

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A05-755
)	
HALE MUA PROPERTIES, LLC	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend the Land Use District	)	DECISION AND ORDER FOR A
Boundary Of Certain Lands Situated at	)	STATE LAND USE DISTRICT
Waiehu, Island of Maui, State of Hawai'i,	)	BOUNDARY AMENDMENT
Consisting Of 240.087 Acres from the)	
Agriculture and Rural Districts to the)	
Urban District, Tax Map Key No. 3-3-002:)	
001 (por.).)	

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.
FEB 12 2007

Date

by

Executive Officer

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT

EXHIBIT "A"

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT

HALE MUA PROPERTIES, LLC, a Hawai'i limited liability company, ("Petitioner"), filed a Petition for District Boundary Amendment ("Petition") on January 5, 2005, pursuant to chapter 205, Hawai'i Revised Statutes ("HRS"), and chapter 15-15 of the Hawai'i Administrative Rules ("HAR"), to amend the land use district boundary of certain lands situated at Waiehu, Maui, Hawai'i, consisting of 240.087 acres from the State Land Use Agricultural and Rural Districts to the Urban District, Tax Map Key No. 3-3-002: 001 (por.) ("Petition Area") for the development of a 466-lot residential subdivision and related infrastructure, two (2) interior subdivision parks consisting of 0.46 acres and 1.14 acres, respectively, and a 5.32-acre athletic park to include a comfort station and parking lot (collectively, the "Project").

The State of Hawai'i Land Use Commission ("LUC"), having examined the testimony, evidence and arguments of counsel presented during the hearing; Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order; The Office of Planning's (OP) Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment; Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Exceptions to the Office of Planning's and Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order for a State Land Use District Boundary Amendment; and The Office of Planning's (OP) Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment; hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner is a Hawai'i limited liability company licensed to do business in the State of Hawai'i, with its business and mailing address at 385 Hukilike Street, Suite 210, Kahului, Maui, Hawai'i 96732. The manager of Hale Mua Properties, LLC is Sterling J. Kim.

2. On January 5, 2005, the LUC received the Petition, Petitioner's Exhibits 1-4, and 6-14, Draft Environmental Assessment ("DEA"), Petitioner's filing fee of \$500.00 for the Petition, and Certificate of Service.

3. On January 10, 2005, Petitioner filed its Notarized Affidavit of Mailing of the Notification of Petition Filing, Exhibits A and B, and Certificate of Service.

4. On January 14, 2005, the LUC held a meeting in Kahului, Maui, to determine whether the LUC should be the approving agency pursuant to chapter 343, HRS, and if so, to determine whether the information contained in the DEA warrants an anticipated finding of no significant impact.

5. On February 10, 2005, Petitioner filed Petitioner's Exhibit 5 and an Errata Sheet to the Petition ("Errata Sheet") to clarify the acreage of the Petition Area and the State Land Use Districts to be reclassified. The Errata Sheet noted that the Petition Area consists of 232.135 acres of land in the State Land Use Agricultural District and 5.918 acres of land in the State Land Use Rural District, rather than the 240.087 acres of land in State Land Use Agricultural and Rural Districts – as originally described in the Petition and DEA.

6. On February 14, 2005, the LUC issued its Order Determining (1) That The LUC Agrees To Be The Accepting Authority Pursuant To Chapter 343, HRS, and (2) Determining That The DEA Dated January 5, 2005, Warrants An Anticipated Finding Of No Significant Impact.

7. On June 16, 2005, the LUC held a meeting in Honolulu, Hawai'i, to consider acceptance of Petitioner's Final Environmental Assessment ("FEA").

8. On August 4, 2005, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order Determining A Finding Of No Significant Impact For A State Land Use District Boundary Amendment.

9. On August 23, 2005, the Council of the County of Maui adopted Resolution No. 05-123 approving the Project, including the Project's preliminary plans and specifications, as submitted to the Council of the County of Maui on July, 11, 2005, pursuant to section 201G-118, HRS (the "201G Approval"). The 201G Approval granted certain exemptions from the Maui County Code ("MCC"), including:

- A. Exemptions from Title 2, MCC, Administration and Personnel:
An exemption from Chapter 2.80B, MCC, General Plan and Community Plans, shall be granted to permit the Project to proceed without obtaining a community plan amendment.
- E. Exemptions from Title 18, MCC, Subdivisions:
Exemptions from Section 18.04.030, MCC, Administration, and Section 18.16.020, MCC, Compliance, shall be granted to exempt the Project from obtaining a change in zoning and community plan amendment to enable subdivision approval.
- F. Exemptions from Title 19, MCC, Zoning:
An exemption from Chapter 19.30A, MCC, Agricultural District, shall be granted to permit the development and use of the Petition Area for single-family residential purposes, including supporting infrastructure requirements.

10. By letter dated April 4, 2006, the Executive Officer of the LUC deemed the Petition a proper filing as of March 31, 2006.

11. On May 15, 2006, the State of Hawai'i Office of Planning ("OP") filed its Statement of Position in Support of the Petition.

12. On May 16, 2006, OP filed its Amended Statement of Position in Support of the Petition.

13. By letter dated June 16, 2006, the Executive Officer of the LUC rescinded the letter dated April 4, 2006 deeming the Petition a proper filing, as Petitioner's fee simple ownership of the Petition Area was unclear given the timely appeal and cross-appeal filed against the summary judgment Petitioner obtained in the quiet title action for the Petition Area in *Hale Mua Properties, LLC, v. Heirs or Assigns of Kula, et. al.*, Civil No. 05-1-0178(2) (the "Quiet Title Action").

14. On July 14, 2006, Petitioner filed its Supplemental Certificate of Service, certifying that the Petition, Exhibits 1-14, and Errata Sheet were served upon the appellant and cross-appellant in the Quiet Title Action: James P. Brumbaugh, Esq. & Brian R. Jenkins, Esq., attorneys for Elden K. Liu, and Lance Castroverde, Esq., attorney for Heirs or Assigns of Kula (k), Heirs or Assigns of Kealoha (w), Heirs or Assigns of Kahookano (w), and Heirs or Assigns of Kapule (collectively, the "Appellants") on July 12, 2006.

15. By letter dated July 17, 2006, the Executive Officer of the LUC deemed the Petition a proper filing as of March 31, 2006.

16. On July 21, 2006, a Notice of Hearing on the Petition was published in the Maui News, Honolulu Star Bulletin, West Hawai'i Today, Hawai'i Tribune Herald, and The Garden Island, which noticed the commencement of the hearings on the Petition on August 24-25, 2006, in Makena, Maui.

17. On July 24, 2006, Petitioner filed its Affidavit of Mailing of Notice of Hearing, Exhibits A and B, and Certificate of Service.

18. On August 8, 2006, the Executive Officer of the LUC conducted a prehearing conference at the Land Use Commission office, room 406, 235 South Beretania Street, Honolulu, Hawai'i, with representatives of Petitioner, OP, and County of Maui Department of Planning ("County"). Representatives of Petitioner and County also attended the prehearing conference via telephone conference in Wailuku, Maui. OP filed its List of Exhibits, List of Witnesses, and Exhibit 2. The County filed its Position of the County of Maui Department of Planning, List of Witnesses, List of Exhibits, and Certificate of Service.

19. On August 11, 2006, Petitioner filed its Affidavit of Publication of Notice of Hearing and Certificate of Service.

20. On August 14, 2006, Petitioner filed its List of Exhibits, List of Witnesses, Exhibits 16-25, and 27-31, and Certificate of Service. OP filed its Exhibit 1.

21. On August 16, 2006, Petitioner filed its Exhibit 26 and attached Exhibits A-D, and Certificate of Service.

22. On August 16, 2006, the County filed its Exhibits 1 and 2, List of Witnesses, List of Exhibits, and Certificate of Service.

23. On August 17, 2006, Petitioner filed its Amended List of Witnesses, Supplemental List of Exhibits, Exhibits 32-36, and Certificate of Service. OP filed its Second Amended List of Exhibits, Exhibits 2A, 5 and 6, and Certificate of Service.

24. On August 24-25, 2006, the LUC opened the hearing on the Petition at its meeting in Makena, Maui. Entering appearances were Blaine J. Kobayashi, Esq., and Sterling J. Kim on behalf of Petitioner; Michael W. Foley, Director of Planning on behalf of the County Department of Planning, and Jane E. Lovell, Esq. and Jesse Souki, Esq., Deputies Corporation Counsel, for the County; Abe Mitsuda and Mary Alice Evans on behalf of OP, and Bryan C. Yee, Esq., Deputy Attorney General for OP.

25. On August 24, 2006, the following individuals provided public testimony: Nathan Kekahuna, Jo-Ann Ridao, Leimomi Schmitt, Mahealani Oliver, No'eau Kaholokula, Joyclyn Costa, John Oliver, Kimo Rivera, Cherlyn Tachera, Gary Wood, Charlene Kana, Pi'imauna Aiwohi, James Sagawinit, Mamie Fernandez, and Bernandini Maio.

26. On August 24, 2006, Petitioner filed its Exhibit 38. The LUC admitted into evidence Petitioner's Exhibits 1-36 and 38; County's Exhibits 1-3; OP's Exhibits 1-2, 2A, and 4-6.

27. At the LUC's hearing on August 25, 2006, Petitioner clarified that the correct tax map key parcel number for the Petition Area is parcel 31, rather than portion of parcel 1.

28. On August 25, 2006, Petitioner filed its Exhibit 37, which was admitted into evidence.

29. On September 7-8, 2006, the LUC resumed the hearing on the Petition in Makena, Maui. On September 7, 2006, the LUC admitted into evidence OP's Exhibit 3. DeGray Vanderbilt provided public testimony.

30. At the LUC's meeting on September 8, 2006, Petitioner clarified that the acreage of the Petition Area is more accurately described as 232.032 acres of land in the State Land Use Agricultural District and 6.149 acres in the State Land Use Rural District, totaling 238.181 acres. Petitioner noted that the 238.181-acre Petition Area now includes an adjacent 0.128-acre portion of land identified as Royal Patent 8051, Land Commission Award 2572: 3 to Naheana.

31. On September 8, 2006, the LUC informed the Petitioner that the LUC can not take judicial notice of a certified copy of the summary judgment in the Quiet Title Action as evidence of title in the Petition Area since the title is still in dispute due to the ongoing appeal. The LUC requested that the Petitioner submit written clarification as to which Land Commission Awards are the subject of the appeal and cross appeal.

32. On September 8, 2006, Petitioner filed its Exhibit 40, which was admitted into evidence.

33. On September 9, 2006, Petitioner filed its Exhibit 39.

34. On September 19, 2006, OP filed its Exhibit 1A, Third Amended List of Exhibits, Exhibits 7-14, and Certificate of Service.

35. By letter dated September 21, 2006, Petitioner provided written clarification to the LUC of the Land Commission Awards which were the subject of the appeal in the Quiet Title Action.

36. On September 21-22, 2006, the LUC continued the hearing on the Petition in Makena, Maui.

37. On September 21, 2006, Petitioner filed its Exhibits 41 and 42. The County filed its Revised Exhibit List, Exhibits 4 and 5, and Certificate of Service. The LUC admitted into evidence Petitioner's Exhibits 39, 41, and 42, County's Exhibits 4 and 5, OP's Exhibits 1A, and 7-14. Doug MacClure provided public testimony.

38. On September 22, 2006, Petitioner filed its Exhibit 43, which was admitted into evidence.

39. At the September 22, 2006 hearing, the LUC requested Petitioner provide the legal basis, with citations, for its disagreement with the principle that a judgment is not admissible in a different forum where offered to show rights declared in the judgment until it becomes final by affirmance upon appeal or by the lapse of time within which an appeal may be taken.

40. On October 2, 2006, OP filed its Exhibit 15.

41. On October 4, 2006, Petitioner filed its position that the Second Circuit Court's judgment in the Quiet Title Action was admissible as evidence in the LUC's proceedings.

42. On October 11, 2006, OP filed its Position on Admissibility of Judgments Pending Appeal.

43. On October 17, 2006, the County filed its Joinder in the State Office of Planning's Position on Admissibility of Judgments Pending Appeal.

44. On November 16, 2006, the LUC continued the hearing on the Petition in Makena, Maui. Kimokeo Kapahulehua provided public testimony. OP's Exhibit 15 was admitted into evidence. The LUC closed the evidentiary portion of the hearing and issued post-hearing instructions.

45. On December 18, 2006, Petitioner transmitted to the parties and LUC staff, via email, the Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order.

46. On December 18, 2006, OP filed The Office of Planning's (OP) Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service.

47. On December 19, 2006, the County filed Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order and Certificate of Service.

48. On December 27, 2006, Petitioner filed Petitioner's Exceptions to the Office of Planning's and Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service.

49. On December 28, 2006, OP filed The Office of Planning's (OP) Amended Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service.

DESCRIPTION OF THE PETITION AREA

50. The Petition Area is located in Waiehu, Island of Maui, State of Hawai'i. The Petition Area consists of approximately 238.181 acres, and is identified by Tax Map Key No. 3-3-002: 031.

51. Kahekili Highway forms the eastern boundary of the Petition Area, while Waiehu Stream and Spreckels Ditch form the north/northwest boundary and south/southwest boundary of the Petition Area, respectively.

52. The single-family residential subdivisions of Waiehu Terrace and Waiehu Heights and the Pi'ihana Project District 3 (an undeveloped urban area proposed for residential use), are located to the east of the Petition Area along Kahekili Highway directly across from the Petition Area.

53. The Petition Area is adjacent to the town of Wailuku, which is the County of Maui's seat of government. In addition to the main federal, state, and county offices, the town of Wailuku includes numerous single-family residences, businesses, and recreational uses.

54. The town of Kahului is located approximately 3 miles from the Petition Area.

55. The Petition Area is currently vacant and is largely vegetated with macadamia nut trees which have not been cultivated since 1999.

56. The Petition Area experiences mild and uniform temperatures year-round, moderate humidity, and relatively consistent northeasterly trade winds. Average temperatures at the Petition Area range from lows in the 60's to highs in the 80's. Average rainfall at the Petition Area is 20 to 30 inches per year.

57. The Petition Area is relatively flat and gently slopes in a west to east direction. The Petition Area contains slopes ranging from 0 to 15 percent. Elevations at the Petition Area range from approximately 80 feet to 250 feet.

58. The Flood Insurance Rate Map of the Federal Emergency Management Agency for the County of Maui identified the majority of the Petition Area as lying within Zone C, an area of minimal flooding. A small portion of the Petition Area is located within Zone A, an area that is affected by 100-year flood events. This area, however, will be designated for open space and incorporated into an overall drainage detention plan to control runoff from the Project.

59. The Petition Area is not subject to coastal hazards such as tsunami inundation.

60. The United States Department of Agriculture Soil Conservation Service classifies the soil type underlying the Petition Area as being within the Pulehu-Ewa-Jaucas association of soils, which is characterized as deep, nearly level to moderate

sloping, and well drained that have a moderately fine to coarse texture. These types of soils are often used for sugarcane cultivation and homesites.

61. According to the State of Hawai'i Department of Agriculture's Agricultural Lands of Importance to the State of Hawai'i ("ALISH"), the Petition Area consists of "Prime" agriculture lands.

62. The University of Hawai'i Land Study Bureau classifies the land underlying the Petition Area as B82i and C83i, which is reflective of soils that are irrigated and well-drained with a non-stony, finely textured soil well-suited for cultivation.

PETITIONER'S PROPERTY INTEREST IN THE PETITION AREA

63. The Petitioner purchased Wailuku Agribusiness Co., Inc.'s property interest in the Petition Area by means of a quit claim deed. Petitioner's quit claim deed was recorded in the Bureau of Conveyances on May 21, 2004 as Document Number 2004-102439.

64. At the time the Petitioner purchased Wailuku Agribusiness Co., Inc.'s property interest in the Petition Area, Title Guaranty issued an opinion that approximately 40 acres of the Petition Area, consisting of twelve (12) Land Commission Awards, had broken title.

65. On May 9, 2005, Petitioner filed its Complaint to Quiet Title; Exhibits A through L; and Summons in the State of Hawai'i, Circuit Court of the Second Circuit, in Civil No. 05-1-0178(2).

66. On October 14, 2005, Petitioner filed its Motion For Summary Judgment in the State of Hawai'i, Circuit Court of the Second Circuit in Civil No. 05-1-0178(2).

67. On March 8, 2006, Judge Shackley F. Raffetto issued the Order on Motion for Summary Judgment (the "Summary Judgment"); Findings of Fact and Conclusions of Law; and Final Rule 54(B) Judgment and Decree, Exhibits A through L in Civil No. 05-1-0178(2).

68. On March 31, 2006, Judge Shackley F. Raffetto issued the Order on Motion for Partition; and Final Judgment and Decree on the Motion for Partition and on Other Issues, and Exhibit F in Civil No. 05-1-0178(2).

69. The Appellants timely filed an appeal to the Summary Judgment in the Quiet Title Action regarding five (5) of the Land Commission Awards within the Petition Area.

70. The Appellants did not file a supersedeas bond to stay the ruling in the Quiet Title Action.

71. Petitioner represented that the Summary Judgment determined that the Petitioner has the legal right to file the Petition with the LUC and seek development approvals for the Petition Area from the County of Maui.

72. The Appellants, through their counsel, were served, with a copy of the Petition on July 12, 2006. The Appellants did not file a petition to intervene in the proceeding for Petitioner's district boundary amendment.

73. The status of Petitioner's title in the Petition Area may affect Petitioner's ability to receive final subdivision approval from the County of Maui, as the Petitioner must demonstrate compliance with Title 18, MCC and its requirements.

74. Title 18, MCC requires in part, that as a condition for final subdivision approval, the Petitioner must provide a complete title report issued by a licensed title company showing all persons vested with record title in the proposed subdivided land.

75. In the County of Maui's Housing and Human Services Committee Report No. 05-110, the Deputy Corporation Counsel noted that the Petitioner must obtain clear title and title insurance.

PROPOSAL FOR RECLASSIFICATION

76. The Project consists of approximately 466 improved lots, with approximately 238 lots (representing 51% of the Project's lots) to be sold as affordable single-family house-lot packages (the "238 affordable units"). The remaining lots, consisting of approximately 209 residential lots (approximately 10,000 square feet each in size) (the "209 market-priced residential lots") and 19 large lots (approximately 2 to 25 acres in size) (the "19 large lots"), will be sold at market price.

77. The lot size for the 238 affordable units will be approximately 5,000 square feet with a zero-lot line concept and will provide approximately 1,100 to 1,200 square feet of interior living area.

78. The Project's 19 large lots were designed by the Petitioner to preserve an open space perimeter around the 238 affordable units and 209 market-priced residential lots.

79. The 238 affordable units will be priced to be affordable to families earning between 70% and 100% of the County of Maui's median family income. Assuming a 6.5% interest rate, the range of the sales prices for the 238 affordable units will be from \$164,900 to \$245,600.

80. To the extent practicable, the 238 affordable units will be sold for less than the maximum amounts established by the County of Maui's Department of Housing and Human Concerns ("DHHC") Sales Price Guidelines matrix.

81. The Petitioner has initiated a pre-approval process to expedite the sale of the 238 affordable units.

82. The 238 affordable units will be sold based on the following income distribution:

Affordable Homes Allocated By Income Category		
Percent of Median Annual Income	Number of Affordable Units Available for Sale	Percent of Project's Affordable Units
70%	12	5%
80%	95	40%
90%	95	40%
100%	36	15%
Total	238	100%

83. The Petitioner will coordinate with and enter into an affordable housing agreement with the DHHC to determine all of the terms and conditions of its affordable housing requirements for the Project.

DEVELOPMENT TIMETABLE

84. The Project is intended to be developed in three (3) phases.

85. Phase 1 of the Project will include the development of seventy-seven (77) affordable units, ninety-eight (98) market-priced residential lots, seven (7) large lots, and two (2) parks - one (1) interior subdivision park and a 5.32-acre athletic park.

86. Phase 2 of the Project will include the development of the remaining one-hundred sixty-one (161) affordable units, one-hundred eleven (111) market-priced residential lots, twelve (12) large lots, and one (1) interior subdivision park.

87. Phase 3 of the Project is an extension of Imi Kala Street from its current terminus at Eha Street to Kahekili Highway (the "Imi Kala Street Extension"). The Imi Kala Street Extension will include the construction of a new bridge across Iao Stream.

88. Phases 1 and 2 of the Project are anticipated to take approximately eighteen (18) months to complete, with a six (6) month overlap for each phase. Phase 3 of the Project is anticipated to take approximately six (6) months to complete, and will be completed prior to the occupancy of any homes in the Project.

89. The Petitioner testified that under a worse case scenario, the first seventy-seven (77) affordable units will be completed in about five years.

90. The Imi Kala Street Extension is a regional transportation improvement which was included as a component of the Petitioner's development proposal approved by the County of Maui, as codified in County Council Resolution No. 05-123.

PETITIONER'S FINANCIAL CAPABILITY

91. The total estimated cost of the Project is \$57,000,000.00. This estimated cost includes \$6,300,000.00 for the construction of the Imi Kala Street Extension.

92. The total estimated cost of the Project does not include the cost of constructing the Project's 238 affordable units. The Project's 238 affordable units will be financed by each of the individual affordable unit homeowner's mortgages.

93. From each affordable units' mortgage, Central Pacific Home Loans – Wells Fargo will disburse \$80,000.00 to the Petitioner to construct the affordable unit. During the construction period of the 238 affordable units, the Petitioner will cover the carrying cost of each of the affordable units' mortgages until such time that the affordable unit is completed and ready for occupancy.

94. Once the affordable unit is complete and ready for occupancy, the balance of the loan amount will be closed in a construction-to-perm loan and each new

homeowner will takeover the payments on the balance of their mortgage at the time the homeowner takes occupancy of the affordable unit.

95. Petitioner conservatively estimates the gross profit of the Project to be in excess of \$112,000,000.00. The net profit of the Project is expected to be approximately \$55,000,000.00.

96. Petitioner's financial balance sheet dated June 30, 2006, reflects total assets of \$22,242,469.00.

97. Petitioner intends to finance the Project through a development loan with Central Pacific Bank. Clifford K. Fujiwara, Central Pacific Bank's vice president of commercial real estate, expressed support for the Project based on review of the Project's budget, Project appraisal, Petitioner's cash flows and budgets, and strong market for the Project's 238 affordable units and 209 market-priced residential lots.

98. The financial viability of the Project will not be affected if the 19 large lots are not reclassified into the State Land Use Urban District and remain in the State Land Use Agricultural District.

99. Petitioner has previous residential home construction experience in Maui. In 2003, Petitioner constructed the 66-lot Honu Alahele subdivision in Kihei, Maui using a \$4 million loan from Central Pacific Bank.

100. Based on Petitioner's ownership of the Petition Area, current financial position, demand for the Project's 238 affordable units and market-priced lots,

financing from Central Pacific Bank, and expected net profit of approximately \$55,000,000.00, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

STATE AND COUNTY PLANS AND PROGRAMS

State Land Use Districts

101. The Petition Area consists of 232.032 acres in the State Land Use Agricultural District and 6.149 acres in the State Land Use Rural District.

102. The Project's 19 large lots represent approximately 120.888 acres of the Petition Area, with approximately 114.739 acres in the State Land Use Agricultural District and approximately 6.149 acres in the State Land Use Rural District.

103. The Project's 238 affordable units and 209 market-priced residential lots represent approximately 117.293 acres of the Petition Area, all of which are within the State Land Use Agricultural District.

County of Maui General Plan

104. The Project conforms to Theme 5 of the 1990 update of the General Plan of the County of Maui ("General Plan"), which is to provide for needed residential housing.

105. Population growth and the correlating need and demand for housing is extremely high on the island of Maui. The proposed reclassification, which will allow residents to purchase an affordable house and lot, as well as allow other

residents to purchase a lot to design and build their own homes, will present an opportunity to address a portion of the critical community need for affordable housing.

106. The Project will support the local economy, as construction-related employment opportunities would be generated during the build-out of the Project.

107. The Project conforms with the following objectives of the General Plan relating to population, land use, economic activity, housing and urban design:

- To plan the growth of resident and visitor population through a directed and managed growth plan so as to avoid social, economic, and environmental disruptions.

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

- To use the land within the County of Maui for the social and economic benefit of all the County of Maui's residents.

- To utilize an equitable growth management program which will guide the economic well-being of the community.

- To provide a choice of attractive, sanitary and affordable homes for all residents of Maui County.

- To provide affordable housing to be fulfilled by a broad cross-section of housing types.

- To encourage developments which reflect the character and the culture of the County of Maui's people.

Wailuku-Kahului Community Plan

108. The purpose of the nine (9) community plans established in the County of Maui is to outline a detailed agenda for carrying out the objectives of the General Plan.

109. The Wailuku-Kahului Community Plan ("Community Plan") identified the lack of affordable housing as one of the major problems. As the cost of residential housing has dramatically increased in the past 10 to 15 years, the Community Plan recognizes that providing affordable housing opportunities for residents, especially those earning below 80 to 140 percent of the County of Maui's median annual income, must be aggressively pursued.

110. The Project is consistent with the following goals, objectives, and policies of the Community Plan:

- Provide a sufficient supply and choice of attractive, sanitary, and affordable housing accommodations for the broad cross-section of residents, including the elderly.
- Provide sufficient land areas for new residential growth which relax constraints on the housing market and afford variety in type, price, and location of units. Opportunities for the provision of housing are presently constrained by a lack of

expansion areas. This condition should be relieved by a choice of housing in a variety of locations, both rural and urban in character.

- Seek alternative residential growth areas within the planning region, with high priority given to the Wailuku and Kahului areas. This action should recognize that crucial issues of maintaining important agricultural lands, achieving efficient patterns of growth, and providing adequate housing supply and choice of price and location must be addressed and resolved.

- Provide efficient housing designs in order to reduce residential home energy and water consumption.

- Develop and maintain an efficient and responsive system of public services which promotes a safe, healthy, and enjoyable lifestyle, accommodates the needs of young, elderly, disabled and disadvantaged persons, and offers opportunities for self-improvement and community well-being.

- Provide park and recreation areas as an integral part of project district specifications which will accommodate the needs of population growth.

- Ensure that adequate regional/community park facilities are provided to service new residential developments.

- Provide an attractive and functionally integrated urban environment that enhances neighborhood character, promotes quality design, defines a unified landscape planting and beautification theme along major roads and highways,

watercourses and at major public facilities and recognizes the historic importance and traditions of the region.

- Maintain shrubs and trees at street intersections for adequate sight distance.

- Incorporate drought tolerant plant species and xeriscaping in future landscape planting.

111. The Community Plan designates the majority of the Petition Area as Agricultural, with a small portion designated as Rural.

112. The 201G Approval exempts the Project from requiring a community plan amendment.

County of Maui Zoning

113. The Petition Area is designated Agricultural by County of Maui zoning.

114. The 201G Approval exempts the Project from requiring a zoning amendment.

County of Maui Special Management Area

115. The Petition Area does not lie within the County's Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

116. According to the SMS Socio-Economic Forecast for Maui County, the island's housing supply in the year 2000 totaled 40,041 units, 32 percent of which,

(or 12,852 units), were located in the Wailuku-Kahului Community Plan region. This area accounts for the largest percentage of housing units on the island. Demand for housing in this region in the year 2000 was 13,528 units.

117. The demand for housing in the Wailuku-Kahului area is projected to grow to 16,826 units in the year 2010, while the expected number of household units is estimated at 15,985 units. By the year 2020, the housing demand is expected to reach 20,054 units compared to the projected household count of 19,051 units.

118. According to the Realtor's Association of Maui, during the period from January 1, 2006 to June 30, 2006, the median sales price of a Central Maui home was \$615,000.00. During that same time period, the island-wide median price for single-family homes was \$710,000.00.

119. The Project's provision of 238 affordable units will meet a community and island need.

120. The DHHC supports the Project due to the significant need for affordable housing in the County of Maui.

121. The Hawai'i Housing Finance and Development Corporation supports the Project due to the high percentage of affordable homes being provided and the income levels that the affordable units will be offered to.

ECONOMIC IMPACTS

122. The Project will support the island's economy by providing construction and construction-related employment during the build-out of the Project.

In the long term, residential homeowners will require services related to home maintenance and improvement, which will further support local business operators.

SOCIO-ECONOMIC IMPACTS

123. The population of the island of Maui has experienced strong growth over the past two (2) decades. The 2000 population was estimated at 117,644, which was an increase from the 1990 population of 91,361. The year 2005 population is estimated at 127,950, while the population for the year 2020 is projected to be 160,090.

124. In terms of the Wailuku-Kahului Community Plan region, the estimated 2000 population was 41,503, with a projected increase to 44,883 in the year 2005. By the year 2020, the projected population in the region is expected to be 55,424.

125. The average household size in the Wailuku-Kahului region in the year 2000 was 3.17 compared to an island-wide average of 2.90. According to SMS Socio-Economic Forecast for Maui County, these numbers are expected to decrease to an average of 3.03 and 2.80, respectively, by the year 2010, and to an average of 2.90 and 2.72, respectively, by the year 2020.

126. The Project is not considered a direct population generator from a long-term perspective because any increase in population should be within expected growth parameters defined by migration and birth/death rates. Instead, the Project is anticipated to accommodate a portion of the demand of existing residents for affordable housing.

127. Lokahi Pacific, incorporated in 1971, is an independent, private non-profit housing and community development organization chartered under the laws of the State of Hawai'i.

128. Lokahi Pacific will serve as the buy-back entity for the Project's affordable units. Each deed for an affordable unit will include a provision requiring the owner of the affordable unit to sell the home to Lokahi Pacific in the event the owner sells the affordable unit within 10 years of purchase. Until ten years after the purchase date of the affordable unit, the homeowner's equity will be 20%, with the remaining 80% of equity belonging to Lokahi Pacific. After a period of 10 years, the homeowner's equity interest will grow at 3% per year, up to 50% equity interest in the 20th year of homeownership. At the 20th year, the homeowner will have the option to purchase the balance of the affordable unit's equity from Lokahi Pacific for \$50,000.

IMPACTS UPON RESOURCES IN THE AREA

Agricultural Resources

129. Although the Petition Area was previously used for large-scale agricultural activities, and recently planted as a macadamia nut orchard, the Petition Area has not been cultivated since 1999.

130. The Petition Area is located in an area of existing and planned urban development. To the north of the Project is the Oceanview Estates residential subdivision. To the east of the Project are the Waiehu Heights and Waiehu Terraces

residential subdivisions and the Pi'ihana Project District 3. To the immediate south of the Project is the Wailuku Country Estates agricultural subdivision.

131. The location of the Petition Area, coupled with the demand for affordable housing in the County of Maui, outweighs the impact on agriculture in the County of Maui and the State of Hawai'i. The loss of productive agricultural land associated with the development of the Project is not expected to be significant as the reclassification of the Petition Area's 238.181 acres would represent a reduction of only 0.1 percent of the lands designated agricultural on the island of Maui.

Flora and Fauna

132. A biological survey of the Petition Area was conducted by Robert W. Hobdy. Field work for the study was carried out on July 21-24, 2005.

133. Vegetation throughout much of the Petition Area is characterized primarily by macadamia nut trees, koa haole, guinea grass and common weeds. There are no known significant habitats or rare, endangered or threatened species of flora or fauna on the Petition Area.

134. The Project is not anticipated to have significant adverse impacts upon wetland areas or on the biological resources of the Petition Area.

Archaeological/Historical/Cultural Resources

135. An archaeological inventory study of the Petition Area was conducted by Scientific Consultant Services, Inc. ("SCS"). Field work for the archaeological inventory study was carried out between December 8, 2003, and January

11, 2004. The goals of the archaeological inventory survey were to determine the existence of any historic properties on the Petition Area, assess the significance of any identified historic properties/sites, and to provide recommendations to the State Historic Preservation Division ("SHPD") concerning any mitigation on the Petition Area during the development of the Project.

136. The archaeological inventory survey of the Petition Area identified thirteen (13) sites. Of these sites, one was a previously recorded historic state site (Spreckels Ditch, State Site Number 50-50-07-1508), nine others were new sites from the historic period, one site was a terrace complex from the late prehistoric to late historic times, and two sites were isolated finds, likely from the early historic period. SCS also excavated six stratigraphic trenches on the Petition Area. No cultural material or remains were found in any of the trenches.

137. While the thirteen (13) sites are considered significant according to the broad criteria established for the State and National Register of Historic Places because of their ability to yield information about history or pre-history, SHPD agreed that the thirteen (13) sites have been adequately documented and no further work is required.

138. On May 18 and 20, 2004, SCS also conducted an archaeological inventory survey of the Imi Kala Street Extension area that was conducted in a similar manner as SCS' survey of the Petition Area.

139. The archaeological inventory survey of the Imi Kala Street Extension area identified a total of three (3) new sites, as well as the previously documented Spreckels Ditch (State Site Number 50-50-07-1508). Of these sites, one was the historic bridge constructed and used by Wailuku's sugar cane industry, another was the former *lo'i* fields used during pre-Contact into early post-Contact times, and the last was a small, concrete-lined irrigation ditch that was also constructed and used by the sugar cane industry, and later, the macadamia nut industry.

140. SCS excavated eleven (11) stratigraphic trenches on the Imi Kala Street Extension area. No cultural material or remains were found in any of the trenches.

141. While the three (3) sites in the Imi Kala Street Extension area are considered significant according to the broad criteria established for the State and National Register of Historic Places because of their ability to yield information about history or pre-history, except for Spreckels Ditch which will be preserved, SHPD agrees that no further work is required for the other sites in the Imi Kala Street Extension area.

142. A small portion of the Imi Kala Street Extension area (identified as Section One in the survey of the Imi Kala Street Extension area) may contain perimeters of individual *lo'i* patches and remnant field habitations. SHPD agreed with SCS' recommendation to monitor this portion of the Imi Kala Street Extension.

143. A cultural impact assessment for the Petition Area was prepared by CKM Cultural Resources, in accordance with guidelines of the State of Hawai'i Office of

Environmental Quality Control. Kahu Charles Kauluwehi Maxwell served as the principal researcher for the assessment.

144. The objective of the cultural impact assessment was to identify and describe any resources on the Petition Area having native Hawaiian cultural value, as well as to describe potential impacts from development of the Petition Area, including measures to mitigate impacts.

145. Kahu Charles Kauluwehi Maxwell determined that there is a strong possibility that *iwi* could be encountered when the Petition Area is cleared and graded.

146. Kahu Charles Kauluwehi Maxwell recommended full-time archaeological monitoring for the Petition Area in the areas where Kahekili Highway runs parallel to the Petition Area, 100 meters inward toward the *mauka*/Wailuku direction from Lower Waiehu Stream.

147. The cultural impact assessment was based on Kahu Charles Kauluwehi Maxwell's personal knowledge of the Petition Area and included interviews with several long-time residents of the area, documentary research, review of the archaeological inventory survey prepared by SCS, and site visits to the Petition Area from February through March of 2004.

148. While the interviewees in the cultural impact assessment related the culture and history of the area in general, there was no indication that the Petition Area had been used for native Hawaiian traditional and customary practices.

149. Based upon the archaeological inventory, interviews of long-time residents of the area, documentary research, the recommended archaeological monitoring for a portion of the Petition Area, and Kahu Charles Kauluwehi Maxwell's personal knowledge of the Petition Area, the Project will not have any adverse impacts to native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawai'i State Constitution.

Groundwater Resources

150. Waiehu Stream and Spreckels Ditch form the north/northwest and south/southwest boundaries of the Petition Area. Waiehu Stream is a perennial stream with substantial aquatic resources. The Project will not impact Waiehu Stream or Spreckels Ditch. There are no wetlands in the vicinity of the Petition Area.

151. The Imi Kala Street Extension includes a bridge over Iao Stream, which is a perennial stream with substantial aquatic resources, and is rated an Outstanding Stream by the State of Hawai'i. The Project will not impact Iao Stream since the bridge foundation work associated with the Imi Kala Street Extension will be conducted outside of the stream bed.

Recreational and Scenic Resources

152. The Wailuku-Kahului region encompasses a full range of recreational opportunities, including shoreline and boating activities at the Kahului Harbor and adjoining beach parks, and individual and organized athletic activities offered at numerous County of Maui parks.

153. The County of Maui's Waihee Park is located to the south of the Petition Area, and includes a baseball field, paved play court, restroom facilities, and picnic tables with barbecue areas.

154. Additional park and recreational facilities in the Wailuku area include Iao Park, Wells Park, Wailuku Pool, Wailuku Gym, Wailuku Elementary School Park, the Wailuku Community Center, Papohaku Park, War Memorial Athletic Complex, Sakamoto Pool, and Keopuolani Park.

155. The Project will not significantly impact any of the foregoing existing recreational facilities.

156. As part of the Project, Petitioner will provide three (3) public parks. An approximately 5.32-acre athletic park will be developed along Kahekili Highway. Petitioner will prepare the site for development and provide an athletic field, comfort station, parking stalls, landscaping, and irrigation. Upon its completion, the 5.32-acre athletic park will be dedicated to the County of Maui.

157. Two interior subdivision parks, consisting of approximately 0.46 acre and 1.14 acres, will be developed at the northern and southern ends of the Project. These two interior subdivision park sites will be prepared for development, landscaped, and irrigated. The two interior subdivision parks will be open to the public but will be privately owned and maintained by the Project's homeowners' association.

158. The scenic resources for the Petition Area are defined by Mount Haleakala to the east and the West Maui Mountains to the west. The Pacific Ocean lies to the east of the Petition Area.

159. The Project's 19 large lots will preserve an open space perimeter around the 238 affordable units and the 209 market-priced residential lots. The Petitioner represented to the LUC that none of the 19 large lots will be further subdivided, as specified in Petitioner's Unilateral Agreement recorded in the Bureau of Conveyances on June 8, 2006 as Document Number 2006-106454.

160. The Petition Area is not part of a scenic corridor and the Project will not adversely affect views from inland vantage points. The Project is not anticipated to have an adverse visual impact upon the visual character of the surrounding area.

ENVIRONMENTAL QUALITY

Noise

161. Traffic noise from Kahekili Highway is the predominant source of noise in the vicinity of the Petition Area.

162. Ambient noise conditions may be temporarily affected by on-site construction activities on the Petition Area such as mass grading and roadway and utilities installation work. Noise mitigation measures, such as equipment mufflers, barriers, and other noise attenuating equipment will be utilized as required.

163. All construction activities will be limited to daylight working hours, and will be in compliance with appropriate governmental rules and regulations relating to permissible noise levels.

Air Quality

164. The air quality in the Wailuku-Kahului region, as well as the Waihee region, is considered good. While air quality in the vicinity of the Petition Area may be temporarily and intermittently impacted from the emission of fugitive dust during construction-related activities, Best Management Practices will be used to ensure that construction-related impacts are minimized. Additionally, the region's constant exposure to winds allows quick dispersal of any concentrations of emissions.

ADEQUACY OF PUBLIC SERVICE AND FACILITIES

Schools

165. Schools in the Wailuku region include: Wailuku Elementary School and Waihee Elementary School (Grades K to 5); Iao Intermediate School (Grades 6 to 8); and Baldwin High School (Grades 9 to 12). Schools in the Kahului area include: Lihikai and Kahului Schools (Grades K to 5); Maui Waena Intermediate School (Grades 6 to 8); and Maui High School (Grades 9 to 12).

166. According to Department of Education ("DOE") calculations, the Project is anticipated to generate approximately 152 students at full build-out.

167. The schools in the Wailuku area are presently at- or over-capacity.

168. The DOE anticipates that Baldwin High School, Iao Intermediate School, Waihee Elementary School, and Wailuku Elementary School will exceed their facility capacity by several hundred students in the 2011-2012 school year.

169. The Petitioner may satisfy the DOE's fair-share contribution in one of the following ways: 1) a contribution of land; 2) a contribution of money; or 3) a contribution of both land and money. The DOE estimates that the Petitioner's contribution of land-only would be approximately 12 useable acres. If the Petitioner contributes money-only, the required amount would be approximately \$2.4 million. If the Petitioner contributes both land and money, the contribution would be approximately 3.7 useable acres and \$1.3 million.

170. The DOE stated that the Petition Area contains an area appropriate for the location of an elementary school, which would require approximately 12 acres of usable land.

171. The Petitioner continues to have ongoing discussions with the DOE regarding a potential fair-share contribution that may utilize one of the Project's 19 large lots as a school site. However, no agreement between the Petitioner and the DOE was reached by the conclusion of the evidentiary portion of the hearing.

172. The Petitioner requested that the Project's 238 affordable units be declared exempt from the DOE's calculation of the Project's fair share contribution.

173. The Petitioner testified that if the DOE fair share contribution was applied to the Project's 238 affordable units, the Petitioner may not be able to deliver as

many affordable units in the lower percentiles of affordable housing (expressed as a percent of the County of Maui's annual median income) as previously represented by the Petitioner to the Council of the County of Maui.

174. The DOE particularly stressed the importance of using the standard fair-share condition language to offset the Project's impact on local schools. The DOE's proposed the following language as a condition of approval:

"The Applicant shall contribute to the development, funding, and/or construction of school facilities, on a fair-share basis, as determined by, and to, the satisfaction of the Department of Education. Terms of the contribution shall be agreed upon in writing by the Applicant and the Department of Education prior to obtaining building permits for any area of the development."

175. The Petitioner did not incorporate a school site within the design of the Project that was submitted to the Maui County Council for the 201G Approval. The concept of developing a school site within the Petition Area was also not incorporated in the Petitioner's FEA or Petition.

176. Subdividing a 12-acre school site from one of the Project's 19 large lots would represent a substantial deviation from the Project's 201G Approval and breach a development standard set forth in Petitioner's Unilateral Agreement recorded in the Bureau of Conveyances on June 8, 2006 as Document Number 2006-106454.

177. Developing a school site within the Petition Area would represent a substantial deviation from the Project's 201G Approval.

178. Any substantial deviations of the 201G Approval will require the approval of the Maui County Council.

Solid Waste Disposal

179. The Project will generate approximately 154,000 pounds of solid waste per week.

180. The Project's solid waste will be collected by the staff of the County of Maui's Solid Waste Division and hauled to the Central Maui Landfill for disposal.

181. The Central Maui Landfill has adequate capacity to accommodate the Project's solid waste.

Wastewater

182. If the Project does not include accessory dwellings, the Project's estimated wastewater generation rate will be approximately 240,000 gallons per day ("gpd"). If the Project's 209 market-priced residential lots and the 19-large lots include accessory dwellings, the Project's estimated wastewater generation rate will be approximately 340,000 gpd.

183. The County of Maui's Wailuku-Kahului Wastewater Reclamation Facility ("WKWWRF") is located on Amala Place near Kanaha Beach in Kahului. The WKWWRF has a capacity of 7.9 MGD, which is sufficient capacity to accommodate the amount of wastewater estimated to be generated by the Project.

184. Within the Project, eight (8) inch sewer lines utilizing a gravity system will collect the Project' wastewater.

185. The alignment for collecting and transmitting the Project's wastewater to regional treatment facilities was not determined at the time of the LUC's hearing on the Petition. During the evidentiary portion of the hearing, the Petitioner described two potential strategies for transmitting the Project's wastewater to regional treatment facilities.

186. Under one strategy, the Project's wastewater lines will be connected to a pump station and then to a new force main that will be located within the Petition Area. The new force main will convey the Project's wastewater along Kahekili Highway to an existing sewer manhole and line located along Imi Kala Street for transmission to the WKWWRF.

187. The other strategy would involve coordinating the design of the Project's wastewater transmission system with that of the State of Hawai'i Department of Hawaiian Home Lands' ("DHHL") Waiehu Kou Phase IV subdivision. This strategy would also utilize a gravity collection system. However, the force main would be located in the right-of-way along Waiehu Beach Road, and convey the Project's wastewater to the Paukukalo Pump Station for transmission to the WKWWRF. Under this scenario, the Petitioner would participate with the DHHL in underwriting the required upgrade of the Paukukalo Pump Station.

188. If the Petitioner were to partner with DHHL in DHHL's planned wastewater improvements, such cost-sharing partnership must occur in advance of the estimated completion of the Waiehu Kou IV subdivision in October 2007.

189. The Petitioner designed the Project's wastewater system to be constructed up to the lot-line of each of the Project's 19 large lots. The individual homeowners of the 19 large lots may choose to connect to the Project's wastewater system or utilize an individual wastewater system. The Project's 19 large lot owners will bear the cost to connect their respective lots to the Project's wastewater system.

190. The Petition Area is located above the State of Hawai'i Department of Health ("DOH") Underground Injection Control ("UIC") line. The DOH restricts the injection of water or other fluids above the UIC line to protect underground aquifers. Title 11, Chapter 23, HAR sets forth the DOH's rules governing the location, construction, and operation of injection wells which are designed to ensure that injected fluids do not migrate and pollute underground sources of drinking water. Development of individual wastewater systems on the Petition Area are subject to the regulations of the DOH.

Drainage

191. The runoff from the Petition Area in its undeveloped state for a 50 year - 1 hour storm is 238 cubic feet per second ("cfs"). The estimated post-development runoff from the Petition Area for a 50 year - 1 hour storm is 456 cfs, which is a 218 cfs increase from pre-development conditions.

192. The increase in runoff from the Project will be accommodated by a drainage system that will include a series of catch basins, drainage pipes, culverts, and

grassed swales that will convey stormwater into three (3) detention ponds located within the Petition Area.

193. The Project's drainage system will be designed in a manner such that the Project will not have an adverse effect on adjoining or downstream properties.

194. The Project is not designed to use the 5.32-acre athletic park as a drainage thoroughway or drainage or detention or retention basin. The Project will utilize a drain line under or around the park to transmit the drainage to an approximate 2-acre retention pond ("Retention Pond No. 3") located within the Petition Area on the northern portion of one of the 19 large lots situated along Kahekili Highway.

195. The Petitioner will design the Project's drainage system so that stormwater will be directed to Retention Pond No. 3 in a manner that preserves the ability for the DOE to possibly use one of the 19 large lots as a location for an elementary school, in the event that a school is constructed within the Petition Area.

196. The Petitioner has an agreement with Wailuku Country Estates to utilize the 21.25-acre lot adjacent to Wailuku County Estates along the Petition Area's southern boundary (one of the 19 large lots), to alleviate the existing drainage problems that occur within Wailuku County Estates.

Water Service

197. The Petition Area is located in the Central Maui Service Area. The Central Maui Service Area draws water from several sources which include: the Iao Aquifer, the Waihee Aquifer, the Iao tunnel, and the Iao-Waikapu ditch.

198. The Iao Aquifer has a sustainable yield of 20 million gpd. In July 2003, the Commission on Water Resource Management ("CWRM") designated the Iao Aquifer as a groundwater management area. The CWRM estimates that an additional 2 million gpd can be withdrawn without damaging the Iao Aquifer.

199. The Project's drinking water demand was estimated based on a projected usage of 1,000 gpd per lot. If the Project does not include accessory dwellings, the Project's water consumption will be approximately 466,000 gpd.

200. The County of Maui Department of Water Supply ("DWS") informed the Petitioner that it may be required to provide a water source to supply the Project and that the availability of county water would be determined at the time of Petitioner's application for water service.

201. The Petitioner intends to construct the Project without developing drinking water source infrastructure or making a contribution to regional drinking water source development. Drinking water source for the Project is wholly dependant on the DWS to provide an allocation of drinking water.

202. The Petitioner's purchase agreement for the Petition Area specified that the Petitioner is prohibited from drilling any wells within the Petition Area.

203. The standard policy of the DWS is to not issue reservations for water meters. At the time the Petitioner applies to the DWS for water meters, the DWS will make a determination whether or not the Project will receive water service from the County of Maui.

204. Petitioner plans to proceed with the Project although DWS is not obligated to issue water meters for the Project. If water meters are issued for the Project, DWS cannot ensure that water will be available for the Project at the time the Project is built-out.

205. DWS is working on developing new sources of potable water to accommodate the County of Maui's projected population growth. DWS is working with the developer of Maui Lani to establish three (3) new drinking water wells to serve the Central Maui Service Area, and also continues to have ongoing discussions with Alexander & Baldwin, Inc. ("A&B") regarding the development of a surface water treatment plant. The three (3) Maui Lani wells are anticipated to provide 2.0 million gpd while the A&B water treatment plant is anticipated to provide an additional 6.0 million gpd. DWS also has plans to develop a well at the Iao tank site, and a well in the Waikapu area. The DWS is also finalizing an agreement with the developer of Kehalani Mauka to develop three (3) new drinking water wells. Given the new drinking water sources being developed, the DWS anticipates that approximately 10.9 million gpd could become available within the next several years in the Central Maui Service Area.

206. The total water storage requirement for the Project is approximately 500,000 gallons. Petitioner has committed to construct a 500,000 gallon drinking water storage tank to meet the water storage requirement for the Project.

207. DWS has indicated that in order to meet drinking water storage requirements for the Project, the construction of two storage tanks totaling, at a

minimum 500,000 gallons may be necessary due to differences in elevation occurring within the Petition Area.

208. If its design is approved by the DWS, one storage tank could service the Project if the tank is engineered to accommodate both pressure zones within the Project.

209. The DWS indicated that when possible, potable groundwater (as defined by the Safe Drinking Water Act as enacted or as adopted by the U. S. Environmental Protection Agency and the DOH Safe Drinking Water Branch) should not be used for irrigation of the Project's 19 large lots.

210. The Petitioner has a tentative agreement with Wailuku Sugar regarding use of surface water from Spreckels Ditch as a private irrigation water source for the Project's 19 large lots. The Petitioner is waiting to receive development approval of the Project before entering into a contract with Wailuku Sugar to provide water to irrigate the Project's 19 large lots.

211. The Petitioner will provide infrastructure for surface water to be used for irrigation on the 19 large lots; however, each of the 19 large lot owners will be required to provide their own storage for irrigation water.

Highway and Roadway Facilities

212. Kahekili Highway forms the eastern boundary of the Petition Area.

213. Access to the Petition Area will be provided via two (2) access points on Kahekili Highway.

214. The portion of Kahekili Highway fronting the Petition Area is owned and maintained by the County of Maui.

215. Julian Ng of Julian Ng, Inc. prepared a Traffic Impact Analysis Report ("TIAR") for the Project dated November 2004; a Supplemental TIAR dated April 19, 2005; and a written response to the State Department of Transportation dated August 9, 2006, concerning traffic impacts relating to the Project. The purpose of the TIAR was to evaluate the potential impact of the Project's peak hour traffic volumes and compare these impacts to growth in traffic that is already expected to occur.

216. The TIAR was based on the assumption that the Project would include accessory dwellings on both the 209 market-priced residential lots and 19 large lots.

217. The TIAR utilized the suggestion of the Institute of Transportation Engineers of one hundred (100) or more added new peak direction trips to or from the Project as the threshold for conducting a traffic impact study (the "TTS Suggested Traffic Impact Study Threshold") to determine the impact of the Project on certain road intersections in the vicinity of the Petition Area. The Project's impact was determined to be less than one hundred (100) vehicles per hour in the peak direction north of the proposed north access road to the Project and south of Mill Street in Wailuku. As such, the TIAR did not consider the impact of the Project on Waiehu Beach Road and Kahekili Highway; North Market Street and Mill Street; North Market Street and Main Street; or Main Street and South High Street.

218. The following intersections were analyzed in the TIAR: both of the Project's access roads and Kahekili Highway; Kahekili Highway and Maka'ala Drive; Mill Street and Market Street; Central Avenue, Kaniela Street, Mission Street, Eha Street, and Imi Kala Street.

219. Based on the assumptions of the ITS Suggested Traffic Impact Study Threshold, the Project's impact to the intersections of Waiehu Beach Road and Kahekili Highway, Main Street and Market Street, Market Street and Vineyard Street, and South High Street and Main Street are not expected to be significant.

220. With the Petitioner's planned improvements to the Project's two (2) access points, Kahekili Highway will have adequate capacity to accommodate the Project's expected peak hourly volumes at acceptable levels.

221. The Imi Kala Street Extension is projected to increase roadway capacity by approximately 50 percent in and out of Wailuku, distribute traffic from the Project and other projects in Wailuku, divert traffic from Market Street, and increase traffic volumes at Imi Kala Street.

222. The increased volume of traffic resulting from the Imi Kala Street Extension may necessitate the installation of traffic signals on Imi Kala Street at major intersections such as Eha Street and Mill Street. The TIAR did not conclude that the Project's impact warranted the Petitioner's contribution to the future improvements of the affected intersections of Eha Street and Mill Street at Imi Kala Street.

223. The Imi Kala Street Extension from Kahekili Highway to Eha Street will be completed by the Petitioner. However, the Imi Kala Street Extension is only a partial implementation of a planned continuous north-south roadway between Kahekili Highway and Waiale Road. The remaining planned section of Imi Kala Street south of Mill Street to Waiale Road will not be constructed by the Petitioner and does not have a proposed completion date.

224. Without the construction of the remaining planned section of Imi Kala Street south of Mill Street to Waiale Road, turning movements at the Mill Street intersections with Central Avenue, Kaniela Street, and Mission Street are expected to be adversely affected by the Petitioner's construction of the Imi Kala Street Extension.

225. The TIAR is deficient for the following reasons: 1) the TIAR does not consider the impact of locating a school within the Petition Area; 2) the TIAR used assumptions concerning traffic projections relating to the Project that do not adequately consider all of the Project's potential impacts; and 3) the TIAR does not consider a regional view of traffic in the area of the Project and the Project's impacts upon state facilities or intersections.

Public Utility Services

226. There are existing overhead telephone lines located on Kahekili Highway. Petitioner will coordinate with Maui Electric Company, Hawaiian Telcom, and Oceanic Time Warner Cable to provide electrical, telephone, and cable television

services for the Project, respectively. All utilities for the Project will be installed underground.

227. The Project is not expected to adversely impact local and regional public utility services.

Police and Fire Protection

228. Police services for the Wailuku-Kahului area are provided by the County of Maui Police Department, which has its main headquarters at 55 Mahalani Street in Wailuku.

229. The County of Maui has approved additional staffing of the Police Department for the Wailuku-Kahului area.

230. Fire prevention, suppression, protection, rescue, and emergency services for the Wailuku-Kahului area, including Waiehu and Waihee, are provided by the County of Maui Department of Fire and Public Safety's Wailuku Station, located in Wailuku town on Kinipopo Street.

231. The Department of Fire and Public Safety does not intend to build a fire station within the Petition Area.

232. The Department of Fire and Public Safety requires minimum street widths which will be reviewed during the subdivision process. Petitioner has redesigned the subdivision to reduce the number of cul-de-sacs by increasing street connections within the Petition Area.

233. The Project is not anticipated to adversely affect the service capabilities of police, fire, and emergency medical operations, and will not result in the extension of the existing service area limits for emergency services.

Health Care Services

234. The Petition Area is within the service area of the 196-bed Maui Memorial Medical Center located in Wailuku. The Maui Memorial Medical Center, which is the only major medical facility on the island, provides acute, general, and emergency care services for the Wailuku-Kahului region.

235. The Project is not anticipated to adversely impact the capabilities of the Maui Memorial Medical Center.

CONFORMANCE TO STATE LAND USE URBAN DISTRICT STANDARDS

236. The Petition Area is located in an area of existing and planned urban development, where there are sufficient areas for foreseeable urban growth.

237. The Petition Area consists of satisfactory topography, drainage, and soil conditions, and is free from the danger of flood, tsunami and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for residential uses.

238. The Petition Area is characterized by sloping topography with less than 20% grade.

239. The eastern side of the Petition Area is adjacent to State Land Use Urban District lands characterized by "city-like" concentrations of people, structures,

streets, urban level of service, and other related land uses. These State Land Use Urban District lands include the Waiehu Terraces and Waiehu Heights subdivisions and the Pi'ihana Project District 3, which are located directly across Kahekili Highway from the Petition Area.

240. The southern side of the Petition Area is adjacent to lands in the State Land Use Agricultural District, including the 184-lot low-density Wailuku Country Estates agricultural subdivision.

241. The western and northern sides of the Petition Area are adjacent to lands in the State Land Use Agricultural and State Land Use Rural Districts, including existing low-density single-family homes.

242. Reclassification of the area underlying the proposed 238 affordable units and the proposed 209 market-priced residential lots, consisting of approximately 117.293 acres of the Petition Area, from the State Land Use Agricultural District to the State Land Use Urban District will allow for the development of the Project consistent with the 201G Approval and will not contribute to scattered spot urban development given the Petition Area's location adjacent to existing urban development and close proximity to the towns of Wailuku and Waihee.

243. Retaining the Project's 19 large lots in the State Land Use Agricultural District is consistent with the 201G Approval because the 201G Approval does not specify a particular State Land Use designation for the Petition Area and certain residential uses are permitted in State Land Use Agricultural District in the

County of Maui as farm dwelling uses, provided that farm plans for each of the 19 large lots are filed with the County of Maui.

244. Retaining the Project's 19 large lots in the State Land Use Agricultural District will maintain an open space buffer which will help to maintain a visual separation between the towns of Wailuku and Waihee, consistent with the objectives of the Wailuku-Kahului Community Plan.

245. An open space buffer to maintain visual separation between the towns of Wailuku and Waihee could also be accomplished if the Project's 19 large lots were reclassified into the State Land Use Urban District, however such reclassification would require that conditions of approval be imposed on the 19 large lots by the LUC to preserve open space and require the LUC's subsequent monitoring of the Petition Area for compliance.

246. Preserving the intended open space low-density residential uses on the Project's 19 large lots as proposed by the Petitioner and as described in the 201G Approval is best accomplished by retaining the 19 large lots in the State Land Use Agricultural District, given the allowable uses in the State Land Use Agricultural District explicitly defined in chapter 205-4.5, HRS.

247. Reclassification of the 19 large lots to the State Land Use Urban District could encourage future subdivision of the lots, despite the restrictions placed on the 19 large lots by the Unilateral Agreement recorded in the Bureau of Conveyances on June 8, 2006 as Document Number 2006-106454.

**CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE
HAWAI'I STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY
GUIDELINES AND FUNCTIONAL PLANS**

Hawai'i State Plan

248. The Hawai'i State Plan, found in chapter 226, HRS, is a comprehensive guide for the future long-range development of the State. The Hawai'i State Plan's purposes are to identify the goals, objectives, policies, and priorities for the State, provide a basis for allocating limited resources, and improve coordination among federal, state, and county agencies.

249. The reclassification of the Petition Area is in conformance with the following goals of the Hawai'i State Plan:

- A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawai'i's present and future generations.
- A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.
- Physical, social, and economic well-being, for individuals and families in Hawai'i, that nourishes a sense of community responsibility, of caring, and of participation in community life.

The Project will contribute toward attainment of these three goals by: 1) providing direct and indirect short and long-term employment opportunities for the present and future residents of the island of Maui; 2) generating increased state and county tax revenues; 3) contributing to the stability, diversity, and growth of local and regional

economies; and 4) minimizing the impact on the physical environment of the Petition Area.

250. The Hawai'i State Plan also provides numerous objectives and policies for the State. In particular, the proposed reclassification and the Project are consistent with, and conform to, the following objectives and policies:

Section 226-5, HRS, Objectives and Policies for Population

section 226-5(a), HRS:	It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.
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section 226-5(b)(1), HRS:	Manage population growth statewide in a manner that provides increased opportunities for Hawai'i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.
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section 226-5(b)(3), HRS:	Promote increased opportunities for Hawai'i's people to pursue their socio-economic aspirations throughout the islands.
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The Project will provide economic and employment opportunities for the island of Maui. The Project will also provide a variety of housing options for families that will allow pursuit of economic and social aspirations.

Section 226-6, HRS, Objective and Policies for the Economy - in General

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

The Project will provide increased employment opportunities in construction and construction-related employment during the Project's build-out.

Section 226-11, HRS, Objectives and Policies for the Physical Environment - Land-Based, Shoreline, and Marine Resources

section 226-11(a)(2), HRS:	Effective protection of Hawai'i's unique and fragile environmental resources.
section 226-11(b)(3), HRS:	Take into account the physical attributes of areas when planning and designing activities and facilities.
section 226-11(b)(8), HRS:	Pursue compatible relationships among activities, facilities, and natural resources.

The Project is not expected to have adverse impacts on environmental resources. The Project takes into account the Petition Area's location relative to existing residential uses and physical features of the Petition Area.

Section 226-12, HRS, Objective and Policies for the Physical Environment - Scenic, Natural Beauty, and Historic Resources

section 226-12(b)(5), HRS:	Encourage the design of developments and activities that complement the natural beauty of the islands.
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The Project has been designed to reflect a subdivision that will be compatible with the existing single-family residential subdivisions in the area such as Waiehu Terraces and Waiehu Heights. Retaining the 19 large lots in the State Land Use Agricultural District will ensure that an open space buffer is preserved to complement the surrounding area.

Section 226-13, HRS, Objectives and Policies for the Physical Environment - Land, Air, and Water Quality

section 226-13(b)(2),	Promote the proper management of Hawai'i's land
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HRS:	and water resources.
section 226-13(b)(6), HRS:	Encourage design and construction practices that enhance the physical qualities of Hawai'i's communities.
section 226-13(b)(7), HRS:	Encourage urban developments in close proximity to existing services and facilities.

The Petition Area's eastern side is situated adjacent to urban lands of similar uses. The Project will address the problem of lack of affordable housing as stated in the Wailuku-Kahului Community Plan, and the Project is also compatible with the adjacent and nearby single-family residential uses.

Section 226-19, HRS, Objectives and Policies for Socio-Cultural Advancement - Housing

section 226-19(a)(2), HRS:	The orderly development of residential areas sensitive to community needs and other land uses.
section 226-19(b)(1), HRS:	Effectively accommodate the housing needs of Hawai'i's people.
section 226-19(b)(3), HRS:	Increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.
section 226-19(b)(5), HRS:	Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.
section 226-19(b)(7), HRS:	Foster a variety of lifestyles traditional to Hawai'i through the design and maintenance of neighborhoods that reflect the culture and values of the community.

The Project will address a portion of the significant demand for affordable housing on the island of Maui. The Project will be an extension of the existing residential uses in the immediate area. The sale of 238 affordable units, which will be affordable to families earning between 70% and 100% of the County median annual income, will allow individuals and families to foster a variety of traditional lifestyles, and reflect the culture and values of the community.

Section 226-23, HRS, Objective and Policies for Socio-Cultural Advancement - Leisure

section 226-23(b)(4), HRS:	Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.
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The Project will include three (3) parks which will provide open space and recreational value for residents of the Project as well as the general public.

251. Priority guidelines are other important elements of the Hawai'i State Plan. By prioritizing major areas of statewide concern, the quality of life for Hawai'i's present and future population is improved and enhanced. The Project is consistent with, and conforms to, the following priority guidelines of the Hawai'i State Plan:

Section 226-103, HRS, Economic Priority Guidelines

section 226-103(1), HRS:	Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.
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a. Encourage investments which:

- (i) Reflect long term commitments to the State;
- (ii) Rely on economic linkages within the local economy;
- (iii) Diversify the economy;
- (iv) Reinvest in the local economy;
- (v) Are sensitive to community needs and priorities; and
- (vi) Demonstrate a commitment to management opportunities to Hawai'i residents.

The Project will assist in meeting these guidelines by responding to the community's need for affordable residential housing, and allowing for the investment and reinvestment in the local economy through construction and construction-related employment.

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

section 226-104(a)(1), HRS:	Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawai'i's people.
section 226-104(b)(1), HRS:	Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.
section 226-104(b)(2), HRS:	Make available marginal or non essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.
section 226-104(b)(12),	Utilize Hawai'i's limited land resources wisely,

HRS: providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline conservation lands, and other limited resources for future generations.

With the island of Maui's growing population and economy, there is great demand for housing, especially affordable housing. The Project addresses that demand by providing 238 affordable units, which will be affordable to families earning between 70% and 100% of the County's annual median income. The Petition Area is located in an area of existing and planned single-family residential development as evidenced by the Wailuku-Kahului Community Plan. The Community Plan reflects the community's desire to have growth directed to this general area.

The Petition Area is also in an appropriate location for urban use given the proximity of nearby residential subdivisions and public facilities and services.

The Project will also generate short-term employment opportunities as construction and construction-related jobs will be needed to develop the Petition Area.

The Project is not located in an environmentally sensitive area nor does it encompass lands that are essential to shoreline preservation or conservation. Proper mitigating measures, such as implementing Best Management Practices, will be undertaken to ensure minimal impacts to the environment.

Although the Petition Area's soil is rated "Prime", the Petition Area's fallow condition, coupled with its proximity to existing and planned residential

subdivisions indicates that these agricultural lands are not essential for diversified agriculture.

Section 226-106, HRS, Affordable Housing Priority Guidelines

section 226-106(1), HRS: Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low and moderate income and gap group households.

section 226-106(8), HRS: Give higher priority to the provision of quality housing that is affordable for Hawai'i's residents and less priority to development of housing intended primarily for individuals outside of Hawai'i.

The Project will allow the Petitioner to address a portion of the significant community demand for affordable housing.

252. The Project generally conforms to the Agricultural, Housing, Recreational, and Transportation Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

253. The Project generally conforms to the objectives and policies of the Coastal Zone Management Program, chapter 205A, HRS. The Project is not coastal dependent and is located inland from the coast. As such, the Project will not adversely impact any coastal ecosystems, beaches or marine resources. No views or vistas from or to the shoreline will be impaired. The Petition Area is within areas of minimal flooding. The Project's grading and other site improvements will comply with the requirements of the Federal Flood Insurance Program, and all State and County laws. The Project's drainage will be adequately and appropriately planned and constructed. Wastewater

generated by the Project will be collected, treated, and disposed of in accordance with all applicable statutes, ordinances, and regulations.

254. 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 shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS and chapter 15-15, HAR, the LUC finds upon the clear preponderance of the evidence that the reclassification of a portion of the Petition Area, consisting of approximately 117.293 acres from the State Land Use Agricultural District to the State Land Use Urban District for the development of 238 affordable units and 209 market-priced residential lots, situated at Waiehu, Island of Maui, State of Hawai'i, identified as Tax Map Key No. 3-3-002: 031 (por.), upon the conditions set forth in this Decision and Order, is reasonable, conforms to the standards for establishing the State Land Use Urban District boundaries, is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS is not violative of chapter 205-2, HRS, and is consistent with the policies and criteria established pursuant to chapters 205-16, 205-17, and 205A-2, HRS.

2. The reclassification of the Project's 19 large lots, consisting of approximately 120.888 acres, from the State Land Use Agricultural District to the State Land Use Urban District is not reasonable.

3. Pursuant to section 205-2, HRS, the proposed open space low-density residential use for the Project's 19 large lots is inconsistent with the State Land Use Urban District. Such open space low-density residential uses are more appropriate in either the State Land Use Agricultural District pursuant to section 205-4.5 (4), HRS, or the State Land Use Rural District, pursuant to section 205-2 (2), HRS.

4. The reclassification of the Project's 19 large lots is not consistent with the Hawai'i State Plan, section 226-12, HRS. Urbanization of the Project's 19 large lots would allow urban, city-like uses in an area planned - for open space low-density residential uses. Such city-like uses are inconsistent with Petitioner's representation that the Project's 19-large lots are designed to preserve the open space character of the Petition Area.

5. Retaining the Project's 19 large lots in the State Land Use Agricultural District will not adversely affect the Petitioner's ability to develop the Project as represented to the Commission, including the ability of the Petitioner to provide 238 affordable units.

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

7. Based on the archaeological inventory survey of the Petition Area, and earlier surveys of neighboring areas, there is a potential for isolated, undocumented human burials in portions of the Petition Area. Should any resources be found during construction, Petitioner will comply with all state and county laws and rules regarding the preservation of archaeological and historic sites.

8. A cultural impact assessment was prepared for the Project. There appear to be no special affinities to the Petition Area for native Hawaiians or any other ethnic group.

9. Article XI, Section 1, of the Hawai'i Constitution requires the State 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 their conservation and in furtherance of the self-sufficiency of the State of Hawai'i.

10. There are no threatened and endangered species of flora and fauna or species of concern in the Petition Area.

11. The ambient air quality of the Petition Area will be impacted in the short term by fugitive dust and emissions from engine exhausts during construction of the Project. Petitioner will implement all required mitigation measures for fugitive dust and exhaust emissions.

12. The Project's long-term impacts to air quality will be minimal, and no mitigation measures are necessary.

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

14. The Project will not have a significant impact on agriculture in the County of Maui or in the State of Hawai'i as the loss of these agricultural lands in comparison to the total acreage of agricultural lands in the island or County of Maui and in the State of Hawai'i is minimal.

DECISION AND ORDER

IT IS HEREBY ORDERED that the reclassification request for the Project's 19 large lots, representing 120.888 acres of the Petition Area, consisting of 114.739 acres in the State Land Use Agricultural District and 6.149 acres in the State Land Use Rural District, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, IS DENIED.

IT IS HEREBY FURTHER ORDERED that a portion of the Petition Area, consisting of approximately 117.293 acres in the State Land Use Agricultural District for the development of 238 affordable units and 209 market-priced residential lots (the "Reclassified Area"), situated at Waiehu, Island of Maui, State of Hawai'i, identified as Tax Map Key No. 3-3-002: 031 (por.), and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby 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 approximately 117.293 acres of the Petition Area for the development of 238 affordable units and 209 market-priced residential lots 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 HEREBY FURTHER ORDERED that the Reclassified Area shall be subject to the following conditions:

1. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawai'i in accordance with the affordable housing policies and guidelines of the DHHC, Maui County Council Resolution No. 05-123, and Petitioner's representations in this docket. The Petitioner shall develop and offer for sale 238 house and lots to families earning between 70% and 100% of the County of Maui's median annual income. The location and distribution of the 238 affordable units, the buy-back program, and other provisions for affordable housing shall be consistent with Petitioner's representations in this docket, and shall be under such terms and conditions as may be mutually agreeable to Petitioner and the DHHC. Petitioner shall enter into an affordable housing agreement with the DHHC within six (6) months of the issuance

date of this Decision and Order and provide the LUC with a copy of the executed affordable housing agreement.

To the extent practicable, the 238 affordable units shall be sold for less than the maximum amounts established by the DHHC's Sales Price Guidelines matrix.

The Petitioner shall construct at least seventy-seven (77) affordable units within five (5) years of the issuance date of this Decision and Order.

2. **Ohana Units.** No ohana units or accessory dwellings (as this term is defined in section 19.04.040, MCC) shall be permitted within the Reclassified Area.

3. **Public School Facilities.** Petitioner shall contribute to the development, funding, and/or construction of school facilities on a fair-share basis, as determined by and to the satisfaction of the DOE; provided, however that the affordable units shall not be included in the fair-share contribution calculation. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining any building permits for the Reclassified Area.

4. **Wastewater Facilities.** Petitioner shall fund and develop on-site wastewater collection and off-site wastewater transmission facilities to transport wastewater from the Reclassified Area to appropriate County of Maui wastewater transmission and treatment facilities to the satisfaction of the County of Maui and the DOH. Petitioner shall pay a pro-rata share of off-site sewer improvements as determined by the County of Maui.

5. **Transportation Improvements.** Petitioner shall submit a revised TIAR to address the Project's impacts to the intersection of Waiehu Beach Road and Kahekili Highway and the intersection of Market Street and Main Street. The revised TIAR shall utilize actual turn counts collected at the intersection of Waiehu Beach Road and Kahekili Highway.

The revised TIAR shall analyze the potential impact of locating an elementary school or a middle school within the Petition Area.

The revised TIAR shall include a conceptual design of the proposed mitigation measures for the intersection of Waiehu Beach Road and Kahekili Highway.

Petitioner shall implement traffic mitigation measures and roadway and intersection improvements, including signalization, as recommended or required by the revised TIAR.

Petitioner shall submit the revised TIAR to the DOT for its review and approval, within six (6) months of the issuance date of this Decision and Order.

6. **Civil Defense.** Petitioner shall provide its fair share of the cost of adequate civil defense measures serving the Reclassified Area as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.

7. **Archaeological Monitoring.** Petitioner shall employ the services of the appropriate number of archeological monitors to ensure that all ground disturbances associated with the mass grading of the Reclassified Area and trenching

and excavation related to the installation of utilities do not impact any subsurface cultural remains within the Petition Area in a 100-meter wide strip along the Kahekili Highway.

The Petitioner shall consult with the State of Hawai'i Office of Hawaiian Affairs and coordinate with SHPD to determine where any additional full-time monitoring may be warranted.

8. **Unidentified Archaeological Finds.** If any burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls are discovered during the course of development of the Reclassified Area, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to the satisfaction of the SHPD.

9. **Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program as specified by the DOH.

10. **Drainage.** Petitioner shall fund the design and construction of drainage system improvements to prevent runoff resulting from the development of the Reclassified Area from adversely affecting downstream properties (except as to the Petition Area), including, but not limited to state and county highway and roadway facilities, to the satisfaction of appropriate state and county agencies.

The Reclassified Area's grassed drainage swales and drainage basins shall be maintained by the Petitioner or homeowners association, to the satisfaction of the County of Maui.

11. **Notification of Potential Nuisances.** Petitioner shall disclose to all prospective buyers and/or lessees of the Reclassified Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands.

12. **Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Reclassified Area that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

13. **Solid Waste.** Petitioner shall cooperate with the DOH and the County of Maui to conform the Reclassified Area with the program goals and objectives of chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH.

14. **Water Resources Allocation.** Petitioner shall provide adequate potable and non-potable water source, storage, and transmission facilities and improvements to the satisfaction of the DWS to accommodate the development of the Reclassified Area.

15. **Best Management Practices.** Petitioner shall implement Best Management Practices ("BMP") to protect surface and groundwater resources. The

BMP shall be designed to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the DOH guidelines and the County of Maui's grading ordinance.

16. **Water Conservation Measures.** Petitioner shall implement water conservation measures and BMP, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common area landscape planting of the Reclassified Area.

17. **Energy Conservation Measures.** Petitioner shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the development of the Reclassified Area.

18. **Metes and Bounds Map and Description.** Within six (6) months of the issuance date of this Decision and Order, Petitioner shall provide the LUC with a metes and bounds map and description of the Reclassified Area prepared by a registered professional land surveyor.

19. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the LUC, the Office of Planning, and the County of Maui Department of Planning in connection with the status of the Reclassified Area and Petitioner's progress in complying with the conditions imposed herein. The annual reports shall be due on the anniversary date of the issuance of this Decision and Order.

The annual reports shall be submitted in a form prescribed by the Executive Officer of the LUC.

20. **Notice of Change to Ownership Interests.** Petitioner shall give notice to the LUC of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests of the Reclassified Area.

21. **Evidence Clear Title.** The Petitioner shall provide the LUC, the Office of Planning, and the County of Maui Department of Planning with a title report issued by a licensed title company which establishes clear title to the Reclassified Area, pursuant to Title 18, MCC, to the satisfaction of the County of Maui.

22. **Release of Conditions.** The LUC may fully or partially release the conditions provided herein as to all or any portion of the Reclassified Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

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

24. **Notice of Imposition of Conditions.** Within 7 days of the issuance of the LUC's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Reclassified Area is subject

to conditions imposed herein by the LUC, and (b) shall file a copy of such recorded statement with the LUC.

25. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the LUC with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

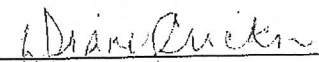
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 1st day of February, 2007. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Makena, Maui, Hawai'i, this 18th day of January, 2007, per motion on January 18, 2007.


APPROVED AS TO FORM

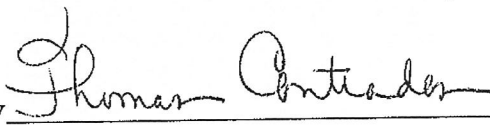
LAND USE COMMISSION
STATE OF HAWAII


Deputy Attorney General

By _____
LISA M. JUDGE
Chairperson and Commissioner

By (Absent)
STEVEN MONTGOMERY
Vice-Chairperson and Commissioner

By 
MICHAEL D. FORMBY
Vice-Chairperson and Commissioner

By 
THOMAS CONTRADES
Commissioner

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this _____ day of _____, 2007. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at _____, Hawai'i, this _____ day of _____, 2007, per motion on _____, 2007.

APPROVED AS TO FORM

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII


By Lisa Judge
LISA JUDGE
Chairperson and Commissioner

By _____
MICHAEL FORMBY
Vice-Chairperson and Commissioner

By _____
STEVEN LEE MONTGOMERY
Vice-Chairperson and Commissioner


By _____
THOMAS CONTRADES
Commissioner

By



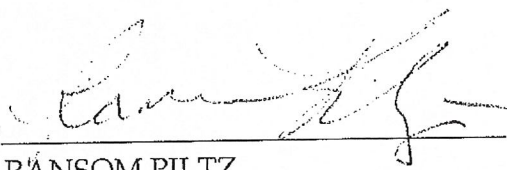
KYONG SU IM
Commissioner

By




DUANE KANUHA
Commissioner

By



RANSOM PILTZ
Commissioner

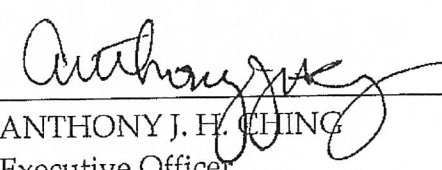
By



REUBEN S.F. WONG
Commissioner

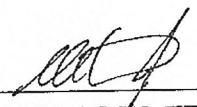
Filed and effective on
February 12, 2007

Certified by:

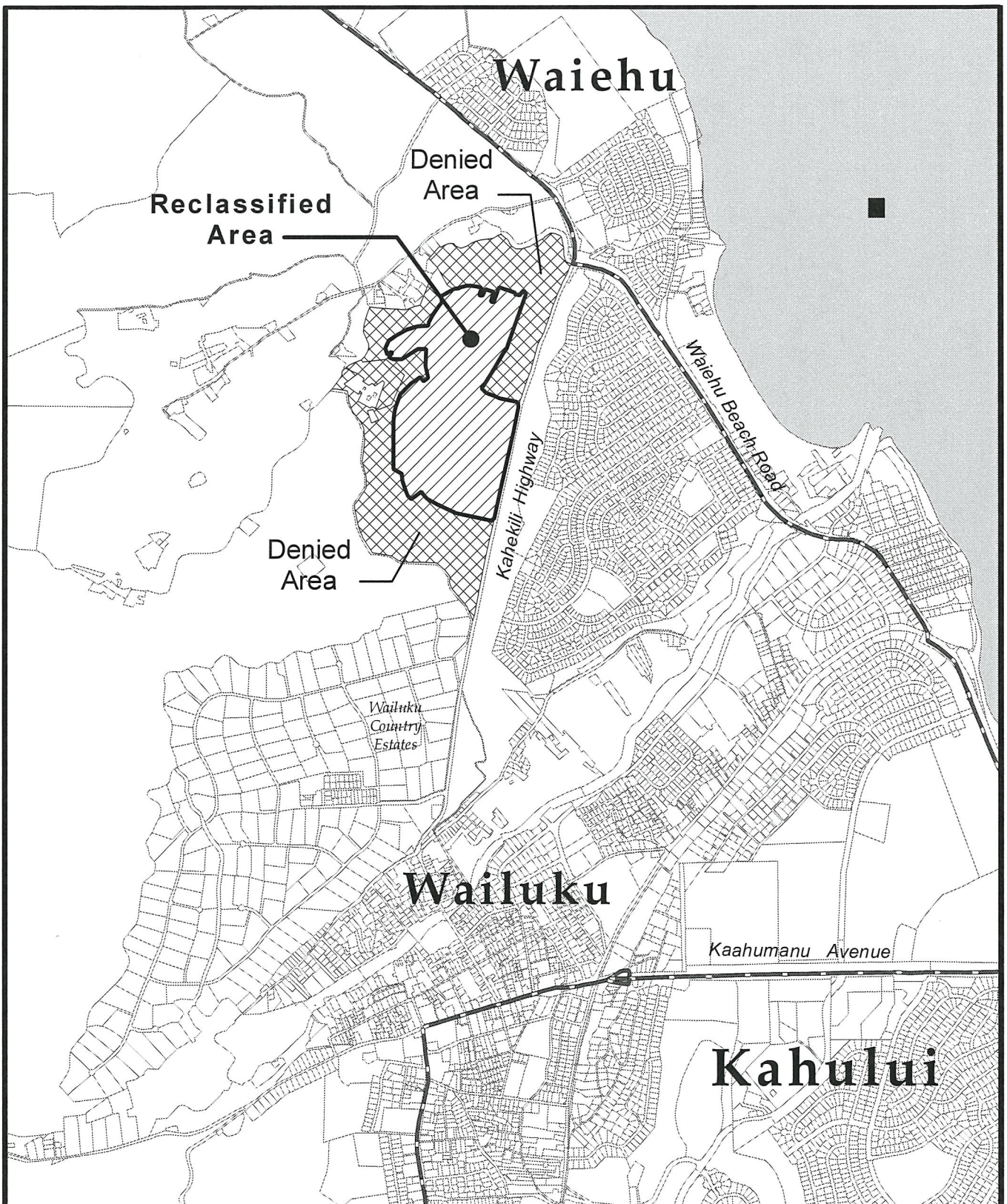


ANTHONY J. H. CHING
Executive Officer

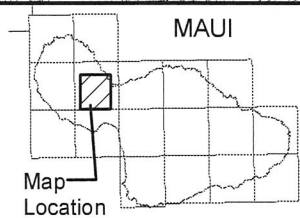
By



NICHOLAS W. TEVES, JR.
Commissioner



A04-755 HALE MUA PROPERTIES, LLC
MAP LOCATION
Tax Map Key: 3-3-02: por. 01
Waiehu, Maui, Hawaii
Scale: 1" = 2,000 ft.
EXHIBIT "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A05-755
)	
HALE MUA PROPERTIES, LLC	)	CERTIFICATE OF SERVICE
)	
To Amend the Land Use District)	
Boundary Of Certain Lands Situated at)	
Waiehu, Island of Maui, State of Hawai'i,)	
Consisting Of 240.087 Acres from the)	
Agriculture and Rural Districts to the)	
Urban District, Tax Map Key No. 3-3-002:)	
001 (por.).)	
_____)	

CERTIFICATE OF SERVICE

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

DELIVERED	LAURA THIELEN, Director Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804-2359
-----------	--

REGULAR MAIL	BRYAN YEE, Esq. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawaii 96813
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REGULAR MAIL

JEFFREY HUNT, Director
County of Maui, Planning Department
250 South High Street
Wailuku, Hawaii 96793

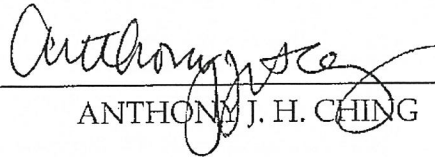
REGULAR MAIL

BRIAN MOTO, Esq.
JANE LOVELL, Esq.
Corporation Counsel
County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERTIFIED MAIL

BLAINE J. KOBAYASHI, Esq.
Carlsmith Ball LLP
One Main Plaza, Suite 400
2200 Main Street, P. O. Box 1086
Wailuku, Hawaii 96793-1086

Dated: Honolulu, Hawaii, February 12, 2007.



ANTHONY J. H. CHING

LAND USE COMMISSION
MEETING MINUTES
May 9, 2018 – 9:00 a.m.
Maui Arts & Cultural Center, Haynes Meeting Room
One Cameron Way, Kahului, Maui, Hawai'i, 96732-1137

COMMISSIONERS PRESENT: Arnold Wong
 Nancy Cabral
 Aaron Mahi
 Jonathan Scheuer
 Gary Okuda
 Lee Ohigashi
 Dawn Chang

COMMISSIONERS EXCUSED: Edmund Aczon
 (There are currently 8 seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
 Diane Erickson, Deputy Attorney General
 Scott Derrickson, Staff Planner
 Bert Saruwatari, Staff Planner
 Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

A

CALL TO ORDER

Chair Wong called the meeting to order at 9:00 a.m.

APPROVAL OF MINUTES

Chair Wong asked if there were any corrections or additions to the April 19, 2018 meeting minutes. There were none. Commissioner Cabral moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (7 ayes-0 nays- 1 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

- **MAY 23 at NELHA- Kailua Kona**

Status Reports-

- A00-730 Lanihau,
- A10-788 HHFDC,
- A06-767 Waikoloa Mauka,

MAY 24-at HNL airport conference meeting room #3

- DR18-61 Hartung Brothers - Oahu IAL Docket
- A92-682 Halekua Developments- Status Report

JUN 14- on Maui at DOT Highways office

- A89-649 Lanai Resorts Status Report
- LUC training

JUN 28-

- DR18-62 Kualoa Ranch- IAL

JUL 11

- A94-706 Ka`ono`ulu Ranch- Motion to Rescind OSC

September 26 - 28, 2018, HCPO Hawaii Island- Hilo

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Wong stated that the next agenda item was a hearing and action on SP08-402 -County of Maui, Environmental Management- Hana Landfill(Maui).

HEARING AND ACTION

SP08-402 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI

Consider Extension of A State Special Use Permit For An Approximately 14.615-Acre Portion Of The Existing 29.05-Acre Hāna Landfill And An Approximately 5.39-Acre Encroachment Area Situated Within The State Land Use Agricultural District At Hāna, Maui, Hawai`i, Tax Map Key: 1-3-06: Por. 7 And Por. 12

APPEARANCES

Elaine Baker, Department of Environmental Management (DEM), Applicant

Bob Schmidt, Operations Manager, DEM

Paul Fasi, Planner, County of Maui Planning Department (County)

Michael Hopper Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning

Tomas Oberding, State Office of Planning

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

None

Chair Wong called Applicant DEM to make their presentation.

APPLICANT PRESENTATION

Ms. Baker provided background information on why Applicant DEM was appearing before the Commission and described details of how the landfill operation had become more efficient and ecologically friendly for the Commission to consider while deciding whether to approve the application to extend the time permitted on Special Permit SP08-402.

County and OP had no questions for Ms. Baker.

Commissioner Cabral requested clarification on how far the landfill was from Central Maui; why all waste from Hana was not removed to the central landfill; and what “white goods” were.

Ms. Baker stated that the Department of Health had objected to shutting down the Hana landfill due to the remoteness of Hana and the difficulties in safely transporting waste materials on the highway; and that the distance was approximately 55 miles each way. Ms. Baker described “white goods” as large appliance items such as washers and dryers.

Commissioner Okuda requested clarification on whether an Environmental Impact Statement (EIS) or Environmental Assessment (EA) had been done or required for the application. Ms. Baker described how DEM had two EAs done to expand the boundaries of the landfill; and for a Makai side “clean-up” effort in 2016.

Discussion ensued on whether DEM’s application triggered the need for an EIS or EA. Ms. Baker described why DEM had not sought an EIS or EA; and how Maui County had routinely applied for time extensions to their special permits from the LUC without them in the past.

Commissioner Chang requested clarification on efforts DEM had made to satisfy SP08-402, Condition 16- Cultural Assessment. Ms. Baker described how DEM had complied with the condition and included the Office of Hawaiian Affairs in current and past communications; and had observed condition provisions to preserve the cultural landscape and provide adequate buffer zones.

Commissioner Scheuer requested clarification on how the need for a 30-year time extension had been determined. Ms. Baker described how the estimated remaining useful life of the landfill factored into the requested time period. Mr. Fasi and Mr. Hopper provided additional report information that was included in the DEM application.

Commissioner Ohigashi requested clarification on what future plans had been made for Hana waste removal and landfill operations. Ms. Baker described how future waste handling plans included seeking alternative sites and providing for expansion into adjacent areas if necessary. Mr. Fasi stated that the future plans had not been discussed at the Planning Commission sessions.

Additional clarification on State Department of Land and Natural Resources (DLNR) and community involvement and representation was requested by Commissioners Chang and Scheuer. Ms. Baker and Mr. Fasi described how the Hana Community Association, public meetings and DLNR input was considered during Maui Planning Commission deliberations on this matter.

There were no further questions or comments.

Chair Wong called on County to make its presentation.

COUNTY

Mr. Hopper stated that the main intent of the SP08-402 Petition was to extend the life of the permit for 30 years and described the factors that the Maui Planning Commission had considered during its review and approval of the application presented to the LUC; and that there were also some County Permit references that need to be deleted to editorially clarify the content of the proposed decision and order.

Commissioner Okuda requested clarification on what the County's position was on the need for an accompanying EIS or EA to support a decision to extend time to the life of a permit for the requested 30-year period. Mr. Hopper provided his perspective that the passage of time and similar continuing use needed to be balanced and assessed against providing an EIS or EA.

Commissioner Ohigashi requested clarification on the standards used by the Maui Planning Commission to grant the extension. Mr. Fasi provided the details of the Maui Planning Commission's proceedings. Discussion ensued to further clarify what evidence or supporting documents were used by the Maui Planning Commission during its deliberations before approving the SP08-402 application.

There were no further questions or comments for County.

OP

Ms. Apuna stated that OP had no objections to the extension of the special permit.

Commissioner Cabral requested clarification on the effectiveness of the Hana Landfill's program to reduce the amount of waste being put into the landfill. Ms. Baker described how calculations that the landfill could accommodate another 30 years of use were made and what policies were put in place to ensure the projected lifespan would be sufficient.

DECISION-MAKING

Commissioner Ohigashi moved to authorize a 30-year extension subject to the conditions suggested by the County and other LUC conditions; and that the LUC Chair be authorized to sign the Decision and Order. Commissioner Cabral seconded the Motion.

Discussion

Commissioners Scheuer, Okuda, Chang and Ohigashi shared their opinions and concerns about the subject docket.

When there were no further comments or questions, Chair Wong directed Mr. Orodenker to poll the Commission.

The results of the poll were:

Ayes- Commissioners Ohigashi, Cabral, Chang, Scheuer, Mahi and Chair Wong (6)

Nay- Commissioner Okuda (1)

Excused- Commissioner Aczon.

The Motion passed 6-1-1 excused (8 Commissioners seated)

Chair Wong declared a recess at 9:52 a.m. and reconvened the meeting at 10:01 a.m., and moved on to the next agenda item.

STATUS REPORT AND ACTION (IF NECESSARY)

A05-755 HALE MUA PROPERTIES LLC (MAUI)

Chair Wong stated that this was a meeting to receive a status report and take any appropriate action on Docket No. **A05-755 HALE MUA PROPERTIES LLC (MAUI)**

APPEARANCES

Murray Smith, represented new owner Southwest 7 successor to Petitioner Hale Mua Properties (SW7)

Jefferey Dack, Planner, County of Maui Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Tomas Oberding, OP

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

None

Chair Wong called for the representative of the new owner SW7 to provide a status update on the A05-755 Petition Area.

New Owner SW7 Presentation

Mr. Smith provided background information and history of SW7's involvement with the Petition Area; and described how SW7 was currently dealing with "clouded title" issues, estate matters, and addressing the conditions imposed by the County and the LUC's decision and order. Mr. Smith requested additional time be granted to SW7 before the LUC took further action on SW7's failure to meet deadlines and comply with the conditions of the decision and order.

Commissioners Mahi, Okuda, Chang, Scheuer, Cabral, Ohigashi, and Wong requested clarification on Mr. Smith's testimony. Mr. Smith confirmed that the Petition Area had not changed its zoning from agriculture to urban and provided his understanding of what the lender of the loan money for the property acquisition should have considered before making a loan for the purchase. Mr. Smith stated that he was a civil engineer and described how he was assisting the current landowner in selling the property and the difficulties he was having. Mr. Smith also stated that SW7 was a Colorado based LLC that was seeking a purchaser interested in pursuing the development plans for the Petition Area; and that an amended EA would be needed for those efforts; and acknowledged SW7's non-compliance with various conditions cited by the Commissioners during their questioning.

There were no further questions for Mr. Smith.

Chair Wong asked if County or OP had any questions or comments.

County

Mr. Hopper stated that Mr. Smith had provided new information that the County had not been aware of regarding the Petition Area; and that County would cooperate in supplying any information it had to the LUC.

OP had no comments.

Chair Wong declared at recess at 10:37 a.m. and reconvened the meeting at 10:42 a.m.

There were no further questions or comments.

Chair Wong entertained a motion.

Commissioner Ohigashi moved that, as the status report given by the Petitioner indicated that there may not have been compliance with a number of conditions

contained in the Decision and Order and that it appeared that there had not been substantial commencement of use of the land, the commission issue an order to show cause, schedule a hearing and serve upon the Petitioner notice of the hearing, to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification..

Commissioner Scheuer seconded the motion.

Discussion

Commissioners Scheuer and Chang expressed their reasons for supporting the motion.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion. (7-0-1 excused).

Chair Wong stated that the Commission staff would contact and schedule a hearing date with Mr. Smith.

Chair Wong declared a recess at 10:47 a.m. and reconvened the meeting at 10:53 a.m.

Chair Wong moved on to the next agenda item.

ACTION

A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (ELC)

1. Consider Waikapu Development Venture LLC's Motion to be Copetitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene
2. Consider Emmanuel Lutheran Church of Maui's Motion To Extend Time to Complete Project

APPEARANCES

Peter Horovitz, Esq., represented Waikapu Development Venture LLC (WDV)

Jennifer Lim, Esq. and Derek Simon, Esq., represented Emmanuel Lutheran Church of Maui (ELC)

Tara Furukawa, Planner, County of Maui Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Tomas Oberding, OP

Lorene Maki, OP

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

DISCLOSURES

Commissioner Ohigashi disclosed that he knew Jennifer Lim and her husband socially; but did not feel that his personal relationship would impact his ability to remain fair and impartial.

There were no objections to Commissioner Ohigashi's continued participation. Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

1. Stephen Kealoha- Catholic Charities Volunteer

Mr. Kealoha encouraged the Commission to grant a time extension to ELC and provided his reasons for supporting ELC's motion.
There were no questions for Mr. Kealoha.

2. Thelma Akita-Kealoha

Ms. Kealoha stated that she was the Director of Catholic Charities and shared her reasons for supporting ELC's motion.
There were no questions for Ms. Kealoha.

Commissioners Chang, Cabral and Ohigashi expressed their thanks and appreciation to the two public witnesses.

There were no further public witnesses.

Chair Wong called for Mr. Horovitz to make his presentation on WDV's motion.

Intervenor WDV's Presentation

Mr. Horowitz described why WDV wanted to be involved with the A07-773 docket proceedings, and what its interest in the Petition Area was.

Chair Wong asked if Parties had any comments.

ELC Comments

Ms. Lim provided the reasons why ELC supported WDV's motion, and described how WDV factored into ELC's future development plans for the Petition Area.

County and OP respectively stated that they had no opposition to WDV's Motion.

Chair Wong asked if Commissioners had any questions.

Commissioner Questions

Commissioner Okuda requested clarification on what specific capacity within the proceedings WDV preferred to appear. Mr. Horovitz expressed why he preferred to be a Party in the proceedings; and why he would still be content with other capacities that the Commission might grant.

Commissioner Ohigashi requested clarification on who the WDV entity was and why Mr. Horovitz did not feel an Intervenor role might be more appropriate; and what the current status of the proposed sub-division approval was. Mr. Horovitz provided details of the pending purchase contract and Mr. Hopper deferred the sub-division status to Mr. Horovitz to respond to. Mr. Horovitz described what the County's sub-division timeline for approval might be and estimated that it might take 6-9 months after initial filing to be processed.

Commissioner Chang requested clarification on how WDV would procedurally react if it were admitted as a Party and if a bifurcation were to occur. Mr. Horovitz described how WDV would react to facilitate proceedings under different scenarios.

Ms. Lim opined how ELC might react depending on what status WDV was granted by the LUC.

Commissioner Cabral expressed her perspective of what role WDV should consider assuming. Commissioner Scheuer called for the question.

There were no further questions or comments.

Chair Wong entertained a motion.

Commissioner Ohigashi moved to grant movant WDV Intervenor status and provided his reasoning for making the motion.

Commissioner Scheuer seconded the motion and provided his perspective of why he felt there were no negatives to the Intervenor role in these proceedings.

Discussion

Commissioners Scheuer and Chang expressed their reasons for supporting the motion.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion. (7-0-1 excused).

Chair Wong declared at recess at 11:31 a.m. and reconvened the meeting at 12:35 p.m.

Chair Wong moved on to ELC's Motion to Extend Time to Complete Project.

ELC Presentation

Ms. Lim described her client's role in developing parts of the Petition Area and why the Motion to Extend Time to Complete Project should be granted. Ms. Lim offered Michael Reiley as a witness to respond to questions regarding ELC's future development plans.

Chair Wong recognized Mr. Reiley and had the witness affirm that his testimony would be truthful.

Petitioner Witness- Michael Reiley

Mr. Reiley described his professional background and personal involvement in ELC property development effort. Mr. Reiley also provided information on how WDV and ELC had advanced their combined but separate development proposals at the County level; and why the requested 10-year time extension was needed. Chair Wong asked if there were any questions for Mr. Reiley.

County-

Mr. Hopper confirmed that Mr. Reiley's testimony was limited to the original A07-775 decision and order and not including the proposed 201H housing project. Mr. Reiley affirmed his testimony was confined to the A07-773 decision and order.

OP-

Ms. Apuna requested clarification on whether new conceptual planning needed to be done for the proposed development and how the 30-year time period would be utilized. Mr. Reiley responded that updates would be needed, but since the desired zoning had been obtained, future plans would be easier to make and finance; and provided his perspective of how the 30-year time extension would be applied.

Commissioners

Commissioners Chang, Cabral, Ohigashi, and Scheuer requested clarification of Mr. Smith's testimony. Mr. Smith described how ELC's development plans could not

happen without the sale of property to WDV, the type of future housing that was being considered, why the original development plans had to be revised and explained why annual reports were not submitted to the Commission.

Commissioner Cabral disclosed that the company Mr. Reiley worked for (H Energy) had done a project for her business, but that she did not know Mr. Reiley personally. There were no objections to Commissioner Cabral's continued participation in the proceedings.

Discussion ensued to clarify specifics on what ELC had done since obtaining its original decision and order, what other witness would be provided, how the 30-year extension would be applied to the ELC and WDV portions of the Petition Area, how the motion for extension of time related to a potential order to show cause; and how the future sale of property to WDV would affect this docket and its relationship to the Commission. Ms. Lim and Mr. Horovitz shared their perspectives on how ELC and WDV would work together when the time extension was granted.

Commissioner Ohigashi moved for an Executive Session to consult with legal counsel in questions and issues regarding the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Chang seconded the motion. By unanimous voice vote, the Commission voted to enter Executive Session.

The Commission entered into Executive Session at 1:29 p.m. and reconvened in regular session at 1:50 p.m.

Chair Wong declared a recess at 1:50 p.m. and reconvened the meeting at 1:57 p.m.

Commissioner Ohigashi moved "to defer or continue action on the Motion to Extend Time to Complete Project for a period of 6 months and the details of the next hearing would be worked out between the Parties and LUC staff. Petitioner is to provide a detailed timetable of any and all State and County required approvals and actions necessary to bring Petitioner into full compliance with this D&O to the Commission at least 60 days prior to the next hearing. The Petitioner and Intervenor will also submit all status reports and motions they wish to have considered at least 60 days prior to the next hearing."

Before finalizing his motion, Commissioner Ohigashi questioned whether the 6 month period might be too short. Mr. Horovitz responded that it might take till the end of November, 2018 or till January 2019 before he would be ready to appear before the Commission; and that he would prefer 9 months.

Commissioner Ohigashi amended his motion so that the 6-month period remain, and if a continuance was needed, that the LUC Chair be authorized to grant a continuance not to exceed another 6-month time period and if an extension greater than

six months were needed or requested, the motion would be before the whole Commission.

Commissioner Mahi seconded the Motion and the modified Motion.

Discussion

Commissioner Scheuer requested clarification on how the additional 6 months would be granted and shared how he uniformly questions witnesses to avoid bias. Discussion ensued to determine what time period the Chair would be comfortable in granting and whether the original motion needed to be amended.

Chair Wong acknowledged that the motion needed to be amended and directed Commissioner Ohigashi to re-state his motion.

Commissioner Ohigashi re-stated his motion "to defer or continue action on the Motion to Extend Time to Complete Project for a period of 6 months and the details of the next hearing would be worked out between the Parties and LUC staff. Petitioner is to provide a detailed timetable of any and all State and County required approvals and actions necessary to bring Petitioner into full compliance with this D&O to the Commission at least 60 days prior to the next hearing. The Petitioner and Intervenor will also submit all status reports and motions they wish to have considered at least 60 days prior to the next hearing. The Chair will have the discretion to grant no more than an additional 6 months to defer or continue action on this matter. If a continuance of longer than 6 months is needed, it will have to be granted by the full Commission."

Chair Wong asked if Commissioner Mahi approved the amended Motion. Commissioner Mahi acknowledged that he did.

Commissioner Scheuer requested that the Motion be repeated for clarity.

Mr. Orodenker and Commissioner Ohigashi repeated various sections of the proposed Motion for the Commission.

Commissioner Chang requested clarification on what progress she might expect to see on the proposed development. Mr. Horovitz described the types of activities and accomplishments he expected to be reporting on.

There were no further questions or discussion.

Chair Wong directed Mr. Orodenker to poll the Commission.

The results of the poll were:

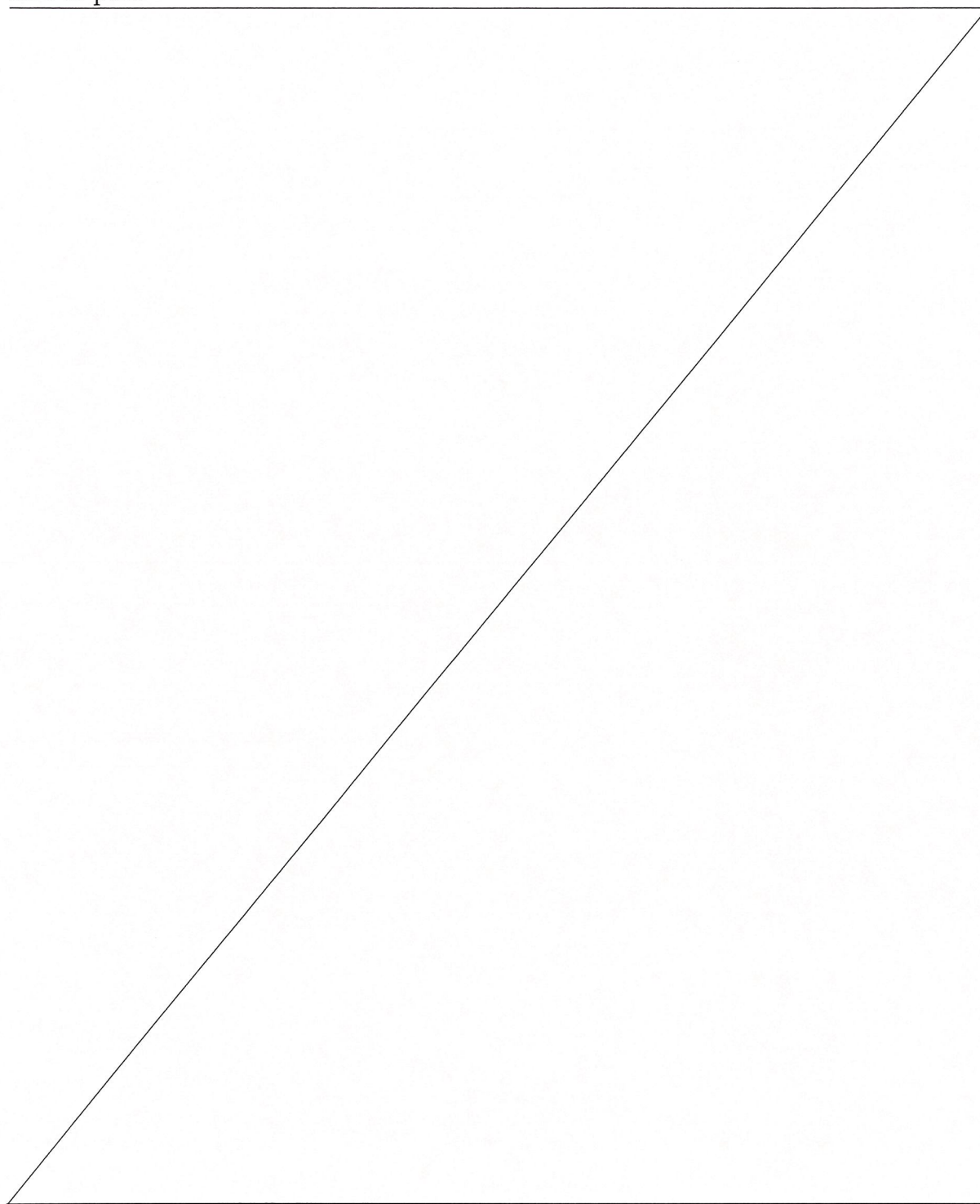
Ayes- Commissioners Ohigashi, Mahi, Okuda, Scheuer, Chang, and Chair Wong
(6)

Nay- Commissioner Cabral (1)

Excused- Commissioner Aczon.

The Motion passed 6-1-1 excused (8 Commissioners seated)

There being no further business to address, Chair Wong adjourned the meeting at 2: 10 p.m.



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A92-680
C. BREWER PROPERTIES, INC.,)	FINDINGS OF FACT,
a Hawaii corporation,)	CONCLUSIONS OF LAW, AND
)	DECISION AND ORDER
To Amend the Agricultural Land)	
Use District Boundary into the)	
Urban District for approximately)	
288.240 acres of land at Puueo,)	
South Hilo, Island and County)	
of Hawaii, State of Hawaii,)	
TMK Nos.: 2-6-08: 17, 26, 27,)	
28 (por.), 29, 31 (por.),)	
32 (por.), 33 (por.), 34 (por.),)	
36, 37 (por.), 38 (por.), 39;)	
2-6-29: 14 and 15)	
_____)	

JAN 5 8 59 AM '94
LAND USE COMMISSION
STATE OF HAWAII

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

BEFORE THE LAND USE COMMISSION
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C. BREWER PROPERTIES, INC.,)	
a Hawaii corporation,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
)	DECISION AND ORDER
To Amend the Agricultural Land)	
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288.240 acres of land at Puueo,)	
South Hilo, Island and County)	
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TMK Nos.: 2-6-08: 17, 26, 27,)	
28 (por.), 29, 31 (por.),)	
32 (por.), 33 (por.), 34 (por.),)	
36, 37 (por.), 38 (por.), 39;)	
2-6-29: 14 and 15)	
_____)	

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

C. BREWER PROPERTIES, INC., a Hawaii corporation ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on July 24, 1992, pursuant to Chapter 205, Hawaii Revised Statutes ("HRS"), and Chapter 15-15, Hawaii Administrative Rules ("H.A.R."), to amend the State land use district boundary by reclassifying approximately 288.240 acres of land situated at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, identified as Tax Map Key Nos.: 2-6-08:17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15 ("Property"), from the Agricultural Land Use District to the Urban Land Use District.

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence and arguments of counsel presented during the hearings; Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; the subsequent stipulation and exceptions of the County of Hawaii Planning Department to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; the Office of State Planning's ("OSP") Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Petitioner's Exceptions to OSP's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner is C. Brewer Properties, Inc., a Hawaii corporation, with its principal place of business and mailing address at 827 Fort Street Mall, Honolulu, Hawaii, 96813.

2. Petitioner filed a Petition for a Land Use District Boundary Amendment on July 24, 1992 ("Petition").

3. Petitioner filed a First Amendment to its Petition on September 16, 1992, clarifying the TMK parcels comprising the Property.

4. Petitioner filed a Second Amendment to its Petition on November 23, 1992.

5. On December 1, 1992, a prehearing conference on the Petition was held at which time the parties exchanged exhibits and lists of witnesses.

6. The Commission conducted hearings on the Petition on December 17, 1992 and April 29, 1993, pursuant to a public notice published November 4, 1992 in the Honolulu Advertiser and the Hawaii Tribune Herald.

7. On December 17, 1992, Robert Williams testified in support of the Petition. The Commission entered into the record, without objection, a letter dated November 23, 1992 from Clifford H. Dodo; a letter dated December 9, 1992 from Julia D. Simmons; and a letter dated December 17, 1992 from Mitsugu Sumada.

8. On April 29, 1993, the Commission entered into the record, without objection, a letter dated February 7, 1993 from Lenny Sutton.

9. On May 21, 1993, Petitioner filed a Motion to Re-Open Hearing ("Motion"), which was granted by the Commission on June 16, 1993, and by a written Order dated July 9, 1993.

10. On August 18, 1993, the Commission issued its "Order Re: Submission of Exhibits and Identification of Witnesses" for this docket.

11. The Commission conducted the reopened hearing on September 20, 1993, pursuant to a public notice published on August 6, 1993 in the Honolulu Advertiser and Hawaii Tribune

Herald. At the hearing, the Commission entered into the record, without objection, a letter dated May 12, 1993 from Russell Kokubun.

12. On December 2, 1993, the matter was presented for decision making before the Commission. At that time, Petitioner orally moved to defer consideration of the Petition at a later date. The Commission granted, without objection, Petitioner's oral motion.

DESCRIPTION OF THE PROPERTY

13. The Property is situated at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii.

14. The Property is generally bound to the north by Pukihae Stream, to the south by Wailuku River, to the east by the Puueo community, and to the west by sugarcane and a macadamia nut orchard. The Property is situate to the west (and mauka) of the Hawaii Belt Highway and north of Waianuenue Avenue. Wainaku Street is at the eastern base of the Property. The Property is north of downtown Hilo, and separated from Hilo proper by the Wailuku River.

15. There are two exclusions from the Property, Amauulu Camp, consisting of approximately 19.381 acres, and a small, approximately 1.604-acre kuleana lot mauka of Dodo Mortuary. Amauulu Camp is located within the Urban District while the 1.604-acre lot is located within the Agricultural District.

16. The Property is owned in fee by Mauna Kea Agribusiness, Co., Inc. ("MKA"), a subsidiary of C. Brewer and Co., Ltd., and an affiliate of Petitioner.

17. MKA has authorized Petitioner to prepare, file, and process the Petition.

18. Previous historic and current uses of the Property include sugarcane cultivation.

19. The Property is located at the foot of Mauna Kea, sloping towards the ocean. From the mauka or western edge of the Property, elevation ranges from 400 feet above mean sea level ("MSL") near the lower cane haul road, to approximately 100 feet MSL near the boundary of the Property adjacent to Wainaku Street.

20. The Property's average slope is between six to 10 percent.

21. Major topographical features form the drainage pattern and include Mokupau Stream, Kiohoole Gulch, the Wailuku River, and Pukihae Stream. Much of the natural drainage empties into Pukihae Stream to the north and the Wailuku River to the south.

22. The Property is predominately exposed to the northeast tradewinds, with daytime temperatures ranging between the high 70's to the low 80's throughout the year. Nighttime temperatures range from the high 60's to the low to mid 70's. Average rainfall is approximately 125 inches per year.

23. The United States Department of Agriculture Soil Conservation Service Soil Survey of the Island of Hawaii identifies the soils of the Property as primarily HoC and HoD, the Hilo silty clay loam series, with slopes between 10 and 20 percent. Permeability is rapid, runoff is slow to medium, and the erosion hazard is slight to moderate. These soils are used for sugarcane, truck crops, orchards, and pasture.

24. The Land Study Bureau Detailed Land Classification rates the productivity of the Property's soils as "C," fair to good productivity potential for most agricultural uses.

25. The soils of the Property are classified "Prime" by the Agricultural Lands of Importance to the State of Hawaii classification system.

26. The Property is located within Zone X on the Federal Emergency Management Agency's ("FEMA") Flood Insurance Rate Maps ("FIRM"). Zone X represents areas determined to be outside the 500-year floodplain.

27. The Property is designated as Zone 8 on the U.S. Department of the Interior, U.S. Geological Survey Volcanic Hazards Map. Zone 1 areas represent the most hazardous, while Zone 9 is the least hazardous.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

28. Petitioner proposes to develop an approximately 303-acre master planned community (of which the Property represents approximately 288.240 acres) consisting of: up to a

maximum of 1,000 residential units; a neighborhood commercial center to service the proposed project residents; park and open space ("Project"); and a school site, if it is determined an additional facility is needed by the State Department of Education ("DOE").

29. Petitioner also proposes to expand the existing Clem Akina Park, which abuts the Property to the east, by approximately 3.9 acres.

30. Petitioner anticipates the residential component of the Project will include between 650 and 1,000 homes to be developed as completed single-family residential units, rather than vacant home lots. Lot sizes will range from 7,500 to 20,000 square feet for 650 homes, or 7,500 to 10,000 square feet for 1,000 homes.

31. Depending upon the number of units developed and the final product mix, construction costs are expected to range between \$121.5 million and \$170.8 million, in addition to \$44.6 million in estimated infrastructure development costs.

32. Petitioner anticipates beginning construction in 1995, with development occurring over a six to 14-year period, depending upon market conditions and cyclical fluctuations in market demand. Petitioner anticipates that the development would occur in three to four phases, with each phase consisting of on-site construction of infrastructure, home construction, and/or sales. Off-site construction, including water well and storage development, and roadway improvements would occur

within the first year of development. Petitioner anticipates that the first phase would be completed within the third or fourth year of construction.

33. Petitioner proposes to furnish a range of residential housing types for a range of socioeconomic groups. Should affordable housing be accommodated on-site, Petitioner anticipates that approximately 50 percent of the residential units will be offered at prices at which families in the 80 to 140 percent range of Hawaii County's median income can afford. The remaining 50 percent will be composed of the market units, targeting those families in the 150 to 180 percent of median income range.

34. The State Housing Finance and Development Corporation ("HFDC") comments that Policies A(3) and B(3) of the State Housing Functional Plan seek to ensure that (1) housing projects and (2) projects which impact housing provide a fair share/adequate amount of affordable homeownership or rental housing opportunities. Based upon the 1992 median income for a family of four in the County of Hawaii, an affordable sales price for a single-family house and lot package for families earning from 80 percent to 140 percent of the median income is estimated to range from \$82,800 to \$158,200 (assumes a 30-year mortgage at 8.5 percent interest, a housing expense not exceeding 33 percent of income, a customer trust fund of \$130 for property taxes and insurance, and a down payment of five percent). Estimated rents for a family of four

earning from 50 percent to 80 percent of the area median range from approximately \$420 to \$670 per month.

35. Petitioner has proposed to satisfy some or all of its affordable housing requirements by donating land in the Kulaimanu area to the County of Hawaii. The extent to which the affordable housing requirement is satisfied in this manner is dependent upon community needs and market conditions at the time, as well as County and State regulations. Under this proposal, Petitioner anticipates the County would work with HFDC on the particular mix of the affordable units.

36. The County of Hawaii is in full agreement in principle with the proposal by Petitioner to address its affordable housing requirements.

37. Petitioner is aware that the current State policy on affordable housing is that 60 percent of a project must be in the affordable range and that HFDC's affordable housing guidelines can be used for credits to work from that 60 percent base figure.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

38. Petitioner's Consolidated Balance Sheet as of December 29, 1991 (Exhibit 5) reflects total assets of \$75,195,000 (including total current assets of \$29,066,000; total investments of \$3,493,00; total property, plant and equipment of \$42,361,000; deferred charges of \$96,000; and other assets of \$179,000). Total liabilities were \$9,785,000,

and stockholders' equity was \$65,410,000. Petitioner is a wholly-owned subsidiary of C. Brewer and Co., Ltd. Petitioner has represented that in addition to acquiring bank financing, it has in the past relied on the parent company's ability to support Petitioner's balance sheet and income.

STATE AND COUNTY PLANS AND PROGRAMS

39. The Property is located within the State Land Use Agricultural District, as reflected on the Commission's Official Map H-66 (Hilo).

40. The Hawaii County General Plan Land Use Pattern Allocation Guide map designates the Property as Low Density Urban Development (Single-family residential in character, ancillary community and public uses, and convenience type commercial uses). The Property was reclassified to its current land use designation in 1989 during the Comprehensive General Plan Review Program.

41. The County zoning designation for the Property is Agricultural 20-Acre (A-20a).

42. The Property is not within the County of Hawaii's Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

43. By the year 2010, the resident population of the South Hilo District is estimated to be between 58,900 and 72,840 persons, an increase of 13,400 to 27,340 individuals over existing levels. These additional residents will be a result of natural increases in the population, in-migration by

people who are seeking a quality lifestyle and reasonable housing prices, and new employees for expanding governmental, private industry, and resort services.

44. In order to fully service the housing needs of the community over the next 19 years, an additional 6,706 to 13,263 units beyond the 16,200 currently in place must be constructed. Petitioner's Project is intended to address a portion of this demand.

45. Petitioner estimates that approximately 45 to 50 percent of the Project purchasers will be relocating Big Island households, 20 to 25 percent will be in-migrating households, 20 to 25 percent newly formed households, and five percent non-resident owners.

46. Approximately 22 percent to 30 percent of existing and future Hilo households could afford a home priced at \$250,000 (1992-93 price). An additional 15 percent to 20 percent could qualify for homes priced from \$150,000 to \$250,000.

47. While there are large numbers of substandard, outlying lots available for development, there is insufficient competitive housing supply available or proposed providing the inventory mix anticipated for the evolving Hilo market.

48. The commercial center, with a gross leasable area of approximately 52,000 square feet, will be primarily a "neighborhood" center serving the needs of the Project's households. The Project's residents will create demands for

upwards of 30,000 square feet by the year 2000, reaching a maximum of 48,000 square feet during the following decade. Secondary demand will be created by residents of the abutting makai housing units.

SOCIO-ECONOMIC IMPACTS

49. The Project will provide additional housing inventory to meet growing community needs as well as employment opportunities, both short and long term, in keeping with the diversification of the economy of the Hilo region.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

50. Due to increasingly unfavorable production economics, acreages used for sugar production have been steadily decreasing. Statewide, acreages in sugarcane cultivation have decreased 22 percent between 1979 and 1989, from 218,800 to 170,800 acres. On the Big Island, sugarcane acreage has decreased from 98,700 in 1974 to 57,900 in 1990. Big Island sugarcane acreage reductions have been more rapid than the Statewide decline.

51. During the period 1981 through 1986, 2,730 acres of fallowed cane lands were converted to macadamia by MKA. An additional net of approximately 2,000 acres were withdrawn from sugar cultivation by independent cane growers, due to market conditions. Sugar operations at MKA and Hilo Coast Processing Company ("HCPC"), a cooperative composed of MKA and independent cane growers which harvests, transports, and processes the

cane, have not been economically feasible for the last 12 years. In mid-1992, it was announced that the HCPC would be closing. The failure is principally due to increases in the costs of production which are greater than increases in the value of production (sugar prices). Since the cost of production is largely a function of acreage in production, reductions in acreage in production have been necessary to reduce costs in the face of inadequate prices.

52. Approximately 231 acres of cane will be removed from cultivation over time upon development of the Property. This acreage represents less than 0.2 percent of the total State cane acreage currently cultivated, or approximately one-half of one percent of the Big Island's cane acreage. This would represent approximately 1.7 percent of the total cane acreage of MKA.

53. Because the Property is the southernmost of the cane lands owned by MKA it formed part of the acreage that is ultimately to be excluded from cane cultivation, based on operational considerations. These decisions are based on consolidation of the most cost effective fields with the associated savings created by reducing "longhaul fields" and therefore production costs.

54. In addition to the 13,700 cane acres in cultivation, more than 500 fallowed cane areas (not including the Property) are suitable for return to cane production should additional requirements for cane arise. Thus, no significant

negative impact to the operations of MKA or to State agricultural activities overall are anticipated due to the development of the Project.

55. Petitioner's parent corporation and affiliates will continue with their on-going efforts in East Hawaii to support agriculture operations and employment with diversified agriculture, including silviculture, guava, macadamia, oranges, and mangoes, as well as providing land to farmers in small scale noncorporate agriculture.

Flora

56. Winona Char of Char & Associates prepared an uncontroverted report for the Property entitled, "Botanical Survey, Pu'u'eo Makai Project Site, South Hilo District, Island of Hawaii," dated March 1992.

57. No rare, endangered or threatened plants were found on the Property. While certain common native plants were found in gulch areas, most of the species found on the Property are introduced. Approximately 95 percent of the Property is cultivated in sugarcane.

Fauna

58. Dr. Phillip L. Bruner of BYU-Hawaii prepared an uncontroverted report for the Property entitled, "Survey of the Avifauna and Feral Mammals at Puueo Makai, Hilo, Hawaii," dated November 7, 1990.

59. There were no rare animals on the Property. One Hawaiian Hawk or I'o (Buteo solitarius), which is endemic and

endangered, was observed over the Property. No special or unique habitat for birds was found on the Property. Migratory shorebirds and 10 species of exotic birds were recorded.

Archaeological Resources

60. Joseph Kennedy of Archaeological Consultants of Hawaii prepared an uncontroverted report for the Property entitled, "Archaeological Inventory Report Located at Puueo, Island of Hawaii, TMK 2-6-08: 26-29, 31-33, 35-39; 2-6-29: 9-12, 14, 15 (Revised November 1991)."

61. Only a single surface site, in a gulch where no development is anticipated, was found. In the event any development is to occur within the area of the site, a detailed mitigation plan approved by the State Historic Preservation Division would be required.

Groundwater Resources

62. The hydrological characteristics of the Property include perched water on volcanic cinder and basal groundwater beneath the site. The Property falls within Hydrologic Zone II of the County of Hawaii's Water Master Plan ("WMP"). According to the WMP, Zone II areas receive 7,335 million gallons per day ("mgd") of rainwater. Approximately 1,730 mgd is lost to evapotranspiration, 2,510 mgd to runoff, and 3,095 mgd is retained for groundwater recharge. Based upon the County's present calculations for Zone II areas, there appears to be ample groundwater projected to be available for the Project.

Recreational Resources

63. Based on the presence of existing recreational facilities, many of the recreational needs generated by the Project can be accommodated by existing facilities in the area.

64. An on-site park developed by Petitioner will address the recreational needs of new residents, and comply with the County of Hawaii park dedication requirements. The proposed parks to meet the needs of the residents of the Project would consist of a 3.9-acre expansion to Clem Akina Park and a new centrally located four-acre parcel site within the Property.

Scenic and Visual Resources

65. Area view planes will not be significantly impacted by the Project. The low-rise nature of the Project will not detract from the Mauna Kea backdrop, and no makai views will be affected due to the Project's location mauka of the belt highway. Off-site views of Rainbow Falls will not be affected, however, a small portion of the Project will be visible from the upper viewing station at the falls.

ENVIRONMENTAL QUALITY

Noise

66. Any increase in noise level from construction and increased traffic is anticipated to remain well within acceptable levels (not exceeding 55 Ldn.). No significant impacts are expected from the Project. Petitioner has

represented that standards and guidelines established by the Department of Health, such as limiting construction to daylight hours and requiring emission controls on motorized equipment, will be followed to mitigate any impact on ambient noise levels.

Air Quality

67. Vehicle emissions during construction and fugitive dust during construction will cause temporary impacts, although these impacts will be mitigated by Petitioner by use of modern mitigative techniques. These measures include: minimizing the number of concurrent construction and grading projects, watering to minimize fugitive dust, and utilizing electrical and fuel burning equipment with air pollution control devices installed.

68. Upon completion of the Project, the additional volume of traffic and fugitive dust is not anticipated to violate State or Federal air quality standards. Mitigation measures which would reduce carbon monoxide emissions from motor vehicles include: increased use of public transportation, ride sharing, limitation of parking spaces, use of shuttle services, and installation of bike lanes.

69. Impact on air quality from ongoing agricultural operations, particularly burning sugarcane, will be minimal due to the predominant tradewinds which originate from the northeast and the Property's location on the windward side of the remaining sugarcane land in the area.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Services and Facilities

70. The major roadway serving the Project is Wainaku Street. On-site, the Project is served by Amaulu road, which is constructed of asphaltic concrete pavement and terminates at a dirt road. Amaulu Road is not built to County Standards.

71. Wainaku Street north leads to Hau Lane and the Hawaii Belt Road, while Wainaku Street south leads across the Wailuku River into downtown Hilo. The section of Hilo immediately across the Wailuku River from Puueo is composed of a series of one-way streets including Ululani Street, Kinooles Street, Kekaulike Street, Keawe Street, Shipman Lane, and Wailuku Street. Waianuenue Avenue is the major (two-way) mauka-makai arterial, but is one-way makai-bound between Komohana Street and Kamehameha Avenue from 7:15 a.m. to 8:00 a.m. on school days. The Waianuenue Avenue intersections with Kinooles Street, Keawe Street, Kamehameha Avenue, and the Hawaii Belt Highway have traffic signals.

72. Existing (1992) levels of service ("LOS") in the vicinity of the Property indicate LOS A at most intersections during the morning peak hour of traffic. The Hau Lane (Hawaii Belt Road) left is LOS E, while right is LOS C. Hawaii Belt Road northbound left is LOS B. The evening peak hour of traffic is slightly better.

73. There would be no adverse impacts on the existing roadway network if the effects of the Project are properly

mitigated. Proper mitigation includes elimination of on-street parking on Wainaku Street in the vicinity of the access roadways to provide two through lanes and a left turn lane; widening of Amauulu Road to three lanes at Wainaku Street to provide one inbound and two outbound lanes: one left through and one right turn; design of the proposed access roadway to three lanes at Wainaku Street as with Amauulu Road; and if warranted by traffic conditions, traffic signalization at the intersections of Hau Lane and Hawaii Belt Road and at Wainaku and Wailuku Streets.

74. Project traffic would utilize an improved Amauulu Road and a new access road to connect to Wainaku Street. From Wainaku, traffic would either travel south to downtown Hilo, or north to the Hawaii Belt Road via Hau Lane.

75. The proposed roadway system within the Property will be composed of streets classified into two categories: collector and local (minor). The collector street will require a 60-foot right of way and the local street will require a 50-foot right of way in accordance with the Hawaii County Standards and will contain the elements of pavement, utilities, and sidewalk. The proposed design speed for collector and local streets will be 30 mph. Petitioner has represented that roadway geometrics, including horizontal and vertical alignment and sight and stopping distance requirements, will be designed in accordance with the Hawaii County Standards.

76. The Project will not generate sufficient traffic to warrant improvements to State facilities.

77. The State Department of Transportation plans to widen the Hawaii Belt Highway. The Project may have to participate in funding the construction costs of future traffic signalization.

Water Service

78. Serving the Puueo district at the present is the Piihonua Well with a pumping capacity of 3.02 mgd. An existing reservoir with a 1.0 million gallon ("MG") capacity stores water from the Piihonua Well. The transmission line to the Property consists of a 16-inch pipe and a 10-inch pipe. The existing 10-inch transmission system runs along Wainaku Street.

79. The Project will require an estimated average daily demand of 0.728 mgd of potable water at build out.

80. The County of Hawaii, Department of Water Supply ("DWS"), has stated that for a development of this size, Petitioner must provide a water source regardless of the availability of existing water sources. The location of this new source will be determined based on further hydrological studies of the Property, and in coordination and consultation with DWS and the Department of Land and Natural Resources ("DLNR").

Petitioner has represented that prior to the actual development of the new well, Petitioner will submit water use, well construction, and pump installation permits to DLNR,

Commission on Water Resource Management. Petitioner has also represented that it will submit plans and supporting data to the Department of Health in order to obtain new source approval. The proposed location of the reservoir site is mauka of the Property at an elevation of approximately 500 feet MSL.

81. The water system for the Project will consist of a well with a minimum pump capacity of 500 gallons per minute and a new 1 MG reservoir. A 12-inch transmission line will connect the 1.0 MG reservoir to the existing 10-inch waterline on Wainaku Street. Branch waterlines off the main 12-inch waterline will consist of six-inch and eight-inch pipelines with fire hydrants.

Wastewater Disposal

82. The Project is expected to generate an average wastewater flow of approximately 0.38 mgd and a peak flow of 1.41 mgd.

83. The wastewater system servicing the Project to be developed on the Property will be connected to the municipal system that currently services the area makai of the Project. Minor improvements to the existing sewer system may be required. The present wastewater treatment plant has an existing capacity of 7.0 mgd and currently treats a dry weather wastewater flow of 3.9 mgd. The new wastewater treatment plant in Hilo, which will have a capacity of 5.0 mgd, will have sufficient capacity to handle the Project.

Drainage

84. The existing drainage area at the Property covers 331 acres, broken up into 11 sub-areas which are natural drainage basins within the Property. Elevations range from 80 to 400 feet MSL, with average ground slopes of 0 to 20 percent. The drainage basins mauka of the Property are approximately 0.6 miles away and cover approximately 218 acres. Elevations range from 400 to 940 feet MSL, with average ground slopes of 10 to 20 percent. The soils (Hilo soil series) are a well-drained, silty clay loam.

85. The existing drainage system consists of storm runoff, sheetflowing into natural water courses, which ultimately discharge to the ocean. The quantities of runoff estimated for the 11 drainage basins ranged from a low of 16.7 cubic feet per second ("cfs") to a high of 851.7 cfs.

86. The proposed change in land use would increase the amount of impervious surfaces, and thus increase surface runoff. The drainage within the Project will be managed by utilizing typical roadside curbs and gutters, and underground reinforced concrete drainlines connected by catch basins and drain manholes. The system will lead to on-site drywells to accommodate the additional surface runoff from the Project.

87. The State Coastal Zone Management ("CZM") Program comments that the increase in surface runoff, due to an increase in impermeable surfaces, will likely carry with it

residential nonpoint sources of pollution such as pesticides, fertilizers, petroleum products and other hazardous materials.

88. In order to accommodate the runoff mauka of the Property, diversion channels are recommended. These diversion channels would discharge into Pukihae Stream and Kiohoole Gulch which drains into Wailuku River. (OSP 82)

89. One of the significant problems to surface water habitats associated with channelization will be a change in sediment supply and delivery from upland forest reserve and agricultural lands. Channelization can lead to an increased rate of delivery and quantity of sediments and nutrients, and other pollutants to downstream sites. Furthermore, channelization will concentrate freshwater input into surface and marine waters, rather than allowing the natural sheetflow and percolation.

90. The CZM Program recommends that Petitioner consider alternative measures to minimize runoff volumes and velocities, and to treat pollutants entrained in runoff to mitigate adverse impacts to the freshwater and marine ecosystems.

91. Potential impacts on water quality are primarily associated with drainage and its diversion and ultimate discharge. The Department of Health requires a permit for the discharge into streams by means of the National Pollutant Discharge Elimination System permit. The process of obtaining

the permit provides for detailing of the potential impacts and their mitigation.

Solid Waste Disposal

92. The solid waste system for the County of Hawaii consists of landfills located in Hilo and Kailua, supported by transfer stations strategically sited at various communities throughout the island. Because of its proximity to the landfill in Hilo, Puueo does not have a transfer station. However, based on initial conversations with the County of Hawaii, Petitioner will be required to provide a transfer station. The location and capacity of the transfer station would be determined after consultation with the County.

Schools

93. According to the DOE, the Project would impact area schools, as follows:

	<u>Grades</u>	<u>Projected students</u>
Haaheo Elementary School	K- 5	260
Hilo Intermediate School	6- 8	70
Hilo High School	9-12	100

94. DOE states that Haaheo Elementary School is already operating at capacity and is projected to increase in enrollment beyond capacity by 1997. The projected increase in students will result in a need for additional land and/or facilities. Hilo High School is operating beyond capacity and will require four additional classrooms. DOE indicates it

cannot assure the availability of adequate classroom space to accommodate the additional enrollment generated by this Project.

95. Petitioner would work with DOE to see that impacts of the Project on local schools are mitigated through provision of land on-site or off-site, or a combination of both. Petitioner anticipates that the school site shown on the conceptual plan would be held in reserve for DOE for a period of two years. If the site is not utilized by DOE at the end of that time, it would then be converted to residential use. Petitioner has represented that it will keep the DOE apprised of the Project schedule to assure the educational needs of the Project's residents are met in a timely manner.

Police and Fire Protection

96. The Project is expected to increase the population and number of dwelling units in the Hilo area, but is not anticipated to significantly affect the ability of the local police and fire departments to provide required levels of service. Some adjustments to existing manpower levels and equipment may be necessary, however, these changes can be accommodated as Project phases are implemented.

Electrical and Telephone Service

97. Electrical, telephone, and cable television utilities are available to service the Project. Based on the availability of present service capabilities and planned improvements to the electrical and telephone utilities, significant impacts are not expected to result from the Project.

Civil Defense

98. The State Department of Defense, Civil Defense Office, recommends that Petitioner provide two new siren devices within the project site. These devices, 115 DB and 120-121 DB solar powered outdoor warning sirens, are recommended to be installed within the two parks proposed by Petitioner. The proposed 115 DB siren requires a 100-foot radius and the 121 DB siren requires a 300-foot radius buffer zone in which no residential buildings are situated.

CONFORMANCE TO THE URBAN DISTRICT STANDARDS

99. The proposed reclassification is in accordance with the standards set forth in section 15-15-18, H.A.R. in that:

a. The proposed reclassification takes into consideration:

(1) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;

(2) Substantiation of economic feasibility by Petitioner;

(3) Proximity to basic services such as sewers, transportation systems, water, sanitation, schools, parks, and police and fire protection; and

(4) Sufficient reserve areas for urban growth in appropriate locations based upon a 10-year projection;

b. The proposed reclassification includes lands with satisfactory topography and drainage and is reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects;

c. The proposed reclassification includes lands contiguous with existing urban areas and indicated for urban use on the County General Plan; and

d. The proposed reclassification includes lands in appropriate locations for new urban concentrations as shown on the County General Plan.

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

99. The proposed reclassification is generally consistent with the objectives and policies of the Hawaii State Plan, chapter 226, HRS, as follows:

a. The Project will conform with section 226-4(1), HRS, by contributing to provide a strong, viable economy characterized by stability diversity, and growth that enables the fulfillment of the needs and expectations of Hawaii's present and future generations. The present economy of the State and County of Hawaii is influenced by agricultural activities and tourism. However, sugar cultivation by MKA along the Hilo coast, as well as sugar cultivation Statewide have been cut back due to current market conditions. The Project would offer new jobs during the 1994 to 2005 planned

development stage. Over the long-term, the Project would add to the housing opportunities of Hawaii County residents employed in the area.

b. The Project will conform with section 226-4(2), HRS, by contributing to provide a desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness that enhances the mental and physical well-being of the people. The Project would be a master-planned residential community in East Hawaii that will furnish an enhanced physical environment to residents of the community.

c. The Project will conform with section 226-4(3), HRS, by contributing to provide a physical, social, and economic well-being for individuals and families in Hawaii that nourishes a sense of community responsibility, of caring, and of participation in family life. The increased job opportunities generated through construction of the Project and the proposed neighborhood commercial development and additional housing stock provided by the Project would increase the economic well-being of the community as a whole.

101. The State Functional Plans have been prepared to manage and coordinate the various functional area activities of the State Plan, and to guide resource allocation and decision making. The Project is consistent with the State's Housing and Recreational Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

102. The Project conforms to the following CZM objectives:

a. The Project will conform with the objective for Scenic and Open Space Resources under section 205A-2(b)(3), HRS, by protecting, preserving, and improving the quality of coastal scenic and open space resources. Reclassification of the Property will not result in the degradation of the region's scenic and open space resources. The coastal scenic resources mauka will be improved as the Project would provide landscaped open space. The residential development would provide landscaped open space. Although the residential development would be situated to take advantage of coastal views, the low rise nature of the single-family residential units within the Property will not obstruct any existing coastal view plane. Landscape buffers would be incorporated into the Project's design to minimize the visual impingement due to the Project's development.

b. The Project will conform with the objective for Coastal Ecosystem under section 205A-2(b)(4), HRS, by protecting valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems. The Project will not have any significant adverse impacts to the coastal ecosystem which cannot be effectively mitigated. Storm runoff from the Property would utilize the existing drainage system that will lead to on-site dry wells.

c. The Project will conform to the objective for Coastal Hazards under section 205A-2(b)(6) by reducing the hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence. The Property is not subject to coastal related flooding. FEMA's FIRM designate the Property outside of the 500-year floodplain. Zone A lands (i.e., special flood hazard areas inundated by 100-year flood; no base flood elevation determined) are within the present Conservation District and outside the bounds of the Property. Petitioner has represented that development of the Project's drainage systems will follow design standards of the County of Hawaii to ensure safe conveyance and discharge of storm runoff.

INCREMENTAL DISTRICTING

103. Petitioner anticipates that the Project will not be substantially completed within five years after the date of final county zoning approval. Petitioner's request to reclassify the entire Property to the Urban district is appropriate at this time as major commitments regarding construction of on and off-site infrastructure for the entire development will be required during the initial five year period.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding not adopted by the Commission herein, or rejected by clear contrary findings of fact herein, are hereby denied and rejected.

Any conclusions of law herein 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 shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS, and the Hawaii Land Use Commission Rules under chapter 15-15, H.A.R., and upon consideration of the Land Use Commission's decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property consisting of approximately 288.240 acres of land at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, identified as Tax Map Key Nos.: 2-6-08: 17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15, from the Agricultural Land Use District to the Urban Land Use District subject to the conditions hereinafter stated in the Order, is reasonable and conforms to the standards for establishing the urban district boundaries, is non-violative of section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in chapter 226, HRS.

ORDER

IT IS HEREBY ORDERED that the Property, which is the subject of this Docket No. A92-680 filed by Petitioner C. Brewer Properties, a Hawaii corporation, consisting of

approximately 288.240 acres of land at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, and identified as Tax Map Key Nos.: 2-6-08:17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Agricultural District to the State Land Use Urban District, and that the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap-group residents of the State of Hawaii in cooperation with the State Housing Finance and Development Corporation considering the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended, pursuant to an affordable housing plan approved by the County of Hawaii, which addresses proportionate household income distribution, location, and other appropriate affordable housing policies as determined by the County of Hawaii. The location and distribution of the affordable housing or other provision for affordable housing shall be under such terms as may be mutually agreeable to Petitioner, the Housing Finance and Development Corporation, and the County of Hawaii.

2. If during construction, any previously unidentified sites or remains, such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings, or walls are encountered, work shall stop and the State Department of Land and Natural Resources, Historic Preservation Division shall be notified immediately. Work in the immediate area shall remain stopped until the Historic Preservation Division is able to assess any impact and make further recommendations for mitigative activity.

3. Petitioner shall contribute to the development, funding, and/or construction of school facilities on a pro rata basis as a result of the development on the Property, as determined by and to the satisfaction of the Department of Education (DOE). Agreement by DOE on the level of funding and participation shall be obtained prior to Petitioner applying for county zoning.

4. Petitioner shall participate in the funding and construction of local and regional transportation improvements and programs necessitated by the proposed development, including dedication of rights-of-way, as determined by the State Department of Transportation and County of Hawaii. Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to Petitioner applying for county zoning.

5. Petitioner shall fund and construct water source, transmission, and storage facilities and improvements to accommodate the proposed Project.

6. Petitioner shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a pro rata basis, as determined by the State Department of Health and the County Department of Public Works.

7. Petitioner shall implement effective soil erosion and dust control measures both during and after construction.

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

9. Petitioner shall notify all prospective buyers of Property in the Project that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

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

11. Petitioner shall cooperate with the State Department of Health and the County Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act.

12. Petitioner shall fund the design and construction of drainage improvements required as a result of the

development of the Property to the satisfaction of the appropriate State and County of Hawaii agencies.

13. Petitioner shall establish a program to monitor groundwater, stream water, and ocean water quality as specified by the State Department of Health. Should any adverse impacts affect the area as the result of Petitioner's activities, Petitioner shall immediately implement remedial and corrective actions to the satisfaction of the State Department of Health.

14. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

15. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the complete development of the Property and as represented by the Petitioner.

16. Petitioner shall promptly provide without any prior notice, annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed.

17. The Land Use Commission may fully or partially release these conditions as to all or any portion of the

Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

18. Petitioner shall obtain all other governmental approvals which may be required for the proposed Project.


19. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (1) record with the Bureau of Conveyances a statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property; and (2) shall file a copy of such recorded statement with the Commission.


20. Petitioner shall record the conditions imposed by the Land Use Commission with the Bureau of Conveyances pursuant to Section 15-15-92, H.A.R.


DOCKET NO. A92-680 - C. BREWER PROPERTIES, INC.

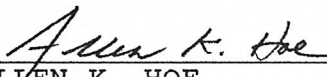
Done at Honolulu, Hawaii, this 5th day of January 1994,
per motion on December 15, 1993.

LAND USE COMMISSION
STATE OF HAWAII


By 
JOANN N. MATTSON
Chairperson and Commissioner

By 
KAREN S. AHN
Vice Chairperson and Commissioner

By 
TRUDY K. SENDA
Vice Chairperson and Commissioner

By 
ALLEN K. HOE
Commissioner

By 
LLOYD F. KAWAKAMI
Commissioner

By 
EUSEBIO LAPINIA, JR.
Commissioner

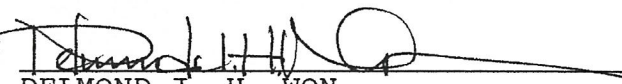
By (excused)
RENTON L. K. NIP
Commissioner

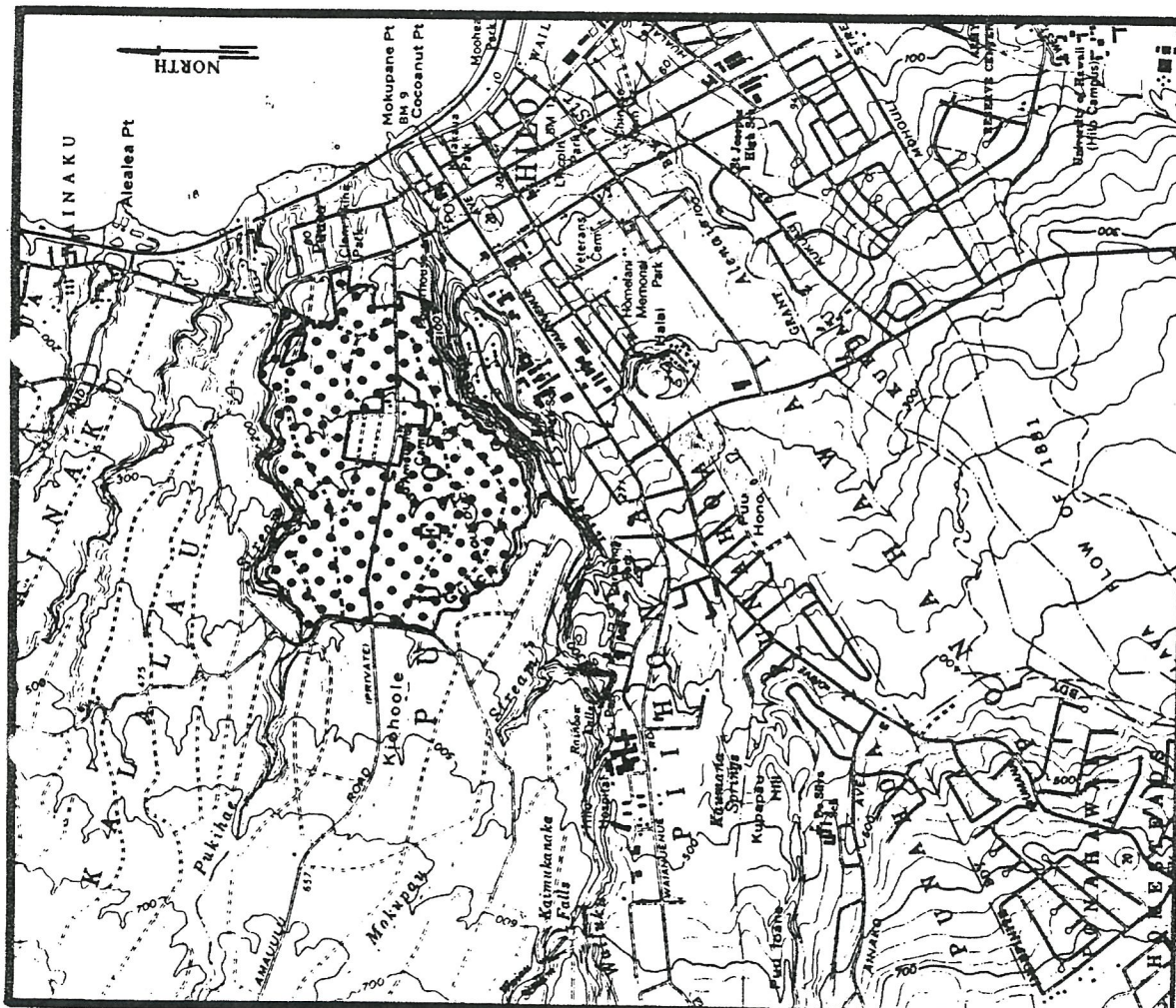
Filed and effective on
January 5, 1994

Certified by:


Executive Officer

By 
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner



DOCKET NO. A92-680 C. BREWER PROPERTIES, INC.

LOCATION MAP

T.M.K.: 2-6-08 : 17, 26, 27, por. 28, 29, por. 31, por. 32, por. 33, por. 34, 36, por. 37, por. 38, 39 ; 2-6-29 : 14 & 15

PUUEO, SOUTH HILO, HAWAII

SCALE: 1" = 2,000 ft. ±

APPROVED AREA



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A92-680
C. BREWER PROPERTIES, INC.,)	
a Hawaii corporation,)	CERTIFICATE OF SERVICE
)	
To Amend the Agricultural Land)	
Use District Boundary into the)	
Urban District for approximately)	
288.240 acres of land at Puueo,)	
South Hilo, Island and County)	
of Hawaii, State of Hawaii,)	
TMK Nos.: 2-6-08: 17, 26, 27,)	
28 (por.), 29, 31 (por.),)	
32 (por.), 33 (por.), 34 (por.),)	
36, 37 (por.), 38 (por.), 39;)	
2-6-29: 14 and 15)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. ERIC T. MAEHARA, ESQ.
JORDAN D. WAGNER, ESQ., Attorneys for Petitioner
Foley Maehara Judge Nip & Chang
Grosvenor Center, Suite 2700
737 Bishop Street
Honolulu, Hawaii 96813

CERT. B.G. MOYNAHAN
C. Brewer Properties, Inc.
827 Fort Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 5th day of January 1994.



ESTHER UEDA
Executive Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A92-679
)	
WHITE HAT DEVELOPMENT, CORP.	)	WHITE HAT DEVELOPMENT,
	)	CORP.
To Amend the Agricultural Land)	
Use District Boundary into the)	
Urban Land Use District for)	
approximately 23.926+ acres, at)	
Makaula, North Kona, Island,)	
County and State of Hawaii,)	
Tax Map Key Nos. (3) 7-3-03:7)	
and 17)	

JAN 7 7 13 AM '93
LAND USE COMMISSION
STATE OF HAWAII

ORDER ADOPTING HEARING OFFICER'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A92-679
)	
WHITE HAT DEVELOPMENT, CORP.	)	WHITE HAT DEVELOPMENT,
	)	CORP.
To Amend the Agricultural Land)	
Use District Boundary into the)	
Urban Land Use District for)	
approximately 23.926+ acres, at)	
Makaula, North Kona, Island,)	
County and State of Hawaii,)	
Tax Map Key Nos. (3) 7-3-03:7)	
and 17)	

ORDER ADOPTING HEARING OFFICER'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

This matter came on for consideration on December 17, 1992 at the meeting of the Land Use Commission (hereinafter "Commission") of the State of Hawaii, held in Hilo, Island and State of Hawaii. Appearing for White Hat Development, Corp. (hereinafter "Petitioner") were Steven S.C. Lim, Gerard A. Jervis and William Boyle; for the County of Hawaii Planning Department were Frederick Giannini and Norman Hayashi; and for the Office of State Planning were Ann Ogata Deal and Abe Mitsuda. Hearing Officer Allen K. Hoe was not present.

The Commission, after careful review of the Hearing Officer's report, the record and files herein, with good cause existing and upon motion duly passed,

HEREBY adopts the Hearing Officer's Report. Accordingly, the Commission hereby adopts the findings of fact, conclusions of law and decision and order as follows:

Petitioner filed a Petition for Land Use District Boundary Amendment pursuant to Chapter 205, Hawaii Revised Statutes, as amended, (hereinafter "HRS") and the Hawaii Land Use Commission Rules, Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended, to reclassify approximately 23.926 acres, Tax Map Key Nos. (3) 7-3-03:07 and (3) 7-3-03:17, at Makaula, North Kona, Island and County of Hawaii, State of Hawaii (hereinafter referred to as "Property"), from the Agricultural District to the Urban District.

FINDINGS OF FACT

Procedural Matters

1. The Petitioner filed the Petition for Land Use District Boundary Amendment (hereinafter "Petition") on July 16, 1992.

2. The Petition was served upon the Office of State Planning (hereinafter "OSP") and the County of Hawaii Planning Department (hereinafter "Planning Department") by Steven S. C. Lim, attorney for Petitioner.

3. On September 18, 1992, a prehearing conference was held in the conference room of the Department of Business, Economic Development and Tourism, 11th Floor, Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii, with all parties in attendance.

4. On October 2, 1992, the Land Use Commission's Hearing Officer, Allen K. Hoe, Esq. conducted a hearing on the

Petition, pursuant to notices published on August 10, 1992 in the Honolulu Advertiser, the Hawaii Tribune-Herald, and the West Hawaii Today.

5. There were no requests for intervention nor any public witnesses testifying on the Petition.

Description of the Property

6. The fee owner of the Property is Yamada Diversified Corporation, a Hawaii corporation. Petitioner is the purchaser of the Property under a binding contract to purchase from the foregoing owner all of the fee interest in the parcels comprising the Property.

7. The Property is situated approximately 4 miles east (mauka) of Keahole Airport, and 10 miles northeast of Kailua Town.

8. The Property is located at an elevation ranging from 1,240 feet above sea level along its west (makai) boundary to 1,800 feet above sea level at its east (mauka) boundary with an average slope of approximately 16 percent.

9. The Property is bounded by Agricultural designated lands on all four sides. However, single-family homes on 11 lots ranging from approximately 7,800 square feet to 17,627 square feet are located east (mauka) of the Property.

10. On the south side of the Property are 5 lots ranging in size from 6.3 to 9.9 acres. One of those lots contains a dwelling and the other lots are unimproved. Further

south, about 1,000 feet away, is the Urban District and the single family residential developments of Keahole Heights, Kona Highlands, Kona Wonderview and Kona Coastview.

11. Along the north and west (makai) borders of the Property, the land is vacant and unimproved.

12. The Property was cleared and grubbed in approximately 1970 or 1971 by a prior owner. There were also more recent grading activities that have occurred on portions of the Property pursuant to grading permit.

13. On the east (mauka) portion of the Property are located three single-family dwellings, which will be demolished prior to construction of the proposed subdivision.

14. The USDA Soil Conservation Service Soil Survey of the Island of Hawaii identifies the soils of the Property as Kaimu (rKED) and Punaluu (rPYD) soils.

15. The Kaimu soils are well-drained, thin organic soils over a'a lava. Permeability is rapid, runoff is slow, and the erosion hazard is slight. According to the Soil Survey, the soil is generally not suitable for cultivation.

16. The Punaluu soils, which cover about 80 per cent of the Property, are well-drained, organic soils over pahoe-hoe lava bedrock. The top soil layer is rapidly permeable. The pahoe-hoe lava underneath is very slowly permeable, although water moves rapidly through cracks. Runoff is slow, and the erosion hazard is slight. The soils are typically used for pasture.

17. About 20 percent of the Property is in the Other Important Agricultural Land category as classified by the Agricultural Lands of Importance to the State of Hawaii (ALISH).

18. The Land Study Bureau Detailed Land Classifications, reference Map 11 for the Island of Hawaii, rates approximately 80 percent of the land in "C55", which indicates that the land has a fair productivity potential for most agricultural uses. The remaining land is rated "D" or lands having a poor productivity rating.

19. According to the Flood Insurance Rate Map (FIRM), the Property is located within Zone X. Zone X is an area determined to be outside the 500-year Flood Plain.

20. Located on the leeward side of the island, the Property experiences an average annual rainfall of approximately 30 inches at its west (makai) end to 40 inches at its east (mauka) end.

21. Winds are normally diurnal (on-shore during the day and off-shore during the night), with a mean annual temperature between 70 to 78 degrees Fahrenheit.

22. Due to its location approximately 4 miles inland and uphill from the coast, the Property is not located within the tsunami inundation area.

Description of the Proposed Development

23. Petitioner proposes to develop the "University Heights" planned residential community with approximately 109

single-family dwellings, parks, roadways, a private on-site sewage treatment facility, and appurtenant infrastructure (hereinafter "Project").

24. Petitioner proposes to develop the 109 unit planned residential community through the concept of a Planned Unit Development (PUD) and a change of zone to a Single-Family Residential-7,500 square foot (RS-7.5) zoned district, pursuant to provisions of the Hawaii County Zoning Code, as amended.

25. Petitioner is proposing to build and offer for sale to qualified applicants a 100 percent affordable housing community with house/lot sales prices ranging between 80 to 140 percent of the median income for the County of Hawaii.

26. The proposed PUD lot sizes will be approximately 5,000 to 7,000 square feet to accommodate the construction of two- and three-bedroom single-family residential dwellings by the Petitioner.

27. Primary access to the Property from the Mamalahoa Highway is via Makaula Street, which has a 40-foot right-of-way. Petitioner is also exploring locating the primary access to the Property from Mamalahoa across the parcel immediately to the north of the Property.

28. Internal traffic circulation will be provided by a 32-foot right-of-way main spine road running in the east (mauka) to west (makai) direction, with 16-foot right-of-way secondary roads leading to the subsectors of the proposed Project.

29. Petitioner anticipates a total revised construction cost for infrastructure and site improvements, not including costs associated with the construction of the 109 single-family dwellings, to be approximately \$4,804,405.00 in 1992 dollars, up from the original cost projection of \$3,472,000.00.

30. Petitioner anticipates completion of the proposed development within 5 years from the date of receiving zoning approval from the County of Hawaii.

Petitioner's Financial Capability to Undertake the Proposed Development

31. Petitioner's Statement of Financial Condition as of July 15, 1992, lists its total assets at \$1,974,332.00, and total liabilities and partners' capital at \$1,005,000.00.

32. Petitioner has investigated the market feasibility of the Project, examined environmental considerations affecting the Project, examined processing of required governmental permits, examined arrangement and securing of financing for construction of the Project, and overseeing of construction of the Project within the State of Hawaii.

33. Petitioner has demonstrated the financial capability to develop the Property based on its financial condition, and a showing of substantial market demand that indicates a probability of sufficiently profitable endeavor to justify the boundary amendment request.

State Plans and Programs

34. The Property is currently classified within the State Land Use Agricultural District by the Land Use Commission (hereinafter "Commission").

35. Urbanization of the Property is generally consistent with the State's West Hawaii Regional Plan, which directs future growth to the Keahole to Kailua subregional planning area.

36. The Property is located adjacent to several existing and proposed residential developments and will provide for additional affordable housing, which is currently one of the State's primary concerns.

County Plans and Programs

37. The County of Hawaii General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the project site for Urban Expansion. This designation allows for a mix of high density, medium density, low density, industrial and/or open designations in areas where new settlements may be desirable, but where specific settlement patterns and mix of uses have not yet been determined (provided the applicable goals, policies and standards of the General Plan are met).

38. The Property is currently zoned "Unplanned" by the County of Hawaii, and is not specifically planned in the County's Keahole to Kailua Planning Area.

39. The Property is not located within the Special Management Area (SMA) of the County of Hawaii.

Need for Proposed Development

40. Petitioner has completed a market study which concluded that the demand for affordable housing within the West Hawaii market is extremely strong. The market study found that there have been no single family detached affordable housing projects completed and offered for sale in the Kailua-Kona area since approximately 1985, when the Kealakehe House Lots Phase II Subdivision was completed. Although the Pualani Subdivision Increment I is progressing toward its requirements for house/lot sales, the projected demand far outstrips the affordable housing product available.

41. Petitioner's proposal to develop a subdivision to offer for sale affordable single-family dwellings will further the State's goal of providing affordable housing.

42. Within the Project, Petitioner proposes to provide approximately 5 private park sites and a private central park and swimming pool facility for the residents of the proposed subdivision. There are no public parks or recreational facilities within the immediate vicinity of the Property.

IMPACT ON THE RESOURCES OF THE AREA

Air Quality

43. Petitioner expects that the proposed Project will create only short-term impacts to the present air quality during the construction of the subdivision.

Aural Quality

44. Petitioner expects that the proposed Project will create only short-term adverse impacts to the present aural quality in the area during the construction phase of the Project. The Property is not affected by noise impacts from the Keahole Airport.

Archaeological Resources

45. Petitioner's archaeological consultant conducted a survey of the archaeological and historical features on the site. The site had been grubbed twice, once in the early 1970's and once in the early 1990's.

46. Petitioner's archaeological consultant observed possible agricultural mounds, a dense cultural deposit, two shell midden scatters, boundary rock walls, and a portion of a lava tube.

47. An archaeological survey of the Property located two sites, one a surface scatter and the other a stacked stone wall. Both sites have been severely compromised by previous bulldozing activities which occurred on the Property and both sites were found Significant for Information Content Only, and no preservation is recommended.

48. The State of Hawaii Department of Land and Natural Resources Historic Preservation Division has reviewed the archaeological survey submitted by Petitioner for the Property and has stated that the proposed development will have "no

effect" on significant historic sites and that no further archaeological work is necessary.

Agricultural Resources

49. The Property does not contain Prime or Unique agricultural lands, however, the Property does contain some Other Important Agricultural Lands as classified by the Agricultural Lands of Importance to the State of Hawaii (ALISH). The majority of the lands on the site are rated "C" by the Land Study Bureau and have a fair productivity potential for most agricultural uses.

50. The State Department of Agriculture has expressed a concern that "existing agricultural operations and lands with agricultural production potential in the general vicinity of the subject property, such as the Keahole Agriculture Park, be able to continue and not be precluded from future agricultural use".

Flora and Fauna

51. Petitioner's flora and fauna consultant conducted a botanical survey of the Property, finding vegetation on the site to be a thicket dominated by non-native plants with only a few native species, none of which are rare or endangered. The former native vegetation of the site had been destroyed by past human activity (grubbing and clearing operations). No rare or endangered plants were found on the site, nor is it likely that any grow there undetected.

52. Petitioner's flora and fauna consultant also conducted a fauna survey of the Property, finding all of the

birds observed on the site to be non-native. No rare or endangered species of animals were detected. Although the endangered Hawaiian Hawk is known to forage in the vicinity, it was concluded to be improbable that an active nest was being maintained on the site.

Scenic/Visual Resources

53. The Project will be a low density single-family dwelling subdivision located below Mamalahoa Highway. Currently, there is dense vegetation surrounding the Property along the east (mauka) and north sides. The proposed Project should not significantly affect views from Queen Kaahumanu Highway.

Socio-Economic Impacts

54. The proposed Project will generate direct employment during the construction period of the Project. Petitioner anticipates that socio-economic impacts of the Project will be favorable due to the focus on provision of affordable housing opportunities for the people of West Hawaii.

Adequacy of Public Service and Facilities

Highway and Roadway Services and Facilities

55. The Property is located below Mamalahoa Highway, which is a State-maintained two-lane arterial highway with a pavement width of 24 feet within a 100-foot right-of-way to the north of its Makaula Street intersection and an 80-foot right-of-way to the south.

56. Access to the Property is from Mamalahoa Highway via Makaula Street, which is a County-maintained roadway with a 40-foot right-of-way. From its intersection with Mamalahoa Highway, it proceeds west (makai) for a distance of approximately 450 feet to the Property.

57. Petitioner's traffic consultant states that the highway presently operates at Level Of Service (LOS) "B" during both the morning peak hour and during the afternoon peak hour. In 1995, the traffic along Mamalahoa Highway without the Project during the morning peak hour both north and south of Makaula Street is at LOS "C", and during the afternoon peak hour at LOS "D". In 1995 with the Project traffic, Mamalahoa Highway both north and south of Makaula Street will operate at LOS "D" during both the morning and afternoon peak hours.

58. Petitioner's consultant recommends an unsignalized intersection with dedicated left-turn pockets provided on both the northbound and the southbound approaches to the Project off Mamalahoa Highway.

59. The State Department of Transportation (DOT) recommends that the access intersection for the project with Mamalahoa Highway be fully channelized with left-turn lanes and provided with appropriate street lighting at no cost to the State, and that plans for construction work within the State Highway right-of-way be submitted to the DOT for review and approval.

Water

60. Petitioner proposes to utilize water provided from the County's Department of Water Supply system.

Wastewater Treatment and Disposal

61. The wastewater from the Property will be processed through a private sewage treatment plant located on-site. Petitioner will meet the applicable State Department of Health (DOH) regulations governing private wastewater sewage treatment plants.

Solid Waste

62. Solid waste and debris removal will be accomplished through private contractor services. The County's Kailua landfill is presently at capacity, and future solid waste disposal will be trucked to the new landfill site at Pu'uana'hulu.

Drainage

63. The Property will be drained into on-site drywells pursuant to the requirements of the State Department of Health. Petitioner does not anticipate any runoff from the Property nor intrusion of wastewater into the groundwater table.

Electrical Power

64. The proposed Project will be serviced by Hawaii Electric Light Company (HELCO) and Hawaiian Telephone Company through underground utilities provided on-site at property line stubouts. HELCO states no objections, provided that easements for a new electrical distribution system interconnecting the

existing distribution circuit to the on-site development are granted to HELCO and a minimum of two 7.2 KV main feeders are available to serve the estimated load.

Schools

65. Petitioner anticipates that students residing in the "University Heights" project will attend public schools at Kealakehe Elementary and Intermediate School and Konawaena High School. However, the State Department of Education has stated that it "cannot assure the availability of classrooms to accommodate the 47 students projected from this subdivision".

66. Petitioner has committed to participate in the funding and construction of school facilities, on a pro rata basis, as determined by the State Department of Education.

Police and Fire Protection

67. Police protection services are provided by the Hawaii County Police Department out of its Kealakehe station, which is located approximately 5 miles to the southwest of the Property. Fire protection services are provided by the Hawaii County Fire Department out of its Kailua station, which is located at the junction of Palani Road and Queen Kaahumanu Highway.

Health Services

68. Primary health care is provided by Kona Hospital, which is located in Kealahou approximately 15 miles to the south of the Property. Kailua Fire Station also provides emergency medical and paramedical services.

Civil Defense

69. The State Department of Defense, Office of the Director of Civil Defense, recommends the installation of a new 115 DBC solar powered outdoor warning siren, located within the central portion of the subdivision. The proposed siren requires a 100-foot radius buffer zone in which there is no residential building. Petitioner has represented that it will not be feasible to locate the warning siren anywhere within the proposed project due to the 100-foot radius buffer zone, nevertheless, the Petitioner is willing to share in the pro rata costs of funding the construction of appropriate civil defense measures with other developers in the area on a site located outside the Property.

Geologic Hazards

70. In its letter to OSP dated September 21, 1992, the Department of the Interior, United States Geological Survey, Hawaiian Volcano Observatory, stated that since the Project site is on a steep slope only two miles downhill from the northeast rift zone of Mt. Hualalai, it recommends a road which exits the development either to the side or downhill of the slope. Petitioner proposes to comply with the requirements of the Hawaii County Department of Public Works which typically require lateral roadway stubouts leading to the properties on each side of the development.

Conformance with the Hawaii State Plan and Functional Plans

71. The proposed reclassification is generally consistent with the goals, objectives and policies of the Hawaii State Plan and Functional Plans.

Conformance with the Land Use Commission Rules

72. The proposed reclassification is in general conformance with Section 15-15-18 of the Hawaii Land Use Commission Rules, relating to Standards for Determining "U" Urban District Boundaries.

Conformance with Coastal Zone Policies and Objectives

73. The proposed reclassification conforms with the goals, objectives and policies of the Coastal Zone Management Program, Chapter 205A, HRS.

Incremental Districting

74. Full development of the Property can be substantially completed within five years after the date of the final County zoning approval and therefore incremental districting of the Property is not warranted.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact not adopted by the Commission herein, or rejected by clear contrary finding of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should 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

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, as amended, and subject to the conditions of the Decision and Order herein, the Commission finds upon a clear preponderance of the evidence that the reclassification of the Property from the Agricultural to the Urban District, which is the subject of the Petition in Docket No. A92-679, filed by WHITE HAT DEVELOPMENT, CORP., a Hawaii corporation, which Property consists of approximately 23.926 acres, situated at Makaula, North Kona, Island and County of Hawaii, State of Hawaii, and is identified as Tax Map Key Nos. (3) 7-3-03:7 and (3) 7-3-03:17, conforms to the standards for reclassification from the Agricultural to the Urban district, is reasonable and not violative of Section 205-2, HRS, and is consistent with the policies and criteria of the Hawaii State Plan pursuant to Section 205-16, HRS, the Land Use Commission decision making criteria pursuant to Section 205-17, HRS, and the Coastal Zone Management program, objectives and policies pursuant to Section 205A-2, HRS.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, being the subject of the Petition in Docket No. A92-679, filed by White Hat Development, Corp., a Hawaii corporation, consisting of approximately 23.926 acres of land situated at Makaula, North

Kona, Island and County of Hawaii and identified as Tax Map Key Nos. (3) 7-3-03:7 and (3) 7-3-03:17, and approximately identified on Exhibit A attached hereto and incorporated by reference herein, shall be and the same is hereby reclassified from the State Land Use Agricultural District to the State Land Use Urban District and the State Land Use District Boundaries are hereby amended accordingly subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner, the State Housing Finance and Development Corporation and the County of Hawaii.

2. Should any archaeological resources such as artifacts, shell, bones or charcoal deposits, human burials, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property, Petitioner shall immediately stop work on the impacted area and contact the Historic Preservation Division of

the State of Hawaii Department of Land and Natural Resources (hereinafter referred to as "State Historic Preservation Division").

3. Petitioner shall submit a complete archaeological inventory survey for the review and approval of the State Historic Preservation Division. Provided that the inventory survey indicates significant archaeological sites, a detailed preservation plan (scope of work) and archaeological data recovery plan (scope of work) shall be approved by the State Historic Preservation Division prior to commencement of work. The detailed preservation plan shall include acceptable buffer zones around the sites, interim protection measures during construction, and long-term management measures (e.g., public access, trails, interpretative sign design and text, maintenance). The buffer zones and interim protection measures shall be approved by the State Historic Preservation Division and implemented prior to construction. The archaeological data recovery plan shall be executed prior to construction. The State Historic Preservation Division shall verify in writing the successful execution of both plans.

4. Petitioner shall fund, design, and construct the necessary roadway improvements, specifically, that the development's access intersection with Mamalahoa Highway shall be fully channelized with left-turn lanes and provided with street lighting as appropriate to the satisfaction of the State

Department of Transportation. Petitioner shall submit construction plans for work within the State highway right-of-way for review and approval by the State Department of Transportation.

5. Petitioner shall participate in the funding and construction of school facilities, on a pro rata basis, as determined by the State Department of Education.

6. Petitioner shall implement effective soil erosion and dust control measures both during and after construction to the satisfaction of the State Department of Health.

7. Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Hawaii Department of Public Works.

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

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

10. Petitioner shall participate, on a pro rata basis, in the funding for construction of appropriate civil defense measures as determined by the State and County of Hawaii civil defense agencies.

11. Petitioner shall fund and construct adequate water source/storage/transmission facilities and improvements to accommodate the proposed project.

12. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the appropriate State and County agencies.

13. Petitioner shall provide notification to all owners and occupants of the Property of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

14. Petitioner shall consult with the Department of Interior, United States Geological Survey, Hawaiian Volcano Observatory in the design of the roadway system for the proposed project.

15. Petitioner shall complete the proposed project in substantial compliance with the representations made before the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former land use classification, or change to a more appropriate classification.

16. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust,

or otherwise voluntarily alter the ownership interest in the Property prior to development of the Property.

17. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

18. The Land Use Commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

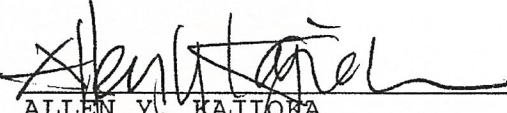
19. The conditions imposed by the Commission shall be recorded with the Bureau of Conveyances pursuant to Title 15, Chapter 15, Section 92, Hawaii Administrative Rules.

20. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a Statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

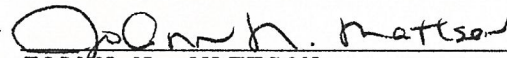
DOCKET NO. A92-679 - WHITE HAT DEVELOPMENT, CORP.

Done at Honolulu, Hawaii, this 7th day of January 1993,
per motion on December 17, 1992.

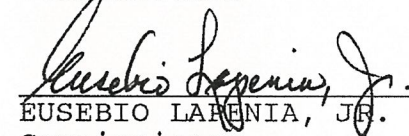
LAND USE COMMISSION
STATE OF HAWAII

By 
ALLEN Y. KAJIORA
Chairman and Commissioner

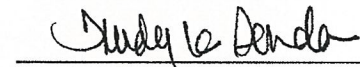
By (absent)
KAREN S. AHN
Vice Chairman and Commissioner

By 
JOANN N. MATTSON
Vice Chairman and Commissioner

By (absent)
ALLEN K. HOE
Commissioner

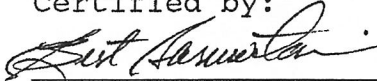
By 
EUSEBIO LARENIA, JR.
Commissioner

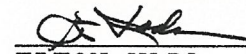
By (absent)
RENTON L. K. NIP
Commissioner

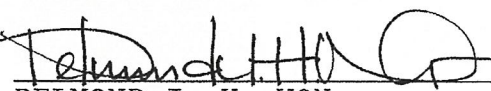
By 
TRUDY K. SENDA
Commissioner

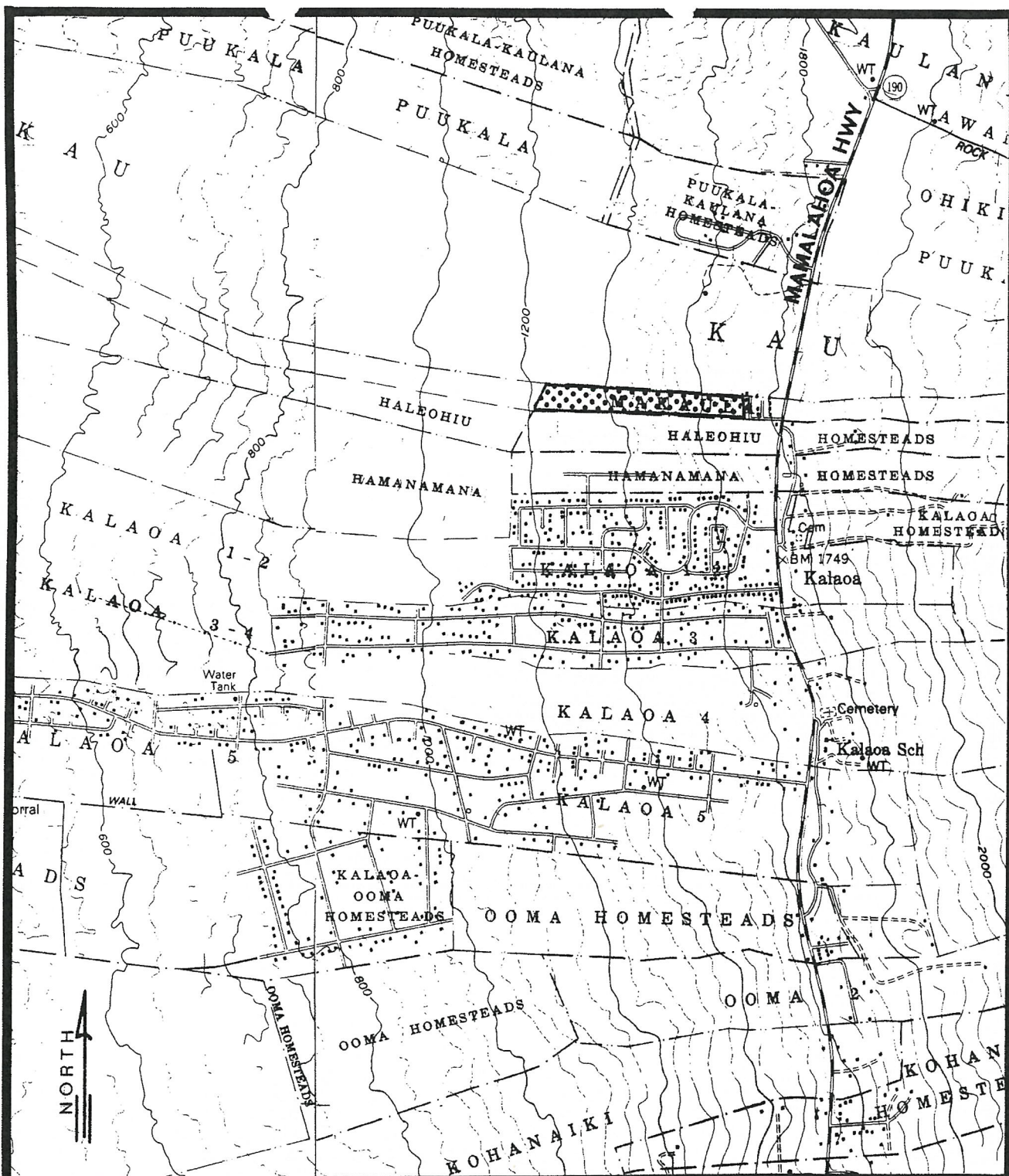
Filed and effective on
January 7, 1993

Certified by:


for Executive Officer

By 
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner



DOCKET NO. A92-679 / WHITE HAT
DEVELOPMENT, CORP.

LOCATION MAP

TAX MAP KEY: 7-3-03: 7 & 17
MAKAULA, NORTH KONA, HAWAII

SCALE: 1" = 2,000 ft. ±



APPROVED AREA

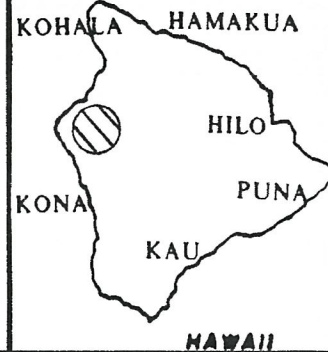


EXHIBIT "A"

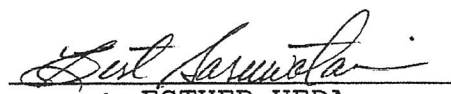
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of )	)	DOCKET NO. A92-679
WHITE HAT DEVELOPMENT, CORP.)	
	)	WHITE HAT DEVELOPMENT,
	)	CORP.
To Amend the Agricultural Land)	
Use District Boundary into the)	
Urban Land Use District for)	
approximately 23.926+ acres, at)	
Makaula, North Kona, Island,)	
County and State of Hawaii,)	
Tax Map Key Nos. (3) 7-3-03:7)	
and 17)	
<hr/>		

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Adopting Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

	HAROLD S. MASUMOTO, Director Office of State Planning P. O. Box 3540 Honolulu, Hawaii 96811-3540
CERT.	VIRGINIA GOLDSTEIN, Planning Director Planning Department, County of Hawaii 25 Aupuni Street Hilo, Hawaii 96720
CERT.	STEVEN S.C. LIM, ESQ., Attorney for Petitioner Case & Lynch 460 Kilauea Avenue Hilo, Hawaii 96720
CERT.	GERARD A. JERVIS, President White Hat Development, Corp. 970 N. Kalaheo Avenue, Suite A-300 Kailua, Hawaii 96734
DATED:	Honolulu, Hawaii, this <u>7th</u> day of January 1993.



for ESTHER UEDA
Executive Officer


BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) C. BREWER PROPERTIES, INC.,) a Hawaii corporation,) To Amend the Agricultural Land) Use District Boundary into the) Urban District for approximately) 288.240 acres of land at Puueo,) South Hilo, Island and County) of Hawaii, State of Hawaii,) TMK Nos.: 2-6-08: 17, 26, 27,) 28 (por.), 29, 31 (por.),) 32 (por.), 33 (por.), 34 (por.),) 36, 37 (por.), 38 (por.), 39;) 2-6-29: 14 and 15) _____)	DOCKET NO. A92-680 CERTIFICATE OF SERVICE
--	--

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

	HAROLD S. MASUMOTO, Director Office of State Planning P. O. Box 3540 Honolulu, Hawaii 96811-3540
CERT.	VIRGINIA GOLDSTEIN, Planning Director Planning Department, County of Hawaii 25 Aupuni Street Hilo, Hawaii 96720
CERT.	ERIC T. MAEHARA, ESQ. JORDAN D. WAGNER, ESQ., Attorneys for Petitioner Foley Maehara Judge Nip & Chang Grosvenor Center, Suite 2700 737 Bishop Street Honolulu, Hawaii 96813
CERT.	B.G. MOYNAHAN C. Brewer Properties, Inc. 827 Fort Street Honolulu, Hawaii 96813
DATED:	Honolulu, Hawaii, this <u>5th</u> day of January 1994.



ESTHER UEDA
Executive Officer

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

In the Matter of the Petition of)
C. BREWER PROPERTIES, INC.,)
a Hawai`i corporation)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
288.240 Acres of Land at Pu`ueo,)
South Hilo, Island and County of)
Hawai`i, State of Hawai`i, TMK)
Nos.: 2-6-08: 17, 26, 27, 28)
(por.), 29, 31 (por.) 32 (por.),)
33 (por.), 34 (por.), 36, 37)
(por.), 38 (por.), 39; 2-6-29:)
14 and 15)

DOCKET NO. A92-680

ORDER GRANTING MOTION TO
WITHDRAW LAND USE
COMMISSION APPROVALS AND
REVERT LAND USE DISTRICT
BOUNDARY CLASSIFICATION
TO AGRICULTURE

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

SEP 20 2000

by

Date

Executive Officer

ORDER GRANTING MOTION TO WITHDRAW LAND USE COMMISSION
APPROVALS AND REVERT LAND USE DISTRICT BOUNDARY
CLASSIFICATION TO AGRICULTURE

LAND USE COMMISSION
STATE OF HAWAII
2000 SEP 20 A 8:16

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

In the Matter of the Petition of)	DOCKET NO. A92-680
C. BREWER PROPERTIES, INC.,)	
a Hawai`i corporation)	ORDER GRANTING MOTION TO
To Amend the Agricultural Land Use)	WITHDRAW LAND USE
District Boundary into the Urban)	COMMISSION APPROVALS AND
Land Use District for Approximately)	REVERT LAND USE DISTRICT
288.240 Acres of Land at Pu`ueo,)	BOUNDARY CLASSIFICATION
South Hilo, Island and County of)	TO AGRICULTURE
Hawai`i, State of Hawai`i, TMK)	
Nos.: 2-6-08: 17, 26, 27, 28)	
(por.), 29, 31 (por.) 32 (por.),)	
33 (por.), 34 (por.), 36, 37)	
(por.), 38 (por.), 39; 2-6-29:)	
14 and 15)	

ORDER GRANTING MOTION TO WITHDRAW LAND USE COMMISSION
APPROVALS AND REVERT LAND USE DISTRICT BOUNDARY
CLASSIFICATION TO AGRICULTURE

On May 15, 2000, David Earl Greer and Doris Rochelle Greer ("Greers") filed a Motion To Withdraw Land Use Commission Approvals And Revert Land Use District Boundary Classification To Agriculture ("Motion"), pursuant to section 15-15-70, Hawai`i Administrative Rules ("HAR"). The Greers requested the Land Use Commission ("Commission") to withdraw its approvals in the above-referenced docket and to revert the district boundary classification of the property subject of the docket from its current "Urban" classification to the "Agriculture" classification. The Greers also requested this Commission for authorization to reverse and rescind the conditions previously

recorded against the property in conjunction with the "Urban" classification.

Attached to the Motion was a Memorandum In Support Of Motion ("Memorandum in Support"), which stated, among other things, that 1) the Greers had purchased the property from Hawaii Land and Farming Company, Inc.¹, under that certain Deed, dated September 16, 1999, and recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 99-157447 on September 30, 1999; 2) none of the previous owners proceeded with the physical development of the property; 3) the Greers, as the current owners of the property, had no intention of developing the property into residential or commercial lots, as represented by the original Petitioner; 4) the Greers had already begun to implement plans to plant and harvest tropical fruit trees on the property and had coordinated their efforts with the assistance of the Natural Resources and Conservation Service of the U.S. Department of Agriculture; 5) the costs of development in accordance with the current conditions imposed by various governmental agencies, coupled with market conditions, did not justify the residential or commercial development; 6) the Greers did not know of any objections to the removal of the "Urban" district classification of the property in view of the Greer's decision not to proceed with residential or commercial development of the property; and 7) the Greers had filed a request with the County of Hawai'i to repeal Ordinance No. 96-48 to revert the zoning of the property

¹ Successor-in-interest to Petitioner C. Brewer Properties, Inc.

from residential and commercial to its former agricultural and open zoning designations.²

Affidavits Of David Earl Greer and Doris Rochelle Greer ("Affidavits"), filed in support of the Motion, stated, among other things, that 1) they were the owners of the property; and 2) they understood that in the event the Commission approved the Motion, a petition to amend the boundaries of the property would need to be filed, considered, and heard in conjunction with all applicable laws and rules and regulations should they decide to once again amend the boundaries of the property from Agriculture to Urban.

On June 8, 2000, the Greers filed a Supplement To Motion To Withdraw Land Use Commission Approvals And Revert Land Use District Boundary Classification To Agriculture ("Supplement"), which provided a true copy of the deed conveying to the Greers the ownership interest in the property.

On August 10, 2000, the Greers filed a Stipulation Of Substitution Of David Earl Greer And Doris Rochelle Greer As Petitioner And To Withdraw Land Use Commission Approval And Revert Land Use District Boundary Classification To Agricultural ("Stipulation"), attached hereto and incorporated by reference herein. The Stipulation was signed by the Greers, the Office of Planning, and the County of Hawai'i Planning Department, and stated, among other things, that 1) the Greers, as the current owners of the property, be substituted herein as the Petitioner;

² C. Brewer Homes, Inc., formerly known as C. Brewer Properties, Inc., had obtained rezoning approval from the County of Hawai'i on May 2, 1996, under Ordinance No. 96-48.

2) all prior Commission approvals in the above-entitled docket be withdrawn; 3) the land use district boundary classification for the 288.240-acre property revert from its current "Urban" classification to its former "Agriculture" classification; and 4) the parties hereto waive the procedural requirements as set forth in chapter 91, Hawai'i Revised Statutes, pertaining to notices, hearings, and proceedings, and agree that this Commission may proceed with the informal disposition of the requests made herein.

The Motion came on for hearing before this Commission on August 17, 2000, in Kailua-Kona, Hawai'i, with appearances by the parties as noted in the minutes. Thereafter, a motion was made and seconded to grant the Motion. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 8 ayes, 0 nays, and 1 excused, the motion carried.

ORDER

Having duly considered the Motion, the Memorandum in Support, the Affidavits, the Supplement, the Stipulation, and the arguments presented by the parties in this proceeding, and a motion having been made at a hearing conducted on August 17, 2000, in Kailua-Kona, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS as follows:

The Motion is GRANTED, and the property, being the subject of Docket Number A92-680/C. Brewer Properties, Inc., consisting of approximately 288.240 acres of land situated at Pu'ueo, South Hilo, Island and County of

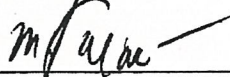
Hawai'i, State of Hawai'i, identified as Tax Map Key Nos.: 2-6-08: 17, 26, 27, 28 (por.), 29, 31 (por.) 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15, reverts from the State Land Use Urban District to the State Land Use Agricultural District.

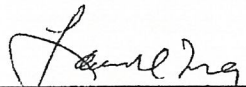
The Greers are authorized to vacate and release the conditions of approval previously recorded against the property pursuant to the classification to Urban.

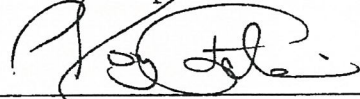
ADOPTION OF ORDER

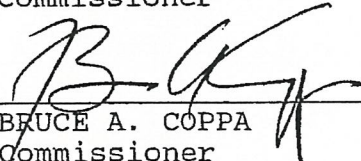
The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 14th day of September 2000. The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

LAND USE COMMISSION
STATE OF HAWAI'I

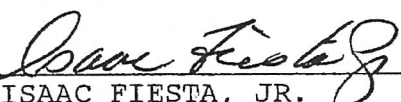
By 
MERLE A. K. KELAI
Chairperson and Commissioner

By 
LAWRENCE N. C. ING
Vice Chairperson and Commissioner

By 
P. ROY CATALANI
Commissioner

By 
BRUCE A. COPPA
Commissioner

By (absent)
PRAVIN DESAI
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

Filed and effective on
September 20, 2000


Certified by:


Executive Officer

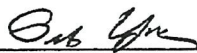
By (absent)

M. CASEY JARMAN
Commissioner

By


STANLEY ROHRIG
Commissioner

By


PETER YUKIMURA
Commissioner

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

In the Matter of the Petition of)	DOCKET NO. A92-680
C. BREWER PROPERTIES, INC.,)	CERTIFICATE OF SERVICE
a Hawai`i corporation)	
To Amend the Agricultural Land Use)	
District Boundary into the Urban)	
Land Use District for Approximately)	
288.240 Acres of Land at Pu`ueo,)	
South Hilo, Island and County of)	
Hawai`i, State of Hawai`i, TMK)	
Nos.: 2-6-08: 17, 26, 27, 28)	
(por.), 29, 31 (por.) 32 (por.),)	
33 (por.), 34 (por.), 36, 37)	
(por.), 38 (por.), 39; 2-6-29:)	
14 and 15)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Motion To Withdraw Land Use Commission Approvals And Revert Land Use District Boundary Classification To Agriculture was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

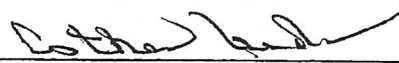
DEL. DAVID W. BLANE, Director
 Office of Planning
 P. O. Box 2359
 Honolulu, Hawaii 96804-2359

CERT. VIRGINIA GOLDSTEIN, Planning Director
 Planning Department, County of Hawaii
 25 Aupuni Street
 Hilo, Hawaii 96720

CERT. RICHARD D. WURDEMAN, ESQ.
 Corporation Counsel
 County of Hawaii
 The Hilo Lagoon Center
 101 Aupuni Street, Suite 325
 Hilo, Hawaii 96720

CERT. THOMAS L.H. YEH, ESQ., Attorney for Petitioner
Tsukazaki, Yeh & Moore
100 Pauahi Strteet, Suite 240
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 20th day of September 2000.



ESTHER UEDA
Executive Officer