

EXHIBIT 8

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PŪLAMA LĀNAʻI

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

PŪLAMA LĀNAʻI,

To Amend The Agriculture Land Use
District Boundaries Into the Urban Land
Use District for approximately 56.436
acres of land, consisting of a portion of
Tax Map Key No. (2) 4-9-002:061 (por.);
and (2) 4-9-014:001 (por.) (por.) at Lānaʻi
City, Island of Lānaʻi, County of Maui,
State of Hawaiʻi.

DOCKET NO. A21-810

**PETITIONER'S PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER**

CERTIFICATE OF SERVICE

**PETITIONER’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER**

Petitioner LANAI RESORTS, LLC, dba Pūlama Lāna‘i, a Hawai‘i limited liability company (“*Pūlama Lāna‘i*” or “*Petitioner*”) filed a Petition for Land Use District Boundary Amendment on October 18, 2021 (“*Petition*”) with the Land Use Commission of the State of Hawai‘i (“*Commission*”) pursuant to Hawai‘i Revised Statutes (“*HRS*”) sections 205-4 and 201H-38 and Hawai‘i Administrative Rules (“*HAR*”) chapter 15-15, to amend the land use district boundary to reclassify approximately 56.436 acres of land, comprised of a portion of Tax Map Key Nos. (2) 4-9-002:061 (por.) and (2) 4-9-014:001 (por.) situated at Lāna‘i City, County of Maui, State of Hawai‘i (“*Petition Area*”). Specifically, Pūlama Lāna‘i petitioned the Commission to amend the land use district boundaries of the Petition Area from the State Land Use Agricultural District (“*Agricultural District*”) to the State Land Use Urban District (“*Urban District*”) to allow construction of the Hōkūao 201H Housing Project (“*Project*” or “*Hōkūao*”).

The Commission, having heard and examined the testimony, evidence and argument of counsel presented during the hearing, along with the pleadings filed herein, makes the following Findings of Fact, Conclusions of Law and Decision and Order. To the extent these Findings of Fact contain Conclusions of Law, they shall be so considered and construed. To the extent these Conclusions of Law contain Findings of Fact, they shall be so considered and construed.

I. FINDINGS OF FACT

A. Procedural History

1. On May 23, 2021, the Department of Housing and Human Concerns transmitted the Final Environmental Assessment and Finding of No Significant Impact (“*FEA-FONSI*”) to the Office of Environmental Quality Control, which published the FEA-FONSI. Pet. Ex. 2
2. On July 21, 2021, the Maui County Council enacted Resolution No. 21-136 (“*Resolution*”) approving certain exemptions from County requirements and imposing modifications with certain conditions on the Project. Pet. Ex. 3

3. On August 24, 2021, its Petitioner filed Notice of Intent to File a Land Use District Boundary Amendment Petition with the Commission pursuant to HAR § 15-15-97(b)(3). Copies of the Notice of Intent were sent to the State of Hawai'i Office of Planning (“*OP*”) Director, the County of Maui Department of Planning (“*DP*”), all persons with a property interest in the Petition Area, and all other persons on the chief clerk’s mailing lists. Pet. Ex. 7.

4. On August 24, 2021, Petitioner published the Notice of Intent to File a Land Use District Boundary Amendment Petition in the Honolulu Star Advertiser, a newspaper of general circulation in the State of Hawai'i, and the Maui News, a newspaper of general circulation in the County of Maui where the subject property is located. Pet. Ex. 7.

5. On September 3, 2021, the Department of Hawaiian Homelands (“*DHHL*”) filed a Petition to Intervene with the Commission. Dkt. A21810.

6. On September 15, 2021, a virtual Pre-Application Meeting pursuant to HAR §15-15-97(i) was held for the purpose of identifying possible issues, setting schedules for position statements, witness lists, and possible contested case hearing dates in order to foster an orderly hearing process on the compressed HRS § 201H-38 timing. In attendance at the Pre-Application Meeting were representatives from the Commission, the State of Hawai'i Office of Planning, the Planning Department of the County of Maui, the Department of Hawaiian Homelands, and the Petitioner.

7. During the September 15, 2021 Pre-Application Meeting, Corporation Council, all parties agreed that Draft Position Statements would be due on October 13, 2021, and that position statements would be due on October 20, 2021. All parties agreed that all filings need to be submitted to the Commission by October 27, 2021, for consideration. The hearing for the DBA was set for November 10, 2021, with the Commission adopting the Decision and Order at their November 23, 2021 meeting.

8. On September 20, 2021, DHHL withdrew its Petition to Intervene. Dkt. A21810.

9. On October 11, 2021, Notice of hearing for the Hōkūao 201H Affordable Housing Land Use District Boundary Amendment Petition was published in the Honolulu Star Advertiser, a newspaper of general circulation in the State of Hawai'i and the Maui News, a newspaper of general circulation in the County of Maui where the subject property is located pursuant to HAR §15-15-91(n). Pet.

10. On October 13, 2021, Petitioner circulated its Draft Position Statement, Witness List, Exhibit List to the Commission and all parties to the proceedings. Dkt. A21810

11. On October 13, 2021, OP circulated its Draft Position Statement to the Commission and all parties to the proceedings.

12. On September 30, 2021, PD circulated its Draft Position Statement to the Commission and all parties.

13. On October 18, 2021, Petitioner filed its Petition for Land Use District Boundary Amendment (“*Petition*”), with the Commission. Pet.

14. Copies of the Petition were served to the Maui County PD, OP and all persons with a property interest in the Petition Area as recoded in the County’s real property tax records at the time the Petition is filed pursuant to HAR § 15-15-48. Pet.

15. A copy of the notification of petition filing was sent to all persons on the Commission’s state and County mailing lists pursuant to HAR § 15-15-50(d). Pet.

16. On October 18, 2021, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing. Dkt. A21810.

17. On October 18, 2021, the Notification of Petition Filing was served upon all persons included on the mailing list provided by the chief clerk. Pet.

18. On October [20], 2021, OP filed its Final Position Statements, Witness List and Exhibit List pursuant to the Pre-Application meeting agreement.

19. On October [20], 2021, DP filed its Final Position Statements, Witness List and Exhibit List pursuant to the Pre-Application meeting agreement.

20. On October [x], 2021, Petitioner filed its Response to OP's Statement of Position.

21. On October [x], 2021, Petitioner filed its Response to DP's Statement of Position.

22. On October 27, 2021, [insert names of parties if any filings occur; this is last day to file] filed supplemental [insert names of documents] with the Commission.

23. On November 10, 2021, the Commission held a virtual hearing on the Hōkūao 201H Affordable Housing Project. At the hearing, the Commission entered into the record written public testimony and oral public testimony. Thereafter, Petitioner commenced with its case-in-chief. [County witnesses or concurrence and no witnesses]. [OP witness or concurrence and no witnesses] Thereafter, a motion was made and seconded to grant the DBA Petition in its entirety. The vote was x ayes, x nays and x excused.

24. On November 23, 2021, the Commission held a virtual meeting to consider the adoption of the Proposed Findings of Fact, Conclusions of Law and Decision and Order Approving the Petition. Following discussion, a motion was made and seconded to adopt the Proposed Findings of Fact, Conclusions of Law and Decision and Order. The vote was x ayes, x nays and x excused.

B. Authority for Relief Sought

1. Identification of Petitioner

25. Pūlama Lāna'i has standing to petition the Commission for a Boundary Amendment pursuant to HRS §205-4(a) and HAR §15-15-46(3).

26. Lāna'i Resorts, LLC, dba Pūlama Lāna'i, is a land and resource management company organized in the state of Hawai'i. Pūlama Lāna'i's principal place of business is located at 733 Bishop Street, Suite 1500 Honolulu, Hawai'i 96813.

2. Petitioner's Property Interest

27. Pūlama Lāna'i is the fee owner of the Petition Area, which is comprised of portions of two separate parcels identified as Tax Map Key Nos. (2) 4-9-002:061 (por.) and (2) 4-9-014:001.

3. Notification of Petition Filing

28. A copy of the notification of petition filing was sent to all persons on the Commission's state and County mailing lists pursuant to HAR §15-15-50(d). Pet.

4. Petition for HRS § 201H Housing Project

29. The Petition complies with the requirements of HAR §15-15-97(b). Prior to filing the Petition, Pūlama Lānaʻi filed with the Commission its Notice of Intent to File a Land Use District Boundary Amendment Petition on August 19, 2021. The Notice of Intent was published in the Honolulu Star-Advertiser, a newspaper of general circulation in the state, and the Maui News, which is a newspaper of general circulation in the County of Maui.

30. The Petition complies with HAR § 15-15-97(k) by (1) obtaining a FEA-FONSI, and no Conservation District lands are involved in the Petition; (2) submission of these Proposed Findings of Fact, Conclusions of Law and Decision and Order; (3) submission of an affidavit of Pūlama Lānaʻi attesting that Petitioner met with interested community groups to discuss the Project; (4) providing a statement that Lānaʻi Resorts, LLC is entirely funding the project; and (5) providing a certification from DHHC that the Petition involves a HRS § 201H-38 housing project, including a certified copy of the County Council resolution approving the project. Pet.

C. Description of the Subject Property

31. The Petition Area is approximately 56.436 acres in size, comprised of a portion of Tax Map Key Nos. (2) 4-9-002:061 (por.) and (2) 4-9-014:001, situated at Lānaʻi City, County of Maui, State of Hawaiʻi, and is owned in fee simple by Petitioner. Only 56.436 acres of the Petition Area require reclassification from Agricultural to Urban. Pet.

32. There are no known property interests in the Petition Area. Pet.

D. Requested Reclassification

33. Petitioner seeks the reclassification of the Petition Area from the Agricultural District to the Urban District in order to develop a 201H affordable housing project. Pet.

34. The Petition Area is former pineapple fields, former landscaping nursery operations and former community gardens and is currently undeveloped.

35. The majority of the Petition Area is an extension of similar land uses in the adjoining Lāna‘i City. It is in close proximity to available public services and resources and employment, which makes it an appropriate area for urban growth. There is ample land available in the vicinity for future growth. Pet.

36. Pursuant to HAR § 15-15-18, setting forth the standards for determining Urban District boundaries, such district shall include “lands characterized by ‘city-like’ concentrations of people, structures, streets, urban level of services and other related land uses;” and “shall take into consideration the following specific factors: proximity to centers of trading and employment . . . ; availability of basic services such as schools, parks. . . public utilities. . . and; sufficient reserve areas for foreseeable urban growth.” HAR § 15-15-18(1)-(2). “It shall also include lands with satisfactory topography, drainage and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects.” *Id.* at (3). The Boundary Amendment sought in this Petition conforms to these standards. Pet.

1. Type of Use Being Proposed

37. The Project will consist of 150 single-family homes on 8,000 to 12,000 square foot lots with affordable and market-rate units for rent. The remainder of the Petition Area will be developed as a one-acre park, a 1,500-square foot community center, pedestrian and bicycle path, three small pocket parks along the edge of the project and a 60-stall parking lot. Pet.

38. The project was approved and certified as a HRS §201H-38 affordable housing project by Resolution 21-136, which was adopted by the Maui County Council on July 21, 2021. Pet. Ex. 4.

39. The Project is part of an effort to make Lānaʻi City a more sustainable community. The homes have been designed to maximize airflow and conserve energy to provide innovative energy solutions, such as photovoltaic roof tiles and battery storage systems.

2. Impact of the Project on Housing Needs

40. The primary objective of the Project is to provide much needed affordable and market-rate rental units in Lānaʻi City. Petitioner aims to achieve this objective by offering 76 of the 150 homes at affordable rates, as defined by state law, for rent in perpetuity. Pet.

41. The affordable housing units in the Project will generally be priced within ranges established for low-moderate and gap income groups to address affordable housing needs of Lānaʻi. Pet.

42. To address the housing needs of low income groups, Petitioner proposes to commit 39 of 128 units at Iwiolo Hale—an existing residential housing complex owned by Petitioner—for rent at affordable rates. These 39 units will be reserved for lower area median income (“*AMT*”) categories in perpetuity. Accordingly, the housing needs of those in the low income group will also be provided for in connection with the development of the Project. Pet.

3. Need for the Proposed Development

43. A market study conducted by CBRE in 2020 (the “*Market Study*”) concluded that there is a shortage of homes on the island available for residential long-term rent. Pet. Ex. 2.

44. By way of example, there were only four units listed across popular listing platforms, such as Zillow and Craigslist, available for rent as of the Market Study’s publication date. Pet. Ex. 2.

45. The affordable housing projects discussed over the last several decades by the County of Maui and one project by DHHL are estimated to provide 113 units with an estimated completion date before 2035. Pet. Ex. 2.

46. CBRE estimates that the mid-point or average demand for new residential units will total 465 units by 2035. Many of those households will choose to live

in Lānaʻi City, as 90 percent of the current population and two-thirds of the island's economic activity are centered there. Pet. Ex. 2.

47. The available units on Lānaʻi are inadequate to meet the present and future needs of residents. Pet. Ex. 2.

4. Development Will be Accomplished Within Ten Years

48. Contingent upon the timely grant of all necessary permits and approvals, the Project will be fully built out within ten years.

5. Densities and Project Market

49. The Project will provide affordable and market-rate housing for the Lānaʻi workforce.

50. The Project will transform vacant land of limited agricultural potential into an asset for the community. Pet.

51. The Project will provide housing opportunities and enhance the social stability and well-being for the people of Lānaʻi. Pet.

52. The 76 affordable homes will consist of a two-bedroom layout. The homes will have 1,150 to 1,175 square feet of interior space and a 370 to 375 square foot lanai. Pet.

53. The 74 market-rate homes will consist of a two-bedroom layout identical to the affordable home dimensions. Pet.

54. Ten percent of the affordable units will be priced according to affordability guidelines for a household earning more than 80 percent but not more than 100 percent of the area median household income. Twenty percent of the affordable units will be priced for households earning more than 100 percent but not more than 120 percent of the area median household income. Seventy percent of the affordable units will be priced for households earning more than 120 percent but not more than one 140 percent of the area median household income. Pet.

E. The Subject Property

1. Recent and Present Use

55. The Petition Area is currently vacant and unutilized. The majority of the Petition Area is abandoned pineapple fields, former commercial landscaping nursery and community gardens. The land has lain fallow for decades with no plans for cultivation. Due to poor soil conditions for crops, other than pineapple and sugar, as well as limited water available to support large-scale agriculture, the land is suitable for development. Historically, a Maui Electric Company Power plant—now demolished and removed—was located within the Petition Area. Pet.

56. Petitioner had a site characterization and environmental hazard evaluation conducted by TRC to determine the nature and extent of any potential contamination from past use of the land as pineapple fields. The Final Site Characterization Report & Environmental Hazard Evaluation was submitted to the Hawai'i Department of Health (“DOH”) on February 10, 2021. The DOH has stated that it has no comments. Pet.

2. Soil Classification

57. Soils at the site are predominantly “Lahaina Silty Clay” and “Waihuna Clay” types. Productivity of the soil is average. Pet.

58. Soils within the Petition Area are classified as “C” and “D” pursuant to the University of Hawai'i Land Study Bureau Detailed Land Classification rating system, with “A” indicating the most productive soil and “E” the least. Pet.

59. The Petition Area is classified on Agricultural Lands of Importance to State of Hawai'i (“ALISH”) maps as “unique.” Pet. Ex. 2.

3. Flood and Drainage

60. According to Federal Emergency Management Agency records, the Petition Area is located within Flood Zone X, designated as areas outside of the 0.2 percent annual chance floodplain. Pet. Ex. 2.

4. Topography

61. Most of the Petition Area topography is flat to gently sloping. [insert elevation] Pet. Ex. 2.

62. The Petition Area is an open area comprised of patchy forest and scrub lands. Pet. Ex. 2.

F. Adequacy of Public Services and Facilities

1. Schools

63. The Project is located within walking distance of Lānaʻi High and Elementary School—the only public school that serves the educational needs of the island of Lānaʻi.

64. The capacity for the school is indicated to be 700 students with recent enrollment holding steady with approximately 550 to 575 students.

65. There is sufficient capacity to accommodate any increase in enrollment that may result from the development of the Project. Pet. Ex. 2.

2. Parks

66. The Project proposes a one-acre public park that will be maintained by Petitioner as well as a 1,500 square-foot community center, which will be made available for use by the residents on Lānaʻi.

67. Development of the Project will improve recreational resources in the area. Pet.

68. There are a number of parks and recreational facilities within and surrounding Lānaʻi City to which residents of the Project will have access. Public parks and recreational facilities maintained by the Maui County Department of Parks and Recreation as well as those associated with the Lānaʻi public schools in Lānaʻi City include the Lānaʻi Community Center, the Lānaʻi Gym and Tennis Courts, the Lānaʻi Little League Field, Fraser Avenue Park and the Kamālapaʻu Highway/Fraser Avenue Park. There are also a number of parks owned and maintained by Petitioner with recreational facilities available for public use, including Lānaʻi

Community Football Field, Dole Park, Olopuia Woods Park Waialua Park in Lānaʻi City and Hulopoʻe Beach Park near Mānele Small Boat Harbor.

3. Wastewater Systems

69. Lānaʻi’s municipal wastewater collection system is situated in and around Lānaʻi City and is owned and operated by the County.

70. The existing sewer lines that route from current subdivisions to the Wastewater Reclamation Facility (“**WWRF**”) will need to be relocated within the proposed street right-of-ways. New sewer lines will be connected to the 15-inch interceptor sewer line which discharges to the WWRF.

71. The capacity of the WWRF is 0.50 million gallons per day (“**MGD**”). Pet. Ex. 2.

72. The average actual daily flow is approximately 0.325 MGD. Pet. Ex. 3

73. The Project will yield an average daily flow of 0.050 MGD. Pet.

74. The average daily flow with the estimated 150-unit Project is 0.375 MGD. Pet.

75. There is sufficient municipal wastewater capacity to support this Project. Pet. Ex. 2

4. Solid Waste Disposal

76. Petitioner will provide trash service through a contractor for the Residents of the Project. Petitioner employs solid waste mitigations strategies such as rural recycling events for hard to recycle items and green waste recycling with the resulting compost made available to the community. Pet.

5. Drainage

77. No permanent surface water bodies or wetlands are located within the Petition Area. An existing drainage swale on the western boundary of the Petition Area carries stormwater away from the town center. Pet. Ex. 2.

78. On the western flank, the Project sits back from the WWRF with a 600-foot buffer between the closest lot and the WWRF boundary. Proposed improvements will maintain these existing conditions, and the tributary drainage area will remain the same.

79. Surface improvements consisting of shallow cutoff swales between the residential units and Fraser Avenue will capture runoff and direct flow around the Project or into the new drainage system.

80. The Project proposes three retention basins to mitigate any increase in runoff. Roadway drains will be provided along the new roadways and will feed into the retention basins. A new swale will direct runoff away from the wastewater treatment plant, the only property downward of the Project.

81. As a result of the planned improvements, the Project will have no impact on existing regional drainage infrastructure. Pet. Ex. 2.

6. Water

82. The Lānaʻi Water Company privately owns the domestic water system on Lānaʻi.

83. The Project's water use conforms to the Lānaʻi Water Use and Development Plan ("*LWUDP*").

84. R.M. Towill prepared a Preliminary Engineering Report ("*PER*") for the Project assessing water availability and capacity for a 200-unit development. Since that time, the number of units within the Project has decreased from 200 units to 150 units. Despite the reduced need, the recommendations proposed by the PER remain valid will be followed. There is adequate pumping capacity and source availability to support the Project.

85. The estimated increase in the average daily domestic water demand from the Project 0.0917 MGD. The estimated demand (0.0917 MGD) plus the January 2020 12-month moving average for the entire island (1.6 MGD) results in a total estimated use of approximately 1.6917 MGD. Pet.

86. Petitioner will be developing Well #7 to provide additional source capacity and reliability. Once completed, Well #7 will feed into the Lānaʻi City distribution system along with Wells #6, #8, and #3.

87. The development and use of Well #7 is consistent with the LWUDP.

88. The Project will be constructed with water efficiency in mind utilizing efficient fixtures, smart meters and landscaping that will minimize irrigation needs. Pet. Ex. 2.

89. Well #7 is expected to average sustainable pumping of 300,000 GPD. Pet. Ex. 2.

90. The current daily water demand for the Island of Lānaʻi is 1.6 MGD. The Project estimates to use .0917 MGD. Other near-term projects (this includes projects in the process of land entitlements or that have been discussed at monthly community information meetings hosted by Pūlama Lānaʻi) estimate a water demand of 1.51 MGD. The total forecasted daily water demand including the Project is estimated to be 3.2017 MGD, which is below the 4.3 MGD threshold set by the CWRM that triggers the reinstatement of proceedings of Lānaʻi as a groundwater management area and well below the 6 MGD sustainable yield set for the Island. Pet.

7. Transportation Services

91. The two primary streets for vehicular access for the Project are Ninth Street and Twelfth Street, which both feed onto Fraser Avenue—a main thoroughfare through Lānaʻi City.

92. Ninth Street is an east-west, two-way, two-lane roadway that runs perpendicular to Fraser Avenue. This roadway begins to the west at a T-intersection with Awalau Avenue and terminates to the east at a T-intersection with Kaunaoa Drive. The planned expansion of Ninth Avenue into the Project will have curbs, gutters, and pedestrian sidewalks connecting the Project to town.

93. Twelfth Street is an east-west, two-way, two-lane roadway that runs perpendicular to Fraser Avenue. This roadway begins to the west of the Project at a T-intersection with Fraser Avenue and terminates to the east at a T-intersection with Ilima Ave. The street continues to the east as a T-intersection with Lānaʻi Avenue and terminates to the east as a T-intersection with Queens Street.

94. Fraser Avenue is a north-south, two-way, two-lane roadway through Lānaʻi City. This roadway begins to the south at a T-intersection with Kaumālapaʻu

Highway and terminates to the north as an outlet. As a main thoroughfare, Fraser Avenue provides access to Lānaʻi High and Elementary School, churches, park and other smaller streets with restaurants and retail.

95. The Traffic Impact Analysis Report (“*TIAR*”) reviewed six intersections located at Fraser Avenue/Ninth Street, Fraser Avenue/Tenth Street, Fraser Avenue/Twelfth Street, Fraser Avenue/Thirteenth Street, Kaumālapaʻu Highway/Fraser Avenue, and Kaumālapaʻu Highway/Mānele Road. Currently, all intersections operate at level of service (“*LOS*”) B, defined as reasonably free-flow traffic conditions.

96. Each of the intersections is forecasted to operate at LOS B, similar to existing conditions. No intersection improvements are necessary. Pet. Ex. 2.

8. Public Utilities

97. The existing Maui Electric Company (“*MECO*”) electrical service will be extended to the Project through connection to MECO’s 12.47 kilo-Volt distribution system.

98. The Project was initially anticipated to generate a total electrical demand load of approximately 1,000 kilo-Volt Amperes (“*kVA*”) or 1.0 megavolt amperes (“*MVA*”) based on a diversified peak load of 5 kVA per residential unit with 200 units. As this estimate was based on 200 total units, the actual total demand will be lower, especially with the solar roof tiles and battery energy systems on each of the residential units.

99. MECO will be able to accommodate the increase in demand generated by the project, but upgrades to the existing overhead lines may be required. Petitioner is working with MECO to address the necessary upgrades.

100. Hawaiian Telecom (“*HTCO*”) and Charter Communications, dba Spectrum (“*Spectrum*”), will offer broadband, cable television and telephone services to residents of the Project. Both HTCO and Spectrum will likely extend fiber optic cable infrastructure into the Project. Pet. Ex. 2.

9. Police and Fire Protection

101. The Maui Police Department (“*MPD*”) serves as the primary law enforcement agency for the island of Lāna‘i, including the Petition Area.

102. The island makes up District II of the MPD, which is comprised of eleven full-time officers, including a Lieutenant, two Sergeants and a School Resource Officer. The number of officers currently exceeds the estimated need. As the Project is located within an area that is currently patrolled, it will not present a significant increase to existing law enforcement services.

103. The Lāna‘i Fire Station provides the fire protection services for the island. Located in Lāna‘i City, the fire station is approximately one mile from the Petition Area. To mitigate any possible impact of the Project on the Fire Department, and at their request, Petitioner will incorporate a fire break of approximately 30 feet around the Project.

104. After accounting for this mitigation, the Project is not anticipated to have a significant impact on fire protection services. Pet. Ex. 2.

10. Civil Defense

105. The Maui Emergency Management Agency (“*MEMA*”) is responsible for the administration of county, state and federal emergency programs for the Mayor. Petitioner also has an Emergency Operations Plan, which integrates the company’s emergency response efforts with other stakeholders, including the County of Maui and state of Hawai‘i.

106. The closest emergency shelter to the Project is located at Lāna‘i High and Elementary School. The Petition Area is at a high elevation and is outside the flood and tsunami evacuation zones. Pet. Ex. 2.

107. The development of the Project will also mitigate wildfire risks, as vegetative fuel and brush will be replaced by homes and mindful landscaping. Petitioner will work with state and County agencies regarding any further civil defense measures necessary to serve the Project. Pet.

11. Emergency Medical Services and Medical Facilities

108. Lānaʻi Community Hospital provides hospital services to the island. Lānaʻi Community Hospital is affiliated with Maui Health. This facility is open to everyone regardless of health coverage.

109. The Project is not anticipated to adversely affect the Lānaʻi Community Hospital.

110. The Project is not anticipated to adversely affect the Lānaʻi Community Hospital. Pet.

G. Impacts on Area Resources

1. Environmental Resources

111. Any impact to air quality or noise caused during construction will be mitigated by compliance with applicable state and federal regulations and best management practices.

112. Long-term impacts to air quality in and around the Petition Area due to increased vehicular traffic are not anticipated.

113. A model of worst-case scenario projections indicates that the air quality will remain well within applicable ambient air quality standards. Pet. Ex. 2.

114. Possible impacts that the neighboring wastewater treatment plant may have on the air quality in the Petition Area will be mitigated by a buffer of at least 300 to 600 feet. The Project was purposefully designed with a 600-foot buffer to comply with this recommendation. Pet. Ex. 2.

115. Once construction is complete, any noise associated with the Project is expected to be negligible. Pet. Ex. 2.

2. Agricultural Resources

116. An agricultural assessment was conducted for the Project by CBRE.

117. The assessment concluded the Project Area is located on land that is currently unproductive; there is an adequate amount of available agricultural lands surrounding the Petition Area and on the Island; the Project represents approxi-

mately 0.57 percent of the 13,000 plus acres of the previously cultivated pineapple fields. Pet. Ex. 2.

118. Although the Project will result in the loss of approximately 56.436 acres of historically cultivated agricultural land, the land has not been cultivated for decades. Pet.

119. The Petition Area makes up a small fraction of the 20,000 potentially cultivatable acres on the island and even less of the 200,000 acres of fallow agricultural lands vacated by the sugar and pineapple industries statewide. Pet. Ex. 2.

120. There is presently no demand for agricultural use of the Petition Area, and there is sufficient available agricultural land to meet near to mid-term demand. Pet. Ex. 2.

3. Recreational Resources

121. Petitioner will provide a one-acre park that will be maintained by Pūlama Lānaʻi and open to the community on Lānaʻi. Pet. Ex. 2..

122. Petition will also provide a 1,500 square-foot community center, which will be made available for use by the residents on Lānaʻi. Pet. Ex. 2..

123. Consequently, development of the Project will improve recreational resources in the area. Pet. Ex. 2..

4. Cultural Resources

124. In order to fulfill its duty to preserve and protect customary and traditional Native Hawaiian rights to the extent feasible, pursuant to the Hawai'i Supreme Court's holding in *Ka Pa'akai O Ka'Aina v. Land Use Com'n, State of Hawai'i*, 94 Hawai'i 31, 7 P.3d 1068 (2000), the Commission must make specific findings and conclusions as to the following:

- (1) The identity and scope of "valued cultural, historical, or natural resources" in the Petition Area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the Petition Area;

(2) The extent to which those resources - including traditional and customary Native Hawaiian rights - will be affected or impaired by the proposed action; and

(3) The feasible action, if any, to be taken by the Commission to reasonably protect Native Hawaiian rights if they are found to exist.

125. A Cultural Impact Assessment (“*CIA*”) was completed for the Petition Area.

126. The Petition Area is situated in the ahupua‘a of Kamoku.

127. The CIA involved archival and documentary research, ethnographic research and interviews of individuals with knowledge of Kamoku and native Hawaiian beliefs, practices, and traditions on Lāna‘i. The CIA concluded that there were no identified cultural resources, practices or beliefs connected the Petition Area.

128. The CIA recommended the preservation of a *kukui* nut tree which is believed to have been harvested by the father of one of the interviewees.

129. Petitioner will attempt to preserve the specified *kukui* nut tree.

130. The Project will not have any adverse impacts on the exercise of native Hawaiian traditional and customary practices in the area. Pet. Ex. 2.

5. Historic Resources

131. The Archaeological Impact Survey (“*AIS*”) completed by T.S. Dye & Colleagues (Log. No.: 2019.00221) identified three historical properties.

132. All three of the identified properties are historic-era artifacts that were transported to the Petition Area for preservation decades ago.

133. Two of the artifacts were wood-frame buildings from the Kō‘ele School complex that have deteriorated and now lack the integrity of condition to be listed in the Hawai‘i Register of Historic Places. Both have been demolished, and a Historic American Buildings Survey (“*HABS*”) report report was completed.

134. The third, a pineapple harvester, was identified as of sufficient integrity to be listed under Criterion “A.” The harvester, identified as “Machine 1,” in the

possession of Lānaʻi Culture & Heritage Center, was anticipated to be moved offsite in accordance with the recommendations of the AIS.

135. Upon further inspection by the archaeological consultant and further discussions with State Historic Preservation Division (“*SHPD*”), the harvester is significantly dilapidated and unsafe to move. It will be disposed of accordingly to all applicable laws.

136. No pre-contact archeological sites have been recorded in the vicinity of the Petition Area.

137. The AIS recommends no further historic preservation in the Petition Area.

138. Given the conclusions of the AIS, discovery of historic items in the Petition Area is not expected. Nevertheless, a qualified archeological monitor will be present during ground disturbing activities to mitigate any unknown and unanticipated impact on any historic resources. Pet.

139. The SHPD accepted the AIS in a letter dated August 14, 2020.

140. Honua Consulting prepared an Archeological Monitoring Plan (“*AMP*”) for all ground disturbing activities, meeting all requirements of HAR § 13-279-4. Pet. Ex. 2.

141. The SHPD accepted the AMP and the final HABS in a letter dated August 27, 2021. Pet.

6. Scenic Resources

142. The Petition Area is not part of a scenic corridor, and the Project will not affect scenic vistas or view planes. Pet.

143. The character and design of the Project will reflect the existing design of the area. The single-family homes will have design characteristics that perpetuate the architectural character already present in Lānaʻi City. Pet.

7. Flora and Fauna

144. A terrestrial vegetation and wildlife study of the Petition area was completed and documented no state or federally-listed threatened or endangered species or rare native Hawaiian plant species were observed within the Petition Area.

145. The Petition Area is not designated a critical habitat for any species.

146. Historically, the vegetation of Lānaʻi has been impacted by grazing and commercial pineapple cultivation. Pet. Ex. 2.

8. Groundwater

147. Groundwater from the Leeward aquifer, in the Central aquifer sector will be utilized from Well #7, which will be developed in accordance with all Commission on Water Resource Management (“*CWRM*”) and DOH standards. Pet.

148. The housing units of the proposed Project will be serviced by Lānaʻi Water Company, which regularly monitors water quality parameters. Pet.

149. The sustainable yield of Lānaʻi’s combined aquifers is estimated at 6 MGD. Most of the available water included in this estimate is located in the Central aquifer, which is divided into two aquifer systems (the leeward and the windward) with an estimated sustainable yield of 3 MGD each. Pet.

H. Climate Change Concerns and Proposed Mitigation

1. Impacts of Sea Level Rise

150. The Petition Area is between 1,500 and 1,600 feet above sea level, located approximately 4.3 miles inland from the western shoreline towards the center of the island in Lānaʻi City.

151. The Petition Area falls well outside the Sea Level Rise Exposure Area, which as modeled for passive flooding, as shown on the Hawaiʻi Sea Level Rise Viewer for the Hawaiʻi Sea Level Rise Vulnerability Adaptation Report.

152. Based on the maps and information available in the Hawaiʻi Sea Level Rise Vulnerability Adaptation Report, the predicted three- to six-foot increase in sea level over the next century are not anticipated to have an impact on the Petition Area. Accordingly, no mitigation measures are necessary. Pet.

2. Infrastructure Adaptions

153. The Project will be designed to meet all applicable International Building Code (“*IBC*”), federal, state and county requirements, as stated in the 201H Application.

154. The design of the Project includes grass swales throughout the interior of the Project and three retention basins to attenuate peak storm water flow. Improvements will terrace the land to maintain characteristics similar to existing conditions.

155. Homes will follow County requirements for low-flow fixtures and fittings. Generated gray and black water will be treated to an R-1 water level to be used by Pūlama Lānaʻi for its irrigation needs. Site design will also incorporate low-water and drought tolerant plants to minimize the need for excessive irrigation. Additionally, the Project will be serviced with existing water, electric and wastewater utilities to minimize infrastructure excavation and land disruption. Pet.

3. Overall Carbon Footprint and Mitigation

156. The Project is anticipated to have a carbon neutral footprint. Petitioner will ensure that the development incorporates, to the extent practicable, measures to promote energy conservation, sustainable design and environmental stewardship.

157. Site lighting will be low-energy consumptive, and homes will incorporate Energy Star fixtures, LED lighting, interior fans and on-demand hot water heaters. To reduce the amount of energy expended on cooling, homes have been designed to increase air flow, and construction will utilize R-19 insulation, roof ventilators and reflective roof heat barriers.

158. Homes will also include solar photovoltaic on-site generation with individual home battery energy storage to satisfy most of the energy demand for each unit. By implementing on-site generation for each home, there is a significant reduction of carbon dioxide emissions.

159. Petitioner is committed to reducing its carbon footprint. Consistent with this goal, Petitioner, in partnership with other organizations, is managing and protecting Lānaʻi's natural resources through projects such as native reforestation, use of carbon encapsulating concrete and recycling efforts. Pet.

I. Adherence to Sustainability Principles and Priority Guidelines in HRS § 226-108 and Hawai‘i State Plan.

1. Walkability

160. The Project is located close to Dole Park to take advantage of its walkable proximity to shops, groceries, educational and entertainment venues.

161. The Ninth Street extension will have no parking signs for the first 250 feet and will have pedestrian sidewalks connecting the Project to town. The pedestrian sidewalks along the Ninth Street extension will increase in width as one moves towards the Project, starting at 5.5 feet wide at Fraser Avenue, reaching 7.5 feet wide and finally reaching 8 feet wide.

162. The entire length of pedestrian sidewalk along the Twelfth Street extension will be 8 feet wide.

163. There will also be pedestrian sidewalks within the Project, pedestrian and bike paths along the edge of the Project, leading to the one-acre park, community center and comfort stations. Pet.

2. Accessibility to Alternate Forms of Transportation and Transit Oriented Development Opportunities

164. The Project is not a Transit Oriented Development (“*TOD*”) in the traditional sense. Lāna‘i is a rural island, with Lāna‘i City being its most urbanized area.

165. Although Lāna‘i does not have a public transportation system, the Petition Area was intentionally chosen for its close proximity to Lāna‘i City to allow residents to enjoy and take advantage of a walkable and bicycle-friendly community.

166. Despite the absence of public transportation, the Project offers similar benefits as a TOD with easy access to the economic and recreational resources Lāna‘i City provides.

3. Green Infrastructure

167. Petitioner will, to the extent feasible and practicable, incorporate measures into the Project to promote energy conservation and sustainable design.

168. As explained, the Project incorporates three retention basins to account for runoff, and improvements will terrace the land to mirror existing conditions.

169. Road and lot layouts are oriented with the natural topography of the site to minimize mass grading requirements. Houses will utilize post and beam construction to minimize fine grading, maintain soil permeability, and enhance aquifer recharge.

4. Mitigation of Heat Island Effect

170. With 8,000 to 12,000 square-foot lots, the Project will incorporate landscaping to help absorb radiation from the sun and release moisture into the atmosphere.

171. There will be two dense plantings of cook pines at both entrances to the Project, as well as plantings of native tree species at frequent, random intervals throughout the project area.

172. Graded sites will be re-vegetated as soon as practicable with plants from Lānaʻi. Care will also be taken to preserve as many mature trees as practicable.

173. A one-acre community park, three pocket parks and a vegetative buffer between the Project and Fraser Avenue will also serve to mitigate any heat island effect.

5. Urban Agricultural Opportunities

174. Petitioner maintains community gardens in Lānaʻi City for use by the public to encourage urban agriculture.

175. The community gardens, relocated from the Petition Area in February 2020, will continue to provide access to agricultural opportunities for the residents of the Project and the surrounding area. Pet.

J. Economic Impacts

1. Financial Condition

176. The Project is being entirely privately funded by Petitioner. Pet.

2. Economic Impacts of Proposed Use

177. The Project will provide affordable and market-rate housing for the Lānaʻi workforce. Pet. Ex. 2.

178. The Project will transform vacant land of limited agricultural potential into an asset for the community. Pet. Ex. 2.

179. Construction activities will result in short- and long-term creation of jobs and materials spending. Pet. Ex. 2.

180. During initial estimated buildout, the Project will generate \$166.3 million in total new economic activity island-wide. Pet. Ex. 2.

181. Thereafter, the Project will contribute an estimated \$8.3 million in annual economic activity, including the creation of full-time positions within the Project. Pet. Ex. 2.

182. The Project will produce an estimated \$52 million in earnings, \$19.5 million in state taxes and nearly \$7 million in County taxes. Pet. Ex. 2.

K. Conformity to Objectives and Policies of Hawaiʻi State Plan

1. Conformity to Hawaiʻi State Plan

183. The Project will support and conform to the following goals of the state by supporting the state economy, providing housing opportunities and enhancing the social stability and well-being for the people of Lānaʻi:

HRS § 226-4, State Goals

(1) A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaiʻi's present and future generations.

(2) 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.

(3) Physical, social, and economic well-being, for individuals and families in Hawaiʻi, that nourishes a sense of community responsibility, of caring, and of participation in community life.

184. The Project will also support and conform to the following objectives and policies:

HRS § 226-5, Objective and policies for population

(b)(1) 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.

(b)(2) Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.

(b)(3) Promote increased opportunities for Hawai'i's people to pursue their socio-economic aspirations throughout the islands.

(b)(7) (7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

HRS § 226-6, Objective and policies for the economy--in general

(a)(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawai'i's people, while at the same time stimulating the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.

(a)(2) A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

(b)(13) Foster greater cooperation and coordination between the government and private sectors in developing Hawai'i's employment and economic growth opportunities.

(b)(14) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems.

(b)(15) Maintain acceptable working conditions and standards for Hawai'i's workers.

(b)(16) Provide equal employment opportunities for all segments of Hawai'i's population through affirmative action and nondiscrimination measures.

(b)(19) Promote and protect intangible resources in Hawai'i, such as scenic beauty and the aloha spirit, which are vital to a healthy economy.

HRS § 226-8, Objective and policies for the economy--visitor industry

(b)(1) Support and assist in the promotion of Hawai'i's visitor attractions and facilities.

(b)(2) Ensure that visitor industry activities are in keeping with the social, economic, and physical needs and aspirations of Hawai'i's people.

(b)(4) Encourage cooperation and coordination between the government and private sectors in developing and maintaining well-designed, adequately serviced visitor industry and related developments which are sensitive to neighboring communities and activities.

(b)(5) Develop the industry in a manner that will continue to provide new job opportunities and steady employment for Hawai'i's people.

(b)(6) Provide opportunities for Hawai'i's people to obtain job training and education that will allow for upward mobility within the visitor industry.

(b)(7) Foster a recognition of the contribution of the visitor industry to Hawai'i's economy and the need to perpetuate the aloha spirit.

(b)(8) Foster an understanding by visitors of the aloha spirit and of the unique and sensitive character of Hawai'i's cultures and values.

HRS § 226-11, Objective and policies for the physical environment--land-based, shoreline, and marine resources

(a)(1) Prudent use of Hawai'i's land-based, shoreline, and marine resources.

(a)(2) Effective protection of Hawai'i's unique and fragile environmental resources.

(b)(1) Exercise an overall conservation ethic in the use of Hawai'i's natural resources.

(b)(2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.

(b)(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

(b)(4) Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage.

(b)(6) Encourage the protection of rare or endangered plant and animal species and habitats native to Hawai'i.

(b)(8) Pursue compatible relationships among activities, facilities, and natural resources.

(b)(9) Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes.

HRS § 226-12, Objective and policies for the economy--scenic, natural beauty, and historic resources

(b)(1) Promote the preservation and restoration of significant natural and historic resources.

(b)(2) Provide incentives to maintain and enhance historic, cultural, and scenic amenities.

(b)(3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.

(b)(4) Protect those special areas, structures, and elements that are an integral and functional part of Hawai'i's ethnic and cultural heritage.

(b)(5) Encourage the design of developments and activities that complement the natural beauty of the islands.

HRS § 226-13, Objective and policies for the physical environment--land, air, and water quality

(a)(1) Maintenance and pursuit of improved quality in Hawai'i's land, air, and water resources.

(a)(2) Greater public awareness and appreciation of Hawai'i's environmental resources.

(b)(1) Foster educational activities that promote a better understanding of Hawai'i's limited environmental resources.

(b)(2) Promote the proper management of Hawai'i's land and water resources.

(b)(3) Promote effective measures to achieve desired quality in Hawai'i's surface, ground, and coastal waters.

(b)(4) Encourage actions to maintain or improve aural and air quality levels to enhance the health and well-being of Hawai'i's people.

(b)(5) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.

(b)(6) Encourage design and construction practices that enhance the physical qualities of Hawai'i's communities.

(b)(7) Encourage urban developments in close proximity to existing services and facilities.

(b)(8) Foster recognition of the importance and value of the land, air, and water resources to Hawai'i's people, their cultures and visitors.

HRS § 226-14, Objective and policies for facility systems--in general

(b)(1) Accommodate the needs of Hawai'i's people through coordination of facility systems and capital improvement priorities in consonance with state and county plans.

(b)(2) Encourage flexibility in the design and development of facility systems to promote prudent use of resources and accommodate changing public demands and priorities.

(b)(3) Ensure that required facility systems can be supported within resource capacities and at reasonable cost to the user.

(b)(4) Pursue alternative methods of financing programs and projects and cost-saving techniques in the planning, construction, and maintenance of facility systems.

HRS § 226-15, Objective and policies for facility systems--in general

(a)(1) Maintenance of basic public health and sanitation standards relating to treatment and disposal of solid and liquid wastes.

(a)(2) Provision of adequate sewerage facilities for physical and economic activities that alleviate problems in housing, employment, mobility, and other areas.

(b)(2) Promote reuse and recycling to reduce solid and liquid wastes and employ a conservation ethic.

HRS § 226-16, Objective and policies for facility systems--water

(b)(1) Coordinate development of land use activities with existing and potential water supply.

(b)(3) Reclaim and encourage the productive use of runoff water and wastewater discharges.

(b)(6) Promote water conservation programs and practices in government, private industry, and the general public to help ensure adequate water to meet long-term needs.

HRS § 226-18, Objective and policies for facility systems--energy

(a)(1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people.

(a)(2) Increased energy security and self-sufficiency through the reduction and ultimate elimination of Hawai'i's dependence on imported fuels for electrical generation and ground transportation.

(a)(3) Greater diversification of energy generation in the face of threats to Hawai'i's energy supplies and systems.

(a)(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

(b) To ensure the short- and long-term provision of adequate, reasonably priced, and dependable energy services to accommodate demand.

(c)(1) Support research and development as well as promote the use of renewable energy sources.

(c)(2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth.

(c)(3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative accounting of their long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits.

(c)(4) Promote all cost-effective conservation of power and fuel supplies through measures, including: (A) Development of cost-effective demand-side management programs; (B) Education; (C) Adoption of energy-efficient practices and technologies; and (D) Increasing energy efficiency and decreasing energy use in public infrastructure; (c)(5) Ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies.

(c)(6) Support research, development, demonstration, and use of energy efficiency, load management, and other demand-side management programs, practices, and technologies.

(c)(7) Promote alternate fuels and transportation energy efficiency.

(c)(8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications.

(c)(9) Support actions that reduce, avoid, or sequester Hawai'i's greenhouse gas emissions through agriculture and forestry initiatives.

HRS § 226-19, Objective and policies for socio-cultural advancement--housing

(a)(1) Greater opportunities for Hawai'i's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more rental and for sale affordable housing is made available to extremely low-, very low-, lower-, moderate-, and above moderate-income segments of Hawai'i's population.

(a)(2) The orderly development of residential areas sensitive to community needs and other land uses.

(b)(1) Effectively accommodate the housing needs of Hawai'i's people.

(b)(2) Stimulate and promote feasible approaches that increase affordable rental and for sale housing choices for extremely low-, very low-, lower-, moderate-, and above moderate-income households.

(b)(3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

(b)(5) 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.

(b)(6) Facilitate the use of available vacant, developable, and underutilized urban lands for housing.

(b)(7) 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.

HRS § 226-20, Objective and policies for socio-cultural advancement--health

(a)(2) Maintenance of sanitary and environmentally healthful conditions in Hawai'i's communities.

HRS § 226-23, Objective and policies for socio-cultural advancement--leisure

(b)(10) Assure adequate access to significant natural and cultural resources in public ownership.

HRS § 226-25, Objective and policies for socio-cultural advancement--culture

(b)(4) Encourage the essence of the aloha spirit in people's daily activities to promote harmonious relationships among Hawai'i's people and visitors.

185. The Hawai'i State Plan also sets forth Priority Guidelines to improve the quality of life for Hawai'i's present and future generations. The Project supports and conforms to the following Priority Guidelines:

HRS § 226-103, Economic priority guidelines

(a)(1)(A)(i) Encourage investments which reflect long-term commitments to the State.

(a)(1)(A)(ii) Encourage investments which rely on economic linkages within the local economy.

(a)(1)(A)(iii) Encourage investments which diversify the economy.

(a)(1)(A)(iv) Encourage investments which reinvest in the local economy.

(a)(1)(A)(v) Encourage investments which are sensitive to community needs and priorities.

(a)(1)(A)(vi) Encourage investments which demonstrate a commitment to provide management opportunities to Hawai'i residents.

(5) Streamline the processes for building and development permit and review and telecommunication infrastructure installation approval and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business, where scientific evidence indicates that public health, safety, and welfare would not be adversely affected.

(e)(1) Maintain and improve water conservation programs to reduce the overall water consumption rate.

HRS § 226-104, Population growth and land resources priority guidelines

(a)(3) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future growth throughout the State.

(a)(4) Encourage major state and federal investments and services to promote economic development and private investment to the neighbor islands, as appropriate.

(a)(5) Explore the possibility of making available urban land, low-interest loans, and housing subsidies to encourage the provision of housing to support selective economic and population growth on the neighbor islands.

(b)(1) 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 pro-

tection of important agricultural land or preservation of lifestyles.

(b)(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

(b)(6) Seek participation from the private sector for the cost of building infrastructure and utilities, and maintaining open spaces.

(b)(9) Direct future urban development away from critical environmental areas or impose mitigating measures so that negative impacts on the environment would be minimized.

(b)(11) Identify all areas where priority should be given to preserving rural character and lifestyle.

(b)(12) Utilize Hawai'i's limited land resources wisely, 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.

(b)(13) Protect and enhance Hawai'i's shoreline, open spaces, and scenic resources.

HRS § 226-106, Affordable housing

(1) Seek to use marginal or nonessential agricultural land, urban land, and public land to meet housing needs of extremely low-, very low-, lower-, moderate- and above moderate-income households.

(2) Encourage the use of alternative construction and development methods as a means of reducing production costs.

(3) Improve information and analysis relative to land availability and suitability for housing.

(4) Create incentives for development which would increase home ownership and rental opportunities for Hawai'i's extremely low-, very low-, lower-, and moderate-income households and residents with special needs.

(5) Encourage continued support for government or private housing programs that provide low interest mortgages to Hawai'i's people for the purchase of initial owner-occupied housing.

(6) Encourage public and private sector cooperation in the development of rental housing alternatives.

(7) Encourage improved coordination between various agencies and levels of government to deal with housing policies and regulations.

(8) 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.

HRS § 226-108, Sustainability

(1) Encourage balanced economic, social, community, and environmental priorities.

(2) Encourage planning that respects and promotes living within the natural resources and limits of the State.

(3) Promote a diversified and dynamic economy.

(4) Encourage respect for the host culture.

(5) Promote decisions based on meeting the needs of the present without compromising the needs of future generations.

(7) Emphasize that everyone, including individuals, families, communities, businesses, and government, has the responsibility for achieving a sustainable Hawai'i.

HRS § 226-109, Climate change adaptation priority guidelines

(1) Ensure that Hawai'i's people are educated, informed, and aware of the impacts climate change may have on their communities.

(2) Encourage community stewardship groups and local stakeholders to participate in planning and implementation of climate change policies.

(3) Invest in continued monitoring and research of Hawai'i's climate and the impacts of climate change on the State.

(4) Consider native Hawaiian traditional knowledge and practices in planning for the impacts of climate change.

(5) Encourage the preservation and restoration of natural landscape features, such as coral reefs, beaches and dunes, forests, streams, floodplains, and wetlands, that have the inherent ca-

capacity to avoid, minimize, or mitigate the impacts of climate change.

(6) Explore adaptation strategies that moderate harm or exploit beneficial opportunities in response to actual or expected climate change impacts to the natural and built environments.

(7) Promote sector resilience in areas such as water, roads, airports, and public health, by encouraging the identification of climate change threats, assessment of potential consequences, and evaluation of adaptation options.

(10) Encourage planning and management of the natural and built environments that effectively integrate climate change policy.

2. Conformity to State Functional Plans

186. The boundary amendment request is consistent with the objectives of the following State Functional Plans:

Employment State Functional Plan

The Project will result in the creation of construction and construction-related employment during the development period. This will result in the influx of employment opportunities and allow residents to compete in the workforce. Long-term, the Project is expected to result in additional primary and secondary employment gains.

Policy C(2) of the functional plan recognizes that the development of affordable housing is an encouraged strategy to increase the labor pool. In addition, action item C(2)(f) calls on the Commission and counties to impose “realistic and fair housing requirements on projects seeking land use redesignations” The Project conforms to these policies and objectives by providing 76 single-family affordable homes in perpetuity and 74 market-rate homes for rent to multiple income levels of Lānaʻi’s workforce.

Energy State Functional Plan

A primary objective of the Energy State Functional Plan is to moderate the growth in energy demand through conservation and energy efficiency in an effort to become a more sustainable island state. The Project conforms to this objective by incorporating energy-saving materials and methodologies into the Project that are anticipated to result in a carbon neutral foot-

print. Homes are designed to maximize natural airflow and use LED lighting, Energy Star fixtures and appliances, interior fans, R-19 insulation, solar roof ventilators, reflective roof heat barriers, and on-demand hot water heaters. Homes will also include photovoltaic on-site generation with individual home battery energy storage.

Housing State Functional Plan

The revised Housing State Functional Plan explains that it is the state’s goal to “continue to focus on leveraging state funds and reducing regulatory barriers within the state’s control to increase the inventory of affordable housing, particularly rental housing that is affordable to our workforce and lower income households.” The state is also “committed to the mission of increasing housing for a continuum of income levels” Objective A of the revised plan is to increase and sustain the supply of permanent rental housing that is affordable and accessible to Hawai‘i residents. Policy A(2) encourages increased participation from private developers and other state entities in the development of rental housing.

The Project conforms to these goals by providing both market and affordable (in perpetuity) single-family rental homes. The Project is entirely privately funded by Petitioner. As a result, development of the Project will not require financial support of the state or County, allowing funds to be used elsewhere while still addressing the housing shortage. Moreover, affordable rental units within the Project will be affordable—consistent with County and HUD guidelines—in perpetuity. In addition, the Project will be implemented in a developed area with existing infrastructure and services in Lāna‘i City. Consequently, the project is in consonance with this state functional plan and furthers the objectives and goals of the state. Pet. Ex. 2.

Recreation State Functional Plan

The recreation state plan recognizes the need to expand urban and community recreation opportunities. The Project conforms to this goal by providing a one-acre park, community center, and pedestrian and bike paths within the Project for the residents and surrounding community.

L. Conformance to Hawai‘i Coastal Zone Management Program

187. The Petition Area is not located on the shoreline and is not within the Special Management Area.

188. Consequently, development of the Project will not impact coastal recreational activities, affect public shoreline access, increase coastal hazards, have an adverse effect upon the region's coastal ecosystem, or otherwise conflict with the Coastal Zone Management Program.

189. Best management practices and erosion and sedimentation control measures will be implemented during construction to mitigate any possible impact from runoff on coastal ecosystems.

M. Conformity to County General Plan

1. Conformity to County of Maui General Plan

190. The vision for the County expressed in the General Plan is that the County will be an innovative model of sustainable island living and a place where every individual can grow to reach his or her potential.

191. The County has expressed, by way of the General Plan, the intention to be a leader in the creation of responsible, self-sufficient communities and environmentally sound economic development and land stewardship. The Project conforms to this vision.

192. Among other goals and objectives, the development of the Project directly conforms to and supports the following policies, objectives, and strategies expressed in the Countywide Policy Plan to do as follows:

- Promote, encourage, and require the correct use of traditional place names, particularly in government documents, signage, and the tourism industry.
- Emphasize respect for our island lifestyle and our unique local cultures, family, and natural environment.
- Acknowledge the Hawaiian culture as the host culture, and foster respect and humility among residents and visitors toward the Hawaiian people and their practices.
- Recognize the interconnectedness between the natural environment and the cultural heritage of the islands.
- Perpetuate the authentic character and historic integrity of rural communities and small towns.

- Seek solutions that honor the traditions and practices of the host culture while recognizing the needs of the community.
- Develop safe walking and bicycling programs for school children.
- Ensure quality, island-appropriate housing will be available to all residents.
- Reduce the affordable housing deficit for residents.
- Ensure that an adequate and permanent supply of affordable housing, both new and existing units, is made available for purchase or rental to our resident and/or workforce population, with special emphasis on providing housing for low- to moderate-income families, and ensure that all affordable housing remains affordable in perpetuity.
- Seek innovative ways to lower housing costs without compromising the quality of our island lifestyle.
- Seek innovative methods to secure land for the development of low- and moderate- income housing.
- Ensure residents are given priority to obtain affordable housing units developed in their communities, consistent with all applicable regulations.
- Develop neighborhoods with a mixture of accessible and integrated community facilities and services.
- Increase the mix of housing types in towns and neighborhoods to promote sustainable land use planning, expand consumer choice, and protect the County's rural and small town character.
- Design neighborhoods to foster interaction among neighbors.
- Promote infill housing in urban areas at scales that capitalize on existing infrastructure, lower development costs, and are consistent with existing or desired patterns of development.
- Encourage the building industry to use environmentally sustainable materials, technologies, and site planning.
- Develop workforce housing in proximity to job centers and transit facilities.
- Increase and maintain the affordable housing inventory.
- Minimize the intrusion of housing on prime, productive, and potentially productive agricultural lands and regionally valuable agricultural lands.
- Support efforts to improve conditions that foster economic vitality in our historic small towns. Pet. Ex. 2.

2. Conformity to the Lānaʻi Community Plan (2016)

193. The Project conforms to the 2016 Lānaʻi Community Plan.

194. The 2016 update to the community plan highlighted key issues to the Lānaʻi community. The Project addresses a number of these issues by providing affordable and market-rate housing that mirrors the design style of Lānaʻi City.

195. The Project conforms to the following issues identified in the plan:

- **Need For Preservation Of Historic Character:** Lānaʻi's historic and cultural resources are truly unique in the state and the country, but many of these resources are threatened by incremental demolition and by 'demolition by neglect'.
- **Limited Housing Options:** The availability and the variety of housing types on the island are limited.
- **Aging Infrastructure:** Many of Lānaʻi's infrastructure systems are old, inadequate, and require extensive renovation or redevelopment to meet existing and future needs.
- **Relationship With Major Landowner:** The relationship between the island's previous major landowner and the community was historically difficult. Recent discussion with others and progress seen in community meetings, the involvement of Pūlama Lānaʻi has been helpful in improving relations between the residents and major landowner. Pet. Ex. 2.

196. Development of the Project includes, pursuant to HRS § 201H-38, an exemption from the requirement to obtain a community plan amendment. Exemptions under HRS § 201H-38 are processed through the applicable county agencies.

197. The Petition Area is currently designated as "Park," "Open Space" and/or OS-1 and/or OS-2, "Mixed-Use Residential" and "Public/Quasi-public" in the Lānaʻi Community Plan.

198. Although the community plan does not show housing in the Petition Area, the Project seeks to address issues identified by the Lānaʻi Community Plan. Pet. Ex. 2.

199. Exemptions from county zoning requirements for the development of the Project were granted pursuant to HRS § 201H-38.

3. Conformity to County Zoning Designations

200. The Project has been approved by the County Council. Pet. Ex. 4.

201. Exemptions from county zoning requirements for the development of the Project were granted pursuant to HRS § 201H-38.

202. The land underlying the Petition Area is currently zoned Interim, Open Space, Active Open Space, Road and Agricultural by the Maui County Code (“MCC”).

203. Exemptions from MCC Chapter 19.02A (Interim Zoning), Chapter 19.07, MCC Open (Space Districts) and Chapter 19.30A (Agricultural District) were approved to permit the development and use of the parcel for single-family and park purposes, including supporting infrastructure requirements.

204. Input from the community and interested stakeholders confirm that the Project’s location is ideal because it provides access to the school and center of town, justifying the exemptions from county zoning.

205. Presently, there are sufficient alternatives on the island to account for agricultural and open space uses.

206. Several other exemptions were approved by the County Council, including:

- a. Exemption for Chapter 2.80B, MCC to allow the Project to proceed without obtaining a Community Plan Amendment.
- b. Exemption from MCC § 12.24A.070(D) to allow flexibility in the number, species and location of street trees in the Project, except that the Project must use native plants and fruit-bearing trees.
- c. Exemption from MCC § 16.26B.3600 to allow the Project flexibility in the construction of frontage improvements along public streets.
- d. Exemptions from Chapters 16.04C, 16.18B, 16.20B and 16.26B, MCC to exempt the 76 affordable units from fire, electrical, plumbing and building permit fees, including plan review and inspection fees.
- e. Exemptions from Chapter 16.04C, 16.08A, and 16.26B, MCC to allow the Project to proceed under the Fire, Residential and Building Code provisions as stated at the time of the filing of the building permit applications.
- f. Exemption from MCC § 18.04.030 as well as related land use consistency and conformity requirements of Title 18 to allow the Project to proceed without obtaining a change in Change of Zoning or Community Plan Amendment.

- g. Exemption from MCC § 18.16.050 to allow the proposed minimum rights-of-way and pavement widths.
- h. Exemption from MCC §§ 18.16.320 relating to parks and playgrounds.
- i. Exemption from MCC § 18.20.080 to allow grass swales within the Projects internal roadways, not including 9th and 12th streets.
- j. Exemptions from Chapters 19.02A, 19.07 and 19.30A relating to interim zoning, open space districts and agricultural districts to allow for development and subdivision of the property as proposed in the site configuration and allow single family housing units, accessory structures and park recreational buildings and structures.
- k. Exemptions from Chapters 19.08 and 19.27A, MCC to allow permitted uses for Residential Districts and permitted uses for Park Districts in the areas of the Project designated for such uses, including minor utility facilities and utility services.
- l. Exemption from MCC § 19.30A.040 to allow for residential, infrastructure and public facility use on lots to be created relative to lands included in the County of Maui Subdivision File Number 6.180.
- m. Exemption from MCC § 2.96.040(C)(2) to allow the Project to provide the residential workforce housing units for rent to “above-moderate,” “moderate” and “below-moderate” income-qualified residents in perpetuity, and in the approved distribution percentages.
- n. Exemption from MCC § 2.96.070(B) for a 30-year deed restriction for the residential workforce housing units to provide the units in accordance with HUD affordability guidelines, as adjusted by DHHC, in perpetuity subject to a residential workforce housing agreement.
- o. Exemption from MCC § 2.96.070(F) to allow the Project to include “above-moderate” income qualified residents as “graduated income tenants” for the 76 workforce housing units.
- p. Exemption from MCC § 2.96.100(A)(3) to allow Petitioner to follow the wait list procedure as outlined in Exhibit A to Resolution 21-36.
- q. Exemption from MCC § 2.96.100(D) to allow the Project to include “above-moderate” income-qualified residents for workforce housing units and to provide selection priority for the residential workforce housing units as outlined in Exhibit A to Resolution 21-36.
- r. Exemption from 2.96.160(B) and (C) to allow fast track permitting of all units in the Project.

N. Conformity with the Urban District Standards

207. The Petition Area is presently classified in the State Land Use Agricultural District.

208. The neighboring parcels to the north and east are in the State Land Use Urban District. The neighboring parcels to the south and west are in the State Land Use Agricultural District.

209. The proposed reclassification of the Petition Area is in general conformance with HAR §15-15-18, standards for determining Urban District Boundaries as follows:

Criterion 1. The Project will be characterized by “city-like” concentrations of people, structures, streets, and urban levels of services. The Project will support approximately 150 households, with 76 affordable units and 74 market-rate units. Along the east edge bordering the school fields, the project will provide a one-acre park, a 1,500-square foot community center, bicycle and pedestrian pathways and 60 parking stalls for intermittent use by those visiting Hōkūao residents or attending events at the community center.

Criterion 2. The Project is located immediately adjacent to Lāna‘i City, the economic center of the island. The town center contains markets, shops, restaurants, banks, medical care, a cultural center and more. The Project is within walking distance of the only public school on the island. The Project has been approved by the Council and has received an exemption from obtaining a Community Plan Amendment under HRS § 201H-38. The island is primarily rural and sufficient reserve areas for foreseeable urban growth are available. The school, parks, public utilities solid waste disposal, wastewater systems, and police and fire services will be available to residents of the Petition Area. There are no public transportation services on the island.

Criterion 3. The Petition Area has satisfactory topography and drainage to accommodate development of the Project. The Petition Area is located between 1,500 and 1,600 feet above sea level, is not subject to tsunami inundation and is not within a tsunami evacuation zone identified by the National Oceanic and Atmospheric Administration. Located in Flood Zone X, the Petition Area has little chance of flooding, and is outside the 0.2 annual chance floodplain.

Criteria 4 and 5. The Project is an extension of Lāna‘i City, the economic center of the island. A portion of the project site already falls within the State Urban District, and reclassification of the Petition Area as Urban would be an extension of existing, adjacent urban use. The Project is contiguous with

other existing urban areas and is an appropriate location for a new urban concentration.

Criterion 7. The Petition Area is adjacent to existing and planned urban and residential areas. Furthermore, the Petition Area is within existing service areas for public infrastructure and support services.

Criterion 8. The approximate range of ground slopes and elevations of the project site range from 3 percent (3% grade) to 20 percent (20% grade). The majority of the project site ranges from flat (0% grade) to gently sloping (3% grade). The eastern and western portions of the site range from a gentle (3% grade) to a moderate slope (7%). The 20 percent (20%) slope area falls outside the portion of the Petition Area to be developed.

II. RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties that are not already ruled upon by the Commission by adoption herein, or that are rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusions 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.

III. CONCLUSIONS OF LAW

1. Pursuant to HRS chapter 205 and the Commission Rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS §205-17, the Commission finds upon the preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 56.436 acres of land, comprised of a portion of Tax Map Key Nos. (2) 4-9-002:061 (por.) and (2) 4-9-014:001 (por.) situated at Lāna‘i City, County of Maui, State of Hawai‘i to the State Land Use Urban District, subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS §205-2 and Part III of HRS chapter 205, and is consistent with the policies and criteria established pursuant to HRS §§201H-38, 205-16, 205-17 and 205A-2.

2. The Commission is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *See Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n, State of Hawai‘i*, 94 Hawai‘i 31, 7 P.3d 1068 (2000).

3. Article XI, Section 1, of the Hawai‘i State 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.

4. Article XI, Section 1, of the Hawai‘i State Constitution states that all public natural resources are held in trust by the State for the public benefit, and the State should make appropriate assessments and require reasonable measures to protect public natural resources, while applying a higher level of scrutiny where public natural resources are used for economic gain. *Kauai Springs, Inc. v. Planning Comm’n of Cnty. of Kaua‘i*, 133 Hawai‘i 141, 324 P.3d 951 (2014).

5. Article XI, Section 3, of the Hawai‘i State 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.

6. The Petition Area is not designated as Important Agricultural Land under Part III of HRS Chapter 205.

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

8. Article XII, Section 7, of the Hawai‘i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai‘i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of

customarily and traditionally exercised Native Hawaiian rights to the extent feasible. See *Pub. Access Shoreline Hawai'i v. Hawai'i Cnty. Planning Comm'n*, 79 Hawai'i 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (1995).

9. Based on the facts of this case, the reclassification is consistent with the requirements of Article XI, Sections 1, 3 and 7, and Article XII, Section 7, of the Hawai'i State Constitution, and *Ka Pa'akai O Ka'Aina v. Land Use Comm'n, State of Hawai'i*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

10. The Commission concludes that it has observed and complied with its duties arising from Article XI, Section 1, Article XI, Section 3, Article XI, Section 7 and Article XII, Section 7, of the Hawai'i State Constitution.

IV. DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 56.436 acres of land, comprised of a portion of Tax Map Key Nos. (2) 4-9-002:061 (por.) and (2) 4-9-014:001 (por.) situated at Lāna'i City, County of Maui, State of Hawai'i, and shown on Exhibit 1 attached hereto and incorporated by reference herein, shall be and is hereby classified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

Based on the findings of fact and conclusions of law stated herein, it is determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural and other natural resources of the area.

IT IS FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

County Conditions

1. No condominium property regimes are allowed within the Hōkūao project site. No further subdivision of land for additional dwellings is allowed within the Hōkūao project site.
2. Petitioner must establish a policy to affirmatively protect any Pūlama Lāna'i employee residing within the Project to express themselves freely, even in

opposition to Pūlama Lāna‘i or its affiliates, without fear of retaliation from the company, or loss of home or employment.

3. The Project’s proposed one-acre park and community center must be completed prior to construction of the last market rate unit.
4. Petitioner must reserve 10 residential workforce housing units for teachers in grades Pre-K through 12 residing on Lana‘i. Teachers will be required to complete the same application and verification process as any other applicant. Should there be fewer than 10 teachers who apply or qualify for units, the remaining reserved units may be offered to other qualified applicants. Developer must coordinate with the Department of Housing and Human Concerns to establish the specific procedures for implementing the selection priority for teachers.
5. Petitioner must act in good faith and with best efforts to develop internal roads, sidewalks, and pathways that promote safety and accessibility, multi-modal transportation, and “Vision Zero Maui” and “Complete Streets” principles.
6. Petitioner must develop a stub out for water and a stub out for wastewater in coordination with, and for the use of, the County’s Lana‘i Affordable Housing Project on the parcel adjacent to the Hōkūao Housing Project.
7. Petitioner must develop all residential workforce housing units, including related roads and infrastructure, before or concurrently, and at the same ratio with the market rate units.
8. Petitioner must complete construction of all residential workforce housing units, with related roads and infrastructure, within 10 years of receiving the first building permit, except that an extension may be granted by Maui County Council approval by County Resolution.
9. The County Resolution and Exemptions will lapse and become void if construction of the units has not started within two years of receiving approved building permits for the residential workforce housing units.
10. The County Resolution and Exemptions will lapse and become void if the required District Boundary Amendment is not granted within two years of the effective date of the County Resolution.
11. Short-term rental homes and other transient accommodations are prohibited within the Project.

12. Rental of residential workforce housing units at market rate is prohibited, even in the temporary absence of income-qualified applicants.
13. Petitioner must satisfy the conditions of Chapter 14.12, Maui County Code, Water Availability.
14. Petitioner must develop and manage the Project in substantial compliance with all representations made to the County Council and its Affordable Housing Committee to obtain approval of the County Resolution. The County has the right to deny the issuance of permits if, and as long as, the Developer is in breach of any of these Modifications.

Commission Conditions

15. Affordable housing. Petitioner shall provide affordable housing opportunities in accordance with the certification of the Project as an HRS § 201H-38 project.
16. Previously Unidentified Burials and Archeological/Historic Sites. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and SHPD shall be contacted immediately.
17. BMPs. Petitioner shall implement all appropriate BMPs to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with DOH guidelines and County ordinances and rules.
18. Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.
19. Infrastructure Deadline. Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways, internal roadways, water supply, sewer, drainage and electrical infrastructure within ten years from the date of the Decision and Order approving the reclassification of the Petition Area.
20. Order to Show Cause. If Petitioner fails to complete the proposed backbone infrastructure within ten years from the date of the Decision and Order approving reclassification of the subject Increment, the Commission may issue

and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification, or be changed to a more appropriate classification.

21. Notice of Change of Ownership. 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 Petition Area, at any time prior to completion of development of the Petition Area.
22. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the City, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.
23. Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.