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

In the matter of the Petition

of

MOLOKAI PROPERTIES LIMITED

To Amend the Agricultural Land Use District Boundary into the Conservation Land Use District for Approximately 252 Acres of Land and into the Rural Land Use District for Approximately 613 Acres of Land and To Amend the Conservation Land Use District Boundary into the Rural Land Use District for Approximately 10 acres at Lā‘au Point, Molokai, TMK No.: (2) 5-1-002: portion of 030

DOCKET NO. A06-764

ORDER DETERMINING: 1) THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI‘I REVISED STATUTES; AND 2) THAT THE PROPOSED ACTION MAY HAVE A “SIGNIFICANT IMPACT” TO WARRANT THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT

ORDER DETERMINING: 1) THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI‘I REVISED STATUTES; AND 2) THAT THE PROPOSED ACTION MAY HAVE A “SIGNIFICANT IMPACT” TO WARRANT THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT
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MOLOKAI PROPERTIES LIMITED, a Hawai‘i corporation ("Petitioner"), filed its Petition For Land Use Boundary Amendment ("Petition") on April 27, 2006, to amend the Agricultural Land Use District Boundary into the Conservation District for approximately 252 acres of land and into the Rural Land Use District for approximately 613 acres of land and to amend the
Conservation Land Use District Boundary into the Rural Land Use District for approximately 10 acres of land at Lā`au Point, Moloka`i, Hawai`i, and designated by Tax Map Key No.: (2) 5-1-002: portion of 030 (the “Petition Area”), for the development of a 200-lot rural-residential subdivision to include roadways, infrastructure, open space, in addition to expansion of the Conservation District along the shoreline and related resource areas by 252 acres, and development of a 16.5-acre park and a 1.5-acre park (the “Project”). Included with the Petition was Petitioner’s Environmental Impact Statement Preparation Notice (“EISPN”).

On May 4, 2006, the LUC held its meeting in Hilo, Hawai`i, for the following: 1) to determine whether the Land Use Commission (“LUC”) should be the accepting authority pursuant to chapter 343, Hawai`i Revised Statutes (“HRS”); and 2) if so, to determine whether the Project may have a “significant impact” sufficient to warrant the preparation an Environmental Impact Statement (“EIS”) pursuant to chapter 343, HRS. In attendance were Petitioner and the Office of Planning, Department of Business, Economic Development and Tourism, State of Hawai`i (“OP”).

The County of Maui Department of Planning (“County”) previously informed LUC staff that it would be unable to attend the meeting and that it had no objection to Petitioner’s assertion that the LUC is the appropriate accepting authority for the EISPN and that the Project may have a significant impact to
warrant the preparation on an EIS.

Petitioner asserted that the LUC is the appropriate accepting authority for the EISPN because the filing of the Petition and EISPN is the Petitioner’s first action to seek regulatory approval of the development of the Petition Area. Petitioner noted that the Moloka`i Planning Commission would not be the appropriate accepting authority for the EISPN because the Petitioner does not have any pending application before the Moloka`i Planning Commission at this time. Petitioner also noted that a significant portion of the Petition Area involves the reclassification of the Conservation District, of which, the LUC has sole jurisdiction and authority.

Petitioner also asserted that the scope and scale of the Project in addition to the Project’s role in a much larger community plan for Moloka`i, may have a significant effect warranting the preparation of an EIS, pursuant to chapter 343, HRS. The Petitioner then requested the LUC to review and issue the appropriate determination to the EISPN and EIS for the Project, all before entering a decision and order relating to a change in land use classification.

OP commented that the preparation of an EIS appears to be warranted and that OP defers to the LUC on the issue of whether the LUC is the appropriate accepting authority of the EISPN.

At its meeting on May 4, 2006, a motion that: 1) the LUC agrees to accept

Docket No. A06-764 Molokai Properties Limited
Order Determining: 1) That The Land Use Commission Agrees To Be The Accepting Authority Pursuant To Chapter 343, Hawaii Revised Statutes; And 2) That The Proposed Action May Have A “Significant Impact” To Warrant The Preparation Of An Environmental Impact Statement
responsibility of the receiving and acceptance of the EISP and EIS; and 2) that
the proposed action warrants the preparation of an EIS, pursuant to chapter 343,
HRS, was made and seconded. There being a vote tally of eight ayes and no
nays, the motion carried, having received the affirmative votes required by
Section 15-15-13, Hawai`i Administrative Rules ("HAR").

ORDER

IT IS HEREBY ORDERED that the LUC: 1) agrees to be the
accepting authority of Petitioner's EISP and EIS under chapter 343, HRS, and 2)
determines that the proposed action in LUC Docket No. A06-764 warrants the
preparation of an EIS pursuant to chapter 343, HRS, by the authority of the
presiding officer under section 15-15-60, HAR.

Dated: Honolulu, Hawai`i, _______________________.

LAND USE COMMISSION
STATE OF HAWAII

By Randal F. Sakamoto
Chair and Commissioner

APPROVED AS TO FORM:

Deputy Attorney General

Filed and effective on
MAY 24 2006

Certified by:

Executive Officer
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

In the matter of the Petition of MOLOKAI PROPERTIES LIMITED

To Amend the Agricultural Land Use District Boundary into the Conservation Land Use District for Approximately 252 Acres of Land and into the Rural Land Use District for Approximately 613 Acres of Land and To Amend the Conservation Land Use District Boundary into the Rural Land Use District for Approximately 10 acres at Lā‘au Point, Molokai, TMK No.: 2(2) 5-1-002: portion of 030

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Determining: 1) That The Land Use Commission Agrees To Be The Accepting Authority Pursuant To Chapter 343, Hawai‘i Revised Statutes; And 2) That The Proposed Action May Have A “Significant Impact” To Warrant The Preparation Of An Environmental Impact Statement was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL. LAURA H. THIELEN, Director Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804-2359
BRYAN YEE, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, Hawaii 96813

MICHAEL FOLEY, Director
County of Maui, Planning Department
250 South High Street
Wailuku, Hawaii 96793

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

CERT. LINNEL T. NISHIOKA, Esq.
Morihara Lau & Fong LLP
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

CERT. ISAAC HALL, Esq.
2087 Wells Street
Wailuku, HI 96793

Dated: Honolulu, Hawaii, ____________________________

MAY 24 2006

ANThony J. H. CHING
Executive Officer