

CADES SCHUTTE  
A Limited Liability Law Partnership

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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 200 acres  
of land, consisting of a portion of Tax  
Map Key No. (2) 4-9-002:061 (por.) at  
Lānaʻi City, Island of Lānaʻi, County of  
Maui, State of Hawaiʻi.

DOCKET NO. A19-809

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

**[SECOND AMENDED PROPOSED]  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION AND ORDER**

**CERTIFICATE OF SERVICE**



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

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Petitioner Lānaʻi Resorts, LLC dba Pūlama Lānaʻi, a Hawaiʻi limited liability company, respectfully submits its Second Amended Proposed Findings of Fact and Conclusions of Law to the Land Use Commission of the State of Hawaiʻi in the Petition to Amend the Agriculture Land Use District Boundaries into the Urban Land Use District for approximately 200 acres of land consisting of a portion of Tax Map Key No. (2) 4-9-002:061, at Lānaʻi City, Island of Lānaʻi, County of Maui, State of Hawaiʻi (“*Amended Proposed Order*”).

The Amended Proposed Order makes one change to Findings of Fact paragraph 115. The Amended Proposed Order has been stipulated to by the State of Hawaiʻi Office of Planning and Sustainable Development and the County of Maui as to form and substance.

DATED: Honolulu, Hawaiʻi, January 17, 2023.

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*/s/Molly A. Olds*

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In the Matter of the Petition of

PŪLAMA LĀNA'I,

To Amend The Agriculture Land Use District Boundaries Into the Urban Land Use District for approximately 200 acres of land, consisting of a portion of Tax Map Key No. (2) 4-9-002:061 (por.) at Lāna'i City, Island of Lāna'i, County of Maui, State of Hawai'i.

DOCKET NO. A19-809

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

**CERTIFICATE OF SERVICE**

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

Petitioner Lāna'i 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 June 7, 2022 ("***Petition***") with the Land Use Commission of the State of Hawai'i ("***Commission***") pursuant to Hawai'i Revised Statutes ("***HRS***") § 205-4 and Hawai'i Administrative Rules ("***HAR***") chapter 15-15 to amend the land use district boundary to reclassify approximately 200 acres of land, comprised of a portion of Tax Map Key No. (2) 4-9-002:061 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 for the development of the Miki Basin Industrial Park ("***Project***" or "***Miki Basin***").

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 December 13, 2019, the Commission agreed to be the accepting authority pursuant to HRS Chapter 343 and determined that the Commission anticipates a Finding of No Significant Impact (“**FONSI**”) for the Project. Pet. Ex. 2; 11/16/22 Tr. at 12:16-20.

2. On November 17, 2021, Petitioner submitted a Second Draft Environmental Assessment (“**SDEA**”) to the Commission. The Commission was the accepting agency for the SDEA. Pet. Ex. 2.

3. On February 4, 2022, Petitioner filed a Motion to Issue a Notice of a FONSI. 11/16/22 Tr. at 12:21-23.

4. On February 16, 2022, after the requisite review and comment period, the Commission held a hearing on the SDEA and, based on its analysis of the significance criteria set forth in HAR § 11-200.1-13 and public comments received, voted to find that the Project will not have any significant impacts on the environment and determined that a FONSI was warranted for the Project. Pet. Ex. 2.

5. On February 28, 2022, the Commission transmitted the Final Environmental Assessment and Finding of No Significant Impact (“**FEA-FONSI**”) to the Office of Planning and Sustainable Development (“**OPSD**”), with a request to publish the FEA-FONSI in the next edition of The Environmental Notice. Pet. Ex. 2 at 1-2.

6. On June 7, 2022, Petitioner filed the Petition with the Commission. Pet. at 1.

7. Copies of the Petition were served on the Maui County Planning Department (“**Planning Department**” or “**County**”), OPSD, the Maui Planning Commission, the Lānaʻi Planning Commission, and all persons that appeared to have a property interest in the Tax Map Key parcel, a portion of which comprises the Petition Area, as recorded in the County’s real property tax records at the time the Petition was filed pursuant to HAR § 15-15-48. Pet. at Affidavit of Stacey F. Gray Attesting to Service of the Petition at 1-2 (“**Gray Aff.**”).

8. A copy of the Notification of Petition Filing was sent to all persons on the Commission's State and County mailing lists, as provided by the chief clerk, pursuant to HAR § 15-15-50(d). Pet. at Affidavit of Stacey F. Gray Attesting to Mailing of the Notification of Petition Filing at 1-2.

9. On June 21, 2022, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing. Dkt. A19-809.

10. On July 20, 2022, Petitioner filed an updated map to support the Petition. 11/16/22 Tr. at 13:8-10.

11. On August 18, 2022, OPSD filed its Position Statement. Dkt. A19-809.

12. On August 30, 2022, the County filed its Response to Petitioner's Motion to Issue Notice of a Finding of No Significant Impact stating it has no objection to the Petition. Dkt. A19-809.

13. On September 2, 2022, the County filed its Position Statement. Dkt. A19-809.

14. On October 3, 2022, OPSD filed its witness list and exhibit list. Dkt. A19-809.

15. On October 13, 2022, the Commission received the Department of Land and Natural Resources Chapter 6E-42 Historic Preservation Review. Dkt. A19-809; 11/16/22 Tr. 13:11-15.

16. On October 15, 2022, Petitioner caused the Notice of Hearing for the Miki Basin Industrial Park Land Use District Boundary Amendment Petition ("**Notice of Hearing**") to be published in the Maui News, a newspaper of general circulation in the County of Maui where the subject property is located pursuant to HAR §15-15-51(c). Dkt. A19-809, Affidavit of Christopher T. Goodin Attesting to Publication and Mailing of Notice of Hearing ("**Goodin Aff.**") at 2.

17. On October 17, 2022, Petitioner caused the Notice of Hearing to be published in the Honolulu Star Advertiser, a newspaper of general circulation in the State of Hawai'i pursuant to HAR § 15-15-51(c). Goodin Aff. at 2.

18. On October 19, 2022, OPSD filed its Testimony in Support with Conditions and Exhibits and OPSD Exhibits 1 through 8. Dkt. A19-809; 11/16/22 Tr. 13:11-15.

19. On October 21, 2022, the Notice of Hearing was received by the Commission. Dkt. A19-809; 11/16/22 Tr. 13:16-17.

20. The Notice of Hearing was served on the Planning Department, OPSD, the Maui Planning Commission, the Lānaʻi Planning Commission, and all persons that appeared to have a property interest in the Tax Map Key parcel, a portion of which comprises the Petition Area, as recorded in the County's real property tax records at the time the Petition was filed pursuant to HAR § 15-15-51(b). Dkt. A19-809.

21. The Notice of Hearing was also sent to all persons on the Commission's state and County mailing lists of persons who have made a timely written request for advance notice of boundary amendment proceedings, as provided by the chief clerk, pursuant to HAR § 15-15-50(c). Goodin Aff. at 2-3.

22. On October 24, 2022, the Commission received Petitioner's Exhibit List, Witness List, and Exhibits 13 through 19. Dkt. A19-809; 11/16/22 Tr. 13:17-19.

23. On October 31, 2022, the County filed its Witness List and refiled its Position Statement. Dkt. A19-809; 11/16/22 Tr. 13:19-21.

24. On November 1, 2022, the Notice of Hearing was filed with the Lieutenant Governor's Office in accordance with HAR § 15-15-51(b).

25. On November 3, 2022, the County filed its Corrected Version of Recipient List. Dkt. A19-809.

26. On November 4, 2022, the Commission sent out the agenda for the November 16, 2022, meeting to the County and statewide mailing lists. Dkt. A19-809; 11/16/22 Tr. 13:24 to 14:3.

27. On November 7, 2022, Petitioner filed the Affidavit of Publication and Mailing of the Notice of Hearing. Goodin Aff. at 1; *see also* Dkt. A19-809; 11/16/22 Tr. 14:1-3.

28. On November 15, 2022, Petitioner filed its Amended Exhibit List and Exhibit 20 with the Commission. The Commission received and formally stamped Petitioner's Amended Exhibit List and Exhibit 20 on November 16, 2022. 11/16/22 Tr. at 15:13-19.

29. On November 16, 2022, the Commission held an in-person hearing on the Miki Basin Industrial Park. At the hearing, the Commission entered into the record Petitioner's exhibits and OPSD's exhibits. The County offered no exhibits. Though the opportunity was provided, no oral or written testimony was submitted by the public. Thereafter, Petitioner commenced with its case-in-chief. *See* 11/16/22 Tr. 16:8 to 18:9, 41:23 to 42:7.

30. The County witness, Maui Planning Department Director Michelle McLean, provided testimony in support of the Project. OPSD witness Land Division Chief Katia Balassiano provided testimony in support of the Project. 11/16/22 Tr. 183:16-23.

31. On November 16, 2022, OPSD and the County confirmed with the Commission that the County and OPSD would review Petitioner's Proposed Findings of Fact Conclusions of Law and file a reply with any recommended revisions rather than filing their own individual Proposed Findings of Fact Conclusions of Law Decision and Order. 11/16/22 Tr. at 189:24-190:5.

32. On November 18, 2022, Petitioner filed its Second Amended Exhibit List and PowerPoint slides, which were presented during the November 16, 2022, hearing, as Exhibit 21. Dkt. A19-809.

33. On December 21, 2022, the Proposed Findings of Fact Conclusions of Law Decision and Order was served by Petitioner on the County and OPSD.

34. On February 8, 2023, 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.

## **B. Authority for Relief Sought**

### **1. Identification of Petitioner**

35. 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).

36. Lāna‘i Resorts, LLC, dba Pūlama Lāna‘i, is a land and asset management limited liability 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**

37. Pūlama Lāna‘i is the fee owner of the Petition Area, which is comprised of a portion of the parcel identified by Tax Map Key No. (2) 4-9-002:061.

**3. Notification of Petition Filing**

38. Petitioner served a copy of the Petition on the Maui County Planning Department, the Maui Planning Commission, the Lāna‘i Planning Commission, OPSD and all persons with a property interest in the Petition Area as recorded in the County’s real property tax records at the time the Petition was filed in accordance with HAR § 15-15-48. Pet. at Gray Aff.

39. A copy of the Notification of Petition Filing was sent to all persons on the Commission’s State and County mailing lists in accordance with to HAR §15-15-50(d). Pet. at Gray Aff.

**C. Description of the Subject Property**

40. The Petition Area is approximately 200 acres in size, comprised of a portion of Tax Map Key No. (2) 4-9-002:061, situated at Lāna‘i City, County of Maui, State of Hawai‘i, and is owned in fee simple by Petitioner. Pet. at 5.

41. The location of the Petition Area is well-suited for industrial development. The Petition Area is adjacent to existing industrial uses, including the Lāna‘i Airport, the Miki Basin Industrial Condominium and the Hawaiian Electric Company (“*HECO*”) fossil fuel power plant. The Petition Area is located approximately 3.2 miles southwest of Lāna‘i City. See Pet. Ex. 2 at II.E; 11/16/22 Tr. (Dr. Keiki-Pua Dancil) at 124:3-4.

42. There are no known property interests in the Petition Area. *Id.*

**D. Requested Reclassification**

43. Petitioner seeks the reclassification of the Petition Area from the Agricultural District to the Urban District to develop a 200-acre industrial park. Pet. at 6.



44. The Petition Area is comprised of former pineapple fields and is largely vacant. An approximate 14.5-acre interim area has been established for industrial stockpiling and storage and operation of a concrete batch plant on a portion of the Project area that borders the western side of the neighboring Miki Basin Industrial Complex. *See* Pet. Ex. 2 at 1. Petitioner applied for and obtained a County Special Use Permit for use of the 14.5-acre area. *See* Pet. Ex. 21; 11/16/22 Tr. at 73:4-8.

45. The majority of the Petition Area is an extension of similar land uses taking place at the adjoining airport, fossil fuel facility and industrial 20-acre condominium. The Petition Area is also close to available public service resources. Accordingly, the Petition Area is appropriate for urban growth. Pet. at 6.

46. 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. at 6.

### **1. Type of Use Being Proposed**

47. The Project is an effort to implement the Lāna‘i Community Plan, which calls for 225 acres within the Miki Basin for heavy and light industrial use, by rezoning the designated land area to allow for such use. 11/16/22 Tr. (Dancil) at 128:5-10.

48. Over 85 percent of the Petition Area has been allocated for specific uses. *Id.* at 128:14-16.

49. The Project will consist of a 200-acre industrial park for light and heavy industrial use. The proposed project will include 127 acres for renewable energy—specifically, photovoltaic plus battery energy storage—20 acres for infrastructure

purposes including roads, common areas and other related uses, 12.5 acres for the relocation of an existing asphalt plant from its current location near Kaumālapa‘u Harbor and 26 acres for new industrial uses. The remaining 14.5 acres will be used for the relocation of an existing concrete batch plant, recycling and rock crushing facility and for the storage and stockpiling of aggregate and construction materials. Pet. Ex. 2 at 1; 11/16/22 Tr. (Dancil) at 131:8 to 132:3, 179:13 to 180:1.

50. The 26 acres of other new industrial uses will consist of uses allowed under Maui County Code “M-1, Light Industrial” and “M-2, Heavy Industrial” zoning. While the specific uses have not been identified at this time, possible new future industrial uses may include a slaughterhouse, warehouse space for cold storage, baseyard space, animal hospital or other uses. Pet. Ex. 2 at 1-2; 11/16/22 Tr. (Kurt Matsumoto) at 52:19 to 53:4.

51. Petitioner will develop “backbone infrastructure,” such as roads, electric and water utility lines, as necessary. 11/16/22 Tr. (Matsumoto) at 63:20 to 64:15.

52. Individual tenants within the Project will be responsible for vertical development and infrastructure within their specific properties and for compliance with applicable regulatory requirements associated with individual developments. Petitioner will require all tenants to implement best management practices with respect to preventing environmental harm. Pet. Ex. 2 at 1-2; 11/16/22 Tr. (Matsumoto) at 65:9-12.

## **2. Impact of the Project on Housing Needs**

53. The Project will not impact housing needs. Pet. at 14.

## **3. Need for the Proposed Development**

54. A market study conducted by Plasch Econ Pacific in 2021 (the “*Market Study*”) concluded that there is a shortage of rental industrial space on the island. Pet. Ex. 2. at App’x A.

55. It is expected that there will be a future need for industrial-zoned lands on Lāna‘i, particularly since there are limited such lands currently available. In addition to providing land for renewable energy uses and relocation of existing facilities, the Petition Area will provide light and heavy industrial space for potential uses such as

a slaughterhouse, warehouse space for cold storage, base yard space, animal hospital or other uses for existing and new businesses on island. *See* Pet. Ex. 2 at App'x A; 11/16/22 Tr. (Matsumoto) at 51:14 to 53:3.

56. Approximately 3,000 acres or 3 percent of Lānaʻi is designated as Urban. There is not sufficient area within those lands for an industrial park as all Urban-zoned lands are in use. 11/16/22 Tr. (Dancil) at 130:6-14.

57. The Project implements the Lānaʻi Community Plan by rezoning land for light and heavy industrial uses to accommodate for present need and future growth. *Id.* at 128:5-10; *id.* (Director Michelle McLean) at 182:5-7.

#### **4. Development Within Ten Years**

58. The relocation of the concrete batch plant, the rock crushing facility and the asphalt plant is anticipated to occur within the first or second year after all State and County permitting is approved. The renewable energy project is anticipated to be complete within the next ten years. Pet. at 10; 11/16/22 Tr. (Dancil) at 133:1-8.

59. All calculations of time are based upon the assumption that all necessary permits and approvals are granted in a timely manner. Pet. at 10; 11/16/22 Tr. (Dancil) at 132:23 to 133:11.

60. The concrete batch plant, rock crushing facility, asphalt plant and renewable energy project will cover approximately 154 acres or approximately 77 percent of the Project's total area. *See* Pet. at 6-7.

61. When including the land being used for infrastructure, over 85 percent of the Project will be developed within the first 10 years. 11/16/22 Tr. (Dancil) at 128:3-17.

62. It is Petitioner's position that the Project will be substantially developed—85 percent of the 200 acres—within the first 10 years if not sooner. 11/16/22 Tr. (Dancil) at 128:11-16.

63. It is OPSD's position that because it is unnecessary to approve the Petition Area incrementally, it is not necessary to determine whether full development of the Petition Area can substantially be completed within ten years after the date of this Decision and Order. *See* HAR § 15-15-78(a).

64. The remaining 26 acres slated for other industrial uses will be developed as needed. If this area is not developed within the first 10 years, development is anticipated through years 11 to 20. Pet. at 9; 11/16/22 Tr. (Dancil) at 132:23 to 133:11.

65. It is OPSD's position that the 26-acre portion of the industrial park is functionally distinct from the remainder of the Petition Area and that the development of the 26-acre portion is not dependent on the development of the rest of the Petition Area.

66. Aspects of this development are unique from developments on other islands. For example, much of the land adjacent to the Petition Area, with the exception of the Lāna'i Airport, Kaumālapa'u Highway, and the HECO fossil fuel power plant is owned by Petitioner. Surrounding lands in the State Agricultural District are vacant and owned by Petitioner. 11/16/22 Tr. (Matsumoto) 57:17 to 58:19.

67. It is OPSD's position that no adjacent properties would be adversely affected if portions of the light and heavy industrial area remained undeveloped after the initial 10-year period. Moreover, no other landowner would be deprived of the opportunity to develop the light and heavy industrial area. Thus, the risk of adverse impact on land use that the 10-year substantial completion requirement is intended to minimize does not exist here because of the unusual nature of the project and Pūlama Lāna'i's ownership. OPSD Testimony In Support with Conditions and Exhibits, at 9.

68. Based on the entire record, the Commission finds that approximately 85 percent of the Petition Area can be developed within ten years and that the remaining portion can be developed within twenty years and is satisfied that all other pertinent criteria for amending the land use boundary for the entire Petition Area will be met to support reclassification for the entire Petition Area.

## **5. Densities and Project Market**

69. The renewable energy project is anticipated to consist of 127-acres containing photovoltaic panels, battery storage and associated infrastructure. *See* Pet. Ex. 7; 11/16/22 Tr. (Dancil) at 132:23 to 133:11.

70. The asphalt plant is anticipated to consist of 12.5 acres and will be relocated to the Petition Area in one to two years after permit approval. *See* Pet. Ex. 7; 11/16/22 Tr. (Dancil) at 132:23 to 133:11.

71. The concrete batch plant, recycling and rock crushing facility is anticipated to consist of 14.5 acres and be relocated to the Petition Area within one to two years after permit approval. *See* Pet. Ex. 7; 11/16/22 Tr. (Dancil) at 132:23 to 133:11.

72. Other industrial uses are anticipated to consist of up to 23 individual areas ranging in size from approximately 0.5 to 2 acres, to be offered for rent and to be developed on an as-needed basis. Pet. at 11; Pet. Ex. 7; Pet. Ex. 7; 11/16/22 Tr. (Dancil) at 132:23 to 133:11.

## **E. The Subject Property**

### **1. Recent and Present Use**

73. The Petition Area is located 3.2 miles southwest of Lāna‘i City on land adjoining the Lāna‘i Airport, the HECO 5-acre fossil fuel power plant and the existing 20-acre Miki Basin Industrial Condominium. The Petition Area is immediately adjacent to the Urban District along its northern boundary. The remainder of the adjacent land falls within the Agricultural District. Pet. at 1-14; 11/16/22 Tr. (Dancil) at 124:3-4, 125:18 to 127:7.

74. The Petition Area is comprised of former pineapple fields and is largely vacant. An approximate 14.5-acre interim staging area is currently operating under a County Special Use Permit for industrial stockpiling and storage and operation of a concrete batch plant and asphalt plant on a portion of the Project area that borders the western side of the neighboring Miki Basin Industrial Complex. *See* Pet. Ex. 2 at 1. *See* Pet. Ex. 21; 11/16/22 Tr. (Matsumoto) at 73:4-8.

75. A Phase I Environmental Site Assessment (“*ESA*”) conducted by TRC documented that there are no recognized environmental concerns associated with the Petition Area. Pet at 12; Ex. 2 at App’x E.

### **2. Soil Classification**

76. Soils at the site are predominantly “Waikapū Silty Clay Loam,” “Molokai Silty Clay Loam” and “Uwala Silty Clay Loam.” Pet. Ex. 2 at II.A.4.

77. Soils within the Petition Area are classified as “D” and “E” 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. at 18; Pet. Ex. 2 at II.A.4.

78. The Petition Area is classified on Agricultural Lands of Importance to State of Hawai‘i (“*ALISH*”) maps as “unique.” The Petition Areas is designated as “unique” due to its historic use for pineapple cultivation. Pet. Ex. 2 at II.A.3.

### **3. Flood and Drainage**

79. 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 at III.A.5.

80. Additional surface water runoff generated within the proposed Industrial Park will be contained by the Miki and Pālāwai Basins. *Id.* at III.A.

81. The Petition Area is 3.5 miles inland from the shoreline, is located at a high elevation at approximately 1,247 feet above mean sea level, and thus, it is outside the tsunami evacuation zone and is not subject to the negative impacts from sea level rise. *Id.* at IIA.5; *id.* at App’x E.

### **4. Topography**

82. The Petition Area moderately slopes at approximately 5 percent from Miki Road to the southeast and is overgrown with dense grassland and shrubs. Pet. Ex. 2 at 47.

## **F. Adequacy of Public Services and Facilities**

### **1. Schools**

83. The Project is not anticipated to generate an increase in enrollment. The Project is located within walking distance of Lāna‘i High and Elementary School—the only public school that serves the educational needs of the island of Lāna‘i. *See* Ex. 2 at II.C.5.

### **2. Parks**

84. The Project will not have an impact on recreational resources.

85. There are adequate parks and recreational facilities available. 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 Kaumālapaʻu Highway/Fraser Avenue Park. There are also several parks owned and maintained by Pūlama Lānaʻi with recreational facilities available for public use. Ex. 2 at II.C.6.

### **3. Wastewater Systems**

86. The Project will construct onsite Individual Wastewater Systems (“*IWS*”), decentralized Wastewater Treatment Plants (“*WWTP*”) and collection systems. Pet. Ex. 2 at II.D.3; *id.* at App’x I.

87. Each development within the industrial park will be required to provide its own wastewater treatment system and associated wastewater collection system. The type of treatment system will be determined by the size and type of development. Sizing of each system will be determined during the design phase of each development. *Id.* at II.D.3; *id.* at App’x I.

88. The average wastewater flow for full buildout of the industrial park is based on the County of Maui’s Wastewater Flow Standards and the Design Standards of the Department of Wastewater Management. The proposed design wastewater flow is estimated at 80,179 gallons per day (“*GPD*”), with a design peak flow of 333,688 GPD. *Id.* at II.D.3; *id.* at App’x I.

### **4. Solid Waste Disposal**

89. Construction-generated waste will be disposed of in accordance with a disposal plan developed by the contractor. Appropriate construction-generated waste will be disposed in the landfill. Pet. Ex. 2 at II.C.4.

90. The renewable energy area will not generate new solid waste once constructed. Appropriate decommissioning practices in compliance with Federal, State and local regulations will be implemented at the end of the renewable energy project’s useful life. *Id.*

91. Individual users at the Miki Basin Industrial Park will be responsible for disposing solid waste, recyclables and green waste consistent with State and County regulations. *Id.*

92. Petitioner employs solid waste mitigation strategies such as rural recycling events for hard to recycle items and green waste recycling with the resulting compost made available to the community. *Id.*

## **5. Drainage**

93. No permanent surface water bodies or wetlands are located within the Petition Area. Pet. Ex. 2 at II.A.6.

94. The planned drainage of the proposed Miki Basin Industrial Park detailed in the Drainage Report prepared by R.W. Towill meets the County of Maui Storm Drainage Standards. *Id.* at App'x J.

95. Offsite surface water runoff will be intercepted before entering the Petition Area by proposed drainage ditches. The drainage ditches will divert runoff around the perimeter of the project site to an offsite discharge point downstream. *Id.* at II.D.4.

96. Onsite runoff generated within the Petition Area can be accommodated by the existing Miki Basin and Pālāwai Basin capacity. *Id.* at II.D.4.

97. The Project is not anticipated to have an adverse impact to any existing downstream properties. *Id.* at II.D.4; *id.* at App'x J.

## **6. Water**

98. The Lānaʻi Water Company privately owns the domestic water system on Lānaʻi, including Mānele Bay Water System (Public Water System 238 (“**PWS 238**”)), which provides service to the Petition Area. Pet. Ex. 2 at II.D.2.

99. The Project’s water use conforms to the Lānaʻi Water Use and Development Plan (“**LWUDP**”). Pet. Ex. 2 at II.D.2.

100. Akinaka & Associates, Ltd. Prepared a Water Master Plan for PWS 238 (“**Akinaka Report**”). The Water Master Plan assessed the existing water distribution system and the capacity of PWS 238 and provided recommendations for the



forecasted water demand for the Miki Basin Industrial Park. *See* Pet. Ex. 2 at App'x H-1.

101. PWS 238 provides water service to Mānele, Hulopo'e and the Pālāwai Irrigation Grid. Water from the wells is either stored in the existing 0.5 million gallon ("MG") Hi'i Tank or 1.0 MG concrete Hi'i Reservoir or fed directly into the distribution system depending on demand. PWS 238 utilizes 10-inch, 12-inch and 16-inch transmission mains. PWS 238 is interconnected with the Lāna'i City Water System (Public Water System 237 ("**PWS 237**"). During emergencies, PWS 237 can be connected to PWS 238 by opening a valve. Pet. Ex. 2 at II.D.2.a.

102. The water demand on Lāna'i is estimated, as of August 2021, at 1.517 million gallons per day ("**MGD**"). At full build out, the water demand estimated for the Project is 0.159 MGD. Other proposed or approved projects are estimated at 0.260 MGD for a total forecasted water demand for Lāna'i of 1.936 MGD. The total forecasted need is below the 4.3 MGD trigger set by the Commission on Water Resources Management ("**CRWM**") and further below the sustainable yield of 6 MGD for Lāna'i. *Id.* at II.D.2; *id.* at App'x H-1.

103. Anticipated future water needs for the 26 acres of new industrial uses are consistent with State standards. 11/16/22 Tr. (Dancil) at 136:12-24.

104. Petitioner may need to develop an additional source to provide additional pump capacity of at least 426 gallons per minute ("**GPM**") to support the estimated demand of the Project at full build-out. Petitioner commissioned a New Well Supply from Tom Nance Water Resource Engineering to identify potential sources. The report identified a recommended well site that could meet or exceed the necessary 426 GPM capacity to ensure adequate supply for the Project. *See* Pet. Ex. 2 at II.D.5; *id.* at App'x H-2.

105. Petitioner will develop an additional source if required.

106. The Project will be constructed with appropriate water efficiency measures. *Id.* at II.D.5.

107. Petitioner has represented and committed that water usage for the Project will not exceed the maximum daily usage calculations provided in the Akinaka Report. 11/16/22 Tr. (Matsumoto) 66:22 to 67:2.

## **7. Transportation Services**

108. The primary street for ingress/egress for the Project is Miki Road. Miki Road is a generally north-south, two-way privately-owned roadway that begins to the north at its intersection with Kaumālapa‘u Highway and extends approximately 2.95 miles to the south. Kaumālapa‘u Highway is generally an east-west, two-way, two-lane state-owned roadway that runs perpendicular to Miki Road.

109. The Traffic Impact Analysis Report (“**TIAR**”) evaluated traffic impacts resulting from the proposed Project. Currently, the Kaumālapa‘u Highway/Miki Road intersection operates at level of service (“**LOS**”) B, which is defined as reasonably free-flow traffic conditions. Pet. Ex. 2 at II.D.1; *id.* at App’x G.

110. When warranted, the TIAR recommends the widening of Miki Road between its intersection with Kaumālapa‘u Highway to the project driveways and to provide an exclusive westbound left-turn deceleration lane. *Id.* at App’ x G.

111. At full build-out, each of the intersections is forecasted to operate at LOS B, which is similar to existing conditions. *Id.* at II.D.1; *id.* at App’x G.

## **8. Public Utilities**

112. The existing HECO fossil fuel power plant is adjacent to the Petition Area.

113. Approximately 127 acres of the Project are slated for the development of a renewable energy project. Petitioner has committed that the renewable energy project will only use the technology of photovoltaic and battery energy storage as represented in the FEA. *See generally* Ex. 2; 11/16/22 Tr. (Dancil) at 179:16 to 180:1.

114. The Project’s location adjacent to the HECO fossil fuel power plant will significantly reduce connection costs associated with bringing the renewable energy project online. The electricity generated by the renewable energy project will provide clean energy for 95 percent of the energy demand for the island of Lāna‘i. By replacing the use of fossil fuels with renewable energy, Lāna‘i will increase resiliency and

minimize the impacts of price fluctuations based on the price of oil. 11/16/22 Tr. (Dancil) at 177:13-20; *see id.* at 138:21 to 139:6.

115. At the hearing, concerns were raised regarding the potential of Pūlama Lānaʻi taking two resorts off-grid, which may result in an overall load reduction on the island-wide system of approximately 40 percent. In the event pulling the hotels off the existing grid would lead to an increase in costs for consumers, Pūlama Lānaʻi has represented and committed it will either offset the increase or not pursue that course of action. *Id.* at 164:13 to 167:20, 180:2-15.

116. Hawaiian Telecom (“**HTCO**”) and Charter Communications, dba Spectrum (“**Spectrum**”) will offer broadband and telephone services to the Project. Pet. Ex. 2.

## **9. Police and Fire Protection**

117. The Maui Police Department (“**MPD**”) serves as the primary law enforcement agency for the island of Lānaʻi, including the Petition Area. Pet. Ex. 2 at II.C.1.

118. 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 require a significant increase to existing law enforcement services. *Id.*

119. The Lānaʻi Fire Station provides the fire protection services for the island. Located in Lānaʻi City, the fire station is approximately one mile from the Petition Area. *Id.*

120. The Project is not anticipated to have a significant impact on fire protection services. *Id.*

## **10. Civil Defense**

121. The Maui Emergency Management Agency (“**MEMA**”) is responsible for the administration of County, State and Federal emergency programs. 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 Hawaiʻi.

122. The closest emergency shelter to the Project is located at Lānaʻi High and Elementary School. The Petition Area is at a high elevation and is outside the flood and tsunami evacuation zones. Pet. Ex. 2 at II.A.5.

123. Petitioner will work with State and County agencies regarding any further civil defense measures necessary to serve the Project. Pet. at 22.

### **11. Emergency Medical Services and Medical Facilities**

124. 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. See Ex. 2 at II.C.2

125. The Project is not anticipated to adversely affect medical services or facilities in the area. *Id.*

### **G. Impacts on Area Resources**

126. Petitioner has represented and committed that it or its consultants will implement the mitigation measures identified in the Final Environmental Assessment with equivalent mitigation measures, or better. 11/16/22 Tr. (Matsumoto) at 67:16-22.

127. Petitioner has acknowledged and committed to OPSD's proposed 11 conditions with certain revisions proposed by the parties and incorporated here. 11/16/22 Tr. (Matsumoto) at 55:4-7; (Dancil) at 140:11-23; 147:19-24.

#### **1. Environmental Resources**

128. Impacts to air quality in and around the Petition Area due to future industrial activities will be regulated by DOH. Pet. Ex. 2 at II.A.10.

129. The renewable energy project will utilize 127 acres and will not generate any adverse air quality impacts. *Id.*

130. With respect to the relocation of an existing concrete batch plant, recycling and rock crushing operation and for the storage and stockpiling of aggregate and construction materials, the stockpiles may generate dust. The Project will adhere to the environmental regulations for the storage and use of the aggregate stockpiles to mitigate any potential impact to air quality. *Id.*

131. With respect to the 26 acres for other industrial uses, any potential use that may constitute an air pollution source must file an application with DOH. If deemed appropriate, DOH may require the applicant to assess the air quality impact of the proposed emissions. *Id.*

132. Noise around the Petition Area is dominated by noise from airport-related activities, including roadway use and aircraft taxiing, taking off and landing. Operations at the HECO fossil fuel power plant and the Miki Basin Industrial Condominium also contribute noise to the surrounding area. Pet. Ex. 2 at II.A.12.

133. No noise-sensitive areas are in the Petition Area. The nearest noise-sensitive area is Lānaʻi City. The Project is located approximately 3 miles from Lānaʻi City and, accordingly, will not impact noise sensitive areas. *Id.*

134. Petitioner will comply with all applicable State and Federal regulations and BMPs to mitigate any impact on air quality or noise caused during construction. Pet. at 24.

## **2. Agricultural Resources**

135. A study regarding the Project's potential impacts on agriculture was conducted by Plasch Econ Pacific Inc. Ex. 2 at App'x B.

136. The Project represents approximately 1.1 percent of the 18,000-plus acres of former plantation lands. The assessment concluded the Project Area is located on land that is currently unproductive and that there is an adequate amount of available agricultural lands surrounding the Petition Area and on the Island. *Id.* at II.A.3; *id.* at App'x B.

137. 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. *Id.* at App'x B.

138. There is presently no demand for agricultural use of the Petition Area. There is sufficient available agricultural land to meet near to mid-term demand. *Id.* at II.A.3; *id.* at App'x B.

### 3. Recreational Resources

139. The Project will not have an impact on recreational resources in the area. Pet. Ex. 2 at II.C.6.

### 4. Cultural Resources

140. 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.

141. At the hearing, Dr. Trisha Kehaulani Watson testified regarding cultural resources and the archeological work conducted for the Project.

142. The Petition Area is situated in the ahupua'a of Kamoku. Pet. Ex. 2 at App'x D-1.

143. Ethnographic data was collected and a cultural resources assessment was included in the Archaeological Inventory Survey ("**AI**S") conducted for the Project. The cultural resources assessment involved ethnographic research and interviews of individuals with knowledge of Kamoku and native Hawaiian beliefs, practices and traditions on Lāna'i. 11/16/22 Tr. (Dr. Trisha Kehaulani Watson) at 26:7-22; Pet. at 25.

144. One of the interviewees indicated that the Petition Area had been used for gathering of 'a'alii and 'uhaloa for adornments and la'au lapa'au. Both 'a'alii and 'uhaloa are common throughout the Pālāwai-Miki Region of Lāna'i and prevalent in

the surrounding areas. Therefore, while the Petition Area is used for traditional practices, the cultural assessment concluded that the Project is not anticipated to affect the availability of these cultural resources, and the project will not affect access to these resources in the region. Pet. Ex. 2, App'x D-1; *id.* at App'x D-4. *See also* 11/16/22 Tr. (Watson) at 27:18-23 (testifying that the Project will not affect or impair native Hawaiian customary or traditional rights).

145. The Project will not have any adverse impacts on the exercise of native Hawaiian traditional and customary practices in the area. Pet. Ex. 2, App'x D-4 at 4.

## **5. Historic Resources**

146. The AIS was completed by T.S. Dye & Colleagues (Log. No.: 2020.01586).

147. The methodology for the AIS was a 100 percent pedestrian survey with 31 trenches conducted across the Property. Two historic sites were identified. The AIS recommended that a data recovery plan be developed for two sites, 50-40-98-1980 and 50-40-98-1981. The AIS was accepted by the State Historic Preservation Division (“*SHPD*”). 11/16/22 Tr. (Trisha Kehaulani Watson) at 25:7 to 26:6; Pet. Ex. 2, App'x D-2.

148. Both historic sites were historic, remnant fire pits but were not pre-contact. Traditional lithic scatter was also associated with one site, which is pre-contact. All were documented and properly catalogued. 11/16/22 Tr. (Watson) at 25:23 to 26:6.

149. A data recovery plan and data recovery report for the two sites identified in the AIS was prepared and accepted by SHPD. No further work is required for the sites identified in the AIS. 11/16/22 Tr. (Watson) at 26:7 to 27:13; Pet. Ex. 13.

150. SHPD determined there are no historic properties affected for 14.5 acres of the Petition Area included in the County of Maui Permit Application SUP2 2021/0008. Pet. Ex. 8.

151. Petitioner has represented and committed that the DBA will be submitted to SHPD in accordance with SHPD requirements for review and approval. 11/16/22 Tr. (Watson) at 31:5-16.

## **6. Scenic Resources**

152. The Petition Area abuts the southeast end of Lāna‘i Airport and the Project will have complementary, industrial uses to the neighboring facilities.

153. The Petition Area is not located near traditional access or walking trails between coastal or upland areas. Ex. 2 at II.A.14; 11/16/22 Tr. (Watson) 39:15-18.

154. The Petition Area is not part of a scenic corridor, and the Project will not affect scenic vistas or view planes. Pet. Ex. 2 at II.A.14.

## **7. Flora and Fauna**

155. No State or federally-listed threatened or endangered species or rare native Hawaiian plant species were documented or observed within the Petition Area. Ex. 2 at App’x C.

156. The Petition Area is not designated a critical habitat for any species. *Id.*

157. Historically, the vegetation of Lāna‘i has been impacted by grazing and commercial pineapple cultivation. *Id.*

## **8. Groundwater**

158. The sustainable yield of Lāna‘i’s combined aquifers is estimated at 6 MGD. Most of the available water included in this estimate is 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. Ex. 2 at II.D.2.

159. Groundwater from the Leeward aquifer, in the Central aquifer sector will be utilized from PWS 238 until demand necessitates the development of a new source. *Id.*

160. The Project will be serviced by Lāna‘i Water Company. The Company regularly monitors water quality parameters and ensures adherence to all State and Federal standards. *Id.*

161. The Project will conform to all requirements of CWRM and DOH related to the installation, inspection and maintenance of water systems associated with the Project. *Id.*



## **H. Climate Change Concerns and Proposed Mitigation**

### **1. Impacts of Sea Level Rise**

162. The Petition Area is between 1,000 and 1,250 feet above sea level, located approximately 3.5 miles inland from the western shoreline towards the center of the island in Lānaʻi City. Pet. Ex. 2 at II.A.5.

163. The Petition Area falls well outside the Sea Level Rise Exposure Area as shown on the Hawaiʻi Sea Level Rise Viewer for the Hawaiʻi Sea Level Rise Vulnerability Adaptation Report. Pet. at 34.

164. 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 is not anticipated to have an impact on the Petition Area. Accordingly, no mitigation measures are necessary. Pet. Ex. 2 at II.A.5.

### **2. Infrastructure Adaptions**

165. The Project will be designed to meet all applicable Federal, State and County requirements. Pet. at 34.

166. Buildings developed in the Project will follow County requirements for low-flow fixtures and fittings. *Id.*

167. The Project will involve limited or no landscaping. *Id.*

168. The Project will be serviced with existing water and utilities to minimize infrastructure excavation and land disruption. *Id.*

### **3. Overall Carbon Footprint and Mitigation**

169. The Project is not projected to contribute to the emission of greenhouse gases. *See* Pet. at 28-35.

170. According to estimated carbon footprint calculated utilizing the Environmental Protection Agency (“*EPA*”) Equivalencies Calculator for each component of the Project, the Project results in an overall reduction of CO<sub>2</sub>E per year. *Id.*

171. The 127-acre renewable energy component of the Project is estimated to displace approximately 25,382 metric tons of CO<sub>2</sub>E per year. The concrete crushing facility is anticipated to generate 79.57 CO<sub>2</sub>E per year. The asphalt plant is

anticipated to generate approximately 52 CO<sub>2</sub>E per year. The new industrial uses are anticipated to generate between 21 to 358 CO<sub>2</sub>E per year, accounting for possible uses and respective offset resulting from the use of renewable energy to service such uses. The net result is a reduction in estimated CO<sub>2</sub>E between 25,229 CO<sub>2</sub>E to 24,892 CO<sub>2</sub>E per year. *Id.*

172. 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. Ex. 2 at II.C.

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

**1. Walkability**

173. Pedestrian walkability within the Project will not be provided due to the nature of the planned heavy and light industrial uses. Pet. at 35.

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

174. The Project is not a Transit Oriented Development ("**TOD**"). The Petition Area was intentionally chosen for its proximity to the workforce and existing industrial areas. Pet. at 35.

**3. Green Infrastructure**

175. Petitioner will, to the extent feasible and practicable, incorporate measures into the Project to promote energy conservation and sustainable design. Pet. at 36.

176. The Project incorporates 127 acres of renewable energy development that will decrease Lānaʻi's dependence on fossil fuel. *Id.*

177. Stormwater will be directed into the Miki and Pālāwai Basins where it can percolate back into the aquifer or evaporate. *Id.*

178. Road and lot layouts are oriented with the natural topography of the site to minimize mass grading requirements. *Id.*

#### **4. Mitigation of Heat Island Effect**

179. The Project is an industrial park that will implement limited or no landscaping. Large swaths of land in the surrounding areas will remain undeveloped to absorb radiation from the sun and release moisture back into the atmosphere. Pet. at 36.

#### **5. Urban Agricultural Opportunities**

180. Petitioner maintains community gardens in Lānaʻi City for use by the public to encourage urban agriculture. Pet. at 36.

181. 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. *Id.*

### **J. Economic Impacts**

#### **1. Financial Condition**

182. The Project is being entirely privately funded by Petitioner, with the exception of the renewable energy project that will be developed by the awardee of HECO's competitive bid process. No portion of the Project will utilize government funding. Pet. at 36-37.

#### **2. Economic Impacts of Proposed Use**

183. The Project will create temporary and permanent employment opportunities. Pet. at 37; 11/16/22 Tr. (Matsumoto) at 68:9 to 69:1.

184. The Project will provide space for new businesses and industrial uses to encourage diversification of the Lānaʻi economy. Pet. at 37.

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

186. Construction activities will result in short- and long-term creation of jobs and materials spending. *Id.*

187. Overall, the Project will produce an estimated \$670,000 in State taxes and \$380,000 in County taxes annually. Pet. Ex. 2 at App'x F.

**K. Conformity to Objectives and Policies of Hawai‘i State Plan**

**1. Conformity to Hawai‘i State Plan**

188. 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 Lāna‘i:

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 Hawai‘i’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 Hawai‘i, that nourishes a sense of community responsibility, of caring, and of participation in community life.

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

HRS § 226-5, Objective and policies for population

(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.

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.

HRS § 226-10, Objective and policies for the economy—potential growth and innovative activities

(a) Planning for the State's economy with regard to potential growth and innovative activities shall be directed towards achievement of the objective of development and expansion of potential growth and innovative activities that serve to increase and diversify Hawai'i's economic base.

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

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

(a) Planning for the State's physical environment shall be directed towards achievement of the objective of enhancement of Hawai'i's scenic assets, natural beauty, and multi-cultural/historical resources.

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

(a)(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)(2) Promote the proper management of Hawai‘i’s land and water resources.

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

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

(a) Planning for the State’s facility systems in general shall be directed towards achievement of the objective of water, transportation, waste disposal, and energy and telecommunication systems that support statewide social, economic, and physical objectives.

(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—solid and liquid waste

(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)(1) Encourage the adequate development of sewerage facilities that complement planned growth.

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

(b)(3) Promote research to develop more efficient and economical treatment and disposal of solid and liquid wastes.

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

(a) Planning for the State's facility systems with regard to water shall be directed towards achievement of the objective of the provision of water to adequately accommodate domestic, agricultural, commercial, industrial, recreational, and other needs within resource capacities.

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

(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 § 226-21, Objective and policies for socio-cultural advancement—education

(a) Planning for the State's socio-cultural advancement with regard to education shall be directed towards achievement of the objective of the provision of a variety of educational opportunities to enable individuals to fulfill their needs, responsibilities, and aspirations.



(b)(1) Support educational programs and activities that enhance personal development, physical fitness, recreation, and cultural pursuits of all groups.

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

(a) Planning for the State’s socio-cultural advancement with regard to culture shall be directed toward the achievement of the objective of enhancement of cultural identities, traditions, values, customs, and arts of Hawai‘i’s people.

(b)(1) Foster increased knowledge and understanding of Hawai‘i’s ethnic and cultural heritages and the history of Hawai‘i.

(b)(2) Support activities and conditions that promote cultural values, customs, and arts that enrich the lifestyles of Hawai‘i’s people and which are sensitive and responsive to family and community needs.

HRS § 226-27, Objective and policies for socio-cultural advancement—government

(b)(7) Improve the fiscal budgeting and management system of the State.

*See* Pet. at 28-41; Pet. Ex. 2 at K-1.

190. 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.

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

(f)(1) Encourage the development, demonstration, and commercialization of renewable energy sources.

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

(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 protection 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)(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.

HRS § 226-108, Sustainability

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

(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 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.

Pet. Ex. 2 at App'x K-1.

**2. Conformity to State Functional Plans**

191. 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 short-term employment during the development

period as well as long-term employment opportunities in industrial and renewable energy industries. This will provide local residents with opportunities to compete in the workforce and potentially start new businesses that create additional job opportunities. *See* Pet. Ex. 2 at III.C; *id.* at App'x F.

#### 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 127-acres of renewable energy development into the Petition Area, which is anticipated to result in a significant decrease in the carbon footprint for Lānaʻi. The inclusion of this large renewable energy project will reduce Lānaʻi's long-term dependence on fossil fuels and decrease greenhouse gas emissions. *Id.* at III.C.

#### Historic Preservation State Functional Plan

An AIS was prepared for the Petition Area. A data recovery plan was implemented prior to proposed construction activities, and research questions were developed and addressed through data yielded by laboratory testing. The AIS included research compliant with guidelines for development of a cultural impact assessment study. The Project will not have a negative impact on Hawaiian traditional and customary practices. *Id.* *See also id.* at App'x D-4.

### **L. Conformance to Hawaiʻi Coastal Zone Management Program**

192. The Petition Area is not located on the shoreline and is not within the Special Management Area. Pet. at 44.

193. 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. *Id.*

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

## **M. Conformity to County General Plan**

### **1. Conformity to County of Maui General Plan**

195. 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.

196. 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.

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

- Improve the stewardship of the natural environment.
- Evaluate development to assess potential short-term and long-term impacts on land, air, aquatic, and marine environments.
- Educate the construction and landscape industries and property owners about the use of best management practices to prevent erosion and non-point source pollution.
- Document, record, and monitor existing conditions, populations, and locations of flora and fauna communities.
- Promote an economic climate that will encourage diversification of the County's economic base and a sustainable rate of economic growth.
- Support economic decisions that create long-term benefits.
- Invest in infrastructure, facilities, and programs that foster economic diversification.
- Support and promote locally produced products and locally owned operations and businesses that benefit local communities and meet local demand.
- Expand economic sectors that increase living-wage job choices and are compatible with community values.
- Support emerging industries.
- Significantly increase the use of renewable and green technologies to promote energy efficiency and energy self-sufficiency.
- Promote the use of locally renewable energy sources, and reward energy efficiency.
- Encourage small-scale energy generation that utilizes wind, sun, water, biowaste, and other renewable sources of energy.
- Expand renewable-energy production.

- Community character, lifestyles, economies, and natural assets will be preserved by managing growth and using land in a sustainable manner.
- Improve land use management and implement a directed-growth strategy.
- Direct urban and rural growth to designated areas.
- Direct new development in and around communities with existing infrastructure and service capacity, and protect natural, scenic, shoreline, and cultural resources.
- Design all developments to be in harmony with the environment and to protect each community's sense of place.
- Ensure better connectivity and linkages between land uses.
- Promote civic engagement.
- Foster consensus building through in-depth, innovative, and accessible public participatory processes.
- Promote and ensure public participation and equal access to government among all citizens.
- Expand opportunities for all members of the public to participate in public meetings and forums.
- Develop a project-review process that mandates early and ongoing consultation in and with communities affected by planning and land use activities.
- Minimize the causes and negative effects of climate change.
- Invest in infrastructure that is not dependent on fossil fuels and utilizes renewable energy.
- Significantly increase the use of renewable and green technologies to promote energy efficiency and energy self-sufficiency.
- Expand renewable-energy production.
- Promote the retrofitting of existing buildings and new development to incorporate energy-saving design concepts and devices.
- Reduce Maui County's dependence on fossil fuels and energy imports.
- Support green building practices such as the construction of buildings that aim to minimize carbon dioxide production, produce renewable energy, and recycle water.

Pet. Ex. 2 at App'x K-2.

## **2. Conformity to the Lānaʻi Community Plan (2016)**

198. The Project conforms to the 2016 Lānaʻi Community Plan. The 2016 update to the community plan highlighted key issues to the Lānaʻi community. The Project addresses a number of these issues by consolidating industrial uses scattered around Lānaʻi and providing space for new industrial uses and economic growth.

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

- Encourage economic diversity, environmental health, infrastructure, maintenance, and hazard preparedness to improve the community’s resiliency.
- Require developments to mitigate their impacts on historic, cultural, natural, and scenic resources.
- Support diversification of Lāna‘i’s economy.
- Encourage and support lease and fee simple land ownership options for residential commercial, and industrial properties.
- Support the increased use of renewable energy sources.
- Limit new residential, commercial or industrial development to existing communities and proposed expansion areas as shown on the Lāna‘i Community Plan.
- Ensure all lands are zoned and zoning standards are consistent with Community Plan policies and land use designations.
- 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 Lāna‘i has been helpful in improving relations between the residents and major landowner.

See Pet. Ex. 2 at III.D.2.

200. The Petition Area is designated by the Community Plan as “Light Industrial” and “Heavy Industrial.” Amending the district boundary line from “Agriculture” to “Urban” is consistent with the community plan designations.

### **3. Conformity to County Zoning Designations**

201. The majority of the land underlying the Petition Area is currently zoned “Agricultural” by the Maui County Code (“*MCC*”). The remaining portion is zoned “Interim.” Pet. Ex. 2 at I.E.

202. Petitioner has represented that it will seek a change in zoning from the Maui County Council for “M-1, Light Industrial” and “M-2, Heavy Industrial” designations, which is identical to the designation called for in the Lāna‘i Community Plan.

### **N. Conformity with the Urban District Standards**

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

204. The three adjoining parcels—the airport, HECO fossil fuel facility and the 20-acre Miki Basin Industrial Condominium—are in the Urban District. Pet. Ex. 2 at III.A.

205. 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 and other related land uses. The Project will support industrial uses and will be an extension of similar uses in the adjacent Lāna‘i Airport, Miki Basin Industrial Condominium and HECO fossil fuel power plant. Pet. Ex. 2 at I.

Criterion 2. The Project is located approximately three (3) miles from Lāna‘i City. The town center contains markets, shops, restaurants, banks, medical care, the only public school, a cultural center and more. Basic public services are available. Sufficient reserve areas for foreseeable urban growth are available. The island is primarily rural, and vast portions of the formerly cultivated lands lay fallow. The Lāna‘i Community Plan contemplates housing and future developments in other areas, which will not be affected by the development of the Project.

Criterion 3. The Petition Area has satisfactory topography and drainage to accommodate development of the Project. The Petition Area is located between 1,000 and 1,250 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. *Id.* at II.A.5.

Criteria 4 and 5. 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. The Project conforms to the objectives and policies of the applicable plans.

Criterion 6. Reclassification of the Petition Area conforms to the standards set forth in HAR §§ 15-15-18(1)-(5).

Criterion 7. The Petition Area is adjacent to existing urban use. Development of the Project will be an extension and consolidation of existing urban and industrial uses, which are currently dispersed throughout the island. Furthermore, the Petition Area is within existing service areas for public infrastructure and support services.



Criterion 8. The Project is situated on gently to moderately sloping lands. The approximate range of ground slopes and elevations of the Petition Area range from 0 percent (0% grade) to 15 percent (15% grade). Most of the Petition Area has slopes of less than 4 percent (4%). There are no identified 20 percent (20%) slope areas within the Petition Area.

See Pet. Ex. 2 at 15; *id.* at Figure 6; *id.* at App'x B at 2–4; *id.* at App'x C at 1.

## 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, upon consideration of the Commission decision-making criteria under HRS §205-17 and based upon the preponderance of the evidence, the Commission finds and concludes that the reclassification of the Petition Area consisting of approximately 200 acres of land and comprised of a portion of Tax Map Key No. (2) 4-9-002:061 situated at Lānaʻi City, County of Maui, State of Hawaiʻi 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 consistent with the policies and criteria established pursuant to HRS §§ 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 Paʻakai O KaʻAina v. Land Use Comm'n, State of Hawaiʻi*, 94 Hawaiʻi 31, 7 P.3d 1068 (2000).

3. Article XI, Section 1, of the Hawaiʻi State Constitution requires the State to conserve and protect Hawaiʻi'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 200 acres of land, comprised of a portion of Tax Map Key No. (2) 4-9-002:061 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 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:

#### **OPSD & County Conditions**

**1. Preserving Water Resources.** In consultation with the Commission on Water Resource Management, Petitioner shall install water efficient fixtures and implement water efficient practices throughout the development to reduce the increased demand on the area’s freshwater resources. Alternative water sources shall be used wherever practicable.

**2. Stormwater Management.** To the satisfaction of the County Department of Public Works, Petitioner shall implement BMPs for stormwater management to minimize the impact of the project to the existing area’s hydrology while maintaining on-site filtration and preventing polluted runoff from storm events.

**3. CWRM Water Audit Program.** Petitioner shall expand its participation in the State Commission of Water Resources Management’s Water Audit Program to include the Miki Basin Industrial Park and update its water usage data.

**4. FAA Notice of Construction.** Prior to construction, Petitioner shall submit to the FAA, FAA Form 7460-1 Notice of Construction or alteration pursuant to the Code of

Federal Regulations, Title 14, Part 77.9. Construction equipment and staging area heights, including heights of temporary construction cranes, shall be included in the submittal.

5. Notification of Proximity to Lānaʻi Airport. Petitioner shall notify and disclose to all prospective lessees within the Project, as part of any conveyance document (lease, rental agreement, etc.) required for the transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from the Lānaʻi Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

6. Hazards to Aircraft Operations.

- a) Petitioner shall not provide landscape or vegetation that will create a wildlife attractant. Stormwater retention basins shall be designed, engineered, constructed, and maintained to prevent standing water from accumulating for periods longer than 48 hours after a storm event so as to avoid attracting wildlife. If the development creates a wildlife attractant that can potentially become a hazard to aircraft operations, the developer shall immediately mitigate the hazard upon notification by the HDOT-A and/or FAA.
- b) Petitioner shall conduct or require the photovoltaic (“*PV*”) developer to conduct a glint and glare analysis for the PV system. Petitioner shall also submit or require the PV developer to submit a submission to the FAA a separate FAA Form 7460-1 for the PV system. After the FAA determination of the Form 7460-1 and the glint and glare analysis, a copy shall be provided to the HDOT-A by the owner of the PV system. The owner of the PV system shall immediately mitigate glint and glare hazards and any radio frequency interference (“*RFI*”) hazards emitted by the PV system upon notification by the HDOT-A and/or FAA. In addition, the PV system and battery energy storage facility shall have sufficient firefighting/fire suppressant capability to prevent thick smoke from an uncontrolled fire creating a hazard to airport operations.
- c) During construction, the developer shall mitigate any fugitive dust from construction activities to prevent dust hazards to flight operations.
- d) Petitioner shall also work with HDOT-A regarding the widening of the portion of Miki Road (Easement 4) located within HDOT-A property. As such, design plans for the road widening shall be submitted to HDOT-A Engineering Branch for review and approval prior to construction. If additional HDOT-A land is required to accommodate the widening of Miki Road, Petitioner shall work with HDOT-A on revising the Memorandum of

Agreement, dated November 23, 2021, and the Right of Entry Agreement, dated November 23, 2021.

7. Kaumālapa‘u Highway Impact Mitigation. Petitioner shall improve the Kaumālapa‘u Highway approach on Miki Road prior to any new occupancy of the site or submit a schedule acceptable to HDOT-HWY, Maui District Engineer. Petitioner shall implement, when warranted, at no cost to the State, all recommended improvements referenced in the Traffic Impact Analysis Report dated June 3, 2021, as follows:

- a) Widen Miki Road to two lanes between the project site driveways and Kaumālapa‘u Highway with intersection geometrics capable of accommodating turning movements.
- b) Add an exclusive westbound left-turn deceleration lane on Kaumālapa‘u Highway at the intersection of Miki Road.

Should traffic issues arise at any time up to one year after the full buildout of the Miki Industrial Park, Petitioner shall commence a Traffic Impact Analysis Report and shall be responsible for mitigation of any traffic impacts and issues attributable to the Miki Basin Industrial Park identified in the Traffic Impact Analysis Report, at no cost to the State, to the satisfaction of the HDOT-HWY, Maui District Engineer.

8. Endangered Hawaiian Hoary Bat. Petitioner shall not remove any trees during the bat birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall shall not be disturbed, removed, or trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.

9. Impacts to Seabirds. For nighttime lighting that might be required, Petitioner shall install fully shielded lights to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting shall be prohibited during the seabird fledgling season from September 15 through December 15 unless such work is necessitated by an emergency and cannot be performed during the daytime.

10. Invasive Species. Petitioner shall minimize the movement of plant or soil material between worksites as to prevent the spread of pathogens, pests, or invasive plant parts that could harm native species and ecosystems. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

11. Infrastructure Deadline. Petitioner shall require that the construction of the proposed PV and battery energy storage project, which includes the primary roadways and access points, and other utility system improvements required for the PV and

battery energy storage project, within ten (10) years from the date of this Decision and Order approving the Petition.

### **Commission Conditions**

**12. Previously Unidentified Burials and Archeological/Historic Sites.** In the event 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.

**13. 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.

**14. 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.

**15. Backbone 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.

**16. 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.

**17. 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.

**18. Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OPSD, and the County, 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.

19. 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.

20. Renewable Energy. The 127 acres within the Project Area that have been planned for renewable energy will only be used for the technology of photo-voltaic and battery storage.

21. Consumer Cost Condition. If an increase to rate payers will result from the removal of the two hotels from the existing grid, Petitioner will commit to either offset the increase or not remove the hotels from the grid.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, this \_\_\_\_ day of January 2023, per motion on \_\_\_\_\_.

APPROVED AS TO FORM

LAND USE COMMISSION  
STATE OF HAWAII

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
DAN GIOVANNI  
Chairperson

Filed and effective on:

\_\_\_\_\_  
Date

Certified by:

\_\_\_\_\_  
DANIEL ORODENKER  
Executive Officer



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 Dis-  
trict Boundaries Into the Urban Land Use  
District for approximately 200 acres of  
land, consisting of a portion of Tax Map  
Key No. (2) 4-9-002:061 (por.) at Lānaʻi  
City, Island of Lānaʻi, County of Maui,  
State of Hawaiʻi.

DOCKET NO. A19-809

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

The undersigned hereby certify that on this date, a copy of the foregoing docu-  
ment was duly served on the following persons at their last known address by  
depositing a copy in the U.S. mail, postage prepaid and/or via email:

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DATED: Honolulu, Hawai'i, January 17, 2023.

CADES SCHUTTE  
A Limited Liability Law Partnership

*/s/ Molly A. Olds*

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