

Pre-decisional Document

**DOCKET NO. A19-809 Pūlama
Lānaʻi – Miki Basin**

Petition to Amend the Land Use District
Boundaries of certain lands situated in
Lānaʻi City, for an industrial park and other
uses at Miki Basin.

***STAFF
REPORT***

**ACTION MEETING
November 16th, 2022**



Daniel E. Orodener, Executive Officer

Submitted: November 14, 2022

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1. EXPLANATION OF THE PROCEEDING

The proceeding before the Land Use Commission is to consider the Petition by Lāna‘i Resorts Pūlama Lāna‘i (“Petitioner”) to reclassify approximately 200 acres of land in the Agricultural District to the Urban Land Use District at Miki Basin, Island of Lāna‘i, State of Hawai‘i.

The project known as Miki Basin Industrial Park (“Project”) proposed a 200-acre master- planned light and heavy industrial development adjacent to Lāna‘i Airport, Maui Electric powerplant and an existing 20-acre Miki Basin Industrial Condominium.

Decision-Making Criteria

From Hawai‘i Revised Statutes (“HRS”) Chapter 205, and Hawai‘i Administrative Rules (“HAR”)15-15-77 ([Part 3, Exhibit 2 of Petition, pgs.51-55](#)).

1. Does the proposed boundary amendment violate HRS Section 205-2?

HRS Section 205-2, provides, in the context of setting urban district boundaries, that the Commission shall set standards for establishing the urban district (found in HAR Section 15- 15-18). There are eight standards identified in LUC rules of which the following are applicable in this proposed reclassification:

- 2(A)** proximity to centers of trading and employment;
- 2(B)** availability of basic public and private services;
- (3)** lands with satisfactory physical locational features free from danger and adverse environmental effects;
- (4)** contiguous to existing urban areas, particularly when identified for future urban use on state or county plans;
- (5)** lands in appropriate locations for urban growth as shown on state and county plans;
- (6)** lands located adjacent to existing or approved urban development;
- (7)** shall not contribute to spot urban development; and,
- (8)** may include lands with slopes of more than 20% if suitable for urban purposes.

2. The extent to which the proposed reclassification conforms to the Hawai‘i State Plan (“HSP”), relates to applicable priority guidelines, and the adopted functional plans.

The purpose of the HSP is to serve as a guide for the long-range development of the State; identifies goals, objectives, policies, and priorities. This provides a basis for allocating limited public funds, services, land, energy, water, and other resources to improve government coordination and establish a system for planning and program integration. To be in conformance with the

HSP means “..the weighing of the overall theme, goals, objectives and policies of this chapter and a determination that an action, decision ...is consistent with the overall theme, and fulfills one or more of the goals, objectives, or policies of this chapter.” The Petitioner represents that the proposed reclassification is consistent with the goals, objectives, and policies of the HSP ([Part 3, Exhibit 2 of Petition, pgs.55-61](#)).

*Sustainability,
Climate Change,
and Sea Level Rise*

Sea Level Rise:

The Petition Area falls outside the Sea Level Rise Exposure Area. Accordingly, no mitigation measures are necessary ([Petition, pg. 28](#)).

Infrastructure Adaptations:

County requirements for low-flow fixtures and fittings. Because the Project will be used for industrial uses, no landscaping is anticipated. Additionally, the Project will be serviced with existing water and utilities to minimize infrastructure excavation and land disruption ([Petition, pg. 28](#)).

Carbon Footprint and Mitigation:

The Project is not anticipated to contribute to the emission of greenhouse gases. Instead, the Project is consistent with the State’s goals of reducing greenhouse gas emissions and reliance on fossil fuels due to the planned renewable energy production facility within the Petition Area ([Petition, pg. 28](#)).

Walkability:

Walkability within the Miki Basin Industrial Park is not anticipated ([Petition, pg. 35](#)).

Green Infrastructure:

Petitioner will, to the extent feasible and practicable, incorporate measures into the Project to promote energy conservation and sustainable design ([Petition, pg. 36](#)).

Heat Island Effect: Mitigation

Surrounding areas will remain undeveloped and help absorb radiation from the sun and release moisture into the atmosphere ([Petition, pg. 36](#)).

Urban agriculture Opportunities:

Petitioner maintains community gardens in Lāna‘i City for use by the public to encourage urban agriculture ([Petition,](#)

[pg. 36](#)).

3. *The extent to which the proposed reclassification is consistent with the State’s Coastal Zone Management Act (CZMA) – HRS Section 205A-2.*

The State’s CZMA provides 10 objectives and following from those specific policies for each objective that need to be considered and addressed, where applicable, for guiding and regulating public and private uses in the coastal zone management area. Hawai‘i defines its coastal zone to include “...all lands of the State and the area extending seaward from the shoreline to the limit of the State’s police power and management authority, including the United States territorial sea.”¹ The objectives cover the following areas: recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, and marine resources.

Petitioner has represented that the project site is inland and away from the ocean, therefore, the proposed project is not anticipated to have an adverse impact on CZMA resources ([Part 3, Exhibit 2 of Petition, pgs.80-87](#)).

4. *The extent to which the proposed reclassification conforms to applicable district standards.*

Petitioner represents that the Petition Area conforms to the LUC standards for determining urban and rural district boundaries (see above #1([Part 3, Exhibit 2 of Petition, pgs.51-55](#))).

5. *The county general plan and all community development plans.*

The Petitioner represents that the Proposed Project is consistent with the objectives and policies in the Countywide Policy Plan as well as the Lāna‘i Community Plan. The project site is designated as “Light Industrial” and “Heavy Industrial” by the Lāna‘i Community Plan. The land underlying the proposed project site are zoned “Agricultural”, with a small portion zoned “Interim” by the Maui County Zoning. See [Figure 10](#). The Applicant will seek a Change of Zoning (CIZ) request to the Maui County Council for “M-1, Light Industrial” and “M-2, Heavy Industrial” designation, similar to the designation called for in the Lāna‘i Community Plan ([Part 3, Exhibit 2 of Petition, pgs.68-80](#)).

6. *Economic ability to carry out representations and commitments.*

Petitioner represents that the owner has the ability to provide capital to cover

¹ HRS Section 205A-1

the permitting, design, and infrastructure costs for areas to be used by Pūlama Lāna‘i. Petitioner states that all financing will be provided by Lāna‘i Islands Holdings, LLC (parent company of Lāna‘i Resorts, LLC) or another entity owned by Larry Ellison. For areas to be leased for use, the leasee will be responsible for development and construction of the project. ([Part 19, Exhibit 9 pgs. 8-9](#))

7. *The impact of the proposed reclassification on the following areas of statewide concern*

Impacts Upon Resources of the Area

Agricultural Resources
(Appendix B):

The land for the proposed site is characterized by a low productivity rating of “D” for agriculture by the University of Hawai‘i (“UH”) Land Study Bureau (“LSB”) soils rating system. A small portion of the project area has the lowest LSB soils rating of “E.”

The proposed site is located on lands designated as “Unique” by the Agricultural Lands of Importance to the State of Hawai‘i (“ALISH”)

The proposed project will result in a loss of 200 acres of agricultural lands. The site amounts to only 1.1 percent of the approximately 18,000 acres of former plantation lands on Lāna‘i that remain available for agricultural use. ([Part 3, Exhibit 2, pg.x, 10-14](#))

Flora & Fauna
(Appendix C):

A botanical and faunal study was conducted for the Petition.

Just three common native plant species were found, ‘ilima (*Sida fallax*), ‘uhaloa (*Waltheria indica*) and ‘a‘ali‘i (*Dodonaea viscosa*), all of which are widespread and common throughout Hawai‘i, causing no conservation concern. It is determined that there is nothing of special botanical concern with regard to this project. No recommendations with reference to plants were deemed necessary by the Flora and Fauna Study.

No Endangered Hawaiian bats were detected in the project area during the survey. The Flora and Fauna Study recommended that any significant outdoor lighting associated with the proposed project be hooded to direct the light downward to mitigate this threat. The U.S. Fish and Wildlife Service provided recommendations more specific for avoidance and minimization measures as it relates to the

endangered Hawaiian petrel that may occur in the vicinity to pass through the project area ([Part 3, Exhibit 2, pg.xi, 18-21](#)).

*Archaeological/
Cultural Resources
(Appendix D 1-4):*

The State Historic Preservation Division (“SHPD”) accepted the AIS on August 4, 2020. The AIS recommended that a data recovery plan be developed for Sites 50-40-98-1980 and 50-40-98-1981, and that this plan be implemented prior to proposed construction activities within the parcel. SHPD concurred with this recommended mitigation.

The Applicant prepared and submitted an Archaeological Data Recovery Plan and Archaeological Data Recovery Report to SHPD.

On October 13th, 2022, the LUC received the SHPD Chapter 6E-42 Historic Preservation Review [Letter](#).

SHPD states that the Data Recovery Plan (“DRP”) meets the minimum requirements of HAR §13-278-3 and HAR §13-284-9(d) and therefore accepts the DRP. SHPD agrees with the conclusion that the archaeological data recovery work conducted for the current study adequately mitigates possible future adverse impacts to SIHP Sites 50-40-98-01980 and 50-40-98-01981. SHPD stated that no further archaeological work is needed at either site.

Ka Pa‘akai Analysis:

Attestation letters, interviews with lineal descendants of Lana‘i and a Ka Pa‘akai Analysis and Determination were conducted to provide cultural background and research for the proposed project. No native tenant kuleana (property rights) or Royal Patent Grants were issued for lands within the project area.

The Ka Pa‘akai Analysis and Determination conducted for the project determined that the availability and accessibility of cultural resources in the region will not be significantly impacted. Therefore, the project will not have any significant negative impact on traditional and customary practices ([Part 3, Exhibit 2, pg. xii, 21-24](#))

*Groundwater
Resources and Water
Service*

There are two (2) aquifers on Lāna‘i, the Leeward Aquifer system and Windward Aquifer system, each with a sustainable yield of 3.0 million gallons per day (“MGD”).

(Appendix H 1 & 2):

Together, the total sustainable yield for the island of Lāna‘i is 6.0 MGD.

The New Well Supply Alternatives report prepared by Tom Nance Water Resource Engineering concluded that a new well to supply the Miki Basin Industrial Park project can be accommodated within the Leeward Aquifer System’s 3.0 MGD sustainable yield.

The total forecasted water demand for Lāna‘i (summation of current water demand, full buildout of Miki Basin Industrial Park and other proposed or approved projects) is 1.936 MGD, which is less than the Leeward Aquifer’s 3.0 MGD sustainable yield and the island’s sustainable yield of 6.0 MGD.

Based on the foregoing, significant adverse impacts to water resources are not anticipated as a result of the proposed project ([Part 3, Exhibit 2, pg. xvii, 38-44](#)).

Water Service:

The estimated water demand for the full buildout of the Miki Basin Industrial Park is 163,125 GPD, which includes the existing and new or incremental estimated water demand.

Water Master Plan provided a list of improvements that will be required to support full buildout of the industrial park. A few of these improvements include drilling a new source or multiple sources to obtain an additional minimum pump capacity of 426 gallons per minute (“GPM”), and evaluating the condition of sections of the Pālāwai Irrigation Grid, to determine the need for pipe repair, replacement, or possible abandonment.

Three (3) potential well sites were evaluated. The study recommended development of a new well 2,000 feet northwest of existing Well No. 2 ([Part 3, Exhibit 2, pg. xvii, 38-44](#)).

Recreational Resources:

The proposed action is not expected to adversely impact existing recreational facilities or generate a need for additional facilities ([Part 3, Exhibit 2, pg. xvii, 36](#)).

Environmental Quality

Noise:

The existing noise environment in and around the project study area is dominated by noise from airport related activities, including roadway use and aircraft taxiing, taking off, and landing at the airport. The proposed project site was selected, in part, due to its proximity to similar industrial uses, as well as its distance from noise-sensitive areas.

Sound attenuating construction equipment will be used where practicable and necessary, to mitigate noise impacts caused by construction. Night-time construction activity is not anticipated for the proposed project ([Part 3, Exhibit 2, pg. xiv, 27, 28](#)).

Air Quality:

Dust control measures and Best Management Practices (“BMPs”) will be implemented during construction to minimize the effects of dust.

The State Department of Health (“DOH”) will regulate activities that have air quality impacts. .

More than half the 200-acre project is planned for renewable energy projects (127 acres), which will not generate adverse air quality impacts.

While specific uses for the 26 acres of new industrial space have not been solidified, many of the potential uses contemplated generally do not represent noxious uses, such as warehouses and testing facilities, and would not be a source of air pollution.

It is noted that before any air pollution sources can be built, an application must be filed with the DOH with detailed information on such sources. If deemed appropriate, the DOH may require the applicant to assess the air quality impact of the proposed emissions. A permit from the DOH will be required for air pollution sources ([Part 3, Exhibit 2, pg. xviii](#))

Visual Resources:

The proposed project is low-profile and is not located within a scenic view corridor. Impacts to visual and aesthetic resources will be mitigated through the project’s layout and design. As such, the proposed project is not anticipated to adversely affect scenic view corridors ([Part 3, Exhibit 2, pg. 96](#)).

Adequacy of Public Services and Facilities

Roadway Facilities (Appendix G):

The Traffic Impact Analysis Report (“TIAR”) studied two existing roadways: Kaumālapa‘u Highway and Miki Road. No significant delays or queuing were observed at the intersection during either a.m./p.m. peak hour of traffic.

TIAR recommendations are to widen Miki Road between its intersection with Kaumālapa‘u Highway to the project driveway(s) and provide an exclusive westbound left-turn deceleration lane.

The proposed project is anticipated to generate 161 trips during the AM peak hour of traffic and 163 trips during the PM peak hour of traffic.

It is assumed that at least two (2) driveway access points to the project site will be provided along Miki Road. Project Driveway 1 provides access to the light and heavy industrial areas west of Miki Road and Project Driveway 2 provides access to the light industrial area east of Miki Road ([Part 3, Exhibit 2, pg. xvii, 36-38](#)).

Civil Defense

Pūlama Lāna‘i has an Emergency Operations Plan, which integrates the company’s emergency response efforts with other stakeholders, including the State and County.

The Petition Area is at a high elevation and is outside the flood and tsunami evacuation zones. [See Figure 7](#). Currently, residents of Lāna‘i City typically shelter in place during storm warnings or emergencies due to Lāna‘i City’s high elevation.

The closest emergency shelter to the Project is located at Lāna‘i High and Elementary School. There is sufficient capacity at the school to provide shelter for employees of the Project.

Pūlama Lāna‘i will work with State and County agencies regarding any further civil defense measures necessary to serve the Project ([Petition p.22](#)).

Solid Waste Disposal:

During the construction phase of the project, the contractor will develop and implement a construction-generated waste disposal plan. Appropriate construction debris will be taken to the landfill.

By-products from the concrete crushing operation will be

recycled as much as possible.

The concrete crushing operation represents a relocation of an existing use, significant new solid waste generation is not anticipated.

Pūlama Lāna‘i sponsors rural recycling collection events for hard to recycle items including: appliances, small scrap metal and vehicle batteries and tires. The County has recycling programs for computers/electronics and household batteries ([Part 3, Exhibit 2, pg. xvii, 34, 35](#)).

Wastewater Disposal
(Appendix H-2):

There is currently no existing County or privately owned or operated wastewater treatment system in the vicinity of the proposed project.

Wastewater generated by the concrete recycling and rock crushing operation will be recycled back into production via a fully integrated system and conform to rules and regulations of the Clean Water Act.

The construction of onsite Individual Wastewater Systems (“IWS”), decentralized Wastewater Treatment Plants (“WWTP”) and collection systems will be required to support development activity.

Each development within the industrial park will be required to provide its own wastewater treatment system and associated wastewater collection system.

The proposed design average wastewater flow for full buildout of the industrial park is 80,179 GPD, with a design peak flow of 333,688 GPD.

The wastewater system for the Miki Basin Industrial Park will be designed in conformance with the requirements of the DOH and the County of Maui ([Part 3, Exhibit 2, pg. xix, 44-46](#)).

Drainage
(Appendix J):

The development of the proposed industrial parcels will increase the runoff onsite by 141.36 cubic feet per second (“cfs”).

The additional flow generated within the proposed parcels can be accommodated by the existing Miki Basin and Pālāwai Basin. Existing drainage patterns will be maintained by discharging intercepted offsite runoff to its original flow path.

Offsite runoff will be collected by interceptor ditches located on the perimeter of the site that discharge to existing drainageway and ultimately to Miki Basin. The additional runoff volume is negligible compared to the available basin capacity. Stormwater treatment will not be provided for this project since the runoff flows into an existing offsite sump with no outlet to the ocean ([Part 3, Exhibit 2, pg. xix- xx, 47-48](#)).

Educational Facilities:

Lānaʻi High and Elementary School reported the enrollment of 565 students for the 2020 to 2021 school year. It is the only school that serves educational needs on the island of Lānaʻi.

Miki Basin Industrial Park is not a population generator and, as such, adverse impacts on educational facilities are not anticipated ([Part 3, Exhibit 2, pg. xvii, 35](#)).

Police and Fire Protection:

The proposed activity is not anticipated to adversely impact public services or facilities and utilities, and will not expand the service limits for public services and infrastructure ([Part 3, Exhibit 2, pg. xvi, 32](#)).

Electrical & Telephone Services:

The Miki Basin Industrial Park will include 127 acres for renewable energy projects, including photovoltaic equipment with battery energy storage. The project is not anticipated to have an adverse impact on existing electrical, telephone, or cable television systems, nor is it expected to extend existing service area limits ([Part 3, Exhibit 2, pg. xx, 48](#)).

2. BACKGROUND INFORMATION

On [December 13, 2019](#), the Land Use Commission (“LUC”) (i) agreed to be the accepting authority pursuant to chapter 343, HRS, and (ii) determined that the LUC anticipates a finding of no significant impact on the environment (“AFONSI”).

On February 4, 2022, Petitioner filed a [Motion](#) to Issue Notice of a Finding of No Significant Impact Final EA (“FEA”).

On February 7, 2022, Petitioner filed an electronic and hard copy version of its FEA with the LUC. The 30-day period for LUC to take action was March 9, 2022.

On February 16, 2022, at the [LUC hearing](#), based on the LUC’s analysis of the significance criteria set forth in HAR §11-200.1-13 and the public comments received on the Draft EA, the LUC voted to:

- a) find that the Proposed Action will not likely have significant impacts on the environment; and
- b) determine that a finding of no significant impact (“FONSI”) is warranted for the proposed action.

On February 25th, 2022, the LUC transmitted the [determination and notice](#) of a FONSI for the Final Environmental Assessment to the Environmental Review Program (“ERP”) for publication The Environmental Notice.

On June 7th, 2022, the Petitioner filed the [Petition](#) for Land Use District Boundary Amendment.

On June 21st, 2022 The Land Use Commission sent a [letter](#) Deeming the Petition Complete and Accepted for Processing.

On July 20th, 2022, Petitioner filed [Updated map for the Miki Basin DBA](#)
Changes in this map include:

- Update to TMK (2) 4-9-002:119
 - Recently issued TMK for subdivided parcel (20 acres)
 - Original map sent to LUC did not include the TMK
- Update the SLUD for TMK (2) 4-9-002:119
 - It was identified as Agriculture in error
 - Update includes the correct SLUD = Urban

On August 18th, 2022, the LUC received the Office of Planning and Sustainable Development (“OPSD”) [position statement](#).

On August 30th, 2022, the LUC received the County of Maui’s position statement, and on September 2, 2022, the LUC received a [revised position statement](#) form the County of Maui.

On October 3, 2022, the LUC received OPSD’s [Witness and Exhibits Lists](#).

On October 13th, 2022, the LUC received The Department of Land and Natural Resources Chapter [6E-42 Historic Preservation Review](#).

On October 19th, 2022, OPSD filed [Testimony in Support](#) with Conditions and Exhibits 2-8.

On October 21st, 2022, the LUC received the Petitioners [Notice of Hearing](#).

On October 24th, 2022, the Petitioner filed their [Exhibit List](#), [Witness List](#), and [Exhibits 13-19](#).

On October 31st, 2022, the County of Maui filed their [Witness List](#) and [Position](#)

Statement.

On November 3rd, 2022, the County of Maui filed their corrected Version of Recipient List.

On November 4th, 2022, the Land Use Commission Mailed/Emailed agenda for Nov 16 mtg to Parties, Statewide and Maui list.

On November 7th, 2022, the Petitioner Filed Affidavit and Mailing of Notice of Hearing.

3. SUMMARY OF OPSD POSITION STATEMENT

The Office of Planning and Sustainable Development supports the reclassification of the Petition area, subject to conditions. OPSD identified certain issues or questions and describes the positions of State departments impacted by the proposed boundary amendment.

OPSD’s position is based on the representations of the Petitioner and documents filed in these proceedings, coordination with the Petitioner and affected government agencies, and the statutes and regulations applicable to these proceedings.

OPSD asks for a timetable for development of the backbone infrastructure for the entire project (including the new light and heavy industrial uses). OPSD also asks for additional information to provide assurances that the development will occur. For example, whether Public Utilities Commission (“PUC”) approval for the solar energy facility has been given.

OPSD offers 11 conditions:

1. **Preserving Water Resources.** The 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. The Petitioner shall adopt landscape irrigation conservation best management practices (“BMPs”) endorsed by the Landscape Industry Council of Hawai‘i .
2. **Stormwater Management.** The Petitioner shall implement BMP’s 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. **State Commission on Water Resource Management (“CWRM”) Water Audit Program.** Petitioner shall expand its participation in CWRM’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, the 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 Lāna‘i Airport.** The 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 Lāna‘i Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.
6. **Hazards to Aircraft Operations.**
 - a. The 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 a glint and glare analysis for the solar energy photovoltaic (“PV”) system. Petitioner shall also submit to the FAA a separate FAA Form 7460-1 for the solar energy 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 solar energy 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 solar energy PV system upon notification by the HDOT-A and/or FAA. In addition, the PV system battery 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.
7. **Kaumālapa‘u Highway Impact Mitigation.** The Petitioner shall improve the Kaumālapa‘u Highway approach on Miki Road prior to any occupancy of the site or submit a schedule acceptable to HDOT-HWY, Maui District Engineer. Petitioner shall implement, at no cost to the State, all recommended improvement 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. c. Add an exclusive left-turn lane in the northbound direction. Should traffic issues arise at any time up to one year after all lots sold, the Petitioner shall be responsible for mitigation of any traffic impacts and issues attributable to the industrial park, at no cost to the State, to the satisfaction of the HDOT-HWY, Maui District Engineer.

8. **Endangered Hawaiian Hoary Bat.** The 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 fledging season from September 15 through December 15.
10. **Invasive Species.** The Petitioner shall minimize the movement of plant or soil material between worksites 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.** The Petitioner shall complete construction of the proposed solar energy project, which includes the primary roadways and access points, and other utility system improvements required for the solar energy project, within ten (10) years from the date of this Decision and Order approving the Petition.

4. SUMMARY OF COUNTY POSITION STATEMENT

The County of Maui’s Department of Planning supports the reclassification of the Petition area.

The Department concurs with the comments from the OPSD on matters regarding this Petition and Project on the need for a detailed development timetable as well as additional information regarding the solar energy facility development assurances.

5. STAFF RECOMMENDATION

Water

The island of Lāna‘i is experiencing lower levels of rainfall causing drier conditions across the island. Water availability, capacity, and sustainable yield continues to be a

critical concern in Lāna‘i.

Specific points of concern:

Location of wells

Most of the currently used and pumped wells are in the Leeward aquifer, whereas there is only one (1) well that is being used and pumped in the Windward aquifer.

Sustainable Yield

Well compartment capacity in relationship to the overall development of the island.

Reduced aquifer recharge results in long-term reduction in sustainable yield reduction.

Non- potable water

Decreased rainfall and recharge estimates, negatively impact sustainable yield of the Leeward and Windward drinking water aquifers on the island. The LUC Staff emphasizes [CWRMs comment](#), and recommends finding alternative sources of water for non-potable industrial uses for the project.

Water Recycling

Use of reclaimed water, as well as treating and using water after use within the industrial park should be explored.

During the Final Environmental Assessment (“FEA”) hearing the Petitioner agreed and represented to limiting the water use to the projections developed by Mr. Kawahara and presented in his report ([FEA: Water Master Plan Appendix H-1](#)). **Since it is not clear what other industrial uses will be tenants in the Proposed Project, the Petitioner committed to having occupants with low water use. The water use for the redistricted land will not exceed the estimated water demands calculated in the Final Environmental Assessment ([YouTube:01:50:15](#)).**

Photovoltaic Infrastructure/ Project

*Technology Choice,
Acreage, and Time
Frame*

During the FEA hearing, the Petitioner stated that 127 acres of land will be set aside for a photovoltaic power system.

Depending on the infrastructure chosen, 50 acres of the 127 acres set aside would either not be used or be used for additional Photovoltaic resources.

Petitioner should be asked for an update on the choice of technology, total acreage to be used for solar power, and if there is change in timeframe (due to need for renewable energy across the State).

PUC Approval

During the FEA hearings it was represented that Maui Electric Company (“MECO”) was in front of the PUC regarding the solar and battery energy project.

Petitioners should be asked where the standing of this project is regarding PUC approval.

In recent news: Pūlama Lāna‘i plans to remove their two hotels from the existing grid and develop a microgrid and other renewable projects, this should be discussed with its relevance to this project and the acreage designated for the photovoltaic system.

Long-term Development

Freed Urban Lands

If the asphalt and concrete plants are moved, it will result in vacant urban lands. The Petitioner indicated during the FEA hearing that there were no plans for the current urban land being used in the Miki 20 and near Mānele.

Petitioners should be asked if there is an update regarding this representation.