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EMMANUEL LUTHERAN CHURCH OF MAUI

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII  
2007 NOV -9 A 7:01

In the Matter of the Petition of

DOCKET NO. A07-773

EMMANUEL LUTHERAN CHURCH OF  
MAUI

To Amend the Land Use District Boundary  
Of Certain Lands Situated at Wailuku,  
Island of Maui, State of Hawaii, Consisting  
Of 25.263 Acres from the Agriculture  
District to the Urban District, Tax Map  
Key No. 3-5-002:011.

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

**EXHIBIT "A"**

**CERTIFICATE OF SERVICE**

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OF THE STATE OF HAWAII

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

EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawaii non-profit corporation ("Petitioner"), filed a Petition for District Boundary Amendment on March 19, 2007, pursuant to chapter 205 , Hawaii Revised Statutes ("HRS"), and Title 15, Subtitle 3, Chapter 15 of the Hawaii Administrative Rules ("HAR"), to amend the land use district boundary to reclassify approximately 25.263 acres of land from the State Land Use Agricultural District to the State Land Use Urban District, situated at Wailuku, Maui, Hawaii, identified by Tax Map Key No. 3-5-002:011 ("Petition Area") for the development of a new campus for Emmanuel Lutheran Church and School ("Project").

The Land Use Commission of the State of Hawaii ("Commission"), having examined the testimony, evidence and arguments of counsel presented during the hearing hereby makes the following findings of fact, conclusions of law, and decision and order:

## **FINDINGS OF FACT**

### **PROCEDURAL MATTERS**

1. Petitioner is a Hawaii non-profit corporation, with its business and mailing address at 520 West One Street, Kahului, Maui, Hawaii 96732. The President is Richard H. Sudheimer.
2. On March 19, 2007, Petitioner filed a Petition for District Boundary Amendment ("Petition").
3. On March 20, 2007, Petitioner filed the Notarized Affidavit of Mailing and Certificate of Service upon the State of Hawaii Office of Planning ("OP"), Maui Planning Department, Maui Planning Commission, and the Office of the Corporation Counsel (collectively, "County").
4. By letter dated April 9, 2007, Land Use Commission Executive Officer Tony Ching ("Executive Officer") requested additional information from Petitioner in order to deem the Petition a proper filing pursuant to HAR § 15-15-50(f).
5. By letter dated May 18, 2007, Petitioner provided the Executive Officer with the requested additional information concerning the Petition.
6. By letter dated May 24, 2007, the Executive Officer deemed the Petition properly filed as of May 18, 2007, and accepted the Petition for processing.
7. On June 5, 2007, Petitioner filed a Supplemental Certificate of Service regarding service of the Petition upon Bryan C. Yee, Deputy Attorney General for OP.
8. On June 13, 2007, the County filed its Position of the Maui Planning Department, List of Witnesses, and List of Exhibits.

9. On June 20, 2007, the Executive Officer conducted a prehearing conference at Room 405, 235 S. Beretania Street, Honolulu, Hawaii to identify the parties and potential parties, their respective positions, to identify and clarify issues, to arrange for the timely submission of witness lists, and exhibits, and to set schedules. In attendance were representatives of Petitioner, OP, and County. Representatives of Petitioner and County attended the prehearing conference via telephone conference.

10. On June 25, 2007, Petitioner filed an Affidavit of Mailing of Notice of Hearing, Exhibits "A" - "C", and Certificate of Service.

11. On June 29, 2007, OP filed its Statement of Position of the Office of Planning in Support of the Petition and Exhibit 1.

12. On July 11, 2007, the County filed its Testimony of the Maui Planning Department, Exhibit 2-4, Amended Witness List, and Amended Exhibit List.

13. On July 13, 2007, OP filed its List of Exhibits and List of Witnesses.

14. On July 13, 2007, OP filed its Testimony of the Office of Planning in Support of the Petition and Exhibits 1 - 18.

15. On July 16, 2007, Petitioner filed its List of Exhibits and List of Witnesses.

16. On July 20, 2007, Petitioner filed its Submission of Original Written Testimony of Phillip J. Rowell and Original Written Testimony of Lisa Rotunno-Hazuka.

17. On July 20, 2007, OP filed its Objections to Pre-Hearing Conference Order.

18. On July 20, 2007, Petitioner filed an Affidavit of Publication regarding Maui Publishing Co., Ltd., MidWeek Printing, Inc., West Hawaii Today, and Hawaii Tribune Herald.

19. On July 24, 2007, OP filed its First Amended List of Exhibits, and Exhibits 3a, 5a, and 19.

20. On July 25, 2007, a Prehearing Order detailing the outcome of the prehearing conference held on June 20, 2007, was filed.

21. On July 26-27, 2007, the Commission considered the Petition at its meeting in Makena, Maui, Hawaii. Entering appearances were Blaine J. Kobayashi, Esq., and Richard Sudheimer on behalf of Petitioner; Jeffery Dack on behalf of the County Department of Planning, and Jane E. Lovell, Deputy Corporation Counsel, for the County; Abe Mitsuda and Koren Ishibashi on behalf of OP, and Bryan C. Yee, Deputy Attorney General for OP.

22. The Commission resumed hearings on the Petition on September 21, 2007, in Makena, Maui, Hawaii.

23. On September 21, 2007, the Commission closed the evidentiary portion of the hearing for the subject docket in Makena, Maui, Hawaii.

#### **DESCRIPTION OF THE PETITION AREA**

24. The Petition Area is located in Wailuku, Maui, Hawaii. The Petition Area consists of approximately 25.263 acres, and is identified by Tax Map Key No. (2) 3-5-002:011. See Petitioner's Exhibit 16.

25. Petitioner is the fee owner of the Petition Area, and therefore has standing to file the Petition. See HRS § 205-4(a), HAR § 15-15-46(3), and Petitioner's Exhibit 7.

26. The Petition Area abuts Honoapiilani Highway to the west and the eastern boundary of the Petition Area will abut the new Waiale Road Extension. To the north and south of the Petition Area are vacant lots. Access to the Project will be provided via a new driveway along the west side of Waiale Road, midway between Kuikahi Drive and the north boundary of the Waikapu Gardens affordable housing subdivision. See Petitioner's Exhibit 16.

27. The Petition Area is located midway between the towns of Wailuku and Waikapu. Wailuku, which is the County of Maui's seat of government, contains a variety of single-family residential, multi-family residential, commercial, and recreational uses. The proposed development of the Petition Area will be compatible with the existing and future land uses in the Wailuku and Kahului areas, as evidenced by nearby projects such as the Spencer Homes Affordable Housing Residential Subdivision, the Waiolani residential subdivisions, the future Maui Lani Mixed-Use Subdivision, and the Consolidated Baseyards Light Industrial Subdivision. See Petitioner's Exhibit 16.

28. The Petition Area is located in the Wailuku-Kahului area, which are the centers of commerce and government for the island of Maui. Numerous professional and business services are located within Kahului and Wailuku. The main federal, state, and county offices are all centrally located in Wailuku, with additional governmental offices located in Kahului. See Petitioner's Exhibit 16.

29. The Petition Area slopes in a west to east direction with an average slope of 6.2 percent. See Petitioner's Exhibit 17.

30. As indicated by the Flood Insurance Rate Map for the County of Maui, the Petition Area is located within Zone C, which is an area of minimal flooding according to the Federal Emergency Management Agency. See Petitioner's Exhibits 6 and 16.

31. The Petition Area has satisfactory topography for the proposed use, and is free from the danger of flood, tsunami and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for the Project. See Petitioner's Exhibit 16.

32. The soils underlying the Petition Area are of the Pulehu-Ewa-Jaucas soil association. The soils within the Petition Area are classified as Iao clay (IaA and IaB), which is characterized as having slow runoff. See Petitioners Exhibits 6 and 16.

33. According to the State of Hawaii Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii ("ALISH"), the Petition Area falls within the "Prime" agriculture lands category. See Petitioner's Exhibits 6 and 16.

34. The University of Hawaii Land Study Bureau's Detailed Classification has classified the productivity of the land underlying the Petition Area as "A". This classification system rates lands on a scale of "A" to "E," reflecting land productivity characteristics. Lands designated "A" are considered to be of highest productivity, with "E" rated lands ranked the lowest. See Petitioner's Exhibits 6 and 16.

#### **PROPOSAL FOR RECLASSIFICATION**

35. Petitioner proposes to develop the Petition Area into a new campus for a church and school. Approximately 52,000 square feet of structures are planned for the new campus, which will include a pre-school building, eighteen (18) classrooms for grades K through 8, a multi-purpose complex, and other buildings accessory to school functions. See Petitioner's Exhibit 15.

36. At full buildout, the new school will be able to accommodate approximately 450 students. The Project will also include a 450-seat sanctuary for religious services and school-related functions. See Petitioner's Exhibit 15.

37. The new campus involves a low-density village concept and will include substantial areas of green, open space. See Petitioner's Exhibit 15.

#### **DEVELOPMENT TIMETABLE**

38. The Project is anticipated to proceed in three (3) phases. Phase 1 of the Project will include construction of necessary infrastructure, a pre-school building, 12 regular classrooms, and a multi-purpose complex for art, music, and athletics. Phase 1A will include an administrative building and another building to accommodate a library, computer lab, and science room. Phase 2 of the Project will include the 450-seat sanctuary and additional regular classrooms. Each phase of the Project will take approximately 13 months to complete.

#### **PETITIONER'S FINANCIAL CAPABILITY**

39. The estimated cost of the Project is \$20,000,000.00. Phase 1 of the Project is estimated to cost approximately \$10,000,000, Phase 1A of the Project is estimated to cost approximately \$5,000,000, and Phase 2 of the Project is estimated to cost approximately \$5,000,000. See Petitioner's Exhibit 15, and Testimony of Richard Sudheimer, Transcript of Proceedings on July 26, 2007, at page 61, lines 15-22.

40. Petitioner's financial balance sheet as of December 31, 2006, reflects total assets of \$4,676,518. See Petitioner's Exhibit 8.

41. Petitioner intends to finance the Project in a number of ways. CFR Associates has been hired by Petitioner to assist with securing money from education-oriented foundations. Petitioner estimates that it will be able to secure approximately \$1,500,000 -



2,000,000 from these foundations which will be used to cover the construction costs for the Project's early-development facilities (pre-school through second grade). See Petitioner's Exhibit 15, and Testimony of Richard Sudheimer, Transcript of Proceedings on July 26, 2007, at page 40, lines 4-13.

42. American Savings Bank and Petitioner's Church Extension Fund of the California, Nevada, Hawaii District have expressed favorable support for construction loan financing for the Project for \$4,000,000 - \$5,000,000. See Petitioner's Exhibit 15, and Testimony of Richard Sudheimer, Transcript of Proceedings on July 26, 2007, at page 41, lines 6-10.

43. In September of 2006, the Voters Assembly for Petitioner, which is Petitioner's governing body, approved a resolution to seek a legislative bill to request up to \$20,000,000 in State of Hawaii Private School Bonds. Although the legislative bill was not submitted due to a miscommunication with the area's State senator and representative, Petitioner will pursue passage of this legislative bill in the upcoming legislative session. See Petitioner's Exhibit 15, and Testimony of Richard Sudheimer, Transcript of Proceedings on July 26, 2007, at page 41, lines 18-25, and page 42, lines 1-8.

44. Petitioner has also commenced a capital campaign fund-raiser. The plan is for a three-year pledge paid monthly by the church and school families. The fund-raiser will also include grant requests for education-oriented foundations. Petitioner estimates the following amount of funds for the first three years of the capital campaign fund-raiser: \$1,500,000 from education-oriented foundations, \$1,500,000 from church families, school families, and business and non-members. See Petitioner's Exhibit 15.

45. Petitioner will also prepare a business solicitation that will be sent to appropriate Hawaii businesses. See Petitioner's Exhibit 15.

46. Petitioner will also solicit contractors for purposes of securing charitable deductions for construction materials for the Project. See Petitioner's Exhibit 15.

47. Based on Petitioner's ownership of the Property, existing assets, anticipated funds derived through various fund-raising activities, and favorable support for construction loan financing from Church Extension Fund and American Savings Bank, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

#### **STATE AND COUNTY PLANS AND PROGRAMS**

48. The Petition Area is currently designated in the State Land Use Agricultural District. See Petitioner's Exhibits 6 and 16.

49. Reclassification of the Petition Area from the Agricultural to the Urban District will allow for the development of a new campus for a church and school. The Project will be situated in close proximity to existing and planned urban land uses. See Petitioner's Exhibits 6 and 16.

50. The Project is consistent with the objectives and policies of the General Plan of the County of Maui 1990 Update. In particular, the proposed reclassification and development will be consistent with Theme 2 of the General Plan which is a direct and managed growth plan. This is evidenced by the Petition Area's location in close proximity to existing urbanized lands and consistency with the "Public/Quasi-Public" designation by the Wailuku-Kahului Community Plan. See Petitioner's Exhibits 6 and 16.

51. The proposed reclassification is also consistent with the following objectives and policies of the General Plan:

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

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

- Provide and maintain a range of land use districts sufficient to meet the social, physical, environmental and economic needs of the community.

- To preserve and protect the County's unique and fragile environmental resources.

- To preserve scenic vistas and natural features.

- To see that all developments are well designed and are in harmony with their surroundings.

- Require that appropriate principles of urban design be observed in the planning of all new developments.

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

- Establish urban design guidelines and standards which will reflect the unique traditional architectural values of each community plan area.

- To provide Maui residents with continually improving quality educational opportunities which can help them better understand themselves and their surroundings and help them realize their ambitions.

- Seek continual improvement in the quality of education at all levels for all residents. See Petitioner's Exhibits 6 and 16.

52. The Project will support the local economy as construction-related employment opportunities would be generated during the build-out of the Project. See Petitioner's Exhibits 6 and 16.

53. The Wailuku-Kahului Community Plan, one of nine (9) community plans for Maui County, is mandated by the Revised Charter of the County of Maui and the General Plan. Each region's growth and development is guided by a community plan, which contains goals, objectives, and policies drafted in accordance with the General Plan. See Petitioner's Exhibits 6 and 16.

54. The purpose of the community plan is to provide a relatively detailed agenda for implementing the objectives and policies of the General Plan. Included within the community plans are the desired sequence, patterns, and characteristics of future developments for the particular region, as well as statements of standards and principles with respect to development and sequencing of future developments. See Petitioner's Exhibits 6 and 16.

55. The Wailuku-Kahului Community Plan's current designation of the Petition Area is "Public/Quasi-Public" which would be consistent with, and allow for, the proposed development. See Petitioner's Exhibits 6 and 16.

56. The Petition Area is zoned Agricultural by Maui County zoning. See Petitioner's Exhibits 6 and 16.

57. In order to allow Petitioner to develop the Petition Area into the proposed new campus and church, a change in zoning is required. The change in zoning application has been filed with the Maui Planning Department for processing with the Maui Planning Commission and referral to the County Council. The request is being made to change the zoning from "Agricultural" to "Public/Quasi-Public" which would allow for the proposed development. See Petitioner's Exhibits 6 and 16.

58. The Petition Area is not within the County's Special Management Area. See Petitioner's Exhibits 6 and 16.

59. The Maui Planning Department supports the reclassification of the Petition Area from the Agricultural District to the Urban District since it would be consistent with the Wailuku-Kahului Community Plan's "Public/Quasi-Public" designation of the Petition Area, and reclassification would bring consistency between the State land use designation and Wailuku-Kahului Community Plan's designation of the Petition Area. See County's Exhibit 1, and Testimony of Jeffrey Dack, Transcript of Proceedings on July 27, 2007, page 9, lines 16-20.

60. OP acknowledges that, in areas of growing residential development, community building uses such as Petitioner's proposed church and school are critical to support the social and educational needs of the public. See OP's Exhibit 1, page 14.

#### **NEED FOR THE PROPOSED DEVELOPMENT**

61. Petitioner's current campus in Kahului is operating on a constrained campus of 1.3 acres, which has resulted in a limited student enrollment (38 students in pre-K and 175 students in grades K through 8). Expansion of the current campus is necessary to provide additional educational space for students, and to accommodate the needs of a projected growing student body for the school and the church's congregation. See Petitioner's Exhibits 6 and 15.

## **ECONOMIC IMPACTS**

62. The Project will support the island's economy by providing construction and construction-related employment during the build-out of the Project. Over the long term, the Project will have a direct and beneficial impact as teaching and campus-related jobs will be created which will further support the local economy. See Petitioner's Exhibits 15 and 16.

## **SOCIO-ECONOMIC IMPACTS**

63. The Project will benefit the social welfare of the community by providing expanded opportunities for a Christian-based education, and allow Petitioner to increase its congregation to meet the religious needs of a rising population. See Petitioner's Exhibits 6, 15, and 16.

## **IMPACTS UPON RESOURCES IN THE AREA**

### **Agricultural Resources**

64. The Petition Area is currently vacant and fallow and has been used in the past for sugarcane and pineapple cultivation, which ceased in 2003. A small portion of the Petition Area was used by short term, small scale tenant farmers to grow bananas and other fruits, which ceased in mid-2005. See Petitioner's Exhibit 16.

65. The Petition Area represents approximately one hundredth of one percent of the estimated 244,726 acres of State land use designated agricultural lands on Maui. Due to the parceling and sale of lands owned by Wailuku Agribusiness Company, Inc. in the general area, the viability of large scale agricultural operations has been substantially reduced. Based on the close proximity of the Petition Area to existing and planned urban land uses, the extremely low percentage impact on available agricultural land on Maui, and the existing "Public/Quasi-

Public" Community Plan designation of the Petition Area, reclassification of the Petition Area will not result in substantial impacts to agricultural resources. See Petitioner's Exhibits 6 and 16.

#### **Flora and Fauna/Biological Resources**

66. The Petition Area is in an extensively disturbed area of long-term agricultural cultivation. Onsite flora include weeds and scrub grasses, as well as banana trees. Onsite fauna include rats, mongoose, francolins, and mynah. See Petitioner's Exhibits 6 and 16.

67. As no biological survey of the Petition Area was conducted, the State Office of Environmental Quality Control ("OEQC") has recommended that Petitioner obtain documentation from a qualified expert confirming the absence of rare or endangered species in the Petition Area. See OP Exhibit 1, page 8.

68. In LUC Docket No. A99-728, an endangered plant (*Abutilon Menziesii* or *Ko'olua'ula*) was found in a former pineapple field. Accordingly, although the Petition Area was a former pineapple field, OP agrees with OEQC and recommends that Petitioner obtain documentation from a qualified expert confirming the absence of rare or endangered species in the Petition Area. See Testimony of Abe Mitsuda, Transcript of Proceedings on September 21, 2007, at page 56, lines 9-19.

69. Maps of the Project region indicate the presence of a non-perennial stream, *Kaiapaoka'ilio*, running north of the Petition Area. Although the stream lies no less than twenty feet north of the Petition Area, there is the possibility of runoff and resident or user intrusion from the Petition Area. OP has recommended that Petitioner obtain documentation from a qualified expert confirming that there are no biological resources within the non-perennial stream which will be impacted by the proposed project. See OP Exhibit 1, page 8; and

Testimony of Abe Mitsuda, Transcript of Proceedings on September 21, 2007, at page 55, lines 21-25, page 56, lines 1-8, and page 58, lines 11-20.

70. The non-perennial stream has been used in the past for agricultural purposes, and portions of it have been cemented. Petitioner's review of existing databases did not identify the non-perennial stream as having any notable or identified biological resources. Field inspections of the non-perennial stream revealed that the stream was dry and bereft of anything other than scrub grass. See Testimony of Matthew Slepín, Transcript of Proceedings on July 26, 2007, at page 75, lines 10-18, page 82, lines 12-17, and page 83, lines 2-18.

71. Based upon the history of prior long-term agricultural cultivation of the Petition Area, researching documents produced for properties in the vicinity of the Petition Area, and research on data concerning critical habitats for bird and plant species, there are no known habitats of rare, endangered or threatened species of flora or fauna on the Petition Area. Id.; Testimony of Matthew Slepín, Transcript of Proceedings on July 26, 2007, page 74, lines 19-25, and page 75, lines 1-2.

#### **Archaeological/Historical/Cultural Resources**

72. An archaeological field report of the Petition Area was conducted by Archaeological Services Hawaii, LLC. The archaeological field report included a pedestrian survey with subsurface backhoe testing that was carried out from May 5-7, 2004. All accepted standard archaeological procedures and practices were followed during the course of the field work on the Petition Area. See Petitioner's Exhibits 6 and 19.

73. A total of twenty-five (25) backhoe trenches were completed. No subsurface cultural remains were recovered in any of the trenches within the Petition Area,



which has been heavily impacted by compounded surface disturbances from sugar cane, sand mining, and farming tenements. See Petitioner's Exhibits 6 and 19.

74. One surface site, the Kama Ditch, was identified. The Kama Ditch is a ditch from the historic sugar cane era period and consists of a concrete ditch that runs in a north-south direction. See Petitioner's Exhibits 6 and 19.

75. Although no further archaeological testing is warranted, based on the potential for the presence of subsurface sites, archaeological monitoring was recommended for all construction-related activities. See Petitioner's Exhibits 6 and 19.

76. Chris Hart & Partners, Inc. conducted a cultural impact analysis of the Petition Area. The analysis included consideration of the history of the Petition Area which had been in heavy industrial agricultural operations for the past century, research on nearby parcels in the vicinity of the Petition Area, and review of informant interviews and archival research conducted for several projects in the vicinity of the Petition Area, specifically, the Waiolani Mauka Subdivision and the Spencer Homes project. See Petitioner's Exhibit 6; Testimony of Matthew Slepín, Transcript of Proceedings on July 26, 2007, at page 73, lines 10-25, and page 74, lines 1-9.

77. Based on the results of the analysis, the Project will not have any adverse effects on native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawaii State Constitution.

#### **Recreational and Scenic Resources**

78. There are several parks and numerous recreational opportunities within the immediate vicinity of the Petition Area. Shoreline and boating activities are provided at the

Kahului Harbor and adjoining beach parks, and individual and organized athletic activities at various County parks. See Petitioner's Exhibits 6 and 16.

79. The War Memorial Athletic Complex, located along Kaahumanu Avenue, includes a gymnasium, swimming pool, tennis courts, baseball fields, and football and soccer fields. The Wailuku-Kahului area also includes the Kahului Community Center, Kanaha Beach Park, and Keopuolani Park (an approximately 140-acre regional park complete with soccer fields, baseball fields, playground equipment, pedestrian and bike ways, and an outdoor amphitheatre). See Petitioner's Exhibits 6 and 16.

80. The Project will not significantly impact any of the foregoing existing recreational facilities. See Petitioner's Exhibits 6 and 16.

81. The scenic resources of the Petition Area are characterized by views to Waikapu Valley and the West Maui Mountains, and agricultural fields and Mount Haleakala to the east. See Petitioner's Exhibits 6 and 16.

82. The Petition Area is not part of a scenic corridor and will not impact views from inland vantage points. See Petitioner's Exhibits 6 and 16.

## **ENVIRONMENTAL QUALITY**

### **Noise**

83. Traffic noise from Honoapiilani Highway is the primary source of noise in the vicinity of the Petition Area. While noise levels will be impacted to a certain extent during the course of development such as exhaust emissions from on-site construction equipment, construction vehicle traffic, and construction noise, the impact will be short-term. In addition, best management practices that include performing construction-related activities in strict

compliance with all applicable noise regulations will mitigate any temporary impacts. See Petitioner's Exhibits 6 and 16.

#### **Air Quality**

84. The air quality in the Petition Area is good. While air quality will be impacted to a certain extent during the course of development such as exhaust emissions from on-site construction equipment, construction vehicle traffic, and construction noise, the impact will be short-term. In addition, best management practices that include performing construction-related activities in strict compliance with all applicable air regulations will mitigate any temporary impacts. Additionally, the region's constant exposure to winds quickly disperse any concentrations of pollutants. See Petitioner's Exhibits 6 and 16.

#### **ADEQUACY OF PUBLIC SERVICE AND FACILITIES**

##### **Schools**

85. The State Department of Education's public school system serves the Kahului area, which includes Lihikai and Kahului Schools (Grades K to 5), Maui Waena Intermediate School (Grades 6 to 8), and Maui High School (Grades 9 to 12). Schools in the Wailuku region include Wailuku Elementary School (Grades K to 5), Iao Intermediate School (Grades 6 to 8), and Baldwin High School (Grades 9 to 12). See Petitioner's Exhibits 6 and 16.

86. At full build-out, the Project will be able to accommodate approximately 450 students in grades pre-K through 8. See Petitioner's Exhibit 15.

##### **Solid Waste Disposal**

87. The Project's solid waste will be collected by the County's Solid Waste Division and hauled to the Central Maui Landfill for disposal, which has adequate capacity to accommodate the Project. See Petitioner's Exhibits 6 and 16.

### **Wastewater**

88. The County's existing wastewater system services the Waikapu and Wailuku areas. The Wailuku-Kahului Wastewater Reclamation Facility ("WKWRF") is located on Amala Place near Kanaha Beach in Kahului. The facility has a capacity of 7.9 million gallons per day ("gpd"), and has the necessary capacity to meet the sewage demands of the Project, which is anticipated to generate a wastewater flow of approximately 10,050 gpd. See Petitioner's Exhibits 6 and 17, and Testimony of Stacy Otomo, Transcript of Proceedings on July 26, 2007, at page 123, lines 10-21.

89. Wastewater from the Project will be collected by an onsite gravity sewer system, that will connect to the existing 12-inch sewerline traversing through the southeastern corner of the Petition Area. The existing sewerage system on Lower Main Street was recently upgraded by the installation of a new 15-inch sewerline. This new sewerline, which will be used to convey the Project's wastewater to WKWRF has the capacity to accommodate the wastewater generated by the Project. See Petitioner's Exhibits 6 and 17.

### **Drainage**

90. The total present onsite runoff from the Petition Area for a 50 year - 1 hour storm is estimated to be 30.60 cubic feet per second ("cfs"). The estimated post-development runoff from the Petition Area for a 50 year - 1 hour storm is expected to be approximately 45.15cfs, which is an increase of 14.55 cfs over pre-development conditions. See Petitioner's Exhibits 6 and 17.

91. In order to accommodate the increase in post-development runoff, Petitioner will construct grated catch basins to initially collect onsite runoff. This runoff will then be conveyed to onsite retention basins which will be located within the Project's proposed

playfields and landscaped areas. Onsite runoff from the makai half of Honoapiilani Highway will be intercepted by the Project's drainage system and conveyed to the onsite retention basins. See Petitioner's Exhibits 6 and 17.

The proposed development will not have an adverse effect on adjoining or downstream properties. See Petitioner's Exhibits 6 and 17.

### **Water Service**

92. The Petition Area is served by the Central Maui Water System, a distribution network administered by the County of Maui Department of Water Supply ("DWS"), which draws water from the Iao Aquifer, the Waihee Aquifer, the Iao Tunnel, and the Iao-Waikapu Ditch, and then distributes these potable supplies across the Central Maui region. See OP's Exhibit 1.

93. The Iao Aquifer, which is the primary source for the Central Maui Water System, has a sustainable yield of 20 million gpd. In July 2003, the Commission on Water Resource Management ("CWRM") designated the Iao Aquifer as a Groundwater Management Area ("GMA") due to the County's pumpage in excess of 18 million gpd. See Petitioner's Exhibits 6 and 17.

94. While the domestic water demand for the Project is anticipated to be approximately 42,947 gpd as determined by the land area and 29,400 gpd as determined by the total number of anticipated students, the realistic domestic water demand for the Project is 29,400 gpd since Wailuku Agribusiness will be providing the irrigation source for the Project, thereby reducing the Project's domestic water demand. See Petitioner's Exhibits 6 and 17.

95. DWS continues to issue water meters in Central Maui to those ready to receive service. Even assuming that Petitioner is unable to acquire irrigation water from

Wailuku Agribusiness, DWS can still accommodate the potable and non-potable water demands of the Project. See Petitioner's Exhibits 6 and 17, and Testimony of Jeffrey Eng, Transcript of Proceedings on July 27, 2007, at page 33, lines 18-22, page 37, lines 23-25, and page 38, lines 1-6.

96. DWS has several projects planned in order to increase the water supply for Central Maui. The project closest to completion is DWS's partnership with the developer of Maui Lani who is developing three new wells which are anticipated to be online in approximately one to one and a half years. The anticipated maximum available capacity of the three wells is approximately 2.0 million gpd. See Testimony of Jeffrey Eng, Transcript of Proceedings on July 27, 2007, at page 34, lines 1-6.

97. DWS also plans to develop the south Waikapu well that has an anticipated capacity of 1.0 million gpd, partnership with a developer to develop the Maluhia well that has an anticipated capacity of 1.5 million gpd, and partnership with A&B to develop the Waiale Water Treatment Plant that has an anticipated capacity of 6.0 million gpd. See Testimony of Jeffrey Eng, Transcript of Proceedings on July 27, 2007, at page 34, lines 7-25, and page 35, lines 1-25.

98. Water storage for the Project will be provided by the existing 3.0 million gallon Iao Tank which is located at the intersection of Main Street-Iao Valley Road-West Alu Road at an elevation of 506 feet. See Petitioner's Exhibits 6 and 17.

#### **Highway and Roadway Facilities**

99. Phillip J. Rowell of Phillip Rowell and Associates, prepared a traffic impact analysis report ("TIAR") for the Project. The objectives of the TIAR were to identify the individual and cumulative traffic impacts of the Project, and provide recommendations concerning mitigation measures. Numerous intersections, including proposed intersections for

new roads to be constructed as part of the proposed Project and other proposed projects, were analyzed in the TIAR. See Petitioner's Exhibits 6 and 18.

100. There will be no direct access from the Project onto Honoapiilani Highway. Access will be provided via a new driveway along the west side of Waiale Road, approximately midway between Kuikahi Drive and the north boundary of the affordable housing project known as Waikapu Gardens. See Petitioner's Exhibits 6 and 18.

101. The Institute of Transportation Engineers ("ITE") standard was used for the TIAR which provides that a Level-of-Service D is the minimum acceptable level-of-service and that the criteria is applicable to the overall intersection. Side street approaches and minor movements may operate at Level-of-Service E or F in order for the overall intersection and the major roadway to operate at Level-of-Service D, or better. If project-generated traffic causes the level-of-service to drop below Level-of-Service D (Levels-of-Service E or F), then mitigation should be provided to improve the level-of-service to Level-of-Service D or better. See Petitioner's Exhibits 6 and 18.

102. The year 2010 was used as the design horizon year for the TIAR prepared for the Project. The design horizon year represents a date for which future background traffic projections were estimated, which include traffic generated by other planned projects within and adjacent to the TIAR's study area and background traffic growth. The year 2010 was used as the horizon year since it is consistent with the traffic studies for related projects in the area. See Petitioner's Exhibits 6 and 18.

103. Background traffic projections were prepared for 2010 conditions without the Project to establish a base condition for assessing the impacts of the proposed Project. Future traffic growth consists of both ambient background growth and traffic from other proposed

projects in the study area. Data provided in the *Maui Long Range Land Transportation Study* was used to estimate the background growth rate of traffic along Honoapiilani Highway. See Petitioner's Exhibits 6 and 18.

104. Roadways are designed to accommodate projected peak hour traffic volumes. The traffic impact analysis, therefore, focuses on morning and afternoon peak hour conditions. See Petitioner's Exhibits 6 and 18.

105. With respect to signalized intersections, the intersections of Honoapiilani Highway at East Waiko Road and Honoapiilani Highway at Pilikani Street are signalized for 2010 background conditions. The intersection of Honoapiilani Highway at Kuikahi Drive is already signalized. See Petitioner's Exhibits 6 and 18.

106. With respect to all of the signalized intersections, all movements will operate at Level-of-Service D, or better. No additional mitigation of the signalized intersections is recommended. See Petitioner's Exhibits 6 and 18.

107. With respect to unsignalized intersections, except for the intersection of Waiale Road at Kuikahi Drive, all of the unsignalized intersections will operate at Level-of-Service C or better during all peak periods. Since the eastbound to northbound left turn at the intersection of Waiale Road at Kuikahi Drive will operate at Level-of-Service F, mitigation will be required. This intersection will operate at this level of service with or without the Project. See Petitioner's Exhibits 6 and 18.

108. Three (3) potential mitigation measures for the intersection of Waiale Road at Kuikahi Drive are: intersection widening, signalization, and a roundabout. Of these three mitigation measures, signalization is the best alternative as doing so will result in all



movements at the intersection operating at Level-of-Service C, or better during morning and afternoon peak hours. See Petitioner's Exhibits 6 and 18.

109. The TIAR also included an analysis of the anticipated traffic conditions at the Project's driveway along Waiale Road to determine what would be the most appropriate lane configuration. The TIAR concluded that in addition to the driveway having two exit lanes, a separate left turn for traffic turning into the Project is warranted for the morning peak hour period. The inclusion of this separate left turn lane into the Project will also allow for the widening required for a left turn refuge lane coming out of the Project. These lanes will improve the level of service and safety of traffic exiting the Project onto Waiale Road. See Petitioner's Exhibits 6 and 18.

110. In order to address the County's concern for traffic safety of children who would be attending the Project's school, the County questioned whether the Project would incorporate sidewalks or bikepaths. See Transcript of Proceedings on July 26, 2007, at pg. 109, lines 4-25.

111. Although the Project does not currently incorporate sidewalks or bikepaths, roadway improvements must comply with the Manual of Uniform Traffic Control Devices, which may include requiring a school crossing guard based on the estimated number of students. See Testimony of Phillip J. Rowell, Transcript of Proceedings on July 26, 2007, at pg. 109, lines 14-25, and pg. 110, lines 1-2.

#### **Public Utility Services**

112. Existing overhead electrical, telephone, and cable television lines along Honoapiilani Highway provide the source of utilities for the Project. Maui Electric Company, Hawaiian Telcom, and Oceanic Time Warner Cable provide electrical, telephone, and cable

television services, respectively. Within the Project, all distribution systems will be installed underground. See Petitioner's Exhibits 6 and 17.

### **Police and Fire Protection**

113. Police protection for the Wailuku-Kahului area is provided by the Maui County Police Department, with its main headquarters located in Wailuku. Likewise, fire protection for the Wailuku-Kahului area, which encompasses fire prevention, suppression, rescue, and emergency services, is provided by the Maui County Fire Department, with stations located in Kahului on Dairy Road, and in Wailuku on Kinipopo Street. See Petitioner's Exhibits 6 and 16.

114. The proposed development will not result in any extension of the existing service area limits for these emergency services. See Petitioner's Exhibits 6 and 16.

### **Health Care Services**

115. Maui Memorial Medical Center, located between Wailuku and Kahului, is the only major medical facility on the island of Maui. Acute, general, and emergency care services are provided by the 196-bed facility. See Petitioner's Exhibits 6 and 16.

116. The Project is not anticipated to adversely impact the capabilities of the facility. See Petitioner's Exhibits 6 and 16.

### **CONFORMANCE TO URBAN DISTRICT STANDARDS**

117. The Petition Area is characterized by "city-like" concentrations of people, structures, streets, urban level of services, and other related land uses. The Petition Area is located midway between the towns of Wailuku and Waikapu. Wailuku, which is the County of Maui's seat of government, contains a variety of single-family residential, multi-family residential, commercial, and recreational uses. See Petitioner's Exhibits 6 and 16.

118. The proposed development of the Petition Area will be compatible with the existing and future land uses in the Wailuku and Kahului areas, as evidenced by nearby projects such as the Spencer Homes Affordable Housing Residential Subdivision, the Waiolani residential subdivisions, the future Maui Lani Mixed-Use Subdivision, and the Consolidated Baseyards Light Industrial Subdivision. See Petitioner's Exhibits 6 and 16.

119. The Petition Area is in close proximity to centers of trading and employment. The Petition Area is located in the Wailuku-Kahului area, which are the centers of commerce and government for the island of Maui. Numerous professional and business services are located within Kahului and Wailuku. The main federal, state, and county offices are all centrally located in Wailuku, with additional governmental offices located in Kahului. See Petitioner's Exhibits 6 and 16.

120. The Petition Area consists of satisfactory topography, drainage, and soil conditions, and is free from the danger of flood, tsunami and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for the Project. See Petitioner's Exhibits 6 and 16.

121. Urbanization of the Petition Area will not contribute to scattered spot urban development given the close proximity to urbanized lands to the north, south, east, and west. The Petition Area is also located in close proximity to the towns of Wailuku, Kahului, and Waikapu. See Petitioner's Exhibits 6 and 16.

122. The proposed development will not necessitate unreasonable public investment in infrastructure facilities or public services. See Petitioner's Exhibits 6 and 16.

123. The area proposed for development does not consist of lands having a slope of 20 percent or more. See Petitioner's Exhibits 6 and 17.

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

**Hawaii State Plan**

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

125. HRS § 226-5, HRS, Objectives and Policies for Population

HRS § 226-5(b)(7):	Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.
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The Project is not considered a direct population generator. Instead, the Project is anticipated to increasing educational opportunities for residents of Maui. Over the long term, the proposed development will also provide teaching and other employment opportunities at the school's campus. See Petitioner's Exhibits 6 and 16.

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

HRS § 226-11(b)(3):	Take into account the physical attributes of areas when planning and designing activities and facilities.
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HRS § 226-11(b)(9):	Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes.
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The Project is not expected to have adverse impacts on environmental resources. The proposed project takes into account the Petition Area's location to existing urbanized uses in close proximity and the physical features of the Petition Area. See Petitioner's Exhibits 6 and 16.

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

HRS § 226-12(b)(3): Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, oceans, scenic landscapes, and other natural features.

HRS § 226-12(b)(5): Encourage the design of developments and activities that complement the natural beauty of the islands.

The Project has been designed to reflect a project that will make excellent use of green, open space, and allow for enjoyment of the surrounding natural environment. See Petitioner's Exhibits 6 and 16.

128. HRS § 226-21, Objectives and Policies for Socio-Cultural Advancement - Education.

HRS § 226-21(b)(1): Support educational programs and activities that enhance personal development, physical fitness, recreation, and cultural pursuits of all groups.

HRS § 226-21(b)(2): Encourage the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs.

HRS § 226-21(b)(8): Emphasize quality educational programs in Hawaii's institutions to promote academic excellence.

The Project is needed as Petitioner's current school facility is comprised of only 16,000 square feet of building space, which accommodates 213 students in grades pre-K through 8. The existing school facility is over-utilized and is inadequate to meet the needs of the current and projected student population. The Project will allow the school to meet an expanding student enrollment, improve the adequacy of classrooms, and increase educational opportunities for residents of Maui. See Petitioner's Exhibits 6 and 16.

129. HRS § 226-23, Objective and Policies for Socio-Cultural Advancement -

Leisure.

HRS § 226-23(b)(4): Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.

The Project's design, which makes optimum use of significant green, open space, will facilitate and promote the recreational and educational potential of students.

The Petition Area is located in a general area of existing and planned urban development as evidenced by the Wailuku-Kahului Community Plan, especially in light of the Petition Area's "Public/Quasi-Public" designation. This reflects the desirability to have proposed developments like Petitioner's to be in proximity to public infrastructure and services.

The Project will generate short-term employment opportunities as construction and construction-related jobs will be needed to develop the Property. Long-term employment opportunities will also be generated by the Project as teaching and teaching-related positions will be required in order to meet the anticipated increase in student enrollment.

The Project is not in a critical environmental area nor does it encompass shoreline or conservation lands. Proper mitigating measures, such as implementing best management practices, will be undertaken to ensure minimal impacts to the environment. See Petitioner's Exhibits 6 and 16.

130. The reclassification of the Petition Area generally conforms to the Agricultural and Educational Functional Plans. See Petitioner's Exhibits 6 and 16.

## **CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES**

131. The proposed reclassification of the Petition Area generally conforms to the objectives and policies of the Coastal Zone Management Program, Chapter 205A, HRS. The Project is not coastal dependent and is located inland from the coast. As such, the Project will not adversely impact any coastal ecosystems, beaches or marine resources. No views or vistas from or to the shoreline will be impaired. The Petition Area is within areas of minimal flooding. See Petitioner's Exhibit 6, and letter dated May 18, 2007, to Land Use Commission Executive Officer Anthony Ching.

132. Any conclusion of law improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

## **CONCLUSIONS OF LAW**

1. Pursuant to HRS § 205 and HAR § 15-15, this Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 25.263 acres from the Agricultural District to the Urban District, situated at Wailuku, Island of Maui, State of Hawaii, identified as Tax Map Key No. 3-5-002:011, upon the conditions set forth in this Decision and Order, is reasonable, conforms to the standards for establishing the Urban District boundaries, is consistent with the Hawaii State Plan as set forth in HRS § 226, is not violative of HRS §§ 205-2, and is consistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17, and 205A-2.

2. Article XII, Section 7, of the Hawaii Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms

and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

3. Based on the archaeological field report of the Petition Area, there is a potential for the presence of subsurface sites. Archaeological monitoring of all construction-related, ground disturbing activities shall occur on the Petition Area. Should any resources be found during construction, Petitioner shall comply with all State and County laws and rules regarding the preservation of archaeological and historic sites.

4. Based on the cultural impact analysis of the Petition Area which included consideration of the history of the Petition Area which had been in heavy industrial agricultural operations for the past century, research on nearby parcels in the vicinity of the Petition Area, and review of informant interviews and archival research conducted for several projects in the vicinity of the Petition Area, there appears to be no special affinities to the Petition Area for native Hawaiians or any other ethnic group.

5. Article XI, Section 1, of the Hawaii Constitution requires the State to conserve and protect Hawaii'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.

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



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

8. The Project's long-term impacts to air quality will be minimal, and mitigation measures are probably unnecessary and unwarranted.

9. Article XI, Section 3, of the Hawaii 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.

10. The Project will not have a significant impact on agriculture in Maui or in the State as the reduction of these agricultural lands in comparison to the total acreage of agricultural lands in Maui and in the State are minimal.

### **DECISION AND ORDER**

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 25.263 acres from the Agricultural District to the Urban District, situated at Wailuku, Island of Maui, State of Hawaii, identified as Tax Map Key No. 3-5-002:011, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State land use district boundaries shall be amended accordingly.

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

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

1. **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.

2. **Reversion of District Classification.** Petitioner shall develop the Petition Area and complete construction of the Project no later than ten (10) years from the date of the decision and order. If Petitioner fails to complete project construction within ten (10) years from the date of the decision and order, the Commission will file an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

3. **Water Resources Allocation.** Petitioner shall provide potable and non-potable water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area, to the satisfaction of the County of Maui Department of Water Supply and other appropriate State and County agencies. Petitioner shall notify the Commission of changes to its proposed water source for the Project's non-potable water needs.

4. **Wastewater.** Petitioner shall develop a wastewater collection and transmission system and other sewer improvements in the Petition Area, as required by the State of Hawaii Department of Health ("DOH") and the County of Maui Department of Environmental Management ("DEM"). Petitioner shall pay a pro-rata share of off-site wastewater treatment improvements as determined by the County of Maui.

5. **Highways and Roads.** Petitioner shall prepare a revised Traffic Impact Analysis Report ("TIAR"), to be initiated after Phase 1 is completed and approximately three months after the date upon which the school opens for classes, using assumptions and methods that are mutually agreed upon by the State Department of Transportation ("DOT") and the Petitioner, to determine the regional and local traffic impacts of the proposed development and recommend appropriate mitigation measures. In its assessment of current traffic conditions, the Petitioner's TIAR shall use actual traffic counts and actual intersection turn counts taken approximately three months after the school opens.

Based on the findings and recommendations of the revised TIAR, the Petitioner shall contribute to or construct state highway improvements in the immediate vicinity of the development to alleviate the cumulative traffic improvements including those generated by the proposed development and uses, as agreed to by the Petitioner and DOT.

All state highway improvements shall be coordinated with and submitted for review and approval to DOT Highways Division. Such improvements must be planned, designed, and constructed in compliance with State requirements and the current standards established by the American Association of State Highway and Transportation Officials ("AASHTO"), and shall be provided at no cost to the State.

6. **Stormwater.** Petitioner shall fund, design, and construct drainage system improvements to manage runoff resulting from development of the Petition Area, to the satisfaction of appropriate State and County agencies, based on one-hour of runoff from a 50-year storm. Petitioner shall be required to prevent runoff from adversely affecting State and County highway and roadway facilities or other properties located down grade from the Petition Area.

7. **Civil Defense.** Petitioner shall fund and construct, on a fair-share basis, adequate solar-powered civil defense measures to serve the Petition Area, as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.

8. **Archaeological Field Report and Historic Preservation Mitigation Plan.** Prior to commencement of any ground-altering activities, Petitioner shall obtain written approval and acceptance of the Project's archaeological field report and monitoring plan from the State of Hawaii Department of Land and Natural Resources, State Historic Preservation Division ("SHPD").

9. **Previously Unidentified Burial/Archaeological/Historic Sites.** Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from SHPD that mitigative measures have been implemented to its satisfaction.

10. **Soil Analysis.** Petitioner shall conduct a soil analysis study of the Petition Area, in consultation with the State of Hawaii Department of Health, Hazard Evaluation and Emergency Response Office ("HEER"), to determine any impacts on the proposed use from fertilizers, pesticides, and other chemical contaminants that may be present at elevated levels in the Petition Area. Petitioner shall undertake measures to abate and remove any hazardous materials identified during said study, to the satisfaction of the HEER.

11. **Air Quality Monitoring.** Petitioner shall implement soil erosion and dust control measures and participate in an air quality-monitoring program as specified DOH.

12. **Established Access Rights Protected.** Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area for access to other areas to exercise subsistence, cultural, or religious practices.

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

14. **Provisions of the Hawaii Right to Farm Act.** If any lands adjacent to the Petition Area remain in the Agricultural District, Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawaii Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

15. **Integrated Solid Waste Management Plan.** Petitioner shall develop a Solid Waste Management Plan for the Petition Area in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes, and the solid waste disposal requirements set forth by the DPW and DEM.

16. **Best Management Practices.** Petitioner shall implement BMPs to preserve air quality and protect surface and groundwater resources. The BMPs shall be designed to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and groundwater pollution, and control dust during and after the development process, in accordance with DOH guidelines and the County of Maui's grading ordinance.

17. **Water Conservation Measures.** Petitioner shall implement water conservation measures, as may be required by the applicable provisions of the Maui County

Code, including, but not limited to, low-flow water fixtures, and shall also implement best management practices, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common area landscape planting.

18. **Energy Conservation Measures.** Petitioner shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the Project.

19. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

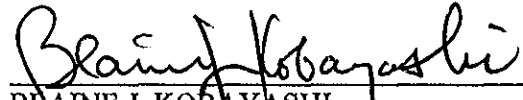
20. **Sale of Petition Area.** Petitioner shall secure prior approval of the Commission of any sale of the Petition Area or any portion thereof.

21. **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.

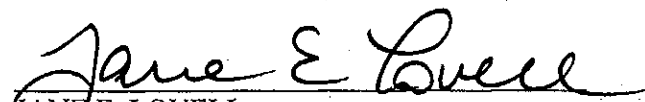
22. **Notice of Imposition of Conditions.** Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.

23. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR.

DATED: Wailuku, Hawaii, November 7, 2007.

  
BLAINE J. KOBAYASHI  
Attorney for Petitioner EMMANUEL  
LUTHERAN CHURCH OF MAUI

\_\_\_\_\_  
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JANE E. LOVELL  
Deputy Corporation Counsel  
County of Maui  
Attorney for MAUI PLANNING  
DEPARTMENT

**EXHIBIT "A"**

(Description of Petition Area)



**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2007, due service of a copy of the  
within document was made by depositing the same with the U. S. mail, postage prepaid, or by  
hand delivery, addressed to:

MARY LOU KOBAYASHI  
Administrator  
Office of Planning  
State of Hawaii  
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Honolulu, Hawaii 96804

BY MAIL

ABE MITSUDA  
Planning Program Administrator  
Office of Planning , Land Use Division  
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BY HAND DELIVERY

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BY MAIL

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BY MAIL

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BY MAIL

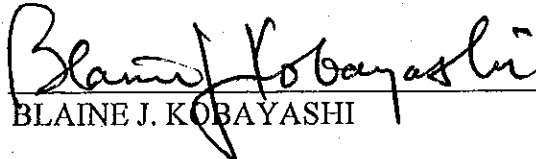
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DATED: Wailuku, Hawaii, November 7, 2007.

  
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