DEPARTMENT OF
HOUSING AND HUMAN CONCERNS
COUNTY OF MAUI

ALAN M. ARAKAWA
Mayor
JO-ANN T. RIDAO
Director
JAN SHISHIDO
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August 28, 2012

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Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable G. Riki Hokama, Chair
Policy Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL
Mayor 09/4/12 Date

Dear Chair Hokama:

SUBJECT: KULA RIDGE AFFORDABLE HOUSING SUBDIVISION RESIDENTIAL WORKFORCE HOUSING AGREEMENT (POL-13)

As a follow up to my letter dated July 6, 2011 regarding the above subject, attached is a copy of the State of Hawaii Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order in the Matter of the Petition of Kula Ridge, LLC, which was filed on Feb. 21, 2012. Also attached is a copy of the Certificate of Service for your use.

Thank you for the opportunity to provide you with this additional information. Please do not hesitate to contact me at Ext. 7805 should you require additional information.

Sincerely,

JO-ANN T. RIDAO
Director of Housing and Human Concerns

Attachment

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

2012 FEB 21 A 10: 53
LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of KULA RIDGE, LLC To Amend The Land Use District Boundaries Of Approximately 34.516 Acres Of Land From The Agricultural Land Use District Into The Urban Land Use District And Approximately 16.509 Acres Of Land From The Agricultural Land Use District Into The Rural Land Use District At Kula, Makawao, Maui, Hawai`i, Tax Map Key: 2-3-01: Por. 23 And 174	DOCKET NO. A11-790 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

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

AND

CERTIFICATE OF SERVICE

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In The Matter Of The Petition Of KULA RIDGE, LLC To Amend The Land Use District Boundaries Of Approximately 34.516 Acres Of Land From The Agricultural Land Use District Into The Urban Land Use District And Approximately 16.509 Acres Of Land From The Agricultural Land Use District Into The Rural Land Use District At Kula, Makawao, Maui, Hawai'i, Tax Map Key: 2-3-01: Por. 23 And 174	DOCKET NO. A11-790 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

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

KULA RIDGE, LLC ("Petitioner"), a Hawai'i limited liability company,[1] filed a Petition For District Boundary Amendment on January 24, 2011 ("Petition"); a First Amendment To Petition For District Boundary Amendment Filed January 24, 2011, on April 8, 2011 ("First Amendment"); and a Second Amendment To Petition For District Boundary Amendment Filed January 24, 2011, on May 5, 2011 ("Second

[1] Petitioner is licensed to do business in the State of Hawai'i and is located at 2145 Wells Street, Suite 301, Wailuku, Maui, Hawai'i, 96793. Petitioner's managing member is Clayton Nishikawa, AIA.

Amendment"), pursuant to chapter 205, Hawai`i Revised Statutes ("HRS") (as appropriate, the Petition, First Amendment, and Second Amendment are collectively called the Petition), and chapter 15-15, Hawai`i Administrative Rules ("HAR"), to amend approximately 34.516 acres of land from the State Land Use Agricultural District to the State Land Use Urban District and approximately 16.509 acres of land from the State Land Use Agricultural District to the State Land Use Rural District at Kula, Makawao, Maui, Hawai`i, identified as Tax Map Key ("TMK"): 2-3-01: por. 23 and 174 (collectively "Petition Area"), for the development of a 116-unit residential subdivision, consisting of 70 affordable units (36 single-family and 34 senior duplexes) and 46 market-priced lots and onsite infrastructure improvements, including a three-acre park site with a comfort station within this park site (collectively "Project").

The State of Hawai`i Land Use Commission ("Commission"), having examined the testimony, evidence, and argument of counsel presented during the hearings and the Stipulated Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order For A State Land Use District Boundary Amendment filed by the parties herein, hereby makes the following findings of fact, conclusions of law, and decision and order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On January 24, 2011, Petitioner filed the Petition, Exhibits "1" through "13," Petitioner's filing fee of $500, and Certificate Of Service.

2. On January 26, 2011, Petitioner filed its Notarized Affidavit Of Mailing (Notification Of Petition Filing), Exhibits "A" and "B," and Certificate Of Service.

3. On April 8, 2011, Petitioner filed the First Amendment, Verification, Exhibits "4A," "4B," "4C," "4D," "4E," "7A," "14," and "15," and Certificate Of Service to clarify the metes and bounds description and acreage of the Petition Area and the metes and bounds description and acreage of the Petition Area proposed to be reclassified to the respective land use districts, and further to provide supplemental information pertaining to Sections IX, X, XII, XIII, and XV of the Petition. In the First Amendment, Petitioner clarified that the Petition Area consisted of approximately 51.025 acres of land in the State Land Use Agricultural District, and that Petitioner's request is to reclassify approximately 34.516 acres of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District and approximately 16.509 acres of the Petition Area from the State Land Use Agricultural District to the State Land Use Rural District.

4. On April 11, 2011, Petitioner filed its Notarized Affidavit Of Mailing (Notification Of Filing Of Kula Ridge, LLC's First Amendment To Petition, Exhibits "A" and "B," and Certificate Of Service.

5. On May 5, 2011, Petitioner filed the Second Amendment, Verification, Exhibits "4B-1" and "16," and Certificate Of Service to revise the metes and bounds map to show the existing Waterline Easement "C-1" and to provide supplemental information pertaining to Sections IX and X of the Petition.

6. By letter dated May 5, 2011, the Executive Officer of the Commission deemed the Petition a proper filing as of May 5, 2011.

7. On May 16, 2011, a Notice Of Hearing on the Petition was published in *The Maui News, The Honolulu Star-Advertiser, West Hawaii Today, Hawaii Tribune-Herald*, and *The Garden Island*, which noticed the commencement of the hearing on the Petition on July 14 and 15, 2011, at the Mākena Beach & Golf Resort, 5400 Mākena Alanui, Wailea-Mākena, Maui, Hawai`i.

8. On May 17, 2011, Petitioner filed its Affidavit Of Mailing Of Notice Of Hearing, Exhibits "A" through "C," and Certificate Of Service.

9. On May 31, 2011, Petitioner filed its Affidavits Of Publication and Certificate Of Service.

10. On June 3, 2011, the County of Maui Planning Department ("MPD") filed its Statement Of Position.

11. On June 8, 2011, the State of Hawai`i Office of Planning ("OP") filed its Statement Of Position.

12. On June 9, 2011, the Executive Officer of the Commission conducted a prehearing conference at the Leiopapa A Kamehameha Building, Room 406, 235 South Beretania Street, Honolulu, Hawai`i, with representatives of Petitioner, OP, and MPD. Representatives of Petitioner and MPD attended the prehearing conference via telephone conference from Wailuku, Maui.

13. On June 9, 2011, the Executive Officer of the Commission issued a Prehearing Order.

14. On June 20, 2011, Petitioner filed its List Of Witnesses, List Of Exhibits, Exhibits "1" through "30," and Certificate Of Service.

15. On June 20, 2011, OP filed its List Of Exhibits, List Of Witnesses, Exhibits "1" through "3," "5," and "7" through "11," and Certificate Of Service.

16. On June 21, 2011, MPD filed its List Of Witnesses, List Of Exhibits, Exhibits "1" through "6," and Certificate Of Service.

17. On June 27, 2011, Petitioner filed its First Amended List Of Witnesses, First Amended List Of Exhibits, Exhibits "5" and "23"[2] and Certificate Of Service.

[2] Petitioner represented that Exhibit "5," an aerial photograph/map of the Petition Area, was a secondary map to the Exhibit "5" previously filed on June 20, 2011. Petitioner further represented that Exhibit "23,"

18. On June 30, 2011, MPD filed its List Of Exhibits - Amendment No. 1, Exhibit "7," and Certificate Of Service.

19. On July 1, 2011, OP filed its First Amended List Of Witnesses, First Amended List Of Exhibits, Exhibits "3A," "4," "6," and "12," and Certificate Of Service.

20. On July 1, 2011, Petitioner filed its Second Amended List Of Exhibits, Exhibits "31" through "43," and Certificate Of Service.

21. On July 8, 2011, OP filed its Exhibit "13" and Certificate Of Service.

22. On July 11, 2011, Petitioner filed its Exhibits "29" and "38" and Certificate Of Service.

23. On July 14, 2011, the Commission conducted a site visit to the Petition Area.

24. On July 14, 2011, the Commission opened the hearing on the Petition at the Haleakalā Room, Mākena Beach & Golf Resort, 5400 Mākena Alanui, Wailea-Mākena, Maui, Hawai`i. B. Martin Luna, Esq., and Clayton Nishikawa entered appearances for Petitioner. Deputy Corporation Counsel Michael Hopper and staff planner Jeffrey Dack entered appearances for MPD. Deputy Attorney General Bryan C. Yee and Director Jesse Souki entered appearances for OP.

the resume of Tom Nance, Hydrologist/Water Resource Engineer, was filed to replace the original Exhibit "23," the resume of Glenn Bauer, Geologist/Hydrologist.

25. On July 14, 2011, the Commission admitted into evidence, without objection, Petitioner's Exhibits "1" through "43,",as amended.[3]

26. On July 14, 2011, MPD filed its List Of Exhibits – Amendment No. 2, Exhibit "8," and Certificate Of Service. The Commission admitted into evidence, without objection, MPD's Exhibits "1" through "8."

27. On July 14, 2011, the Commission admitted into evidence, without objection, OP's Exhibits "1" through "13," as amended.

28. On July 14, 2011, the Commission admitted into evidence, without objection, written correspondences on the Project from the Kula Community Association, Curt Hashimoto, and Jocelyn Romero Demirbag.

29. On July 14, 2011, the following individuals provided public testimony: Bobbie Patnode (Kula Community Association), Richard "Dick" Mayer (Kula Community Association), C. Mike Kido (Pacific Resource Partnership), David Gleason, Perry Artates (Hawai`i Operating Engineers Industry Stabilization Fund), Alan Kaufman, Bruce U`u, Penny Humphries, Mariya Dones, John Wilson, Maria Rawe, Fred Rawe, Scott Prather, Dana Nāone Hall, and Richard Pohle.

30. On July 14, 2011, Michael Munekiyo, Tom Nance, Michael Dega, and Kimokeo Kapahulehua provided testimony as part of Petitioner's case-in-chief.

[3] Petitioner's secondary map to its Exhibit "5" filed on June 20, 2011, was included among these exhibits as Exhibit "5A."

31. On July 15, 2011, the Commission resumed the hearing on the Petition at the Haleakalā Room, Mākena Beach & Golf Resort, 5400 Mākena Alanui, Wailea-Mākena, Maui, Hawai`i.

32. On July 15, 2011, Harold Nagato, Bruce Plasch, Stacy Otomo, Michael Munekiyo, and Clayton Nishikawa provided testimony as part of Petitioner's case-in-chief.

33. On July 15, 2011, William Spence, Jo-Ann Ridao, and David Taylor provided testimony as part of MPD's case-in-chief.

34. On July 15, 2011, the Commission adjourned the proceedings and continued the hearing on the Petition.

35. On July 19, 2011, Petitioner filed its First Stipulation In Docket No. A11-790/Kula Ridge, LLC, by and between Petitioner, OP, and MPD regarding certain expert witnesses and their resumes and written testimonies.

36. On July 19, 2011, OP filed its Second Amended List Of Exhibits, Exhibit "14," and Certificate Of Service.

37. On August 3, 2011, MPD filed its List Of Exhibits – Amendment No. 3, Exhibit "9," and Certificate Of Service.

38. On August 16, 2011, Petitioner filed its Third Amended List Of Exhibits, Exhibits "23A" and "44A" through "44G," and Certificate Of Service.

39. On August 22, 2011, Petitioner filed its Fourth Amended List Of Exhibits, Exhibit "34A," and Certificate Of Service.

40. On August 22, 2011, Petitioner filed a Notice Of Appearance Of Counsel For Petitioner Kula Ridge, LLC, listing Steven S. C. Lim and Jennifer A. Benck as additional counsel.

41. On August 25 , 2011, the Commission resumed the hearing on the Petition at the Kula Catholic Community Holy Ghost Hall at 4300 Lower Kula Road, Kula, Maui, Hawai`i. Steven S. C. Lim, Esq.; Jennifer A. Benck, Esq.; and Clayton Nishikawa entered appearances for Petitioner. Deputy Corporation Counsel Michael Hopper and Planning Director William Spence entered appearances for MPD. Deputy Attorney General Bryan C. Yee entered an appearance for OP.

42. On August 25, 2011, MPD filed its List Of Exhibits – Amendment No. 4 and Exhibit "10."

43. On August 25, 2011, the Commission admitted into evidence, without objection, written correspondences on the Project from several individuals, including a petition signed by approximately 618 Maui residents.

44. On August 25, 2011, the following individuals provided public testimony: Bobbie Patnode; Richard "Dick" Mayer; Debbie Anthony; Al Chiarella; Barbara Oura-Tavares; Joann Van Guillory; Steve Goldstein; Fran Goldstein; Doug MacCluer; Alan Gorg; Leina Shirota-Purdy; Jocelyn Romero Demirbag; Penny

Humphries; Joan Crowe; Michael Yap, Jr.; Joshua Ulu; Jim Bushlow; Norman Stubbs; Alvin Peterson; Jim Crowe; Marie Parker; Deborah Sawyer; Gwyn Gorg; Victor Reyes; Anne Masuda; Mark Crowe; Fred Rawe; Marie Rawe; Nara Chow; Ruth DePonte; Will Flammer; Velma Wiese; Marilyn Hill; Joey Cremer; Dana Nāone Hall; Alan Vares; Rosemary Robbins; Cheryl Zarro; Bruce U`u; Mariya Dones; Ron Collins; Gene Zarro; Nainoa Purdy; Alan Kaufman; and Melissa Bruschi.

45. On August 26, 2011, the Commission resumed the hearing on the Petition at the Kula Catholic Community Holy Ghost Hall at 4300 Lower Kula Road, Kula, Maui, Hawai`i.

46. On August 26, 2011, the Commission admitted into evidence, without objection, Petitioner's Exhibits "23A," "34A," and "44A" through "44G."

47. On August 26, 2011, the Commission admitted into evidence, without objection, MPD's Exhibits "9" through "12."

48. On August 26, 2011, the Commission admitted into evidence, without objection, OP Exhibit "14."

49. On August 26, 2011, Pete Pascua, Clayton Nishikawa, and Stacy Otomo provided testimony as part of Petitioner's case-in-chief; Jesse Souki provided testimony as part of OP's case-in-chief; and William Spence provided testimony as part of MPD's case-in-chief.

50. On August 26, 2011, the Commission closed the evidentiary portion of the hearing, subject to the receipt of additional exhibits identified by MPD during the hearing.[4]

51. On September 9, 2011, MPD filed its List Of Exhibits – Amendment No. 5, Exhibits "13" and "14," and Certificate Of Service.

52. On September 12, 2011, MPD filed its List Of Exhibits – Amendment No. 6, Exhibit "15," and Certificate Of Service.

53. On September 19, 2011, Petitioner filed its Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order.

54. On September 28, 2011, Petitioner filed its Second Stipulation In Docket No. A11-790/Kula Ridge, LLC, which consisted of a Stipulated Proposed Findings Of Fact, Conclusions Of Law, And Decision and Order For A State Land Use District Boundary Amendment among Petitioner, OP, and MPD.

55. On November 3, 2011, the Commission reconvened at the Molokini Room, Mākena Beach and Golf Resort, 5400 Mākena Alanui, Wailea-Mākena, Maui, Hawai`i, to hear the parties' closing arguments on the Petition. Steven S. C. Lim, Esq.; Jennifer A. Benck, Esq.; and Clayton Nishikawa entered appearances for Petitioner. Deputy Corporation Counsel Michael Hopper and Planning Director William Spence

[4] After the close of the evidentiary portion of the hearing, the Commission received written public testimony from David Gridley, Penny Humphries (who also submitted petitions signed by approximately 521 Maui residents), Nelson Nishikawa, Agnes Ariyoshi, Lois Nishikawa, Scott Prather, Skylar Decker, Ron Montgomery, Taryn Sato, Erik Miller, Paul Lacno, C. Mike Kido, Jocelyn A. Perreira, Matt Holten, Jerry Fornelia, Samia Rebecca Presley and Jaydan D.K. Puahala, and Janet Quinton.

entered appearances for MPD. Deputy Attorney General Bryan C. Yee and Director Jesse Souki entered appearances for OP. At the meeting, the following individuals provided oral and/or written public testimony: Rick Adams; Cole Sturdevant; Steve Sturdevant; Scott Loomer; Dutch Akama; Ron Deppe; Lori Yoshisato; Mike Williams; Roger Dix; Dustin Heiner; Priscilla Mikell; Michael Yap, Jr.; Joey Cremer; Clivan Cremer; Juno Comilang; Ed Lamb; Joey Corcino; Teresa Winterfeld; Cheryl Zarro; Gene Zarro; Warren Orikasa; Dave Gleason; Penny Humphries; Bryan Lustig-Thurman; Pastara Monces; Ron Montgomery; Morgan Gerdel; Randy Piltz; Marcus Griffen; Maria Rawe; Jerry Fornelia; Godwin Pelissero; Ann Pirsch; Richard "Dick" Mayer; C. Mike Kido; Al Chiarella; Victor Reyes; Jim Bushlow; Lucienne de Naie; Jackie Haraguchi; Cathy Riley; and Durwin Kiyabu. Following the presentation of the parties' closing arguments, the Commission deferred its deliberations on the Petition to its meeting on January 6, 2012.[5]

56. On January 6, 2012, the Commission met at the Maui Arts and Cultural Center, Alexa Higashi Room, One Cameron Way, Kahului, Maui, Hawai`i, to conduct its deliberations on the Petition. Steven S. C. Lim, Esq.; Jennifer A. Benck, Esq.; and Clayton Nishikawa entered appearances for Petitioner. Deputy Corporation Counsel Michael Hopper and staff planner Jeffrey Dack entered appearances for MPD.

[5] During the meeting, Commissioner Matsumura disclosed that he had utilized Petitioner's counsel in the past. There were no objections from the parties to Commissioner Matsumura's continued participation in this docket.

Director Jesse Souki entered an appearance for OP. At the meeting, the following individuals provided oral and/or written testimony: Scott Nunokawa, Randy Piltz, Gene Zarro, Penny Humphries, Tanner Morrin, Ivan Lei, Charles Jencks, Maria Rawe, Christian Tackett, Dan Patrika, Jamie Medeiros, and Jake Kaho'ohanohano. Following the receipt of public testimony and after discussion and deliberation by the Commission, a motion was made and seconded to grant the reclassification of the Petition Area subject to conditions. By a vote tally of 7 ayes, 1 nay, and 1 excused, the motion carried.

DESCRIPTION OF THE PETITION AREA

57. The Petition Area is located mauka of Lower Kula Road, between Kamehameha Iki Road and Puakea Place.

58. The Petition Area is bordered on the north by Keāhuaiwi Gulch, to the south and east by pasture lands, and to the west, along Lower Kula Road, by the Kula Community Center, a gateball field, and tennis courts. Single-family homes are also located along the western boundary of the Petition Area.

59. The Petition Area is currently undeveloped and is largely vegetated by pasture (open grassland).

60. The Petition Area slopes in a west to east direction with an average slope of 14.8 percent.

61. As indicated by the Flood Insurance Rate Map of the Federal Emergency Agency for the County of Maui, the Petition Area is located within Zone C, which is an area of minimal flooding.

62. The soils underlying the Petition Area are of the Pu`u Pa-Kula-Pane soil association.

63. According to the 1972 Land Capability Grouping by the U. S. Department of Agriculture, Natural Resources Conservation Service, which rates soils according to eight levels (the highest being I and the lowest being VIII), the soil at the Petition Area is rated IVe. Class IV soils have very severe limitations that reduce the choice of plants or require very careful management, or both. The subclassification "e" indicates that the soils are subject to severe erosion if they are cultivated and not protected.

64. According to the State of Hawai`i Department of Agriculture's Agricultural Lands of Importance to the State of Hawai`i ("ALISH"), the Petition Area does not qualify as "Prime" or "Unique" lands but falls within the "Other Important Agricultural Land" category.

65. The University of Hawai`i Land Study Bureau classified the productivity of the land underlying the Petition Area as "C", "D," and "E" on a rating scale that runs from "A," considered to be land of the highest productivity, to "E," considered to be land of the lowest productivity.

66. Petitioner owns approximately 48.12 acres of the Petition Area, identified as TMK: 2-3-01: 174.

67. Kula Ridge Mauka, LLC ("Kula Ridge Mauka"), owns the remaining approximately 2.905 acres of the Petition Area, identified as TMK: 2-3-01: por. 23.

68. Kula Ridge Mauka has authorized Petitioner to file the Petition on the small portion of its land.

PROPOSAL FOR RECLASSIFICATION

69. The Project consists of 70 affordable units and 46 market-priced lots, with onsite infrastructure improvements.[6]

70. Each of the four market-priced lots proposed to be reclassified to the State Land Use Rural District may be developed with one main dwelling and one accessory dwelling, resulting in a maximum of 120 dwelling units within the Petition Area.

71. Thirty-six of the 70 affordable units will be single-family units and 34 will be senior duplexes, which will be made available to purchasers who are 55 years of age or older.

[6] On October 19, 2010, the Maui County Council ("Council") approved Petitioner's *Revised Application for Affordable Housing Development Pursuant to Section 201H-38, Hawai'i Revised Statutes* by Resolution No. 10-57, which granted Petitioner certain exemptions from the Maui County Code ("MCC"), including an exemption from MCC, chapter 2.80B, to allow for development of the Project without obtaining a general plan or community plan amendment as well as an exemption to allow for subdivision approval without obtaining a change in zone or community plan amendment.

72. Fifty-nine of the affordable units within the Petition Area will be provided to comply with the requirements of Resolution No. 10-57.

73. The Project will also include a three-acre park site adjacent to the Kula Community Center. Petitioner plans to build and dedicate to the County a comfort station within this park site as part of the Project.

74. As required by Resolution No. 10-57, affordable units shall be constructed at a rate of two single-family homes or one senior duplex for each market-rate home built or market-rate lot sold, whichever is earlier.

75. The affordable house lots will be approximately 5,200 to 5,800 square feet. When the area for the access drive is added to the house lot, the minimum lot size will be 6,000 square feet.

76. The affordable house-lot units will be sold for sale prices based on the County's affordable sale price guidelines in effect at the time the units are placed on the market.

77. It is currently contemplated that 59 affordable housing units to be developed as part of the Project will be offered as follows: Senior Housing: 17 senior housing units will be offered to families with below-moderate income (ranging from 81 percent to 100 percent of the area median income ("AMI")), and 17 senior housing units will be offered to families with moderate incomes (ranging from 101 percent to 120 percent of the AMI). Single-Family Housing: 12 single-family units will be offered to

families with moderate incomes, and 13 units will be offered to families with above moderate incomes (ranging from 121 percent to 140 percent of the AMI).

78. Forty-two of the 46 market-priced lots will range in size from approximately 8,500 square feet to 22,000 square feet.

79. Based on current market conditions, these market-priced lots will be sold for sale prices ranging from $350,000 to $450,000.

80. The remaining four market-priced lots will have a minimum size of four acres each.

81. Based on current market conditions, each of these four lots will be sold for approximately $1.2 million.

82. Construction of the Project will be initiated within one year of the granting of a bonded final subdivision approval, or, if Petitioner chooses to implement construction of subdivision improvements without bonding, Petitioner will initiate construction of the Project within one year of the receipt of approval of the Project's subdivision construction plans.

83. The affordable units required under Resolution No. 10-57 are projected to be completed by June 2015.

84. Backbone infrastructure for the Project will be completed within ten years of the date of this Decision and Order granting the reclassification of the Petition Area.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

85. The estimated cost of the Project, including the cost for water source development but excluding the cost for house construction on the affordable and market-priced lots, is $9 million. The total construction costs for the proposed affordable and market-priced units are estimated at $14.9 million and $19.8 million, respectively.

86. Petitioner's financial balance sheet as of January 13, 2011, reflects total consolidated assets of approximately $5.75 million, total liabilities of $2,075,000, and total equity of $3,673,584.

87. Petitioner intends to finance infrastructure improvements through a variety of sources, including, but not limited to, private investment sources and banking institutions. First Hawaiian Bank and Bank of Hawai`i have expressed to Petitioner favorable support for construction loan financing for the Project of up to $7 million.

88. Based on Petitioner's ownership of the Petition Area, current financial position, demand for the Project's affordable units and market-priced lots, and favorable support for construction loan financing from First Hawaiian Bank and Bank of Hawai`i, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

STATE AND COUNTY DESIGNATIONS

89. The Petition Area is located within the State Land Use Agricultural District, as reflected on the Commission's official map, M-11 (Kilohana).

90. The Petition Area is zoned "Interim."

91. The Petition Area is located within the Makawao-Pukalani-Kula Community Plan region. Approximately 16 acres of the Petition Area are designated Single-Family Residential, with the remainder designated as Rural.

92. The Petition Area is not located within the County of Maui Special Management Area.

NEED FOR THE PROJECT

93. The resident population in the Makawao-Pukalani-Kula region is projected to increase from 25,198 in 2010 to 29,294 by the year 2030. A significant increase in housing supply will be needed to accommodate the region's anticipated growth.

94. The Project will provide additional housing units to address the growth in the resident population in the Makawao-Pukalani-Kula Community Plan region, and the provision of 70 affordable units specifically will address a portion of the significant current and growing demand for affordable housing on the island of Maui.

95. Petitioner has received requests from approximately 500 applicants seeking to purchase an affordable unit at the Project.

96. Petitioner will execute and comply with a Residential Workforce Housing Agreement, to be approved by the Council, which will include terms for ensuring long-term affordability, such as a 25-year requirement for keeping the units affordable.

97. The County of Maui Department of Housing and Human Concerns ("DHHC") supports the Project due to the significant need for affordable housing in the County of Maui and the lack of affordable housing in Kula.

98. The proposed three-acre park, together with a comfort station within this park site, will provide local residents with expanded facilities to gather, relax, and spend time with their families and other residents or members of the community.

SOCIO-ECONOMIC IMPACTS

99. The Project's impact on the population is expected to be minimal. The Project is anticipated to accommodate demands for housing by existing island residents. While many purchasers are anticipated to be Upcountry residents, some of the prospective homeowners may relocate from other regions of the island, with the potential to incrementally increase the population in the Makawao-Pukalani-Kula Community Plan region. This increase in population is not expected to extend beyond the projected growth parameters of the region defined by migration and birth/death rates.

100. Over the long term, the Project will have a direct and beneficial social impact as affordable homeownership opportunities will become available to young families and seniors wishing to live in the Upcountry area.

101. In general, there are no significant adverse fiscal and economic impacts anticipated as a result of the Project.

102. The Project will have a direct beneficial effect on the State economy, including the generation of personal income and general excise tax revenues through increased employment opportunities in construction, construction-related, and real estate jobs. These employment opportunities, estimated to include 352 direct, indirect, and induced jobs, will also have a direct beneficial impact on the local economy.

103. With regard to fiscal impacts to the County, the Project will result in additional real property taxes of approximately $152,270, which are anticipated to support County expenditures for the provision of local governmental services to serve the residents of the Project.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

104. Decision Analysts Hawai`i, Inc., prepared a report entitled *Kula Ridge Affordable Housing Subdivision: Impact on Agriculture* dated November 2006.

105. The Petition Area has not been identified or designated as important agricultural lands by the County of Maui or the Commission pursuant to part III of chapter 205, HRS, entitled *Important Agricultural Lands*.

106. The reclassification and development of the Petition Area will result in the loss of a relatively small amount of farm land that is poorly suited for agriculture—approximately 36 acres of low/poor quality agricultural land. The remaining approximately 12 acres that contain better soils will be available for agricultural use as part of the proposed four 4-acre lots. Given the availability of good agricultural land elsewhere on the island and the State, the Project will not adversely affect the current agricultural resources or agricultural activities nor adversely affect the future growth of diversified crop farming in the area.

107. The demand for affordable housing in the County outweighs any impact the Project may have on agriculture in the County of Maui and the State of Hawai`i.

Flora and Fauna

108. Robert W. Hobdy, Environmental Consultant, conducted floral and faunal surveys of the Petition Area and prepared a report entitled *Biological Resources Survey for the Kula Ridge Project* dated April 2006. The surveys included a walk-through of the Petition Area.

109. The Petition Area has been covered by vegetation characterized by two general categories: primarily pasture (open grassland) and abandoned farm (agricultural weeds). There are no wetlands on the Petition Area.

110. There are no known significant habitats, or rare, endangered, or threatened species of flora or fauna, or any species of flora or fauna proposed as candidates for such status in the Petition Area.

111. A special effort was made to conduct the faunal survey during the evening to determine whether the native Hawaiian hoary bat was present on the Petition Area. There was no evidence of the Hawaiian hoary bat found during the survey.

112. The Project will not have a significant negative impact upon the biological resources of the Petition Area.

Archaeological/Historical/Cultural Resources

113. Scientific Consultant Services, Inc. ("SCS") conducted a survey of the Petition Area and prepared a report entitled *An Archaeological Inventory Survey Report on 48.117 Acres Located in Kealahou Ahupua`a, Kula, Makawao District, Maui Island, Hawai`i [TMK: 2-3-001: 174]* dated April 2006.

114. The archaeological inventory survey ("AIS") included historic background research and settlement pattern analysis prior to fieldwork, a complete pedestrian survey, subsurface testing, and reporting. All accepted standard

archaeological procedures and practices were followed during the course of the field work on the Petition Area.

115. The goals of the AIS were to determine the existence of any historic properties on the Petition Area, assess the significance of any identified historic properties/sites, and to provide recommendations to the State of Hawai`i Department of Land and Natural Resources, State Historic Preservation Division ("SHPD"), concerning any mitigation on the Petition Area during the development of the Project.

116. The AIS has been accepted by SHPD.

117. The Petition Area has been heavily altered by habitation since the 1800s, followed by ranching for the past 100 years. Currently there is a cottage within the Petition Area, the style of which is typical of plantation-style homes of the 1930s.

118. Cattle grazing, erosion, and bulldozer grading activities, including construction of a dirt road and the presence of horses, have altered much of the Petition Area's original integrity.

119. Eighteen sites consisting of 32 individual features were identified and documented. Nine sites were considered pre-contact based on the architecture and type. Six sites were interpreted as historic and three sites were undetermined.

120. Pre-contact sites include modified outcrops and small enclosures that may represent temporary habitation (Site 50-50-11-5980), rock mounds (Site -5983),

low walls (Site -5972), a habitation platform (Site -5977), and agricultural terraces (Sites -5973, -5975, -5978, -5979, and -5982).

121. All sites fit the model of Upcountry occupation reflected in early historic documents, Land Commission Awards, and archaeological studies.

122. Parts of the Petition Area were interpreted as historic and used for habitation (Site 50-50-11-5984). The sites used for pastureland consisted of walls and an enclosure, and were interpreted as the results of historical ranching activities.

123. A bulldozed house site was identified as Site -5984.

124. The three sites listed as undetermined (Sites 50-50-11-5974, -5976, and -5986) were difficult to define partly due to their previous disturbance.

125. Sub-surface testing carried out in areas likely to have been least affected by historic activities resulted in no identified cultural material. The only finds of any significance were a sharpening stone (*hoana*) and a surface lithic scatter at Site 50-40-11-5980.

126. The 18 archaeological sites identified in the AIS were assessed as significant under Criterion D of the State and National Register of Historic Places because of their ability to yield information about history or prehistory.

127. All 18 sites yielded sufficient information in the form of photographs and maps, and no additional archaeological work is recommended. Further archaeological procedures would not contribute a significant volume of

additional data to the interpretation of the history of the region. Therefore, while all of the 18 archaeological sites were considered significant according to the broad criteria because of their ability to yield information about history or pre-history, they have been adequately documented in the form of photographs and maps and no further work is required. SHPD has concurred with this conclusion.

128. On the approximately 48-acre parcel identified by TMK: 2-3-01: 174, one inadvertent human burial was found by the current tenant during gardening. The burial was determined to be of Asian ancestry. SCS completed a Burial Treatment Plan to preserve the burial in place, with a buffer zone around the burial.

129. The SHPD accepted the Burial Treatment Plan.

130. Petitioner agreed to implement the long-term Preservation Plan for the burial site, which includes measures to be taken prior to, during, and after grading and construction.

131. SHPD recommended full-time archaeological monitoring during construction due to the historic properties representing pre-contact agricultural use of the area and post-contact use for ranching, agriculture, and historic habitation.

132. Petitioner will be required to comply with all State of Hawai`i and County of Maui laws and rules regarding the preservation of archaeological and historic sites should any be found during construction.

133. Petitioner agreed to prepare and implement an archaeological monitoring plan to be accepted by SHPD.

134. Should any archaeological remains or cultural materials be encountered during construction and/or earth altering activities, work in the vicinity of the find will be halted and appropriate protocols will be followed in coordination with SHPD and the Maui/Lana`i Islands Burial Council. SHPD will be contacted to establish appropriate mitigation measures in accordance with State preservation law and administrative rules for the treatment of inadvertent discoveries, including chapter 6E, HRS, and in coordination with the Maui/Lana`i Islands Burial Council. The Office of Hawaiian Affairs will also be contacted in the event that archaeological remains or cultural material is discovered during ground altering activities.

135. As part of the Project's Final Environmental Assessment ("FEA"), an assessment of the cultural impacts of the Project was conducted.

136. Supplemental cultural analysis was performed by Kimokeo Kapahulehua, owner of Hana Pono LLC, a Native Hawaiian-owned company specializing in cultural impact assessments, cultural monitoring, and general cultural consulting services.

137. The supplemental assessment included consideration of informant interviews and review of the history of the Petition Area. The objectives of the assessment were to obtain information from local informants which would provide

cultural context for the Petition Area, as well as to describe potential impacts, if any, from the development of the Petition Area, including measures to mitigate impacts, if necessary.

138. Kimokeo Kapahulehua interviewed Lawrence Shim, Ewalani Shim, and Keali`i Taua to obtain primary source-level information regarding subsistence, cultural, and religious uses associated with the Petition Area.

139. Based on the studies and interviews, there are no Native Hawaiian traditional and customary practices being exercised in the Petition Area.

140. Based upon the AIS prepared by SCS and approved by SHPD, the cultural impact assessments, including that conducted by Kimokeo Kapahulehua, documentary research, SHPD's recommended archaeological monitoring during construction and/or earth altering activities, and SHPD's acceptance of the Burial Treatment Plan, development of the Project is not anticipated to have an adverse effect on Native Hawaiian traditional and customary rights which would require protection under Article XII, section 7, of the Hawai`i State Constitution.

Groundwater Resources

141. The Petition Area lies within the boundaries of the Makawao Aquifer System, which is not under the management of the State of Hawai`i Department of Land and Natural Resources, State Commission on Water Resource Management ("CWRM").

142. Groundwater beneath the Petition Area is likely to occur as a basal lens with a standing water level between five to ten feet above mean sea level. The groundwater is expected to be of drinking water quality, residing in the Honomanū basalts that are the original shield-building volcanics of Haleakalā. The thin-bedded lava flows of this volcanic series have proven to be very permeable.

Recreational Resources

143. There are several parks in proximity to the Petition Area. Kula Park is located southwest of the Petition Area, and includes a ballfield, soccer fields, playground equipment, picnic tables, restroom, and parking.

144. Other neighborhood parks and facilities in proximity to the Petition Area include Kula Community Center, a gateball field, tennis courts, and Harold Rice Park.

145. The Project will not significantly impact any of the existing recreational facilities.

146. The Project will include a three-acre park site adjacent to the Kula Community Center. Petitioner represents that it will build and dedicate to the County the park, together with a comfort station within this park site, as part of the Project.

147. Petitioner plans to develop a greenway trail or path within the Project to promote recreational opportunities. Petitioner represented that it will

coordinate with the County to ensure that the greenway trails or paths are consistent with the County's Upcountry Greenway Master Plan.

Scenic Resources

148. The scenic resources of the Petition Area are characterized by views to Maui's central isthmus. The northern and southern shorelines of Maui can be seen northwest and southwest of the Petition Area. Mount Haleakalā is also visible from the Petition Area.

149. The Petition Area is not part of a scenic corridor and the Project will not impact views from inland vantage points.

150. Petitioner will comply with County requirements for outdoor and street lighting to be shielded and downward pointing to minimize light pollution.

ENVIRONMENTAL QUALITY

Noise

151. The predominant source of noise in the vicinity of the Petition Area will be noise from the Kula Community Center, the gateball field and tennis courts, and nearby traffic noise from Lower Kula Road.

152. Ambient noise conditions may be temporarily affected on a short-term basis by certain onsite construction activities on the Petition Area (such as mass grading, roadway and utilities installation work, construction vehicle traffic, and other

construction noise). Best Management Practices ("BMPs"), such as equipment mufflers, barriers, and other noise attenuating measures, will be utilized as required.

153. All construction activities will be limited to daylight working hours, and will be in compliance with appropriate governmental rules and regulations relating to permissible noise levels.

Air Quality

154. The air quality in the Petition Area and Kula region is considered good. The region's constant exposure to winds allows quick dispersal of any concentrations of emissions.

155. Air quality in the vicinity of the Petition Area may be temporarily and intermittently impacted on a short-term basis from the emission of fugitive dust during construction and construction-related activities, such as exhaust emissions from onsite construction equipment. BMPs will be used to ensure that construction-related impacts are minimized.

Coastal Water Quality

156. The Project is not expected to adversely impact coastal water quality. Runoff will be retained in a retention basin located on the northwestern corner of the Project. Drainage system improvements will be designed in accordance with applicable regulatory standards to ensure that there is no adverse effect on downstream properties. Temporary environmental effects, including soil and vegetation disturbance

due to construction of offsite water improvements, will occur. Waterline construction will be limited to a period when Keāhuaiwi Gulch is dry. Environmental impacts are expected to be minimal and will be monitored on a regular basis. BMPs will be implemented to minimize the effects of stormwater runoff during construction of the Project.

ADEQUACY OF PUBLIC SERVICE AND FACILITIES

Highway and Roadway Facilities

157. Wilson Okamoto Corporation ("WOC") prepared a July 2006 Traffic Impact Assessment Report ("July 2006 TIAR") and a July 2006 (Revised) TIAR ("Revised TIAR") for the Project.

158. The objectives of the July 2006 TIAR and Revised TIAR were to evaluate existing roadway and traffic operations in the vicinity of the Petition Area, analyze future roadway and traffic conditions with and without the Project, analyze and develop trip generation characteristics for the Project, superimpose site-generated traffic over future traffic conditions, identify and analyze traffic impacts resulting from the Project, and make recommendations of improvements to mitigate traffic impacts resulting from the Project.

159. Several intersections, including the Project's proposed new access road off Lower Kula Road, were analyzed in the July 2006 TIAR and Revised TIAR.

160. The Federal Highway Administration's "Highway Capacity Manual" and the "Highway Capacity Software" were used for a highway capacity analysis. This analysis is based on the concept of Level of Service ("LOS") to identify the traffic impacts associated with the traffic demands during peak hours of traffic. LOS is a qualitative and quantitative assessment of traffic conditions. LOS "A" represents ideal or free-flow traffic operating conditions and LOS "F" represents unacceptable or potentially congested traffic operating conditions.

161. Historic traffic data and traffic projections contained in the Maui Long-Range Land Transportation Plan were used to determine an appropriate ambient growth of traffic demands in the vicinity of the Petition Area.

162. With respect to the Revised TIAR's study intersections, all movements will operate at LOS "C" or better, with or without the Project.

163. In discussions with the State of Hawai'i Department of Transportation ("DOT") in August 2011, the DOT recommended, and Petitioner agreed, that the Revised TIAR needs to be updated to reflect current traffic conditions. The following are study parameters to be incorporated and/or included in the updated TIAR:

a. The Project description shall be based on the latest Project plan.

b. Updated traffic counts shall be taken when school has been in session for a couple of weeks for a span of three days (Tuesday, Wednesday, and Thursday) during three time

periods (A.M., P.M., and when school dismisses for the day). The data with the highest traffic volumes on the highway shall be used in the updated analysis.

c. The study area shall include the intersections contained in the July 2006 TIAR with the addition of the Copp Road/Kula Highway intersection.

d. The updated analysis shall use 1.2 percent per year ambient growth based on the Maui General Plan.

e. Trip generation for all the Project's residential uses, regardless of type, shall use rates for single-family detached residential units to represent the worst-case scenario.

f. Traffic assignments shall be based on the Kula Highway/Lower Kula Road (north) intersection as the primary access route to and from the Project.

g. The updated analysis shall incorporate trips for park uses during commuter peak periods.

h. The updated analysis shall evaluate the performance of creating a southbound left-turn lane along Kula Highway at the intersection with Lower Kula Road to maintain through traffic flow on the highway.

164. Petitioner has agreed to implement the recommendations of the July 2006 (Revised) TIAR, including provision of exclusive left-turn and right-turn lanes on the westbound approach of Lower Kula Road at the northern intersection with Kula Highway and an exclusive southbound left-turn lane along Kula Highway at the northern intersection with Lower Kula Road to minimize the impact of turning vehicles on through traffic along Kula Highway. DOT approval will be required prior to finalizing plans and undertaking any roadway and intersection improvements

impacting State highways. Petitioner will ensure that all proposed roadway development and improvements conform to applicable State and County standards.

165. Petitioner represented that it would install speed bumps on Kula Road if requested by the County, will construct sidewalks as required by Resolution No. 10-57 in consultation with the County, and will comply with County ordinances regarding the condition of Lower Kula Road.

Water Service

166. Otomo Engineering, Inc., prepared a report entitled *Preliminary Engineering Report for Kula Ridge Subdivision* dated September 2006. The report provided information on the existing water system infrastructure serving the Project and the adequacy of the existing infrastructure and anticipated improvements that may be required for the Project.

167. Water service to the Makawao-Pukalani-Kula Community Plan region is provided by the County of Maui Department of Water Supply ("DWS"). The Kula System consists of an upper ("Upper Kula System") and lower ("Lower Kula System") system, with the Upper Kula System located at the 4,000-foot elevation and the Lower Kula System originating at the 3,000-foot elevation. The Lower Kula System serves the Ōma`opio, Olinda, and lower Kula communities, while the Upper Kula System serves the remaining communities. The Upper Kula System collects water from

Haipua`ena, Puohakamoa, and Waiakamoi Streams, while the Lower Kula System diverts water from the Haipua`ena, Puohakamoa Waiakamoi, and Honomanū Streams.

168. DWS operates a water treatment plant at Olinda with a capacity of 1.7 million gallons per day ("MGD"). Major storage reservoirs supporting the Upper Kula System include a 10 million gallon ("MG") upper Waiakamoi dam/reservoir, a lower Waiakamoi concrete dam, two 15 MG Waiakamoi concrete tanks, and a 3 MG Olinda steel tank. The recently constructed Kahakapao Reservoirs, consisting of two 50 MG reservoirs in the vicinity of the Waiakamoi Reservoirs, also provide additional storage capacity for the upper system. During dry periods, the Kula System is supplemented by water pumped from the Makawao System.

169. Water storage for the area is currently provided by the Ōma`opio tank located approximately 1,200 feet to the northeast of the Petition Area. It has a capacity of 2.1 MG at an elevation of 3,890 feet. An existing 8-inch waterline along Lower Kula Road in the vicinity of the Petition Area conveys water from the Ōma`opio tank.

170. There is an existing fire hydrant located near the Kula Community Center.

171. Resolution No. 10-57 requires that the Project comply with chapter 14.12, MCC, relating to water availability.

172. The Project's average water supply requirement has been estimated to be approximately 83,200 gallons per day ("GPD").

173. By DWS standards, the source of the water supply for the Project must be capable of providing the maximum day use in a 16-hour pumping day. As maximum day is defined as 1.5 times average, or 114,000 GPD, the 16-hour pumping source must have a capacity of at least 120 gallons per minute ("GPM") to supply the Project.

174. Petitioner will work with DWS to provide the required water for the Project.

175. Petitioner's three options for obtaining drinking water for the Project are: (1) connecting to the County water system, in which case the Project would be placed on the Upcountry water meter list with no assurance that all persons on the list would receive water; (2) developing a new water source for dedication to the County in exchange for water credits, in which case the Upcountry water meter list would not apply; or (3) developing a private water system, in which case the Upcountry water meter list would not apply.

176. With respect to the second option, Petitioner has identified the Pi`iholo South well (State No. 5118-04), which has been pump tested at rates up to 1,250 GPM. Petitioner has an agreement with the Pi`iholo South well owner to allocate

120,000 GPD of the well's capacity for the Project and the Kula Ridge Mauka development.

177. Petitioner has offered to pay $2 million to assist in the acquisition of the Pi`iholo South well, or any other water source selected by the County.

178. As another alternative for the second option, Petitioner has explored the development of a new well on the adjacent Kula Ridge Mauka property. A permit for this well, identified as State No. 4519-01, was originally issued by the CWRM in 2009. By CWRM letter dated June 20, 2011, Petitioner received an extension of the Well Construction/Pump Installation Permit for Well No. 4519-01, providing a new completion date of May 23, 2013.

179. If Petitioner and DWS cannot agree on the development and dedication of a new water source, Petitioner could explore the third option and develop an onsite private water system, in conjunction with the adjacent Kula Ridge Mauka project. The onsite private water system would consist of two wells (one for back-up capacity) and multiple service pressure zones, each established by a storage reservoir.

180. The well would be placed at the approximately 3,100-foot elevation above the Project, and the service area to be served by the water system would be divided into three service pressure zones. Thus, the water supply would only need to go as high as the first service zone at 3,100 feet. This would result in a more efficient and cost effective system.

181. No well has been drilled within the Petition Area or on the Kula Ridge Mauka site. However, based on the results of the nearest four wells (State No. 4719-01 to the north at the 2,127-foot elevation and State Nos. 4422-01, 4621-01, and 4621-02, down gradient), groundwater beneath the Petition Area is likely to be of drinking water quality.

182. The sustainable yield of the Makawao Aquifer System is 7 MGD. Currently only 0.3 MGD are being drawn from the Makawao Aquifer.

183. The Project will meet DWS standards for fire flow demand of 1,000 GPM for a 2-hour duration and 500 GPM for a 2-hour duration for agriculture. Fire hydrants will be installed with a maximum spacing of 350 feet for residential areas and 500 feet for rural areas.

184. Water conservation plans will be pursued and formulated during the design phase of the Project.

Wastewater

185. Otomo Engineering, Inc., prepared a report entitled *Preliminary Engineering Report for Kula Ridge Subdivision* dated September 2006. The report provided information on the existing wastewater infrastructure that will be serving the Project and the adequacy of the existing infrastructure and anticipated improvements that may be required for the Project.

186. There are no public sewer facilities in this part of Maui. Wastewater in the Kula region is treated, processed, and filtered through cesspools or septic tanks. The County of Maui does not serve the area.

187. The Project is estimated to generate an average wastewater flow of approximately 40,600 gallons per day based on County of Maui standards.

188. Wastewater for the Project will be handled through the use of individual wastewater systems ("IWS"), which will be provided for each unit.

189. Petitioner was granted a variance by the State of Hawai`i Department of Health ("DOH") on June 20, 2007, to utilize IWS on lots smaller than 10,000 square feet, subject to certain conditions.

190. Based upon the Findings of Fact and Conclusions of Law of the Variance Application No. WW 242 for Individual Wastewater System Docket No. 06-VWW-31, a variance was granted and valid for a period of five years, after which the developer or the Association of Lot Owners must apply for a variance renewal.

191. Best Industries USA, or another single entity, will be responsible for reporting to DOH in compliance with Variance Application No. WW 242.

192. Environmental Waste Management Systems, Inc. ("EWMS"), a wastewater treatment and water purification industries firm based in Honolulu, Hawai`i, that is the exclusive manufacturer and distributor of the patented ESIS Aerobic

Treatment Unit ("ATU"), was retained by Petitioner to install and maintain IWS and ESIS ATUs in the Project. EWMS has worked with DOH to allow the use of ATUs.

193. The approved IWS, utilizing an ATU as the means of wastewater treatment for each lot, meets the requirements of section 11-62-33.1(b)(2), HAR. A single IWS will be provided per lot, and will consist of an aerobic unit with chlorinators (if required) and a horizontal soil absorption system or subsurface disposal system.

194. Each IWS and ATU will be required to have an active continuous operation and maintenance ("O&M") service program to ensure optimal performance. This obligation for a continuous O&M service program will be imposed in the Project Covenants, Conditions, and Restrictions ("CC&Rs"), which will be recorded against the Petition Area and will run with the land, requiring an annual report of the system quality to be sent to DOH. The implementation of a continuous O&M service program for all IWSs and ATUs is a key component for safe, successful, and long-term IWS and ATU use.

195. Best Industries USA, Inc., a licensed contractor, or another single entity, will maintain and inspect all IWS in the Project, including the ATUs and absorption beds. The maintenance program will include provisions for system operations, scheduled service inspections, and a basic maintenance visit completed at least once a year for each IWS. A maintenance inspection will be provided for every

homeowner. This maintenance inspection notice will list recommendations and comments for maintaining the ATU.

196. In compliance with sections 342D-6(d)(4) and 342D-7(c)(1), (2), and (3), HRS, a variance shall be issued when it serves the public interest, it does not substantially endanger human health or safety, and compliance with the rules or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

197. The ESIS ATU meets and exceeds the National Sanitation Foundation Standard No. 40 Class I Effluent (NSF-40) criteria for secondary quality effluent and meets the requirements for use as an ATU in the State according to chapter 11-62, HAR.

198. Each IWS, ATU, and absorption bed will be able to be installed at the rate of dwelling construction and occupancy, which allows for incremental buildout and lower initial investment. Furthermore, because each IWS, ATU, and absorption bed will be able to be installed on each lot independently and integrated into each lot, the need to allocate usable land for an onsite wastewater treatment package plant is eliminated.

199. There is no need for a collection system because each IWS, ATU, and absorption bed can be installed on each lot independently and integrated into the lot.

200. Chapter 11-62, HAR does not require a back-up disposal component for absorption beds from IWSs and ATUs, which allows for lower costs.

201. The ATUs and IWSs are able to operate without primary electrical power due to gravity flow of raw wastewater from dwellings to the ATU, raw and treated wastewater through the ATU, and treated effluent to the absorption bed. The only primary electrical power requirement is for an external airblower located outside of the ATU, which will provide aeration from the external airblower via a half-inch PVC line to the ATU.

202. Installation of the IWSs in the Project is not anticipated to be complicated by the sloping terrain of the Petition Area. Site specific IWS design and engineering will be performed to address the specific site conditions of each lot of the Petition Area. In addition, IWSs and ATUs have been designed for, and installed in, previous developments with similarly sloping terrain without complication.

203. The cost for the continuous O&M service program is initially anticipated to be $250 per year per each ESIS ATU. There will be a single service contract by the Association of Lot Owners to have the IWS O&M service program provided by Best USA Industries, Inc., or another single entity.

Drainage

204. Otomo Engineering, Inc., prepared a report entitled *Preliminary Drainage Report for Kula Ridge Subdivision* dated September 2006. The purpose of the

report was to examine both the existing and proposed drainage conditions for the Project.

205. Presently, the majority of the onsite runoff sheet flows across the Petition Area in a northeast to southwest direction toward the adjacent properties. A portion of runoff sheet flows directly into Keāhuaiwi Gulch, and the runoff eventually discharges into the ocean.

206. It is estimated that the existing 50-year storm runoff from the undeveloped Petition Area is 55.66 cubic feet per second ("cfs").

207. The Petition Area is situated in Flood Zone C, which means it is an area of minimal flooding.

208. After the development of the Project, it is expected that the 50-year storm runoff from the Petition Area will be approximately 164.59 cfs, a net increase of 108.93 cfs.

209. To accommodate the increase in post-development runoff, Petitioner will construct grated catch basins located within the grassed shoulder areas of roadways to intercept and collect onsite runoff. The onsite detention basins will be located in the northwestern corner of the Petition Area.

210. The detention basins will be developed and sized to accommodate the increase in surface runoff volume from a 50-year, 1-hour storm generated from the Project.

211. Overflows from the detention basin will be allowed to sheet flow into Keāhuaiwi Gulch at a rate less than existing sheet flow conditions into the gulch.

212. Prior to overflowing into Keāhuaiwi Gulch, the runoff will be filtered through a gravel berm wrapped in a fine filter fabric.

213. The drainage design criteria will be to minimize any alterations to the natural pattern of the existing onsite surface runoff. There will be no increase in runoff sheet flowing from the Petition Area onto the adjoining or downstream properties. This is in accordance with drainage standards, Chapter 4, Rules for the Design of Storm Drainage Facilities of the County of Maui.

214. Petitioner has agreed to ongoing maintenance of the detention basins and drainage improvements as designed. Petitioner has also represented that low impact development techniques to manage stormwater onsite will be incorporated in the design and development of the Project to the extent practicable, as discussed in *Low Impact Development: A Practitioner's Guide*, June 2006, available at http://hawaii.gov/dbedt/czm/initiative/lid.php.

215. The Project is not anticipated to have any adverse effect on adjoining or downstream properties, and the proposed drainage improvements are sufficient to comply with County standards for a 50-year, 1-hour storm event.

Solid Waste Disposal

216. A solid waste management plan will be developed for the disposal and/or recycling of materials resulting from construction of the Project.

217. Solid wastes generated during the construction of the Project are anticipated to be recycled or disposed of in an approved construction landfill site. According to the County of Maui's Integrated Solid Waste Management Plan (February 2009), the County of Maui's Central Maui Landfill has the capacity to accommodate solid waste to the year 2026.

Schools

218. The State of Hawai`i Department of Education ("DOE") has three schools in the Upcountry region: King Kekaulike High School (Grades 9 to 12), Kalama Intermediate School (Grades 6 to 8), and Kula Elementary School (Grades K to 5). Other schools in the area include Kamehameha Schools (Grades K to 12), St. Joseph School (Grades K to 6), Haleakalā Waldorf School (Grades K to 8), and Seabury Hall (Grades 6 to 12).

219. Based on 82 single-family units (excluding the senior duplex units), it is expected that the Project will generate approximately 20 elementary school students, 10 middle school students, and 12 high school students. The Project is outside of the current Maui School Impact Fee Districts. The DOE will not be requesting a condition for this Project.

Police, Fire, and Emergency Services

220. Police protection for the Upcountry area is provided by the County of Maui Police Department, with its main headquarters located in Wailuku. A police substation is located in Pukalani Town, and a new police community service center will be located in the Kulamalu Town Center, approximately one mile away from the Petition Area.

221. Fire protection for the Upcountry area, which encompasses fire prevention, suppression, rescue, and emergency services, is provided by the County of Maui Department of Fire Control, with stations located in Kula, Makawao, and Pā`ia.

222. Maui Memorial Medical Center, located between Wailuku and Kahului, is the only major medical facility on the island of Maui, and is located approximately 19 miles to the northeast of the Petition Area. Acute, general, emergency, and obstetric care services are provided by the 231-bed facility.

223. Kula Hospital is located approximately three miles away from the Petition Area. The hospital serves as a long-term care facility and also has an out-patient clinic for area residents.

224. The development of the Project will not extend the existing service area limits for or adversely impact the capabilities of the police services, fire protection operations, or medical services.

Civil Defense

225. The State of Hawai`i Department of Defense, State Civil Defense ("SCD"), requested that a new outdoor warning siren be installed at the Petition Area.

226. Petitioner agreed to provide the siren as requested by the SCD. Appropriate coordination will be undertaken with the SCD to ensure that appropriate siting, design standards, and specifications are used for the new siren.

Public Utility Services

227. Otomo Engineering, Inc., prepared a report entitled Preliminary Engineering Report for Kula Ridge Subdivision dated September 2006. The report provided information on the existing electrical and telephone services that will be serving the Project and the adequacy of the existing infrastructure and anticipated improvements that may be required for the Project.

228. Maui Electric Company, Ltd., Hawaiian Telecom, and Time Warner Oceanic Cable will provide electrical, telephone, and cable television services, respectively, for the Project.

229. Within the Project, all distribution systems will be installed underground.

230. The Project is not anticipated to adversely affect electrical or communication systems.

Energy Conservation

231. The affordable units of the Project will be designed to address sustainability goals for the Maui Island Community.

232. Petitioner represented that the following sustainability measures will be incorporated into the Project:

a. All units will have solar hot water heaters, Energy Star appliances, Energy Star Advanced Lighting Packages, EPA WaterSense plumbing fixtures, R-30 insulation in attics, and R-13 insulation in exterior walls.

b. Siting of buildings to maximize natural cooling and minimize heat gain.

c. Provision of space for recycling and material diversion within the Project lots.

d. Units will be designed to be PV-ready (e.g., designed to accommodate a photovoltaic energy system), and a solar photovoltaic-energy system will be installed at the option of the homebuyer.

COMMITMENT OF STATE FUNDS AND RESOURCES

233. The Project is not expected to require an unreasonable commitment of State funds and resources. Personal income and general excise taxes generated by residents of the Project will help offset expenditures required to support State services.

MITIGATION OF PROJECT IMPACTS

234. Petitioner represented that it will implement the mitigation measures recommended by its consultants in the Project's FEA, which includes the reports and studies referenced therein.

CONFORMANCE TO THE STATE LAND USE URBAN DISTRICT STANDARDS

235. The Petition Area is located in an area of existing and planned urban development.

236. Makai of and adjoining the Petition Area is a community that has among the greatest density of people, structures, streets, urban level of services, and other related land uses in the overall Upcountry Kula area.

237. The nearby Kula Community Center and tennis courts establish a land use spatial configuration that provides a continuity of urban use patterns between the Petition Area and lands designated within the State Land Use Urban District containing single-family residential lots; a church; small business establishments, including a grocery store, restaurant, and gas station; an elementary school; and park space.

238. The Petition Area is located approximately eight miles from Makawao Town, and six miles from Pukalani Town, which are centers of trading and employment. Both towns include professional and business services, as well as established residential communities.

239. The Petition Area will be serviced by infrastructure and public services without creating capacity and operational constraints. Appropriate onsite and offsite infrastructure improvements will be provided. The Petition Area is located in

proximity to major existing roadways, including Kula Highway, and the Project includes a planned internal transportation system of collector and local roads.

240. The Petition Area consists of satisfactory topography, drainage, and soil conditions, is free from the danger of flood, tsunami inundation, and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for residential uses.

241. The Petition Area as a whole is characterized by sloping topography with less than 20 percent grade.

242. The Makawao-Pukalani-Kula Community Plan designates the Petition Area as "Single-Family" and "Rural."

243. Urbanization of the approximately 34.516-acre portion of the Petition Area will not contribute to scattered spot urban development given the proximity to developed and undeveloped urban lands nearby.

244. The proposed development is not anticipated to require unreasonable public investments in infrastructure facilities or public services.

CONFORMANCE TO THE STATE LAND USE RURAL DISTRICT STANDARDS

245. The approximately 16.509 acres of the Petition Area proposed for State Land Use Rural District reclassification is surrounded by low-density residential lots. Reclassification of this portion of the Petition Area from the State Land Use

Agricultural District to the State Land Use Rural District will not alter the general characteristics of the area.

246. The four proposed rural lots, which make up the approximately 16.509-acre portion of the Petition Area, will encourage farming activities, including small farms.

247. The four proposed rural lots are surrounded by single-family homes, small farms, and other uses which are reflective of the region's overall rural character. The rural lots will be sold with restrictions on further subdivision, and each lot will be limited to one main dwelling and one accessory dwelling unit.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI`I STATE PLAN: RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

Hawai`i State Plan

248. The Hawai`i State Plan, found in chapter 226, HRS, is a comprehensive guide for the future long-range development of the State. The Hawai`i State Plan's purposes are to identify the goals, objectives, policies, and priorities for the State, provide a basis for allocating limited resources, and improve coordination among Federal, State, and County agencies.

249. The reclassification of the Petition Area is in conformance with the following goals of the Hawai`i State Plan:

> A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the

needs and expectations of Hawai`i's present and future generations.

A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.

Physical, social and economic well-being for individuals and families in Hawai`i, that nourishes a sense of community responsibility, of caring, and of participation in community life.

The Project will contribute toward the attainment of these three goals by: (1) providing direct and indirect short and long-term employment opportunities for the present and future residents of the island of Maui through construction expenditures, and ultimately through resident spending on goods and services from local merchants and service providers; (2) allowing Maui residents, young and old, to secure affordable housing in an area that is both desirable and suitable for local families to raise their children, who represent the next generation of Maui's community, and for seniors to enjoy a safe, quality atmosphere which can be characterized as unique, quiet, clean, and with a distinct element of beauty; (3) generating increased State and County tax revenues; (4) contributing to the stability, diversity, and growth of local and regional economies; and (5) minimizing the impact on the physical environment of the Petition Area.

250. The Hawai`i 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 of the Hawai`i State Plan:

Section 226-5, HRS, Objective and Policies for Population

226-5(a), HRS:	It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.
226-5(b)(1), HRS:	Manage population growth statewide in a manner that provides increased opportunities for Hawai`i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.
226-5(b)(3), HRS:	Promote increased opportunities for Hawai`i's people to pursue their socio-economic aspirations throughout the islands.

The Project will provide economic and employment opportunities for the island of Maui. The Project will also provide affordable housing for young families and seniors, which will allow the pursuit of their economic and social aspirations.

Section 226-6, HRS, Objectives and Policies for the Economy—in General

226-6(b)(6), HRS:	Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.

The Project will provide increased employment opportunities in construction and construction-related employment during the Project's buildout.

Section 226-11, HRS, Objectives and Policies for the Physical Environment—Land-based, Shoreline, and Marine Resources

226-11(a)(2), HRS:	Effective protection of Hawai`i's unique and fragile environmental resources.
226-11(b)(3), HRS:	Take into account the physical attributes of areas when planning and designing activities and facilities.
226-11(b)(8), HRS:	Pursue compatible relationships among activities, facilities, and natural resources.

The Project is not expected to have adverse impacts on environmental resources. The Project takes into account the Petition Area's location relative to existing residential uses and physical features of the Petition Area.

Section 226-12, HRS, Objective and Policies for the Physical Environment—Scenic, Natural Beauty, and Historic Resources

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

The Project has been designed to reflect a subdivision that will be compatible with the existing single-family residences in the surrounding areas. In addition, the four 4-acre lots, 5-acre open space area, and the 3-acre park site will ensure that open space buffers are preserved to complement the surrounding areas.

Section 226-13, HRS, Objectives and Policies for the Physical Environment--Land, Air, and Water Quality

226-13(b)(2), HRS:	Promote the proper management of Hawai`i's land and water resources.
226-13(b)(6), HRS:	Encourage design and construction practices that enhance the physical qualities of Hawai`i's communities.
226-13(b)(7), HRS:	Encourage urban developments in close proximity to existing services and facilities.

The Petition Area is situated near urban lands of similar uses. The Project will address the problem of lack of affordable housing as stated in the Makawao-Pukalani-Kula Community Plan, and the Project is also compatible with the adjacent and nearby single-family residential uses.

Section 226-19, HRS, Objectives and Policies for Socio-Cultural Advancement—Housing

226-19(a)(2), HRS:	The orderly development of residential areas sensitive to community needs and other land uses.
226-19(b)(1), HRS:	Effectively accommodate the housing needs of Hawai`i's people.
226-19(b)(3), HRS:	Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.
226-19(b)(5), HRS:	Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.

226-19(b)(7), HRS: Foster a variety of lifestyles traditional to Hawai`i through the design and maintenance of neighborhoods that reflect the culture and values of the community.

The Project will address a portion of the significant demand for affordable housing on the island of Maui. The Project will be an extension of the existing residential uses in the immediate area. The sale of 70 affordable units, which will be offered to families having an annual income of not more than 140 percent of the Maui County median family income, will allow individual families and seniors to foster a variety of traditional, quality lifestyles, and reflect the culture and values of the community.

Section 226-23, HRS, Objective and Policies for Socio-Cultural Advancement—Leisure

226-23(b)(4), HRS: 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 will include a three-acre park site, together with a comfort station within the park site, which will provide open space and recreational value for residents of the Project as well as the general public.

Petitioner plans to develop a greenway trail or path within the Petition Area to promote recreational opportunities.

Priority Guidelines

251. Priority guidelines are other important elements of the Hawai`i State Plan. By prioritizing major areas of statewide concern, the quality of life for Hawai`i's present and future population is improved and enhanced. The Project is consistent with, and conforms to, the following priority guidelines of the Hawai`i State Plan:

Section 226-103, HRS, Economic Priority Guidelines

226-103(1), HRS: Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.

(A) Encourage investments which:

(i) Reflect long term commitments to the State;

(ii) Rely on economic linkages within the local economy;

(iii) Diversify the economy;

(iv) Reinvest in the local economy;

(v) Are sensitive to community needs and priorities; and

(vi) Demonstrate a commitment to provide management opportunities to Hawai`i residents.

The Project will assist in meeting these priority guidelines of the Hawai`i State Plan by responding to the community's need for affordable residential housing,

and allowing for the investment and reinvestment in the local economy through construction and construction-related employment opportunities.

Section 226-104, HRS, Population Growth and Land Resources Priority Guidelines

226-104(a)(1), HRS:	Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawai`i's people.
226-104(b)(1), HRS:	Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.
226-104(b)(2), HRS:	Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.
226-104(b)(12), HRS:	Utilize Hawai`i's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.

With the island of Maui's growing population and economy, there is a great demand for housing, especially affordable housing. The Project will help address a portion of that significant demand by providing 70 affordable units, which will be

offered to families having an annual income of not more than 140 percent of the Maui County median family income.

The Petition Area is located in an area of existing and planned single-family residential development as evidenced by the Makawao-Pukalani-Kula Community Plan.

The Petition Area is located near an existing restaurant, grocery store, residences, and public facilities and services.

The Project will also generate short-term employment opportunities as construction and construction-related jobs will be needed to develop the Petition Area.

The Project is not located in an environmentally sensitive area nor does it encompass lands that are essential to shoreline preservation or conservation. There are no reasonably foreseeable or unmitigated impacts to the environment that are likely to result from the development of the Project.

The land underlying the Petition Area is rated with the lowest productivity, with ratings of "C," "D," and "E." The Petition Area's low productivity rating, together with the Petition Area's proximity to existing and planned residential subdivisions, indicates that it is not essential for diversified agriculture.

Section 226-106, HRS, Affordable Housing Priority Guidelines

226-106(1), HRS:	Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.
226-106(8), HRS:	Give higher priority to the provision of quality housing that is affordable for Hawai`i's residents and less priority to development of housing intended primarily for individuals outside of Hawai`i.

The Project makes use of marginal agricultural land to meet housing needs of low and moderate income and gap-group households.

The Project will help address a portion of that significant demand by providing 70 affordable units, which will be offered to families having an annual income of not more than 140 percent of the Maui County median family income.

Section 226-108, HRS, Sustainability Priority Guidelines

226-108(1), HRS:	Encouraging balanced economic, social, community, and environmental priorities.
226-108(3), HRS:	Promoting a diversified and dynamic economy.
226-108(5), HRS:	Promoting decisions based on meeting the needs of the present without compromising the needs of future generations.

The Project is not anticipated to have adverse impacts on environmental resources. The Project will incorporate several sustainability measures including, but not limited to, solar hot water heaters, Energy Star appliances, Energy Star Advanced Lighting Packages, EPA WaterSense plumbing fixtures, R-30 insulation in attics, and R-

13 insulation in exterior walls. Buildings will also be sited to maximize natural cooling and minimize heat gain, and space will be provided for recycling and material diversion. In addition, the residential units will be designed to be PV-ready.

The Project will generate short-term employment opportunities as construction and construction-related jobs will be needed to develop the Petition Area.

The Project will address a portion of the significant demand for affordable housing on the island of Maui, providing young families and seniors with the opportunities to pursue their economic and social aspirations.

Functional Plans

252. The reclassification of the Petition Area and the development of the Project generally conforms to the Agricultural, Housing, and Recreational Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

253. The Project generally conforms to the objectives and policies of Coastal Zone Management Program, chapter 205A, HRS.

254. The Project is not coastal dependent and is located inland. As such, the Project will not have a direct, adverse impact on coastal ecosystems, beaches, or maritime resources.

255. No views or vistas from or to the shoreline will be impaired by the development of the Project.

256. The Petition Area is within areas generally unaffected by flooding. Any reasonably foreseeable adverse impacts caused by development of the Project to downstream properties and coastal resources will be mitigated.

257. The Project's grading and other site improvements will comply with the requirements of the Federal Flood Insurance Program and all State and County laws. The Project's drainage will be adequately and appropriately planned and constructed.

258. Wastewater generated by the Project will be collected, treated, recycled and/or disposed of in accordance with all applicable statutes, ordinances, and regulations.

CONFORMANCE WITH COUNTY PLANS AND PROGRAMS

Countywide Policy Plan

259. Chapter 2.80B of the MCC, relating to the General Plan and Community Plans, calls for the preparation of a Countywide Policy Plan. The Countywide Policy Plan was adopted as Ordinance No. 3732 on March 24, 2010. The Countywide Policy Plan provides broad policies and objectives which portray the desired direction of the County's future.

260. Among the key strategies identified in the Countywide Policy Plan is one relating to expanding housing opportunities for residents. The Countywide Policy Plan states:

> Maui County's attractive environment has increased the demand for housing not only for local residents, but for off-shore owners as well, which has contributed to the challenges of obtaining affordable housing for many Maui County families. To achieve balance in the housing market, it is important to work cooperatively with developers to ensure a range of housing options is available for varying income levels and demographic groups.

As it relates to the above strategy, the Countywide Policy Plan identifies the following goal and pertinent objectives.

> Goal: Quality, island-appropriate housing will be available to all residents.
>
> Objectives:
>
> (1) Reduce the affordable housing deficit for residents.
>
> (2) Increase the mix of housing types in towns and neighborhoods to promote sustainable land use planning, expand consumer choice, and protect the County's rural and small-town character.
>
> (3) Increase and maintain the affordable housing inventory.

261. With regard to the above goal and objectives, the Project is intended to increase housing opportunities for all of Maui's residents. The Petition Area will include four large lots encompassing approximately 16 acres, with the remaining approximately 34.5 acres set aside for affordable and market-rate single-family and duplex units, park and open space areas, and roadways. In the context of land use surrounding the Petition Area, including other single-family residence, public-

or quasi-public uses, and commercial uses, the Project does not affect the small town character of this sub-region of Kula.

Makawao-Pukalani-Kula Community Plan

262. The Makawao-Pukalani-Kula Community Plan is mandated by the Revised Charter of the County of Maui and the County of Maui 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 Maui County General Plan.

263. The Makawao-Pukalani-Kula Community Plan was adopted as Ordinance 2510, which took effect on July 23, 1996.

264. The purpose of the community plan is to provide a relatively detailed agenda for supplementing 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.

265. The Project advances the goals, objectives, and policies of the Makawao-Pukalani-Kula Community Plans for economic activity, land use, urban design, housing, and social infrastructure.

266. The Project is consistent with the Makawao-Pukalani-Kula Community Plan in that none of the Petition Area is designated Agriculture. Since 1996 the Petition Area has been designated for Single-Family Residential and Rural uses.

267. Pursuant to section 201H-38, HRS, Petitioner submitted a *Revised Application for Affordable Housing Development* to the Maui County Council on September 8, 2010. Petitioner requested, among other things, an exemption from the Community Plan Amendment process and an exemption from the Zoning Amendment process.

268. The Maui County Council, in reviewing and approving the Project under the provisions of section 201H-38, HRS, granted an exemption to chapter 2.80B of the MCC relating to the General Plan and Community Plans to allow the Project to proceed under its proposed land use spatial delineations and allocations. As such, Resolution No. 10-57 exempts the Project from the Community Plan Amendment process.

RULINGS ON PROPOSED FINDINGS OF FACT

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

Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any findings of fact herein

improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission rules under chapter 15-15, HAR, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 34.516 acres of land at Kula, Makawao, Maui, Hawai`i, identified as TMK: 2-3-01: por. 23 and por. 174, and shown approximately on Exhibit "A" attached hereto and incorporated by reference herein, from the State Land Use Agricultural District to the State Land Use Urban District and approximately 16.509 acres of land at Kula, Makawao, Maui, Hawai`i, identified as TMK: 2-3-01: por. 174, and also shown approximately on Exhibit "A," from the State Land Use Agricultural District to the State Land Use Rural District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban and Rural Districts, respectively, is reasonable, not violative of section 205-2, HRS, and part III of chapter 205, HRS, entitled *Important Agricultural Lands*, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

2. Article XII, section 7, of the Hawai`i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai`i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by *ahupua`a* tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission*, 79 Hawai`i 425, 450, n. 43, 903 P.2d 1246, 1271 n.43 (1995), *certiorari denied*, 517 U.S. 1163 (1996).

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

4. Article XI, section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

5. Article XI, section 3, of the Hawai`i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture,

increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

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

7. Section 205-16, HRS, provides that "no amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai`i state plan."

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 34.516 acres of land at Kula, Makawao, Maui, Hawai`i, identified as TMK: 2-3-01: por. 23 and por. 174, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby reclassified from the State Land Use Agricultural District to the State Land Use Urban District and approximately 16.509 acres of land at Kula, Makawao, Maui, Hawai`i, identified as TMK: 2-3-01: por. 174, and also approximately shown on Exhibit "A," shall be and is hereby reclassified from the State Land Use Agricultural District to the State Land Use Rural 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 District to the State Land Use Urban and Rural Districts shall be subject to the following conditions:

1. **Affordable Housing.** Petitioner shall design and construct, or have constructed, for occupancy, 70 affordable housing units within the Petition Area. Fifty-nine of the affordable units will be constructed as set forth in Resolution No. 10-57, dated October 19, 2010, and the Residential Workforce Housing Agreement, as approved by the Maui County Council and shall satisfy in full the affordable housing requirements under Resolution No. 10-57. Petitioner shall construct the 59 affordable units at a rate of two single-family homes or one senior duplex for each market rate home built, or market lot sold, as required by Resolution No. 10-57.

The remaining 11 affordable housing units to be constructed on the Petition Area are not required under Resolution No. 10-57, and may be available as affordable housing credits to satisfy affordable housing requirements for other property, if permitted by County law.

To the extent practicable, the 70 affordable units shall be sold for less than the maximum amounts established by the DHHC's Sales Price Guidelines matrix.

2. **`Ohana Units.** Except for the four Rural District lots, no *`ohana* units or accessory dwelling (as this term is defined in section 19.04.040 of the MCC) shall be allowed in the Project. The initial deed for each unit sold in the Project and the Project CC&Rs shall include this restriction.

3. **Wastewater Facilities.** Petitioner shall design and install IWS for all housing units in the Project in accordance with DOH Variance Application No. WW 242, granted on June 20, 2007. Each IWS shall be required to have an active and continuous O&M service program, to include annual inspection and reporting to DOH, provided through a single entity for all Project IWSs, to ensure optimal, safe, successful, and long-term use of the IWS. The O&M service program requirement shall be written into each initial deed for each unit sold in the Project and into the Project CC&Rs.

4. **Traffic Impact Mitigation.** Petitioner shall mitigate all Project-generated transportation impacts in accordance with a TIAR, and any updates thereto, that has been reviewed and approved by the DOT and the County of Maui Department of Public Works ("DPW"). Petitioner shall fund, construct, and implement all transportation improvements and other measures recommended and/or required in the approved TIAR, or any updated TIARs, as determined by DOT and the DPW. Petitioner shall submit an updated TIAR for DOT review and acceptance, which must

be accepted by DOT. The accepted TIAR shall be submitted to the DPW for review and acceptance prior to final subdivision approval. Upon request by DOT and the DPW, additional updates to the TIAR shall be submitted every five years after the date of this Decision and Order approving the Petition, until the mitigation measures have been completed.

Petitioner shall submit the updated TIAR to the DOT and the DPW for their review and approval within six months of the effective date of the Decision and Order approving the Petition.

5. **Civil Defense.** Petitioner shall fund and install an outdoor warning siren, as specified by the SCD to serve the Petition Area prior to the completion of the first residential unit. The location of the siren shall be determined in consultation with SCD.

6. **Archaeological Monitoring Plan.** Petitioner shall comply with an archaeological monitoring plan accepted by the SHPD, in consultation with the Maui/Lana`i Islands Burial Council, including the employment of archaeological monitors to ensure that all ground disturbances associated with the mass grading of the Petition Area, and trenching and excavation related to the installation of utilities, do not impact any subsurface cultural remains within the Petition Area.

7. **Unidentified Archaeological Finds.** Petitioner shall comply with all State of Hawai`i and County of Maui laws and rules regarding the preservation of

archaeological and historic sites should any archaeological remains or cultural materials be encountered during construction and/or earth altering activities. Petitioner shall stop work in the immediate vicinity of the find, and appropriate protocols shall be followed in coordination with SHPD and the Maui/Lana`i Islands Burial Council. Petitioner shall immediately notify the SHPD, and comply with the requirements of all applicable regulations, including chapter 6E, HRS. The SHPD, in consultation with the Maui/Lana`i Islands Burial Council, shall determine the significance of these finds and permit subsequent work to proceed with an archaeological clearance after appropriate measures have been implemented.

8. **Stormwater Management and Drainage Improvements.** Petitioner shall construct and maintain, or cause to be maintained, stormwater and drainage system improvements as designed, in compliance with applicable Federal, State, and County laws and rules. To the extent feasible, Petitioner shall mitigate nonpoint source pollution by incorporating low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to prevent runoff onto affected State highway facilities, downstream properties, and receiving gulches, streams, and estuaries that connect with coastal waters.

9. **Compliance with Section 205-3.5, HRS, Related to Agricultural Uses on Adjacent Agricultural Land.** For all land in the Petition Area or any portion

thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following:

a. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in section 165-2, HRS; and

b. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under chapter 165, HRS, the Hawai`i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

10. **Water System Improvements.** Petitioner shall provide adequate drinking and non-drinking water source, storage, and transmission facilities and

improvements to the satisfaction of the DWS to accommodate the development of the Petition Area.

11. **Water Supply Plan.** Petitioner shall comply with all provisions of MCC, chapter 14.12, relating to water availability, including obtaining written verification of a long-term, reliable supply of water for the Project from the County of Maui prior to the submittal of subdivision construction plans.

12. **BMPs.** Petitioner shall implement BMPs to 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 implement dust control measures during the development process in accordance with DOH guidelines and the County of Maui's grading ordinance.

13. **Water Conservation Measures.** Petitioner shall implement water conservation measures and BMPs, such as use of endemic, indigenous and drought-tolerant plants and turf, and incorporate such measures into the Petition Area's site design and landscape planting, and shall incorporate low flow fixtures into the construction of all units.

14. **Energy Conservation Measures.** Petitioner shall implement energy conservation measures such as installation and use of solar water heaters and implementation of designs that accommodate photo-voltaic energy systems should the

buyer decide to purchase this option. All units shall be equipped with Energy Star appliances.

15. **Established Access Rights Protected.** Pursuant to Article XII, section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

16. **Solid Waste Management Plan.** Petitioner shall consult with the County of Maui to ensure the Project conforms to the program goals and objectives of chapter 342G, HRS, and the County's approved integrated solid waste management plan.

17. **Sidewalk Improvements.** Petitioner shall fund and construct a sidewalk and crosswalks between the Kula Community Center and the Haleakalā Waldorf School. The proposed design shall incorporate traffic-calming and other safety measures, such as raised crosswalks, speed humps, warning lights, or other measures deemed appropriate by the DPW to support the objective of creating a safer pedestrian environment along this segment of roadway. The specific alignment of the sidewalk, mauka or makai, shall be defined by Petitioner in coordination with the neighboring property owners, and must be approved by the DPW.

18. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten years from the effective date of this Decision and Order granting the requested reclassification.

19. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the MPD in connection with the status of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual reports shall be due prior to or on the anniversary of the approval of the Petition. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission, and shall be due on or before the anniversary date of this Decision and Order granting the reclassification of the Petition Area.

20. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classifications, or change to a more appropriate classification.

21. **Notice of Change to Ownership Interests.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust or otherwise

voluntarily alter the ownership interest in the Petition Area, prior to the development of the Petition Area.

22. **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.

23. **Notice of Imposition of Conditions.** Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai`i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

24. **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.

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 21st, day of February 2012, per motion on February 16, 2012.

LAND USE COMMISSION

STATE OF HAWAI'I

By _____

Normand Lezy
Chairperson and Commissioner

APPROVED AS TO FORM

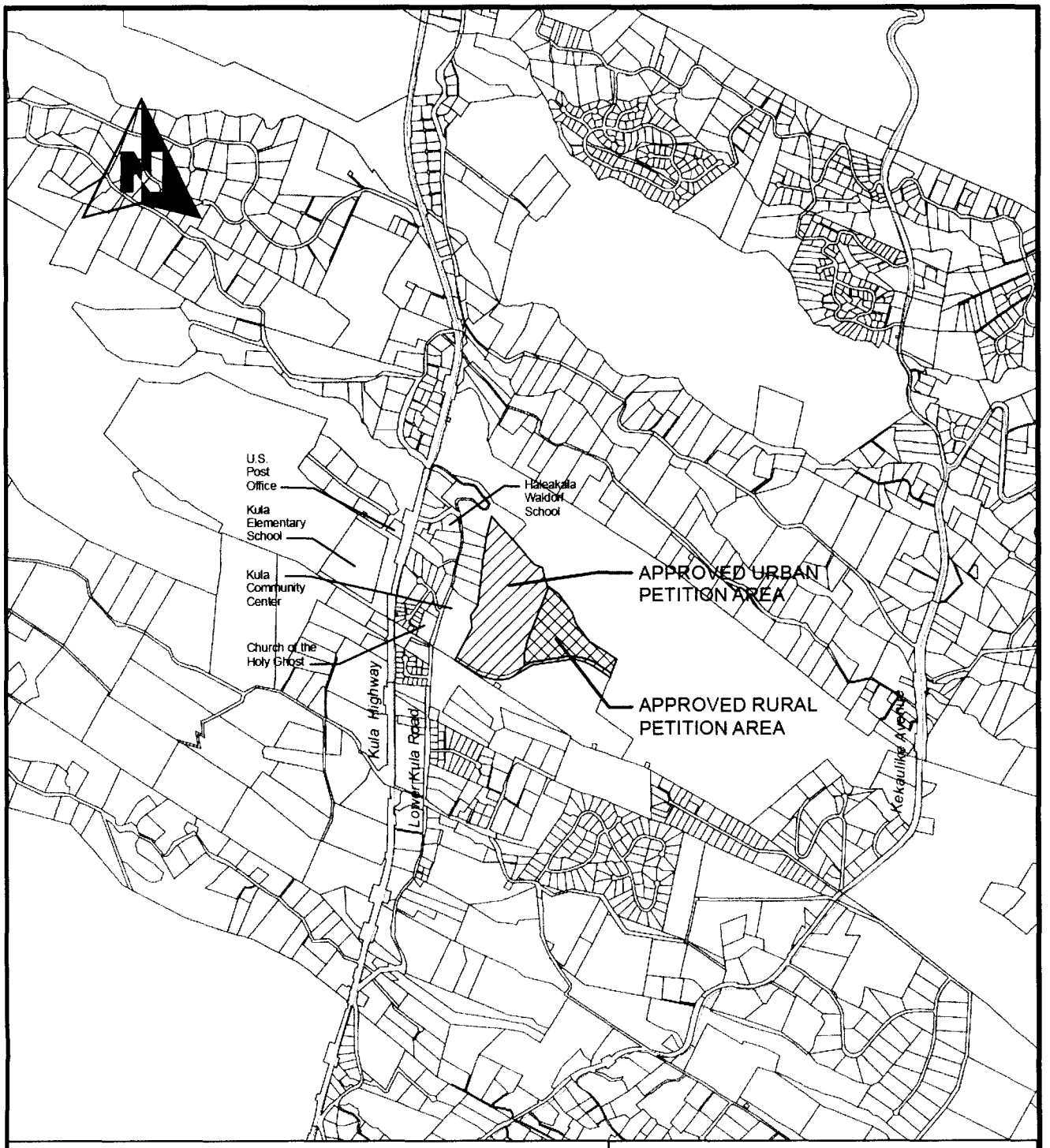
_____
Deputy Attorney General

Filed and effective on:

2/21/12

Certified by:

_____
ORLANDO DAVIDSON
Executive Officer

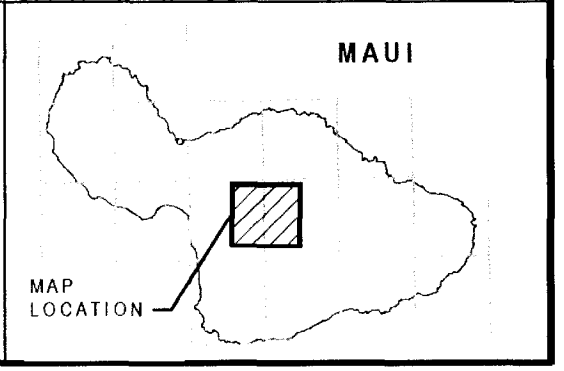


A11-790 KULA RIDGE, LLC

LOCATION MAP

Tax Map Key: 2-3-001: por. 023 & 174
Kula, Makawao, Maui, Hawai`i
Scale: 1: 24, 000

EXHIBIT "A"



c:\webs-ucweb\luc_04032012\dockets\a11790_kula_ridge\a11790_exhibit a.mdx

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In The Matter Of The Petition Of KULA RIDGE, LLC To Amend The Land Use District Boundaries Of Approximately 34.516 Acres Of Land From The Agricultural Land Use District Into The Urban Land Use District And Approximately 16.509 Acres Of Land From The Agricultural Land Use District Into The Rural Land Use District At Kula, Makawao, Maui, Hawai`i, Tax Map Key: 2-3-01: Por. 23 And 174	))))))))))))	DOCKET NO. A11-790 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **DOCKET A11-790 -FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER** was served

upon the following by either hand delivery or depositing the same in the U. S.

Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813		X	
WILLIAM SPENCE, DIRECTOR Department of Planning County of Maui 250 South High Street Wailuku, Hawai`i 96793		X	
PATRICK WONG, ESQ. Corporation Counsel Department of the Corporation Counsel County of Maui 200 South High Street Wailuku, Hawai`i 96793			X
B. MARTIN LUNA, ESQ. Carlsmith Ball LLP One Main Plaza, Suite 400 2200 Main Street Wailuku, Hawai`i 96793			X
Steven S. C. Lim, Esq. Carlsmith Ball LLP 121 Waianuenue Avenue Hilo, HI 96720			X

Honolulu, Hawai`i, February 21, 2012

ORLANDO DAVIDSON
Executive Officer