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PLANNING DEPARTMENT  
COUNTY OF HAWAII

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use  
District Boundaries into the Rural Land  
Use District for Approximately 731.581  
Acres in South Kohala District, Island of  
Hawaii, Tax Map Key No. (3) 6-8-02:016  
(por.)

DOCKET NO. A06-767

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND DECISION AND  
ORDER FOR A STATE LAND USE  
DISTRICT BOUNDARY  
AMENDMENT; EXHIBIT "A";  
CERTIFICATE OF SERVICE

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

This is to certify that this is a true and correct  
copy of the document on file in the office of the  
State Land Use Commission, Honolulu, Hawaii.

JUN 10 2008

Date

by

Executive Officer

**SCANNED**

JUN 16 2008

By: 042367



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STATE OF HAWAII

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
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STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

WAIKOLOA MAUKA, LLC ("Petitioner"), whose principal place of business is 431 North Brand Boulevard, Suite 201, Glendale, CA 91203, filed a Petition For Land Use District Boundary Amendment ("Petition") on June 28, 2006, pursuant to Hawai'i Revised Statutes ("HRS") §205-4, and, Hawai'i Administrative Rules ("HAR") Chapter 15-15, to amend the land use district boundary to reclassify approximately 731.58 1 acres of land in the South Kohala District, Island of Hawai'i, State of Hawai'i, identified as Tax Map Keys ("TMK") No.: (3) 6-8-02:016 (por.) ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Rural District to allow for the development of the Waikoloa Highlands Project ("Project") for residential use.

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with: a) the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order entered into by Petitioner and the Department of Planning of the County of Hawai'i ("County") filed on January 25, 2008, b) the Exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the State Office of Planning ("OP") on January 23, 2008, and c) Petitioner's Post-Hearing Brief in Response to OP's Exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, filed on March 11, 2008, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

**I. PROCEDURAL MATTERS**

1. On June 27, 2006, Petitioner filed the Petition, which included an Environmental Impact Statement Preparation Notice, pursuant to HRS §343-5(a)(1), and HAR §11-200-6(b)(1)(A). Petitioner also filed Exhibits 1 to 12 and the appropriate filing fee.

2. On July 6, 2006, and by a written Order dated July 10, 2006, the Commission agreed to be the accepting authority pursuant to HRS Chapter 343, and determined that the proposed action may have a significant effect on the environment to warrant the preparation of an Environmental Impact Statement ("EIS").

3. On May 21, 2007, the Commission accepted Petitioner's Final EIS.

4. By letter dated July 18, 2007, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of July 3, 2007.

5. On July 23, 2007, a prehearing conference was held in Honolulu, Hawai'i to identify the parties and potential parties, and their respective positions, to identify and clarify issues, to arrange for the timely submission of exhibits, and to

set schedules. Representatives were present for the Petitioner, the OP, and the County. Among other things, a deadline for filing a final witness list, a final exhibit list, and all exhibits was set for August 23, 2007. A Prehearing Order was subsequently issued on July 25, 2007.

6. On July 23, 2007, the OP filed its List of Witnesses, List of Exhibits and Exhibits 2, 3, 4, 6, 7, and 8.

7. On July 27, 2007, a Notice of Hearing ("Notice") was published in the Honolulu Star-Bulletin, the West Hawaii Today, the Hawaii Tribune-Herald, the Maui News, and The Garden Island. No petitions for intervention were filed with the Commission within 15 days after the publication of the Notice as required by HAR § 15-15-52(e).

8. On August 2, 2007, the OP filed the Position Statement of the Office of Planning In Support of the Petition.

9. On August 3, 2007, the County filed its List of Witnesses and List of Exhibits.

10. On August 22, 2007, the OP filed the Testimony of the Office of Planning in Support of the Petition, First Amended List of Witnesses and Exhibits 1 through 5.

11. On August 23, 2007, Petitioner filed its List of Witnesses, List of Exhibits, and Exhibits 1 through 56.

12. On September 6, 2007, the Commission conducted a hearing on the Petition at the Waikoloa Beach Marriott, Ali'i Ballroom, 69-275 Waikoloa Drive, Waikoloa, Hawai'i.

13. On September 6, 2007, Petitioner filed Exhibits 5A, 10A, 57, and Petitioner's Amended List of Exhibits. The Commission admitted into the record, without objections, Petitioner's Exhibits 1 through 57.

14. On September 6, 2007, the Commission admitted into the record, without objections, County Exhibit 1.

15. On September 6, 2007, the Commission admitted into the record, without objections, OP Exhibits 1 through 8.

16. On September 6, 2007, the Commission heard public testimony from Margaret Tigue, John Tarson, and Jan Sears.

17. On September 6, 2007, the County and the OP stipulated to Petitioner's list of expert witnesses and the Commission granted Petitioner's request to accept its list of expert witnesses in their respective fields. Petitioner also started its case and presented the following expert witnesses: Brian Takeda; James Dannemiller; Tom Holliday; and David Shideler.

18. On September 7, 2007, the Commission resumed the hearing on the Petition at the Waikoloa Beach Marriott, Ali'i Ballroom, 69-275 Waikoloa Drive, Waikoloa, Hawai'i. At the continued hearing, Petitioner continued its case and presented the following expert witnesses: Stephen Bowles; Eric Guinther; Julian Ng; and Reginald David.

19. On September 25, 2007, Petitioner filed a Motion to Submit Exhibits 58 through 64 and Amend the Exhibit List ("Motion to Submit").

20. On October 4, 2007, the Commission resumed the hearing on the Petition at the Waikoloa Beach Marriott, Ali'i Ballroom, 69-275 Waikoloa Drive, Waikoloa, Hawai'i. The Commission granted the Motion to Submit and admitted into the record, without objections, Petitioner's Exhibits 58 through 64.

21. On October 4, 2007, the Commission admitted into the record, without objections, County's Exhibits 2 through 6.

22. On October 4, 2007, the County presented its witness, Christopher Yuen, Director of the Planning Department for the County. OP also produced its first witness, Brennon Morioka, a representative from the State Department of

Transportation ("State DOT"). Petitioner presented two witnesses, Bert Toba and Charles Santos.

23. On October 5, 2007, the Commission resumed the hearing on the Petition at the Waikoloa Beach Marriott, Ali'i Ballroom, 69-275 Waikoloa Drive, Waikoloa, Hawai'i. The Commission admitted into the record, OP's Exhibits 9 through 11. Counsel for the Petitioner objected to the admission of these exhibits, asserting that the late production of the exhibits associated with the testimony of Gail Suzuki-Jones was detrimental to the Petitioner because it did not allow enough time for the parties to analyze the assumptions and opinions of the witness included in these exhibits. Counsel for the County took no position on the admission of the contested exhibits.

24. On October 5, 2007, the OP presented the following witnesses: Gail Suzuki-Jones and Lorene Maki. As a rebuttal witness to Gail Suzuki-Jones' testimony, the Petitioner presented the testimony of Susan Irvine. Following the completion of the parties' respective cases, the Commission declared the evidentiary portion of the hearing completed, and closed the evidentiary record.

25. On January 23, 2008, OP filed its Exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order. In addition to proposing its own revisions to the Petitioner's and the County's Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order, OP noted that it had no objection and stipulated to the paragraphs of the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

26. On January 25, 2008, Petitioner and the County filed their Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

27. On March 11, 2008, Petitioner filed its Post-Hearing Brief in Response to OP's Exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

28. On March 17, 2008, the Commission had an action meeting at the Waikoloa Beach Marriott, Ali'i Ballroom, 69-275 Waikoloa Drive, Waikoloa, Hawai'i, to deliberate on the Petition. No action was taken.

29. On April 9, 2008, petitioner filed a Motion for Continuance of Hearing on the Commission's deliberations.

30. At its meeting at the Waikoloa Beach Marriott, Ali'i Ballroom, 69-275 Waikoloa Drive, Waikoloa, Hawai'i, on April 15, 2008, the Commission considered Petitioner's Motion. Petitioner asserted that the Commission's deliberations should be continued because Petitioner believed it could reach a fully stipulated proposed decision and order with OP because OP's new director had just been confirmed by the State Senate. The Commission granted Petitioner's Motion.

31. On May 2, 2008, Petitioner submitted a letter to the Commission stating the Petitioner and OP were not able to reach a fully stipulated proposed decision and order with respect to this docket.

32. On June 5, 2008, the Commission continued its deliberations at the Hapuna Beach Hotel, 62-100 Kaunaoa Drive, Kamuela, Hawaii.

33. On May 28, 2008, the Commission received OP's revision to its proposed LEED condition, to be consistent with OP's position in another docket. This revised proposed condition became part of the record in this matter with no objections from the parties.

## **II. FINDINGS OF FACT**

### **A. Description of the Petition Area**

34. The Petition Area consists of approximately 73 1.581 acres of land, identified by TMK No. (3) 6-8-02: por. 16 in the South Kohala District on the Island of Hawai'i.

35. The Petition Area is approximately 5.6 miles west and makai of Queen Ka'ahumanu Highway and 4.6 miles east and mauka of Mamalahoa Highway.

36. The adjacent lands that surround the Petition Area are within the State Land Use Agricultural and Urban Districts.

37. The Petition Area historically has not been used for active agricultural production, and is currently vacant and unused.

38. The Petition Area slopes upland from north to south with average slopes ranging from 5 to 15 percent.

39. Ground surface elevations range from approximately 900 feet above mean sea level ("msl") near the northwest boundary of the Petition Area, to 1,300 feet msl near the south boundary.

40. The Petition Area is comprised of a mix of a`a and pahoehoe lava flows interspersed with pockets containing loose and unconsolidated sandy soils. The soils consist of Kawaihae extremely stony very fine sandy loam, Kamakoa very fine sandy loam, very stony land, cinder lands, and rock land, as demonstrated by Figure 9 of the Petitioner's Final EIS.

41. The Waikoloa area is considered dry with a low annual rainfall of 10 to 15 inches.

42. The soil in the Petition Area has been classified with an "E" rating according to the Land Study Bureau's ("LSB") land classification system, meaning that it is only marginally suitable for agricultural uses.

43. The Agricultural Lands of Importance to the State of Hawaii ("ALISH"), classification system has classified a small portion of the Petition Area



near the southeast boundary as "other lands." The remaining portion, consisting of the vast majority of the Petition Area was unclassified.

### **B. Proposal For Reclassification**

44. Reclassification for the Petition Area is being sought to develop 398 rural lots for residential use with a minimum lot size of one-acre. The Project will provide an alternative to the current available stock of housing options in the area. The Petitioner has chosen to pursue a reclassification from Agricultural to Rural District, as opposed to Agricultural to Urban because of the Petitioner's desire to have a lower density development and preserve the character of the land. Petitioner has completed all County zoning requirements including a third revised tentative map and subdivision approval.

45. The land in the Petition Area is not currently being used for agricultural production.

46. The reclassification is consistent with the County's General Plan, which designates the Petition Area as Rural.

### **C. Affordable Housing**

47. The Planning Director for the County testified that the affordable housing requirement for the County is 20 percent. This requirement represents the number of housing credits that the Petitioner must meet.

48. Petitioner is currently in negotiations with the County and intends to comply with the County's affordable housing requirements.

### **D. Petitioner's Financial Capability to Undertake the Project**

49. Petitioner submitted the 2005 U.S. Return of Partnership Income for Waikoloa Mauka, LLC as Exhibit 10 of the Petition for Land Use District Boundary Amendment filed with the Land Use Commission on June 28, 2006.

50. Petitioner also included a copy of Waikoloa Mauka, LLC's Financial Statements, year ended December 31, 2006, as Exhibit 55 during the hearing before the Land Use Commission.

51. Petitioner intends to use \$4 million in funds held by Morgan Stanley for pre-development costs for the Project. In addition, the Petitioner plans to use proceeds from sales of its properties to fund the Project. In conjunction with sale proceeds, Petitioner will also obtain funding from Arch, Ltd., one of the Petitioner's members, to complete the Project.

#### **E. State and County Plans and Programs**

52. The Petition Area is currently within the State Land Use Agricultural District as reflected on Figure 1 of the Environmental Impact Statement Preparation Notice.

53. The Petition Area is also designated as Rural and Open according to the County's LUPAG map.

54. The Petition Area is zoned by the County as RA-1 a (Residential and Agriculture, one-acre minimum) and O (Open).

55. The Project was found to be either supportive or inapplicable to the objectives of the Coastal Zone Management program.

#### **F. Need for the Proposed Project**

56. Thomas Holliday of the Hallstrom Group prepared a market study analysis entitled, *Market Study, Economic Impact Analysis and Public Costs/Benefits Assessment of the Proposed Waikoloa Highlands to be located at Waikoloa Village, South Kohala, Hawaii*, in May 2006.

57. The market analysis concludes that: 1) there will be a demand of thousands of additional housing units in Waikoloa Village; 2) demand for homes

will exceed the available supply; and 3) a reasonable sell out period for the Project is four to six years.

58. Using federal census data, state population forecasts, county general planning projections, the availability of services and entitled land, and market indicators, the Hallstrom Group developed a model that indicated the number of new residences required in the Waikoloa Village to meet anticipated demand through 2025 will be from 4,200 to over 7,000 total units with a midpoint of 5,600 units.

59. The lots in the Project are anticipated to sell between \$350,000 and \$500,000, with an average price of \$400,000. With a house and lot package, the selling price is anticipated to be from about \$700,000 to several million dollars. Petitioner has estimated that the selling price for the lots would be \$250,000 to \$350,000.

60. Approximately 27 percent of the demand for homes in the Waikoloa Village area will be for homes in the Waikoloa Highlands estimated price range.

61. There are only 3,681 units firmly proposed or moving forward at this time in five major projects in the Waikoloa Village. This is fewer than the minimum of 4,000 units and maximum of 7,000 units, anticipated to be needed over the next two decades.

62. The Hallstrom Group quantified the absorption rate using three techniques: gross comparison, market capture rates, and residual analyses. All three of these methodologies point to a reasonable sell out period of four to six years for the 398 lots in the Project. The sellout period is different from the buildout period because Petitioner does not intend to build houses, but rather only sell lots upon which the purchasers will build their own houses.

## **G. Economic Impacts**

63. The market study conducted by the Hallstrom Group also includes a section on the economic impacts of the Project.

64. The Project is projected to generate \$340 million in direct new capital investment and spending into the County's economy and create an estimated \$48 million in profits for local contractors and suppliers.

65. During the construction period, the Project is estimated to generate 1,640 worker years of direct onsite employment, along with 656 worker years in associated and indirect offsite employment. The wages paid to these workers is estimated to total approximately \$113 million.

66. After completion, the Project is estimated to require the equivalent of 56 full-time maintenance, renovation, repair, and other workers being paid approximately \$1.6 million in wages each year.

67. Residents and guests of the Project will spend approximately \$39 million per year in the local economy.

68. The total household income of the full-time residents is forecasted to reach a stabilized level of \$48 million per year.

69. At full development, the Project is anticipated to generate net revenues of approximately \$16.6 million for the County during the 10-year modeling period and \$1.9 million each year after buildout.

70. The Project is expected to generate net revenues of approximately \$24.9 million for the State during the 10-year buildout period and \$1 million each year after buildout.

## **H. Social Impacts**

71. The Market Study conducted by the Hallstrom Group also includes a section on the social impacts of the Project.

72. Full-time resident population for the Project is estimated to reach 907 persons, with a maximum of 233 children in public schools, using the Department of Education's formula. Second-home owners and guests are expected to add an average daily number of 161 persons to the community, resulting in an average de facto population of 1,068 persons for the Project at buildout. Petitioner has reached a fair-share agreement with the Department of Education for a payment of an in lieu fee contribution for land and payment of additional monies for construction.

73. SMS Research and Marketing Services ("SMS") also conducted a socioeconomic impact analysis and prepared a report entitled, *Socio-Economic Impacts Waikoloa Highlands*, dated September 18, 2006.

74. The analysis by SMS showed that the new residents of the Project would not significantly affect the delivery of fire and emergency medical services. The Hawaii County Fire Department has 20 full-time fire/medic stations, and 20 volunteer stations. The Waikoloa Fire Station currently has a total of five personnel per shift, including a hazardous material unit, engine company unit, and medic. A secondary response and back up is provided by the South Kohala Fire Station at Mauna Lani. The area is also serviced by a North Hawaii Community Hospital, located in Waimea. There appears to be adequate fire protection service for the existing community and the 398 new homes at Waikoloa Highlands. Also, the current emergency medical services and hospitals are adequate and there is no need for additional facilities in Waikoloa Village.

75. Police service to the Waikoloa Village area is provided by the South Kohala Police Station in Waimea which covers an area of 688 square miles. The station has a staff of 32 police officers. The Waimea station currently has five vacant police officer positions. Assuming these vacant positions can be filled, police services in the area are adequate and a new police substation would not need to be built in order to provide services to the Project.

## I. Impacts Upon Resources of the Area

### 1. Agricultural Resources

76. The Waikoloa area is considered dry with a low annual rainfall of 10 to 15 inches.

77. The soil in the Petition Area is classified with an "E" rating according to the LSB's land classification system, meaning that it is only marginally suitable for agricultural uses.

78. The ALISH classification system has classified a small portion of the Petition Area near the southeast boundary as "other lands." The remaining portion, consisting of the vast majority of the Petition Area was unclassified.

79. The soils profile indicates that the Petition Area is unsuitable for intensive agricultural uses because of shallow and rocky soil conditions.

### 2. Flora and Fauna

80. Rana Productions, Ltd. and AECOS Consultants prepared a floral and faunal survey entitled *A Survey of Botanical, Avian and Terrestrial Mammalian Species for the Waikoloa Highlands Subdivision Project, South Kohala District, Island of Hawai'i* dated May 25, 2006, for the Petition Area.

81. The Petition Area is nearly completely covered with grassland. Flora of the Petition Area is composed mostly of lichens on rocks and flowering plants with a couple of ferns. Of some 58 flowering plant species described in the survey, only 18 percent are native. None of the species encountered on the Petition Area are considered threatened or endangered by either the State or the Federal government, and none of the native plants were considered particularly rare.

82. The Petition Area is mostly covered by non-native grasslands, and these grasslands are best developed along the low areas of Auwaiakeakua Gulch. A native kāwelu grassland occupies the more central part of the Petition Area, roughly

between the highway (Waikoloa Road) and the gulch and the quarry entrance road and the powerline road. Close to the highway and close to the gulch, non-native grasses dominate, and within the kāwelu stand, nonnative grasses dominate all areas that have previously graded for purposes such as access roads and fire suppression. This distribution suggests that a kāwelu grassland is capable of excluding the prolific non-native grasses-such as buffleggrass and fountain grass that now dominate the landscape of West Hawaii-until a disturbance and then non-natives invade and are effective at preventing reestablishment of kāwelu.

83. There are a few native wiliwili trees present in the Petition Area. The wiliwili trees might be perfectly adapted to xeriscaping for Project on the Petition Area because they do not require much water.

84. Preventing disturbance of a portion of the kāwelu grassland assemblage would be the only way to preserve the assemblage intact on site. Species comprising the assemblage (or others, such as 'akia) could be used in some of the landscaping of common areas of the Project. Undisturbed, these plants are also vulnerable to destruction by wildfires, which are a growing threat to all of the native vegetation in this area.

85. The avian survey recorded 115 individual birds of nine different species on the Petition Area. All of the species were alien to the Hawaiian Islands.

86. The mammalian survey detected eight species on the Petition Area, all of which were alien. They included mouse, goats, sheep, dog, cat, and a horse. The Hawaiian Hoary Bat was not detected.

87. The Hawaiian Hoary Bat may occasionally overfly the Petition Area on a seasonal basis, but currently there is no suitable habitat on the Petition Area for this tree-roosting bat to live in. The lights of the Project will likely attract insects to the Petition Area which will enhance the habitat for the Hawaiian Hoary Bat.

88. There is also no suitable habitat for the Hawaiian Petrel and Newell's Shearwater, which may fly past the Petition Area to their nesting sites on Mauna Loa and in the Kohala Mountains.

89. The development of the Project on the Petition Area and the modification of the habitat on the Petition Area will not result in any deleterious impact to any protected species.

### 3. Archaeological and Cultural Resources

90. Cultural Surveys Hawai'i, Inc. ("CSH") prepared an archaeological inventory survey entitled *Evaluation of Archaeological Potential at a 702.28-Acre Parcel at Waikoloa, South Kohala District, Hawai'i Island* ("Archaeological Inventory Survey") dated January 2007 for the Petition Area. The Archaeological Inventory Survey was prepared in accordance with HAR chapters 13-276 and 13-284, governing archaeological inventory surveys and reports.

91. The survey lists one site identified in a 1990 survey conducted by Peter M. Jensen as site T-1. The site consists of a wall segment approximately 2.5 meters long, with a maximum height of 1.21 meters. The feature was so modest that no State Inventory of Historic Places number was given and no further treatment of any kind was recommended.

92. In a subsequent survey initiated by the Petitioner on August 22, 2007, Cultural Surveys Hawaii and other members of the project team located a previously discovered site described as a complex of walls in a 1972 study conducted by an archaeologist named Bevacqua ("Site 22"). Approximately five percent of Site 22 lies within the Petition Area. The Site 22 consists of two walls, one approximately 250 feet long and the other approximately 30 feet long.

93. The portion of Site 22 located within the Petition Area, has been recommended for preservation and/or data recovery. Site 22 appears to be part of early efforts by Parker Ranch to impound water. If Site 22 is a 1900-era cattle trough,



it may be significant for only for information, and it would not be reasonable to require preservation.

94. Petitioner is currently awaiting a recommendation from the State Historic Preservation Division ("SHPD"), and will comply with all SHPD requirements regarding Site 22.

95. In the January 2007 revision of the archaeological study there is a map that shows approximately 45 entrances for lava tubes in the vicinity, the vast majority of which have no known cultural resources, and none of which are located in the Petition Area.

96. Cultural monitors are not appropriate for this Project, because there is no compelling reason to believe that any abundance of cultural resources would be expected to exist within the Petition Area.

97. CSH also prepared a study entitled, *Cultural Impact Assessment For An Approximately 700-Acre Project, Waikoloa Ahupua 'a, South Kohala District, Hawai'i Island*, dated September 2006 for the Petition Area, which included an examination of historical documentation, review of archaeological studies, and community consultations and interviews.

98. Various organizations and informants were contacted. The individuals contacted were not aware of any ongoing cultural practices or cultural resources within the Petition Area. Reclassification and development of the Petition Area will have no impact on cultural practices, cultural traditions, or cultural resources.

#### 4. Groundwater Resources

99. A hydrological assessment was prepared on behalf of the Petitioner by Stephen P. Bowles, dated November 2006 and revised April 2007.

100. The plans of the West Hawaii Utility Company to provide water for the Project are adequate. The estimated sustainable yield for the Waimea Aquifer is

24 mgd, for the Kiholo Aquifer it is 18 mgd, and for the Anaeho`omalu Aquifer, it is 30 mgd. The projected water demand for the Project is 0.484 mgd.

101. The estimated sustainable yield of the portions of the Waimea and Anaeho`omalu aquifer units from which the water would be supplied to the Project is adequate to support the Project. It was also estimated that approximately 18 mgd is available for future development of the general area.

102. The Waikoloa Water Master Plan has allocated 1,000 gallons per day of water usage for each of the proposed residential lots in the Project.

103. The West Hawaii Water Company has confirmed that it can service the Project and provided a will serve letter.

104. The use of brackish water to provide irrigation water for the Project, is not appropriate because the Petition Area is underlain by fresh groundwater.

## 5. Scenic Resources

105. The design of the Project will minimize the adverse visual impacts of the Project to the views of the Pu`u Hinai and the ocean. Setbacks of 10 to 25 feet will be provided along Waikoloa Road through development covenants with the County, and the height of the homes will be limited to 35 feet as provided by zoning. The use of tall trees along Waikoloa Road will be prohibited.

## J. Environmental Quality

### 1. Noise

106. Although the construction activities of the Project will generate noise, there are no noise sensitive developments adjacent to the Petition Area that would be adversely impacted. The Waikoloa Village residential and commercial areas are located upwind of the Petition Area, and would not be adversely affected by construction noise.

107. The Project will not have a significant noise impact on the surrounding community. Although noise levels along Waikoloa Road and at the intersection with Pua Melia Street and Paniolo Avenue will increase due to Project-generated traffic, traffic noise levels are expected to be less than the federal 67 dBA limit. The incremental increase in traffic noise over existing conditions is not expected to be significant. Overall, no significant noise impact on the surrounding community due to Project generated traffic noise is anticipated. No mitigation for vehicular traffic noise is required.

## 2. Air Quality

108. Given the Petition Area's arid climate, there will be an increased potential for fugitive dust. During construction, dust control measure such as frequent watering of unpaved roadways and areas of exposed soil will be employed. The soonest possible paving of roadways and landscaping of bare areas will also reduce dust emission. Transported or stored soils will be covered. There are no immediately adjacent residential uses, and the distance from residences on Pua Melia Street and Waikoloa Village should minimize construction related impact on surrounding residents. Construction activities will employ fugitive dust emission control measure in compliance with provisions of HRS § 43-10, HAR Chapter 11-60.1, and HAR §11-60.1-33.

109. The effect of particulate matter from the operation of concrete and asphalt batching plants during Project construction is expected to be minimal.

110. Any increase in carbon monoxide levels due to increased traffic volumes are expected to be minimal, and both federal and State one-hour and eight-hour carbon monoxide standards are expected to be met. Other than the proposed traffic improvements, no special mitigation is required for air quality impacts.

### 3. Natural and Man-Made Hazards

111. The Project will have no effect on the occurrence of natural hazards or the level of public risk; therefore no mitigation is required.

112. The Petition Area is within a former U.S. military training camp and artillery range in West Hawaii that is known to have remaining unexploded ordnance. The Army's clean up effort was initiated in 2004, and it was funded at \$10 million a year for the period of 2002 to 2007. There is a potential that unexploded ordnance and other military debris could be found on the Petition Area during the on-site work. Construction personnel will be trained to recognize and immediately report to the Army any suspected munitions encountered. Further, as part of the lot sales program, the finding of the U.S. Army's Honolulu Engineer District will be disclosed to lot buyers.

#### K. Adequacy of Public Services and Facilities<sup>1</sup>

##### 1. Highway and Roadway Facilities

113. Julian Ng, Inc. prepared the traffic impact assessment report entitled, *Traffic Impact Analysis Report, Waikoloa Highlands Subdivision, Waikoloa, South Kohala, Hawaii* ("TIAR"), dated January 2007, for the Project.

114. The Petition Area is located approximately 5.5 miles from the Waikoloa Road/Queen Ka'ahumanu Highway intersection, and 6.5 miles from the Waikoloa Road/Mamalahoa Highway intersection. The Project will have three access points, two located on Waikoloa Road and one on Pua Melia Street.

115. A new intersection will be created at the Pua Melia Street access point. The Levels of Service for this intersection are rated A. The rating system ranges from A to F, with A being the highest. In the case of unsignalized intersections, this level of service would be minimal delays of 10 seconds or less.

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<sup>1</sup> Police, Fire, and Medical Services are covered under Social Impacts discussion

116. For the two access points on Waikoloa Road, a separate left-turn lane will be provided, and the median created by the left-turn lane will be extended beyond the intersection to provide a shelter lane. The Levels of Service for these intersections would still be better than Level of Service D, which would be considered acceptable conditions.

117. At the intersection of Waikoloa Road, Paniolo Avenue and Pua Melia Street, the Paniolo Avenue approach would have three lanes, one for each movement, and be controlled by a stop sign. The Pua Melia Street approach would have one left-turn lane and one shared through/right-turn lane controlled by a stop sign. The left turn off of Waikoloa Road would yield to oncoming traffic. Each left turn lane would have adequate levels of service in both morning and afternoon peak hours. However, the left turn lane from Pua Melia Street would experience long delays in the morning and be worse than Level of Service D. The left turn lane from Paniolo Avenue would have very long delays in the range of Level of Service

118. However, a signalized intersection, along with separate right turn lanes off of Waikoloa Road would improve the baseline level for the intersection to Level of Service C in the morning and to Level of Service D in the afternoon. With the Project included in the analysis, the delays would be slightly increased, but would stay at the same level of service as the baseline levels without the Project.

119. By adding a second left-turn lane from Waikoloa Road onto Paniolo Avenue by re-striping the median, more time would be allocated for the southbound Paniolo approach and could address the left turn traffic coming out of Paniolo Avenue. With this signalization, the conditions would be mitigated to acceptable levels.

120. The County required under Ordinance No. 07-127, Condition C, that this intersection "shall be channelized and improved by a "roundabout" system meeting with the requirements of the Department of Public Works." A single-lane

round-about at this intersection would provide adequate levels of service for the traffic volumes projected for the year 2025 with the Project.

121. For the Waikoloa Road/Queen Ka`ahumanu Highway intersection, the TIAR shows that while the intersection is currently within acceptable Levels of Service (under both baseline and project conditions), it will approach Level of Service D/E by approximately year 2010. Therefore the TIAR presumes that the highway would need to be expanded to a four-lane highway based on daily volumes. Subsequent to the original TIAR, Petitioner was informed that the Waikoloa Resort would build a second entrance on the makai side of the intersection opposite Waikoloa Road. The State DOT has requested that the Petitioner include improvements to make the makai bound approach from Waikoloa Road have one left-turn only lane, one through/left turn lane, and a right turn lane. In addition, an acceleration lane would be added to Queen Ka`ahumanu Highway to accommodate the additional left-turn lane.

122. As for the Waikoloa Road/Mamalahoa Highway intersection, the 2010 traffic volumes indicated that there would be a very long delay for the left turn out of Waikoloa Road. The long term solution for this intersection is signalization, but signalization cannot be justified at this time or due to traffic conditions associated with this Project. The State DOT has proposed that the Petitioner provide a left-turn shelter lane on Mamalahoa Highway from Waikoloa Road, and two advanced warning lights, one located on mauka-bound Waikoloa Road, and the other on southbound Mamalahoa Highway.

123. Prior to final subdivision approval, Petitioner will enter into a Memorandum of Understanding outlining the proposed improvements with the State DOT.

## 2. Park Space/Golf Course

124. Petitioner will contribute funds for the development of a community center in association with the Waikoloa Village Association to fulfill its fair-share requirements with the County.

125. Petitioner will develop passive park space within the Petition Area which will be open to the general public.

126. The Petitioner will not be constructing a golf course in the Petition Area.

## 3. Water Service

127. R.M. Towill Corporation prepared a report entitled *Waikoloa Highlands Water Distribution System, Waikoloa Highlands Subdivision, Waikoloa, South Kohala, Hawai'i*, ("Water Distribution Report") dated September 2006, which addressed the water service requirements for the Project.

128. The water system in the Waikoloa area is owned and operated by the West Hawaii Water Company, and has been master planned and sized to provide service to the Project and Petition Area. Under the operating rules and rate structures, the West Hawaii Water Company is responsible for the planning, design, construction, and operation of the water system.

129. The deed to the Petition Area includes a restriction imposed by the Waikoloa Land Company, that reserves all rights to surface and subterranean water that exists on and under the Petition Area. Therefore, the owner of the Petition Area will not be able to drill water wells to obtain water for consumption by the Project.

130. The water system for the Project will be designed and constructed to meet or exceed the West Hawaii Water Company standards which are basically consistent with the County of Hawaii Water Department Standards.

131. The Waikoloa Water Master Plan has allocated 1,000 gallons per day of water usage for each of the proposed lots in the Project, and five-eighths inch water meters will be installed to each lot.

132. The West Hawaii Water Company does not have plans to operate a separate non-potable water system for irrigation, therefore, the Petitioner will install irrigation submeters after the primary meters to monitor and control excessive use of the drinking water for irrigation.

#### 4. Wastewater Disposal

133. Sewer service to the Project will be via individual wastewater systems. These will consist of septic tanks and leach fields. Each lot owner will be required to install a septic system, a practice which is common to the areas in Waikoloa Village and most of the Island of Hawaii. The reason for this is that both the West Hawaii Sewer Company and the County do not provide sewer service in this area.

#### 5. Drainage

134. Existing drainage patterns will be maintained. Onsite drainage improvement including paved roadway swales, rock-lined channels, and roadway culverts will be designed and installed to safely collect and carry stormwaters through the Petition Area. Ninety-seven drywells will be constructed to intercept and dispose of stormwaters within the Project's streets and have a total capacity of 582 cubic feet per second. The calculated increase in runoff generated by the Project is 190.4 cubic feet per second. The proposed drainage system will be designed to ensure that stormwater flows generated by the Project leaving the Petition Area will not add to an increased existing flow, nor cause an adverse impact to adjacent and downstream properties. The drainage system has been sized to ensure that the post development flows leaving the Petition Area will not exceed the predevelopment flow in both velocity and volume.



## 6. Solid Waste Disposal

135. The Pu`uanahulu landfill, which services the Petition Area, has approximately 12 million cubic yards of capacity remaining, which is more than adequate for the Project's needs. The County does not provide collection service in the area, and a private contractor will be utilized for solid waste disposal.

## 7. Electricity and Telephone Services

136. Electrical power to the Petition Area is provided by Hawaii Electric Light Company. The main generating plants servicing the area are located in Ke`ahole and Waimea. The projected electrical load for the Project is estimated at 1.2 megawatts. The existing 10 megawatt transformer at the on-site substation is expected to be adequate for the Project loads.

137. Telephone service to the Project will be provided by Hawaiian Telecom. No significant off-site improvements are required for the Hawaiian Telecom central office in Waikoloa. Hawaiian Telecom may request a 20 by 30 feet easement site be reserved for future remote switching equipment. Oceanic Time Warner Cable is expected to request an onsite area approximately 20 by 30 feet to place distribution equipment for the entire Waikoloa Village area. No significant impacts to the electrical or telecommunication systems are anticipated, and no other mitigation is required.

## 8. Energy Conservation

138. Susan Irvine, a LEED Certified Architect with the firm Architects Pacific, Inc., testified on behalf of Petitioner.

139. In LEED for Homes, the homeowner would hire an additional consultant, a provider, and a rater.

140. There are currently no LEED Providers in Hawaii and only 12 nationwide. The closest is in California.

141. The Provider would then subcontract out a Rater to do a compliance check of the various LEED points.

142. An initial fee is paid to the Provider, sometimes including a deposit. Then a seminar is conducted where the owner would fly out his or her builder and possibly the consultant, or fly the Provider to the location of the project. The costs are paid by the homeowner under the construction cost.

143. Implementation also requires that the contractor has the knowledge to be able to perform installation or construction of the LEED points.

144. Typically, when planning out a LEED strategy, more points than necessary are selected in order to provide a cushion to meet the certification level, in case things go wrong or appropriate documentation is not provided.

145. According to the model case study compiled by Ms. Irvine, the additional cost to the homeowner to implement a LEED silver standard could be in the range of 12.5 to 14 percent, depending on the size of the home. The costs used in this calculation reflect the installed cost, not just the product cost.

146. According to Ms. Irvine's analysis, LEED compliance should not be a condition imposed by the Commission for the development of the Project, and that implementation of LEED should be voluntary.

#### **L. Conformance To Rural District Standards**

147. The reclassification of the Petition Area is in general conformance to HAR §15-1 5-21, standards for determining "R" Rural District boundaries as follows:

- (1) Areas consisting of small farms; provided that the areas need not be included in this district if their inclusion will alter the general characteristics of the areas;
- (2) Activities or uses as characterized by low-density residential lots of not less than one-half acre and a density of not more than one single-family dwelling per

one half acre in areas where “city-like “ concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low-density residential lots; and

- (3) It may also include parcels of land which are surrounded by, or contiguous to this district, and are not suited to low-density residential uses for small farm or agricultural uses.

First, the Rural District would include areas consisting of small farms; provided that the areas need not be included in this district if the inclusion will alter the general characteristics of the area. There are no farms in the vicinity of the Petition Area.

Two, the Rural District shall include activities or uses as characterized by low density residential lots of not less than one-half acre and a density of not more than one single-family dwelling per one-half acre in areas where “city-like” concentrations of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low-density residential lots. The Project will be comprised of lots of not less than one acre in size, with only one single-family dwelling allowed per lot.

Three, the Rural District may include parcels of land which are surrounded by, or contiguous to, this district and are not suited to low-density residential uses for small farm or agricultural uses. The Petition Area is located adjacent to the area of Waikoloa Village which is also in the Rural District. Both of these areas involve development on land that is not well suited for small farm or agricultural uses.

**M. Conformance to the Goals, Objectives, and Policies of the Hawai`i State Plan; Relationship With Applicable Priority Guidelines and Functional Plans**

148. The applicable section of the Hawaii State Plan is HRS §226-19, Objectives and policies for socio-cultural advancement-housing:

(a) Planning for the State's socio-cultural advancement with regard to housing shall be directed toward the achievement of the following objectives:

- (1) Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawaii's population.
- (2) The orderly development of residential areas sensitive to community needs and other land uses.
- (3) The development and provision of affordable rental housing by the State to meet the housing needs of Hawaii's people.

(b) To achieve the housing objectives, it shall be the policy of this State to:

- (1) Effectively accommodate the housing needs of Hawaii's people.
- (2) Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households.
- (3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.
- (4) Promote appropriate improvement, rehabilitation, and maintenance of existing housing units and residential areas.
- (5) 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.

- (6) Facilitate the use of available vacant, developable, and underutilized urban lands for housing.
- (7) Foster a variety of lifestyles traditional to Hawaii through the design and maintenance of neighborhoods that reflect the culture and values of the community.
- (8) Promote research and development of methods to reduce the cost of housing construction in Hawaii.

149. The Project complies with objectives (a)(1) and (a)(2), and (b)(1), (b)(2), (b)(3), (b)(6), and (b)(7). The Project also complies with these objectives by committing to fulfilling the County's affordable housing requirements. The remaining objectives are not applicable to the Project.

150. The following are the priority guidelines for the provision of affordable housing, HRS §226-106:

- (1) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.
- (2) Encourage the use of alternative construction and development methods as a means of reducing production costs.
- (3) Improve information and analysis relative to land availability and suitability for housing.
- (4) Create incentives for development which would increase home ownership and rental opportunities for Hawaii's low- and moderate-income households, gap-group households, and residents with special needs.
- (5) Encourage continued support for government or private housing programs that provide low interest mortgages to Hawaii's people for the purchase of initial owner occupied housing.

- (6) Encourage public and private sector cooperation in the development of rental housing alternatives.
- (7) Encourage improved coordination between various agencies and levels of government to deal with housing policies and regulations.
- (8) Give higher priority to the provision of quality housing that is affordable for Hawaii's residents and less priority to development of housing intended primarily for individuals outside of Hawaii.

151. The Project promotes objectives 1, 3, 6, and 8. Petitioner will fulfill its obligations concerning affordable housing requirements. The objectives of Priority Guidelines are aspirational in nature and the Project strives to attain as many of the guidelines as are feasible.

152. The Project is consistent with all eight objectives of the State's Housing Functional Plan, and the review of the Housing Functional Plan issue area of Homeownership indicated policy A(2): *encourage increased private sector participation in the development of affordable housing*, and policy A(3): *ensure that (1) housing projects and (2) projects which impact housing provide a fair share/adequate amount of affordable homeownership opportunities*, will comply with the County's affordable housing requirement in accordance with Chapter 11, Hawai'i County Code, which requires the Petitioner to earn affordable housing credits equal to 20 percent of the number of units or lots, which equate to the 80 planned units that will be provided for affordable housing by the Petitioner.

**N. Conformance To The Coastal Zone Management Program**

153. The objectives and policies of the Coastal Zone Management Program ("CZM") are listed in HRS §205A-2 HRS, and are as follows:

(a) The objectives and policies in this section shall apply to all parts of this chapter.

(b) Objectives.

(1) Recreational resources;

(A) Provide coastal recreational opportunities accessible to the public.

(2) Historic resources;

(A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

(3) Scenic and open space resources;

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

(4) Coastal ecosystems;

(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

(5) Economic uses;

(A) Provide public or private facilities and improvements important to the State's economy in suitable locations.

- (6) Coastal hazards;
  - (A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.
- (7) Managing development;
  - (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- (8) Public participation;
  - (A) Stimulate public awareness, education, and participation in coastal management.
- (9) Beach protection;
  - (A) Protect beaches for public use and recreation.
- (10) Marine resources;
  - (A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

154. The Project is generally supportive of the CZM objectives for historic resources, economic uses, coastal hazards, in that the Project will have sufficient mitigation measures to meet the protection and preservation requirements for historic resources. The Project will promote and manage economic growth and development, address potential risks due to flooding while maintaining State water quality standards, and will also manage development and public participation.

155. The CZM objectives regarding coastal recreational opportunities, scenic and open space resources, coastal ecosystems, beach protection, and marine



resources are not applicable to the Petition Area or not impacted by the Project due to the inland location and mitigation measures being taken by the Petitioner.

#### **O. Conformance To The County General Plan**

156. The General Plan designated the Petition Area in the Land Use Pattern Allocation Guide ("LUPAG) map as "Rural" and "Open". The Project's proposed low-density residential development is consistent with these designations. The Project is also consistent with the Northwest Hawai'i Open Space and Community Development Plan, which was prepared, but not adopted by the County, inasmuch as the Project will be developed on lands that are in the Mauka Development Zone ("MDZ") which facilitates the reduction of development pressure on the coastal zone.

#### **P. Conformance To County Zoning**

157. According to County Zoning Map, the zoning for the Petition Area is RA-1a (residential agricultural within minimum one-acre lots), and O (open). The portions of the Petition Area identified on the map as open are to be used for open space and drainage, while the rural areas are identified for development.

#### **Q. Incremental Districting**

158. The Project is planned to be developed in two phases. Phase 1 is projected to start upon approval of the required land use entitlements and last approximately 8 to 10 months. This first phase will involve 149 lots on about 3 19 acres and involve the development of roads, infrastructure, and utilities.

159. Phase 2 is also projected to last approximately 8 to 10 months and will include 249 lots on 413 acres following the completion of Phase 1. The remainder of the site roads, infrastructure, and utilities will be installed. The Project is expected to

be completed within 10 years of the date of receipt of the last land use entitlement allowing site work and development activities. Therefore, incremental districting is not necessary.

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

### IV. CONCLUSIONS OF LAW

1. Pursuant to HRS chapter 205, and the Commission rules under chapter 15-1 5, HAR, and upon consideration of the decision-making criteria in HRS §205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 73 1.58 1 acres of land in the State Land Use Agricultural District at South Kohala District, Island of Hawai`i, State of Hawai`i, identified as TMK: (3) 6-8-02:016 (por.), 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 Rural District, is reasonable, not violative of HRS §205-2, and is consistent with the policies and criteria established pursuant to HRS §§205-16 and 205-17.

2. Article XII, Section 7, of the Hawai`i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for

subsistence, cultural, and religious purposes and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. 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, 903 P.2d 1246, certiorari denied, 517 U. S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (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. There is no evidence to suggest that any native Hawaiian traditional and customary rights are currently being exercised within the Petition Area.

5. 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.

6. There are no floral or faunal species that are threatened, endangered, or of concern under State or federal law on the Petition Area.

7. Air quality of the Petition Area will be impacted in the short-term by fugitive dust and exhaust emissions from stationary and mobile equipment during the construction phase of the Project. Petitioner will implement all required and applicable regulations to mitigate the effects of fugitive dust and exhaust emissions.

8. The long-term impacts to air quality that will result from the development of the Petition Area are minimal and no mitigation measures are necessary.

9. The proposed drainage system will not increase existing flow, nor cause an adverse impact to adjacent and downstream properties.

10. The design of the Project will minimize the adverse visual impacts of the Project on the view to Pu`u Hinai and the ocean.

11. The Pu`uanahulu landfill has adequate capacity to support the needs of the Project.

12. 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.

13. The Petition Area's soil classifications and low annual rainfall make it unsuitable for intensive agricultural use.

14. The Petition Area is not classified as Important Agricultural Land under the ALISH rating system or Part III of HRS Chapter 205.

15. 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.

16. There are sufficient hydrological resources to support the Project. The West Hawaii Water Company will provide water service to the Project and is responsible for the planning, design, construction and operation of the water system for the Project.

17. The Petitioner is not permitted to drill water wells due to a restriction in the deed to the Petition Area imposed by the Waikoloa Land Company.

18. The Petitioner's proposed irrigation submeters will be sufficient to monitor and control excessive use of the drinking water for irrigation purposes.

19. Petitioner is limited to one dwelling per lot in the Project, by Condition I of Ordinance No. 07-127, and as a condition of the third revised tentative map approval of the County issued on April 5, 2007.

20. Petitioner's fair-share agreement with the Department of Education is sufficient to mitigate the impact of the Project on the educational resources of the area.

21. Petitioner will enter into an agreement with the County to contribute funds for the development of a community center in the Waikoloa Village area, which will satisfy the County's fair-share impact assessment with regards to the Project.

#### V. DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 73 1.58 1 acres of land in the State Land Use Agricultural District at South Kohala District, Island of Hawai'i, State of Hawai'i, identified as TMK: (3) 6-8-02:016 (por.), and shown approximately 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 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 FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Rural District shall be subject to the following conditions:

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

2. **Completion of Project.** Petitioner shall develop the Petition Area and complete buildout of the Project no later than ten (10) years from the date of the Commission's decision and order. For purposes of the Commission's decision and order, "buildout" means completion of the backbone infrastructure to allow for the sale of individual lots.

3. **Reversion on Failure to Complete Project.** If Petitioner fails to complete buildout of the Project or secure a bond for the completion thereof within ten (10) years from the date of the Commission's decision and order, the Commission may, on its own motion or at the request of any party or interested person, file an Order to Show Cause and require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

4. **Water Resource Allocation.** Petitioner shall provide drinking and irrigation water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area, to the satisfaction of the County of Hawaii and appropriate State agencies. Petitioner shall notify the Commission of changes to its proposed water source for the Project's drinking water and irrigation water needs.

5. **Water Conservation Measures.** Petitioner shall implement water conservation measures as may be required by the applicable provisions of the Hawaii County Code, and shall implement BMPs, such as use of indigenous and drought tolerant plants and turf and incorporate such measures in the Project's

landscape planting. Petitioner shall require the use of native drought tolerant plants on the Petition Area in the Conditions, Covenants and Restrictions (“CC&Rs”) associated with the Project or in deed restrictions for each lot in the Project. Petitioner shall provide a copy of the complete CC&Rs to the Commission within 30 days after the CC&Rs become enforceable.

6. **Transportation.** Petitioner shall reach an agreement with the State DOT for the construction of the following improvements related to the Project:

a. For the intersection, Waikoloa Road and Queen Ka`ahumanu Highway, the State DOT has requested that the Petitioner include improvements to make the makai bound approach from Waikoloa Road have one left-turn only lane, one through/left-turn lane, and a right turn lane with the appropriate signalization. In addition, an acceleration lane would be added to Queen Ka`ahumanu Highway to accommodate the additional left-turn lane;

b. Petitioner will provide a left-turn shelter lane on Mamalahoa Highway from Waikoloa Road, and two advanced warning lights, one located on mauka-bound Waikoloa Road, and the other on southbound Mamalahoa Highway. Prior to final subdivision approval, Petitioner will enter into a Memorandum of Understanding with the State DOT outlining the proposed improvements. Petitioner will provide the Commission with a copy of the fully executed agreement within 30 days from the date the agreement is fully executed. Petitioner will also comply with Condition C of Ordinance No. 07-127, as may be amended from time to time, which fulfills the Petitioner’s transportation obligations to the County in relation to the Project.

7. **Street Lights.** Petitioner shall use shielded or low sodium streetlights within the Project to avoid impacts to flight birds and other population.

8. **Plant Species.** Petitioner shall preserve native wiliwili trees and kāwelu grassland assemblages located outside of the construction and grading areas, if practicable, consistent with the development of the Project.

9. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents in the State of Hawaii in accordance with applicable affordable housing requirements of the County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County. Petitioner shall provide the Commission with a fully executed copy of the affordable housing agreement within 30 days of the execution of the agreement.

10. **Previously Unidentified Burial/Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, lava tubes and lava blisters/bubbles are identified during the construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division (“SHPD”), Hawai‘i Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in the studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

11. **Archaeological Site 22.** Petitioner shall consult and comply with all SHPD recommendations in regards to the treatment of Site 22.

12. **Drainage.** Petitioner shall prepare a drainage study and the recommended drainage system shall be constructed, meeting with the approval of the County of Hawai‘i Department of Public Works.



13. **Wastewater.** Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the County of Hawai'i Department of Environmental Management and the State Department of Health.

14. **Solid Waste.** Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter 342G. The solid waste management plan shall be approved by the County of Hawai'i Department of Environmental Management and the DOH.

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

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

17. **Air Quality Monitoring.** Petitioner shall participate in an air quality monitoring program if required by the DOH.

18. **Best Management Practices.** Petitioner shall implement applicable Best Management Practices ("BMPs") applicable to each proposed land use in order to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the State Department of Health guidelines.

19. **Energy Conservation Measures.** Petitioner shall implement energy conservation and sustainable design measures, that are feasible and practicable, such as use of solar energy and solar heating and the standards and guidelines

promulgated by the Building Industry Association of Hawai'i, the U.S. Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai'i, and the applicable county building codes, as amended, into the design and construction of the Project and the structures within the Petition Area.

20. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.

21. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and County in connection with the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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 issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the 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 HAR §15-15-92. Such conditions shall run with the land, pursuant to HRS §205-4(g).

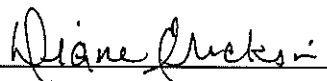
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 10th day of June, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.


Done at Honolulu, Hawai'i, this 10th day of June, 2008, per motion on June 5, 2008.

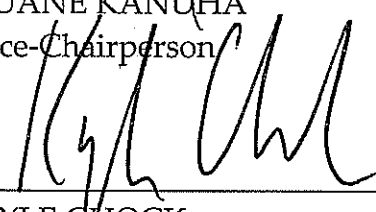
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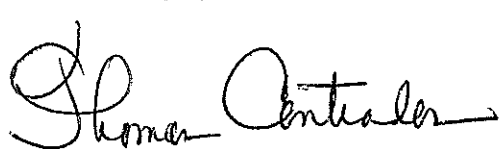
LAND USE COMMISSION  
STATE OF HAWAII

  
Deputy Attorney General

(absent)  
LISA M. JUDGE  
Chairperson

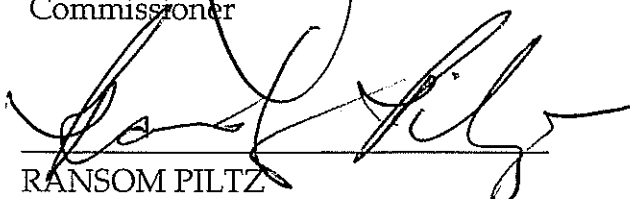
  
DUANE KANUHA  
Vice-Chairperson

  
KYLE CHOCK  
Commissioner

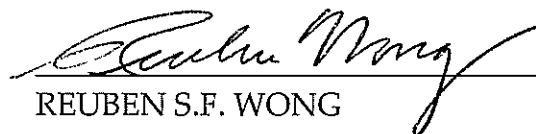
  
THOMAS CONTRADES  
Commissioner

(absent)  
\_\_\_\_\_  
VLADIMIR PAUL DEVENS  
Commissioner

\_\_\_\_\_  
NORMAN LEZY  
Commissioner

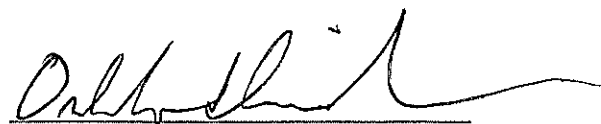
  
\_\_\_\_\_  
RANSOM PILTZ  
Commissioner

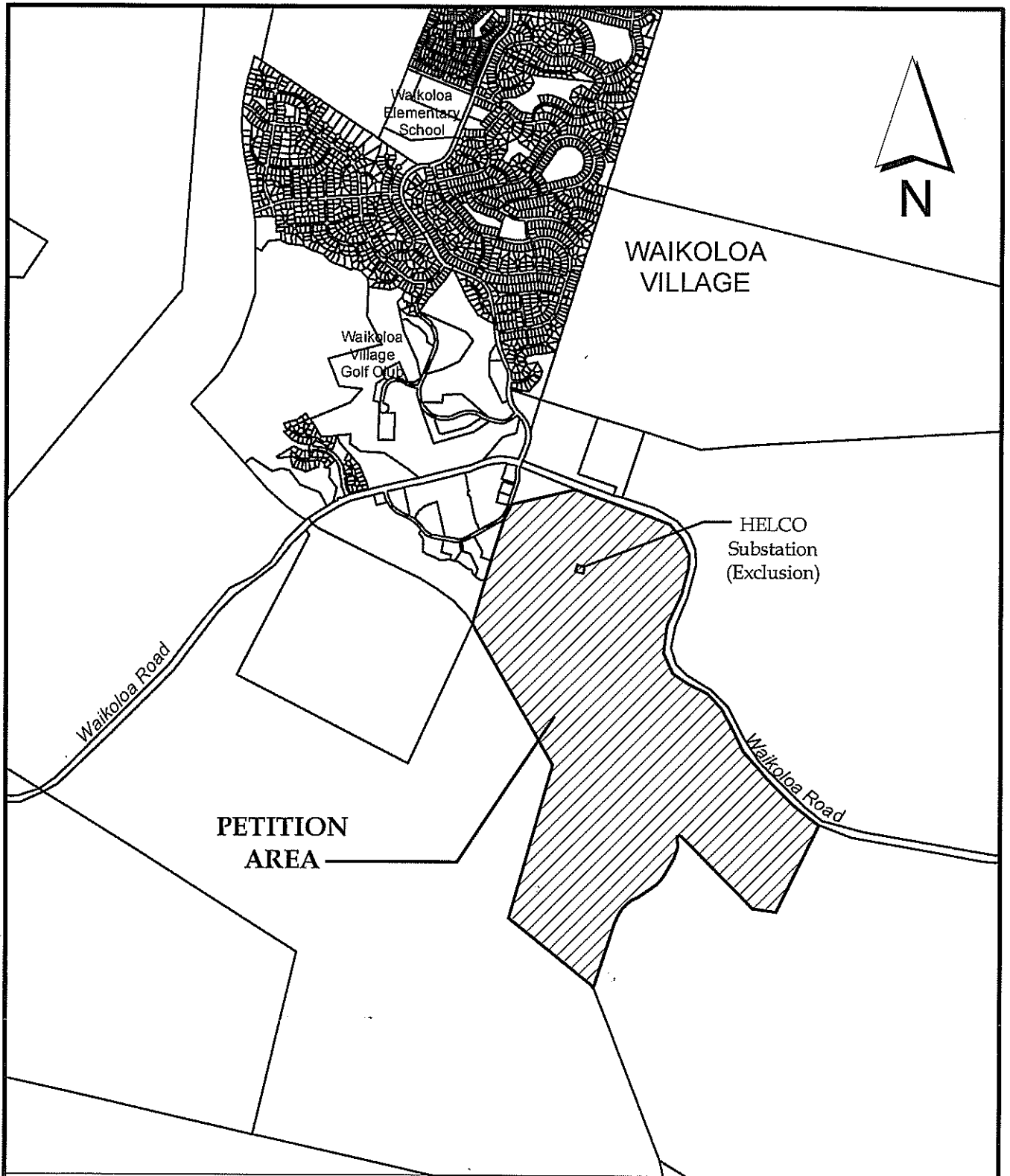
  
\_\_\_\_\_  
NICHOLAS W. TEVES, JR.  
Commissioner

  
\_\_\_\_\_  
REUBEN S.F. WONG  
Commissioner

Filed and effective on:  
JUN 10 2008

Certified by:

  
\_\_\_\_\_  
ORLANDO DAVIDSON  
Executive Officer

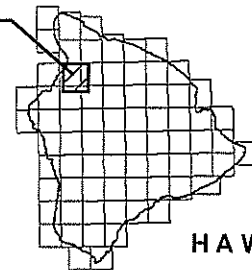


**A06-767 WAIKOLOA MAUKA, LLC,**  
**a Delaware limited liability company**

Location Map  
 Tax Map Key: 6-8-02: por. 16  
 Waikoloa Village, South Kohala, Hawai'i  
 Scale: 1" = 2640 ft.

**Exhibit "A"**

Map  
 Location



**HAWAII**

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use  
District Boundaries into the Rural  
Land Use District for Approximately  
731.581 Acres in South Kohala District,  
Island of Hawaii, Tax Map Key No. (3)  
6-8-02:016 (por.)

DOCKET NO. A06-767

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER FOR A STATE LAND  
USE DISTRICT BOUNDARY AMENDMENT, was served upon the following by  
either hand delivery or depositing the same in the U. S. Postal Service by regular or  
certified mail as noted:

DEL.            ABBEY MAYER, Director  
                  Office of Planning  
                  P. O. Box 2359  
                  Honolulu, Hawai'i 96804-2359

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Attorney for County of Hawai`i  
DEPARTMENT OF PLANNING

Dated: Honolulu, Hawaii, JUN 10 2008



ORLANDO DAVIDSON  
Executive Officer