

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
A & B PROPERTIES, INC.)
To Amend the Agricultural District)
Boundary Into the Urban District)
for Approximately 72.6 Acres at)
Eleele, Koloa, Kauai, Tax Map Key)
Nos.: 2-1-001: Portion of 3 and)
Portion of 27)
_____)

DOCKET NO. A90-654
A & B PROPERTIES, INC.

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

DEC 18 1990 by *Esther Land*
Date Executive Officer

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

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LAND USE COMMISSION
STATE OF HAWAII

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

A & B PROPERTIES, INC., a Hawaii corporation ("Petitioner"), filed a Petition on May 1, 1990, and a First Amendment to Petition on August 8, 1990 (said Petition, as so amended, being herein called the "Petition"), pursuant to Chapter 205, of the Hawaii Revised Statutes, as amended ("HRS"), and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended (the "Commission Rules"), to amend the land use district boundary to reclassify approximately 72.6 acres of land, situate at Eleele, Koloa, Island and County of Kauai, State of Hawaii, identified by Tax Map Key Nos. 2-01-001: portion of 3 and portion of 27 (the "Property"), from the Agricultural District to the Urban District to develop single family lots, multi-family dwelling units, and commercial and industrial lots. The Land Use Commission (hereinafter "Commission"), having heard and

examined the testimony, evidence and argument of counsel presented during the hearings, and the parties' stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the Office of State Planning and County of Kauai's exceptions to the stipulated Findings of Fact, Conclusions of Law and Decision and Order, hereby makes the following findings of fact:

FINDINGS OF FACTS

PROCEDURAL MATTERS

1. Petitioner filed herein a Petition for District Boundary Amendment on May 1, 1990, and filed herein a First Amendment to Petition for District Boundary Amendment on August 8, 1990.

2. A prehearing conference was conducted on August 31, 1990, on the 9th floor, Kamamalu Building, 250 South King Street, Honolulu, Hawaii.

3. The Commission held a public hearing on the Petition at the Kauai Hilton and Beach Villas, Ginger Room, 4331 Kauai Beach Drive, Lihue, Kauai, on September 13, 1990. The hearing was held pursuant to notices published in the Honolulu Advertiser and Garden Island Herald on August 8, 1990.

4. On September 13, 1990, the Commission considered a petition to intervene filed by Elizabeth Ann Stone on August 21, 1990. Ms. Stone failed to appear at the hearing and the Commission, after reviewing the record and good cause appearing

therefrom, denied the petition to intervene. The Commission filed Order Denying Petition For Intervention on October 4, 1990.

5. The Commission did not receive any requests for public witness testimony or any written testimony on the Petition.

DESCRIPTION OF THE PROPERTY

6. The Property is located at Port Allen/Eleele, Island and County of Kauai, identified by Tax Map Key Nos. 2-01-001: portion of 3 and portion of 27.

7. The Property has been and is currently used for sugarcane cultivation, except that a residential dwelling is located upon approximately two acres of the Property. McBryde Sugar Co., Ltd., a Hawaii corporation ("McBryde"), is the owner in fee simple of the Property. The Petitioner and McBryde are both wholly-owned subsidiaries of A&B-Hawaii, Inc., a Hawaii corporation, which in turn is a wholly-owned subsidiary of Alexander & Baldwin, Inc., a Hawaii corporation. By letters dated April 4, 1990 and August 7, 1990, McBryde authorized Petitioner to submit the Petition to the Commission for reclassification of the Property.

8. The elevation of the Property ranges from near sea level to approximately 230 feet above sea level. The slopes of the 24-acre portion of the Property above Halewili Road (herein referred to as the "Mauka Parcel"), average four percent. The slopes of the 48.6-acre portion of the Property

located below Halewili Road (herein referred to as the "Makai Parcel"), average five percent.

9. The median annual rainfall at the Property is approximately 30 inches per year, according to the Rainfall Atlas of Hawaii, Report R76, Department of Land and Natural Resources, June 1986, with November through January being the wetter months (3 inches per month) and April through September being the drier months (1 inch per month). According to rainfall data gathered by McBryde, the rainfall in the vicinity of the Property averages 28 inches per year.

10. The Property's soil consists of two types: "MgB" (Makaweli silty clay loam of 0 to 6 percent slope), which comprises approximately 73% of the Property, and "MgC" (Makaweli silty clay loam of 6 to 12 percent slope), which comprises approximately 27% of the Property. The Property is classified under the Land Capability Grouping by the United States Department of Agriculture Soil Conservation Service (SCS) as "II(e)" for the MgB soil type, and "III(e)" for the MgC soil type. All of the Property is classified as "Prime" under the Agricultural Lands of Importance in the State of Hawaii (ALISH), by the SCS, University of Hawaii College of Tropical Agriculture and Human Resources, and State of Hawaii, Department of Agriculture. Approximately 65% of the soils within the Property is rated "A", while the remaining 35% is rated "B", under the Overall Productivity Rating by the UH Land Study Bureau.

11. The Property is classified under the Federal Emergency Management Association (FEMA) Federal Insurance Rate Maps for the Island of Kauai as follows: The majority of the Property falls within the "Other Areas Zone X" area, described as "areas determined to be outside the 500-year flood plain". A small portion of the Makai Parcel falls within the "Other Flood Areas Zone X", which is defined as "areas of 500-year flood; areas of 100-year flood with average depths of less than one foot or with drainage area less than one square mile; and areas protected by levees from 100 year flood". A very small portion of the Makai Parcel immediately abutting the shoreline area falls within the "Special Flood Hazard Area inundated by 100 year flood" Zone AE (EL 14).

12. The Property constitutes approximately 0.005% of the lands on the island of Kauai which are classified as Agricultural District under the State Land Use Classifications.

PROPOSAL FOR RECLASSIFICATION

13. Petitioner proposes to develop the Mauka Parcel with approximately 100 to 120 single-family residential lots, ranging in size from approximately 5,000 square feet to 8,000 square feet. With respect to the Makai Parcel, Petitioner proposes to develop approximately 18 acres with approximately 180 multi-family residential dwelling units ranging in size from approximately 600 square feet to 800 square feet; to develop approximately 10 acres with commercial facilities, to be subdivided into approximately 10 lots ranging in size from

approximately 10,000 square feet to five acres; and to develop approximately 20 acres with mixed industrial (limited and general) uses, to be subdivided into approximately 25 lots ranging in size from approximately 16,000 square feet to 92,400 square feet.

14. The following table reflects the approximate land use allocations of the Property:

<u>Use</u>	<u>Acres</u>	<u>Percent</u>
Single-family	24	33.3
Multi-family	18	25.0
Commercial	10	13.9
Industrial	<u>20</u>	<u>27.8</u>
Total	72	100.0

15. Petitioner proposes to price approximately 50% of the 180 multi-family residential units so as to be affordable for persons earning between 80% and 120% of the median income for the County of Kauai, and the remaining 50% of the 180 multi-family units so as to be affordable for persons earning between 120% and 140% of the median income for the County of Kauai. Sixty percent (60%) of the residential units (single-family lots and multi-family units) to be developed on the Property will therefore be priced to be affordable to persons earning between 80% and 140% of the median income for the County of Kauai.

16. Petitioner estimates that the cost of constructing the on-site and off-site infrastructure

improvements for the Property (exclusive of structures to be constructed on the Property), will be approximately \$13,000,000 (in 1990 dollars).

17. Following reclassification by the Commission of the Property from the Agricultural District to the Urban District, Petitioner will be required to obtain County zoning, Special Management Area, subdivision, building and grading permits and approvals. Petitioner estimates it will take approximately 25 months to obtain these permits and approvals. From the time final County zoning approval is obtained, Petitioner estimates that it will take approximately 20 to 25 months to complete the on-site and off-site improvements for the Property.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

18. Petitioner's financial statements as of December 31, 1989, reflect a total net worth of approximately \$29,828,000, net income of approximately \$9,758,000, and retained earnings of approximately \$16,237,000. The financial statements of Petitioner's ultimate parent company, Alexander & Baldwin, Inc., reflect net income for 1989 of approximately \$202,708,000, and as of December 31, 1989, total assets of approximately \$1,139,449,000, retained earnings of approximately \$553,508,000 and total shareholders' equity of approximately \$605,056,000.

STATE AND COUNTY PLANS AND PROGRAMS

19. The Property is located within the State Land Use Agricultural District as reflected on the State Land Use District Map K-5, Hanapepe.

20. Approximately 20.4 acres of the Mauka Parcel are designated as "Urban Residential", and approximately 3.6 acres of the Mauka Parcel are designated as "Agriculture", under the County's Hanapepe/Eleele General Plan. The "Urban Residential" designation permits residential use. Approximately 48.3 acres of the Makai Parcel are designated as "Urban Mixed Use", and approximately 0.3 acres of the Makai Parcel are designated as "Agriculture", under the County's Hanapepe/Eleele General Plan. The "Urban Mixed Use" designation permits residential, industrial and commercial use. According to the County of Kauai's General Plan Ordinance No. 461, the County's General Plan boundaries are intended to differentiate general classifications and functions and not to be precise graphic definitions. The County Planning Director has the authority to determine the location of such boundaries.

21. All of the Mauka Parcel is designated "Single-Family" on the Kauai County Development Plan, and a portion of the Makai Parcel is designated "Industrial" with the balance designated "Agriculture" on the Kauai County Development Plan.

22. All of the Property is currently zoned "Agriculture" under the Kauai County Zoning Ordinances.

23. Approximately 2.6 acres within the Makai Parcel, starting from the shoreline and moving inward approximately 600 feet, are located within the Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

24. Based upon the latest State Department of Business and Economic Development M-K projections, the resident population of Kauai County is anticipated to increase 86%, from 45,000 people in 1985 to 86,900 people in 2010, and the de facto population of Kauai County (including visitors) is expected to increase 121%, from 56,200 people in 1985 to 124,500 people in 2010.

25. Petitioner's marketing consultant, Cowell & Co., Inc., prepared a market study dated March 1990, for the proposed development of the Property.

26. The market study concluded that there is a very strong demand for and a limited supply of industrial land in the southwest portion of Kauai near the Property. The study projected that the industrial land, assuming marketing commenced in 1994, would be absorbed by the market in a three to five-year period, reflecting an average absorption rate of 4.0 to 6.7 acres per year.

27. The market study concluded that there is a strong demand for commercial development at the Property, and that there are no other commercially-zoned sites that are currently vacant and available for development that are truly competitive with the Property. Assuming that the commercial property is

marketed in 1994, the market study projects an absorption period of three to five years, reflecting an average absorption rate of 2.0 to 3.3 acres per year.

28. The County of Kauai Planning Department (County) questions the timing for the commercial zoning and the direction of commercial development. The existing shopping center and commercial town core in Hanapepe must be assessed to determine availability and adequacy in providing the commercial services for the anticipated developments in the area. There could be a need for commercial zoning with an increase in population, but the amount and direction of commercial development eastward is a key factor which must be evaluated before considering such expansion. Of major concern is the impact of this commercial zoning to the efforts of revitalizing commercial development within the Hanapepe Town core. The County finds in their research that approximately 49% of the lots in the Hanapepe Commercial District are in commercial use, with about half of that number actually in use. The other 39% of the lots are in residential use, about 9% of the lots in the Hanapepe Town core are vacant, and about 3% are in other uses such as telephone switching stations, post office and churches. The County believes it can handle this issue at the County level, and the County will request that Petitioner submit a market study with Petitioner's zoning amendment request.

29. The market study concluded that the supply of housing units available for purchase in the vicinity of

Hanapepe is very limited but the demand remains strong. The nearby Hanapepe Cliffside and Eleele Nani II subdivisions will be absorbed in a four to six-year period. After these two subdivisions are sold out, there will be a very limited supply of residential-zoned land available for future development in the vicinity of the Property, and the market study therefore predicts a very strong demand for additional single-family residential development commencing at about the 1995 timeframe. The market study projects an absorption period for the single-family lots of one to two years, reflecting an average absorption rate of 50 to 100 lots per year.

30. The market study reflects that there have been very few multi-family residential projects marketed directly to the local resident population. The market study concluded that due to the increasing demand for and relatively high prices of single-family properties, there are many residents on Kauai who cannot afford single-family properties at today's prices, and that it is unlikely that single-family prices will decline. The study further concluded that the multi-family residential development priced in the "affordable" range, as proposed by Petitioner, will provide the opportunity for first-time home buyers and others that cannot afford single-family properties to acquire their home at a price they can afford. The market study projected an absorption period of two to four years for the multi-family units, reflecting an average absorption rate of 45 to 90 units per year.

ECONOMIC IMPACTS

31. Petitioner projects that numerous employment opportunities will be made available by the proposed development of the Property. All aspects of the proposed development will produce design and construction employment opportunities during the construction phases. The commercial aspect of the proposed development will produce approximately 130,000 square feet of commercial space, resulting in numerous employment opportunities, and the industrial aspect of the proposed development will result in substantial commercial and industrial uses and accompanying employment opportunities.

32. Potential employment of approximately two agriculturally-related jobs would be gained if the Property were to be placed in coffee cultivation. However, there is a problem in attracting agricultural workers to the plantations and the urbanization of the Property will not result in the termination of any employees.

33. The proposed development is anticipated, at full development, to increase real property tax revenues from the Property from its current level of approximately \$2,667 per year to approximately \$507,645 per year (at 1990 tax rates).

SOCIAL IMPACTS

34. The residential aspects of the proposed development are expected to generate housing opportunities for the residents of the County of Kauai, and are not anticipated

to result in any significant in-migration to the County from persons residing out of the State or on neighbor islands.

IMPACTS UPON RESOURCES OF THE AREA

35. McBryde intends to convert approximately 5,000 acres of sugarcane lands which it owns in fee simple to coffee orchards. This conversion would include the Property (in the absence of its urbanization) and all of McBryde's fee simple lands east of the Property. The proposed urbanization of the Property therefore will have no effect on McBryde's sugar operations.

36. The impact of urbanization of the Property on McBryde's coffee operations would be to reduce the potential production of coffee by approximately 100 tons per year, to reduce export revenues from coffee sales by approximately \$280,000 per year, and to reduce potential employment by approximately two jobs. This amounts to a reduction in coffee production and revenues of less than 1.5% from what they would otherwise be if the Property were not urbanized. The impact on McBryde's profits would be less than \$280,000 per year since the cost of farming the land and processing the coffee beans would be eliminated. Water requirements for irrigating the affected fields would be reduced by approximately 360,000 gallons per year.

37. The economic viability of the overall coffee operations would not be threatened by the urbanization of the Property due to the comparatively small impact on potential

coffee operations, and the comparatively weak economies of scale associated with coffee operations. Because the Property is located at the western edge of the lands to be cultivated in coffee, the proposed development is not expected to interfere with McBryde's coffee operations. The proposed development would contribute to the growth of the coffee industry in that a portion of the revenues from the proposed development would be used to provide a part of the \$15,000,000 in investment funds that McBryde needs to convert from sugarcane operations to coffee operations.

38. Inasmuch as the Property, if not urbanized, would be used for coffee operations, the urbanization of the Property would not affect the availability of lands for other diversified agricultural activities.

39. Petitioner's consultant, Char & Associates, prepared a botanical survey of the Property dated February, 1990. That survey concluded that no endemic species of plant life occur on the site, and none of the native species inventoried at the site are officially listed or proposed to be listed as endangered or threatened species. The survey further concluded that there is little botanical interest or concern on the Property, that the proposed development is not expected to have any significant impact on the Property's botanical resources, and that there are no botanical reasons to impose any restrictions, impediments or conditions to the development of the Property.

40. Petitioner's consultant, Andrew J. Berger, prepared a study on the terrestrial vertebrae animals which may inhabit the Property. The study concluded that there is no endemic ecosystem anywhere near the Property, that the proposed development would have no impact on any animal species which may be located at the Property, and that there is no biological reason for opposing any change in the land use of the Property.

41. Petitioner's consultant, Cultural Surveys Hawaii, prepared an archaeological reconnaissance of the Property, dated April, 1990. The study concluded that no archaeological sites were located at the Property, that it is likely that 50 to 75 years of cultivation would have destroyed all traces of former cultural features which may have once been present at the Property, and that whatever Hawaiian settlement that once occupied the shoreline has been destroyed by recent modifications including dumping and filling. No further archaeological investigation was recommended, and the study concluded that no on-site archaeological monitoring during construction is justified, and that the archaeological resources of the area will not be impacted by the development of the Property.

42. The study recommended that all development planners for the Property be made aware of the location of a Japanese cemetery located approximately five hundred feet to the east of the shoreline portion of the Property, and that if

any archaeological finds are uncovered, an archaeologist from the State Historic Preservation Office should be consulted before work proceeds.

43. Petitioner anticipates that there is ample water supply to service the proposed development, and that the water system for the proposed development will not have any adverse impact upon the surrounding areas.

44. Petitioner does not anticipate that the proposed development of the Property will have any significant adverse impact upon the recreational, scenic, cultural, coastal or aquatic resources of the area.

45. Some of the recreational resources in the area include the following: windsurfing, board surfing, fishing and swimming along the coastline, Poipu Beach Park (approximately 11 miles from the Property), Salt Pond Park (approximately 2 miles from the Property), Hanapepe Stadium (approximately 1.5 miles from the Property), Eleele School Park (approximately 0.3 miles from the Property) and Eleele Little League Park (adjacent to the Property on the mauka side of Kaunualii Highway). The proposed development is not anticipated to unreasonably burden the public recreational services or facilities covering the Property.

ENVIRONMENTAL QUALITY

46. Petitioner does not anticipate that the proposed development will be subject to or generate any negative impact

upon noise, air quality, water quality or other environmental concerns.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

47. Petitioner's consultant, Pacific Planning and Engineering, Inc., prepared a report dated April, 1990, analyzing the traffic to be generated from the proposed development. That study projected that with the development of the Property, traffic along Kaumualii Highway and various intersections by the year 1998 will experience average delays (LOS C) or better during the morning and afternoon peak hours, except at Waialo Road, and that vehicles turning left from Kaumualii Highway into Waialo Road are expected to experience very long delays (LOS D or E). Delays to the minor streets will worsen for vehicles attempting to cross or enter Kaumualii Highway due to the increase in the number of vehicles attempting to cross or enter Kaumualii Highway. The study further noted that even without the proposed development, the traffic on the minor streets by 1998 will experience delays ranging from LOS D to LOS F, and that the inclusion of the proposed development will have little or no effect on the LOS for the minor streets.

48. To minimize the impacts on traffic, Petitioner's traffic consultant recommended that the following improvements be made:

- a. Signalize the intersection of Kaumualii Highway with Waialo Road when warranted;

b. Signalize the intersection of Kaumualii Highway with Halewili Road when warranted;

c. Provide additional laneage to the signalized intersections of Kaumualii Highway with Waialo Road and Halewili Road as required to operate under capacity;

d. Improve the acute intersection of Kaumualii Highway and Mehana Road to State standards or disconnect it. An alternative measure would be to ban left turns out of Mehana Road and right turns into Mehana Road; and

e. Provide adequate left turn storage length capacity along Kaumualii Highway for vehicles turning into Waialo Road.

49. Based upon the implementation of these mitigation measures, Petitioner's traffic consultant anticipates that the traffic in the area of the Property will be moving at acceptable levels of delay, and that none of the State or County agencies providing road services or facilities would be unreasonably burdened as a result of the proposed development and that the proposed development will not result in any unreasonable investment in public roadway or infrastructure support services or commitment of State funds of resources.

50. The State Department of Transportation ("DOT") expressed its concern that additional traffic mitigation measures may be required as a cumulative result of this project and other projects, and therefore maintains that Petitioner

should participate in the funding and construction of such regional traffic improvements, on a pro rata basis, as so determined by DOT.

51. DOT specifically recommended that the acute intersection of Kaumualii Highway and Mehana Road be eliminated and that petitioner examine the feasibility of realigning Halewili Road with Eleele Road to create a major intersection.

52. The County of Kauai, Department of Public Works, stated that it did not concur with the conceptual plan for the internal roadway layout for the Property and will require a revised plan prior to development of the Property. The Department further recommended that the subdivision layout for the Mauka Parcel should consider the elimination of the existing Mehana Road/Kaumualii Highway intersection, and that an additional connection to Kaumualii Highway from the area may be warranted.

53. Petitioner's engineering report projected a total average daily water demand of 199,500 gallons per day (gpd), consisting of 50,000 gpd for the single family lots, 50,400 gpd for the multi-family units, 27,000 gpd for the commercial portion of the proposed development, and 72,000 gpd for the industrial portion of the proposed development. A new water well will have to be drilled, and new storage facilities will have to be constructed, to service the Property, and on-site distribution systems and upgraded off-site transmission systems will have to be constructed and integrated with the new storage

and source facilities. The water system will be constructed in accordance with County standards.

54. Petitioner anticipates that there will be adequate water source for the proposed development, and that the proposed water system will be adequate to serve the proposed development. The Executive Summary for the Kauai Water Use and Development Plan dated February, 1990, prepared by R.M. Towill Corporation for the Kauai County Department of Water, indicates that there is more than adequate ground water to meet the projected long term demands on the Hanapepe hydraulic system.

55. Petitioner will pay for the pro rata cost of developing the water source, storage facilities and water transmission and distribution systems for the proposed development, and therefore Petitioner does not anticipate that any public agencies providing water services or facilities will be unreasonably burdened by the proposed development, or that the proposed development will necessitate an unreasonable investment in public infrastructure support services or commitment of State funds or resources, or that the proposed water system will have any adverse impact upon any surrounding areas.

56. The Eleele/Hanapepe sewage treatment plant, located immediately west of the Makai Parcel, is currently at capacity. This plant will have to be expanded to accommodate the wastewater generated by the proposed development. The

plant is modular in design and was designed to accommodate expansion, and adequate land area exists for this expansion. The County of Kauai currently is in the process of preparing plans for this expansion, and Petitioner will pay its pro rata share of the cost of this expansion. Petitioner anticipates that this expansion will be completed so as to meet Petitioner's development timetable for the proposed development.

57. Based upon the planned expansion of the existing wastewater treatment facility, and the improvements to be constructed and paid for by Petitioner, Petitioner anticipates that the proposed wastewater system will be adequate to service the proposed development; no public agencies providing wastewater services or facilities will be unreasonably burdened by the proposed development; the proposed wastewater system will not have any adverse impact upon any surrounding areas, and that the proposed wastewater system and wastewater requirements for the proposed development will not necessitate an unreasonable investment in public infrastructure or support services or commitment of State funds or resources.

58. Petitioner's consultant, Akinaka and Associates, prepared a master plan drainage report for the Property dated August, 1990 (rev. September, 1990). That report took into consideration all of the drainage from surrounding areas flowing onto the Property. The study recommended various alternative methods of handling the drainage for the Property, and Petitioner is prepared to accept and implement the

recommendations set forth in the drainage study. Among other things, the report recommended that the drainage outlet at the shoreline should be relocated easterly to the rocky shore (approximately 150 feet east of the partially crushed 36-inch pipe presently located at the shoreline), so as to discharge on the rocky shore. This treatment will reduce erosion and allow fuller use of the sandy shore.

59. Petitioner's drainage consultant does not anticipate that the proposed development will have any impact upon the Hanapepe River.

60. Petitioner's drainage consultant does not anticipate that the drainage services or facilities in the area of the Property or the public agencies providing those services or facilities, will be unreasonably burdened by the proposed development, or that the proposed drainage for the proposed development will have any adverse impact upon the environment.

61. Petitioner's drainage consultant further stated that Kiaha Reservoir is no longer used for irrigation purposes, and therefore there should be no concern over the mixing of irrigation water with storm and drainage water, and that there exists no evidence of structural damage to the roadway pavement of Halewili Road or the side slope of Kiaha Reservoir.

62. Solid waste generated by the single-family residences will be collected by the County of Kauai's refuse crews, and solid wastes generated by the multi-family, industrial and commercial areas will be collected by private

refuse haulers. All solid wastes from the Property will ultimately be disposed of at the County's Kekaha Sanitary Landfill. The County's Landfill currently has adequate capacity to service the proposed development, but the County is in need of additional land to accommodate solid waste on the island of Kauai and Petitioner has agreed to work with the County to help provide new facilities. Petitioner does not anticipate that the County agencies providing solid waste pickup and disposal services and facilities will be unreasonably burdened by the proposed development, or that the proposed development will necessitate an unreasonable investment in public facilities, services, or commitment of State funds or resources.

63. The Property will be served by the following schools: Eleele Elementary School (grades K-6), located approximately one mile from the Property; Waimea Canyon Intermediate School (grades 7-8), located approximately six miles from the Property; and Waimea High School (grades 9-12), located approximately six miles from the Property. The State Department of Education projects that the proposal would result in an enrollment increase of 45 to 55 additional students at Eleele Elementary, 18 to 22 additional students at Waimea Canyon Intermediate, and 20 to 25 students at Waimea High School. The Department of Education believes that Waimea Canyon Intermediate and Waimea High School should be able to accommodate the increase in students resulting from the

proposed development, but that Eleele Elementary School is currently beyond capacity and additional classrooms will be required to accommodate the projected growth. Eleele Elementary School has sufficient land area to accommodate its expansion.

64. The Property will be served by a 24-hour police patrol stationed out of the Waimea headquarters (six miles from the Property). The patrol area benefits from good response time and support vehicles. The proposed development is not anticipated to result in any unreasonable burden upon, or necessitate an unreasonable investment in, police services, facilities, or commitment of State funds or resources.

65. Fire protection for the Property is provided by the Hanapepe Fire Station (two miles from the Property), with an estimated response time of under 2 minutes, as well as the Kalaheo (five miles from the Property) and Waimea (six miles from the Property) fire stations. The Property is considered to be a well-covered service area and the proposed development is not anticipated to result in any unreasonable burden upon, or necessitate an unreasonable investment in, fire services or facilities or commitment of State funds or resources.

66. Electricity will be provided to the Property by the adjacent Kauai Electric Company plant; both electrical and telephone facilities have adequate capacity to service the proposed development; and the proposed development is not anticipated to result in any unreasonable burden upon, or

necessitate an unreasonable investment in, electrical or telephone facilities or services.

COMMITMENT OF STATE FUNDS AND RESOURCES

67. Given Petitioner's commitment to pay its pro rata share of various off-site and on-site infrastructure facilities for the proposed development, Petitioner does not anticipate that the proposed development will result in any unreasonable commitment of State funds or resources, it being understood, however, that the Eleele Elementary School may have to be expanded to accommodate children residing at the proposed development.

CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

68. Based on the findings previously stated, and the evidence and testimony adduced at the hearing, the Property meets the standards applicable in establishing boundaries of the Urban District as set forth in Section 15-15-18 of the Commission Rules as follows:

a. The Property is located immediately adjacent to and is contiguous with lands which are located in the Urban District and which are zoned and used for industrial, residential and commercial purposes.

b. The proposed development represents an appropriate and reasonable use of the Property and is an appropriate location for urban concentration.

c. The Property is located in the immediate vicinity of the Port Allen industrial area and nearby other

centers of trading and employment (Poipu, approximately 11 miles away, Koloa, approximately 8.3 miles away and Lihue, approximately 16 miles away), and would itself generate new centers of trading and employment.

d. Petitioner has evaluated the cost of developing the proposed project, has demonstrated its financial capacity to undertake the proposed development, and has determined that the development is economically feasible.

e. The Property includes lands with satisfactory topography and drainage conditions and is reasonably free from the danger of floods, tsunami, unstable soil conditions and other adverse environmental affects.

f. The vast majority of the Property is designated "Urban" and "Urban Mixed Use" under the County's Hanapepe/Eleele General Plan, and Petitioner's proposed uses of the Property are compatible with these designations.

g. Petitioner's sister company, McBryde, owns in fee simple approximately 5,000 acres of land to be converted to coffee operations, and the Property's 72.6 acres represent only a minor portion of the Agricultural District lands.

h. Given Petitioner's commitment to pay its pro rata share of the cost of various off-site and on-site infrastructure for the Property, the proposed development will not necessitate an unreasonable investment in public infrastructure or support services.

i. The urbanization of the Property will not substantially impair actual or potential agricultural production in the vicinity of the Property or in the County of the State.

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

69. The reclassification of the Property and the proposed development of the Property are in conformity with all of the State goals set forth in Section 226-4, HRS, the objectives set forth in Sections 226-5, 226-6, 226-7, 226-10, 226-11, 226-13 through 226-17, and 226-19, HRS, and numerous State policies set forth in Chapter 226, HRS, including, among others, the following:

- Section 226-5(b)(2) "Encourage an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires."
- Section 226-6(a)(1) "Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people."
- Section 226-6(a)(2) "A steadily growing and diversified economic base that is not overly dependent on a few industries."

- Section 226-13(b)(7) "Encourage urban developments in close proximity to existing services and facilities."
- Section 226-19(a)(1) "Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, livable homes located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals."
- Section 226-19(b)(2) "Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households."
- Section 226-19(b)(3) "Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing."

The proposed development of the Property is also consistent with various State priority guidelines, including, among others, the following:

- Section 226-103(a) "Priority guidelines to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy:

(1) Seek a variety of means to increase 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 community;
- (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 Hawaii residents."

Section 226-106(a)(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."

CONFORMANCE WITH COASTAL ZONE
MANAGEMENT OBJECTIVES AND POLICIES

70. The development of the Property is not anticipated to adversely affect the ocean or the shoreline, and

[because the] residents of the Property will have full access to nearby ocean and shoreline areas. The proposed reclassification is consistent with the objectives set forth in Sections 205A-2(b)(1), 205A-2(b)(5) and 205A-2(b)(6), HRS, and the policies set forth in Sections 205A-2(c)(1)(B)(iii), 205A-2(c)(1)(B)(iv), 205A-2(c)(1)(B)(v) and 205A-2(c)(6)(B), HRS.

71. Approximately 3.6% of the Property (2.6 acres) is located in the SMA, and Petitioner will have to obtain a SMA permit from the County before proceeding with the development of the Property.

72. Petitioner proposes relocating the existing drainage outlet at the shoreline away from the sandy beach and onto a rocky area, and therefore the drainage from the Property will have no adverse effect upon, and may in fact benefit or enhance the utilization of, the shoreline.

INCREMENTAL DISTRICTING

73. Petitioner anticipates that the off-site and on-site improvements for the Property will be completed within twenty to twenty-five months after final County zoning approval for the Property has been obtained.

RULING ON STIPULATED AND PROPOSED FINDINGS OF FACT

Any of the stipulated or proposed findings of fact submitted by the 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.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the Commission Rules, the Commission finds upon the preponderance of the evidence that the reclassification of the Property, consisting of approximately 72.6 acres identified by Tax Map Key Numbers 2-01-001: portion of 3 and portion of 27, situated at Eleele, Koloa, Island and County of Kauai, State of Hawaii, from the Agricultural District to the Urban District, subject to the conditions stated in the Order below, conforms to the standards for establishing Urban Boundaries, is reasonable, is not violative of Section 205-2, HRS, and is consistent with the policies and criteria established pursuant to Section 205-16, 205-17 and 205A-2, HRS.

ORDER

IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. A90-654, as amended, by A & B Properties, Inc., consisting of approximately 72.6 acres, situated at Eleele, Koloa, Island and County of Kauai, State of

Hawaii, and identified by Tax Map Key Numbers 2-01-001: portion of 3 and portion of 27, and approximately shown on Exhibit "A" attached hereto and incorporated herein by reference, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. A study evaluating the need for the amount of commercial zoning in comparison to the adequacy and availability of the existing commercial zoning within the Hanapepe-Eleele area to support existing and anticipated developments in the area shall be presented by Petitioner to the County Planning Department and the Office of State Planning at the time of the zoning amendment. The study should also cover the impacts of the additional commercial zoning to the urgent efforts of revitalizing commercial development within the Hanapepe Town Core.

2. A master plan of the area surrounding the Property, including the area south of the Eleele Shopping Center, shall be provided by Petitioner to the County Planning Department and the Office of State Planning for evaluation at the time of zoning amendment.

3. Petitioner shall provide housing opportunities for low, low-moderate and moderate income residents of the State of Hawaii by offering for sale or lease a number of units equal to at least 30% of the residential units in the Property at prices

which families with an income range of up to 120% of the County of Kauai's median income can afford, and a number of units equal to at least 30% of the residential units in the Property at prices which families with an income range of 120% to 140% of the County of Kauai's median income can afford.

This condition may be fulfilled through construction of units under such terms as may be mutually agreeable between Petitioner and the Housing Finance and Development Corporation of the State of Hawaii ("HFDC"). This condition may also be fulfilled, with the approval of HFDC and the County of Kauai, through construction of rental units to be made available at rents which families in the specified income ranges can afford. In addition, Petitioner may obtain a special credit, as determined by HFDC, for the provision of housing affordable to persons with low and very low incomes and for the provision of housing for special need groups, all as determined by and subject to the approval of HFDC.

Insofar as possible, Petitioner shall implement this affordable housing requirement concurrently with the completion of market priced units for the residential project. The determination of median income, as that term is used in this condition, shall be based upon the median income published by the United States Department of Housing and Urban Development at the time that construction of such housing units commences.

4. Petitioner shall participate in the funding and construction of regional traffic improvements, on a pro rata

fair share basis, as determined by the State Department of Transportation. Petitioner shall also fund, design and construct the necessary roadway improvements within the Property to the satisfaction of the County of Kauai, Department of Public Works, and the State Department of Transportation.

5. Petitioner shall complete a drainage study and evaluation of necessary flood control facilities acceptable to the County of Kauai, Department of Public Works, State Department of Transportation and State Department of Health.

6. Petitioner shall coordinate with the County of Kauai, Department of Land and Natural Resources and State Department of Health regarding the establishment of appropriate systems to contain spills and prevent materials associated with industrial uses such as petroleum products, chemicals or other pollutants, from leaching or draining into the storm drainage system and adversely affecting the groundwater and coastal waters.

7. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

8. Storage and/or disposal of hazardous wastes should be approved by the Department of Health prior to their establishment on the Property.

9. Petitioner shall implement effective soil erosion and dust control measures during all phases of the development.

10. Petitioner shall provide notification to future lessees or occupants of the potential odor, noise and dust pollution resulting from the Property, adjacent sewage treatment plant and adjacent agricultural operations. Petitioner shall inform all prospective occupants of the Hawaii Right-to-Farm Act, Chapter 165, HRS, which limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

11. Petitioner shall not permit the occupancy of the residential units developed on the Property until such time as the lands immediately east of the Property have been converted from sugarcane cultivation to coffee cultivation.

12. Petitioner shall pay its pro rata share to expand the existing Eleele Wastewater Treatment Plant and shall fund and develop as required by the County of Kauai, Department of Public Works and the State Department of Health the necessary measures required to collect and transmit the wastewater.

13. Petitioner shall provide the necessary water source, storage and transmission facilities to service the proposed project.

14. Petitioner shall provide its pro rata share for police, fire, park, and solid waste disposal as may be required by and to the satisfaction of the County of Kauai.

15. Petitioner shall provide its pro rata fair share for school facilities as may be required by and to the satisfaction of the State Department of Education.

16. Petitioner shall fund and install the necessary number of emergency siren units within the Property to the satisfaction of the Kauai Civil Defense Agency and the State Department of Defense.

17. Petitioner shall immediately stop work and contact the State's Historic Preservation Office should any archaeological resources, such as artifacts, shell, bones, or charcoal deposits, human burial, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property.

18. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission in obtaining the reclassification of the Property. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

19. 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 Property, prior to development of the Property.

20. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Kauai, Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

21. The Land Use Commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

DOCKET NO. A90-654 - A & B PROPERTIES, INC.

Done at Honolulu, Hawaii, this 18th day of December 1990,
per motion on December 10, 1990.

LAND USE COMMISSION
STATE OF HAWAII

By ABSENT
RENTON L. K. NIP
Chairman and Commissioner

By *Allen K. Hoe*
ALLEN K. HOE
Vice Chairman and Commissioner

By *Allen Y. Kajioka*
ALLEN Y. KAJIOKA
Vice Chairman and Commissioner

By *Karen S. Ahn*
KAREN S. AHN
Commissioner

By *Eusebio Lapenia, Jr.*
EUSEBIO LAPENIA, JR.
Commissioner

By *Joann N. Mattson*
JOANN N. MATTSON
Commissioner

Filed and effective on
December 18, 1990

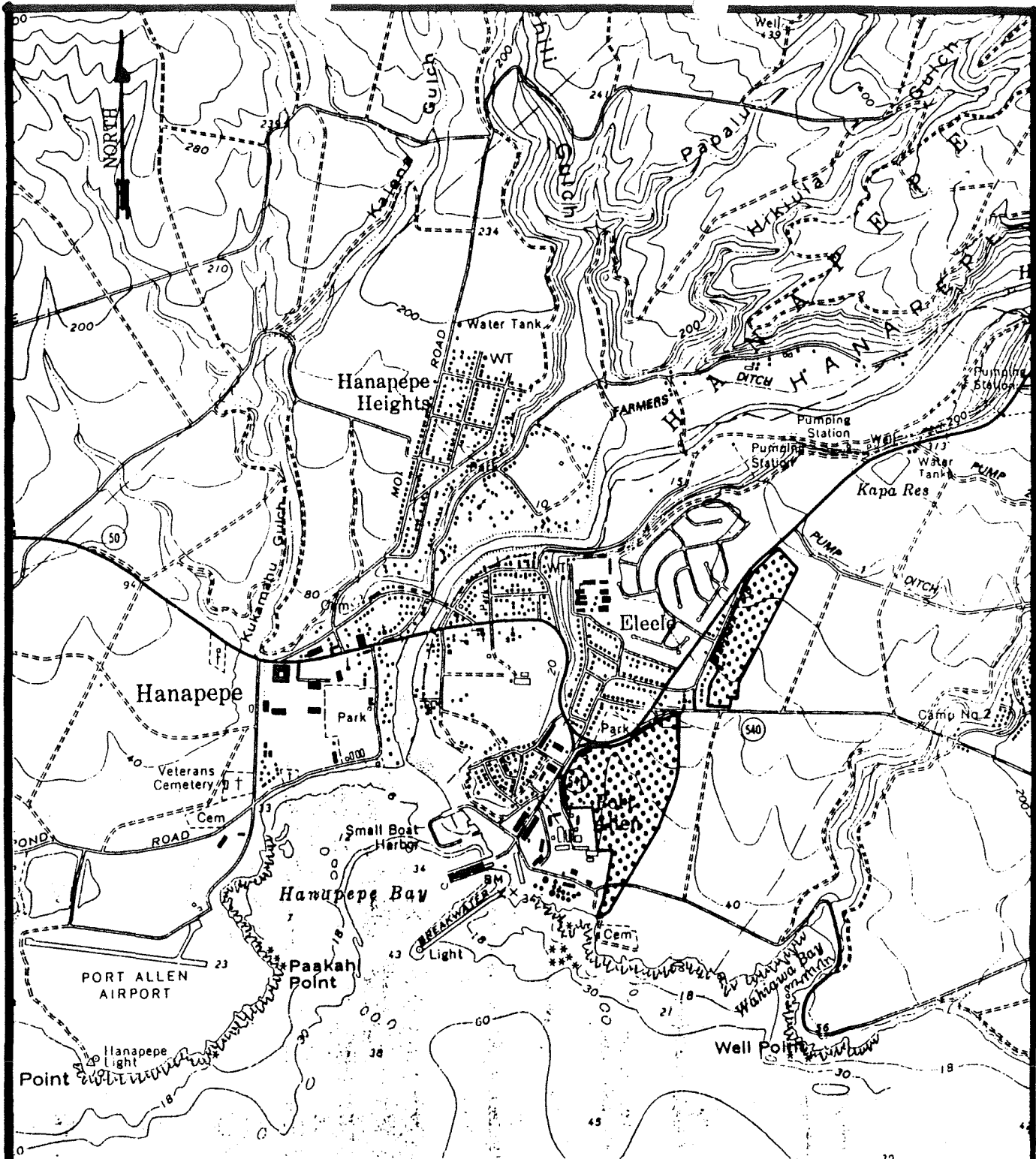
Certified by:

Robert Land
Executive Officer

By ABSENT
JAMES M. SHINNO
Commissioner

By *Elton Wada*
ELTON WADA
Commissioner

By *Delmond J. H. Won*
DELMOND J. H. WON
Commissioner

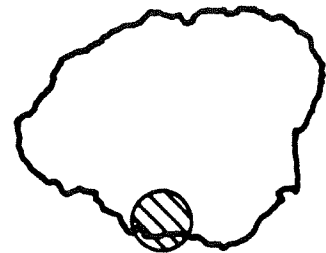


LOCATION MAP

A90-654/A & B PROPERTIES, INC.
 TAX MAP KEY: 2-1-01: por. 3 and por. 27
 ELEELE, KOLOA, KAUAI
 SCALE: 1" - 2,000 ft. ±



APPROVED AREA



KAUAI

EXHIBIT "A"

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
A & B PROPERTIES, INC.) DOCKET NO. A90-654
To Amend the Agricultural District)
Boundary Into the Urban District)
for Approximately 72.6 Acres at)
Eleele, Koloa, Kauai, Tax Map Key)
Nos.: 2-1-001: Portion of 3 and)
Portion of 27)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the 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 certified mail:

HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

CERT. PETER A. NAKAMURA, Planning Director
Planning Department, County of Kauai
4280 Rice Street
Lihue, Hawaii 96766

CERT. MICHAEL BELLES, ESQ.
County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street, #202
Lihue, Hawaii 96766

CERT. STANLEY M. KURIYAMA, ESQ., Attorney for Petitioner
Cades, Schutte, Fleming & Wright
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 18th day of December 1990.


ESTHER UEDA
Executive Officer