

Waikapu

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A04-746
)	
WAIKAPU 28 INVESTMENT, LLC)	WAIKAPU 28 INVESTMENT, LLC
)	
To Amend the Agricultural District)	
Boundary into the Urban Land Use)	
District for Approximately 28.7 Acres at)	
Waikapu, Island of Maui, State of Hawaii,)	
Tax Map Key No. (2) 3-5-004:025)	
_____)	

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

EXHIBIT "A"

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.

DEC 14 2004 by Anthony J. [Signature]
Date

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

WAIKAPU 28 INVESTMENT, LLC, a Hawaii limited liability company ("Petitioner"), filed a Petition for District Boundary Amendment ("Petition") on January 5, 2004, pursuant to chapter 205, Hawaii Revised Statutes ("HRS"), and Title 15, Subtitle 3, Chapter 15 of the Hawaii Administrative Rules ("HAR") to amend the land use district boundary to reclassify approximately 28.7 acres of land at Waikapu, Maui, Hawaii, identified by Tax Map Key No. (2) 3-5-004:025 ("Property"), from the State Land Use Agricultural District to the State Land Use Urban District for an approximate 108 single-family lot-only subdivision ("Project").

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

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On January 5, 2004, Petitioner filed the Petition.
2. On January 14, 2004, Petitioner filed the Affidavit of Service of Petition for District Boundary Amendment and Certificate of Service upon the State of Hawaii Office of Planning ("OP"), Maui Planning Department, Maui Planning Commission, and the Office of the Corporation Counsel (collectively, "County").
3. On January 14, 2004, Petitioner filed the Notarized Affidavit of Mailing and Certificate of Service.
4. On January 28, 2004, Petitioner filed the Affidavit of Service of Petition for District Boundary Amendment and Certificate of Service upon Maui Electric Company, Limited, and Verizon Hawaii, Inc.
5. On April 14, 2004, the Commission filed an order determining that it is the accepting authority pursuant to HRS § 343, and that the draft environmental assessment dated January 5, 2004, warranted an anticipated finding of no significant impact.

6. On May 4, 2004, OP filed its Statement of Position of the Office of Planning in Support of the Petition.
7. On May 6, 2004, the Commission accepted the final environmental assessment dated April 2004, and issued a finding of no significant impact.
8. On May 13, 2004, the Executive Officer of the Commission deemed the Petition a proper filing as of May 6, 2004.
9. On June 24, 2004, the County filed its Statement of Position in general support of the Petition.
10. On June 25, 2004, the Executive Officer of the Commission conducted a prehearing conference in the conference room of the County's Department of Planning, 250 South High Street, Wailuku, Maui, Hawaii, with representatives of Petitioner, OP, and County.
11. On July 23, 2004, the Commission considered the Petition at its meeting in Makena, Maui, Hawaii. Entering appearances were Blaine J. Kobayashi, Esq., and Scott Nunokawa for Petitioner; Michael W. Foley, Director of Planning, and Jane E. Lovell, Deputy Corporation Counsel, for the County; Abe Mitsuda and Mary Alice Evans for OP, and John W.K. Chang, Deputy Attorney General for OP.
12. No individuals provided public testimony.

13. The Commission conducted a hearing on the Petition pursuant to a public notice published on June 23, 2004, in the Honolulu Star Bulletin and the Maui News.

14. The Commission scheduled a further hearing on the Petition for September 3, 2004.

15. On September 3, 2004, the Commission conducted a further hearing on the Petition at its meeting in Kahului, Maui, Hawaii.

DESCRIPTION OF THE PROPERTY

16. The Property is located in Waikapu, Maui, Hawaii. The Property consists of approximately 28.7 acres, and is identified by Tax Map Key No. (2) 3-5-004:025.

17. The Property is bounded to the north by fallow fields formerly used for sugar cane and pineapple cultivation; to the south by Pilikana Street and the existing 25-lot Waiolani Elua and 116-lot Waiolani residential subdivisions; to the east by Honoapiilani Highway; and to the west by vacant agricultural lands.

18. Currently, the Property is vacant and fallow, and was previously used for sugar cane and pineapple cultivation, with the last crop of pineapple being harvested in July, 2001.

19. Fee simple ownership of the Property is vested in Petitioner, whose business and mailing address is P.O. Box 946, Wailuku, Maui, Hawaii 96793.

20. As owner of the Property, Petitioner has standing to file the Petition.

21. The University of Hawaii Land Study Bureau's Detailed Land Classification classifies the Property as "A." This classification system rates lands on a scale of "A" to "E," reflecting land productivity characteristics. Lands designated "A" are considered to be of highest productivity, with "E" rated lands ranked the lowest.

22. The Property's soil type of A80i reflects soil that is over 30 inches deep, non-stony, and well to excessively drained. Underlying the Property is Iao clay, 3-7 percent slopes (IcB) soil. This type of soil, which is found on smooth alluvial fans and valley fill, has a 15-inch layer of dark brown clay. The 45-inch deep subsoil is dark brown clay and silty clay. The soil is neutral and has moderately slow permeability. With medium runoff, the erosion hazard for IcB soil is slight to moderate. The Property also consists of Iao cobbly silty clay, 3-7 percent slopes (IbB) soil, which has a similar profile to the IcB soil type, except for the texture of the surface level and the content of cobblestones.

23. The Property is listed as "Prime Agricultural Land" according to the Agricultural Lands of Importance to the State of Hawaii.

24. The Property is relatively flat, with slopes of approximately 6.8 percent.

25. The Property is within Zone C of the Federal Flood Insurance Rate Map, which is an area of minimal flooding according to the Federal Emergency Management Agency.

PROPOSAL FOR RECLASSIFICATION

26. The Property will be developed into an approximate 108 single-family lot subdivision that will be similar in character to the existing 116-lot Waiolani and 25-lot Waiolani Elua residential subdivisions located immediately south of the Property.

27. Petitioner intends to subdivide the Property, creating lots ranging in size from 7,500 square feet to approximately 12,000 square feet.

28. Estimated sales prices for each fee simple lot are currently projected to be in the range of \$140,000.00 to \$190,000.00. Lot sales are anticipated to occur over an 18-month time period.

29. Subdivision improvements are anticipated to commence in mid-to-late 2005, and will take approximately 8 months to complete. It is estimated that the cost for the subdivision improvements will be approximately \$4,200,000.00.

30. Petitioner intends to limit ohana units to 50% of the lots.

31. Petitioner will coordinate with the County to determine its affordable housing requirements in accordance with the County's affordable housing policy as it pertains to the Project. Petitioner's affordable housing requirements shall be

under such terms and conditions as may be mutually agreeable to Petitioner and the County.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

32. Petitioner's financial statements as of June 30, 2003, reflect total assets of \$1,085,614, total liabilities of \$195,479, and total members' equity of \$1,200,135.

33. Petitioner owns the Property free and clear of debt. Petitioner intends to finance development of the Project through local lending institutions.

34. Based on Petitioner's ownership of the Property, total assets and equity, financing through local lending intuitions, and history with other projects, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

STATE AND COUNTY PLANS AND PROGRAMS

35. The Property is currently designated in the State Land Use Agricultural District.

36. The Wailuku-Kahului Community Plan designates almost the entire Property as "Single Family".

37. An approximate 2-acre area at the southwest corner of the Property at the Pilikana Street-Honoapiilani Highway intersection is designated "Public/Quasi-Public" by the Wailuku-Kahului Community Plan.

38. The intent of this designation was to accommodate a future fire station facility at this location. The County, however, no longer considers this location to be desirable for a future fire station.

39. A separate application for a community plan amendment has been filed with the Maui Planning Department for processing with the Maui Planning Commission and referred to the Maui County Council to amend the Wailuku-Kahului Community Plan's designation of this 2-acre area from its "Public/Quasi-Public" designation to "Single-Family".

40. In conjunction with the County, Petitioner has worked to identify the park needs for the area. Currently, this has resulted in a plan for a 2-acre area within the Project for a park that would be dedicated to the County. Unless directed otherwise by the County, Petitioner will provide this land to the County to help address park needs in the area.

41. The Property is currently zoned "Agricultural" by Maui County zoning. Accordingly, a separate Change in Zoning application has been filed with the Maui County Council. The request is being made to change the zoning of the Property to "R-2, Residential" that would allow for the subdivision of the Property into single-family lots as proposed by Petitioner.

42. The Property is not within the Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

43. As demonstrated in Petitioner's Central Maui Real Property Survey dated August 2003, which included a Market Analysis prepared by ACM Consultants, Inc., in March of 2003, housing demand and sales have exhibited a significant upward trend in the County of Maui. Sales information for single-family subdivisions indicates very high demand, with continuing strength in demand anticipated.

44. The demand for single-family product has also shown strength with very little supply available. The Project's approximate 108 single-family lot subdivision will alleviate some of this high demand by providing much needed inventory.

45. The County of Maui's Department of Housing and Human Concerns supports the Project. The Project will fill a need for a variety of types of housing in the "high moderate" price category.

46. "High moderate" would be affordable to individuals or families earning 140 percent of median income.

47. The County's Department of Housing and Human Concerns will ask County Council to set aside 11 lots for affordable housing.

48. "Affordable" means affordable to individuals or families making 120 percent or less of median income, which currently for Maui County is \$60,700.

49. The County of Maui's Department of Planning generally supports the Project. It is designated on the Wailuku-Kahului Community Plan for single-family residential. The Project would provide housing that while not technically affordable, does provide buildable lots that are in extremely short supply, at a price where the housing is likely to be sold at moderate cost.

50. The County of Maui has past history with the developer. The Planning Department has reviewed other projects that have been submitted, reviewed, and approved and built by Scott Nunokawa and his wife. The Planning Department has found them to be truthful in their presentations and in the implementation of what they said they were going to do.

SOCIO-ECONOMIC IMPACTS

51. The Project will benefit the social and economic welfare of the community by providing additional housing inventory, and allowing purchasers to develop, uniquely design, and construct their own style of homes.

52. On a short-term basis, the proposed development will have a direct beneficial impact on the local economy during construction by generating construction and construction-related employment.

53. Over the long term, the residential homeowners will require various services related to home maintenance and improvement that will further support the local economy.

IMPACTS UPON RESOURCES IN THE AREA

Agricultural Resources

54. Although the Property was previously used as a part of large-scale agricultural activities, it is presently fallow, undeveloped, and predominantly vegetated with scattered kiawe, koa haole and introduced grass species. Given the liquidation by Wailuku Agribusiness Inc. of its properties in the area, the Property's relatively small size, its "Single-Family" community plan designation, and its location adjacent to existing residential areas, continued use of the Property for large-scale agricultural activities is not practical or appropriate.

55. The Wailuku-Kahului Community Plan's designation of the Property, coupled with the pressing need for housing in the County of Maui, outweighs the impact on agriculture on Maui and the State of Hawaii, which is not expected to be significant in light of the fact that the Property's 28.7 acres represent only 0.01 percent of the approximate 245,777 acres of land as of December 31, 2002, within the Agricultural district on the island of Maui.

Flora and Fauna

56. Vegetation in the area, including the Property, is characterized by introduced grass species. Other plant species typically found in the area include sandbur, lantana, fingergrass, and bristly foxtail. The Property also contains vegetation such as koa haole, kiawe, and castor bean. None of the foregoing vegetation is a

threatened and endangered species. The Project is not expected to have a significant negative impact on the botanical resources of the Property or the general region.

57. Based on past agricultural uses of the Property, site observations, and terrestrial fauna characteristics in surrounding areas, the following introduced species of terrestrial fauna such as cats, mice, rats, and mongoose may be expected at the Property. Some of the avifauna introduced to the area include the Spotted Dove, Barred Dove, Japanese white-eye, Cardinal, Red-Crested Cardinal, and Mynah. None of these species are listed as threatened or endangered.

Archaeological/Historical/Cultural Resources

58. Jeffrey Pantaleo of the archaeological consulting firm of Jeffrey Pantaleo Consultants, LLC, conducted an archaeological inventory survey of the Property which included subsurface testing. No subsurface cultural remains or deposits were revealed in the testing.

59. A segment of State Site 50-50-04-5197, the Waihee Ditch owned by Wailuku Agribusiness Inc., bisects the Property. Constructed between 1905-07, Waihee Ditch provides irrigation water to the area's sugar cane and pineapple fields.

60. The State Historic Preservation Division ("SHPD") reviewed and accepted the archaeological inventory survey and found that no further archaeological work is warranted on the Property. SHPD recommended preservation of Waihee Ditch, State Site 50-50-04-5197. Following the recommendation of SHPD and the consulting

archaeologist, the flow of water from the ditch will not be impeded by the Project.

Petitioner anticipates fencing or covering the entire portion of Waihee Ditch that runs through the Property. Petitioner will comply with all State of Hawaii and County of Maui laws and rules regarding the preservation of archaeological and historic sites should any be found during construction.

61. A cultural impact assessment was also conducted for the Project. Informant interviews were conducted for the assessment and included interviews of Mr. Koichi Yamaoka, Mr. Wayne Rosario, Mr. Royal G.L. Vida, and Mr. Royal G. Vida.

62. Mr. Yamaoka owns two (2) lots which abut the Property, and has lived on his property since 1934. As far as Mr. Yamaoka can recall, the Property was always used for sugar cane and pineapple cultivation. He did not recall any burials occurring in the vicinity of the Property.

63. Mr. Rosario moved to Waikapu in 1942, and lived near the Property for a number of years. Mr. Rosario also recalls the Property always being used for sugar cane and pineapple cultivation. He did not recall any traditional cultural practices occurring on the Property.

64. Mr. Royal G.L. Vida was born in 1957, and has lived on a parcel abutting the Property for virtually his entire life. Mr. Vida recalls the Property being used for sugar cane and pineapple cultivation. He expressed concern over traffic, namely, being able to access in and out of his subdivision for everyday or emergency

access purposes. Mr. Vida does not recall observing any traditional practices occurring on the Property.

65. Mr. Royal G. Vida was born in 1936, and owns property that abuts the Property to the south. Mr. Vida used to live on the abutting property until he moved to Kahului in 1987. As far as he can recall, Mr. Vida said that the Property was used for sugar cane and pineapple cultivation. He was not aware of any cultural practices occurring on the Property.

66. Based on these interviews, the archaeological inventory survey, and observation of the Property, the Project will not have any adverse effects to native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawaii State Constitution.

Groundwater Resources

67. Waikapu Stream is a perennial stream that originates in the upper reaches of Waikapu Valley. It is located approximately 0.33 miles to the north of the Property. A plantation reservoir is located approximately 0.2 mile from the Property. This reservoir is maintained by Wailuku Agribusiness Inc. The proposed development will not impact the Waikapu Stream or significantly undermine the integrity of the reservoir. There are no wetlands in the vicinity of the Property.

68. Waihee Ditch, owned by Wailuku Agribusiness Inc., bisects the Property in a north-south direction. No adverse impacts to the flow of water in Waihee

Ditch will result from the Project. Petitioner will implement protective measures to mitigate possible risks posed by Waihee Ditch.

Recreational and Scenic Resources

69. There are numerous recreational facilities, park, and open spaces in close proximity to the Property and the Wailuku-Kahului area in general. In addition to the 2-acre park that is currently proposed as part of the Project, the County-owned Waikapu Community Center, which includes a baseball field, basketball court, and community center building is located a short distance from the Property. Two (2) baseball fields owned by Wailuku Agribusiness, Inc., open for use by the public, are also located a short distance from the Waikapu Community Center.

70. In addition, a nearby park with a baseball field, basketball court, and playground equipment, is located a short distance from the Property near the Hale Makana O Waiale Affordable Housing complex. Additional park and recreational facilities include Iao Park, Wells Park, Wailuku Pool, Wailuku Gym, Wailuku Elementary School Park (two (2) baseball fields, basketball court, and playground equipment), Wailuku Community Center, Papohaku Park, former Keiki Zoo Park, War Memorial Athletic Complex, Sakamoto Pool, and Keopuolani Park (an approximately 140-acre regional park complete with soccer fields, baseball fields, playground equipment, pedestrian and bike ways, and an outdoor amphitheatre).

71. The Project will not significantly impact any of the foregoing existing facilities.

72. The Property is characterized by views of Mount Haleakala to the east, and Waikapu Valley and the West Maui Mountains to the west. The Property is surrounded by vast open space and former agriculture lands on three (3) sides. The Property is not anticipated to have an adverse impact upon the visual character of the surrounding area since the Property is not part of a scenic corridor and will not impact views from inland vantage points.

ENVIRONMENTAL QUALITY

Noise

73. The predominant source of noise in the vicinity of the Property comes from Honoapiilani Highway to the east, while the secondary source of background noise comes from traffic on East Waiko Road, and intermittent agricultural operations on nearby properties.

74. Ambient noise conditions may be temporarily impacted by on-site construction activities during the initial construction phase of the Project which will only be carried on during the daytime. Noise mitigation measures such as equipment mufflers, barriers, and other noise-attenuating equipment will be utilized as required. In cases where construction noise exceeds, or is expected to exceed the State

Department of Health's ("DOH") maximum permissible noise levels, Petitioner will obtain all required permits from DOH.

75. Any temporary impacts on noise conditions from on-site construction activities or traffic noise due to the Project are not considered significant and are not expected to adversely impact the Property or surrounding areas.

Air Quality

76. There are no point sources of airborne emissions within proximity of the Property. While air quality is temporarily and intermittently impacted by a variety of sources, such as dust from nearby agricultural operations, odor from pigs, cattle, and horses from the adjacent property, smoke and dust from sugar cane harvesting operations to the south and east of the Property, and vehicular exhaust from traffic on the region's roadways, the prevailing winds in the area quickly disperse any particulates generated by these sources.

77. Air quality within the immediate vicinity of the Project may be temporarily impacted from the emission of fugitive dust during construction-related activities. Dust mitigation measure include: i) dust barriers, ii) water trucks watering unpaved work roads and graded areas on an as-needed basis, iii) sprinkler system to control dust, iv) proper maintenance and cleaning of construction equipment and vehicles, and v) daily monitoring of dust at the Project during construction. Petitioner will implement all required mitigation measures for fugitive dust.

78. During construction, increased emissions from engine exhausts may occur at or near the Project site during construction-related activities. Petitioner will ensure that all mitigation measures to alleviate increased vehicular emissions are implemented.

Water Quality

79. Operations within the Project will comply with all Federal, State, and County regulations regarding the handling, use, and storage of any potential pollutants to prevent leaching into the ground and flowing into any storm drainage systems.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highways and Roadway Facilities

80. Phillip Rowell and Associates prepared a traffic impact analysis report ("TIAR") for the Project dated October 5, 2003. The purposes and objectives of the TIAR were to identify the individual and cumulative traffic impacts of the Project, and provide recommendations concerning mitigation measures.

81. The following intersections are in the study area and were analyzed in the TIAR: Honoapiilani Highway at East Waiko Road, and Honoapiilani Highway at Pilikana Street.

82. The year 2008 was used as the design year for the Project. Background traffic projections were prepared for 2008 conditions without the Project to

establish a base condition for assessing the impacts of the proposed Project. Future traffic growth consists of both ambient background growth and traffic from other proposed projects in the study area. The background growth rate used for the TIAR was 1.6 percent.

83. For purposes of the TIAR, it was assumed that the Project would be 100-percent single-family residential. Specifically, the TIAR was based on 108± single-family detached residential units, including up to 54 ohana units.

84. The State of Hawaii Department of Transportation ("DOT") typically designs its roadways for peak hours in the morning or afternoon and that capacity needs generally determine the roadway design.

85. It was estimated that the Project will generate 113 trips during the morning peak hour and 146 trips during the afternoon peak hour.

86. A traffic signal warrant analysis was also performed as part of the TIAR to determine if traffic signals were warranted for future conditions. The analysis concluded that at the intersection of Honoapiilani Highway at Pilikana Street, the morning peak hour traffic volume will increase 5.5 percent. During the afternoon peak hour, the traffic volume will increase 7.5 percent. At the intersection of Honoapiilani Highway at East Waiko Road, the morning and afternoon peak hour traffic volume will increase 2.4 percent and 2.8 percent respectively.

87. The traffic signal warrant analysis for the intersection of Honoapiilani Highway at Pilikana Street concludes that the morning peak hour volume warrant for traffic signals are satisfied for existing traffic conditions.

88. The final recommendation of the TIAR is that a traffic signal should be installed at the intersection of Honoapiilani Highway at Pilikana Street, and that a separate left turn phase for traffic turning from northbound Honoapiilani Highway to westbound Pilikana Street would be provided.

89. The Maui Lani and Kehalani developments were not included in the TIAR analysis because specific development timetables could not be obtained. Consequently, the TIAR analysis utilized data provided in the *Maui Long Range Transportation Plan* dated October 1996, and prepared by Kaku Associates, to estimate future traffic volumes along Honoapiilani Highway.

90. The TIAR found the Project to not significantly impact either study intersection.

91. Petitioner has had discussions with DOT regarding DOT's concerns about the Project. Pursuant to those discussions and to address DOT's concerns, a traffic signal at the intersection of Honoapiilani Highway at Pilikana Street will be installed and operational prior to the issuance of final subdivision approval of the Project or the release of the subdivision bond by the County of Maui. Construction plans for the traffic signal will be submitted to the DOT for review and approval.

92. In addition, at the discretion of DOT, the TIAR will be updated at the time that the traffic signal at the intersection of Honoapiilani Highway at Pilikana Street is designed. The TIAR will include an analysis of the updated number of units pertaining to the Maui Lani and Kehalani developments. The DOT may also require that a full traffic signal warrant analysis be submitted with the updated TIAR.

93. Additionally, sufficient right-of-ways and setbacks shall be dedicated, at no cost to the State of Hawaii, along the Honoapiilani Highway frontage currently shown on lots 15, 16, and 17 of the preliminary subdivision layout as shown in Figure 3 of Petitioner's Exhibit "2" to accommodate possible storage and turn lanes for improvements to the Pilikana Street/Honoapiilani Highway intersection. The exact right-of-ways and setbacks, if any, shall be determined at the time that the traffic signal at the Pilikana Street/Honoapiilani Highway intersection is designed.

Water Service

94. The Property is located in the Central Maui Service Area that is served by water from the Iao and Waihee Aquifers, the Iao tunnel, and the Iao-Waikapu ditch. On July 21, 2003, the Commission on Water Resource Management ("CWRM") designated the Iao Aquifer as a Groundwater Management Area ("GMA"). New groundwater use permits are subject to the availability of groundwater determined by sustainable yield and existing water use permits.

95. As a result of CWRM's designation of the Iao Aquifer as a GMA, the County Department of Water Supply ("DWS") has stopped issuing advance water meter reservations until new water sources are brought on-line. DWS is taking steps to protect the long-term viability and sustainability of the Iao and Waihee Aquifers by developing new sources, emphasizing groundwater and watershed protection, and promoting water conservation.

96. Petitioner understands that DWS has completed drilling a new well adjacent to its existing Waikapu water tank site. Petitioner further understands that it is the intent of DWS to use this new well to service the Waikapu area, and that DWS is in the process of finalizing the design of the deep well pump and necessary equipment for this new well.

97. DWS continues to issue water meters up to 800,000 gallons per day ("gpd") to those ready to receive service from the service area of the designated Iao Aquifer. As of April 26, 2004, DWS has issued meters equivalent to 62 percent. At the time of the hearing on July 23, 2004, DWS Water Resource Planner Eva Blumenstein testified that DWS is close to allocating its limit of 800,000 gpd. The anticipated water consumption for the proposed project is 97,200 gpd. There is an existing water stub-out on the southern side of Pilikana Street near its intersection with Honoapiilani Highway. Petitioner acknowledges and understands that if water resources are not available at the

time of development or if an adequate number of water meters cannot be issued by DWS, delays in project construction, and the project itself, may result.

98. There are several new sources of water expected to come on-line in the near future. Before the end of 2004, an expansion of the existing Iao treatment plant will add at least 800,000 gpd from surface water sources to the Central Maui System that serves the Waikapu area.

99. Another source of water will be the Kupa'a Well, which should be on-line sometime in 2005. Pumping from that source should average about 750,000 gpd.

100. The Hamakuapoko Wells in East Maui should come on-line by March of 2005. The two wells are expected to provide approximately 640,000 gpd.

101. Another surface water treatment plant is being planned for Central Maui. Preliminary studies should be completed in 2005. The expected yield would be 2 million gallons per day.

102. Although the 300,000 gallon Waikapu storage tank does not currently have the capacity to provide the required fire flow and anticipated maximum day demands for the Project, Petitioner is working with the developers of the nearby Kehalani project, who will be constructing a 1.0 million gallon storage tank on the south side of Kuikahi Drive, to enlarge the size of the tank to provide the necessary storage demand for the Project.

103. Petitioner will participate with other developers in installing approximately 3,000 feet of off-site waterline from the new storage tank to the Project if deemed required by the County.

Wastewater Disposal

104. The County's existing wastewater system services the Waikapu area. The Wailuku-Kahului Wastewater Reclamation Facility ("WKWWRF") is located on Amala Place near Kanaha Beach in Kahului. The facility has a capacity of 7.9 million gallons per day ("MGD"), and has the necessary capacity to meet the demands of the Project. The estimated sewage to be generated by the proposed project will be 38,150 gallons per day. The WKWWRF has sufficient capacity to accommodate this Project. In addition, the Project will contribute to the Facility Expansion of the Wailuku/Kahului Wastewater Treatment System to mitigate the Project's impact to the facility.

105. There is an existing sewer stubout on the southeast corner of the Property. Due to the lower elevation of the northwest corner of the Property, the northeast corner of the Property will be raised in order to provide sufficient fall to the existing sewer stubout. An 8-inch gravity collector will be installed onsite to connect to the stubout. All installations will be designed to DWS standards.

Drainage

106. The estimated post-development runoff from the Property is 62.4 cubic feet per second. An existing berm along the old government road right-of-way at

the western boundary of the Property will be retained to keep on-site runoff from sheetflowing into the Property.

107. Additional on-site runoff will be intercepted by catch basins spaced along the Project's subdivision streets and conveyed into a storm water drain system that will be directed to the southeast corner of the Property.

108. A new off-site drainline will be installed across Honoapiilani Highway and along the east side of the highway, down into Wailuku Agribusiness Inc.'s Waikapu reservoir. Petitioner has secured the right from Wailuku Agribusiness Inc. to increase the capacity of the reservoir by dredging or enlarging the area of the reservoir by one (1) acre to accommodate any post-development runoff generated by the Project.

109. Although the United States Department of Agriculture Natural Resources Conservation Service has expressed concern that the function of the existing reservoir is not intended for residential drainage run-off, the reservoir is able to function, and has the capacity to serve, as both an irrigation system component and a stormwater receiving reservoir. The reservoir has served as a drainage system component for the adjacent, existing Waiolani Subdivision, and has been functionally viable to serve the dual purposes for a number of years. The reservoir's integrity can be maintained with the additional stormwater flows from the Project.

Solid Waste Disposal

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

Schools

111. Schools in the Wailuku region include Wailuku Elementary School (Grades K to 5), Iao Intermediate School (Grades 6 to 8), and Baldwin High School (Grades 9 to 12). Schools in the Kahului area include Lihikai and Kahului Schools (Grades K to 5), Maui Waena Intermediate School (Grades 6 to 8), and Maui High School (Grades 9 to 12).

112. According to the State Department of Education's ("DOE") calculations, the Project is anticipated to generate an estimated maximum total of 72 elementary, intermediate, and high school students based on an approximate total of 158 units, including ohana units.

113. Petitioner will coordinate with the DOE to determine Petitioner's fair-share contribution to the development, funding, and/or construction of school facilities and improvements. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County rezoning for the Project.

Police and Fire Protection

114. Police services for the Wailuku-Kahului area, including Waikapu, is provided by the County Department of Police, with its main headquarters located at 55 Mahalani Street in Wailuku.

115. Fire protection for the Wailuku-Kahului area, including Waikapu, which encompasses fire prevention, suppression, rescue, and emergency services, is provided by the County Department of Fire and Public Safety, with one of its stations located in Wailuku on Kinipopo Street.

116. The proposed project will not result in any extension of the existing service area limits for police or fire emergency services, and will not adversely impact service capabilities.

Medical Services

117. Maui Memorial Medical Center, located between Wailuku and Kahului, is the only major medical facility on the island of Maui. Acute, general, and emergency care services are provided by the 196-bed facility. The proposed project is not anticipated to adversely impact the capabilities of the facility.

Electric and Telephone Service

118. Existing overhead electrical, telephone, and cable television lines located on the easterly side of Honoapiilani Highway provide the source of utilities for

the proposed project. Maui Electric Company, Verizon Hawaii, and Time Warner Oceanic Cable provides electrical, telephone, and cable television services, respectively.

119. An electrical, telephone, and cable television distribution system will be extended underground into the proposed project's subdivision from the existing Waiolani Subdivision to the existing overhead system in a location determined by the respective utility companies. The underground system will be designed to current standards and Petitioner will cooperate with the respective utility companies in expanding their services to the Property.

COMMITMENT OF STATE FUNDS AND RESOURCES

120. Petitioner will participate in the funding, design, and construction of its fair-share of infrastructural improvements required as a result of the Project.

CONFORMANCE TO URBAN DISTRICT STANDARDS

121. The Property is adjacent to lands characterized by "city-like" concentrations of people, structures, streets, urban levels of service, and other related land uses. The Property is situated adjacent to existing urban uses and is proximately located to centers of trading and employment.

122. The Property is located adjacent to Waikapu Town and is within 1.2 miles to the town of Wailuku, which is the County's seat of government. Waikapu and Wailuku contain a variety of single-family residential, commercial, and recreational uses. Immediately adjacent to the south of the Property are the existing single-family

residential 116-lot Waiolani Subdivision and the 25-lot Waiolani Elua Subdivision, both of which are situated within the Urban District.

123. Upon completion of necessary offsite and onsite infrastructure, the Property will be adequately serviced by wastewater systems, solid waste collection and disposal, drainage, water, roads, public utilities, and police and fire protection.

124. The Property is located in an area with sufficient reserve for foreseeable urban growth as evidenced by the Wailuku-Kahului Community Plan's "Single-Family" designation of property to the north of, and adjacent to, the Property.

125. The Property consists of satisfactory topography for the proposed use, drainage, and soil conditions, and is free from the danger of flood, tsunami and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for the Project.

126. The Property is consistent with the objectives and policies of the General Plan of the County of Maui 1990 Update and is, for the most part, designated by the Wailuku-Kahului Community Plan for single-family use. Although an approximate 2-acre area at the northwest corner of the Property is designated "Public/Quasi-Public" by the community plan, Petitioner is seeking, and is anticipated to obtain, a community plan amendment from the County changing the designation to "Single-Family."

127. Given the Property's "Single-Family" designation by the Wailuku-Kahului Community Plan, the "Single-Family" designation of property to the north of the Property, and its location immediately adjacent to existing residential subdivisions to the south of the Property, the Property is in an appropriate area for new urban concentration.

128. Development of the Property will not contribute toward scattered spot urban development. Petitioner will develop, or cooperate in developing, additional infrastructure required to service the Project.

129. The Property does not consist of lands having a slope of 20 percent or more.

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

130. The reclassification of the Property and the proposed development are in conformance with the following goals, objectives, policies, and priority guidelines of the Hawaii State Plan, Chapter 226, HRS, including the following:

Section 226-4 State Goals

Section 226-4(1): "A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaii's present and future generations."

Section 226-4(2): "A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people."

Section 226-4(3): "Physical, social, and economic well-being, for individuals and families in Hawaii, that nourishes a sense of community responsibility, of caring, and of participation in community life."

The Project will contribute toward attainment of these three goals by: 1) providing direct and indirect short and long-term employment opportunities for the present and future residents of Maui; 2) generating increased State and County tax revenues; 3) contributing to the stability, diversity, and growth of local and regional economies; and 4) minimizing the impact of the physical environment of the Property.

Section 226-5 Objectives and Policies for Population

Section 226-5(a): "Guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.

Section 226-5(b)(1): "Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.

Section 226-5(b)(3): "Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.

The Project will be able to provide economic and employment opportunities for the population of Maui. The Project will also provide much needed housing for families which will allow pursuit of economic and social aspirations. The Property is, for the most part, designated for single-family uses on the Wailuku-Kahului Community Plan.

Section 226-6 Objectives and Policies for the Economy - In General

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

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

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

Section 226-11(a)(2): "Effective protection of Hawaii's unique and fragile environmental resources."

Section 226-11(b)(3): "Take into account the physical attributes of areas when planning and designing activities and facilities."

Section 226-11(b)(8): "Pursue compatible relationships among activities, facilities, and natural resources."

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

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

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

The proposed development has been designed to reflect a subdivision concept that will be compatible with the existing single-family residential subdivisions of Waiolani and Waiolani Elua located to the south of the Property.

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

Section 226-13(b)(2): "Promote the proper management of Hawaii's land and water resources."

Section 226-13(b)(6): "Encourage design and construction practices that enhance the physical qualities of Hawaii's communities. "

Section 226-13(b)(7): "Encourage urban developments in close proximity to existing services and facilities."

The Project is situated adjacent to urban lands of similar uses, is consistent with the Wailuku-Kahului Community Plan, and is a logical extension of the adjacent and nearby single-family residential uses. The Project is not expected to have adverse impacts upon water quality.

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

Section 226-19(a)(2): "The orderly development of residential areas sensitive to community needs and other land uses."

Section 226-19(b)(1): "Effectively accommodate the housing needs of Hawaii's people."

Section 226-19(b)(3): "Increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing."

Section 226-19(b)(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."

Section 226-19(b)(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."

The Project will address a portion of the significant demand for housing on Maui. The Project will be a logical and attractive extension of the existing residential uses in the immediate area and is in conformity with the Wailuku-Kahului Community Plan's "Single-Family" designation of the Property. The sale of approximately 108 lots will allow individuals and families to uniquely design their own style of home which will foster a variety of traditional lifestyles.

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

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

The Project will include an approximate 2-acre park which will provide open space and recreational value.

Section 226-103 Economic Priority Guidelines

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

- (A) Encourage investments which:
 - (i) Reflect long term commitments to the State;
 - (ii) Rely on economic linkages within the local economy;
 - (iii) Diversify the economy;
 - (iv) Reinvest in the local economy;
 - (v) Are sensitive to community needs and priorities; and

(vi) Demonstrate a commitment to management opportunities to Hawaii residents."

The Project will assist in meeting these guidelines by responding to the community's need for residential housing, and allowing for the investment and reinvestment in the local economy through construction and construction-related employment.

Section 226-104 Population Growth and Land Resources Priority Guidelines

Section 226-104(a)(1): "Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawaii's people."

Section 226-104(b)(1): "Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles."

Section 226-104(b)(2): "Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district."

Section 226-104(b)(12): "Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline conservation lands, and other limited resources for future generations."

With Maui's growing population and economy, there is great demand for housing, which will be partially addressed by the Project. The Property, for the most part, has been designated "Single-Family" by the Wailuku-Kahului Community Plan,

which reflects the community's desire to have proposed developments like Petitioner's to be in this area.

The Property is also in an ideal location for urban use given the proximity of nearby residential subdivisions and public facilities and services.

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

The Project is not in a critical environment area nor does it encompass shoreline, conservation, or important agricultural lands that are essential for diversified agriculture. Proper mitigating measures, such as implementing best management practices, will be undertaken to ensure minimal impacts to the environment.

Although the Property's soil is rated "prime" and of "high productivity," the Property's small size and proximity to a regional rural center satisfies the requirement of utilizing marginal or non-essential agricultural lands.

Section 226-106 Affordable Housing Priority Guidelines

Section 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."

Section 226-106(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."

The Project will utilize only 28.7 acres of vacant and fallow agricultural lands which comprises only a small percentage (0.01 percent) of the 245,777 acres, as of

December 31, 2002, within the Agricultural District on the island of Maui. The reclassification will allow for a portion of the community's housing needs to be met by providing an opportunity for families and individuals to design and construct quality homes in an ideal location.

131. The reclassification of the Property generally conforms to the Agricultural, Housing, Recreational, and Transportation Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

132. The proposed reclassification of the Property generally conforms to the objectives and policies of the Coastal Zone Management Program, Chapter 205A, HRS. The Project is not coastal dependent and is located inland from the coast. As such, the Project will not adversely impact any coastal ecosystems, beaches or marine resources. No views or vistas from or to the shoreline will be impaired. The Property is within areas of minimal flooding. All grading and other site improvements will comply with the requirements of the Federal Flood Insurance Program, and all State and County laws. Drainage will be adequately planned and constructed, and wastewater generated by the Project will be collected, treated, and disposed of in accordance with all applicable statutes, ordinances, and regulations.

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

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

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission's Rules under Chapter 15-15, HAR, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, the Commission finds upon a clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 28.7 acres of land at Waikapu, Maui, Hawaii, identified as Tax Map Key No. (2) 3-5-004:025, from the State Land Use Agricultural District to the State Land Use Urban District, for the development of the Project, and subject to the conditions in the Order below, conforms to the standards for establishing the Urban District boundaries, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

2. Article XII, Section 7, of the Hawaii Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

3. Based on the archaeological inventory survey of the Property and the historical use of the site for sugar cane and pineapple cultivation, the Property is unlikely to contain archaeological resources. Should any resources be found during construction, Petitioner will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites.

4. The Project will not have any adverse effects to native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawaii State Constitution.

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

6. There are no threatened and endangered species of flora and fauna of species of concern in the Property.

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

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

9. Article XI, Section 3, of the Hawaii Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

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

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 28.7 acres of land in the State Land Use Agricultural District at Waikapu, Maui, Hawaii, identified as Tax Map Key No. (2) 3-5-004:025, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State land use district boundaries shall be amended accordingly.

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

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

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

2. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to the satisfaction of the County of Maui, acting in accordance with its approved affordable housing policy, but no less than ten percent (10%) of the subdivided lots approved by the County subdivision. The location and distribution of the affordable housing and other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and the County of Maui.

3. **Ohana units.** The Project shall limit ohana dwellings to no more than 54 of the Project's 108 units or 50% of the lots, which ever is less, as enforced by deed restrictions.

4. **Public School Facilities.** Petitioner shall work with the State Department of Education (DOE) relative to any fair share contributions. Terms of the

contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County of Maui rezoning.

5. **Traffic Impact Mitigation.** A traffic signal at the intersection of Pilikana Street and Honoapiilani Highway shall be installed and be operational prior to the issuance of final subdivision approval for the Project or the release of the subdivision bond by the County of Maui. Construction plans for the traffic signal shall be submitted to the Department of Transportation (DOT), Highways Division for review and approval.

6. **Traffic Impact Analysis Report.** At the DOT's discretion, the Project's Traffic Impact Analysis Report (TIAR) shall be updated at the time that the Pilikana Street/Honoapiilani Highway traffic signal is designed. The DOT may require that a full traffic signal warrant analysis be submitted with the updated TIAR.

7. **Highway Right-of-Way and Setback.** Sufficient right-of-ways and setbacks shall be dedicated, at no cost to the State of Hawaii, along the Honoapiilani Highway frontage currently shown as lots 15, 16, and 17 in the Project's preliminary subdivision layout as shown in Figure 3 of the Project's Final Environmental Assessment to accommodate possible storage and turn lanes for improvements to the Pilikana Street/Honoapiilani Highway intersection. The exact right-of-ways and setbacks, if any, shall be determined at the time that the traffic signal at the Pilikana Street/Honoapiilani Highway intersection is designed.

8. **Hawaii Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Property that the Hawaii Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

9. **Notification of Potential Nuisances.** Petitioner shall notify all prospective buyers and/or lessees of the Property of potential odor, noise, and dust pollution resulting adjacent agricultural uses.

10. **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of appropriate State and County agencies.

11. **Water Service.** Petitioner shall participate in the funding and construction of adequate water source, storage and transmission facilities and improvements to accommodate projected water use generated by the Project. Water facilities and improvements, or the payment of applicable fees, shall be coordinated and approved by the County of Maui, Department of Water Supply and, if applicable, the Commission on Water Resources Management of the Department of Land and Natural Resources.

12. **Best Management Practices.** Petitioner shall implement best management practices to reduce or eliminate soil erosion and groundwater pollution

and implement dust control measures during the development process in accordance with the State Department of Health guidelines.

13. **Wastewater Facilities.** Petitioner shall fund and develop, as required by the County of Maui and the State Department of Health, on-site wastewater transmission facilities to transport wastewater from the Project to appropriate County wastewater transmission and treatment facilities. Petitioner shall pay a pro-rata share of off-site sewer improvements as determined by the County of Maui.

14. **Solid Waste.** Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities.

15. **Energy Conservation Measures.** Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed development.

16. **Civil Defense.** Petitioner shall fund and construct or provide its fair share of adequate civil defense measures serving the Property as determined by the State of Hawaii Department of Defense, Office of Civil Defense and County Civil Defense Agency.

17. **Unidentified Archaeological Finds.** Petitioner shall stop work in the immediate vicinity should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal

deposits, stone platforms, pavings, loi walls be found. Petitioner shall immediately notify the Historic Preservation Division, and comply with the requirements of Chapter 6E, HRS, and applicable regulations. The Historic Preservation Division shall determine the significance of these finds and permit subsequent work to proceed with an archaeological clearance after appropriate measures have been implemented.

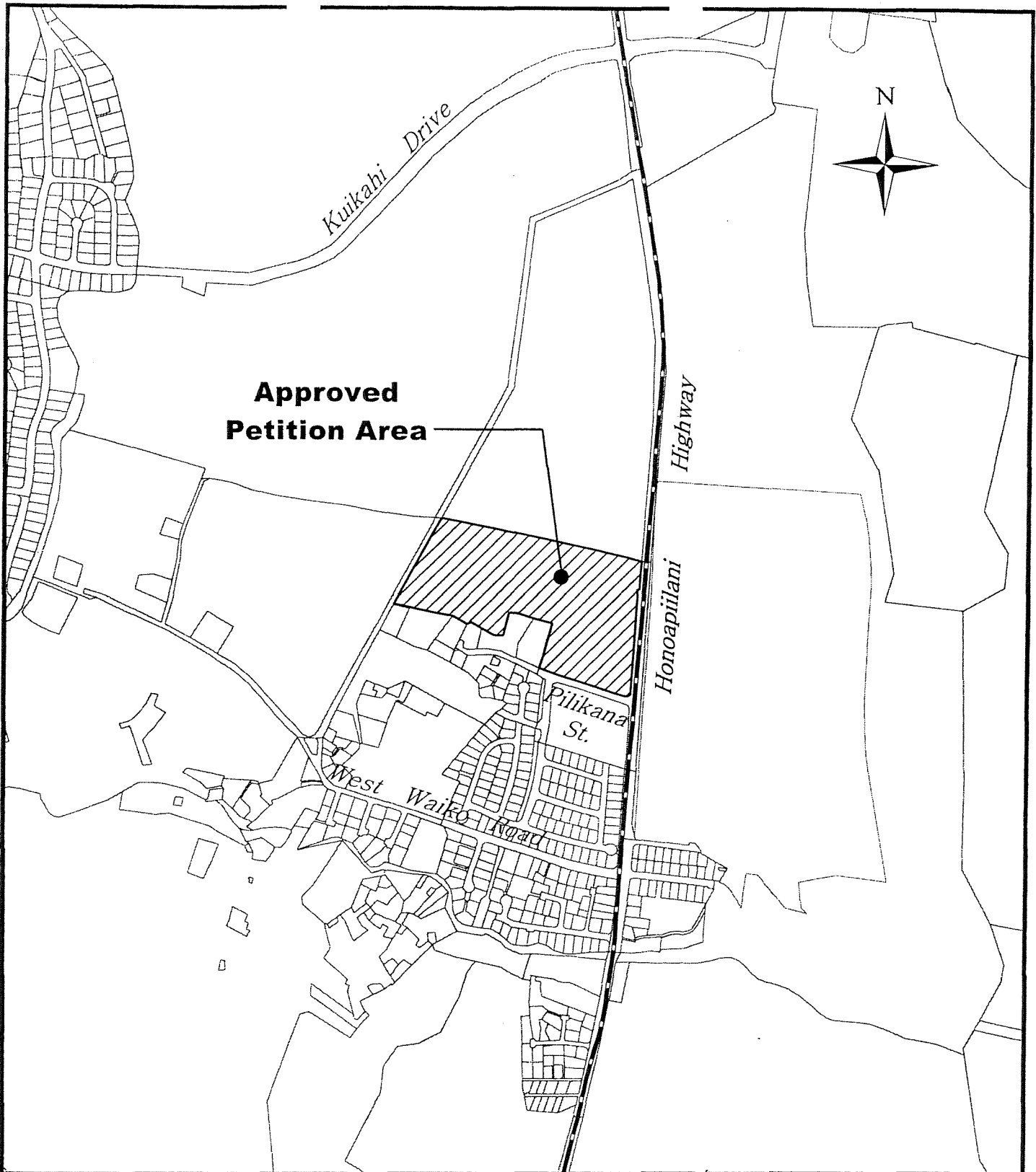
18. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include an update on the status of construction of the 1.5 MG water storage tank located off Kuikahi Drive and all executed agreements pertaining to construction of the tank and allocation of water therefrom. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

19. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

20. **Notice of Imposition of Conditions.** Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to

conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

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



A04-746 WAIKAPU 28 INVESTMENT, LLC

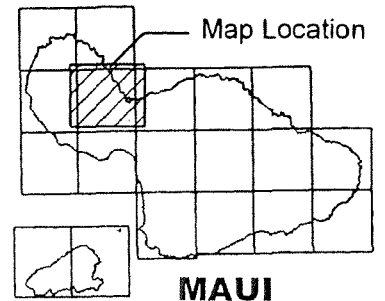
Map Location

Tax Map Key No.: 3-5-04: 25

Waikapu, Maui, Hawaii

Scale: 1" = 1,000 ft.

Exhibit "A"



Map Location

MAUI

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 14th day of December, 2004. 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 14th day of December, 2004, per motion on October 21, 2004.

APPROVED AS TO FORM

Dean Jackson
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

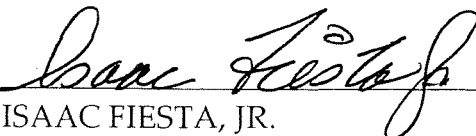
By P. Roy Catalani
P. ROY CATALANI
Chairperson and Commissioner

By Randall Sakumoto
RANDALL SAKUMOTO
Vice-Chairperson and Commissioner

By Steven Lee Montgomery
STEVEN LEE MONTGOMERY
Vice Chair and Commissioner


By (absent)
PRAVIN DESAI
Commissioner

By (absent)
KYONG-SU IM
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

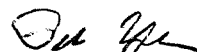
By 
LISA M. JUDGE
Commissioner

Filed and effective on
DEC 14 2004

By 
MICHAEL D. FORMBY
Commissioner

Certified by:


ANTHONY CHING

By 
PETER YUKIMURA
Commissioner

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A04-746
WAIKAPU 28 INVESTMENT, LLC)
) WAIKAPU 28 INVESTMENT, LLC
)
To Amend the Agricultural District) CERTIFICATE OF SERVICE
Boundary into the Urban Land Use)
District for Approximately 28.7 Acres at)
Waikapu, Island of Maui, State of Hawaii,)
Tax Map Key No. (2) 3-5-004:025)

CERTIFICATE OF SERVICE

I hereby certify that a 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. MARY LOU KOBAYASHI
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

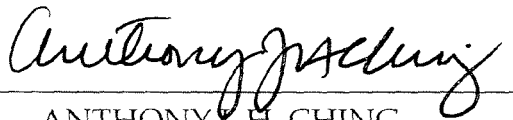
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Wailuku, Hawaii 96793-1086

Dated: Honolulu, Hawaii, DEC 14 2004.



ANTHONY J. H. CHING

Executive Officer