

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In The Matter Of The Petition Of ) DOCKET NO. A04-748  
CONSOLIDATED BASEYARDS LLC )  
To Amend The Agricultural Land Use ) FINDINGS OF FACT, CONCLUSIONS  
District Boundary Into The Urban Land ) OF LAW, AND DECISION AND ORDER  
Use District For Approximately 23.164 )  
Acres Of Land At Waikapu, Maui, )  
Hawai'i, Tax Map Key: 3-8-07: 89, 143, )  
And 144 )

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CONSOLIDATED BASEYARDS LLC, a Hawai`i limited liability company ("Petitioner"), filed a Petition For District Boundary Amendment From Agricultural To Urban ("Petition") on April 15, 2004, pursuant to chapter 205, Hawai`i Revised Statutes ("HRS"), and chapter 15-15, Hawai`i Administrative Rules ("HAR"), to amend the State land use district boundary to reclassify approximately 23.164 acres of land at Waikapu, Maui, Hawai`i, identified by Tax Map Key: 3-8-07: 89, 143, and 144 ("Property"), from the State Land Use Agricultural District to the State Land Use Urban District for an approximate 35-lot light industrial subdivision ("Project").

The Land Use Commission of the State of Hawai`i ("Commission"), having heard and examined the testimony, evidence, and arguments of counsel

presented during the hearing and the Stipulated Findings Of Fact, Conclusions Of Law, And Decision And Order among the parties, hereby makes the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On April 15, 2004, Petitioner filed the Petition. The Petition included a Draft Environmental Assessment (“DEA”) pursuant to section 343-5(a)(1), HRS, and section 11-200-6(b)(1)(A), HAR.

2. On April 15, 2004, Petitioner filed the Affidavit Of Service Of Petition For District Boundary Amendment and Certificate Of Service upon the State of Hawai`i Office of Planning (“OP”), the Maui Planning Department, the Maui Planning Commission, and the Office of the Corporation Counsel (collectively, “County”).

3. On April 19, 2004, Petitioner filed the Notarized Affidavit Of Mailing and Certificate Of Service.

4. On May 6, 2004, and by a written Order issued on June 7, 2004, the Commission agreed to be the approving agency pursuant to chapter 343, HRS, and determined that the DEA dated April 2004 warranted an anticipated finding of no significant impact.

5. On September 3, 2004, the Commission accepted the Final Environmental Assessment (“FEA”) subject to (i) Petitioner’s revision of the FEA to

incorporate additional information; (ii) submittal of the revised FEA to the Commission by September 10, 2004; and (iii) review of the revised FEA by the Executive Officer of the Commission to confirm that the appropriate revisions were made.

6. On September 10, 2004, Petitioner filed a revised FEA that incorporated the additional information and complied with the September 3, 2004, conditions of acceptance of the FEA.

7. On September 28, 2004, the Executive Officer of the Commission deemed the Petition a proper filing as of September 3, 2004.

8. On October 12, 2004, the Executive Officer of the Commission conducted a prehearing conference in Conference Room 405 of the Commission, located at 235 South Beretania Street, Honolulu, Hawai'i, with representatives of Petitioner, OP, and County. Representatives of Petitioner and County attended the prehearing conference via telephone conference.

9. On October 25, 2004, the Commission issued its Findings Of Fact, Conclusions Of Law, And Decision And Order Determining A Finding Of No Significant Impact For A State Land Use District Boundary Amendment.

10. On October 29, 2004, OP filed its Statement Of Position Of The Office Of Planning. OP recommended approval of the Petition with conditions.

11. On November 3, 2004, the County filed its Position Of The Maui Planning Department. The County's support of the Petition was subject to resolution of

issues relating to limitation of uses of the Property, improvements to Waiko Road, water, and sewer.

12. On November 4 and 5, 2004, the Commission conducted a hearing on the Petition in Makena, Maui, Hawai`i, pursuant to a public notice published in the Honolulu Star-Bulletin and the Maui News on October 4, 2004. Entering appearances were B. Martin Luna, Esq., and Roderick Fong, David Ward, and Dean Frampton for Petitioner; Michael W. Foley, Director of Planning, and Madelyn S. D'enbeau, Deputy Corporation Counsel, for the County; Abe Mitsuda and John W. K. Chang, Deputy Attorney General, for OP. No individuals provided public testimony.

13. At the conclusion of the hearing on November 5, 2004, the Commission authorized Petitioner to hold its case open to present further evidence on the issue of wastewater disposal at the next Commission hearing on the Petition.

14. On January 14, 2005, the Commission resumed consideration of the Petition at its continued hearing in Kahului, Maui, Hawai`i. Entering appearances were B. Martin Luna, Esq., Dean Frampton, and Roderick Fong for Petitioner; Joseph Alueta, Staff Planner with the Department of Planning, and Madelyn S. D'enbeau, Deputy Corporation Counsel, for the County; Abe Mitsuda and John W. K. Chang, Deputy Attorney General, for OP. The Commission heard public testimony from Sally Raisbeck. The Commission subsequently closed the hearing on the Petition.

## DESCRIPTION OF THE PROPERTY

15. The Property is located in Waikapu, Maui, Hawai`i. The Property consists of approximately 23.164 acres, and is identified by Tax Map Key: 3-8-07: 89, 143, and 144.

16. The Property is bounded to the north and east by lands designated for agricultural uses, to the south by Waiko Road, and to the west by the Fong Construction Baseyard. Kuihelani Highway, a State of Hawai`i two-way, four-lane divided highway, is located further to the east of the Property.

17. Waikapu Stream is located approximately 0.33 miles to the south of the Property. Waikapu Stream is a perennial stream that originates in the upper reaches of Waikapu Valley, ultimately discharging into Kealia Pond in the Ma`alaea flats.

18. A plantation reservoir is located approximately one mile from the Property. This reservoir is maintained by Wailuku Agribusiness and is actively used for sugarcane cultivation. There are no wetlands on the Property.

19. Approximately 12 acres of the Property is currently being utilized for storage of equipment and materials, as well as minor services in accordance with the conditions of a State Special Use Permit (Docket No. SP94-387/Fong Construction) and County Conditional Permit applicable to the Property. The remaining portion of the Property is vacant and is covered with kiawe trees and buffelgrass.

20. Fee simple ownership of the Property is vested in Petitioner, whose business address is 345 East Waiko Road, Wailuku, Maui, Hawai'i 96793, and whose mailing address is 2073 Wells Street, Suite 101, Wailuku, Maui, Hawai'i 96793.

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

22. The University of Hawai'i Land Study Bureau's Detailed Land Classification classifies the Property as "E." 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.

23. The Property's soil type of E3 reflects soil that is over 30 inches deep, non-stony, and excessively drained. As identified by the U.S. Department of Agriculture, the soil types underlying the Property are `Ewa silty clay loam, 0 to 3 percent slopes (EaA), and Jaucas Sand, 0 to 15 percent slopes (JaC). The EaA type of soil has very slow runoff with no more than a slight erosion hazard. The JaC soil type is characterized by rapid permeability and very slow to slow runoff.

24. The Property is listed as "Other Agricultural Land" according to the Agricultural Lands of Importance to the State of Hawai'i.

25. The Property is relatively flat, with slopes of approximately 3 percent.

26. 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. In order to address concerns relating to possible flooding of Waikapu Stream, Petitioner will use best efforts to encourage the landowner to remove a culvert to improve the flow of Waikapu Stream during storm events.

#### PROPOSAL FOR RECLASSIFICATION

27. The Property is proposed to be reclassified to the Urban District and developed into an approximate 35-lot light industrial subdivision. Under the State Special Use Permit and County Conditional Permit for the Property, Petitioner had plans to sell or lease portions of the land to other light industrial users. However, the potential buyers needed to finance their land acquisition and improvements over a 30-year period, and financial institutions would not grant mortgages to them because there were no guarantees that these permits would be extended beyond their respective timeframes.

28. The Project's intended market will be light industrial users and operations. Although the specific uses in the Project have not yet been determined, the "M-1 Light Industrial" zoning designation for which Petitioner has filed an application for change in zoning allows various uses pursuant to section 19.24.020(A) of the Maui County Code.



29. Petitioner intends to subdivide the Property, creating lots ranging in size from 10,375 square feet to 85,502 square feet. The improved lots will either be leased or sold to interested users.

30. Estimated sales prices for each fee simple lot are currently projected to be in the range of \$20.00 to \$35.00 per square foot. Final sales prices and lease prices will depend on market demand and conditions. Lot sales or lease agreements are anticipated to occur over a 12 to 36-month time period.

31. Subdivision improvements are anticipated to commence in 2005, and will take approximately 12 months to complete. The estimated cost for the subdivision improvements is \$3.5 million.

32. Depending on market conditions, the Project may be completed in two phases. Phase I would consist of 20 lots, utility improvements, and internal subdivision roads. Phase II would consist of the remaining 15 lots, with completion of construction anticipated in 2009.

#### PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

33. Petitioner's financial statement as of December 31, 2003, reflects total assets of \$3,382,433.79.

34. Petitioner intends to finance infrastructure improvements through a conventional loan from a local lending institution. Petitioner filed a letter of interest from Central Pacific Bank to provide the financing for the Project.

35. Based on Petitioner's ownership of the Property, substantial equity in the Property, current financial position, demand for light industrial inventory, and favorable financing from a local lending institution, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

#### STATE AND COUNTY PLANS AND PROGRAMS

36. The Property is currently designated in the State Land Use Agricultural District, as reflected on the Commission's official map, M-5 (Wailuku).

37. The Wailuku-Kahului Community Plan designates the Property as "Light-Industrial."

38. The Property is currently zoned "Agricultural" by Maui County zoning. Accordingly, a separate Change in Zoning application was filed with the County of Maui's Department of Planning for consideration by the Maui Planning Commission and final action by the Maui County Council. The request was made to change the zoning of the Property to "M-1, Light Industrial" that would allow for the subdivision of the Property into the 35-lot light industrial lots as proposed by Petitioner and would bring the zoning into conformity with the Wailuku-Kahului Community Plan's designation of the Property.

39. On December 14, 2004, the Maui Planning Commission voted to recommend approval of the Change in Zoning application with conditions. The

conditions of approval are set forth on pages 4 through 7 of the written testimony of Dean Frampton. This testimony is filed as Petitioner's Exhibit No. 29.

40. The Property is not within the County's Special Management Area.

#### NEED FOR THE PROPOSED DEVELOPMENT

41. ACM Consultants, Inc., prepared a market study and analysis dated December 2003 for the Project. While the Central Maui region of Wailuku and Kahului has seen growth in population, tourism, and the economy over the past decade, there has only been a slight increase in new industrial inventory. As a result, the industrial occupancy rates have steadily climbed while the inventory has dwindled. Warehouse rents in the Central Maui area have also been steadily rising.

42. There is a need for additional light industrial land to satisfy current and future demand in Wailuku and Kahului. The addition of new inventory will also help to stabilize rent in the warehouse inventory segment of the market.

#### SOCIO-ECONOMIC IMPACTS

43. The Project will benefit the social and economic welfare of the community by providing additional light industrial inventory, as well as allowing for the development of additional warehouse space. No significant population changes are anticipated as a result of the Project. Nevertheless, Petitioner will undertake a housing study to address (i) the impact of the Project upon the current labor force; (ii) the type of employee housing demands created by the Project, if any; (iii) any proposed mitigation

measures to alleviate the impact on the employee housing situation; and (iv) recommendations and timeframe for implementing any applicable County housing policy or requirements and/or Petitioner's proposed mitigation measures.

44. On a short-term basis, the Project will have a direct beneficial impact on the local economy during construction by generating construction and construction-related employment during the buildout of the Project.

45. Over the long term, the Project will have a direct and beneficial impact as employment opportunities for future owners and tenants would be created. It is estimated that employment for business operations would be one employee per 1,000 square feet of light industrial floor space. This equates to a total of approximately 72 jobs per year based on a six-year buildout of the subdivision, which is a fraction of the estimated 1,187 new jobs created annually in Maui County.

46. Over the buildout of the Project, it is anticipated that the Project will infuse approximately \$76 million into the economy, including revenues to the State and County from increased income, general excise, and real property taxes.

## IMPACTS UPON RESOURCES IN THE AREA

### Agricultural Resources

47. Although the Property was previously used for pasture, it is presently fallow and undeveloped, except for approximately 12 acres which are currently used for storage of equipment and materials and minor servicing of

equipment. Based on the Property's soil characteristics, it has marginal agricultural productivity potential. Given the Property's location in proximity to existing and future light industrial uses, as well as the Wailuku-Kahului Community Plan's designation of the Property as "Light-Industrial," agricultural use of the Property is not deemed appropriate.

### Flora and Fauna

48. Robert W. Hobdy, Environmental Consultant, prepared a biological resources survey report of the Property dated March 2004.

49. Vegetation throughout much of the Property is primarily characterized by buffelgrass and kiawe. There are no officially listed threatened or endangered plants, or their habitats, found on the Property.

50. There are no rare, endangered, or threatened mammal, bird, or insect species, or their habitats, on the Property.

51. The Project is not expected to have a significant negative impact on the biological resources of the Property.

### Archaeological/Historical/Cultural Resources

52. Aki Sinoto of the archaeological consulting firm, Aki Sinoto Consulting, in association with Archaeological Services Hawaii, LLC, prepared an archaeological inventory survey report of the Property dated August 2000. The survey included subsurface testing. No cultural components, midden, or artifacts were

encountered in any of the eight backhoe trenches. The surface survey of the Property also did not reveal any significant cultural manifestations.

53. Based on the results of the archaeological inventory survey, no further archaeological work is warranted on the Property. However, based on the results of various earlier studies in the neighboring areas, there is a potential for isolated, undocumented human burials in portions of the Property. Petitioner will comply with all State of Hawai'i and County of Maui laws and rules regarding the preservation of archaeological and historic sites should any be found during construction.

54. Scientific Consultant Services, Inc., prepared a cultural impact assessment dated January 2004 for the Project. The assessment included archival and documentary research, as well as consultation with individuals or organizations with knowledge of the Property, its cultural resources and practices and beliefs relating to or associated with the Property. Site visits were also made to the Property. None of the organizations or individuals had any knowledge or information concerning cultural activities occurring on the Property.

55. Based on the documentary research and interviews, and observation of the Property, the Project will not have any adverse effects on native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawai'i State Constitution.

## Groundwater Resources

56. Tom Nance Water Resource Engineering prepared an assessment of the water resources dated March 22, 2004, for the Project. The Project will be supplied with water from an 8-inch well drilled into groundwater within the Kahului Aquifer, a 9.54-square mile area that extends across the island's isthmus. Groundwater in this aquifer occurs as a basal lens residing in the very permeable Honomanu series of lava flows from the Hualalai Volcano. Over most of the isthmus, the top of the lens is approximately four feet above sea level and consists of potable water.

57. The Commission on Water Resource Management ("CWRM") has set the sustainable yield of the Kahului Aquifer at 1.0 million gallons per day ("MGD") based on its estimate that approximately 20 percent of the rainfall directly on the 9.54-square mile area becomes recharge to the underlying groundwater and that 44 percent of this recharge can be safely pumped by wells. Past and present pumpage from the Kahului Aquifer has substantially exceeded the 1.0 MGD that was set by the CWRM. The present pumpage of approximately 29.8 MGD is primarily attributed to the Hawaiian Commercial & Sugar Co. ("HC&S") wells. The quality of water from the Kahului Aquifer has not deteriorated despite the past and present pumpage. Based on Mr. Nance's review of pumpage records, salinity records and sampling of the water, contaminants are at a non-detectable level.

58. In addition to rainfall, the Kahului Aquifer is recharged from underflow from Haleakala, which passes through the Pa`ia Aquifer into the Kahului Aquifer with no known hydrologic impediment; underflow from the West Maui Mountains, which moves into the Kahului Aquifer through the weathered surface and alluvium of the mountains; irrigation return flow from HC&S sugarcane fields and other agricultural activities; and leakage of Waihe`e and Spreckels Ditch flows from the Wai`ale Reservoir.

59. It is anticipated that once HC&S ceases operations, irrigation return flow from its sugarcane fields will stop; however, it will also free up an additional approximately 26 MGD of use from the Kahului Aquifer. The pending closure of Maui Land & Pineapple Co., Inc.'s, cannery operations in Kahului will further reduce demand upon the Kahului Aquifer by approximately 2 MGD. Based on these anticipated decreases in water demand and the minimal water requirements of the Project, it is expected that the Project will have no impact on the integrity of the Kahului Aquifer or any of its existing uses.

#### Recreational and Scenic Resources

60. There are numerous recreational facilities, park, and open spaces in proximity to the Property and the Wailuku-Kahului area in general. 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



baseball fields owned by Wailuku Agribusiness, Inc., open for use by the public, are also located a short distance from the Waikapu Community Center.

61. 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 Wai`ale Affordable Housing complex. Additional park and recreational facilities include `Iao Park, Wells Park, Wailuku Pool, Wailuku Gym, Wailuku Elementary School Park, Wailuku Community Center, Papohaku 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).

62. Due to the industrial nature of the Project, it will not significantly impact any of the foregoing existing facilities.

63. The scenic resources of the Property are defined by Mount Haleakala to the east and the West Maui Mountains and Waikapu Valley to the west. The Project 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

64. The predominant source of noise in the vicinity of the Property comes from traffic on East Waiko Road. Traffic on Honoapi`ilani Highway, Kuihelani Highway, and other local roads in the vicinity of the Property is a secondary source of background noise. Other intermittent background noise comes from industrial and agricultural operations on nearby properties.

65. Ambient noise conditions may be temporarily impacted by onsite construction activities during the initial construction phase of the Project, which will only be conducted 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.

66. Any temporary impacts on noise conditions from onsite 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.

67. Once completed, the Project is not anticipated to generate significant adverse noise conditions based on the existing and surrounding heavy and

light industrial uses occurring in the area. There are also no existing residential uses surrounding the Property.

### Air Quality

68. 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 and smoke from agricultural cultivation operations to the south and east of the Property, and the existing and surrounding heavy and light industrial uses, the prevailing winds in the area quickly disperse any particulates generated by these sources.

69. Air quality within the immediate vicinity of the Project may be temporarily impacted from the emission of fugitive dust during construction-related activities. These impacts can be minimized through the proper use of appropriate Best Management Practices (“BMPs”), including routine maintenance of construction equipment and vehicles. 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 and its successors will implement mitigation measures for fugitive dust control required by all applicable government agencies and departments.

70. On a long-term basis, the Project is not anticipated to significantly impact air quality.

#### Water Quality

71. 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. Storm and surface water runoff will be captured on the premises and all runoff entering the ground will be first filtered treated to remove all industrial waste so that no industrial pollutants will enter the water table. Petitioner will implement a Pollution Prevention Plan (“PPP”) that will be appropriately designed to address potential pollutants associated with industrial developments. The PPP will be included in the Covenants, Conditions, and Restrictions (“CC&Rs”) for the Property and will run with the land.

#### Hazardous Waste

72. Vuich Environmental Consultants, Inc., conducted a Phase I Environmental Site Assessment (“ESA”) in June 2003 for the Property. Both site reconnaissance and records review for the Property, as well as the surrounding areas, were done. There was no evidence of any historic misuse or significant spills of hazardous or regulated substances on the Property, except for some soil staining. Petitioner will work with a local contractor to clean up surface soil staining as noted in

the Phase I ESA. Disposal will be done in accordance with applicable government standards.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Highways and Roadway Facilities

73. Austin, Tsutsumi & Associates, Inc., prepared a traffic impact analysis report (“TIAR”) for the Project dated January 20, 2004, and Supplement No. 1 to the TIAR, dated December 1, 2004. 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. The following intersections are in the study area and were analyzed in the TIAR: Honoapi`ilani Highway at Waiko Road, Kuihelani Highway at Waiko Road, and Waiko Road at Wai`ale Road.

74. Access to the Property will be from Waiko Road, which is a two-lane County collector roadway that connects Honoapi`ilani Highway and Kuihelani Highway. There is a weight limit of 10,000 pounds for vehicles entering and exiting Waiko Road via its intersection with Honoapi`ilani Highway. Petitioner will install a concrete island at the Property’s exit to discourage vehicles exceeding 10,000 pounds from making a right turn onto Waiko Road.

75. The years 2006 and 2009 were used as the design years for the Project. Background traffic projections were prepared for 2006 and 2009 conditions without the Project to establish a base condition for assessing the impacts of the Project.

Included with the TIAR was a Level of Service (“LOS”) analysis. LOS is a qualitative measure used to describe the conditions of traffic flow ranging from free-flow conditions, LOS A, to congested conditions, LOS F. The 2000 *Highway Capacity Manual* (HCM2000) methods for calculating volume-to-capacity ratios, delays, and corresponding levels of service were utilized in the TIAR.

76. Trip generation estimates the total number of vehicular trips produced by a given land use. Trip rates contained in the nationally published *ITE Trip Generation, 7th Edition*, were used to estimate the number of trips generated by the Project. Based on the trip generation rates, it was estimated that the Project will generate approximately 210 trips during the morning peak hour and approximately 225 trips during the afternoon peak hour.

77. Except for the intersection of Honoapiʻilani Highway at Waiko Road, the Project will not have a significant impact on traffic conditions at the study intersections. As for the intersection of Honoapiʻilani Highway at Waiko Road, signalization of this intersection is warranted even without the traffic generated by the Project. Without signalization at this intersection, the Waiko Road eastbound and westbound traffic is at LOS F and LOS E, respectively, during the AM and PM peak hours of traffic. With the signalization, all of the TIAR’s study intersections will operate at LOS C or better with the Project, except for westbound traffic at the Honoapiʻilani

Highway/Waiko Road intersection, which will operate at LOS D during the AM and PM peak hours of traffic.

78. The TIAR also recommended that the intersection of Waiko Road and the Project be two-way stop-controlled and contain an eastbound shared through/left-turn lane, a westbound shared through/right-turn lane, and a shared southbound right-turn/left-turn lane. Petitioner has agreed to follow these recommendations.

#### Water Service

79. Currently, water service to the Property is provided by an existing 8-inch well, identified by State Number 5129-02. Well 5129-02 is drilled into groundwater within the Kahului Aquifer. Well 5129-02 will be utilized as a back-up water source for the Project. Petitioner will construct a new well on the Property that will be used as the primary water source for the Project. Like Well 5129-02, this new well will be drilled into groundwater within the Kahului Aquifer.

80. Although the County of Maui, Department of Water Supply, estimated the anticipated use of water for the Project to be approximately 139,000 gallons per day (“gpd”), that figure was calculated based on a conservative projected water use of 6,000 gpd per acre. Based on a projected water use of 3,000 gpd per acre, which is a figure used by the City and County of Honolulu, County of Hawai‘i, and County of Kaua‘i, coupled with the proposed light industrial uses of the Property, the

domestic water demand for the Project is anticipated at approximately 60,000 gpd. The fire flow demand for the light industrial development is 2,000 gallons per minute for a 2-hour duration. To accommodate the Project's water demand, Petitioner will construct a 326,000-gallon storage tank on the Property and install ancillary booster pumps to meet the domestic water system and fire system requirements for the Project. Petitioner will install "dry" water lines and stub outs within the subdivision's roadways to accommodate any future connection to County water service.

81. The proposed draw of 60,000 gpd will have no significant adverse impact on the integrity of the Kahului Aquifer or any of its existing uses. Also, a proposed draw of double this amount will have no significant adverse impact on the integrity of the aquifer.

#### Wastewater Disposal

82. Otomo Engineering, Inc., prepared a preliminary engineering report dated August 2004 for the Project. As the Project progresses and building permits are applied for, the building permit applicant will be required to submit the design of the aerobic IWS to DOH, which has review and approval authority.

Individual aerobic wastewater systems ("aerobic IWS") will be used for the treatment of wastewater for each lot in the Project. Each aerobic IWS is required to strictly adhere to DOH regulations. As the Project progresses and building permits are applied for, the building permit applicant will be required to submit the design of the aerobic IWS to



DOH, which has review and approval authority. In the event DOH does not approve the aerobic IWS, Petitioner shall connect to the County of Maui's Wailuku-Kahului Sewage System.

83. Petitioner will construct a centralized leach field and internal sewer lines to dispose of effluent from the aerobic IWS servicing each lot on the Property. Petitioner will also construct "dry" lines and stub outs to allow for future County of Maui sewer hook up.

84. Petitioner and/or each individual lot owner(s) will develop a Wastewater Treatment System Maintenance Agreement, before constructing upon or occupying any portion of the Property, that will provide for safe and effective operation and maintenance of the aerobic unit(s). The Maintenance Agreement will require a contract with a wastewater professional to regularly inspect, maintain, and certify that the aerobic IWS installed on the Property is operating correctly. Necessary repairs will be performed promptly and record of repairs will be kept. Petitioner will include this requirement in the conditions of sale or lease of any lot and/or parcel of the Property.

85. The owner of the aerobic IWS will certify with DOH that the aerobic IWS will be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to chapter 11-62 of the DOH's administrative rules. The certification will include that upon the sale or transfer of ownership of the aerobic IWS, the sale or transfer will include the appropriate

transfer documents and provisions binding the new owner to the operation and maintenance manual.

### Drainage

86. Otomo Engineering, Inc., prepared a preliminary drainage report dated August 2004 for the Project. The consultant subsequently revised the proposed drainage system for the Project from that described in the report. The present runoff from the Property for a 50-year – 1-hour storm is estimated to be 19.1 cubic feet per second (“cfs”). The estimated post-development runoff from the Property for a 50-year – 1-hour storm is 57.2 cfs, which is a 38.1 cfs increase from pre-development conditions.

87. The Project will be serviced by a centralized drainage system. Onsite runoff will be collected by curb inlet catch basins located at appropriate intervals within the Project’s roadways. Drain lines from the catch basins will convey the runoff to an underground perforated pipe system. Runoff that sheet flows across the Property will sheet flow into an on-ground detention basin, which will be located along the eastern boundary of the Property. The centralized drainage system will be adequate to accommodate any increase in runoff from the Property resulting from a 50-year – 1-hour storm in accordance with the County of Maui’s drainage standards. The Project will not have an adverse effect on adjoining or downstream properties.

88. Petitioner will implement the PPP prior to the sale of any lots of the Property that will be approved by DOH and appropriately designed to address

potential pollutants associated with industrial developments. To the extent possible, all storm and surface water runoff will be captured on the premises and all runoff entering the ground will be first filtered treated to remove all industrial waste so that no industrial pollutants will enter the water table.

89. Petitioner will be subject to and prepare CC&Rs for the Property and each lot into which the Property may be subdivided to contain spills and prevent materials associated with industrial uses attributable to the operations of the Property, or any lot on the Property, including petroleum products, chemicals, or other pollutants, from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants will be subject to the approval of DOH.

90. Subdivision improvements will include structural BMPs to prevent any and all pollutants that may be associated with industrial industries from being released into the environment, including groundwater. Structural BMPs will include, but will not be limited to, detention ponds, subsurface perforated drainage systems, and storm water filtration units designed to contain and remove industrial contamination.

#### Solid Waste Disposal

91. The Project is estimated to generate 2.5 tons of solid waste per day. The Project's solid waste will be collected by private companies retained by individual lots owners of the Property, and hauled to the Central Maui Landfill, which has

adequate capacity to accommodate the Project. Petitioner will develop a solid waste management plan.

### Schools

92. 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).

93. Due to the industrial nature of the Project, it is not anticipated that there will be any adverse impacts to the area's schools.

### Police and Fire Protection

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

95. 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 stations located in Wailuku on Kinipopo Street, and in Kahului on Dairy Road.

96. The 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

97. 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 Project is not anticipated to adversely impact the capabilities of the facility as the Project will not extend the existing service area limits for emergency services.

#### Electric and Telephone Service

98. Maui Electric Company, Ltd. ("MECO"), and Verizon Hawaii provide electrical and telephone services, respectively, to the Property.

99. An existing electrical transmission system located within an easement granted to MECO traverses inside the southern boundary of the Property.

100. The proposed electrical and telephone distribution systems to the Property will be installed overhead from the existing overhead facilities located to the west of the Property. All electrical and telephone systems within the Project will be installed in accordance with the utility companies rules and regulations.

## COMMITMENT OF STATE FUNDS AND RESOURCES

101. The Project will include the construction of private water and wastewater systems. No adverse impacts to public water and wastewater capacities and facilities are anticipated. The Project is also not expected to significantly impact public services. The Project will have a direct beneficial effect on the local and State economy through increased employment opportunities and fiscal benefits, including additional income, general excise, and real property tax revenues. Government costs incurred as a result of the Project are not expected to exceed the revenues derived.

## CONFORMANCE TO THE URBAN DISTRICT STANDARDS

102. Although the Property itself is not characterized by “city-like” concentrations of people, structures, streets, urban level of services, and other related land uses, the Property is in proximity to lands characterized by such “city-like” concentrations of people, structures, streets, urban levels of service, and other related land uses. West of the Property are additional industrial uses such as the proposed Waiko Baseyard (including the Brewer Environmental warehouse), which is situated within the Urban District, as well as the Fong Construction Baseyard. The Maui Scrap Metal facility is also located along Waiko Road, approximately 0.1 mile west of the Property. Further, the light-industrial uses of the Property are consistent with the long-

term land use goals of the County General Plan and Wailuku-Kahului Community Plan.

103. The Property is located approximately 1.1 miles to the east of Waikapu Town, which contains a small node of commercial uses, and is within 5.0 miles of the town of Wailuku, which is the County's seat of government and a center of trading and employment. Waikapu and Wailuku contain a variety of single-family residential, commercial, and recreational uses.

104. The Project will not result in an increased demand on schools and parks. The individual lots of the Property will be adequately serviced by individual wastewater systems, solid waste collection and disposal, drainage, water, roads, public utilities, and police and fire protection.

105. The area of the reclassification request encompasses 23.164 acres for intended light industrial use. Development of the Property will not significantly affect reserve areas for foreseeable urban growth. Additional area for light industrial use and future urban growth is provided to the west of the Property as shown by the Wailuku-Kahului Community Plan.

106. The Property has a 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 proposed development.

107. The reclassification of the Property is consistent with the objectives and policies of the General Plan of the County of Maui 1990 Update and is designated by the Wailuku-Kahului Community Plan for light-industrial use.

108. Given the Property's "Light-Industrial" designation by the Wailuku-Kahului Community Plan, and its location in proximity to industrial uses, the Property is in an appropriate area for extending these uses.

109. Development of the Property will not contribute toward scattered spot urban development. The Property is in proximity to existing industrial uses, such as the Waiko Baseyard, Maui Scrap Metal, and the Fong Construction Baseyard. The Project will not necessitate unreasonable public investment in infrastructural facilities or public services.

110. 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

111. The reclassification of the Property and the Project are in conformance with the following goals, objectives, policies, and priority guidelines of the Hawai'i 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 Hawai'i'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 Hawai'i, 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 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(b)(2): "Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires."

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

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

Section 226-6(a)(1): "Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawai'i's people."

Section 226-6(a)(2): "A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands."

The Project will provide economic and employment opportunities for the population of Maui and neighbor islands in the way of needed additional light industrial inventory in the Central Maui region, and will allow for the expansion and possible creation of new business ventures to employ island residents.

#### Section 226-103 Economic Priority Guidelines

Section 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 Hawai`i residents."

#### Section 226-104 Population Growth and Land Resources Priority Guidelines

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 nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.”

The Project will diversify the economy by providing expansion opportunities for light industrial businesses. The Project will also encourage urban growth in an existing urban area where there are existing heavy and light industrial uses operating in proximity to the Property. Further, the reclassification from “Agricultural” to “Urban” will make available marginal agricultural lands for light industrial uses while retaining lands with higher productivity potential for agricultural purposes.

112. The reclassification of the Property generally conforms to the Agricultural, Transportation, and Employment Functional Plans.

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

113. 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 appropriately addresses other Coastal Zone Management resource parameters. In particular, the Project will not adversely impact any coastal ecosystems, beaches, or marine resources. No views or vistas to and along 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

improvements 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.

#### RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or the other parties to this proceeding 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 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's 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 23.164 acres of land at Waikapu, Maui, Hawai'i, identified as Tax Map Key: 3-8-07: 89, 143, and 144, 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 Hawai`i 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 earlier surveys of neighboring areas, there is a potential for isolated, undocumented human burials in portions of the Property. 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. Based on the cultural impact assessment prepared for the Project, 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 Hawai`i State Constitution.

5. Article XI, Section 1, of the Hawai`i Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and

utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

6. There are no threatened and endangered species of flora and fauna or species of concern in or on 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. The Project's water demands will have no significant adverse impact on the integrity of the Kahului Aquifer or any of its existing uses.

10. Article XI, Section 3, of the Hawai'i 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.

11. The Property consists of marginal agricultural land and is not currently used for agriculture. 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 is minimal.

## DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 23.164 acres of land in the State Land Use Agricultural District at Waikapu, Maui, Hawai'i, identified as Tax Map Key: 3-8-07: 89, 143, and 144, 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. **Affordable Housing.** Within 180 days of this decision and order or prior to the Petitioner's presentation to the appropriate county council committee for a change in zoning, whichever is sooner, Petitioner shall complete and submit to the Commission for its approval, with copies to the County of Maui's Department of Planning and State Office of Planning, a housing study that addresses the following:
  - i. The impact the Project will have on the current labor force;

- ii. The type of employee housing demands that will be created by the Project, if any;
- iii. Any employee housing policy adopted and in place by the County of Maui for commercial and industrial developments;
- iv. The proposed mitigation measures to alleviate the impact on the employee housing situation; and
- v. Recommendations and timeframe for implementing any applicable County of Maui housing policy (in place at the time of this study) or requirements and/or Petitioner's proposed mitigation measures.

Within 150 days of approval of the housing study by the Commission, Petitioner shall submit to the Commission a copy of an executed affordable housing agreement entered into with the DHHC or appropriate agency or department. Said agreement shall include the terms and conditions concerning implementation of the mitigation measures and timeline approved by the Commission.

2. **Traffic Impact Mitigation.** Petitioner shall fund up to 50 percent of the cost for improvements for the signalization of Honoapi`ilani Highway at East Waiko Road as determined by the State Department of Transportation. As a condition of the Commission's district boundary amendment approval for Spencer Homes, Inc., Docket No. A04-750, Spencer Homes, Inc. is responsible for the remaining 50 percent of the cost for improvements for the signalization. Specific cost share arrangements shall be



determined between Petitioner and Spencer Homes, Inc. Petitioner's funding of the foregoing improvements shall be deemed satisfactory mitigation for the Project's local and regional traffic impacts.

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

4. **Notification of Potential Nuisances.** Petitioner shall notify all prospective buyers and/or lessees of the Property of potential odor, noise, and dust pollution resulting from adjacent agricultural uses. The notification shall be included in the covenants, conditions, and restrictions for the Property which shall run with the land.

5. **Drainage Improvements.** Petitioner shall comply with drainage improvements as required by appropriate State and County agencies. To the extent possible, storm and surface water runoff shall be captured on the Property. Petitioner shall be subject to and prepare covenants, conditions, and restrictions for the Property and each lot into which the Property may be subdivided, to contain spills and prevent materials associated with industrial uses attributable to the operations of the Property, including petroleum products, chemicals or other pollutants from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants, conditions,

and restrictions shall be subject to approval by the State Department of Health, and documented in the Pollution Prevention Plan (“PPP”). Petitioner shall fund the design and construction of the centralized drainage system required as a result of the development of the Property to the satisfaction of appropriate State and County agencies.

6. **Best Management Practices.** Petitioner shall implement Best Management Practices (“BMPs”), including a PPP, to protect surface and groundwater resources. The BMPs and PPP shall be designed to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and groundwater pollution, and implement dust control measures during and after the development process in accordance with State Department of Health guidelines.

7. **Hazardous Materials.** Storage and/or disposal of hazardous materials shall be approved by the State Department of Health prior to their establishment on the Property.

8. **Water Service.** A private water system shall be developed for the Property which shall be approved by the State Department of Health, Safe Water Drinking Division, and the State Department of Land and Natural Resources for well drilling and pump installation requirements. Petitioner shall construct internal water lines in accordance with County of Maui standards and will include a stub out for future connection if and when County of Maui water service becomes available to the

Property. At such time, Petitioner and/or its successors shall apply to the County of Maui, Department of Water Supply, for connection and service.

9. **Wastewater Facilities.** Petitioner shall comply with wastewater system improvements as required by the State Department of Health. Petitioner shall construct a centralized leach field and internal sewer lines to dispose of effluent from the aerobic individual wastewater system servicing each lot on the Property. Petitioner shall construct internal sewer lines in accordance with County of Maui standards and will include a stub out to allow for future connection to the County of Maui wastewater system if the DOH does not approve the proposed centralized leach field and aerobic IWS during the subdivision process or when such service becomes available at the subject property.

10. **Solid Waste.** Petitioner shall comply with solid waste disposal as required by the County of Maui Department of Public Works and Environmental Management.

11. **Energy Conservation Measures.** Petitioner and its successors, where feasible, shall implement energy conservation measures, such as use of solar energy and solar heating, and incorporate such measures into the Project.

12. **Civil Defense.** Petitioner shall fund and construct or provide its fair share of the cost of adequate civil defense measures serving the Property as

determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and County Civil Defense Agency.

13. **Unidentified Archaeological Finds.** In accordance with the existing monitoring plan for the Property, Petitioner and/or its successors shall stop work in the immediate vicinity should any archaeological or burial sites be found. Petitioner and/or its successors shall immediately notify the Historic Preservation Division, and comply with the requirements of chapter 6E, HRS, and applicable regulations.

14. **Withdrawal of Special Use Permit.** Petitioner shall file a request with the County of Maui Planning Department to withdraw the Land Use Commission Special Use Permit issued under LUC Docket No. SP94-387/Fong Construction within one year from the issuance of this Decision and Order.

15. **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.

16. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the Project and Petitioner's

progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

18. **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.

19. **Notice of Imposition of Conditions.** Within seven (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.

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

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 24th day of May, 2005. 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 24th day of May, 2005, per motion on March 3,, 2005.

APPROVED AS TO FORM


Heani Jackson  
Deputy Attorney General


LAND USE COMMISSION  
STATE OF HAWAII

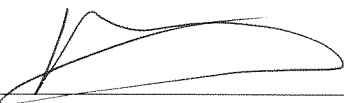
By P. Roy Catalani  
P. ROY CATALANI  
Chair and Commissioner

By Randall Sakumoto  
RANDALL SAKUMOTO  
Vice-Chair and Commissioner


By Steven Lee Montgomery  
STEVEN LEE MONTGOMERY  
Vice-Chair and Commissioner

By   
ISAAC FIESTA, JR.  
Commissioner


By   
MICHAEL FORMBY  
Commissioner

By   
KYONG-SU IM  
Commissioner

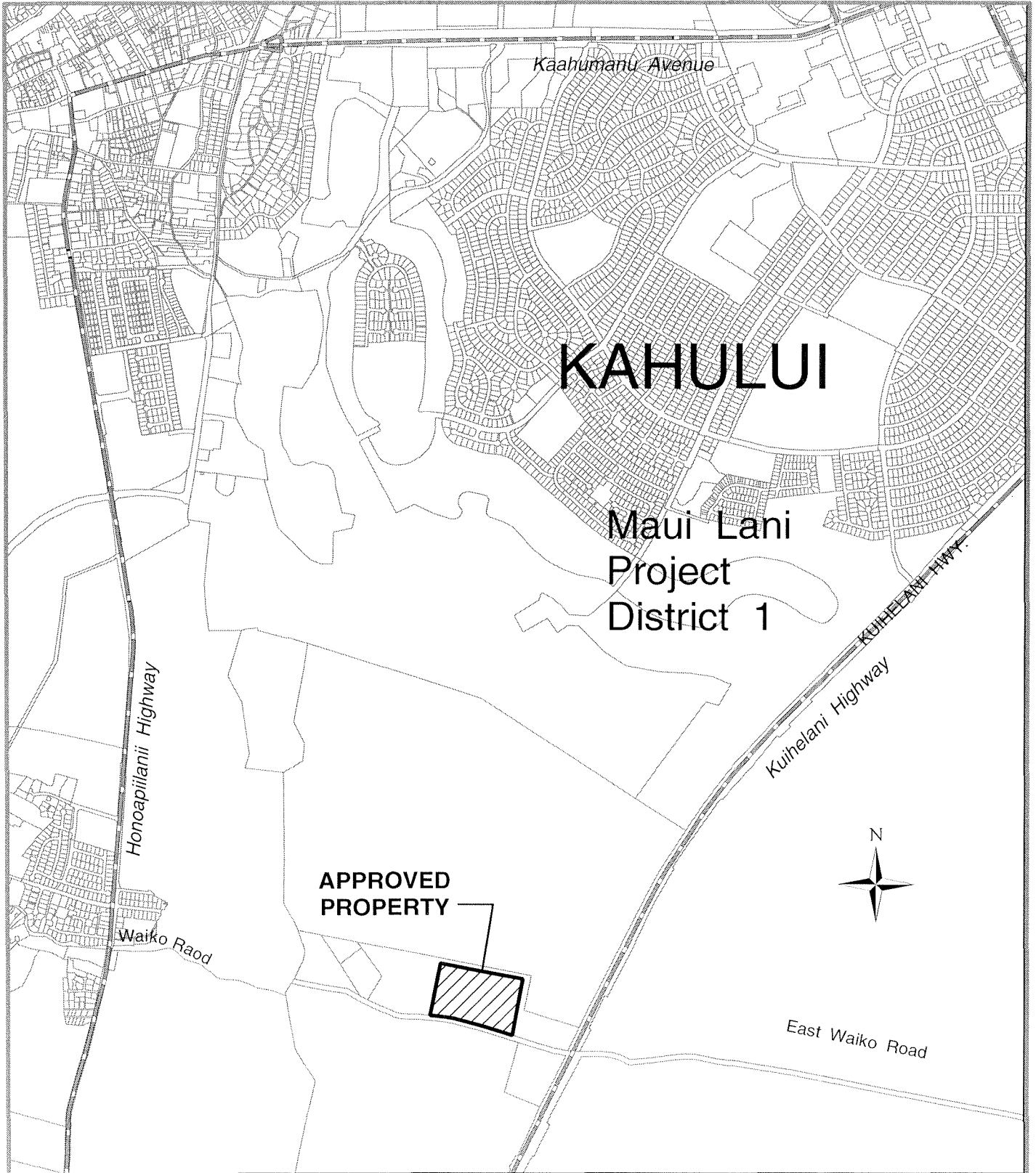
Filed and effective on:  
MAY 24 2005

By   
LISA M. JUDGE  
Commissioner

Certified by:

  
ANTHONY J. HUCHING  
Executive Officer

By   
PETER YUKIMURA  
Commissioner

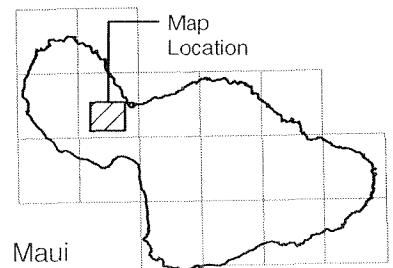


**A04-748 CONSOLIDATED BASEYARDS LLC**  
 a Hawai'i limited liability company

MAP LOCATION

Tax Map Key: 3-8-07: 89, 143, & 144  
 Waikapu, Maui, Hawai'i  
 Scale: 1" = 2,000 ft.

**Exhibit "A"**





BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of ) DOCKET NO. A04-748  
)  
CONSOLIDATED BASEYARDS LLC ) CERTIFICATE OF SERVICE  
)  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban Land )  
District For Approximately 23.164 Acres )  
Of Land At Waikapu, Maui, Hawai'i, )  
Tax Map Key: 3-8-07: 89, 143, and 144 )  
\_\_\_\_\_)

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 regular or certified mail as noted:

DEL. LAURA H. THIELEN, Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

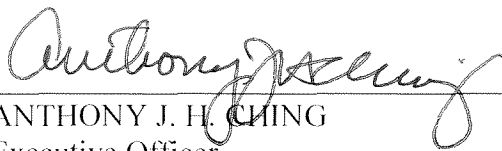
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Wailuku, Hawaii 96793-1086

Dated: Honolulu, Hawaii,           MAY 24 2005          .

  
\_\_\_\_\_  
ANTHONY J. H. CHING  
Executive Officer