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**LAND USE COMMISSION**  
Department of Business, Economic Development & Tourism  
State of Hawai'i

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May 8, 2015

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Kahului, Hawai'i 96732

Michael Atherton  
Waikapū Properties, LLC  
1670 Honoapi'ilani Highway  
Wailuku, Hawai'i 96793

Dear Mr. Geiger and Mr. Atherton:

Subject: Docket No. A15-798 Waikapū Properties, LLC, et.al.  
Waikapū Country Town

This is to acknowledge receipt of the following documents filed on April 16, 2015:

- 1) Petition for District Boundary Amendment ("Petition");
- 2) Exhibits "1" through "18";
- 3) Petitioner's Motion to Designate the Land Use Commission as Approving Agency for Environmental Impact Statement Under HRS Chapter 343 and For Authority to Prepare Environmental Impact Statement ("Motion");
- 4) Memorandum in Support of Motion; and
- 5) Appendix 1

Further, the following documents were received and filed on April 23, 2015:

- 1) Notarized Affidavit of Mailing (supplement);
- 2) Notarized Affidavit of Notification of Petition Filing (supplement); and
- 3) Exhibits 1 and 2.

We understand that the Petition, as stated, proposes the reclassification of approximately 149.848 acres of land from the State Land Use Agricultural District to the State Rural District, and approximately 335.155 acres of land in the State Land Use Agricultural District to the State Land Use Urban District. Collectively, all of the lands to be reclassified comprise approximately 485.003 acres ("Petition Area").

We have reviewed the Petition and have deemed it defective at this time because it does not meet the content requirements outlined pursuant to Section §15-15-50, Hawai'i, Administrative Rules (HAR) for a properly filed petition. Your Petition may be deemed a complete filing and accepted for processing upon our review of any additional information submitted to address the matters identified below:

1) In accordance with Section §15-15-50(b), HAR, a petition shall not be deemed a proper filing unless an approved environmental impact statement (EIS) or finding of no significant impact (FONSI) is approved or accepted by the Commission. Such approved or accepted EIS or FONSI shall be filed with and be part of the petition for boundary amendment. The Commission has approved Petitioner's Motion to be the accepting authority for Petitioner's EIS and has directed Petitioner to proceed directly to conducting an EIS. Upon completion and acceptance, Petitioner's EIS should be filed with the Commission to supplement Petitioner's current filings.

2) In accordance with Section §15-15-50(c)(1), HAR, the Petitioner needs to provide the exact legal name of each petitioner and the location of the principal place of business and if an applicant is a corporation, trust, or association, or other organized group, the state in which the petitioner was organized or incorporated. The Petition (Section B., page 7) provides information regarding each of the entities involved and which tax map keys they have an interest in. Also, in accordance with Section §15-15-50(5)(B), HAR, please clarify ownership interests of all entities and provide authorization from each entity for Michael Atherton to proceed on their behalf. Currently, the Petition (Section C, page 8; Exhibit 3) only provides authorization for Mr. James W. Geiger, Esq., to act on their behalf.

3) In accordance with Section §15-15-50(c)(3), HAR, the applicable tax maps that identify the area under petition is required. We acknowledge that Exhibits 10-11 are the applicable tax maps, and that Exhibits 12-13 provide metes and bounds descriptions for portions of the area under petition. We require that an original, one copy, and one digital copy of each map be submitted. The original should be a full-scale map while the copy may be reduced to half scale. This section also requires that if the Petition Area is a portion of one or more lots, the Petitioner shall include a map and description of the subject property in metes and bounds prepared by a registered professional land surveyor. We require the metes and bounds map and description of the *entire Petition Area* that are signed and stamped to indicate that they were prepared by a registered professional land surveyor. All exclusions, easements, leases, kuleanas, etc. that exist on the Petition Area should be reflected on the map.

At this time a comprehensive analysis of the the Petition Area relative to the survey can not be completed. These documents do not satisfy the requirements of maps and a description of the Petition Area.

4) In accordance with Section §15-15-50(c)(6), the Petitioner should provide a description of any easements on the subject property, identification of easement owners, and any other ownership interests shown on the tax maps. This document does not satisfy the requirements of this Section.

5) In accordance with Section §15-15-50(c)(9), HAR, requires a statement describing the financial condition of the Petitioner together with a current balance sheet and income statement, and a clear description of the manner in which the Petitioner proposed to finance the proposed use or development. This document does not satisfy the requirements of this Section.

6) In accordance with Section §15-15-50(c)(11), HAR, an assessment of the impacts of the proposed use upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area should be provided. Relatedly, in accordance with Section §15-15-50(c)(12), HAR, the availability or adequacy of public services and facilities and the extent to which any public agency would be impacted by the proposed development should be addressed. We note that the “Environmental Impact Statement Preparation Notice” (EISPN) provides preliminary information to address these areas of concern. This document does not satisfy the requirements of this Section.

7) In accordance with Section §15-15-50(c)(14), HAR, the economic impacts of the proposed development, including without limitation, the provision of an any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county and State should be addressed. A market study or needs assessment for the proposed project customarily provides such information and detail. This includes addressing Section §15-15-50(c)(15), HAR, which requests information on how the Petitioner will address the housing needs of low income, low-moderate income, and gap groups. This document does not satisfy the requirements of this Section.

8) In accordance with Section §15-15-50(c)(16), HAR, an assessment of need for the reclassification based upon the relationship between the proposed development and other projects existing or proposed for the area and consideration of other similarly designated land in the area should be provided. This document does not satisfy the requirements of this Section.

9) In accordance with Section §15-15-50(c)(20), HAR, the Petitioner shall represent that development of the subject property will be accomplished before ten years after the date of commission approval. If full development can't be substantially completed within ten years then an incremental development plan, schedule and maps should be provided. This document does not satisfy the requirements of this Section.

10) In accordance with Section §15-15-50(c)(21), HAR, a statement addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawai'i State Constitution should be provided. Petitioner indicates that an Archaeological Inventory Survey (AIS) and Cultural Impact Assessment (CIA) will be completed as part of the EIS process. The current information provided does not satisfy the requirements of this Section.

Pursuant to §15-15-50(f), HAR, the Petition is deemed incomplete at this time as information regarding the above-mentioned items have not been submitted or addressed adequately pursuant to §15-15-50(b) and (c), HAR. We reserve the right to provide additional comments and raise additional concerns not included in this review.

Finally, in the event a notice of intent to intervene is filed with the LUC pursuant to HAR, Section §15-15-52(b), the Petition should be served upon the potential intervener and an affidavit

of Petitioner or their agent attesting to their compliance with HAR, Section §15-15-48(b), should be filed.

Pursuant to §15-15-50(f), HAR, the Petition may be deemed as a proper filing upon review of additional information submitted and upon determination by the Executive Officer.

Please address the above matters as soon as possible. Should you require clarification or further assistance in this matter, please contact Scott Derrickson, AICP, of my staff at 587-3921.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Orodener", is written over a horizontal line. The signature is stylized and somewhat cursive.

Dan Orodener  
Executive Officer

c: Office of Planning  
County of Maui, Department of Planning