

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of ) DOCKET NO. A04-751  
)  
MAUI LAND & PINEAPPLE COMPANY, ) CERTIFICATE OF SERVICE  
INC., a Hawai'i corporation )  
)  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban Land Use )  
District For Approximately 310.440 Acres )  
Of Land At Māhinahina And Kahana, )  
Lahaina, Maui, Hawai'i, Tax Map Key: 4-3- )  
01: Por. 31 And 79 )

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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:

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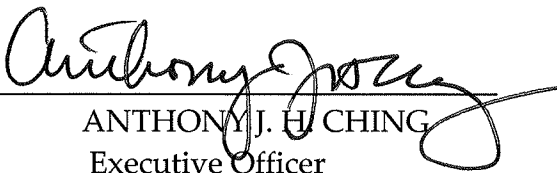
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Dated: Honolulu, Hawaii, JUN 30 2006.

  
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ANTHONY J. H. CHING  
Executive Officer

ORIGINAL

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

SPENCER HOMES, INC., a Hawaii  
corporation, and the COUNTY OF MAUI,  
DEPARTMENT OF HOUSING AND  
HUMAN CONCERNS,

To Amend the Agricultural District  
Boundary into the Urban Land Use District  
for Approximately 94.229 Acres at  
Waikapu, Island of Maui, Tax Map Key  
No. 3-5-002:001 (por.)

DOCKET NO. A04-750

*Conditions inputted  
in database*

*5/31/05*

*A04-750*

*Spencer Homes*

**FINDINGS OF FACT, CONCLUSIONS,  
AND ORDER FOR A STATE LAND USE DISTRICT**

**EXHIBIT "A"**

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

SPENCER HOMES, INC., a Hawaii  
corporation, and the COUNTY OF MAUI,  
DEPARTMENT OF HOUSING AND  
HUMAN CONCERNS,

To Amend the Agricultural District  
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Waikapu, Island of Maui, Tax Map Key  
No. 3-5-002:001 (por.)

DOCKET NO. A04-750

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

SPENCER HOMES, INC., a Hawaii corporation, ("Petitioner"), filed a Petition for District Boundary Amendment on August 18, 2004, pursuant to chapters 205 and section 201G-118, 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 94.229 acres of land at Waikapu, Maui, Hawaii, identified by Tax Map Key No. 3-5-002:001 (por.) ("Property") from the State Land Use Agricultural District to the State Land Use Urban District for the development of the approximate 410± unit Waikapu Affordable Housing Subdivision ("Project").

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

### **FINDINGS OF FACT**

#### **PROCEDURAL MATTERS**

1. On June 16, 2004, Petitioner filed its Notice of Intent to File a Petition for Land Use District Boundary Amendment ("Notice of Intent") with the Commission pursuant to HAR § 15-15-97(b).

2. Petitioner is a Hawaii corporation licensed to do business within the State of Hawaii, with its business and mailing address at P.O. Box 97, Kihei, Hawaii 96753. The chief executive officer is Jesse Spencer.

3. The Notice of Intent was published in The Honolulu Star Bulletin, a statewide newspaper of general circulation, on June 18, 2004, and in The Maui News, a county newspaper, on June 18, 2004.

4. Copies of the Notice of Intent were served upon the Director of the Office of Planning, the County of Maui's Planning Department, all persons with a property interest in the Property, and all persons on the chief clerk's mailing list on June 16, 2004.

5. An affidavit of mailing of the Notice of Intent to the foregoing persons was filed with the Commission on June 17, 2004.

6. On June 21, 2004, the County of Maui's Department of Housing and Human Concerns certified that the Project involves an HRS § 201G-118 housing project.

7. An affidavit of publication of the Notice of Intent was filed with the Commission on June 30, 2004.
8. On July 12, 2004, a Motion for Intervention was filed with the Commission by Majesty Akahi Nui, Trustee, Kingdom of Hawaii Nation Ministry Trust.
9. On August 6, 2004, the Office of Planning ("OP") filed its Statement of Position in support of the Petition.
10. On August 6, 2004, the Maui County Council adopted Resolution 04-116 approving the Project pursuant to § 201G-118, HRS.
11. On August 9, 2004, the County of Maui filed its Statement of Position in support of the Petition.
12. On August 9, 2004, a prehearing conference was held in the County of Maui, Department of Planning's conference room pursuant to HAR § 15-15-57.
13. On August 16, 2004, a Notice of Hearing on the Petition was published, which scheduled the commencement of the hearings on September 16, 2004, in Makena, Maui, Hawaii.
14. On August 18, 2004, Petitioner filed its Petition for District Boundary Amendment ("Petition").
15. On September 3, 2004, the Commission denied the Motion for Intervention submitted by Majesty Akahi Nui, Trustee Kingdom of Hawaii Nation Ministry Trust.
16. On September 16, 2004, at its meeting in Makena, Maui, Hawaii and September 17, 2004, at its meeting in Wailea, Maui, Hawaii, the Commission conducted its

hearing on the matter pursuant to the notice published in The Honolulu Star Bulletin and The Maui News. Entering appearances were Blaine J. Kobayashi, Esq., and Jesse and Mark Spencer on behalf of Petitioner; Michael W. Foley, Director of Planning on behalf of the County Department of Planning, and Jane E. Lovell, Deputy Corporation Counsel, for the County; Abe Mitsuda and Mary Alice Evans on behalf of OP, and John W.K. Chang, Deputy Attorney General for the State of Hawaii.

17. Joan Martin of the Maui Nui Housing Task Force offered public testimony in support of the Petition.

18. On September 17, 2004, the Commission closed the evidentiary portion of the hearing for the subject docket in Wailea, Maui, Hawaii.

19. On September 17, 2004, the Commission received a Proposed Findings of Fact, Conclusions of Law, and Decision and Order stipulated by the parties.

#### **DESCRIPTION OF THE PROPERTY**

20. The Property is located in Waikapu, Island of Maui, State of Hawaii. The Property consists of approximately 94.229 acres, and is identified by Tax Map Key No. 3-5-002:001 (por.).

21. Wailuku Agribusiness Co., Inc. ("Wailuku Agribusiness") is the present fee owner of the Property. Petitioner has a binding contract to purchase the Property from Wailuku Agribusiness, which has authorized Petitioner to file the Petition.

22. As of September 17, 2004, the Property is in the process of being subdivided in connection with the large lot subdivision application by Wailuku Agribusiness relative to the Waikapu East large lot subdivision No. 3.

23. By virtue of the Petitioner's Real Estate Purchase and Sale Agreement effective May 30, 2003, with Wailuku Agribusiness as reinstated and reaffirmed by that document dated January 5, 2004, and Petitioner's payment of a non-refundable \$500,000 deposit, the Petitioner has created an interest in property sufficient to establish standing to file the Petition.

24. The Property is bounded on the western side by the State of Hawaii's Honoapiilani Highway. The 116-lot Waiolani and 28-lot Waiolani Elua residential subdivisions are located across Honoapiilani Highway further to the west of the Property. The proposed 108-lot Waiolani Mauka residential subdivision, subject of LUC Docket A04-746, is also located across Honoapiilani Highway to the west of the Property.

25. The Property is bounded on the southern side by Waiolu Street and single-family residences, and a segment of East Waiko Road. The town of Waikapu, which consists mainly of single-family residences and a small core of commercial uses, is located further to the south of the Property.

26. The Property is bounded on the northern and eastern sides by vacant lands which were formerly used for agriculture and sand mining operations.

27. Further north, approximately 1.2 miles from the Property, is the town of Wailuku, which is the County of Maui's seat of government. In addition to the main federal, state, and county offices, the town of Wailuku includes numerous single-family residences, businesses, and recreational uses.



28. The Property is currently vacant, being formerly used for sugar cane and pineapple cultivation. The Property contains overgrown vegetation, including pineapple, buffelgrass, fingergrass, koa haole, kiawe, and castor bean.

29. The Property experiences mild and uniform temperatures year-round, moderate humidity, and a relatively consistent northeasterly tradewind. Average temperatures at the Property range from lows in the 60's to high in the 80's. Average rainfall at the Property is 20 to 30 inches per year.

30. The Property is relatively flat and occupies an area characterized by slopes of less than 20 percent. The average slope at the Property is 5.5 percent. Elevations at the Property range from approximately 407 feet to 325 feet above sea level.

31. Located near the eastern base of the West Maui Mountains, the Flood Insurance Rate Map of the Federal Emergency Management Agency for the County of Maui identified the Property as lying within Zone C, an area of minimal flooding. The Property is not subject to coastal hazards such as tsunami inundation.

32. The United States Department of Agriculture Soil Conservation Service classifies the soil underlying the Property as Puuone Sand, 7 to 30 percent (PZUE), Pulehu silt loam, 7 to 30 percent (PpB), Iao Clay, 3 to 7 percent (IcB), and Iao cobbly silty clay, 3 to 7 percent (IbB). These types of soil are often used for pastures and homesites.

33. According to the State of Hawaii Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii ("ALISH"), the Property falls within "Prime" and "Other" agriculture lands categories. The "Prime" agricultural lands for the Property are located

on the western extent of the Property, while the "Other" agricultural lands are located on the eastern portion of the Property.

34. The University of Hawaii Land Study Bureau classifies the land underlying the Property as A71i, A80i, C3i, and E58, which are reflective of soil that is over thirty inches deep, non-stony, and well to excessively drained.

### **PROPOSAL FOR RECLASSIFICATION**

35. Petitioner proposes to develop the Property as an affordable housing development. The Project will consist of approximately 410± single-family lots and residences, and will reflect a subdivision concept compatible with the 116-lot Waiolani and 28-lot Waiolani Elua Subdivisions to the immediate west of the Property.

36. Petitioner intends to subdivide the 94.229 acres of land to create improved house and lot packages. The size of the lots will range from approximately 4,500 square feet to 10,600 square feet. Petitioner has represented that no ohana units will be developed or allowed in the Project.

37. Given the County of Maui's pressing need for affordable housing, Petitioner will set aside at least 51% (212) of the 410± units specifically for affordable buyers. The affordable units will be sold to interested purchasers in fee simple interest, with sale prices currently projected in the range of \$225,000.00 to \$275,000.00 (the "affordably priced units"), making the units affordable to families in the 120 percent or less of median income category. The remaining 49% of the units (the "other units") will be designated and sold at prices as close as possible to the affordably priced units. Included in this amount will be two (2) lots-only to be sold for \$100,000 each.

38. Subject to the preceding finding of fact, Petitioner intends that all units of the Project will be priced so as to be affordable to families earning up to the 140 percent median income category, which in 2004 equates to \$383,400.

39. Petitioner will coordinate with the County to determine its affordable housing requirements in accordance with the County's affordable housing guidelines as it pertains to the Project. Petitioner's affordable housing agreement with the County of Maui shall be executed prior to the filing of a building permit application or prior to the granting of final subdivision approval as specified by the Maui County Administrative Affordable Housing Recommended Guidelines for Land Use Approvals, revised June 7, 2004.

40. The County will administer a ten (10) year buyback program to maintain the Project as affordable. The buyback program will feature a seven percent (7%) per year return plus the cost of approved improvements to the seller.

41. A linear park will also be a part of the Project. The 10.33-acre park will provide a continuous and attractive open space buffer along the entire length of the Project, and will include paved pathways and landscaping. The park will be owned and maintained by the proposed development's homeowner's association.

42. The Property is located along Honoapiilani Highway adjacent to the town of Waikapu and a short distance to the town of Wailuku.

43. The Project would complement the existing, and planned, single-family residential subdivisions in the area, and address the need for affordable housing on the island of Maui.

## **DEVELOPMENT TIMETABLE**

44. The Project is intended to be developed in four (4) phases, with approximately 100 homes per phase. At a minimum, one (1) affordably priced unit will be developed with each of the “other units”. Completion of the subdivision is anticipated to be within five (5) years of the start of work.

45. Sales of the affordably priced units will be accomplished through a lottery system established by Petitioner. Sales of the “other units” are anticipated to commence in January 2005. The design and construction of the affordably priced units will be identical to the “other units”, and will be seamlessly integrated throughout the Project.

## **PETITIONER'S FINANCIAL CAPABILITY**

46. The estimated total cost of the Project at full buildout is estimated at \$70,000,000.00. Petitioner intends to finance the Project through local lending institutions. Homestreet Bank, a Hawaii chartered bank, has issued a \$15 million revolving line of credit to Spencer Homes for the Project.

47. Petitioner's financial statements reflect total assets of \$1,404,679.

48. Jesse and Joyce Spencer have committed to loan \$5 million to Spencer Homes to partially finance the Project.

49. The Petitioner has a long history of developing affordable housing on the island of Maui and has represented its commitment to pursue the development of the Project to completion.

50. Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

## **STATE AND COUNTY PLANS AND PROGRAMS**

### **State Land Use District**

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

52. Reclassification of the Property from the Agricultural District to the Urban District will allow for the development of approximately 410± single-family residences which will be compatible with urban uses in the surrounding area.

### **County of Maui General Plan**

53. According to the County of Maui, the Project conforms to Themes 2, 4, and 5 of the 1990 update of the General Plan of the County of Maui ("General Plan"), which are to prepare a directed and managed growth plan, maintain a viable economy that offers diverse employment opportunities for residents, and provide for needed residential housing, respectively.

54. The need and demand for affordable housing is extremely high on Maui. The proposed reclassification, which will allow for the purchase of affordable homes and lots, will present an opportunity to address the pressing need for affordable housing.

55. The proposed reclassification and development will also be consistent with a managed growth plan as evidenced by the Project's location near existing, and planned, single-family residential development. The Project will also assist in maintaining a viable economy, as construction-related employment opportunities would be generated during the build-out of the Project.

56. The Project also conforms with the following objectives of the General Plan relating to population, land use, economic activity, housing and urban design:

- To plan the growth of resident and visitor population through a directed and managed growth plan so as to avoid social, economic, and environmental disruptions.

- To preserve for present and future generations existing geographic, cultural, and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County.

- To use the land within the County for the social and economic benefit of all the County's residents.

- To utilize an equitable growth management program which will guide the economic well being of the community.

- To provide a choice of attractive, sanitary and affordable homes for all our residents.

- To provide affordable housing to be fulfilled by a broad cross-section of housing types.

- To encourage developments which reflect the character and the culture of Maui County's people.

### **Wailuku-Kahului Community Plan**

57. The purpose of the nine (9) community plans established in the County of Maui is to outline a detailed agenda for carrying out the objectives of the General Plan.

58. The Wailuku-Kahului Community Plan ("Community Plan") identified the lack of affordable housing as one of the major problems. As the cost of residential housing has dramatically increased in the past 10 to 15 years, the Community Plan recognizes that providing affordable housing opportunities for residents, especially those earning below 80 to 140 percent of the median income, must be aggressively pursued.

59. The Community Plan designates the Property as Agricultural. Accordingly, an HRS § 201G-118 application was filed with the Maui County Council on June 28, 2004, requesting that the Project be exempted from the community plan amendment process to allow for the Project's proposed single-family homes.

60. On August 6, 2004, the Maui County Council unanimously approved the application.

61. The Project is consistent with the following goals, objectives, and policies of the Community Plan:

- A sufficient supply and choice of attractive, sanitary, and affordable housing accommodations for the broad cross-section of residents, including the elderly.
- Provide sufficient land areas for new residential growth which relax constraints on the housing market and afford variety in type, price, and location of units. Opportunities for the provision of housing are presently constrained by a lack of expansion areas. This condition should be relieved by a choice of housing in a variety of locations, both rural and urban in character.
- Seek alternative residential growth areas within the planning region, with high priority given to the Wailuku and Kahului areas. This action should recognize that crucial issues

of maintaining important agricultural lands, achieving efficient patterns of growth, and providing adequate housing supply and choice of price and location must be addressed and resolved.

- Provide efficient housing designs in order to reduce residential home energy and water consumption.

- Develop and maintain an efficient and responsive system of public services which promotes a safe, healthy, and enjoyable lifestyle, accommodates the needs of young, elderly, disabled and disadvantaged persons, and offers opportunities for self-improvement and community well-being.

- Provide park and recreation areas as an integral part of project district specifications which will accommodate the needs of population growth.

- Ensure that adequate regional/community park facilities are provided to service new residential developments.

- An attractive and functionally integrated urban environment that enhances neighborhood character, promotes quality design, defines a unified landscape planting and beautification theme along major roads and highways, watercourses and at major public facilities and recognizes the historic importance and traditions of the region.

- Maintain shrubs and trees at street intersections for adequate sight distance.

- Incorporate drought tolerant plant species and xeriscaping in future landscape planting.



### **County of Maui Zoning**

62. The Property is zoned Agricultural by Maui County zoning. An HRS § 201G-118 application was filed with the Maui County Council requesting that the Project be exempted from the zoning provisions of Title 19, Maui County Code, to allow for the Project's proposed single-family homes. The Maui County Council approved the application on August 6, 2004.

### **County of Maui Special Management Area**

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

### **NEED FOR THE PROPOSED DEVELOPMENT**

64. According to the SMS Socio-Economic Forecast for Maui County, the island's housing supply in the year 2000 totaled 40,041 units of which 32 percent, or 12,852 units, were located in the Wailuku-Kahului Community Plan region. This area accounts for the largest percentage of housing units on the island. Demand for housing in this region in the year 2000 was 13,528 units.

65. The demand for housing in the Wailuku-Kahului area is projected to grow to 16,826 units in the year 2010, while the expected number of household units is estimated at 15,985 units. By the year 2020, the housing demand is expected to reach 20,054 units compared to the projected household count of 19,051 units.

66. According to the Realtor's Association of Maui, during the month of February 2004, the median sales price of a Central Maui home was \$367,500.00. During that same time period, an island-wide median price for homes was \$550,000.00.

67. The Project's provision of much-needed affordable housing inventory will therefore meet a significant community and island need.

### **ECONOMIC IMPACTS**

68. The Project will support the island's economy by providing construction and construction-related employment during the build-out of the Project. In the long term, residential homeowners will require services related to home maintenance and improvement which will further support local business operators.

### **SOCIO-ECONOMIC IMPACTS**

69. The population of the island of Maui has experienced strong growth over the past two (2) decades. The 2000 population was estimated at 117,644, which was an increase from the 1990 population of 91,361. The year 2005 population is estimated at 127,950, while the population for the year 2020 is projected to be 160,090.

70. In terms of the Wailuku-Kahului Community Plan region, the estimated 2000 population was 41,503, with a projected increase to 44,883 in the year 2005. By the year 2020, the projected population in the region is expected to be 55,424.

71. The average household size in the Wailuku-Kahului region in the year 2000 was 3.17 compared to an island-wide average of 2.90. According to SMS Socio-Economic Forecast for Maui County, these numbers are expected to decrease to an average of 3.03 and

2.80, respectively, by the year 2010, and to an average of 2.90 and 2.72, respectively, by the year 2020.

72. The Project is not considered a direct population generator from a long-term perspective, as any increase in population should be within expected growth parameters defined by migration and birth/death rates. Instead, the Project is anticipated to accommodate the demand for affordable housing by existing residents.

## **IMPACTS UPON RESOURCES IN THE AREA**

### **Agricultural Resources**

73. Although the Property was previously used in large-scale agricultural activities, it is presently fallow, undeveloped, and predominantly vegetated with scattered kiawe, pineapple, and introduced grass species. The Property's unutilized state is attributed to the Property's surrounding residential and roadway uses.

74. The Property abuts urban development on two (2) sides and is adjacent to existing urban development. These conditions place operational (land locking) constraints on conducting profitable, large-scale agricultural production.

75. The Project will reclassify approximately 94.229 acres of land from the State Agricultural District to the Urban District. The location of the Property, coupled with the pressing need for affordable housing in the County 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 94.229 acres represent only 0.03 percent of the 245,777 acres, as of December 31, 2002, within the Agricultural District on the island of Maui.

## **Flora and Fauna**

76. Vegetation in the area is generally characterized by introduced grass species. Terrestrial fauna in the region include introduced species such as cats, mice, rats, and mongoose. Some of the avifauna in the area include the Spotted Dove, Barred Dove, Japanese white-eye, Cardinal, Red-Crested Cardinal, and Mynah. There are no known significant habitats or rare, endangered or threatened species of flora or fauna on the Property.

77. The Project is not anticipated to have significant impacts upon wetland areas and wildlife habitats.

## **Archaeological/Historical/Cultural Resources**

78. An archaeological inventory study of the Property was conducted by Xamanek Researches. Fieldwork for the study was carried out in August, September, and December of 2003. The objective of the study was to determine the presence/absence, nature, extent, and significance of cultural resources in the Project area.

79. The study found that approximately 40 percent (40%) of the Property was previously impacted by sandmining activities in the last 20 years. The remainder of the Property was most recently planted in pineapple.

80. The pedestrian portion of the study did not locate any surface pre-contact structural remains. A total of 29 backhoe trenches were excavated during the course of the inventory. There were no subsurface cultural layers encountered during the study.

81. The test results from the study indicated that the Property was heavily impacted by land-altering activities associated with commercial sugar cane cultivation and subsequent pineapple production.

82. The study identified a historic site on the Property that was previously designated as State Site 50-50-04-5474 ("Site 5474"). Site 5474 consists of two features - Waikapu Reservoir and a portion of Kama Ditch.

83. Waikapu Reservoir is maintained by Wailuku Agribusiness and is used for agricultural irrigation purposes. Kama Ditch, which is estimated to have been abandoned approximately 30 years ago, enters the southern portion of the Property from the north and transits the Property in roughly a north/south manner.

84. Site 5474 qualifies for importance under Federal and State historic preservation guidelines Criterion "a" because of its association with the plantation era, and Criterion "d" for its information content.

85. Passive "as is" preservation is recommended for this plantation era site. Although ownership of the Waikapu Reservoir will be acquired by Petitioner, it will be leased back to Wailuku Agribusiness for continued use as an agricultural irrigation system component.

86. The bulk of Kama Ditch that lies within the Property will have to be demolished for the Project. The State Historical Preservation Division ("SHPD") has determined that sufficient information has been gathered during the study that adequately documents Kama Ditch, and accordingly, has approved the study. As such, no further work is required for the portion of Site 5474 that will be demolished, other than photographic documentation of the demolition process.

87. Following the recommendations of SHPD, full-time archaeological monitoring will be conducted during earthmoving activities on the Property which will mitigate any adverse effects to any significant material culture remains and/or human burials that may be contained in untested portions of the Property. In the event any remains or burials are encountered, appropriate stop-work, coordination, and mitigation measures will be carried out with a qualified archaeologist, including consultation with SHPD and the Maui/Lanai Islands Burial Council.

88. A cultural impact assessment was prepared by CKM Cultural Resources, in accordance with the Office of Environmental Quality Control. Kahu Charles Kauluwehi Maxwell served as the principal researcher for the assessment.

89. The assessment included a description of the potential impacts from development along with measures to mitigate such impacts, evaluating the cultural significance of historic and prehistoric resources identified during the archaeological inventory, and assisting in the development of a general preservation plan for those resources.

90. The assessment also included interviews with individuals with knowledge of the area's cultural resources, practices, and beliefs, or of its historical and natural resources. Interviewees recounted the abundance of *lo'i* in the area, as well as the many large sand dunes which were referred to as the "Mo'o of Maui."

91. One interviewee recalled the many hours spent in the Waikapu Stream (located approximately 0.33 mile to the north of the Property) catching o'opu, opae, and hihiwai. Interviewees also expressed their concern that careful monitoring be performed during the

development of the Property to show respect to the past Hawaiian ancestors who used the Property.

92. While the interviewees in the assessment related the culture and history of the area in general, there was no indication that the Property had been used for traditional cultural purposes.

93. Based upon the archaeological inventory and the cultural impact assessment, the Project will not have any adverse impacts to native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawaii State Constitution.

#### **Surface Water Resources**

94. 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. According to the Hawaii Stream Assessment, Waikapu Stream has no listed tributaries and flows to the sea year-round. The proposed development will not impact Waikapu Stream. There are no wetlands in the vicinity of the Property.

95. The Waikapu Reservoir is located within the Property, and is currently maintained by Wailuku Agribusiness. After Petitioner purchases the Property, Petitioner intends to lease the reservoir back to Wailuku Agribusiness. The proposed development will not significantly undermine the integrity of the reservoir.

## **Recreational and Scenic Resources**

96. The Wailuku-Kahului region encompasses a full range of recreational opportunities, including shoreline and boating activities at the Kahului Harbor and adjoining beach parks, and individual and organized athletic activities offered at numerous County parks.

97. The Waikapu Community Center is located in the immediate vicinity of the Property. It is a County-owned facility that includes a baseball field, basketball court, and a community center building. Wailuku Agribusiness also has two (2) baseball fields open for public use located near the Property.

98. A nearby park adjacent to the Hale Makana O Waiale Affordable Housing contains a baseball field, basketball court, and playground equipment. Other recreational facilities in the Wailuku area include Iao Park, Wells Park, Wailuku Pool, Wailuku Gym, Wailuku Elementary School Park, the Wailuku Community Center, Papohaku Park, War Memorial Athletic Complex, Sakamoto Pool, and Keopuolani Park.

99. As part of the Project, Petitioner will be providing a 10.33-acre linear park that will be owned and maintained by the Project's homeowner's association.

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

101. The scenic resources for the Property are defined by Mount Haleakala to the east and the West Maui Mountains to the west. Surrounding the Property is vast open space, primarily former agriculture lands. A cemetery is located to the south of the Property and a closed county landfill is located to the east.



102. The Property is not part of a scenic corridor and will not affect views from inland vantage points. The Project is not anticipated to have an adverse visual impact upon the visual character of the surrounding area.

## **ENVIRONMENTAL QUALITY**

### **Soil Testing**

103. Petitioner will conduct further testing of soil to determine the presence, if any, of residual hazardous chemicals from past agricultural activities on the Property and any necessary effort to mitigate soils to a level suitable for homesites. Soil testing will be completed prior to any land sales by the Petitioner.

### **Water Quality**

104. 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 leeching into the ground and flowing into any storm drainage systems.

### **Noise**

105. Traffic noise from Honoapiilani Highway is the predominant source of noise in the vicinity of the Property. Traffic on East Waiko Road and other local roads in the vicinity are a secondary source of background noise. Other background noise levels are attributed to nearby agricultural operations on an intermittent basis, as well as natural conditions such as wind and rain.

106. Ambient noise conditions may be temporarily affected by construction activities on the Project site. Heavy construction machinery, such as backhoes, dump trucks, front-end loaders, paving equipment, and material transport vehicles, are anticipated to be the dominant noise-generating sources during the Project's construction period. Proper equipment and vehicle maintenance are anticipated to reduce noise levels. Equipment mufflers or other noise attenuating equipment may also be employed by Petitioner as may be required.

107. All construction activities will be limited to daylight working hours, and will be in compliance with appropriate governmental rules and regulations relating to permissible noise levels.

### **Air Quality**

108. There are no point sources of airborne emissions within proximity of the Property. While air quality in the vicinity of the Project may be temporarily and intermittently impacted by smoke and dust from nearby agricultural operations, and smoke and dust from sugar cane harvesting operations in the area, the prevailing winds in the area quickly disperse any particulates generated by these sources.

109. Emissions from construction equipment and other vehicles involved in construction activities may temporarily affect the ambient air quality within the immediate vicinity of the Property. However, these effects can be minimized by proper maintenance of construction equipment, dust barriers, and water wagons and/or sprinklers. Petitioner will implement all required mitigation measures for fugitive dust and ensure that all mitigation measures to alleviate increased vehicular emissions are implemented.

## **ADEQUACY OF PUBLIC SERVICE AND FACILITIES**

### **Schools**

110. 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). Two of these schools are currently over their designed enrollment capacity. 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).

111. According to the State Department of Education's ("DOE") calculations, the Project is anticipated to generate the following estimated number of students: elementary school - 112 students, intermediate school - 57 students, and high school - 62 students.

112. In the event that the base price of any unit exceeds \$383,400, Petitioner is committed to pay a fee of \$3,134 for that unit to the DOE for the construction of public school facilities in the Wailuku region.

### **Solid Waste Disposal**

113. According to Petitioner's engineering consultant, each household in the County of Maui generates 9 pounds of solid waste per day.

114. 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.

115. The Central Maui Landfill has a ten-year capacity with the completion of Phase IV, to accommodate the solid waste generated by the Project and the rest of the population of the island of Maui.

### **Water Service**

116. 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").

117. 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.

118. 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. The anticipated water consumption for the proposed project is approximately 240,000 gpd.

119. Due to the cumulative demand for the Project, DWS recommended that the Petitioner develop source or participate in source development, which Petitioner agrees to do through the payment of water meter fees. 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.

120. New sources of potable water being developed by DWS to serve the Central Maui Service Area include 800,000 gpd provided by the Iao surface water treatment plant, 750,000 gpd by the Kupa'a Well I, and 640,000 gpd by the Hamakuapoko Well.

121. DWS recently drilled a new well near the end of Waiko Road and is currently finalizing the design of the deep pump well and necessary equipment. This new well will be one of the options for DWS to service Waikapu and the mid-level service area of the Kehalani Project, otherwise known as the Wailuku-Kahului Project District 3.

122. 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 by 500,000 gallons to provide the necessary storage demand for the Project, and the proposed 108-lot Waiolani Mauka residential subdivision, subject of LUC Docket A04-746.

123. A draft of Petitioner's agreement with the developers of the nearby Kehalani project to increase the capacity of the water storage tank has been previously provided to the Commission in LUC Docket A04-746.

### **Highway and Roadway Facilities**

124. The western boundary of the Property borders Honoapiilani Highway, a two-lane highway under the jurisdiction of the State of Hawaii Department of Transportation which is the main artery linking Waikapu to Central, South, and West Maui. The southern boundary of the Property borders Waiolu Street and a segment of East Waiko Road.

125. Access to the Property will be provided via the realigned Waiale Road extension at the Property's eastern boundary. The realigned Waiale Road is currently being implemented by the developers of the Kehalani Project District in connection with drainage system improvements. There will be no access onto Honoapiilani Highway directly from the

Project. Indirect access to Honoapiilani Highway, however, will be provided via East Waiko Road and the realigned Waiale Road extension.

126. Phillip Rowell and Associates prepared a Traffic Impact Analysis Report ("TIAR") for the Project dated November 24, 2003, and revised on April 8, 2004. The purpose of the TIAR was to identify the traffic impacts of the proposed project, and if warranted, to make recommendations regarding minimizing said impacts.

127. The following intersections are in the study area and were analyzed in the TIAR: Honoapiilani Highway at Pilikana Street, Honoapiilani Highway at East Waiko Road, Honoapiilani Highway at Waiolu Street, and Kuihelani Highway at East Waiko Road. Proposed intersections in the study area were also analyzed in the TIAR.

128. The year 2008 was used as the design year for the Project. Background traffic projections were prepared for the 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 1.083.

129. For purposes of the TIAR, it was assumed that the Project would be 100 percent single-family residential. Specifically, the TIAR was based on 400 single-family detached residential units.

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

131. It was estimated that the Project will generate 308 trips during the morning peak hour and 408 trips during the afternoon peak hour.

132. A level of service ("LOS") analysis was also conducted for all of the study intersections. Based on the LOS analysis, except for the intersection of Honoapiilani Highway at East Waiko Road, the traffic impacts of the Project are below the threshold of significance and no mitigation is required.

133. With respect to the intersection of Honoapiilani Highway at East Waiko Road, pursuant to consultation meetings with the DOT, Petitioner has agreed to fund 100 percent of the design costs and up to 50 percent of the costs to implement the signalization of this intersection, which costs include, but are not limited to, underground conduits for signalization and approach lane improvements along Honoapiilani Highway and East Waiko Road as determined by the DOT. Petitioner will coordinate with DOT to determine Petitioner's fair-share of the signalization improvements.

### **Public Utility Services**

134. The existing overhead electrical, telephone, and cable television lines located on the easterly side of Honoapiilani Highway provide the source of these utilities for the Project. Maui Electric Company, Verizon Hawaii, and Time Warner Oceanic Cable provide electrical, telephone, and cable television services, respectively.

135. An electrical, telephone, and cable television distribution system will be serviced from the existing facilities along Honoapiilani Highway. Within the subdivision, all distribution systems will be installed underground. 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.

### **Police and Fire Protection**

136. Police protection for the Wailuku-Kahului region is provided by the County Police Department headquartered at the Wailuku Station. The region is served by the Department's Central Maui patrol. The Department provides investigative services, uniform patrol services, technical support, and traffic services.

137. Fire prevention, suppression, protection, rescue, and emergency services for the Wailuku-Kahului region is provided by the County Department of Fire and Public Safety's Wailuku Station, located in Wailuku town on Kinipopo Street, and the Kahului station on Dairy Road.

138. As population grows, any necessary expansion of fire and police services will be identified by various county agencies on an annual basis and brought to the attention of the Maui County Council for action and resolution in the county budget process.

### **Health Care Services**

139. The Property is within the service area of the 196-bed Maui Memorial Medical Center located in Wailuku. The Center, which is the only major medical facility on the island, provides acute, general, and emergency care services for the Wailuku-Kahului region. There are also numerous privately operated medical/dental clinics and offices located in the area to serve the region's residents.



140. The Project is not anticipated to adversely impact the capabilities of the Center.

### **Commitment of State Funds and Resources**

141. Petitioner will participate in the funding, design, and construction of its fair-share of infrastructural improvements such as for sewer, water distribution, and drainage required as a result of the Project.

### **CONFORMANCE TO URBAN DISTRICT STANDARDS**

142. The Property is adjacent to lands characterized by "city-like" concentrations of people, structures, streets, urban level 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.

143. The Property is located in close proximity to the existing 116-lot Waiolani and 28-lot Waiolani Elua residential subdivisions, both of which are situated with the Urban District. The Property also abuts Waikapu town, which is comprised of single-family residential, commercial, and recreational uses.

144. Located approximately 1.2 miles from the Project is the town of Wailuku, which is the County's seat of government. The main federal, state, and county offices all centrally located in Wailuku, and there are numerous businesses also located therein.

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

146. The Property is generally located in an area of existing and planned residential development as evidenced by the Wailuku-Kahului Community Plan. Development of the Property will not significantly impact reserve areas for foreseeable urban growth.

147. The Property consists of satisfactory topography, 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.

148. The Property is in an appropriate location for new urban concentration and growth as it is bordered by lands already in the Urban District. Although the Property is not identified for single-family residential use on the Wailuku-Kahului Community Plan, the Property's location is ideal and appropriate for affordable housing purposes given its proximity to existing urban residential uses, infrastructure, and public services.

149. Development of the Property will not contribute to scattered spot urban development given its location to existing urban development and proximity to urban centers.

150. 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**

**Hawaii State Plan**

151. The Hawaii State Plan, found in HRS chapter 226, is a comprehensive guide for the future long-range development of the State. The Hawaii State Plan's purposes are to identify the goals, objectives, policies, and priorities for the State, provide a basis for

allocating limited resources, and improve coordination between federal, state, and county agencies.

152. The reclassification of the Property and the proposed Project are in conformance with the following goals of the Hawaii State Plan:

- 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.
- 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.
- 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.

153. The Hawaii State Plan also provides numerous objectives and policies for the State. In particular, the proposed reclassification and the Project is consistent with, and conforms to, the following objectives and policies:

**HRS § 226-5, HRS, Objectives and Policies for Population.**

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| HRS § 226-5(a):    | It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter. |
| HRS § 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.

HRS § 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.

**HRS § 226-6, Objective and Policies for the Economy - in General.**

HRS § 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.

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

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

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

HRS § 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.

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

HRS § 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 near the Property.

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

- HRS § 226-13(b)(2): Promote the proper management of Hawaii's land and water resources.
- HRS § 226-13(b)(6): Encourage design and construction practices that enhance the physical qualities of Hawaii's communities.
- HRS § 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 in furtherance of addressing the problem of lack of affordable housing as stated in 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.

**HRS § 226-19, Objectives and Policies for Socio-Cultural Advancement - Housing.**

- HRS § 226-19(a)(2): The orderly development of residential areas sensitive to community needs and other land uses.
- HRS § 226-19(b)(1): Effectively accommodate the housing needs of Hawaii's people.
- HRS § 226-19(b)(3): Increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.
- HRS § 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.
- HRS § 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 affordable housing on Maui. The Project will be a logical and attractive extension of the existing residential uses in the immediate area. The sale of approximately 410± single-family homes, 51% of which will be affordable to families earning 120% or less of the County median annual income, will allow individuals and families to foster a variety of traditional lifestyles, and reflect the culture and values of the community.

**HRS § 226-23, Objective and Policies for Socio-Cultural Advancement - Leisure.**

HRS § 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 attractive 10.33-acre linear park which will provide open space and recreational value.

154. Priority guidelines are other important elements of the Hawaii State Plan. By prioritizing major areas of statewide concern, the quality of life for Hawaii's present and future population is improved and enhanced. The proposed reclassification and the Project is consistent with, and conforms to, the following priority guidelines of the Hawaii State Plan:

**HRS § 226-103, Economic Priority Guidelines:**

HRS § 226-103(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 affordable residential housing, and allowing for the investment and reinvestment in the local economy through construction and construction-related employment.

**HRS § 226-104, Population Growth and Land Resources Priority Guidelines.**

- HRS § 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.
- HRS § 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.
- HRS § 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.
- HRS § 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, especially in the area of affordable housing. The Project directly addresses that demand by providing a significant number of homes, which will be affordable to families earning 120% or less of the County's annual median income. The Property is located in a general area of existing

and planned single-family residential development as evidenced by the Wailuku-Kahului Community Plan. This reflects the community's desire to have proposed developments like Petitioner's to be in this general 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" in certain areas, the Property's location to existing residential subdivisions and proximity to a regional rural center satisfies the requirement of utilizing marginal or non-essential agricultural lands.

**HRS § 226-106, Affordable Housing Priority Guidelines.**

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|-------------------|--|
| HRS § 226-106(1): | Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low and moderate income and gap group households.  |
| HRS § 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 94.229 acres of vacant agricultural lands which comprises a small percentage (0.03 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 Petitioner to



address a portion of the significant community demand for affordable housing in an ideal location.

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

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

156. 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.

157. 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 HRS chapter 205, HAR chapter 15-15, and Maui County Council Resolution 04-116, this Commission finds upon the clear preponderance of the evidence

that the reclassification of the Property, consisting of approximately 94.229 acres situated at Waikapu, Island of Maui, State of Hawaii, identified as Tax Map Key No. 3-5-002:001 (por.), from the Agricultural District to the Urban District, upon the conditions set forth in this Decision and Order, is reasonable, conforms to the standards for establishing the Urban District boundaries, is consistent with the Hawaii State Plan as set forth in HRS chapter 226, is not violative of HRS §§ 205-2 and 201G-118, and is consistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17, and 205A-2.

2. Based upon Maui County Council Resolution 04-116, the Project is exempted from current provisions of the Wailuku-Kahului Community Plan and County regulations relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units.

3. 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.

4. Based on the archaeological inventory survey of the Property, the Property may contain archaeological resources, specifically, pre-contact and post-contact burials. Should any such resources be found during construction, Petitioner will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites.

5. 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.

6. 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.

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

8. 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.

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

10. 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.

11. 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 94.229 acres of land in the State Land Use Agricultural District at Waikapu, Island of Maui, State of Hawaii, identified as Tax Map Key No. 3-5-002:001 (por.), 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 pursuant to this order, the Unilateral Agreement (Petitioner's Exhibit "29"), and the affordable housing agreement to be executed prior to the

filing of a building permit application or prior to the granting of final subdivision approval as specified by the Maui County Administrative Affordable Housing Recommended Guidelines for Land Use Approvals, revised June 7, 2004.

3. **Ohana Units.** No ohana units shall be allowed in the Project. The deed for each unit sold in the Project and the Covenants, Conditions, and Restrictions (“CC&R’s”) for the Project shall include this restriction.

4. **Public School Facilities.** In the event that the base price of any unit of the Project exceeds \$383,400, Petitioner will pay through escrow a fee of \$3,134 for that unit to the DOE for the construction of public school facilities in the Wailuku region.

5. **Traffic Impact Mitigation.** Petitioner shall fund 100 percent of the design costs and up to 50 percent of the costs to implement the signalization of Honoapiilani Highway at East Waiko Road which includes but is not limited to underground conduits for signalization and approach lane improvements along Honoapiilani Highway and East Waiko Road as determined by the DOT. Petitioner shall also fund improvements and extension of Waiale Road between Waiko and Kuikahi Roads.

6. **Buffer and Landscape.** There will be a 20-foot buffer along Honoapiilani Highway, which shall include, within said buffer, a 15-foot right-of-way in favor of the State. Petitioner shall install landscaping within the 15-foot right-of-way to mitigate noise. Petitioner shall install a guardrail to mitigate the impact of any errant vehicles upon the six (6) homes, which abut Honoapiilani Highway as shown on the conceptual subdivision plan of the Project Assessment.

7. **Property Interest.** Petitioner shall acquire the fee simple interest in the Property in accordance with the aforesaid Real Estate Purchase and Sale Agreement within six (6) months following the date of Final Subdivision Approval granted to Wailuku Agribusiness Company relative to the Waikapu East (Large Lot) Subdivision No. 3, and shall provide the Commission with a copy of the recorded deed conveying such interest within six (6) months of the date of recordation.

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 from 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. **Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the State of Hawaii Department of Health and County of Maui to conform to the program goals and objectives of Chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the State of Hawaii Department of Health.

12. **Water Service.** Petitioner shall participate in the funding and construction of adequate water 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.

13. **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.

14. **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.

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

16. **Water Conservation Measures.** Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common areas landscape planting, and shall incorporate low flow fixtures into the construction of all units.

17. **Energy Conservation Measures.** Petitioner shall install solar water heating and attic vents or fans into all units constructed. The Petitioner shall incorporate solar energy and energy conservation techniques where feasible.

18. **Civil Defense.** Petitioner shall fund and construct adequate solar-powered 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.

19. **Archaeological Inventory Survey and Historic Preservation Mitigation Plan.** Petitioner shall comply with the conditions recommended by the State of Hawaii Department of Land and Natural Resources, Historic Preservation Division. Petitioner shall confirm in writing to the Commission that the Historic Preservation Division has found Petitioner's preservation mitigation commitments, if any, to be acceptable and has determined that any historic preservation measures have been successfully implemented.

20. **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.

21. **Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program as specified by the State Department of Health.



22. **Submission of Documents.** Petitioner shall submit to the Commission a copy of all loan documents for the Project within one (1) year of the date of this order for the Commission's review.

23. **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 reports shall be due prior to or on the anniversary of the approval of the Petition. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

24. **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.

25. **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.

26. **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.

27. **Notice of Change to Ownership Interests.** In the event the Petitioner desires to sell the Property, or its interests in the Property, or the controlling interest in Spencer


Homes prior to the completion of the development, the assignee or purchaser or transferee must record with the Bureau of Conveyances, (a) a statement acknowledging 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.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 1st day of October, 2004. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

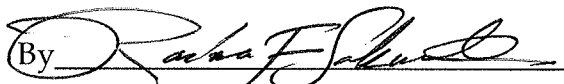
Done at Honolulu, Hawai'i, this 1st day of October, 2004, per motion on September 17, 2004, 2004.

APPROVED AS TO FORM

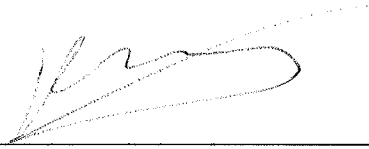
  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAI'I


By   
P. ROY CATALANI  
Chairperson and Commissioner

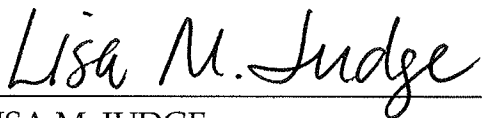
By   
RANDALL SAKUMOTO  
Vice-Chairperson and Commissioner

By absent  
PRAVIN DESAI  
Commissioner


By   
\_\_\_\_\_  
KYONG SU IM  
Commissioner

By absent  
\_\_\_\_\_  
ISAAC FIESTA, JR.  
Commissioner

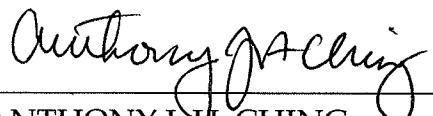
By   
\_\_\_\_\_  
STEVEN LEE MONTGOMERY  
Commissioner

By   
\_\_\_\_\_  
LISA M. JUDGE  
Commissioner

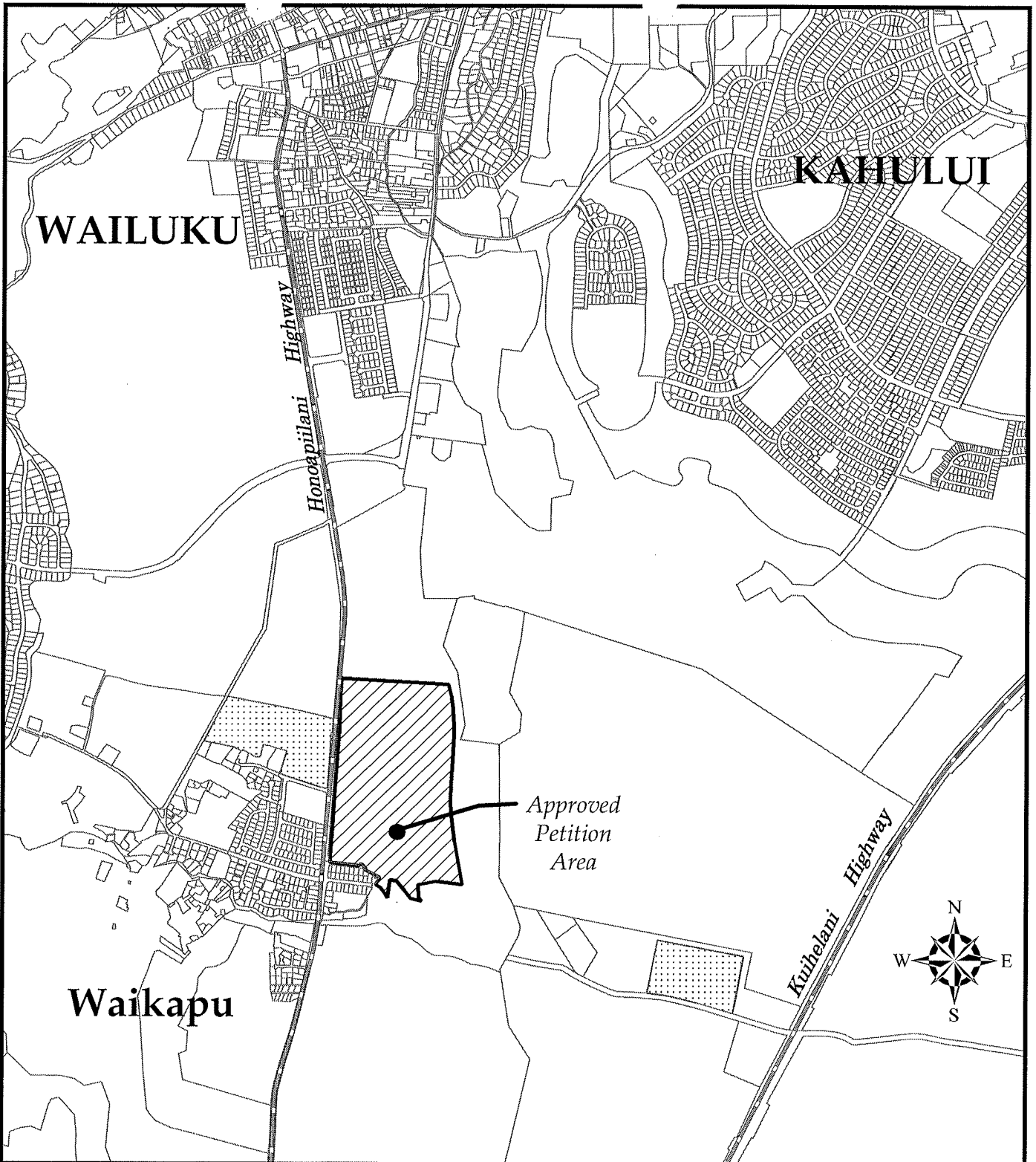
Filed and effective on  
OCT - 1 2004  
\_\_\_\_\_

By   
\_\_\_\_\_  
MICHAEL D. FORMBY  
Commissioner

Certified by:

  
\_\_\_\_\_  
ANTHONY J. H. CHING

By absent  
\_\_\_\_\_  
PETER YUKIMURA  
Commissioner

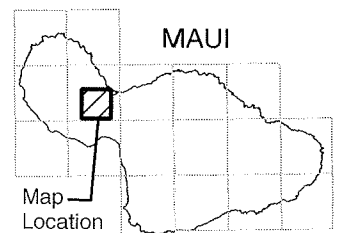


A04-750 Spencer Homes, Inc., a Hawaii Corporation,  
and the County of Maui, Department of Housing and  
Human Concerns

**Map Location**

Tax Map Key Nos: 3-5-02: por. 1  
Waikapu, Maui  
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 -750  
)  
SPENCER HOMES, INC., a Hawaii ) CERTIFICATE OF SERVICE  
corporation, and the COUNTY OF )  
MAUI, DEPARTMENT OF HOUSING )  
AND HUMAN CONCERNS )  
)  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban Land )  
Use District For Approximately 94.229 )  
Acres at Waikapu, Island of Maui, )  
Tax Map Key No: 3-5-002:001 (por.) )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

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

DEL. ABE MITSUDA  
Planning Program Administrator  
Office of Planning, Land Use Division  
State of Hawaii  
P. O. Box 2359  
Honolulu, HI 96804

JOHN CHANG, Esq.  
Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, Hawaii 96813

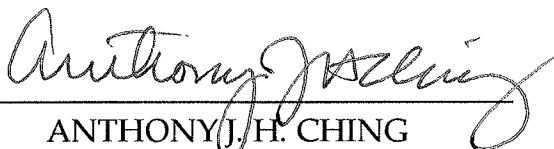
MICHAEL FOLEY  
Director, Planning Department  
County of Maui  
250 S. High St.  
Wailuku, Maui, Hawaii 96733-6898

BRIAN T. MOTO, Esq.  
JANE LOVELL, Esq.  
Corporation Counsel  
Office of Corporation Counsel  
County of Maui  
200 S. High Street  
Wailuku, Maui, Hawaii 96793

CERT.      B. MARTIN LUNA, Esq.  
              BLAINE J. KOBAYASHI, Esq.  
              One Main Plaza, Suite 400  
              2200 Main Street  
              Wailuku, Maui, Hawaii 96793-1691

OCT - 1 2004

Dated: Honolulu, Hawaii, \_\_\_\_\_.

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