

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

In the Matter of the Petition of )  
AMFAC/JMB HAWAII, INC. )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for Approximately )  
242 Acres of Land at Ka'anapali, )  
Maui, Hawai'i, Tax Map Key No.: )  
4-4-06: 13, 14, 1 (por.), 10 )  
(por.), 28 (por.) )

DOCKET NO. A90-658  
ORDER GRANTING  
PETITIONER'S AMENDED  
MOTION TO AMEND FINDINGS  
OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND  
ORDER DATED MARCH 18,  
1991

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

FEB 26 1999

Date

by

*Edward Leach*  
Executive Officer

ORDER GRANTING PETITIONER'S AMENDED MOTION  
TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER DATED MARCH 18, 1991

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STATE OF HAWAII

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ORDER GRANTING PETITIONER'S AMENDED MOTION  
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AND DECISION AND ORDER DATED MARCH 18, 1991

On November 5, 1998, Amfac/JMB Hawaii, Inc.

("Petitioner"), filed a Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated March 18, 1991 ("Motion"), pursuant to sections 15-15-70 and 15-15-94, Hawai'i Administrative Rules ("HAR"). The Motion requested the Land Use Commission ("Commission") to modify Condition Number 1 of the Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") filed on March 18, 1991, in its entirety and to replace it with the following:

- 1) Petitioner shall provide affordable housing opportunities for low, low-moderate and moderate income residents of the State of Hawaii under such terms and conditions as may be mutually agreeable between Petitioner and the Director of Housing and Human Concerns of the County of Maui; provided, however, if no agreement is reached between Petitioner and the Director of Housing and Human Concerns, Petitioner's obligations with respect to affordable housing shall be as originally provided in that certain Findings of Fact, Conclusions of Law and Decision and Order dated March 18, 1991, in Docket No. 90-658.

Attached to the Motion was a Memorandum in Support of Motion ("Memorandum in Support") which stated that i) the State's current policy was to assign responsibility to the respective counties for the specific implementation of programs under affordable housing requirements imposed by the Commission; and ii) housing conditions in the County of Maui had changed since the issuance of the Decision and Order, as evidenced by certain indices produced by and/or for the State Housing Finance and Development Corporation which demonstrated that there may be no current need for affordable housing.

On December 1, 1998, the Office of Planning ("OP") filed Testimony of the Office of Planning in Support of the Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated March 18, 1991 ("OP's Testimony"). OP's Testimony requested that Petitioner's proposed Condition Number 1 be modified as follows:

- 1) Petitioner shall provide affordable housing opportunities for low, low-moderate and moderate income residents of the State of Hawaii to the satisfaction of the County of Maui. The County of Maui shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable between Petitioner and the County of Maui; provided, however, if no agreement is reached between Petitioner and the County of Maui, Petitioner's obligations with respect to affordable housing shall be as originally provided in that certain Findings of Fact, Conclusions of Law and Decision and Order dated March 18, 1991, in Docket No. A90-658.

On December 1, 1998, the County of Maui Planning Department ("Planning Department") filed Maui Planning

Department's Memorandum in Partial Opposition to Petitioner Amfac/JMB Hawaii, Inc.'s Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated March 18, 1991 ("Memorandum in Partial Opposition"). The Memorandum in Partial Opposition stated that although the Planning Department did not oppose Petitioner's Motion as it related to that portion of the Petition Area that was zoned R-3 Residential District at the time of the reclassification, the Planning Department did oppose Petitioner's Motion as it related to that portion of the Petition Area that was zoned Interim District at the time of the reclassification, and which had since been the subject of County Ordinance No. 2663 rezoning said portion to R-3 Residential District.

Among the conditions set forth in Ordinance No. 2663 was Condition No. 12 relating to the provision of affordable housing units which incorporated by reference the Commission's Decision and Order. The Planning Department believed that Petitioner was, and remained, bound by the affordable housing provisions of Condition No. 12 of Ordinance No. 2663 until such time, if ever, Ordinance No. 2663 was amended.

The Motion came on for hearing before this Commission on December 3, 1998, in Honolulu, Hawai'i. Petitioner was represented by Stacey W.E. Foy, Esq. OP was represented by Ann Ogata-Deal, Esq., and Abe Mitsuda, OP Land Use Division Administrator. The Planning Department was represented by Brian T. Moto, Esq., and Colleen Suyama, Planner. At the hearing, Petitioner orally moved to continue the hearing in light of the

Planning Department's partial opposition to the Motion. Hearing no objections from OP and the Planning Department, the Commission granted Petitioner's oral motion to continue.

On December 29, 1998, Petitioner filed an Amendment to Petitioner's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated March 18, 1991, Filed November 5, 1998 ("Amended Motion"), pursuant to sections 15-15-70 and 15-15-94, HAR. Attached to the Amended Motion was Exhibit "A" (see attached map.) The Amended Motion requested that Condition Number 1 of the Decision and Order filed on March 18, 1991, be replaced with the following:

- 1) Petitioner shall provide affordable housing opportunities for low, low-moderate and moderate income residents of the State of Hawaii to the satisfaction of the County of Maui. The County of Maui shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable between Petitioner and the County of Maui; provided, however, if no agreement is reached between Petitioner and the County of Maui, Petitioner's obligations with respect to affordable housing shall be as originally provided in that certain Findings of Fact, Conclusions of Law, and Decision and Order dated March 18, 1991, in Docket No. A90-658 ("Original Affordable Housing Condition").

The affordable housing condition as specified herein shall apply to all of the Petition Area save and except that portion of the Petition Area that was zoned Interim District at the time of the amendment of the Land Use District Boundary from Agriculture to Urban, which area is shown on the attached map and consists of two separate parcels containing 11.82 acres and 4.23 acres respectively. The Original Affordable Housing Condition shall continue to apply to said parcels; provided, however, that in the event Petitioner is able to secure an amendment to Ordinance 2663, or secure a new ordinance amending the County's affordable housing

requirement such that the County requirement is consistent with the above, then the terms set forth in the prior paragraph shall apply to the Petition Area in its entirety.

On January 6, 1999, the Planning Department filed Maui Planning Department's Statement of No Opposition to Petitioner Amfac/JMB Hawaii, Inc.'s Amendment to Petitioner's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated March 18, 1991, Filed December 29, 1998.

The Amended Motion came on for hearing before this Commission on January 21, 1999, in Waikapu, Maui, with the parties listed in the minutes being present. OP and the Planning Department had no objections to the Amended Motion.

This Commission, having duly considered the Motion, the Memorandum in Support, the Amended Motion, and the oral and written arguments presented by the parties in this proceeding, and good cause existing therefrom,

HEREBY ORDERS that Petitioner's Amended Motion be GRANTED.

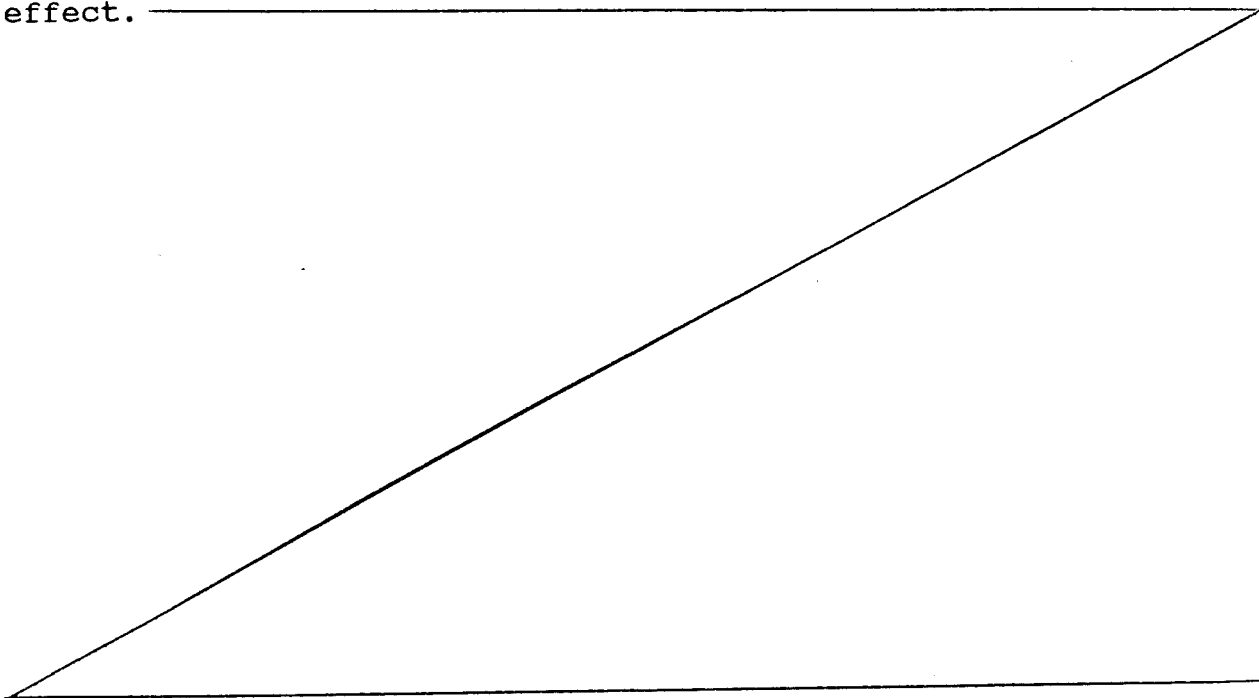
IT IS FURTHER ORDERED that Condition Number 1 be amended as follows:

- 1) Petitioner shall provide affordable housing opportunities for low, low-moderate and moderate income residents of the State of Hawaii to the satisfaction of the County of Maui. The County of Maui shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable between Petitioner and the County of Maui; provided, however, if no agreement is reached between Petitioner and the County of Maui, Petitioner's obligations with

respect to affordable housing shall be as originally provided in that certain Findings of Fact, Conclusions of Law, and Decision and Order dated March 18, 1991, in Docket No. A90-658 ("Original Affordable Housing Condition").

The affordable housing condition as specified herein shall apply to all of the Petition Area save and except that portion of the Petition Area that was zoned Interim District at the time of the amendment of the Land Use District Boundary from Agriculture to Urban, which area is shown on the attached map and consists of two separate parcels containing 11.82 acres and 4.23 acres respectively. The Original Affordable Housing Condition shall continue to apply to said parcels; provided, however, that in the event Petitioner is able to secure an amendment to Ordinance 2663, or secure a new ordinance amending the County's affordable housing requirement such that the County requirement is consistent with the above, then the terms set forth in the prior paragraph shall apply to the Petition Area in its entirety.


All other conditions to the Decision and Order filed on March 18, 1991, are hereby reaffirmed and shall continue in effect.

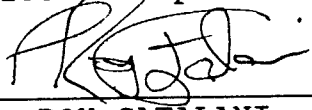



Done at Honolulu, Hawai'i, this 26th day of February 1999,  
per motions on January 21, 1999 and February 25, 1999.

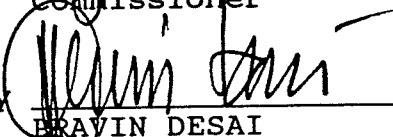
LAND USE COMMISSION  
STATE OF HAWAII

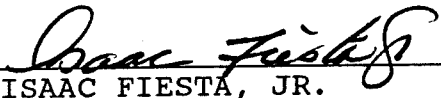
By   
MERLE A. K. KELAI  
Chairperson and Commissioner

By   
LAWRENCE NG. ING  
Vice Chairperson and Commissioner


By   
P. ROY CATALANI  
Commissioner

By   
RUPERT K. CHUN  
Commissioner

By   
BRAVIN DESAI  
Commissioner


By   
ISAAC FIESTA, JR.  
Commissioner

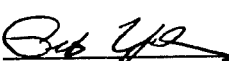
By (absent)  
M. CASEY JARMAN  
Commissioner

By   
HERBERT S.K. KAOPUA, SR.  
Commissioner

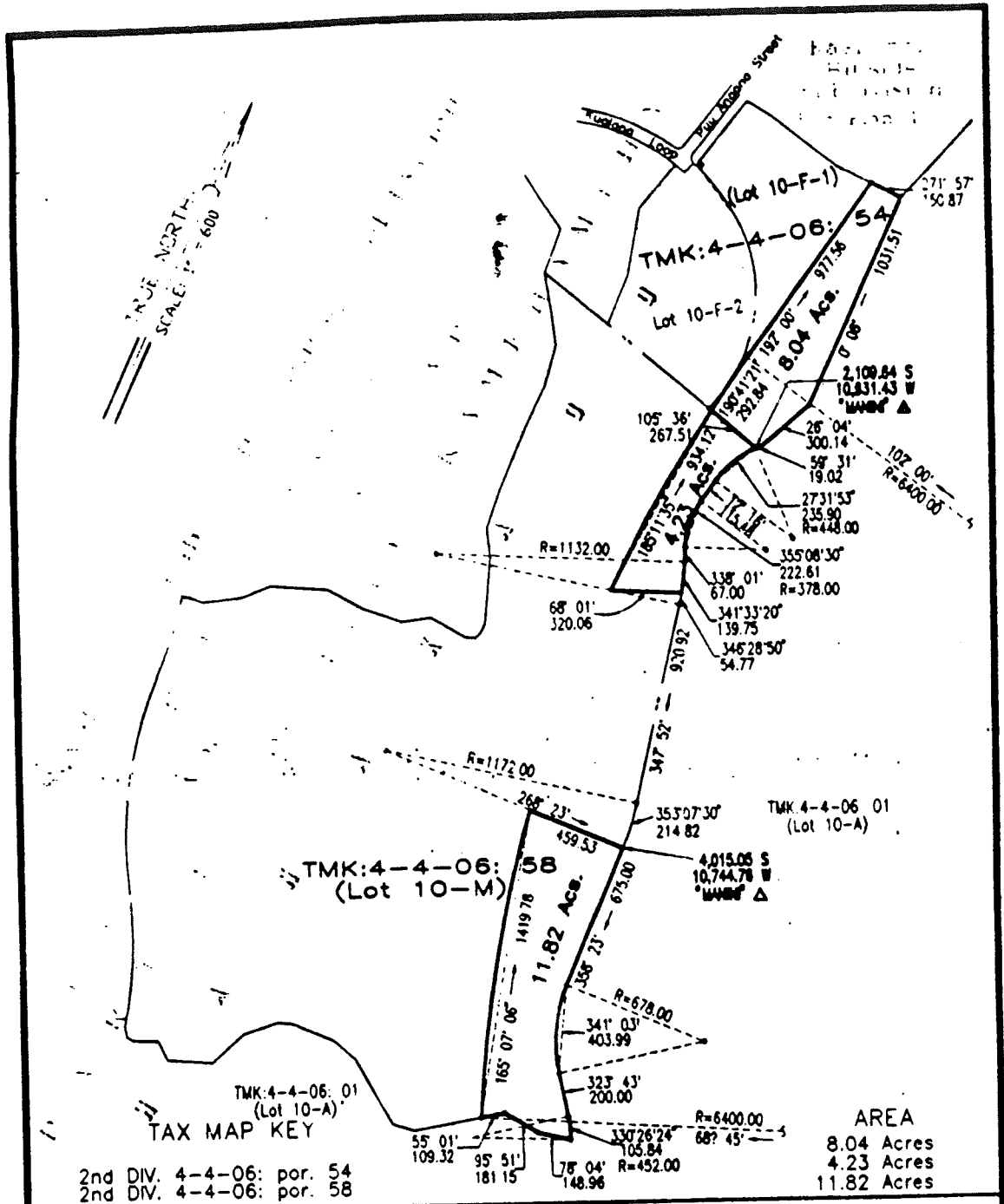
Filed and effective on  
February 26, 1999

Certified by:

  
Executive Officer

By   
PETER YUKIMURA  
Commissioner





LAND ZONING MAP NO. L-982  
CHANGE IN ZONING-HANAKAHO, LAHAINA, MAUI, HAWAII  
FROM INTERIM DISTRICT TO R-3 RESIDENTIAL

APPROVED: \_\_\_\_\_  
COUNTY CLERK DATE

APPROVED: *[Signature]* 4/25/96  
PLANNING DIRECTOR DATE

PUBLIC HEARING: 4-23-96  
ADOPTED-COUNCIL:  
ADOPTED-MAYOR:  
ORDINANCE:

DATE: \_\_\_\_\_ SCALE: 1" = 600'

DEPARTMENT OF PLANNING  
200 High Street, Wailuku, Maui, Hawaii, 96793

L-982

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

In the Matter of the Petition of )  
AMFAC/JMB HAWAII, INC. ) DOCKET NO. A90-658  
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Land Use District for Approximately )  
242 Acres of Land at Ka'anapali, )  
Maui, Hawai'i, Tax Map Key No.: )  
4-4-06: 13, 14, 1 (por.), 10 )  
(por.), 28 (por.) )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Petitioner's Amended Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated March 18, 1991 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. DAVID W. BLANE, Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

CERT. JOHN E. MIN, Director of Planning  
Planning Department, County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

CERT. JAMES B. TAKAYESU, ESQ.  
Corporation Counsel  
Office of the Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

CERT. DENNIS M. LOMBARDI, ESQ., Attorneys for Petitioner  
STACEY FOY, ESQ.  
Case Bigelow & Lombardi  
737 Bishop Street, 26th Floor  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 26th day of February 1999.

  
ESTHER UEDA  
Executive Officer