

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

In the Matter of the Petition of)
C. EARL STONER, JR. ON BEHALF OF)
S & F LAND COMPANY, INC.)
To Amend the Agricultural Land Use)
District Boundary for approximately)
51.946 Acres Into the Urban Land)
Use District at Waikapu, Wailuku,)
Maui, State of Hawai'i, Tax Map)
Key: 3-8-05: por. 1, 19, 22, and 38)

DOCKET NO. A96-717
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

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

NOV 13 1996 by *C. J. [Signature]*
Date Executive Officer

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AND DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
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C. Earl Stoner, Jr. On Behalf of S & F Land Company, Inc. ("Petitioner"), filed an Application For Land Use District Boundary Change Reclassification on April 16, 1996, pursuant to Hawai'i Revised Statutes ("HRS") section 205-4, and Hawai'i Administrative Rules ("HAR") chapter 15-15, to amend the State land use district boundaries by reclassifying approximately 51.946 acres of land situated at Waikapu, Wailuku, Maui, State of Hawai'i, identified as Tax Map Key No. 3-8-05: por. 1, 19, 22, and 38 ("Property" or "Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District for development and expansion of an existing industrial baseyard and other related uses.

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence, and argument of the parties, both written and oral;

Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; the Office of Planning's ("OP") Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Reply of Petitioner, S & F Land Company to Office of State Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order; and the entire record of this docket, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURALS MATTERS

1. On April 16, 1996, Petitioner filed an Application For District Boundary Change Reclassification ("Petition") with the Commission. The Petition was accepted as a complete filing on May 22, 1996.

2. On July 5, 1996, a prehearing conference was conducted in Hearing Room 204, Leiopapa A Kamehameha Building, 235 S. Beretania Street, Honolulu, Oahu with the Petitioner and representatives from the County of Maui Planning Department ("County") and the OP.

3. On July 26, 1996, the Commission conducted a hearing on the Petition, pursuant to notice published on June 6, 1996 in the Maui News and the Honolulu Advertiser.

4. No written or oral public testimony was received.

5. No request for intervention were filed.

6. On July 26, 1996, the hearing on the Petition was closed.

DESCRIPTION OF THE PROPERTY

7. Petitioner is the president of S & F Land Company, Inc., a Hawai'i corporation, whose principal place of business is 333 Dairy Road, Suite 202, Kahului, Maui, Hawaii 96793. A&B-Hawaii, Inc. is the fee owner of Tax Map Key parcel 1; A&B Properties, Inc., a wholly owned subsidiary of A&B-Hawaii, is the fee owner of Tax Map Key Parcels 19 and 22. Maui Electric Company, Limited is the fee owner of Tax Map Key Parcel 38. The Petitioner holds a twenty-year lease with a ten-year option for approximately 17.5 acres of Tax Map Key Parcel 19, executed with Alexander & Baldwin in 1984, Petitioner also holds a license agreement for five acres of the same parcel. Petitioner is negotiating a lease and license agreement for the remainder of the Property owned by A&B-Hawaii or its subsidiary, A&B Properties, Inc.

8. The respective fee owners of the lands within the Petition Area have authorized Petitioner to file the Petition with the Commission.

9. The Property is located in Puunene, approximately one mile south of the HC&S Sugar Mill. It is bounded on the west by Mokulele Highway, on the north by Waiko Road, and on the south and east by Pulehu Gulch. The Property is entirely surrounded by sugar cane fields, cane haul roads and appurtenant structures.

10. The Property consists of three parcels. Parcel IB, comprised of a portion of Tax Map Key Parcel 1 and Parcels 19 and 22, is approximately 26.562 acres and is occupied by the existing Central Maui Baseyard, which licenses space to primarily

construction-related contractors and subcontractors. Central Maui Baseyard has been operated by the Petitioner since 1983 under State Land Use Commission Special Permit Docket No. SP83-358. It has served as a baseyard or in a similar capacity since World War II, when it was used for military vehicle and materials storage, and thereafter, as a facility for plantation concrete batching and fabrication, logging and saw mill activity, and kiln drying and wood treatment. Tax Map Key Parcel 22, consisting of approximately 1.2 acres, is the site of a former wood treatment facility which is the subject of an ongoing Department of Health/U.S. Environmental Protection Agency hazardous waste facility closure.

11. Parcel IA, a portion of Tax Map Key Parcel 1, consists of approximately 14.328 acres and is currently undeveloped. The parcel is covered by kiawe and grass scrubland with a small agricultural sub-tenant at the easternmost end of the parcel. Parcel IC, consisting of approximately 11.056 acres, is comprised of a portion of Tax Map Key Parcel 1 and Parcel 38. Tax Map Key Parcel 38, consisting of approximately 16,800 square feet, serves as an electrical substation. The remainder of Parcel IC is in sugar cane cultivation, irrigation ditch, and service roads.

12. The course of Pulehu Gulch, an intermittent stream bed, runs from the flanks of Haleakala on the east toward the area of Kealia Pond, a U.S. National Wildlife Refuge, to the southwest. A major concrete-lined irrigation ditch transects Parcel IB, transporting irrigation water to fields north of the

Property. Another irrigation ditch transects Parcel IC parallel to Pulehu Gulch, carrying water from the north-south irrigation ditch to fields west of Mokulele Highway. Pulehu Gulch and the irrigation ditch which serves fields west of the Property connect and intersect with other irrigation ditches and natural gulches cutting through the southern Central Maui isthmus. This system of ditches and gulches eventually drain into Kealia Pond.

13. The Property is generally flat to gently sloping. The soils on the Property include Pulehu silty loams (PpA), Pulehu cobbly silt loams (PrA), and Alae cobbly sandy loams (AcA), with 0 to 3 percent slope. These are generally well-drained to excessively-drained soils occurring on alluvial fans or stream terraces. Annual rainfall ranges from 10 to 30 inches. Permeability is rapid to moderate, runoff is slow, and the erosion hazard is slight. There are only slight limitations for septic tank filter fields. The Pulehu soil series are also subject to flooding in low areas.

14. The land study bureau classification for lands west of the irrigation channel which divides the Property approximately in half is "A" while the lands east of the irrigation channel is classified "E".

15. The Agricultural Land of Importance to the State of Hawaii system (ALISH) classification for the entire Petition Area is "prime" agricultural land.

16. The entire Petition Area is classified Zone C (area of minimal flooding) on the National Flood Insurance Rate Map (FIRM).

PROPOSAL FOR RECLASSIFICATION

17. Petitioner proposes continued operation and expansion of the single-lot light industrial baseyard, offering land and basic road, water, and utility services for construction and construction-related operations, including equipment and materials storage, ancillary offices, storage of trucks and heavy construction equipment, and household moving and storage activities ("Project"). Site development will consist of improvements to the off-site water line and expansion of internal roadways and utilities. Chain link fencing, grading, and surfacing of tenant yards with crushed rock or paving materials such as asphalt or concrete would be done on an as-needed basis. Tenants will be responsible for structural improvements and will occupy space on the Property under term license agreements.

18. Petitioner proposes to expand upon the existing baseyard in two increments. Parcels IB and IA would be developed within the five years following County of Maui zoning approval. Petitioner expects that Parcel IC would be developed in the period from five to ten years following County of Maui zoning.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

19. Petitioner's Balance Sheet as of July 31, 1995 indicates total assets of \$2,928,911, which includes tenant contracts, leasehold improvements, plant, and equipment, and other assets. The Balance Sheet also lists liabilities and stockholders equity of \$2,928,911, which includes accounts payable, long-term loans and notes due, and stockholder equity.

Petitioner represented that total improvement costs over a ten-year period could be in the \$3-3.5 million range. Initial site development costs are estimated at \$2 million.

NEED FOR THE PROPOSED DEVELOPMENT

20. The Property is centrally located on the island of Maui, with ready access to business and commercial centers in Kahului and Wailuku approximately 2.5 miles to the northwest. The Property is likewise conveniently located with respect to shipping and freight facilities at Kahului Harbor and Kahului Airport.

21. The Project proposes to satisfy a need for low-cost light industrial space which could accommodate fluctuations in the County of Maui's construction and affiliated industries. These construction and affiliated industries utilize large areas of land with limited efficiency due to the need to store large items of equipment or material for intermittent use or individual use on projects from time to time.

22. The existing Central Maui Baseyard has exhibited an overall pattern of growth and demand for tenant space, but has fluctuated in area and tenant use during periods of low economic activity. The Project's provision of low cost land for intermittent use by contractor and subcontractor groups has allowed many of them to continue operations which would otherwise be curtailed due to the high cost of industrial land elsewhere. This results in a continuing employment base for workers within the industries serviced.

23. A number of Land Use District Boundary amendments and Special Permits have been approved for urban light industrial uses in the Kahului/Wailuku and Kihei areas in recent years. No market study has been provided in this docket to determine what effect these actions have had on the demand for baseyard or light industrial space on Maui. Notwithstanding the lack of a market study, there appears to be a serious problem with retail and commercial activities inflating lease rents and displacing construction baseyard and similar operations from industrial areas on Maui, as a result of retail and commercial uses being permitted in the County of Maui's M-1 Light Industrial district. Petitioner has represented that it will restrict uses on the Property to light industrial uses only and to prohibit retail and commercial activities on-site.

STATE AND COUNTY PLANS AND PROGRAMS

24. The Property is located within the State Land Use Agricultural District, as reflected on the Official Land Use District Boundary Map M-5 (Wailuku).

25. The Kihei/Makena Community Plan, of which the Property is a part, has a present designation of Agricultural for the Property. However, the current Kihei/Makena Community plan proposal as completed by the Citizens Advisory Committee and presently before the Maui County Planning Department for review by the Maui Planning Commission and Maui County Council reflects a proposed designation of light industrial for approximately 50 acres of the Property.

26. The Maui County Zoning designation for the Property is currently Agricultural.

27. Petitioner has filed a Change in Zone request with the County for approximately 40 acres of the Property. Parcel IA and IB are included in the Change in Zone request. Parcel IC was not made a part of the request as Petitioner felt that Parcel IC could be left in agricultural use and sugar use until such time that it is necessary for expansion of the Central Maui Baseyard.

28. Although the Property is within the Coastal Zone Management Area, it is not located within the Special Management Area as established by the County of Maui pursuant to HRS Chapter 205A. The Petition is in general compliance with HRS Chapter 205A.

ECONOMIC IMPACTS

29. The existing Central Maui Baseyard has exhibited an overall pattern of growth and demand for tenant space, but has fluctuated in area and tenant use during periods of low economic activity. Its provision of low cost land for intermittent use by contractor and subcontractor groups has allowed many of them to continue operations which would otherwise be curtailed due to the high cost of industrial land elsewhere. This results in a continuing employment base for workers within the industries serviced.

IMPACTS UPON THE RESOURCES OF THE AREA

30. The Property's history of long-term industrial use and its location away from recreational, scenic, and cultural resources, as well as coastal areas, results in no significant

impact on flora and fauna, archaeological and historical resources, recreational, scenic and cultural resources or coastal and aquatic resources.

Agricultural Resources

31. The small portion of sugar land on Parcel IC has been deemed expendable by the area's primary agricultural user and fee owner of the Property, A&B Hawaii, Inc.

Archaeological/Historical/Cultural Resources

32. The State Historic Preservation Division ("SHPD") of the Department of Land and Natural Resources has concluded that the Project will have "no effect" on significant historic sites. SHPD has represented that their review of the Project and their conclusions thereto is evidence of compliance with HRS Section 6E-42.

33. There are no indications of historic features within the existing baseyard area, and it appears unlikely that undisturbed remains or features are present beneath the cane plow zone or beneath the existing concrete. No evidence of unmodified or intact WWII structural remains were observed. Petitioner and representatives of the County and the OP are not aware of any active or non-active gathering or traditional Hawaiian cultural practices within the Petition Area.

Flora and Fauna

34. The Petition does not provide documentation of any flora and fauna studies conducted on the Property. Petitioner affirmed the sighting of a pueo at the Property during an OP staff site visit on July 3, 1996; the pueo was flushed from kiawe

trees in Pulehu Gulch on the southern border of the Property. OP requested that Department of Land and Natural Resources staff conduct a field inspection of the Property to ascertain its habitat value and to provide any recommendations as to mitigative measures to ensure continued use by native birds. Petitioner has represented that it will maintain a kiawe and vegetative buffer along Pulehu Gulch for the purpose of a mitigative measure to ensure continued use of Pulehu Gulch by native birds.

Groundwater Resources

35. Typical activities associated with industrial areas are such that subsurface and groundwater contamination resulting from daily operations, is possible. The soils on the Property are highly permeable. The Property is subject to ponding during lengthy periods of inclement weather, but ponding is limited and dries up quickly after such storms. To minimize the possibility of contamination, the State Department of Health ("DOH") recommended that the developer confine all maintenance and manufacturing activities which involve industrial agents to appropriately designed concrete floored areas to ensure that all spills can be contained and recovered, and intentional discharges will be discouraged.

Recreational/Scenic Resources

36. The Property fronts Mokulele Highway, a major highway used by visitors and residents. Trees and shrubs have been planted along Mokulele Highway to screen the existing baseyard operation from the highway. Additional landscaping or vegetative buffers along the perimeter of the Property may be

needed to fully mitigate the visual impact of light industrial activity in the middle of agricultural vistas.

37. The use of the Property, as represented in the Petition, is not anticipated to generate a need for additional recreational facilities or services. The project will provide a cost effective location for construction and related companies to continue to operate.

ENVIRONMENTAL QUALITY

Noise

38. The Project has no significant noise impacts. The Project is used primarily for storage and limited fabrication of construction materials, with no heavy manufacturing or continuous heavy construction activity. If necessary, construction mitigation measures such as limiting construction activities to particular hours and providing set backs from construction areas may be placed into effect.

Air Quality

39. Petitioner has previously provided dust control measures during construction within the existing Central Maui Baseyard and will continue to do so during any expansion of the baseyard.

Water Quality

40. The Project will have no significant impacts on water quality.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Road Facilities

41. The Property fronts Mokulele Highway, a two-lane State highway, with access to the Property from Waiko Road. Petitioner installed a left turn lane on Mokulele Highway at Waiko Road as required by a condition of approval of the Petitioner's Special Permit (LUC Docket No. SP83-358). The State Department of Transportation (DOT) has plans to widen Mokulele Highway from two to four lanes. Additional right-of-way or setbacks may be required at the time of widening. The DOT recommended that a Traffic Impact Analysis Report (TIAR) that identifies the impacts and mitigative measures attributable to the Project be submitted for their review and approval.

42. Roadways within the existing baseyard are 25-foot paved roadways without curbs, gutters or sidewalks. The County of Maui Department of Public Works and Waste Management is requiring that all roadways within the developed urban area shall have a minimum of 56-foot wide rights-of-way, with a minimum 40-foot wide pavement measured curb-to-curb.

Water Service

43. Existing water use and anticipated water demand are not quantified in the Petition. The Property is served by water lines connecting to the Central Maui System, whose source, the Iao Aquifer, is currently in a designation process as a ground water management area. The County of Maui must meet the Commission on Water Resource Management's (CWRM) timeframes for establishing new water sources to reduce withdrawal from the Iao

Aquifer to avoid designation. CWRM is recommending that the Petitioner work with the County of Maui to incorporate this project in the County of Maui's Water Use and Development Plan to ensure that water for urban expansion on the Property is available.

44. An old six-inch water line serves the Property's internal system of domestic and fire protection lines. This line connects to a 12-inch transmission line which terminates approximately 4,400 feet from the Property on Mokulele Highway. The 12-inch line, which connects to the County of Maui's 36-inch high pressure main between Kahului and Kihei, was put in by the Petitioner.

45. The existing fire protection system lacks adequate water flow for conventional light industrial development. The Petitioner represented that current fire flow has been tested between 570-760 gallons per minute (gpm); and that light industrial development at Wailuku or Kahului Industrial Parks is required to have fire flows of approximately 1,500 gpm. A new 12-inch transmission line is proposed to replace the six-inch line serving the site. These off-site water improvements are proposed to be done in the first phase of development activities for the subject Property.

46. Petitioner has agreed to complete this water improvement at the time expansion of the Project begins.

47. Petitioner has executed three agreements with the County of Maui indemnifying the County of Maui from any damages from fire for buildings exceeding the existing fire flow

restrictions for development on the Property. The Petitioner agrees to indemnify both the State and County of Maui with respect to fire damages to facilities until such time as the installation of the new 12-inch water line is completed.

Wastewater Disposal

48. Present wastewater disposal includes septic tank and chemical toilet facilities. Petitioner has represented that it will work with state and county agencies to assure that expansion of the Project meets state, federal and county wastewater requirements.

49. The County of Maui Department of Public Works and Waste Management commented that there are long range plans (10-15 years) to construct a new wastewater reclamation facility within the old Puunene Airport area. If and when this facility is constructed, the Petitioner may be required to connect to the wastewater system.

Drainage

50. No provisions are proposed to collect or control stormwater drainage from the Property to avoid potential runoff into the irrigation ditches on the Property or Pulehu Gulch. The Petition indicates that the Property drains well, with Pulehu Gulch and adjacent fields serving as additional drainage areas for major storm events. The Petition also represents that "the Property is...bounded on its entire south border by a dry stream bed which provides satisfactory drainage for the entire parcel." Petitioner has represented that a berm approximately 6-8 feet

high and 25-50 feet wide runs along the built-up portions of the Property abutting Pulehu Gulch.

51. The County of Maui Department of Public Works and Waste Management will be requiring a drainage and erosion control report upon further development of the Property.

52. Intermittent streams like Pulehu Gulch are classified as State waters. Discharges into State waters are regulated by the DOH. Should the Project involve any of the following types of discharges, a National Pollutant Discharge Elimination System (NPDES) general permit will be required for each activity, i.e., discharge of storm water runoff associated with construction activities, including clearing, grading, and excavation that result in disturbance of equal to or greater than five (5) acres of total land area; construction dewatering effluent; non-contact cooling water; hydrotesting water; and treated contaminated groundwater from underground storage tank remedial activity. If any type of process wastewater from the facility is proposed for discharge, the Petitioner or facility operator may be required to apply for an Individual NPDES permit.

53. Petitioner has represented that it will work with the agencies vested with responsibility for drainage controls to assure that expansion does not negatively impact adjacent lands or environmentally sensitive areas.

Solid Waste Disposal

54. The DOH commented that tenants of the Property may generate regulated hazardous wastes, such as solvents, oils, acids/bases, paints, and heavy metals. These potential hazardous

waste generators will be subject to State hazardous waste requirements found in HAR Chapters 11-260 to 11-280. Additional measures may be needed to ensure that regulated hazardous wastes are handled and disposed of properly.

55. The Property is served by a dump site on Pulehu Road, approximately two miles from the Property. The County of Maui Department of Public Works and Waste Management has commented that refuse collection shall be done by a private collector.

56. Solid waste disposal is accomplished by three private contractors, presently operating on the Island of Maui. Petitioner anticipates that tenants of the baseyard will continue to use such private solid waste disposal companies, and will urge all tenants to utilize recycling measures for solid waste disposal as they are available on island.

Schools

57. The Project will have no impact on schools.

Police and Fire Protection

58. Adequate police and fire protection personnel are provided by the main police station in Wailuku (about 2.5 miles from the Property) and the Dairy Road fire station (approximately 1.25 miles from the Property).

59. The State Civil Defense (SCD) commented that the location of the Property is beyond the coverage of any existing outdoor warning siren. The SCD recommended that the Petitioner purchase and install one 115 Db omnidirectional solar powered siren and siren support infrastructure. The recommended siren

requires a 100-foot radius buffer zone in which no residential buildings are located. Determination of the exact location and coverage should be made with SCD. A complete siren installation consists of the siren, a siren pole and appropriate grounding.

60. The SCD also commented that the Property is located in an area that is vulnerable to a variety of natural hazards other than just floods and tsunamis. As the Project develops, SCD recommends the following items be addressed:

a. The impact of tropical cyclone/hurricane force winds (to include terrain amplification), possible flooding from torrential rainfall associated with the previous phenomena and earthquakes.

b. Design and construction of facilities to mitigate and better withstand the above hazards.

c. Emergency ingress and egress of vehicles.

Electric and Telephone Service

61. Electrical and telephone service are presently available on site and will be expanded to provide service available to all future tenants.

COMMITMENT OF STATE FUNDS AND RESOURCES

62. The Project has no commitment of State funds and does not anticipate any. It will have no significant affect on State funds and resources.

CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

63. The existing baseyard is proposed to continue as contractor and storage baseyard facilities, providing low cost land for the storage of construction materials and equipment,

household goods and related items. It is a low cost alternative to light industrial/commercial areas more closely related to the urban core areas of Kahului, Wailuku, and Kihei.

64. The existing baseyard has been operating for approximately 13 years as a limited industrial facility, providing yard space for contractors and household goods storage users. Its expansion within this use will continue to provide a firm economic base for much of Maui's construction and supporting industry.

65. The proposed Project is consistent with the proposed urban designation in the Kihei/Makena Community Plan amendment filed by the Petitioner with the County and the Planning Director and Maui Planning Commission light industrial/urban designation for the recommended update of the Kihei/Makena Community Plan.

66. Public services exist or may be expanded to satisfactorily accommodate the needs of the expanded Central Maui Baseyard.

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

67. The existing Central Maui Baseyard and its proposed expansion supports and is consistent with the applicable objectives, policies, and prior guidelines of the Hawai'i State Plan, and the State Functional Plans.

68. HRS sections 226-6(a)(1) and 226-6(a)(2), provide that:

(a) Planning for the State's economy in general shall be directed toward achievement of the following objectives:

- (1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people.
- (2) A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

The Project, by providing space for construction industry users and related businesses, contributes to increased and diversified employment opportunities and assists in providing a steadily growing and diversified economic base that is not overly dependent on a few industries.

69. HRS sections 226-6(b)(6) and 226-6(b)(8), provide that:

(b) To achieve the general economic objectives, it shall be the policy of this State to:

* * *

(6) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.

* * *

(8) Encourage labor-intensive activities that are economically satisfying and which offer opportunities for upward mobility.

* * *

The Project supports the construction industry by providing reasonable cost space for the operation of a variety of construction activity. The Project also provides the construction and related industries with space to conduct labor

intensive activities which offer continuing growth within the Maui region.

70. HRS section 226-104(b)(2), provides that:

(b) Priority guidelines for regional growth distribution and land resource utilization:

* * *

(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

* * *

The Project would develop a largely marginal or nonessential agricultural area for appropriate urban use while not disturbing adjacent agricultural lands of importance.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

71. Although the Property is within the Coastal Zone Management Area, it is not located within the Special Management Area as established by the County of Maui pursuant to HRS Chapter 205A. The Petition is in general compliance with HRS Chapter 205A.

INCREMENTAL DISTRICTING

72. Petitioner proposes to develop the Project in two increments. Petitioner's first increment, consisting of Parcels IB and IA, are anticipated to be developed within five years following County of Maui zoning approval. Petitioner anticipates that its second increment, consisting of Parcel IC, would be developed in the period from five to ten years following County of Maui zoning.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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

CONCLUSIONS OF LAW

Pursuant to HRS chapter 205, and the Hawaii Land Use Commission Rules under HAR chapter 15-15, and upon consideration of the Land Use Commission decision-making criteria under HRS section 205-17, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property consisting of approximately 51.946 acres of land in the State Land Use Agricultural District, situate at Waikapu, Wailuku, Maui, State of Hawai'i, Tax Map Key Nos.: 3-8-05: por. 1, 19, 22, and 38, to the State Land Use Urban District, for the continued operation and expansion of the Central Maui Baseyard, and subject to the conditions in the Order below, is reasonable, non-violative of HRS section 205-2, and is consistent with the Hawai'i State Plan as set forth in HRS chapter 226, and the Coastal Zone Management Program as set forth in HRS chapter 205A.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. A96-717, consisting of approximately 51.946 acres of land in the State Land Use Agricultural District situate at Waikapu, Wailuku, Maui, State of Hawai'i, identified as Tax Map Key Nos.: 3-8-05: por. 1, 19, 22, and 38, 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, subject to the following conditions:

1. Petitioner shall obtain a Community Plan Amendment and a Change in Zoning from the County of Maui.

2. Petitioner shall cause to be verified that areas adjoining the former wood treatment facility site Tax Map Key No. 3-8-05: 22, are free of soil contamination due to migration of contaminants from wood treatment activities. Petitioner and/or landowner shall ensure that future use of the wood treatment facility site complies with the hazardous waste facility closure and postclosure plans for the site as approved by the State Department of Health or such other agencies as may be responsible for such approval.

3. Petitioner shall consult with the State Department of Transportation (DOT) during the processing of zoning and subdivision requests for the Property. Landowner may be required to provide dedication of land for rights of way or setbacks for

the widening of Mokulele Highway, subject to the requirements of the Department of Transportation.

4. Petitioner shall quantify existing water use and project future demand, and shall work with the County of Water Supply to incorporate this project in the County Water Use and Development Plan.

5. Petitioner shall design and construct necessary on-and off-site improvements to the project's fire protection system to meet County Department of Water Supply standards during the planned expansion of the project.

6. Petitioner shall consult with the State Department of Health and if necessary, prepare a wastewater plan which shall conform to the State Department of Health's Administrative Rules, Chapter 11-62, "Wastewater Systems". Such plan will be subject to review and approval by the Department of Health.

7. Petitioner shall require its tenants who utilize such materials to establish appropriate systems to contain spills and prevent materials associated with light industrial uses (such as petroleum products, chemicals or other pollutants) from leaching or draining into above ground or subsurface storm drainage collection areas. Petitioner will use and/or cause to be used best management practices to minimize non-point source pollution into the irrigation ditches and Pulehu Gulch.

Petitioner shall consult with the State Department of Health and County of Public Works and Waste Management and obtain any permits required or construct improvements required for storm water discharge on the Property.

8. Petitioner shall require all tenants of the property to implement best management practices to minimize possible subsurface and ground water contamination from activities on the Property. This shall include all activity including delivery, removal, storage, use and handling of industrial agents on tenant or common areas of the Property.

9. Petitioner shall require all tenants of the property to implement best management practices to minimize possible subsurface and ground water contamination from activities on the Property. This shall include all activity including delivery, removal, storage, use and handling of industrial agents on tenant or common areas of the Property.

10. Petitioner and/or landowner shall limit disturbance of the natural drainage features of Pulehu Gulch, and shall consult with the Army Corps of Engineers should any activity be proposed that would impact Pulehu Gulch.

11. Storage and/or disposal of hazardous wastes shall be approved by the applicable Federal, State, and/or County agencies prior to their establishment on the Property.

12. Petitioner shall maintain a buffer of undisturbed kiawe and vegetative cover on the Property along Pulehu Gulch to minimize disturbance to native bird habitat provided by Pulehu Gulch.

13. Petitioner shall fund and construct adequate civil defense measures as may be required by the State Civil Defense and County civil defense agency.

14. Petitioner shall cooperate with the State Department of Health and the County Department of Public Works and Waste Management to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

15. Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.

16. Petitioner shall ensure that the proposed project will not negatively impact the use of cane haul roads and irrigation ditches or otherwise interfere with continued agricultural operation of adjoining sugar cane cultivation areas.

17. Should any human burials or any historic artifacts, such as charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation Division (SHPD). The significance of these finds shall then be determined and approved by the SHPD, and an acceptable mitigation plan shall be approved by the SHPD. The SHPD must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, HRS.

18. Petitioner shall implement effective soil erosion and dust control methods during and after construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.

19. Petitioner shall inform prospective tenants and shall include in all tenant license agreements language informing tenants of possible odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and the Hawai'i Right-To-Farm Act, chapter 165, Hawai'i Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

20. The property subject of the Petition will be subject to incremental redistricting and Parcel 1C totaling 11.056 acres more or less shall be withheld from formal redistricting until (a) substantial completion of improvements for parcels 1A and 1B; (b) submittal by Petitioner to Maui County for a Zoning Change from agricultural to light industrial for Parcel 1C; and (c) approval from the County Department of Land Use and Codes for processing of said zoning change by the Planning Department.

21. Petitioner and/or landowner shall develop the Property in substantial compliance with the representations made to the Commission and the conditions imposed herein by 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.

22. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter its interest in the Property covered by the approved Petition, prior to development of the Property.

23. Petitioner shall 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 subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include any supporting documentation from State and/or County agencies related to progress in complying with said conditions. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

24. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner and/or landowner 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.

25. Petitioner and/or landowner shall record the conditions imposed herein by the Commission with the Land Court of the State of Hawai'i and/or the Bureau of Conveyances, as applicable, pursuant to Hawai'i Administrative Rules section 15-15-92.

26. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provisions of adequate assurance of satisfaction of these conditions by the Petitioner and/or landowner.

DOCKET NO. A96-717 - C. EARL STONER, JR. ON BEHALF OF
S&F LAND COMPANY, INC.

Done at Honolulu, Hawai'i, this 13th day of November 1996,
per motion on November 1, 1996

LAND USE COMMISSION
STATE OF HAWAI'I

By *Trudy K. Senda*
TRUDY K. SENDA
Chairperson and Commissioner

By *Rupert K. Chun*
RUPERT K. CHUN
Vice Chairperson and Commissioner

By *Lawrence N.C. Ing*
LAWRENCE N.C. ING
Commissioner

By *M. Casey Jarman*
M. CASEY JARMAN
Commissioner

By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

By *Lloyd F. Kawakami*
LLOYD F. KAWAKAMI
Commissioner

By *Merle A. K. Kelai*
MERLE A. K. KELAI
Commissioner

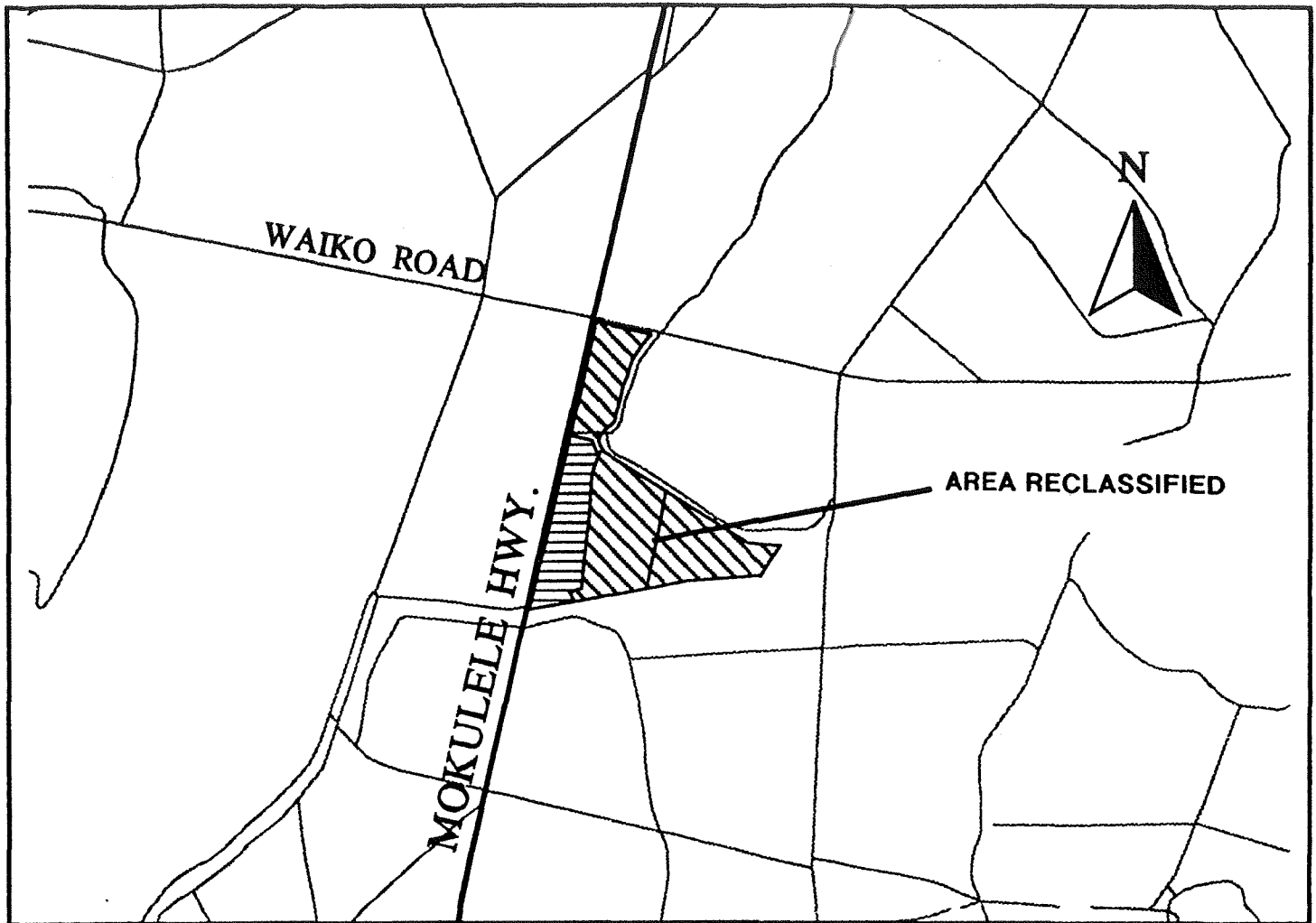
Filed and effective on
November 13, 1996

Certified by:

Robert L. ...
Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By *Joann N. Mattson*
JOANN N. MATTSON
Commissioner



DOCKET NO. A96-717

C. EARL STONER, JR. on

Behalf of S&F Land Company

LOCATION MAP

Tax Map Key: 3-8-05: por. 1, 19,
22, & 38

WAIKAPU, WAILUKU, MAUI



AREA RECLASSIFIED



**AREA SUBJECT TO
CONDITION NO. 20**

EXHIBIT "A"

