

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition)	DOCKET NO. A04-746
)	
of)	ORDER GRANTING MOTION TO
)	AMEND FINDINGS OF FACT,
WAIKAPU 28 INVESTMENT, LLC)	CONCLUSIONS OF LAW, AND
)	DECISION AND ORDER FOR A
To Amend the Findings of Fact,)	STATE LAND USE DISTRICT
Conclusions of Law, and Decision and)	BOUNDARY AMENDMENT FILED
Order for a State Land Use District)	DECEMBER 14, 2004
Boundary Amendment filed December)	
14, 2004, for approximately 28.7 acres at)	
Waikapu, Island of Maui, State of)	
Hawaii; Tax Map Key No. (2) 3-5-004:025)	
)	

ORDER GRANTING MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER FOR A STATE LAND USE DISTRICT
BOUNDARY AMENDMENT FILED DECEMBER 14, 2004

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On March 24, 2005, Waikapu 28 Investment, LLC, (“Petitioner”) filed a Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed December 14, 2004; Verification; and Affidavit of Scott Nunokawa (“Motion”), pursuant to §§ 15-15-70 and 15-15-94, Hawaii Administrative Rules (“HAR”). Petitioner requested that the Land Use Commission (“Commission”) amend Condition Number 4 of this Commission’s Findings of Fact, Conclusions of Law, and Decision and Order issued December 14, 2004 (“Decision and Order”).

Condition Number 4 in the Decision and Order provides the following:

“4. Petitioner shall work with the State Department of Education (DOE) relative to any fair share contributions. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County of Maui rezoning.”

Petitioner requested that the Commission amend Condition Number 4 to read as follows:

“4. Petitioner shall work with the State Department of Education (DOE) relative to any fair share contributions. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County of Maui final subdivision approval.”

The Motion stated that: (i) Petitioner has had, and continues to have, discussions with DOE concerning the fair share contribution, (ii) the parties have not yet been able to come to a written agreement concerning same, and (iii) Petitioner’s change in zoning application is currently being processed by the Maui County Council but has been held up based on the fact that a written agreement with DOE has not been executed.

Petitioner justified the Motion by stating that an amendment to Condition Number 4 will accomplish the dual purpose of allowing Petitioner’s change in zoning application to move forward with the Maui County Council and giving Petitioner additional time to further evaluate and discuss the fair share contribution and written agreement with DOE.

On April 7, 2005, the Commission held its meeting in Honolulu, Hawaii, to consider Petitioner's Motion.

The County of Maui Planning Department ("County") stated no objections to Petitioner's Motion.

The State of Hawaii Office of Planning, Department of Business Economic Development and Tourism ("OP") stated no objections and added that the Commission has received the memo from the DOE supporting the amendment, which reflects OP's position at this time.

At the hearing conducted on April 7, 2005, a motion to grant Petitioner's Motion as presented and deliberated was made and seconded. There being a vote tally of six ayes and two absent, the motion PASSED, having received the affirmative votes required by § 15-15-13, HAR.

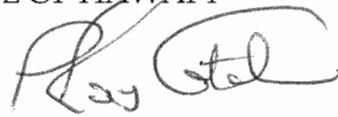
ORDER

IT IS HEREBY ORDERED that Condition Number 4 of the Decision and Order is amended to read in its entirety as follows:

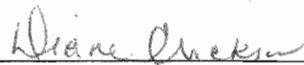
“4. Petitioner shall work with the State Department of Education (DOE) relative to any fair share contributions. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County of Maui final subdivision approval.”

Dated: Honolulu, Hawai`i, APR 26 2005.

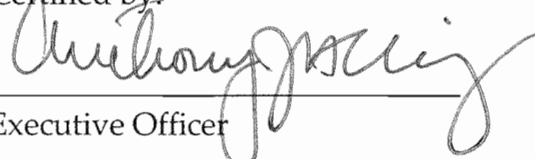
LAND USE COMMISSION
STATE OF HAWAII

By 
P. Roy Catalani
Chairperson and Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
APR 26 2005, 2005

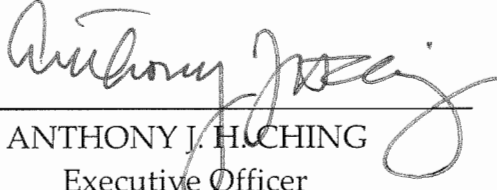
Certified by:

Executive Officer

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Dated: Honolulu, Hawaii, APR 26 2005.



ANTHONY J. HUCHING
Executive Officer