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

In the matter of the Petition of

WAIKAPU 28 INVESTMENT, LLC

To Amend the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District 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

DOCKET NO. A04-746
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

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
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

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, ________________.

LAND USE COMMISSION
STATE OF HAWAII

By ____________________________
P. Roy Catalani
Chairperson and Commissioner

APPROVED AS TO FORM:

Deputy Attorney General

Filed and effective on ________________

Certified by: ____________________________

Executive Officer

APR 26 2005

Docket No. A04-746 Waikapu 28 Investment
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
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the matter of the Petition ) DOCKET NO. A04-746
) CERTIFICATE OF SERVICE

WAIKAPU 28 INVESTMENT, LLC )
)
To Amend the Land Use District )
Boundary of Reclassify Approximately )
28.7 acres of land in the Agricultural )
District to the Urban District at Waikapu, )
Maui, Hawaii, Tax Map Key: )
(2) 3-5-004:025. )
)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the 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 was served upon the following
by either hand delivery or depositing the same in the U. S. Postal Service by as noted:

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ANTHONY J. HUCHING  
Executive Officer