

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
KAHALA CAPITAL CORPORATION,)
a Hawaii corporation)
)
To Amend the Conservation Land)
Use District Boundary into the)
Urban Land Use District for)
Approximately 217.566 Acres, at)
O'oma II, North Kona, Island and)
County of Hawaii, State of)
Hawaii, Tax Map Key No.: 7-3-09:4)
_____)

DOCKET NO. A91-666
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
SEP 22 8 07 AM '93

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FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER

KAHALA CAPITAL CORPORATION, a Hawaii corporation ("Petitioner"), filed a Petition for District Boundary Amendment on March 12, 1991, pursuant to Section 205-4, Hawaii Revised Statutes ("HRS"), and Chapter 15-15, Hawaii Administrative Rules ("H.A.R."), to amend the State land use district boundaries by reclassifying approximately 217.566 acres of land situated at O'oma II, North Kona, Island and County of Hawaii, State of Hawaii, identified as Tax Map Key No.: 7-3-09:4 ("Property"), from the Conservation Land Use District to the Urban Land Use District.

The Land Use Commission of the State of Hawaii ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the

hearings; the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order of Petitioner, the County of Hawaii Planning Department ("Planning Department"), and the Office of State Planning ("OSP"); the Planning Department and OSP's respective exceptions to the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervenor's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Responses and Objections to the Intervenor's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervenor's respective responses to the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and the responses to the Commission's proposed Findings of Fact, Conclusions of Law, and Decision and Order, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 12, 1991, Petitioner filed a Petition for District Boundary Amendment and an Amendment to Petition on March 11, 1992 (collectively referred to as "Petition"). The Petition included an Environmental Impact Statement previously submitted by Petitioner for a boundary amendment at the Property in 1986 as well as updated technical studies.

2. Petitioner Kahala Capital Corporation is a Hawaii corporation, whose principal place of business and mailing

address in the State of Hawaii and on the Island of Hawaii is 75-5751 Kuakini Highway, Suite 201, Kailua-Kona, Hawaii 96740.

3. On April 11, 1991, and by Order dated April 24, 1991, the Commission required Petitioner to prepare a Supplemental Environmental Impact Statement ("SEIS").

4. On January 9, 1992, and by Order dated February 4, 1992, the Commission accepted Petitioner's SEIS, pursuant to Chapter 343, HRS, and Chapter 11-200, H.A.R.

5. On February 24, 1992, untimely petitions for intervention were filed on behalf of Cyanotech Corporation, a Hawaii corporation ("Cyanotech"), by Kelly Moorhead, its Vice President, and Hui He'enalu O Kona ("Hui"). On February 26, 1992, an untimely petition for intervention was filed by Mahealani Pai of the Pai Ohana ("Pai"). On March 19, 1992, and by Order dated April 14, 1993, the Commission granted Intervenor status to Cyanotech, Hui, and Pai. The Commission limited Cyanotech's intervention to matters concerning air and water quality as they relate to pesticide and herbicide drift. The Commission limited Hui's intervention to matters concerning ocean water quality. The Commission limited Pai's intervention to matters involving cultural, historic, and religious concerns. Both Intervenors Hui and Pai were subsequently represented by counsel William I. Zimmerman.

6. By Order dated July 20, 1992, the Commission clarified and amended the orders granting intervention dated

April 14, 1992, pursuant to the stipulation by the parties, as follows:

- (a) To provide that the Intervenors Pai Ohana, Hui He'enalu O Kona, and Cyanotech Corporation shall be restricted to presenting testimony in their respective cases to the issues listed as follows: (a) Pai Ohana: cultural, historic and religious concerns; (b) Hui He'enalu O Kona: ocean water quality; and (c) Cyanotech Corporation: sea drift and air drift as applicable to pesticides and herbicides.
- (b) Each Intervenor shall be permitted the opportunity to cross-examine each witness on all relevant matters testified upon by that witness and each Intervenor shall not be limited to the scope of their intervention.

7. A prehearing conference was conducted on March 6, 1992, at Honolulu, Hawaii, at the conference room of the Department of Business, Economic Development, and Tourism, 11th Floor, Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii, with all parties and the proposed Intervenors in attendance.

8. The Commission conducted hearings on the Petition on March 19 and 20, 1992, April 30 and May 1, 1992, July 9 and 10, 1992, August 27 and 28, 1992, November 12 and 13, 1992, February 24, 1993, and on May 26, 1993 pursuant to notices

published on February 6, 1992 in the Hawaii Tribune Herald, the West Hawaii Today, and The Honolulu Advertiser.

9. On March 19, 1992, the Commission admitted into evidence, without objection, a letter from Maurice H. Kaya, Energy Division, Department of Business, Economic Development and Tourism, commenting on the Draft SEIS and a letter from William Paty, Chairperson, Department of Land and Natural Resources ("DLNR"), commenting on the Final SEIS.

The Commission received written testimony from Elizabeth Ann Stone, Alice Goo, Karen Klein, George Yokoyama, Gilbert Kahele, Representative Virginia Isbell, Carol C. Moran, Scott Fuller, and Frank Deluz, III. The Commission also received written testimony from Richard Nast, John Dye, John Wood, James Paulik, Jeff Hanlon, Jeff Brandenburg, Robert Meierdiercks, Henry Warner, Paul Reiss, Keith Green, Pete Lindsey, Gregory G. Ogin, Tom Provalenko, Craig Yamaguchi, and Kent Nakashima. All of these letters were received into evidence by the Commission, without objection, on March 19, 1992.

10. On March 19 and 20, 1992, the following individuals appeared and testified as public witnesses, without objection: Representative Mike O'Kieffe, Clare Hachmuth, Gerald R. Cysewski, J. Anthony Hanley, Buzzy Hong, Sam Rupp, Marilyn Debus, Barbara McLean, Maitland Akau, Tom Allen, James Schleiger, Howard Johnson, Warren P. Chong, Robert Shane Rohan,

Robert Glasser, Marty Herkes, Karen Eoff, Douglas Blake, and Judy Graham.

11. On April 30, 1992, the Commission admitted into evidence, without objection, letters from George R. Ariyoshi of Hawaii Cultured Pearls, Inc. and Barbara McLean of the West Hawaii Sierra Club.

12. On July 10, 1992, Margaret Mulhall testified as a public witness. On August 27, 1992, Margaret Johnson testified as a public witness.

13. On February 24, 1993, the Commission admitted into evidence, without objection, written testimony from Kathleen Becker Foley. The Commission also admitted into evidence without objection a signed petition submitted by Stephen Martin. The following individuals testified as public witnesses: Stephen Martin, Jerry Coiner, Rodney Felts, Robert Shane Rohan, David Roy, Jr., Pali Mench, Janice Palma, Michael Glass, Ralph Blancato, Karen Eoff, Carol C. Moran, Arthur Stockel, and Roland Kleger.

14. On May 26, 1993, letters from the following individuals were admitted into evidence by the Commission, without objection: Councilman Jim Rath, Alastair Glennie, Joy Licavoli, Greg Gaffney, Terian Tyre, Kathryne J. Kent, The Evett Family, Gail Bickett, Senator Andrew S. Levin, Anuhea Reimann-Giegerl, and Maile P. David. In addition, newspaper articles and brochures from Margaret Johnson and County of Hawaii, State of Hawaii, Resolution No. 536-92 (Draft 3)

submitted by Mahealani Pai were admitted into evidence by the Commission, without objection. The following individuals testified as public witnesses: Margaret Johnson, Councilman Jim Rath, Harry Foster, Jon Matsuoka, Douglas Blake, William Lazenby, Representative Virginia Isbell, Anuhea Reimann-Giegerl, Maile P. David, Charles Young, Gail Bickett, Jonathan Kemp, and Alena Kaiokekoa.

15. On November 4, 1992, counsel William I. Zimmerman on behalf of Intervenors Hui and Pai filed a Notice of Conflict and Motion for Continuance stating his inability to attend the Commission's continued hearing scheduled for November 12, 1992, due to a scheduling conflict as well as additional grounds preventing Intervenor Pai from attending the continued hearing. On November 12, 1992, and by Order dated December 9, 1992, the Commission denied the request of Intervenors Hui and Pai to continue the hearing. The Commission further ordered that Intervenors Hui's and Pai's right to cross-examine Petitioner's witnesses, Norbert A. Schlei, Stuart Z. Cohen, Richard C. Honeycutt, and Tim Canute, be preserved in a manner and fashion acceptable by the parties or in the absence of mutual agreement as determined by the Commission.

16. On February 17, 1993, Petitioner and Intervenor Cyanotech entered into a Mutual Agreement (with Keahole Point Association also participating), which was recorded in the Bureau of Conveyances as Document No.: 93-026582. By letter dated February 24, 1993, Kelly Moorhead on behalf of Cyanotech

notified the Commission of its withdrawal as an Intervenor with respect to Docket No. A91-666 upon the recording of the Mutual Agreement. On February 24, 1993, and by Order dated March 11, 1993, the Commission granted Cyanotech's Motion to Withdraw as an Intervenor.

17. On February 24, 1993, Mr. Zimmerman orally moved to withdraw as counsel for Intervenor Pai with the approval of Mr. Mahealani Pai on behalf of Intervenor Pai. On February 24, 1993, and by Order dated March 11, 1993, the Commission granted Mr. Zimmerman's Motion for Withdrawal of Counsel for Intervenor Pai.

18. On August 6, 1993, Intervenor Pai filed a written objection to the location of the Commission's action meeting on this Docket No. A91-666. On August 11, 1993, counsel William I. Zimmerman on behalf of Intervenor Hui notified the Commission of his joinder with Intervenor Pai's objection.

19. On August 9, 1993, Petitioner filed a Motion to Strike Exhibits Submitted by Intervenor Hui regarding exhibits which were attached to Intervenor Hui's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

20. On August 12, 1993, the Commission held its action meeting in Lanai City, Lanai with all the parties appearing except Intervenor Hui. At the meeting, Alan Murakami, Esq., made a special appearance and represented that

he was authorized to submit oral argument on behalf of Intervenor Pai, and that he further objected to the location of the action meeting. Upon hearing arguments from the parties, the Commission considered Mr. Murakami's oral objection and Intervenor Pai's written objection to the location of the action meeting and noted said objections.¹⁾ The Commission also entered into evidence, without objection, a letter from Councilman Jim Rath dated August 5, 1993. Both Councilman Jim Rath and Stephen Martin appeared in person and testified as public witnesses. The Commission granted Petitioner's Motion to Strike Exhibits submitted by Intervenor Hui.

DESCRIPTION OF THE PROPERTY

21. The Property is a single lot, located in the Conservation District at O'oma II, North Kona, Hawaii, consisting of approximately 217.566 acres, and identified by Tax Map Key No.: 7-3-09:4. The Property is located approximately seven miles north of Kailua-Kona and one mile south of Keahole Airport.

22. The Property is bounded on the east (mauka) by an approximately 83-acre parcel, identified by Tax Map Key No.: 7-3-09:22, which is beneficially owned by Petitioner although title to the parcel is vested in American Trust Company of

¹⁾ Inasmuch as the hearing proceeded to action, Mr. Murakami's and Intervenor Pai's objection to the location of the action meeting were rejected sub silentio.

Hawaii, Trustee. Queen Ka'ahumanu Highway and the State-owned portion of O'oma II consisting of approximately 800 acres mauka of Queen Ka'ahumanu Highway lie to the east of Petitioner's land. These State-owned lands are included in the Petition for District Boundary Amendment by the Office of State Planning under Docket No. A92-685 seeking reclassification from the Conservation and Agricultural Districts to the Urban District.

23. The Property is bounded on the west (makai) by the Pacific Ocean. The Property is bounded on the north by the Natural Energy Laboratory of Hawaii Authority ("NELHA"). NELHA is a public body corporate and politic of the State of Hawaii duly organized and existing pursuant to Chapter 227D, HRS, involved in the research and commercial application of alternative energy systems, aquaculture and related fields, utilizing deep ocean water pumped ashore via off-shore pipelines. A portion of these State-owned lands, identified as Tax Map Key No.: 7-3-09: 23, was received by the State in the 1986 land exchange with Petitioner, in which Petitioner received the approximately 83-acre parcel identified as Tax Map Key No.: 7-3-09:22. Parcel 23 is the subject of a Petition for District Boundary Amendment under Docket No. A91-669 currently pending before the Commission, which seeks to reclassify the parcel from the Conservation District to the Urban District.

24. The Keahole Airport is approximately one mile north of the Property. The Keahole Agricultural Park is

located north of the Property and east (mauka) of the highway. This Park is located on State-owned land and was developed by the State of Hawaii.

25. Nansay Hawaii, Inc. ("Nansay") owns the 470-acre property at Kohanaiki directly south of the Property. Nansay proposes to develop its lands as a multi-use resort development.

26. Immediately south of Kohanaiki is the Kaloko-Honokohau National Park being developed by the U. S. National Park Service. Mauka of the National Park is the Kaloko Industrial Park consisting of 194 fee-simple one-acre industrial lots.

27. The Property is presently vacant and in its natural state.

28. Fee simple ownership of the Property is vested in American Trust Company of Hawaii, Inc., a Hawaii corporation, which holds title in trust for Kona Oceanfront Properties ("KOP"), a Hawaii limited partnership whose Certificate of Limited Partnership was recorded on January 9, 1984.

Petitioner is the Managing General Partner of KOP and as such has the authority to perform all acts connected with the Property, including development and improvements, as deemed to be in the best interest of the partnership.

29. The geology of the Property and surrounding area is dominated by lava flows, primarily pahoehoe with a few a'a flows near Puhili Point. The lava varies in thickness from 6 inches to 100 feet. The layers are very porous and contain

numerous lava tubes, cracks, and fissures. Along the coast area, the substrate may vary from unconsolidated coral sand to coral rubble to weather-worn pahoehoe.

30. The Property has elevations ranging from sea level at the coastline to approximately 85 feet above mean sea level ("msl") at the southern mauka boundary. The land slopes gently with average slopes ranging from 0-5 percent. Localized mounds and depressions, characteristic of lava flows, are present throughout the site.

31. The U.S. Department of Agriculture Soil Conservation Service ("SCS") identifies the following soil types for the Property: a'a (rLV) and pahoehoe lava flows (rLW). The beach area is composed of sand and coral cobbles in the stable upper reaches and coral sand near the water's edge. The SCS survey indicates that the Property is not suited for agricultural use.

32. The University of Hawaii Land Study Bureau's Detailed Land Classification for the area classifies the soil on the Property as E319/E320/E327. These soil classifications indicate the general lack of suitability for agricultural purposes. None of the Property is classified in the Agricultural Lands of Importance to the State of Hawaii ("ALISH") system.

33. The Property lies in an area of low rainfall amount and intensity. The mean annual rainfall is less than 20 inches a year.

34. Vegetation on the lava flows is composed of a grass-scrub community and, along the coastal area, a strand community.

35. There are no naturally occurring drainage ways. A man-made ditch on the mauka side of Queen Ka'ahumanu Highway conveys the runoff to culverts located to the north and south of O'oma II, discharging storm waters away from the Property. The existing O'oma watershed contains an area of approximately 482 acres and there are no perennial streams or well-defined water courses. Most of the ground surface is covered with basaltic cobbles and gravel with localized exposures of *in situ* basalt rock formation. The porous character of the lava results in rapid percolation of rainwater.

36. The Property is potentially impacted by three principal natural hazards: seismic activity, lava flow inundation, and tsunami and storm wave inundation. Seismic activity is relatively common in most areas on the Island of Hawaii and may be mitigated by various engineering and building methods. The potential for lava flow inundation of the area associated with Hualalai is considered to be slight. The latest historical eruption of Hualalai occurred in 1801 resulting in a lava flow which reached the sea in the Keahole area. The Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (May 3, 1982) have identified coastal high hazard areas at risk from flooding due to tsunami and high wave run-up. The 100-year flood boundary closely

follows the coastline makai of the beach trail except near Puhili Point where the boundary extends inland for approximately 500 feet. Portions of the Property are located in flood hazard area AE (areas inundated by the 100-year flood with base flood elevations of seven to nine feet above msl). Other portions of the Property are located in flood hazard area VE (areas inundated by the 100-year coastal flood with velocity hazards and a base flood elevation of nine feet above msl).

PROPOSAL FOR RECLASSIFICATION

37. Petitioner has proposed a multi-use development plan for the approximately 300 acres of land comprising the Property and the adjoining 83-acre parcel identified by Tax Map Key No.: 7-3-09:22. The proposed development would include a Marine Exploratorium, Water Recreation Park, and Professional Conference Center designed to serve as a visitor attraction and a center for ocean science education and recreation. The proposed development would also include an 18-hole golf course with clubhouse and lodging inn of approximately 50 to 60 rooms; approximately 70 to 100 residential lots situated within two communities fronting the golf course; approximately 130 to 230 condominiums with golf course frontage; a small retail center (approximately 35,000 square feet); and an oceanfront first-class hotel providing approximately 550 rooms (collectively referred to as "Project").

38. Petitioner originally proposed an Ocean Science Center featuring educational and scientific exhibits on

Hawaiian marine ecosystems with a concentration on the various systems and environment which exist at or near Keahole Point. A restaurant and meeting facilities were also planned within the Center. Also included in the original development proposal was a seven-acre saltwater Water Recreation Park. Petitioner subsequently amended its plan and incorporated the Marine Exploratorium in place of the Ocean Science Center due to the plans of tenants at neighboring NELHA who have also proposed the development of an ocean science center. Petitioner subsequently amended the seven-acre saltwater lagoon to an approximately 3 1/2-acre Water Recreation Park. Petitioner further revised the design of the Park to its present configuration as described in finding 37.

39. The shoreline and beach strand areas of the Property are proposed to be essentially left in their natural condition. The area 150 feet mauka of the shoreline would remain in the Conservation District ("Conservation Reservation Area") and there would be an additional area, an average of 190 feet from the boundary between the Conservation Reservation Area and Urban District in which no vertical improvements would be constructed ("No Vertical Improvement Area"). The existing shoreline trail would be incorporated into the Ala Kahakai Demonstration Trail Project under the Na Ala Hele branch of DLNR. The shoreline and beach strand areas would be open to the public on a 24-hour-per-day basis, without any charge.

40. The Marine Exploratorium is proposed to be an educational and recreational amenity for residents which combines elements of a swim-through reef exhibit, related display/habitat areas, and cultural displays and activities. This complex would be designed to provide opportunities for passive or interactive experience ranging from a walk-through exhibit to a reef-swim adventure. One focus of the Marine Exploratorium would be human exploration of the ocean including cultural, historical, educational, and technological exhibits which demonstrate and interpret human efforts to explore and understand our ocean and shoreline environments. The Exploratorium may include displays of ancient and modern ocean exploration techniques and technologies. It is also intended for the swim-through lagoon area to serve as an underwater location or set for film and television work.

The Marine Exploratorium would also include a full-service restaurant which would offer underwater views of the lagoon as well as double as an art gallery featuring the work of top marine and local Hawaiian artists.

41. The proposed professional Conference Center would be planned in conjunction with the Marine Exploratorium and would be designed to service business and professional gatherings of a scientific and technical nature. The Conference Center would be planned to include function rooms readily subdividable into spaces of varying size, advanced communications technology permitting teleconferencing and

satellite reception and high quality audiovisual capacity. It is anticipated that conference attendees could stay at the First-Class Hotel and the attendees and their families could utilize the Marine Exploratorium (including evening functions), the Water Recreation Park, and the golf course.

42. The proposed Water Recreation Park would be open to the general public. The Water Recreation Park would include approximately three "Flow-Rider" wave simulators, together with related water slides, river rides, pools, a public keiki pool, and related activities.

43. It is anticipated that the standard adult rates at the Marine Exploratorium and the Water Recreation Park may be approximately \$13.50 and \$8.25 in 1992 dollars, respectively. For children, the standard rate at the Marine Exploratorium and Water Recreation Park may be approximately \$9.75 and \$6.50, respectively. There would be discounts for local residents and special groups.

44. The proposed Project would include a regulation par 72 golf course planned as a recreational and open space amenity within the O'oma II community, which would include a driving range, practice greens, and a clubhouse with pro shop, restaurant, pool, and cart barn. There would be a Japanese-style inn (ryokan) with approximately 50 rooms near the clubhouse. The course would be private but affordable public play would be provided. The inn may be joined with the course as an economic unit as course memberships may include reduced

room rates in the inn or similar arrangements. Alternatively, the inn may be used for extended-stay visitors or as accommodations for groups using the Conference Center.

45. The proposed Project would include two types of residential properties: single-family dwellings and condominiums. All residential properties would be located on the more mauka portions of the O'oma II Property because of design requirements resulting from airport noise considerations.

46. The Project would include 70 to 100 golf course frontage lots of approximately 10,000 square feet and 130 to 230 golf course condominiums. Most residential units would have golf course frontage and would be supported by recreational facilities, including tennis courts and swimming pools. The projected sales prices of the lots would range from \$250,000-\$300,000 in 1990 dollars, while the condominiums are projected to range in price from \$340,000-\$375,000 per unit in 1990 dollars. Petitioner's market study does not substantiate a target market for these units at this time with data specific to the Project. Instead the market study applies information from other projects, including a project on Maui, and infers that a market exists for units at this Project.

47. The proposed development would include a First-Class (not luxury) Hotel of approximately 550 rooms located near the O'oma II/Kohanaiki boundary. The hotel would service the Conference Center and provide accommodations for families visiting the Marine Exploratorium, business travelers,

and more budget-minded visitors. In and around the hotel, there would be food and beverage facilities, recreational amenities, and approximately 200 parking stalls.

48. The rates at the hotel would range from \$130 to \$150 per night in 1992 dollars.

49. The intended market for the hotel would be the free and independent travelers who are price conscious, business travelers. There would be a retail center near the hotel containing retail shops and restaurants overlooking the lagoon and golf course together with approximately 300 parking stalls.

50. Petitioner provided only a generalized description of the manner in which it would address the housing needs of the low, low moderate, and gap group income residents of the County of Hawaii. Petitioner has not provided any preliminary plan outlining: (1) location of any proposed sites, whether on-site or off-site; (2) projected number of units, (3) sale prices; and (4) should an off-site location be proposed, identification of other landowners and/or developers and any agreements with them.

51. The Property is intended to be developed on a phased basis with basic infrastructure (including public beach access and parking, internal roadway, water, sewer and electrical systems), landscaping, golf course, golf clubhouse, and inn developed first. The basic infrastructure is estimated to require two years to construct. The initial phases of the

Marine Exploratorium, Conference Center, Water Recreation Park, hotel, and retail center would be developed concurrently during this first phase. Petitioner's proposal that the golf course house lots and condominiums would be developed on a timetable driven by anticipated market absorption results in an indefinite development timetable.

52. The basic infrastructure is estimated to cost \$41,039,000 in 1991 dollars. Petitioner has not provided preliminary information on the costs of construction of the hotel and residential units. Information on the costs for obtaining seawater for the Marine Exploratorium and Water Recreation Parks from NELHA were not provided.

53. Petitioner testified that Petitioner prepared an appraisal and feasibility study which computed projected expenses and revenue until 2010 and 2015 and which indicated to Petitioner that the proposed Project was financially feasible. Petitioner did not submit the study nor substantiate the appraisal and feasibility study with any statistical data demonstrating the economic feasibility of the Project.

54. Petitioner proposed a figure in excess of \$300 million to complete the Project. Petitioner testified that without the benefit of any architectural work, this was a ballpark figure.

55. Petitioner proposes to plan and establish the parameters of the proposed Project and then engage other investors to develop the units or components within the

Project. Petitioner did not provide any timetable as to when the parameters of the proposed Project would be planned and established. Petitioner did not provide the identity of the other investors who will provide financing and/or develop the residential or condominium units or the Marine Exploratorium, Water Recreation Park, golf course, conference center, retail center, clubhouse, and lodging inn.

56. Petitioner intends to maintain overall control and overall direction of the Project.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

57. Petitioner's Balance Sheet, dated December 31, 1990, reflects total assets of \$8,203,970 (including investments in real estate: \$7,775,000; accounts receivable: \$138,500; equipment: \$67,400; Hale Pohaku Condominium: \$210,120; leasehold improvements: \$3,550; and prepaid expenses and other assets: \$9,350). Total liabilities were \$1,349,080, and shareholders' equity was \$6,854,890.

58. The beneficial owner of the O'oma II Property is KOP. The partners of KOP, including Petitioner and Norbert A. Schlei, have a combined net worth in excess of \$150 million. In addition, KOP is in a position to pledge the entire value of the O'oma Property in support of development financing.

59. Mr. Schlei has limited experience as a developer in Hawaii. Other than the O'oma Project, he was involved in a small condominium project in Aiea, Oahu in 1988 or 1989.

Petitioner did not provide specific and definitive information of the manner in which Petitioner proposed to finance the development.

60. Petitioner's Chairman and sole stockholder, Mr. Norbert A. Schlei, disclosed to the Commission that he was indicted by a federal grand jury in Tampa, Florida on criminal charges, including conspiracy to sell counterfeit foreign securities, mail fraud, wire fraud, and bank fraud. As a result of the indictment, Mr. Schlei testified that he immediately placed his shares in Kahala Capital Corporation into a voting trust, with Mr. Robert Van Dorpe acting in the capacity as Trustee. On November 12, 1992, Mr. Van Dorpe entered into a contract executed by Mr. Schlei as president of Kahala Capital Corporation, Mr. Schlei as managing general partner of Kona Oceanfront Properties, and Norbert Schlei individually. On November 12, 1992, the parties entered into a supplemental agreement which contains provisions relieving Mr. Van Dorpe of any responsibilities for representations previously made by Mr. Schlei. Pursuant to the agreements Mr. Van Dorpe serves as Chairman of the Board of Kahala Capital Corporation and would be responsible for managing and directing the development of the Project. Mr. Van Dorpe's testimony about his education and prior work background indicated that he had no experience as a developer of a project of this scope or nature. Mr. Van Dorpe's testimony also indicated that he was

unfamiliar with much of the Project, including his responsibilities for obtaining financing for the Project under the terms of his contract and Petitioner's relationship as well as its representations to its limited partners.

61. It is uncertain how Mr. Schlei's indictment and his actions placing his shares in Kahala Capital Corporation in a voting trust after his indictment would impact

1) Petitioner's financial capability to undertake the Project, 2) the financial feasibility of the Project itself, 3) the timetable to complete the Project as proposed, 4) the extent of Mr. Van Dorpe's role in the Project, and 5) Mr. Van Dorpe's ability to carry out the representations of Mr. Schlei.

STATE AND COUNTY PLANS AND PROGRAMS

62. The Property is situated within the State Land Use Conservation District as reflected on State Land Use District Map H-2 (Keahole Point).

63. The proposed reclassification conforms to the County of Hawaii General Plan for the Property. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map for the Property designates the Property as Resort, Alternate Urban Expansion, and Open. The County of Hawaii General Plan Land Use element designates O'oma II as an Intermediate Resort Development.

64. OSP's West Hawaii Regional Plan identified the Property within the Keahole/Keauhou Resort Destination Node.

65. OSP's Five Year District Boundary Review identified the Property as an area for urbanization in West Hawaii.

66. The Keahole-Kailua Development Plan adopted by the County of Hawaii designates the following uses for the Property: resort/recreation, ocean research, commercial/industrial, and ocean recreational and coastal zone for the area along the shoreline.

67. The existing County of Hawaii zoning designation for the Property is Open. Zoning changes would be required for the Project.

68. The Property is situated within the County of Hawaii's Special Management Area ("SMA"). SMA approvals would be required for the Project.

69. Planned Unit Development and subdivision approvals, grading, and building permits would be required to allow the uses proposed for the Property.

NEED FOR THE PROPOSED DEVELOPMENT

70. Petitioner's marketing consultant, KPMG Peat Marwick, prepared a market study entitled, "Market Assessment for the O'oma II Ocean Science and Recreation Community," dated December 12, 1990, as amended/supplemented by updated information presented as Petitioner's Exhibit 93 for the proposed development of the Property and adjoining lands. Mr. Schlei testified that components of the Project are

designed to be mutually supportive to each component in order for the Project to be successful.

71. Petitioner has not substantiated the market study for the residential lots with information on household income and other demographic profiles to confirm that there is a market of potential buyers in the County of Hawaii.

72. It is anticipated that the hotel would have the following occupancy rates:

1996 - 65 percent

2000 - 75 percent

2005 - 85 percent

These projections are based on 1) an anticipated upturn in hotel occupancy State and island-wide from the current decline in hotel occupancy rates; and 2) that the Project would be a unique development providing amenities that current hotels in West Hawaii do not provide, such as the Marine Exploratorium, Water Recreation Park, and Conference Center. The proposed First-Class Hotel is critical to the success of the Project since it would provide an on-site population to support the proposed unique facilities. In turn, the viability of the Project depends upon the unique features of the Project. The absence of these unique features would jeopardize the viability of the Project.

73. Petitioner utilized the Department of Business, Economic Development, and Tourism's visitor arrival projections as a basis for doing the hotel market assessment, which

projected an approximate 5.9 percent increase in arrivals per year for the Island of Hawaii from 1990 to 2010. During 1990-1991 and 1991-1992, these projections were not met.

74. Petitioner did not provide a comprehensive market study that considered all components of the Project to substantiate a demand for the First-Class Hotel. The market study instead provided separate potential demand analysis for each component based on comparable features in the State and elsewhere. Petitioner did not adequately substantiate its projection with data to indicate that there will be a demand for the First-Class Hotel within its target market when the hotel is anticipated to be completed. The market demand for the golf course is dependent, in part, on the projected number of visitors staying in the hotel, residences, and condominiums, and the full and part-time residents of the single-family homes and condominium units. Petitioner did not present any expert testimony to support the economic feasibility of the Project.

75. The Planning Department expressed concern that subsequent rezoning of the Property for the purpose of establishing an intermediate resort community at this time may create an abundant supply of resort uses when other proposed resort developments in the North Kona and South Kohala Districts approved by the Commission and the County in the past have not materialized.

76. Petitioner anticipates that the retail commercial units would be patronized mainly by on-property residents and

visitors, and therefore, projections on retail spending would be dependent on the ability of the Project to attract residents and visitors.

ECONOMIC IMPACTS

Impacts on Employment

77. Petitioner projects that employment opportunities would be made available by the development of the Property. The development of O'oma would impact the economy through additional visitor expenditures, generation of construction and operation jobs, creation of additional personal income, and through population growth. Direct construction employment for the Project would be greatest in the 1993-1996 periods, providing an average of 270 full-time equivalent jobs per year. Construction employment is anticipated to be 2,300 person years over the life of the Project.

78. Petitioner anticipates that operational employment would be in the areas of the hotel, golf course, commercial, Marine Exploratorium, Water Recreation Park, and Conference Center. By 1996, Petitioner anticipates the Project would require approximately 1,090 full-time equivalent employees, and by buildout in 2000, approximately 1,140 full-time employees.

79. Petitioner anticipates that development of the Property would result in the creation of new types of employment opportunities in addition to traditional resort and construction-related jobs. Petitioner anticipates that the

Marine Exploratorium, Water Recreation Park, and Conference Center would create jobs for marine biologists, aquarists, lifeguard/water recreation instructors, cultural specialists, water quality specialists, audiovisual specialists, actors, artists, and high technology specialists.

Impacts on State or County Revenues

80. Petitioner anticipates that total projections for direct personal income from the Project represents approximately \$22 million per year in 1996 and up to and approximately \$12 million per year in 2010.

81. Petitioner anticipates that total real property tax revenues would be \$1.4 million per year in 1996, increasing to \$1.78 million per year by 2010. Petitioner anticipates that income generated as a result of indirect taxes, such as sales, individual, liquor, and fuel would generate an estimated \$5.1 million in 1996 and reach \$7.2 million in 2010.

82. Petitioner anticipates that the Project would generate for the County of Hawaii a net additional earnings of \$500,000 in 1996 which would increase to \$710,000 per year in 2010. Petitioner anticipates that the State would realize \$2.03 million per year beginning in 1996 and increase up to \$3.8 million per year in 2010.

SOCIO-CULTURAL IMPACTS

83. Intervenor Pai offered testimony with respect to the potential cultural impacts of the proposed Project.

Mahealani Pai testified that he was a resident of Honokohau Village and that at least one of his ancestors was raised in O'oma. Mr. Pai testified that Hawaiian people need indigenous native places to heal, that Heiaus and shrines at O'oma are of great significance, and that his family would go to a shrine and offer prayers before fishing. Mr. Pai testified that he uses shoreline trails which need to be left open, and that he requires access to shrines, access to anchialine ponds, and access to medicinal plants along the shoreline. Mr. Pai requested that all bones and artifacts discovered be returned to the family.

84. Intervenor Pai testified that he and his ohana use the physical and cultural features existing on the Property as landmarks to identify fishing locations and, therefore, that the Project would adversely impact upon his ohana's cultural practices and traditions.

85. Petitioner and Mr. Pai have not agreed on any possible mitigation measures. Petitioner attempted to elicit testimony from Mr. Pai with respect to potential mitigative measures. Mr. Pai did not provide the information requested by Petitioner. The position of Mr. Pai was that the proposed development was not consistent with their traditional religious practices and should stop.

86. The proposed development plan allows the shoreline and Conservation Reservation Area to be preserved in

their natural state and provides for unrestricted public access to the shoreline area.

IMPACT UPON RESOURCES OF THE AREA

Flora and Fauna

87. Petitioner's consultant, Char & Associates, conducted a flora survey of the Property in 1986 and a follow-up study in October 1990. Char & Associates also conducted a fauna survey in 1986. No officially-listed threatened and/or endangered plants occur on the Property; nor are there any plants proposed as candidates for such status on the Property. Scrub vegetation covers almost 95 percent of the Property and strand vegetation occupies a narrow belt along the coast. The largest number of native species is found in the beach strand environment along the coast. During the survey conducted in October 1990, it was noted that certain portions of the strand vegetation show some damage not observed in the earlier survey. This was attributed to shifting sand and the higher usage of the coastal area near NELHA.

88. The vertebrate fauna on the Property are largely composed of introduced species. Nine bird species were noted during the 1986 survey: seven were listed as foreign species, one was an indigenous species which leaves the islands when not breeding, and one species is a migratory winter visitor. The only mammalian species observed was the mongoose, although it was believed that feral cats may also inhabit the area. No

endangered species were observed. However, the Hawaiian Stilt, or Ae'o, and the Hawaiian Hoary Bat, both endangered species, probably feed on insects along the coastal area, which includes the Property, during the evening and at night.

89. Two major faunal habitats are present in the area; these correspond to the vegetation types but are less finely divided. The predominant scrub vegetation habitat was found to support low bird densities. Birds were more abundant in the coastal strand habitat, although it appeared that much of the activity was of a transient nature. Migratory birds sought the rocky coastline makai of the strand.

90. No endangered flora or fauna are known to inhabit the Property. The proposed development on the Property will result in the loss of vegetation, primarily the scrub community and some wildlife habitat.

Agricultural Resources

91. There are no existing agricultural uses of the Property. Soil surveys indicate that the Property is not suitable for agricultural purposes and none of the Property is classified in the ALISH system. The proposed reclassification of the Property will have no adverse impact on the agricultural resources of the State of Hawaii.

Archaeological/Historical Resources

92. Seven archaeological investigations of the O'oma II ahupua'a have been conducted. The earliest reconnaissance of the coastal sites was conducted by John E.

Reinecke of the Bernice Pauahi Bishop Museum in 1930. In 1971-72, DLNR performed an inventory of several known sites. This was followed by an intensive survey of larger sites by Ross H. Cordy in 1975 and 1981 and a field check in 1986. A reconnaissance survey of the Property was conducted by William Barrera in 1985. A full archaeological reconnaissance survey, field tests, and data collection were conducted for Petitioner by Paul Rosendahl in 1986 and more recently in 1990.

93. A total of 42 archaeological sites have been identified within the Property. Additional work in the form of data collection is needed for 13 sites assessed as significant for their information. For four sites, further data collection would be sufficient treatment and no continued preservation would be necessary. Preservation with some level of interpretive development is recommended for three of the 13 sites assessed as significant additionally as good examples of site types and/or for cultural value, while preservation with protection only ("as is") is recommended for six of these sites assessed as significant additionally as good examples of site types and/or for potential cultural values as possible burial and/or religious sites. No further work or preservation in any form is needed for the remaining 29 sites which were assessed as significant for information content only and for which sufficient data collection had been completed.

94. Further work and study would be done to formulate a complete mitigation plan, including a burial treatment plan,

a site preservation plan, and a monitoring element during the course of actual construction. Dr. Rosendahl recommends the feasibility of in-place preservation of all features potentially containing human burial remains. If appropriate, further archaeological testing to determine the definite presence or absence of human burial remains would be conducted to facilitate decisions regarding preservation or disinterment. Site and feature-specific mitigation treatment would then be modified as needed.

Groundwater Resources

95. The O'oma coastline shows relatively little groundwater outflow compared to other areas in West Hawaii. Groundwater flow into the ocean was estimated to be 1-2 million gallons per day ("gpd") per coastal mile.

96. There are high levels of nutrients, primarily nitrates and phosphates, that occur naturally in groundwater in West Hawaii.

Recreational Resources

97. Development of the Property would offer expanded public recreational opportunities in West Hawaii, including a Shoreline Park, Water Recreation Park, Marine Exploratorium, and golf course. The master plan recognizes the recreational resource of the coastal area and would provide three public access points: one at Puhili Point near the hotel site; one adjacent to NELHA boundary at Wawaloli Beach; and another at the center of the Project. The beach and setback areas would

remain open to public pedestrian traffic via pathways along the Property's oceanfront.

Scenic Resources

98. The Project would have to conform to the County ordinance that regulates permissible building heights, bulk, and setbacks. The Project is not expected to interfere substantially with the line of sight from Queen Ka'ahumanu Highway because of the slope gradients adjacent to the highway that obscure the view. However, the Project would be visible from higher elevations, from the air, and from offshore.

Coastal/Aquatic Resources

99. The shoreline and nearshore environment at the Property consists of a basaltic bench with a white sand beach behind it. The basaltic bench extends out into the intertidal area where the waves break. Beyond the bench there is a sharp drop-off to a depth of 20 feet. The ocean bottom then slopes gently downward to approximately 35 to 50 feet where there is a sharp drop-off to abysmal depths. The ocean is deep close to shore off the Property. The coastline would be categorized as an open coastline without significant bays or indentations.

100. The nearshore marine biological communities off O'oma are a typical assemblage of coral reef and nearshore marine organisms as typified in West Hawaii.

101. The major current environmental impacts on the nearshore marine communities are physical damage to coral from storm waves and fishing pressure.

102. Petitioner has identified two anchialine ponds on the Property. The larger, recently "discovered" pond is located in a pahoehoe flow approximately 50 meters from the shoreline. This pond is overgrown with and hidden by Christmas berry trees and litter from the trees is contributing to infilling of the pond. Two species of native shrimp, the opae'ula (Halocardina rubra) and alpheid (Metabetaeus lohena), as well as one species of red amphipod were noted. At high tide, there are other depressions to the south of the pond that contain water. Two of these are very small and are situated along the edge of a pahoehoe slab surrounded by mud; the size and depth of these "pools" vary with the tide. The small pools are located between the main pond and the "Well." The Well is approximately five meters south of the main pool and is approximately one meter in diameter and is lined with a'a. All three of these smaller pools contained native shrimp (Metabetaeus lohena and Halocardina rubra). High spring tides may result in more ponds in the area as a damp depression to the south of the main pool at high tides was present during observation of the site. Another very small anchialine pool is located near the O'oma/Kohanaiki boundary and is within a historical site.

103. Petitioner's anchialine pond consultant recommended that the ponds at O'oma should be preserved and restored for their environmental as well as educational and cultural values.

104. Petitioner recognizes that the discovery of the anchialine ponds would require implementation of an anchialine pool management plan.

ENVIRONMENTAL QUALITY

Noise

105. The most significant noise source affecting the Property is aircraft movements generated from interisland jets flying over the western section of the site after taking off from Runway 17 at the Keahole Airport. Studies performed at the site between September 12 and 25, 1990 are consistent with the published 1990 aircraft noise contours differing only in that the Ldn 60 and 65 contours overestimate the current noise exposure levels by two and three points (presumably, because of variations between the flight departure tracks assumed in the predictions and those actually used). The ongoing runway extension at Keahole Airport will impact the Project. It is anticipated that the gradual introduction of progressively quieter aircraft would reduce future (year 2005) aircraft noise exposure levels at the Property to approximately five dBA below existing values.

106. The U. S. Environmental Protection Agency, the Department of Housing and Urban Development, and other federal agencies specify that residential and other noise-sensitive developments can normally be constructed in areas subjected to noise exposures levels of up to Ldn 65, with no special noise

control measures required in buildings of conventional construction. Sites exposed to Ldn in the range of 65 to 75 dBA are considered normally unacceptable for residential development, with building approval subject to additional noise control measures. The land use compatibility guidelines are typically less restrictive for transient lodging buildings such as hotels and motels, which are normally air conditioned and better acoustically insulated than conventional residential buildings.

107. It is estimated that the proposed single and multi-family residential areas within the Project would be subjected to existing aircraft noise exposure levels of approximately Ldn 58 or less, which is in compliance with the State Department of Transportation's ("DOT") Ldn 60 residential air limit. To mitigate aircraft noise exposure, residences may have to be designed using sliding windows and glass doors with double strength or 1/4-inch thick monolithic glass, that seal well in the closed position, avoiding the use of jalousie windows or restrict their use to the less noise sensitive areas (e.g., bathrooms, laundries). Air conditioning may have to be used in noise-sensitive areas.

108. It is estimated that the proposed hotel and inn would be subjected to existing aircraft noise exposure levels of Ldn 63 or less. Assuming conventional building designs and construction, with air-conditioned guest rooms and sliding

glass doors providing access to guest room lanais, the estimated exterior to interior noise reduction should be approximately 25 dBA. Thus noise exposure levels inside the guest rooms due to aircraft noise should be Ldn 38 or less when windows and sliding glass doors are closed. This level is in compliance with the Ldn 45 criterion. Jalousie windows would not be used in guest rooms.

109. Additional measures could be undertaken to further reduce guest room noise levels including laminated single-glazed, or acoustically double-blazed, guest room windows and sliding glass door, selected on the basis of providing an exterior to interior noise reduction of 30 to 35 dBA.

110. Public areas in the proposed hotel and inn, including lobbies, bars, restaurants and specialty shops, could, at times, be exposed to aircraft noise levels of up to approximately 80 dBA if the open designs were used. The noise could be high enough to momentarily interfere with people's speech and telephone communication in these public areas. Noise impacts could be reduced by utilizing design features which would enclose the proposed public areas and/or by incorporating sound absorbing treatments on the finish surface.

111. With the extension of the Keahole Airport runway, with the long-term addition of the parallel runway, and with the national standards which require new commercial jets to have much quieter jet engines, it is predicted that there

would be a reduction of approximately five Ldn over the Property by the year 2005.

112. Construction noise levels would be restricted by times imposed by permits. Machinery noise (golf course and project maintenance and stationary equipment from resort and commercial operations) would be operated and scheduled to cause minimum disturbances to neighboring residential units.

113. Petitioner proposes to work with the State Airport Division to insure that design and construction of all facilities would be compatible with Keahole Airport operations.

114. Petitioner's market consultant, Ann Bouslog, testified that the proximity of the Property to Keahole Airport with its aircraft noise limits what kind of hotel and residential units can be proposed for the Property.

115. Petitioner's market consultant, Ann Bouslog, testified that the potential noise impacts from Keahole Airport upon the Property discouraged the development of a luxury hotel.

116. Petitioner's noise consultant, Ronald Darby, testified that no assessment was done regarding traffic noise impacts as a result of the revised plan for the Water Recreation Park/Marine Exploratorium.

Air Quality

117. Petitioner identified potential adverse impacts on air quality from dust during construction activities and from wind drift of pesticides and irrigation water applied to the proposed golf course and landscaped areas.

118. Potential adverse impacts resulting from construction activities may be mitigated by measures such as a berm, screening, and frequent watering.

119. Petitioner's pesticide drift expert, Dr. Richard Honeycutt, recommended specific mitigation measures including 1) exclusive use of shrouded spray units, 2) creation of a vegetated buffer between the Property and NELHA, and 3) refraining from spray applications when winds exceeded five mph and had a northerly component.

120. Petitioner has proposed to use Paspalum (Paspalum vaginatum) turfgrass on the proposed golf course as a means to reduce fertilizer and pesticide use and utilize brackish water for irrigation. However, the use of Paspalum turfgrass does not eliminate the need for traditional herbicides and pesticides which could adversely impact the environment.

121. Clare Hachmuth, Executive Director at NELHA, testified on behalf of NELHA that the organisms cultured at the facility are raised in tanks or raceways which are open to the atmosphere. These organisms are very susceptible to minute changes in the environment. Both macro and micro algae are particularly adept at accumulating toxic materials during their relatively short growth cycle. The impact on these organisms from a single pulse of toxic material would be far more severe than the impact would be on natural ecosystems which tend to be more extensive and thus more resilient. Aquaculture farms with

large open tanks, ponds, and raceways are at risk from the potential aerial drift of biocides and microbes from the proposed golf course. NELHA is not a party to the Mutual Agreement.

122. Despite the proposed mitigative measures outlined in the Integrated Golf Course Management Plan ("IGCMP"), NELHA is still concerned about the possible negative effects. Ms. Hachmuth testified that the IGCMP will be ineffective if not fully implemented at all times. The misuse of the biocides proposed for pest control and the turf maintenance could lead to serious damage to projects at NELHA. The only sure way to avoid the problem would be to eliminate biocides and eliminate the use of sewage effluent in the area.

123. The purpose of NELHA is to support the economic development and diversification of the State to help reduce its dependency on the tourism industry by developing ocean-related high technology industry uses, including aquaculture. Ms. Hachmuth testified that both the commercial and research operations at NELHA depend on the lack of air and water contamination for their success. Small environmental changes could have dire consequences for NELHA's aquaculture tenants.

Water Quality

124. The nearshore waters off the Property are classified as "AA" by the State Department of Health. According to Chapter 11-54, Department of Health Water Quality Standards, the waters of this classification are to remain in

their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions.

125. The proposed Marine Exploratorium and Water Recreation Park would utilize surface seawater purchased from NELHA or, if necessary, obtained from wells on the Property. The Marine Exploratorium pools would have a volume of 2.5 million gallons which would be replaced every four hours. The Water Recreation Park would have a total volume of two million gallons and would be entirely emptied and refilled every four hours during a ten-hour operating day. The total volume required for the Water Recreation Park would be five million gpd. The total volume of return water from the Marine Exploratorium and Water Recreation Park would be 20 million gpd. The return water would be disposed of through injection wells which would take the water through solid casings to a depth of approximately 80 to 100 feet, below the brackish lens.

126. The proposed rate of disposal of approximately 20 million gpd through the injection wells is not currently being done anywhere in the State, and in the past, has only been done at that magnitude at the now defunct oyster farm in Kahuku, Oahu.

127. Petitioner's hydrologist, Tom Nance, was unable to provide clear and definitive information on the direction of movement of the disposed seawater after being injected into the ground and its subsequent impacts to the nearshore environment.

128. Phosphorus subsidies and nitrate nitrogen have been detected in Keauhou Bay. Nitrate nitrogen has been detected in Pauoa Bay. Petitioner's marine chemistry expert, Dr. Steven Dollar, testified that fertilizer nutrients or sewage nutrients that are used on the Keauhou resort and Mauna Lani resort golf course appear to be the source of the bays' respective phosphorus and nitrate nitrogen levels. No study on the cumulative impacts of pesticides from the proposed golf course as well as those golf courses proposed at nearby Kohanaiki, Kealakehe, and Koloko upon water quality was done.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadways

129. The Property is bordered on the east by Queen Ka'ahumanu Highway. The State DOT's long-range plans call for Queen Ka'ahumanu to be developed into a four-lane divided controlled access highway.

130. Petitioner's traffic management consultant, Randall Okaneku, testified with respect to the potential traffic impacts of the proposed Project and recommended specific interim mitigation measures including signalization and channelization of the Project access road.

131. Petitioner would provide and develop, among other things, the internal roadway systems and tie-ins to Queen Ka'ahumanu Highway which would conform to State of Hawaii regulations and be consistent with the proposed Keahole-Kailua plan and the proposed widening of Queen Ka'ahumanu Highway. If

the widening involves the construction of a frontage road adjacent to the O'oma Property, the tie-in can be relocated to the frontage road at that time. An internal connection to the Kohanaiki project is also possible which would eliminate the need for traffic between the two projects to utilize Queen Ka'ahumanu Highway.

132. The State DOT has indicated that signalization will not be allowed at the Project's access to Queen Ka'ahumanu Highway. Petitioner has not provided acceptable alternatives to DOT to the installation of traffic signals as a means to address interim access to the highway.

Water Service

133. The anticipated potable water demand for the proposed Project at full build-out is three quarters of a million gpd. Existing water service in the area is provided by a 12-inch line in the Queen Ka'ahumanu right-of-way but the capacity of the line is inadequate to service the Project.

134. Petitioner would be required to develop additional water sources as well as additional off-site and on-site transmission and distribution systems.

135. Petitioner would work in conjunction with the County Board of Water Supply and other landowners in the region to develop or share in the cost of developing potable water for the planned development. Potable water wells may be needed and would be located in the water resource development zone indicated by the Keahole-Kailua Development Plan. Petitioner

has acquired a well site in the Kalaoa area within the water resource development zone and has applied for a well permit to develop this resource. Consideration is also being given to desalination of brackish or salt water obtained from sources located on or near the Project. Petitioner has undertaken studies to evaluate measures such as dual potable and brackish irrigation water systems to minimize the Project's demand for potable water and to attempt to eliminate the use of potable water for irrigation purposes.

136. The Marine Exploratorium would use approximately 15 mgd and the Water Recreation Park would use a maximum of approximately five mgd. Petitioner anticipates that both the Water Recreation Park and the Marine Exploratorium which together contribute to the Project's uniqueness would use seawater obtained from NELHA, which is the preferred means of obtaining seawater. However, Petitioner has not provided any formal commitments on the part of NELHA to provide the seawater. The alternative sources of obtaining seawater, surface ocean intake and deep saltwater wells on-site, are not as economical. It is uncertain how the financial feasibility of the Project would be affected should Petitioner be unable to obtain seawater from NELHA.

Wastewater Treatment and Disposal

137. The Project would generate .45 million gpd of wastewater at full build-out and 100 percent occupancy. No municipal wastewater treatment and disposal facility exists in

the area. The current Keahole to Kailua Development Plan shows sewage from this development discharging to a proposed Municipal Treatment Plant No. 2 to be completed in the year 2005. During the interim, a temporary sewage treatment plant would be constructed as part of the proposed Project or arrangements would be made to share the Kohanaiki treatment facility which is located on an adjacent parcel. The proposed temporary treatment plant would be sited adjacent to Nansay's planned temporary treatment plant and Petitioner would endeavor to negotiate shared temporary facilities with Nansay. If negotiations are not successful, Petitioner would construct its own temporary plant.

Drainage

138. The existing soil types within the Property are very permeable and surface waters drain rapidly. There are no perennial streams or well-defined water courses in the watershed due to a combination of meager rainfall and the lava landscape. Storm water consists primarily of sheet flows downward from the upper parts of the watershed to Queen Ka'ahumanu Highway. A man-made ditch on the mauka side of the highway conveys the run-off to culverts located to the north and south of O'oma II, discharging storm waters away from the Project area.

139. It is expected that the Project would alter the character of the surface runoff of the Property by increasing stormwater runoff from 260 cubic feet per second ("cfs") to 450

cfs. Petitioner proposes to mitigate drainage impacts by interrupting storm runoff from open and off-site areas through a network of cut-off swales and ditches, inlets, and drain pipes located within the road right-of-ways. Most of the channelized runoff would be discharged to the south of the Property to minimize any impacts to the HOST Park facility to the north. The majority of the runoff would be allowed to drain naturally by sheetflow into the ocean, by percolation into the soil, and into a series of drywells. Additionally, areas would be left in open space for drainage into the ground. The primary open space would be the golf course which would provide areas for retention basins for excess runoff.

Solid Waste Disposal

140. Petitioner's proposed development of the Property is expected to generate a significant volume of solid waste. As the different phases of the proposed development of the Property are constructed and occupied, the generation of solid waste is expected to increase to a maximum at full build out of approximately 2.79 tons/day in 1996 and 4.58 tons/day in 2010.

141. Petitioner proposes to dispose of the solid waste generated by each phase of the development of the Property in the County of Hawaii landfill, currently under construction at Pu'uana'hulu or wherever directed by the County of Hawaii Department of Public Works.

Schools

142. The North Kona District is serviced by three public schools. The only public high school serving the region, Konawaena, is located in Captain Cook, south of Kailua-Kona. The public schools in West Hawaii are approaching capacity and the Department of Education ("DOE") has plans to add a high school at Kealakehe to complement the proposed State development at Kealakehe.

143. The DOE in comments to OSP has projected the following enrollment impact in public schools in the area: Kealakehe Elementary (Kindergarten-5th), 10 students; Kealakehe Intermediate (6th-8th), three students; and Konawaena High School (9th-12th), three students. Although those numbers will not have a major impact on the school system, some of the schools are nearing capacity and Petitioner has agreed to participate and contribute its fair share to any school improvements that are necessary.

Fire and Police Protection

144. The proposed development of the Property would not result in significant impact on police operations. The proposed development would in the future contribute to the need for a new fire station north of Kailua.

Electrical Power

145. The Project is expected to have an estimated demand of approximately 10 MVA with approximately five MVA materializing as early as five years and the remainder being

completed within 10 years. This program does not burden HELCO's ability to support its customers for the island as a whole. A new step-down substation to be located near Queen Ka'ahumanu Highway would be required for the development of land in the vicinity of the Property. It is anticipated that this substation would be designed to accommodate the development potential of the area. This would require land acquisition as well as PUC approval. It is not predicted that HELCO's present customers would be adversely affected by the anticipated Project since there is sufficient system capacity to support the Project.

In conjunction with this development's proposed step-down substation, it should be noted that Nansay has been granted a Conservation District Use Permit in which the Board of Land and Natural Resources approved use of State-owned lands in the O'oma II parcel mauka of Queen Ka'ahumanu Highway for a regional electrical substation. The proposed substation would be the property of HELCO and become part of the utility's distribution system. Nansay's proposed substation will encompass an area of approximately 1.4 acres and it will be large enough to accommodate the development potential of the proposed development as well as adjacent properties. O'oma would share in these costs.

Telephone

146. The telephone company's facilities at its Kailua-Kona Electronic Common Control ("ECC") station are

adequate to support the new telephone requirements of the Project; however, it would be necessary to supplement the cable running between the Kailua-Kona ECC and the Property.

COMMITMENT OF STATE FUNDS AND RESOURCES

147. Petitioner does not anticipate that the Project would result in any unreasonable commitment of State funds or resources.

CONFORMANCE TO URBAN DISTRICT STANDARDS

148. The reclassification of the Property does not meet the standards applicable in establishing boundaries of the Urban District as set forth in Section 15-15-18 H.A.R. as follows:

a. Petitioner has not shown that the proposed reclassification of the Property is reasonably necessary to accommodate growth and development and that there would not be significant cumulative adverse effects upon the nearshore water quality and air quality of the Property and surrounding area.

b. Petitioner's market studies did not adequately support and substantiate the need for additional visitor accommodation units and residential units.

c. Petitioner did not adequately support and substantiate the economic feasibility of the Property.

d. Petitioner has not adequately demonstrated that Petitioner has the financial capacity to undertake the Project or that Mr. Van Dorpe is capable of fulfilling the commitments made by Mr. Schlei.

CONFORMANCE WITH THE GOALS, OBJECTIVES,
AND POLICIES OF THE HAWAII STATE PLAN

149. The reclassification of the Property and the proposed development of the Property are not in conformity with the Hawaii State Plan as follows:

- SEC 226-11(a)(2) Effective protection of Hawaii's unique and fragile environmental resources.
- SEC 226-11(b)(2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.
- SEC 226-11(b)(8) Pursue compatible relationships among activities, facilities, and natural resources.
- SEC 226-13(a)(1) Maintenance and pursuit of improved quality in Hawaii's land, air, and water resources.
- SEC 226-13(b)(3) Promote effective measures to achieve desired quality in Hawaii's surface, ground, and coastal waters.
- SEC 226-13(b)(4) Encourage actions to maintain or improve aural and air quality levels to enhance the health and well-being of Hawaii's people.
- SEC 226-14(b)(1) Accommodate the needs of Hawaii's people through coordination of facility systems and capital improvement priorities in consonance with state and county plans.

CONFORMANCE WITH THE OBJECTIVES AND POLICIES
OF THE COASTAL ZONE MANAGEMENT PROGRAM

150. The proposed reclassification of the Property and the proposed development does not conform with the following objectives and policies of the Coastal Zone Management Program:

- Coastal Ecosystems
205A-2(c)(4), HRS Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

C. Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs.

Economic Uses
205A-2(c)(5), HRS

B. Insure that coastal dependent development such as harbors and ports, visitor industry facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner and 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 conclusion of law herein improperly designated as a findings of fact should be deemed or construed as a conclusion of law; any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the Hawaii Land Use Commission Rules under Chapter 15-15, H.A.R., and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds upon a clear preponderance of evidence that the reclassification of the Property consisting of approximately 217.566 acres of land situated at O'oma II, North Kona, Hawaii, Tax Map Key No.:

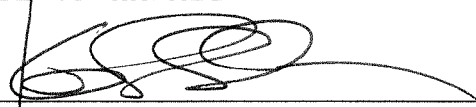
7-3-09: 4, from the Conservation Land Use District to the Urban Land Use District, is not reasonable, does not conform to the standards for establishing the urban district boundaries, is violative of Section 205-2, HRS, and is not consistent with the Hawaii State Plan as set forth in Chapter 226, HRS.


DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition for reclassification is denied and that the Property, being the subject of Docket No. A91-666, filed by Kahala Capital Corporation, consisting of approximately 217.566 acres of land situated at O'oma II, North Kona, Hawaii, identified as Tax Map Key No.: 7-3-09: 4, shall hereby remain in the Conservation Land Use District.

Done at Honolulu, Hawaii, this 22nd day of September 1993,
per motions on August 12, 1993 and September 20, 1993.

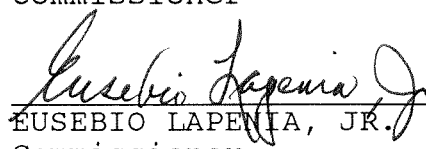
LAND USE COMMISSION
STATE OF HAWAII

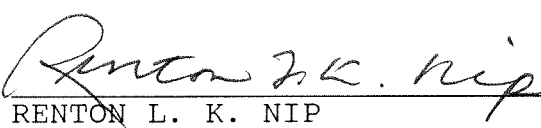
By 
KAREN S. AHN
Vice Chairman and Commissioner

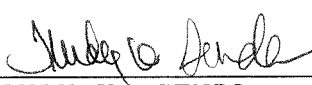
By 
JOANN N. MATTSON
Vice Chairman and Commissioner

By _____ (absent)
ALLEN K. HOE
Commissioner


By _____ (abstain)
LLOYD F. KAWAKAMI
Commissioner

By 
EUSEBIO LAPENIA, JR.
Commissioner


By 
RENTON L. K. NIP
Commissioner


By 
TRUDY K. SENDA
Commissioner

Filed and effective on
September 22, 1993

By 
ELTON WADA
Commissioner

Certified by:


Executive Officer

By 
DELMOND J. H. WON
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A91-666
KAHALA CAPITAL CORPORATION,)	
a Hawaii corporation)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND DECISION AND ORDER
To Amend the Conservation Land)	
Use District Boundary into the)	
Urban Land Use District for)	
Approximately 217.566 Acres, at)	
O'oma II, North Kona, Island and)	
County of Hawaii, State of)	
Hawaii, Tax Map Key No.: 7-3-09:4)	
_____)	

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 certified mail:

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DATED: Honolulu, Hawaii, this 22nd day of September 1993.



ESTHER UEDA
Executive Officer