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HILO ONE, INCORPORATED

MAY 27 2 49 PM 1993  
LAND USE COMMISSION  
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A92-676
HILO ONE, INCORPORATED )	
To Amend the Agriculture Land Use )	STIPULATION RE PROPOSED
District Boundary in the Urban )	FINDINGS OF FACT,
Land Use District for )	CONCLUSIONS OF LAW,
Approximately 24.659 acres at )	DECISION AND ORDER;
Paukaa, South Hilo, Hawaii, )	PROPOSED FINDINGS OF FACT
State of Hawaii )	AND CONCLUSIONS OF LAW,
Tax Map Key No. 2-7-03:27 )	DECISION AND ORDER

STIPULATION RE PROPOSED FINDINGS OF  
FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

HILO ONE, INCORPORATED, the Petitioner herein, the OFFICE OF  
STATE PLANNING and the COUNTY OF HAWAII PLANNING DEPARTMENT  
hereby stipulate to the submission of the following Proposed  
Findings of Fact, Conclusions of Law, Decision and Order in the  
above referenced Petition, with the exception of the following:

1. The OFFICE OF STATE PLANNING is seeking the inclusion of  
the following condition to replace Condition No. 1 located on  
page 27 of the Proposed Decision and Order:

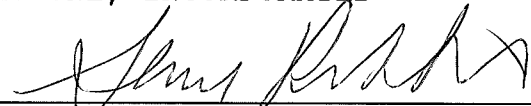
"1. The Petitioner shall provide affordable housing  
opportunities for low-low/moderate and gap group  
residents of the State of Hawaii to the  
satisfaction of the State Housing Finance and  
Development Corporation in accordance with the

Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended. The location and distribution of the affordable housing or other provision for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner, the State Housing Finance and Development Corporation and County of Hawaii.

2. The COUNTY OF HAWAII PLANNING DEPARTMENT is seeking the deletion of Condition Nos. 1 through 15 of the Proposed Decision and Order.

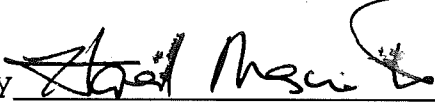
DATED: Hilo, Hawaii, MAY 25 1993.

HILO ONE, INCORPORATED

By   
SANDRA PECHTER SCHUTTE  
Its Attorney


DATED: Honolulu, Hawaii, May 27, 1993.

OFFICE OF STATE PLANNING

By   
HAROLD MASUMOTO  
Its Director

DATED: Hilo, Hawaii, MAY 25 1993.

COUNTY OF HAWAII PLANNING  
DEPARTMENT

By   
VIRGINIA GOLDSTEIN  
Its Planning Director

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A92-676
HILO ONE, INCORPORATED	)	
To Amend the Agriculture Land Use	)	
District Boundary in the Urban	)	
Land Use District for	)	
Approximately 24.659 acres at	)	
Paukaa, South Hilo, Hawaii,	)	
State of Hawaii	)	
Tax Map Key No. 2-7-03:27	)	
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PETITIONER'S PROPOSED FINDINGS OF FACT  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

HILO ONE, INCORPORATED, a Hawaii corporation (hereinafter "Petitioner"), filed a Petition on April 21, 1992, pursuant to Chapter 205, Hawaii Revised Statutes, as amended (hereinafter "HRS"), and Title 15, Subtitle 3, Chapter 15, Hawaii Land Use Commission Rules, as amended (hereinafter "Commission Rules"), to amend the Land Use District Boundary of approximately 24.659 acres of land situate at Paukaa, South Hilo, Island and County of Hawaii, State of Hawaii, Hawaii Tax Map Key No. 2-7-03:27 (hereinafter "Property"), from the Agricultural District to the Urban District for a residential lot subdivision. The Hawaii State Land Use Commission (hereinafter "Commission"), having heard and examined the testimony, evidence and arguments of counsel presented during the hearing and the record in this matter, hereby makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. Petitioner filed a Petition for a Land Use District Boundary amendment on April 21, 1992.

2. Petitioner is Hilo One, Incorporated, a Hawaii corporation, with its principal place of business and mailing address at 714 Kanoelehua Avenue, Hilo, Hawaii 96720. (Petition, par. 3).

3. The Commission conducted a hearing on the Petition on July 23, 1992, pursuant to notices published on June 8, 1992 in the Honolulu Advertiser and the Hawaii Tribune Herald, which are newspapers of general circulation.

4. There were no public witnesses testifying on this Petition at the July 23, 1992 hearing and the hearing was closed by the Commission on July 23, 1992.

5. On September 23, 1992, the Office of State Planning (hereinafter "OSP") filed a motion to reopen the hearing, citing a letter dated September 8, 1992 to the Commission from residents of the Paukaa community opposing the Petition.

6. By written stipulation dated October 29, 1992, OSP, the County of Hawaii Planning Department (hereinafter "COH") and Petitioner agreed to reopen the hearing to address concerns raised about the Petition by the residents of the Paukaa community.

7. By Order dated November 17, 1992, the Commission reopened the hearing on the Petition for the purpose of

submitting additional evidence related to the concerns raised by residents of the Paukaa community about Petitioner's project.

8. The Commission conducted a reopened hearing on the Petition on April 29, 1993, pursuant to notices published on March 19, 1993 in the Honolulu Advertiser and the Hawaii Tribune Herald, which are newspapers of general circulation.

9. At the reopened hearing, Robert Shioji and Seiji Nakamura testified as public witnesses in support of the Petition and Patrick Moore, Edward Johnston, Jim Wang and Perry Hotchkiss testified as public witnesses against the Petition. Also, written testimony was received by the Commission from Gordon Kurakawa as a public witness in support of the Petition.

#### DESCRIPTION OF THE PROPERTY

10. The Property is situated at Paukaa, South Hilo, Hawaii, approximately 2.5 miles north of downtown Hilo. It is bounded by the Hawaii Belt Road on the makai side and Kulana Road or the Old Mamalahoa Highway on the mauka side. (OSP Exhibit 3, pp.1-2; COH Exhibit 1, p.4, par. 10; Transcript of Proceeding "T" 7/23/92 p. 32, l. 6-13, p.36, l. 13-18).

11. The Property is immediately north and adjacent to the Honolii Pali Subdivision, Tract No. 2 and the Paukaa Village Subdivision, which are residential subdivisions. (T. 7/23/92 p. 33, l. 6-9, p. 36, l. 13-18; Petitioner's Exhibit 4).

12. Also, the Honolii By the Sea Subdivision, a residential subdivision developed by Petitioner and reclassified by the Commission in 1984 from the Conservation and Agricultural

Districts to the Urban District, is located directly east of the Property on the makai side of the Hawaii Belt Road. (T. 7/23/92 p. 33, l. 10-16, p. 36, l. 13-18; Petition, par. 8).

13. The Property is contiguous to the State Land Use Urban District to the east and the south and to the State Land Use Agricultural District to the north and west. (OSP Exhibit 3, p. 2, par. 1).

14. The Property is owned in fee simple by Petitioner. (T. 7/23/92 p. 36, l. 21-22; Petitioner's Exhibit 3).

15. The Property contains an area of approximately 24.659 acres. A steep gulch, approximately 200 feet wide and 50 to 75 feet deep, with an area of approximately three acres, intersects the Property through the center of the parcel. A gully runs along the entire northern boundary of the Property. The Paukaa Stream is located at the base of the gulch and an unnamed stream runs along the northern gully. A drainageway extends along the southern boundary of the Property. (Petition, par. 7; T. 7/23/92 p. 56, l. 13-20, p. 76, l. 8-10, p. 81, l. 3-7, p. 88, l. 2; OSP Exhibit 3, p. 2, par. 1).

16. The Property has a frontage along the Hawaii Belt Road of approximately 1,900 feet and a frontage along Kulana Road of approximately 2,100 feet. (COH Exhibit 1, p. 4, par. 11).

17. The Property gently slopes downward in the makai or easterly direction at an average grade of 12%, except for the gulch and the gully. The elevation of the Property in a makai to mauka orientation ranges from 132 feet to 200 feet above sea

level. The Property is also approximately 390 feet inland or mauka from the shoreline. (Petition, par. 10; T. 7/23/92 p. 42, l. 12-21, p. 56, l. 13-20, p. 73, l. 13-25; OSP Exhibit 3, p. 2, par. 2).

18. The Property was formerly used for the cultivation of sugar cane. Presently, ginger is being cultivated on a major portion of the Property. (T. 7/23/92 p. 56, l. 13-20; OSP Exhibit 3, p. 2, par 1-2).

19. The United States Department of Agriculture Soil Conservation Service Soil Survey of the Island of Hawaii identifies the soils throughout the Property as being in the Hilo Series. Hilo silty clay loam, 0 to 10 percent slopes (HoC) is found on about 60 percent of the Property and Hilo silty clay loam, 20-25 percent slopes (HoD) is found on about 30 percent of the Property. The soil in the gulch area is classified as Hilo silty clay loam, 20 to 30 percent slopes (HoE). (Petition, par. 11; T. 7/23/92 p. 56, l. 13-20; OSP, Exhibit 3, p. 2, par. 3).

20. The Hilo soil series is a well-drained silty clay loam. A representative profile contains a surface layer of dark brown silty clay loam about 12 inches thick, and a subsoil of dark brown, dark reddish-brown, and very dark grayish-brown silty clay loam about 48 inches thick. For soils classified as HoC, permeability is rapid, runoff is slow and the erosion hazard is slight. For soils classified as HoD, runoff is moderate and the erosion hazard is slight to medium. In those areas classified as HoE, the runoff is medium and the erosion hazard is moderate.

(Petition, par. 12; T. 7/23/92 p. 56, l.13-20; OSP Exhibit 3, p. 2, par. 3; COH Exhibit 1, p. 5, par. 17).

21. The Soil Conservation Service Soil Survey of the Island of Hawaii also identifies this soil as having low load bearing capacity for building foundations, high shrinkage, and may be subject to sliding. There is also a limitation on the use of septic tank filter fields on this type of soil depending on the slope of the lots. (OSP Exhibit 3, p. 3, par. 1).

22. The Property is classified as Prime under the Agricultural Lands of Importance in the State of Hawaii (ALISH) classification system. The University of Hawaii's Land Study Bureau's overall master productivity rating of the Property for agricultural use is Class C or Fair, with the gulch area being Class E or very poor. (Petition, par. 13; T. 7/23/92 p. 56, l. 13-20; OSP Exhibit 3, p. 3, par. 2; COH Exhibit 1, p. 5, par. 18-19).

23. The Lava Flow Hazard Zone Map, prepared by the U.S. Geological Survey designates the Property as being in Zone 8 or an area that has almost no likelihood of a risk of lava flow. (Petition, par. 14; T. 7/23/92 p. 43, l. 4-6, p. 56, l. 13-20).

24. Located on the windward side of the island, the Property experiences an average rainfall of approximately 125 to 150 inches. (COH Exhibit 1, p. 4, par. 14).

25. Winds in the vicinity of the Property are normally northeast trades and the mean annual temperature is about 75 degrees Fahrenheit. (COH Exhibit 1, p. 4, par. 15).



26. The Flood Insurance Rate Map (FIRM) prepared by the U.S. Army Corps of Engineers, designates the Property as being located within zone X, which is an area outside of the 500-year flood plain. (Petition, par. 20; T. 7/23/92 p. 43, l. 7-8, p. 56, l. 13-20).

27. The Property is outside of any tsunami inundation area. It is also outside of any tsunami evacuation route. (T. 7/23/92 p. 42, l. 22-25, p. 43, l. 1-3).

#### DESCRIPTION OF THE PROPOSED DEVELOPMENT

28. Petitioner proposes to develop a 41-lot single-family residential lot subdivision on the Property (hereinafter, the "Development") (Petitioner's Exhibit 23). The present conceptual plan provides for 33 lots on the Hamakua or northern side of the Paukaa stream intersecting the property, and 8 lots on the Hilo or southern side of this stream. Based upon concerns of the Paukaa community regarding the lot sizes for the Development and the maintenance of the rural Paukaa lifestyle, the Development is designed with large lots providing open space, and a minimum lot size of 15,000 square feet. (T. 4/29/93, p. 159, l. 1-3, p. 161, l. 18-22, p. 162, l. 19-21, 25; Petitioner's Exhibit 23).

29. Petitioner proposes to establish a two-acre park as a community benefit on the Hilo or southern side of the Development. (T. 4/29/93, p. 161, l. 12-18, p. 163, l. 24-25; Petitioner's Exhibit 23). The park will satisfy a community need to provide a place for people to congregate, the community association and other groups to meet, and a safe place for

children to play. (T. 4/29/93, p. 160, l. 7-11). The park is also intended to serve as a buffer between the Development and the Paukaa community. (T. p. 160, l. 12-14, p. 161, l. 13-14). Petitioner proposes to survey, grade and grass the park and turn it over to COH. (T. p. 164, l. 3-5).

30. In order to maintain open space and to satisfy the community concerns regarding the potential double density of this Development, Petitioner proposes to prohibit the construction of ohana dwellings on the subdivided lots. (T.4/29/93, p. 162, l. 2-5).

31. The traffic problem along Kulana Road is a major concern of the Paukaa community. (T. p. 141, l. 16-17, p. 159, l. 1-2). In order to minimize this problem, access to the 33 lots on the Hamakua or northern side of Paukaa Stream will be provided off of the Hawaii Belt Road, by relocating the present designated access point along that highway. Access to the remaining 8 lots and the park on the Hilo or southern side of Paukaa Stream would be provided off of Kulana Road. (T. 4/29/93, p. 161, l. 18-22, p. 164, l. 21-25, P. 165, l. 1-4; Petitioner's Exhibit 23).

32. Petitioner proposes that no curbs, gutters or sidewalks be provided along the roads of the Development in order to make the Development fit into the rural type lifestyle of the Paukaa area. (T. 4/29/93 162, l. 19-25, p. 163, l. 1-7; Petitioner's Exhibit 23).

33. The high biological value of the Paukaa Stream has been noted by the State Department of Land and Natural Resources, Division of Aquatic Resources and the Paukaa community. (OSP Exhibit 3, p. 14; T. 4/29/93 p.161, l. 3-8). In order to protect this stream and the environment in the vicinity of the stream from the impacts of the Development, Petitioner proposes to establish a conservation easement, in favor of the State of Hawaii, over the Paukaa Stream and the entire gulch surrounding the stream. (T. 4/29/93, p. 161, l. 3-8).

34. Lots will be sold as improved raw land. Improvements, which will be constructed to County of Hawaii subdivision standards, will include the construction of roads, drainage structures, sewer lines, water transmission lines, electrical, telephone and cable TV transmission facilities. (Petition. par. 21; T. 7/23/92 p. 37, l. 18-24, p. 56, l. 13-20; T. 4/29/93, p. 159, l. 17-20).

35. The total improvement costs for the Development are presently estimated to be approximately \$1,350,000 or \$32,927 per lot. (T. 4/29/93, p. 166, l. 3-8). The estimated dollar value of the park to be contributed as a community benefit is \$200,000. (T. 166, l. 13-17).

36. The intended market for the subdivided lots will be buyers in the middle income range. Petitioner does not intend to market the subdivided lots outside of the State of Hawaii. (Petition, par. 23, T. 7/23/92 p. 38, l. 20-21, p. 56, l. 13-20).

37. The State Housing Finance and Development Corporation (hereinafter "HFDC") has stated that Policies A(30) and B(3) of the State Housing Functional Plan seek to ensure that (1) housing projects and (2) projects which impact housing provide a fair share or adequate amount of affordable home ownership or rental housing opportunities, and that the park proposed by Petitioner in lieu of providing housing for low, low-moderate, and moderate income residents does not address these affordable housing policies. (OSP Exhibit 3, p. 12-13).

38. HFDC has also stated that it appears that a portion of the 41 proposed lots could be provided at affordable prices based upon the estimated development cost of approximately \$32,927, and HFDC is open to working with the Petitioner and the County of Hawaii Housing Agency to find an acceptable means for the Petitioner to provide a fair share of affordable housing. (OSP Exhibit 3, p. 13).

39. OSP recommends that Petitioner provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii as a condition of the Commission's approval of this Petition. (OSP Exhibit 3, p. 14). However, Petitioner is proposing to provide the park as a community benefit in lieu of providing affordable housing, because affordable housing will not immediately benefit the Paukaa community whereas the park would be a direct benefit to the community. (T. 4/29/93, p. 166, l. 18-25, p. 167, l. 1-4).

40. Petitioner proposes to begin construction of the subdivision improvements immediately after all land use, zoning and subdivision approvals are received from the State and County. Petitioner also believes that the Development on the Property will be substantially completed within five years after the date of final zoning approval of the Property by the County. (Petition, par. 25-26; T. 7/23/92 p.55, l. 18-22, p. 56 l. 13-20).

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

41. Petitioner's financial statement for the year ending December 31, 1990 lists Petitioner's total assets at \$645,415.55 and total liability and stockholders' equity at \$645,415.66. Petitioner's financial statement for the year ending December 31, 1991 lists Petitioner's total assets at \$1,614,350.89 and total liability and stockholders' equity at \$1,614,350.89 (Petitioner's Exhibits 5 and 11).

42. Petitioner has experience in developing residential subdivisions in the South Hilo area. Petitioner has experience in processing required governmental permits, arranging for and securing financing for construction of projects, and overseeing the construction of the projects. (Petition, par. 28; T. 7/23/92 p. 40, l. 10-25, p. 56, l. 13-20).

43. Petitioner proposes to finance the Development on the Property by means of obtaining development loans from financial institutions, and by using the Property as collateral to secure the loans. Petitioner has used this means of financing in the

past for residential development projects. (Petition, par. 29; T. 7/23/92 p. 48, l. 19-24).

44. Petitioner has the financial capability to develop the Property based on Petitioner's financial condition and past experience in real estate development. (T. 7/23/92 p. 48, l. 14-18).

#### STATE AND COUNTY PLANS AND PROGRAMS

45. The Property is designated within the State Land Use Agricultural District as reflected on the Land Use District Boundary Map H-65, Papaikou (Petitioner's Exhibit 16; T. 7/23/92 p. 31, l. 17-21).

46. The County of Hawaii General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the Property for Low Density Urban development. Single family residential development is permitted within this General Plan designation. (COH Exhibit 1, p. 10, par. 41).

47. The County zoning designation for the Property is Agricultural, with a minimum lot size of 20 acres (A-20a). If this Petition is granted, County zoning will be amended to Residential, with a minimum lot size of 15,000 square feet (RS-15). (COH Exhibit 1, p. 10, par. 42; T. 4/29/93, p. 162, l. 25).

48. The Property is not located within the Special Management Area (SMA) of the County of Hawaii. (COH Exhibit 1, p. 11, par. 43).

## NEED FOR THE PROPOSED DEVELOPMENT

49. Petitioner maintains that there is a demand and a need for single family residential lots in South Hilo, because there is a lack of available inventory of buildable residential lots. Petitioner also states that there is a market in the Hilo area for lots intended for the middle income range buyer, priced at \$90,000 and above as proposed by Petitioner. (Petition, par. 30; T. 7/23/92 p. 38, l. 6-10, 20-21, p. 56, l. 13-20; Petitioner's Exhibit 6).

50. Petitioner believes that the development of the Property into small agricultural lots is not economically feasible. (Petition, par. 32; T. 7/23/92 p. 56, l. 13-20).

## IMPACT UPON THE RESOURCES OF THE AREA

### Agricultural Resources.

51. The Property was cultivated in sugarcane by Mauna Kea Sugar Company until the early 1980's. A major portion of the property is presently being used for the cultivation of ginger. (COH Exhibit 1, p. 6, par. 20).

52. Although the Property is contiguous to urban development to the south and the east, macadamia nut orchards are located on land immediately west or mauka of the Property and sugar cane is planted on land to the north of the Property. (Petition, par. 8, T. 7/23/92 p. 56, l. 13-20).

53. The State Department of Agriculture ("DOA") is of the opinion that the agricultural resources of the area, and the plans, programs and activities of DOA will not be adversely

affected by the approval and development of the Petitioner's proposal. However, DOA believes that existing farm businesses should be protected from nuisance complaints and the cost of implementing mitigating measures when there is a conflict between agriculture and non-agricultural uses. (OSP Exhibit 3, p. 6-7; COH Exhibit 1, p. 6, par. 21).

#### Water Quality

54. Petitioner anticipates that the development on the Property will not adversely affect the quality of the groundwater in the area, because the Development will utilize the County sewer system for sewage disposal. (T. 7/23/92 p. 55, l. 9-14).

55. Surface water generated by the Development will be controlled by drainage structures constructed in accordance with County standards. (T. 7/23/92 p. 55, l. 15-17).

56. Potential impacts of soil erosion which would affect the existing streams will be mitigated by the establishment of a soil erosion plan which will be included in the construction contract for the Development on the Property. (T. 7/23/92 p. 69, l. 21-25, p. 70, l. 1-2).

#### Wetlands

57. There has been no determination by the Department of Army Corps of Engineers (hereinafter "COE") as to whether any wetland areas exist in the Paukaa Stream gulch area, the gully on the northern boundary or the drainageway on the southern boundary. (OSP Exhibit 3, p. 5).



58. A COE DA permit would be required for any grading or filling of a wetland area, and the COE has recommended that a botanical study and/or wetland delineation be performed for the Property so that DA permit requirements can be determined. (OSP Exhibit 3, p. 5, Exhibit 3, p. 5).

59. Although Petitioner had assistance from Hawaii Tropical Botanical Garden in identifying the plants on the Property, Petitioner did not have a formal botanical study prepared in conjunction with this Petition. (T. 7/23/92, p. 59, l. 18-25, p. 50, l. 1-8).

60. OSP has recommended that Petitioner have a botanical study or a wetland delineation performed for the Property so that the COE permit requirements can be determined. Petitioner has no objection to this recommendation. (OSP Exhibit 3, p. 16, T. 4/29/93, p. 168, p. 16-19).

#### Air Quality

61. Petitioner anticipates that because of the high rainfall in the area, there is only a minimal potential for short-term air quality impacts from fugitive dust associated with construction activities on the Property. (Petition, par. 35; T. 7/23/92 p. 49, l. 11-15, p. 56, l. 13-20).

62. Petitioner anticipates that the impacts upon the air quality can be mitigated by the development and implementation of a dust and erosion control plan submitted to the State Department of Health (hereinafter "DOH") for approval as part of the

construction contract for the Development. (T. 7/23/92 p. 69, l. 21-25, p. 70, l. 1-2)

#### Aural Quality

63. The aural quality of the area may be adversely affected for a short time during the construction phase. However, the completed residential Development should not have any long term noise impacts on the area. (OSP Exhibit 3, p. 6).

64. Petitioner anticipates that the impacts upon the aural quality will be negligible. (T. 7/23/92 p. 49, l. 16-17).

#### Archaeological Resources

65. Petitioner's archaeological assessment, conducted by Paul H. Rosendahl, concluded that no archaeological or historic features were located on the Property and no further studies were needed. The State Department of Land and Natural Resources (hereinafter "DLNR") concurs with the findings of the assessment. (Petitioner's Exhibit 7; Petition, par. 36-37; T. 7/23/92 p. 56, l. 13-20; OSP Exhibit 3, p. 6).

66. Petitioner agrees that work on the Development will temporarily stop in the event that any archaeological resources such as artifacts, shell, bones or charcoal deposits, human burials, rock or coral alignments, paving or walls of historic or prehistoric significance, are found during construction, and that the Historic Preservation Division of DLNR will be contacted. (T. 7/23/92 p. 57, l. 23-25, p. 58, l. 1-2).

### Flora and Fauna

67. Petitioner knows of no rare or endangered plant species on the Property. (T. 7/23/92 p. 50, l. 1-8).

68. Except for the occasional sighting of an owl, there are no known rare or endangered animal species on the Property. Petitioner knows of no nesting of owls on the Property. (T. 7/23/92 p. 51, l. 7-13).

### Aquatic Resources

69. DLNR, Division of Aquatic Resources (hereinafter "DAR") found significant populations of all five of the endemic Hawaiian freshwater fishes along with various invertebrate species in the Paukaa Stream. DAR concluded that the Paukaa Stream is of high biological value and needs some protection from the impacts of development. (OSP Exhibit 3, p. 7-8).

70. Based upon DAR's recommendation, OSP is recommending that a conservation easement be established in favor of the State of Hawaii for the Paukaa Stream and gulch, to the satisfaction of DLNR. (OSP Exhibit 3, p. 16).

71. Petitioner agrees to provide a conservation easement for the Paukaa Stream and the gulch in favor of the State of Hawaii, with the terms of said easement to be satisfactory to DLNR. Petitioner also agrees to record the easement with the State of Hawaii Bureau of Conveyances or Land Court, as appropriate, prior to the sale of the Property or any subdivided lot within the Property. (T. 4/29/93, p. 168, l. 1-15).

### Scenic/Visual Resources

72. The Property is situated mauka of the Hawaii Belt Road, gently rising above the highway. The proposed Development will not interfere with the coastal and shoreline views. It is also proposed to be designed to utilize the existing topography of the land without substantial alteration. (Petition, par. 66(a); T. 7/23/92 p. 56, l. 13-20).

### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

#### Roadway and Highway Services and Facilities

73. Access to the Property is presently available from a designated access point along the Hawaii Belt Road; a State maintained two-lane arterial highway with a pavement width of 22 feet within a 100-foot corridor. Access is also available from Kulana Road; a County-maintained roadway having a pavement width of 17 feet within a 40-foot right-of-way. (T. 7/23/92 p. 45, l. 16-18; COH Exhibit 1, p. 11, par. 44-45; OSP Exhibit 3, p. 9).

74. Because of the Paukaa community concerns about traffic along Kulana Road, Petitioner intends to provide access off of Kulana Road only to the eight lots and the park in the Development which are situated on the Hilo or southern side of the Paukaa Stream. (T. 4/29/93, p. 161, l. 18-20).

75. Petitioner intends to relocate the access point along the Hawaii Belt Road to provide access to the 33 remaining lots in the Development which are situated on the Hamakua or northern side of the Paukaa Stream, in order to minimize the traffic

impact of the Development along Kulana Road. (T. 4/29/93, p. 161, l. 20-22, p. 164, l. 21-25, p. 165, l. 1-4).

76. Petitioner is willing to participate in the funding and construction of regional and local traffic improvements on a pro rata basis. (T. 7/23/92 p. 58, l. 3-7, p. 68, l. 20-22, T. 4/29/93, p. 167, l. 20-24).

#### Water Service

77. An 8-inch County water line extends along the Hawaii Belt Road adjacent to the Property, and Petitioner intends to provide potable water to the proposed Development through the County water system (T. 7/23/92 p. 45, l. 11-13; COH Exhibit 1, p. 12, par. 49).

78. The County Department of Water Supply (hereinafter "DWS") does not have sufficient water capacity in its system to provide water service to the Property at the present time. However, DWS is presently in the process of acquiring land in Papaikou from C. Brewer for the purpose of drilling another well. Water from the well should be sufficient to service the proposed Development and other lots in the Papaikou area. (T. 7/23/92 p. 45, l. 4-10, p. 65, l. 5-19).

79. Funding for the proposed Papaikou well has been appropriated in the DWS 1992-1993 budget, and DWS anticipates that the additional source could be on line in late 1993 or 1994. (COH Exhibit 1, p. 12, par. 50; Petitioner's Exhibit 17).

### Wastewater Treatment and Disposal

80. An 8-inch County sewer line extends along the Hawaii Belt Road adjacent to the Property, and the Petitioner proposes to dispose of sewage by connecting the Development to the County sewer system. (T. 7/23/92 p. 44, l. 20-24).

81. Under County Department of Public Works (hereinafter "DPW") Wastewater Division standards, 400 gallons per day ("gpd") of sewage is generated by a single family residential lot and the total amount of sewage that would be generated by the Development would be 31,600 gpd. (COH Exhibit 1, p. 13, par. 52).

82. There is presently sufficient capacity in the County sewer system to accommodate the sewage to be generated by the proposed Development, but an additional pump for the system may be required. (COH Exhibit 1, p. 13, par. 52; T. 7/23/92 p. 45, l.2-3).

83. Petitioner is willing to participate in Petitioner's proportionate share of the funding and construction of adequate wastewater transmission and disposal facilities for the Development. (T. 7/23/92 p. 61, l. 8-13).

### Drainage

84. DPW requires that all development generated surface water runoff is to be disposed of and is not to be directed toward any adjacent properties. (OSP Exhibit 3, p. 10).

85. Petitioner is willing to design and construct drainage improvements to the satisfaction of the County of Hawaii and the

State Department of Transportation. (T. 7/23/92 p. 61, l. 14-18).

#### Solid Waste Disposal

86. Solid waste generated by the proposed Development can be disposed of at an existing County solid waste transfer station located approximately one-half mile to the south of the Property at Puueopaku. Solid waste can also be disposed of at any other approved disposal site in South Hilo. (T. 7/23/92 p. 46, l. 19-21; COH Exhibit 1, p. 13, par. 53).

87. Petitioner is willing to cooperate with the DOH and DPW to conform to the program goals and objectives of the Integrated Solid Waste Management Act. (T. 7/23/92 p. 62, l. 12-17).

#### Electrical and Telephone Service

88. Electrical power for the proposed Development would be provided by Hawaii Electric Light Company, Inc. (hereinafter "HELCO"). Electrical power and telephone facilities are available to provide service to the proposed Development. (Petition, par. 52; T. 7/23/92 p. 46, l. 15-18, p. 56, l. 13-20).

#### Police and Fire Protection

89. The Property is within an existing serviceable region by basic police and fire facilities. The Hilo Police Station is situated approximately 4.3 miles away from the Property and the Hilo Central Fire Station is situated approximately 3.6 miles away from the Property. (OSP Exhibit 3, p. 12; COH Exhibit 1, p. 13, par. 54, p. 14, par. 55).

## Schools

90. The State Department of Education (hereinafter "DOE") estimates that 33 additional students will be added to the school population by reason of the proposed Development, with 25 additional students at Kalaniana'ole Elementary and Intermediate Schools and 8 additional students at Hilo High School. (COH Exhibit 1, p. 14, par. 56; Petitioner's Exhibit 12).

91. Kalaniana'ole School has had a 16% decline in enrollment over the last 10 years. DOE projects that the enrollment of 580 students at this school as of 1991 will continue to decrease annually, so that by 1997 the projected enrollment will be 488 students. (Petitioner's Exhibit 13, 14).

92. DOE has concluded that Kalaniana'ole Intermediate and Elementary Schools will not be impacted by the proposed Development. It has also concluded that the impact of eight additional students at Hilo High School is negligible. (Petitioner's Exhibit 19).

## Civil Defense

93. There are presently civil defense sirens located near the Property in the Paukaa area, and in Papaikou and Pepeekeo. (T. 7/23/92 p. 59, l. 20-23).

94. Although the State Department of Defense, Office of the Director for Civil Defense has recommended the installation of a new siren on the Property in order to provide alerting coverage for the residents of the proposed Development, it is the County Civil Defense administrator, Harry Kim's position that a siren



would not be warranted for a subdivision of this size. Mr. Kim also advised the Petitioner that the Property was not in a tsunami inundation zone and the sirens are primarily used for tsunami warnings. (OSP Exhibit 3, pp.11-12; T. 7/23/92 p. 59, l. 24-25, p.60, l. 1-11.

95. OSP has recommended that Petitioner fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies. Petitioner has no objection to this recommendation. (OSP Exhibit 3, p. 15, T. 4/29/93, p. 168, l. 16-19).

#### Park and Recreation Services and Facilities

96. There are existing recreational facilities within the vicinity of the Property. A ball field is located at Papaikou approximately one mile away from the Property, and Wainaku Gym is approximately two miles away from the Property. (Petition, par. 55; T. 7/23/92 p. 56, l. 13-20)

#### CONFORMANCE TO URBAN DISTRICT STANDARDS

97. The proposed Development meets the standards applicable in establishing boundaries of the Urban District set forth in Section 15-15-18 of the Commission's Rules as follows:

(a) The Development is in reasonable proximity to centers of trading and employment facilities. The Property is less than three miles away from downtown Hilo, the largest commercial and industrial area in the County of Hawaii. (Petition, Par. 37(a); T. 7/23/92 p. 56, l. 13-20).

(b) The Petitioner has substantiated the economic feasibility of the Project through Petitioner's financial statements, the report of Kenneth Tanaka, and Petitioner's testimony regarding his experience in the development of residential subdivisions in South Hilo. (Petitioners Exhibits 5, 6, and 11; Petition, par. 28, 57(b); T. 7/23/92 p. 40, l. 10-25, p. 41, l. 1-21, p. 48, l. 19-29, p. 56, l. 13-20).

(c) The Property is in proximity to existing and developing facilities, such as roads, water, sewer and solid waste disposal. Public Services, such as police, fire, parks and schools area also in reasonable proximity to the Property. (Petition, par. 57(c); T. 7/23/92 p. 56, l. 13-20).

(d) The Development will help to provide a sufficient reserve area for urban growth in an appropriate location based on a ten-year projection. The Big Island has been experiencing an acute housing shortage for many years. In addition, there is an absence of available residential lots in the Hilo area. The proposed Development, situated in an area designated by the County for urban expansion, will help to mitigate this shortage by the infusion of additional residential lots into the market. (Petition, par. 57(d); Petitioner's Exhibit 6; T. 7/23/92 p. 56, l. 13-20).

(e) The Property is of satisfactory topography with a gentle slope not exceeding 20 percent, except in the gulch area. The property is also reasonably free from the threat of flooding, tsunami, unstable soil and other adverse environmental effects.

(Petition, par. 57(e), T. 7/23/92 p. 42, l. 12-21, p. 43, l. 4-8, p. 56, l. 13-20).

(f) The Property is contiguous to the Urban Land Use District to the south, the east and the southeast, with residential developments existing in those Urban areas. The Property is also designated for "Low Density Urban" use under the Hawaii County General Plan, which contemplates future residential development in the area. (Petition, par. 57(f); T. 7/23/92 p. 56, l. 13-20; OSP Exhibit 3, p. 2, par. 1; COH Exhibit 1, p. 10, par. 41).

(g) The urbanization of the Property will not contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services, since it is contiguous to an existing urban and residential area. (Petition, par. 57(g); T. 7/23/92 p. 33, l. 10-16, p. 36, l. 13-18, p. 56, l. 13-20; OSP Exhibit 3, p. 2, par. 1).

#### CONFORMANCE WITH THE HAWAII STATE PLAN

98. The proposed reclassification is generally consistent with the objectives, policies and priority guidelines of the Hawaii State Plan for the physical environment, relating to land, air and water quality; for socio-cultural advancement relating to housing; and for regional growth distribution and land resource utilization. The proposed reclassification:

(a) Provides for an urban development in close proximity to existing services and facilities (Section 226-13(b)(7), HRS). (supra, par. 65-88).

(b) Provides greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, livable homes located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals (Section 226-19(a)(1), HRS). (supra, par. 21-27, 36).

(c) Increases home ownership opportunities and choices in terms of quality, location, cost, densities, style and size of housing (Section 226-19(b)(3), HRS). (supra, par. 21-27, 36).

(d) Promotes design and location of housing developments, taking into account the accessibility to public facilities and services and other concerns of existing communities and surrounding areas (Section 226-19(b)(5), HRS). (supra, par. 21-27, 65-68).

(e) Makes available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district (Section 226-104(b)(2), HRS). (supra, par. 38-40).

#### CONFORMANCE TO COASTAL ZONE POLICIES AND OBJECTIVES

99. The proposed reclassification of the Property for the proposed Development conforms to the policies and objectives of the Coastal Zone Management Program, Chapter 205A, Hawaii Revised Statutes, as amended. (Petition, par. 64-66, T. 7/23/92 p. 56, l. 13-20).

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, the Commission finds upon a clear preponderance of the evidence that the proposed boundary amendment of the Property, which is the subject of the Petition in Docket No. A92-676, by Hilo One, Incorporated, consisting of approximately 24.659 acres of land situated at Paukaa, South Hilo, Island and County of Hawaii, Hawaii and identified as Hawaii Tax Map Key No. 2-7-03:27, from the Agriculture District to the Urban District, subject to the conditions stated in the order, conforms to the standards for establishing the Urban boundaries, is reasonable, not violative of Section 205-2, Hawaii Revised Statutes, and is consistent with the policies and criteria established pursuant to Section 205-16, Hawaii Revised Statutes, compliance with the Hawaii State Plan; pursuant to Section 205-17, Hawaii Revised Statutes, the Land Use Commission decision making criteria; and pursuant to Section 205A-2, Hawaii Revised Statutes, the Coastal Zone Management Program, Objectives and Policies.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, being the subject of the Petition in Docket No. A92-676, filed by Hilo One, Incorporated, consisting of approximately 24.659 acres of land situated at Paukaa, South Hilo, Island and County of Hawaii, Hawaii and identified as Hawaii Tax Map Key No. 2-7-03:27, and approximately identified on Exhibit A attached hereto and

incorporated by reference herein, shall be and the same is hereby reclassified from the Agriculture District to the Urban District and the State Land Use District Boundaries are amended accordingly subject to the following conditions:

1. Petitioner shall survey, grade and grass a two-acre park situated along the Hilo or southern boundary of the Property and shall offer the park for dedication to the County of Hawaii as a public park.

2. Petitioner shall immediately stop work on the impacted area and contact the Historic Preservation Division, State Department of Land and Natural Resources, should any archaeological resources such as artifacts, shell, bones or charcoal deposits, human burials, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property.

3. Petitioner shall participate in the funding and construction of regional and local traffic improvements, on a pro rata basis, as determined by the State Department of Transportation.

4. Petitioner shall submit construction plans for roadway work required for the Development within the State Highway right-of-way to the Department of Transportation for approval.

5. The Petitioner shall implement effective soil erosion and dust control measures both during and after construction.

6. Petitioner shall fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies.

7. Petitioner shall provide notification to all prospective buyers of the single family dwellings of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance. If conflicts do occur, the owners of the Property and not the existing farm businesses, shall bear the full cost of implementing mitigating actions.

8. Petitioner shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a pro-rata basis, as determined by the State Department of Health and the County Department of Public Works.

9. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the County of Hawaii and the State Department of Transportation.

10. Petitioner shall grant a conservation easement, or easements, to the State of Hawaii for Paukaa Stream and gulch, to the satisfaction of the State Department of Land and Natural Resources. The conservation easement, or easements, shall be recorded with the State of Hawaii Bureau of Conveyances or Land Court prior to the sale of the Property or any portion thereof.

Petitioner shall submit a copy of the recorded easement, or easements, to the Land Use Commission, the Office of State Planning and the County of Hawaii.

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

12. Petitioner shall cooperate with the State Department of Health and the County Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act.

13. Petitioner shall have a botanical study and/or wetland delineation performed for the Property so that the Department of Army Corps of Engineers permit requirements can be determined.

14. Petitioner shall complete the proposed project in substantial compliance with the representations made before the Land Use Commission.

15. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property covered by the approved petition prior to visible commencement of construction on the Property.

16. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of



the subject project and the Petitioner's progress in complying with the conditions imposed.

17. The conditions imposed by the Land Use Commission shall be recorded with the State of Hawaii Bureau of Conveyances or the Land Court pursuant to Title 15, Chapter 15, Section 92, Hawaii Administrative Rules.

Done at Honolulu, Hawaii, this \_\_\_\_ day of \_\_\_\_\_, 1993 per motion on \_\_\_\_\_, 1993.

LAND USE COMMISSION  
STATE OF HAWAII

By \_\_\_\_\_  
ALLEN Y. KAJIOKA  
Chairman

sps:May 25, 1993/Hig-Paukaa/Fndngs3