

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
)
KAUPULEHU DEVELOPMENTS)
)
To Amend the Conservation Land Use District)
Boundary into the Urban Land Use District for)
Approximately 1,009.086 Acres of Land at)
Ka'upulehu, North Kona, Island, County, and)
State of Hawai'i, TMK 7-2-03: por. 1)
_____)

DOCKET NO. A93-701

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

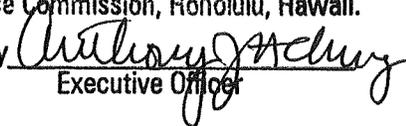
**This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu, Hawaii.**

OCT 18 2001

Date

by

Executive Officer



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CONCLUSIONS OF LAW, AND DECISION AND ORDER

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STATE OF HAWAII

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INTRODUCTION

Kaupulehu Developments, a Hawai`i general partnership ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on December 13, 1993, and a First Amended Petition for Land Use District Boundary Amendment on July 1, 1994, pursuant to chapter 205, Hawai`i Revised Statutes ("HRS"), and chapter 15-15, Hawai`i Administrative Rules ("HAR"), to amend the State land use district boundaries by reclassifying approximately 1,009.086 acres of land from the State Land Use Conservation District to the State Land Use Urban District at Ka`upulehu, North Kona, Island, County, and State of Hawai`i, identified as Tax Map Key No. 7-2-03: por. 1 ("Property" or "Petition Area"), for the development of a recreational/residential community.

The Supreme Court in *Ka Pa`akai O Ka `Aina v. Land Use Commission*, 94 Haw. 31, 46, 7 P.3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," the Land Use Commission

“Commission”) must “protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians.” To satisfy that obligation, “[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted.” *Id.*, 94 Haw. At 52, 7 P.3d at 1089. The Supreme Court vacated the Commission’s Decision and Order filed herein and remanded the case for the limited purpose of entering specific findings and conclusions regarding such rights and valued native Hawaiian resources.

Given the specific findings and directions to the Commission in this remand by the State Supreme Court in *Ka Pa`akai*, *supra*, the Commission’s revised findings of fact, conclusions of law, and decision in this land use district boundary amendment therefore specifies (1) the identity and scope of valued cultural, historical, or natural resources in the Petition Area, including the extent to which traditional and customary native Hawaiian rights are exercised in the Petition Area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the Commission to reasonably protect native Hawaiian rights if they are found to exist in the Petition Area.

The Commission, having heard and examined the testimony, evidence and arguments of the parties presented during the hearings; the Proposed Findings of Fact, Conclusions of Law, and Decision and Orders of Petitioner, the County of Hawai`i Planning Department, Intervenor Plan to Protect (“PTP”), Intervenor Ka Lahui Hawai`i, Kona Hawaiian Civic Club, and Protect Kohanaiki `Ohana (collectively referred to herein as “Ka Pa`akai O Ka `Aina”); the Office of State Planning’s (“OSP”) response to Petitioner’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner’s response to PTP’s and Ka Pa`akai O Ka `Aina’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Ka` Pa`akai O Ka `Aina’s exceptions to

Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed thereto; Petitioner's Proposed Findings of Fact, Conclusions of Law, Decision and Order on Remand; the County of Hawai'i's Joinder in Petitioner's Proposed Findings of Fact, Conclusions of Law and Order on Remand; Ka Pa`akai O Ka `Aina's Proposed Findings of Fact; the State Office of Planning's ("OP") Proposed Findings of Fact and Recommendations; and Petitioner's exceptions to Ka Pa`akai O Ka `Aina's and OP's Proposed Findings of Fact, hereby makes the following findings of fact, conclusions of law, and decision and order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On December 13, 1993, Petitioner filed a Petition For Land Use District Boundary Amendment, and on July 1, 1994, a First Amended Petition For Land Use District Boundary Amendment (collectively referred to herein as "Petition"). The Petition included an Environmental Assessment as required by section 343-5(a)(7), HRS.
2. Petitioner, a Hawai'i general partnership, is comprised of Barnwell Hawaiian Properties, Inc., a Delaware corporation licensed to do business in Hawai'i and managing general partner of Kaupulehu Developments, and Cambridge Hawaii Limited Partnership, a Hawai'i limited partnership. Petitioner's business and mailing address is 1100 Alakea Street, Suite 2900, Honolulu, Hawai'i 96813.
3. On January 13, 1994, and by a written Order filed on January 31, 1994, the Commission required Petitioner to prepare an Environmental Impact Statement ("EIS") pursuant to chapter 343, HRS, and chapter 11-200, HAR.
4. On September 22, 1994, and by a written Order dated October 5, 1994, the Commission accepted Petitioner's Final EIS and accepted Petitioner's Petition and First Amended Petition for filing.
5. On October 26, 1994, PTP filed a Petition To Intervene In Proceedings.

6. On October 27, 1994, Kona Village Associates ("KVA") filed a Petition For Intervention.

7. On November 16, 1994, and by written Orders dated November 25, 1994, the Commission granted Intervenor status to PTP and KVA.

8. On November 23, 1994, KVA filed a Notice Of Withdrawal Of Kona Village Associates As An Intervenor In Land Use Commission Docket No. A93-701. On December 1, 1994, and by a written Order dated December 20, 1994, the Commission granted KVA's request to withdraw its Petition For Intervention.

9. On November 28, 1994, Ka Lahui Hawai'i ("KLH") and the Kona Hawaiian Civic Club ("KHCC") each filed a Petition To Intervene As Party And Request For Contested Case Hearing.

10. On November 30, 1994, Protect Kohanaiki `Ohana ("PKO") filed a Petition To Intervene As A Party And Request For Contested Case Hearing.

11. On December 1, 1994, and by a written Order dated December 20, 1994, the Commission consolidated the Petitions to Intervene filed by KLH, KHCC, and PKO and granted them Intervenor status.

12. The Commission conducted prehearing conferences regarding the Petition on November 18, 1994; March 3, 1995; May 2, 1995; and November 9, 1995, at which time proposed evidence was discussed, and exhibits and lists of witnesses were exchanged by the parties.

13. The Commission opened the hearing on the Petition on December 1 and 2, 1994, pursuant to public notices published in the Hawaii Tribune-Herald, West Hawaii Today, and the Honolulu Advertiser on October 12, 1994. On December 1, 1994, the Commission took a field trip to the Property. The Commission continued its hearings on March 23 and 24, 1995; May 25 and 26, 1995; August 10, 1995; October 10 and 11, 1995; November 16 and 17, 1995; November 30 and December 1, 1995;

January 18 and 19, 1996; February 15 and 16, 1996; March 27, 1996; and May 30, 1996. On January 18, 1996, the Commission took a field trip to sites off of the Property.

14. The following persons appeared and testified as public witnesses and/or submitted written testimonies or letters: Ruby McDonald; Janice Palma; April Maberry; C. J. Villa; Leimana Damate; Lois Tyler; John P. Powell; Hannah Kihalani Springer; John A. Broussard; Curtis Tyler; Lunakanawai Hauanio; Karen Eoff; Charles Young; Gary L. Blaich, M.D.; Robert E. Bethea; Rodney T. Oshiro; Brooks Harper; Patsy T. Mink; Maile David; Don Hibbard; John R. De Sa; John E. Dawrs; Rex D. Johnson; Roy C. Price, Sr.; Douglas Blake; Trina Meinsen and family; Joshua Dankovchik; Robert D.S. Kim; Marion Kelly; Virginia Isbell; Gladys K. Pualoa; Ipolani Tano; and Herbert M. Richards.

15. On April 6, 1995, PTP filed a First Request For Subpoena Duces Tecum To Petitioner Kaupulehu Developments, which subpoena duces tecum was issued by the Commission's chairperson on April 10, 1995.

16. On April 28, 1995, Petitioner filed a Motion To Quash Subpoena Duces Tecum To Petitioner Kaupulehu Developments ("Motion to Quash").

17. On August 10, 1995, and by Order Granting Motion To Quash Subpoena Duces Tecum To Petitioner Kaupulehu Developments dated August 24, 1995, the Commission granted Petitioner's Motion to Quash.

18. On September 14, 1995, Petitioner filed a Motion To Correct Transcript Of Hearing On August 10, 1995 ("First Motion to Correct Transcript"). On October 10, 1995, and by a written Order dated October 20, 1995, the Commission granted Petitioner's First Motion to Correct Transcript.

19. On September 25, 1995, PTP filed a Notice Of Appeal To Circuit Court.

20. On November 8, 1995, Petitioner filed a Motion To Correct Transcript Of Hearing On October 10, 1995 ("Second Motion to Correct Transcript"). On

November 16, 1995, and by a written Order dated November 29, 1995, the Commission granted Petitioner's Second Motion to Correct Transcript.

21. On January 16, 1996, Petitioner filed a Motion To Correct Transcript Of Hearing On November 16, 1995 ("Third Motion to Correct Transcript"). On January 18, 1996, and by a written Order dated January 26, 1996, the Commission granted Petitioner's Third Motion to Correct Transcript.

22. On February 21, 1996, the Circuit Court issued an order which affirmed the Commission's Order Granting Motion To Quash Subpoena Duces Tecum To Petitioner Kaupulehu Developments.

23. On March 15, 1996, Ka Pa`akai O Ka `Aina filed a Joint Motion To Dismiss Or Summarily Deny Petition ("Joint Motion to Dismiss"). On May 30, 1996, and by a written Order dated June 7, 1996, the Commission denied Ka Pa`akai O Ka `Aina's Joint Motion to Dismiss.

24. On March 15, 1996, Ka Pa`akai O Ka `Aina filed a Joint Motion To Strike Testimony Relating To DLNR Historical Preservation Findings, Related Petitioner Exhibits And All References Thereto ("Joint Motion to Strike Testimony"). On March 22, 1996, Ka Pa`akai O Ka `Aina filed an Amendment to their Joint Motion to Strike Testimony. On May 30, 1996, and by a written Order dated June 7, 1996, the Commission denied Ka Pa`akai O Ka `Aina's Amended Joint Motion to Strike Testimony.

25. On March 15, 1996, Ka Pa`akai O Ka `Aina filed a Joint Motion To Admit Stated Exhibits In Evidence ("Joint Motion to Admit"). On March 27, 1996, and by a written Order dated May 1, 1996, the Commission granted Ka Pa`akai O Ka `Aina's Joint Motion to Admit.

26. On March 19, 1996, Ka Pa`akai O Ka `Aina filed a Joint Request For Issuance Of Subpoena, which administrative subpoena was issued by the Commission's chairperson on March 21, 1996.

27. On March 20, 1996, Petitioner filed a Request For Issuance Of Subpoena, which administrative subpoena was issued by the Commission's chairperson on March 22, 1996.

28. On March 25, 1996, Petitioner filed a Motion To Correct Transcript Of Hearing On November 17, 1995 ("Fourth Motion to Correct Transcript"). On May 30, 1996, and by a written Order dated June 7, 1996, the Commission granted Petitioner's Fourth Motion to Correct Transcript.

29. On May 2, 1996, Petitioner filed a Motion To Correct Transcript Of Hearing On March 27, 1996 ("Fifth Motion to Correct Transcript"). On May 30, 1996, and by a written Order dated June 7, 1996, the Commission granted Petitioner's Fifth Motion to Correct Transcript.

30. On May 6, 1996, Ka Pa`akai O Ka `Aina filed a Joint Motion To Strike County Of Hawaii's Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order ("Joint Motion to Strike"). On May 30, 1996, and by a written Order dated June 7, 1996, the Commission denied Ka Pa`akai O Ka `Aina's Joint Motion to Strike.

31. On May 10, 1996, OSP filed a Motion To Correct Transcript Of Hearing On March 27, 1996 ("Motion to Correct Transcript"). On May 30, 1996, and by a written Order dated June 7, 1996, the Commission granted OSP's Motion to Correct Transcript.

32. On May 30, 1996, the Commission approved the Petition subject to 25 conditions.

33. The Commission entered its Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") on the Petition on June 17, 1996.

34. The Commission's decision was appealed to the Third Circuit Court by Ka Pa`akai O Ka `Aina and Plan to Protect. On November 29, 1996, Ka Pa`akai O Ka `Aina filed a Motion To Supplement Record On Appeal with the Third Circuit Court to include into the record the Executive Summary of a Report entitled "Identification of

Potential Traditional Cultural Properties-Beach Safety Improvements Project at Hualalai Resort.” On February 12, 1997, the Third Circuit Court entered an Order On Appellants Ka Pa`akai O Ka `Aina’s Motion To Supplement Record On Appeal, which denied the motion but found that the Executive Summary was material for the Commission’s consideration and therefore partially remanded the case to the Commission for the limited purpose of considering whether the Executive Summary warranted the re-opening of the evidentiary hearing to consider what value, if any, the report may have.

35. On March 12, 1997, Petitioner filed a Memorandum In Opposition To Proposed Supplementation of the Record By Intervenors –Appellants Ka Pa`akai O Ka `Aina.

36. On March 13, 1997, PTP filed a Brief On Remand.

37. On March 20, 1997, Ka Pa`akai O Ka `Aina filed a Memo In Support Of Re-Opening Evidentiary Hearing (“Memo in Support”).

38. On March 21, 1997, OP filed a Statement Of Position Regarding Re-Opening Of The Evidentiary Hearing.

39. On March 21, 1997, and by a written Order dated April 17, 1997, the Commission granted Petitioner’s oral motion to strike Ka Pa`akai O Ka `Aina’s Memo in Support.

40. On March 21, 1997, and by a written Order dated April 17, 1997, the Commission denied Ka Pa`akai O Ka `Aina’s request to reopen the hearing.

41. On September 30, 1997, the Third Circuit Court entered a judgment affirming the Commission’s Decision and Order.

42. Ka Pa`akai O Ka `Aina and PTP appealed the circuit court’s judgment to the Hawai`i Supreme Court. On September 11, 2000, the Hawai`i Supreme Court rendered an opinion in which it vacated the Commission’s Decision and Order and remanded the matter to the Commission for the limited purpose of entering specific findings and conclusions, with further hearing if necessary, regarding: (1) the identity

and scope of “valued cultural, historical, or natural resources” in the Petition Area, including the extent to which traditional and customary native Hawaiian rights are exercised in the Petition Area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by Commission to reasonably protect native Hawaiian rights if they are found to exist.

43. A Notice and Judgment on Appeal was entered by the Hawai`i Supreme Court on October 17, 2000, remanding the case to the Third Circuit Court with instructions for it to remand to the Commission for the purpose set forth in its opinion.

44. On October 18, 2000, Petitioner filed a Motion for Establishment of Procedure on Remand with the Commission.

45. On October 30, 2000, Ka Pa`akai O Ka `Aina filed a Response To Kaupulehu Developments’ Motion For Establishment Of Procedure On Remand Dated October 17, 2000.

46. The Third Circuit Court entered a Judgment Remanding Civil Nos. 96-189K and 96-190K to the Land Use Commission Following Decision on Appeal to the Hawaii Supreme Court on December 5, 2000, vacating its judgment entered on September 30, 1997, directing the Commission to vacate its June 17, 1996, Decision and Order, and directing the Commission to enter specific findings and conclusions as ordered by the Hawai`i Supreme Court in its decision as set forth above.

47. On December 19, 2000, a prehearing conference was held, at which time the parties were ordered to each file a memorandum no later than January 5, 2001, which addressed certain issues regarding the scope of the remanded proceeding.

48. On January 2, 2001, the Commission entered a Prehearing Conference Order.

49. On January 2, 2001, Ka Pa`akai O Ka `Aina filed a Brief On Remand.

50. On January 5, 2001, Petitioner filed a Memorandum Concerning The Scope Of And Procedure Applicable To The Remand Proceedings.

51. On January 5, 2001, OP filed a Memorandum In Support Of Office Of Planning, State Of Hawaii Position On How To Proceed.

52. On January 9, 2001, PTP filed a Memorandum On How To Proceed.

53. On January 9, 2001, the Hawai`i Supreme Court entered an Amended Notice and Judgment on Appeal.

54. On January 12, 2001, the County of Hawai`i filed a Memorandum In Response To Prehearing Conference Order Of January 2, 2001.

55. At its meeting on January 19, 2001, and in its Order Establishing Procedures for Further Proceedings on Remand entered February 15, 2001 ("Order Establishing Procedures"), the Commission ordered the parties and the Commission's staff to 1) review the record upon which the June 17, 1996, Decision and Order was premised and based and identify in the record where there is a reference to (a) a "valued cultural, historical or natural resource," (b) a "traditional and customary native Hawaiian right exercised in the Petition Area," or (c) the extent to which either (a) or (b) could be affected or impaired by Petitioner's requested land reclassification; and 2) submit a written list of all resources, rights, impairments, or affect identified, referred to, described, or discussed with a citation to each instance in the record where such is found.

56. Responses to the Order Establishing Procedures were filed by Petitioner on March 19, 2001; by the County of Hawai`i on March 19, 2001; by Ka Pa`akai O Ka `Aina on March 19, 2001; and by the Commission staff on March 29, 2001.

57. At its meeting on April 5, 2001, the Commission directed the parties to submit by April 27, 2001, proposed Findings of Fact regarding 1) the identity and scope of "valued cultural, historical, or natural resources" within the Petition Area, including the extent to which traditional and customary native Hawaiian rights are

exercised in the Petition Area; and 2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action, together with copies of the applicable portions of the record on which the findings are based. The Commission further directed that the parties may also submit proposed conclusions of law and decision and order.

58. On April 26, 2001, the County of Hawai`i filed an Amended List Of Valued Cultural, Historical And Natural Resources And Impact Assessment.

59. On April 27, 2001, Petitioner filed a Proposed Findings Of Fact, Conclusions Of Law, Decision and Order On Remand.

60. On April 27, 2001, the County of Hawai`i filed a Joinder In Kaupulehu Development's Proposed Findings Of Fact, Conclusions Of Law And Order On Remand Dated April 27, 2001.

61. On April 30, 2001, OP filed Proposed Findings Of Fact And Recommendations.

62. On April 30, 2001, Ka Pa`akai O Ka `Aina filed a Proposed Findings Of Fact.

63. On May 11, 2001, Petitioner filed Exceptions To Intervenors Ka Pa`akai O Ka `Aina's Proposed Findings Of Fact and Exceptions To State Office Of Planning's Proposed Findings Of Fact, And Recommendations.

64. On May 31, 2001¹, and by a written Order dated June 29, 2001, the Commission required its staff to prepare a Proposed Findings of Fact, Conclusions of Law, and Decision and Order that would provide for approval of the Petition subject to certain conditions.

65. On July 12, 2001, the Draft Proposed Findings of Fact, Conclusions of Law, and Decision and Order ("Draft Proposed Decision and Order") prepared by the

¹ At this meeting, Leina`ala Keakealani Lightner, Ku`ulei Keakealani, Mikahala Roy, and David Roy appeared and testified as public witnesses.

Commission's staff pursuant to the Order dated June 29, 2001, was transmitted to the parties.

66. By letter dated July 16, 2001, Michael J. Matsukawa, Esq., counsel for Ka Pa`akai O Ka `Aina, provided comments on the Draft Proposed Decision and Order.

67. On July 19, 2001, the Commission met in Kailua-Kona, Hawai`i, to consider the Draft Proposed Decision and Order². At the meeting, the Commission deferred the matter to provide additional time to review comments on the document provided by the Attorney General's office. The Commission also shortened the time period for the parties' review of the document in order that the Commission could take action on the document at its August 23, 2001, meeting date.

68. On August 7, 2001, Draft #2 of the Draft Proposed Decision and Order ("Second Draft Proposed Decision and Order") prepared by the Commission's staff pursuant to the Order dated June 29, 2001, and to the comments provided by the Attorney General's office was transmitted to the parties.

69. On August 9, 2001, the Commission met in Hilo, Hawai`i, to consider the Second Draft Proposed Decision and Order. At the meeting, the Commission received a facsimile letter dated August 9, 2001, from Michael J. Matsukawa, Esq., commenting on the Second Draft Proposed Decision and Order. Following discussion on the Second Draft Proposed Decision and Order, the Commission, by motion, directed its staff to issue to the parties for review and comment a Proposed Findings of Fact, Conclusions of Law, and Decision and Order sponsored by Commissioner Roehrig.

70. On August 14, 2001, the Proposed Findings of Fact, Conclusions of Law, and Decision and Order sponsored by Commissioner Roehrig prepared by the Commission's staff pursuant to the Order dated June 29, 2001, and to the Commission's motion of August 9, 2001, was transmitted to the parties.

² At this meeting, Janice Palma-Glennie appeared and testified as a public witness.

71. On August 16, 2001, Petitioner filed its Exceptions To The Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order.

72. On August 21, 2001, Petitioner filed its Supplemental Exceptions To The Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order.

73. On August 22, 2001, Petitioner filed a facsimile of suggested changes to Condition No. 8.

74. On August 23, 2001, the Commission met in Kailua-Kona, Hawai'i, to consider the Proposed Findings of Fact, Conclusions of Law, and Decision and Order sponsored by Commissioner Roehrig. Following arguments by the parties and discussion by the Commission, the Commission adopted the document, subject to certain amendments as reflected in the transcripts of the meeting.

DESCRIPTION OF THE PROPERTY

75. Petitioner leases the Property from Kamehameha Schools/Bishop Estate ("KS/BE").

76. KS/BE owns the Property in fee simple and has authorized the filing of the Petition. The Property was originally ruled and controlled by early Hawaiian chiefs who passed on the Property to their heirs in the line of ali'i that succeeded Kamehameha I, including Kame'eiamoku and his twin brother, Kamanawa. Following the Mahele in 1848, the Property came under the ownership of Kamehameha V. Kamehameha V's half-sister, Ruth Ke'elikolani, subsequently inherited the Property, which upon her death, was bequeathed to Bernice Pauahi Bishop. Upon Bernice Pauahi Bishop's death in 1884, the Property was included under the Bernice Pauahi Bishop Estate, a trust benefiting the Kamehameha Schools for Hawaiian children.

77. Petitioner's lease allows the uses of the Property as proposed in the Petition.

78. The Property is located makai of Queen Ka`ahumanu Highway in the ahupua`a of Ka`upulehu, North Kona, Hawai`i, and is designated as Tax Map Key No. 7-2-03: portion of 1.

79. The Property consists of approximately 1,009.086 acres and is a portion of a larger approximately 2,180.879-acre parcel ("Parcel 1"). There is an approximately 37.064-acre exclusion located on the Property, which will remain within the State Land Use Conservation District for archaeological preservation purposes.

80. The Property is crescent-shaped and generally consists of the western half of Parcel 1. The Property is bounded by the Queen Ka`ahumanu Highway to the south, the State-owned lands of Pu`uwa`awa`a to the east, the ocean to the north, and Kona Village Resort and the development which is now known as "Hualalai Resort" (hereinafter referred to by its original name, "Kaupulehu Resort") to the west.

81. Except for the construction of a new access road for Kona Village Resort, the Property is currently undeveloped. It is generally uninhabited, except for the shoreline area which is used occasionally by fishermen, salt gatherers, campers, and others who visit the Property.

82. The Property is generally flat and rises from close to sea level to approximately 220 feet above mean sea level at the Queen Ka`ahumanu Highway boundary, with an overall average slope of 4 percent.

83. The Property receives less than 20 inches of precipitation annually.

84. The Property generally consists of sparsely-vegetated pahoehoe lava flows and the 1800-1801 historic Ka`upulehu Lava Flow, an a`a lava flow which extends through the center of the Property and constitutes approximately one-half of its total area.

85. There is practically no soil cover on the lava flows. The U. S. Soil Conservation Service designates the Property's soil types as A`a (rLV) and Pahoehoe

(rLW) lava flows, Rock Land (rRO), and Beach Land (BH). The latter two types apply to approximately 10 percent of the Property.

86. The land within the Property is not classified by the State Department of Agriculture's "Agricultural Lands of Importance to the State of Hawai'i" rating system.

87. The Land Study Bureau's Detailed Land Classification study for the Island of Hawai'i designates the soils of the Property as class "E" lands. Class "E" lands are very poor or least suited for agricultural uses.

88. The Federal Emergency Management Agency's Flood Insurance Rate Map indicates that, with the exception of a approximately fifty-foot wide strip of land along the coastline which is designated Zone VE (areas inundated by the 100-year flood with velocity hazards and a base flood elevation of nine feet above mean sea level), the Property is designated as Zone X (areas determined to be outside the 500-year floodplain).

PROPOSAL FOR RECLASSIFICATION

89. The primary objective of the proposed development is to accommodate, with a viable master plan and common infrastructure, future growth of the Kaupulehu Resort community by offering complementary products to those planned in the portion of the resort which is under construction. The proposed development is intended to enhance the economic viability of the Kaupulehu Resort community.

90. The development concept is a recreational/ residential community which consists of:

1. 530 single-family homes;
2. 500 low-rise multi-family units;
3. An 11-acre neighborhood commercial center containing 45,000 square feet of leasable space;

4. A 36-hole golf course;
5. A golf clubhouse which will also serve as a secondary retail, restaurant, and service complex for the expansion area;
6. A 3-acre recreational club for residents, members and guests;
7. Other necessary ancillary facilities and uses; and
8. A 70-acre area abutting the north boundary adjacent to State lands which would include public access shoreline facilities, other recreational uses, and cultural activities (collectively referred to herein as "Project").

91. Substantial infrastructure improvements are expected to be provided during the initial five years once the required government approvals have been secured. Initial sales are also expected during this period. Full build-out of the Project is projected over 20 years.

92. The projected development costs for the proposed Project to come to market is \$100 million. Within the first five years following the receipt of all government approvals, development costs would be approximately \$45 million. This phase would cover the first golf course, related infrastructure, general infrastructure costs, certain public facility costs, and finishing a certain amount of the residential product for sale to the public.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

93. Barnwell Hawaiian Properties, Inc., which is Petitioner's managing partner, filed a consolidated balance sheet showing total assets of \$15,573,386 as of September 30, 1993. Its parent company, Barnwell Industries, Inc., filed consolidated financial statements for itself and its subsidiaries which show that, of June 30, 1993, its total assets were \$28,452,000 and that for the nine months ending June 30, 1993, its net after-tax earnings and revenues were \$2,880,000 and \$13,810,000, respectively, and its cash flow provided by operating activities was \$4,546,000.

94. The proposed Project can be financed through alternative means. Petitioner may form a joint venture with an independent developer, as Petitioner did in the initial increment of Kaupulehu Resort. In the alternative, Petitioner will fund the initial development itself or will obtain conventional financing. Initial sales revenues will be used to finance subsequent development phases.

95. Pursuant to an option agreement with Petitioner, Kaupulehu Makai Venture, a California partnership, held an option to acquire Petitioner's interest in the Property.

96. Such option agreement contains a provision for its automatic termination on April 30, 1995, unless earlier exercised or terminated.

97. Such option agreement terminated on April 30, 1995, without being exercised.

STATE AND COUNTY PLANS AND PROGRAMS

98. The Property is located within the State Land Use Conservation District, as reflected on the Commission's official map, H-6 (Kiholo).

99. The Property is designated within a "Resort Destination Node" in the West Hawai'i Regional Plan (November 1989) of OSP.

100. The Property is within the Hawai'i County General Plan Land Use Pattern Allocation Guide Maps as "Urban Expansion" and "Open."

101. The Property is zoned "Open" by the County of Hawai'i.

102. The Property is situated within the Hawai'i County Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

103. Petitioner's market consultant, The Hallstrom Group, Inc., prepared a market assessment for the proposed Project, which projects the demand for residential, golf course, and commercial uses within the proposed Project. There is a demand for the Project within an 18-year absorption schedule.

104. Approximately 3,700 new resort/residential lots will be required in West Hawai'i by the year 2015. Despite the gross level of regional inventory which is proposed, it is likely that moderately-priced lots, as proposed by Petitioner, will be in significant demand.

105. As to resort/multi-family units, approximately 4,500 units will be directed toward West Hawai'i.

106. Although golf course demand may nearly be serviced in the year 2015 by the number of golf courses which are currently existing, under construction, or proposed and approved, it is unlikely that the 23 proposed golf courses will all be built in the foreseeable future. Golf courses are a vital amenity for resort and master-planned community development, offering recreational opportunities and desirable frontage attributes.

107. The proposed Project could support upwards of 120,000 square feet of finished floor space in a neighborhood retail/service center which meets the daily household shopping needs of Kaupulehu Resort community residents, guests, and tourists. Petitioner proposes a smaller commercial center of approximately 45,000 square feet of finished floor space in keeping with the low-density nature of the proposed Project.

ECONOMIC IMPACTS

108. The proposed Project is projected to generate the equivalent of 165 full-time on-site and off-site jobs in the first year of construction, which will steadily increase to 1,209 jobs in the twentieth year of the development timeframe. After completion of construction, the proposed Project will generate 1,103 permanent on-site and off-site positions.

109. In 1993 dollars, the estimated annual cost to the public from the proposed Project would range from \$219,922 effective at the commencement of residential occupancy to \$7,306,475 by build-out in the twentieth year of the Project's

life span. Over the two-decade development timeframe, the entire direct cost to the public which results from the implementation of the proposed Project is estimated to be \$67,477,840 in 1993 dollars.

110. In 1993 dollars, the aggregate tax revenues for the State and County during the development period will total \$232.4 million. Thus, the total direct benefits of the Project in tax revenues exceeds the estimated public costs relating to the Project by an estimated \$164,930,383, with \$109.65 million accruing to the County of Hawai`i and \$55.27 million to the State of Hawai`i.

111. Using the capital multiplier effect ratio for basic expenditures which include total wages, contractor's and supplier's profits, and subject population discretionary expenditures, the total base economic impact in the region which results from the proposed Project ranges from \$28.9 million in the first year of the Project to a maximum of \$123.15 million in the twentieth year and stabilizing thereafter at \$60 million per year.

SOCIAL IMPACTS

112. In the coastal region extending north from Keahole Airport to Kiholo, there is no existing community which would be directly impacted by the proposed Project. However, the Kona Village Resort is adjacent to the proposed Project, and Project plans have incorporated certain development setbacks in order to mitigate impacts upon Kona Village Resort.

IMPACTS UPON RESOURCES OF THE AREA

AGRICULTURAL RESOURCES

113. Based on the limited suitability of the Property for agricultural use, the proposed Project will not have any adverse impact upon agricultural resources or productivity.

CULTURAL RESOURCES

Resource Management

114. Petitioner has proposed to establish a resource management area to include five subzones based upon the resources and activities within each respective subzone and the management and preservation measures to be employed in regard to cultural, historical, and natural resources. All five subzones will be linked by a public access way consisting of portions of the historic coastal trail and new pedestrian paths. (See Exhibit "B" map with physical boundaries of subzones)

115. The five subzones will constitute a 235-acre resource management area. Excluding the approximately 37.064-acre archaeological preserve which is to be retained in the State Land Use Conservation District, the resource management area will encompass approximately 198 acres.

116. Subzone "A" will encompass an area of approximately 104 acres (65 acres of which are in the existing Urban District) on the makai, northeastern side of the 1800-1801 lava flow along approximately 4,000 feet of the shoreline, extending approximately 1,000 to 1,200 feet inland from the shoreline. Subzone "A" has been designated for preservation of salt gathering, the coastal trail, coastal views, and archaeological sites, and no ground-disturbing activities will be done except for pedestrian paths or other public access improvements that may be required by the State or County. Public access will be provided to and within this subzone over the shoreline, historic coastal trail and other onsite pedestrian pathways. Subzone "B" will be divided into three components, B1, B2, and B3. Subzone "B1" will include approximately 30 acres, and is designated as an activity-oriented area as it abuts the State Wilderness Preserve and will provide a centrally located area for public access parking. Subzone "B2" will include approximately 15 acres and traverse the coastal edge of the 1800- 1801 lava flow over a distance of approximately 3,900 feet along the coast and at least 100 feet inland from the certified shoreline, and in some instances

300 feet. It will preserve the coastal trail and access to the shoreline resources. Subzone "B3" will consist of approximately 49 acres surrounding Kona Village Resort, and will provide a buffer to reduce visual and other impacts to the Kona Village Resort. This buffer area will be restricted to open space uses such as golf course and related improvements, landscaping, infrastructure, existing heliport, and other uses which may be acceptable to Kona Village Resort. Subzone "C" will consist of approximately 37 acres just inland of Kona Village Resort and will be an archaeological preserve for 38 archaeological sites containing 191 separate features. Improvements in this subzone will be limited to interpretive signage and trail maintenance.

Salt Gathering

117. Hannah Springer, a lifetime resident of Ka`upulehu, traces her Hawaiian ancestry back at least six generations. Her family and friends gather salt for personal and religious purposes at the shoreline in the Petition Area at an area known as Kalaemano.

118. Mililani Trask has also gathered salt at Kalaemano to be used for spiritual and ceremonial purposes.

119. Historical data indicates this practice of gathering salt at Kalaemano has been ongoing since at least the early 1900s.

120. The salt gathering occurs along the shoreline north of the 1800-1801 lava flow. The salt gathering area is within Subzone A of the resource management area.

121. In the early 1900s, residents of neighboring ahupua`a in the Kekaha region, from Mahai`ula, Makalawena, and Kukio, would travel to Kalaemano to gather salt.

122. There are both natural and man-made salt gathering features at Kalaemano, which date from both the pre-historic and historic time periods.

123. According to Hannah Springer, the quality of the salt from Kalaemano is high because of the water quality.

124. Although no specific studies have been conducted as to the impact of the proposed development on the quality of the salt gathered at Kalaemano, the Commission finds that based on the baseline marine assessment, which included a water chemistry analysis for the Project and the protective measures that Petitioner has agreed to take regarding the potential impact of fertilizers and pesticides to be used on the Project, the proposed development will have minimal, if any, impact upon the quality of the nearshore waters of the Petition Area. Petitioner has also agreed to establish a nearshore water quality monitoring program. Petitioner will also be required to implement soil erosion and dust control measures during and after construction to ensure that the Project will not adversely impact the salt gathering resources at Kalaemano.

125. The salt gathering areas along the coastline at Kalaemano will be protected and preserved under the resource management area. Access will be provided to those wishing to gather salt.

Archaeological Resources

126. Certain archaeological sites that contain burials have been assessed as having traditional cultural value and will be preserved in accordance with the prevailing requirements of the Hawai'i Island Burial Council. The coastal trail and portions of a mauka- makai trail have traditional cultural value and will be preserved.

127. The proposed development is not anticipated to adversely affect the coastal trail which is to be preserved within Subzones A, B2, and B3 of the resource management area. The mauka-makai trail and some of the burial sites are located outside of the resource management area. However, they will be preserved pursuant to the recommendations of Paul H. Rosendahl, Inc., which have been approved by the State Historic Preservation Division. Distinctive portions of the mauka-makai trail that

are in good physical condition as well as those portions of the trail clearly associated with other preservation sites and areas will be preserved. The burials in the resource management area will be preserved “as is.”

128. Although they are located within the existing 65-acre Urban District adjacent to the Petition Area, the salt gathering or manufacturing features (namely the natural and partially modified lava depressions) have been recommended for preservation and are to be preserved by inclusion into Subzone A of the resource management area. Such preservation will entail leaving these areas in their existing state as much as practicable. Management of the areas will focus on sustaining these resources.

Recreational Resources

129. Recreational resources are located along the shoreline of the Petition Area and along the historic coastal trail which traverses the makai portion of the Petition Area. These resources include the coastal trail itself, areas of fishing, opihi and other limpet collecting, ha’uke’uke collecting, limu collecting, and general recreation.

130. The coastal trail and the resources collected along the shoreline are either within the Conservation District or the resource management area, depending on whether they are located makai or mauka of the certified shoreline.

131. These shoreline area resources located mauka of the certified shoreline are within areas that are to be preserved and protected under Subzones A, B2, and B3 of the resource management area.

Kupe’e

132. Kupe’e, an edible shellfish, is found along the shoreline of the Petition Area.

133. Based on the testimony of Mililani Trask and Pua Kanahale, the Commission finds that they and others gather Kupe’e along the shoreline of the Petition Area and use the shells to make necklaces and for ceremonial purposes. Kupe’e

necklaces are one of the ornaments of Na Mea Pele, things of Pele including dances and chanting.

134. The gathering of Kupe'e along the shoreline will not be adversely affected by the proposed development, as the State has jurisdiction over the shoreline areas makai of the certified shoreline in which Kupe'e can be gathered and because public access to such shoreline areas will be continued.

Pele's Tears

135. Based on the testimony of Mililani Trask, the Commission finds that Pele's Tears, a small tear-shaped volcanic formation, were gathered along the 1800-1801 lava flow. Mililani Trask testified that Pele's Tears are known as "hornitos" and are cultural resources that she gathered within the makai portion of the Petition Area, and that she uses them for worship and other ceremonial purposes.

136. Based on the testimony, the Commission finds that the gathering of Pele's Tears will be adversely impacted by the proposed development to the extent that construction within the lava flow reduces such items and impairs access to them. However, makai portions of the lava flow will be incorporated into the 235-acre resource management area where Pele's Tears have been found and will continue to be accessible to native Hawaiians and the public.

Wahi Pana

137. Wahi pana are the storied, remarkable places, the legendary places of significance in native Hawaiian culture.

138. The entire ahupua'a of Ka'upulehu is by story and the history of its name a wahi pana; however, there are no specific wahi pana which are known to be within the Petition Area, based on historical documentary research and interviews.

1800-1801 Lava Flow

139. The Commission finds that the 1800-1801 lava flow is historically and culturally significant as the subject of various Hawaiian legends.

140. The lava flow is considered by Hannah Springer and others to be a waoakua, a place or dominion of the gods.

141. The traditional meaning of the term waoakua refers to the uninhabited areas in the mauka mountain regions where the clouds touch the land. It is described as a place untouched by man.

142. There has already been development upon portions of the 1800-1801 lava flow, including the Kona Village Resort and the Queen Ka`ahumanu Highway.

143. The Commission finds that a portion of the 1800-1801 lava flow, which descends from the slopes of Hualalai to the ocean, will be impacted by the proposed reclassification of the Petition Area. However, the 235-acre resource management area will include a portion of the lava flow within its boundary. Specifically, Subzones A, B2, and B3 will encompass the makai portion of the lava flow.

HISTORICAL RESOURCES

Archaeological Resources

144. Based on an archaeological inventory survey and final survey report by Paul H. Rosendahl, Inc., after consultation with the State Historic Preservation Division, 193 archaeological sites were identified and assessed for significance under the National Register of Criteria for Evaluation, National Register guidelines for traditional , cultural significance, and Criterion E of the State Historic Preservation Division, which accepted the final inventory survey report. Forty-five of these sites are located outside of the Petition Area, including a portion of the mauka-makai trail and some burials. The most common functional feature types were temporary and primary habitation sites, marker sites, rock art, trails, agricultural sites, and quarry sites. Several sites contained one or more burials of both prehistoric and historic eras. One hundred thirty-seven of the 193 sites were assessed to be significant for the purpose of some form of preservation. Sixty-nine of those sites were recommended for further data recovery, and the other 68 were recommended for various forms of mitigation. Twenty-one sites

were recommended to be preserved as is. Thirty-eight of those recommended for preservation are contained within a designated 37-acre preserve area that is not included in the Petition Area. The coastal trail along the entire makai frontage of the Property is recommended for preservation with interpretive development. Portions of a mauka-makai trail that are physically distinctive and associated with other site complexes are also recommended for preservation with interpretive development.

145. The requested land reclassification will result in grading which will reshape the natural topography. Sites which have received required study or which have not been identified for preservation will be subject to displacement. Sites that have been identified for preservation as is will be protected and preserved, as recommended by the archaeological inventory level survey conducted by Paul H. Rosendahl, Inc. Many of these sites are located in the 235-acre resource management area.

146. Archaeological sites may also be affected by increased public access that is expected to occur as a result of the requested land reclassification. This impact is expected to be offset to some degree by the educational and cultural enrichment programs that are part of the mitigation measures recommended by Paul H. Rosendahl, Inc.

Trails

147. Twelve sites that appear to have functioned for transportation were located in the Petition Area. These include steppingstone trails across a'ā lava flows and two major trails - a mauka-makai trail from the upper boundary of the Property to Kahuwai, and a large coastal trail. The smaller steppingstone trails often included pahoehoe steppingstones to facilitate crossing the a'ā. The mauka-makai trail is a probable prehistoric trail thought to have been used until the incursion of the 1800-1801 lava flow. It was used to access the coastal and upland resources of Ka'upulehu, including the large brackish ponds near Kahuwai Bay. The trail cannot be traced

upslope of the Property (especially mauka of Queen Ka`ahumanu Highway) since the upper portions appear to have been cut off or covered by the 1800-1801 lava flow.

148. The coastal trail roughly parallels the coastline and begins near the northern edge of the Kona Village Resort property. The trail route disappears in certain places, reemerging and winding across the coastal edge of the a`a lava flow. Across the 1800-1801 lava flow, the trail consists of white coral markers and smooth stepping stones. On the northeastern side of the lava flow, the trail route descends to flat pahoehoe where it becomes obscured by beach sand along the seaward edge of the coastal shelf.

149. Hannah Springer testified that her family uses the mauka-makai trails in the area and the lateral coastline trails. She specifically identified using a mauka-makai trail which connects Huehue in the upland area with Kiholo Bay, which is not within the Petition Area.

150. In the resource management area, the coastal trail will be preserved in its entirety with interpretive development such as signage. Portions of the mauka-makai trail that are in good physical condition and clearly associated with other preservation sites and areas will also be preserved with interpretive development even though they are located outside of the resource management area.

NATURAL RESOURCES

Flora

151. The Petition Area supports limited vegetation, which is primarily categorized as coastal strand and scrub vegetation. One plant of the `ohai (*Sesbania tomentosa*), which is listed as an endangered species, occurs in the Petition Area at about the 120-foot elevation, approximately 600 feet north of the Kona Village Resort water tanks.

152. The requested land use district reclassification is not expected to significantly impact these botanical resources. The existing vegetation is primarily

composed of widespread species. The 'ohai plant will be preserved and a buffer area shall be established in consultation with the U. S. Fish and Wildlife Service.

Fauna

153. Various species of migratory shorebirds and exotic birds exist on the Property. No apparent significant or unique bird habitats exist within the Petition Area. No endemic (native to the Hawaiian Islands) resident water birds or seabirds were observed during a two-day bird and mammal survey.

154. The requested land use district reclassification will not result in significant adverse impacts to area birdlife. Aside from the short-term displacement during construction of individual project elements, the identified bird populations are considered to be resilient species and will be able to endure short-term displacement. In the long term, avi-fauna may be enhanced by new foraging areas which accompany new landscaping.

155. Feral mammals observed within the Petition Area include mongoose, goats, and donkeys. No endangered mammal species were observed.

156. Donkeys, known as "Kona Nightingales," have been observed on the Property. The donkeys will be displaced by the Project. However, the donkey is not considered endangered. Some consider the donkeys to be a cultural resource of the area, although they are also considered to be a nuisance because of their threat to native plant life. Petitioner will participate with adjacent landowners in a management program with regard to the donkeys.

Marine Fauna

157. The threatened green sea turtle (*Chelonia mydas*) occurs commonly along the Kona coast and is known to feed on selected species of macroalgae. Several green sea turtles were sighted on the surface and underwater in the waters off the Petition Area. The endangered hawksbill turtle (*Eretmochlys imbricata*) is seen infrequently in the waters off the Kona coast.

158. Increased access to the shoreline resulting from the proposed development may affect resident turtles in the area because they do not remain in areas frequented by humans. However, the potential for impact upon the turtle communities is considered to be very slight, especially because of the rocky character of the coastline and the lack of swimming areas.

Marine Biota

159. The coastal area and nearshore waters along the Petition Area contain a variety of marine biotic resources, including limu, coral, opihi, crabs, and reef fish.

160. The requested land use district reclassification is not expected to have an adverse impact with respect to the physical integrity of these resources. Other than the restoration of the coastal trail, no development is proposed to encroach upon the coastal area makai of the certified shoreline.

161. The potential exists for erosion of soil into nearshore waters. However, the potential negative impacts will be reduced if Petitioner uses Best Management Practices and any other appropriate mitigation measures.

162. Effluent injection in the early stages of the proposed development is not anticipated to adversely impact nearshore or offshore waters.

163. The use of treated sewage effluent for irrigation of the proposed golf course, as well as the use of fertilizers and pesticides, can have adverse impacts on the aquatic ecosystem. However, the use of Best Management Practices and the proper application of fertilizers and pesticides will decrease the opportunity for and severity of those impacts.

164. The increased access to the coastal area by the public resulting from the proposed development may adversely affect the marine resources because of the increased risk of overfishing and gathering with the resultant diminishment of the

resources. With the increase in access to the shoreline, great care should be taken to prevent the entanglement of marine life with fishing materials.

Water Resources

165. The general character of the groundwater in the Kona region may be classified in three types: basal groundwater, brackish basal groundwater, and dike-impounded perched groundwater. Due to the Petition Area's proximity to the ocean, no potable water sources are present onsite.

166. The requested land use district reclassification will not have a significant adverse impact upon groundwater resources within the Ka`upulehu ahupua'a, even when added to the cumulative demand from Kona Village Resort and Kaupulehu Resort. With proper chemical and irrigation practices, the Project's impact can be minimized.

Scenic Resources

167. Due to the flat topography of the Petition Area, it will be visible to motorists who use the Queen Ka`ahumanu Highway. The Project will appear as a broad landscaped area within the existing lava field. There would be no loss of ocean views from the highway. From the coastal trail, the Project will appear as a landscaped area, with portions of the golf course and some residential structures being visible.

168. The requested land use district reclassification is not anticipated to have a significant adverse impact upon scenic resources. Development setbacks and open-space corridors will help to preserve mauka viewplanes from the coastal trail and the Kona Village Resort.

Air Quality

169. The principal source of short-term air quality impact will be construction activity, which will increase automotive pollutant concentrations along Queen Ka`ahumanu Highway as well as in the Petition Area. There is a potential for

fugitive dust due to the dry climate and fine soils. Dust control measures will be employed during the construction period.

Noise

170. Existing ambient noise levels in the Property will increase as a result of the proposed Project, which will urbanize presently vacant lands. Temporary noise impacts are unavoidable during the construction phase. Construction and future noise impacts will be mitigated by Petitioner through the use of quiet equipment, construction curfew periods, landscaped buffers and berms, and disclosures to future occupants of the proposed Project.

Water Quality

171. The absence of significant runoff most of the year and the dynamic mixing of turbulent shoreline water by wave action preclude any adverse effect of chemical use on the Property upon coastal waters if adequate care is taken in irrigation and in fertilizer and pesticide practices. Similarly, groundwater quality will not be adversely affected if recommended chemical application and irrigation practices are followed.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Services

172. Queen Ka`ahumanu Highway is the primary arterial highway in the region. It is a high quality, two-lane, two-way State Highway connecting Kawaihae and Kailua-Kona. The highway is situated approximately 600 feet mauka of the Property.

173. The proposed Project is expected to generate a total of 571 vehicles per hour ("vph") during the AM peak hour of traffic, 326 vph entering the Property and 245 vph exiting the Property. During the PM peak hour of traffic, the Project is expected to generate a total of 705 vph, 374 vph entering the Property and 331 vph exiting the Property.

174. The Traffic Management Consultant prepared a traffic impact analysis ("TIM") for the proposed Project, dated June 27, 1994. Based on the TIM, the following improvements should be considered to accommodate year 2015 highway deficiencies that will exist without the proposed Project:

- a) The intersection of Queen Ka`ahumanu Highway and Ka`upulehu Access Road should be upgraded to a fully channelized intersection, providing exclusive left-turn storage lanes and right-turn deceleration lanes on Queen Ka`ahumanu Highway in both the northbound and southbound directions. Kaupulehu Resort is in the process of implementing this improvement;
- b) Queen Ka`ahumanu Highway should be widened to provide a four-lane, divided highway, as proposed in the State Department of Transportation Long-Range Highway Plan;
- c) The intersection of Queen Ka`ahumanu Highway and Ka`upulehu Access Road should be signalized, when warranted; and
- d) Ka`upulehu Access Road and the mauka-makai road should include separate right-turn, through, and left-turn lanes.

Together, these improvements will provide sufficient capacity to mitigate the traffic impacts of the proposed Project.

Water Service

175. The proposed Project will require potable water for consumption and non-potable water for irrigation. The groundwater resources within the Ka`upulehu ahupua`a are adequate to meet the demand of the proposed Project.

176. A total of five wells are presently situated within the Ka`upulehu ahupua`a. Two of them are non-potable wells and are capable of producing brackish water which is of acceptable quality for irrigation use. Two potable wells have also been drilled at the 1,400 elevation within the Ka`upulehu ahupua`a. The fifth well is an

exploratory well. A total of three new potable wells, including a back-up well, will be required. Also, four non-potable wells for irrigation purposes will be required by the proposed Project.

Wastewater Disposal

177. The Property is not presently serviced by a wastewater collection and treatment system. A privately funded system will serve the proposed Project. Effluent from the proposed secondary level treatment facility will be utilized to supplement non-potable irrigation water at the proposed Project's 36-hole golf course.

Drainage

178. Due to the Property's relatively flat topography and the highly porous character of the lava, no defined drainageways exist on the Property. As the proposed Project is developed, the addition of topsoil and the development of impermeable surfaces will significantly alter the surface drainage flow from the Property. Surface water runoff will increase and there will be a greater potential for surface water to impact coastal waters. Petitioner will design all Project components to retain surface drainage on-site.

Solid Waste Disposal

179. The Property is not presently serviced by a solid waste collection and disposal system. Solid waste collected throughout the West Hawai`i area is disposed of at the County's West Hawai`i Sanitary Landfill at Pu`uanahulu.

180. The projected solid waste production by the proposed Project's population and facilities will be approximately 5.7 tons per day, or 2,067 tons per year. Minimal green waste will be generated during the construction phase of the proposed Project. During the operation phase, the mulching of yard trimmings and golf course green waste will help reduce the volume of solid waste that is sent to the County's landfill.

Schools

181. Public educational facilities in the region include Kahakai, Kealakehe, Konawaena at Kealakekua, and a new high school proposed at Kealakehe. Private schools in the area include University of Nations, Creative Day Preschool, Kona Baptist Church, and Mokuaikaua Church/Nursery. Additional private schools are located in Kamuela, Kapa`au, Holualoa, and Honaunau. The State of Hawai`i is also proposing a West Hawai`i University campus be located somewhere between Kailua-Kona and Keahole.

182. The Department of Education requests a fair-share contribution for the development of school facilities to assist in the construction of adequate classrooms to accommodate the projected growth.

Police and Fire Protection

183. Police protection for the North Kona area is provided primarily by the County Satellite Police Station at Kealakehe, approximately 10 miles south of the Property.

184. Fire protection services are provided by the County's Kailua Fire Station, located on Palani Road mauka of the Queen Ka`ahumanu Highway, approximately 15 miles south of the Property.

185. Development of the 1,030 proposed residential units will probably require an expansion of emergency services in the West Hawai`i area.

Electrical Utility and Telephone Services

186. The Keahole Generating Station is owned and operated by Hawaii Electric Light Company and is located mauka of the Queen Ka`ahumanu Highway, about 8 miles south of the Property.

187. The proposed Project at ultimate build-out will create a demand of 8.575 megawatts on the Keahole Generating Station or additional power plants. The

utility expects the need to generate an additional 200 megawatts of power of generation capacity by 2007 to meet future regional demands.

188. To assist in the reduction of electrical energy consumption, a number of conservation measures can be encouraged and implemented in the proposed Project by Petitioner, including the energy-efficient design of homes and the strategic use of landscaping, low energy lamps, lighting fixtures, and solar water heaters.

189. Hawaiian Telephone Company provides telephone service to the North Kona area. The proposed Project will require approximately 1,500 units.

COMMITMENT OF STATE FUNDS AND RESOURCES

190. The concept plan for the Project includes the privately-funded development, on a fair-share basis, of all basic infrastructure needed to serve the Project. The Project does not call for a substantial commitment of government supplied services or facilities that would not be required without the Project.

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

191. The proposed reclassification of the Property generally conforms to the following goals, objectives, priorities and policies of the Hawai'i State Plan, as defined in chapter 226, HRS:

- a. 226-4 State Goals. The reclassification will result in a development which contributes to the attainment of the elements of choice and mobility which are embodied in the State goals. The development will provide up to 1,030 residential units, and the jobs which will be created to construct and maintain those units will contribute to the area's economy and social well-being of the community. The low-density character of the proposed development will also create a complementary expansion of the resort node.
- b. Section 226-5 Objectives and policies for population. The proposed reclassification is consistent with the State's population growth and distribution policies which identify

West Hawai`i as a major visitor destination area, as well as a dynamic resident growth center.

- c. Section 226-6 Objectives and policies for the economy-in general. The proposed Project will strengthen the visitor industry in West Hawai`i by providing residential opportunities in the Kaupulehu Resort node, thus complementing the development character of the resort. At build-out, the proposed development will generate over 330 on-site jobs and over 700 off-site jobs due to a multiplier effect of 2.0.
- d. Section 226-10 Objectives and policies for the economy - potential growth activities. The proposed Project will contribute to the fulfillment of the State's vision for the West Hawai`i visitor destination area, as set forth in the West Hawai`i Regional Plan. Development of the Kaupulehu Resort destination node will generate new demand for business and services throughout the region.
- e. Section 226-11 Objectives and policies for the physical environment-land-based, shoreline, and marine resources. The shoreline portion of the Property will be preserved in its natural form, including an existing historic trail along the shoreline. No development is proposed makai of the certified shoreline. The proposed Project's recreation area will enable the public to traverse along the shoreline from the Property to the adjacent State property to Kiholo Bay and beyond, as envisioned by the State Parks Division of the Department of Land and Natural Resources. The proposed Project will complement the natural environment by maintaining a low-density character and open-space. A proposed endangered plant identified on the Property will be preserved through the creation of a special buffer area.
- f. Section 226-12 Objective and policies for the physical environment--scenic, natural beauty, and historic resources. Significant historic sites and the shoreline trail will be preserved by Petitioner, based upon a detailed archaeological inventory survey which was conducted for the entire Property. The low-profile, low-density character of the proposed Project is consistent with the policy to preserve views and vistas of the ocean and mountains.

- g. Section 226-13 Objectives and policies for the physical environment--land, air, and water quality. The planning and design of the proposed project is consistent with and supportive of Federal, State, and County environmental regulations and controls. Measures for conservation of potable and non-potable water will be emphasized. Mitigation measures will be employed by Petitioner to minimize the potential impact of surface water run-off and drainage on coastal resources. Informational, evacuation, and warning system measures will be taken by Petitioner to reduce tsunami and volcanic hazards.
- h. Section 226-14 Objective and policies for facility systems--in general. The proposed Project will be served by privately developed water and wastewater treatment facilities.
- i. Section 226-15 Objectives and policies for facility systems--solid and liquid wastes. Wastewater collection and treatment facilities will be privately developed. Given the limited vegetation on the Property, very little green waste will be generated during the construction phase. During the operation phase, mulching of yard trimmings and golf course green wastes will help to reduce the volume of solid wastes that must be sent to the County's landfill.
- j. Section 226-16 Objective and policies for facility systems--water. The Project's water wells will be pumped at daily rates which are based upon the sustainable yield of the area's groundwater resources. Conservation measures will be emphasized by Petitioner as a means of limiting demand for both potable and non-potable water.
- k. Section 226-18 Objectives and policies for facility systems--energy/ telecommunications. In the interest of reducing the consumption of electrical energy, Petitioner will encourage that various conservation measures be taken in the design of the Project and future homes.
- l. Section 226-19 Objectives and policies for socio-cultural advancement--housing. The development of up to 1,030 residential units will provide new housing opportunities to satisfy demand for market-priced homes in West Hawai'i. Petitioner is committed to applicable affordable housing requirements.

- m. Section 226-23 Objective and policies for socio-cultural advancement--leisure. The provision of recreational facilities at the proposed Project by Petitioner will enable the public to utilize the coastal portion of the State-owned property adjacent to Ka`upulehu, which is presently under-utilized and largely inaccessible. In addition, the preservation of the coastal shoreline trail by Petitioner will provide opportunities for the enjoyment of recreational resources along the shoreline of the Property.
- n. Section 226-103 Economic priority guidelines. With regard to the priority guidelines in subsection (a), development of the proposed Project is consistent with the State's goal to focus visitor industry services at "destination nodes" in West Hawai`i. At full build-out, the proposed Project will provide a combined total of more than 1,000 on-site and off-site job opportunities, which will help to strengthen the economy of West Hawai`i.

With regard to priority guidelines in subsection (e), conservation devices and measures will be taken by Petitioner to reduce consumption of potable and non-potable water.

With regard to priority guidelines in subsection (f), the proposed Project will encourage the use of energy conservation measures.
- o. Section 226-104 Population growth and land resources priority guidelines. The proposed Project is designed to protect and preserve the shoreline. No development is proposed makai of the certified shoreline. The proposed Project will be designed to ensure that off-shore water quality is not compromised.

192. The proposed reclassification of the Property generally conforms to the following State functional plans, as defined in chapter 226, HRS:

- a. Conservation Functional Plan.
Certain objectives and policies of this functional plan are served to the extent that the Project will minimize the impact on marine and coastal resources and will preserve significant historical and archaeological resources.

- b. Employment Functional Plan.
By providing new employment opportunities, the proposed Project is consistent with this functional plan.
- c. Energy Functional Plan.
Petitioner can assist in the implementation of this plan's strategy of reducing the State's dependency upon petroleum and other fossil fuels by promoting energy-efficiency techniques and energy conservation whenever possible.
- d. Health Functional Plan.
The general purpose of this functional plan is served through the various measures which will be taken by Petitioner in the proposed Project to minimize environmental impacts upon groundwater and ocean water.
- e. Historic Preservation Functional Plan.
The objectives, policies, and implementing actions of this functional plan are supported through Petitioner's compliance with all applicable State, County, and Federal requirements concerning historic sites.
- f. Housing Functional Plan.
Certain policies within this functional plan will be served by the proposed Project through the provision of housing, recreational opportunities, and commercial services.
- g. Recreational Functional Plan.
Various policies within this functional plan are served by the proposed Project through the preservation of the coastal trail and the provision of public access to it.

CONFORMANCE WITH THE URBAN DISTRICT STANDARDS

193. The proposed reclassification of the Property conforms to the State Land Use Urban District standards stated in section 15-15-18, HAR, in the following respects:

- a. The proposed Project will create a new economic and employment center through the in-filling of a resort destination area and the development of well-planned community support facilities and services.

- b. The proposed Project includes the construction of primary infrastructure in the initial development phase. Petitioner will provide most basic services on-site and contribute land and capital to upgrade facilities in the Project.
- c. The proposed Project will be reasonably free from adverse environmental effects through the use of mitigation measures. The Property has satisfactory topography and soil conditions.
- d. The Property is adjacent to an established resort. The Hawai'i County General Plan indicates the area is appropriate for future urban use.
- e. Petitioner intends to privately fund the on-site support construction and services. While the proposed Project will require the investment in upgraded public infrastructure or support services, Petitioner will contribute to its fair share of the cost of such improvements and the long-range fiscal cost/benefit does not make such an investment unreasonable.

CONFORMANCE WITH THE HAWAII COUNTY GENERAL PLAN

194. The proposed reclassification of the Property is in general conformance with the following elements of the Hawai'i County General Plan: economic, environmental quality, flood control and drainage, historic sites, housing, natural beauty, natural resources and shoreline, recreation, and land use.

CONFORMANCE WITH COASTAL ZONE
MANAGEMENT OBJECTIVES AND POLICIES

195. The proposed reclassification of the Property is in general conformance with the objectives and policies in section 205A-2, HRS, in the following ways:

- a. Recreational Resources Objective: Provide coastal recreational opportunities accessible to the public.

The preservation and restoration of the coastal trail and the provision of a public-oriented recreation area by Petitioner is consistent with this objective.

- b. Historic Resources Objective: Protect, preserve, and where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture. All significant archaeological resources identified on the Property are proposed for preservation by Petitioner.

- c. Scenic and Open Space Resources Objective: Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.

The existing quality of the coastal scenic and open space resources of the area will be preserved by the Project. The development of a low-density, golf course oriented community will not detract from the open space character of the region.

- d. Coastal Ecosystems Objective: Protect valuable coastal ecosystems from disruption and minimize adverse impacts on coastal ecosystems.

As discussed in the Final EIS, the proposed Project seeks to minimize any potential adverse impacts to coastal ecosystems. The potential adverse impact upon marine biota resulting from increased public access will be mitigated by Petitioner

through the implementation of a shoreline management plan, prepared in conjunction with the SMA permit process.

- e. Economic Uses Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

Development of the Property will assist the State in its implementation of the resort destination node strategy identified in the West Hawai'i Regional Plan.

- f. Coastal Hazards Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

The proposed Project has been designed to reduce potential hazards associated with coastal hazards.

- g. Managing Development Objective: Improve the development review process, communication and public participation in the management of coastal resources and hazards.

Preparation of the EIS for the proposed Project provides the public with the opportunity to participate in the review of development proposals adjacent to coastal resources.

- h. Public Participation Objective: Stimulate public awareness, education, and participation in coastal management.

The Commission's hearings on the Petition have provided a public forum in which members of the public have participated as public witnesses and/or as intervenors to discuss coastal management issues as they relate to the development of the Property.

- i. Beach Protection Objective: Protect beaches for public use and recreation.

Development of the Property will include the preservation and protection of the physical attributes of the coastal area, including the beaches and intertidal region.

- j. Marine Resources Objective: Promote the protection, use and development of marine and coastal resources to assure sustainability.

Development of the Property will include the preservation and protection of the physical attributes of the coastal area, the preservation and management of sustainable resources within the area to ensure their availability to future generations, the provision of public access to the coastal area for the recreational use of the community, and the protection of fragile and sensitive areas and sustainable resources from overuse and degradation.

RULING ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Hawai'i Land Use Commission Rules under chapter 15-15, HAR, and upon consideration of the Land Use

Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 1,009.086 acres of land in the State Land Use Conservation District at Ka`upulehu, North Kona, Island, County, and State of Hawai`i, identified as TMK No. 7-2-03: por. 1, into the State Land Use Urban District, is reasonable, conforms to the standards for establishing the Urban District boundaries, is non-violative of section 205-2, HRS, and is consistent with the Hawai`i State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to sections 205-17 and 205A-2, HRS.

2. Article XII, § 7 of the Hawai`i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights:

The State reaffirms and shall protect all rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

3. The State's power to regulate the exercise of customarily and traditionally exercised native Hawaiian rights (see Article XII, § 7 of the Hawai`i State Constitution) necessarily allows the State to permit development that interferes with such rights in certain circumstances, for example, where the preservation and protection of such rights would result in actual harm to the recognized interests of others. Nevertheless, the State is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible. *Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission*, 79 Hawai`i 425, 450 n.43, 903 P.2d 1246 (1995).

4. The gathering of salt within the Petition Area at Kalaemano is a customary and traditional native Hawaiian practice in which Hannah Springer, a native

Hawaiian, and her family, and others within the Kekaha region have been and continue to be engaged.

5. The right of access across the coastal trail is a customary and traditional native Hawaiian right which is exercised within the Petition Area. The coastal trail will be preserved within the resource management area in its entirety with interpretive development, and there will be no impairment of its continued use for access along the shoreline and to areas in which fishing, gathering, and other cultural practices are exercised.

6. Fishing, the collection of opihi, ha'uke'uke, limu and other marine food sources, and the collection of Kupe'e shells, are cultural practices relating to valued cultural resources which occur and are found along the shoreline fronting the Petition Area. Access to the shoreline will be unrestricted, and the shoreline portion of the Petition Area will be preserved within the resource management area, ensuring that such practices will be protected.

7. The 1800-1801 lava flow is a valued historical and cultural resource. A portion of the lava flow within the Petition Area will be impacted by the construction of the proposed development upon the lava flow. However, the makai portion of the lava flow within the resource management area will be preserved. Further protection or preservation of some portions of the 1800-1801 lava flow is not feasible without unreasonably interfering with Petitioner's common law property rights.

8. Pele's Tears are a cultural resource within the Petition Area. The collection of Pele's Tears may be impaired by development upon portions of the 1800-1801 lava flow within the Petition Area. However, the makai portions of the lava flow will be preserved within the resource management area, and the collection of Pele's Tears will be possible in those portions of the lava flow.

9. The right of access to the burial sites in the Petition Area for cultural and religious purposes is a customary and traditional native Hawaiian right.

10. Pele Worship is a customary and traditional native Hawaiian right.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Decision and Order filed June 17, 1996, is hereby vacated; and IT IS FURTHER ORDERED that the Property being the subject of this Docket No. A93-701 filed by Petitioner, Kaupulehu Developments, consisting of approximately 1,009.086 acres of land in the State Land Use Conservation District at Ka`upulehu, North Kona, Island, County, and State of Hawai`i, identified as Tax Map Key No. 7-2-03: por. 1, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified into the State Land Use Urban District, and the State land use district boundaries are amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the customary and traditional native Hawaiian rights and practices within the Petition Area that have been identified herein shall be protected in perpetuity; that the proposed reclassification will not significantly affect or impair the continued exercise of those rights and practices; and that the reasonable exercise of those rights and practices will be protected, to the extent feasible, by the conditions of approval set forth herein.

To protect the native Hawaiian practitioner's exercise of customary and traditional practices in the subject area; to ensure appropriate public access to historical/cultural resources located within the Petition Area; to ensure the availability of natural and cultural resources for present and future generations; to promote the practice of `ohana and conservation values with respect to the physical and cultural landscape; the reclassification of the Property shall be subject to the following conditions:

1a. Petitioner shall initially establish and annually provide reasonable operating and capital expenditure costs through revenues from the Project and assessments, a Ka`upulehu Development Monitoring Committee (KDMC) composed of:

(1) a person of native Hawaiian ancestry who is knowledgeable regarding the type of cultural resources and practices within the Petition Area, as selected by the Land Use Commission from a list of three names submitted by each of the parties based on review of their resumes and a formal interview process; and (2) a management member knowledgeable regarding the type of cultural resources and practices within the Petition Area, as selected by Petitioner and landowner. The individuals making up the KDMC shall operate on an equal vote basis. In the event that the individuals making up the KDMC cannot agree on a specific decision, they shall jointly select a third person to break the tie.

1b. The KDMC shall be established by Petitioner no later than six months from the issuance of this decision and order. Upon establishment of the KDMC, Petitioner shall provide a written report to the Land Use Commission, the Office of Planning, and the County of Hawai'i with details as to its composition, structure, operating costs and compensation for members and staff, procedures, and plan of action to be approved by the Land Use Commission.

1c. The KDMC shall jointly decide on an equal vote basis monitoring and dispute resolution decisions related to the protection of native Hawaiian practitioners' exercise of customary and traditional practices and rights as described above; the availability of natural and cultural resources for present and future generations; and appropriate access in the subject area to the extent that these rights are protected by *PASH vs. Hawaii County Planning Commission*, 79 Haw. 425, (1995), in perpetuity. In the event that the two person KDMC cannot agree on a specific decision, they shall jointly select a third person to break the tie. A certified description of any action requiring selection of a third member of the KDMC shall be filed with the Land Use Commission.

1d. The KDMC shall monitor the quality of the salt gathering resource and the effectiveness of Petitioner's actions to provide access to and/or preserve and

maintain traditional and customary native Hawaiian practices and cultural resources. The KDMC shall provide recommendations consistent with this decision and order to the Land Use Commission with respect to maintenance and/or preservation of those traditional and customary native Hawaiian practices and cultural resources.

1e. The KDMC shall provide reports on an annual basis describing items and issues covered in their deliberations and any other findings and recommendations.

2a. Petitioner shall establish a 235-acre resource management area to maintain, protect, and preserve the exercise of traditional and customary practices and cultural resources within the Petition Area consistent with this decision and order. Petitioner shall establish an annual budget for maintaining the resource management area including the costs for administration, infrastructure, capital costs, security and educational personnel to be approved by the KDMC. Excluding the approximately 37.064-acre archaeological preserve, which will be retained in the Conservation District, the resource management area shall encompass approximately 198 acres.

2b. The resource management area shall contain five subzones. The delineation of the five subzones shall be based upon the resources and activities within each respective subzone and the management and preservation measures to be employed with regard to those resources as set forth in the decision and order. All five subzones will be linked by a public access way consisting of portions of the historic coastal trail and new pedestrian paths. Petitioner shall provide a metes and bounds map and description of the boundaries of each of the five subzones to the Land Use Commission within six months of the issuance of this decision and order.

2c. Subzone A shall be designated for preservation of salt gathering, the coastal trail, coastal views, and archaeological sites. Petitioner shall prohibit any ground-disturbing activity within the subzone except for pedestrian paths or other public access improvements that may be required by the State or County. Public access

will be provided to and within this subzone over the shoreline, historic coastal trail, and other onsite pedestrian pathways.

2d. Subzone B shall be divided into three components, B1, B2, and B3. Subzone B1 shall include approximately 30 acres, and will be designated as an activity-oriented area as it abuts the State Wilderness Preserve and will provide a centrally located area for public access parking. Subzone "B2" shall include approximately 15 acres and traverse the coastal edge of the 1800- 1801 lava flow over a distance of approximately 3,900 feet along the coast and at least 100 feet inland from the certified shoreline, and in some instances 300 feet. It will preserve the coastal trail and the shoreline resources. Subzone "B3" shall include approximately 49 acres surrounding Kona Village Resort, and will provide a buffer to reduce visual and other impacts to the Kona Village Resort. This buffer area will be restricted to open space uses such as golf course and related improvements, landscaping, infrastructure, existing heliport, and other uses which may be acceptable to Kona Village Resort.

2e. Subzone "C" shall consist of approximately 37 acres just inland of Kona Village Resort and will be an archaeological preserve for 38 archaeological sites containing 191 separate features, as identified in the archaeological inventory level survey conducted by Paul H. Rosendahl, Inc. Improvements in this subzone will be limited to interpretive signage and trail maintenance.

3a. Petitioner shall preserve and protect the gathering and access rights of native Hawaiians by providing appropriate access to the salt gathering resource at Kalaemano and fund adequate security and maintenance to maintain trails and salt gathering areas in accordance with traditional and customary native Hawaiian practices located within Subzone A as decided and monitored by the KDMC.

3b. Petitioner shall preserve and protect the gathering for cultural purposes including religious practice by providing appropriate access to burial sites and other archaeological sites within the Petition Area consistent with this decision and

order. Petitioner shall adhere to prevailing and/or published protocols of the Hawai'i County Burial Council and/or State Historic Preservation Division where these sites are found to exist as monitored by the KDMC.

3c. Pele worship shall be allowed to continue however, it shall not be further allowed in the portion of the 1800-1801 Hualalai lava flow to be developed. There is no reference in the record to a specific site on the flow that has been utilized for such worship. Therefore, the Land Use Commission is not designating a specific site. However, if the KDMC should identify a specific site in the course of their monitoring of Petitioner's efforts to maintain and/or preserve traditional native Hawaiian cultural resources, it shall forward its recommendation to the Land Use Commission for its approval that such site be designated for Pele worship.

3d. Petitioner shall initiate and fund a nearshore water quality monitoring program. The parameters of the monitoring program shall be approved by the State Department of Health (DOH). Petitioner shall provide regular reports to the Land Use Commission and the KDMC as to the findings of this water quality monitoring program.

4. Petitioner shall to the extent feasible inventory non-renewable resources such as Pele's Tears found at the makai edge of the 1800-1801 Hualalai lava flow located in Subzones A, B2, and B3. The KDMC shall review this inventory and recommend to the Land Use Commission methods to preserve, protect, exhibit, or provide appropriate access to any such resource in its six-month plan for the Land Use Commission's approval.

5. Petitioner shall provide appropriate access to the shoreline of the Petition Area to preserve and protect access rights of native Hawaiians and the general public to Kupe'e shells that may be found along the shoreline as monitored by the KDMC.

6a. At a minimum, to preserve and protect mauka and makai view planes and the shoreline as a site for spiritual meditation and educational practices, Petitioner shall cause to be established a setback zone of 75 feet from the certified shoreline within which there shall be no improvements of any kind other than improvements which may be reasonably necessary for purposes of public safety, and where the property will be left in its natural state; provided that certain golf holes may be allowed within that setback subject to mutual agreement between Petitioner, the Department of Land and Natural Resources, and the Office of Planning.

6b. At a minimum, to preserve and protect mauka and makai view planes and the shoreline as a site for spiritual meditation and educational practices, Petitioner shall prohibit any residential development or vertical improvements, other than landscaping and improvements allowed by County ordinance or variance, to be constructed or erected within 150 feet of the certified shoreline.

7a. The proposed mitigation commitments for all identified sites with burials must be submitted to the State Historic Preservation Division's Hawai'i Island Burial Council for a vote on the mitigation proposals. Once a decision is made by the Council, then the mitigation commitments for those sites will be finalized. A burial treatment plan for the mitigation treatment for those sites must then be approved by the State Historic Preservation Division, in consultation with their Hawai'i Island Burial Council, and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites as monitored by the KDMC. Mitigation commitments shall be monitored by the KDMC.

7b. For all sites approved by the State Historic Preservation Division (SHPD) to undergo archaeological data recovery, an archaeological data recovery plan (scope of work) must be prepared by Petitioner. This plan must be approved by the SHPD and a certified copy of said plan shall be filed with the LUC prior to any land

alteration in the vicinity of these sites. The approval plan will be monitored by the KDMC.

7c. For all sites approved for preservation by the State Historic Preservation Division (SHPD), a preservation plan must be prepared by Petitioner. (Burial sites may be covered under the burial treatment plan.) This plan must include buffer zones/interim protection measures during construction, and long-range preservation (including public access and interpretation, where appropriate). The plan must include input from the local native Hawaiian community and relevant Hawaiian groups. The plan must be approved by the SHPD and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites. The approval plan will be monitored by the KDMC.

7d. Petitioner shall immediately stop work and contact the State Historic Preservation Division should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered during Project development. Mitigation and preservation shall be monitored by the KDMC.

8. Petitioner shall preserve and protect the coastal trail in its entirety and portions of the mauka-makai trail located within the Resource Management Area and Petition Area with interpretive development, pursuant to the recommendations of Paul H. Rosendahl, Inc., and as approved by the State Historic Preservation Division to manage this cultural resource. Preservation and protection shall be monitored by the KDMC.

9. Petitioner shall initiate and fund a program to monitor the populations of threatened and endangered green sea turtles, hawksbill turtles, and humpback whales, as required by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Division of Aquatic Resources. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program

warrant them. Mitigation measures shall be approved by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Department of Land and Natural Resources.

10. Petitioner shall conduct a biological survey for terrestrial invertebrates, the Hawaiian Hoary bat, and Kona Nightingale (feral donkey), prior to submitting an application for rezoning to the County of Hawai`i. Petitioner shall consult with the U.S. Fish Wildlife Service prior to initiating the study, regarding the content and completeness. The study shall also include a mitigation/preservation plan. The plan shall be accepted and approved by the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service must also verify in writing the successful execution of the study, and the implementation of the mitigation/preservation plan.

11. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents in the State of Hawai`i to the satisfaction of the County of Hawai`i. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County of Hawai`i.

12. Petitioner shall implement effective soil erosion and dust control measures during and after construction to ensure that the development activities of the Petitioner shall not impact the salt gathering resources at Kalaemano located within subzone "A" of the Resource Management Area and other resources. Such measures shall be to the satisfaction of the State Department of Health and the County of Hawai`i.

13. Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawai`i Revised Statutes. Petitioner's solid waste management plan shall be approved by the County of Hawai`i Department of Public Works.

14. Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Hawai`i.

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

16. Petitioner shall fund and construct adequate civil defense measures as determined by the State and County of Hawai`i civil defense agencies.

17. Petitioner shall provide a fair-share contribution for school facilities as mutually agreed upon with the Department of Education. The contribution may be a combination of land and/or cash required to address the impact on school facilities.

18. Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Hawai`i.

19. Petitioner shall fund and construct adequate water source, storage, and transmission facilities and improvements to accommodate the proposed Project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

20. 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 appropriate State and County agencies.

21. Petitioner shall initiate and fund a groundwater monitoring program as determined by the State Department of Health. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the State Department of Health.

22. Petitioner shall make available adequate golf tee times at affordable rates for public play to State of Hawai`i residents.

23. Petitioner shall comply with the environmental health conditions from the State Department of Health, dated August, 1994 (Version 5), and entitled "Guidelines Applicable to Golf Courses in Hawaii."

24. In developing and operating the golf course and residential development in the Kaupulehu Resort Development Project, Petitioner shall at a minimum protect public access along the accessible coastline by the following:

24a. Petitioner shall establish a perpetual right of public access along the coastline from the State's Pu`uwa`awa`a landholding to the intersection of the shoreline with the southernmost boundary of the Project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such access, subject to reasonable rules and regulations for public safety, provided that access shall be maintained.

24b. In operating the golf course and any future residential development in the Kaupulehu Developments Petition Area, Petitioner shall maintain and protect the public's right of access along the shoreline especially at the 1800-1801 a`a lava flow where the existing trail is near the same level as the proposed dwelling units.

24c. Petitioner shall work with the Department of Land and Natural Resources to incorporate mauka pathways which may be tied to golf course and residential area pathways which will provide alternative access routes to the accessible coastline areas.

- 24d. Petitioner shall adopt golf course rules and provide mutually agreeable signage which will protect the access along the public access areas and pathways.
- 24e. Petitioner shall provide the plans for golf course layout, location of holes, access pathways, and signage to OP and the appropriate governmental agencies in advance of any final approval of such plans.
- 24f. Petitioner shall record with the appropriate governmental agency all necessary and appropriate instruments to accomplish the purpose of this paragraph.

25. Petitioner shall complete the Project in substantial compliance with the representations made before the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former land use classification, or change to a more appropriate classification.

26. 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 the visible commencement of construction of the Property.

27. Petitioner shall provide annual reports to the Land Use Commission, the Office of Planning, and the County of Hawai'i in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission and shall also include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency.

28. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

29. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

30. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

ADOPTION OF ORDER

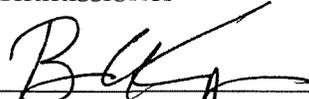
The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 18th day of October 2001. The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

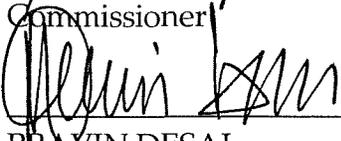
LAND USE COMMISSION
STATE OF HAWAII

By M. Kelai
MERLE A. K. KELAI
Chairperson and Commissioner

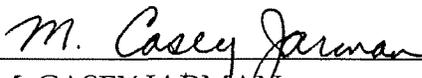
By Lawrence N.C. Ing
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

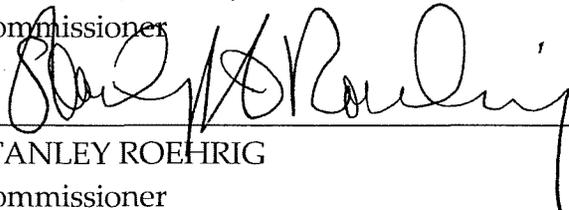
By 
P. ROY CATALANI
Commissioner

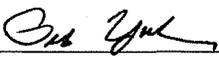
By 
BRUCE A. COPPA
Commissioner

By 
PRAVIN DESAI
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

By 
M. CASEY JARMAN
Commissioner

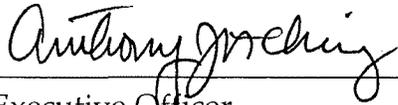
By 
STANLEY ROHRIG
Commissioner

By 
PETER YUKIMURA
Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
October 18, 2001

Certified by:

Executive Officer



Pacific Ocean

Kiholo Bay

KONA VILLAGE RESORT

Kahawai Bay

AREA IN CONSERVATION

Kuli'o Bay

APPROVED AREA

QUEEN KA'AHIMANU HWY.

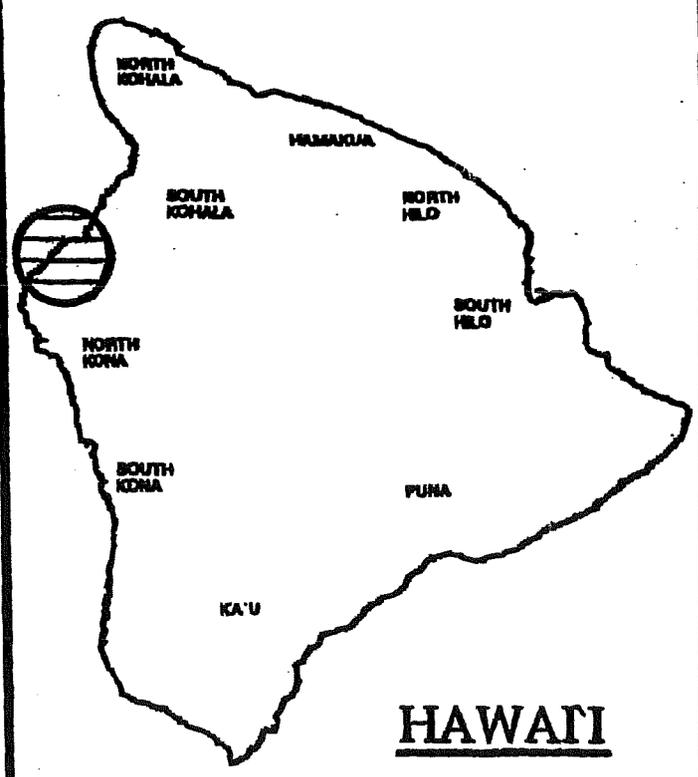
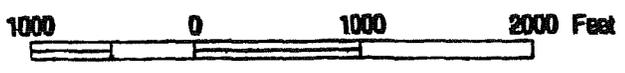
DOCKET NO. A93-701

KAUPULEHU DEVELOPMENTS

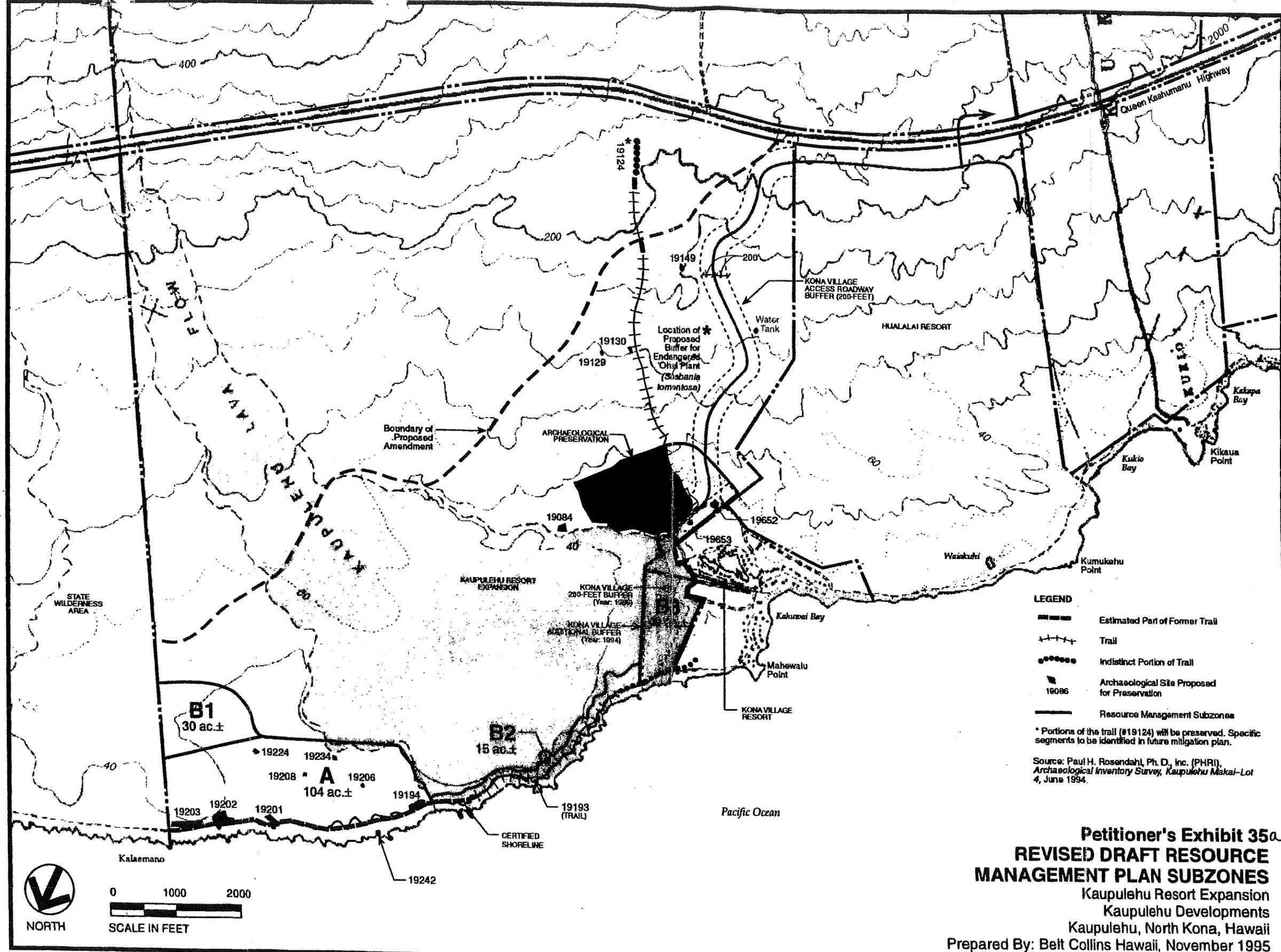
LOCATION MAP

TAX MAP KEY: 7-2-03: por. 1

KA'UPULEHU, NORTH KONA, HAWAII



HAWAII



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A93-701
)	
KAUPULEHU DEVELOPMENTS)	CERTIFICATE OF SERVICE
)	
To Amend the Conservation Land Use District)	
Boundary into the Urban Land Use District for)	
Approximately 1,009.086 Acres of Land at)	
Ka`upulehu, North Kona, Island, County, and)	
State of Hawai`i, TMK 7-2-03: por. 1)	
_____)	

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:

DEL. DAVID W. BLANE, Director
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 Honolulu, Hawaii 96804-2359

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BRENDA FORD, Representing Intervenor
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Captain Cook, Hawaii 96704

DATED: Honolulu, Hawaii, this 18th day of October 2001.



ANTHONY J.H. CHING
Executive Officer