

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
COUNTY OF HAWAII)
PLANNING DEPARTMENT)
)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
955.78 Acres at Keahuolu through)
Keauhou, North Kona, Island of)
Hawaii, State of Hawaii, Tax Map)
Key No.: 7-4-08: por. 1; 7-5-03: 6,)
7, 23; 7-5-10: 5; 7-5-17: 1, 19;)
7-6-13: 9; 7-7-04: por. 2, 56;)
7-7-07: 41; 7-7-08: por. 27, 99,)
105; 7-8-10: por. 29, and por. 30.)
_____)

DOCKET NO. A94-705
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.

JUN 2 2 1998 by *[Signature]*
Date Executive Officer

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CONCLUSIONS OF LAW, AND DECISION AND ORDER

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

The COUNTY OF HAWAII PLANNING DEPARTMENT ("Petitioner") filed a Petition for Land Use District Boundary Amendment ("Petition") on June 28, 1994, pursuant to Hawai'i Revised Statutes ("HRS") Section 205-4, as amended, and Hawai'i Administrative Rules ("HAR") Chapter 15-15, as amended, to amend the State land use district boundaries by reclassifying various parcels of land totalling approximately 2,940.39 acres owned by various landowners, identified as Tax Map Key Nos.: 7-2-05: portion of 1; 7-3-07: 38, 39, 40; 7-3-09: 7, portion of 13; 7-3-10: 31, portion of 33, 35; 7-4-08: portion of 1, 5, portion of 13; 7-5-03: 6, 7, 23; 7-5-10: 1, 16; 7-5-17: 1, 19; 7-7-04: 2, 11; 7-7-07: 41; 7-7-08: 27, 99; 7-8-10: portion of 29, and portion of 30, from the State Land Use Agricultural District to

the State Land Use Urban District to allow uses for the area consistent with adopted State and County policies.

Petitioner subsequently amended the Petition on August 30, 1994, October 26, 1994, November 22, 1994, January 12, 1995, May 5, 1995, and November 24, 1995, ultimately resulting in a request to reclassify approximately 955.78 acres of land, identified as Tax Map Key Nos.: 7-4-08: portion of 1; 7-5-03: 6, 7, 23; 7-5-10: 5; 7-5-17: 1, 19; 7-6-13: 9; 7-7-04: portion of 2, 56; 7-7-07: 41; 7-7-08: portion of 27, 99, 105; 7-8-10: portion of 29, and portion of 30 (collectively referred to as the "Petition Area" or "Property").

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence, and argument of the parties, both written and oral; and having considered the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by Petitioner; the Proposed Findings of Fact, Conclusions of Law, Decision and Order For Docket No. A94-705 filed by Intervenor Liliuokalani Trust; Intervenor E Mau Na Ala Hele's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervenor Kamehameha Investment Corporation's Joinder in Petitioner County of Hawaii's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; E Mau Na Ala Hele's Response to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order Submitted by the Parties; Office of Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Objections to E Mau Na Ala Hele's Proposed Findings

of Facts, Conclusions of Law, and Decision and Order; and the entire record of this docket, hereby makes the following findings of fact, conclusions of law, and proposed decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner is a department of the County of Hawaii whose business and mailing address is 25 Aupuni Street, Hilo, Hawaii 96720.

2. On June 28, 1994, Petitioner filed a Petition for Land Use District Boundary Amendment ("Petition") with the Commission. The Petition requested reclassification of approximately 2,940.39 acres of land within the land divisions of Kau to Keauhou, North Kona District, Island and County of Hawaii, State of Hawaii from the Agricultural District to the Urban District.

3. On July 18, 1994, the Executive Officer of the Commission determined that the Petition was defective since a metes and bounds description and map of the initial Petition Area and written authorization from a number of the affected landowners were not obtained.

4. On August 30, 1994, Petitioner filed its Amended Petition with the Commission. The Amended Petition requested reclassification of approximately 3,017 acres of land from the Agricultural to the Urban District within the land divisions of Kau to Keauhou, North Kona District, Island and County of Hawaii, State of Hawaii. The increase in acreage was due to the addition of parcels identified as TMK: 7-5-10: 5, and 7-7-04: 56.

5. On August 30, 1994, Petitioner filed its Motion to Waive Requirement for Metes and Bounds Description.

6. On September 6, 1994, the Executive Officer accepted the Petition as a complete filing.

7. On October 26, 1994, Petitioner filed its Second Amended Petition For Land Use District Amendment ("Second Amended Petition"). The Second Amended Petition increased the Petition Area from approximately 3,017 acres to approximately 3,717 acres by adding five additional parcels identified as TMK: 7-3-09: portion of 25, 26, 28; 7-6-13: 9, and 7-7-08: 105, and deleting one parcel identified as TMK: 7-3-10: 31.

8. On November 22, 1994, Petitioner filed its Third Amendment to Petition for Land Use District Boundary Amendment ("Third Amended Petition"). The Third Amended Petition increased the Petition Area from approximately 3,717 acres to approximately 3,784 acres by adding the previously deleted parcel identified as TMK: 7-3-10: 31.

9. On November 22, 1994, Petitioner filed its Motion to Waive Requirement for Landowner's Written Authorization.

10. On December 1, 1994, a meeting was held by the Commission to consider Petitioner's Motion To Waive Requirements For Metes and Bounds Description. The motion was granted by the Commission subject to the condition that at any time in the future when a more accurate metes and bounds description of a portion of the property is needed, at the request of the Commission, Petitioner will provide a metes and bounds description and map. Action on Petitioner's Motion To Waive

Requirements For Landowners' Written Authorization To File
Petition was deferred at the request of Petitioner's attorney.

11. On December 13, 1994, Liliuokalani Trust, the fee simple owner of TMK: 7-4-08: portion of 1, filed its Petition for Intervention

12. On December 19, 1994, landowner Nansay Hawaii, Inc., the fee simple owner of TMK: 7-2-05: portion of 1, filed its Petition for Intervention.

13. On December 27, 1994, Hawaiian Development Corporation, the fee simple owner of TMKs: 7-5-03: 6, and 7, filed its Petition for Intervention.

14. On December 28, 1994, Tokyo Green Hawaii, Inc., the fee simple owner of TMKs: 7-3-09: portion of 25, 26, and 28, filed its Petition to Intervene.

15. On December 28, 1994, Lanihau Partners, L.P., and Palani Ranch Company, fee simple owners of TMKs: 7-4-08: 5, and portion of 13, filed its Petition to Intervene in District Boundary Amendment Proceeding.

16. On December 28, 1994, John Tommy Rosas, Jr. filed a Petition to Intervene.

17. On December 28, 1994, Life of the Land filed its Petition for Intervention.

18. On December 28, 1994, E Mau Na Ala Hele filed its Petition for Intervention.

19. On December 29, 1994, Kamehameha Investment Corporation, the fee simple owner of TMKs: 7-8-10: portion of 29, and portion of 30, filed its Petition for Intervention.

20. On December 29, 1994, Kona Scenic Land, Inc., one of the fee simple owners of an approximately 49.03 percent interest in TMK: 7-3-10: 31, filed its Petition for Intervention.

21. On December 29, 1994, James M. Rath filed a Request for Intervenor Status.

22. On December 30, 1994, the Commission issued its Order Granting Petitioner's Motion to Waive Requirement for Metes and Bounds Description.

23. On January 12, 1995, Petitioner filed its Motion for Permission to Amend Petition by Reducing the Total Acreage of the Petition Area ("Fourth Amended Petition") to reduce the acreage of the Petition Area from approximately 3,784 acres to approximately 3,728 acres, due to the subdivision of a parcel identified as TMK: 7-4-08: 5.

24. On February 2, 1995, the Commission conducted a hearing on the Petition, as amended, pursuant to notice published on December 14, 1994, in the West Hawaii Today, Hawaii Tribune-Herald, and the Honolulu Advertiser.

25. On February 2, 1995, Lunakanawai Hauanio orally requested intervenor status.

26. On February 2, 1995, the Office of Hawaiian Affairs orally requested intervenor status.

27. On February 2, 1995, the Commission heard arguments on the petitions and requests for intervention. The Commission took the testimony provided under advisement, and continued action on the various petitions and requests for intervention.

28. On February 21, 1995, the Office of Planning ("OP") (formerly known as Office of State Planning), filed its Motion to Declare Petition Defective.

29. On February 23, 1995, the Commission conducted a continued action meeting on the various requests for intervention. Due to the filing of the OP's Motion to Declare Petition Defective on February 21, 1995, the Commission continued action on the requests for intervention.

30. On March 23, 1995, the Commission conducted a continued action meeting on the various requests for intervention. Action was deferred by the Commission due to the filing of a Stipulation to Continue Motions on Office of State Planning's Motion to Declare Petition Defective; Petitions for Intervention; Petitioner's Motion to Waive Requirement for Landowner's Written Authorization; and Petitioner's Motion to Amend Petition, filed by Petitioner and OP.

31. On May 15, 1995, Petitioner filed its Amended Motion for Permission to Amend Petition by Further Reducing the Total Acreage of the Petition Area ("Fifth Amended Petition"). The Fifth Amended Petition reduced the Petition Area from approximately 3,728 acres to approximately 970.80 acres by deleting the northern portion of the initial Petition Area from Kailua-Kona to Keahole from the Petition.

32. On May 25, 1995, the Commission conducted a meeting to continue action on OP's Motion to Declare Petition Defective, and to take action on Petitioner's Fifth Amended Petition. Upon review of written and oral arguments from the

parties, the Commission granted Petitioner's Fifth Amended Petition, and deferred action on OP's Motion to Declare Petition Defective.

33. On June 5, 1995, Kona Scenic Land, Inc. withdrew its Petition for Intervention.

34. On June 7, 1995, Tokyo Green Hawaii, Inc. filed its Notice of Withdrawal of Petition to Intervene.

35. On June 15, 1995, Palani Ranch, Lanihau Partners L.P., and Nansay Hawaii, Inc. withdrew their respective Petitions for Intervention.

36. On June 15, 1995, the Commission issued its Order Granting Petitioner's Amended Motion for Permission to Amend Petition by Further Reducing the Total Acreage of the Petition Area.

37. On June 19, 1995, Life of the Land withdrew its Petition for Intervention.

38. On July 20, 1995, the Office of Hawaiian Affairs withdrew its request for intervention.

39. On August 10, 1995, the Commission conducted a continued action meeting on OP's Motion to Declare Petition Defective. OP orally amended its motion to declare the amended petition defective. Upon review of written and oral arguments from the parties, the Commission granted OP's Motion to Declare Amended Petition Defective, in part.

40. On September 18, 1995, the Commission issued its Order Granting Motion to Declare Amended Petition Defective.

41. On November 24, 1995, Petitioner filed its Motion to File Additional Information to Cure the Defects Presented in State Land Use Commission's Order Granting Motion to Declare Amended Petition Defective. In addition to filing additional information, Petitioner requested a further reduction of the Petition Area acreage from approximately 970.80 acres to approximately 955.78 acres by the deletion of parcel identified as TMK: 7-5-10: 1.

42. On December 14, 1995, the Commission conducted an action meeting on Petitioner's Motion to File Additional Information to Cure the Defects Presented in State Land Use Commission's Order Granting Motion to Declare Amended Petition Defective. Upon review of written and oral arguments presented by the parties, the Commission granted said motion, and also granted Petitioner's request to further reduce the total acreage of the Petition Area to approximately 955.78 acres.

43. On January 5, 1996, the Commission issued its Order Granting Motion to File Additional Information to Cure the Defects Presented in State Land Use Commission's Order Granting Motion to Declare Amended Petition Defective.

44. On February 2, 1996, Amelia Kuulei Gora filed a Petition for Intervention.

45. On February 15, 1996, the Commission conducted an action meeting on the petitions and requests for intervention. Upon review of both written and oral arguments presented by Petitioner and OP, the Commission granted intervention status to Lunakanawai Hauanio ("Intervenor Hauanio"), E Mau Na Ala Hele

("Intervenor E Mau"), Hawaiian Development Corporation ("Intervenor HDC"), Liliuokalani Trust ("Intervenor LT"), and Kamehameha Investment Company ("Intervenor KIC"). The petitions and requests for intervention by James M. Rath, John Tommy Rosas, Jr., and Amelia Kuulei Gora were denied.

46. On March 8, 1996, a prehearing conference was conducted in Diamond Head Conference Room A, #1 Capitol District Building, 250 South Hotel Street, 4th Floor, Honolulu, Oahu, with representatives of Petitioner, OP, Intervenor E Mau, Intervenor LT, Intervenor HDC, and Intervenor KIC present.

47. On March 11, 1996, Intervenor Hauanio filed a Demand Ex Parte Communication ("Demand"). The Demand requested that the Commission: (1) provide an equal opportunity in its adjudication process; (2) provide equal power to individuals defending Intervenor Hauanio's beliefs, liberties, properties, and sovereignties; (3) provide resources; and (4) provide the right to petition the government for redress of grievances.

48. On March 27, 1996, the Commission conducted a hearing on the Petition, as amended, pursuant to notice published on January 18, 1996, in the Hawaii Tribune-Herald, West Hawaii Today, and the Honolulu Advertiser.

49. At the March 27, 1996 hearing, the Commission struck Intervenor Hauanio's request for intervention for nonpayment of filing fees. The Commission subsequently continued the hearing on the Amended Petition.

50. On March 27, 1996, Intervenor E Mau filed its Motion to Require Compliance With HRS 6E. The motion argued that

the petition filed by Petitioner would, pursuant to HRS Chapter 6E, require written concurrence of the Department of Land and Natural Resources (DLNR), State Historic Preservation Division, before further action on the matter can properly continue.

51. On April 11, 1996, the Commission conducted a continued hearing on the Petition, as amended. At this meeting, the Commission heard arguments from the parties in regards to Intervenor E Mau's Motion to Require Compliance With HRS 6E. Upon consideration of the oral and written arguments on the motion, the Commission granted Intervenor E Mau's Motion to Require Compliance With HRS 6E.

52. On May 9, 1996, the Commission issued the following orders: (a) Order Granting in Part and Denying in Part Petitions For Intervention; (b) Order Dismissing Demand Ex Parte Communication Filed by Lunakanawai Hauanio; and (c) Order Granting Motion to Require Compliance With HRS 6E.

53. On May 30, 1996, the Commission conducted a continued hearing on the Petition, as amended.

54. On July 9, 1996, Intervenor E Mau Filed its Motion to Declare the Petition Still Defective; or in the Alternative, Portions Still Defective. On August 13, 1996, Intervenor E Mau filed a Supplemental Memorandum In Support of E Mau Na Ala Hele's Motion to Declare the Petition Still Defective.

55. On August 22, 1996, the Commission conducted a hearing to consider Intervenor E Mau's Motion to Declare Petition Still Defective; or in the Alternative, Portions Still Defective. Upon receiving oral arguments from the parties, the Commission

deferred action on the motion due to Petitioner's appeal to the State Historic Preservation Board pursuant to HRS 6E.

56. On November 7, 1997, a second prehearing conference was conducted in Conference Room 405, Leiopapa A Kamehameha Building, 235 South Beretania Street, Honolulu, Oahu, with representatives of Petitioner, Office of Planning, Intervenor E Mau, Intervenor LT, Intervenor HDC, and Intervenor KIC present.

57. On December 2, 1997, the Commission conducted a continued hearing on the Petition, as amended, and considered Intervenor E Mau's Motion to Declare Petition Still Defective; or in the Alternative, Portions Still Defective. Upon consideration of the written and oral arguments provided by the parties, the Commission denied Intervenor E Mau's Motion to Declare Petition Still Defective on in the Alternative, Portions Still Defective. The Commission continued the hearing until such time that clarification could be obtained from SHPD regarding DLNR concurrence pursuant to HRS 6E.

58. On January 26, 1998, the Commission issued its Order Denying Intervenor E Mau Na Ala Hele's Motion to Declare the Petition Still Defective; or in the Alternative, Portions Still Defective.

59. The Commission conducted continued hearings on the Petition, as amended on the following dates: February 12, 1998; March 19, 1998; and April 30, 1998.

60. Written and/or oral testimonies were received from the following: William Lazenby - Hawaii Carpenters Union; Lin

McIntosh - Kona Kohala Chamber of Commerce; Robert Bethea - Japanese Chamber of Commerce and Industry of Hawaii; Robert Burgess - KIAA; F.L. Smothers; James Trask; Lee Taylor - Mauna Kea Resort; Mark Richards - Maryl Development, Inc.; H. Pete L'Orange - Hawaii Leeward Planning Conference and Kona Soil and Water Conservation District; Jana Mugford - Kona Board of Realtors; Glenn Santos - Hawaii Island Chamber of Commerce; Jay Sasan - Hawaii Island Portuguese Chamber of Commerce; Charles Hosley; Philip Hoffman; Susie Green; Mr. & Mrs. Kim Sherman; Joseph Castelli; Representative David Tarnas; Duane Erway; Daniel and Ann Roudebush; Dr. Terry Hunt; Jack Davis - Hawaii County Green Party; L. Bunge; Francis Kuailani, Sr. - U.S. Department of the Interior, National Park Service; Toni Withington; Tim Newstrom; Thomas Langenstein; Sachi Noma - Japanese Chamber of Commerce and Industry of Hawaii; Sherri Ching; Elane Snavely; Nancy Pisicchio; Clarence Medeiros, Jr.; Sandra Scarr; Lily Kong; Curtis Tyler; Harry Fergerstrom; Laura Kamoku Na'o Pio o Kahaluu; Hannah Reeves; Betty Jean Kamoku; Kalani Hamm; Josephine Kamoku, and Isbella Medeiros.

DESCRIPTION OF THE PROPERTY

61. The Petition Area extends from Kailua-Kona to Keauhou 2nd, North Kona, Island and County of Hawaii, State of Hawaii. The affected parcels are interspersed among existing Urban-designated lands within this area of Kona.

62. The sixteen lots involved in the petition are owned by various landowners who have authorized Petitioner to submit the Petition, as amended, and include their properties for

reclassification into the Urban District. Petitioner does not own any of the properties affected by the Petition, as amended.

63. The properties herein identified are owned by the following firms/individuals and consists of the following acreage:

- a. 7-4-08: por. 1: Liliuokalani Trust Estate (60 acres)
- b. 7-5-03: 6: Hawaiian Development Corporation (93.41 acres)
- c. 7-5-03: 7: Hawaiian Development Corporation (44.50 acres)
- d. 7-5-03: 23: Capt. Cook Investment Co., Inc., et al (129.32 acres)
- e. 7-5-10: 5: Kamehameha Schools/Bishop Estate (54.70 acres)
- f. 7-5-17: 1: Pualani Estates, Inc. (22.67 acres)
- g. 7-5-17: 19 Pualani Estates, Inc. (31.68 acres)
- h. 7-6-13: 9: Arthur Nearon Family Trust (16.07 acres)
- i. 7-7-04: por 2: Nohona Partners, Inc. (133.48 acres)
- j. 7-7-04: por 27: Nohona Partners, Inc. (39.09 acres)
- k. 7-7-04: 56: American Lutheran Church (22.86 acres)
- l. 7-7-07: 41: ADN Corporation (26.16 acres)
- m. 7-7-08: 99: F.L. Smothers (31.50 acres)
- n. 7-7-08: 105: IVY & Associates (15.34 acres)
- o. 7-8-10: por 29: Kamehameha Investment Corporation (29 acres)
- p. 7-8-10: por 30: Kamehameha Investment Corporation (206 acres)

64. The Petition Area is located on the lower slopes of Mt. Hualalai, an 8,271 feet high dormant volcano.

65. Elevation of the Petition Area ranges from about 10 feet above mean sea level (msl) at Alii Drive to about 950 feet above msl at the mauka boundaries. The topography is characterized as being moderate sloping with the majority of the Petition Area having gradients of less than 10 percent.

66. The climate in this section of Kona is generally warm and semi-tropical. Seasonal changes are mild and fairly uniform, except for certain times during the winter months. The average annual temperature is 75 degrees Fahrenheit, with an average high of 83 degrees Fahrenheit and an average low of 67 degrees Fahrenheit.

67. The annual rainfall ranges from 25 to 30 inches on the lower (makai) section to 50 inches on the upper section (mauka). The wetter periods of the year usually occur during the months of May to September.

68. The Kona coast is largely sheltered from the predominant trade wind system by the land masses of Hualalai, Mauna Kea and Mauna Loa. The prevailing pattern is on-shore winds in the morning and early afternoon, then becoming off-shore breezes in the late afternoon and evening. Relative humidity is generally stable with the daily average ranging from 71 to 77 percent.

69. The Petition Area lies within Zone 4 of the hazard zone for lava flows as identified by the United States Geological Survey.

70. The entire coastline of North Kona is subject to inundation by tsunami. The Petition Area, however, is not within the tsunami inundation area.

71. The Land Study Bureau's Detailed Land Classification - Island of Hawaii overall master productivity ratings for the Petition Area are Classes E (Very Poor), D (Poor) and C (Fair).

72. The United States Department of Agriculture, Soil Conservation Service's Soil Survey of the Island of Hawaii, State of Hawaii (1973) has identified five soil types on the Property: Lava Flows, A'a (rLV) and Pahoehoe (rLW), Punaluu (rPYD), Waiaha (WHC), Kainaliu (KEC), and Kaimu (rKED).

73. A very small portion of the Property is classified as "Other Important Agricultural Lands" under the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) system. The remaining area of the Property is not classified under the ALISH system.

74. The majority of the Petition Area is designated Zone X (Areas determined to be outside of the 500-year flood plain) on the Flood Insurance Rate Map ("FIRM") prepared by the Federal Emergency Management Agency. However, portions of TMK: 7-5-03: 6 and 7 (Keopu drainageway overflow) are within a floodway as designated on the FIRM. These FIRM designations are presently undergoing revisions which will change the delineation of the subject floodway. Portions of TMK: 7-5-03: 29 (Keopu drainageway) and 7-7-04: portions of 2 (Kaumalumalu drainageway) are also situated within a floodway as designated on the FIRM.

PROPOSAL FOR RECLASSIFICATION

75. The purpose of the Petition is to allocate sufficient land for future urban growth and also to direct urban growth in appropriate areas designated on the County General Plan.

76. The Petition Area has been designated for urban growth by the County of Hawaii General Plan since 1971. Within the area surrounding the Petition Area, there are approximately 3,900 acres of existing State Land Use Urban-designated lands.

77. Specific urban uses have not been determined at this time. Petitioner has represented that the Petition Area will mainly include residential uses at varying densities ranging from 4 to 10 units per acre with some limited commercial uses. The Land Use Concept for the Petition Area and surrounding lands will be further refined during the subsequent county land use and permit process. These refinements will include the identification of more specific land use patterns and densities, infrastructure requirements, and required facilities, such as schools and parks.

78. The development of the Petition Area will likely take place over a period of 10 to 20 years.

79. Petitioner, along with the landowners, will be working closely with the State and County agencies in providing the necessary infrastructure and services to support any proposed development within the Petition Area. Improvements to existing infrastructure will also be made simultaneously with development of the properties.

STATE AND COUNTY PLANS AND PROGRAMS

80. The Petition Area, as amended, is within the State Land Use Agricultural District as shown on the Land Use District Boundary Maps (USGS Quads) H-7 (Kailua), and H-8 (Kealahou).

81. The Petition Area is designated within a "Resort Destination Node" in the West Hawaii Regional Plan ("WHRP") prepared by the Office of Planning. Kailua-Kona is a major resort destination area and also serves as the regional and commercial center for West Hawaii. The Palani Road - Queen Kaahumanu Highway intersection in Kailua-Kona is being developed as a major commercial core. The other major resort destination area and commercial area is at Keauhou.

82. The Hawaii County General Plan Land Use Pattern Allocation Guide Map designates the Petition Area for Low, Medium and High Density Urban developments and as an Urban Expansion Area. The Low Density Urban designation allows single family, ancillary community and public uses, and convenience-type commercial uses. The Medium Density Urban designation may allow villages and neighborhood commercial and residential and related uses. The High Density Urban designation allows for much higher density commercial, multiple residential and related services. The Urban Expansion Area allows for a mix of high, medium and low density uses, industrial and/or open designations. The reclassification of the Petition Area will be consistent with the General Plan's land use goal of containing Urban development within certain sections of the North Kona District. The

reclassification of the Petition Area would also conform to other stated goals, policies, and standards of the General Plan.

83. The Petition, as amended, is also consistent with the Kona Regional Plan ("KRP") adopted by the Hawaii County Planning Commission as Resolution No. 1 84. The KRP is intended to be used as a guide to help shape the nature of future land use actions for the Kona area. The KRP's Land Use Concept Map designates the Petition Area as CG (general commercial), CV (village commercial), and RES - 4, 6, and 10 (residential - 4, 6 and 10 units per acre).

84. The Petition Area is either zoned Agricultural 3-acre (A-3a), Agricultural 1-acre (A-1a) or Unplanned (U) on the County's zoning map. Changes to the appropriate County urban zoning district may be initiated by Petitioner.

85. Lands within the Petition Area situated makai of Kuakini Highway are within the County's Special Management Area ("SMA"). Any development contemplated within the SMA would require a SMA Use Permit from the Planning Commission.

86. Petitioner has applied to the State to reduce the SMA in the region. If the application is granted, none of the properties within the Petition Area situated makai of Kuakini Highway will be within the SMA.

NEED FOR PROPOSED DEVELOPMENT

87. It is anticipated that the Petition Area will be mainly used for the development of residential units at varying densities, thereby providing for a full range of residential opportunities for this section of the North Kona District. As a

result of these anticipated residential developments, some limited commercial activities are also needed in this section of the Kona area.

88. Despite the previous growth of housing construction in the North Kona and South Kohala areas, there still exists a need for additional housing units in West Hawaii. The inadequate supply of housing is attributed to high land costs, the presence of many resort and high-priced market units, pent-up demand for affordable housing, and high infrastructure costs. High prices and a lack of affordable units help to explain why there appears to be widespread overcrowding and house sharing in West Hawaii. Residents in West Hawaii are particularly concerned about the supply of housing that working families can afford. The shortage is connected to both the inventory of housing available to residents and the price of housing in relation to resident income. Based on the projected population increase in Kona over the next few years, it is anticipated that the demand will exceed the supply of affordable and market housing in West Hawaii. West Hawaii's housing supply will be positively impacted by future developments of the Petition Area.

ECONOMIC/SOCIAL IMPACTS

89. The resident population of North Kona was estimated at 4,832 and 13,748 in 1970 and 1980, respectively. This amounted to an increase in population of 184.5 percent or an average annual rate of 18.5 percent per year. Between 1980 and 1990, the population of North Kona further grew to 22,284

persons. This amounted to an average increase of 6.2 percent per year or 62.1 percent over the 10-year period from 1980 to 1990 as compared to about 2.4 percent per year for the entire island.

90. The Hawaii County General Plan resident population for the North Kona District to the year 2005 ranges from a low of 43,250 (Series A) to a high of 64,500 (Series C). Series A is the most conservative projection, which assumes the demise of the sugar industry and a growth rate of 2 percent per annum. Series C projection is an optimistic projection, which assumes an average annual growth rate of 4.7 percent. In comparison with North Kona, the General Plan's population projection for the entire island in the year 2005 ranges from 173,000 (Series A) to 258,000 (Series C). At a conservative estimate of 4 units per acre, the Petition Area could provide approximately 3,800 dwelling units. Based on a calculation of 2.86 persons per household (1990 Census figures), the Petition Area alone could result in a population increase of about 11,000 persons.

91. The urbanization of the Petition Area will provide jobs and housing for the residents of Kona and the West Hawaii region and for others who desire to migrate to the island. Within the context of population projections contained in the County of Hawaii General Plan, the provision of housing and jobs will serve to support projected population increases, including in-migration.

92. The urbanization and development of the Petition Area and surrounding properties will generate short-term employment during the construction period. Long-term employment

opportunities will also be available with the development and establishment of certain commercial activities. Employment associated with future developments within the Petition Area includes construction jobs and indirect and induced jobs created as the Petition Area is developed.

93. The development of the Petition Area is estimated to generate an additional \$2.6 million in real property tax revenues. These monies will be deposited in the County's general fund which would then be used to provide services to the public, including capital improvement projects.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

94. The majority of the Petition Area is not being used for agricultural purposes. There are a few lots which are used for limited grazing. A very small portion of the Petition Area is designated "Other Important Agricultural Lands" by the State Department of Agriculture's ALISH system. None of the Petition Area is designated by the Land Study Bureau as Class A or B soils. The Petition area is designated either Class VII or VIII by the United States Department of Agriculture, Soil Conservation Service. Both soil types have very severe limitations that make the Petition Area unsuited to cultivation. Based on the soil classifications and from an agricultural resource perspective, there will be no adverse impact to existing and proposed agricultural operations should the Petition Area be reclassified into the Urban District.

Flora and Fauna

95. There are stretches of undeveloped land characterized by barren lava and lowland vegetation consisting of kiawe, lantana, koa haole, and pasture grasses within the Petition Area. Previous flora studies conducted on adjacent lands south of Palani Road revealed that there are no endangered plant species in these sections of the Petition Area.

96. A preliminary botanical study was conducted by Intervenor HDC of its properties identified by TMK: 7-5-03: 6 & 7. Of the approximately 70 species of plants recorded, only six were native. None of the plants are considered rare, endangered or threatened.

97. At Petitioner's request, the U.S. Department of Interior, Fish and Wildlife Service, conducted surveys of several parcels (TMK: 7-5-03: 23; 7-5-17: 1 & 19; 7-6-13: 9; 7-7-04: 2; 7-7-08: 27, 99 & 105) within the Petition Area. The surveyed parcels were dominated by alien plant species and contained only a few indigenous plant species. No threatened or endangered plant species or any plant species of concern were found on the properties surveyed. The Fish and Wildlife Service had no objections to the redistricting of the properties with respect to impacts on these species.

98. Previous fauna studies conducted on adjacent lands revealed that there are no rare or endemic ecosystems in the area. All of the animal life (i.e., mongoose, rats) are introduced species.

99. A survey of avifauna and feral mammals was conducted for Intervenor HDC properties identified by TMK: 7-5-03: 6 & 7. The survey revealed that there are no endemic species except that the short-eared owl (Pueo) and the endangered Hawaiian Hawk ('Io) may occur at times. No special or unique bird or mammal habitat was discovered.

Archaeological/Historical Resources

100. The Petition, as amended, states that archaeological inventory and/or reconnaissance surveys were conducted for the following Tax Map Keys: 7-5-03: 6 & 7 (HDC); 7-7-08: 105 (IVY & Associates); 7-8-10: pars. 29 & 30 (KIC); 7-5-17: 1 & 19 (Pualani Development Company); 7-4-01: por. 1 (LT); 7-7-04: 2 & 7-7-08: 27 (Matsuzato Hawaii, Inc./Nohona Partners). However, only surveys conducted for Intervenor HDC, Intervenor KIC, and Intervenor LT have been submitted into the record for the subject docket. The Commission has not received surveys for parcels owned by IVY & Associates; Pualani Development Company; Matsuzato Hawaii, Inc./Nohona Partners; Capt. Cook Investment Co., Inc; Kamehameha Schools/Bishop Estate; Arthur Nearon Family Trust; American Lutheran Church; ADN Corporation; and F.L. Smothers.

101. Petitioner submitted an archaeological reconnaissance report of seven parcels within the Petition Area: 7-4-08: por. 1 (LT); 7-5-03: 23 (Captain Cook Investment, et al); 7-5-10: 5 (Kamehameha School/Bishop Estate); 7-6-13: 9 (Arthur Nearon Family Trust); 7-7-04: 56 (American Lutheran Church); 7-7-07: 41 (ADN Corporation); and 7-7-08: 99 (F.L. Smothers).

The report concluded that archaeological or historical remains were found on each of the parcels and each will require an intensive archaeological survey. The report was not intended to indicate the total number of sites on the parcels or provide any significance evaluation of the sites within the seven parcels.

102. At Petitioner's request, the Department of Land and Natural Resources, State Historic Preservation Division ("SHPD"), did an overview of a report entitled Central Kona Archaeological Settlement Patterns. Petitioner had requested SHPD to do a regional perspective of the Petition Area with respect to what the archaeological and cultural resources were in the area. The study would then provide the context in which Petitioner could assess other archaeological survey reports in terms of uniqueness of features that are found in the area and whether they fit this overall pattern. This paper briefly summarized the archaeological site patterns for Central Kona and only sites dating to pre-European contact (pre-A.D. 1779) times and the early 1800s were considered.

103. Intervenor HDC's report entitled An Archaeological Inventory Survey of 126 acres in the Ahupua'a of Lanihau 2, Moeauoa 1, and Moeauoa 2, Kailua-Kona, Island of Hawaii (Spear 1996) reported twenty-five significant historic sites were found on Intervenor HDC's properties. Seventeen sites were significant solely for their information content and eight were significant for multiple criteria. SHPD approved the archaeological inventory survey. A Data Recovery Plan was also

done for the Intervenor HDC's properties and submitted into the record for the subject docket.

104. Intervenor KIC's report entitled Population and Land-use on the Keauhou Coast. The Mauka Land Inventory Survey, Keauhou, North Kona, Hawai'i Island, Part I: Narrative was approved by SHPD. SHPD agreed with the mitigation proposals in the report which states that 12 sites undergo preservation or partial preservation and 55 sites undergo archaeological data recovery. With these commitments, SHPD believed that development of the KIC properties will have "no adverse effect" on the significant sites.

105. Intervenor LT's Interim Report Archaeological Inventory Survey 60-Acre Agricultural Zoned OLT Parcel revealed a total of 67 sites. These included agricultural, habitation, and wall sites. The features include terraces, mounds, enclosures, platforms, C-shapes, caves, modified outcrops, and possible burials, modified trail, and historic dump. One of the wall sites is the Kuakini Wall. The interim report has been submitted to SHPD, and a final report is being completed.

106. The Petition was reviewed by SHPD for compliance with the requirements of Section 6E-8, HRS. The Petition received concurrence from SHPD in May 1996, however, the concurrence was subsequently rescinded in July 1996 when SHPD learned that the Commission had not decided to defer archaeological surveys to the County level. SHPD re-issued its written concurrence in August 1997, based on SHPD's understanding

that the County has authority to impose historic preservation conditions on County change of zone applications.

107. SHPD indicated that deferring archaeological surveys to a later stage, i.e., County action or rezoning level, is appropriate, although the preference is to do the survey during the early stages of development.

108. Petitioner has represented that the Judd Trail, which is owned by the State of Hawaii, is not within the Petition Area, although a survey has not been completed to designate the actual trail alignment. The West Hawaii Railroad right-of-way forms the eastern (mauka) boundary of one of Intervenor KIC's parcels within the Petition Area. The Queen Keakealaniwahine Complex is not part of the Petition area but is adjacent to the parcel owned by American Lutheran Church (TMK: 7-7-04: 56) which is within the Petition Area.

Recreational Resources

109. There are a variety of public recreational opportunities and facilities provided by the County and the State within the Kona area. The County has over 17 public recreational facilities throughout Kona. The State continues to maintain an 80-acre shoreline recreational area at the old Kona Airport. This shoreline park includes a large community pavilion, small picnic complexes, restroom facilities, and public parking. The population growth as a result of development of the Petition Area will result in increased demand for recreational service and facilities. Petitioner and/or landowners/developers would have

to work closely with the affected governmental agencies in providing on-site recreational facilities and activities.

110. Any development of the Petition Area will not involve the alteration of the shoreline since the properties do not directly abut the shoreline.

ENVIRONMENTAL QUALITY

Noise

111. Noise in the Petition Area is associated with construction activities and from traffic along the existing roadways. Noise from these two activities will increase as a result of development of the Petition Area. Attenuating measures to reduce noise from increased vehicular traffic could be in the form of providing additional setbacks from roadways, landscaping buffers, and other sound attenuating construction materials.

Air Quality

112. Air quality in the Petition Area is mostly affected by air pollutants from natural and vehicular sources. The most obvious source of natural pollutants is the volcano. Emission from the on-going eruption can be seen in the form of volcanic haze which hangs in the area. Exhaust from vehicles is another source of air pollutants. Yet another source of pollutants is dust from construction activities in the nearby areas. Adequate dust control measures will be employed during the construction period.

Water Quality

113. Since the Petition Area does not abut the shoreline, it will not impact the coastal waters between Kailua-

Kona and Keauhou. Developers/landowners will be required to fund the design and construction of drainage improvements to accommodate any surface runoff as a result of the development of the Petition Area. Several agencies, such as the Coastal Zone Management Program, State Department of Health, and the U.S. Fish and Wildlife Service, expressed concerns regarding ocean water quality and non-point source pollution.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Services

114. The primary roadways in the vicinity of the Petition Area are the Queen Kaahumanu Highway, Palani Road, Kuakini Highway, Kamehameha III Road, and Alii Drive. Queen Kaahumanu Highway is a two-lane limited access State highway within a 300-foot right-of-way and services the region from Kawaihae to Kailua-Kona. Kuakini Highway and Alii Drive are the two roadways which extend from Kailua-Kona to Keauhou. The existing Alii Drive is a two lane roadway with a right-of-way width of 50 feet with 22- to 24-foot wide pavement. Kamehameha III Road connects Kuakini Highway to Alii Drive in the Keauhou area.

115. A major roadway improvement project from Kailua-Kona to Keauhou is the proposed Alii Highway which will parallel the existing Alii Drive and traverse through some of the lots within the Petition Area. This proposed roadway will consist of four 12-foot wide lanes, two lanes in each direction, with paved shoulders within a minimum right-of-way of 100 feet. The County Department of Public Works ("DPW") has been working closely with

SHPD in the review of the comprehensive Archaeological Study for the Alii Highway Project area, concurrently with the design of the highway. The construction and land acquisition are estimated to cost roughly \$15 million each, for a total project cost of \$30 million. The County of Hawaii will pursue all available Federal funds to finance the project with the remaining funds coming from improvement district bonds.

116. Besides the proposed Alii Highway, a number of mauka-makai connector roads between Kuakini Highway and the existing Alii Drive are also proposed. These new roadways and improvements will facilitate emergency evacuation for the coastal areas and also help with the general circulation pattern on a daily basis.

117. A preliminary traffic assessment for the Kailua-Kona to Keauhou Petition Area was prepared for the Petition. The purpose of the study was to determine the order of magnitude of the traffic impacts that may result from development of the Petition Area. The assumption was that the development density of each parcel would be four units per gross acre. The maximum number of dwelling units per acre were developed for each parcel in the Petition Area in order to estimate the potential trip generation attributable to each parcel. The assessment included:

- a) General description of the existing and planned roadways in the region;
- b) Description of the location and potential access opportunities for properties contained within the Petition Area;
- c) Estimates of the traffic generation characteristics of each parcel or groups of contiguous properties, based upon an assumed

land use intensity; and d) Discussion of the traffic issues and opportunities relative to the development of lands in the Petition Area. Issues which would need to be addressed by future and ongoing studies include: a) Construction schedule for the Alii Highway; b) Development of a comprehensive traffic master plan for the Kailua Village and areas mauka and to the south of Kailua Village; and c) Specific traffic impacts and access requirements based upon the individual development plans for each parcel in the Petition Area.

118. Development of the Petition Area and the surrounding lands will affect the existing traffic situation in the Kona area. Additional roadways as proposed in the various plans should be implemented as development of the area occurs. The respective County and State agencies will need to work closely with the private developers/landowners in providing these needed infrastructure. Implementation strategies, such as the County's on-going Keahole to Kailua Plan Implementation Strategy, should be undertaken. These traffic concerns and future roadway improvements will also be addressed and taken into account during the County rezoning process.

Water Service

119. The County of Hawaii Department of Water Supply ("DWS") has one major water system in the North Kona District. The lands between Kailua-Kona and Keauhou are served by three separate well fields - Kahaluu Wells, Kahaluu Shaft, and Hualalai Well. Water from these sources are pumped into reservoirs for distribution throughout the area. Additional booster pump

stations are also used to transmit water to higher elevation service zones from the well sites. The water sources for these well fields are typical basal water aquifers, namely fresh water floating on sea water. The average daily water use is approximately 8.3 million gallons per day (mgd) with a pump capacity of 13.2 mgd.

120. The development of the Petition Area will generate a water demand of approximately 1.8 mgd. To fully support the total development of the Petition Area, additional wells will have to be developed. The DWS will continue to develop new wells to service the Kona area.

121. A unique source of water referred to as "High Level Water" was discovered in the upper areas of North Kona and South Kona several years ago. This occurrence is due to a highly impervious geological formation that traps water in the upper areas and prevents it from flowing freely to the ocean. This formation runs parallel to the shoreline and extends from Kalaoa in the North Kona District to Hookena in the South Kona District. The elevation where this formation occurs is typically 1,600 feet above msl. Water levels above msl in this area range from 40 to 400 feet. The estimated safe yield of this source is 60 mgd. This source of water would be adequate to supply the anticipated demand caused by development of the Petition Area. One well is producing water from this source with two more wells expected to come on-line.

122. The DWS is preparing a master plan to provide a comprehensive method to develop and distribute water for Kailua

and areas to the south. This plan will provide guidance for future projects and developments to assure a sound engineered system network. Water to accommodate developments in the Petition Area is available through development of the source and installation of transmission and distribution systems which shall comply with guidelines set by the master plan.

Drainage

123. The following are the existing drainage systems in the Kona area between Kailua-Kona and Keauhou: Keopu Channel, Holualoa, Waiaha Stream, and Kaumalumalu Stream drainage basins. The Keopu Channel improvement was completed in 1972 and is the only fully completed flood control facility in North Kona. The Keopu Channel discharges its flows to the ocean at the County's Hale Halawai Community Center and Park. The Holualoa Drainage Basin flows along the south boundary of the Alii Kai Subdivision and discharges its stream flows adjacent to the Holualoa Bay Villas condominium on Alii Drive. The Holualoa Stream, which drains the Holualoa Horseshoe Bend and Holualoa School Streams, is the only improved and lined basin below Kupuna Street. The Waiaha Stream and Kaumalumalu Stream drainage basins are both unimproved and are in their natural state.

124. The DPW has engaged a consultant to conduct a preliminary engineering study entitled the Kailua Flood Control Study. The purpose of the study is to investigate several feasible alternatives to address the periodic flooding of Kailua Village caused by stream flows outside of the Keopu Channel basin.

125. Development of the Petition Area will increase surface runoff in the Petition Area. Additional runoff can be precluded from entering downstream properties by installing drainage improvements which would channel surface water runoff into a system of dry wells. The minimization of runoff can also be accomplished by maintaining vegetation in high rainfall areas, such as forests and pastures. All drainage structures will be developed to adequately handle the anticipated peak flows while minimizing downstream hazards. The landowners and/or developers will be required to share in the funding of design and construction of the drainage improvement projects. These issues will be further discussed and conditioned as part of the County rezoning process.

Solid Waste Disposal

126. Municipal refuse collection service is not provided in Hawaii County. Each individual household is responsible to take its refuse to the West Hawaii Sanitary Landfill at Puuanahulu. There are private enterprises providing this service. The West Hawaii Sanitary Landfill will be able to accommodate the solid waste to be generated with the development of the Petition Area.

127. Petitioner will work closely with the State Department of Health and the DPW to ensure that program goals and objectives of Chapter 342G, HRS, (Integrated Solid Waste Management Act) and the County's integrated solid waste management plans are met.

Schools

128. Kahakai Elementary School (K-6) is situated between Kailua-Kona and Keauhou and services the Petition Area. Konawaena High School and the newly constructed Kealakehe High School service the Kona area.

129. Urbanization of the Petition Area will create the demand for additional school facilities. Petitioner and/or landowners/developers will work closely with the State Department of Education to plan for the additional school enrollment which would result from development of the Petition Area.

Police and Fire Protection

130. The Police Department ("PD") district headquarters is located at Kealakehe. A police substation is also located at Kealakekua in the South Kona District. The PD anticipates an increase in the demand for additional police services as the Petition Area is developed. Petitioner will coordinate with the PD to provide for these additional services.

131. There are two fire stations serving the Kona districts - Kailua-Kona and Kealakekua. The increase in population as a result of development of the Petition Area will increase demand on existing Fire Department ("FD") and emergency services. Petitioner will coordinate with the FD to provide these additional services.

Electricity and Telephone Services

132. Electrical power to the Petition Area is provided by Hawaii Electric Light Company ("HELCO"). The Keahole generating plant which would service the Petition Area has a

generating capacity of 30.25 megawatts ("MW"). HELCO is proposing a 56 MW expansion to the Keahole generating plant which would, among other things, provide additional capacity to meet projected demand for electric service.

133. Development of the Petition Area and surrounding undeveloped areas would result in a substantial increase in electrical demand. Petitioner and/or the landowners/ developers will work closely with HELCO to monitor the capacity of electrical production to ensure that there will be adequate supply for future development of the Petition Area.

134. To assist in the reduction of electrical energy consumption, energy-saving and cost effective energy efficiency measures can be implemented for all future developments.

135. GTE Hawaiian Tel ("GTE") provides telephone service to the Petition Area. Development of the Petition Area and surrounding undeveloped Urban lands will result in an increased demand for additional telephone services. Petitioner and/or landowners/developers will work closely with GTE to plan for the eventual development of the Petition Area.

Wastewater Disposal

136. The current sewer system for the Kona area consists of one wastewater treatment plant, four sewage pump stations and several miles of collection lines. The system provides sewage collection, treatment and disposal for the Kona Industrial Subdivision, Kona Bay Estates Subdivision, and part of Kailua Town.

137. The County of Hawaii has begun construction on the Alii Drive Interceptor Sewer and Force Main Project, Phases I, II, and III. The area along Alii Drive from Kailua-Kona to Disappearing Sands will be sewerred by this 3-phase project. The entire project consists of a combination of gravity and force main lines of various sizes and three sewage pump stations and will cost approximately \$19.2 million.

138. Expansion of the sewerage system to Keauhou is being considered. However, no funds have been appropriated for such expansion.

139. Petitioner will ensure that the developer and/or landowner assist in the development of adequate wastewater transmission and disposal facilities to serve the area.

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

140. Reclassification of a portion of the Petition Area conforms to the following goals, objectives, priorities and policies of the Hawaii State Plan, as defined in Chapter 226, HRS, in the following respect:

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 Hawaii as a major visitor destination area, as well as a residential growth center. The development of the Petition Area could generate an increase in population of approximately 11,000 persons.

Section 226-6 Objectives and policies for the economy -
in general

The construction activities generated by the development of the Petition Area will increase economic activities and employment opportunities for residents of West Hawaii and the island as a whole.

Section 226-12 Objectives and policies for the physical environment - scenic, natural beauty, and historic resources

All significant archaeological or historic sites, including trails, will be preserved and/or protected in accordance with the requirements and guidelines of SHPD.

Section 226-13 Objectives and policies for the physical environment - land, air, and water quality

The development of the Petition Area will encourage urban developments in close proximity to existing services and facilities. In fact, the Petition Area is surrounded by existing Urban lands and is situated between the two urban commercial and resort cores of Kailua-Kona and Keauhou.

Section 226-14 Objective and policies for facility systems - in general

The reclassification of the Petition Area will be in conformance to the stated policy of pursuing alternative methods of financing programs and infrastructure projects in this section of the North

Kona District. State and County agencies will work with the landowners/developers in the planning and funding of the necessary infrastructure to accommodate development in the area.

Section 226-15 Objective and policies for facility systems - solid and liquid waste

In the development of the Petition Area, the developers and/or landowners will work with the State Department of Health and the County Department of Public Works in providing sewerage facilities to accommodate and complement the planned growth of the area.

Section 226-16 Objective and policies for facility systems - water

The developers and/of landowners will be required to fund and construct improvements to the water system to meet their individual needs. Further, they will also participate in the funding and construction of adequate water source, storage, and transmission facilities to accommodate development in the area.

Section 226-17 Objectives and policies for facility systems - transportation

The development of the Petition Area will facilitate the construction of transportation systems such as the planned Alii Highway between Kailua-Kona and Keauhou. This roadway is needed to accommodate present and future growth in this section of the Kona area.

Section 226-19 Objectives and policies for socio-cultural advancement-housing

The anticipated development of the additional residential units will provide new housing opportunities to satisfy demand for affordable homes in West Hawaii. The development of the Petition Area into residential projects will provide greater opportunities for the residents of West Hawaii in securing reasonably priced, safe, sanitary, livable homes which are located in suitable environments that satisfactorily accommodate the needs and desires and families and individuals. It will provide the residents with a choice for housing in various locations.

Section 226-104 Population growth and land resources priority guidelines

The development of the Petition Area will not adversely impact the shoreline since none of the properties are situated along the shoreline. Developments will be designed to ensure that coastal water quality is not affected.

Section 226-106 Affordable housing

The development of the Petition Area will convert marginal or non-essential agricultural lands to meet the housing needs of low and moderate-income and gap-group households.

141. The proposed reclassification is consistent with and conforms to applicable State functional plans, as defined in Chapter 226, HRS, as follows:

a. AGRICULTURAL FUNCTIONAL PLAN

The Agricultural Functional Plan identifies two objectives to be achieved: 1) continued viability in Hawaii's sugar and pineapple industries; and 2) continued growth and development of diversified agriculture throughout the State.

The majority of the Petition Area consists of primarily vacant land. While some of the lots are or have been used for limited cattle grazing, the lands are not classified "prime" agricultural lands by the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) system.

b. HISTORICAL PRESERVATION FUNCTIONAL PLAN

The Historical Preservation Functional Plan identifies three issue areas for which objectives, policies, and actions are proposed: 1) the preservation of historic properties; 2) the collection and preservation of historic records, artifacts and oral histories; and 3) the provision of public information and education on the

ethnic and cultural heritages and history of Hawaii. Petitioner and landowners will be required to work closely with the State Department of Land and Natural Resources - SHPD to mitigate any impacts on archaeological sites which may be found in the Petition Area. When appropriate, implementation of any development will include the preparation of mitigation plans to ensure conformance with all applicable federal, state and county regulations regarding historic or archaeological sites.

c. TOURISM FUNCTIONAL PLAN

The Tourism Functional Plan seeks to maintain a visitor industry that constitutes a major component of steady growth for Hawaii's economy.

The Petition Area will be available to accommodate the housing demand created by the visitor industry; and therefore, will help alleviate the housing shortage in the West Hawaii region and will also indirectly assist in the maintenance of tourism as a viable industry.

d. TRANSPORTATION FUNCTIONAL PLAN

The objectives and policies of the Transportation Functional Plan relate

primarily to the administration and implementation of transportation policies by the State Department of Transportation. This plan focuses on the policies for various modes of transportation.

Petitioner/landowners will be required to work closely with the Department of Transportation in accomplishing the stated objectives and policies of the plan.

e. HOUSING FUNCTIONAL PLAN

The Housing Functional Plan includes home ownership, land acquisition for affordable housing development, and rental housing as issue areas.

Although specific land use plans for the Petition Area have not been developed, the majority of the land will be used for the development of residential units. Therefore, the urbanization of the Petition Area will provide housing opportunities for residents of the County of Hawaii, as well as provide additional lands for housing developments.

f. EMPLOYMENT FUNCTIONAL PLAN

The Employment Functional Plan contains objectives, policies and implementing actions in areas of- 1) Education and Preparation Services for Employment; 2) Job Placement;

3) Quality of Work Life; and 4) Employment Planning Information and Employment Coordination.

The development of the Petition Area will provide new employment opportunities for residents of the area and the Big Island, primarily in the construction trades.

Additional job opportunities will also be available with the possible development of support commercial developments.

g. HEALTH FUNCTIONAL PLAN

The Health Functional Plan objectives that are directly related to the Petition Area and its future development are: 1) to prevent degradation and enhance the quality of Hawaii's air, land and water; and 2) the threat to public health from unsanitary conditions.

In the development of the Petition Area, Petitioner will ensure all applicable Department of Health and County of Hawaii rules and regulations will be complied with.

m. WATER RESOURCES DEVELOPMENT FUNCTIONAL PLAN

The Water Resources Development Functional Plan sets guidelines for the regulation and development of adequate water sources to meet public and private requirements for water.

It also includes setting guidelines for the preservation of the source and quality of the water resources.

Petitioner/landowners will work closely with the appropriate state and county agencies in the development and implementation of water infrastructure.

CONFORMITY WITH URBAN DISTRICT STANDARDS

142. The Petition, as amended, is consistent with Section 205-2, HRS, as it seeks a reclassification into the State Land Use Urban District for lands which are reserved for foreseeable urban growth.

143. Section 15-15-18, of the Commission Rules defines the standards which the Commission uses in determining the boundaries for the Urban District. The proposed reclassification of a portion of the Petition Area satisfies the following standards:

Section 15-15-18(1): It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

Section 15-15-18(2): It shall take into consideration the following specific factors:

- a) Proximity to center of trading and employment except where the development would generate new centers of trading and employment.

- b) Proximity to basic services such as sewers, transportation systems, water, sanitation, schools, parks, and police and fire protection.
- c) Sufficient reserve areas for urban growth in appropriate locations based on a ten-year projection.

Section 15-15-18(3): It shall include lands with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects.

Section 15-15-18(4): In determining urban growth for the next ten years, or in amending the boundary, land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans.

Section 15-15-18(5): It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans.

Section 15-15-18(6): It may include lands which do not conform to the standards in paragraphs (1) to (5):

- (A) When surrounded by or adjacent to existing urban development; and
- (B) Only when those lands represent a minor portion of this district.

144. The proposed reclassification is generally consistent with the Commission decision-making criteria set forth in Section 205-17, HRS, in that:

- a. The proposed reclassification is consistent with the applicable goals of the Hawaii State Plan and the adopted functional plans. The Petition Area is suitable for development as part of a resort destination node.
- b. The proposed reclassification conforms to the Urban District standards.
- c. No significant natural habitats exist within the Petition Area.
- d. The Petition Area is marginal for agriculture.
- e. The development of the Petition Area will generate needed jobs in the West Hawaii area.
- f. Housing opportunities will be available to residents of West Hawaii as a result of the reclassification.

145. Portions of the proposed reclassification are not consistent with the Commission decision-making criteria in regards to significant historic, cultural, and natural resources being preserved. With the exception of the archaeological surveys, and data recovery plan submitted as part of the proceedings on this docket, there is insufficient data to determine if historic, cultural, and natural resources will be protected.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

146. The proposed reclassification of the Petition Area is generally consistent with the objectives and policies of the Hawaii Coastal Zone Management ("CZM") program included in Chapter 205A, Hawaii Revised Statutes. In an effort to preserve and protect the natural resources of the coastal areas, special controls on development along the shoreline have been implemented.

147. The properties within the Petition Area situated makai of the Kuakini Highway are within the County's SMA. Any development contemplated within the SMA would require a SMA Use Permit from the County Planning Commission. During the review of a SMA Use Permit, applicable objectives and policies of Chapter 205A, HRS will be further considered.

148. Petitioner has applied to the State to reduce the SMA in the region. If the application is granted, none of the properties within the Petition Area situated makai of Kuakini Highway will be within the SMA.

INCREMENTAL DISTRICTING

149. Since this Petition involves several properties under different landownership, it is difficult to predict the timing of development of each parcel. It can be concluded that the entire Petition Area will not be completely developed within five years from the date of receipt of County zoning approval. Private development master plans, changing market conditions, and the availability and prioritization of capital improvement funding will affect the timing of the improvements.

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 the conclusion of law; any findings of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205 of the Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, as amended, the Commission finds and concludes upon a clear preponderance of the evidence as follows:

A portion of the Petition Area of approximately 955.78 acres of land at Keahuolu to Keauhou, North Kona, County and State of Hawaii, subject to the conditions stated in the Order, conforms to the standards for establishing the Urban District Boundaries, is reasonable, non-violative of Section 205-2, Hawaii Revised Statutes, and is consistent with the policies and criteria established pursuant to Section 205-16 and Chapter 226, Hawaii Revised Statutes (the Hawaii State Planning Act, as amended), and Section 205-17, Hawaii Revised Statutes, and Section 205A-2, Hawaii Revised Statutes.

DECISION AND ORDER

IT IS HEREBY ORDERED that a portion of the Petition Area being the subject of this Docket No. A94-705 filed by the County of Hawaii Planning Department, comprised of a total of approximately 432.91 acres situated in the land divisions from Keahuolu to Keauhou, North Kona, Island, County and State of Hawaii, identified as Hawaii Tax Map Key Nos. 7-4-08: portion of 1; 7-5-03: 6, 7; and 7-8-10: portion of 29 and portion of 30, for reclassification from the State Land Use Agricultural District to the State Land Use Urban District, and approximately shown in Exhibit "A" attached hereto and incorporated herein by reference, shall be and is hereby approved, and the State Land Use District Boundaries shall be amended accordingly, subject to the following conditions:

1. Provided that the land uses proposed generate the need for such facilities, Petitioner, developers and/or landowners of the affected properties, on an individual or collective basis, shall provide or cause to provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii to the satisfaction of the County of Hawaii. 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 the developers and/or landowners and the County of Hawaii.

2. Provided that the land uses proposed generate the need for such facilities, Petitioner shall ensure that the developers and landowners of the affected properties and their

successors and assigns contribute to the development, funding, and/or construction of public school facilities on a fair share basis as determined by and to the satisfaction of the State Department of Education. Petitioner shall ensure that a written agreement between the affected developers and/or landowners, their successors and assigns, and the Department of Education setting forth the contribution and timing of contributions is on-going as part of the County rezoning process and is fully executed prior to the County issuing any building permits.

3. Provided that the land uses proposed generate the need for such facilities, Petitioner shall ensure that the developers and/or landowners of the affected properties participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a fair share basis, as determined by the County of Hawaii Department of Public Works (DPW) and the State Department of Health (DOH). Developer and/or landowner participation shall also be in compliance with conditions of approval of County zoning or determined prior to applying for County building permits if County rezoning is not required.

4. Petitioner shall ensure that the developers and/or landowners of the affected properties each submit for review by and receive approval from the State Department of Transportation (DOT) and the County of Hawaii DPW a Traffic Impact Analysis Report (TIAR), prior to the County approval of a rezoning application for each affected property or prior to applying for County building permits if rezoning is not required. The TIAR

shall identify the traffic impacts attributable to the proposed development and recommend proposed mitigation measures. The report should also reflect the latest planning efforts for transportation (i.e., the conditions, assumptions, and findings for the upcoming Hawaii Land Transportation Plan). Based on an analysis of traffic-related impacts, Petitioner shall ensure that the developers and/or landowners also participate, on a fair share basis, in the funding and construction of local and regional transportation improvements and programs, including dedication of rights-of-way as determined by the State DOT and the County of Hawaii DPW.

5. Petitioner shall ensure that the developers and/or landowners of the affected properties, on a fair share basis, fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies as part of the development of the affected properties.

6. The findings of the archaeological inventory surveys prepared by the developers and/or landowners of each affected property shall be submitted to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) in report format for adequacy review. Prior to making a decision on the County rezoning or permit application for each property, the County agency shall receive in writing from SHPD verification that the survey report is acceptable, that significance evaluations are acceptable, and that the mitigation commitments are acceptable.

7. If significant historic sites, including trails and railroad right-of-ways, are present, the developers and/or landowners of each affected property shall submit a detailed historic preservation mitigation plan for review by SHPD. This plan may include preservation and/or archaeological data recovery subplans (detailed scopes of work). SHPD must approve this plan before any land alteration can occur on the project area. SHPD must also verify in writing to the County agency approving the permit that the plan has been successfully executed, prior to any land alteration.

8. Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, the developers and/or landowners of the affected properties shall stop work in the immediate vicinity and SHPD shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from SHPD when it finds that mitigative measures have been implemented to their satisfaction.

9. Petitioner, developers and/or landowners of the affected properties shall notify all prospective buyers of the property of the potential odor, noise and dust pollution if there are any Agricultural District lands surrounding the affected properties.

10. Petitioner, developers and/or landowners of the affected properties shall notify all prospective buyers of property that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which

pre-existing farm activities may be deemed a nuisance if there are any Agricultural District lands surrounding the affected properties.

11. Provided that the land uses proposed generate the need for such facilities, Petitioner shall ensure that the developers and/or landowners of the affected properties fund on a fair share basis, the design and construction of drainage improvements required as a result of the development of the affected properties to the satisfaction of the appropriate State and County agencies. Petitioner shall ensure that the developers and/or landowners also participate, on a fair share basis, in other drainage improvement programs in the area as determined by the County of Hawaii DPW.

12. Petitioner shall ensure that the developers and/or landowners participate on a fair share basis in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project(s). Water transmission facilities and improvements shall be coordinated and approved by appropriate State and County agencies. Petitioner shall transmit to the County of Hawaii DWS any changes in water demand forecasts and in water development plans to supply the proposed projects.

13. Petitioner shall timely provide without any prior notice, annual reports to the Land Use Commission and the Office of Planning, in connection with the status of the affected properties and the developers' and/or landowners' progress in complying with the conditions imposed herein. The annual report

shall be submitted in a form prescribed by the Executive Officer of the Commission.

14. The Commission may fully or partially release these conditions provided herein as to all or any portion of the affected properties upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the developers and/or landowners of the affected properties.

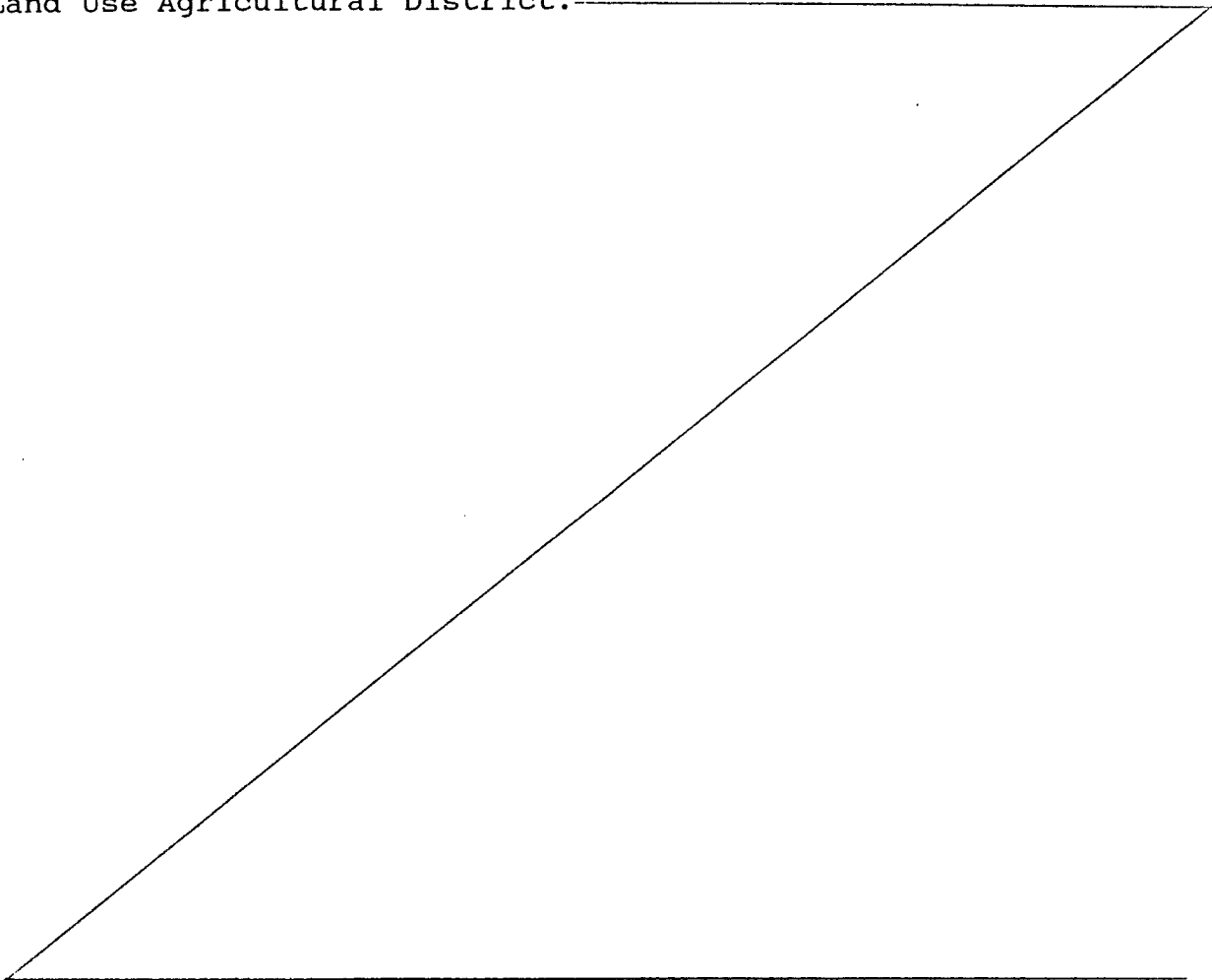
15. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the State Bureau of Conveyances a statement that the properties are subject to conditions imposed by the Commission in the reclassification of the affected properties; and (b) file a copy of such recorded statement with the Commission.

16. Petitioner, shall ensure that the conditions imposed herein by the Commission are recorded with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.

17. Petitioner, landowner/developer, their successors and assigns shall ensure that development of the reclassified area is in substantial compliance with the representations made before the Land Use Commission. Failure of Petitioner, landowner/developer, their successors and assigns to ensure substantial compliance may result in reversion of the reclassified area to its former land use classification, or change to a more appropriate classification.

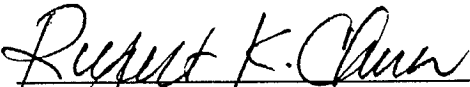
18. Petitioner, landowner/developer, their successors and assigns shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the reclassified area prior to the visible commencement of construction.

IT IS HEREBY FURTHER ORDERED that the remainder of the Petition Area, as amended, consisting of approximately 522.87 acres, and identified as Tax Map Key Nos.: 7-5-03: 23; 7-5-10: 5; 7-5-17: 1 & 19; 7-6-13: 9; 7-7-04: portion of 2 & 56; 7-7-07: 41; 7-7-08: portion of 27, 99, and 105, shall remain within the State Land Use Agricultural District.

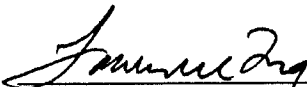


Done at Honolulu, Hawai'i, this 22nd day of June 1998,
per motion on June 18, 1998.


LAND USE COMMISSION
STATE OF HAWAI'I

By 
RUPERT K. CHUN
Chairperson and Commissioner


By (opposed)
M. CASEY JARMAN
Vice Chairperson and Commissioner

By 
LAWRENCE N.C. KING
Vice Chairperson and Commissioner

By (absent)
P. ROY CATALANI
Commissioner


By 
ISAAC FIESTA, JR.
Commissioner

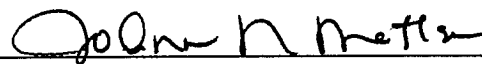
By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner


By 
MERLE A. K. KELAI
Commissioner

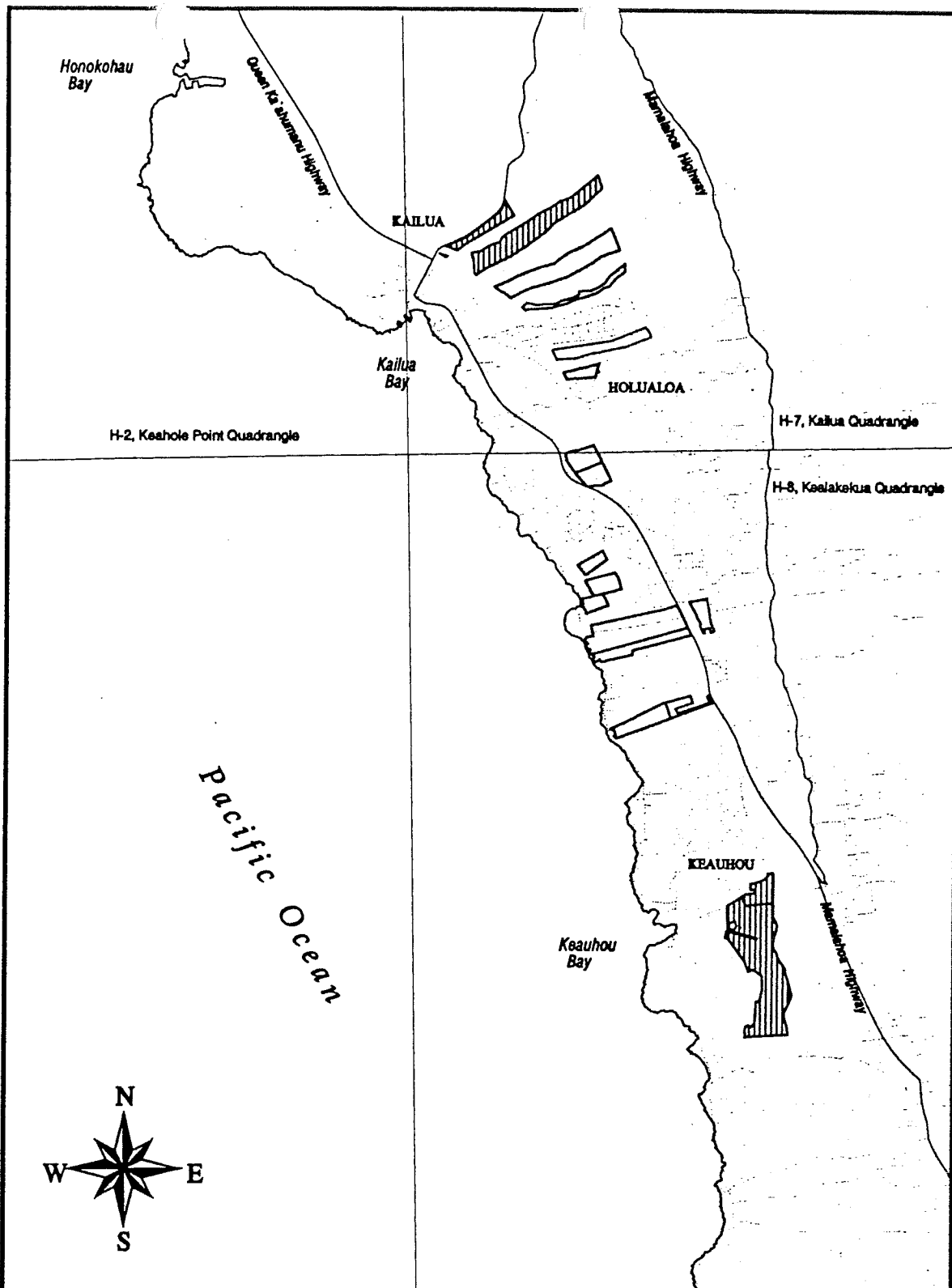
Filed and effective on
June 22, 1998

Certified by:


Executive Officer



By 
JOANN N. MATTSO
Commissioner

By 
PETER YUKIMURA
Commissioner



A94-705 / COUNTY OF HAWAI'I PLANNING DEPARTMENT

LOCATION MAP

- 
 Approved Area - Tax Map Key No.: 7-4-08: por. 1; 7-5-03: 6, 7; 7-8-10: por. 29, & por. 30
- 
 Denied Area - Tax Map Key No.: 7-5-03: 23; 7-5-10: 5; 7-5-17: 1, 19; 7-6-13: 9; 7-7-04: por. 2, 56; 7-7-07: 41; 7-7-08: por. 27, 99, 105

Kailua - Keauhou, South Kona, Hawai'i

EXHIBIT "A"

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A94-705
)	
COUNTY OF HAWAII)	CERTIFICATE OF SERVICE
PLANNING DEPARTMENT)	
)	
To Amend the Agricultural Land Use)	
District Boundary into the Urban)	
Land Use District for Approximately)	
955.78 Acres at Keahuolu through)	
Keauhou, North Kona, Island of)	
Hawaii, State of Hawaii, Tax Map)	
Key No.: 7-4-08: por. 1; 7-5-03: 6,)	
7, 23; 7-5-10: 5; 7-5-17: 1, 19;)	
7-6-13: 9; 7-7-04: por. 2, 56;)	
7-7-07: 41; 7-7-08: por. 27, 99,)	
105; 7-8-10: por. 29, and por. 30.)	
_____)	

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. RICHARD EGGED, JR., Director
 Office of State Planning
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 Honolulu, Hawaii 96804-2359

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CERT. JUDITH GRAHAM
Representing Intervenor E Mau Na Ala Hele
P. O. Box 6384
Kamuela, Hawaii 96743

DATED: Honolulu, Hawaii, this 22nd day of June 1998.



ESTHER UEDA
Executive Officer