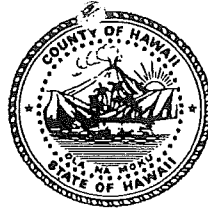


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

December 6, 2016

Mr. Steven S. C. Lim, Esq.  
Carlsmith Ball LLP  
P.O. Box 686  
Hilo, HI 96721-0686

Dear Mr. Lim:

**Subject: Proposed Solar Farm  
Special Management Area (SMA) Use Permit No. 25  
State Land Use Commission Docket No. A89-637  
Developer: JPL Hawai'i, LLC  
TMK: (3) 6-9-012:001 and (3) 6-9-012:005 (formerly 6-9-008:002)**

2016 DEC - 9 A 10:35  
LAND USE COMMISSION  
STATE OF HAWAII

Thank you for your letter dated June 23, 2016 requesting a determination of whether a solar farm consisting of a utility-scale photovoltaic solar array and battery storage systems may be placed on the subject property under the existing entitlements and County zoning. We appreciate the patience you have afforded us while we consulted with Hawai'i Electric Light Company and the County Department of Public Works Building Division about how they define solar farms, utility substations and power generating facilities.

Our understanding is that solar farms are typically utility-scale power generating facilities that can either be tied to the public power grid or independent, and that distribute power to multiple end-users. A utility substation does not generate power on its own but rather transforms or "steps down" incoming power so that it can be transmitted to customers on a public or private basis. The Planning Department has permitted solar energy facilities when it is accessory and subordinate to a primary use on a property, such as ground or roof-mounted solar panel arrays for one home or a commercial business. The solar farm proposed for the subject property would generate power that is distributed to multiple users within the housing development on the adjacent properties, therefore it would not be considered an accessory use.

Based upon our research, when Land Use Commission Docket #A89-637 and SMA Use Permit No. 25 were approved and amended, representations made in the applications were for electricity to be provided via conventional methods rather than the use of solar technology. Both the LUC docket and SMA permit have conditions that state the property shall be developed in substantial

Mr. Steven S. C. Lim, Esq.  
Carlsmith Ball LLP  
Page 2  
December 6, 2016

compliance with the representations made to the LUC and Planning Commission. While the County of Hawai'i is very supportive of the State's renewable energy goals, we must ensure that State land use and resource protection laws, such as the coastal zone management law, are applied when meeting those goals.

Therefore, your client will need to seek a determination from the State Land Use Commission (LUC) regarding whether the proposed solar farm meets their definition of an "infrastructure improvement" that would be permitted in the highway buffer area, and whether the solar farm is considered an "obtrusive structure" since Condition 2 of the Order does not allow obtrusive structures within the conservation easement buffer.

Additionally, SMA Permit No. 25 will need to be amended to evaluate the proposed solar farm against the coastal zone management objectives and policies and SMA criteria, which include but are not limited to, protecting coastal scenic and open space resources and consistency with general and community plans. The County General Plan indicates that view planes along Queen Ka'ahumanu Highway looking mauka and makai are examples of natural beauty to be protected from becoming obstructed. Similarly, Strategy 2.2 on page 102 of the South Kohala Community Development Plan indicates that views of the sunset over the sea and the view of Maui from Waikoloa should be preserved.

Lastly, the property is zoned Open by the County. Section 25-4-11(b) allows a private utility substation in any zoning district, but it is clear that a solar farm is a utility facility rather than a utility substation and thus only permitted within the General Industrial (MG) zoning district.

If you have any questions, please feel free to contact Maija Jackson at 961-8159.

Sincerely,

  
MICHAEL YEE  
Planning Director

MJJ:mad  
P:\wpwin60\Maija\Letters\SMA\LLim-SMA25-JPLHawaii-SolarFarm.doc

cc/ltr (COR-16-106062):      Planning Department- Kona  
   Long Range Planning Division  
   State Land Use Commission  
   State Office of Planning  
   LUC 722, SMA 25, REZ 697, 6-9-012:001 & 005

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2016 JUN 23 PM 12 15

PLANNING DEPARTMENT  
COUNTY OF HAWAII

June 23, 2016

## VIA HAND DELIVERY

Mr. Duane Kanuha, Planning Director  
County of Hawai'i  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720

Re: JPL Hawaii, LLC  
TMK Nos.: (3) 6-9-012:001; (3) 6-9-012:005 (f.k.a (3) 6-9-008:002 por.) (the  
"Property")  
Special Management Area Use Permit No. 25 ("SMA 25")  
State Land Use Commission Findings of Fact, Conclusions of Law and Decision  
and Order under Docket A89-637, dated January 9, 1990 ("LUC Order")

Dear Mr. Kanuha:

Carlsmith Ball LLP represents JPL Hawaii, LLC ("JPL"), the current owner of the Property. With this letter, we request your concurrence that (i) "utility substations", such as utility-scale photovoltaic solar array and battery storage systems ("Solar Farm") are allowed in the County Open zone districts; (ii) "utility substations" are allowable uses within the 200-800 foot buffer zone set forth in the LUC Order;<sup>1</sup> and (iii) SMA 25, which regulates development on the Property, allows for the construction of "utility substations".

JPL's project area comprises TMK Nos.: (3) 6-9-012:001 through 005 and (3) 6-9-013:001 through 043 (the "Project") all of which was formerly designated as (3) 6-9-008:002 being Lot 1 of File Plan 2013 (Waikoloa Beach Resort Phase VI). The Project is located in the State Land Use Urban District, and is designated "Resort Node" in the LUPAG map of the County of Hawai'i General Plan. The Project is zoned in a mix of Multiple-Family Residential RM-8, Village Commercial CV-10 and Open. The Property on which JPL is proposing a Solar Farm is in the County's Open zoning district.

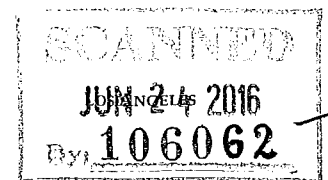
<sup>1</sup> See Exhibit A.

HONOLULU

HILO

KONA

MAUI



I. COUNTY ZONING

A. The Solar Farm is a Permitted Use in the Open Zone as a "Utility Substation"

Hawaii County Code ("HCC") §25-4-11 provides: "Any substation used by a public or private utility for the purpose of furnishing telephone, gas, electricity, water, sewer, radio, or television shall be a permitted use in any district provided that the use is not hazardous or dangerous to the surrounding area and the director has issued plan approval for such use." (Emphasis added.)

In the County's Open zoning districts, "utility substations", which are defined in the above section, are specifically listed as one of the permitted uses. See HCC §25-5-162(a)(13). We understand that the Hawaii Electric Light Company operationally classifies a Solar Farm as a "utility substation".

Based on the above, it is our position that a Solar Farm meets the definition of a "utility substation" under HCC §25-4-11 and therefore is a permitted use, provided the Planning Director issues Plan Approval for such use.

II. LUC ORDER

A. History

In 1989 Atpac Land Co. Limited Partnership, Waikoloa Development Co., and Waikoloa Land & Cattle Co filed a petition under Docket A89-637 to amend the land use district boundary for approximately 853.187 acres of land in Waikoloa, South Kohala, Island and County of Hawai'i, from the Agricultural District to the Urban District. On January 9, 1990 the LUC granted the petitioner's request for reclassification subject to the twelve (12) conditions contained in the LUC Order. The Property is a portion of the land covered by the LUC Order.

The Property was originally master planned as an expansion area for the Waikoloa Beach Resort Complex, which would include an eighteen (18) hole championship golf course ("Golf Course") and residential community. The predecessor in interest to JPL, Elleair Hawaii, Inc., abandoned plans to develop the Golf Course and JPL likewise does not intend to develop the Golf Course. At this time JPL's proposed Solar Farm, which is intended to serve the energy needs of the entire Project, is located within a portion of the Property that was formerly part of the planned Golf Course.

B. Analysis

The Land Commission Rules provide:

*Permissible uses within the "U" Urban district. Any and all uses permitted by the counties, either by ordinances or rules may be allowed within this district, subject to any conditions imposed by the commission pursuant to section 205-4(g) HRS.*

See, Hawaii Administrative Rules §15-15-24.

As set forth above, "Utility Substations" are permitted in uses in any County zoning district<sup>2</sup> and therefore are permitted in the SLU Urban District subject to any conditions imposed in the LUC Order.

Condition 2 of the LUC Order provides:

*Petitioner shall ensure that a buffer along the boundary of the Property fronting the Queen Kaahumanu Highway right-of-way will be preserved to protect open space and scenic views. This buffer area shall be preserved in perpetuity through the establishment of a conservation easement pursuant to Chapter 198, HRS, as amended, or such other means as shall be reviewed and approved by the Office of State Planning of the State of Hawaii.*

*The buffer area shall extend makai of the Queen Kaahumanu Highway right-of-way to a depth of approximately eight hundred (800) feet. The first two hundred (200) feet of the buffer area shall be comprised of natural open space. The buffer area extending between two hundred (200) feet and eight hundred (800) feet from the Queen Kaahumanu Highway right-of-way shall be comprised of open space of which golf courses are the only permitted use. Golf related recreational, maintenance, parking, and other obtrusive structures shall not be allowed within the conservation easement. The depth of the buffer area may vary and the actual boundary lines of the buffer area may meander to a lesser or greater depth to accommodate the project's development plan and preservation of natural open space and scenic views so long as the average depth is eight hundred (800) feet. Exceptions shall be made for infrastructure improvements, corridors, or entry features that may be necessary to service the developed portions of the Property (Emphasis Added).*

There is no question that a Solar Farm is an infrastructure improvement necessary to service the developed portions of the Project. The proposed Solar Farm is planned to generate sufficient power for the entire Project's energy needs, and is also thus supportive of Hawaii's goal to transition to 100 percent renewable energy by 2045<sup>3</sup>. JPL's proposal is to locate the Solar Farm in the *makai* portion of the buffer area within the 200 - 800 foot zone. It will be set far enough away from Queen Kaahumanu Highway and behind a lava berm so as not to affect scenic views, and the height of the Solar Farm panels will comply with all zoning regulations. Once the perimeter of the Solar Farm is determined, JPL will work with the State Office of Planning to ensure preservation of the buffer area in perpetuity, whether through a conservation easement established pursuant to Chapter 198, HRS, or similar open space easement recorded against this portion of the Property at the State Bureau of Conveyances.

---

<sup>2</sup> HCC §25-4-11(b)

<sup>3</sup> Act 97 (H.B. No. 623), signed by the Governor on June 8, 2015 requires each electric utility company that sells electricity for consumption in the State to establish a renewable portfolio standard of (1) thirty per cent (30%) of its net electricity sales by December 31, 2020, forty per cent (40%) of its net electricity sales by December 31, 2030, seventy percent (70%) of its net electricity sales by December 31, 2040; and one hundred per cent (100%) of its net electricity sales by December 31, 2045.

Mr. Duane Kanuha, Planning Director

June 23, 2016

Page 4

III. SMA 25

The Project is subject to Special Management Area Use Permit No. 25, effective February 14, 1977, amended on April 9, 1985, August 23, 1991, and again on February 1, 2001 ("SMA 25"). The Planning Commission originally approved SMA 25 in 1977 to allow the development of the Waikoloa Beach Resort complex that included the construction of 3,000 hotel rooms, and approximately 3,430 multiple-family residential units, 2 golf courses and other recreational facilities, commercial facilities, temporary construction and maintenance yard, infrastructure such as roads, utilities and other related improvements necessary for the development of the resort complex, subject to certain conditions (See **Exhibit B**).

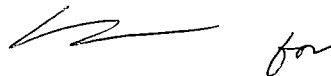
The final amendment to SMA 25 to allow a time extension occurred in 2001. Attached as **Exhibit C** is that final amendment, which lists all the current conditions of SMA 25.

Relevant to development of the Project, Condition 15 states: "All utility lines shall be underground." JPL intends to comply with this condition. The solar panels which make up the Solar Farm will obviously be above-ground, but all of the utility transmission lines will be underground. As the development of "utilities" is included under the approved elements of SMA 25, the Solar Farm is permitted under SMA 25.

IV. CONCLUSION

We respectfully request that you concur with our analysis herein that: (i) the Solar Farm falls within the definition of "utility substations", and as such, is allowed in the County Open zone district at the Property; (ii) "utility substations" are allowable uses within the *makai* portion (200-800 feet) of the buffer zone set forth in the LUC Order; and (iii) SMA 25 allows for the development of "utilities" (the Solar Farm) at the Property.

Sincerely,



Steven S.C. Lim

Enclosure

cc: Client

4816-6645-1763.5

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
ATPAC LAND CO. LIMITED PARTNERSHIP, )  
WAIKOLOA DEVELOPMENT CO., and )  
WAIKOLOA LAND & CATTLE CO. )  
 )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for Approximately )  
853.187 Acres at Waikoloa, South )  
Kohala, Hawaii, Tax Map Key Nos.: )  
6-8-01: portion of 26, portion of )  
32, 33, 34 and portion of 35 )  
\_\_\_\_\_ )

DOCKET NO. A89-637

ATPAC LAND CO. LIMITED  
PARTNERSHIP, WAIKOLOA  
DEVELOPMENT CO., and  
WAIKOLOA LAND & CATTLE  
CO.

LAND USE COMMISSION  
STATE OF HAWAII  
Jan 9 12 15 PM '90

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

Exhibit A

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-637
ATPAC LAND CO. LIMITED PARTNERSHIP,	)	
WAIKOLOA DEVELOPMENT CO., and	)	ATPAC LAND CO. LIMITED
WAIKOLOA LAND & CATTLE CO.	)	PARTNERSHIP, WAIKOLOA
	)	DEVELOPMENT CO., and
To Amend the Agricultural Land Use	)	WAIKOLOA LAND & CATTLE
District Boundary into the Urban	)	CO.
Land Use District for Approximately	)	
853.187 Acres at Waikoloa, South	)	
Kohala, Hawaii, Tax Map Key Nos.:	)	
6-8-01: portion of 26, portion of	)	
32, 33, 34 and portion of 35	)	
	)	

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

ATPAC LAND CO. LIMITED PARTNERSHIP, a Texas limited partnership, WAIKOLOA DEVELOPMENT CO., a Hawaii limited partnership, and WAIKOLOA LAND & CATTLE CO., a Hawaii limited partnership, (hereinafter collectively referred to as the "Petitioner") filed a Petition on February 27, 1989, and amendments to Petition on April 28, 1989, June 9, 1989, and July 14, 1989, pursuant to Chapter 205, Hawaii Revised Statutes, and the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, to amend the land use district boundary for approximately 853.187 acres of land, Hawaii Tax Map Key Nos.: 6-8-01: portion of 26, portion of 32, 33, 34 and portion of 35, situate at Waikoloa, South Kohala, Island of Hawaii, State of Hawaii, (hereinafter the "Property") from the Agricultural District to the Urban District. The Land



Use Commission of the State of Hawaii (hereinafter the "Commission") having heard and examined the testimony, evidence and argument of counsel presented during the hearings, the stipulated proposed findings of fact, conclusions of law, and decision and order, does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTER

1. The Commission conducted hearings on the Petition on August 10 and 11, and October 5, 1989, pursuant to notices published on July 3, 1989, in the Honolulu Advertiser and the Hawaii Tribune-Herald, newspapers of general circulation.

2. The Commission did not receive any request for intervention in the Petition.

3. The Commission allowed Matthew Bailey, Peter L'Orange, James Sanbei, Clyde Imada, Representative Mike O'Kieffe, Noelani Whittington, Peter Young, Neele Schultz, Joe Spielman, Elaine Flores, Robert Hoffman and Mike Luce to testify as public witnesses on August 10, 1989. Written comments and communications were received into evidence by the Commission from the following persons and organizations: Big Island Business Council (Mike Luce, President), Kohala Coast Resort Association (Noelani Whittington, Executive Director), Council Spencer K. Schutte, Hawaii Leeward Planning Conference (Peter L'Orange, President), Waimea-Kawaihae Community Association (Peter T. Young, President), Waikoloa Village

Association (Robert Allen Hoffman, Vice President and Director), Kona-Kohala Chamber of Commerce (Peter T. Young, President), Hawaii Island Contractors' Association (Harold Okuhama, President), Elizabeth Ann Stone, Kona Transportation Company, Incorporated (Albert Shiotsuka, Vice President), Big Island Chapter of the Hawaii Visitors Bureau, Big Island Baptist Association (Reverend James Y. Sanbei), Bill Graham, Clyde Imada, Clyde Nagata, Representative Mike O'Kieffe, Neele Schultz, Joe Spielman, and the Big Island Fleet Safety Organization (Michael Leite).

4. On October 5, 1989, Petitioner withdrew its request for an in-camera inspection of its financial statements.

DESCRIPTION OF PROPERTY

5. The Property is located mauka of the existing Waikoloa Beach Resort and makai of the Queen Kaahumanu Highway. To the north of the Property is the Mauna Lani Resort. Twenty-four miles south of the Property is the town of Kailua-Kona, a major population center and resort on the Island of Hawaii.

The project is part of Waikoloa, a planned development consisting of approximately 31,000 acres divided by the Queen Kaahumanu Highway into two planning areas. The mauka portion of Waikoloa includes the Waikoloa Village and the makai portion is the Waikoloa Beach Resort.

6. The Property consists of approximately 853.187 acres of land and is almost in its entirety barren lava field,

devoid of vegetation. Approximately 21 acres are currently occupied by the seventh and eighth holes and golf maintenance facility of the existing makai golf course. A central parking facility occupies approximately 5.8 acres as a portion of the common areas. About 177 acres are designated for a second 18-hole golf course, currently under construction pursuant to a conditional use permit issued by the County of Hawaii (hereinafter the "County"). Another 2.3 acres are being used as a nursery, and 7.8 acres are preserved as archaeological reserves.

7. The general topography of the Property is relatively flat (generally 1 percent to 3 percent slope) throughout the site with no prominent variation in elevations except for a 15-25 foot high bluff which bisects the Property in a mauka-makai direction. Elevations range from 15 feet at the King's Trail, near the southern boundary, to approximately 170 feet above sea level, at the Queen Kaahumanu Highway near the northeastern boundary. The project area is composed of lava flows that probably resulted from eruptions of the Mauna Loa volcano.

8. The United States Department of Agriculture Soil Conservation Service has identified and mapped two different soil types within the Property: aa lava flow (mapped as rLV) and pahoehoe lava flow (rLW). The northern end of the Property consists of a prominent flow, known as the Kaniku lava flow, and is composed of aa lava. The edge of this flow forms a

bluff that rises about 15-25 feet above the older pahoehoe flow. The aa lava is a rough and broken mass of clinkery, hard, glass-sharp pieces piled in tumbled heaps. The remainder of the Property is composed of pahoehoe lava which has a billowy, glassy surface that is relatively smooth forming fissures, cracks, and collapsed lava tubes.

9. The Property is rated in terms of soil capability for agriculture potential as follows:

<u>Rating System</u>	<u>Rating</u>
Land Study Bureau of the University of Hawaii - Overall Productivity Rating	Entire Property is "E" (lowest)
United States Dept. of Agriculture - Land Capability Classification	Entire Property is VIII (very severe limitations)
Agricultural Land of Importance to the State of Hawaii (ALISH)	Entire Property is not classified

10. The Property has been designated Zone X, an area determined to be outside the 500-year flood plain, on the Flood Insurance Rate Maps (FIRM) prepared by the U.S. Army Corps of Engineers (1982). Localized flooding as a result of intense rainfall events is essentially non-existent. When intermittent flows do occur in the upland areas, the water infiltrates into the porous lava before reaching the shoreline.

11. The Property's location on the flank of Mauna Loa places the Property in "Overall Volcanic Risk Zone E" (risk increases from A through F), but Dames and Moore

(December 1969) concluded that the risk of damage from new lava flows within the next 100 years is remote.

12. The Property is located in one of the driest areas in the State. Average annual rainfall is 10.65 inches. Monthly means range from 2.63 inches in January to 0.14 inch in July. The mean annual temperature is 78 degrees Fahrenheit with relatively small seasonal fluctuations. Wind velocities average seven to eight miles per hour.

13. The Property is owned in fee simple by the Petitioner entities in the following manner:

	Lot	Tax Map Key No.	Area (Acres)
Atpac Land Co. Limited Partnership	3 (File Plan 1712)	6-8-01: 33	17.423
Waikoloa Development Co.	2 (File Plan 1712) B R-1 (File Plan 1712)	6-8-01: por. 32 6-8-01: por. 35 6-8-01: por. 26	103.535 726.947 7.959
Waikoloa Land & Cattle Co.	4 (File Plan 1712)	6-8-01: 34	<u>2.681</u> 858.548
Less King's Trail and Forerunner King's Trail Easement Areas			<u>(5.358)*</u>
		TOTAL	<u>853.187</u>

\* King's Trail Easement affecting Lot 2, B and R-1 and Forerunner King's Trail Easement together with land lying between King's Trail affecting Lot B, aggregate area 5.358 acres, are not made part of the Petition.

PROPOSAL FOR THE DEVELOPMENT

14. In 1968, the Commission approved the reclassification of approximately 500 acres of land at Anaehoomalu Bay and Waiulua Bay from the Conservation District

into the Urban District for the development of the Waikoloa Beach Resort, makai of the subject area. In 1977, the County issued a Special Management Area Permit for the Waikoloa Beach Resort extending to the Queen Kaahumanu Highway which included the 500-acre parcel. Zoning allowed for the development of 3,000 hotel rooms and 3,430 residential units on the 500-acre parcel. About 240 of the 500 acres of land have been developed and currently include the 543-room Royal Waikoloan Hotel, the 1,243-room Hyatt Regency Waikoloa Hotel, the 120-unit Shores at Waikoloa condominium, and the Waikoloa Beach Resort golf course.

15. Petitioner's original request for development proposed the following:

Land Use	Area in acres	Planned Units	Density
<u>Revised Master Plan</u>			
Resort Residential	252.7	1,760	7
Commercial	11.1	3	--
Golf Course	532.8	3	--
Preservation Area	7.8	2	--
Roads/Common Areas	48.8	--	--
	<u>853.2</u>		

The above proposal reduces the density of the 500-acre parcel by restricting total development to 3,365 residential units for the entire Waikoloa Beach Resort development area of 1,353.187 acres. Petitioner represented that the proposed resort residential units would be situated no closer than 300 to 400 feet makai of Queen Kaahumanu Highway.

16. In response to concerns raised by the Office of State Planning on the visual impact of the proposed project on the surrounding environment, Petitioner revised its

master plan. Petitioner's revised plan reduces the density of the 3,430 residential units allowed for the 500-acre parcel by restricting total development of the 1,353.187-acre Waikoloa Beach Resort to 3,365 residential units. About 1,605 residential units will be developed within the 500-acre parcel in the existing Urban district and about 1,600 to 1,760 units are proposed to be developed on the Property which is located mauka of the 500-acre parcel. Also proposed are three golf courses covering about 501.9 acres of land, 8 acres of land for commercial use, and 7.8 acres of archaeological preserves. No hotels are proposed on the Property. The revised land use plan for the Property is as follows:

<u>Land Use</u>	<u>Area (acres)</u>
1,600-1,760 Resort Residential Units	226.1
1 Commercial Unit	8.0
3 Golf Courses	501.9
Portion of Golf Course subject to Conservation Easement	(178.0)
Natural Open Space subject to Conservation Easement	59.0
Preservation Area	7.8
Roads/Common Areas	<u>50.4</u>
	<u>853.2</u>

17. Petitioner proposes to establish a buffer along the boundary of the Property fronting the Queen Kaahumanu Highway right-of-way to preserve the open space and scenic views. This buffer area shall be preserved in perpetuity through the establishment of a conservation easement pursuant to Chapter 198, Hawaii Revised Statutes (HRS), as amended, or

such other means as shall be reviewed and approved by the Office of State Planning of the State of Hawaii.

18. Petitioner proposes that the buffer area shall extend makai of the Queen Kaahumanu Highway right-of-way to a depth of approximately eight hundred (800) feet. The first two hundred (200) feet of the buffer area shall be comprised of natural open space. The buffer area extending between two hundred (200) feet and eight hundred (800) feet from the Queen Kaahumanu Highway right-of-way shall be comprised of open space with golf courses as the only use. Golf related recreational, maintenance, parking, and other obtrusive structures shall not be allowed within the conservation easement except for infrastructure improvements, corridors, or entry features that may be necessary to service the developed portions of the Property. The depth of the buffer area may vary and the actual boundary lines of the buffer area may meander to a lesser or greater depth to accommodate the project's development plan on the Property and preservation of natural open space and scenic views so long as the average depth is eight hundred (800) feet.

19. The proposed development of the Property is a long term project as an integral part of the overall Waikoloa Beach Resort development, the completion year for which is scheduled to be the year 2006. Commencement of development on the Property, after all land use approvals are obtained, is scheduled for 1991-1995.



20. Petitioner estimates that the development cost of the proposed project on the Property will be approximately \$532 million based on 1989 dollars. Projected development costs include the cost for the residential units, commercial facilities, three golf courses, and other recreational and open space amenities and infrastructure.

PETITIONER'S FINANCIAL CAPABILITY  
TO UNDERTAKE THE PROPOSED DEVELOPMENT

21. Petitioner's Balance Sheet indicates the following:

a. The Balance Sheet of Petitioner Atpac Land Co. Limited Partnership for the period ending April 30, 1989 listed total assets of \$5,333,484, and liabilities of \$45,342,476 (including partners' deficit of \$40,008,992).

b. The Balance Sheet of Waikoloa Development Co. for the period ending April 26, 1989 listed total assets and liabilities (including capital) of \$130,127,646.

c. The Balance Sheet of Waikoloa Land & Cattle Co. for the period ending April 26, 1989 listed total assets and liabilities (including capital) of \$130,244,002.

22. According to Petitioner, the ORIX Corporation, in April 1989, has invested twenty-seven percent limited minority interest in the Petitioner. ORIX Corporation is the largest leasing company in the world and is based in Tokyo, Japan.

23. Petitioner intends to finance the proposed development on the Property as it has in the past: through

proceeds from sale of land to qualified developers who develop in a manner consistent with Petitioner's master plan; through Petitioner's equity and an established line of credit when infrastructure improvements are required in advance of sales; and through joint venture with developers as in the cases of the Royal Waikoloan and the Hyatt Regency Waikoloa developments in which the Petitioner and/or related entities have partnership interests.

24. To ensure compliance with the Petitioner's master plan, conditions, covenants, and restrictions will be included in the deed for any future land transaction. Consequently, the buyer's development plans must be approved by the Petitioner.

STATE AND COUNTY PLANS AND PROGRAMS

25. The Property is located within the State Land Use Agricultural District as reflected on Land Use District Boundary Map H-15, Puu Hinai.

26. The Hawaii County General Plan identifies the Waikoloa Beach Resort area of which the Property is a part as a Major Resort Area.

27. The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map currently designates the Property as Extensive Agriculture, but the County Planning Department has initiated a change for redesignation of the Property to Urban Expansion Area which may include resort developments or portions thereof. However, specific settlement patterns and mix uses have yet to be determined.

28. Current County Zoning for the Property is Unplanned (U). Changes in the zoning will be necessary for implementation of the proposed development.

29. The Property is located within the County's Special Management Area.

30. The Property is located within a designated visitor destination area as identified by the State Tourism Functional Plan Technical Reference Document.

NEED FOR THE PROPOSED DEVELOPMENT

31. Petitioner's market study indicates that the State Department of Business and Economic Development projects State visitor counts to increase from 5.8 million in 1987 to 7.8 million in 1995 and 10.2 million in 2005. Total island of Hawaii visitors could be as high as 2.2 million in the year 2005.

32. The West Hawaii region, encompassing the judicial districts of North Kohala, South Kohala, and North Kona, is expected to continue its rapid growth on the island of Hawaii. Attributed largely to tourism and resort development, the May 1988 Office of State Planning draft of the West Hawaii Plan estimates 32,000 resort residential and hotel units approved or proposed in the region.

33. Petitioner seeks Urban reclassification of the Property which would constitute an 853.2-acre expansion of the existing 500-acre Waikoloa Beach Resort and provide for a

better Waikoloa Beach Resort product to meet changing market demands as follows:

a. A lower overall development density would be achieved for the resort because Petitioner proposes to maintain essentially the same number of units initially proposed for the existing 500-acre resort but spread over a 1,353.187-acre area.

b. More open space and additional recreational facilities of three golf courses would be provided for the resort.

c. With more open space and lower density, the proposed resort project would be a quality development and compatible with the rural character and ambiance of the Kohala Coast area.

34. Petitioner's market consultant stated that a major market change that has occurred since the 1970's is a very definite trend all over the country toward lower density, golf oriented, and higher quality resort environments.

35. An improved market support for the proposed development on the Property, as an integral part and expansion of Waikoloa Beach Resort, is indicated. The major change in the market for Waikoloa and for West Hawaii in general has been the opening of the Hyatt Regency Waikoloa Hotel which appears to have provided the needed catalyst and critical mass vital to Waikoloa and West Hawaii for credibility as a destination area.

36. Other significant developments proposed for West Hawaii are the Ritz-Carlton Hotel at Mauna Lani, the Princess

Hotel at Kaupulehu, and the Westin Hotel at Hapuna Beach which developments would vastly increase the marketing networks and visibility of the West Hawaii region.

37. Petitioner's market consultant projects that the average condominium sales will range from 100 to 150 units per year with cumulative demand for about 3,470 units by 2010 for Waikoloa Beach Resort. The achievable prices are expected to range from about \$220,000 to \$425,000 for the clustered units and up to \$325,000 for the townhouse type units.

38. Petitioner's market consultant projects sales of resort residential lots of about 30 to 50 lots per year for a total demand of about 850 lots by 2010 which could more than absorb the 600 lots proposed under the Petitioner's plan. This projection is based on a market concept emphasizing lot sizes of 10,000 to 14,000 square feet with golf course frontage priced at about \$100,000 to \$240,000 per lot.

39. Golf course has become a very critical element in resort planning and an absolute necessity as an integral part of resort development.

40. The popularity of golf is rapidly increasing. The National Golf Foundation estimates that the number of golfers in the United States will increase to about 31 million persons by the year 2000. The demand generated by the increase in golfers in the country would require providing one golf course per day from now to the year 2000.

41. Petitioner's market consultant estimates demand for about 320 rounds of golf per day by 1990 and up to about 730 rounds per day by 2005 at Waikoloa Beach Resort. Based on 175 rounds per day per course, the demands in 1990 and 2005 would support two and four golf courses, respectively, at the Waikoloa Beach Resort.

42. Petitioner's market consultant estimates that about 60,000 square feet of commercial area for resort commercial facilities at the Waikoloa Beach Resort would be supportable by 1990 and about 200,000 square feet of commercial area would be supportable by 2010. To provide for such commercial area would require about 23 acres of land. The Petitioner proposes about 20 acres for commercial uses at four sites at the Waikoloa Beach Resort, 8 acres of which are to be located on the Property.

#### IMPACT UPON RESOURCES OF THE AREA

##### Agricultural Resources

43. The Property consists of barren lava field devoid of vegetation except in the developed areas.

44. The State Department of Agriculture does not foresee any adverse impacts upon agricultural resources of the area or upon the plans, programs and activities of the Department resulting from the approval and subsequent construction of the proposed development on the Property.

### Historical/Archaeological Resources

45. The State Department of Land and Natural Resources Historic Sites Section noted several historic sites within or near the Property to include Ke Ahu A Lono (shrine), the Forerunner Trail, the King's Trail, several acres of abrader quarries, and the petroglyph area. Only the abrader quarry and petroglyph preservation areas, and possibly the shrine, are within the Property. The Forerunner Trail and the King's Trail are not made part of the Petition. The other significant historic sites within the Property have undergone archaeological data recovery, under carefully prepared plans approved by the County of Hawaii's Planning Department and the State's Historic Sites Section.

46. An archaeological summary report covering surveys of the Property and adjoining areas was prepared by Petitioner's consultant, Paul H. Rosendahl, Ph.D., Inc. The archaeological consultant recommended five sites as historic site preserves as follows: Forerunner Trail, King's Trail, petroglyph area, abrader-area and Ke Ahu A Lono Shrine which preserves have been established.

47. The King's Trail and Forerunner Trail are exclusions from the Property and not a part of the Petition and only a portion of the Ke Ahu A Lono Shrine is within the Property. Interpretative development of the Shrine and abrader area are in progress and the interpretative signs for those preserves are scheduled to be completed in 1989.

48. The Department of Land and Natural Resources (DLNR) believes that the development proposed in the Petition will have no adverse impact on significant historic sites. However, DLNR recommends that the preservation areas set aside will be maintained in accordance with the agreed upon preservation plans and that the Historic Sites Section shall periodically monitor the preservation areas on behalf of the Commission.

49. Petitioner states that in the event archaeological remains are uncovered during the course of constructing the proposed development on the Property, work will immediately cease and the appropriate governmental agencies will be notified.

#### Flora and Fauna

50. A botanical survey of the Property was conducted by George L. Linney and Winona P. Char, botanical consultants. The survey reported that the Property was almost in its entirety barren lava field, devoid of vegetation. Depauperate vegetation was present where bulldozers had cleared and leveled roads and also as weedy contaminants where landscape plantings were maintained.

51. The survey found that only 109 species of vascular plants were found on the site, a low number for an area of the size of the Property. Many of these were restricted to the nursery area and its environs. Exotic weeds or deliberately introduced plants numbered 104 species (95%),



while only 5 species (5%) were native or presumed-native. None of the species found on the site are officially listed as endangered or threatened; nor are any species proposed or candidate for such status.

52. A faunal survey of the Property was conducted by Petitioner's biology consultant, Phillip L. Bruner. The survey concluded that:

a. The present habitat is extremely barren and inhospitable to birds and mammals. Adjacent lands, both those that have been developed and those that are undeveloped but possess suitable bird and mammal habitat, provide an indication of the potential faunal communities this site could harbor if it had a suitable environment.

b. The proposed development would create a vastly more diversified habitat than presently exists. This would result in a dramatic increase in the avifauna and feral mammal communities on the Property. The diversity of these faunal communities would be somewhat proportionate to the diversity of habitat that is created by the development. Any change of the present habitat on the Property would increase its usefulness to birds and mammals.

#### ENVIRONMENTAL QUALITY

##### Visual Impacts

53. Nearly sixty percent of the Property will be encompassed by three golf courses, which will contribute to the open space character of the project.

54. Petitioner's revised master plan for the Property provides for a natural open space buffer area extending 200 feet makai from the Queen Kaahumanu Highway right-of-way and an additional open space buffer area extending 600 feet makai from the natural open space buffer area for golf course use only.

Noise Impacts

55. A noise impact evaluation for the proposed development on the Property was conducted by Petitioner's acoustical consultant, Darby and Associates. According to the evaluation, the proposed development will involve an increase in temporary construction-related noise, permanent increase in traffic noise, golf course maintenance noise and noise generated from resort and commercial operation.

56. According to Petitioner's acoustical consultant, noise from equipment associated with ground maintenance activities, including lawn mowers and leaf blowers, could have an adverse impact on the proposed and the nearby residential neighborhood particularly when the equipment is near the housing. Noisy equipment is also incompatible and disruptive with golf play, as well.

57. The acoustical consultant states that in order to comply with the Department of Housing and Urban Development ("HUD") criteria, proposed residential units on the Property in the vicinity of Queen Kaahumanu Highway would require a set-back of about 390 to 570 feet from the centerline of the highway under the worst case Type A topography where direct

sound path is either hard surface or greater than 9 feet above the ground such that no significant ground absorption exists.

58. Under Petitioner's revised master plan, a meandering 800-foot open space buffer area makai of the highway right-of-way is proposed where no residential units will be built.

59. The noise impact evaluation also states that with a set-back distance of about 50 feet from Waikoloa Beach Drive, the proposed residential units which are located away from the Queen Kaahumanu Highway but along the Waikoloa Beach Drive would comply with HUD criteria and would not be significantly impacted by the traffic noise along Waikoloa Beach Drive.

60. There are no quantitative noise regulations in Hawaii County which apply to maintenance and equipment operations. The acoustical consultant states that the noise from ground maintenance operations should not cause "unreasonable" or "excessive" noise as defined in the State Department of Health (DOH) noise regulations (Reference 5).

The consultant recommends that all equipment powered by internal combustion engines should have exhaust mufflers. Schedules should be developed so noisier maintenance operations do not occur near residences before 7 a.m. The noise from ground maintenance operations should not cause "unreasonable" or "excessive" noise as defined in Reference 5.

61. It is the opinion of the acoustical consultant that operations of stationary equipment and other resort and

commercial operations would not cause "unreasonable" or "excessive" noise as defined in Reference 5 of the DOH regulations.

62. It is anticipated that the noise generated during construction will exceed allowable limits under Reference 5 of the DOH regulations. If Hawaii County adopts the DOH regulations, construction can proceed under permit from the DOH subject to conditions imposed by the DOH.

#### Air Quality

63. Petitioner's air quality consultant, J. W. Morrow, states that the principal source of short-term air quality impact will be the construction activity at the Property. The potential for fugitive dust due to the dry climate and fine soils can be mitigated by adequate dust control measures during the construction period such as frequent watering of unpaved roads and areas of exposed soil.

64. Based on an analysis of automotive emissions, the air quality consultant finds and concludes that there will be relatively small increases of pollutant concentrations over the 1988-2006 period with or without the proposed development on the Property and that the ambient air quality will comply with State and Federal 1-hour carbon monoxide standards.

65. The proposed development on the Property will increase electrical demand which in turn will cause more fuel to be burned and more pollutants to be emitted into the air.

The air quality consultant states that ambient air quality standards are predicted to be met despite the increased emissions.

#### Water Quality

66. Surface and subsurface water quality impacts may be generated from the application of fertilizers and pesticides, and from the potential movement of these chemicals as a component of surface water runoff, and/or groundwater recharge. Fertilizers comprised of nitrogen, phosphorus and potassium are commonly applied to golf courses as a source of essential turf grass nutrients.

67. Petitioner's consultants, Charles Murdock, Ph.D. and Richard Green, Ph.D., conducted a study on the impact of fertilizer and pesticide uses on the project site, which included the findings and conclusions, as follows:

a. Among the fertilizer elements, only nitrogen (N) in the form of nitrate could possibly diminish water quality, but with proper management of nitrogen fertilizer and water, leaching of N will be minimal. Phosphorus (P) is attached very tightly to soil colloids in most soils and moves little if any from the site of application.

b. The groundwater aquifer underlying the Property is too brackish to be used for potable water and thus is considered only as it dilutes soil drainage water and transports materials contained in the drainage water to the shoreline and ponds.

c. The Property is a low-rainfall, high evapotranspiration area. Most of the year, only irrigation in excess of rainfall will provide any means of chemicals leaching to the groundwater. Careful management of water and fertilizers will be needed to prevent contamination with nitrate.

d. Petitioner's maintenance practice at the existing golf course includes use of slow-release fertilizers which reduce the potential for nitrate leaching to insignificant levels. Other practices proposed by Petitioner which reduce nitrate leaching include a computer controlled irrigation system which applies water based on evapotranspiration rates and fertigation where small amounts of fertilizer are injected into the irrigation system rather than applying large amounts of a dry material.

e. The high groundwater flux (estimated to be approximately 4 million gallons/day/mile of shoreline) will contribute to dilution of any nitrate or pesticide chemical leached to groundwater. This dilution will reduce the impact of chemicals leached on anchialine ponds which the groundwater may enter. Vigorous wave action at the shoreline will further reduce the concentration of nitrate and pesticide chemicals which might be contained in groundwater to undetectable levels.

f. Only five of the pesticides labeled for use on golf courses in Hawaii have the potential to move to groundwater. Based on computation of the Attenuation Factor

for these five pesticides, a 12-inch layer of soil over the lava will sufficiently retard the movement of pesticides to groundwater.

68. The consultants recommend that responsibility for managing the golf course be given to a well qualified golf course superintendent, preferably a certified golf course superintendent. The consultants recognize Ed Hodnett, who is Petitioner's golf course superintendent, as such a qualified golf course superintendent.

69. A study of potential impacts from the proposed development of the Property on the groundwater, the anchialine ponds and nearshore marine communities was conducted by Richard E. Brock, Ph.D., of Environmental Assessment Co., which included findings and conclusions, as follows:

a. Potential impacts could come from application of fertilizers, pesticides and irrigation containing sewage effluent on the golf courses, the nutrient subsidy from which could migrate to the groundwater table, to the anchialine ponds and to the nearshore marine waters.

b. Nutrient levels have increased in the ground water at Waikoloa during 1977 to 1986, but there was no increase from 1986 to 1988. The mean level of nutrient concentrations at Waikoloa are well within the range of variability that are found in other areas along the coast where there are no surrounding development such as Awakee, Makalawena, and Kukio.

c. The Waikoloa Anchialine Pond Preserve Area was established in 1986 to preserve in perpetuity 66 representative anchialine ponds at Waikoloa. Petitioner has provided the funds in trust to the University of Hawaii, to be administered by the University of Hawaii Foundation for the management and monitoring of the biological and water characteristics of the anchialine ponds system.

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

##### Transportation Facilities

70. Vehicular access to the Property is from Queen Kaahumanu Highway. The State maintained highway has two lanes and a 24-foot wide pavement with a posted speed limit of 55 miles per hour. The major intersections along Queen Kaahumanu Highway are channelized with left-turn storage lanes for safety and maximizing roadway capacity.

71. The proposed development is planned to have two access points along Queen Kaahumanu Highway. One access already exists at the Waikoloa Beach Drive intersection. This access forms a T-intersection with Queen Kaahumanu Highway and is located approximately 5,500 feet south of the Waikoloa Road intersection. The second access, located north of Waikoloa Beach Drive, would connect to the existing T-intersection of the Waikoloa Road and Queen Kaahumanu Highway to form a cross intersection.

72. A traffic impact study was prepared by Petitioner's consultant, Pacific Planning & Engineering, Inc.,



to evaluate the traffic impacts from the development of the entire Waikoloa Beach Resort including the Property. The study concluded that the Level-of-Service (LOS) at the intersections of Queen Kaahumanu Highway at Waikoloa Beach Drive and at Waikoloa Road would be at a congested level LOS F by the year 2006.

73. The traffic impact study concludes that if both intersections were signalized, the intersections would operate at LOS B or C with no change to Queen Kaahumanu Highway to the year 2006 with its existing two lanes.

74. The State Department of Transportation (DOT) states that signalization at the two intersections is no longer acceptable and would recommend the construction of a full diamond interchange at the intersection of Waikoloa Road and Queen Kaahumanu Highway the design of which should be based on a six-lane, divided highway.

75. Petitioner has agreed to participate in the funding and construction of present and future transportation improvements at project access points as identified and deemed necessary by DOT, which improvements may include a highway overpass, underpass, and diamond interchange.

#### Water Service

76. The principal sources of water in the coastal region of the South Kohala District are the County-operated Lalamilo Water System and the private Waikoloa water system. The Waikoloa Water Company owns the wells, reservoirs and

primary transmission mains that supply potable water to the Waikoloa Village and Waikoloa Beach Resort. Waikoloa Resort Utilities owns the water distribution and sewer lines and the wastewater treatment plant (WWTP) which serve the resort area.

77. The Waikoloa Water Company's potable water wells draw from the Waikoloa aquifer. These wells, known as Parker Wells No. 4 and No. 5, are located at the 1,200-foot level nearly five miles inland from Puako Bay. The combined pumping capacity of the Parker 4 and 5 wells is 1500 gallons per minute (gpm) or 2.2 million gallons per day (mgd). Under County of Hawaii standards, one pump is held in reserve for emergency. Thus, the sustained yield is 1.1 mgd based on the use of one pump.

78. A third well known as Waikoloa Water Well No. 1 has been drilled and is currently operational pending final approval by the State Department of Health. This third well has a sustained yield of 1.1 mgd.

79. A fourth well known as Waikoloa Water Well No. 2 which will add another 1.1 mgd of water source is currently being developed.

80. A test of Waikoloa Water Well No. 1, Parker Wells 4 and 5 at the same time indicated a potential withdrawal rate of close to 4.5 mgd.

81. At full build out of Waikoloa Beach Resort including the Property, Petitioner's engineering consultant

projects a water demand of around 3.0 mgd which can be met by the capacity of the existing system.

82. The existing 18-hole golf course is irrigated primarily with brackish water from three wells at lower elevations within the resort. Water from these wells is not potable quality but is satisfactory for golf course irrigation. Treated effluent is mixed with brackish water and provides part of the resort course's irrigation. Two holding ponds for the effluent/brackish water mix (with capacities of about 2.0 and 4.0 million gallons) are located within the resort course. The proposed golf courses on the Property will be irrigated in a similar fashion.

#### Sewage Treatment and Disposal

83. Currently, the Waikoloa Resort Utilities, Inc. provides for the collection, treatment, and disposal of the Waikoloa Beach Resort wastewater. The wastewater treatment plant (WWTP) is located 1,000 feet south of the Waikoloa Beach Resort entrance road intersection on the mauka side of the Queen Kaahumanu Highway. The treatment plant provides for a secondary level of treatment and meets all of the State Department of Health standards for private wastewater treatment facilities.

84. The existing wastewater treatment plant has a design flow capacity of 1.250 mgd. The current flow is 0.64 mgd. The WWTP was designed so that it could be expanded in the future to accommodate an average flow capacity of 2.9 mgd.

85. The proposed project is anticipated to increase the average flow to the WWTP by approximately 1.7 mgd. Wastewater generated by the proposed development will be collected, treated and disposed of at the WWTP.

86. Petitioner's engineering consultant states that the WWTP system was designed and developed to accommodate capacity to meet demand of the Waikoloa Beach Resort including the Property.

87. The State Department of Health recommends that the project utilize all of its treated effluent for irrigation instead of using injection wells.

#### Drainage

88. The Property has little or no surface runoff due to its high permeability of the soil and the low annual precipitation.

89. The proposed drainage system concept for the Property is premised on limiting runoff from each development parcel. Each parcel would be required to dispose of any runoff by percolation through drywells or through the natural lava formations. The Property is located inland from the shoreline and runoff would not be channelled into a collection system that would discharge directly into the ocean. Abundant open space uses and golf course facilities planned by Petitioner within the Property will provide significant opportunities for surface runoff to infiltrate into the ground and to reduce the requirement for on-site drainage improvements.

### Solid Waste Management

90. The Kailua landfill, located near Kailua-Kona, is serving the North Kona and South Kohala coastal area until a planned new landfill site become operational. The County Sewers and Sanitation Bureau is considering a new sanitary landfill site about 20 miles east of the Kona Village Resort in the vicinity of Pu'uanahulu. The new County landfill is expected to be operational in 1991. Refuse generated by existing facilities in the Waikoloa Beach Resort is currently being collected by privately contracted firms which truck the waste to the Kailua-Kona landfill.

91. The proposed project is anticipated to generate 26,000 pounds of refuse per day or about 4,700 tons per year. Solid waste generated as a result of the project would be collected and then trucked by commercial refuse service, which is currently being done for existing facilities, to either the existing County landfill site in Kailua or to the planned new landfill near Pu'uanahulu.

### Parks and Recreation

92. The existing major recreation areas located in the North and South Kohala area include Mahukona Beach Park, Mookini State Monument, Kamehameha Park, Waimea Community Center, Samuel Spencer Beach Park and the Hapuna Beach State Park. Resource management areas include Lapakahi State Park and Waialea Marine Life Conservation Districts and Kohala

Forest Reserve. Small boat harbors and ramps in the vicinity of Waikoloa Beach Resort include Kawaihae Harbor and Puako Boat Ramp.

93. The Waikoloa Beach Resort currently has an 18-hole championship golf course with an additional 18-hole golf course expected to be completed in 1989 in the project site. The Royal Waikoloan Hotel offers tennis and swimming facilities for guests, and the Hyatt Regency Waikoloa Hotel offers tennis facilities, a half-acre freshwater swimming pool, a 5-acre swimming lagoon and a health spa/sports complex. Hotel guests are the primary users of the hotel amenities but residents and visitors also use the restaurants and other facilities.

#### Police and Fire Protection

94. Existing police headquarters for South Kohala is located in Waimea with a staff of 13 patrolmen and 2 staff personnel per 24-hour shift. Response time from the Waimea Station to the Waikoloa Beach Resort is approximately 30 minutes. Other police facilities in the study area are the Kapa'au station, which serves the North Kohala area, and the Kona station in North Kona. In addition, the recently constructed Kohala Coast Fire Station has a police substation, called the Mauna Lani Substation.

95. According to Lt. Lawrence Mahuna of the Waimea Police Station, existing services are not adequate to cover the

600 square mile area it serves. A request for additional personnel has been submitted for their next fiscal budget.

96. The recently built Kohala Coast Fire Station, located approximately two miles north of the Waikoloa Beach Resort and about 2.5 miles south of Puako, provides fire protection service for the Kohala Coast area. The station provides 24-hour service and has a staff of 4 to 5 men per 24-hour shift. Response time to Waikoloa Beach Resort is about 5 to 6 minutes. Future additional fire protection services will be provided by a 3-acre site within Waikoloa Village which has been dedicated for use by the County Fire and Police Departments.

97. It is anticipated that the proposed project will lead to an increased demand for County police services. A 3-acre site in Waikoloa Village has been dedicated for use by the County Police and Fire Departments. Additionally, private security within the project site may be provided by the individual residential complexes as necessary.

98. Petitioner has represented that it will provide its pro rata share for police and fire facilities as may be required by the County of Hawaii.

#### Schools

99. The proposed development is expected to have a negligible impact on the public educational facilities. Resident population of the project would be about 1,760 by the year 2010 primarily consisting of vacationers and second home

buyers with an expected lower overall ratio of school-age children to projected resident population.

100. While the number of school-aged children may not significantly impact the school system, the impact of in-migrant employees and their dependents could have a significant effect on the area and its educational requirements.

101. Existing schools located in the North and South Kohala Districts include Waimea Elementary and Intermediate School (public school, grades K-8), Hawaii Preparatory Academy (private school, grades K-12) and Parker School (private school, grades 9-12) in Waimea and Kohala High and Elementary School (public school, grades K-12) in Hawi. Waimea students attending public school grades 9-12 are bussed to the Honoka'a High School in Honoka'a.

102. The Department of Education is contemplating plans to build new elementary and intermediate schools in Waimea and Waikoloa Village within the next decade. Petitioner has been working with the State Department of Education to identify the timing and requirements for an elementary and intermediate school in the Waikoloa Village. Petitioner intends to provide a 30-acre school site free of any fee for this purpose to meet the needs of the Department of Education.

#### Electrical and Telephone

103. Electrical service to Waikoloa Beach Resort is supplied by the Hawaii Electric Light Company (HELCO) from its Anaehoomalu substation. The substation is located on the



inland side of the Queen Kaahumanu Highway within the resort's southern boundary. Power distribution from the substation is provided by cabling that is installed in underground ducts extending along Waikoloa Beach Drive and beyond the Hyatt Regency Waikoloa Hotel site. The current maximum electrical power demand at the Waikoloa Beach Resort is about 6,373 KVA.

104. Development of the proposed project will require upgrading of the existing electrical system. The forecasted load addition for this project is estimated to be 19,000 KVA.

105. Telephone service to the Waikoloa Beach Resort is provided by the Hawaiian Telephone Company from their microwave station located along the southern boundary of the project area. Telephone cables are routed from there via underground ducts similar to those used for electrical power distribution.

#### Medical Facilities

106. The Kohala area is serviced by two state-operated hospitals, the Kohala Hospital located in Kapa'au in North Kohala and the Honoka'a Hospital. Served by a staff of five physicians, the Kohala Hospital has 8 acute care beds and 18 long-term beds. The Honoka'a Hospital provides 24-hour emergency service. It has 30 beds: 22 for acute care patients and 8 for long-term care. It is served by 12 physicians.

107. Kona Hospital is a 24-hour health care facility. It has 53 acute care beds, 22 beds for long-term care and a staff of 51 physicians.

108. The private Lucy Henriques Medical Center, located in Waimea, is closest to the proposed development. Services comprise of outpatient health services which include emergency room treatment, x-ray, laboratory services and radiology. The staff includes five physicians, one psychologist and monthly specialists.

109. The proposed development is anticipated to generate increased demand on medical care services. However, existing conditions or needs in the West Hawaii region seem to indicate that the health care facilities will require upgrading with or without additional development. A number of facilities available to accommodate health care needs in the region and expansion plans by these facilities are being made to improve service and meet growing needs in the community.

#### SOCIO-ECONOMIC IMPACTS

110. Expansion at the Waikoloa Beach Resort would bring additional tax revenues to the county and state governments. County government revenues would be principally in the form of real property taxes on the developed acreage and new facilities. Revenues to the state government would be composed principally of general and specific excise taxes and personal income taxes paid by new state residents, and the general excise tax on sales revenues attributable to visitors.

111. Petitioner considers the great majority of the jobs estimated for the Waikoloa Beach Resort project, including the proposed development on the Property, are not "new" jobs

because they were already projected for the density and uses permitted under existing land use approvals. The Petitioner contends that the proposed development on the Property will result in the lowering of density and the redistribution of over a larger area without any increase in the total number of resort units.

112. According to Petitioner's consultant, Community Resources, Inc., the implementation of the proposed development on the Property will generally result in jobs being created a little more gradually, and the eventual creation of about 20 on-site jobs.

113. Petitioner is in the process of dedicating 300 net developable acres in Waikoloa Village to the County of Hawaii in compliance with the County's employee and affordable housing condition imposed under the zoning of the existing Waikoloa Beach Resort to provide for employee and affordable housing needs generated by the development under the zoning. The zoning accommodates 3,430 approved residential units, about 1,600 to 1,760 units of which are proposed to be developed on the Property.

114. About 1,200 residential units can be built on the 300-acre site. The dedication of the 300-acre site includes all necessary off-site infrastructure: water source, storage and distribution; sewer distribution and treatment systems; electrical transmission and substations; and the extension of Paniolo Avenue to the 300-acre site.

CONFORMANCE WITH THE HAWAII STATE PLAN

115. The reclassification of the Property to allow the proposed development conforms to the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes, as amended, including the following objectives and policies:

- §226-5(b)(2) "Encourage an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires."
- §226-8(b)(2) "Ensure that visitor industry activities are in keeping with the social, economic, and physical needs and aspirations of Hawaii's people."
- §226-8(b)(3) "Improve the quality of existing visitor destination areas."
- §226-11(a)(1) "Prudent use of Hawaii's land-based, shoreline, and marine resources."
- §226-11(a)(2) "Effective protection of Hawaii's unique and fragile environmental resources."
- §226-11(b)(9) "Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes."
- §226-12(b)(3) "Promote the preservation of views and vistas to enhance the visual and aesthetic

enjoyment of mountains, ocean, scenic  
landscapes, and other natural features."

116. The proposed Waikoloa Beach Resort project, including the Property, is a high quality, low density self-contained resort-residential community. State and County tax revenues generated by this new development will contribute toward the cost of providing and improving facilities and services. The goods and services required by the proposed development will generate a positive economic benefit for businesses in the region, island and state.

117. Petitioner proposes to maintain and preserve significant archaeological sites within the Property and adjoining property. The petroglyph area, abrader-area, Forerunner Trail, King's Trail and Ke Ahu A Lono Shrine have been established as Historic Site Preserves.

118. Petitioner has established and funded the Waikoloa Anchialine Pond Preservation Area at the Waikoloa Beach Resort monitoring program to be administered in perpetuity by the University of Hawaii.

119. Development design will reflect the natural beauty of the Kohala Coast and proposed resort densities will be low to maintain the open feeling of the area. Golf courses will be set back from the Queen Kaahumanu Highway, and residential and commercial structures will be low profile to preserve view planes from the highway to the sea.

CONFORMANCE TO STATE LAND USE DISTRICT STANDARDS

120. The Property is adjacent to and intended as an integral part of the existing Waikoloa Beach Resort.

121. The Property is contiguous to and located immediately mauka of the existing Waikoloa Beach Resort which is in the State Urban District.

122. The Waikoloa Beach Resort, of which the Property is proposed to be a part, is a designated visitor destination area as identified by the State Tourism Functional Plan Technical Reference Document.

123. The topography of the Property is relatively level and uniform with one percent to three percent slopes. The Property has been designated Zone X, an area determined to be outside the 500-year flood plain, on the Flood Insurance Rate Maps prepared by the U.S. Army Corps of Engineers.

124. The Property is proximate to basic services as sewer, water, public highway, access, police and fire protection, power and other public services.

125. The Hawaii County General Plan identifies the Waikoloa Beach Resort area, of which the Property is a part, as a Major Resort Area.

CONFORMANCE WITH COASTAL ZONE POLICIES AND OBJECTIVES

126. The proposed reclassification of the Property for the development of the project conforms to the policies and objectives of the Coastal Zone Management Program Chapter 205A, Hawaii Revised Statutes, as amended.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed stipulated findings of fact submitted by the Petitioner and the Office of State Planning 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.

CONCLUSION OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, the Commission finds upon the preponderance of evidence that the reclassification of the Property, consisting of approximately 853.187 acres, from the Agricultural District to the Urban District at Waikoloa, South Kohala, Island of Hawaii, State of Hawaii, Tax Map Key Nos. 6-8-01: portion of 26, portion of 32, 33, 34 and portion of 35, for golf courses, clubhouse, resort residential dwelling units, and other related uses, subject to the conditions stated in the Order, conforms to the standards established in the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, is reasonable and nonviolative of Section 205-2, Hawaii

Revised Statutes, as amended, and the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 853.187 acres, being the subject of this Docket No. A89-637 by Atpac Land Co. Limited Partnership, Waikoloa Development co., and Waikoloa Land & Cattle Co., situate at Waikoloa, South Kohala, Island of Hawaii, State of Hawaii, identified as Tax Map Key No. 6-8-01: portion of 26, portion of 32, 33, 34, and portion of 35, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, for reclassification from the Agricultural District to the Urban District, shall be and hereby is approved and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii citizens as may be required by the County of Hawaii, provided that at least 30 percent (30%) of all residential units shall be at prices which families with an income range up to one hundred twenty percent (120%) of the County of Hawaii's median income can afford, and thirty percent (30%) of residential units at prices which families with an income range of one hundred twenty to one hundred forty percent (120-140%) of the County of Hawaii's median income can afford.



This condition may be fulfilled through projects or other means as may be mutually agreeable between the Petitioner and the Housing Finance and Development Corporation of the State of Hawaii and the County of Hawaii. This condition may also be fulfilled with the approval of the Housing Finance and Development Corporation and the County of Hawaii of rental units to be made available at rents which families in the specified income ranges can afford. This affordable housing requirement shall be implemented concurrently with the completion of the market units for the residential project. The determination of median income, as that term is used in this condition, shall be based on median income figures that exist at the time that this condition must be implemented.

2. Petitioner shall ensure that a buffer along the boundary of the Property fronting the Queen Kaahumanu Highway right-of-way will be preserved to protect open space and scenic views. This buffer area shall be preserved in perpetuity through the establishment of a conservation easement pursuant to Chapter 198, HRS, as amended, or such other means as shall be reviewed and approved by the Office of State Planning of the State of Hawaii.

The buffer area shall extend makai of the Queen Kaahumanu Highway right-of-way to a depth of approximately eight hundred (800) feet. The first two hundred (200) feet of the buffer area shall be comprised of natural open space. The buffer area extending between two hundred (200) feet and eight

hundred (800) feet from the Queen Kaahumanu Highway right-of-way shall be comprised of open space of which golf courses are the only permitted use. Golf related recreational, maintenance, parking, and other obtrusive structures shall not be allowed within the conservation easement. The depth of the buffer area may vary and the actual boundary lines of the buffer area may meander to a lesser or greater depth to accommodate the project's development plan and preservation of natural open space and scenic views so long as the average depth is eight hundred (800) feet. Exceptions shall be made for infrastructure improvements, corridors, or entry features that may be necessary to service the developed portions of the Property.

3. Petitioner shall participate in the funding and construction of present and future transportation improvements at project access points as identified and deemed necessary by the State Department of Transportation. Such improvements may include a highway overpass, underpass, and diamond interchange. The Petitioner shall also participate in the funding and construction of other on-site and off-site transportation improvements necessitated by the proposed development and in designs and schedules accepted by and coordinated with the State Department of Transportation, provided that the extent of the Petitioner's participation shall not exceed its share of the increased community traffic impacts in the region and, provided further that, in the event

the county adopts an impact fee for transportation improvements, the foregoing requirements shall not include or double count the cost of any specific traffic improvements which may also be included in the County's impact fee computation.

Petitioner shall monitor the traffic attributable to the development proposed on the Property at on-site and off-site locations and shall undertake subsequent mitigative measures that may be reasonably required. These activities shall be coordinated with and approved by the Department of Transportation.

4. Petitioner shall provide its pro rata share for police, park, fire, and solid waste facilities as may be required by and to the satisfaction of the County of Hawaii.

5. Petitioner shall provide its pro rata share for school facilities as may be required by and to the satisfaction of the State Department of Education.

6. Petitioner shall establish a program to monitor groundwater and ocean water quality as specified by the State Department of Health. Should any adverse impacts affect the area as the result of the Petitioner's activities, the Petitioner shall immediately implement remedial and corrective actions to the satisfaction of the State Department of Health.

7. Petitioner shall establish a pond management program for the monitoring of anchialine ponds on the Waikoloa Resort, whether or not the ponds are in the Property, as

approved by the State Department of Land and Natural Resources and applicable federal agencies. Should any adverse impacts affect the ponds as the result of the Petitioner's activities in the Property, Petitioner shall immediately implement remedial and corrective actions to the satisfaction of the State Department of Land and Natural Resources and applicable federal agencies.

8. Petitioner shall design, locate and construct sewage treatment facilities as may be required by the County of Hawaii and the State Department of Health so as to minimize adverse impact on adjoining properties.

9. Petitioner shall immediately stop work on the impacted area and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development.

10. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed.

11. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.

12. Petitioner shall give notice to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property covered in the Petition, prior to development of the Property and shall provide evidence that any successor in interest has a willingness and ability to develop the Property in substantial compliance with representations made to the Commission in obtaining the reclassification of the Property in concert and in compliance with the conditions herein.

13. The Commission may fully or partially release these conditions 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 the Petitioner.

DOCKET NO. A89-637 - ATPAC LAND CO. LIMITED PARTNERSHIP, WAIKOLOA  
DEVELOPMENT CO., AND WAIKOLOA LAND & CATTLE CO.

Done at Honolulu, Hawaii, this 9th day of January 1990,  
per motion on December 14, 1989.

LAND USE COMMISSION  
STATE OF HAWAII

By *Renton L. K. Nip*  
RENTON L. K. NIP  
Chairman and Commissioner

By *Lawrence F. Chun*  
LAWRENCE F. CHUN  
Vice Chairman and Commissioner

By (absent)  
SHARON R. HIMENO  
Commissioner

By *Allen K. Hoe*  
ALLEN K. HOE  
Commissioner

By *Allen Y. Kajiona*  
ALLEN Y. KAJIONA  
Commissioner

By *Eusebio Lapenia, Jr.*  
EUSEBIO LAPENIA, JR.  
Commissioner

By *James M. Shinno*  
JAMES M. SHINNO  
Commissioner

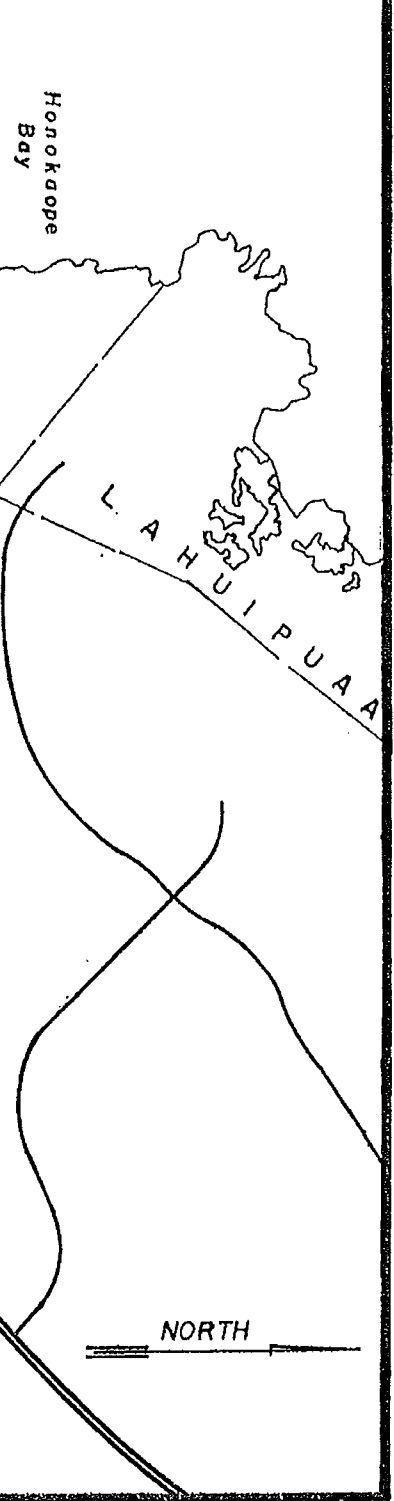
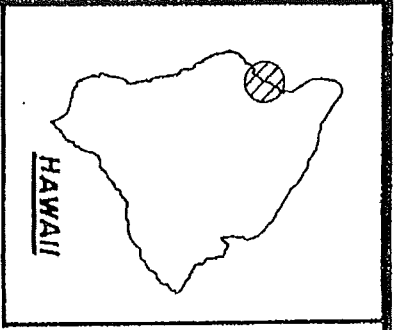
By *Elton Wada*  
ELTON WADA  
Commissioner

By *Frederick P. Whittemore*  
FREDERICK P. WHITTEMORE  
Commissioner

Filed and effective on  
January 9, 1990

Certified by:

*Esther Lunde*  
Executive Officer



ROYAL WAIKOLOA HOTEL  
 Kahapapa Fishpond  
 Kuuuli Fishpond  
 Andeboomalu Bay

Waialea Bay

HONOKAHOE

HYATT REGENCY WAIKOLOA HOTEL

Honokaope Bay

ANAHOU

KAHUMANU WAIKOLOA HWY.

LAHUIPUA

KAHUMANU WAIKOLOA RD.

QUEEN


S. KOHALA DISTRICT  
 N. KONA DISTRICT



**A89-637 / ATPAC LAND CO. LIMITED PARTNERSHIP, WAIKOLOA DEVELOPMENT CO., & WAIKOLOA LAND & CATTLE CO.**

TMK : 6-8-01: por. 26, por. 32, 33, 34, & por. 35  
 WAIKOLOA, SOUTH KOHALA, HAWAII

SCALE : 1" = 2000' ±

 APPROVED AREA

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A89-637
ATPAC LAND CO. LIMITED PARTNERSHIP, )	
WAIKOLOA DEVELOPMENT CO., and )	ATPAC LAND CO. LIMITED
WAIKOLOA LAND & CATTLE CO. )	PARTNERSHIP, WAIKOLOA
	DEVELOPMENT CO., and
To Amend the Agricultural Land Use )	WAIKOLOA LAND & CATTLE
District Boundary into the Urban )	CO.
Land Use District for Approximately )	
853.187 Acres at Waikoloa, South )	
Kohala, Hawaii, Tax Map Key Nos.: )	
6-8-01: portion of 26, portion of )	
32, 33, 34 and portion of 35 )	

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:

HAROLD S. MASUMOTO, Director  
Office of State Planning  
State Capitol, Room 410  
Honolulu, Hawaii 96813

CERT. DUANE KANUHA, Planning Director  
Planning Department, County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

CERT. JAMES T. FUNAKI, ESQ., Attorney for Petitioner  
Okumura, Takushi, Funaki & Wee  
Grosvenor Center, Suite 1400  
733 Bishop Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 9th day of January 1990.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer



PLANNING COMMISSION

Planning Department  
County of Hawaii  
Hilo, Hawaii

Application for )  
SPECIAL MANAGEMENT AREA USE PERMIT )  
by )  
BOISE CASCADE HOME AND LAND CORPORATION )  
for ) SMA USE PERMIT NO. 25  
DEVELOPMENT OF THE ENTIRE )  
WAIKOLOA RESORT COMPLEX )  
at )  
Anaeho'omalu and Waikoloa )  
South Kohala, Hawaii )

SPECIAL MANAGEMENT AREA USE PERMIT

The County Planning Commission at a duly held public hearing on February 14, 1977, considered the application of BOISE CASCADE HOME AND LAND CORPORATION for a Special Management Area Use Permit in accordance with Rule No. 9, Rules and Regulations Relating to Environmental Shoreline Protection, to allow the Development of the Entire Waikoloa Resort Complex located makai of the Queen Ka'ahumanu Highway in the land divisions of Anaeho'omalu and Waikoloa, South Kohala, Tax Map Key 6-8-01:26 and 6-9-07:1 to 30.

The Commission has found that approval of the SMA Use Permit for the proposed development will not be inconsistent with the spirit and intent of Act 176 (Environmental Shoreline Protection Act) of the 1975 Legislature. The intent of Act 176 is to implement the State policy of preserving, protecting, and restoring where possible the natural resources of Hawaii's coastal zone, as well as to provide special interim controls on developments along the shoreline. The Legislature has deemed that such controls are necessary to avoid the permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves.

Based on development plans and supporting studies submitted by the petitioner, the proposed development is deemed to be in conformance with the policies and guidelines of Act 176 and Rule 9 of the Planning Commission in the following ways:

1. Adequate access to the shoreline, including beach areas, will be provided. The petitioner has committed to retain Anaeho'omalu Beach and the fishponds in open space. This area, consisting of approximately 16.3 acres, is and will be open to the public. The petitioner's plans also show that a path along the shoreline will be provided. In addition, the petitioner's plans show that pedestrian access with public parking areas will be provided along the side property lines of makai parcels. These will extend from the main resort road to the shoreline and with the beach area and shoreline path will assure that an integrated system of public shoreline access is established.

Exhibit B

2. The petitioner will also protect, and interpret where appropriate, significant historical sites on the subject property. An archaeological survey has been conducted in the subject areas and partial salvage work has been undertaken. Historical sites which will be protected include habitation complexes, the fishponds, the petroglyph field, and the King's Trail. Significant sites will be retained in open space and public access to them will be provided. Research and salvage of other sites will be conducted as necessary.
3. The petitioner has made the necessary provisions for waste treatment, disposition, and management so as to minimize potential adverse effects on the area's natural resources. Sewage treatment facilities will be provided by the petitioner. In addition, the environmental impact statement (EIS) submitted by the petitioner has addressed the characteristics of the near-shore waters and fishponds and the potential impact of the proposed development upon them. The EIS will also be instrumental in monitoring and assessing the impact of the proposed development as it progresses.
4. The size of the beach or other areas usable for public recreational purposes will not be reduced by the proposed development. Some areas of the subject property to which public access will be made available have previously been basically inaccessible. It is expected that the proposed development will provide additional recreational opportunities for the public.
5. There will be minimal alteration of the coastal shoreline area. Alterations will basically consist of landscaping. Structures will be sufficiently set back so that there will essentially be an open corridor along the shoreline.
6. The proposed structures will be limited in height so that they will not substantially interfere with the line of sight from the Queen Ka'ahumanu Highway. Although they will be visible, the relief of the sites upon which are to be located will determine the ultimate height of each building. Landscaping, the choice of color, and the open space imposed through setback requirements and density limitations will help to minimize the visual impact of structures. In addition, the siting of structures will be closely examined so that view planes from the Queen Ka'ahumanu Highway will be protected.

The enforcement of other existing rules, regulations, and standards will further ensure that adverse effects are minimized and the mitigating measures are undertaken.

Furthermore, approval of the Special Management Area Use Permit shall exclude the proposed small boat harbor. Upon reviewing the application filed by the petitioner, it has found that there is insufficient evidence to warrant the approval of such a facility. Detailed plans and engineering, environmental and related studies are needed before the impact of the proposed facility can be evaluated. In addition, other governmental reviews must be conducted before such a facility can be initiated. One of these reviews is by the Department of Health for the reclassification of the water quality class. Previous application by the petitioner for the same purpose was denied by the Department of Health in December, 1971.

Further, the petitioner is uncertain as to the timetable for the proposed small boat harbor. When the petitioner has determined that development of such a facility might be warranted, reapplication can be made.

Therefore, The Commission hereby grants to the petitioner a Special Management Area Use Permit to allow the entire development of the Waikoloa Beach Resort Complex which includes 3,000 hotel rooms, approximately 3,430 multiple residential units, two (2) golf courses, other recreational facilities, commercial facilities, temporary construction and maintenance yard, infrastructures such as roads, utilities, etc., and other related improvements necessary for the development of the resort complex, pursuant to the authority vested in it by Rule No. 9, Rules and Regulations Relating to Environmental Shoreline Protection, subject to the following conditions:

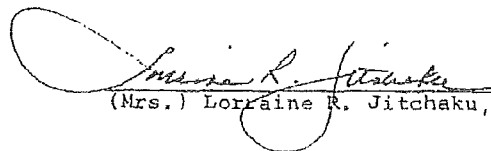
1. That the overall development shall conform substantially to the plans submitted and the representations made by the petitioner and as described in the environmental impact statement, hereafter identified as "File Exhibit 1" on file in the Planning Department. Structural development and construction of the golf course shall be contingent upon approval of the change of zone request. Hotel and condominium development shall also be contingent upon receipt of Planned Development Permits.
2. That the method of sewage disposal shall conform to the rules and regulations of the State Department of Health.
3. That the petitioner shall set aside those historic site preserves identified in "File Exhibit 1" on file in the Planning Department. The petitioner shall submit plans for the historic preserves to the Planning Director for review and approval prior to undertaking any research, restoration, reconstruction, or development within the historic preserves. Such plans shall include but not be limited to a proposed management and interpretation program, and the means of providing public access to the historic preserves. Further, any alteration and/or salvage of archaeological sites which are not located in the designated preserves shall first be approved by the Planning Director. The petitioner/representative(s) shall also submit plans for interim control and protection measures for sites which are not to be immediately salvaged, researched, or developed within six (6) months of the effective date of approval of the change of zone request for the review and approval of the Planning Director. The petitioner/representative(s) shall also conduct an archaeological survey of the area between the King's Trail and the Queen Ka'ahumanu Highway prior to any development of that area.
4. That the King's Trail shall be open for public access. Any breaching of the King's Trail shall first be approved by the Planning Director. The number of breaches in the King's Trail shall be limited to three, two street crossings and one golf cart crossing, each of which shall be of a minimal width as determined by the Planning Director and the Chief Engineer.
5. That any proposal or program for research, maintenance, restoration, and/or management of Ku'uali'i and Kahapapa fishponds shall be submitted to the Planning Director for review. The petitioner shall also provide public access to the fishponds meeting with the approval of the Planning Director.
6. That the petitioner shall provide public accesses to the shoreline meeting with the approval of the Planning Director. Such public accesses shall be provided in perpetuity and by recorded covenant running with the land. The general location of public accesses shall be as described in "File Exhibit 1."

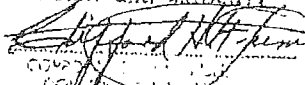
7. That construction of the golf course and clubhouse facility shall be completed and available for play upon issuance of the occupancy permit for the first hotel. The plans for the golf course shall be submitted to the Planning Department for review and approval.
8. That temporary overhead utility lines will be permitted for Increment I; however, all utility lines shall be installed underground in conjunction with development of Increment II. Furthermore, a bond or other forms of legal assurance for utility improvements shall be submitted prior to issuance of building permits within Increment II.
9. That the petitioner or its authorized representative(s) shall submit a comprehensive program for the treatment of the tidal, or anchialine, ponds for the review of the Planning Director within one (1) year of the effective date of approval of the Special Management Area Use Permit and/or prior to any construction directly affecting any tidal pond, whichever comes first.
10. That the petitioner or its authorized representative(s) shall submit an overall landscaping plan which includes the use of native and indigenous plants for Increment One to the Planning Director for review and approval within one (1) year from the effective date of approval of the Special Management Area Use Permit.
11. That all accesses from the Queen Ka'ahumanu Highway shall conform to the requirements, including the provision of a channelized intersection, of the State of Hawaii Department of Transportation, Highways Division.
12. That all other applicable rules and regulations shall be complied with, including the conditions of approval of the change of zone request and all necessary permits.

Should these conditions not be met, the Special Management Area Use Permit may be deemed null and void by the Planning Commission or the designated authority for Special Management Areas as may be established by any amendments to Act 176, SLH 1975.

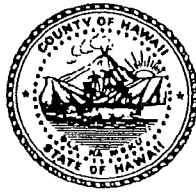
The effective date of this permit shall be February 14, 1977.

Dated at Hilo, Hawaii, this 4th day of March, 1977.

  
(Mrs.) Lorraine R. Jitchaku, Chairman

<p>APPROVED as to FORM and LEGALITY</p> <p></p> <p>Date <u>Mar. 2, 1977</u></p>
--

Harry Kim  
Mayor



## County of Hawaii

### PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL  
7000 0600 0024 2904 6532

FILED 01 2001

Mr. Myron Yamasato, Vice President  
Waikoloa Development Company  
150 Waikoloa Beach Drive  
Waikoloa, HI 96738

Dear Mr. Yamasato:

Amendment to Special Management Area Use Permit No. 25 (SMA 25)  
Applicant: Waikoloa Development Company  
Request: Amendment to Condition No. 12 to Allow for an Extension of Time  
in Which to Complete Construction to Golf Course  
Tax Map Key: 6-9-7:1-14, 17, 19-21, 26, 30-38 and 6-9-8:1-13

The Planning Commission at its duly held public hearing on January 19, 2001, voted to approve the above-referenced request to amend Condition No. 12 (extension of time to complete construction of golf course) of Special Management Area Use Permit No. 25, which allowed the entire development of the Waikoloa Beach Resort complex, and other related improvements necessary for the development of the resort complex. The properties are located on the makai side of the Queen Kaahumanu Highway, adjacent to and south of the Mauna Lani Resort, Anaeho'omalua and Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

Approval of this request would not be contrary to the General Plan or the Zoning Code nor the original reasons for the granting of Special Permit No. 25. Approval of the applicant's request will provide the applicant with additional time in which to complete the proposed golf course in a manner as approved by the Planning Commission in 1991. The applicant has demonstrated its commitment to proceed with the proposed golf course development by securing various approvals for the proposed development over the years as well as commencing with the construction of the golf course in 1995. To date, the applicant remains in compliance with all conditions of approval of SMA Use Permit No. 25; further testament to their commitment to complete the proposed golf course development.

Exhibit C

The applicant has noted that current market conditions and the difficulties of obtaining financing for the development has attributed to their need to request additional time for completion. Current market conditions, while improving, have not improved to a level that financially justifies the need to increase golf course capacity. The request to defer the completion of the golf course for an additional 6 years will give the applicant the opportunity to await better market conditions that will support the development of the golf course. This delay in the completion of the golf course will not be contrary to the original reasons for granting of the SMA Use Permit or its subsequent amendments. The applicant has and will continue to comply with all conditions of approval of SMA Use Permit No. 25 that will ensure that significant adverse impacts to the coastal environment, historical resources, public access and other important coastal resources are minimized. Over the years, the applicant has completed an archaeological survey of the project site and implemented approved mitigative measures; committed to place all permanent utility lines underground; established a ground water monitoring program, prepared an emergency preparedness and response plan, paid approximately half of a \$3 million community benefit assessment payment, and continues to comply with the conditions of approval of SMA Use Permit No. 25.

Based on the above considerations, the request for an amendment to Condition No. 12 is hereby granted subject to the following revised changes (Material to be deleted is bracketed and material to be added is underscored):

1. That the overall development shall conform substantially to the plans submitted and the representations made by the petitioner and as described in the environmental impact statement, hereafter identified as "File Exhibit 1" on file in the Planning Department, except as further amended by subsequent ordinances and permits.
2. That the method of sewage disposal shall conform to the rules and regulations of the State Department of Health.
3. That the petitioner shall set aside those historic site preserves identified in "File Exhibit 1" on file in the Planning Department. The petitioner shall submit plans for the historic preserves to the Planning Director for review and approval prior to undertaking any research, restoration, reconstruction, or development within the historic preserves. Such plans shall include but not be limited to a proposed management and interpretation program, and the means of providing public access to the historic preserves. Further, any alteration and/or salvage of archaeological sites which are not located in the designated preserves shall first be approved by the Planning Director. The petitioner/representative(s) shall also submit plans for interim control and protection measures for sites which are not to

be immediately salvaged, researched, or developed within six (6) months of the effective date of approval of the change of zone request for the review and approval of the Planning Director. The petitioner/representative(s) shall also conduct an archaeological survey of the area between the King's Trail and the Queen Kaahumanu Highway prior to any land development of that area.

4. That the King's Trail shall be open for public access. Any breaching of the King's Trail shall first be approved by the Planning Director. The number of breaches in the King's Trail shall be limited to three, two street crossings and one golf cart crossing, each of which shall be of a minimal width as determined by the Planning Director and the Chief Engineer.
5. That any proposal or program for research, maintenance, restoration, and/or management of Ku'uiali'i and Kahapapa fishponds shall be submitted to the Planning Director for review. The petitioner shall also provide public access to the fishponds meeting with the approval of the Planning Director.
6. That the petitioner shall provide public accesses to the shoreline meeting with the approval of the Planning Director. Such public accesses shall be provided in perpetuity and by recorded covenant running with the land. The general location of public accesses shall be as described in 'File Exhibit 1.'
7. That temporary overhead utility lines will be permitted for Increment I of the existing Resort; however, all utility lines shall be installed underground in conjunction with development of Increment II of the existing Resort. Furthermore, a bond or other forms of legal assurance for utility improvements shall be submitted prior to issuance of building permits within Increment II of the existing Resort.
8. That the petitioner or its authorized representative(s) shall submit a comprehensive program for the treatment of the tidal, or anchialine pond, ponds, for the review of the Planning Director within one (1) year of the effective date of approval of the Special Management Area Use Permit and/or prior to any construction directly affecting any tidal pond, whichever comes first.
9. That the petitioner or its authorized representative(s) shall submit an overall landscaping plan which includes the use of native and indigenous plants for Increment One to the Planning Director for review and approval within one (1) year from the effective date of approval of the Special Management Area Use Permit.

10. The effective date of this amendment shall be simultaneous with the effective date of the accompanying change of zone.
11. Plans for the proposed golf course and related improvements shall be submitted to the Planning Department within one year from the effective date of this amendment and Final Plan Approval secured within one year thereafter. To assure adequate time for Plan Approval Review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five (45) days prior to the date by which plan approval must be secured.
12. Construction of the golf course and related improvements shall commence within one year from the date of receipt of final plan approval and be completed [within three years thereafter] on or before April 5, 2007.
13. Plans for the second golf course and related improvements shall be submitted to the Planning Department and Final Plan Approval secured within one year thereafter. The second golf course may be constructed simultaneously with the first golf course.
14. A ground and ocean water quality monitoring and mitigation plan shall be developed. The plans shall be submitted to and approved by the Planning Department in consultation with the Department of Health prior to the issuance of a grading permit and/or prior to any land preparation activity being conducted on the golf course or multi-family residential sites, whichever occurs first.
15. All utility lines shall be underground.
16. An emergency preparedness and response plan shall be filed with the Planning Director and the Civil Defense Agency prior to receipt of occupancy for the multi-family residential units, commercial structures or establishment of the golf course, whichever occurs first.
17. To ensure that the goals and policies of the General Plan are implemented, the Planning Director shall formulate a community benefit assessment program for implementation by the applicant prior to receipt of Final Plan Approval of the golf courses.



18. In the design of the golf courses, the County of Hawaii Planning Department's Guidelines for Golf Course Design (November 1989, as amended) shall be utilized. The Planning Department shall determine appropriate setback requirements (i.e. building and property line) at the time of plan approval review.
19. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Department notified. Work within the affected area shall not resume until clearance is obtained from the Planning Department.
20. The use of pesticides and herbicides in conjunction with all phases of operation shall conform with the applicable regulations of appropriate governmental agencies.
21. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
22. Prior to golf course construction, the applicant shall demonstrate to the satisfaction of the Planning Department that all proposed off-site construction materials such as topsoil or sand are being supplied from an approved quarry or resource site.
23. Comply with the requirements of the Department of Health, including the "New Golf Course Development Guidelines" dated April 1990 (Version 3) or applicable subsequent versions.
24. Comply with all other applicable laws, rules, regulations and requirements, including those of the Department of Water Supply, the Department of Public Works, the Department of Land and Natural Resources and the Department of Transportation-Highways Division.
25. Comply with applicable conditions of Ordinance No. 265, as amended, the State Land Use Commission Decision and Order, and SMA Use Permit No. 25, as amended.
26. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this amendment. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in

Mr. Myron Yamasato, Vice President  
Waikoloa Development Company  
Page 6

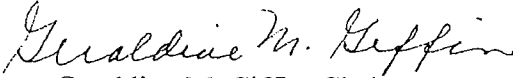
effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.

27. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
- a) the non-performance is the result of conditions that could not have foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence;
  - b) the granting of the time extension would not be contrary to the general plan or zoning code;
  - c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
  - d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Daryn Arai of the Planning Department Kona Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman  
Planning Commission

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cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
West Hawaii Office  
Office of Planning, CZM Program (w/Background)  
Department of Land and Natural Resources  
Kazu Hayashida, Director/DOT-Highways, Honolulu  
Mr. Norman Hayashi  
Mr. Jeffrey Darrow  
Plan Approval Section