

ORIGINAL

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LAND USE COMMISSION
STATE OF HAWAII
AUG 25 9 20 AM '92

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A92-676
HILO ONE, INCORPORATED)
To Amend the Agriculture Land Use)
District Boundary in the Urban)
Land Use District for)
Approximately 24.659 acres at)
Paukaa, South Hilo, Hawaii,)
State of Hawaii)
Tax Map Key No. 2-7-03:27)

PETITIONER'S PROPOSED FINDINGS OF FACT
CONCLUSIONS OF LAW, AND DECISION AND ORDER

HILO ONE, INCORPORATED, a Hawaii corporation (hereinafter "Petitioner"), filed a Petition on April 21, 1992, pursuant to Chapter 205, Hawaii Revised Statutes, as amended (hereinafter "HRS"), and Title 15, Subtitle 3, Chapter 15, Hawaii Land Use Commission Rules, as amended (hereinafter "Commission Rules"), to amend the Land Use District Boundary of approximately 24.659 acres of land situate at Paukaa, South Hilo, Island and County of Hawaii, State of Hawaii, Hawaii Tax Map Key No. 2-7-03:27 (hereinafter "Property"), from the Agricultural District to the Urban District for a residential lot subdivision. The Hawaii State Land Use Commission (hereinafter "Commission"), having

heard and examined the testimony, evidence and arguments of counsel presented during the hearing and the record in this matter, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

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

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

3. The Commission conducted a hearing on the Petition on July 23, 1992, pursuant to notices published on July 17, 1992 in the Honolulu Advertiser, the Hawaii Tribune Herald and the West Hawaii Today, newspapers of general circulation.

4. There were no public witnesses testifying on this Petition.

DESCRIPTION OF THE PROPERTY

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

6. The Property is immediately north and adjacent to the Honolii Pali Subdivision, Tract No. 2 and the Paukaa Village Subdivision, which are residential subdivisions. (T. p. 33, l. 6-9, p. 36, l. 13-18; Petitioner's Exhibit 4). Also, the Honolii By the Sea Subdivision, a residential subdivision developed by Petitioner and reclassified by the Commission in 1984 from the Conservation and Agricultural Districts to the Urban District, is located directly east of the Property on the makai side of the Hawaii Belt Road. (T. p. 33, l. 10-16, p. 36, l. 13-18; Petition, par. 8).

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

8. The Property is owned in fee simple by Petitioner. (T. p. 36, l. 21-22, Petitioner's Exhibit 3).

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

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

11. The Property gently slopes downward in the makai or easterly direction at an average grade of 12%, except for the gulch and the gully. The elevation of the Property in a makai to mauka orientation ranges from 132 feet to 200 feet above sea level. The Property is also approximately 390 feet inland or mauka from the shoreline. (Petition, par. 10; T. p. 42, l. 12-21, p. 56, l. 13-20, p. 73, l. 13-25; OSP Exhibit 1, p. 2, par. 2).

12. The Property is former sugar cane land, and presently ginger is being cultivated on a portion of the Property. (T. p. 56, l. 13-20, Petition, par. 16; OSP Exhibit 1, p. 2, par 1-2).

13. The United States Department of Agriculture Soil Conservation Service Soil Survey of the Island of Hawaii identifies the soils throughout the Property as being in the Hilo Series. Hilo silty clay loam, 0 to 10 percent slopes (HoC) is found on about 60 percent of the Property and Hilo silty clay loam, 20-25 percent slopes (HoD) is found on about 30 percent of the Property. The soil in the gulch area is classified as Hilo silty clay loam, 20 to 30 percent slopes (HoE). (Petition, par. 11; T. p. 56, l. 13-20; OSP, Exhibit 1, p. 2, par. 3).

14. The Hilo soil series is a well-drained silty clay loam. A representative profile contains a surface layer of dark brown silty clay loam about 12 inches thick, and a subsoil of dark brown, dark reddish-brown, and very dark grayish-brown silty clay

loam about 48 inches thick. For soils classified as HoC, permeability is rapid, runoff is slow and the erosion hazard is slight. For soils classified as HoD, runoff is moderate and the erosion hazard is slight to medium. In those areas classified as HoE, the runoff is medium and the erosion hazard is moderate. (Petition, par. 12; T. p. 56, l.13-20; OSP Exhibit 1, p. 2, par. 3; COH Exhibit 1, p. 5, par. 17).

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

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

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

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

19. The Flood Insurance Rate Map (FIRM) prepared by the U.S. Army Corps of Engineers, designates the Property as being

located within zone X, which is an area outside of the 500-year flood plain. There is also no major or discernible drainage problems within the Property. (Petition, par. 20, T. p. 43, l. 7-8, p. 56, l. 13-20).

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

DESCRIPTION OF THE PROPOSED DEVELOPMENT

21. Petitioner proposes to develop a 79-lot single-family residential lot subdivision on the Property, with the present conceptual plan providing lots ranging in size from 8,884 square feet to 24,800 square feet (hereinafter the "Development"). The larger lots will include portions of the gulch together with sufficient buildable area on the relatively flat land outside of the gulch. (T. p. 37, l. 6-13, p. 38, l. p. 39, l. 12-19, p. 56, l. 13-20; Petition, par. 20).

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

23. No subdivision improvements are intended to be constructed within the gulch or in the drainage way or gully along the boundaries of the Property. In order to protect the stream ecosystems of Paukaa Stream, Petitioner proposes to

establish a ten-foot wide conservation easement on either side of Paukaa Stream in favor of the State and a management plan with the State Department of Land and Natural Resources ("DLNR") regarding the remainder of the gulch. Petitioner also proposes to provide deed covenants restricting the use of the gulch area and requiring the approval of DLNR for any improvements within the gulch area. (T. p. 52, l. 8-19, p. 53, l. 1-14, p. 56, l. 13-20, p. 74, l. 1-18).

24. The total improvement costs for the Development are estimated to be approximately \$2,000,000 or \$25,300 per lot. (Petition, par. 22; T. p. 37, l. 25, p. 38, l. 1-4).

25. The intended market for the subdivided lots will be buyers in the middle income range with lot prices beginning at about \$90,000. Petitioner does not intend to market the subdivided lots outside of the State of Hawaii. (Petition, par. 23, T. p. 38, l. 20-21, p. 56, l. 13-20).

26. Petitioner indicated that Petitioner will work with the County of Hawaii Housing Agency and/or HFDC to provide housing opportunities for low, low-moderate, and moderate income Hawaii residents. (Petition, par. 24; T. p. 56, l. 13-20).

27. Petitioner proposes to begin construction of the subdivision improvements immediately after all land use, zoning and subdivision approvals are received from the State and County. Petitioner also believes that the Development on the Property will be substantially completed within five years after

the date of final zoning approval of the Property by the County. (Petition, par. 25-26; T. p.55, l. 18-22, p. 56 l. 13-20).

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

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

29. Petitioner has had extensive experience in the development of residential subdivisions in the South Hilo area. Petitioner has had experience in the investigation of the market feasibility of projects, the examination of environmental considerations affecting projects, the processing of required governmental permits, the arranging for and securing financing for the construction of projects, and the overseeing of the construction of the project. (Petition, par. 28, T. p. 40, l. 10-25, p. 41, l. 1-21, p. 56, l. 13-20).

30. Petitioner proposes to finance the Development on the Property by means of obtaining development loans from financial institutions, and by using the Property as collateral to secure the loans. Petitioner has used this means of financing in the past for residential development projects. (Petition, par. 29; T. p. 48, l. 19-24).

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

STATE AND COUNTY PLANS AND PROGRAMS

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

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

34. The County zoning designation for the Property is Agricultural, with a minimum lot size of 20 acres (A-20a). (COH Exhibit 1, p. 10, par. 42).

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

NEED FOR THE PROPOSED DEVELOPMENT

36. There is a demand and a need for single family residential lots in South Hilo, because there is a lack of available inventory of buildable residential lots. There is also a market in the Hilo area for lots intended for the middle income range buyer, priced at \$90,000 and above as proposed by

Petitioner. (Petition, par. 30; T. p. 38, l. 6-10, 20-21, p. 56, l. 13-20; Petitioner's Exhibit 6).

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

IMPACT UPON THE RESOURCES OF THE AREA

Agricultural Resources.

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

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

40. The State Department of Agriculture ("DOA") is of the opinion that the agricultural resources of the area and the plans, programs and activities of DOA will not be adversely affected by the approval and development of the Petitioner's proposal. However, DOA believes that existing farm businesses should be protected from nuisance complaints and the cost of implementing mitigating measures when there is a conflict between agriculture and non-agricultural uses. (OSP Exhibit 1, p. 6-7; COH Exhibit 1, p. 6, par. 21).

Water Quality

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

42. Surface water generated by means of the Development will be controlled by means of construction of drainage structures as required by County standards. (T. p. 55, l. 15-17).

43. Potential impacts of soil erosion which would affect the existing streams will be mitigated by means of the establishment of a soil erosion plan which will be made a part of the construction contract for the Development on the Property. (T. p. 69, l. 21-25, p. 70, l. 1-2).

Wetlands

44. There has been no determination by the Army Corps of Engineers ("COE") as to whether any wetland areas exist in the gulch area, the gully on the northern boundary or the drainageway on the southern boundary. (OSP Exhibit 1, p. 5)

45. A "COE" DA permit may be required for any grading or filling of any wetland area. (OSP Exhibit 1, p. 5).

46. Petitioner does not intend to grade, fill or otherwise alter the gulch, the gully or the drainageway. (T. p. 50, l. 21-25, p. 51, l. 1-6).

47. If any work would be done within the gulch, gully or drainageway, the preparation of a botanical study or a wetland delineation prior to the commencement of such work would be

appropriate in order to determine if there are COE permitting requirements. (OSP Exhibit 1, p. 5; T. p. 63, l. 2-6; Petitioner's Exhibit 18).

Air Quality

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

49. Petitioner anticipates that the impacts upon the air quality can be mitigated by the development and implementation of a dust and erosion control plan submitted to the State Department of Health for approval as part of the construction contract for the Development. (T. p. 69, l. 21-25, p. 70, l. 1-2)

Aural Quality

50. The aural quality of the area may be adversely affected for a short time during the construction phase. However, the completed residential Development should not have any long term noise impacts on the area. (OSP Exhibit 1, p. 6).

51. Petitioner anticipates that the impacts upon the aural quality will be negligible. (T. p. 49, l. 16-17).

Archaeological Resources

52. Petitioner's archaeological assessment, conducted by Paul H. Rosendahl, concluded that no archaeological or historic features were located on the Property and no further studies were needed. DLNR concurs with the findings of the assessment.

(Petitioner's Exhibit 7; Petition, par. 36-37; T. p. 56, l. 13-20; OSP Exhibit 1, p. 6).

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

Flora and Fauna

54. Petitioner knows of no rare or endangered plant species on the Property. (T. p. 50, l. 1-8).

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

Aquatic Resources

56. DLNR Division of Aquatic Resources ("DAR") found significant populations of all five of the endemic Hawaiian freshwater fishes along with various invertebrate species in the Paukaa Stream. DAR concluded that the Paukaa Stream is of high biological value and needs some protection from the impacts of development. (OSP Exhibit 1, p. 7).

57. Based upon DAR's recommendation, OSP is recommending that a conservation easement be established in favor of the State for the Paukaa Stream and gulch, including the area from the

definable top of both sides of the gulch (from rim to rim) together with a buffer/setback area on each side of the gulch rim which extends a minimum width of ten feet from the definable top of the gulch. (OSP Exhibit 2, p. 2; T. p. 88, l. 8-21).

58. The conservation easement proposed by OSP is intended to be consistent with OSP's recommendations regarding stream protection in its five-year boundary review of State Land Use Districts. (T. p. 91, l. 16-24).

59. OSP's proposed five-year boundary review prioritized areas for protection and reclassification; however, the Paukaa Stream was not included as any priority in the boundary review. (T. p. 96, p. 16-25, p. 97, l. 1-8).

60. There is no factual basis to conclude that a ten-foot wide buffer/setback area on top of the rim of the gulch on the Property is required to protect the Paukaa Stream resources. (T. p. 94, l. 16-25, p. 95, l. 1-13, p. 98, l. 1-23).

61. The establishment of a conservation easement as proposed by OSP will reduce the buildable area of the eight lots proposed along the gulch, and may create a situation where there is insufficient buildable area on those lots. (T. p. 53, l. 21-25, p. 54, l. 1-9, 19-24).

62. There are no conservation easements or restrictions placed upon the portion of the Paukaa Stream situated makai of the Property, in the State Land Use Urban district. (T. p. 112, l. 3-6).

63. Petitioner proposes to protect the Paukaa Stream ecosystems by establishing a conservation easement in favor of the State extending along either side of Paukaa Stream for a width of ten feet, and by developing a management plan with DLNR for the remainder of the gulch area. The management plan proposed would provide measures to insure the protection of the stream ecosystems and to insure that any construction or improvement within the gulch will not interfere with or damage the Paukaa Stream or the stream ecosystems. Petitioner further proposes to provide deed covenants restricting the use of the gulch area and requiring the approval of DLNR for any improvements within the gulch area. (T. p. 52, l. 4-25, p. 53, l. 1-14; Petitioner's Exhibit 18).

Scenic/Visual Resources

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

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadway and Highway Services and Facilities

65. Access to the Property is presently available from a designated access point along the Hawaii Belt Road, a State maintained two-lane arterial highway with a pavement width of 22 feet within a 100-foot corridor. Access is also available from

Kulana Road, a County-maintained roadway having a pavement width of 17 feet within a 40-foot right-of-way. (T. p. 45, l. 16-18; COH Exhibit 1, p. 11, par. 44-45; OSP Exhibit 1, p. 8).

66. Petitioner intends to eliminate the access point from the Hawaii Belt Road because of the safety problems associated with such an access point and to provide access to the Development only by means of Kulana Road. (T. p. 45, l.14-25). Petitioner's present conceptual plan designates three access points along Kulana Road. (T. p. 68, l. 6-8).

67. Kulana Road is in poor repair and improvements to this road have been recommended by the County Department of Public Works ("DPW"). (T. p. 68, l. 9-12; COH Exhibit 1, p. 12, par. 48; OSP Exhibit 1, p. 8).

68. Petitioner is willing to participate in the funding and construction of regional and local traffic improvements on a pro rata basis. (T. p. 58, l. 3-7, p. 68, l. 20-22).

Water Service

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

70. The County Department of Water Supply ("DWS") does not have sufficient water capacity in its system to provide water service to the Property at the present time; however, DWS is presently in the process of acquiring land in Papaikou from C.

Brewer for the purpose of drilling another well. Water from the well should be sufficient to service the proposed Development and other lots in the Papaikou area. (T. p. 45, l. 4-10, p. 65, l.5-19).

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

Wastewater Treatment and Disposal

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

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

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

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

Drainage

76. DPW requires that all development generated surface water runoff is to be disposed of on site and is not to be directed toward any adjacent properties. (OSP Exhibit 1, p. 10).

77. Petitioner is willing to design and construct drainage improvements to the satisfaction of the County and the State Department of Transportation. (T. p. 61, l. 14-18).

Solid Waste Disposal

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

79. Petitioner is willing to cooperate with the State Department of Health and DPW to conform to the program goals and objectives of the Integrated Solid Waste Management Act. (T. p. 62, l. 12-17).

Electrical and Telephone Service

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

Police and Fire Protection

81. The Property is within an existing serviceable region by basic police and fire facilities. The Hilo Police Station is situated approximately 4.3 miles away from the Property and the Hilo Central Fire Station is situated approximately 3.6 miles away from the Property. (OSP Exhibit 1, p. 11; COH Exhibit 1, p. 13, par. 54, p. 14, par. 55).

Schools

82. The State Department of Education ("DOE") estimates that 33 additional students will be added to the school population by reason of the proposed Development, with 25 additional students at Kalaniana'ole Elementary and Intermediate Schools and 8 additional students at Hilo High School. (OSP Exhibit 1, p. 11; COH Exhibit 1, p. 14, par. 56; Petitioner's Exhibit 12).

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

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

Civil Defense

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

86. Although the State Department of Defense, Office of the Director for Civil Defense has recommended the installation of a new siren on the Property in order to provide alerting coverage for the residents of the proposed Development, it is the County Civil Defense administrator, Harry Kim's position that a siren would not be warranted for a subdivision of this size. Mr. Kim also advised the Petitioner that the Property was not in a tsunami inundation zone and the sirens are primarily uses for tsunami warnings. (OSP Exhibit 1, pp.11-12; T. p. 59, l. 24-25, p.60, l. 1-11.

87. The County Civil Defense Agency, as opposed to the State Office of Civil Defense, is in a better position to police and enforce any conditions regarding civil defense. Petitioner is willing to fund and construct adequate civil defense measures as determined by the County Civil Defense Agency (T. p.59, l.2-4, p. 70, l. 12-14)

Park and Recreation Services and Facilities

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

CONFORMANCE TO URBAN DISTRICT STANDARDS

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

(a) The Development is in reasonable proximity to centers of trading and employment facilities. The Property is less than three miles away from downtown Hilo, the largest commercial and industrial area in the County of Hawaii.

(Petition, Par. 37(a); T. p. 56, l. 13-20).

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

(c) The Property is in proximity to existing and developing facilities, such as roads, water sewer and solid waste disposal. Public Services, such as police, fire, parks and schools are also in reasonable proximity to the Property.

(Petition, par. 57(c); T. p. 56, l. 13-20).

(d) The Development will help to provide a sufficient reserve area for urban growth in an appropriate location based on a ten-year projection. The Big Island has been experiencing an acute housing shortage for many years. In addition, there is an absence of available residential lots in the Hilo area. The

proposed Development, situated in an area designated by the County for urban expansion, will help to mitigate this shortage by the infusion of additional residential lots into the market. (Petition, par. 57(d); Petitioner's Exhibit 6; T. p. 56, l. 13-20).

(e) The Property is of satisfactory topography with a gentle slope not exceeding 20 percent, except in the gulch area. The property is also reasonably free from the threat of flooding, tsunami, unstable soil and other adverse environmental effects. (Petition, par. 57(e), T. p. 42, l. 12-21, p. 43, l. 4-8, p. 56, l. 13-20).

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

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

CONFORMANCE WITH THE HAWAII STATE PLAN

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

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

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

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

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

(e) Makes available marginal or non-essential agricultural lands for appropriate urban uses while maintaining

agricultural lands of importance in the agricultural district (Section 226-104(b)(2), HRS). (supra, par. 38-40).

CONFORMANCE TO COASTAL ZONE POLICIES AND OBJECTIVES

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

CONCLUSIONS OF LAW

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

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, being the subject of the Petition in Docket No. A92-676, filed by Hilo One, Incorporated, consisting of approximately 24.659 acres of land situated at Paukaa, South Hilo, Island and County of Hawaii, Hawaii and identified as Hawaii Tax Map Key No. 2-7-03:27, and approximately identified on Exhibit A attached hereto and incorporated by reference herein, shall be and the same is hereby reclassified from the Agriculture District to the Urban District and the State Land Use District Boundaries are amended accordingly subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities to the State of Hawaii or the County of Hawaii to the satisfaction of the State Housing Finance and Development Corporation or the County of Hawaii, as appropriate. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the State Housing Finance and Development Corporation or the County of Hawaii.

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

paving or walls of historic or prehistoric significance be encountered during the development of the Property.

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

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

5. Petitioner shall fund and construct adequate civil defense measures as determined by the County Civil Defense agency.

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

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

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

9. Petitioner shall designate a ten foot wide conservation easement extending from each bank of the Paukaa Stream. Petitioner shall also establish a management plan, in conjunction with the State Department of Land and Natural Resources for the remainder of the gulch area. The management plan shall provide measures to insure the protection of the stream ecosystems and to insure that any construction or improvement within the gulch will not interfere with or damage the Paukaa Stream or the stream ecosystems. Petitioner shall also provide deed covenants to be recorded with the State Bureau of Conveyances or the Land Court regarding the management plan for the gulch, which covenants shall specifically prohibit any construction or use of the gulch area by any property owner, unless the construction or use conforms to the terms of the management plan and is approved by DLNR.

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

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

12. Petitioner shall have a botanical study and/or wetland delineation performed for the gully, gulch and stream areas within the Property if grading or filling is proposed within the gulch, the gully or the stream areas.

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

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

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

Done at Honolulu, Hawaii, this ____ day of _____,
1992 per motion on _____, 1992.

LAND USE COMMISSION
STATE OF HAWAII

By _____
RENTON L. K. NIP
Chairman

ROEHRIG, ROEHRIG, WILSON,
HARA, SCHUTTE & DE SILVA

ORIGINAL

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LAND USE COMMISSION
STATE OF HAWAII
AUG 25 9 18 AM '92

Attorney for Petitioner
HILO ONE, INCORPORATED

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A92-676
)	
HILO ONE, INCORPORATED)	
)	
To Amend the Agriculture Land Use)	
District Boundary in the Urban)	
Land Use District for)	
Approximately 24.659 acres at)	
Paukaa, South Hilo, Hawaii,)	
State of Hawaii)	
Tax Map Key No. 2-7-03:27)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order was either hand delivered or mailed, postage pre-paid, to each of the following persons, addressed as follows:

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DATED: Hilo, Hawaii, 8/24/92



SANDRA PECHTER SCHUTTE
Attorney for Petitioner