

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A93-696
	)	
KUKUI'ULA DEVELOPMENT COMPANY, INC.	)	SUPPLEMENTAL AND/OR
	)	MODIFIED FINDINGS OF
To Amend the Agricultural Land Use	)	FACT, CONCLUSIONS OF
District Boundary into the Urban	)	LAW, AND DECISION AND
Land Use District for approximately	)	ORDER
822.142 acres at Lawa'i, Koloa,	)	
Kaua'i, Hawai'i, Tax Map Key Nos.:	)	
2-6-03: por. 1, 21, por. 31, por.	)	
32, and 63; 2-6-04: por. 16, por.	)	
38, por. 39, por. 40, and por. 45	)	
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LAND USE COMMISSION  
STATE OF HAWAII  
JUN 12 4 11 PM '93

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

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SUPPLEMENTAL AND/OR MODIFIED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

On March 25, 1998, Kukui'ula Development Company, Inc. ("Petitioner"), filed a Motion For Order To Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated May 18, 1995 ("Motion"). The Land Use Commission ("Commission"), having heard the testimony and examined the evidence presented by the parties during the hearing on the Motion; Petitioner's Proposed Supplemental and/or Modified Findings of Fact, Conclusions of Law, and Decision and Order; and the response of the Office of Planning ("OP"), hereby makes the following supplemental and/or modified findings of fact to the Commission's Findings of Fact, Conclusions of Law, and Decision and Order Dated May 18, 1995 ("First Decision and Order").

SUPPLEMENTAL AND/OR MODIFIED FINDINGS OF FACT

The Commission's **Findings of Fact numbers 1 to 8, inclusive**, in its First Decision and Order relating to procedural matters are supplemented with the following findings of fact:

1. On March 25, 1998, Petitioner filed the Motion (i) to remove approximately 77 acres of land from Increment II of the Property and to transfer and include the same approximately 77 acres of land into Increment I of the Property, (ii) amend and delete certain conditions of the Decision and Order, and (iii) release and delete a 10-acre portion of land from the application of the conditions.

2. On May 15, 1998, a prehearing conference for the Motion was conducted in Conference Room 405, Leiopapa A Kamehameha Building, 235 South Beretania Street, Honolulu, Hawai'i, with representatives of Petitioner, OP, and the County present, and at which time the lists of exhibits and lists of witnesses of the parties were exchanged with respect to the Motion.

3. The Commission conducted a hearing on the Motion on May 28, 1998, pursuant to a public notice published on April 10, 1998, in the Garden Island and the Honolulu Star-Bulletin.

4. Entering appearances at the hearing on the Motion were James Funaki, Esq., and William Campbell for Petitioner; Jonathan Chun, Esq., and Keith Nitta for the County; and Ann Ogata-Deal, Esq., and Abe Mitsuda for the OP.

5. The County supported the Motion and filed a statement/testimony in support of its position.

6. The OP supported the Motion in part and filed a statement/testimony in support of its position.

7. No request for intervention on the Motion was filed.

**Findings of Fact numbers 9 to 21, inclusive,** in the Commission's First Decision and Order relating to the description of the property are supplemented by the following findings of fact:

8. McBryde Sugar Company, Limited ("McBryde"), and A & B-Hawaii, Inc., have authorized Petitioner to file the Motion.

9. A 10-acre portion of the Property within Increment I has been donated and conveyed by McBryde to the National Tropical Botanical Garden ("NTBG"), a charitable education and scientific nonprofit corporation chartered by the United States Congress. This 10-acre portion is identified as TMK 2-6-03:63 and was subdivided out from TMK 2-6-03:1.

10. NTBG has authorized the filing of the Motion, insofar as its interest in the 10-acre parcel is concerned and affected, by its letter of April 3, 1998.

**Findings of Fact numbers 22, 24, 25, 27, 28, and 29** in the Commission's First Decision and Order relating to the

proposal for reclassification are modified by the following findings of fact:

11. Petitioner proposes to develop the Property and the adjoining 219-acre Urban parcel as a common and integrated project to be known as the Kukui'ula Planned Community ("Project"). The land uses proposed for the Project include single-family residential, multi-family residential, golf course, clubhouse, commercial, lagoon/wetland, hotel, timeshare/condominium units, school expansion, sewage treatment plant, botanical garden visitor center, parks and open space.

12. Petitioner proposes to develop the Project in two phases. The first phase, as revised, is comprised of approximately 614.313 acres of the Property and the 219-acre Urban parcel ("Phase I"). The 614.313 acres reflect the transfer and inclusion of approximately 77 acres from Increment II of the Property to Increment I of the Property. Phase I includes development of up to 1,600 residential units and 828 visitor accommodation units, the golf course and clubhouse, commercial area, parks, public facilities, and the botanical garden visitor center. Phase I also includes the sewage treatment plant site, the school expansion site, and the affordable housing sites. The second phase, as revised, is comprised of approximately 207.829 remaining acres of the Property ("Phase II"). Phase II includes development of approximately 744 residential units, parks, and open space. The resort area and the residential component of the Project will compose Petitioner's Kukui'ula Bay Village, which replaces Petitioner's previous Town Center concept in the

Project. Under the new concept, the small boat marina that was originally proposed in Phase II will not be developed. In lieu of the marina, the lagoon/wetland will be developed as part of Phase I. The change in concept will allow Petitioner to develop a job-creating resort component within Increment I.

13. The 219-acre Urban parcel, which was originally zoned by Kaua'i County ordinance for 738 single-family units, 1,000 multi-family residential units, open space/park, and commercial use, was originally intended as the first phase of the Project. The storm surge from Hurricane Iniki severely impacted the makai portion of the 219-acre Urban parcel and caused Petitioner to revise its master plan to (i) contain golf course fairways within the area impacted by the hurricane, (ii) move the residential units to the mauka areas out of the surge zone, and (iii) seek reclassification of the Property to provide for an expanded revised Phase I to contain proposed 1,600 residential units and 828 visitor accommodation units, consisting of 628 timeshare/condominium units and 200 hotel rooms. The visitor accommodation units could be increased by up to 200 units through the use of lock-out design features.

14. The Project is projected to be built-out over a period of approximately 25 years. It was initially anticipated that this would allow for absorptions of 100 to 140 residential units per year, but it is now anticipated that the absorption rate will be significantly lower.

15. Construction and marketing of the residential units will proceed in phases, generally from east to west across

the Property. The schedule contemplates a final completion of the Project following the year 2020.

16. The total cost of the Project at full build-out is estimated at \$915 million ("M") (in 1998 dollars) as follows:

Offsite and Backbone Infrastructure	\$140 M
Golf Course and Clubhouse	\$ 22 M
Wetland	\$ 3 M
On-Site Infrastructure (Residential and Commercial)	\$150 M
Structures (Residential and Commercial)	<u>\$600 M</u>
TOTAL COST	\$915 M

**Findings of Fact number 30** in the Commission's First Decision and Order relating to financial capacity to undertake the proposed development is modified by the following finding of fact:

17. The audited Consolidated Financial Statements of A & B-Hawaii, Inc., and its subsidiaries which include Petitioner, for the years ended December 31, 1997, and 1996 as reported by the independent auditor, Deloitte & Touche, reflect as of December 31, 1997 total assets of \$608,059,000, including total current assets of \$120,908,000; net land, buildings, machinery and equipment, and other property improvements of \$355,110,000; real estate developments of \$68,056,000; other assets of \$50,557,000; note receivable from affiliate of \$12,239,000; and investments of \$1,189,000. Total liabilities and equity of \$608,059,000 include total current liabilities of \$64,343,000; total long-term liabilities of \$247,422,000;

deferred income taxes of \$72,932,000; and shareholder's equity of \$223,362,000.

**Finding of Fact number 36** in the Commission's First Decision and Order relating to State and County plans and programs is modified by the following finding of fact:

18. The Petition Area is zoned agriculture, open, residential, and commercial under the County's Zoning Map.

**Finding of Fact number 40** in the Commission's First Decision and Order relating to residential market is modified by the following finding of fact:

19. The approximately 3,400 dwelling units proposed for the Project would serve a significant share of the market-priced housing needs of Kaua'i for the foreseeable future and would serve to partially satisfy the need for affordable housing.

**Findings of Fact numbers 43 and 44** in the Commission's First Decision and Order relating to the marina market are modified by the following finding of fact:

20. The small boat marina that was proposed as a part of the Town Center concept will not be developed under the Kukui'ula Bay Village concept.

**Findings of Fact numbers 48 and 49** in the Commission's First Decision and Order relating to the commercial space market are modified by the following findings of fact:



21. The resort commercial center and neighborhood shopping facilities are intended primarily to serve the commercial needs of residents and visitors at Kukui'ula Bay, and secondarily, the demand for retail space in the Koloa and Po'ipu area as a whole.

22. The demand for the planned shopping facilities was estimated based on the typical amount of commercial space required per household on Kaua'i, the Project's proposed number of residential units, and the additional demand generated from the Po'ipu Resort and surrounding visitor attractions. The commercial space requirement for the Kukui'ula community could reach a total of about 242,000 square feet at full build-out. Assuming a floor area ratio (FAR) of 20 percent, about 28 acres of commercially designated site areas could be supported.

23. The resort commercial center is planned to include restaurants, shops, and craft galleries, and will serve as a common venue for cultural activities. The center will be located adjacent to the hotel site to primarily serve resort visitors. The center is intended to be integrated into the resort area through walkways, landscaping and architectural design and be contained within an approximately 4-acre area, which is substantially smaller than the area originally allocated for commercial uses under the previously proposed town center concept.

**Finding of Fact number 50** of the Commission's First Decision and Order relating to the visitor accommodation market is modified by the following findings of fact:

24. The two inns that were proposed to accommodate visitors will not be developed. A resort hotel and timeshare condominium units are planned for visitor accommodations.

25. The planned visitor accommodations at the Project site include a resort hotel of approximately 200 rooms on a 20-acre site and two 150-unit timeshare/condominium projects containing 300 rooms on two sites totaling about 30 acres. Lockout provisions for the timeshare/condominium units could expand the units to provide 200 additional visitor accommodations. Additionally, 328 condominium units are designated in an area adjacent to the Lawa'i Beach Villas, and will likely be used for visitor accommodations.

26. Current market conditions point to a hotel of approximately 200 rooms, but changes in market conditions that increase demand may justify a larger hotel.

27. Petitioner's consultant does not recommend the traditional four-to-five star hotel for the Project; instead, a hotel with an ecotourism image or theme and possessing a distinctly different appeal is recommended. The consultant recommends a hotel with a lower price point, combining bungalows and low-rise structures with generous landscaping and grounds augmented by other on- and off-site features for potential ecotourism activities.

**Findings of Fact numbers 58 to 61, inclusive,** in the Commission's First Decision and Order relating to social impacts are supplemented by the following findings of fact:

28. An updated issues analysis study was prepared by Earthplan in April 1998 to identify and update issues from the previous October 1993 study. The updated study focused upon issues related to the conceptual plan changes in the Project since that time, including the deletion of the marina and the Town Center commercial area and the revision of the conceptual plan to include resort hotel, timeshare/condominium, and resort commercial uses. As in the 1993 study, the selection of interviewees was geared by achieving a cross-section of community interests and includes a total of 47 persons, 19 of whom were participants in the 1993 study.

29. The 1998 updated issues analysis summarized community feelings on the characteristics of the revised conceptual plan of the Project, as follows:

a. The most positive characteristic of the revised plan was its potential to stimulate the regional and island economy. Interviewees stressed that the magnitude of economic activity, the Project's construction and long-term employment, and the secondary effects upon other businesses are sorely needed in these poor economic times. Employment generated by the Project was viewed as crucial to the revitalization of the Koloa-Po'ipu region.

b. Non-boaters felt that the elimination of the marina was a positive aspect of the plan, primarily because

previous opposition and concerns were voiced regarding the environmental effects from dredging and other construction activity related to the marina. Conversely, boaters expressed disappointment that the marina had been deleted.

c. The botanical theme and the siting of development mauka of Lawa'i Road and away from the shoreline was viewed positively. The proposed wetland concept was viewed positively and seen as following the natural function of that portion of the Property. The potential of providing habitat for rare and endangered species was also noted.

d. Concerns expressed in the study related to increased traffic, beach crowding in the Po'ipu region and the influx of outsiders who tend to influence community affairs. Concern relating to the marketability of an off-beach resort at the Property was also mentioned. Also noted was the need to emphasize the residential component of the Project.

**Findings of Fact numbers 65 and 66** in the Commission's First Decision and Order relating to impacts on agricultural resources are modified by the following findings of fact:

30. McBryde cultivated 7,300 acres of sugarcane including approximately 480 acres located within the Petition Area. McBryde ceased doing business as a sugar plantation to concentrate on the business of growing coffee and other diversified crops. The 480 acres were still in sugarcane cultivation when the termination of the sugar plantation operation was announced in 1995. Sugarcane cultivation on the

480 acres ceased in 1996 with McBryde's closure of its sugar plantation operation.

**Findings of Fact numbers 76 and 77** in the Commission's First Decision and Order relating to archaeological resources are modified by the following findings of fact:

31. An archaeological data recovery plan was approved by the Historic Sites Division of the State Department of Land and Natural Resources ("DLNR") and the Kaua'i County Planning Department in 1990, and data recovery has taken place for 32 sites within the 219-acre Urban parcel and for 9 sites located within the Property which have been affected by construction activities. Data recovery on six additional sites was completed in 1998 pursuant to a Data Recovery Plan approved in 1997.

32. Four sites within the Property still require data recovery, and seven sites will be preserved. As approved by DLNR and the County of Kaua'i Historic Preservation Review Commission, archaeological data recovery will be performed on the ten sites to extract important historical information. A preservation plan will be prepared for the seven sites that have been recommended for preservation on the Property. These sites include the heiau to the west, the Portuguese oven and house site, and the five cave sites to the east.

**Findings of Fact numbers 81 to 94, inclusive, and 96 to 108, inclusive,** in the Commission's First Decision and Order

relating to flora and fauna are supplemented by the following findings of fact:

33. The proposed enhancement of the existing drainage basin as a permanent wetland will be designed to be an attraction to a variety of the water bird species. A conceptual design plan for the wetland that incorporates design, engineering, and biological considerations has been prepared by Petitioner's consultant, Oceanit Laboratories, Inc. The objective is to create a design that accommodates the necessary flood water holding and desilting capacity of the existing stormwater retention/detention basin and which provides adequate habitat for wetland birds and plants.

34. The wetland is intended to be functional to a wildlife habitat and also serve as an amenity to adjacent properties. Defined pathways and viewing areas through the wetland will allow visitors to view various habitats without threatening wildlife. Aesthetic (waterfalls, viewing platforms) as well as operational considerations (maintenance, water circulation, pest control) would be incorporated into the design.

35. Initial water quality analysis at sites within the basin indicated a low salinity level, which would allow a range of plant species. Appropriate plants for the wetland, consistent with the overall design, have been suggested in a study by Petitioner's consultant, William H. Magruder, Ph.D., who has proposed measures for initial propagation and long-term care and maintenance of plant species.

36. In 1995, a Cooperative Agreement between Petitioner and the USFWS, Region 1, was entered into for the purpose of restoring and protecting the subterranean habitats of the blind wolf spider and amphipod.

**Finding of Fact number 95** in the Commission's First Decision and Order relating to flora and fauna is modified by the following finding of fact:

37. The deletion of the marina will avoid the elimination of a small frontage on the bay and a white sand beach flanked by a rocky coastline.

**Findings of Fact numbers 109 to 112, inclusive,** in the Commission's First Decision and Order relating to visual resources are supplemented by the following finding of fact:

38. The proposed wetland is planned to be located immediately mauka of Lawa'i Road across from Kukui'ula Bay. The wetland will act as an open space buffer between the resort area of the Project and Kukui'ula Bay.

**Finding of Fact number 115** in the Commission's First Decision and Order relating to recreational resources is amended by the following finding of fact:

39. An impact on the area's recreational facilities is expected from the increase in population generated by the proposed Project. The Project will also add new recreational facilities that can be used by the community, including:

- a. wetland habitat for viewing flora and fauna,
- b. 18-hole golf course,
- c. 15-acre archaeological park,
- d. several historical preserve areas,
- e. active and passive parks,
- f. open space areas,
- g. dedication of land for expansion of Prince Kuhio Park, and
- h. pedestrian and bike paths.

**Findings of Fact** in the Commission's First Decision and Order are supplemented with the subject of traditional practices by the following findings of fact:

40. A portion of the 77-acre parcel consists of a developed drainage basin system to serve adjoining lands.

41. There are no unique topographical features on the 77-acre parcel. Archaeological sites indicating habitation and activities are located and concentrated in an area outside of and away from the 77-acre parcel.

42. Appropriate access to the archaeological sites on areas outside the 77-acre parcel that are being preserved and maintained is or will be made available by Petitioner.

43. The 77-acre parcel is a portion of lands that had been under commercial sugarcane cultivation since at least as early as the late 1890s until the recent closure of McBryde in 1996.



44. Based on the history of the 77-acre parcel and the current, existing use of the developed drainage basin, and the absence of natural and cultural resources thereon, the impact of the development of the 77-acre parcel on traditional practices appears minimal.

**Findings of Fact numbers 124 and 125** in the Commission's First Decision and Order relating to water quality and marine communities are modified by the following finding of fact:

45. The deletion of the marina avoids impacts of a marina to offshore water quality and marine habitat. Both the short-term (construction) and longer term (operational) environmental impacts from a marina will not occur because of the deletion.

**Findings of Fact numbers 127 to 134, inclusive**, in the Commission's First Decision and Order relating to air quality are supplemented by the following finding of fact:

46. McBryde has ceased its business of sugarcane cultivation in 1996, and air emissions related to sugarcane cultivation and operation affecting the Project are no longer being generated.

**Findings of Fact numbers 135 to 141, inclusive**, in the Commission's First Decision and Order relating to aural quality are supplemented by the following finding of fact:

47. With the closure of the sugarcane cultivation and operation of McBryde, the noise relating to sugarcane cultivation and operations otherwise affecting the Project is no longer being generated.

**Findings of Fact numbers 142 to 151, inclusive,** in the Commission's First Decision and Order relating to transportation facilities are supplemented by the following findings of fact:

48. An updated traffic impact analysis, based on the revised conceptual plan for the Project has been prepared in May 1998 by Petitioner's traffic consultant, Julian Ng, Incorporated, to determine any significant changes to previous traffic projections and recommendations. The regional impacts of the proposed changes in the Project will be minimal. Peak hour volumes on Kaumuali'i Highway, Maluhia Road, and Koloa Road are expected to increase slightly; however, the improvements recommended in the islandwide long-range land transportation plan would still be applicable and would serve the projected volumes at acceptable levels of service.

49. The timing of the construction of the "Western Bypass Road" is not worsened by the revised conceptual plan for the Project. The timing and provision of this roadway is specified pursuant to requirements of the County of Kaua'i. The completion of the Koloa-Bypass Road (Eastern Bypass Road) from Koloa, north to Maluhia Road, will divert some traffic and decrease traffic volume passing through Koloa Town. Construction of this road is scheduled to commence in late 1998.

50. The proposed changes under the revised conceptual plan will not have a significant effect on previous traffic estimates for this Project, and earlier traffic mitigation recommendations are still valid.

**Findings of Fact numbers 152 to 157, inclusive,** in the Commission's First Decision and Order relating to water services are supplemented by the following findings of fact:

51. To address the concerns of the Oma'o residents concerning their use of septic tanks near the Oma'o wells, Petitioner applied to the State Department of Health ("DOH") for a variance from Chapter 11-62 of the Hawai'i Administrative Rules ("HAR"). The DOH concluded that no variance was required to utilize septic tanks within 1,000 feet of the Oma'o wells, and Oma'o residents may continue the use of their septic tanks.

52. The DOH does not concur with the deletion of Condition No. 13. Health and safety concerns have not been resolved regarding wastewater disposal for the properties surrounding the Oma'o wells. The County of Kaua'i's Department of Water must review and concur with the Mink and Yuen Report, which has not been resolved. Petitioner has not submitted evidence that the County Department of Water has concurred with the Mink and Yuen Report, as stated in Petitioner's Exhibit 5.

**Findings of Fact numbers 170 to 175, inclusive,** in the Commission's First Decision and Order relating to drainage are supplemented by the followings finding of fact:

53. The DOH indicates that a Section 401 Clean Water Permit (NPDES) was obtained by Petitioner for its drainage plan. The drainage plan was approved by the DOH for a storm water retention capacity of the wetland area for 23.8 acre-feet. The existing basin only retains about 5-acre feet of water. Creation of the wetland may involve issues related to the discharge of storm water associated with construction activities. Consultation with the DOH Clean Water Branch should take place to ensure that storm water issues related to the wetland construction are adequately addressed in the NPDES.

54. To lower the water level in the wetland following a storm, a pump will be provided to direct the excess water to two potential locations. A 20 HP pump can be used to pump water upland for irrigation (about 40 feet high) to the golf course or nearby agricultural fields. In cases such as a two to three year storm when the flood water elevation of seven feet will be reached, excess flood water will overflow into the ocean until rains subside.

55. If upland soils in the golf course and agricultural fields are saturated during and immediately after the storm, the water may be pumped to an upland reservoir (using 40 HP pumps) such as Aepoeha at an elevation of approximately 170 feet. However, this alternative would involve substantial economic costs for pumping the water to this elevation and would require proper management of the Aepoeha Dam. If upland soils are saturated after a storm and pumping water to the Aepoeha Reservoir is impractical or impossible because of flooding, the

wetland may have to remain underwater until soils become more permeable. In general, most of the plants proposed for the wetland are hearty and can survive underwater conditions up to a month. If the wetland remains flooded over a month, maintenance dredging and replanting of wetland plants may be necessary. A third option would involve creating a direct outflow to the ocean when flood waters exceed a certain level. The DOH would probably consider this a new discharge and a new NPDES would probably be required. The NPDES would probably require at least partial treatment to remove sediment load.

**Finding of Fact number 194** in the Commission's First Decision and Order relating to conformance with the Hawaii State Plan is supplemented by the following finding of fact:

56. The purpose and manner of deleting the marina, adding the wetland, and changing the Town Center concept to the Kukui'ula Bay Village concept to enhance the feasibility of the Kukui'ula Planned Community Project are consistent with the Hawai'i State Plan, Chapter 226, Hawai'i Revised Statutes ("HRS"), as amended with respect to the objectives and policies under §226-5(b)(2), §226-6(a)(2), §226-8(b)(1), §226-11(b)(6), §226-12(b)(1), and §226-15(b)(1).

**Finding of Fact number 197** in the Commission's First Decision and Order relating to conformance to State land use urban district standards is modified by the following finding of fact:

57. The Project is in close proximity to employment areas of Koloa Town and the Po'ipu area. The Project will create employment opportunities through development of the commercial center, a golf course, and visitor accommodations.

**Finding of Fact number 202, subsection a,** in the Commission's First Decision and Order relating to conformance to coastal zone management policies and objectives is modified by the following finding of fact:

58. The small boat marina that was proposed as part of the Town Center concept will not be developed under the Kukui'ula Bay Village concept. The marina will be replaced with a wetland. If a very wet winter occurred, and the wetland filled up and stayed full for a long period of time, one alternative would be to filter the water and dispose it through an injection well or into the ocean. The existing drainage basin on the Property overflowed three times in five years due to huge storm events and the basin would have overflowed during these huge storm events no matter how much capacity was involved.

**Findings of Fact number 202, subsection e,** in the Commission's First Decision and Order relating to conformance to coastal zone management policies and objectives as modified by the following finding of fact:

59. After Hurricane Iniki, the location of the residential components of the Project have been moved from the initial storm surge areas to the mauka areas.

Findings of Fact numbers 204 to 206, inclusive, in the Commission's First Decision and Order relating to incremental districting are modified by the following findings of fact:

60. To effectuate the development of the Property in two phases, Petitioner proposes incremental districting of the Property under §15-15-78, HAR, in a manner as will provide for approximately 614.313 acres of the Property to be designated within the first increment and approximately 207.829 acres of the Property to be designated within the second increment.

61. Phase I includes portions of the Property and the 219-acre Urban Parcel. Those portions of the Property are specifically identified as TMKS 2-6-03: por. 1, 21, por. 32, and 63; 2-6-04: por. 16, por. 38, por. 39, por. 40, and por. 45. The proposed uses in Phase I include approximately 1,600 residential units, 828 visitor accommodation units, golf course and clubhouse, wetland and commercial area, parks, public facilities, a botanical garden visitor center, a sewage treatment plant, school expansion site, and affordable housing sites.

62. Phase II includes portions of the Property and is specifically identified as TMK 2-6-03: por. 1 and por. 31. Phase II uses include approximately 744 residential units, parks, and open space.

SUPPLEMENTAL AND/OR MODIFIED RULING

ON PROPOSED FINDINGS OF FACT

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

In addition, the findings of fact adopted herein supplement and/or modify findings of fact of the Commission's Decision and Order dated May 18, 1995, as incorporated herein, and where findings of fact adopted herein are contrary to findings of fact in the Commission's May 18, 1995, Decision and Order, the findings adopted herein shall prevail.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the State Land Use Commission Rules under Chapter 15-15, HAR, the Commission finds upon a preponderance of the evidence that the incremental reclassification of the Property, as modified herein, consisting of approximately 822.142 acres of land in the Agricultural District, situate at Lawa'i, Koloa, Island of Kaua'i, State of Hawai'i, Tax Map Key Nos.: 2-6-03: por. 1, 21, por. 31, por. 32, and 63; 2-6-04: por. 16, por. 38, por. 39, por. 40, and por. 45, to the Urban District, for the development of a planned community to include single-family residential, multi-family residential, golf course, clubhouse, resort hotel, commercial center, wetland, school expansion, sewage treatment plant, botanical garden visitor center, parks and open spaces, and is subject to the



conditions in the Order below, is reasonable, nonviolative of Section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in Chapter 226, HRS, and the Coastal Zone Management Program as set forth in Chapter 205A, HRS.

ORDER

IT IS HEREBY ORDERED that a portion of the Property, consisting of approximately 614.313 acres of land in the State Land Use Agricultural District situate at Lawa'i, Koloa, Island of Kaua'i, State of Hawai'i, identified as Tax Map Key Nos. 2-6-03: por. 1, 21, por. 32, and 63; 2-6-04: por. 16, por. 38, por. 39, por. 40, and por. 45, as approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, and further identified as Increment I, shall be and is hereby reclassified to the State Land Use Urban District and the State Land Use District Boundaries shall be amended accordingly.

IT IS HEREBY FURTHER ORDERED that the portions of the Property consisting of approximately 207.829 acres in the aggregate in the State Land Use Agricultural District, situate at Lawa'i, Koloa, Island of Kaua'i, State of Hawai'i, identified as Tax Map Key Nos. 2-6-03: por. 1 and por. 31, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, and further identified as Increment II, shall be and the same is hereby incrementally reclassified pursuant to Section 15-15-78, HAR, and that redistricting from the State Land Use Agricultural District to the State Land Use Urban District may be granted upon receipt of an application by Petitioner for redistricting of Increment II upon a prima facie showing that

Petitioner has made substantial completion of the offsite and onsite improvements for Increment I and has substantially complied with the conditions imposed herein.

IT IS FURTHER ORDERED that the reclassification of Increment I from the Agricultural District to the Urban District and incremental districting of Increment II from the Agricultural District to the Urban District shall be subject to the following conditions which shall replace the conditions set forth in the Commission's First Decision and Order:

1. For Increment II, Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawai'i to the satisfaction of the County of Kaua'i in accordance with County of Kaua'i housing guidelines. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County of Kaua'i.

2. As a condition for the development of Increment II, an affordable housing master plan shall be prepared by Petitioner and approved by the County of Kaua'i's Housing Agency and the Planning Department. The approved master plan, which shall be carried out by Petitioner, shall address the types of housing, location, income levels, and timing of construction.

3. Petitioner shall initiate and fund a nearshore water quality monitoring program. The monitoring program shall be approved by the State Department of Health in consultation with the U.S. Fish and Wildlife Service, the National Marine

Fisheries Service, and the State Division of Aquatic Resources, Department of Land and Natural Resources. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the DOH in consultation with the above mentioned agencies, and the County Public Works Department. Petitioner shall coordinate this consultation process with the concurrence of the DOH.

4. Petitioner shall implement effective soil erosion and dust control measures during construction to the satisfaction of the State Department of Health and the County of Kaua'i.

5. 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, Chapter 342G, Hawai'i Revised Statutes.

6. Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Kaua'i Department of Public Works as necessary and appropriate to service the needs of the Project area.

7. Petitioner shall comply with the recommendations of the State Department of Health, dated August, 1994 (Version 5), and entitled "Guidelines Applicable to Golf Courses In Hawai'i".

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

9. Petitioner shall provide its fair share of costs to fund and construct adequate civil defense measures to service the Property and surrounding area as determined by the State and County of Kaua'i civil defense agencies.

10. Petitioner shall provide a fair-share contribution for school facilities to the satisfaction of the State Department of Education ("DOE"). In the following manner: A) Petitioner shall donate in fee simple seven (7) acres for the expansion of Koloa Elementary School with all infrastructure provided at no cost to DOE; B) Petitioner shall donate in fee simple twelve (12) acres of usable land for a second elementary school site within the Property, with all infrastructure provided at no cost to DOE; C) The infrastructure provided shall include a sewer connection for the above mentioned 12-acre site, 7-acre site and the Koloa Elementary School from Petitioner's existing Sewage Treatment Plant at no cost to the DOE. The timing of the conveyances of the lands and the location of the 12 acre site shall be determined by mutual agreement between Petitioner and the DOE. Petitioner and the DOE shall submit a written agreement on this matter prior to Petitioner obtaining approval for county zoning.

11. Petitioner shall participate in the pro rata funding and construction of local and regional roadway improvements necessitated by the proposed development in designs

and schedules accepted by the State Department of Transportation and the County of Kaua'i.

12. Petitioner shall make available recreational facilities which are developed within the Project, including available adequate golf tee times, for public play at rates which shall include Kama'aina rates.

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

14. Petitioner shall work with the residents of Oma'o and the County of Kaua'i Department of Water Supply to resolve concerns regarding the Oma'o wells(s).

15. Petitioner shall complete the following:

a. Ten significant historic sites within the Property identified by Petitioner's archaeological consultant not recommended for preservation shall be subject to archaeological data recovery work. An archaeological data recovery plan shall be submitted to the State Historic Preservation Division for approval, the successful execution of which plan shall be verified in writing by the Division prior to the start of land altering activities of those areas which are proximate to the historic sites and could adversely impact upon the historic sites.

b. Seven additional significant historic sites within the Property identified by Petitioner's archaeological

consultant and recommended for preservation shall be preserved. A preservation plan shall be submitted to the State Historic Preservation Division for approval, prior to the start of land altering activities of those areas which are proximate to the historic sites and could adversely impact upon the historic sites.

16. Petitioner shall conduct a biological survey for terrestrial invertebrates (Kaua'i blind wolf spider and Kaua'i cave amphipod), and a study to determine the extent of the caves on the surface. The study shall include a buffer area of a minimum of 100 feet around the perimeter of the lava tube caves. The survey and study shall be completed prior to obtaining zoning approval from the County of Kaua'i. Petitioner shall consult with the U.S. Fish and Wildlife Service ("USFWS") regarding the content and completeness of both studies. Petitioner shall develop with the USFWS a conservation plan establishing specific conditions for the conservation of the cave animals and their habitat. Such conservation plan shall be legally enforceable in a court of law and will run with the land as an encumbrance on title. The plan shall be accepted and approved by the USFWS. The USFWS must also verify in writing to the Commission, the successful execution of the study, and the implementation of the mitigation/conservation plan. Petitioner shall consult with the USFWS prior to any blasting, movement of heavy construction equipment, roadway construction, or grading in areas which may impact terrestrial invertebrates.

17. Petitioner, successors, agents, transferees, or assigns shall comply with any conservation agreement with the U.S. Fish and Wildlife Service related to terrestrial invertebrates (Kaua'i blind wolf spider and Kaua'i cave amphipod).

18. Increment I and that portion of the adjoining 219-acre Urban parcel to be developed with Increment I ("County Zoning Phase 1") shall be limited to 1,738 market residential units along with the various Project components.

19. Bike paths and pedestrian walkways shall be caused to be provided by Petitioner along the major roadways within the Property and the adjoining 219-acre Urban parcel.

20. Petitioner shall (i) provide land for, and or access to, a site for the disposal of construction materials from the Project, or (ii) contribute a pro rata share in developing a disposal site, or (iii) construct a facility in connection with the disposal site.

21. Prior to any application for County zoning within Increment II, Petitioner shall resolve with the County the Petitioner's

(i) contribution to pro rata share of improvements to Maluhia Road, including widening and realignments;

(ii) contribution to pro rata share of improvements to Po'ipu Road from Koloa Town to the Project site; and

(iii) timing of the construction of the westerly by-pass road to avoid congestion on Po'ipu Road, particularly through the Koloa Town area.

22. Building setback lines shall be established along the rim of Lawa'i Kai Bay and or Lawa'i Valley at not less than 50 feet from the edge of the rim.

23. Petitioner shall cooperate with the County of Kaua'i in implementing a program for a shoreline land acquisition for park and or hazard mitigation purposes as may be undertaken by the County.

24. Prior to County zoning approval of the County Zoning Phase II, an agreement between Petitioner and the County of Kaua'i shall be formulated that covers the elements which Petitioner will be participating in contributing its pro rata share toward items that are determined to provide regional and or islandwide benefits (excluding items which service the Project) for which Petitioner shall be credited against County requirements affecting the Project.

25. Petitioner shall provide public access to the wetland lagoon area to the extent feasible.

26. As permitted by law, Petitioner shall provide employment opportunities in the Project to give preference to those persons who have been or will be displaced by the withdrawal of sugarcane lands.

27. Petitioner shall work with the State Commission on Water Resource Management in the development of the



lagoon/wetland to ensure that the water resources of the area are protected.

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

29. 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 interests in the Property prior to development of the Property.

30. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kaua'i Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or has been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

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

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


IT IS FURTHER ORDERED that the 10-acre portion of the Property, identified as TMK 2-6-03:63, the fee simple title of which is held by the National Tropical Botanical Garden, as described in Exhibit "B" attached hereto, is released and deleted from the application of the conditions imposed by the Commission in the Findings Of Fact, Conclusions Of Law, And Decision And Order Dated May 18, 1995, as amended herein.

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


LAND USE COMMISSION  
STATE OF HAWAI'I

By   
RUPERT K. CHUN  
Chairperson and Commissioner

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

By   
LAWRENCE N.C. ING  
Vice Chairperson and Commissioner

By (absent)  
P. ROY CATALANI  
Commissioner


By   
ISAAC FIESTA, JR.  
Commissioner

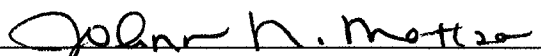
By (absent)  
HERBERT S.K. KAOPUA, SR.  
Commissioner

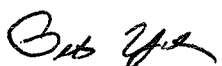
By   
MERLE A. K. KELAI  
Commissioner

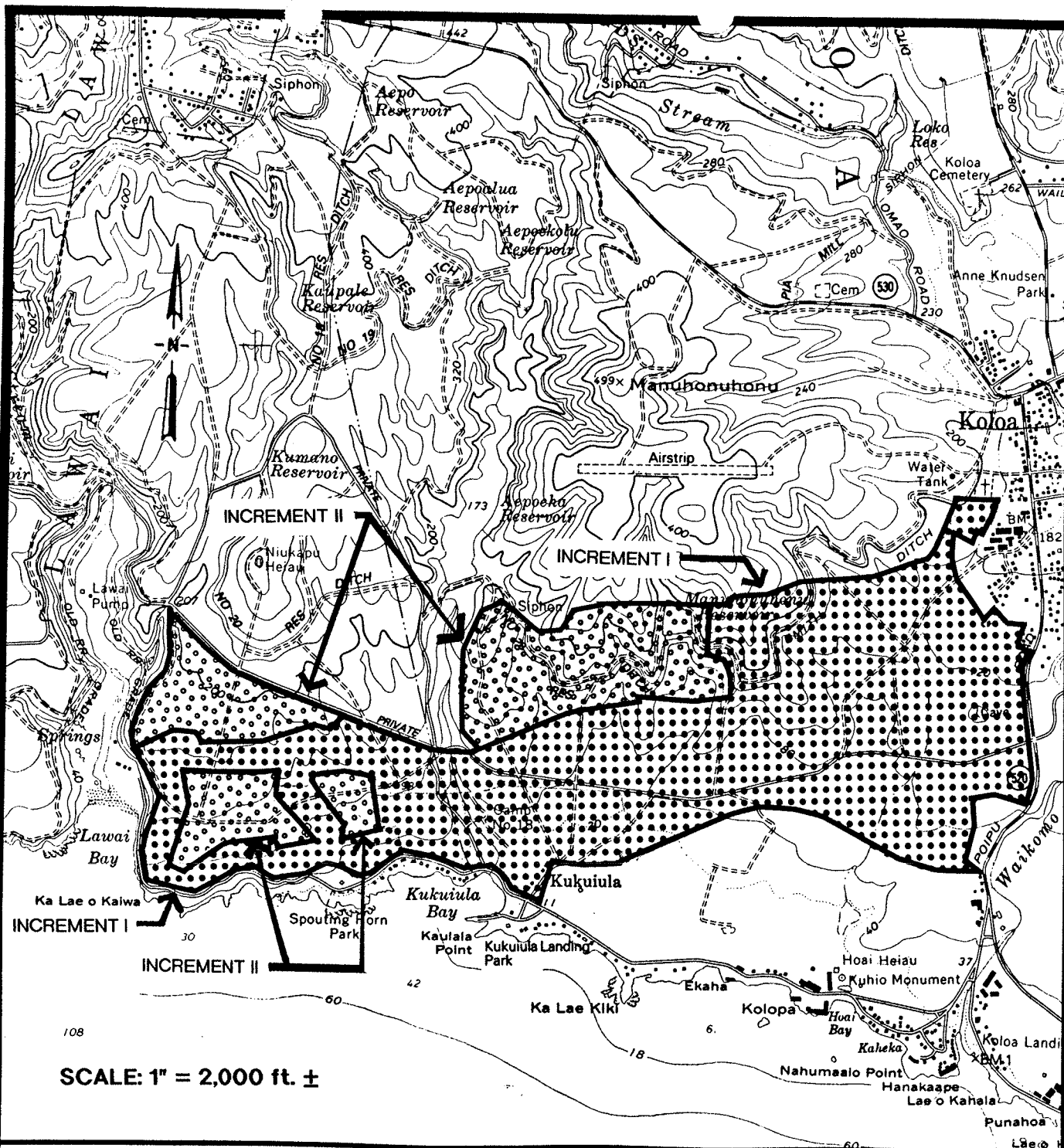
Filed and effective on  
June 22, 1998

Certified by:

  
Executive Officer

By   
JOANN N. MATTSON  
Commissioner

By   
PETER YUKIMURA  
Commissioner



## LOCATION MAP

**DOCKET NO. A93-696 / KUKUI'ULA DEVELOPMENT  
COMPANY, INC.**

**LAWA'I, KOLOA, KAUA'I, HAWAII**

### MODIFIED INCREMENT I

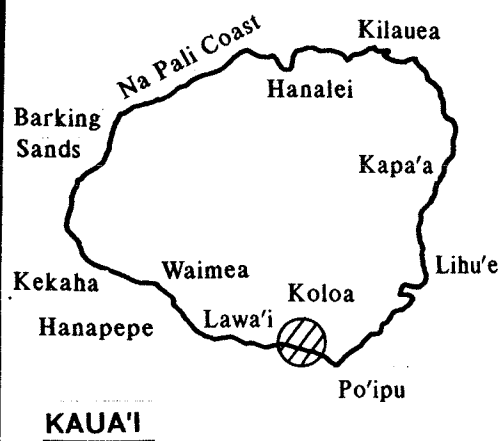


TAX MAP KEY NO.: 2-6-03: por. 1, 21, por. 32, 63; 2-6-04: por. 16, por. 38,  
por. 39, por. 40, and por. 45

## MODIFIED INCREMENT II



**TAX MAP KEY NO.: 2-6-03: por. 1 and por. 31**



# EXHIBIT "B"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4512, Mahele Award Number 43 to J.Y. Kanehoa) situate, lying and being at Lawai, Koloa, Kauai, Hawaii, State of Hawaii, being LOT A-1, and thus bounded and described as per survey of Ronald J. Wagner, Licensed Professional Land Surveyor, dated January 27, 1997, to-wit:

Beginning at the southwest corner of this parcel of land on the north side of Lawai Road, the coordinates of which referred to Government Survey Triangulation Station "WAHIAWA" being 9,149.38 feet south and 11,851.38 feet east and running by azimuths measured clockwise from true South:

1. 179° 48' 30.05 feet along the remainder of R.P. 4512, Mahele Award 43 to J.Y. Kanehoa;
2. Thence along the remainder of R.P. 4512, Mahele Award 43 to J.Y. Kanehoa; on a curve to the left with a radius of 275.00 feet, the chord azimuth and distance being:  
162° 12' 166.30 feet;
3. 144° 36' 95.14 feet along the remainder of R.P. 4512, Mahele Award 43 to J.Y. Kanehoa;
4. 250° 53' 108.43 feet along the remainder of R.P. 4512, Mahele Award 43 to J.Y. Kanehoa;
5. 238° 44' 104.11 feet along the remainder of R.P. 4512, Mahele Award 43 to J.Y. Kanehoa;
6. 258° 00' 760.40 feet along the remainder of R.P. 4512, Mahele Award 43 to J.Y. Kanehoa;
7. 347° 02' 30" 370.99 feet along the remainder of R.P. 4512, Mahele Award 43 to J.Y. Kanehoa;
8. Thence along the north side of Lawai Road on the curve to

the left with a radius of  
315.00 feet, the chord  
azimuth and distance  
being:

- |     |   |     |     |        |   |
|-----|---|-----|-----|--------|---|
|     | 63°   | 45' | 15" | 144.80 | feet;   |
| 9.  | 50°   | 28' |     | 259.00 | feet along the north side<br>of Lawai Road;   |
| 10. | Thence along the north side of Lawai Road on a curve to<br>the right with a radius<br>of 585.00 feet, the chord<br>azimuth and distance<br>being: |     |     |        |   |
|     | 58°   | 21' |     | 160.47 | feet;   |
| 11. | 156°  | 14' |     | 10.00  | feet along the north side<br>of Lawai Road;   |
| 12. | 66°   | 14' |     | 45.00  | feet along the north side<br>of Lawai Road;   |
| 13. | Thence along a curve to the right with a radius of 130.00<br>feet, the chord azimuth<br>and distance being:                                       |     |     |        |   |
|     | 96°   | 45' |     | 132.03 | feet;   |
| 14. | 127°  | 16' |     | 167.63 | feet along the north side<br>of Lawai Road;   |
| 15. | Thence along the north side of Lawai Road; on a curve to<br>the left with a radius of<br>265.00 feet, the chord<br>azimuth and distance<br>being: |     |     |        |   |
|     | 111°  | 14' | 21" | 146.33 | feet to the point of<br>beginning and containing<br>an area of 10.000 acres,<br>more or less. |

Together with a perpetual and non-exclusive  
30-foot wide easement identified as "Easement A-1", over and  
across land designated as Tax Map Key Nos. (4)2-6-3-1 and  
(4)2-6-2-4, for ingress and egress between the termination  
of the public roadway known as Lawai Road and Tax Map Key  
No. (4)2-6-2-4, pursuant to the terms of that certain Easement  
by and between McBryde Sugar Company, Limited and National  
Tropical Botanical Garden dated December 23, 1997, recorded  
concurrently with this Quitclaim Deed.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A93-696
	)	
KUKUI'ULA DEVELOPMENT COMPANY, INC.	)	CERTIFICATE OF SERVICE
	)	
To Amend the Agricultural Land Use	)	
District Boundary into the Urban	)	
Land Use District for approximately	)	
822.142 acres at Lawa'i, Koloa,	)	
Kaua'i, Hawaii, Tax Map Key Nos.:	)	
2-6-03: por. 1, 21, por. 31, por.	)	
32, and 63; 2-6-04: por. 16, por.	)	
38, por. 39, por. 40, and por. 45	)	
	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Supplemental and/or Modified Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL.        RICK EGGED, Director  
            Office of Planning  
            P. O. Box 2359  
            Honolulu, Hawaii 96804-2359

CERT.       DEE CROWELL, Planning Director  
            Planning Department, County of Kauai  
            Suite 473, Building A  
            4444 Rice Street  
            Lihue, Hawaii 96766

CERT.       HARTWELL H.K. BLAKE, ESQ.  
            County Attorney  
            Office of the County Attorney  
            County of Kauai  
            4444 Rice Street, #220  
            Lihue, Hawaii 96766

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

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



ESTHER UEDA  
Executive Officer