

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
STATE OF HAWAI'I, DEPARTMENT OF)
ACCOUNTING AND GENERAL SERVICES,)
DIVISION OF PUBLIC WORKS)
For a Special Permit to Establish)
and Operate a New Middle)
(Intermediate) School on Approxi-)
mately 18.01 Acres Within The State)
Land Use Agricultural District at)
Kapaa, Kawaihau, Kauai, Tax Map Key)
No.: 4-3-03: portion of 1.)

DOCKET NO. SP95-389
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

The State of Hawai'i, Department of Accounting and General Services, Division of Public Works ("Applicant") initiated this proceeding pursuant to Section 205-6, Hawai'i Revised Statutes ("HRS"), and Sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR"). The Land Use Commission ("LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On June 20, 1995, a Special Permit Application ("Application") to allow construction and operation of a new middle (intermediate) school on approximately 17.65 acres at Kapaa, Kawaihau, Kauai, was filed by AM Partners, Inc. on behalf

of the Applicant with the County of Kauai Planning Department ("Planning Department").

2. On July 27, 1995, the County of Kauai Planning Commission ("Planning Commission") conducted a public hearing on the Application. The public hearing was deferred due to notification requirements not being met.

3. On August 24, 1995, the Planning Commission conducted the deferred public hearing on the Application.

4. No oral public testimony was provided at the August 24, 1995 Planning Commission hearing. However, the Planning Commission received a letter from the Kapaa Elementary School PTSA.

5. On September 15, 1995, after due deliberation, the Planning Commission recommended approval of the Application to the LUC, subject to eight conditions.

6. On September 29, 1995, the LUC received a copy of the record of the Planning Commission's proceedings on the Application and the Planning Commission's decision.

7. On November 2, 1995, the LUC held a meeting in Honolulu, Oahu on the Application. Representing the Applicant were the following:

Mr. Eric Nishimoto, Department of Accounting and General Services
Mr. Taeyong M. Kim and Mr. Gary Asahina, AM Partners, Inc.

The Planning Department was not present at the meeting.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

8. The special permit area, as initially filed with the Planning Department, consists of approximately 17.65 acres

located at Kapaa, Kawaihau, Kauai, and is identified as Tax Map Key No.: 4-3-03: portion of 1 ("Property").

9. On November 2, 1995, the Applicant clarified that the actual special permit area consists of approximately 18.01 acres. This acreage corresponds to the acreage to be acquired from the current landowner, Lihue Plantation Company, Limited.

10. Lihue Plantation Company, Limited authorized filing of the Application.

11. The Property is located on Olohena Road in the southern end of Kapaa. Kapaa is located approximately 3/4 miles east of the Property.

12. The Property is owned in fee by Lihue Plantation Company, Limited. The Property is currently being acquired by the State of Hawai'i.

13. Current access to the Property is from Olohena Road. Access to the proposed middle school will also be from said road.

14. The Property is currently being utilized for sugar cane cultivation. The Property is bounded on the north by Olohena Road, and to the east, west, and south by Agricultural District lands upon which sugar cane cultivation continues.

15. According to the United States Department of Agriculture, Soil Conservation Service, soils on the Property are identified as Puhi silty clay loam. The soils have moderate shrink swell potential, and slow to moderately slow permeability.

16. Average slopes on the Property are approximately 2.6 percent and are considered gentle from northwest to southeast.

17. The Land Study Bureau's Detailed Land Classification System (with "A" being the best and "E" being the worst) classifies the overall productivity rating of agricultural lands in the area as "B", or good productivity rating.

18. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) system classifies the lands in the area as "Prime" Agricultural Lands.

19. Flood Insurance Rate Maps (FIRM) show that the Property is located in Zone X (outside of the 500 year flood plain).

DESCRIPTION OF PROPOSED USES

20. The Applicant is requesting the special permit to construct and operate a new middle (intermediate) school within the current service area for the school. This service area spans from the Wailua River to Haena.

21. The new middle school will be designed to accommodate a student population of approximately 1,100 students in grades 6 through 8.

22. The new middle school is proposed to be developed in one phase and will eventually include buildings for administrative offices, horticulture, foreign language/business, music, art/home economics, cafetorium, covered playcourt, physical education, library, three classroom pods, and other related improvements including walkways, landscaping, playfields,

drainage retention basin, septic tank(s), leach field(s), and expansion areas ("Project").

23. Also included in the Project are a bus loading/storage lane parallel to Olohena road and a minimum of 105 off-street parking stalls. Additionally, a portion of Olohena Road will be improved to mitigate a potentially hazardous line of sight condition and improve campus access.

NEED FOR PROPOSED USE

24. The Project is intended to serve the service area from the Wailua River to Haena and to relieve current and projected overcrowding within the school district. Additionally, the school will assist in furthering the district's commitment to reorganizing the school's grade structure into 3 separate levels by segregating younger adolescents from the same campus as high school students.

25. Currently, Kapaa High and Intermediate School has a capacity to serve 1,319 students and is operating beyond its capacity. Future projections show that by the Year 2010, enrollment for grades 7 through 12 for the service area will be approximately 2,200 students (750 students in grades 7 and 8; 1,450 students in grades 9 through 12).

26. Based on existing enrollments, population projections, and anticipated future developments, the Department of Education ("DOE") has determined that Kapaa High and Intermediate School facilities are inadequate to provide necessary service.

STATE AND COUNTY PLANS AND PROGRAMS

27. The Property is situated within the State Land Use Agricultural District, as depicted on the State Land Use District Boundary Map K-10 (Kapaa).

28. The Kauai General Plan designates the area as Urban Mixed Use (UMU).

29. The Kapaa-Lihue Planning Area Development Plan Map identifies the Property as a High School Site.

30. Current zoning for the Property is Agriculture (A). The Comprehensive Zoning Ordinance (CZO) for the County of Kauai identifies schools as a use which may be considered within the Agriculture (A) Zoning District through a Use Permit. A Use Permit was approved by the Planning Commission, together with a Class IV Zoning Permit and Special Permit.

31. Although the Property is within the Coastal Zone Management Area, the Property is not located within the Special Management Area as designated by the County of Kauai.

32. A Final Environmental Impact Statement ("FEIS") for the site selection for the Project was accepted by the Governor on June 23, 1994.

SUMMARY OF COUNTY, STATE AND FEDERAL AGENCY COMMENTS

County Agencies

33. The Department of Water stated no objections to the Application but noted that actual development of the area will be dependent upon adequacy of source, storage, and transmission facilities. Currently, source and storage facilities are

adequate. Transmission facilities will be required to be upgraded.

34. The Fire Department had no objections for the proposed use of the Property.

35. The Department of Public Works did not provide any comments on the Application.

State Agencies

36. The State Department of Health ("DOH") provided a number of comments for consideration. Comments included the requirement of meeting standards pursuant to various chapters of the Hawai'i Administrative Rules administered by the DOH, mandatory review of wastewater system plans, and obtaining necessary permits such as the National Pollution Discharge Elimination System (NPDES) permit.

37. The State Historic Preservation Division ("SHPD") of the Department of Land and Natural Resources noted that the Project will have "no effect" on significant historic sites. They also believed that the possibility of significant historic sites being present on the Property was minimal since the site has been utilized for sugar cane production.

38. The State Department of Transportation ("DOT") commented that intersection improvements, a traffic signal warrant study, and plan review will be required.

39. The State Department of Agriculture and the Office of State Planning did not provide any comments on the Project.

SOCIO-ECONOMIC IMPACTS

40. The Environmental Impact Statement/Site Selection Study ("EIS/Study") noted that one of the criteria for determining the site of a new campus are community effects. These criteria included displacement of existing residences or businesses, interference with other institutions, minimum disruption to a community's pattern of living, and preservation of aesthetic values.

41. The EIS/Study found that the Property did not displace any residences or businesses, was located away from institutions that require a "quiet zone" (i.e., hospital, rest home), and did not represent an aesthetic value to the community in its current state.

42. Overcrowding conditions at the current Kapaa High and Intermediate School has created an environment that is not conducive to the social and mental development of the students

43. The development of a new middle school campus would assist in providing students with a learning environment specifically designed for the transition years of schooling (grades 6 through 8).

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

44. Existing sugar cane cultivation being conducted on surrounding areas is anticipated to continue during and after construction of the Project.

45. Current sugar cane cultivation on the Property will be taken out of cultivation. This removal of agricultural lands will not have a significant impact.

46. The Applicant has represented that it will work with the landowner in order to minimize impacts or disruption to the agricultural operations of the landowner.

Scenic Resources

47. The Property does not offer ocean views but offers brief mountain views.

48. The Planning Department has recommended that the Applicant submit a landscape plan and building paint scheme during application for a building permit to mitigate any visual impacts that the Project may have.

Archaeological and Cultural Resources

49. The Property is not identified as culturally sensitive on County Cultural Sensitivity Maps. Further, the Property has been disturbed by cultivation of sugar cane.

50. The SHPD of the Department of Land and Natural Resources reviewed the Application and represented that the Project will have "no effect" on significant historic sites.

ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

Highway and Roadway Facilities

51. The Project will only be accessible from Olohena Road.

52. The DOT has recommended that intersection improvements would be required at the Kukui Street/Kuhio Highway and Lehua Street/Kuhio Highway intersections. The improvements

would include the provision of signalization and other mitigative measures.

53. The County of Kauai Department of Public Works recommended that improvements to Olohena Road be made as recommended in the Traffic Impact Study (dated May 8, 1995) completed for the Project. These improvements include widening and reconstruction of Olohena Road and left turn storage lanes. Additionally, the Department of Public Works recommended that an alternative route for access to the campus be explored.

Drainage

54. Impacts due to drainage will be addressed through the development of a detention basin. The detention basin is proposed to be located along the southern boundary of the Property.

55. The County of Kauai Department of Public Works has recommended that any improvements made in regards to drainage should be done in cooperation with their department.

Air Quality

56. An increase in dust will be a short-term impact during construction of the Project and related off-site improvements. However, the Applicant represents that the impacts will be minimized as it will be required to comply with necessary permit regulations and standards.

Noise

57. Noise from development of the Project will be short-term. Noise impacts will be minimized by complying with

necessary permits and noise abatement techniques, such as the limitation on hours of construction.

Water

58. Existing source and storage facilities for water are adequate to accommodate the Project. However, transmission facilities are inadequate.

59. The County of Kauai Department of Water has recommended that the Applicant construct a 16-inch mainline extension of approximately 5,850 feet beginning at Kawaihau and Kaapuni Road (Ornellas Tank) towards the County Stable Tank site.

Sewage

60. Existing or proposed system capacity has not been allocated for the Project.

61. A septic tank(s) and leaching field(s) will be located under the playfield to accommodate wastewater generated from the Project.

Electricity and Telephone Service

62. Electric and telephone lines are available for the Property.

MISCELLANEOUS IMPACTS

63. Sugar cane cultivation will continue on agricultural lands surrounding the Property. The use of pesticides, herbicides, and fertilizers for sugar cane cultivation may impact the Property and the students that will attend the new middle school.

64. The Applicant did not have any information as to the possible continued utilization of pesticides, herbicides, or fertilizers on adjacent sugar cane lands.

65. The Applicant represented that it would work with the landowner to mitigate any impacts to the Property and the students due to the utilization of pesticides, herbicides, or fertilizers on adjacent lands.

CONFORMANCE WITH SPECIAL PERMIT CRITERIA

66. The Planning Department, in its report to the Planning Commission on the Application, provided the following findings in regards to the Applicant's conformance with the guidelines for "unusual and reasonable use" authorized by a Special Permit under Section 15-15-95(b), Hawai'i Administrative Rules:

- (A) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission.

The use is not contrary to the objectives sought to be accomplished by the State Land Use Commission as the project is a reasonable use and will not significantly remove existing lands from productive agricultural use. The Applicant has indicated that the project will be coordinated with the current land owner in order to minimize impacts or disruption to the land owners agricultural operations.

- (B) The desired use would not adversely affect surrounding property.

The proposed facility should not adversely affect surrounding properties.

- (C) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection.

The use will not unreasonably burden public agencies to provide infrastructure improvements.

- (D) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

Unusual conditions, trends, and needs have arisen since the district boundary and rules were established, namely the increase in population and need for additional educational facilities.

67. Section 15-15-95(b), Hawai'i Administrative Rules also states the following guideline:

- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The Planning Department's evaluation did not discuss this guideline. However, because the Property is currently utilized for sugar cane cultivation, the land is suited for uses permitted within the State Land Use Agricultural District.

PLANNING COMMISSION RECOMMENDATION

68. At its meeting on September 14, 1995, the Planning Commission recommended approval of the Application to the LUC, subject to the following stated conditions:

1. In order to address visual concerns of the project from view points towards the north and south of the project area, it is recommended that the applicant submit a landscape plan and building color scheme for the review and approval of the Planning Department at time of building permit application.
2. As represented, the applicant shall provide a minimum of 105 off-street parking stalls on the subject property.
3. As represented, the applicant shall provide the detention basin and other applicable drainage improvements as required by the Department of Public Works and the State Health Department.

4. In accordance with Chapter 15 of the State Land Use Commission Rules, the applicant shall complete construction and commence operations on the property within two years of the date of approval of the Special Permit.
5. To address traffic impacts the applicant shall widen and reconstruct Olohena Road in the vicinity of the project area to provide driveway sight distance for safe ingress and egress on the project area. The applicant shall also provide left turn storage lanes on Olohena Road at the school driveway intersection. Driveway connections from the project to Olohena Road shall be limited to only two driveways to reduce traffic conflicts and problems. Said improvements shall be resolved with the Department of Public Works prior to commencement of school operations on the subject property.

The applicant shall explore the possibility of developing an alternative route or secondary access to site in order to improve traffic circulation and to alleviate potential impacts to Olohena Road. We recommend that the applicant explore this alternative with the Department of Public Works, Planning Department, the affected landowner(s), and the Department of Transportation during the subdivision process for the project.

The applicant shall further explore the possibility of providing a sidewalk along Olohena Road from its intersection with Malu Road to the project site. Along with the sidewalk, the applicant shall also explore the possibility of providing a crosswalk across Olohena Road. If both the sidewalk and crosswalk are feasible for the applicant, the applicant shall resolve the location and design of said improvements with the Department of Public Works at time of subdivision for the project.

6. The applicant shall resolve applicable traffic requirements or concerns along the intersections of Kukui Street/Kuhio Highway and Lehua Street/Kuhio highway with the State Department of Transportation prior to commencement of school operations at the site.
7. Applicable requirements of the State Health Department, County Fire and Water Departments shall be resolved with each respective agency(ies).

8. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

69. Any findings of fact that may be a conclusion of law shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

The Special Permit Application to construct and operate a new middle (intermediate) school constitutes an "unusual and reasonable" use as provided in Section 205-6, HRS, and as established in Section 15-15-95(b), Hawai'i Administrative Rules, and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that the Special Permit Application that is the subject of LUC Docket No. SP95-389, requesting the construction and operation of a new middle (intermediate) school on approximately 18.01 acres of land designated within the State Land Use Agricultural District, and identified as Tax Map Key No.: 4-3-03: portion of 1, situated at Kapaa, Kawaihau, Kauai, and approximately identified on "Exhibit A" attached hereto and incorporated by reference herein, is hereby approved and subject to the following conditions:

1. In order to address visual concerns of the Project from view points towards the north and south of the project area,

the Applicant shall submit a landscape plan and building color scheme for the review and approval of the Planning Department at time of building permit application. Upon approval by the Planning Department, a copy of the approved plan and building color scheme shall be filed with the Land Use Commission.

2. As represented, the Applicant shall provide a minimum of 105 off-street parking stalls on the subject Property.

3. As represented, the Applicant shall provide the detention basin and other applicable drainage improvements as required by the Department of Public Works and the State Health Department.

4. In accordance with Chapter 15 of the State Land Use Commission Rules, the Applicant shall complete construction and commence operations on the Property within two years of the date of approval of the Special Permit.

5. To address traffic impacts the Applicant shall widen and reconstruct Olohena Road in the vicinity of the project area to provide driveway sight distance for safe ingress and egress on the project area. The Applicant shall also provide left turn storage lanes on Olohena Road at the school driveway intersection. Driveway connections from the Project to Olohena Road shall be limited to only two driveways to reduce traffic conflicts and problems. Said improvements shall be resolved with the Department of Public Works prior to commencement of school operations on the subject Property.

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6. The Applicant shall resolve applicable traffic requirements or concerns along the intersections of Kukui Street/Kuhio Highway and Lehua Street/Kuhio highway with the State Department of Transportation prior to commencement of school operations at the site.

7. Applicable requirements of the State Health Department, County Fire and Water Departments shall be resolved with each respective agency(ies).

8. The Applicant is advised that additional government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agency(ies).

9. The Applicant shall prepare a metes and bounds description and map of the approximately 18.01 acre Special Permit area. The metes and bounds description and map shall be prepared by a registered professional surveyor and be submitted to the Planning Department and Land Use Commission.

10. The Applicant shall timely provide, without any prior notice, annual reports to the Planning Department and Land Use Commission in connection with the status of the subject Project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Land Use Commission.

11. The Land Use Commission may fully or partially release conditions provided herein as to all or any portion of the Property upon timely motion and upon a recommendation by the Planning Commission.

12. The Applicant shall work with the adjacent landowner to develop a plan to ensure that pesticides used on adjacent agricultural lands do not migrate to the school.

DOCKET NO. SP95-389 - STATE OF HAWAII, DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES, DIVISION OF PUBLIC WORKS

Done at Honolulu, Hawaii, this 21st day of November 1995,
per motions on November 2, 1995 and November 17, 1995.

LAND USE COMMISSION
STATE OF HAWAII

By Allen K. Hoe
ALLEN K. HOE
Chairperson and Commissioner

By Trudy K. Senda
TRUDY K. SENDA
Vice Chairperson and Commissioner

By Rupert K. Chun
RUPERT K. CHUN
Commissioner

By M. Casey Jarman
M. CASEY JARMAN
Commissioner

By (absent)
LLOYD F. KAWAKAMI
Commissioner

By Merle A. K. Kelai
MERLE A. K. KELAI
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

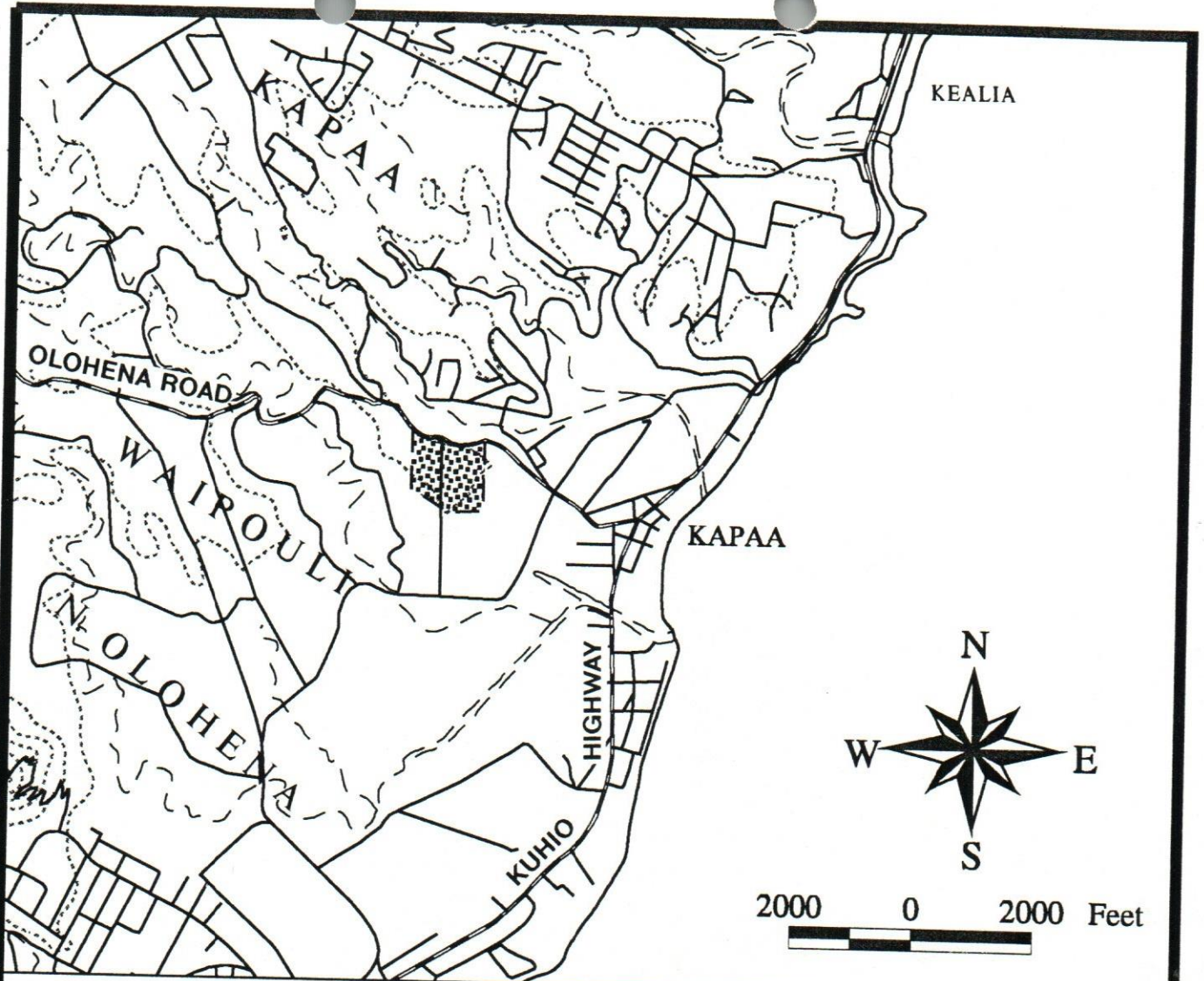
Filed and effective on
November 21, 1995

Certified by:

Robert L. ...
Executive Officer

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

By Elton Wada
ELTON WADA
Commissioner



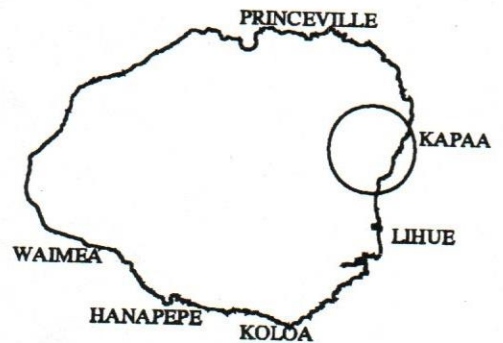
LOCATION MAP

DOCKET NO. SP95-389 / STATE
 OF HAWAII, Dept. of Accounting
 & General Services, Division of
 Public Works

TAX MAP KEY: 4-3-003: por. 001
 KAPAA, KAWAIHAU, KAUAI



APPROVED AREA



KAUAI

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DOCKET NO. SP95-389
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

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
4396 Rice Street, #202
Lihue, Hawaii 96766

CERT. GORDON MATSUOKA, State Public Works Engineer
Department of Accounting & General Services
P. O. Box 119
Honolulu, Hawaii 96810

DATED: Honolulu, Hawaii, this 21st day of November 1995.


ESTHER UEDA
Executive Officer