

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

In the Matter of the Petition of ) DOCKET NO. BR93-699  
)  
OFFICE OF STATE PLANNING, STATE OF ) ORDER PARTIALLY  
HAWAII ) APPROVING MOTION TO  
) RELEASE CONDITIONS  
To amend the Agricultural Land Use ) IMPOSED IN DECISION AND  
District Boundary into the Urban ) ORDER ON  
Land Use District for Approximately ) RECLASSIFICATION MADE A  
660 Acres of Land at Kea'au, Puna, ) PART OF THE COMMISSION'S  
Hawai'i Hawai'i, Tax Map Key No.: ) FINDINGS OF FACT,  
1-6-03: por. 3, por. 7, por. 8, ) CONCLUSIONS OF LAW, AND  
por. 11, por. 12, por. 13, por. 14, ) DECISION AND ORDER DATED  
por. 15, por. 68, 76 and 84 ) JULY 18, 1994  
\_\_\_\_\_)

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IMPOSED IN DECISION AND ORDER ON RECLASSIFICATION MADE A  
PART OF THE COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER DATED JULY 18, 1994

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LAND USE COMMISSION

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On February 7, 2000, Kamehameha Schools Bernice Pauahi Bishop Estate (hereinafter "Movant"), filed a Motion to Release Conditions Imposed in Decision and Order on Reclassification ("Motion"), and Memorandum of Support of Motion ("Memorandum"), pursuant to sections 15-15-70 and 15-15-94, Hawai'i Administrative Rules. This Motion is in conjunction with the Movant's special permit application, LUC Docket No. SP00-393/ Kamehameha Schools Bernice Pauahi Bishop Estate.

The Motion requested the Land Use Commission ("Commission") to either release Conditions Numbers One through Twenty-Four of the Findings of Fact, Conclusions of Law and Decision and Order Dated July 18, 1994, for approximately 64

acres identified as TMK No.: 1-6-03: portion of 012 (hereinafter "Motion Area"), or replace the conditions with the conditions imposed by the County of Hawaii Planning Commission (hereinafter "Planning Commission") on January 21, 2000, in the approval of the use permit and the special permit (SP00-393/Kamehameha Schools). The approximately 64 acres is a portion of Area C, one of four parcels comprising approximately 660 acres (hereinafter "Property") reclassified to the Urban District under LUC Docket No. BR93-699/Office of State Planning.

The Memorandum and the Affidavit of Robert E. Saunders, President of W. H. Shipman, Limited, a Hawaii corporation (hereinafter "Affidavit") were filed in support of the Motion. The Memorandum identified the Movant's intention to purchase approximately 300 acres of land from W. H. Shipman, Limited, a Hawaii corporation (hereinafter "Shipman") for the construction and operation of a permanent Kamehameha Schools Bernice Pauahi Bishop Estate East Hawaii campus comprising of an elementary, middle, and secondary school. The Affidavit states that Shipman has consented to the Movant filing the Motion.

In their letter dated November 22, 1999, Shipman notified the Commission of the purchase agreement with the Movant pointing out that the purchase agreement is contingent upon the Movant receiving the necessary permits and approvals, with a closing scheduled for May 19, 2000.

On February 10, 2000, the Commission received Shipman's Joinder to the Motion.

In its letter dated February 22, 2000, the Movant provided the Commission with a metes and bounds map clarifying the location and acreage of the Motion Area. Based on the metes and bounds map, Movant revised the acreage in its Motion from 64 acres to approximately 36.75 acres.

The Office of Planning (hereinafter "OP"), filed a written response on the Motion on March 1, 2000, and recommended that condition nos. 1, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, and 22 imposed in LUC Docket No. BR93-699/Office of State Planning be retained.<sup>1</sup>

On March 2, 2000, the County of Hawai'i filed a Statement of No Opposition to Movant's Motion.

On March 3, 2000, the Movant filed a Response To Office Of Planning And Land Use Commission Staff Comments.

The Motion was heard by the Commission on March 3, 2000, in Hilo, Hawaii. Certain amendments to the Motion were made during the hearing to which there were no objections.

At the hearing, a motion to approve Movant's Motion, as amended, was made and seconded. Following discussion, a vote on the motion to approve was taken. There being a vote tally of 5 ayes, 0 nays, with 4 excused, the motion to approve carried, having received the affirmative votes required by Section 15-15-13, HAR.

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<sup>1</sup> The Office of Planning amended their recommendation at the March 3, 2000, meeting to include condition no. 8.

ORDER

There being no objection to the Movant's Motion as amended by the parties during the hearing, and this Commission, having duly considered Movant's Motion, as amended, Memorandum, Affidavit, and the arguments presented by the parties in this proceeding, and the Commission having approved Movant's Motion,

Movant's Motion, as amended, is PARTIALLY GRANTED and the conditions for the approximately 36.75 acres of the Motion Area, identified as TMK No.: 1-6-03: portion of 12, and reflected in Exhibit "A" shall be replaced and substituted with the conditions as follows:

1. The developer and/or landowner of the Motion Area shall fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies.

2. The developer and/or landowner of the Motion Area shall consult with the Department of Health regarding the proposed wastewater system and if deemed necessary by the Department of Health, conduct monitoring for any potential impacts to groundwater resources.

3. The developer and/or landowner of the Motion Area 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.

4. The developer and/or landowner of the Motion Area shall have an archaeological inventory survey conducted by a

professional archaeologist prior to submitting an application to the County of Hawaii for rezoning or prior to applying for a building permit if county rezoning is not required. The findings of this survey shall be submitted to the State Historic Preservation Division, Department of Land and Natural Resources ("HPD-DLNR") in report format for adequacy review. The HPD-DLNR must verify that the survey report is acceptable, must approve significance evaluations, and must approve mitigation commitments for significant historic sites prior to the landowner and/or developer submitting an application to the county for rezoning or prior to applying for a building permit if county rezoning is not required.

5. If significant historic sites are present, then the developer and/or landowner of the Motion Area shall agree to develop and execute a detailed historic preservation mitigation plan prior to any ground altering construction in the area. The HPD-DLNR must approve this plan, and must verify in writing to the Land Use Commission that the plan has been successfully executed.

6. Should any human burials or any historic sites such as artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the developer and/or landowner of the Motion Area shall stop work in the immediate vicinity and contact the HPD-DLNR. The significance of these finds shall then be determined and approved by the HPD-DLNR, and an acceptable mitigation plan shall be approved by the HPD-DLNR (if needed).

The HPD-DLNR must verify that the fieldwork portion of the mitigation plans has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under the specific provisions of Chapter 6E, HRS.

7. The developer and/or landowner of the Motion Area shall prepare a Traffic Impact Analysis Report prior to applying for County zoning or prior to the developer and/or landowner applying for County building permits if county rezoning is not required. The landowner and/or developer shall also participate in the funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation and the County Department of Public Works. Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to the developer and/or landowner applying for County zoning or prior to the developer and/or landowner applying for County building permits if County rezoning is not required.

8. The developer and/or landowner of the Motion Area shall monitor the traffic attributable to the proposed project at on-site and off-site locations and shall undertake subsequent mitigative measures that may be reasonably required. These activities shall be coordinated with and approved by the State Department of Transportation.

9. The developer and/or landowner of the Motion Area shall fund the design and construction of drainage improvements

required as a result of the development of the Motion Area to the satisfaction of the appropriate State and County agencies.

10. The developer and/or landowner of the Motion Area shall coordinate with the Department of Health and the County Department of Water Supply on State and County programs to protect the groundwater quality of potable water sources.

11. The developer and/or landowner of the Motion Area shall submit and obtain a Solid Waste Management Plan for review and approval by the Department of Health and the County Department of Public Works prior to occupancy.

12. The developer and/or landowner of the Motion Area shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic on the Motion Area down to levels acceptable to the State Department of Health and the State Department of Transportation.

13. The developer and/or landowner of the Motion Area shall notify all prospective users of the Motion Area of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District land.

14. The developer and/or landowner of the Motion Area shall notify all prospective users of the Motion Area that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which preexisting farming activities may be deemed a nuisance.

15. The developer and/or landowner of the Motion Area shall install a chain link fence surrounding the proposed



development area, with construction barriers between the operating areas and the remaining areas to be developed prior to the issuance of a certificate of occupancy for any portion of the initial campus development. The height of the fence shall be determined during Final Plan Approval.

16. The developer and/or landowner, of the Motion Area its successors or assigns shall indemnify and hold the County of Hawaii and State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the developer and/or landowner, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this motion.

17. The developer and/or landowner of the Motion Area shall develop the Motion Area in substantial compliance with the representations made to the Land Use Commission. Failure to so develop the Motion Area may result in reclassification of the Motion Area to its former land use classification, or change to a more appropriate classification.

18. The developer and/or landowner of the Motion Area shall promptly provide without any prior notice, 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 developer's and/or landowner's progress in complying with the conditions imposed.

19. The developer and/or landowner of the Motion Area shall give notice to the Commission of any intent to sell, lease,

assign, place in trust, or otherwise voluntarily alter the ownership interests in the Motion Area, prior to the completion of the development of the Motion Area.

20. The Land Use Commission may fully or partially release these conditions as to all or any portion of the Motion Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the developer and/or landowner of the Motion Area.

21. Within 7 days of the issuance of the Land Use Commission's Decision and Order for the subject reclassification, the developer and/or landowner of the Motion Area shall

(a) record with the Bureau of Conveyances a Statement to the effect that the Motion Area is subject to conditions imposed by the Land Use Commission in the reclassification of the Motion Area, and (b) shall file a copy of such recorded statement with the Commission.

22. The developer and/or landowner of the Motion Area shall record the conditions imposed by the Land Use Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

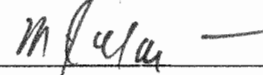
The remaining tax map key parcels and lots comprising the Property shall continue to be subject to all the conditions imposed in the Commission's July 18, 1994 Findings of Fact, Conclusions of Law, and Decision and Order.

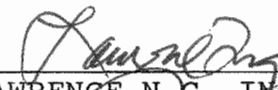
ADOPTION OF ORDER

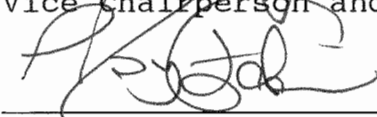
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 6th day of April 2000, in Honolulu, Hawaii.

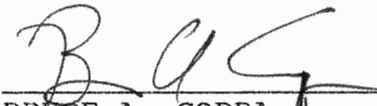
The ORDER and its ADOPTION shall take effect upon the date this Order and Adoption are filed and certified by the executive officer of the Commission.

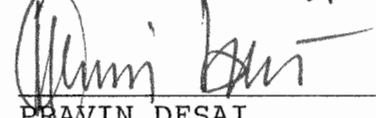
LAND USE COMMISSION  
STATE OF HAWAII


By   
MERLE A. K. KELAI  
Chairperson and Commissioner

By   
LAWRENCE N.C. ING  
Vice Chairperson and Commissioner

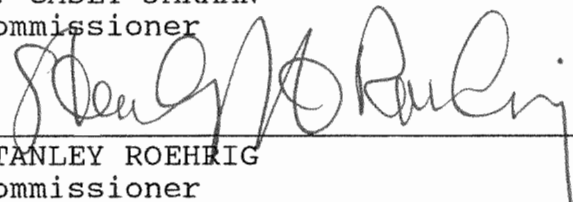
By   
P. ROY CATALANI  
Commissioner

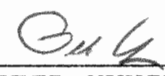
By   
BRUCE A. COPPA  
Commissioner

By   
PRAVIN DESAI  
Commissioner


By   
ISAAC FIESTA, JR.  
Commissioner

By \_\_\_\_\_ (absent)  
M. CASEY JARMAN  
Commissioner

By   
STANLEY ROEHRIG  
Commissioner

By   
PETER YUKIMURA  
Commissioner

Filed and effective on  
April 7, 2000

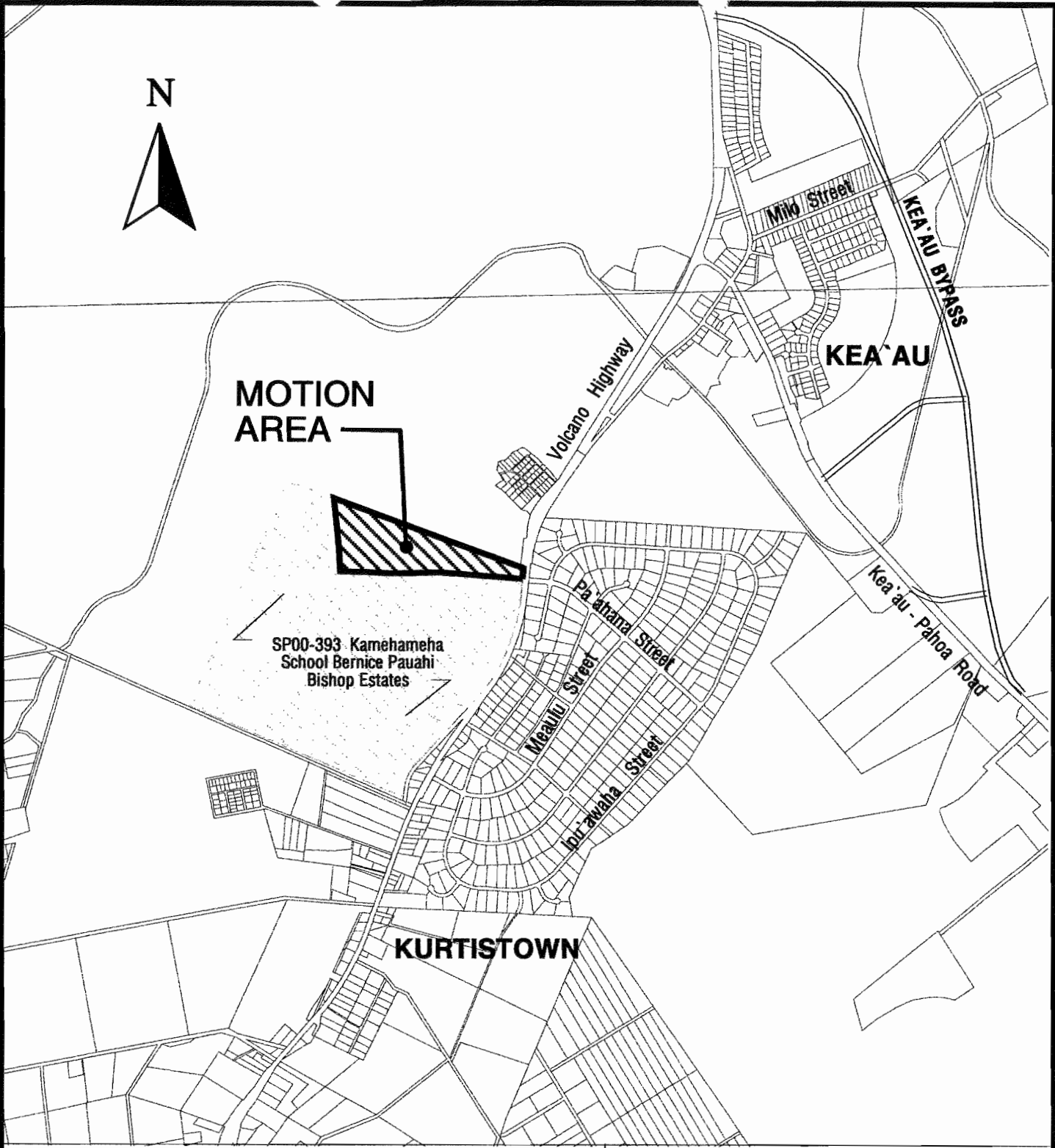
Certified by:  
  
Executive Officer



**MOTION  
AREA**



SP00-393 Kamehameha  
School Bernice Pauahi  
Bishop Estates



**BR93-699 OFFICE OF STATE PLANNING  
(Motion to Release Conditions  
Imposed in D&O)**

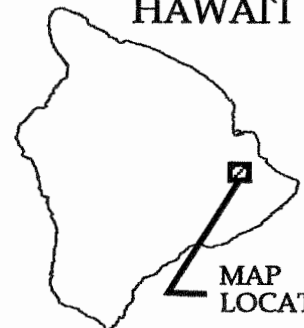
**LOCATION MAP**

Tax Map Key Motion Area: 1-6-03: por. 12  
Kea'au, Puna, Hawai'i

Scale: 1" = 2,000 ft.

**EXHIBIT "A"**

**HAWAII**



**MAP  
LOCATION**

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por. 11, por. 12, por. 13, por. 14, )	
por. 15, por. 68, 76 and 84 )	
_____ )	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Partially Approving Motion To Release Conditions Imposed In Decision And Order On Reclassification Made A Part Of The Commission's Findings Of Fact, Conclusions Of Law, And Decision And Order Dated July 18, 1994 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL.           DAVID W. BLANE, Director  
                  Office of Planning  
                  P. O. Box 2359  
                  Honolulu, Hawaii 96804-2359

CERT.           VIRGINIA GOLDSTEIN, Planning Director  
                  Planning Department, County of Hawaii  
                  25 Aupuni Street  
                  Hilo, Hawaii 96720

CERT.           RICHARD D. WURDEMAN, ESQ.  
                  Corporation Counsel  
                  County of Hawaii  
                  The Hilo Lagoon Center  
                  101 Aupuni Street, Suite 325  
                  Hilo, Hawaii 96720

CERT.           WILLIAM W. L. YUEN, ESQ., Attorney for Petitioner  
                  Ching, Yuen & Morikawa  
                  1001 Bishop Street, Suite 2700  
                  Honolulu, Hawaii 96813

CERT.      ROBERT E. SAUNDERS  
             W. H. Shipman, Limited  
             P. O. Box 950  
             Kea'au, Hawaii 96749

DATED:     Honolulu, Hawaii, this 7th day of April 2000.



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ESTHER UEDA  
Executive Officer