

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
KUKUI'ULA DEVELOPMENT COMPANY,)
INC.)
)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for approximately)
822.142 acres at Lawai, Koloa,)
Kauai, Hawaii, Tax Map Key Nos.:)
2-6-03: por. 1, 21, por. 31, and)
por. 32; 2-6-04: por. 16, por. 38,)
por. 39, 40, and por. 45)
_____)

DOCKET NO. A93-696
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND ORDER

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

Kukui'ula Development Company, Inc. ("Petitioner"), a Hawai'i corporation, filed this petition on October 29, 1993, which was amended pursuant to § 15-15-43 of the Hawai'i Land Use Commission Rules on December 21, 1993 and January 14, 1994 (cumulatively "Petition"). The Petition was filed pursuant to Chapter 205, Hawai'i Revised Statutes ("HRS"), and Chapter 15-15, Hawai'i Administrative Rules ("HAR") to amend the land use district boundary of certain land at Lawai, Koloa, Kauai, Hawai'i, Tax Map Key Nos. 2-6-03: por. 1, 21, por. 31, and por. 32; 2-6-04: por. 16, por. 38, por. 39, 40, and por. 45, covering approximately 822.142 acres of land from the Agricultural District to the Urban District ("Property" or "Petition Area") for development of a planned community to include single-family residential, multi-family residential, golf course, clubhouse, commercial, marina, town center, school expansion, sewage

treatment plant, botanical garden visitor center, parks and open space uses. The Land Use Commission of the State of Hawai'i ("Commission") having heard and examined the testimony, evidence and argument of counsel presented during the hearings, having reviewed Petitioner's Proposed Findings of Fact and Conclusions of Law, and Decision and Order, the Office of State Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order, and the record herein, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Petition for District Boundary Amendment was filed with the Commission on October 29, 1993. A First Amendment to the Petition for Land Use District Boundary Amendment was filed with the Commission on December 21, 1993. A Second Amendment to the Petition for Land Use District Boundary Amendment was filed with the Commission on January 14, 1994.

2. On January 21, 1994, a prehearing conference was conducted in Conference Room 238 of the Old Federal Building, 335 Merchant Street, in Honolulu, Hawai'i, with representatives of the Petitioner, the Office of State Planning ("OSP"), and the County of Kauai Planning Department ("County"), present, and at which time the lists of exhibits and lists of witnesses of the parties were exchanged.

3. The Commission conducted hearings on this petition on February 25, 1994, June 2 and 3, 1994, September 8 and 9,

1994, November 16 and 17, 1994 and January 19, 1995, pursuant to notice published on December 27, 1993 in the Honolulu Advertiser and the Garden Island.

4. Entering appearances at the hearings were James Funaki, Esq. and William Campbell for Petitioner; Jonathan Chun, Esq. and Keith Nitta for the County of Kauai; and Rick Eichor, Esq., Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the OSP, State of Hawai'i.

5. The County was opposed to the reclassification of the entire Petition Area and filed a Statement of Position of the Kauai County Planning Department Not In Support of the Petition on January 18, 1994. The County filed Testimony of the County of Kauai Planning Department Not In Support of the Applicant's Request on February 16, 1994. The County filed a Revised Testimony of the County of Kauai Planning Department In Support of the Applicant's Request recommending approval of the Petition with conditions on January 19, 1995.

6. The Office of State Planning supported the Petition and filed a Statement of Position of the Office of State Planning In Support of the Petition with conditions on December 28, 1993. The Office of State Planning also filed Testimony of the Office of State Planning In Support of the Petition with conditions on February 2, 1994.

7. The following persons appeared and testified as public witnesses on February 25, 1994, and/or submitted written testimony:

Richard Anama, Carpenters Union, Local 745
Richard Maeda and Penny Ono, Contractors
Association of Kauai
Abel Medeiros
Clyde Kodani, Kodani & Associates, Inc.
Warren Perry, Royal Order of Kamehameha I
Cynthia Chamberlin McKenna
Fred Jager, Koloa Community Association
Ronald Kouchi, County Councilman
Chuck Trembath
Richard and Bevin Evans
Helen Mehl
Jimmy Tehada
Nathan Kawaguchi and Cushla Tucker, Koloa
School PTA
William & Margaret Medeiros
Steven Williams, First Hawaiian Bank
Gary Baldwin and Susan Kanohe, Kauai Economic
Development Board
Rick Riess, Poipu Beach Resort Association
William Klein & Douglas Kinney, National
Tropical Botanical Garden
John & Sandra McEvoy

8. No requests for intervention were filed.

DESCRIPTION OF PROPERTY

9. The Property is located in the Koloa District on the southern coast of the island of Kauai. The Property consists of approximately 822.142 acres, and is specifically identified as Tax Map Key Nos. 2-6-03: por. 1, 21, por. 31, and por. 32; 2-6-04: por. 16, por. 38, por. 39, 40, and por. 45.

10. The Property is bordered on the east by Poipu Road, on the southeast by a 219-acre parcel in the Urban District ("219-acre Urban parcel"), on the southwest by Lawai Road and several vacation condominiums, on the west by Lawai Valley, and on the north by pasture and agricultural fields.

11. The Property is situated approximately 2 miles south of Koloa Town and approximately 4 miles from Poipu. The Property is contiguous to the Urban and Agricultural Districts to

the east, the Urban, Conservation and Agricultural Districts to south, and contiguous to the Conservation and Agricultural Districts to the west and north, respectively.

12. The Property is primarily in sugarcane cultivation, with some pasture lands, fallow areas, graded areas, and a sewage treatment plant.

13. The Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawai'i, conducted by the U.S. Department of Agriculture, Soil Conservation Service, August 1972, determined that there are many different types of soils on the Property. The major portion of the class A and Prime Agricultural Lands have Lihue (LhB, LhC, LhD), and Makaweli (MgB, MgC) soils with small pockets of Koloa (KvB, KvC), Puhi (PnD, PnE), Ioleau (IoE2, IoD2) and Nonopahu (NnC). The Lihue and Makaweli soils consist of well drained soils on gently sloping uplands. Permeability is moderately rapid. Runoff is slow, and the erosion hazard is slight. On Lihue soils with 15 to 25 percent slopes runoff is medium and the erosion hazard is moderate.

14. On the Koloa side of the Property the soils are Waikomo (Ws, Wt) series. The Waikomo stony silty clay (Ws) is on low uplands with a surface layer of stony silty clay about 14 inches thick. Permeability is moderate, runoff is slow and the erosion hazard is slight. The Waikomo very rocky silty clay (Wt) has more rocky outcrops on the surface but is similar in character.

15. The elevation of the Property is from 5 feet above mean sea level to approximately 200 feet. Slopes on the Property range from 0 to 8 percent with a few small areas having slopes of 8 to 15 percent. A few areas have slopes greater than 15 percent which are planned to be kept in open space.

16. The Koloa area has a mild semitropical climate that is dominated by the northeast tradewinds which blow approximately 80 percent of the time. The Koloa area has a median annual rainfall of approximately 22 inches.

17. The average daily temperature of the Koloa-Poipu area at the 50-foot elevation ranges from 72 to 79 degrees Fahrenheit. The average temperature drops 3 degrees for each 1,000-foot increase in elevation.

18. The coastal areas fronting the Property are in the Federal Emergency Management Agency ("FEMA") defined "coastal flood area with velocity hazard." FEMA has determined that base flood elevations extend into the Petition Area on the makai side of the Property near Kukuiula Bay. As experienced during Hurricane Iniki, the makai portion of the Property is subject to impacts from hurricanes.

19. McBryde Sugar Company, Limited, a wholly owned subsidiary of A&B-Hawai'i, Inc., is the fee simple owner of a portion of the Property, and A&B-Hawai'i, Inc. is the fee simple owner of the remaining portions of the Property.

20. Petitioner is the owner of a right to purchase a portion of the Property pursuant to an option in favor of Petitioner from McBryde Sugar Company, Limited and A&B-Hawai'i,

Inc. as set forth in Memorandum of Agreement dated October 22, 1993.

21. McBryde Sugar Company, Limited and A&B-Hawai'i, Inc. have authorized Petitioner to submit the petition for a portion of the Property as set forth in their consent letter dated October 22, 1993.

PROPOSAL FOR RECLASSIFICATION

22. Petitioner proposes to develop the Property and the adjoining 219-acre Urban parcel as a common and integrated project to be known as the Kukuiula Planned Community ("Project"). The land uses proposed for the Project include single-family residential, multi-family residential, golf course, clubhouse, commercial, marina, town center, school expansion, sewage treatment plant, botanical garden visitor center, parks and open space.

23. Petitioner has represented and the Commission finds that the proposed Project, will cover the Property and the adjoining 219-acre Urban parcel, and include approximately 3,400 dwelling units.

24. Petitioner proposes to develop the Project in two phases. The first phase is comprised of approximately 537.313 acres of the Property and a portion of the 219-acre Urban parcel ("County Zoning Phase I"). The County Zoning Phase I includes development of up to 1,738 residential units, which include 328 visitor accommodation units, the golf course and clubhouse, a commercial area, parks, public facilities, and the botanical garden visitor center. County Zoning Phase I also includes the

sewage treatment plant site, the school expansion site, and the affordable housing sites. The second phase is comprised of approximately 284.829 remaining acres of the Property and the remaining portion of the 219-acre Urban parcel ("County Zoning Phase II"). County Zoning Phase II includes development of approximately 1,662 residential units, which include approximately 300 visitor accommodation units, parks, open space, the marina and town center.

25. The 219-acre Urban parcel, which is currently zoned by Kauai County ordinance for 738 single-family units, 1,000 multi-family residential units, open space/park, and commercial use, was originally intended as Phase 1 of the Project. The storm surge from Hurricane Iniki severely impacted the makai portion of the 219 acre Urban parcel and caused the 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 the proposed 1,738 residential units, which include 328 visitor accommodation units.

26. The Petitioner has complied with the affordable housing requirements of the Land Use Commission's Docket No. A85-589 and the County of Kauai affecting the 1,738 residential units originally approved under County zoning for the 219-acre Urban parcel, which are now proposed to be developed in Phase I. Petitioner justified in part its request for urbanization and has agreed to an affordable housing requirement to be applied to the

remainder of the 3,400 dwelling units in excess of the 1,738 residential units ("remainder"); Petitioner has further stated that imposition of an affordable housing condition on more than this remainder would render the Petitioner's proposed Project economically infeasible.

27. The Project is projected to be built-out over a period of approximately 25 years. It is anticipated that this will allow for absorptions of 100 to 140 residential units per year.

28. Construction and marketing of the residential units will proceed in phases, generally from east to west across the Project site. The schedule contemplates a final completion of the project by around the year 2017.

29. The total cost of the Project at full build-out is estimated at \$922 million ("M") (in 1993 dollars) as follows:

Offsite and Backbone Infrastructure	\$140 M
Golf Course and Clubhouse	\$ 22 M
Marina	\$ 10 M
On-Site Infrastructure (Residential and Commercial)	\$150 M
Structures (Residential and Commercial)	<u>\$600 M</u>
TOTAL COST	\$922 M

FINANCIAL CAPACITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

30. The audited Consolidated Financial Statements of A&B-Hawai'i, Inc. and its subsidiaries which include the Petitioner for the years ended December 31, 1992 and 1991 as reported by the independent auditor, Deloitte & Touche, reflect as of December 31, 1992 total assets of \$414,988,000, including total current assets of \$93,960,000; net land, buildings,

machinery and equipment, and other property improvements of \$237,164,000; real estate developments of \$50,977,000; other assets of \$3,390,000; note receivable from affiliate of \$16,250,000; and investments of \$13,247,000. Total liabilities and equity of \$414,988,000 include total current liabilities of \$27,239,000; total long-term liabilities of \$185,249,000; deferred income taxes of \$40,610,000; and shareholder's equity of \$161,890,000.

31. Petitioner is planning to finance the Project through internally generated funds from its parent corporation augmented by its general borrowing capacity.

STATE AND COUNTY PLANS AND PROGRAMS

32. The Property is located within the State Land Use Agricultural District as depicted on the State Land Use District Boundary Map, K-8 (Koloa).

33. Under the State Land Use District Boundary Review conducted in 1992 by the OSP pursuant to § 205-18, HRS, OSP has recommended the reclassification of portions of the Property from the Agricultural District to the Urban District.

34. The Kauai County General Plan designates the Property as "urban residential".

35. The County's Koloa-Poipu-Kalaheo Development Plan designates the portion of the Petition Area around Kukuiula Bay as "project district". The remainder of the Petition Area is not designated under the County's Development Plan.

36. The Petition Area is zoned "agriculture" under the County's Zoning Map.

37. A portion of the Property around Kukuiula Bay, including the areas near the shoreline from Kukuiula Bay to Lawai Bay are within the Special Management Area ("SMA"), and subject to the County of Kauai SMA Rules and Regulations.

NEED FOR THE PROPOSED DEVELOPMENT

Residential Market

38. The resident population on Kauai was estimated at about 55,000 persons in 1992. This population is projected to grow by approximately 2.2 percent per annum to about 95,000 by 2015.

39. The Koloa district has historically maintained about 22 percent to 23 percent of the island's resident population. In 1990, approximately 11,000 of Kauai residents lived in the Koloa district, and by 2015 it is projected that the Koloa district could attract about 26 percent, or approximately 25,000 of the island's residents.

40. The approximately 3,400 dwelling units proposed for the Project by 2017 would serve a significant share of the market-priced housing needs of Kauai for the foreseeable future and would serve to partially satisfy the need for affordable housing.

41. Petitioner's market consultant, KPMG Peat Marwick, stated that the Koloa district is positioned to be one of the rapidly growing areas of Kauai because of its availability of land, proximity to its own employment centers, being within reach of the Lihue area, and the presence of the Petitioner and its

parent organization Alexander and Baldwin to provide infrastructure and units at Kukui'ula.

42. In the context of the estimated growth in resident households, increase in visitor arrivals, and historical sales absorption rates of single and multi-family units on Kauai, Petitioner's market consultant states that approximately 3,200 residential units are projected to be sold over the next 23-year period by the year 2017.

Marina Market

43. In 1992, Kauai had approximately 1,250 registered boats. During the same year, there were only 118 boat slips and moorings on the island and an additional 75 boat owners were on a waitlist for boating facilities. The Koloa and Waimea areas are popular spots for boating, and residents in these areas owned about 40 percent of the total craft on the island.

44. The marina at Kukui'ula, proposed as part of the Project, is planned to have between 150 and 200 boat slips. The market consultant estimates a need in the Koloa-Waimea area for 180 slips by the year 2000 and more than 200 slips by the year 2005.

Golf Course Market

45. There are currently eight existing golf courses on Kauai, of which six are resort courses. The proposed golf course at the Project site is planned as a private facility, open to the public, and offering kamaaina and special Kauai resident rates. In addition to the course at the Project site, there are seven

courses planned for the island, two of which are indefinitely on hold due to lack of financing and zoning.

46. Based on analysis of historical and projected total annual rounds on the island, it is estimated that Kauai could support eight 18-hole golf courses by 1995; thirteen by 2000; and fifteen by the year 2005.

47. The golf course for the Project site is seen to be a key amenity to the success of the Project as it would serve to support real estate sales and values, provide open space and views, and offer a recreational amenity.

Commercial Space

48. The town center and neighborhood shopping facility is 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 Poipu area as a whole.

49. The demand for the planned neighborhood and town center was estimated based on the typical amount of commercial space required per household on Kauai, the Project's proposed number of residential units, and the additional demand generated from the Poipu Resort and surrounding visitor attractions. The analysis indicates that 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.

Visitor Accommodation Market

50. The Project is planned to include two inns containing 140 to 160 guest rooms each for County Zoning Phase II to accommodate visitors to Kukui'ula and nearby Poipu.

51. There were approximately 2,700 visitor accommodation units in the Poipu area before Hurricane Iniki. Over two years after the hurricane, approximately 1,100 of the major visitor accommodation units are still closed, with only 308 at Kiahuna Plantation scheduled to reopen. Another 563 units at Waiohai and Poipu Beach have indefinite plans about reopening, and approximately 237 units representing the beachfront property at Sheraton may never reopen.

IMPACTS UPON RESOURCES OF THE AREA

ECONOMIC IMPACTS

52. An "Economic and Fiscal Impacts" study was prepared by KPMG Peat Marwick in October 1993 for the Project. The study concluded that from the initial 20-year period, beginning 1995, the Project would result in approximately 300 to 440 full-time construction jobs annually. Direct, indirect and induced construction employment is expected to average approximately 530 to 780 persons annually over the initial 20-year period, and lessen to approximately 140 construction employees per year during the period 2016 to 2020 when house construction is expected to taper off.

53. Approximately 1,400 persons are projected to be living on the Project site by the year 2000, and up to 6,000 by the year 2020, including part-time residents from off-island.

54. Total direct, indirect and induced operational employment is estimated to represent about 760 full-time equivalent positions per year by 2000. By 2020 full-time equivalent positions are expected to increase to 1,670.

55. Direct annual visitor expenditures could be expected to generate \$18.5 million by the year 2000 and increase up to \$30.4 million by about the year 2020 in 1993 dollars. Including their anticipated multiplier effects throughout the state's economy, these direct expenditures could be expected to support total overall spending in Hawai'i of about \$32.8 million in 2000 and \$53.7 million in 2020 in 1993 dollars.

56. County government revenues would be primarily from new real property taxes generated by the Project. Additional revenue sources would also include fuel, utility, motor vehicle and other non-grant taxes. Government expenditures include public safety facilities, maintenance of highways, recreational facilities, health and sanitation measure, special cash capital improvements, education, retirement and pension funds, public welfare and other government functions. The net revenues to the County will be about \$2.2 million in 2000 and increase to \$5.9 million by 2020, resulting in approximately 4.3 times more revenues than expenditures in 2020.

57. State revenues would be primarily derived from excise taxes on construction and visitor expenditures, personal income taxes paid by new state residents, and the general excise taxes on sales revenues attributable to visitors of the Project. The net additional State revenues is estimated at \$24.53 million

at peak construction period in 2000 to \$3.56 million by year 2020. State revenues exceed its expenditures by 1.5 times in 2020, and up to 10.2 times more in 2000 during the peak construction period.

SOCIAL IMPACTS

58. The number of residents expected to be generated by the Project is approximately 1,400 persons by 2000 and approximately 6,070 by the year 2020.

59. The expected average daily visitor population of the Project is approximately 700 visitors by 2000 and approximately 1,600 visitors by the year 2020.

60. An Issues Analysis study was prepared by Earthplan in October 1993 to identify and analyze community issues related to the proposed Project.

61. The Issues Analysis summarized community feelings on certain characteristics about the Project, as follows:

a. The marina was generally seen as a positive amenity with the shortage of boat slips and as an opportunity for local people to launch their fishing boats. There was concern, however, about environmental degradation from the construction and operation of the marina.

b. A preference for single family units was indicated as consistent with the Kauai lifestyle, the larger the lot the better while smaller units were envisioned as starter units for young families, and recognized as an opportunity for local people to purchase a home. Multi-family units were equated with affordability, and it was perceived that an increase in such

units was needed to help relieve Kauai's housing need. Divided feelings were expressed with regard to the provision of on- and off-site affordable housing.

c. Open space, parks and golf course were generally viewed as positive amenities.

d. Interviewees appreciated the bypass, the completed sewage treatment plant, and the school expansion sites.

e. There was a feeling that the area needed more jobs and a hope that the town center would provide business opportunities for local entrepreneurs.

f. There was concern about creating "another Princeville" of upscale outsiders and speculators which might create social conflicts and economic disparity problems.

g. Divided feelings were expressed about the inns for visitor accommodations, some wanting hotels instead of inns and others believing that Kauai already has its share of visitor facilities.

h. The effects of a major population increase on traffic, existing social patterns, schools and parks were mentioned.

i. Construction impacts, particularly in terms of dust, noise and vibration impacts were a major concern.

j. Alexander & Baldwin which has had a long term presence in the community was viewed by the majority of those interviewed as a company sensitive to community needs and willing to work with people.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

62. The Agricultural Lands of Importance to the State of Hawaii ("ALISH") system classifies approximately half of the Property as "Prime" agricultural lands. The remaining half of the Property consists of "other" important agricultural lands and lands of no agricultural importance.

63. The Land Study Bureau "Detailed Land Classification for the Island of Kauai," 1967, classifies the Property into four categories: A, B, D and E. The A rated soils, which are considered to have the best conditions for agricultural productivity, cover approximately two-fifths of the Property. The B rated soils cover about two-fifths of the Property and are considered to have good attributes for agricultural productivity. The remaining one-fifth of the Property is rated D and E which indicate poor potential for productive agricultural uses.

64. The Project will result in the incremental removal of approximately 480 acres of sugarcane production from the Property.

65. McBryde Sugar Company ("McBryde"), which currently has approximately 7,300 acres under cultivation for sugarcane including the Property, represented that the removal of the 480 acres from sugarcane cultivation will not have a significant impact on the viability of the company in its overall agricultural activities and objectives.

66. The impact of the removal of the 480 acres from sugarcane cultivation would be an increase in cost of sugar

production by less than 2%, and the full time labor force would decrease by seven persons over the period of removal. McBryde expressed its support of the petition because the employment created by the proposed Project would far surpass the loss in agricultural employment, and the diversification of A&B-Hawai'i's presence in the community by way of a major development at Kukui'ula will strengthen the parent company's ability to support operations at McBryde even though, as an agricultural enterprise, McBryde's earnings and return on investment probably will remain marginal, at best.

67. With the decline in the sugar industry in Hawai'i, because of low profitability and competition from foreign countries and other sugar sources, McBryde has undertaken a diversification effort by the investment of nearly \$30 million in the development of coffee and macadamia nut orchards.

68. The diversification effort suffered certain setbacks including significant crop damage and uninsured losses of \$20 million from the effects of Hurricane Iniki, but McBryde is committed to trying to continue agricultural operations on Kauai with no guarantee of success.

Water Resources

69. The groundwater underlying the Project site exists in two layers. The first layer of water is trapped at the surface above a relatively impervious strata. The first layer is referred to as phreatic groundwater and is not used for drinking.

70. The lower or deeper groundwater, found under the Koloa series rock, is the source of fresh water from the upper

mountain range. A well site taps the deep groundwater at a depth of 750 feet.

71. There is little possibility for contamination of the deep groundwater resource mainly because:

a. the impermeable rock layer which substantially precludes seepage from the upper shallow layer of phreatic groundwater.

b. the distance (700 feet) to the lower deep groundwater resource.

c. the depth of lower groundwater resource beneath sea level.

72. Because of the underlying impermeable rock layer, impact from pesticides or nutrients will be limited to the phreatic groundwater in the upper shallow layer which is not used for drinking.

73. To minimize impacts of the Project on the well fields and deep groundwater resource, the effluent from the wastewater treatment plant ("WWTP") will be used to irrigate the golf course and common landscaped areas. The WWTP will provide secondary treatment and the effluent will also be disinfected as required. Non-potable ditch water is also available for irrigation purposes.

Archaeological Resources

74. An archaeological inventory survey was performed on portions of the Property and on the adjoining 219-acre Urban parcel and a report was prepared in June 1988.

75. The survey identified 58 sites, of which four were found within cultivated land area and the remaining 54 on non-cultivated land area. The sites included heiaus, agricultural complexes, habitation sites, burials in caves, lava tube caves and historic sites.

76. An archaeological data recovery plan was approved by the Historic Sites Division of the State Department of Land and Natural Resources (DLNR) and the Kauai 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.

77. Ten sites within the Property still require data recovery, and seven sites will be preserved. As approved by DLNR and the County of Kauai 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 in the Property. These sites include the heiau to the west, the Portuguese oven and house site, and the five cave sites to the east.

78. Three of the lava tube caves are in an area that has been set aside as a 10-acre park in the eastern sector of the Property and two are located makai of the proposed 10-acre park. The entrances of the five caves will be sealed to preserve them and to provide for future research by archaeologists. The two lava tube caves located below the park will be preserved in their

natural state. Four of these caves are on the State Register of Historic Places. These caves are to be preserved and are not proposed for any use.

79. Two other caves are located at the mauka boundary of the 219-acre Urban parcel. The two cave sites cover approximately 2 acres. One of these caves contains human burials, as determined by testing during the data recovery work. These caves will also have their entrances sealed to protect their contents and preserve their natural condition.

80. The data recovery process will be coordinated with the Kauai County Historic Preservation Review Commission and the State Historic Sites Division; the data recovery effort will be performed according to the approved data recovery plan; and the preservation of the sites will be performed in accordance with an approved preservation plan.

Flora and Fauna

81. A botanical survey was conducted by Char & Associates in March 1988 to inventory and assess the botanical resources on the Property and the adjoining 219-acre Urban parcel. The survey did not encounter any rare, threatened or endangered plants on the Property or the adjoining 219-acre Urban parcel.

82. The Property consists of primarily introduced plant species, and a small number of native species. Along the perimeter of the cane fields, weedy species such as finger grass, nutgrass, brachiaria, Bermuda grass and sleeping grass were

observed in the survey. The scrub pasture areas consisted mainly of four types of vegetative cover: koa haole thicket, lantana scrub, open mixed scrub and California grass. The Property also contains mixed grass pasture and coastal shrub vegetation.

83. A survey of fauna was conducted by Dr. Andrew Berger in March 1988. The survey concluded that there were no threatened or endangered terrestrial vertebrate animals on the site of the proposed Project.

84. In the survey, two indigenous or native species were seen on the Project site -- the black-crowned night heron and the golden plover. Other animals found on the Project site included geckos, skinks, and nineteen species of introduced birds.

85. A more recent study of the proposed Project on the migratory shorebirds and migratory seabirds was conducted by Dr. Leonard A. Freed and Dr. Rebecca L. Cann in May 1994.

86. No part of the Property is identified as a major waterbird habitat by the United States Fish and Wildlife Service in the 1985 Hawai'ian Waterbirds Recovery Plan. There are no "natural" wetlands on the Property for waterbird habitat.

87. The Black-necked Stilts, the American Coot and the Hawai'ian Duck have been observed occasionally feeding or resting in man-made bodies of water on the Property such as the sewage treatment lagoons, retention basin, and drainage ditch which will continue to be available to the waterbirds with the proposed Project.

88. The proposed Project will not interfere with the movements of the waterbirds over the Property because low-rise one- or two-story residential units and buildings are proposed for the Project.

89. The Newell's Shearwater migratory seabirds nest during the spring and summer months in the interior mountains on Kauai. Young shearwaters leaving their nests in October and November for the first time fly downslope to the ocean orienting by the moon or stars. If they encounter artificial light associated with urban areas, they become blinded or disoriented and collide with buildings, trees, or utility poles. This can lead directly or indirectly to death by starvation or predation.

90. The impact of a development on the Newell's Shearwater can be substantially reduced by shielding lights so that the reflection is down or to the side, and by reducing the overall amount of light during new moons in October and November through public education.

91. The Koloa district has the third highest incidence of shearwater mortality. However, the Petitioner has represented and the Commission finds that the existing bright lights associated with the sewage treatment plant on the Property have not resulted in downed shearwaters to date.

92. An endangered Hawai'ian Hoary Bat moving through the area of the Property was detected by ultrasound at midnight by the use of a Bat Detector in the Freed-Cann study; however, areas of sugarcane and short grasses do not produce the moths and beetles which are prey for and attraction to bats.

93. Any trees planted within the proposed Project will improve the habitat for foraging bats. Lights associated with urban uses which attract insects might also attract bats.

94. Various lava tube cave openings explored on the Property in the Freed-Cann study showed no evidence of habitation or use of the lava tube caves by bats. The caves which are fenced off for preservation will be available to the bats should they ever attempt to use them.

95. The development of a marina may eliminate a small frontage on the bay with a white sand beach flanked by rocky coastline but is unlikely to impact on the shorebirds including Sanderlings which might be expected to use the sand beach, because the frontage is too small and isolated a patch of white sand beach.

96. Two endemic Hawai'ian cave arthropods, the Kauai cave wolf spiders (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) are currently known to live in the lava formations in the Koloa area including certain two lava tube caves on the Property.

97. These endemic arthropods are unique, and they are found only on the island of Kauai in the particular location of the Koloa area.

The Kauai blind wolf spider is known to inhabit only two localities, two lava tubes, or caves on the Kukuiula Property in the area proposed for development and two lava tubes, or caves on the Kiahuna Property (off the Petition Area). In addition, the

Kauai cave amphipod is also known in the limestone cave in the Mahaulepu area.

The Kauai blind wolf spider is a restricted and isolated population. The species also reproduces young in much fewer numbers than its surface counterpart, the hunting spider, and its young remain in the caves, and do not migrate by "ballooning." Thus, if the present blind wolf spider population is reduced, its capacity to expand and recover will be limited.

98. The Kauai cave wolf spider has completely lost its eyes in adapting to its underground habitat. The amphipod is a natural prey for the wolf spider, and they have evolved as a predator/prey system for millions of years.

99. The wolf spider and the amphipod are not listed as endangered species under the Endangered Species Act. Currently, they are in Category I classification as candidates for listing under the Endangered Species Act.

100. The proposed Project could pose a threat to the wolf spider and the amphipod if construction and development of the ground above and about their cave habitat significantly impact the underground ecosystem.

The underground habitat could be adversely impacted by the movement of heavy construction equipment, which could collapse the lava tubes. Grading the surface could remove the perennial vegetation, trees and shrubs, which would cause the vegetation roots to die. The roots entering the subterranean cave system provide the nutrient resource for the entire cave

ecosystem as the amphipod feeds on the vegetation roots and the wolf spider feeds on the amphipod.

101. Some mitigative measures to ensure conservation of the wolf spider and amphipod are maintenance of perennial vegetation, maintenance of current levels of water flow, non-disturbance of the surface directly above and adjacent to the lava systems, and close monitoring of potential activities that could occur in the area.

102. The Kauai blind wolf spider and Kauai cave amphipod require complete darkness, high moisture and no air movement to survive. These conditions exist at the far ends of the lava tubes, and do not exist at the lava tube entrances.

103. The lava tubes are the primary habitat for the blind wolf spider and amphipod. Both animals also can reside in the cracks that irradiate away from the main lava tube, which can be several meters away from the main lava tube. A buffer area, about 100 feet on each side of the lava tube, should be restricted from any large scale surface clearing. Also, an additional extended buffer area should be created where pesticide use would be restricted. Both animals are extremely susceptible to pesticides. Residential development could apply more pesticides per unit area than golf courses or sugarcane plantations.

104. The lava tubes were in part identified by the archaeological report, however, the report was not sufficient to identify where the cave system appears on the surface. Petitioner has represented and the Commission finds that a study

is being undertaken to survey the area of the lava tube caves, and that when the study is completed, Petitioner will submit the study to the Commission as evidence. However, the study has not yet been submitted.

105. The U.S. Fish and Wildlife Service ("USFWS") is concerned about how changes in the drainage patterns in the Petition Area will affect the blind wolf spider and amphipod. These animals are very sensitive to the humid environment underground, and enough water must be maintained on the surface to maintain a high humidity underground.

106. Petitioner's consultant may be able to realign the major roadway that lies to the west of the park preserve, adjacent to the caves, to facilitate an extended area buffer for the blind wolf spider and amphipod in the lava tube caves.

107. Petitioner originally intended to develop an active park above the cave habitat, but intends to develop instead an open interpretive park with bike paths and jogging trails in a manner that will be compatible with the cave habitat as determined by the USFWS.

108. Petitioner will consult with the USFWS with respect to mitigation measures if any should be necessary to protect the wolf spider and amphipod before commencing with any blasting for construction on the Property.

Visual Resources

109. Visual characteristics of the Project site's current conditions include canefields, grassed drainage swales,

and weedy vegetation on areas that have been mass graded with pockets of scrub brush of koa haole and weeds.

110. The makai areas of the eastern portion of the Project site will not have dramatic scenic views because of the relatively low elevation and level topography. The mauka areas and the western portions of the project site gradually rise in elevation and will provide coastline, ocean and mountain views.

111. Views of the mountains from existing coastal residential areas may be partially blocked when the proposed Project is completed, but views of the ocean will not be affected.

112. Petitioner will cause to be incorporated landscaping throughout the development to create a pleasing visual environment. The sewage treatment plant has been screened by landscaping material. A 100-foot setback along the mauka side of Lawai Road has been reserved for landscaping, pedestrian/bike path, beach parking and a portion of the golf course.

Recreational Resources

113. Coastal resources in the Koloa District include about 2 miles of sandy beaches, surfing sites and body surfing areas. Coastal recreational activities include swimming, sunbathing, canoe paddling, boat launching, diving, fishing, surfing and body surfing.

114. The Prince Kuhio Historical Park and the Spouting Horn Park are adjacent to the Project site. The nearest golf course is the Kiahuna Golf Course located to the east of the Project.

115. 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. marina for approximately 150 to 200 boat slips,
- 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.

ENVIRONMENTAL QUALITY

Water Quality and Marine Communities

116. A Parametric Environmental Study of Groundwater and Nearshore Oceanographic Impact was conducted by Petitioner's consultant, Oceanit Laboratories, Inc. to identify and discuss the potential impacts to the groundwater and nearshore marine environment from the construction and operation of the proposed golf course, residential areas, and the proposed small boat marina.

117. The groundwater underlying the Property exists in two layers: (i) a layer of phreatic groundwater trapped at the surface above a relatively impervious strata of Koloa series lava; and (ii) a lower deep groundwater found under the Koloa series rock.

118. The shallow layer of phreatic groundwater is not used for drinking. The impervious layer of Koloa series rock traps the phreatic groundwater at the shallow topsoil layer and keeps it from seeping into the deep groundwater which is the source of fresh water from the upper mountain range.

119. Very little, if any, of the rainfall onto the Project site seeps into the deep groundwater source. Most of the water is absorbed in the shallow phreatic groundwater layer or directly runs off into the existing swale system constructed on and for the Project site.

120. Impacts to the nearshore environment, if any, will mostly result from runoff activities associated with the golf course and residential development on the Project site. Runoff impacts are proposed to be minimized through best management practices ("BMP") which include management of materials application (e.g., fertilizers), catchment, retainage basins and monitoring.

121. The Project site currently contains a large catchment basin to retain stormwater. Stormwater quality can be monitored through BMP to minimize impact.

122. Oceanit Laboratories, Inc. opines that impact from the golf course and residential development to the nearshore marine resources will be minimal as water with nutrients in sheet flow would first enter the existing marsh or slowly percolate under the road into the shallow layer of phreatic groundwater before entering into the nearshore area.

123. Discontinuing agriculture use of the Property and channeling surface flow away from the bulk of the coastline is expected to have a positive impact by decreasing the nutrient and pesticide flow in surface waters to the nearshore coastal areas.

124. Construction of the marina access channel is expected to eliminate about two acres of coral and other habitat in Kukui'ula Bay and will likely cause short-term damage to nearby coral through siltation. Marina construction will create a plume of short duration as the final dam is broken separating the marina from the bay. Marina related activities including accidental fuel spills may impact the marine environment and water quality. In addition, construction efforts could trigger an increase in the incidence of ciguatera poisoning in the area.

125. The potential impact and needed mitigation measures will be more thoroughly studied when the Petitioner seeks the various permits necessary from the appropriate federal, state and county agencies for the actual construction of the marina at which time Petitioner expects an environmental impact statement to be required.

126. As part of the approval for the construction of the culvert at Kukui'ula Bay, monitoring programs for water quality, algae, coral and green sea turtle were established to ensure that coastal resources are not being adversely impacted. Petitioner intends to continue water quality monitoring throughout the construction period.

Air Quality

127. An air quality study for the Project was prepared in November 1988 by Petitioner's consultants, Barry D. Root and Barry D. Neal. The study focused mainly on three sources of pollution: industrial, agricultural and vehicular.

128. The burning of sugarcane fields during harvest emits particulates carbon monoxide and other organics. The fires last 20 to 30 minutes, and each field is harvested every two years.

129. High levels of particulate concentrations can occur within a mile radius of a burning canefield. Approximately 15 sugarcane fields are located within a one-mile radius of the proposed Project, eight of which are to the west and seven are to the northeast of the proposed Project. The smoke and particulates from the eight fields to the west will usually move away from the Project site during typical tradewind conditions. A high ridge north of the Property forms a buffer between the Project site and the seven fields to the northeast, but ashes from the burning cane may be carried by the wind to the Project site.

130. Smoke and ash from sugarcane burning will continue to impact residents of this community as long as sugarcane is growing in the vicinity. Prospective residents will be informed of the potential impacts from burning cane and a disclosure statement will be provided in the deeds.

131. Another source of air pollution related to sugarcane operations is the presence and use of a major cane haul

road that traverses the Property. At one time the cane haul road was used 56 days of the year to harvest 50 fields from Poipu to Hanapepe. The fields have now been reduced to four fields and the cane haul road is only used approximately 15 days annually. The number of days that the cane haul road will be used will gradually decline further over the years, and the cane haul road in the vicinity of the Project site will eventually be abandoned and the impacts eliminated. However, as long as the cane haul road is needed for McBryde's operations, developments alongside the cane haul road will experience dust that will be carried into the site by the prevailing wind. The watering of the cane haul road near residences and the regulation of speed limits are proposed to minimize dust generation.

132. A long term contributor to air pollutants will be the increase in vehicular traffic generated by the Project. Based on the modeling conducted in the air quality study, the predicted worst case maximum 8-hour carbon monoxide concentration values in milligrams per cubic meter (" mg/m^3 ") upon completion of the Project around the year 2015 at the intersections of (i) Koloa Road and Maluhia Road, (ii) Poipu Road and Koloa Road, (iii) Poipu Road and Road B, and (iv) Poipu Road and Road A/Lawai Road were 4.4, 7.5, 7.7 and 6.5, respectively. All predicted 8-hour maximum carbon monoxide concentrations are within the 10 mg/m^3 national Ambient Air Quality Standard ("AAQS"). It is possible that the carbon monoxide concentrations could exceed the State 8-hour standard of 5 mg/m^3 which is twice as stringent than the national standard.

133. Although the national AAQS allow higher levels of carbon monoxide, the national standards were developed after extensive research with the objective of defining levels of air quality that would protect the public health with an adequate margin of safety.

134. Short term air quality impacts from fugitive dust associated with construction activities, including blasting, are proposed to be mitigated by a frequent watering program.

Aural Quality

135. The existing background ambient noise levels along Lawai Road are about 48 to 53 dBA.

136. Helicopters flying over the ocean parallel to the shore, emit maximum noise levels of 55 dBA. Automobiles traveling 25 to 35 mph typically cause maximum noise levels of 58 to 67 dBA at a distance of 45 to 50 feet from the center of the road.

137. Noise from motor vehicles on Poipu and Lawai Roads and on interior roads of the Project will impact activities in the open spaces as well as those inside the naturally ventilated buildings in the Project.

138. The noise exposure criteria used by the Department of Housing and Urban Development ("HUD") are used to determine the acceptable distance of the housing from the centerline of the right-of-way based on the allowable 65 Ldn noise exposure contour for the worst-case condition. The setback distances can be adjusted to allow smaller setbacks with sound attenuation from plantings, walls, and natural topographic features.

139. Petitioner has represented and the Commission finds that field operations of land preparation every two to six years and harvesting every two years should not cause the annual average Ldn to exceed 65 Ldn at the property line which is the maximum acceptable exterior noise exposure by HUD.

140. Noise from equipment for golf course maintenance and other noise from resort and commercial operations are expected to meet the requirements of reference 4 of the DOH noise regulations.

141. It is anticipated that noise generated during construction will exceed allowable limits in reference 4 of the DOH noise regulations, and a permit will be obtained from DOH if Kauai County adopts the regulations in the future.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Transportation Facilities

142. A traffic impact analysis report for the Kukui'ula Planned Community dated October 1993 was prepared by Petitioner's consultant Julian Ng, Inc. The traffic analysis included an adaptation of the findings from the 1990 Kauai County Highway Planning Study ("KCHPS"), independent traffic estimates for the Project, and highway capacity analysis for projected peak hour conditions.

143. Existing roads in the Koloa area are all two-lane highways and intersections are stop-controlled.

144. The proposed Project would have traffic generation characteristics very similar to the development in the area for year 2010 that was described in the KCHPS, and the future

conditions with the Project are based on the KCHPS 2010 traffic estimates.

145. Under the traffic analysis, the widening of the beach section of Poipu Road to four lanes would be necessary at full buildout to provide LOS C conditions (average traffic delays). Without widening, peak LOS E conditions (very long traffic delays) would constrain traffic to or from Poipu from using the Poipu Road or the Westerly Bypass Road.

146. The traffic analysis also supports the KCHPS recommendations that widening of Maluhia Road and Kaumualii Highway are necessary at full buildout to provide for a highway system that would be adequate for LOS D or better conditions during peak hours, despite daily traffic volumes exceeding the generalized daily capacity on Kaumualii Highway.

147. The addition of a two-lane Westerly By-pass Road would increase capacity at Poipu Road and the Koloa-Poipu Bypass Road and improve level of service from LOS D and LOS E conditions to LOS C conditions.

148. With the full development of the proposed Project around 2017 to 2020, the highway improvements needed to avoid LOS E and LOS F conditions are:

a. Maluhia Road between Koloa and Kaumualii Highway should be widened to four lanes.

b. Kaumualii Highway east of Maluhia Road should be widened to four lanes.

c. Intersections of Koloa Road and Maluhia Road and of Koloa Road and Poipu Road should be signalized when warranted.

d. Westerly Bypass Road should be extended from the Project to Koloa Road and that intersection signalized when warranted.

e. Poipu Road between Kukui'ula and Poipu should be widened to four lanes.

149. The State Highway Division is projecting start of construction for the widening of Kaumualii Highway from Lihue to Kahili Mountain Road (west of Maluhia Road) in 1997.

150. The County of Kauai anticipates construction starts in mid-1995 to early 1996 for the following highway improvements:

a. Constructing the second phase of the Koloa-Poipu Bypass Road to extend the bypass from the vicinity of Koloa Mill to Maluhia Road.

b. Improving Poipu Road between Koloa-Poipu Bypass Road and Lawai Road by widening the travel lanes and shoulders, adding turn lanes at major intersections, and adding street lighting.

151. Petitioner has agreed with the County of Kauai to resolve, prior to any application for County Zoning Phase II of the proposed Project, the following:

a. Contribution to pro rata share of improvements for the widening and realignment of Maluhia Road.

b. Contribution to pro rata share of improvements to Poipu Road from Koloa Town to the Project site.

c. Timing of the construction of the Westerly Bypass Road.

Water Services

152. The potable water system that currently services the Koloa/Poipu area consists of two wells in Waihonu and two wells on the ridge above Mahaulepu. There are currently three potable water tanks that store water for the Koloa district, and existing transmission and distribution lines in the vicinity of the Project Area. The existing system, which is operated by the Department of Water of the County of Kauai, does not have the capacity to meet the full needs of the proposed Project and is adequate only for portions of the Project.

153. The proposed Project will ultimately require approximately 3.1 million gallons daily ("MGD") of potable water.

154. Petitioner has caused a well to be drilled near Omao. The well has been tested and is expected to yield 1,050 gallons per minute (gpm) or approximately 1.5 MGD. To meet the Project demands, three additional wells are planned in the proximity of the County wells at Mahaulepu and/or near the Omao well. Storage capacity is proposed through three or four new water tanks, and water lines are planned within the Project roadways.

155. The well near Omao was drilled very close to existing residences and cesspools. Several public witnesses testified that their existing cesspools which were built prior to

the well, are within the area determined by the State Department of Health to be a critical area for the protection of potable groundwater surrounding a potable water well. Therefore, should the Petitioner obtain approval from the State Department of Health to utilize the well for potable water use, new cesspools cannot be built within 1,000 feet from the well. Even existing residences would not be able to install new cesspools, but must install aerobic systems for waste disposal. Petitioner has met with Omao residents and, as a result, has funded studies and prepared a variance application with the Department of Health on behalf of the residents.

156. The new well sources will be developed in compliance with the requirements of the County of Kauai and the State Water Code, the State's Potable Water System Regulations, Chapter 20, Title 11, Administrative Rules, and will require approval by the Director of Health prior to use.

157. The Water Master Plan finalized in April 1993 for the proposed Project was approved by the Department of Water Supply of the County of Kauai in April 1993.

Sewage Treatment and Disposal

158. Wastewater in the Koloa/Poipu area is currently disposed of by private cesspools or private sewage treatment plants. In the County's 1988 Facility Plan for Koloa-Poipu, a regional sewage treatment plant was planned for the area. As part of the County's requirement for development of this Project, Petitioner has constructed a wastewater treatment plant ("WWTP") within the Project site.

159. The WWTP has been designed to meet State and Federal regulations for treatment plants. The WWTP began operation on October 15, 1993 and currently has a capacity of 1.2 MGD and has been designed to have an eventual capacity of 3.0 MGD. The Paanau Affordable Housing Project in the northern end of the Project site was the first project to be connected to this WWTP in October 1993.

160. The sewage collection system will include a network of gravity sewer mains and force mains that will be installed primarily within the roadways. Sewage pumping stations as required for the low areas of the site to pump the sewage to the WWTP will be underground to provide for reduced visibility.

161. The WWTP has been designed to provide secondary treatment by the use of aerated lagoons. Each lagoon is approximately 400 feet long, 250 feet wide and 18 feet deep. The lagoons have been lined to prevent infiltration of the untreated sewage into the ground.

162. The effluent that is generated during the initial phases of the Project will be disposed of at a designated site located above the WWTP. When the golf course is constructed, treated effluent will be used to irrigate the golf course. Injection wells are available for emergency effluent disposal.

163. There is a small risk that areas that are downwind of the WWTP may be impacted by its odors. An odor control system using an atomizing mist scrubber has been installed at the headworks of the sewage collection system to eliminate odor problems.

164. The WWTP is intended to improve the existing sewage disposal system in the area by providing a facility large enough to accommodate the regional needs that will eventually be operated by the County. Petitioner has represented and the Commission finds that the WWTP would serve to eliminate cesspools and have a positive impact on the groundwater of the region.

Solid Waste Management

165. At full build-out, the proposed Project is expected to generate approximately 30 tons of refuse per day. This volume of refuse would amount to approximately 20 trips per day for refuse collection and 2 trips for the tractor trailers that travel from the transfer station to the landfill.

166. Solid waste generated by the proposed Project will be disposed of by the Department of Public Works, County of Kauai. Private collection service is expected to be utilized for the commercial properties and some of the multi-family developments.

167. The debris generated by Hurricane Iniki caused the closure of the County's only landfill at Kekaha. A new landfill adjacent to the Kekaha landfill opened for operation on October 9, 1993, the capital costs of which was funded by the Federal Emergency Management Agency.

168. The County is expected to receive approximately \$2.1 million of Federal funds to develop recycling stations on the island of Kauai. With these new recycling stations, the new Kekaha landfill is expected to have a life of approximately seven years.

169. Recycling of recyclable material and composting of trimmings from landscape and golf course could reduce solid waste and extend the life of the landfill.

Drainage

170. The drainage system, which has been designed for the Project and partially constructed, consists of drainage swales, drainage channels, retention basins and an underground network of drainage pipes and box culverts. The drainage system has been designed according to the County of Kauai, Drainage Standards and the Drainage Master Plan for Kukui'ula.

171. A large drainage swale has been constructed above the 219-acre Urban parcel. Mauka flows are now being diverted to the three 7-foot high by 25-foot wide culverts at Kukui'ula Bay. Prior to entering the culvert, storm water runoff is detained in a 10-acre detention basin that filters out the sediments prior to discharging storm waters through the culverts.

172. Storm water runoff from approximately 70 acres within the 219-acre Urban parcel flows into a 3-acre detention basin in the Archaeological Park site. Water from the detention basin then flows through a 100-foot wide grass-lined channel along the eastern side of the park, then into a 100-foot wide grassed swale along Lawai Road to the 10-acre detention basin.

173. The drainage swale above the 219-acre Urban parcel and the 100-foot wide swale along Lawai Road will be part of the golf course fairways. The golf course will be designed to serve as a series of detention basins that will settle out most of the silt prior to discharging storm waters at Kukui'ula Bay.

174. The volume of water that is expected to discharge at Kukui'ula Bay is approximately 1,500 cubic feet per second ("cfs") and the peak discharge rate during the 100-year, 24-hour storm will be approximately 3,000 cfs. As major parts of the drainage system have been constructed, sediments that are expected to enter Kukui'ula Bay have been calculated to have already been reduced from 19,000 tons per year to 3,380 tons per year.

175. During construction, drainage impacts will be mitigated by undertaking erosion control measures prescribed by Erosion Control Plans approved by the County of Kauai prior to construction.

Schools

176. Koloa Elementary School (K-6) and Kauai Intermediate and High School (7-12) are the two public schools that children from this community will attend. The Department of Education ("DOE") indicated that Koloa Elementary School is operating at capacity and Kauai High and Intermediate is operating well beyond capacity. The average classroom size is 20 students from kindergarten to grade 3; 23 students for grades 4-6; and 25 students for grade 7-12.

177. The Koloa Elementary School is located near the northeast corner of the Project site. Approximately seven acres have been reserved for expansion of the Koloa Elementary School.

178. The Project at build-out will have an impact on existing schools in the area with potential increase in enrollment of 809 students at Koloa Elementary School, 227

students at Kauai Intermediate School, and 312 students at Kauai High School.

179. Plans for new facilities exist to meet the needs of the community. The DOE is planning to build an intermediate school in Puhi serving grades 6-8 with a design enrollment of 1,300 students, and the existing Kauai High and Intermediate would become a high school with a design enrollment of 1,500 students.

180. Petitioner has not only reserved but will also donate the seven-acre parcel for expansion of the Koloa Elementary School. Petitioner has also indicated its willingness to work with the community, DOE and the County if they were to decide against an expansion to Koloa Elementary School and would prefer a school site somewhere else within the Project.

181. The State Department of Education has testified that the development of the Petition Area will increase the enrollment of Koloa Elementary and Kauai Intermediate and High School. There is also a corresponding increase in the need for school facilities to accommodate these new students. The DOE represents that seven acres of land to expand Koloa School is needed, and that twelve acres of land to locate a second elementary school within the development is necessary to accommodate the increased enrollment due to the Project. The twelve acres of land for the second elementary school should include all infrastructure, such as water, drainage, sewer connections, electrical power, and roadway improvements, at no cost to DOE. Lastly, to address the requirements for the

secondary school needs, the Petitioner's share should total about \$1,519,420 in cash payments to DOE. The DOE estimates that the total value of the seven acres for Koloa Elementary School expansion, twelve acres for a new elementary school, and the cash payment, is roughly equivalent to \$3,419,420 or \$977 per unit for 3,500 units. (Based on a cost of \$100,000 per acre of land).

Electrical, Telephone and Cable Services

182. Electric power will be provided by the Citizens Utilities Company. Power is provided to the Koloa area via a 57 KV transmission line from the Hanapepe Power Plant along the existing cane haul road. Current residents are served by a 3 phase, 12 KV overhead distribution line along Lawai and Poipu Roads. An existing substation is located near Koloa Town.

183. Telephone service will be provided by Hawaiian Telephone Company which has a switching station within Koloa Town, and the telephone lines are placed on the same poles as the electric lines. Kauai Cable provides cable television service to the Koloa area with cable lines also installed on the electric and telephone poles. The future electric, telephone and cable systems for the Project site will be placed underground.

184. If a new electric substation and a new switching station are needed, space will be provided by Petitioner within the Project site for development of these facilities.

Fire Protection

185. The Koloa Town station will service the proposed Project and is equipped with a 1993 Seagrave Fire Truck with a 750-gallon tank and an International Rescue Truck with a 200-

gallon tank which are used for fighting fires and providing rescue services. The fire truck can pump 1,500 gallons per minute. Other rescue equipment includes diving equipment and respirators.

186. A total of 12 firemen currently operate out of the Koloa Station with two more firemen expected to be stationed. Each of the three shifts contains a maximum of five firemen or a minimum of three firemen. The firemen also assist in search and rescue operations on land and in the water.

187. Response time to the Project site from the Koloa Station is estimated at 5 to 7 minutes. The Kalaheo substation is also used as a backup to the Koloa Station. Response time from the Kalaheo substation is estimated at 15 minutes.

Police Protection

188. The police force for Kauai consists of 141 sworn officers and 28 civilians. There are three police stations located approximately 25 miles apart at Hanalei, Waimea and Lihue. Response time to any given point between these three stations is approximately 15 to 20 minutes.

189. A total of ten officers on each shift respond to emergency calls with two officers on standby as backup. The island is divided into ten sectors and one officer is assigned to each sector. The Koloa/Poipu area currently consists of two sectors.

190. Capital improvement funds are being requested for the new Poipu substation that will also accommodate the fire department and ambulance service.

Medical Facilities and Services

191. Medical facilities in Koloa consist of a branch of the Garden Island Medical Group and the Koloa office of the Kauai Medical Group. Ambulance service is dispatched from Hanapepe, Koloa, Waimea and Lihue. Response time from Koloa to the Project site is estimated at 5 to 7 minutes.

192. Petitioner has represented and the Commission finds that the medical facilities in Koloa will be adequate to serve the needs of the Koloa area including the proposed Project. The new commercial areas planned within the Project site could also include doctor's offices and urgent care facilities.

Other Public Services

193. Petitioner will provide its fair share of costs needed to fund and install civil defense measures as required to service the area including the Project as determined by the civil defense agency of the State or of the County of Kauai.

CONFORMANCE WITH THE HAWAI'I STATE PLAN

194. The reclassification of the Property conforms to the Hawai'i State Plan, Chapter 226, HRS, as amended, with respect to the following objectives and policies:

- a. § 226-5(b)(2): "Encourage an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires."

Development of the Project includes commercial areas, housing, a town center with visitor accommodation, golf course,

marina, school expansion site, sewage treatment plant, botanical garden visitor center, parks and open space. These proposed activities can potentially increase economic activities and employment in the Koloa area where the community feels that more jobs and business opportunities are needed.

The KPMG Peat Marwick study projected that from the initial 20-year period the Project would result in approximately 300 to 440 construction jobs annually. Total direct, indirect and induced operational employment is estimated to represent about 760 full-time equivalent positions per year by the year 2000 and increase to approximately 1,670 by the year 2020.

- b. § 226-6(a)(2) "A steadily growing and diversified economic base that is not overly dependent on a few industries."

Development of the various components of the Project may result in the potential generation of a variety of employment opportunities.

- c. § 226-8(b)(1) "Support and assist in the promotion of Hawai'i's visitor attractions and facilities."

Hurricane Iniki caused some of Kauai's hotels to be closed indefinitely. Somewhere between 230 to up to 800 units have no plans at this time to reopen in the Poipu area in the foreseeable future. The small inns or lodges with approximately 140 to 160 units proposed for the town center within the Project could help to replace lost inventory and serve future visitor demand. The proposed marina, botanical garden and golf course

will also provide recreational opportunities to support the visitor industry.

d. (1) § 226-11(b)(6) "Encourage the protection of rare or endangered plant and animal species and habitats native to Hawaii."

(2) § 226-12(b)(1) "Promote the preservation and restoration of significant natural and historic resources."

The Kauai cave wolf blind spider and the Kauai cave amphipod are unique and found only on the island of Kauai in the Koloa area including certain caves within the Project Area.

Petitioner proposes to secure the entrances of the caves to preserve the caves in their natural state. Petitioner intends to develop an open interpretative park above the cave habitat in a compatible manner as determined by the United States Fish and Wildlife Service.

Five cave sites, a Portuguese house and oven site, and a large heiau discovered during the archaeological survey will be preserved. The entrances of the five caves will be sealed to preserve them and to provide opportunities for future research.

e. § 226-15(b)(1): "Encourage the adequate development of sewage facilities that complement planned growth."

The wastewater treatment plant has been constructed to support the County's long range plans for a regional sewer system

in the Koloa District. The treatment plant site has adequate expansion capability to accommodate the regional needs.

CONFORMANCE TO STATE LAND USE URBAN DISTRICT STANDARDS

195. The Property is contiguous to the 219-acre Urban parcel designated as Urban by the Commission on December 13, 1985. The Project will be contiguous to existing "city-like" concentration of people, structure, streets, and urban level services associated with Koloa Town.

196. Slopes on the Project site range from 0% to 8% with some areas with slopes of 8% to 15%. A few areas with slopes greater than 15% are proposed to be kept open space.

197. The Project is in close proximity to employment areas of Koloa Town and the Poipu area. The Project will create employment opportunities through development of the town center, marina, golf course and some visitor accommodations.

198. Certain basic infrastructure services have been or will be provided by the Petitioner:

a. The wastewater treatment plant has already been constructed and a new potable water well has been drilled.

b. New roadways within the Project site will be provided by Petitioner as well as certain improvements to existing roads on a pro rata share basis as agreed to with the County of Kauai.

199. Police and fire protection services will be provided by the County of Kauai.

200. The drainage system that has been constructed for this Project will reduce impacts to downstream residents by

diverting all of the mauka storm waters to the outlet at Kukui'ula Bay. The area that was impacted by storm surge from Hurricane Iniki will be developed into golf course fairways which will serve as a buffer for residential areas.

201. The County of Kauai General Plan map designation of the Project site as "urban residential" and OSP's recommendation in its five-year boundary review that the Property be reclassified into the Urban district to meet urban land requirements for Kauai to the year 2000 indicate that the Property is reasonably necessary for urban growth and appropriate for new urban concentrations.

CONFORMANCE TO COASTAL ZONE MANAGEMENT POLICIES AND OBJECTIVES

202. The proposed reclassification of the Property for the development of the proposed Project conforms to the policies and objectives of the Coastal Zone Management Program, Chapter 205A, HRS, as amended. Petitioner has represented and the Commission finds that:

a. The marina planned for Kukui'ula Bay will provide coastal recreational opportunities which will be made accessible to the public to help meet current and future demand for boat slips. Public access to the marina and coastline will be provided.

b. Monitoring programs have been established to ensure that coastal resources are not being adversely impacted. These monitoring programs included: water quality monitoring, algae monitoring, coral monitoring, and green sea turtle monitoring.

c. Land set aside by Petitioner near the existing boat ramp for future expansion of the facilities will eventually be dedicated to the County.

d. No archaeological sites of significance were found along the coastal areas at Kukui'ula Bay.

e. After Hurricane Iniki, the locations of the residential components of the Project have been moved from the initial storm surge areas to the mauka areas. The structures in the marina and town center areas which may be impacted by storm waves in a major storm will be designed with special specifications to minimize damage.

203. A portion of the Property around Kukui'ula Bay is within the Special Management Area ("SMA"). An SMA permit will be required under the Kauai County SMA rules, the objectives of which are consistent with the Coastal Zone Management objectives, before any construction can proceed within the SMA.

INCREMENTAL DISTRICTING

204. To effectuate the development of the Property in two phases, the Petitioner proposes incremental districting of the Property under §15-15-78, HAR, in a manner as will provide for approximately 537.313 acres of the Property to be designated within the first increment and approximately 284.829 acres of the Property to be designated within the second increment.

205. Increment I includes portions of both the Property and the 219-acre Urban Parcel and is specifically identified as TMKs 2-6-03: por. 1, por. 32; 2-6-04: por. 16, por. 38, por. 39 and por. 40. The proposed uses in Increment I

include approximately 1,738 residential units, golf course and clubhouse, commercial area, parks, public facilities, a botanical garden visitor center, a sewage treatment plant, school expansion site, and affordable housing sites.

206. Increment II includes portions of both the Property and the 219-acre Urban parcel and is specifically identified as TMKs 2-6-03: por. 1, 21, por. 31; 2-6-04: por. 38, por. 40, and por. 45. Increment II uses include approximately 1,662 residential units, parks, open space, the marina, and town center.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the 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.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSION OF LAW

Pursuant to Chapter 205, 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 consisting of approximately 822.142 acres of land in the Agricultural District, situate at

Lawai, Koloa, Island of Kauai, State of Hawai'i, Tax Map Key Nos.: 2-6-03: por. 1, 21, por. 31, and por. 32; 2-6-04: por. 16, por. 38, por. 39, 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, commercial, marina, town center, 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 537.313 acres of land in the State Land Use Agricultural District situate at Lawai, Koloa, Island of Kauai, State of Hawai'i, identified as Tax Map Key Nos. 2-6-03: por. 1, and por. 32; 2-6-04: por. 16, por. 38, por. 39 and por. 40, and 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 284.829 acres in the aggregate in the State Land Use Agricultural District, situate at Lawai, Koloa, Island of Kauai, State of Hawai'i, identified as

Tax Map Key Nos. 2-6-03: por. 1, 21, and por. 31; 2-6-04: por. 38, por. 40, and por. 45, 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:

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 Kauai and the State Housing Finance and Development Corporation in accordance respectively with County of Kauai housing guidelines and with the Affordable Housing guidelines, adopted by the Housing Finance and Development Corporation, as amended January 1, 1994. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between

the Petitioner and the State Housing Finance and Development Corporation and the County of Kauai.

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 Kauai's Housing Agency, Planning Department and the Housing Finance Development Corporation. 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 implement effective soil erosion and dust control measures during construction to the satisfaction of the State Department of Health and the County of Kauai.

4. 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.

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

6. 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".

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

8. 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 Kauai civil defense agencies.

9. 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) The 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) The 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 the 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. The Petitioner and the DOE shall submit a written agreement on this matter prior to the Petitioner obtaining approval for county zoning.

10. 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 Kauai.

11. 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 Kamaaina rates.

12. 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.

13. Petitioner shall work with the residents of Omao to resolve their concerns regarding the Omao well(s).

14. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property. The drainage master plan shall be approved by the U.S. Fish and Wildlife Service, State Department of Health, State Department of Land and Natural Resources, and the County of Kauai.

15. Petitioner shall initiate and fund a nearshore water quality monitoring program. The monitoring program shall be approved by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the State Department of Health and the State Department of Land and Natural Resources. Mitigation measures shall be implemented by the Petitioner if the results of the monitoring program warrant it. Mitigation measures shall be approved by the aforementioned state and federal agencies.

16. Petitioner shall initiate and fund a program to monitor the populations of threatened and endangered green sea turtles and monk seals and to monitor the presence of p. capillacea (red alga), in the nearshore vicinity and Hoai and Lawai Bays. The monitoring program shall be accepted and approved by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the State Department of Land and Natural Resources. Mitigation measures shall be implemented by the Petitioner if the results of the monitoring program warrant it. Mitigation measures shall be approved by the aforementioned state and federal agencies.

17. 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.

18. Petitioner shall conduct a biological survey for terrestrial invertebrates (Kauai blind wolf spider and Kauai 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 Kauai. The Petitioner shall consult with the U.S. Fish and Wildlife Service ("USFWS") regarding the content and completeness of both studies. The 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.

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

20. 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.

21. Prior to proceeding with land use clearances, permits and or zoning amendments for any residential components in Increment II and that portion of the adjoining 219-acre Urban parcel to be developed with Increment II ("County Zoning Phase II"), at least 65% of the County Zoning Phase I 1,738 market residential units shall be completed. Completion shall mean either final subdivision approval of the single-family lots, or commencement of foundation work for the multi-family projects. However, the restriction on performance does not apply to the marina/town center development of the Project.

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

23. 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.

24. Petitioner shall work with the County of Kauai in integrating the visitor center with the Spouting Horn Park to enable both facilities to complement each other.

25. Petitioner shall comply with all conditions of County of Kauai Ordinance No. PM-197-89 relating to the General Plan Amendment affecting areas within County Zoning Phase II.

26. 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 Poipu Road from Koloa Town to the Project site; and

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

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

28. The Petitioner shall cooperate with the County of Kauai in implementing a program for a shoreline land acquisition for park and or hazard mitigation purposes as may be undertaken by the County.

29. General Plan approval for the lodging facilities in the town center area which do not conform to the present Urban Residential designation shall be obtained by Petitioner prior to its application for County zoning of Increment II.

30. Prior to County zoning approval of the County Zoning Phase II, an agreement between the Petitioner and the County of Kauai 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.

31. Prior to proceeding with the development of a marina with Increment II, Petitioner shall cause to be prepared:

a. An Environmental Impact Statement together with all appropriate studies related to environmental considerations which the marina will affect, such as shoreline erosion to the adjacent areas (loss of sand beaches), affecting of surf sites, water quality, endangered and threatened marine mammals and turtles, storm surge and flooding, etc.

Petitioner agrees that in preparing an environmental impact statement for the marina, it will follow and be bound by HRS Chapter 343 pertaining to the preparation of, and contents of an EIS, including the public participation and judicial review provisions.

b. A marina management plan which shall address the following, but not be limited to:

- (1) Maintenance of the marina;
- (2) Usage by local residents and or organizations;

(3) Type of activities which will occur
(land and ocean);

(4) Land use and development controls to
minimize adverse impacts to the marina and ocean;

(5) Commercial activities (if any are
anticipated).

(6) Impacts of the marina on the State
Kukuiula Harbor

c. A timetable/schedule of development of a
marina in relation to the overall Project and a timetable-
schedule specific to the marina itself.

32. Petitioner shall petition the Commission to
reclassify the lands actually developed for the marina waterways
to the Conservation District within two years of completion of
construction of the marina.

33. Petitioner shall provide public access to the
marina waterway and ocean shoreline and record such public access
ways as part of an easement with appropriate State and County
agencies.

34. Petitioner shall generate one (1) non-tourism
related job, or the equivalent value thereof, for each hotel or
hotel/condominium unit Petitioner is allowed to build.

35. 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.

36. 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.

37. 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.

38. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Kauai 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.

39. 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.

40. 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.

41. 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 the Petitioner.

DOCKET NO. A93-696 - KUKUIULA DEVELOPMENT COMPANY, INC.

Done at Honolulu, Hawaii, this 18th day of May 1995,
per motion on May 11, 1995.

LAND USE COMMISSION
STATE OF HAWAII

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

By (absent)
EUSEBIO LAPENIA, JR.
Vice Chairperson and Commissioner

By M. Casey Jarman
M. CASEY JARMAN
Commissioner

By Lloyd F. Kawakami
LLOYD F. KAWAKAMI
Commissioner

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

By Renton L. K. Nip
RENTON L. K. NIP
Commissioner

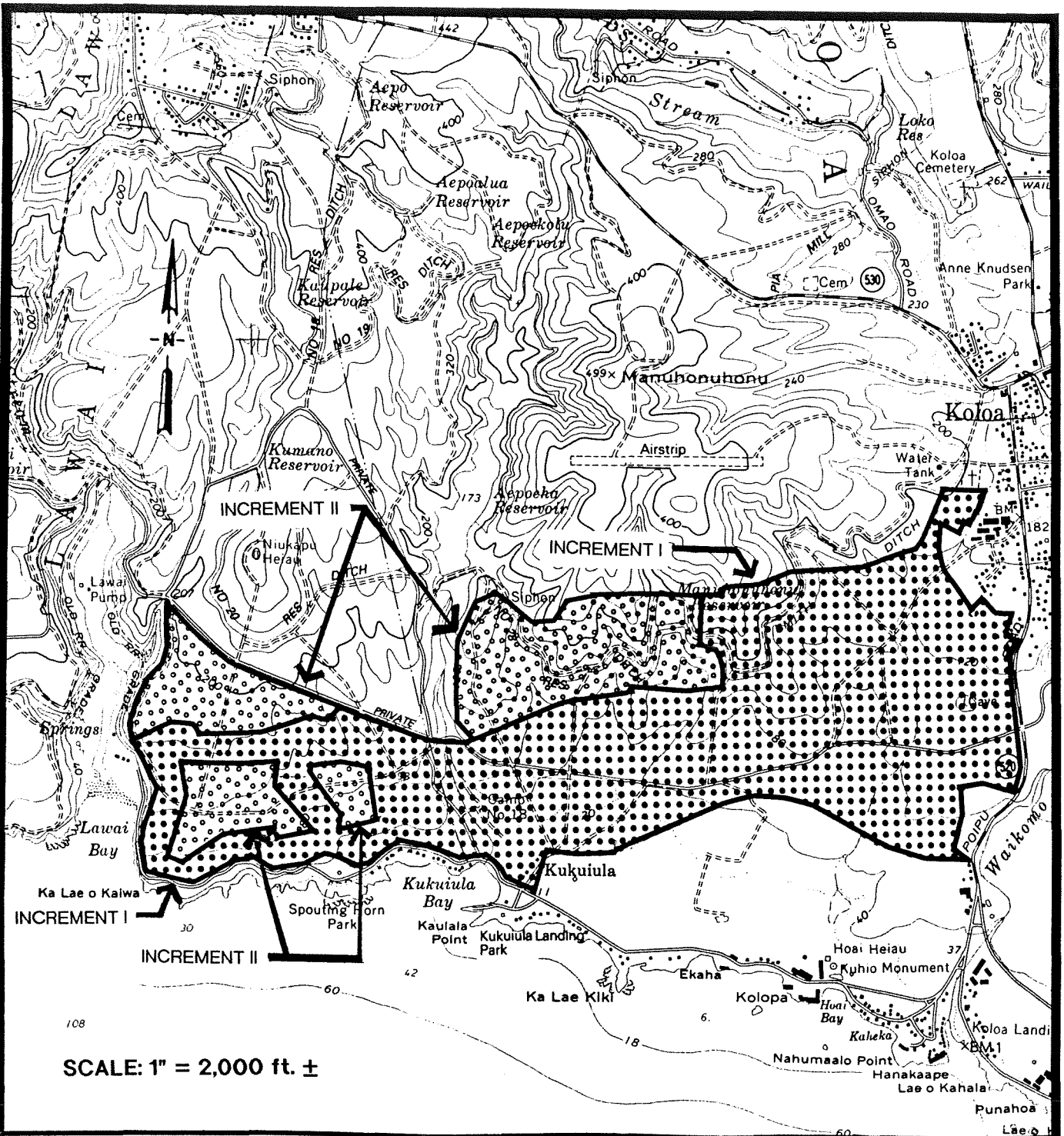
Filed and effective on
May 18, 1995

Certified by:

Lotha Lind
Executive Officer

By Trudy K. Senda
TRUDY K. SENDA
Commissioner

By Elton Wada
ELTON WADA
Commissioner



LOCATION MAP

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

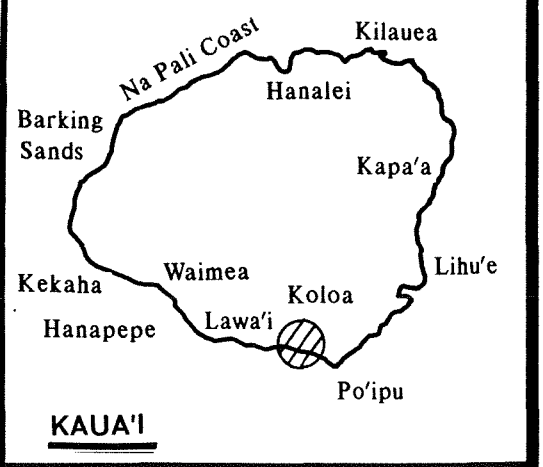
LAWA'I, KOLOA, KAUA'I, HAWAII

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



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,) CERTIFICATE OF SERVICE
INC.)
)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for approximately)
822.142 acres at Lawai, Koloa,)
Kauai, Hawaii, Tax Map Key Nos.:)
2-6-03: por. 1, 21, por. 31, and)
por. 32; 2-6-04: por. 16, por. 38,)
por. 39, 40, and por. 45)
_____)

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:


GREGORY G.Y. PAI, PH.D., Director
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P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. DEE CROWELL, Planning Director
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Lihue, Hawaii 96766

CERT. HARTWELL H.K. BLAKE, ESQ.
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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 18th day of May 1995.



ESTHER UEDA
Executive Officer