

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition	)	DOCKET NO. A03-744
)	
of)	
)	
HILUHILU DEVELOPMENT, LLC	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW, AND
To Amend the State Land Use	)	DECISION AND ORDER FOR A
Agricultural and Conservation Districts	)	STATE LAND USE DISTRICT
to the State Land Use Urban District for	)	BOUNDARY AMENDMENT
Approximately 725.2 Acres of land at)	
<i>ahupua`a</i> of Kau, North Kona Judicial)	
District, Island and State of Hawaii, Tax)	
Map Key No.: (3) 7-2-005: 001.)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND DECISION AND ORDER FOR A STATE LAND USE
DISTRICT BOUNDARY AMENDMENT**

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A03-744
)	
of)	
)	
HILUHILU DEVELOPMENT, LLC	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW,
	)	AND DECISION AND ORDER
To amend the State Land Use	)	FOR A STATE LAND USE
Agricultural and Conservation	)	DISTRICT BOUNDARY
Districts to the State Land Use Urban	)	AMENDMENT
District for approximately 725.2 acres)	
of land at <i>ahupua`a</i> of Kau, North)	
Kona Judicial District, Island and State)	
of Hawai`i, Tax Map Key No.)	
(3) 7-2-005: 001)	
_____)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND DECISION AND ORDER FOR A STATE LAND USE
DISTRICT BOUNDARY AMENDMENT**

HILUHILU DEVELOPMENT, LLC, a Hawai`i limited liability company (“Petitioner”), filed a Petition For Land Use District Boundary Amendment on December 23, 2003, pursuant to Chapter 205, Hawai`i Revised Statutes (“HRS”), and Title 15, Chapter 15, Subchapter 3, Hawai`i Administrative Rules (“HAR”), to amend the State land use district boundary to reclassify approximately 274.9 acres of land from the Conservation District to the Urban District and 450.3 acres of land from the Agricultural District to the Urban District (total area: 725.2

acres) situate at Kau, North Kona, County and State of Hawai`i, bearing Tax Map Key Number (3) 7-2-5: 001 (the "Petition Area") to develop a master planned village community called Palamanui with a mix of single-family and multi-family residential lots and built units, and commercial spaces (medical, office, classrooms, business hotel and health- related facilities), along with active and passive recreation facilities including an 18-hole golf course with clubhouse and driving range, a lowland dry forest preserve, archaeological and cave preserve areas, active and passive activity parks, and a trail system (the "Project").

The Land Use Commission of the State of Hawai`i ("Commission"), having examined the testimony, evidence and arguments presented during the hearing, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On December 23, 2003, Petitioner filed a Petition For Land Use District Boundary Amendment ("Petition") and Draft Environmental Impact Statement ("DEIS").

2. On February 9, 2004, the Commission filed an order requiring Petitioner to prepare a Final Environmental Impact Statement ("FEIS").

3. On March 19, 2004, Petitioner's FEIS was filed with the Commission for approval.
4. On April 1, 2004, Petitioner requested to withdraw and resubmit a revised FEIS. The Commission made and passed a motion to approve the withdrawal of the FEIS for resubmittal at a later date.
5. On May 6, 2004, Petitioner filed its Exhibits 16 and 17.
6. On May 20, 2004, the Commission made and passed a motion that reconfirmed that Petitioner had withdrawn the EIS at the April 1, 2004 meeting.
7. On July 9, 2004, the Commission conducted a site visit to the Petition Area.
8. On September 17, 2004, Petitioner filed its second, revised FEIS ("FEIS II").
9. On October 7, 2004, the Commission accepted Petitioner's FEIS II pursuant to Chapter 343, HRS, and Chapter 11-200, HAR.
10. By letter dated October 13, 2004, the Executive Officer of the Commission ("Executive Officer") deemed the Petition a proper filing as of October 7, 2004.
11. On October 21, 2004, Petitioner filed its Appendix T to FEIS II: Integrated Natural Cultural Resource Management Plan ("INCRMP").

12. On October 25, 2004, the County of Hawai'i Planning Department ("County") filed its List of Witnesses, List of Exhibits, and Certificate of Service. On October 25, 2004, Petitioner filed its List of Witnesses, List of Exhibits 1-39, Exhibits 16, 21, 22, 25, 32, 39, and Certificate of Service.

13. On October 29, 2004, a prehearing conference was held in Honolulu, Hawai'i, pursuant to Section 15-15-57, HAR. On October 29, 2004, the State of Hawai'i Office of Planning, Department of Business Economic Development and Tourism ("OP") filed its List of Witnesses, List of Exhibits, statement in support of the Petition, and Exhibit 2.

14. On November 8, 2004, a Notice of Hearing on the Petition was published in the Honolulu Star Bulletin and West Hawai'i Today, scheduling the commencement of the hearings on December 9 and 10, 2004, in Waikoloa, Hawai'i.

15. On November 23, 2004, the deadline for timely petitions to intervene expired. No petitions for intervention were filed.

16. On November 26, 2004, Petitioner filed a revised List of Exhibits 1-41, a revised List of Witnesses, and Certificate of Service.

17. On November 29, 2004, Petitioner filed Exhibit 40 and Certificate of Service.

18. On December 1, 2004, OP filed its testimony in support of the Petition (Exhibit 1), List of Witnesses, and Exhibits 2-6.

19. On December 3, 2004, the County filed its testimony in support of the Petition and Certificate of Service.

20. On December 9 and 10, 2004, the Commission conducted a hearing on the Petition in Waikoloa, Hawai`i. Entering appearances were Alan M. Okamoto, Esq. and Jerel I. Yamamoto, Esq. on behalf of Petitioner; Norman Hayashi, Planning Program Manager and Christopher J. Yuen, Planning Director, on behalf of the County, and Bobbie Jean Leithead-Todd, Esq., Deputy Corporation Counsel for the County; Abe Mitsuda, Division Head, Land Use Division, on behalf of OP and John W.K. Chang, Esq., Deputy Attorney General for the State of Hawai`i.

21. On December 10, 2004, OP filed its second Exhibit 6, and Exhibits 7-9 and Petitioner filed its Fifth Amended List of Exhibits.

22. On December 9 and 10, 2004, the following individuals offered public testimony in support of the Petition: Marni Herkes; Diane Nui and Lionel Kutner of the Committee Organized for Education Development ("COED"); Karen Cobine; Jerry Rothstein of Public Access Shoreline Hawai`i ("PASH"); George Kimo Kahananui; Mark McGuffie, Vice President of the Kona-Kohala Chamber of Commerce; and Kathy Damon.

23. The following individuals or organizations submitted written testimony: Charles Park, General Manager, Mauna Kea Resort; Alan Clark, President of the Kona Rotary Club; Kathleen Horrigan, General Manager, Four Seasons Resort; Felicity Johnson, Principal of Hualalai Academy; Ashley Ann Cooper, Senator, Associated Students of University of Hawai`i, Hawai`i Community College; Mark McGuffie, Vice President of the Kona-Kohala Chamber of Commerce; Eric von Platen Luder, President of the Kona-Kohala Chamber of Commerce; Jerry Schneyer, President, Makalei Estates Homeowners Association; Violet-Leihulu Mamac, President, Protect Keopuka Ohana; Duane Erway, President, Plan to Protect Kona; Kate Jacobson, Innovations Public Charter School; Vincent Mott, Culinary Student Program at Hawai`i Community College.

24. On December 27, 2004, Petitioner filed its Exhibit 20 and Certificate of Service.

25. On February 7, 2005, Petitioner filed its Exhibit 37.

26. On February 10 and 11, 2005, at its meeting in Waikoloa, Hawai`i, the Commission continued its hearing on the Petition.

27. On February 10 and 11, 2005, the following individuals offered public testimony: Violet-Leihulu Mamac, Jerry Schneyer, David Roy and Mikahala Roy.

28. On February 10, 2005, County filed its First Amended List of Exhibits, Certificate of Service and Exhibit 2.

29. On February 11, 2005, OP filed its second Exhibit 8.

30. On March 10, 2005, Petitioner filed its Exhibit 42 and Certificate of Service.

31. On March 15, 2005, Petitioner filed an amended List of Exhibits.

32. On March 16, 2005, at its meeting in Hilo, Hawai`i, the Commission continued its hearing on the Petition. On March 16, 2005, the Commission closed the evidentiary portion of the hearing for the subject docket with the exception of submissions regarding: an agreement between Petitioner and State of Hawai`i regarding shared protection of the lowland dry forest; Department of Education fair-share agreement; and information to supplement the Petitioner's Exhibit 42.

33. On March 16, 2005, OP filed its Amended List of Exhibits, Amended List of Witnesses, and Exhibit 9. On March 16, 2005, Petitioner filed its Exhibit 43 and amended List of Exhibits.

34. On April 4, 2005, the Commission received a draft proposed Findings of Fact, Conclusions of Law, and Decision and Order stipulated by the parties.

35. On April 12, 2005, Petitioner filed its revised Exhibit 42 and Certificate of Service.

36. On April 15, Petitioner filed its Stipulated Findings of Fact, Conclusions of Law and Decision and Order; and Stipulation Agreement.

37. On April 20, 2005, at its meeting in Kailua-Kona, Hawai'i, the Commission held an action meeting on the Petition. The Commission deferred action on Petitioner's Stipulated Findings of Fact, Conclusions of Law and Decision and Order.

38. On April 20, 2005, the following individuals offered public testimony: Jerry Schneyer, President, Makalei Estates; Duane Erway, President, Plan to Protect Kona; Michael Hess; and Mikahala Roy.

39. On April 20, 2005, Petitioner filed its revised INCRMP as Petitioner's revised Exhibit 42. OP filed its Exhibit 10.

40. On May 13, 2005, Commissioner Randall Sakumoto filed proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment with his fellow Commissioners and upon the parties.

41. On May 19, 2005, the Commission conducted an action meeting in Kailua-Kona, Hawaii, to consider reclassification of the Petition Area. On May 19, 2005, Petitioner submitted its Exhibit 44 and amended List of Exhibits.

42. On May 19, 2005, the following individuals gave public testimony: Lunakanawai Hauanio; Jerry Schneyer, President, Makalei Estates; and

Christopher Yuen, Director of Hawaii County Planning Department. On May 19, 2005, Jerry Schneyer submitted written copies of his testimony to the Commission.

DESCRIPTION OF THE PETITION AREA

43. The Petition Area consists of 725.2 acres of land and is identified as Tax Map Key No. (3) 7-5-002: 001.

44. The Petition Area is located six miles north of Kailua-Kona and one and a half miles northeast of the Kona International Airport at Keāhole (“KOA Airport”). The Petition Area is bordered on the west by Queen Ka`ahumanu Highway and extends *mauka* with its eastern boundary at the Makalei Estates Subdivision. The Petition Area also abuts state-owned land planned for the University of Hawai`i Center for West Hawai`i (“UHCWH”) on its southern boundary (TMK No: 7-3-010: 042) and lands owned by State of Hawai`i on the north (TMK No: 7-2-005: 008).

45. The Petition Area is located within a long sloping *ahupua`a* called Kau on the southwestern slopes of Mt. Hualalai between the elevations of 150 feet to 900 feet.

46. The Petition Area is currently vacant and undeveloped.

47. The visual character of this area is defined by expanses of lava lands covered with clumps of scrub grass, small trees and shrubs.

48. The climate of the Petition Area is hot and arid. Rainfall tends to occur during the late afternoon and evening periods. The annual rainfall averages approximately 25 inches.

49. Average annual temperature in West Hawai'i is 78 degrees Fahrenheit and relative humidity ranges between 71 and 77 percent. Winds follow a diurnal pattern with on-shore winds (westerly and southwesterly) in the morning and early afternoon. Offshore breezes occur in late afternoon and evening. Typical wind velocities range from 3 to 14 knots.

50. The geologic conditions at the Petition Area are characterized by multiple, interlocked *pahoehoe* and *a`a* flows. The Petitioner's archaeological inventory survey dated June 2003, performed by Rechtman Consulting, identified numerous caves and lava tubes on the Petition Area.

51. The Petition Area and all of Hualalai is within Lava Hazard Zone 4, which indicates a moderate lava hazard.

52. The United States Geological Survey assigned the entire Island of Hawai'i seismic Zone 4, which is the highest risk level on the system.

53. The existing air quality on the Petition Area is relatively good. Volcanic emissions from the ongoing volcanic eruption of Mauna Kea periodically affect the Petition Area as well as other areas in Kona.

54. The Petition Area is composed of a variety of soil types. The Petitioner's Soil Report, performed by Yusuf N. Tamimi, Ph.D., dated July 2003, divided the Petition Area into three distinct sections based on soil type: the Upper Area, the Middle Area, and the Lower Area. Petitioner defines the Upper Area as being at the 900-foot elevation and the Lower Area as being at the 200-foot elevation. The Middle Area is not defined by elevation.

55. In the Upper Area of the Petition Area, the soils are dominated by Punalu`u soil series (extremely rocky peat [rPYD] with 6 to 20 percent slope) with pockets of Kaimu soil series (extremely stony peat [rKED] 6-20 percent slope) and *pahoehoe* lava with some weathered volcanic ash and organic residues. Pockets of lava flows of *a`a* [rLV] were also observed. The peat is rapidly permeable, the underlying lava is slowly permeable, runoff is slow and the erosion hazard is slight. Soils of this type are suitable for limited agricultural uses, such as ranching.

56. The Middle Area of the Petition Area is dominated by *pahoehoe* lava flows [rLW] and Punalu`u soil series [rPYD] with pockets of *a`a* lava flows. Lack of soil, rough and uneven terrain and low rainfall render the Middle Area of the Petition Area unsuitable for any traditional agricultural activities.

57. The Lower Area of the Petition Area (about 200 foot elevation) is characterized by very rugged, jagged and difficult to traverse *a`a* [rLV] and

pahoehoe [rLW] flows. Rocky gulches and bare small rocky hills are common.

Most of the Lower Area of the Petition Area is devoid of vegetation.

58. The University of Hawai`i Land Study Bureau classifies the Petition Area as "E" or "very poor agricultural productivity".

59. The Petition Area is not within the Agricultural Lands of Importance in the State of Hawai`i ("ALISH") designation.

60. The Flood Insurance Rate Map ("FIRM") designates the Petition Area as Zone X, an area determined to be outside the 500-year flood plain.

61. The Petition Area is 1 ½ miles inland from the coast and is not subject to tsunami hazards.

62. The Petition Area is located 1.5 miles north of Hawaii Electric Light Company, Inc.'s ("HELCO") Keāhole Generating Station and Airport Substation. HELCO's Generating Station and Airport Substation releases both noise and air pollution, which may affect the Petition Area or portions of the Petition Area.

PROPOSAL FOR RECLASSIFICATION

63. The Project is a master planned village community with a mix of 845 single- and multi-family residential lots and built units, and commercial spaces (medical, office, classrooms, and health related). The Project will also have an 18-hole golf course with clubhouse and driving range, a business hotel (primarily intended for business use associated with the University of Hawai`i),

a lowland dry forest preserve, archaeological and cave preserve areas, active and passive activity parks, and a trail system. Infrastructure will include internal roadways, a private wastewater treatment and disposal system, waterlines and storage, a brackish water irrigation system, and other utility systems.

64. A summary of the proposed land use allocations is as follows:

	Total Units	Acres	Average Price @
Single Family Residential (lots)			
Ocean View Estates	70	70.0	\$400,000
Ocean View Lots	200	100.0	\$300,000
Golf View Lots	120	46.2	\$200,000
Single Family Residential (built)			
Patio Homes	80	16.0	\$350,000
Two Bedroom Condos	60	7.5	\$275,000
Three Bedroom Condos	60	7.5	\$350,000
Subtotal Single Family	590	247.2	
Multi Unit Residential			
Apartments	100	8.0	
International Student Housing	75	5.0	
Senior Housing	80	5.0	
Subtotal Multi Family	255	18.0	
Total Residential	845	265.2	
Commercial (acres)			
University Leases		6.0	60,000
Village Commercial		8.0	80,000
University Village Inn	120	8.0	60,000
Medical, R&D, & Community Commercial			
Medical Campus		10.0	120,000
R&D		50.0	220,000
Community Commercial		20.0	200,000
Golf Course		180.0	
Open Space, Parking, & Preservation		177.8	

Subtotal Commercial & Other	120	459.8	
TOTAL UNITS AND ACREAGE	965	725.2	

65. At full buildout, the Project will have approximately 2,800 residents.

66. The Project is composed of a mixture of 845 housing units, including: single-family lots, townhouses, condominium units and multi-family apartments. The Project’s 590 single-family units will be a mix of single-family detached lots, condominiums, and patio and townhouse units. The Project’s 255 multi-family residential units will include 100 general apartments, 75 units for student housing, and 80 units for senior housing.

67. Petitioner will construct at least 100 affordable housing units onsite within the Petition Area. The affordable housing units will be built in conjunction with the development of the University Village. Petitioner will work with the County to satisfy the County’s Ordinance No. 05-23, Affordable Housing Policy For the County of Hawai`i to determine the exact number, type, and location of affordable housing units for the Project. If the Petitioner is required to construct more than 100 affordable housing units, Petitioner may seek to build the affordable units in excess of 100 offsite, upon written agreement with the County.

68. The core of the Project's commercial activities will be in the University Village, which is designed to serve as the community center for the Project.

69. The commercial component of the University Village area within the Petition Area will include a mixture of classrooms and teaching labs, a supermarket, restaurants, book store, coffee shop, professional and business offices, a business hotel with conference facilities associated with the University, facilities for community outreach and commercial training support, and medical wellness facilities.

70. The concept of the University Village is to develop one-half of the village core within the Petition Area abutting the property line with adjacent State-owned property to the south to allow the UHCWH to have the option to construct its half of the village core at a later date, such that upon completion, the two halves of the University Village will function as one community.

71. The Project's architectural character of core buildings in the University Village and adjacent facilities will be to develop a community with a non-institutional feel. Building design will limit heights (one, two, or three story structures) and will preserve view planes.

72. The University Village is designed to provide convenient pedestrian and bicycle access throughout the Project.

73. The initial development of the Project portion of the University Village will include classroom and office facilities to allow the University of Hawai'i ("University") to relocate and expand its West Hawai'i operations. The University expects to expand program offerings and increase enrollment from 550 students to 2,000 students by 2010 if it has adequate facilities. Under the Memorandum of Understanding between the Petitioner and the University dated April 16, 2004, Petitioner will work with the University to develop as much space for lease as is possible within the University's budget. Petitioner will initially allocate 30,000 square feet of space of the Project to be leased to the University.

74. The University will have the opportunity to lease classrooms, offices and buildings that will be constructed by Petitioner in the Project's portion of the University Village. The proposed leased spaces are sufficient to serve the University's short- to mid-term needs.

75. Petitioner proposes to develop a 120-unit business hotel with meeting and conference facilities to provide visitor accommodations for the Project. The hotel and its meeting and conference facilities will provide accommodations in conjunction with University operations and business. The hotel would be similar to a Courtyard by Marriott, with its primary purpose for

University related activities and for business. The hotel will also provide opportunities to integrate student-training programs.

76. Petitioner will implement sustainable design principles in the Project to maximize efficient use of energy and natural resources using passive, infrastructure and building strategies. These strategies include a pedestrian friendly development, bicycle lanes, orienting buildings to maximize cross ventilation and minimizing solar heat gain, using renewable energy sources such as solar energy, and insulating buildings to mitigate heat loss or gain.

77. The Petitioner will create a trail system to link portions of the Petition Area and link the historic, cultural and natural preservation areas (the "Preservation Areas") within the Petition Area.

78. Structures built on the Petition Area will conform to the County Uniform Building Code's earthquake design provisions.

PETITIONER'S FINANCIAL CAPABILITY

79. Construction of the Project is estimated to cost approximately \$304,000,000.

80. Petitioner owns the Petition Area in fee simple. There are no mortgages or other encumbrances on the Petition Area.

81. Petitioner intends to finance the Project using a range of alternatives including, but not limited to, equity contributions, conventional

financing, joint venture partners and/or independent developers. Petitioner will finance the initial construction of roads and infrastructure system and subdivision of the single-family lots principally from equity contributions.

82. Once revenue from sales, leases or rental in early development phases has been received, such receipts will be utilized to finance subsequent construction of the Project.

83. The Petitioner has a successful history of development in Hawai`i County and is committed to pursuing the development of the Project to completion.

84. Other projects that the Petitioner has completed in Hawai`i County include: the 81-lot Makalei Estates subdivision and custom homes, which abuts the Petition Area to the east.

85. Principals of the Petitioner have completed various residential subdivisions; several golf courses; commercial and special purpose buildings (a public swimming pool, gymnasiums, school buildings, and astronomy observatory buildings); road and water systems; and wastewater treatment facilities in Hawai`i County.

86. Petitioner has the necessary economic ability to carry out the representations and commitments relating to the completion of the Project.

NEED FOR THE PROPOSED DEVELOPMENT

87. The need for the Project's residential units is based on a market study, dated July 2003, performed by Knowledge Based Consulting Group, in association with THK Associates (the "Market Study"). The Market Study identified increasing demand for homes by residents of Hawai'i, second home purchasers, renters, students and senior citizens.

88. In West Hawai'i, the average annual housing demand over the next 10 years will be 719 detached single-family dwellings, 36 house lots, 84 townhouse/condominium units and 104 rental apartments.

89. The Market Study also determined the ability of the Project to attract its share of buyers and renters ("Capture Rate"). The Capture Rate considers: the prestige of the community; the quality and character of the immediate area; reputation of the area; the lot size of single-family lots; planning and amenities of competitor projects; the presence of a golf course; access to regional employment; and retail and recreation centers.

90. The Market Study showed a strong positive response among prospective homebuyers to the association of University programs and activities in the University Village.

91. The estimated demand for the Project, with allowance for future expansion, is 80,000 square feet for University Village commercial (8 acres);

200,000 square feet for community commercial (20 acres); 120,000 square feet for a medical campus (10 acres); and 220,000 square feet for flexible research and development space (50 acres).

SOCIO-ECONOMIC IMPACTS

Social Impacts

92. North Kona had a population increase of 28.1 percent between 1990 and 2000, and during the same period of time, South Kohala's population increased by 43.7 percent. The County of Hawai'i's population increased by 23.6 percent between 1990 and 2000, compared to a 9.3 percent population increase for the State of Hawai'i as a whole.

93. The population growth in Kona is largely attributed to growth in the visitor industry, which is expected to continue expanding. Other economic activities in Kona include agriculture (coffee production, cattle ranching, fruit production, macadamia nuts and vegetable cultivation). Smaller industries in the Kona area include timber, fishing, quarrying, construction and printing.

94. The Project will provide a residential community with a mix of housing with supporting retail amenities, access to training and educational opportunities via the University programs, an 18 hole golf course, passive and active park spaces, a lowland dry forest preserve, bike paths, walking paths and archaeological and cave preserves.

95. The relocation of the University on land adjacent to the Project will assist in furthering training and educational opportunities to the residents of West Hawai'i.

Economic Benefits

96. The Project will generate economic benefits to the construction industry. Total construction spending is expected to be approximately \$304 million. This spending is expected to support 2,500 person years of construction employment.

97. It is estimated that the Project will generate 1,841 new jobs at full buildout in 2014.

98. Development of the Project is expected to result in an increase in total output of \$375 million, an additional 3,700 person years of employment, and \$175 million in household income.

Petitioner's Infrastructure Commitments for the UHCWH

99. The UHCWH is a component of the Hawai'i Community College system.

100. The UHCWH currently rents approximately 13,500 square feet in the Kealakekua Shopping Center. The lease to rent this site expires in 2007 with an optional one-year extension.

101. The continued population growth of the Kona area justifies expanding a higher education center for West Hawai`i.

102. The University of Hawai`i Board of Regents selected 500 acres of land (reclassified into the Urban District by LUC Docket BR92-685 on December 9, 1993) abutting the Petition Area as the permanent future location of the UHCWH (the "500-acre UHCWH site").

103. In the past, the University has had difficulty in securing funding to develop the 500-acre UHCWH site due to the high costs of developing infrastructure for the site.

104. The Petitioner will help to facilitate the relocation of the University operations in West Hawai`i by a) providing leased commercial space within the Project's University Village for the temporary relocation of the UHCWH until the UHCWH is able to permanently relocate to the 500-acre UHCWH site, and b) by constructing some of the infrastructure required such that the permanent relocation of the UHCWH to the 500-acre UHCWH site is less of a financial burden for the University.

105. Petitioner will continue with its joint planning with the University for the University Village under the terms of the Memorandum of Understanding with the University, dated April 16, 2004, including constructing and leasing of buildings for the relocation of the UHCWH.

106. The roadway improvements that the Petitioner will construct that will facilitate the UHCWH's permanent relocation include: a) a new public road that will connect the Project and the 500-acre UHCWH site to Queen Ka`ahumanu Highway and b) a two lane road connecting the Petition Area to Ka`iminani Drive through the 500-acre UHCWH site.

107. The Petitioner will extend the Department of Water Supply main waterlines and storage tanks, with appropriate stub out for future connection on the 500-acre UHCWH site. The Petitioner will provide appropriate stub outs to facilitate the UHCWH's connection to said waterlines at such time that is mutually agreeable between the Petitioner and the University.

108. The Petitioner will design and size the Project's wastewater treatment plant to accommodate both the needs of the Project and future development of the 500-acre UHCWH site. The Petitioner will facilitate the UHCWH's connection to the Project's wastewater treatment plant at such time that is mutually agreeable between the Petitioner and the University.

IMPACTS ON RESOURCES OF THE AREA

Agricultural Resources

109. The Petition Area does not have the potential to support commercial agriculture, given the poor quality of soil and cost of infrastructure needed to make the Petition Area productive for agriculture.

110. Petition Area is currently vacant, and had been intermittently used for ranching and grazing. The Petition Area has not been used for agricultural activities since 1989.

111. Reclassification of the Petition Area to the Urban District would not have an adverse effect on the State's agricultural industry or agricultural resources.

Flora and Fauna

112. A botanical reconnaissance study performed by Dr. Patrick Hart, dated October 2003 (the "Biological Study"), identified the plant and bird species on the Petition Area. The Petition Area contains twenty-seven native plant species, including the federally listed endangered species *aiea*, *halapepe* and *uhiuhi*, two species of concern, numerous stands of giant *wiliwili*, and thirty-five introduced species.

113. Previous human activity in the form of ranching and introduction of cattle, goats and alien plant species has altered the vegetation on much of the Petition Area.

114. A lowland dry forest fragment of approximately 65 acres, which is dominated by *lama*, *alaha`e* and sandalwood trees, encompasses an area that stretches from the 650 foot elevation of the Petition Area to an area close to the *mauka* boundary of the Petition Area (the "Lowland Dry Forest Preserve").

115. The Lowland Dry Forest Preserve may rank among the largest intact lowland dry forest fragments on the island. The Lowland Dry Forest Preserve is ecologically and culturally valuable because over 95 percent of the State's lowland dry forests have been destroyed and the remaining areas are severely degraded.

116. Much of the understory of this Lowland Dry Forest Preserve is composed of native tree seedlings and saplings, especially *lama*, *alahe`e* and some sandalwood. Native vines in the Lowland Dry Forest Preserve include *huehue* and *koali*. The Lowland Dry Forest Preserve includes an abundance of *kolomona* and sandalwood trees and numerous large individuals of *Chamaesyce multiformis*.

117. At least thirteen specimens of the federally endangered *halapepe* species are found in the Lowland Dry Forest Preserve. A single specimen of *ohe makai*, a species of concern, is found in the Lowland Dry Forest Preserve.

118. Four individuals of the federally listed *uhiuhi* and two individuals of *aiea* were identified on the Petition Area, although it is likely that one of the *aiea* individuals is located just outside the southern boundary of the Petition Area. *Maiapilo*, a federally listed species of concern, is common in the *makai* half of the Petition Area.

119. The Biological Study identified three species of native birds, including one federally listed endangered species and one species of concern on the Petition Area.

120. Hawai`i *`amakihi* are abundant in the Lowland Dry Forest Preserve, with a mean density of approximately 4.5 birds per acre.

121. The Biological Study noted that a federally endangered *`Io* (Hawai`ian Hawk) was regularly seen in the forested section on the *mauka* portion of the Petition Area.

122. The nocturnal federally endangered Hawai`ian Hoary Bat was not observed during the Biological Study, which was conducted during daylight hours. However, the lack of bat observations does not signify an actual absence of bats.

123. A federally listed species of concern, the *Pueo* (Hawai`ian short-eared owl), was identified on the Petition Area during the Biological Study, foraging in the *a`ali`i* shrublands at approximately the 500 foot elevation.

124. Preservation of the Lowland Dry Forest Preserve located within the Petition Area is a priority of the Project.

125. The Lowland Dry Forest Preserve, in addition to the *uhiuhi*, *maua* and *aiea* trees throughout the Petition Area, will be permanently protected using enclosure areas with buffers to protect those trees.

126. The Petitioner will, to the extent possible, take measures to preserve the large *wiliwili* tree specimens throughout the Petition Area by incorporating them into its landscaping plan or appropriately relocating them to other sites within the Petition Area.

127. The preservation plan for the Lowland Dry Forest Preserve, prepared by Dr. Hart, has been incorporated into the revised INCRMP.

128. The `Io and Hawai`ian Hoary Bat may breed in the forested areas of the Petition Area at certain times of the year.

129. To avoid any disruption to the breeding of the `Io, a biologist will determine whether there are nests in any of the areas proposed to be grubbed and establish appropriate safeguards before grubbing activities can commence.

130. As a means to mitigate adverse impacts to the Hawai`ian Hoary Bat, Petitioner will retain a biologist to determine whether bats are present in the vicinity of construction work and determine the breeding season for those bats in the area before any construction work occurs. If work is to be done during the bat-breeding season, the biologist will set appropriate safeguards to protect the bat breeding activity.

131. An updated biological survey will be conducted and submitted to the Commission before any construction work on the Petition Area is done.

132. The revised INCRMP requires that Petitioner create preservation easements to protect the Lowland Dry Forest Preserve, and archaeological and cave preserve sites.

133. The implementation of the revised INCRMP requires that prior to the start of construction of the Project: an updated biological survey to be conducted which will also include arthropods and nocturnal animals such as the Hawai`ian Hoary Bat; all Preservation Areas (including buffer areas) be identified and marked in the Petition Area and; all Preservation Areas be marked on an inventory map and provided to construction contractors. Appropriate consultants and cultural monitors will have been mobilized and prepared to identify and protect any new resources that are found during construction. Petitioner will meet on site with the contractor, consultants and cultural monitors to review all proposed grubbing or construction work.

134. One or more cultural monitors, as appropriate, will inspect construction sites on the Petition Area, as construction activity occurs. Construction work will be suspended in any area where an archaeological site, burial or endangered plant or animal species is found. Construction work will not resume in that area until the Petitioner and appropriate consultant have determined the appropriate mitigation in accordance with Petitioner's representations to the Commission. The revised INCRMP provides for special

survey of work sites to determine if there is evidence of nesting or breeding of 'Io or evidence of Hawai'ian Hoary bat breeding. Work in such areas will not proceed until the end of the nesting season or, in the case of encountering bats, until the biologist has developed a plan to mitigate the impact of such construction activity.

135. The revised INCRMP sets reduction of the fire hazard for the Lowland Dry Forest Preserve as a priority goal. Preservation Areas will be fenced exclosures. Such exclosures will be adequate to exclude grazing animals.

136. The revised INCRMP provides for a forest restoration program, coordination of programs relating to the Lowland Dry Forest Preserve, and the development of an interpretive center and program.

137. The revised INCRMP includes an initial implementation budget and identifies those costs to be borne by the Petitioner. Exhibit F of the revised INCRMP provides a breakdown of the \$700,000 committed to implementing the revised INCRMP.

138. The revised INCRMP requires that management of the Lowland Dry Forest Preserve will be done in cooperation with the Department of Land & Natural Resources (Forestry and Land Management Division) and in coordination with the management of the lowland dry forest on State-owned land to the north of the Lowland Dry Forest Preserve.

139. The revised INCRMP contains various preservation and maintenance plans for the Petition Area's Preservation Areas, a process to manage the use of cultural resources, and building design standards that will preserve the open space values and culturally significant view planes.

Cave Fauna

140. In December 2003, Hawai'i Biological Survey conducted a biological reconnaissance of twenty-three caves (lava tubes) on the Petition Area (the "Cave Study"). The twenty-three lava tube segments on the Petition Area were grouped into six lava tube systems and three isolated caves. Five of the cave systems are biologically significant. The biologically significant caves had a deep cave zone environment, which is a perpetually dark, moist passage with a stable air mass saturated with water vapor that can support obligate cave-inhabiting species.

141. According to the Cave Study, the five biologically significant cave systems are of the Petition Area: 1) cave 14338 near the northeast boundary; 2) cave 14368C along the middle of the northern boundary; 3) cave 14375B south of the proposed main access road near the middle of the southern boundary; and 4) and 5) are two segments of the cave 14350 lava tube system about 600 meters down-slope from the middle of the eastern boundary.

142. The presence of suitable habitat, supporting native plant roots and obligate cave-inhabiting species indicate that that a cave ecosystem exists within the Petition Area.

143. The Petition Area contains at least eighteen species of arthropods, including five native to Hawai`i. None of the arthropods on the Petition Area are officially recognized as rare species.

144. Site clearing, grading or excavation, waste disposal, pollution, invasion by alien species, and disturbance by human visitors in the Petition Area's caves create risks of disturbing food and water inputs and altering airflow and microclimate of the cave ecosystems on the Petition Area.

145. Without mitigation, the caves will naturally degrade slowly over time.

146. The Petitioner will implement the following short-term mitigation measures to protect the biologically significant caves on the Petition Area: minimize surface disturbance over significant caves; minimize the addition of topsoil or impermeable materials over significant caves; and develop a buffer zone around the significant caves.

147. The Petitioner will implement the following long-term mitigation measures to protect the biologically significant caves on the Petition Area: control invasive plant species in the vicinity of the caves; monitor surface vegetation

over caves; prevent wildfires; install gates at the entrances of especially sensitive caves; conduct additional biological surveys; and preserve the significant cave ecosystems and the buffer areas above them.

148. The Petitioner's mitigation measures and preservation and management plan for the significant caves are included in the revised INCRMP.

Cultural Resources

149. Portions of the Petition Area were formerly used as a part of the Hu`ehu`e Ranch that operated for more than 100 years and were impacted by ranching activities and feral animals such as goats, pigs and donkeys.

150. A cultural impact assessment conducted by Maria Orr dated December 2003, (the "Cultural Impact Assessment") identified the important cultural places and practices on the Petition Area, as: 1) certain habitation and agricultural features; 2) petroglyphs and trail segments; 3) lava tube cave habitation features and caves with evidence of water collection practices; 4) botanical resources important to Hawai`ian practitioners, including a regenerating *lama* forest (also identified as the Lowland Dry Forest Preserve); 5) land forms and view planes of geographic features important to the Kekaha region.

151. One of the most significant historic events relating to the Petition Area is the 1801 lava flow, which overran the *makai* lands of Kau. The

archaeological evidence of upland shelters and permanent habitation sites indicate that the 1801 lava flow changed the lives of the people in this area.

152. Ancient cave shelters, water collection caves, trails, petroglyphs, ceremonial features and agricultural features are present on the Petition Area. The Petition Area also has a diverse range of endemic and indigenous flora.

153. The Petition Area until recently had an abundance of *hala*. There is still an abundance of other medicinal, craft and specialty lumber plants in the Petition Area.

154. Native Hawai`ian *kupuna* from the region expressed concern that culturally significant sites and flora on the Petition Area should be protected and preserved.

155. The Project's name "Palamanui" was the historical name for this area. The name "Palamanui" was recommended by Mr. Karin Haleamau, whose family once lived on the Petition Area and whose father worked for Hu`ehu`e Ranch. The Petition Area was known for residential, cultivation and healing purposes. *Kahuna lapa`au* treated sick patients by preparing and using appropriate plants and herbs. The word "Palamanui" can mean: huge *lama* (tree or wood) enclosure; an enclosure of abundant education; an enclosure of great enlightenment. The wood of the *lama* tree was considered sacred and used for religious purpose. Other meanings of "lama" are enlightenment, torch (symbolic

for education). The academic logo for the University of Hawai'i at Manoa includes a torch with the word "*malamalama*," meaning "enlightenment." The name "Palamanui" is especially appropriate since the Project involves collaboration with the University.

156. Petitioner will protect and preserve culturally significant places and practices as identified by the Cultural Impact Assessment through the programs described in the revised INCRMP.

157. The revised INCRMP includes as a permanent part of the Project's operations: 1) active participation by Petitioner and representatives of native Hawai'ian *kupuna* from the Kekaha region; 2) consultation with members of the Hewahewa and Mahi families and the University on interpretive programs; 3) use of the cultural impact study and other EIS studies to coordinate cultural management planning with natural resource preservation; 4) amending the revised INCRMP from time to time to incorporate new information as received; and 5) referring to the revised INCRMP to guide landscaping design for the Petition Area.

158. The revised INCRMP requires covenants, conditions and restrictions ("CC&Rs") to be established that will: 1) be recorded against title to the Petition Area and each lot that the Petition Area may be subdivided into; 2) require the use of the revised INCRMP to guide future design and development

by the Palamanui Master Association that will be created under such covenants; 3) require consultation by the Petitioner and the Palamanui Master Association with cultural advisory and other committees; and 4) provide for assessments to defray the cost of administering the programs and plans described in the revised INCRMP.

159. Because the cultural resources related to the Petition Area are closely connected to archaeological and botanical resources, the mitigation measures and preservation plans for these resources have been incorporated into the revised INCRMP.

160. The revised INCRMP requires that Petitioner ensure meaningful participation and consultation with the *kupuna*, affected families, and University personnel by imposing permanent covenants on the Petition Area in creating the Palamanui Master Association.

161. The revised INCRMP incorporates design standards, which ensure that development of the Petition Area will allow for the preservation of significant view planes and culturally significant landforms and selection of place names and landscaping plans that will take into account the need to preserve the sense of place noted in the Cultural Impact Assessment.

Archaeological Resources

162. Rechtman Consulting, LLC performed an archaeological inventory survey, dated June 2003, to supplement information obtained from earlier archaeological inventory surveys of the Petition Area. A total of eighty-three archaeological sites were recorded and identified within the Petition Area during the archaeological inventory study.

163. The most frequent type of archaeological site identified on the Petition Area were forms of pre-contact temporary habitation. There were six pre-contact permanent habitation sites, one of which may have been associated with the Pa`aiea Fishpond which was destroyed by the 1801 lava flow.

164. Of the eighty-three archaeological sites on the Petition Area, twenty-two were recommended for preservation and twenty-three for data recovery.

165. The Petition Area contains nine historic-period sites, including a road.

166. Based on on-site inspections and information obtained by conducting interviews with *kupuna*, the Petition Area is not currently used for Native Hawai`ian traditional or cultural practices.

167. The Project will permanently protect the habitation complex and the trail system in the *makai* area of the Petition Area and permanently preserve

all significant archaeological sites within the Petition Area. The Petitioner will also permanently preserve the Lowland Dry Forest Preserve, specimens of trees that are federally endangered species, and all biologically significant cave systems throughout the Petition Area. The Petitioner will permanently preserve these resources through CC&Rs, through implementing the revised INCRMP, and through its other representations made to the Commission.

168. Mitigation of short-term impacts of the Project to the cultural and archaeological resources of the Petition Area will include the following: contractors will be notified of the location of preservation sites; temporary buffer zones of a size to be determined by a cultural monitor retained by the Petitioner, will be established around each preservation site; temporary fencing will be installed and fencing installation and grubbing will be monitored; and an archaeologist will be consulted regarding the construction of permanent enclosures around the preservation sites.

169. Mitigation of long-term impacts of the Project to the cultural and archaeological resources of the Petition Area will include: the approval of treatment and mitigation plan by State Historic Preservation Division (“SHPD”); following protocols required by the SHPD Burial Sites Program when unidentified cultural remains are found; implementing the specific preservation

and mitigation measures contained within the revised INCRMP; and make further amendments to the revised INCRMP if required by the SHPD.

Surface Water Quality

170. There are no streams or bodies of water on the Petition Area.

171. The Project's stormwater runoff will be directed into drywells and detention basins.

Groundwater Resources

172. Urban uses of land create a risk of contamination to groundwater from accidental spills of hazardous material or from non-point source pollution.

173. Fertilizer and pesticide leaching from golf courses or other landscaped areas creates a potential for adverse effects on groundwater quality.

174. The geology of the Petition Area is that of fresh, young and permeable lava flows from Mt. Hualalai, which leads to high horizontal transmissivity in the groundwater aquifer.

175. Stormwater drainage structures will be designed and operated using best management practices to filter runoff through sand and gravel. Vegetated retention basins will assist in the uptake of nutrients in the storm water.

176. Experience with golf courses in West Hawai`i since resort development began indicates that golf courses can be managed to reduce adverse impacts to groundwater quality.

177. The Project's golf course will be professionally managed. Irrigation will be controlled to avoid over watering. Fertilizers and pesticides will be controlled using best management practices, including but not limited to, integrated pest management.

178. The Project's golf course will be designed and maintained to meet the requirements of the Audubon International Silver Signature Program to minimize the risk of adverse impacts to groundwater, among other environmental concerns.

179. Turf areas of the Project's golf course will be properly graded and will have adequate subcourse to absorb and bind nutrients within it.

180. The Project's use of treated wastewater for supplemental irrigation will result in the consumption of phosphorous and nitrogen that would otherwise leach into groundwater aquifers if treated wastewater was not used for irrigation.

181. The Project will implement a groundwater monitoring program to include soil moisture measurements and lysimeters to assure that any leaching from the soil will be detected so that corrective action can be taken.

182. Petitioner will install at least one groundwater monitoring well to address water quality concerns of the State Department of Transportation (“SDOT”) Airport Division and the Natural Energy Lab of Hawai`i Authority. Petitioner will also participate in coastal water quality monitoring programs with those agencies.

183. Petitioner will implement golf course maintenance and stormwater management plans and will take appropriate mitigative measures if elevated pollutant levels are found in groundwater downgradient of the Petition Area.

184. The sustainable groundwater yield for the hydrological sub-area in which the Project is located is sufficient to provide the projected potable and irrigation water needs for the Project. The Project’s irrigation wells are not expected to adversely impact potable water resources in the area, since the irrigation wells will be hydrologically downgradient from the potable water wells.

185. State of Hawai`i Department of Hawai`ian Homelands properties in North Kona will use groundwater drawn from areas outside the sub-area from which the Petition Area will obtain its irrigation and potable water and will not be affected by the groundwater used to support the Project.

186. The use of groundwater for the Project will not adversely impact the native Hawai`ian rights to groundwater.

Recreational Resources

187. The Project will increase the number of Kona residents who will need access to recreational resources.

188. The recreational facilities of the Project will provide additional resources to offset any impact of the Project.

189. The Project's golf course will be a semi-private course with membership available for the Project's residents. Public play on a fee basis will be available at comparable rates to those of other non-resort golf courses on the Island of Hawai'i. The golf course will also be available for youth golf programs and University programs.

190. An active use park will be available to the public and can be dedicated to the County of Hawai'i if the County is agreeable to dedication. The Project will also have passive use parks and a trail system and bicycle paths available to the public.

Scenic Resources

191. Scenic views and open spaces within the Project will be preserved to the extent possible.

192. The Project's landscaping will preserve the 'sense of place' as to the Kekaha lands.

193. The philosophy of the Project is to 'build to the land', avoiding major cuts and fills.

194. The Project's golf course design will preserve views and retain landforms where possible. The golf course design will avoid over greening the landscape.

195. An 800-foot wide buffer along the entire the *makai* boundary of the Petition Area will be maintained as a visual buffer in its natural state along Queen Ka`ahumanu Highway.

196. Petitioner will site the Project's wastewater treatment plant and the *makai* portion of the "Northern Project Access Road" (defined below) within the 800-foot wide open space buffer. The Petitioner will develop these improvements within the 800-foot wide open space buffer such that the visual impact is minimized.

197. No negative impacts from the Project with respect to view planes are anticipated.

ENVIRONMENTAL QUALITY

Noise

198. The Project's acoustic study performed by Y. Ebisu & Associates, dated February 2004, identified construction activities as the primary source of short-term noise impacts for the Project.

199. Noise from construction equipment will be limited, as regulated by the State Department of Health's ("DOH") Administrative Rules, Chapter 11-46, "Community Noise Control."

200. Implementation of curfew periods and adherence to construction noise limits established by the DOH will further minimize nuisance to residents of nearby communities. So long as these requirements are complied with, no short-term noise mitigation is required.

201. Petitioner will submit a Federal Aviation Administration ("FAA") Form 7460-1, Notice of Proposed Construction or Alteration regarding any probable impacts to the airspace in the vicinity of KOA Airport from the Project.

202. The Petition Area is outside the noise exposure contours for KOA Airport. However, depending on wind conditions, noise from KOA Airport and the Keāhole Generating Station and Airport Substation may be audible from different locations within the Petition Area.

203. The Project may be subject to noise from single event aircraft (jet, fixed wing propeller and rotor wing) operations and overflights going to and from KOA Airport.

204. The Petitioner will disclose such single event noise impacts to prospective buyers and future occupants. This disclosure will also include existing and potential noise events from increased activity at KOA Airport.

Air Quality

205. Short-term impacts to air quality will occur during construction of the Project from fugitive dust and exhaust emissions from construction equipment.

206. The Project's mitigation measures for fugitive dust will be those dust control measures specified under the DOH Air Quality Standards. These measures will include watering active work areas and temporary unpaved roads, creating windcreens, limiting areas being exposed at any given time, covering dirt hauling trucks in transit, road cleaning, paving of parking areas, and early landscaping.

207. Given the undeveloped nature of the Petition Area, exhaust emissions are not expected to require short-term mitigation.

208. The Project's long term impacts to air quality result from motor vehicle emissions that involve carbon monoxide and nitrogen oxides.

209. Petitioner's air quality study performed by B.D. Neal & Associates dated July 2003, indicates that long-term impacts to air quality from motor vehicle emissions will be minimal.

210. The Project's worst-case scenario concentrations of carbon monoxide would still remain within State and national ambient air quality

standards. Mitigation measures for possible long-term traffic related impacts are unwarranted.

ADEQUACY OF PUBLIC SERVICE AND FACILITIES

Transportation and Traffic

211. Petitioner's Traffic Impact Assessment Report ("TIAR"), performed by Austin, Tsutsumi & Associates dated January, 2004, studied existing regional traffic and projected regional traffic conditions with and without the Project.

212. The main regional highways in the vicinity of the Project are Queen Ka'ahumanu Highway and Mamalahoa Highway.

213. The critical intersections that were studied in the TIAR for Queen Ka'ahumanu Highway were Keāhole Airport Access Road and Ka'imīnani Drive.

214. Intersections south of Ka'imīnani Drive were not considered as a factor in the TIAR because the SDOT will have widened Queen Ka'ahumanu Highway by the time the Project has an impact on that highway.

215. The intersections in the TIAR that were studied for Mamalahoa Highway were at Makalei Estates intersection and Ka'imīnani Drive.

216. The TIAR projected traffic in years 2008, 2011, and 2014 with and without the Project.

217. The TIAR considered the effects of establishing an access at the *makai* boundary of the Petition Area with Queen Ka`ahumanu Highway where the Petition Area has an SDOT permitted access (the "Northern Project Access Road") and access at the current Keāhole Airport Access intersection (the "Airport Access Road").

218. Regional traffic projections in the TIAR were based on a 4.5 percent per year growth rate used in the County Keāhole to Honaunau traffic circulation plan ("K to H Plan") that was completed in 2003. Applying that growth rate, regional traffic in this area is projected to double by 2020.

219. Creation of the mid-level road system described in the K to H Plan would significantly reduce traffic demand on Queen Ka`ahumanu Highway and Mamalahoa Highway.

220. Under present traffic conditions, the southbound traffic on Queen Ka`ahumanu Highway south of the Airport Access Road intersection is approaching capacity.

221. Utilizing the Northern Project Access Road for ingress and egress from the Project would allow better overall traffic flow on Queen Ka`ahumanu Highway, as opposed to utilizing the proposed Airport Access Road of the Project.

222. A new roadway along the “Main Street” alignment as shown in the County’s Keāhole to Kailua Development Plan in the area of the *makai* boundary of the 500-acre UHCWH site would allow residents in the community along Ka`iminani Drive and along Mamalahoa Highway to use the facilities and services available in the Project instead of having to go to Kailua-Kona and without having to add to traffic on Queen Ka`ahumanu Highway.

223. A mixed-use development, such as the Project, with residential, commercial and school facilities, provides the opportunity to reduce traffic by providing services for residents within the community.

224. If the Airport Access Road intersection is utilized as the Project’s access to Queen Ka`ahumanu Highway, it will need a left turn pocket on the Airport Access Road going southbound onto Queen Ka`ahumanu Highway, east-west access through the intersection, a deceleration lane on Queen Ka`ahumanu Highway for northbound traffic turning into the Airport Access Road, and a traffic light system to handle the various movements.

225. If the Northern Project Access Road intersection is utilized as the Project’s access to Queen Ka`ahumanu Highway, it will need a traffic signal system, left turn pocket for traffic from the Project going southward onto Queen Ka`ahumanu Highway, and on Queen Ka`ahumanu Highway a left turn pocket for southbound traffic turning into the Project road, a right turn deceleration lane

for northbound traffic turning into the Project, and a right turn acceleration lane for traffic from the Project going northbound.

226. The Airport Access Road would create access to the land owned by the State of Hawai'i and the Department of Hawai'ian Homes Lands through which the road would run.

227. The Petitioner committed to utilize the Northern Project Access Road on the Project's *makai* boundary with Queen Ka'ahumanu Highway as its connector to that highway in lieu of the Airport Access Road; the Petitioner will also construct a new two-lane north-south roadway, parallel to Queen Ka'ahumanu Highway to connect the Project to Ka'iminani Drive.

228. The TIAR contains certain recommendations for roadway improvements that are needed even without the Project, namely widening of Queen Ka'ahumanu Highway to four lanes between Henry Street and Keāhole Airport Road, and monitoring traffic at the Mamalahoa Highway/Ka'iminani Drive intersection, with installation of a traffic signal at that intersection when warranted.

229. The TIAR recommends the following to mitigate the traffic impacts generated from the Project: construct a two-lane road in the Main Street alignment from the Project to Ka'iminani Drive; construct a direct access to Mamalahoa Highway north of Makalei Drive; specific intersection improvements

at the Northern Project Access Road to the Queen Ka`ahumanu Highway access intersection as approved by SDOT.

230. Petitioner will construct all of the roadways required within the Petition Area, and road and intersection improvements required to connect the Project to Queen Ka`ahumanu Highway.

231. Makalei Drive connects to Mamalahoa Highway on its *mauka* end.

232. The Project's connection to Makalei Drive is required by the County under the rezoning ordinance that applies to both the Petition Area and the Makalei Estates subdivision.

233. Makalei Drive was not designed and constructed to county collector street standards.

234. Makalei Drive was constructed to local street standards. Makalei Drive has a 50-foot wide right-of-way, maximum grades of 18 percent, and direct access from individual residential parcels.

235. The Makalei Estates Homeowners Association opposes a *mauka-makai* connector to Mamalahoa Highway via Makalei Estates due to the safety concerns.

236. According to the County: (i) the use of Makalei Drive is necessary to facilitate a *mauka-makai* connection from Mamalahoa Highway to Queen Ka`ahumanu Highway; (ii) connection of the *mauka-makai* road through Makalei

Estates, although not ideal, is not violative of county law; (iii) upon the dedication of Makalei Drive to the County, the County will assume all responsibility for the maintenance and operation of the road and; (iv) lot owners at Makalei Estates were informed, prior to the purchase of their respective lots, of the possibility that Makalei Drive may be connected to a *mauka-makai* connector road through the Petition Area.

237. The County and the Petitioner have expressed interest in developing an alternative *mauka-makai* connector road to Mamalahoa Drive that does not connect via Makalei Drive if feasible.

238. A possible alternative *mauka-makai* alignment of a new collector road would run across the eastern edge of the Petition Area and into property owned by other parties and extend northward and eastward to connect to Mamalahoa Highway. Another possible route for the *mauka-makai* connector road would be routed above the University Village.

239. Petitioner will construct a system of roadways within the Project that will connect the Northern Project Access Road to Queen Ka`ahumanu Highway with Makalei Drive.

240. The road system within the Project will include road alignments for the Main Street, Mid-level Road and Kealaka`a Street Extension. The County is presently considering a realignment of the north-south road system and

Petitioner will revise the layout of the Project's roads, as necessary, to accommodate such realignment.

241. Local roads within the Project may remain privately owned.

242. Bicycle paths will be provided along main collector roads to support bicycle traffic within the Project.

243. Petitioner will work with SDOT and the County to establish the Petitioner's fair share contributions for impacts to regional traffic caused by the Project.

244. To the extent practicable, Petitioner will work with the County to minimize construction related traffic, including heavy trucks, equipment hauling construction equipment and related vehicles through Makalei Estates and will direct construction related traffic away from Makalei Drive.

245. To the extent practicable, Petitioner will notify the Makalei Estates Community Association in advance of any planned construction along Makalei Drive before waterline improvements, utility hook ups and road connection hook ups to the Project are made.

246. Construction activities will create some short-term impacts on roadways because of heavy equipment using existing roads to access the Petition Area. The effect on overall traffic flow is not expected to be significant.

Water Service

247. The Petitioner's groundwater study, dated June 2003, was conducted by Waimea Water Services.

248. The potable water wells in the area are Kau Wells 4458-01 and 4458-02 (the "Kau Wells" or "Kau Wells 1 and 2") and the 5 Hu`ehu`e Ranch wells.

249. The Hu`ehu`e Ranch wells have an estimated sustainable yield of 2 mgd.

250. Kau Wells 1 and 2 have an estimated sustainable yield of 750,000 gallons per day each. Kau Well 1 has been drilled and cased, but does not have a pump, storage tank or connecting transmission line to the rest of the County Department of Water Supply system.

251. The salinity level in the Kau Wells is approximately 35 mg/L chlorides.

252. Groundwater resources beneath the Petition Area consist of a basal lens source. Fresh water is found in this basal lens near Mamalahoa Highway at elevation 1800 feet where the Kau Wells are located in the Makalei Estates subdivision. The fresh water level in that area stands at +7 feet. The lens in this area becomes brackish (total chlorides 580 mg/l) at elevation 680 feet MSL with a head of +3.2 feet.

253. Well 4358-01 to the north and *mauka* of the Mamalahoa Highway is 1890 feet above MSL. Drilling for that well struck a high level aquifer with water level at elevation +238 feet above MSL. High-level aquifers in this area seem most likely to be related to a fault system found within the rift zone of Mt. Hualalai.

254. Wells along Mamalahoa Highway to the south of the Petition Area have encountered high-level aquifers. The wells were drilled at elevations between 1350 and 1800 feet. The water levels ranged from 42 to 490 feet above MSL.

255. Pumpage from the Kau Wells is not expected to affect the high-level aquifer wells. Pumping water from Kau Wells and Hu`ehu`e Ranch wells is not expected to affect groundwater for potable water on wells to the south of the Petition Area.

256. The Waimea Water Services groundwater study, dated June 2003, estimated the groundwater recharge and sustainable yield in the sub-area in which the Petition Area is located. The area from which the sub-area was defined encompasses 38 miles of coastline from Kua Bay on the north to Keauhou on the south and extending to the top of Mt. Hualalai. Sustainable yield is the amount of groundwater that can be pumped on a sustainable basis. After considering the data on the 38-mile Keauhou aquifer section and adjusting

for the lower rainfall in the sub-area in which the Petition Area is located, the most conservative (lowest) sustainable yield for the sub-area was 1 mgd per mile of shoreline. That estimate produces a sustainable yield estimate of 4 mgd for the sub-area in which the Petition Area is located.

257. The estimated potable water demand for the Project is 801,000 gallons per day. This amount does not include potable water for University uses on the 500-acre UHCWH site.

258. The Kau Wells are expected to be the main source of potable water for the Petition Area. Use of the potable water to be produced by those wells is subject to a Water Agreement between the County Department of Water Supply, the Petitioner and the Rutter Group.

259. The Kau Wells were included in a Water Agreement dated June 15, 1999, between K-W Kau, LLC, K-W Kohanaiki, LLC and the Water Board (formerly known as the Water Commission) of the County of Hawai'i. The Petitioner succeeded the rights of K-W Kau, LLC and the Rutter Group succeeded the rights of K-W Kohanaiki, LLC.

260. Petitioner will have 262 water units upon dedication of the pump house for Kau Well 2. Petitioner will need to obtain additional water units from the Department of Water Supply.

261. Petitioner is working to amend the Water Agreement with the Department of Water Supply and the Rutter Group to obtain additional water units for the Project. The amendment would include Petitioner's agreement to outfit Kau Well 1 and provide additional transmission line and storage capacity for the Department of Water Supply system. These improvements will connect to the northern end of the Department of Water Supply's system along Queen Ka`ahumanu Highway.

262. There is sufficient potable water available in the sub-area in which the Petition Area is located to service the Project.

263. Petitioner will construct waterlines and storage tanks for the Project that will be sized to also handle the University's future water demand.

264. Petitioner will connect to the County Department of Water Supply's system through the main waterline on Makalei Drive. The extension of the potable water transmission system will allow the University to connect to the County's potable water system for future improvements on the 500-acre UHCWH site. Petitioner's potable water infrastructure improvements will also facilitate the connection of the County Department of Water Supply's system from *mauka* supply wells to areas along Queen Ka`ahumanu Highway.

Golf Course Irrigation

265. The Project's 18-hole golf course will require approximately 1 million gallons per day of irrigation water for the first two years until the root system of the turf becomes established. Once the golf course turf is established, the golf course will require approximately 800,000 gallons per day.

266. Petitioner will develop three brackish water irrigation wells for the golf course within the Petition Area.

267. The development of the Project's brackish wells will have no impact on the underlying potable water aquifer.

268. The golf course will use seashore paspalum, a highly salt tolerant grass, which will allow use of brackish irrigation water. Brackish irrigation water has been in widespread use for many years to irrigate golf courses in South Kohala and Kona.

269. The Project's golf course will initially utilize brackish water for irrigation. As the Project's residential and commercial component develops, the golf course will transition to using R-1 treated wastewater to supplement the brackish water for irrigation. Upon full buildout of the Project, the golf course will primarily utilize R-1 treated wastewater but may occasionally require the use of some brackish water.

270. The golf course will be designed to conserve irrigation water. Native plants will be used where possible since such plants will need less irrigation water. The size of the turfed areas will be controlled to create conditions similar to a target golf course. Irrigation will be monitored to avoid overwatering.

Wastewater

271. Wastewater from the Project will be processed through a private wastewater treatment plant that will process wastewater to R-1 quality standards set by the DOH. The design of the plant will include features to address SDOT Airport Division concerns about nesting birds.

272. The wastewater treatment plant will be designed to allow future expansion to handle wastewater generated from University uses on the 500-acre UHCWH site. Construction and operation of the wastewater system for such purpose will be under terms mutually agreeable to Petitioner and University.

273. Petitioner will engineer at Petitioner's sole cost and expense the irrigation lines for treated wastewater from the Petition Area and the 500-acre UHCWH site.

274. The treated wastewater will be used to supplement golf course irrigation.

275. Use of wastewater for golf course irrigation will allow the phosphorous and nitrogen therein to be consumed by the turf and landscaping plants.

276. As required by the DOH, the wastewater system will also have an underground injection well to dispose of wastewater when the wastewater cannot be used for irrigation.

277. Petitioner proposes to use a self-contained wastewater collection, treatment and disposal system to handle wastewater from the Project. The wastewater treatment plant will be located so as to use gravity flow to move raw wastewater to the plant. Petitioner proposes to use a relatively simple aerated system to treat wastewater to a secondary treatment level. Advanced treatment to produce water of R-1 quality, as defined by the DOH, will be by means of media, membrane filtration and ultraviolet light disinfection.

278. The R-1 water from the wastewater treatment plant will be pumped to a storage reservoir for use in the golf course irrigation system. As required by the DOH, the plant will include an injection well below the Underground Injection Control line ("UIC line") to provide standby disposal. Petitioner will need to obtain an easement from the State of Hawai'i for land immediately to the south of the Petition Area in order to install the injection well below the UIC line, in close proximity to the Project.

279. Biosolids from the wastewater treatment will be dewatered and composted with green waste to create a soil amendment. The composting process will meet all EPA and DOH requirements applicable to the intended uses. The composting facility will be equipped with odor control systems.

Drainage

280. Petitioner will construct the surface drainage system within the Project. Planning will include review of potential non-point source pollution from runoff and the Project's drainage design will incorporate structural best management practices. The focus will be on controlling nutrients and pesticides from both golf course and residential activities. Permanent non-structural best management practices will be included in the Project's overall stormwater operation and maintenance program and in the golf course operation and maintenance program. The drywells, retention basins and landscape buffer strips along roads and common areas will be designed to filter pollutants and silt through sand and gravel layers.

281. Vegetated retention basins will provide some biological uptake of nutrients in stormwater. The golf course and landscape management plans will address minimizing discharge of fertilizers and pesticides and in selecting appropriate products to minimize storm water pollution.

Solid Waste

282. Since the Petition Area is undeveloped, there will not be demolition waste. To the extent possible, green waste from site grubbing will be composted to reduce its volume.

283. Approximately 1,392 tons of solid waste is expected to be generated from the construction of the proposed 845 residential units. Approximately 1,087 tons of solid waste is expected to be generated from the construction of the Project's 660,000 square feet of commercial activities.

284. The closest solid waste disposal facility is the Pu`u Anahulu Landfill. At the end of 2002, that landfill had a remaining capacity of 5.28 million tons.

285. The Project will generate approximately 1,809 tons of solid waste per year from residential and commercial use.

286. In order to mitigate impacts of solid waste generation, Petitioner will use sustainable design principles in the design of buildings and will adopt a solid waste management plan. The solid waste management plan will address source reduction (minimizing waste generation), re-using material (such as by composting green waste with processed biosolids from the wastewater treatment plant), and recycling materials by separating recyclable materials from the waste stream.

Schools

287. The Kona public school system in this area includes the Kealakehe school complex, which includes a high school as well as middle and elementary levels. Private schools also serve students in the region.

288. The State Department of Education (“DOE”) estimates that the Project will generate 378 students in grades K-12.

289. Petitioner will comply with the guidelines that are determined to be applicable and will work with the DOE to establish a signed written Educational Contribution Agreement to determine Petitioner’s fair-share contribution to mitigate the Project’s impacts on public school facilities under those guidelines.

Police and Fire Protection

290. The Hawai’i County Police Department provides police protection for the Project from its station in Kealakehe.

291. The Hawai’i County Fire Department provides fire protection for the Kailua-Kona area from its station *mauka* of the intersection of Palani Road at Queen Ka`ahumanu Highway.

292. Petitioner will prepare a wildfire plan that will include ways to minimize risks to natural resources such as the Lowland Dry Forest Preserve as well as residences and urban development.

Emergency Medical Services

293. The residents and employees of the Project will need health care. The Project includes space for health services. The location of the Project is advantageous for health services required to serve the Project, KOA Airport and residents north of Palani Road. Access roads to and within the Project will be built to allow easy access by emergency vehicles.

294. DOH operates the Kona Hospital (75 bed facility) in Kealahou that serves the Kona region, which is about 13 miles to the south of the Petition Area. The North Hawai'i Community Hospital (50 bed facility) in Waimea is the next closest hospital facility, which has 24-hour emergency room, medical, and surgical care services.

295. DOH provides contracts for emergency ambulance service. The Hawai'i County Fire Department provides basic and advanced life support response from its fire stations, including advanced life support from its Kailua-Kona station.

Electrical Power and Telecommunication Services

296. The current electrical generating margin of 31.4 percent of Hawaii Electric Light Company, Inc.'s ("HELCO") 233,700 KW generating capacity is sufficient to provide electricity for the Project.

297. HELCO plans to install an additional 40,000 KW of generating capacity at the Keāhole Power Plant in the near future.

298. Petitioner will build a new electrical substation to convert the 69 KV power in the main transmission lines to the 12KV power required to serve the Project.

299. Building design for the University Village will be done under sustainable design principles, which incorporate energy efficient technology and solar power in its commercial building design.

STATE AND COUNTY LAND USE PLANS AND PROGRAMS

300. Of the 725.2 acres of the Petition Area, 274.9 acres are within the State Land Use Conservation District and 450.3 acres are within the State Land Use Agricultural District.

301. The County zones the Petition Area as Agricultural 3-acres (“A-3a”) and Open (“O”). The Petition Area will require a rezoning to allow for the Project’s proposed use.

302. The County of Hawai`i General Plan Land Use Pattern Allocation Guide (“LUPAG”) designates the Petition Area as Urban Expansion. The Project does not require an amendment to the LUPAG.

303. The Kona Regional Plan designates the Petition Area as A-3a. The Project does not require an amendment to the Kona Regional Plan.

COMMITMENT OF STATE FUNDS AND RESOURCES

304. The total County revenue at the end of the Project's 10-year development period is estimated to be \$9,800,000 per year.

305. The County expenses to provide services to the Project are estimated to be \$1,050 per person with an inflation factor of 4 percent. On that basis, County expenses would be \$4,500,000 by the end of the 10-year development period. The County would have a cumulative surplus of revenue over expenses from the Project of \$25,500,000 by the end of the 10-year development period.

306. The total State annual revenue at the end of the Project's 10-year development period is estimated to be \$8,600,000. The cost to the State for the Project is \$5,200,000, with a surplus of \$3,400,000. Over the life of the Project, state revenues will exceed expenditures by \$17,700,000.

CONFORMANCE TO URBAN DISTRICT STANDARDS

307. The Project meets the standards applicable to establishing the boundaries of the State Land Use Urban District set forth in section 15-15-18, HAR, as follows:

The Project will result in urban levels of services.

The Petition Area is in reasonable proximity to centers of trading and employment (Kailua-Kona and South Kohala Hotels) and the development of

University Village will be compatible with and complementary to the development of the 500-acre UHCWH site, which is currently in the Urban District.

Petitioner has established the need for additional housing, for supporting commercial uses, and establishment of space for the relocation of the UHCWH to the University Village.

The Petition Area is in reasonable proximity to basic services such as schools, regional parks, regional highways, public utilities and police and fire protection. Petitioner will be supplementing necessary supporting infrastructure by providing roadways, a private wastewater treatment plant, parks, stormwater drainage, public utility improvements, irrigation wells for its golf course, and extension of the Department of Water Supply potable water system.

The Petition Area has no cultivated land. Given the marginal agricultural productivity of the Petition Area, the cost of grading, providing access and providing irrigation water, the Petition Area is not suitable for commercial agriculture. Reclassification of the Petition Area to Urban will not reduce the amount of available land suited for commercial agriculture.

The Petition Area is within the County Keāhole to Kailua Plan area and is thus part of an urban expansion area that has been identified on the Land Use Pattern Allocation Guide map which is part of the Hawai'i County General Plan.

The development of the Petition Area will not contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services.

The Petition Area has appropriate topography for urban development. The slopes average 5 to 10 percent and are less pronounced in the area of the University Village. The Petition Area is in Flood Zone X. There are no streams or surface water drainage on the Petition Area. The Petition Area is not susceptible to tsunami or ocean storm hazards.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

308. The reclassification of the Petition Area generally conforms to the following applicable goals, objectives, policies and guidelines of the Hawai'i State Plan:

Section 226-5, HRS, Objectives and policies for population.

Section 226-5(b)(1). Manage population growth statewide in a manner that provides increased opportunities for Hawai'i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.

The Project will: 1) provide direct and indirect short and long-term employment opportunities for the residents of Hawai'i; 2) generate increased State and County tax revenues; 3) contribute to the stability, diversity and

growth of local and regional economies; and 4) minimize the impact of the physical environment of the Petition Area.

Section 226-5(b)(2). Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.

The Project will provide economic and employment opportunities for the population of the Island of Hawai`i. The Project will also provide needed housing and educational opportunities for families.

Section 226-10, HRS, Objectives and Policies for the Economy-Potential Growth Activities

Section 226-10(b)(8). Develop, promote and support research and educational and training programs that will enhance Hawai`i's ability to attract and develop economic activities of benefit to Hawai`i.

With its ties to the development of the UHCWH, the Project will develop, promote and support research and educational and training programs that will develop and maintain industries and businesses that benefit Hawai`i.

Section 226-11, HRS, Objectives and Policies for the Physical Environment—Land based, shoreline and marine resources

Section 226-11(a). Planning for the State's physical environment with regard to land-based, shoreline, and marine resources shall be directed towards achievement of the following objectives:

(a)(2) Effective protection of Hawai`i's unique and fragile environmental resources.

Section 226-11(b).

(1) Exercise an overall conservation ethic in the use of Hawai`i's natural resources.

(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

(4) Manage natural resources and environs to encourage their beneficial and multiple uses without generating costly or irreparable environmental damage.

(5) Consider multiple uses in watershed areas, provided such uses do not detrimentally affect water quality and recharge functions.

(6) Encourage the protection of rare or endangered plant and animal species and habitats native to Hawai`i.

(8) Pursue compatible relationships among activities, facilities and natural resources.

(9) Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational and scientific purposes.

The Project will preserve natural features on the site to the extent possible using preservation plans and mitigation strategies incorporated in the revised INCRMP. The Project will preserve view planes and conservation plans and recycling programs will be emphasized.

Section 226-12, HRS, Objectives and Policies for the Physical Environment – Scenic, Natural Beauty and Historic Resources

Section 226-12(a). Planning for the State's physical environment shall be directed towards achievement of the objective of enhancement of Hawai`i's scenic assets, natural beauty and multi-cultural/historical resources

Section 226-12(b).

(1) Promote the preservation and restoration of significant natural and historic resources.

(2) Provide incentives to maintain and enhance historic, cultural and scenic amenities.

(3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes and other natural features.

(4) Protect those special areas, structures and elements that are integral and functional part of Hawai`i's ethnic and cultural heritage.

(5) Encourage the design of developments and activities that complement the natural beauty of the islands.

The Project will preserve view planes, which have been identified as a cultural resource, from the Petition Area. The Project will also permanently protect the Lowland Dry Forest Preserve (which includes endangered trees), archaeological sites and biologically significant caves.

Section 226-13 Objectives and policies for the physical environment - land, air, and water quality.

Section 226-13(a) Planning for the State's physical environment with regard to land, air, and water quality shall be directed towards achievement of the following objectives:

- (1) Maintenance and pursuit of improved quality in Hawai'i's land, air and water resources
- (2) Greater public awareness and appreciation of Hawai'i's environmental resources.

Section 226-13 (b):

- (1) Foster educational activities that promote a better understanding of Hawai'i's limited environmental resources.
- (2) Promote the proper management of Hawai'i's land and water resources.
- (3) Promote effective measures to achieve desired quality in Hawai'i's surface, ground and coastal waters.
- (7) Encourage urban developments in close proximity to existing services and facilities.
- (8) Foster recognition of the importance and value of the land, air, and water resources to Hawai'i's people, their culture and visitors.

The Project is not expected to have adverse impacts upon water quality because sufficient safeguards will be incorporated into the design of facilities and the use of best management practices. The Project will use sustainable building design to promote conservation and will implement a recycling program.

Section 226-15, HRS, Objectives and Policies for Facility Systems – Solid and Liquid Wastes

Section 226-15(b)

- (1) Encourage the adequate development of sewerage facilities that complement planned growth.
- (2) Promote re-use and recycling to reduce solid and liquid wastes and to promote a conservation ethic.

The Project will encourage recycling. The Project will recycle its green waste and will use treated wastewater for irrigation.

Section 226-19 Objectives and policies for socio-cultural advancement - housing.

Section 226-19(a)

- (2) The orderly development of residential areas sensitive to community needs and other land uses.
- (5) Promote design and location of housing development taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.
- (6) Facilitate the use of available vacant, developable and underutilized urban lands for housing.

The Project will create 845 units of housing ranging from single-family residences to multi-family units. This Project will include at least 100 affordable housing units.

Section 226-21 Objectives and policies for socio-cultural advancement - education.

Section 226-21(b).

- (2) Ensure the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs.
- (4) Promote educational programs which enhance understanding of Hawai`i's cultural heritage.
- (5) Provide higher educational opportunities that enable Hawai`i's people to adapt to changing employment demands.
- (8) Emphasize quality educational programs in Hawai`i's institutions to promote educational excellence.

The Project will help to achieve these objectives and policies through its cooperative endeavor with the University to relocate the UHCWH and to work with the University in interpretive programs using the resources found in the Preservation Areas on the Petition Area.

Section 226-23, HRS, Objectives and Policies for socio-cultural advancement – leisure.

Section 226-23(b).

(1) Foster and preserve Hawai`i's multi-cultural heritage through supportive cultural, artistic, recreational and humanities-oriented programs and activities.

(4) Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological or biological values while ensuring that their inherent values are preserved.

(5) Ensure opportunities for everyone to use and enjoy Hawai`i's recreational resources.

The Project will provide opportunities for everyone to enjoy resources such as golf course, bike paths, trails and passive parks and open space and other facilities. The University will link the Lowland Dry Forest Preserve and significant archaeological and biological sites to the University's interpretive programs.

Section 226-107, Priority Guidelines – Quality Education

(6) Pursue the establishment of Hawai`i's public and private universities and colleges as research and training centers of the Pacific.

The Project will allow the University to relocate and develop its UHCWH so that it can expand program offerings, develop a first class culinary arts/food

services program, develop health and wellness program and other programs for the community.

CONFORMANCE WITH STATE OF HAWAI'I FUNCTIONAL PLANS

309. The Project is also consistent with the State of Hawai'i Functional Plans as follows:

State Higher Education Functional Plan. The Project will allow the University to relocate its programs to the University Village and to expand its enrollment and program offerings to better serve Hest Hawaii.

State Conservation Lands Functional Plan. Significant archaeological resources, a Lowland Dry Forest Preserve, and endangered tree species throughout the Petition Area will be preserved.

State Recreation Functional Plan. The golf course, trail system, pedestrian and bicycle paths and parks will enhance outdoor recreation opportunities.

State Historic Preservation Functional Plan. Upon approval of the Petitioner's Preservation Plan by the SHPD, the Petitioner will implement the preservation of the Petition Area's significant archaeological and cultural resources. In addition to archaeological preservation sites identified in the Archaeological Inventory Survey, the Petitioner will preserve the Lowland Dry Forest Preserve, preserve all endangered tree species throughout the Petition Area, and preserve biologically significant lava tube caves.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

310. The proposed reclassification of the Petition Area generally conforms to the policies and objectives of the Coastal Zone Management Program, chapter 205A, HRS, as follows:

Historic Resources

Objective: Protect, preserve, and where desirable, restore those natural and man-made historic and prehistoric resources in the coastal zone management area that are significant in Hawai`ian and American history and culture.

Although the Petition Area is outside the Special Management Area, this Project will further the objectives of Section 205A-2(b) (2) (A), HRS, by preserving significant archaeological sites.

Scenic and Open Space Resources

Objective: Protect, preserve and where desirable, restore or improve the quality of coastal scenic and open space resources.

The Project will preserve significant views from the Petition Area and will utilize an 800-foot wide open space buffer on the Petition Area along Queen Ka`ahumanu Highway.

Coastal Ecosystems

Objective: Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

The Petitioner will participate in coastal water quality monitoring.

Economic Uses

Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

The Project will further the State's economy under Section 205A-2(b) (5) (A), HRS, by providing facilities and improvements with a positive impact on the state economy.

Coastal Hazards

Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.

The Petition Area is outside the tsunami inundation zone and has no surface water within the Petition Area. Petitioner will utilize best management practices to minimize the Project's effects on erosion, subsidence, and pollution.

Managing Development

Objective: Improve the development and review process, communication and public participation in the management of coastal resources and hazards.

The Project is in compliance with this section.

Public Participation

Objective: Stimulate public awareness, education, and participation in coastal management.

The Petitioner will participate in coastal water quality monitoring.

CONFORMANCE WITH THE WEST HAWAI'I REGIONAL PLAN

311. The West Hawai'i Regional Plan identifies the Keāhole to Kailua area as a sub-regional planning area and a major future urban growth area involving the rapid development of competing mixed land uses that could negatively affect natural and cultural resources and outpace the development of infrastructure to support its growth. Therefore it is imperative that developments within the Keāhole to Kailua area involve cooperative partnerships between State and county governments and the private sector.

Heritage Resources

312. The Project is consistent with the goals of the West Hawai'i Regional Plan by promoting and ensuring that community and cultural assets are maintained and enhanced. The Petition Area contains culturally significant archaeological and botanical resources that will be preserved under the revised INCRMP. Visual impacts will be mitigated by the buffer zone, various

Preservation Areas and by limiting building heights. The golf course will retain large areas of the lava landscape.

Water Quality

313. The land and water resources of the Project will be properly managed. Petitioner will use best management practices in designing, operating and maintaining stormwater systems to minimize risks of groundwater contamination from non-point source pollution.

314. Petitioner will also use best management practices in developing, operating, and maintaining the golf course. The golf course will be professionally managed and use of fertilizer and pesticides will be controlled to comply with all requirements of the DOH. Petitioner will design, operate and maintain the golf course to the Audubon International Silver Standard Program standard.

315. Petitioner will monitor the Petition Area's soil conditions on an ongoing basis for adverse impacts on the groundwater.

316. Petitioner will cooperate with the Natural Energy Lab of Hawai'i Authority and the State of Hawai'i Department of Transportation, Airports Division in coastal water monitoring programs.

Energy and Power Facilities

317. The Project will use sustainable building design to reduce energy consumption and use solar energy. Project design will encourage pedestrian and bicycle traffic within the Petition Area. Petitioner will provide areas in the University Village that will be suitable for use by buses and shuttles.

Sewage Disposal Systems

318. Petitioner will construct its own on-site wastewater treatment plant, which will produce treated wastewater of R-1 quality. Odor control measures including buffer zones will be implemented. The treated wastewater will be used to transition the golf course irrigation from the brackish source.

CONFORMANCE WITH THE KEAHOLE TO KAILUA DEVELOPMENT PLAN

319. The Keāhole to Kailua Development Plan (“K-to-K Plan”) designates the Petition Area for residential use and for recreational, commercial, industrial, open space and passive recreation use.

Land Use

320. The Project addresses the need to accommodate population growth identified by the K-to-K Plan.

Design

321. The Project’s visual impacts are addressed through site planning, buffer zones and setbacks, reduced densities, landscaping and design guidelines.

Roads

322. The roadway network shown in the K-to-K Plan in the Petition Area is integrated into the Project.

Drainage

323. The Petition Area is not subject to flooding.

Water

324. Petitioner will pay its fair-share of water development costs and will assist the County Department of Water Supply and DLNR in developing a regional arrangement for water development.

Sewer

325. The Project will contain its own wastewater system that will contribute to regional capacity in that it is sized to accommodate the additional flows from the 500-acre UHCWH site.

Solid Waste

326. Petitioner will develop a solid waste management plan and incorporate waste reduction measures in the Project's design.

Parks

327. The Project includes recreational areas and facilities to serve the Project, the 500-acre UHCWH site, and the general public.

Finance

328. The Project contributes to the development of greater capacity in regional infrastructure.

329. The Project is consistent with the K-to-K Plan.

CONFORMANCE WITH THE COUNTY'S GENERAL PLAN

Economic Development

330. The relocation of and expansion of the UHCWH's programs will support an edu-tourism niche in the tourism market. The Project will include housing for senior citizens. Space for health related activities will support residents of the Project and the UHCWH.

Flood Control and Drainage

331. Petitioner will construct drainage improvements on-site using detention basins and drywells.

Historic Sites

332. Petitioner's archaeological inventory survey of the Petition Area performed by Rechtman Consulting dated June 2003, identified significant archaeological sites which will be preserved under a preservation plan that is to be approved by the SHPD.

Natural Beauty

333. An 800-foot wide setback area along the Petition Area's entire boundary with Queen Ka`ahumanu Highway will be used to retain open space and view planes.

Natural Resources and Shoreline

334. The Project's master plan, design plans, and CC&Rs mitigate adverse environmental effects and depletion of resources caused by the Project. Mitigation measures will include large natural buffer areas, preserve zones, use of brackish water for irrigation, landscaping with native plants, and using sustainable design principles to reduce energy consumption, encourage recycling, and encourage pedestrian and bicycle traffic.

Housing

335. The Project will provide a total of 845 housing units, of which 590 are single-family and 255 are multi-family residential units. The homes will include market-priced units and, at a minimum, 100 affordable housing units, with at least 50 affordable units for sale and 50 affordable units for rent. Affordable housing will be provided in accordance with all applicable affordable housing guidelines of the County and State.

Public Utilities

336. The existing groundwater resources have adequate capacity to provide potable and irrigation water for the Project. There is adequate electrical energy available for the Project.

Sewer Systems

337. Petitioner will build a private wastewater treatment plant on the Petition Area that will have the capacity to serve the Project and the 500-acre UHCWH site.

Transportation

338. Petitioner will build an access road to the Queen Ka`ahumanu Highway, referred to by the Petitioner as the Northern Project Access Road, which will be dedicated as a public road upon completion. Petitioner will also connect the roadways in the Project to Mamalahoa Highway acceptable to the SDOT and the County. Petitioner will fund, design and construct its share of local and regional transportation improvements as determined by the SDOT and the County.

Land Use

339. The Petition Area is designated "Urban Expansion Area" on the General Plan LUPAG map.

Topography

340. The natural slopes and topographic features of the Petition Area allow the Petition Area to be used for urban uses. The development of the Project will respect natural contours and land forms.

Commercial development

341. Petitioner met with community members and the University to determine the needs of local residents. The Project will be designed with those needs in mind.

PROJECT PHASING

342. The Project is scheduled to be developed in ten years from commencement of construction. Pursuant to Section 15-15-78, HAR, incremental districting is not required because full development of the Petition Area can be completed within ten years after the date of the Commission's approval.

343. Petitioner will begin by constructing main infrastructure elements such as the golf course, arterial roadways, wastewater treatment plant, major electrical improvements, and improvements to protect the Lowland Dry Forest Preserve, significant trees outside of the Lowland Dry Forest Preserve, and biologically significant caves as identified in the Cave Study. This work will be completed in the first two years of development.

344. Petitioner will develop the single-family residence lots during the first 6 years of development. The patio homes will be developed between the second through the fifth years of development.

345. The multi-family housing, including the condominium units, rental apartments and student housing, will be built between the third year through the sixth year of development.

346. The Project's affordable housing will be developed at a location and time period that is mutually acceptable to the Petitioner and the County.

347. The business hotel will be built in the third year of development.

348. The research and development lots will be constructed in the third through tenth years of development.

349. The community commercial lots will be provided from the fifth through tenth years.

350. The initial 30,000 square foot space to be leased to the University will be built in the third year, with an additional 30,000 square foot space to be built in the sixth year of the Project's construction.

RULING ON PROPOSED FINDINGS OF FACT

351. Any of the proposed findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption, or rejected

by clearly contrary findings of facts, are hereby denied and rejected. Any conclusion of law improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. The Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of 725.2 acres of land situated at Kau, North Kona, Island, County and State of Hawai`i, identified as Tax Map Key No. (3) 7-5-002: 001 from the Conservation and Agricultural Districts to the Urban District, upon the conditions set forth in this Decision and Order, is reasonable, conforms to the standards of establishing the Urban District boundaries, is not violative of Section 205-2, HRS, is consistent with the Hawai`i State Plan as set forth in Chapter 226, HRS, the policies and criteria established pursuant to Sections 205-16, 205-17 and 205A-2, HRS, and conforms to Chapter 15-15, HAR.

2. Article XII, Section 7, of the Hawai`i Constitution requires the Commission to protect native Hawai`ian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by

ahupua`a tenants who are descendents of native Hawai`ians who inhabited the Hawai`ian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawai`ian rights to the extent feasible. Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission, 79 Hawai`i 425, 450, n.43, 903 P.2d 1246, 1271, n.43 (1995), certiorari denied, 517 U.S. 1163, 116 S. Ct. 1559, 134 L.Ed.2d 660 (1996).

3. The Land Use Commission is empowered to preserve and protect customary and traditional rights of native Hawai`ians. Ka Pa`akai O Ka`Aina v. Land Use Commission, 94 Hawai`i 31, 3 P.3d 1068 (2001).

4. Native Hawai`ian rights protected by the Hawai`i State Constitution include gathering rights of herbs and other plants with medicinal value for cultural and religious purposes.

5. Article XI, Section 1, of the Hawai`i Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with conservation and in furtherance of the self-sufficiency of the State.

6. The endangered and indigenous birds, animals, trees and plants and Lowland Dry Forest Preserve, along with petroglyphs and other significant

archaeological sites of the Petition Area, are valued and important natural and cultural resources.

7. The aforesaid native Hawai`ian rights and natural and cultural resources would be damaged or destroyed if restrictions or mitigation measures are not required. Appropriate mitigation measures are therefore required under the Hawai`i Constitution and the Commission's decision making criteria in order to approve reclassification of the Petition Area.

8. Requiring implementation of the revised INCRMP by the Petitioner provides a feasible means by which the Commission can protect the cultural, historical and natural resources within the Petition Area.

9. The benefit of the preservation of the Lowland Dry Forest Preserve, the endangered flora throughout the Petition Area, and preservation of significant cultural sites within the Petition Area in and of itself constitutes significant preservation of important natural systems and habitats in addition to maintaining valued cultural and historical resources, as identified in Section 15-15-77, HAR.

10. The University has not formally committed to developing its portion of the University Village on the 500-acre UHCWH site. Nevertheless, the Petitioner is committed to developing the Project, as represented to the

Commission, whether or not the University develops any portion of the 500-acre UHCWH site.

11. Article XI, Section 3, of the Hawai`i Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

12. The Project will not have a significant impact on agriculture on the island of Hawai`i or in the State because the land is not suited for commercial agriculture.

13. This reclassification action is consistent with the goals and policies of the Hawai`i County General Plan, Hawai`i State Plans, Hawai`i State Functional Plans and Chapters 205, 205A, 343, HRS, and other applicable rules and regulations.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, being the subject of Docket No. A03-477, filed by Petitioner Hiluhilu Development, LLC, consisting of 725.2 acres of land in the State Land Use Conservation and Agriculture Districts at Kau, North Kona, Island, County and State of Hawai`i, identified as Tax Map Key No. (3) 7-5-002: 001 is hereby reclassified into the State

Land Use Urban District, and the State Land Use District Boundaries are amended accordingly.

Based on the Findings of Fact and Conclusions of Law, it is hereby determined that the valued cultural, historical or natural resources and any customary and traditional native Hawai`ian rights and practices within the Petition Area that have been identified herein shall be protected; that the Project shall not significantly affect or impair the continued exercise of those rights and practices; and that the reasonable exercise of those rights and practices shall be protected, to the extent feasible, by the conditions of approval set forth herein.

IT IS FURTHER ORDERED THAT the reclassification of the Petition Area from the State Land Use Conservation and Agriculture Districts to State Land Use Urban District shall be subject to the following conditions:

1. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents of the State of Hawai`i to the satisfaction of the County, acting in accordance with the County's Ordinance No. 05-23, Affordable Housing Policy For the County of Hawai`i. Petitioner shall provide no less than 100 onsite affordable units in accordance with the Petitioner's representations to the Commission or whatever number of affordable units is deemed acceptable by the County in accordance with the County's Ordinance No. 05-23, Affordable Housing Policy For the County of Hawai`i, whichever is greater. The location

and distribution of the affordable housing units or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and County.

2. **Public School Facilities.** Petitioner shall contribute to the development, funding and construction of public school facilities as determined by and to the satisfaction of the DOE. Petitioner shall enter into an agreement with the DOE covering the specific terms of such contribution prior to final subdivision approval and file such agreement with the Commission and the County.

3. **Wastewater Facilities.** Petitioner shall design and construct its wastewater disposal system in compliance with the requirements of the County and the DOH.

4. **Wastewater Agreement for Underground Injection Offsite.** Prior to final subdivision approval, Petitioner shall provide the Commission and the County with a copy of the executed agreement to inject wastewater underground offsite and above the UIC line on the adjacent State-owned land to the south of the Petition Area, or with other such landowner and location as approved by DOH.

5. **Traffic Impact and Mitigation.** Petitioner shall fund, design and construct its share of local and regional transportation improvements as determined by the SDOT and the County, which includes but is not limited to:

a. **Midlevel Connection with Ka`iminani Drive.** Petitioner shall provide at its sole cost and expense a two-lane roadway between the Petition Area and Ka`iminani Drive in an alignment approved by the County and the University and acceptable to any other State agency with a property interest in the land on which the two-lane roadway is located.

b. **Mauka-Makai Connector Road.** A *mauka-makai* connector road providing public access between Queen Kaahumanu Highway and the Mamalahoa Highway shall be provided at Petitioner's sole cost and expense. Said *mauka-makai* connector road shall connect to Mamalahoa Highway as Petitioner and the County may agree.

c. **Right-Of-Way For An Alternative Mauka-Makai Connector Road.** Petitioner shall reserve a right-of-way along the east (*mauka*) portion of the Petition Area to support the possible future connection to the Mamalahoa Highway. Petitioner shall construct at its sole cost and expense all portions of said future road that is within the Petition Area. Any proposed road construction plans and associated utility easements which may impact the Lowland Dry Forest Preserve shall be subject to prior review and approval of the

Commission and shall include consultation with the County, such that County engineering standards or other County requirements do not adversely impact the Lowland Dry Forest Preserve.

d. **Request to Limit Vehicle Traffic on Portions of Makalei Drive.**

In the event that the *mauka-makai* connector road utilizes Makalei Drive, to promote greater traffic safety, Petitioner shall prior to final subdivision approval, use reasonable efforts to petition the County to limit motor vehicle traffic on Makalei Drive as a through street, as it transverses Makalei Estates, to only those vehicles that have a gross vehicle weight of less than 10,000 pounds.

6. **Integrated Natural Cultural Resources Management Plan**

(INCRMP). Petitioner shall implement the revised INCRMP including completion of all plans (with appropriate approvals), covenants and easements required under the revised INCRMP. Such implementation shall include, but not be limited to the following:

a. **Preservation of Significant Historic, Cultural, and Natural**

Resources. Petitioner shall preserve all of the identified significant historic, cultural, and natural resources on the Petition Area as represented by the Petitioner to the Commission.

b. **Historic Preservation Mitigation Plan.** Petitioner shall submit

data recovery plans and preservation plans to the SHPD and obtain approval of

those plans within one year of the issuance of this Decision and Order. If said plans as approved vary from those incorporated into the revised INCRMP, Petitioner shall amend the revised INCRMP to reflect SHPD's recommendations and submit the amended revised INCRMP to the Commission for its approval prior to final subdivision approval.

c. **Preservation of Lowland Dry Forest.** Petitioner shall permanently protect the Lowland Dry Forest Preserve. Any proposed road construction plans, irrigation well sites and proposed access and utility easements which may impact the Lowland Dry Forest Preserve shall be subject to prior review and approval of the Commission.

d. **Coordination of Lowland Dry Forest Preservation Efforts.** Petitioner shall use reasonable efforts to coordinate its preservation of the Lowland Dry Forest Preserve with the State of Hawai'i Department of Land and Natural Resources as the Lowland Dry Forest Preserve extends in some places onto the neighboring state-owned property. Such coordination shall include, but not be limited to: sharing information regarding updated biological surveys; coordinating the development of a fire prevention plan; establishing appropriate firebreaks; and exploring contingencies for using the Project's irrigation systems to control brush fires.

e. **Preservation of Flora Outside of Lowland Dry Forest.** Petitioner shall preserve all flora that are federally listed as Endangered Species throughout the Petition Area. Petitioner shall to the extent practicable, preserve flora identified as non-endangered indigenous and Species of Concern by incorporating such plants into the Project's landscaping and exclusionary fenced areas.

f. **Unidentified Archaeological Finds.** If any burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

g. **Preservation of Native Hawai`ian Gathering and Access Rights.** Petitioner shall preserve and protect any established Native Hawai`ian traditional and customary rights exercised for subsistence, cultural and religious practices on the Petition Area.

h. **Updated Biological Survey.** Petitioner shall submit an updated biological survey of the Petition Area to the Commission before construction of the Project begins. The updated biological survey shall include but not be

limited to, detailed information pertaining to any significant invertebrates and Hawai'ian Hoary Bats within the Petition Area.

i. **Cultural Monitor for Grubbing and Grading Activities.**

Petitioner shall retain the services of an appropriate number of qualified cultural monitors such that all grubbing and grading activities within the Petition Area are duly monitored.

7. **Open Space Buffer.** Petitioner shall maintain an open space buffer on the Petition Area along Queen Kaahumanu Highway with a minimum width of 800 feet. The only man-made structures allowed in this open space buffer shall be the Northern Project Access Road, the Project's wastewater treatment plant, limited portions of the Project's golf course, and a groundwater monitoring well – as represented by the Petitioner to the Commission. Petitioner shall appropriately screen such uses to maintain the visual continuity of such buffer.

8. **Civil Defense.** Petitioner shall, on a fair-share basis, fund and construct adequate civil defense measures as determined by the State and County Civil Defense Agencies.

9. **Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program as specified by the DOH.

10. **Noise and Avigation Easement.** Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area that overflights can occur from aircraft using KOA Airport. Petitioner shall grant to the State an avigation (right of flight) and noise easement in the form prescribed by the SDOT on any portion of the Petition Area subject to noise levels exceeding 55 Ldn.

11. **Notification of Potential Nuisances - Agricultural.** Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area of potential odor, noise and dust pollution if there are any lands in the Agricultural District surrounding the Petition Area.

12. **Notification of Potential Nuisances – HELCO.** Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area of the potential noise and air quality impacts associated with the existing use and proposed improvements to Hawaii Electric Light Company, Inc.'s Keāhole Generating Station and Airport Substation.

13. **Hawai`i Right to Farm Act.** Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area that the Hawai`i Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District surrounding the Petition Area.

14. **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of the appropriate State and County agencies.

15. **Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the DOH and the County to conform to the program goals and objectives of Chapter 342G, HRS, and the County's approved integrated solid waste management plans in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities for the Project. This condition shall be included in the Project's CC&Rs.

16. **Groundwater and Near Shore Water Monitoring.** Petitioner shall participate in the coastal water-monitoring program with the SDOT Airports Division. Petitioner shall conduct groundwater monitoring from a monitoring well to be located at the *makai* end of the Petition Area. Monitoring programs and mitigation measures shall be approved by the DOH.

17. **Water Service.** Petitioner shall fund and construct adequate water source, storage, and transmission facilities and improvements as represented to

the Commission and as required by the County Department of Water Supply to accommodate the Project.

18. **Best Management Practices.** Petitioner shall implement best management practices to reduce or eliminate soil erosion and groundwater pollution and implement dust control measures during the development process in accordance with DOH guidelines.

19. **Water Conservation Measures.** Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and to the extent possible, use Species of Concern and Endangered Species, and incorporate such measures into common areas landscape planning, and shall incorporate low flow fixtures into the construction of all residential and commercial units.

20. **Energy Conservation Measures.** Petitioner shall incorporate solar energy and energy conservation techniques where feasible into design of all residential and commercial units.

21. **Hazardous Materials.** Storage and/or disposal of hazardous materials on the Petition Area shall comply with all applicable DOH requirements and all necessary permits shall be obtained.

22. **Golf Course.** Petitioner shall comply with the principles of the DOH's "Guidelines Applicable to Golf Courses in Hawai'i" (July 2002, Version

6). Petitioner shall develop and maintain the golf course in accordance with the Audubon International's Signature Silver Program standard. To the extent practicable, the Petitioner will utilize R-1 recycled wastewater to irrigate the golf course.

23. **University Inn and Conference Center.** As represented before the Commission, the Project shall include an approximate 120-unit University Inn and Conference Center, which shall serve as a business hotel and provide accommodations in conjunction with University operations. The University Inn and Conference Center shall not be designed and operated as resort-type hotel or be used for time-share purposes.

24. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

25. **Notice of Change of Ownership.** Petitioner shall provide notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.

26. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the County in connection with the status of the subject Project proposed for the reclassification area, and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the approval of the Petition.

27. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

28. **Notice of Imposition of Conditions.** Within seven days of the approval date of the Petition, the Petitioner shall (a) Record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission; and (b) File a copy of such recorded statement with the Commission.


29. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances within sixty days after the receipt of the Decision and Order pursuant to Section 15-15-92, HAR.

ADOPTION OF ORDER

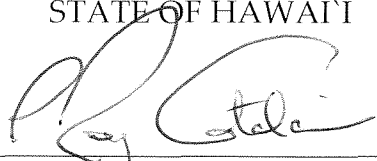
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 13th day of June, 2005. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

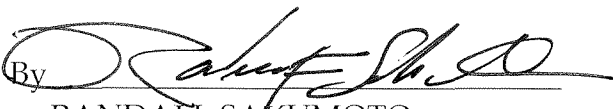
Done at Honolulu, Hawai'i, this 13th day of June, 2005, per motion on May 19, 2005.

APPROVED AS TO FORM


Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By 
P. ROY CATALANI
Chairperson and Commissioner

By 
RANDALL SAKUMOTO
Vice-Chairperson and Commissioner

By 
STEVEN LEE MONTGOMERY
Vice Chairperson and Commissioner

By Isaac Fiesta
ISAAC FIESTA, JR.
Commissioner

By _____ (absent)
MICHAEL D. FORMBY
Commissioner

By [Signature]
KYONG SU IM
Commissioner

By _____ (absent)
LISA M. JUDGE
Commissioner

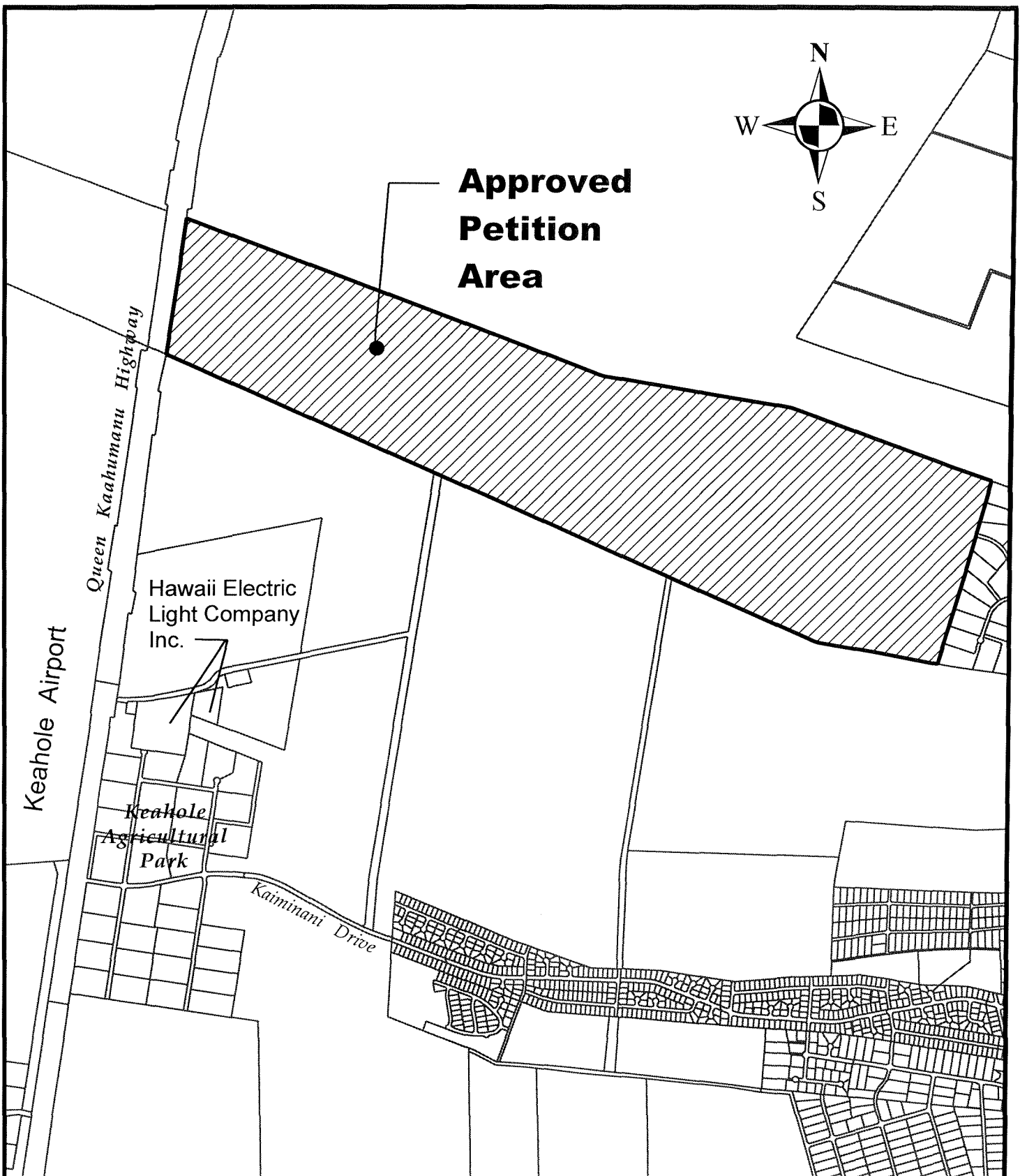
Filed and effective on
JUN 13 2005

By [Signature]
RANSOM A. K. PILTZ
Commissioner

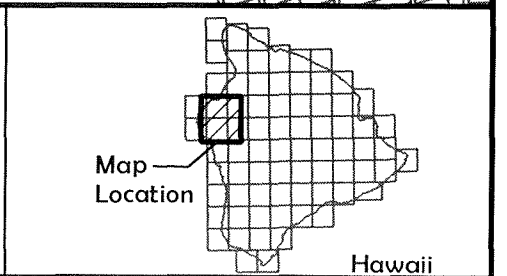
Certified by:

Anthony J. H. Ching
ANTHONY J. H. CHING

By _____ (absent)
PETER YUKIMURA
Commissioner



A03-744 HILUHILU DEVELOPMENT, LLC
MAP LOCATION
 Tax Map Key: 7-2-05: 1
 Kau, North Kona, Hawaii
 Scale: 1" = 2,000 ft.
EXHIBIT "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition	)	DOCKET NO. A03-744
)	
of)	
)	
HILUHILU DEVELOPMENT, LLC	)	CERTIFICATE OF SERVICE
)	
To Amend the State Land Use)	
Agricultural and Conservation Districts)	
to the State Land Use Urban District for)	
Approximately 725.2 Acres of land at)	
<i>ahupua`a</i> of Kau, North Kona Judicial)	
District, Island and State of Hawaii, Tax)	
Map Key No.: (3) 7-2-005: 001.)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact and Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL. LAURA THIELEN
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

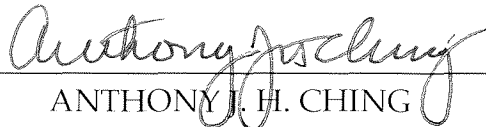
JOHN CHANG, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, Hawaii 96813

LINCOLN ASHIDA, Esq.
Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

CHRISTOPHER YUEN, Director
County of Hawaii, Planning Department
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

ALAN M. OKAMOTO, Esq.
ROY K. NAKAMOTO
JEREL I. YAMAMOTO
187 Kapiolani Street
Hilo, Hawaii 96720

Dated: Honolulu, Hawaii, JUN 13 2005.



ANTHONY J. H. CHING
Executive Officer