



BEFORE THE LAND USE COMMISSION
STATE OF HAWAI'I

In the matter of the Petition of

THE SHOPOFF GROUP, L.P.

To Amend the Agricultural Land Use District
Boundaries into the Urban Land Use District
for Approximately 129.99 Acres in North
Kona District, Island of Hawai'i, Tax Map
Key Nos. (3) 7-3-007:038, 039, and (3) 7-
3009:007

DOCKET NO. A06-770

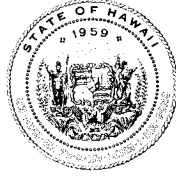
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND
ORDER FOR A STATE LAND USE
DISTRICT BOUNDARY
AMENDMENT; EXHIBIT "A";
CERTIFICATE OF SERVICE

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

This is to certify that this is a true and correct
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State Land Use Commission, Honolulu, Hawaii.

OCT 21 2008

by 
Executive Officer



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STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

THE SHOPOFF GROUP, L.P. ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on November 27, 2006, as amended by amendment filed on November 1, 2007 (the Petition as so amended is referred to as "Petition"), pursuant to Hawai'i Revised Statutes ("HRS") section 205-4, and Hawai'i Administrative Rules ("HAR") chapter 15-15, to amend the land use district boundary to reclassify approximately 129.99 acres of land, situated in the North Kona District, Island of Hawai'i, Tax Map Key Nos.

(3)7-3-007:038, 039, and (3)7-3-009:007 ("Petition Area"), from the state Land Use Agricultural District to the state Land Use Urban District. The classification is necessary to allow for the development of the Kula Nei Project ("Project"), a low-density residential development.

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

I. PROCEDURAL MATTERS

1. On November 27, 2006, the Petitioner filed the Petition, Petition Exhibits "1" through "22", and submitted a check for the filing fee in the amount of \$500.00.
2. On December 18, 2006, the Commission issued its order determining, (1) that the Land Use Commission agreed to be the accepting authority pursuant to HRS Chapter 343, and (2) that the proposed action may have a significant impact to warrant the preparation of an environmental impact statement ("EIS").
3. On August 24, 2007, the Petitioner filed Petitioner's final EIS Volumes 1, 2 and 3.
4. On October 4, 2007, the Commission voted to accept the Petitioner's final EIS.
5. On October 25, 2007, the Petitioner filed Petitioner's Motion to Submit Missing Pages from the Kula Nei Project Final Environmental Impact Statement Accepted by the Land Use Commission on October 4, 2007, Memorandum in Support of Motion, Affidavit of Lee W. Sichter and Exhibit "A".
6. On November 1, 2007, the Petitioner filed an Amended Petition and Petition Exhibits "1A"- "7A", "10A"- "12A", "15A"- "18A", "23"- "26".
7. On November 1, 2007, the Commission voted to grant Petitioner's motion to submit missing pages from the final EIS that was accepted on October 4, 2007.
8. On November 19, 2007, the notice of hearing was published statewide.
9. On December 6, 2007, the U.S. National Park Service ("NPS") filed an Application to Intervene.
10. On December 6, 2007, the Petitioner filed the Affidavit of Naomi U. Kuwaye Attesting to the Mailing of the Notice of Hearing and the Affidavits of Publication of Notice of Hearing.
11. On December 10, 2007 the State Office of Planning ("OP") filed the Position Statement of the Office of Planning in Support of the Petition, List of Witnesses, List of Exhibits, and OP's Exhibit Nos. 2A, 2B, 2C, 2D and 3.
12. On December 11, 2007, the County of Hawai'i Planning Department ("County") filed its Statement of Position in Support of the Petition.

13. On December 31, 2007, a Prehearing Order was issued which required that all exhibits were to be filed with the Commission no later than the close of business on January 11, 2008.
14. On January 10, 2008, the NPS submitted a letter to the Commission withdrawing its Application to Intervene.
15. On January 10, 2008, the Petitioner filed Petitioner's List of Witnesses, List of Exhibits, and Exhibits "1" through "19", "19A", "20", "20A", "21", "21A" and "22" to "46"; and the County filed its testimony in support of the Petition.
16. On January 11, 2008, the OP filed the Testimony of the OP in Support of the Petition.
17. On January 23, 2008, the Petitioner filed Petitioner's Motion to Amend the Exhibit List; Memorandum in Support of Motion; Declaration of Naomi U. Kuwaye; Amended List of Exhibits; Exhibits "6A", "21B", "21C" and "47".
18. On March 13, 2008, the County filed its Amended List of Witnesses.
19. On March 17, 2008, the Petitioner filed the Petitioner's Motion to Amend Its Amended Exhibit List, Memorandum in Support of Motion, Declaration of Jesse K. Souki; Second Amended List of Exhibits and Petitioner's Exhibits "48", "49", and "50".
20. On March 18, 2008, OP filed OP's Second Amended List of Witnesses.
21. On March 18, 2008, Petitioner filed Petitioner's Exhibit "51", a letter from Stanford Carr Development, LLC, regarding Project access through Kaloko Heights.
22. On April 8, 2008, Petitioner filed Petitioner's Motion to Amend Its Second Amended List of Exhibits and to Amend Its List of Witnesses, to Add a Rebuttal Witness, Memorandum in Support of Motion, Declaration of Jesse K. Souki, Third Amended List of Exhibits, Amended List of Witnesses, Exhibits "52" and "53"; and OP filed OP's Second Amended List of Exhibits, and Exhibit No.7.
23. The Commission held evidentiary hearings in this docket on January 24, 2008, January 25, 2008, March 19, 2008, March 20, 2008, and April 10, 2008, in Waikoloa, Hawai'i.
24. On April 10, 2008, the Commission closed the evidentiary portion of the proceedings.

25. On May 30, 2008, the Petitioner filed Petitioner's Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order entered into by Petitioner and the County.

26. On May 30, 2008, OP filed The Office of Planning's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

27. On June 6, 2008, OP filed The Office of Planning's Response to Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

28. On June 6, 2008, Petitioner filed Petitioner The Shopoff Group, L.P.'s Exceptions to The Office of Planning's Proposed Findings of Fact, Conclusions of Law and Decision and Order.

29. On June 12, 2008, Petitioner filed Petitioner The Shopoff Group, L. P.'s Response to Office of Planning's Response to Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

30. On June 12, 2008, OP filed The Office of Planning's Response to Petitioner The Shopoff Group, L. P.'s Exceptions to The Office of Planning's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

31. On June 12, 2008, the County filed County of Hawai'i Planning Department's Exceptions to Petitioner's Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

32. On June 12, 2008, Petitioner filed Petitioner The Shopoff Group, L. P.'s Response to The County of Hawai'i Planning Department's Exceptions To Petitioner's Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

33. On July 24, 2008, the Commission conducted its deliberations at the Waikoloa Marriott Hotel, 69-275 Waikoloa Beach Drive, Waikoloa, Hawai'i. On September 18, 2008, the Commission conducted further deliberations at the Waikoloa Marriott Hotel, 69-275 Waikoloa Beach Drive, Waikoloa, Hawai'i.

Public Testimony

34. On January 24, 2008, the Commission heard public testimony from Geraldine Bell, superintendent at Kaloko-Honokohau National Historical Park (the "National Park"), NPS; Elizabeth Lee; Curtis Tyler, a resident of Kona Acres; Mark McGuffie, executive director of the

Hawai'i Island Economic Development Board; and Barbara Scott, Co-Chair of the Kona Traffic Safety Committee.

II. FINDINGS OF FACT

A. Description of the Petition Area

35. The Petition Area consists of approximately 129.99 acres comprising three tax map key parcels located in the O'oma Homestead region of the North Kona District on the island of Hawai'i, as follows: (3) 7-3-007:038 ("Lot 57"), which contains approximately 44.905 acres; (3) 7-3-007: 039 ("Lot 56"), which contains approximately 39.420 acres; and (3) 7-3-009:007 ("Lot 59"), which contains approximately 45.667 acres.

36. Lots 57 and 56 are owned in fee simple by TSG Kula Nei, L.P., formerly known as TSG O'oma, L.P. TSG O'oma, L.P. was formerly known as Wasson Canyon Investments, L.P. Lot 59 is owned in fee simple by Springbrook Investments, L.P.

37. The Petitioner is authorized by TSG Kula Nei, L.P. and Springbrook Investments, L.P. to represent them in reclassification of the Petition Area. The Petitioner, as the managing entity, is responsible for managing the development process on behalf of TSG Kula Nei, L.P. and Springbrook Investments, L.P.

38. The Petition Area is situated about four miles inland from the shoreline and 1.9 miles upslope of the National Park.

39. The Petition Area is situated several thousand feet due west of Mamalahoa Highway, and is surrounded by a number of existing residential subdivisions. Kona Palisades is directly to the north of the Petition Area, as is Kona Acres. O'oma Plantation, a single family subdivision, is also located north of the Petition Area. Kona Estates, which is a single-family gated community, is located *mauka* of the Petition Area. Directly south of the Petition Area is the proposed Stanford Carr development known as Kaloko Heights. *Makai* of the Petition Area is a vacant 900-acre parcel of State land that is currently in the state Urban Land Use District.

40. Homestead Road runs *mauka-makai* beginning at the Kona Estates Subdivision and runs through the middle of the Petition Area.

41. The County has jurisdiction over Homestead Road. Homestead Road is not part of the Petition Area.

42. The lands adjacent to the Petition Area are within the state Urban Land Use District and/or are planned or built residential subdivisions, except for a portion of the Petition Area's border to the northwest edge of the Petition Area.

43. The Petition Area is presently vacant, overgrown with mostly non-native vegetation. During pre-contact times before 1778 and early post-contact time up into the mid 1800s, it was the site of native Hawaiian habitation and cultivation activities. Subsequent to the decline of the Hawaiian population, habitation on the Petition Area all but disappeared and its use was generally limited to the grazing of livestock and a few residences.

44. Site elevations range from approximately 750 to 1,100 feet above mean sea level.

45. The Petition Area slopes down from *mauka* to *makai*, with an average slope of approximately 10 percent, with areas of slopes of 20 percent or more comprising less than 10 percent of the total Petition Area.

46. The annual rainfall in the region is 25 to 30 inches per year.

47. The entire Petition Area is designated as Zone X by the Federal Insurance Administration's Flood Insurance Study, which indicates that the Petition Area has a very low risk of flooding.

B. Proposal For Reclassification

48. The Petition Area is presently classified in the state Agricultural Land Use District. It is identified by both the County General Plan and the State's West Hawai'i Regional Plan as being appropriate for low-density urban development.

49. To achieve residential densities greater than a half acre per unit, the Petition Area must be reclassified to the state Urban Land Use District and subsequently rezoned from its present zoning of Ag 5A, which allows 5-acre lots, to a zoning classification consistent with low density residential development.

50. The proposed improvements concentrate on the subdivision of the Petition Area to allow for the development of approximately 270 residential units including approximately 216 to 220 single-family homesites, as well as affordable housing units that are needed to conform to County affordable housing requirements. Subdivided residential lots may be sold in bulk to one or more homebuilders, individual lots may be sold to home purchasers, or the lots may be disposed of using a combination of both methods. The number of required affordable housing

units is approximately 54 units, and Petitioner has represented that they will be located in the Petition Area.

51. The Petition Area will be connected to the Queen Ka‘ahumanu Highway and Mamalahoa Highway by two existing roadways, Ka‘iminani Drive and Hina Lani Street.

52. Proposed Project improvements include a 4.4-acre private community park, a wastewater treatment plant to serve the affordable housing area and residential lots immediately surrounding the affordable housing area, individual wastewater systems to serve the remaining residential lots, an offsite drinking water well, storage reservoirs, water transmission lines, an internal roadway circulation system and offsite roadway connections. The Project includes construction of Holoholo Street, a key mid-level connector in the North Kona region, through the Petition Area.

53. Additionally, Petitioner represents that it will preserve Homestead Road as a pedestrian trail open to the public. Homestead Road existed in the mid 1800s. It is a narrow roadway that is lined on each side by a lava rock wall. It ranges in width from about 10 to 20 feet and is overgrown with vegetation. Homestead Road is not suitable for a vehicular access, because it is lined on each side by existing lava walls and was never intended to accommodate motorized vehicles. There will be parking available to the public at various locations so the public can access Homestead Road.

54. The Lee family, including Robert Lee and Aunty Elizabeth Lee and their families, owned and lived on land in the Petition Area. The Lee family will develop the *makai* 10-acre portion of the Petition Area.

55. Petitioner will process grading plans and infrastructure improvement plans and anticipates construction of the Project to commence in 2011. Backbone infrastructure improvements would be completed within 10 years from the last discretionary land use approval for the Project. Backbone infrastructure is the construction of Holoholo Street through the Petition Area and the loop road within the Petition Area, access points, waterlines, and utilities to serve the future lots, the park, and construction of the water supply infrastructure.

56. Infrastructure construction, including a regional water supply well, reservoir, roadways (both on and potentially off the Petition Area), will take two to five years, putting aside market considerations.

57. Zoning and tentative subdivision approvals are anticipated to occur two to three years after issuance of the Commission's Decision and Order.

C. Petitioner's Financial Capability to Undertake the Project

58. Evidence of Petitioner's financial condition in the form of its financial statements was attached to the Petition as Exhibit "19".

59. Financing for land acquisition and entitlement (through subdivision approval) will be through limited partnerships, including TSG Kula Nei, L.P. and Springbrook Investments, L.P. An offering for investment in each of the two limited partnerships was made available to qualified investors to raise capital to finance the land acquisition and entitlements for the Project. Should additional capital be required for Project entitlements, it will be raised through the limited partnerships.

D. Need For The Proposed Development

60. Belt Collins Hawai'i, Ltd., under the direction of John Kirkpatrick, prepared a report titled, "Market Assessment, Kula Nei Residential Project, North Kona, Hawai'i County," dated September 2006, revised to include updated Project information, March 2007.

61. The Project meets demand for both market and affordable housing in West Hawai'i.

62. Housing near the urban center in Kailua-Kona is attractive to residents of West Hawai'i because they would not need to commute long distances to work or school.

63. Taking into account competing projects, the approximately 54 affordable units proposed for the Project could be absorbed in two years, and lot sales for market lots could take five years to be fully absorbed.

64. Absorption estimates in the Market Assessment take into account the slowing housing market since the analysis is based on long- term historical trends.

E. Economic Impacts

65. Over a seven-year period, it is estimated approximately 70 full-time construction jobs would be created annually on average from the Project. It is estimated the total employment impact of construction comes to an average of 161 jobs per year over that period; this includes both direct construction jobs and indirect and induced jobs associated with construction.

66. The State gains revenues from taxes on construction activity and on sales. The total revenue for the State is estimated at \$8.7 million at the end of construction of offsite and onsite infrastructure and housing construction.

67. The County would gain revenues from real property taxes, which would reach an estimated cumulative total of \$10.1 million by the year 2020.

F. Social Impacts

68. The Project will create improved connectivity through road improvements that will make it easier for residents of the area to reach the KaIoko commercial area and reduce the area's dependence on the major highways, Queen Ka'ahumanu Highway and Mamalahoa Highway.

69. Nearby residents will also see increased recreational opportunities near their homes with the development of trails, including Homestead Road, and a community park within the Project.

70. Petitioner will provide funding for schools. It has entered into an agreement with the State Department of Education ("DOE") that establishes fair-share contribution to mitigate the impacts of the Project. The fair share contribution is comprised of two elements: a construction in-lieu fee and a land contribution in-lieu fee.

71. The Project will not have a negative socioeconomic impact on the region.

G. Impacts Upon Resources of the Area

1. Agricultural Resources

72. Decision Analysts Hawai'i, Inc., under the direction of Bruce Plasch, prepared a study titled, "The Kula Nei Project: Impact on Agriculture," dated June 2007.

73. The Petition Area has poor agronomic conditions for commercial farming and grazing cattle because the soils are extremely rocky, rainfall is comparatively low, and water is not currently available for irrigating crops.

74. The Petition Area soil conditions are as follows:

Soil Conservation Service Rating. About 122 acres of the Petition Area is extremely rocky peat with a classification of VII, which means the soils have very severe limitations that make them unsuitable for cultivation and restrict their use largely to pasture range or

nonagricultural uses. The other 8 acres are rated VIII, which basically precludes use for any type of agriculture.

Agricultural Lands of Importance to the state of Hawai'i ("ALISH"). None of the Petition Area soils are rated Important. They are not classified.

Land Study Bureau. Twelve acres in the Petition Area have a rating of D, which is next to the lowest rating. One hundred eighteen acres, 91 percent of the Petition Area soils, have a rating of E, which is the lowest quality agricultural land.

75. Based upon the soil ratings systems, the entire Petition Area is comprised of very low quality soils.

76. There are no current agriculture activities in the Petition Area.

77. Reclassification and development of the Petition Area will not have an adverse impact on agriculture resources in the region or in the State.

2. Fauna

78. A survey was prepared for the Petition Area titled, "Avifaunal and Feral Mammal Survey for the Kula Nei Project, North Kona, Island of Hawai'i," dated April 25, 2007 (Revised).

79. Species of birds and mammals in the Petition Area were documented, the Petition Area was examined to identify natural resources available to wildlife, and special attention was devoted to documenting the presence and possible use of the Petition Area by native and migratory species, particularly those that are listed as threatened or endangered.

80. The study was conducted over a two-day period, which included walk arounds and the use of ultrasound detectors.

81. The Petition Area is disturbed and therefore good native habitat is absent.

82. Only introduced, non-native species of avifauna were observed.

83. An attempt was made to locate two native species that could potentially occur in the Petition Area: the Hawaiian owl or *pueo* and the *'io* or Hawaiian hawk, but none were found. The Hawaiian Hawk uses the same nest year after year and no Hawaiian Hawk nests were observed in the Petition Area.

84. The Newell Shearwater's population is predominantly on Kaua'i, and there is no data to show the extent to which they may occur in the region of the Petition Area.

85. It was recommended that if a Hawaiian Hawk (an endangered species) nest were discovered in the Petition Area the U.S. Fish and Wildlife Service should be notified of its presence.

86. No mitigation recommendations were made because of the lack of listed species in the Petition Area.

87. The chances of a Hawaiian Hawk being in the Petition Area are so small that it would not justify mandatory monitoring.

88. No mammalian species of concern were observed.

89. A particular effort was made to locate the Hawaiian Hoary Bat (an endangered species), but none were observed.

90. The Hawaiian Hoary Bat could only be found solitarily in trees, including trees in a neighbor's backyard, and urbanization of the Petition Area will not restrict or exclude the Hawaiian Hoary Bat.

91. No mitigation recommendations were made for mammalian species.

3. Flora

92. Isle Botanica, under the direction of Art Whistler, prepared a study titled, "Botanical Survey of Kula Nei Development Area, North Kona, Island of Hawai'i," dated May 2007.

93. All plant species encountered during the survey were recorded along with an indication of their frequency.

94. Most of the species were identified in the field; some were taken to the Bishop Museum and identified there.

95. Three types of vegetation were found in the Petition Area: Managed Land Vegetation; Schinus/Psydrax scrub (i.e., Christmas berry and *alahe'e*); and Disturbed Dospyros/Psydrax, dryland forest (i.e., *lama alahe'e* disturbed forest).

96. One hundred nine native and alien plant species were recorded from the Petition Area. Native plants comprise two types based on their distribution: indigenous and endemic species. Nineteen native plants were recorded: fourteen indigenous and five endemic.

97. No threatened or endangered plant species or species of concern were found in the Petition Area.

98. Because of the extensive disturbance of the forest and the scrub presence on the Petition Area, it is unlikely that any threatened or endangered plant species would have been missed in the survey, and it is also unlikely that any would become reestablished in the future.

99. Landscaping with native drought-tolerant plant species where practicable is recommended; but not to the exclusion of non-native species.

100. Petitioner will incorporate the use of native Hawaiian and drought-tolerant plants into the landscaping for the Homestead Road trail and green belt along Homestead Road, within the community park and in common open space areas of the Project that are to be landscaped. Petitioner will also support and recommend the use of native Hawaiian drought-tolerant plants by homeowners within the Project.

4. Archaeological and Historical Resources

101. Archaeological inventory survey reports were prepared for the Petition Area by Rechtman Consulting, LLC ("Rechtman Consulting") under the direction of Dr. Robert Rechtman. These reports are as follows: "An Archaeological Inventory Survey of TMKs:3-7-3-07:39 and 3-7-3-46:105," dated November 2005; "An Archaeological Inventory Survey of TMK:3-7-3-07:38," dated June 2005 (revised June 2006); "An Archaeological Inventory Survey of TMK:3-7-3-009:007," dated April 2006 (Revised March 2007); "An Archaeological Inventory Survey of a Proposed Ho1oho1o Street Extension Across State-Owned Land (TMK:3-7-3-009:008 por.)," dated July 2006.

102. The archaeological studies were prepared in accordance with HAR title 13 subtitle 13, and HRS Chapters 275 through 284.

103. Rechtman Consulting also prepared an archaeological assessment survey for the offsite water system, which is a part of a letter from Dr. Rechtman to Department of Land and Natural Resources ("DLNR"), State Historic Preservation Division ("SHPD"), dated September 26, 2006.

104. The purpose of the archaeological inventory surveys was to identify and record all the archaeological features within the Petition Area, to define sites and assess their significance, and to propose treatment recommendations.

105. Rechtman Consulting documented 87 archaeological sites, eleven of which were considered significant to native Hawaiian people.

106. No further work was recommended for 31 sites as they were fully documented during the inventory surveys. Data recovery was recommended for 40 sites; preservation was recommended for 16 sites, including the 11 sites identified to be associated with cultural practices or beliefs.

107. The archaeological studies and site treatment recommendations were submitted for review to SHPD, and were approved by SHPD.

108. Rechtman Consulting is currently preparing data recovery, preservation, and burial treatment plans. Petitioner will work with SHPD to formulate data recovery, preservation, and burial treatment plans. Adherence to a SHPD accepted preservation plan ensures there will be no adverse impact to these sites.

5. Cultural Resources

109. Rechtman Consulting, prepared a cultural survey of the Petition Area titled, "Cultural Impact Assessment for the Kula Nei Project Area," dated September 2006, which included an assessment of whether any traditional and customary Hawaiian rights are being exercised in the Petition Area.

110. A visual inspection of the Petition Area was conducted as well as oral interviews with Elizabeth Maluihi Lee and Kinoulu Kahananui. Portions of the Petition Area have been in their families since the early 20th century and remained under their ownership until very recently.

111. There are no native Hawaiian traditional and customary practices currently being exercised in the Petition Area.

112. In light of the recommendations contained in the archaeological inventory surveys and the cultural impact assessment, the reclassification and development of the Petition Area will not have an adverse impact on archaeological and cultural resources. In addition, a protocol for any inadvertent discoveries will effectively mitigate any adverse impact.

6. Groundwater Resources

113. Waimea Water Services, Inc., under the direction of Stephen Bowles, prepared a report titled, "Review of Potential Well Development (TMK (3) 7-3-6:por36-New lot B), also known as "DWS lot" For the Kula Nei Project," dated May 2007.

114. Mr. Bowles was retained by the Petitioner to provide the necessary information for the planning, design and construction of a well to provide 700 to 1,000-gallon per minute ("GPM") capacity for the Project.

115. The Petition Area will use water from the Keauhou aquifer, which the State Commission on Water Resource Management estimates has a sustainable yield of 38 million gallons per day.

116. The Project would have a water demand for 270 water units or about 120,000 gallons per day on average as agreed to by the County Department of Water Supply ("DWS").

117. The 700 to 1,000 GPM well is projected to supply the necessary water for the Project, with excess amounts available to DWS and other projects in the area.

118. Based on previous work that was performed by Waimana Water Services, Inc. for the Kamehameha Schools and Kukio Resorts, consisting of a hydrologic or water budget, along with the work of others, there are adequate water resources to support the proposed well and the Project.

119. There will be no anticipated adverse impact on ground water quality from the development of this proposed well.

7. Lava Tube Cave Resources

120. SWCA Environmental Consultants, under the direction of Dr. Kemble White, prepared a report titled, "Biological Surveys of Lava Tube Caves, The Kula Nei Project, Kona, Island of Hawai'i," dated August 2006, Updated May 2007.

121. A field investigation to locate known lava tube caves in the Petition Area was performed by a team conducting a site walk-through using ground-penetrating radar.

122. Thirteen different lava tube cave segments, all part of the same system, were studied.

123. 32 species of cave arthropods were found and none of the species is protected under the law as endangered or threatened.

124. A follow up field study was conducted to investigate the effect of the earthquake of October 2006.

125. During the follow-up study of the lava tube caves, no new entrances were observed. There was evidence of a few rock falls within the tubes but the report as written in 2006 is still current, valid information.

126. Most of the lava tube caves are short segments that are fairly dry and they contain too much air circulation to provide suitable habitat for the cave life. The main section, which is divided into three pieces, is where much of the significant biology occurs.

127. The lava tube caves that have been identified as having active cave biology are the same as those within the preservation areas identified and recommended to be preserved.

128. The three lava tube cave segments within the preservation area should be made inaccessible for the protection of the public and the biological and archaeological resources that are contained within those tubes. Methods should include a combination of fencing, gating, or blocking some of the entrances with large boulders.

129. If subgrade cavities are collapsed and a space large enough to be explored and surveyed and that could support cave biology is encountered, the space should be inspected by a cave or karst expert to identify what protective or mitigation measures, if any, should be undertaken.

8. Scenic Resources

130. Petitioner is committed to protecting the natural beauty of the region and ensuring that the character of the Project is consistent with that of the surrounding communities.

H. Environmental Quality

1. Noise

131. Noise impacts would occur during construction. These impacts are not considered significant since they would be temporary, and construction work would be conducted in compliance with applicable state Department of Health ("DOH") noise regulations.

132. No significant noise impacts are expected during the operational phase of the Project. Ambient noise may increase slightly due to additional vehicular traffic.

2. Air Quality

133. B. D. Neal & Associates, under the direction of Barry Neal, prepared a report titled, "Air Quality Study for the Proposed Kula Nei Project, North Kona, Hawai'i," dated May 2007.

134. The air quality impacts during construction would be related to fugitive dust emissions and, to a lesser extent, exhaust emissions from stationary and mobile construction

equipment, the disruption of traffic, and workers' vehicles coming to and from the Petition Area during construction operations.

135. Mitigation measures during construction will include a dust control plan that includes provisions for watering of active work areas, using windscreens in some dust-sensitive areas, keeping adjacent paved roads clean, and covering open-bodied trucks traveling to and from the Project construction site. Other dust control measures include limiting the area that can be disturbed at any given time and mulching or chemically stabilizing inactive areas that have been worked. Paving and landscaping of Project areas early in the construction schedule will also help to reduce dust emissions.

136. After construction is completed the primary issue as far as air quality impacts from the Project is concerned is related to motor vehicle traffic coming to and from the Petition Area and the long-term increase in air pollution emissions resulting therefrom.

137. Air quality with or without the Project should remain within both the national and State standards through the year 2020.

138. Due to the small impact the Project is expected to have, implementing mitigation measures for traffic-related air quality impacts is unnecessary and unwarranted.

J. Adequacy of Public Services and Facilities

1. Highway and Roadway Facilities

139. Fehr & Peers, Kaku & Associates prepared a study, under the direction of Dick Kaku, titled, "Traffic Study for the Kula Nei Residential Development, North Kona, Island of Hawai'i, Hawai'i," dated May 2007.

140. The traffic study analyzed the potential Project-related traffic impacts on the roadway system in the vicinity of the proposed Project for the Petition Area in North Kona, Hawai'i.

141. New baseline traffic volume data was collected for use in the study to establish existing base conditions. The impact analysis was conducted by examining projected future conditions during the typical weekday morning and afternoon peak hours both with and without the Project at five study intersections and four roadway segments.

142. The five intersections studied are as follows: Ka'iminani Drive and Holoholo Street; Ka'iminani Drive and Mamalahoa Highway; Mamalahoa Highway and Hina Lani Street;

Queen Ka‘ahumanu Highway and Hina Lani Street; and the currently nonexistent but future intersection of Holoholo Street and Hina Lani Street.

143. The four road segments are as follows: A portion of Ka‘iminani Drive just *mauka* of Queen Ka‘ahumanu Highway; a portion of Mamalahoa Highway north of Ka‘iminani Drive; portion of Hina Lani Street just *mauka* of Queen Ka‘ahumanu Highway; and a portion of Mamalahoa Highway just south of its intersection with Hina Lani Street.

144. The projected completion year of the proposed Project is 2017, but for planning purposes, the study evaluated projected 2020 conditions, which coincided with projected roadway improvements for the area.

145. Cumulative and Project-related impacts were identified and mitigation measures were developed to adjust these impacts based upon Level of Service ("LOS") standards adopted by the County of Hawai‘i.

146. County LOS standards indicate that if an intersection operates at LOS D after the addition of Project traffic, it is not impacted by the Project.

147. Petitioner has met with representatives of the state Department of Transportation ("DOT"), regarding the Project's fair-share contribution to mitigate the traffic impacts of the Project. The Project's fair-share contributions involve three intersections: Mamalahoa Highway and Ka‘iminani Drive; Mamalahoa Highway and Hina Lani Street; and *makai* of the intersection of Queen Ka‘ahumanu Highway and Hina Lani Street.

148. There are three potential scenarios for access to state highways via different parallel connector roads, and the DOT agrees with what the traffic impact assessment report ("TIAR") indicates in terms of the percentages of additional traffic at each of those intersections.

149. The fair-share contribution amount will be the total agreed upon cost for each intersection improvement multiplied by the Petitioner's contribution to traffic for each of the intersection improvements. Petitioner's total fair-share contribution is the sum of all three intersection improvements.

150. Current access to the Project is through Lot 105, which is owned by the Petitioner. Lot 105 is a vacant lot in the Kona Acres Subdivision that abuts Kukuna and Punawale Streets.

151. Access to the Petition Area will be through the future extension of Holoholo Street from Kona Acres subdivision to the Petition Area, and/or Kealaka‘a and Holoholo Streets

through the Kaloko Heights Subdivision. Petitioner anticipates two connections through the Kaloko Heights project -a *makai* connection and a *mauka* connection - to Hina Lani Street.

152. Holoholo Street intersects with Ka‘iminani Drive. The County of Hawai‘i plans to extend Holoholo Street as a lateral access in the North Kona area. The Petitioner has proposed the extension of Holoholo Street across a parcel of state owned property that is northwest and adjacent to the Petition Area. Stanford Carr Development is proposing to construct Holoholo Street across the Kaloko Heights property to the south of the Petition Area, to connect to Hina Lani Street.

153. By letter dated January 29, 2008, Stanford Carr Development acknowledges Petitioner's efforts to coordinate the extension of the Holoholo/Kealaka‘a extension from Project south through the Kaloko Heights subdivision.

154. As a condition of subdivision approval, Stanford Carr Development would be required to build Holoholo Street from Hina Lani Street, through the Kaloko Heights subdivision, up to the Petition Area.

155. Petitioner is also working with representatives of the County of Hawai‘i and DLNR to facilitate the extension of Holoholo Street through the vacant State parcel north of the Petition Area.

156. There is currently no public transportation available in this area of North Kona. However, Petitioner is amenable to providing bus turnouts along Holoholo Street within the Petition Area to facilitate future public transportation if desired by the County of Hawai‘i.

2. Grading

157. Belt Collins Hawai‘i, Ltd., under the direction of Walter Billingsley, prepared a report titled, “Civil Infrastructure, Kula Nei Subdivision, TMK: 7-3-007:38, 39; 7-3009: 007,” dated June 2007.

158. The grading design for the Project will be in compliance with County of Hawai‘i standards and will eliminate any potential risk associated with localized relatively steep slopes on the Petition Area. A detailed geotechnical exploration of the Petition Area will be conducted to provide a basis of grading design for the Project.

159. The geotechnical engineer will identify any needed remediation for existing slopes and recommend maximum angles for cut slopes and fill slopes.

160. The grading design will accommodate the existing steeper slopes on the Petition Area by benching or terracing the surface to create roadbeds and building sites. The isolated areas with slopes greater than 20 percent will be incorporated into this pattern without any detrimental effects on the Project.

3. Water Service

161. The Petition Area will be served by existing water lines to the north of the Petition Area.

162. Offsite water supply, storage and transmission consisting of a well, reservoir and transmission lines will be constructed specifically for the Project. Petitioner has a construction easement for constructing waterlines through the O'oma Plantation Subdivision.

163. The County of Hawai'i Department of Water Supply ("DWS") will review and approve the proposed water system.

4. Solid Waste Disposal

164. Solid waste, including construction waste and domestic solid municipal waste, will be discharged to the West Hawai'i Landfill, approximately 15 miles north of the Project.

165. Biosolids from individual wastewater systems in the Project and the Project's proposed wastewater treatment plant will be periodically discharged to the County of Hawai'i wastewater treatment plant in Kona.

166. Sufficient landfill capacity is available at the West Hawai'i Landfill to accommodate the solid waste generated by the Project at full buildout, based on the assumption that when the existing landfill's capacity is reached, the County will at that time have another landfill or some other method of handling municipal solid waste.

5. Wastewater Disposal

167. Wastewater disposal for the Project includes individual wastewater systems for lots of 10,000 square feet and larger, and the small centralized wastewater treatment plant for the affordable housing area and nearby lots. The lots surrounding the affordable housing area that will be served by the wastewater treatment plant may be smaller than 10,000 square feet.

168. The Project's wastewater disposal plan eliminates the need for offsite construction of two and a half miles of sewer line, and it minimizes discharge to the County of Hawai'i wastewater system.

169. The centralized wastewater treatment plant for the affordable housing area and nearby lots, as well as the individual wastewater systems for the Project, will be designed to remove most of the nutrients in the wastewater in accordance with requirements contained in the Agreement between the Petitioner and the NPS, Petitioner's Exhibit 46.

170. Onsite wastewater treatment and disposal will not have a significant impact on the existing County of Hawai'i wastewater infrastructure, because the wastewater will be treated and disposed on the Petition Area, not piped to the County of Hawai'i wastewater system. Only biosolids from septic tanks and the centralized wastewater treatment plant will be transported offsite from the Petition Area by pumper trucks on an as-needed basis and discharged to the County of Hawai'i system.

6. Drainage

171. The Petition Area slopes down *mauka* to *makai* at an average slope of approximately 10 percent. Because the surface of the Petition Area is very uneven and the existing soils are very porous, most rainwater percolates into the ground at or near where it falls. For this reason, there are no streams or natural drainage channels in the vicinity of the Petition Area.

172. The Petition Area has a very low risk of flooding.

173. The Project is projected to have only a minor impact on the existing natural drainage conditions at the Petition Area and is projected not to have any impact on the existing regional drainage conditions.

174. The low density of the Project will allow rainwater to continue to percolate into the ground over most of the Petition Area. Stormwater runoff from buildings, roads and other paved areas on the Petition Area will be directed into porous sumps and shallow drywells in the nearby vicinity.

175. Stormwater quality measures such as debris catch basins will be designed as components of the shallow drywells in accordance with requirements contained in the Agreement between Petitioner and NPS.

176. The Petitioner agreed to follow the terms of the Agreement between Petitioner and NPS regardless of whether the Commission imposes it as a condition, but only if the requested district boundary amendment is granted by the Commission.

7. Police and Fire Protection

177. The Kona station of the Hawai'i County Police Department is located at Kealakehe, just above Queen Ka'ahumanu Highway, about 2.5 miles from the Petition Area. It serves as the local station and main office for West Hawai'i bureaus. Some 78 positions were authorized for the Kona district as of 2005 (Hawai'i County Police Department 2006).

178. While population and housing growth will lead to increased demand for police services, the impact of the Project is likely to be small.

179. The County of Hawai'i's North Kona fire station is located in Kailua-Kona, about 4.5 miles from the Petition Area. The Keahole Airport station is about three miles from the Petition Area. In addition, Kalaoa Volunteer Fire Company 7 Bravo is located on Ka'imini Drive, at the *makai* end of the Kona Palisades subdivision. Its 15 volunteers are trained in firefighting and work in support of the regular Fire Department personnel. Funds for a new Kalaoa Fire Station are in the current budget before the County Council. The net impact of the Project on the demand for firefighting services is likely to be minimal.

8. Emergency/Medical Services

180. The primary medical facility for the Kona region is Kona Community Hospital in Kealahou, South Kona. This 94-bed hospital is part of the Hawai'i Health Systems Corporation supported by the State. It has 24-hour emergency services, an intensive care unit, maternity, oncology, and other units. It is located about 15 miles from the Petition Area. In Waimea, the North Hawai'i Community Hospital is a privately owned non-profit facility, with 40 beds, a 24-hour emergency room, and acute care services. It is located about 30 miles from the Petition Area.

9. Electricity and Telephone Services

181. The Petition Area is located within a region that has a well-developed electrical and communications infrastructure base that is expanding over time to meet the needs of ongoing development in the region.

182. The Project's demand for electrical and communications infrastructure resources is well within the existing providers' capabilities, and will not adversely impact the regional electrical and communications infrastructure resources.

183. Hawai'i Electric Light Company, Hawaiian Telcom and Oceanic Time Warner Cable have indicated that they can provide service for the Project.

10. Energy Conservation

184. HRS Chapter 196, imposes a condition that State buildings, but not private buildings, be designed and constructed to meet LEED¹ silver standards. There is no county ordinance that imposes LEED on any developments. LEED is a voluntary program.

185. The LEED program's goal is, through building design and construction, to increase energy efficiency and water conservation, reduce the amount of material that is sent to the landfill, and improve indoor environmental quality.

186. There are other programs in addition to LEED that are designed to produce buildings with greater energy efficiency and water conservation, and reduce the amount of material sent to the landfill. These programs include Energy Star for Homes, Hawaii Built Green, and Green Communities.

187. Danielian and Associates, under the direction of Jeffrey Stevens, prepared a document titled, "LEED-H Silver Cost Summary for Kula Nei," dated April 4, 2008.

188. According to the study, LEED-H Silver compliance would add \$35,000.00 per unit, which includes construction costs and the LEED related fees. A home constructed in Hawaii would cost about \$130-\$150 per square foot.

189. For residential projects, LEED costs to the builder, among other costs, are generally passed directly on to the homeowner. Although LEED certification may increase initial costs, the energy, water and other savings and benefits over the life of the building may offset the increased initial costs, and reduce energy consumption and the release of greenhouse gases.

190.A. Energy efficiency and demand management are part of the Hawaii State Plan. One of the decision-making criteria for the Commission is conformance to the Hawaii State Plan, and the impact on environmental resources.

190.B. The State has a great concern for the amount of resources available to service all developments such as fuel, water, and solid waste disposal for the future health of its residents. State concerns are the impacts the future development would have on energy consumption and the promotion of energy conservation measures.

¹ LEED is the U.S. Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System.

191. The County of Hawai‘i does not have the resources and/or expertise to enforce a mandatory LEED or similar requirement; however, the Petitioner has agreed to work with the future masterbuilder(s) to identify energy conservation measures that can be incorporated into the Project covenants, conditions, and restrictions where practicable.

K. Commitment of State Funds and Resources

192. In respect to improvements to the Petition Area, the Petitioner or its successors will fund site work and the initial construction of on-site and off-site infrastructure, including roadways; wastewater collection and treatment; drinking water wells, reservoirs, and transmission lines; and utilities.

L. Conformance With Urban District Standards

193. The proposed reclassification of the Petition Area is in general conformance to HAR section 15-15-18, standards for determining "U" Urban District boundaries as follows:

Criterion No.1. The Petition Area is located in an area generally surrounded by existing residential subdivisions as well as undeveloped property that has been reclassified to the Urban District.

Criterion No. 2A. The Petition Area is situated in close proximity to West Hawai‘i's commercial, industrial and economic center, Kailua-Kona.

Criterion No. 2B. Transportation systems, schools, parks, solid waste disposal, and energy systems including police and fire protection are all available to the Petition Area. The Petitioner will develop drinking water resources and wastewater collection and treatment for the Petition Area. The completed water systems will be dedicated to the County of Hawai‘i and become part of the County's regional system.

Criterion No. 2C. The State and the County presently designate the Petition Area as a reserve area for urban growth.

Criterion No. 3. The topography of the Petition Area is consistent with state Urban Land Use District design standards, and it is generally free of potential adverse environmental conditions such as floods, tsunamis, or unstable soil conditions.

Criterion No. 4. The Petition Area is contiguous to and abuts property classified as urban on the north, south and west sides.

Criterion No. 5. The Petition Area is classified for low-density urban growth by both the state plan and County General Plan.

Criterion No. 6. The Petition Area represents a relatively small portion of a large urban area that presently extends *makai* from the Petition Area to the Queen Ka'ahumanu Highway and then north nearly two miles.

Criterion No. 7. The Petition Area is surrounded on three sides by existing or approved subdivisions and would be an infill project.

Criterion No. 8. The average slope of the Petition Area is approximately 10 percent.

M. Conformance With The Goals, Objectives, and Policies of The Hawai'i State Plan

194. The Project is generally supportive of Part I of the Hawai'i State Plan including the themes and the objectives and policies inherent to it. In particular, the Project will provide market-priced house lots and affordable housing units.

195. The proposed reclassification of the Petition Area actively supports or is in general conformance with the following goals, objectives, policies, and priority guidelines of the Hawai'i State Plan:

Section 226-4 State goals. As a matter of state and County land use policy, the lower slopes of Hualalai in North Kona are intended for residential development to provide housing opportunities for the fast growing population of West Hawai'i. The proposed Project is consistent with that purpose. The Project will provide a range of housing opportunities in a desirable physical location, including affordable housing opportunities on site.

Section 226-5 Objective and policies for population. Developing a residential project for the primary and affordable housing markets in a location specifically designated by the State for urban expansion and by the County for low density urban directly contributes to government's goal of directing population growth to areas with the greatest economic benefit.

Section 226-6 Objectives and policies for the economy - in general. As the fastest growing region on the Big Island, the North Kona area is in need of a wide range of housing opportunities to support visitor industry and service sector employees. The proposed Project will help fulfill West Hawai'i's employees' demand for housing.

Section 226-7 Objectives and policies for the economy - agriculture. The Petition Area is ill-suited for agricultural use because of its poor soil quality and its physical setting. It is surrounded on three sides by existing residential subdivisions. Development of the Petition Area for residential uses will not adversely impact agriculture because no productive agricultural land is being removed from the inventory.

Section 226-8 Objectives and policies for the economy - visitor industry. The health of the Big Island's economy is influenced by the availability of housing in reasonable proximity to job centers. Reducing commute times is important to workers' well being. Because West Hawai'i is a high growth visitor destination, its current housing opportunities are outstripped by its employment opportunities.

Section 226-9 Objectives and policies for the economy - federal expenditures. While there is little relationship between private residential development and matters related to federal expenditures and national defense, increasing the availability of housing has a beneficial impact upon existing and potential federal workers by helping to provide housing opportunities in reasonable proximity to West Hawai'i's job centers.

Section 226-10 Objectives and policies for the economy - potential growth activities. The goals and policies set forth in HRS section 226-10 correspond with the changes and growth occurring in the West Hawai'i region. The Project will have a beneficial indirect impact upon economic diversification by providing housing opportunities that may support State and county economic initiatives.

Section 226-10.5 Objectives and policies for the economy - information industry. As is the case with other segments of the economy, the availability of affordable housing in reasonable proximity to employment centers will have a beneficial impact upon the industry's ability to attract and keep workers.

Section 226-11 Objectives and policies for the physical environment – land based, shoreline, and marine resources. The siting of the Project is consistent with sound planning principles for the preservation of the environment and Hawai'i's natural resources. The Petition Area was carefully surveyed to ensure that no significant habitats are present and that no endangered, threatened or candidate species will be impacted.

Section 226-12 Objectives and policies for the physical environment - scenic, natural beauty, and historic resources. The existing Homestead Road will be preserved as a cultural feature. To that end, the Homestead Road, including its abutting dry-stack lava walls, has been incorporated into the Project as a pedestrian trail. In addition, significant archaeological sites that have been identified, including burials, will be preserved. The large lava tube will also be preserved. These preserved areas become important open space elements in the scenic landscape.

Section 226-13 Objectives and policies for the physical environment - land, air, and water quality. The Project's wastewater collection and treatment system includes a combination of individual septic systems and a centralized privately developed and operated Waste Water Treatment Plant ("WWTP"). They will be designed to minimize impacts to the environment. The proposed subdivision plan for the Project includes a variety of lot sizes which will enhance the visual character of the community. Multiple vehicular access points are provided for safe ingress and egress. The Project also includes the development of regional water supply and reservoirs.

Section 226-14 Objectives and policies for facility systems - in general. The Project proposes a combination of individual septic systems with a centralized wastewater treatment system. The Project also includes a drinking water well, reservoirs and a transmission system.

Section 226-15 Objectives and policies for facility systems - solid and liquid wastes. By privately funding wastewater collection and treatment, the Project will not overburden the existing regional wastewater system.

Section 226-16 Objectives and policies for facility systems - water. The Petitioner will fund the development of a new regional drinking water system for the Petition Area and surrounding areas, including a well, reservoirs and transmission lines. Construction of the water system will enhance service to the surrounding area by improving water supply, storage capacity and connectivity.

Section 226-17 Objectives and policies for facility systems - transportation. Petitioner will fund the connection of major collector roads (the Holoholo Street extension per the Keahole to Kailua Development Plan), so the Project will help to improve regional traffic circulation and provide alternate routes to Queen Ka'ahumanu and Mamalahoa Highways.

Section 226-18 Objectives and policies for facility systems - energy. As a residential subdivision, the Project can contribute to energy efficiency in two arenas: transportation and residential energy consumption. From the perspective of transportation, the regional roadway connections that will result from the Project's implementation will contribute to an improvement in vehicular circulation in North Kona, which translate to fewer delays and less energy consumption. Specifically, extending Holoholo Street through the Petition Area and mitigating Project impacts with the installation of a traffic signal at the Holoholo Street/Ka'iminani Drive intersection will improve level of service from "F" to "B". Specific steps to be taken for

improved energy efficiency at the residential level will include ventilation design, landscaping, and the installation of energy saving devices, such as reduced consumption lighting fixtures.

Section 226-18.5 Objectives and policies for facility systems - telecommunications.

Hawaiian Telecom has an existing system with the capacity to serve the Project along Kukuna Street. Hawaiian Telecom proposes to extend its systems from Pole 10 on Kukuna Street via new support structures located along the Holoholo Street Extension to the entry of the Petition Area in the vicinity of the affordable housing site.

Section 226-19 Objectives and policies for socio-cultural advancement - housing. The Project will offer a range of lot sizes, as well as affordable housing. The Project's location on the west-facing slope of Hualalai makes the Project attractive to potential homebuyers. The Project's affordable housing component will be constructed in compliance with the County of Hawai'i's affordable housing requirements.

Section 226-20 Objectives and policies for socio-cultural advancement - health. The Project's wastewater collection and treatment strategy includes individual septic systems for residential lots in excess of 10,000 square feet, with smaller lots being served by a privately funded WWTP. The entire system will be constructed to comply with DOH standards.

Section 226-23 and 226-25 Objectives and policies for socio-cultural advancement leisure and culture. The Petition Area includes significant archaeological and cultural features that will be preserved, including burials, a large lava tube, and a portion of a former historic region-serving transportation route known as Homestead Road. The large lava tube will be preserved. Homestead Road, including its abutting dry-stack lava rock walls, will be preserved and incorporated into the Project as a pedestrian trail open to the public. The Project will ensure access by lineal descendants to burials. Access to sites for traditional and customary Native Hawaiian practices will be provided.

N. Relationship With Applicable Priority Guidelines and Functional Plans

196. The Project is supportive of the goals, objectives, and policies of the State Functional Plans, in particular, the Educational Plan, the Higher Educational Plan, the Employment Plan, the Energy Plan, the Health Plan, the Historic Preservation Plan, the Housing Plan, the Recreation Plan, the Transportation Plan and the Water Resources Plan, as follows:

Educational Functional Plan. The Petitioner will provide a fair-share contribution to the State DOE to mitigate for the impacts of the Project on public education.

State Higher Education Functional Plan. The Project will contribute to the availability of market priced and affordable housing. Some of this housing may be available for faculty and staff at the West Hawai'i College.

State Employment Functional Plan. The Project will generate over 200 construction jobs during each of the first three years of construction. In the long-run, the Project will provide housing within proximity to regional job centers.

State Energy Functional Plan. From the perspective of transportation, the regional roadway connections that will result from the Project's implementation will contribute to an improvement in vehicular circulation in North Kona, which should translate into fewer delays and less energy consumption. Specific steps to be taken for improved energy efficiency at the residential level will include ventilation design, landscaping, and the installation of energy saving devices such as reduced consumption lighting fixtures.

State Health Functional Plan. Project construction will conform to DOH regulations relating to erosion control, fugitive dust control, solid waste disposal, and noise controls. In addition, the Project's proposed wastewater collection and treatment strategy, which includes a combination of individual septic systems and a privately funded and operated WWTP, will fulfill the goal of improving environmental health and protection.

State Historic Preservation Functional Plan. Archaeological inventory surveys have been conducted in the Petition Area and a cultural impact assessment has been prepared. Sites conforming to the significance criteria established under state and federal regulations will be preserved in coordination and consultation with the SHPD and all other recommendations of the consultant will be followed.

State Housing Functional Plan. The Project is supportive of the Housing Functional Plan's goal of providing more homes for Hawai'i's population. In addition, the Project's affordable housing component will address the demand for affordable homes in West Hawai'i.

State Recreation Functional Plan. The Project improvements include a 4.4-acre private community park and preservation of the Homestead Road as a pedestrian trail open to the public.

State Transportation Functional Plan. The Petitioner will construct the portion of Holoholo Street within the Petition Area and will participate on a fair share basis in the funding of the extension of Holoholo Street, linking Ka'iminani to Hina Lani Street, which will provide

routing alternatives to Queen Ka‘ahumanu and Mamalahoa Highways and help to reduce congestion on these regional arterials.

State Water Resources Development Functional Plan. The Project includes a new regional drinking and irrigation water well and storage reservoir. The transmission system to be installed by the Petitioner will be integrated into the County of Hawai‘i's regional distribution system, improving water supply, storage, and transmission in the vicinity of the Petition Area.

O. Conformance With The Coastal Zone Management Program

197. The Project is consistent with applicable objectives of the Coastal Zone Management ("CZM") Program. In particular, it is consistent with four objectives pertaining to the preservation of natural and historic resources, the provision of public and private facilities important to the economy, the reduction of flooding and erosion hazards, and encouragement of public participation in the management of coastal resources.

198. Of the archaeological sites identified in the Petition Area those determined to be significant will be preserved. In addition, Homestead Road is part of the Project and will be preserved as a pedestrian trail open and available to the public.

199. Most CZM Program objectives are not applicable because the Petition Area is four miles from the coast.

P. Conformance With The County General Plan

200. The Project either actively supports or generally conforms to the relevant goals and policies of the County General Plan.

201. The Project is consistent with applicable portions of the County General Plan as follows:

Economic. As a residential community, the Project's ability to directly influence the economy is limited to a supportive role: the provision of new homes, including affordable units, in an area designated by the County General Plan for low-density residential development to support the larger economy.

Energy. The Project is supportive of improving energy efficiency and promoting alternative energies. The Petitioner will work with the future master builder(s) to identify energy conservation measures that can be incorporated into Project covenants, conditions, and restrictions where practicable.

Environmental Quality. The Petitioner is supportive of environmental policies and will comply with all applicable laws, ordinances, rules, and regulations.

Flooding and Other Natural Hazards. The design of the Project and construction of the storm water drainage system will retain Project runoff on the Petition Area. The Petitioner will minimize erosion and minimize sedimentation down slope from the Petition Area.

Historic Sites. The Petitioner will preserve archaeological and cultural sites identified in the Petition Area as significant. The preservation of Homestead Road as a pedestrian trail open to the public will benefit not only the residents of the Project but also the greater community.

Natural Beauty. The Petitioner is committed to protecting the natural beauty of the region and ensuring that the character of the Project is consistent with that of the surrounding communities.

Natural Resources and Shoreline. The preservation of the lava tube within the Petition Area is consistent with the County of Hawai'i's General Plan's policies for preserving natural resources.

Housing. The range of lots sizes in the Project, as well as the Project's affordable housing component, is consistent with the county General Plan's housing goals.

Public Utilities. Master planning the Project enables the provision of utilities to be coordinated, which helps lower costs and maximize connectivity with the regional system.

Public Utilities-Water. The Project includes the privately funded development of a new regional well, storage reservoir, and a transmission system for drinking water that will not only serve the Project but will also provide linkage to the regional system.

Public Utilities-Telecommunications and Electricity. Electrical and telecommunication utility lines will be buried underground in the Petition Area.

Public Utilities-Sewer. The Project is situated *mauka* of the DOH's Underground Injection Control (UIC) line, and is prohibited from utilizing injection wells. In addition, it is located a considerable distance from the Kealakehe WWTP. Therefore, it will rely upon a combination of individual wastewater treatment systems (septic systems) for larger lots and a privately funded and operated WWTP for smaller lots and the affordable housing portion of the Project.

Recreation. The Project includes the development of a passive private recreational park and the preservation of Homestead Road as a pedestrian trail open and available to the public.

Transportation and Transportation Roadways. The Petitioner supports the applicable transportation goals of the County General Plan.

Land Use. Reclassification of the Petition Area to the state Urban Land Use District and a change in County zoning would be in accordance with the existing or projected needs of the neighborhood, community, region, and the County.

Land Use Agriculture. The Petition Area is classified in the state Agricultural District, but is of limited agricultural productivity due to its soil quality. It is surrounded on three sides by existing or planned residential development. In addition, it is designated for urban expansion by the State and as Low-Density Residential by the county. Therefore, its proposed reclassification to the state Urban Land Use District is not anticipated to have a significant negative impact upon agriculture in the region.

Land Use-Multiple Residential. The Petition Area is designated as Low-Density Residential by the county General Plan's Land Use Pattern Allocation Guide (LUPAG), and multiple residential development will be generally limited to some multi-plex development within the affordable housing component of the Project.

Land Use-Single-Family Residential. The Project includes a range of lot sizes, and an affordable housing component, which will implement the county General Plan's housing policies.

Land Use-Open Space and Public Lands. The Project includes the use of Homestead Road as a public pedestrian trail and the designation of a lava tube preservation area as open space. These elements are consistent with the intent of the county General Plan's open space policies.

Q. Conformance To The Keahole To Kailua Regional Development Plan

202. The Project conforms to the goals of the Keahole to Kailua Regional Development Plan to provide a significant number of new residential units in the region. The Petition Area is designated for low density development and the Project is consistent with the Keahole To Kailua Regional Development Plan. The Project also includes the extension of Holoholo Street and the development of a new regional drinking water well, storage reservoir and transmission system.

R. Conformance With Keahole To Honaunau Regional Circulation Plan

203. The Project conforms with strategies 2, 2D, 5, 5B, 6, and 6A of the Keahole to Honaunau Regional Circulation Plan ("Circulation Plan") as follows: The Project conforms to

the goals of the Circulation Plan by spreading traffic rather than funneling all the traffic to the major arterials; making improvements that will contribute to development of Kalaoa Connector Roads; developing affordable housing near an urban area; and creating housing closer to jobs thereby reducing commuting.

S. Incremental Districting

204. The Project is expected to be completed within 10 years of the date of receipt of the last land use entitlement allowing site work and development activities. Therefore, incremental districting is not necessary.

III. RULINGS ON PROPOSED FINDINGS OF FACT

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

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

IV. CONCLUSIONS OF LAW

1. Pursuant to HRS section 205 and the Commission Rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 129.99 acres of land in the state Land Use Agricultural District in the North Kona District, Island of Hawai'i, Tax Map Key Nos. (3) 7-3-007:038, 039, and (3) 7-3-009:007, to the state Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the state Land Use Urban District, is reasonable, not violative of HRS section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 205-16, 205-17, and 205A-2.

2. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and

religious purposes and possessed by *ahupua'a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian 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 Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n.43, *certiorari denied*, 517 U.S. 1163 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

4. There is no evidence to suggest that any native Hawaiian traditional and customary rights are currently being exercised within the Petition Area.

5. In the event any previously unidentified archaeological sites are found, Petitioner will comply with all applicable statutes and rules of SHPD.

6. Article XI, Section 1, of the Hawai'i State 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 their conservation and in furtherance of the self-sufficiency of the State.

7. There are no floral or faunal species that are threatened, endangered, or of concern under State or federal law in the Petition Area.

8. Air quality of the Petition Area will be impacted in the short-term by fugitive dust and exhaust emissions from stationary and mobile equipment during construction of the Project. Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions.

9. The long-term impacts to air quality that will result from the development of the Petition Area are minimal and no mitigation measures are necessary.

10. Article XI, Section 3, of the Hawai'i State 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.

11. The reclassification of the Petition Area will urbanize land that is not suitable for agricultural uses. The Petition Area's soil classifications and low annual rainfall make it unsuitable for intensive agricultural use.

12. The Petition Area is not classified as Important Agricultural Land under the ALISH rating system or Part III of HRS chapter 205.

13. Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people.

14. The proposed drainage system will not increase offsite runoff, nor cause an adverse impact to adjacent and downstream properties.

15. The design of the Project will minimize adverse visual impacts of the Project.

16. The West Hawai'i Landfill has adequate capacity to support the needs of the Project, based on the assumption that when the existing landfill's capacity is reached the County will at that time have another landfill or some other method of handling the municipal solid waste.

17. The fair share agreement with the DOE is sufficient to mitigate the impact of the Project on the educational resources of the area.

18. Petitioner will enter into an agreement with the State Department of Transportation which will satisfy the Petitioner's fair share contribution obligation regarding mitigation of the traffic impacts of the Project.

V. DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 129.99 Acres in the state Land Use Agricultural District in the North Kona District, Island of Hawai'i, Tax Map Key Nos. (3) 7-3-007:038, 039, and (3) 7-3-009:007, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the state Land Use Urban District, and the state Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the

preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. **Order to Show Cause.** The Commission on its own motion, or at the request of any party or interested person, shall issue an order to show cause and require the Petitioner to appear before the Commission to explain why the Petition Area, or any part thereof, should not revert to its original classification or more appropriate classification for any of the following:

A. Failure to accomplish development of the Petition Area as represented to the Commission or to secure a bond for the completion thereof within 10 years from the date of the Commission's decision and order. For purposes of this decision and order, "development" means completion of backbone infrastructure as defined in finding of fact 55; or

B. Failure to accomplish substantial progress in developing the Petition Area as represented to the Commission by the commencement of construction of the Project in 2011, if necessary county approvals have been obtained or in any event no later than five years from issuance of the decision and order; or

C. Failure to perform a condition of approval, or a representation or commitment made on the part of the Petitioner.

2. **Water Resource Allocation.** Petitioner shall fund and construct drinking water source, storage and transmission facilities and improvements as required to accommodate development of the Petition Area, to the satisfaction of the County of Hawai'i and appropriate State agencies.

3. **Water Conservation Measures.** Petitioner shall implement water conservation measures as may be required by the applicable provisions of the Hawai'i County Code, including, but not limited to, low-flow water fixtures, and shall also implement BMPs, such as the use of indigenous and drought tolerant plants and turf and incorporate such measures in the Project's landscape planting. Petitioner shall recommend the use of native and require the use of drought tolerant plants in the Petition Area in the Conditions, Covenants and Restrictions (CC&Rs) associated with the Project or in deed restrictions for each lot in the Project. Petitioner

shall also recommend that homeowners consider some form of water reuse or rainwater harvesting system for irrigation purposes.

4. **Transportation.** Based on an analysis of traffic-related impacts, Petitioner shall fund, design, and/or construct necessary local and regional roadway improvements related to the impact from the Project in accordance with the recommended mitigation measures and schedules accepted by the DOT and the county.

5. **Holoholo Street.** Petitioner shall construct that portion of Holoholo Street within the Petition Area. The Petitioner shall reach an agreement with the County of Hawai'i to cause the construction of the north-south road (Holoholo Street) from Ka'iminani Drive to Hina Lani Street prior to receipt of Final Subdivision Approval for the Project. The obligation to construct any portion of the roadway may be bonded as part of Final Subdivision Approval.

6. **Street Lights.** Petitioner shall use shielded or low sodium street lights within the Project to avoid impacts to flight birds and other populations.

7. **Affordable Housing.** Petitioner shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County. The affordable units shall be constructed and offered for sale prior to the sale of more than fifty per cent of the market lots.

8. **Previously Unidentified Burials and Archaeological/Historic Sites.** Without any limitation to an other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop. The finds shall be protected from additional disturbances, and SHPD shall be contacted immediately. Work shall not resume until the issuance of an archaeological clearance from SHPD that mitigative measures have been implemented to its satisfaction.

9. **Archaeological Survey.** Petitioner shall comply with the conditions recommended and approved by SHPD, prior to issuance of a permit for grubbing and grading. Petitioner shall confirm in writing to the Commission that SHPD has found Petitioner's

preservation mitigation commitments, if any, to be acceptable and has determined that any required historic preservation measures have been successfully implemented.

10. **Homestead Road.** Homestead Road shall be kept as a pedestrian trail open to the public, with public parking available at several locations to access it.

11. **Lava Tube Cave Preservation.** Petitioner shall preserve the areas recommended for preservation and comply with the list of mitigation measures recommended by Dr. White in Appendix F of the EIS, section 4.0, page 12.

12. **Subgrade Cavities.** If subgrade cavities are collapsed and a space large enough to be explored and surveyed is encountered where biology can exist, the space shall be inspected by a karst expert who shall recommend what mitigation measures, if any, should be implemented. Petitioner shall comply with such mitigation measures.

13. **NPS Agreement.** Petitioner shall comply with the agreement entered into between Petitioner and NPS regarding stormwater runoff and wastewater as follows:

A. Storm and Surface Water Runoff

i. Prior to the occupancy of any residential unit within the Petition Area, Petitioner shall engineer, construct (or require to be constructed) and maintain storm and surface-water runoff best management practices ("BMPs") designed to prevent violation of State water quality standards as a result of storm-water discharges originating from the Petition Area. To the extent practicable and consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the KalokoHonokohau National Historical Park (hereinafter, "National Park") or entering the water table. Petitioner shall submit designs for storm and surface water run off BMPs to the National Park Service for consultation, review, and approval prior to construction. Said approval by the National Park Service shall not be unreasonably withheld. The National Park Service shall complete a review of the design for storm and surface water runoff BMPs within forty-five (45) calendar days of receiving the plan. If no response from the National Park Service is received within forty-five (45) calendar days of the submittal date, the plans will be considered approved by the National Park Service. Petitioner and/or its successors or assigns shall obtain all required permits and construct required improvements for storm water discharges related to the Project, on and from the Petition Area.

ii. No drainage injection well shall be constructed as an element of a storm and surface water runoff containment system in the Petition Area unless, prior to the start of any construction, applicable requirements of HAR Chapter 11-23 are satisfied and the Hawai'i State Department of Health issues an UIC (Underground Injection Control) permit,

iii. All drainage injection wells established in the Petition Area shall be operated and maintained in full compliance with Hawai'i State Department of Health's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and HRS Chapters 342D and 342E. Relevant HAR include but, are not limited to:

- a. Chapter 11-20, "Rules Relating to Potable Water Systems";
- b. Chapter 11-23, "Underground Injection Control";
- c. Chapter 11-54, "Water Quality Standards";
- d. Chapter 11-55, "Water Pollution Control"; and
- e. Chapter 11-62, "Wastewater Systems".

iv. Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of the HRS and HAR as they relate to (but are not limited to): Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.

v. Petitioner shall seek to participate with the County of Hawai'i in its pilot storm drain program for roadways within the Kaloko-Honokohau region (i.e., County Ordinance No. 02-114 condition F).

vi. Petitioner, successors and/or Home Owners Association in the Petition Area shall ensure that all drainage injection wells or subsurface drainage structures be designed with a debris catch basin to allow the detention and periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin's volume should be designed using current industry and engineering standards. The debris catch basin shall be periodically inspected and cleaned accordingly.

vii. To the extent practicable and consistent with applicable laws the Petitioner shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable advanced storm water BMPs, specifically engineered to treat the first flush runoff

volume from roadways, and from exposed parking lots designed for more than 10 vehicles within the Petition Area to remove pollutants. Additionally, Petitioner shall consult with the National Park Service to design and install storm water BMPs for treating the first flush runoff volume to remove suspended solids and oils and greases from storm runoff from Holoholo Street and parking lots designed for more than 50 vehicles.

viii. Petitioner shall provide signage for all drainage injection wells in the Petition Area with warnings such as the following: DUMP NO WASTES. DUMPING IS ILLEGAL AND MAY BE REPORTED TO 974-4000, ext. 64258 GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT. Signage shall be stand up signs or riveted placards, or be painted on a paved surface next to the drainage well's inlet. Signage shall be situated so that it will not obscure scenic views, contribute to visual blight, or obstruct an accessible route.

B. Pollution Prevention

i. Before constructing any portion of the Petition Area, Petitioner shall develop, in consultation with the National Park Service, a Home Owner's Pollution Prevention Plan that 1) addresses environmental stewardship and the non-point sources of water pollution that can be generated in residential areas, and 2) provides BMPs for pollution prevention. The Home Owner's Pollution Prevention Plan shall include, but not be limited to: water conservation, lot and landscape runoff, erosion control, use of fertilizers, use of pesticides, environmentally safe automobile maintenance, and management of household chemicals. The Plan shall include information on the National Park and the nationally significant cultural and natural resources within the National Park.

C. Wastewater

i. Petitioner and/or its successors and assigns shall refrain from obtaining a certificate of occupancy for a residential lot within the Petition Area until such time as the respective residential lot to be occupied is connected to one of the following: (1) a public wastewater treatment plant ("WWTP"); (2) a private WWTP and effluent disposal system serving the Petition Area (or portion thereof) designed to remove at least 80% Total Nitrogen and at least 90% Total Phosphorus (aerobic nitrification processes combined with anoxic/anaerobic process and/or intermittent sand filters/anaerobic sand filters to perform denitrification, or comparable technology); or (3) for lots 10,000 square feet or larger, an

Individual Wastewater System ("IWS") that uses an enhanced treatment (such as Sequential Batch Reactor, CBT, or technology with a comparable nutrient removal efficiency) and an absorption field of import material, featuring adequate percolation rate, such that the IWS and absorption field are designed to achieve at least 80% reduction in Total Nitrogen and 90% reduction in Total Phosphorus. Effluent disposal for the WWTP shall be in accordance with applicable laws and will include either: a) a horizontal absorption system with absorption trenches or beds of sufficient import material (meeting the Hawai'i State Department of Health specifications) featuring adequate percolation rate and constructed in a manner to achieve the level of nutrient removal stated above; or b) an irrigation system for disposing of effluent within the Petition Area in accordance with applicable laws and Hawai'i State Department of Health requirements; or c) a combination thereof. Installation is subject to conditions of approval by the Director of the Hawai'i State Department of Health and HAR Chapter 11-62.

ii. The owner of the IWS shall complete and sign an IWS Owner's Certification Form to certify with the Hawai'i State Department of Health that the IWS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR Chapter 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

iii. If any portion of the Petition Area is served by a private WWTP or IWS, Petitioner and/or each individual lot owner(s), shall develop and participate in a Wastewater Treatment System Maintenance Agreement, before issuance of a certificate of occupancy for any lots within the Petition Area, that shall provide for safe and effective operation and maintenance of the treatment units), whether shared or individual. This requirement shall be included in the conditions of sale of any lot and/or parcel in the Petition Area.

14. **Drainage and Stormwater.** Petitioner shall fund, design, and construct any drainage system improvements required to prevent adverse impacts resulting from the development of the Project. Petitioner shall be required to prevent runoff from the Petition Area from adversely affecting state highway facilities and downstream properties. Petitioner shall

submit plans to the DOT and appropriate State and County agencies for review and approval. Plans shall be consistent with Petitioner's agreement with NPS.

15. **Wastewater Facilities.** Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the County of Hawai'i and State Department of Health, and consistent with Petitioner's agreement with NPS. The large lots will have individual WWTPs. The affordable units and smaller lots will be serviced by a WWTP built by Petitioner.

16. **Solid Waste Management Plan.** Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter 342G. Petitioner's solid waste management plan shall be approved by the County of Hawai'i and State Department of Health. The plan shall include provisions for reuse of construction debris generated in the construction of the overall Project. During construction, the Petitioner will recycle green waste, wood waste, cardboard, metals and glass to the extent practical.

17. **Civil Defense.** Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i, Department of Defense, Office of Civil Defense, and the County Department of Environmental Management and the State Department of Health.

18. **Established Access Rights Protected.** Petitioner shall preserve any established access to undeveloped lands of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

19. **Air Quality Monitoring.** Petitioner will participate in an air quality monitoring program if required by State Department of Health.

20. **Best Management Practices.** Petitioner shall implement applicable BMPs applicable to each proposed land use to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with State Department of Health guidelines.

21. **Energy Conservation Measures.** Petitioner and its successors shall implement energy conservation and sustainable design measures to promote energy conservation, and

environmental stewardship in the Project such as, for instance, the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai‘i, the U.S. Green Building Council, the Hawai‘i Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai‘i, Energy Star, Green Communities, into the design and construction of the Project and the structures within the Petition Area. Petitioner shall provide information to lot purchasers regarding energy conservation and sustainable design measures and encourage lot purchasers to design houses that meet at least the minimum requirements of one of the aforementioned programs.

22. **Prohibition on Interference with Farming Operations.** To the extent that the Petition Area is contiguous or adjacent to lands in the State land use Agricultural District, any action that would interfere with or restrain farming operations on those lands is prohibited; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices.

23. **Notification of Right to Farm Act.** Petitioner shall notify all prospective developers or purchasers of all or any portion of the Petition Area or any interest in the Petition Area, and shall require its purchasers to provide subsequent notification to lessees or tenants that farming operations and practices on adjacent or contiguous land in the State land use Agricultural District are protected under HRS chapter 165, the Hawaii Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of all or any portion of the Petition Area or any interest in the Petition Area.

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

25. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

26. **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 Petitioner or its successors and assigns.

27. **Notice of Imposition of Conditions.** Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

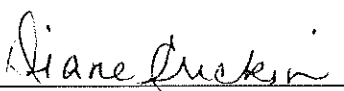
28. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

ADOPTION OF ORDER

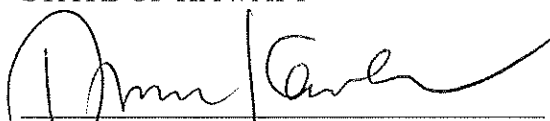
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 16th day of October, 2008. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Makena, Maui, Hawai'i, this 16th day of October, 2008, per motion on September 18,, 2008.

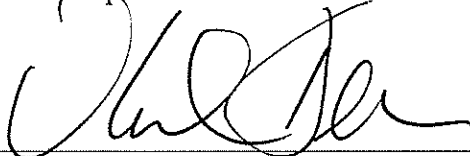
APPROVED AS TO FORM

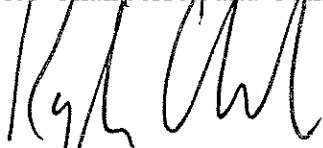

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAI'I


DUANE KANUHA
Chairperson and Commissioner

ABSENT
RANSOM PILTZ
Vice-Chairperson and Commissioner


VLADIMIR PAUL DEVENS
Vice-Chairperson and Commissioner


KYLE CHOCK
Commissioner

ABSENT
THOMAS CONTRADES
Commissioner

Lisa M. Judge

LISA M. JUDGE
Commissioner

NORMAND LEZY
Commissioner

NICHOLAS W. TEVES, JR.
Commissioner

ABSENT
REUBEN S.F. WONG
Commissioner

Filed and effective on: October 21, 2008

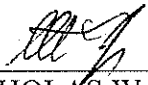
Certified by:

Orlando Davidson

ORLANDO DAVIDSON
Executive Officer

LISA M. JUDGE
Commissioner

NORMAND LEZY
Commissioner

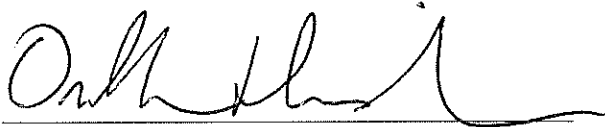


NICHOLAS W. TEVES, JR.
Commissioner

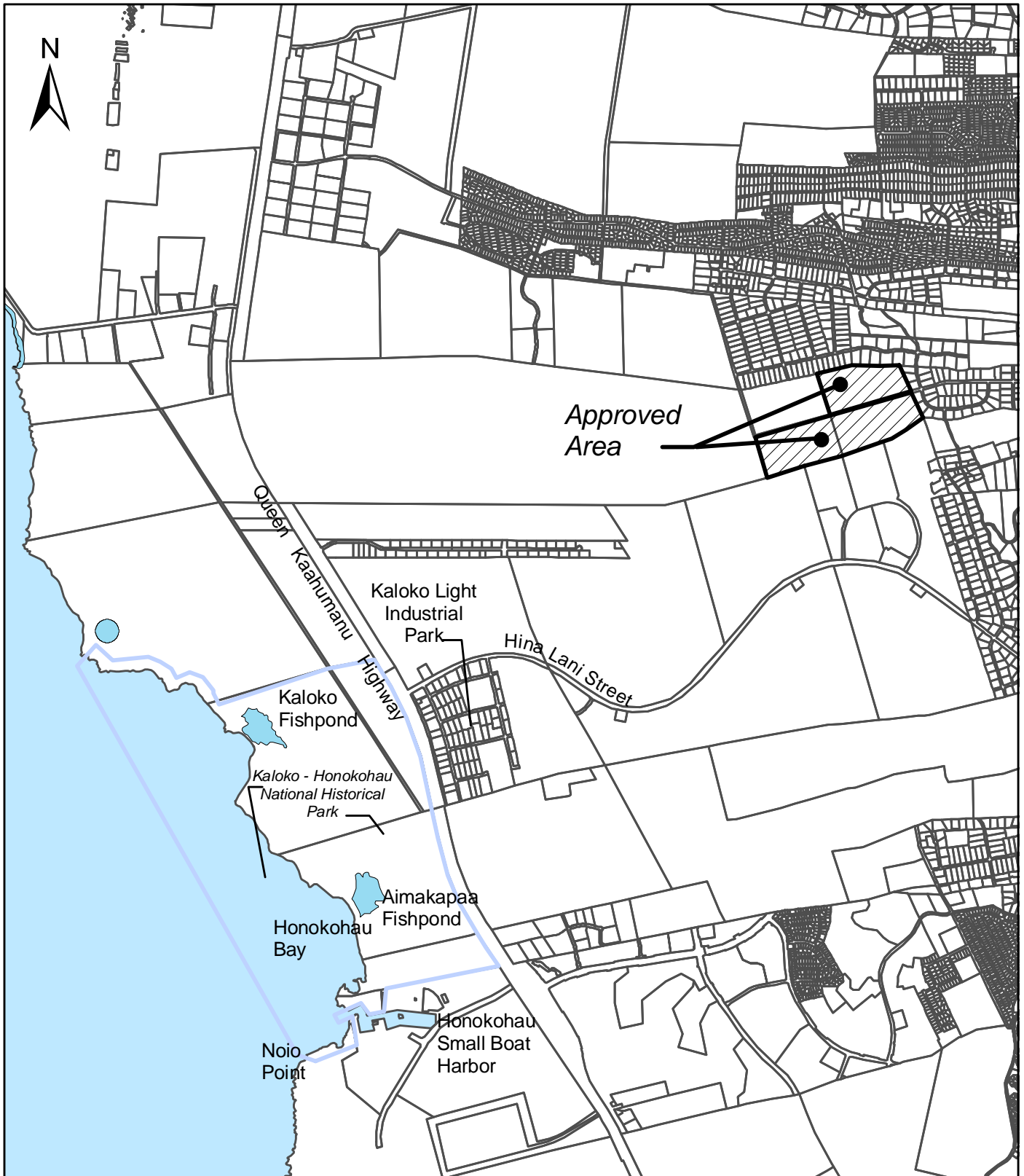
ABSENT
REUBEN S.F. WONG
Commissioner

Filed and effective on: October 21, 2008

Certified by:



ORLANDO DAVIDSON
Executive Officer



A06-770 THE SHOPOFF GROUP, L.P.

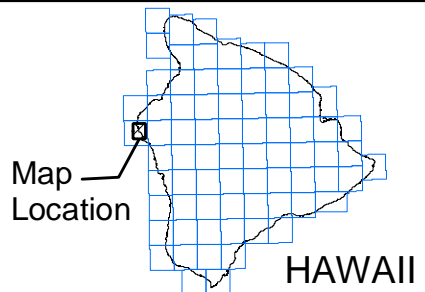
LOCATION MAP

Tax Map Key: 7-3-07: 38, 39 & 7-3-09: 07

Ooma, North Kona, Hawaii

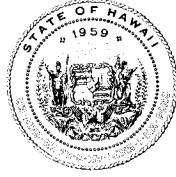
Scale: 1" = 2,000 ft.

EXHIBIT "A"



Map Location

HAWAII



BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

In the matter of the Petition of

THE SHOPOFF GROUP, L.P.

To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 129.99 Acres in North Kona District, Island of Hawai'i, Tax Map Key Nos. (3) 7-3-007:038, 039, and (3) 7-3009:007

DOCKET NO. A06-770

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT; and EXHIBIT "A", 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:

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Attorney for County of Hawai'i
DEPARTMENT OF PLANNING

Dated: Honolulu, Hawai'i, October 21, 2008 .



ORLANDO DAVIDSON
Executive Officer