

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
MAUNA KEA PROPERTIES, INC.)
To reclassify approximately 399)
acres of land currently in the)
Agricultural District into the)
Urban District at Ouli 1, South)
Kohala, Hawaii, TMK: 6-2-01:62,)
63, 78, 79 and Portion of 51)

DOCKET NO. A84-574
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND
ORDER

LAND USE COMMISSION
STATE OF HAWAII
Dec 6 11 18 AM '94

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FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

MAUNA KEA PROPERTIES, INC., a Hawaii Corporation ("Petitioner"), filed a Motion to Extend Time and Approve Second Increment on June 30, 1994, a First Amendment was filed on August 12, 1994, and a Second Amendment was filed on September 15, 1994 (cumulatively referred to herein as "Motion"), pursuant to Chapter 205, Hawaii Revised Statutes, ("HRS"), and Chapter 15-15, Hawaii Administrative Rules, ("HAR") to (1) extend time to show substantial progress on Phase I and to commence Phase II of the incremental redistricting; (2) approve the second increment of the South Kohala Resort, consisting of approximately 82.08 acres, formerly known as the Hapuna Beach Resort; and (3) obtain a release of the housing condition imposed by the Land Use Commission in its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985. The State Land Use Commission ("Commission"), having heard and examined the testimony, evidence and argument of counsel presented during the

hearing, and having reviewed Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the Office of State Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

BACKGROUND AND PROCEDURAL MATTERS

1. Petitioner filed a Petition to reclassify approximately 399 acres of land in the Agricultural District into the Urban District at Ouli 1, South Kohala, Hawaii (the "Property") on August 3, 1984. In its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985, the Commission granted the reclassification of Phase I of the Property (consisting of approximately 317 acres) from the Agricultural District to the Urban District. This phase was comprised of the golf course and approximately 150 units of single-family housing and/or condominium units.

2. The Commission also approved the remaining area of Petitioner's Property, referred to as Phase II, for incremental development. This phase was comprised of the balance of the residential units and consisted of approximately 82.33 acres for incremental development. With respect to Phase II, the Commission ordered that redistricting from the Agricultural to the Urban classification be granted upon a showing of substantial progress and completion of Phase I and development of the Hapuna Beach Prince Hotel.

3. The Commission further ordered that reclassification and incremental redistricting was subject to the condition that Petitioner provide low and moderate income housing opportunities for low and moderate income Hawaii County residents and employees by constructing and offering for sale, on its own or in cooperation with the Hawaii Housing Authority and/or the County of Hawaii, ten percent (10%) of the residential units to be developed on Phases I and II, or by contributing to the development of such housing outside the Property.

4. Petitioner filed a Motion for Extension of Time to show substantial progress on Phase I and for approval of Phase II and for Release of Housing Condition on February 7, 1990. Petitioner subsequently withdrew its request to release the housing condition on March 20, 1990.

5. The Commission, by its Order Approving Motion for Extension of Time, dated May 10, 1990, granted Petitioner an extension of time to substantially complete Phase I and to apply for redistricting of Phase II to December 31, 1993.

6. Petitioner filed a Motion to Extend Time and to Approve Second Increment on June 30, 1994. Petitioner filed a First and Second Amendment to its Motion to Extend Time and to Approve Second Increment on August 12, 1994 and September 15, 1994, respectively.

7. On September 7, 1994, a prehearing conference was conducted at the Old Federal Building, 335 Merchant Street, Conference Room 238, Honolulu, Hawaii with representatives of the Petitioner, County of Hawaii Planning Department ("County"), and

the Office of State Planning ("OSP"), present, and at which time the parties exchanged exhibits and witness lists.

8. On September 6, 1994, the County filed a Statement of Position of the County of Hawaii Planning Department and Planning Commission in Support of the Motion.

9. On September 20, 1994, the OSP filed Testimony of the Office of State Planning in support of the Motion.

10. On September 22, 1994, the Commission held a public hearing and evidentiary hearing on the Motion at the King Kamehameha's Kona Beach Hotel, Kamakahonu Ballrooms, 75-5660 Palani Road, Kailua-Kona, Hawaii. The hearing was held pursuant to notices published in the Hawaii Tribune-Herald, West Hawaii Today, and Honolulu Advertiser on August 11, 1994.

11. On September 22, 1994, the Commission entered into evidence a letter from Dennis Krueger attorney for Mauna Kea Community Association.

12. The Commission conducted a field trip to the Property on September 23, 1994.

DESCRIPTION OF THE PROPERTY

13. The Property consists of approximately 399 acres of land located at Ouli 1, South Kohala, Hawaii. The Property is a portion of the 539 acre South Kohala Resort, formerly known as the Hapuna Beach Resort. The South Kohala Resort is comprised of land which is located both makai and mauka of Queen Kaahumanu Highway. The Property which is the subject of Petitioner's motion is located on the mauka lands.

14. The Property is bounded by Queen Kaahumanu Highway, Waiulaula Gulch, the planned Waimea-Kawaihae Road and State-owned lands.

15. At the time of the reclassification of the Property in 1985, the Property consisted of five (5) separate parcels situated at Ouli 1, District of South Kohala, County of Hawaii, identified as Tax Map Key Numbers 6-2-01: portion of 51, 6-2-01:62, 63, 78 and 79. However, subsequent to the Commission's issuance of its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985, the Tax Map Key numbers for the Property changed.

16. The Property currently consists of ten parcels, identified as Tax Map Key Numbers 6-2-13:01 through 10, inclusive.

17. At the time of the reclassification of the Property in 1985, Petitioner was the lessee of four parcels of the Property under a ninety-nine (99) year lease from the fee owner Richard P. Smart Personal Trust. The County of Hawaii owned the remaining parcel (TMK No. 6-2-01:63). Petitioner subsequently obtained the fee simple interest in the parcels that were owned by the Richard M. Smart Personal Trust.

18. Petitioner subsequently transferred fee title to its lands to its affiliates, South Kohala Resort Corp. and Mauna Kea Beach Hotel Corp. South Kohala Resort Corp. is presently the fee owner of parcels identified as Tax Map Key No. 6-2-13:01 and 6-2-13:06. Mauna Kea Beach Hotel Corp. is the fee owner of parcels identified by Tax Map Key No. 6-2-13:05 and 6-2-13:09.

South Kohala Resort Corp. and Mauna Kea Beach Hotel Corp. are the fee owners of parcels identified as Tax Map Key No. 6-2-13:02, 03, 04 and 07.

19. The State of Hawaii is the fee owner of a small parcel identified as Tax Map Key No. 6-2-13:08, which is under the control and management of the County of Hawaii, Board of Water Supply, through Executive Order No. 2291, the State of Hawaii set aside this parcel, known as the Kaunaoa Tank Site.

20. The County of Hawaii is the fee owner of the parcel identified as Tax Map Key No. 6-2-13:10. All fee owners have consented to the filing of Petitioner's Motion.

21. In addition, Hawaii Electric Light Co., American Cable TV Investors 4, Ltd., Mauna Kea Development Corp., and GTE Hawaiian Telephone Company Incorporated hold easements in the Property. These parties have consented to the filing of Petitioner's Motion.

22. Petitioner is presently the developer of the South Kohala Resort under a development agreement with South Kohala Resort Corp and holds a proprietary interest in the Property.

MOTION FOR EXTENSION OF TIME

23. Petitioner requested an extension of time to show substantial progress on Phase I and to apply for Phase II redistricting from December 31, 1993 to September 30, 1994.

24. On May 10, 1990, the Commission issued its Decision and Order to grant Petitioner an extension of time to substantially complete Phase I and apply for redistricting of Phase II to December 31, 1993. At that time, Petitioner

anticipated that the Hapuna Beach Prince Hotel would be completed in 1992. However, Petitioner was unable to obtain project financing and building permits in sufficient time to complete the hotel by year end 1992. A downturn in Hawaii's tourism market and an excess supply of hotel rooms in West Hawaii made hotel construction financing and development questionable.

25. Petitioner missed the December 31, 1993 deadline because it was involved in extensive litigation with the Queen Emma Foundation over the development of an approximately 944 acre parcel in the South Kohala area. The litigation was not resolved until May 1994.

26. Petitioner missed the December 31, 1993 deadline in part because it was focused on the completion of the Hapuna Beach Prince Hotel in 1994.

PETITIONER'S PROGRESS ON PHASE I

27. Infrastructure development for the Property was scheduled to commence in four phases. The first phase, consisting of the construction of underground utilities and roads, was completed in July 1991. The second phase, which included the construction of additional roads, utilities, retention basins and a drainage system, was completed in August of 1992.

28. The third and fourth phases consisted of other offsite improvements such as the construction of a highway bridge and underpass, highway intersection and widening, detour road, resort service area, a 0.5 million gallon reservoir, wastewater treatment plant, and the undergrounding of existing utilities.

These projects were completed in April 1992. Petitioner also built a golf course halfway house and did landscaping and improvements at the resort entrance.

29. All on-site infrastructure has been completed and stubbed out to the residential parcels. The total cost of the infrastructure improvements is approximately \$50.9 million.

30. The Hapuna Beach Prince Hotel is located makai of the Queen Kaahumanu Highway on lands that had been previously classified in the Urban District. Petitioner obtained financing for construction of the Hapuna Beach Prince Hotel in early 1992. Construction of the hotel commenced in February 1992 and the hotel opened for business in August of 1994. Petitioner spent approximately \$151.5 million dollars to construct the hotel.

31. The Hapuna Golf Course is an 18 hole championship golf course. The construction notice to proceed was issued in November of 1989. Grassing of the golf course was completed in June of 1991 and the golf course opened in September 1992.

32. Petitioner has expended approximately \$21 million dollars to construct the golf course, and approximately \$7.4 million dollars to construct the golf clubhouse.

33. The driving range, club house, and two (2) holes are located on lands makai of the Queen Kaahumanu highway that were previously urbanized. Almost all of the remainder of the golf course is located in Phase I of the Property that was reclassified to Urban in 1985. A portion of the golf course holes are located on Phase II (2nd increment) of the Property.

34. The golf course design was modified because of changes in the location of the resort entry road off of Queen Kaahumanu Highway, as required by the State of Hawaii Department of Transportation. In order to meet vertical sight distance requirements, Petitioner was required to relocate the highway access which also caused the relocation of golf holes into Phase II of the Property.

35. As a result, Petitioner was required to obtain a use permit to develop portions of the golf course on lands within Phase II of the Property.

PROPOSAL FOR RECLASSIFICATION

36. Petitioner proposes to construct 550 single family and multi-family residential units on the Property, the same total number of units originally planned in 1985. As originally planned, Petitioner proposed to construct 100 single family units and 450 multi family units. Petitioner now proposes to develop the single and multi-family residential units in the following manner:

<u>Land Use</u>	<u>Phase I</u>	<u>Phase II</u>	<u>Total Units</u>
Single Family	80	75	155
Multi Family	195	200	<u>395</u>
TOTAL			550

37. Petitioner plans to develop the single-family and multi-family residential units in phases. Petitioner anticipates obtaining necessary government permits by 1995. Phase 1 of the residential development, to commence in 1996 and be completed by the year 2000, consists of 65 single family units and 30

multi-family units. Petitioner believes that the most attractive and marketable residential parcels within the Property are parcels B, C and F as designated in Petitioner's Exhibit "M".

38. Petitioner plans to develop 95 multi-family units and 45 single family units in Phase 2 of Petitioner's residential development schedule. Petitioner plans to construct the remainder of the residential units, the tennis recreational and commercial center in Phase 3, to commence in 2000.

39. The development schedule of the parcels is based upon marketing factors such as the view of the ocean and Kohala Coast, physical elevation above the golf course and noise considerations.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

40. Petitioner will seek conventional financing for the single and multi-family residential projects necessary to complete the first increment and for single and multi-family projects in the second increment from local, national, and international banks and lending institutions. If local economic, real estate, and financial factors make conventional financing difficult or impractical, Petitioner may seek joint venture partners to assist in developing the project through equity or other contributions. Petitioner may also seek financing from its parent corporations and owners by way of loans or capital contributions.

RELEASE OF HOUSING CONDITION

41. The Commission's Decision and Order in this docket dated May 6, 1985, ordered that reclassification and incremental redistricting was subject to the condition that Petitioner provide low and moderate income housing opportunities by constructing and offering for sale or lease, on its own or in cooperation with the Hawaii Housing Authority and/or the County of Hawaii, ten percent (10%) of the residential units to be developed on Phases I and II, or by contributing to the development of such housing outside the Property.

42. By agreement dated January 26, 1990 between Petitioner, the County of Hawaii and the Hawaii County Housing Agency, Petitioner agreed to pay an "in lieu" amount of \$2,043,612 to satisfy the condition imposed by the Commission in its Decision and Order dated May 6, 1985.

43. The "in lieu" amount was calculated based upon satisfying housing needs for both the 350 unit hotel and the 550 residential units.

44. Petitioner paid \$2,043,612 in February of 1990 to the County of Hawaii as required under the Agreement. A Release of Agreement was executed by all parties and filed with the Bureau of Conveyances.

45. The Housing Finance Development Corporation of the State of Hawaii agrees that Petitioner's contribution to Hawaii County fulfills the affordable housing condition.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding not adopted 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.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the Commission Rules, under chapter 15-15, HAR, this Commission finds upon the clear preponderance of evidence that Petitioner has made a good faith effort towards development of Phase I, and that an extension of time to September 30, 1994, to show substantial progress on Phase I and to apply for Phase II redistricting is reasonable and non-violative of Section 205-2, HRS, and chapter 15-15, HAR.

The Commission further finds that Petitioner has substantially completed Phase I of the Property, including the infrastructure improvements and golf course, and has developed the Hapuna Beach Prince Hotel in accordance with the approved incremental plan.

The reclassification of Phase II of the Property consisting of approximately 82.08 acres of land at Ouli, South Kohala, State of Hawaii, from the Agricultural District to the Urban District conforms to the standards for establishing Urban

District Boundaries, is reasonable, not violative of Section 205-2, HRS.

The Commission further finds that Petitioner has complied with the condition imposed by the Commission in its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985 for Petitioner to provide housing opportunities for low and moderate income Hawaii County families.

ORDER

IT IS HEREBY ORDERED that Petitioner's Motion to Extend Time and Approve Second Increment is approved. Petitioner is granted an extension of time to September 30, 1994 to show substantial progress and completion of Phase I and to apply for redistricting of Phase II.

IT IS FURTHER HEREBY ORDERED that the condition imposed by the Commission in its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985, requiring Petitioner to provide housing opportunities for low and moderate income Hawaii County families, is hereby released.

IT IS ALSO HEREBY ORDERED that lands within Phase II of the Property, consisting of approximately 82.08 acres and more specifically identified as TMKs 6-2-13: por. 1, por. 2, and por. 7, and described in Exhibit A attached hereto and incorporated herein by reference, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and the District Boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

2. 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 Property, prior to development of the Property.

3. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

4. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

5. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

6. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

DOCKET NO. A84-575 - MAUNA KEA PROPERTIES, INC.

Done at Honolulu, Hawaii, this 6th day of December 1994,
per motion on December 1, 1994.

LAND USE COMMISSION
STATE OF HAWAII

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

By Allen Y. Kajioka
ALLEN Y. KAJIOKA
Vice Chairperson and Commissioner

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

By M. Casey Jarman
M. CASEY JARMAN
Commissioner

By Lloyd F. Kawakami
LLOYD F. KAWAKAMI
Commissioner

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

By (conflict)
RENTON L. K. NIP
Commissioner

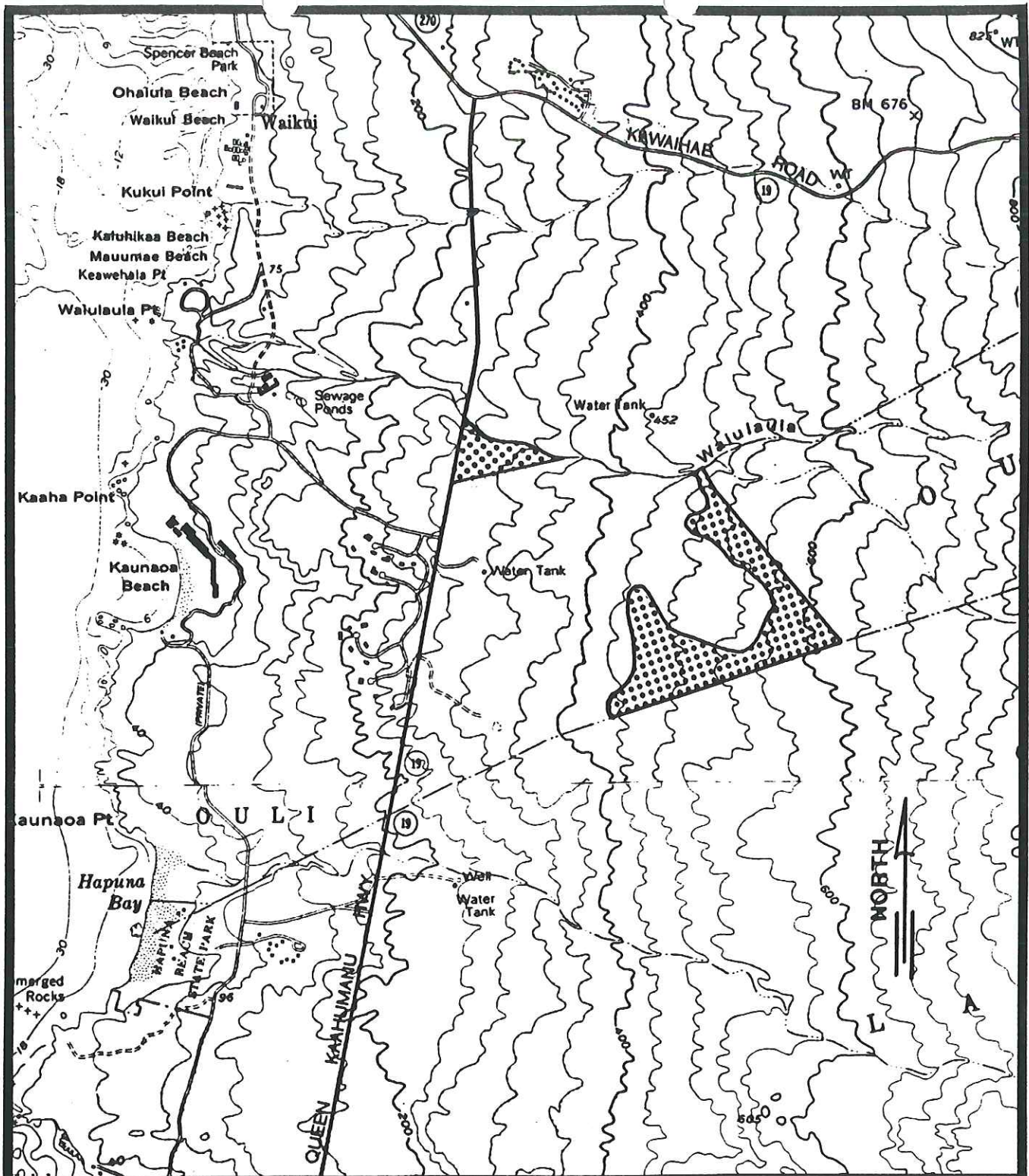
By Trudy K. Senda
TRUDY K. SENDA
Commissioner

Filed and effective on
December 6, 1994

Certified by:

Elton Wada
Executive Officer

By Elton Wada
ELTON WADA
Commissioner



LOCATION MAP

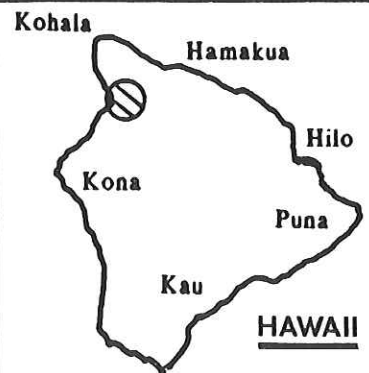
Docket No. A84-574 / MAUNA KEA PROPERTIES, INC.
(Second Increment)

TAX MAP KEY NO: 6-2-13: por. 1, por. 2, & por. 7

OULI, SOUTH KOHALA, HAWAII

SCALE: 1" = 2,000 ft.±

 APPROVED AREA



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
MAUNA KEA PROPERTIES, INC.) DOCKET NO. A84-574
) CERTIFICATE OF SERVICE
)
To reclassify approximately 399)
acres of land currently in the)
Agricultural District into the)
Urban District at Ouli 1, South)
Kohala, Hawaii, TMK: 6-2-01:62,)
63, 78, 79 and Portion of 51)
_____)

CERTIFICATE OF SERVICE

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

NORMA WONG, Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

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

CERT. J. DOUGLAS ING, ESQ., Attorney for Petitioner
Watanabe, Ing & Kawashima
5th Floor, Hawaii Tower
745 Fort Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 6th day of December 1994.



ESTHER UEDA
Executive Officer