

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

In the Matter of the Petition of)
KAUPULEHU DEVELOPMENTS)
To Amend the Conservation Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
1,009.086 Acres of Land at)
Ka'upulehu, North Kona, Island,)
County, and State of Hawai'i, TMK)
7-2-03: por. 1)
_____)

DOCKET NO. A93-701
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.

JUN 17 1996 by *[Signature]*
Date Executive Officer

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CONCLUSIONS OF LAW, AND DECISION AND ORDER

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FINDINGS OF FACT,
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Kaupulehu Developments, a Hawai'i general partnership ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on December 13, 1993, and a First Amended Petition for Land Use District Boundary Amendment on July 1, 1994, pursuant to chapter 205, Hawai'i Revised Statutes ("HRS"), and chapter 15-15, Hawai'i Administrative Rules ("HAR"), to amend the State land use district boundaries by reclassifying approximately 1,009.086 acres of land from the State Land Use Conservation District to the State Land Use Urban District at Ka'upulehu, North Kona, Island, County, and State of Hawai'i, identified as Tax Map Key No. 7-2-03: por. 1 ("Property"), for the development of a recreational/residential community.

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence and arguments of the parties presented during the hearings; the Proposed Findings of Fact, Conclusions of Law, and Decision and

Orders of Petitioner, the County of Hawai'i Planning Department, Intervenor Plan to Protect ("PTP"), Intervenors Ka Lahui Hawai'i, Kona Hawaiian Civic Club, and Protect Kohanaiki 'Ohana (collectively referred to herein as "Ka Pa'akai O Ka 'Aina"); and the Office of State Planning's ("OSP") response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, Petitioner's response to PTP's and Ka Pa'akai O Ka 'Aina's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and Ka' Pa'akai O Ka 'Aina's exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed thereto, hereby makes the following findings of fact, conclusions of law, and decision and order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On December 13, 1993, Petitioner filed a Petition For Land Use District Boundary Amendment, and on July 1, 1994, a First Amended Petition For Land Use District Boundary Amendment (collectively referred to herein as "Petition"). The Petition included an Environmental Assessment as required by section 343-5(a)(7), HRS.

2. Petitioner, a Hawai'i general partnership, is comprised of Barnwell Hawaiian Properties, Inc., a Delaware corporation licensed to do business in Hawai'i and managing general partner of Kaupulehu Developments, and Cambridge Hawaii Limited Partnership, a Hawai'i limited partnership. Petitioner's business and mailing address is 1100 Alakea Street, Suite 2900, Honolulu, Hawai'i 96813.

3. On January 13, 1994, and by a written Order filed on January 31, 1994, the Commission required Petitioner to prepare an Environmental Impact Statement ("EIS") pursuant to chapter 343, HRS, and chapter 11-200, HAR.

4. On September 22, 1994, and by a written Order dated October 5, 1994, the Commission accepted Petitioner's Final EIS and accepted Petitioner's Petition and First Amended Petition for filing.

5. On October 26, 1994, PTP filed a Petition To Intervene In Proceedings.

6. On October 27, 1994, Kona Village Associates ("KVA") filed a Petition For Intervention.

7. On November 16, 1994, and by written Orders dated November 25, 1994, the Commission granted Intervenor status to PTP and KVA.

8. On November 23, 1994, KVA filed a Notice Of Withdrawal Of Kona Village Associates As An Intervenor In Land Use Commission Docket No. A93-701. On December 1, 1994, and by a written Order dated December 20, 1994, the Commission granted KVA's request to withdraw its Petition For Intervention.

9. On November 28, 1994, Ka Lahui Hawai'i ("KLH") and the Kona Hawaiian Civic Club ("KHCC") each filed a Petition To Intervene As Party And Request For Contested Case Hearing.

10. On November 30, 1994, Protect Kohanaiki 'Ohana ("PKO") filed a Petition To Intervene As A Party And Request For Contested Case Hearing.

11. On December 1, 1994, and by a written Order dated December 20, 1994, the Commission consolidated the Petitions to Intervene filed by KLH, KHCC, and PKO and granted them Intervenor status.

12. The Commission conducted prehearing conferences regarding the Petition on November 18, 1994; March 3, 1995; May 2, 1995; and November 9, 1995, at which time proposed evidence was discussed, and exhibits and lists of witnesses were exchanged by the parties.

13. The Commission opened the hearing on the Petition on December 1 and 2, 1994, pursuant to public notices published in the Hawaii Tribune-Herald, West Hawaii Today, and the Honolulu Advertiser on October 12, 1994. On December 1, 1994, the Commission took a field trip to the Property. The Commission continued its hearings on March 23 and 24, 1995; May 25 and 26, 1995; August 10, 1995; October 10 and 11, 1995; November 16 and 17, 1995; November 30 and December 1, 1995; January 18 and 19, 1996; February 15 and 16, 1996; March 27, 1996; and May 30, 1996. On January 18, 1996, the Commission took a field trip to sites off of the Property.

14. The following persons appeared and testified as public witnesses and/or submitted written testimonies or letters: Ruby McDonald; Janice Palma; April Maberry; C. J. Villa; Leimana Damate; Lois Tyler; John P. Powell; Hannah Kihalani Springer; John A. Broussard; Curtis Tyler; Lunakanawai Hauanio; Karen Eoff; Charles Young; Gary L. Blaich, M.D.; Robert E. Bethea; Rodney T. Oshiro; Brooks Harper; Patsy T. Mink; Maile David; Don Hibbard;

John R. De Sa; John E. Dawrs; Rex D. Johnson; Roy C. Price, Sr.; Douglas Blake; Trina Meinsen and family; Joshua Dankovchik; Robert D.S. Kim; Marion Kelly; Virginia Isbell; Gladys K. Pualoa; Ipolani Tano; and Herbert M. Richards.

15. On April 6, 1995, PTP filed a First Request For Subpoena Duces Tecum To Petitioner Kaupulehu Developments, which subpoena duces tecum was issued by the Commission's chairperson on April 10, 1995.

16. On April 28, 1995, Petitioner filed a Motion To Quash Subpoena Duces Tecum To Petitioner Kaupulehu Developments ("Motion to Quash").

17. On August 10, 1995, and by Order Granting Motion To Quash Subpoena Duces Tecum To Petitioner Kaupulehu Developments, dated August 24, 1995, the Commission granted Petitioner's Motion to Quash.

18. On September 14, 1995, Petitioner filed a Motion To Correct Transcript Of Hearing On August 10, 1995 ("First Motion to Correct Transcript"). On October 10, 1995, and by a written Order dated October 20, 1995, the Commission granted Petitioner's First Motion to Correct Transcript.

19. On September 25, 1995, PTP filed a Notice Of Appeal To Circuit Court.

20. On November 8, 1995, Petitioner filed a Motion To Correct Transcript Of Hearing On October 10, 1995 ("Second Motion to Correct Transcript"). On November 16, 1995, and by a written Order dated November 29, 1995, the Commission granted Petitioner's Second Motion to Correct Transcript.

21. On January 16, 1996, Petitioner filed a Motion To Correct Transcript Of Hearing On November 16, 1995 ("Third Motion to Correct Transcript"). On January 18, 1996, and by a written Order dated January 26, 1996, the Commission granted Petitioner's Third Motion to Correct Transcript.

22. On February 21, 1996, the Circuit Court issued an order which affirmed the Commission's Order Granting Motion To Quash Subpoena Duces Tecum To Petitioner Kaupulehu Developments.

23. On March 15, 1996, Ka Pa'akai O Ka 'Aina filed a Joint Motion To Dismiss Or Summarily Deny Petition ("Joint Motion to Dismiss"). On May 30, 1996, the Commission denied Ka Pa'akai O Ka 'Aina's Joint Motion to Dismiss.

24. On March 15, 1996, Ka Pa'akai O Ka 'Aina filed a Joint Motion To Strike Testimony Relating To DLNR Historical Preservation Findings, Related Petitioner Exhibits And All References Thereto ("Joint Motion to Strike Testimony"). On March 22, 1996, Ka Pa'akai O Ka 'Aina filed an Amendment to their Joint Motion to Strike Testimony. On May 30, 1996, the Commission denied Ka Pa'akai O Ka 'Aina's Amended Joint Motion to Strike Testimony.

25. On March 15, 1996, Ka Pa'akai O Ka 'Aina filed a Joint Motion To Admit Stated Exhibits In Evidence ("Joint Motion to Admit"). On March 27, 1996, and by a written Order dated May 1, 1996, the Commission granted Ka Pa'akai O Ka 'Aina's Joint Motion to Admit.

26. On March 19, 1996, Ka Pa'akai O Ka 'Aina filed a Joint Request For Issuance Of Subpoena, which administrative

subpoena was issued by the Commission's chairperson on March 21, 1996.

27. On March 20, 1996, Petitioner filed a Request For Issuance Of Subpoena, which administrative subpoena was issued by the Commission's chairperson on March 22, 1996.

28. On March 25, 1996, Petitioner filed a Motion To Correct Transcript Of Hearing On November 17, 1995 ("Fourth Motion to Correct Transcript"). On May 30, 1996, the Commission granted Petitioner's Fourth Motion to Correct Transcript.

29. On May 2, 1996, Petitioner filed a Motion To Correct Transcript Of Hearing On March 27, 1996 ("Fifth Motion to Correct Transcript"). On May 30, 1996, the Commission granted Petitioner's Fifth Motion to Correct Transcript.

30. On May 6, 1996, Ka Pa'akai O Ka 'Aina filed a Joint Motion To Strike County Of Hawaii's Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order ("Joint Motion to Strike"). On May 30, 1996, the Commission denied Ka Pa'akai O Ka 'Aina's Joint Motion to Strike.

31. On May 10, 1996, OSP filed a Motion To Correct Transcript Of Hearing On March 27, 1996 ("Motion to Correct Transcript"). On May 30, 1996, the Commission granted OSP's Motion to Correct Transcript.

DESCRIPTION OF THE PROPERTY

32. Petitioner leases the Property from Kamehameha Schools/Bishop Estate ("KS/BE").

33. KS/BE owns the Property in fee simple and has authorized the filing of the Petition. The Property was

originally ruled and controlled by early Hawaiian chiefs who passed on the Property to their heirs in the line of ali'i that succeeded Kamehameha I, including Kame'eiamoku and his twin brother, Kamanawa. Following the Mahele in 1848, the Property came under the ownership of Kamehameha V. Kamehameha V's half-sister, Ruth Ke'elikolani, subsequently inherited the Property, which upon her death, was bequeathed to Bernice Pauahi Bishop. Upon Bernice Pauahi Bishop's death in 1884, the Property was included under the Bernice Pauahi Bishop Estate, a trust benefiting the Kamehameha Schools for Hawaiian children.

34. Petitioner's lease allows the uses of the Property as proposed in the Petition.

35. The Property is located makai of Queen Ka'ahumanu Highway in the ahupua'a of Ka'upulehu, North Kona, Hawai'i, and is designated as Tax Map Key No. 7-2-03: portion of 1.

36. The Property consists of approximately 1,009.086 acres and is a portion of a larger approximately 2,180.879-acre parcel ("Parcel 1"). There is an approximately 37.064-acre exclusion located on the Property, which will remain within the State Land Use Conservation District for archaeological preservation purposes.

37. The Property is crescent-shaped and generally consists of the western half of Parcel 1. The Property is bounded by the Queen Ka'ahumanu Highway to the south, the State-owned lands of Pu'uwa'awa'a to the east, the ocean to the north, and Kona Village Resort and the development which is now known as

"Hualalai Resort" (hereinafter referred to by its original name, "Kaupulehu Resort") to the west.

38. Except for the construction of a new access road for Kona Village Resort, the Property is currently undeveloped. It is generally uninhabited, except for the shoreline area which is used occasionally by fishermen, salt gatherers, campers, and others who visit the Property.

39. The Property is generally flat and rises from close to sea level to approximately 220 feet above mean sea level at the Queen Ka'ahumanu Highway boundary, with an overall average slope of 4 percent.

40. The Property receives less than 20 inches of precipitation annually.

41. The Property generally consists of sparsely-vegetated pahoehoe lava flows and the 1800-1801 historic Ka'upulehu Lava Flow, an a'a lava flow which extends through the center of the Property and constitutes approximately one-half of its total area.

42. There is practically no soil cover on the lava flows. The U. S. Soil Conservation Service designates the Property's soil types as A'a (rLV) and Pahoehoe (rLW) lava flows, Rock Land (rRO), and Beach Land (BH). The latter two types apply to approximately 10 percent of the Property.

43. The land within the Property is not classified by the State Department of Agriculture's "Agricultural Lands of Importance to the State of Hawai'i" rating system.

44. The Land Study Bureau's Detailed Land Classification study for the Island of Hawai'i designates the soils of the Property as class "E" lands. Class "E" lands are very poor or least suited for agricultural uses.

45. The Federal Emergency Management Agency's Flood Insurance Rate Map indicates that, with the exception of a approximately fifty-foot wide strip of land along the coastline which is designated Zone VE (areas inundated by the 100-year flood with velocity hazards and a base flood elevation of nine feet above mean sea level), the Property is designated as Zone X (areas determined to be outside the 500-year floodplain).

PROPOSAL FOR RECLASSIFICATION

46. The primary objective of the proposed development is to accommodate, with a viable master plan and common infrastructure, future growth of the Kaupulehu Resort community by offering complementary products to those planned in the portion of the resort which is under construction. The proposed development is intended to enhance the economic viability of the Kaupulehu Resort community.

47. The development concept is a recreational/residential community which consists of:

1. 530 single-family homes;
2. 500 low-rise multi-family units;
3. An 11-acre neighborhood commercial center containing 45,000 square feet of leasable space;
4. A 36-hole golf course;

5. A golf clubhouse which will also serve as a secondary retail, restaurant, and service complex for the expansion area;
6. A 3-acre recreational club for residents, members and guests;
7. Other necessary ancillary facilities and uses; and
8. A 70-acre area abutting the north boundary adjacent to State lands which would include public access shoreline facilities, other recreational uses, and cultural activities (collectively referred to herein as "Project").

48. As part of the proposed Project, Petitioner will develop and implement a Resource Management Plan ("RMP") which would coordinate development with native Hawaiian rights to coastal access for the purpose of traditional cultural practices, West Hawai'i's demand for new coastal recreational opportunities, and the creation of a buffer for Kona Village Resort. Under Petitioner's concept of the RMP, the goals of the RMP are to provide for resource management and ensure public access to the coastal area while balancing Petitioner's needs with the traditional needs of native Hawaiians and the recreational needs of the public. Under Petitioner's concept of the RMP, the objectives of the RMP are:

1. To preserve and protect the physical attributes of the coastal area, including the

natural topography, geological forms, vegetation, archaeological and cultural resources, trails, intertidal region, and ocean water quality;

2. To develop appropriate lands within the coastal area in a manner that is compatible with an open space character and sensitive to the sustained use of neighboring areas for traditional cultural practices;
3. To preserve and manage sustainable resources within the area to ensure their availability to future generations;
4. To provide access to the coastal area for the recreational use of the community; and
5. To protect fragile and sensitive areas and sustainable resources from overuse and degradation.

49. Petitioner's concept for an RMP establishes five subzones which are based upon the valued resources and activities which are known to exist on and makai of the Property. The subzones differ in the degree of restriction of uses. The subzones will be linked by the historic trail which meanders over the shorefront of the Property and new pedestrian paths.

50. The five subzones constitute a 235-acre resource management area. Excluding the approximately 37.064-acre archaeological preserve which is proposed to be retained in the

State Land Use Conservation District, the resource management area encompasses approximately 198 acres.

51. Substantial infrastructure improvements are expected to be provided during the initial five years once the required government approvals have been secured. Initial sales are also expected during this period. Full build-out of the Project is projected over 20 years.

52. The projected development costs for the proposed Project to come to market is \$100 million. Within the first five years following the receipt of all government approvals, development costs would be approximately \$45 million. This phase would cover the first golf course, related infrastructure, general infrastructure costs, certain public facility costs, and finishing a certain amount of the residential product for sale to the public.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

53. Barnwell Hawaiian Properties, Inc., which is Petitioner's managing partner, filed a consolidated balance sheet showing total assets of \$15,573,386 as of September 30, 1993. Its parent company, Barnwell Industries, Inc., filed consolidated financial statements for itself and its subsidiaries which show that, of June 30, 1993, its total assets were \$28,452,000 and that for the nine months ending June 30, 1993, its net after-tax earnings and revenues were \$2,880,000 and \$13,810,000, respectively, and its cash flow provided by operating activities was \$4,546,000.

54. The proposed Project can be financed through alternative means. Petitioner may form a joint venture with an independent developer, as Petitioner did in the initial increment of Kaupulehu Resort. In the alternative, Petitioner will fund the initial development itself or will obtain conventional financing. Initial sales revenues will be used to finance subsequent development phases.

55. Pursuant to an option agreement with Petitioner, Kaupulehu Makai Venture, a California partnership, held an option to acquire Petitioner's interest in the Property.

56. Such option agreement contains a provision for its automatic termination on April 30, 1995, unless earlier exercised or terminated.

57. Such option agreement terminated on April 30, 1995, without being exercised.

STATE AND COUNTY PLANS AND PROGRAMS

58. The Property is located within the State Land Use Conservation District, as reflected on the Commission's official map, H-6 (Kiholo).

59. The Property is designated within a "Resort Destination Node" in the West Hawai'i Regional Plan (November 1989) of OSP.

60. The Property is within the Hawai'i County General Plan Land Use Pattern Allocation Guide Maps as "Urban Expansion" and "Open."

61. The Property is zoned "Open" by the County of Hawai'i.

62. The Property is situated within the Hawai'i County Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

63. Petitioner's market consultant, The Hallstrom Group, Inc., prepared a market assessment for the proposed Project, which projects the demand for residential, golf course, and commercial uses within the proposed Project. There is a demand for the Project within an 18-year absorption schedule.

64. Approximately 3,700 new resort/residential lots will be required in West Hawai'i by the year 2015. Despite the gross level of regional inventory which is proposed, it is likely that moderately-priced lots, as proposed by Petitioner, will be in significant demand.

65. As to resort/multi-family units, approximately 4,500 units will be directed toward West Hawai'i.

66. Although golf course demand may nearly be serviced in the year 2015 by the number of golf courses which are currently existing, under construction, or proposed and approved, it is unlikely that the 23 proposed golf courses will all be built in the foreseeable future. Golf courses are a vital amenity for resort and master-planned community development, offering recreational opportunities and desirable frontage attributes.

67. The proposed Project could support upwards of 120,000 square feet of finished floor space in a neighborhood retail/service center which meets the daily household shopping needs of Kaupulehu Resort community residents, guests, and

tourists. Petitioner proposes a smaller commercial center of approximately 45,000 square feet of finished floor space in keeping with the low-density nature of the proposed Project.

ECONOMIC IMPACTS

68. The proposed Project is projected to generate the equivalent of 165 full-time on-site and off-site jobs in the first year of construction, which will steadily increase to 1,209 jobs in the twentieth year of the development timeframe. After completion of construction, the proposed Project will generate 1,103 permanent on-site and off-site positions.

69. In 1993 dollars, the estimated annual cost to the public from the proposed Project would range from \$219,922 effective at the commencement of residential occupancy to \$7,306,475 by build-out in the twentieth year of the Project's life span. Over the two-decade development timeframe, the entire direct cost to the public which results from the implementation of the proposed Project is estimated to be \$67,477,840 in 1993 dollars.

70. In 1993 dollars, the aggregate tax revenues for the State and County during the development period will total \$232.4 million. Thus, the total direct benefits of the Project in tax revenues exceeds the estimated public costs relating to the Project by an estimated \$164,930,383, with \$109.65 million accruing to the County of Hawai'i and \$55.27 million to the State of Hawai'i.

71. Using the capital multiplier effect ratio for basic expenditures which include total wages, contractor's and

supplier's profits, and subject population discretionary expenditures, the total base economic impact in the region which results from the proposed Project ranges from \$28.9 million in the first year of the Project to a maximum of \$123.15 million in the twentieth year and stabilizing thereafter at \$60 million per year.

SOCIAL IMPACTS

72. In the coastal region extending north from Keahole Airport to Kiholo, there is no existing community which would be directly impacted by the proposed Project. However, the Kona Village Resort is adjacent to the proposed Project, and Project plans have incorporated certain development setbacks in order to mitigate impacts upon Kona Village Resort.

73. The shoreline portion of the Property is used for fishing and gathering of limu, opihi, and other resources, and for camping. The area closest to Kalaemano was traditionally used for salt gathering. Hannah Springer, a kama'aina of the mauka portion of Ka'upulehu, and her 'ohana have traditionally gathered salt in this area on an occasional basis.

74. The areas for fishing, limu, opihi, and salt gathering, and general recreation are to be preserved and managed as part of Petitioner's RMP, thus perpetuating these activities on and makai of the Property.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

75. Based on the limited suitability of the Property for agricultural use, the proposed Project will not have any adverse impact upon agricultural resources or productivity.

Flora and Fauna

76. The Property supports limited vegetation, which is primarily categorized as coastal strand and scrub vegetation. However, because the existing vegetation is primarily comprised of wide-spread species, the proposed Project will not have a significant adverse impact on them. The 'ohai plant, an endangered species, will be preserved in consultation with the U.S. Fish and Wildlife Service.

77. Various bird and mammal species exist on the Property. No apparent significant wildlife habitats exist within the Property. Thus, development on the Property will not result in significant adverse impacts to area fauna. Aside from the short-term displacement during construction of individual Project elements, the identified bird and mammal populations are considered to be resilient species and will be able to endure short-term displacement. In the long term, avi-fauna may be enhanced by new foraging areas which accompany new landscaping. However, all avi-fauna could be adversely impacted by the improper use of insecticides by homeowners and by the golf course operator. Goats and donkeys are likely to be displaced by the proposed Project; however, neither is endangered, and displacement does not constitute a significant negative impact.

Petitioner will participate with adjacent landowners in a management program with regard to the donkeys.

Archaeological/Historic Resources

78. The proposed Project will not have a significant adverse impact on archaeological or historic resources. An archaeological inventory survey was conducted on the Property by Paul H. Rosendahl, Inc. Based upon consultation with the State Historic Preservation Division ("SHPD") and a final survey report, 193 sites were identified, and 65 sites have been recommended for some form of preservation. Thirty-eight of those recommended for preservation are contained within a designated preserve area.

79. The identified archaeological sites were assessed for significance, based upon the National Register Criteria for Evaluation, as outlined in the Code of Federal Regulations (36 CFR, Part 65). The SHPD uses these criteria for evaluating such sites.

80. The SHPD accepted the final inventory survey report.

Groundwater Resources

81. The general character of the groundwater in the Kona region may be classified in three types: basal groundwater, brackish basal groundwater, and dike-impounded perched groundwater. Due to the Property's proximity to the ocean, no potable water sources are present on-site.

82. The proposed Project will not have a significant adverse impact upon groundwater resources within the Ka'upulehu

ahupua'a, even when added to the cumulative demand from Kona Village Resort and Kaupulehu Resort. Furthermore, with proper chemical and irrigation practices, the proposed Project will not adversely affect groundwater beneath the Property.

Recreational, Scenic, and Cultural Resources

83. Recreational resources are located along the shoreline of the Property and on the coastal trail which traverses the makai portion of the Property. These areas are within Petitioner's resource management area and will be preserved in open space.

84. Due to the flat topography of the Property, the proposed Project will be visible to motorists who use the Queen Ka'ahumanu Highway. However, there would be no loss of ocean views from the highway. Development setbacks and open-space corridors will help to preserve mauka viewplanes from the Kona Village Resort.

85. Except for certain archaeological sites which are within a preserve area located inland and to the east of Kona Village Resort, cultural resources are found near the shoreline of the Property.

86. Wahi pana are the storied, remarkable places, the legendary places of significance in native Hawaiian culture.

87. While the ahupua'a of Ka'upulehu is by story and the history of its name a wahi pana, there are no specific wahi pana which are definitely known to be within the Property, based on historical documentary research and interviews.

88. The proposed Project will reasonably preserve and perpetuate cultural resources such as archaeological sites, the coastal trail, areas of fishing, opihi, and limu gathering, salt gathering, and general recreation in the proposed areas within Petitioner's RMP. Petitioner's RMP area totals approximately 235 acres.

89. KS/BE has formulated a plan to manage and protect cultural resources within the entire ahupua'a of Ka'upulehu. Petitioner's RMP will be consistent with and further the objectives of the ahupua'a plan. KSBE's ahupua'a plan includes designated geographic zones that define the natural, cultural, and historic resources of Ka'upulehu from the mountain to the sea. The ahupua'a plan will involve native Hawaiians, particularly the 'ohana who are kama'aina to the subject Property, to relink the traditions and practices that are rooted in that Property. KSBE will form a non-profit entity in perpetuity to oversee the formulation and implementation of the Ka'upulehu ahupua'a plan.

Coastal/Aquatic Resources

90. The proposed Project does not involve alteration of the shoreline or off-shore areas. Given the prevailing climatic and physical characteristics of the off-shore environment, no adverse impacts are expected to result from the proposed Project.

ENVIRONMENTAL QUALITY

Noise

91. Existing ambient noise levels in the Property will increase as a result of the proposed Project, which will urbanize

presently vacant lands. Temporary noise impacts are unavoidable during the construction phase. Construction and future noise impacts will be mitigated by Petitioner through the use of quiet equipment, construction curfew periods, landscaped buffers and berms, and disclosures to future occupants of the proposed Project.

Air Quality

92. The principal source of short-term air quality impact will be construction activity, which will increase automotive pollutant concentrations along Queen Ka'ahumanu Highway as well as in the vicinity of the Property itself. There is a potential for fugitive dust due to the dry climate and fine soils; adequate dust control measures, such as frequent watering, phased grading, and landscaping, will be employed by Petitioner during the construction period.

Water Quality

93. The absence of significant runoff most of the year and the dynamic mixing of turbulent shoreline water by wave action preclude any adverse effect of chemical use on the Property upon coastal waters if adequate care is taken in irrigation and in fertilizer and pesticide practices. Similarly, groundwater quality will not be adversely affected if recommended chemical application and irrigation practices are followed.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Services

94. Queen Ka'ahumanu Highway is the primary arterial highway in the region. It is a high quality, two-lane, two-way

State Highway connecting Kawaihae and Kailua-Kona. The highway is situated approximately 600 feet mauka of the Property.

95. The proposed Project is expected to generate a total of 571 vehicles per hour ("vph") during the AM peak hour of traffic, 326 vph entering the Property and 245 vph exiting the Property. During the PM peak hour of traffic, the Project is expected to generate a total of 705 vph, 374 vph entering the Property and 331 vph exiting the Property.

96. The Traffic Management Consultant prepared a traffic impact analysis ("TIM") for the proposed Project, dated June 27, 1994. Based on the TIM, the following improvements should be considered to accommodate year 2015 highway deficiencies that will exist without the proposed Project:

- a) The intersection of Queen Ka'ahumanu Highway and Ka'upulehu Access Road should be upgraded to a fully channelized intersection, providing exclusive left-turn storage lanes and right-turn deceleration lanes on Queen Ka'ahumanu Highway in both the northbound and southbound directions. Kaupulehu Resort is in the process of implementing this improvement;
- b) Queen Ka'ahumanu Highway should be widened to provide a four-lane, divided highway, as proposed in the State Department of Transportation Long-Range Highway Plan;

- c) The intersection of Queen Ka'ahumanu Highway and Ka'upulehu Access Road should be signalized, when warranted; and
- d) Ka'upulehu Access Road and the mauka-makai road should include separate right-turn, through, and left-turn lanes.

Together, these improvements will provide sufficient capacity to mitigate the traffic impacts of the proposed Project.

Water Service

97. The proposed Project will require potable water for consumption and non-potable water for irrigation. The groundwater resources within the Ka'upulehu ahupua'a are adequate to meet the demand of the proposed Project.

98. A total of five wells are presently situated within the Ka'upulehu ahupua'a. Two of them are non-potable wells and are capable of producing brackish water which is of acceptable quality for irrigation use. Two potable wells have also been drilled at the 1,400 elevation within the Ka'upulehu ahupua'a. The fifth well is an exploratory well. A total of three new potable wells, including a back-up well, will be required. Also, four non-potable wells for irrigation purposes will be required by the proposed Project.

Wastewater Disposal

99. The Property is not presently serviced by a wastewater collection and treatment system. A privately funded system will serve the proposed Project. Effluent from the proposed secondary level treatment facility will be utilized to

supplement non-potable irrigation water at the proposed Project's 36-hole golf course.

Drainage

100. Due to the Property's relatively flat topography and the highly porous character of the lava, no defined drainageways exist on the Property. As the proposed Project is developed, the addition of topsoil and the development of impermeable surfaces will significantly alter the surface drainage flow from the Property. Surface water runoff will increase and there will be a greater potential for surface water to impact coastal waters. Petitioner will design all Project components to retain surface drainage on-site.

Solid Waste Disposal

101. The Property is not presently serviced by a solid waste collection and disposal system. Solid waste collected throughout the West Hawai'i area is disposed of at the County's West Hawai'i Sanitary Landfill at Pu'uana'hulu.

102. The projected solid waste production by the proposed Project's population and facilities will be approximately 5.7 tons per day, or 2,067 tons per year. Minimal green waste will be generated during the construction phase of the proposed Project. During the operation phase, the mulching of yard trimmings and golf course green waste will help reduce the volume of solid waste that is sent to the County's landfill.

Schools

103. Public educational facilities in the region include Kahakai, Kealakehe, Konawaena at Kealahou, and a new

high school proposed at Kealakehe. Private schools in the area include University of Nations, Creative Day Preschool, Kona Baptist Church, and Mokuaikaua Church/Nursery. Additional private schools are located in Kamuela, Kapa'au, Holualoa, and Honaunau. The State of Hawai'i is also proposing a West Hawai'i University campus be located somewhere between Kailua-Kona and Keahole.

104. The Department of Education requests a fair-share contribution for the development of school facilities to assist in the construction of adequate classrooms to accommodate the projected growth.

Police and Fire Protection

105. Police protection for the North Kona area is provided primarily by the County Satellite Police Station at Kealakehe, approximately 10 miles south of the Property.

106. Fire protection services are provided by the County's Kailua Fire Station, located on Palani Road mauka of the Queen Ka'ahumanu Highway, approximately 15 miles south of the Property.

107. Development of the 1,030 proposed residential units will probably require an expansion of emergency services in the West Hawai'i area.

Electrical Utility and Telephone Services

108. The Keahole Generating Station is owned and operated by Hawaii Electric Light Company and is located mauka of the Queen Ka'ahumanu Highway, about 8 miles south of the Property.

109. The proposed Project at ultimate build-out will create a demand of 8.575 megawatts on the Keahole Generating Station or additional power plants. The utility expects the need to generate an additional 200 megawatts of power of generation capacity by 2007 to meet future regional demands.

110. To assist in the reduction of electrical energy consumption, a number of conservation measures can be encouraged and implemented in the proposed Project by Petitioner, including the energy-efficient design of homes and the strategic use of landscaping, low energy lamps, lighting fixtures, and solar water heaters.

111. Hawaiian Telephone Company provides telephone service to the North Kona area. The proposed Project will require approximately 1,500 units.

COMMITMENT OF STATE FUNDS AND RESOURCES

112. The concept plan for the Project includes the privately-funded development, on a fair-share basis, of all basic infrastructure needed to serve the Project. The Project does not call for a substantial commitment of government supplied services or facilities that would not be required without the Project.

CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAI'I STATE PLAN

113. The proposed reclassification of the Property generally conforms to the following goals, objectives, priorities and policies of the Hawai'i State Plan, as defined in chapter 226, HRS:

- a. 226-4 State Goals. The reclassification will result in a development which contributes to

the attainment of the elements of choice and mobility which are embodied in the State goals. The development will provide up to 1,030 residential units, and the jobs which will be created to construct and maintain those units will contribute to the area's economy and social well-being of the community. The low-density character of the proposed development will also create a complementary expansion of the resort node.

- b. Section 226-5 Objectives and policies for population. The proposed reclassification is consistent with the State's population growth and distribution policies which identify West Hawai'i as a major visitor destination area, as well as a dynamic resident growth center.
- c. Section 226-6 Objectives and policies for the economy-in general. The proposed Project will strengthen the visitor industry in West Hawai'i by providing residential opportunities in the Kaupulehu Resort node, thus complementing the development character of the resort. At build-out, the proposed development will generate over 330 on-site jobs and over 700 off-site jobs due to a multiplier effect of 2.0.
- d. Section 226-10 Objectives and policies for the economy - potential growth activities. The proposed Project will contribute to the fulfillment of the State's vision for the West Hawai'i visitor destination area, as set forth in the West Hawai'i Regional Plan. Development of the Kaupulehu Resort destination node will generate new demand for business and services throughout the region.
- e. Section 226-11 Objectives and policies for the physical environment-land-based, shoreline, and marine resources. The shoreline portion of the Property will be preserved in its natural form, including an existing historic trail along the shoreline. No development is proposed makai of the certified shoreline. The proposed Project's recreation area will enable the public to traverse along the shoreline from the Property to the adjacent State property to Kiholo Bay and beyond, as envisioned by the State Parks Division of the Department of Land and Natural Resources. The proposed Project will complement the natural

environment by maintaining a low-density character and open-space. A proposed endangered plant identified on the Property will be preserved through the creation of a special buffer area.

- f. Section 226-12 Objective and policies for the physical environment--scenic, natural beauty, and historic resources. Significant historic sites and the shoreline trail will be preserved by Petitioner, based upon a detailed archaeological inventory survey which was conducted for the entire Property. The low-profile, low-density character of the proposed Project is consistent with the policy to preserve views and vistas of the ocean and mountains.
- g. Section 226-13 Objectives and policies for the physical environment--land, air, and water quality. The planning and design of the proposed project is consistent with and supportive of Federal, State, and County environmental regulations and controls. Measures for conservation of potable and non-potable water will be emphasized. Mitigation measures will be employed by Petitioner to minimize the potential impact of surface water run-off and drainage on coastal resources. Informational, evacuation, and warning system measures will be taken by Petitioner to reduce tsunami and volcanic hazards.
- h. Section 226-14 Objective and policies for facility systems--in general. The proposed Project will be served by privately developed water and wastewater treatment facilities.
- i. Section 226-15 Objectives and policies for facility systems--solid and liquid wastes. Wastewater collection and treatment facilities will be privately developed. Given the limited vegetation on the Property, very little green waste will be generated during the construction phase. During the operation phase, mulching of yard trimmings and golf course green wastes will help to reduce the volume of solid wastes that must be sent to the County's landfill.
- j. Section 226-16 Objective and policies for facility systems--water. The Project's water wells will be pumped at daily rates which are

based upon the sustainable yield of the area's groundwater resources. Conservation measures will be emphasized by Petitioner as a means of limiting demand for both potable and non-potable water.

- k. Section 226-18 Objectives and policies for facility systems--energy/ telecommunications. In the interest of reducing the consumption of electrical energy, Petitioner will encourage that various conservation measures be taken in the design of the Project and future homes.
- l. Section 226-19 Objectives and policies for socio-cultural advancement--housing. The development of up to 1,030 residential units will provide new housing opportunities to satisfy demand for market-priced homes in West Hawai'i. Petitioner is committed to applicable affordable housing requirements.
- m. Section 226-23 Objective and policies for socio-cultural advancement--leisure. The provision of recreational facilities at the proposed Project by Petitioner will enable the public to utilize the coastal portion of the State-owned property adjacent to Ka'upulehu, which is presently under-utilized and largely inaccessible. In addition, the preservation of the coastal shoreline trail by Petitioner will provide opportunities for the enjoyment of recreational resources along the shoreline of the Property.
- n. Section 226-103 Economic priority guidelines. With regard to the priority guidelines in subsection (a), development of the proposed Project is consistent with the State's goal to focus visitor industry services at "destination nodes" in West Hawai'i. At full build-out, the proposed Project will provide a combined total of more than 1,000 on-site and off-site job opportunities, which will help to strengthen the economy of West Hawai'i.

With regard to priority guidelines in subsection (e), conservation devices and measures will be taken by Petitioner to reduce consumption of potable and non-potable water.

With regard to priority guidelines in subsection (f), the proposed Project will

encourage the use of energy conservation measures.

- o. Section 226-104 Population growth and land resources priority guidelines. The proposed Project is designed to protect and preserve the shoreline. No development is proposed makai of the certified shoreline. The proposed Project will be designed to ensure that off-shore water quality is not compromised.

114. The proposed reclassification of the Property generally conforms to the following State functional plans, as defined in chapter 226, HRS:

- a. Conservation Functional Plan. Certain objectives and policies of this functional plan are served to the extent that the Project will minimize the impact on marine and coastal resources and will preserve significant historical and archaeological resources.
- b. Employment Functional Plan. By providing new employment opportunities, the proposed Project is consistent with this functional plan.
- c. Energy Functional Plan. Petitioner can assist in the implementation of this plan's strategy of reducing the State's dependency upon petroleum and other fossil fuels by promoting energy-efficiency techniques and energy conservation whenever possible.
- d. Health Functional Plan. The general purpose of this functional plan is served through the various measures which will be taken by Petitioner in the proposed Project to minimize environmental impacts upon groundwater and ocean water.
- e. Historic Preservation Functional Plan. The objectives, policies, and implementing actions of this functional plan are supported through Petitioner's compliance with all applicable State, County, and Federal requirements concerning historic sites.

- f. Housing Functional Plan.
Certain policies within this functional plan will be served by the proposed Project through the provision of housing, recreational opportunities, and commercial services.
- g. Recreational Functional Plan.
Various policies within this functional plan are served by the proposed Project through the preservation of the coastal trail and the provision of public access to it.

CONFORMANCE WITH THE URBAN DISTRICT STANDARDS

115. The proposed reclassification of the Property conforms to the State Land Use Urban District standards stated in section 15-15-18, HAR, in the following respects:

- a. The proposed Project will create a new economic and employment center through the infilling of a resort destination area and the development of well-planned community support facilities and services.
- b. The proposed Project includes the construction of primary infrastructure in the initial development phase. Petitioner will provide most basic services on-site and contribute land and capital to upgrade facilities in the Project.
- c. The proposed Project will be reasonably free from adverse environmental effects through the use of mitigation measures. The Property has satisfactory topography and soil conditions.
- d. The Property is adjacent to an established resort. The Hawai'i County General Plan

indicates the area is appropriate for future urban use.

- e. Petitioner intends to privately fund the on-site support construction and services. While the proposed Project will require the investment in upgraded public infrastructure or support services, Petitioner will contribute to its fair share of the cost of such improvements and the long-range fiscal cost/benefit does not make such an investment unreasonable.

CONFORMANCE WITH THE HAWAI'I COUNTY GENERAL PLAN

116. The proposed reclassification of the Property is in general conformance with the following elements of the Hawai'i County General Plan: economic, environmental quality, flood control and drainage, historic sites, housing, natural beauty, natural resources and shoreline, recreation, and land use.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

117. The proposed reclassification of the Property is in general conformance with the objectives and policies in section 205A-2, HRS, in the following ways:

- a. Recreational Resources Objective: Provide coastal recreational opportunities accessible to the public.

The preservation and restoration of the coastal trail and the provision of a public-

oriented recreation area by Petitioner is consistent with this objective.

b. Historic Resources Objective: Protect, preserve, and where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture. All significant archaeological resources identified on the Property are proposed for preservation by Petitioner.

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

The existing quality of the coastal scenic and open space resources of the area will be preserved by the Project. The development of a low-density, golf course oriented community will not detract from the open space character of the region.

d. Coastal Ecosystems Objective: Protect valuable coastal ecosystems from disruption and minimize adverse impacts on coastal ecosystems.

As discussed in the Final EIS, the proposed Project seeks to minimize any potential

adverse impacts to coastal ecosystems. The potential adverse impact upon marine biota resulting from increased public access will be mitigated by Petitioner through the implementation of a shoreline management plan, prepared in conjunction with the SMA permit process.

- e. Economic Uses Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations. Development of the Property will assist the State in its implementation of the resort destination node strategy identified in the West Hawai'i Regional Plan.
- f. Coastal Hazards Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence. The proposed Project has been designed to reduce potential hazards associated with coastal hazards.
- g. Managing Development Objective: Improve the development review process, communication and public participation in the management of coastal resources and hazards. Preparation of the EIS for the proposed Project provides the public with the opportunity to participate in the review of

development proposals adjacent to coastal resources.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or the 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.

CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS, and the Hawai'i Land Use Commission Rules under chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 1,009.086 acres of land in the State Land Use Conservation District at Ka'upulehu, North Kona, Island, County, and State of Hawai'i, identified as TMK No. 7-2-03: por. 1, into the State Land Use Urban District, is reasonable, conforms to the standards for establishing the Urban District boundaries, is non-violative of section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to sections 205-17 and 205A-2, HRS.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property being the subject of this Docket No. A93-701 filed by Petitioner, Kaupulehu Developments, consisting of approximately 1,009.086 acres of land in the State Land Use Conservation District at Ka'upulehu, North Kona, Island, County, and State of Hawai'i, identified as Tax Map Key No. 7-2-03: por. 1, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified into the State Land Use Urban District, and the State land use district boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents in the State of Hawai'i to the satisfaction of the County of Hawai'i. 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 of Hawai'i.

2. Petitioner shall implement effective soil erosion and dust control measures during construction to the satisfaction of the State Department of Health and the County of Hawai'i.

3. Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawai'i Revised Statutes. Petitioner's solid waste management plan shall be approved by the County of Hawai'i Department of Public Works.

4. Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Hawai'i.

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

6. Petitioner shall fund and construct adequate civil defense measures as determined by the State and County of Hawai'i civil defense agencies.

7. Petitioner shall provide a fair-share contribution for school facilities as mutually agreed upon with the Department of Education. The contribution may be a combination of land and/or cash required to address the impact on school facilities.

8. Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Hawai'i.

9. Petitioner shall fund and construct adequate water source, storage, and transmission facilities and improvements to accommodate the proposed Project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

10. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the appropriate State and County agencies.

11. Petitioner shall initiate and fund a groundwater monitoring program as determined by the State Department of Health. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the State Department of Health.

12a. The proposed mitigation commitments for all identified sites with burials must be submitted to the State Historic Preservation Division's Hawai'i Island Burial Council for a vote on the mitigation proposals. Once a decision is made by the Council, then the mitigation commitments for those sites will be finalized. A burial treatment plan for the mitigation treatment for those sites must then be approved by the State Historic Preservation Division, in consultation with their Hawai'i Island Burial Council, and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites.

12b. For all sites approved by the State Historic Preservation Division (SHPD) to undergo archaeological data recovery, an archaeological data recovery plan (scope of work) must be prepared by Petitioner. This plan must be approved by the SHPD and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites.

12c. For all sites approved for preservation by the State Historic Preservation Division (SHPD), a preservation plan must be prepared by Petitioner. (Burial sites may be covered

under the burial treatment plan.) This plan must include buffer zones/interim protection measures during construction, and long-range preservation (including public access and interpretation, where appropriate). The plan must include input from the local native Hawaiian community and relevant Hawaiian groups. The plan must be approved by the SHPD and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites.

12d. Petitioner shall immediately stop work and contact the State Historic Preservation Division should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered during Project development.

13. Petitioner shall make available adequate golf tee times at affordable rates for public play to State of Hawai'i residents.

14. Petitioner shall comply with the environmental health conditions from the State Department of Health, dated August, 1994 (Version 5), and entitled "Guidelines Applicable to Golf Courses in Hawaii."

15. Petitioner shall initiate and fund a nearshore water quality monitoring program. The monitoring program shall be approved by the State Department of Health (DOH). Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the DOH and implemented by Petitioner.

16. Petitioner shall initiate and fund a program to monitor the populations of threatened and endangered green sea turtles, hawksbill turtles, and humpback whales, as required by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Division of Aquatic Resources. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Department of Land and Natural Resources.

17. Petitioner shall conduct a biological survey for terrestrial invertebrates, the Hawaiian Hoary bat, and Kona Nightingale (feral donkey), prior to submitting an application for rezoning to the County of Hawai'i. Petitioner shall consult with the U.S. Fish Wildlife Service prior to initiating the study, regarding the content and completeness. The study shall also include a mitigation/preservation plan. The plan shall be accepted and approved by the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service must also verify in writing the successful execution of the study, and the implementation of the mitigation/preservation plan.

18. Petitioner shall preserve and protect any gathering and access rights of native Hawaiians who have customarily and traditionally exercised subsistence, cultural and religious practices on the subject Property.

19. In developing and operating the golf course and residential development in the Kaupulehu Resort Development

Project, Petitioner shall at a minimum protect public access along the accessible coastline by the following:

19a. Petitioner shall establish a perpetual right of public access along the coastline from the State's Pu'uwa'awa'a landholding to the intersection of the shoreline with the southernmost boundary of the Project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such access, subject to reasonable rules and regulations for public safety, provided that access shall be maintained. The perpetual public access way shall be based on a Resource Management Plan.

19b. Petitioner shall develop and implement the Resource Management Plan as represented to the LUC and which shall be consistent with and further the objectives of KSBE's ahupua'a plan. Petitioner shall develop the Resource Management Plan in consultation with the Department of Land and Natural Resources and the Office of State Planning. A copy of the Resource Management Plan shall be filed with the LUC prior to filing any request for zoning amendment with the County. In developing the Resource Management Plan and operating the golf course and any future residential

development in the Kaupulehu Developments
Petition Area, Petitioner shall maintain and
protect the public's right of access along the
shoreline especially at the 1800-1801 a'a lava
flow where the existing trail is near the same
level as the proposed dwelling units.

19c. At a minimum, Petitioner shall cause to be
established a setback zone of 75 feet from the
certified shoreline within which there shall
be no improvements of any kind other than
improvements which may be reasonably necessary
for purposes of public safety, and where the
property will be left in its natural state;
provided that certain golf holes may be
allowed within that setback subject to mutual
agreement between Petitioner, the Department
of Land and Natural Resources, and the Office
of State Planning.

19d. At a minimum, Petitioner shall prohibit any
residential development or vertical
improvements, other than landscaping and
improvements allowed by County ordinance or
variance, to be constructed or erected within
150 feet of the certified shoreline.

19e. Petitioner shall work with the Department of
Land and Natural Resources to incorporate
mauka pathways which may be tied to golf

course and residential area pathways which will provide alternative access routes to the accessible coastline areas.

19f. Petitioner shall adopt golf course rules and provide mutually agreeable signage which will protect the access along the public access areas and pathways.

19g. Petitioner shall provide the plans for golf course layout, location of holes, access pathways, and signage to OSP and the appropriate governmental agencies in advance of any final approval of such plans.

19h. Petitioner shall record with the appropriate governmental agency all necessary and appropriate instruments to accomplish the purpose of this paragraph.

20. Petitioner shall complete the Project in substantial compliance with the representations made before the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former land use classification, or change to a more appropriate classification.

21. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property covered by the approved Petition prior to the visible commencement of construction of the Property.

22. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawai'i in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission and shall also include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency.

23. 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.

24. 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 by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

25. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

DOCKET NO. A93-701 - KAUPULEHU DEVELOPMENTS

Done at Honolulu, Hawaii, this 17th day of June 1996,
per motion on May 30, 1996.

LAND USE COMMISSION
STATE OF HAWAII

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

By Trudy K. Senda
TRUDY K. SENDA
Vice Chairperson and Commissioner

By Rupert K. Chun
RUPERT K. CHUN
Commissioner

By (opposed)
M. CASEY JARMAN
Commissioner

By (opposed)
LLOYD F. KAWAKAMI
Commissioner

By M. Kelai
MERLE A. K. KELAI
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

Filed and effective on
June 17, 1996

Certified by:

Elton Wada
Executive Officer

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

By Elton Wada
ELTON WADA
Commissioner



Pacific
Ocean

Kiholo
Bay

KONA
VILLAGE
RESORT

Kahawai
Bay

AREA IN
CONSERVATION

Kukū'o
Bay

APPROVED
AREA

QUEEN KA'AHUMANU HWY.

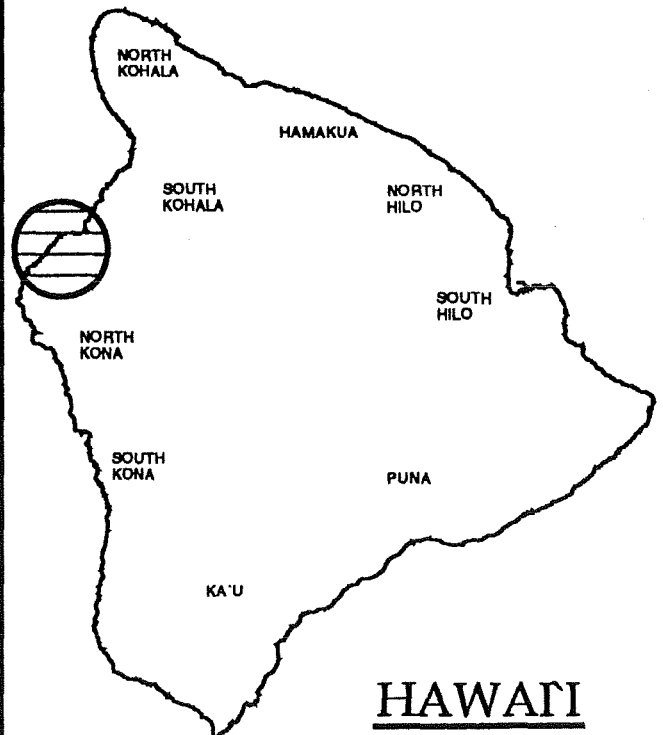
DOCKET NO. A93-701

KAUPULEHU DEVELOPMENTS
LOCATION MAP

TAX MAP KEY: 7-2-03: por. 1

KA'UPULEHU, NORTH KONA, HAWAII

1000 0 1000 2000 Feet



HAWAII

E Kū

O Kū

E Kāne

O Kāne

E Lono

O Lono

Ku`ua mai i ke ola

Let down the gift of life

I nā pōmaika`i

And all the blessings with it

A ea ka lani

Till the heavens

Ka honua

and earth be heaped

Ea iā Kāne

Let them be raised by

i ka wai ola

Kāne of the living waters

E ola mai kahi

May there be life from one

pae a kahi pae

boundary to the other

E ola mai luna a lalo

From above to below

Mai kaupoku

From roof

a ke kahua

to foundation

E ola

May there be life

a ola loa no

Everlasting life.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of) DOCKET NO. A93-701
)
KAUPULEHU DEVELOPMENTS) CERTIFICATE OF SERVICE
)
To Amend the Conservation Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
1,009.086 Acres of Land at)
Ka'upulehu, North Kona, Island,)
County, and State of Hawai'i, TMK)
7-2-03: por. 1)
_____)

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:

CERT. GREGORY G.Y. PAI, PH.D., Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
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CERT. R. BEN TSUKAZAKI, ESQ., Attorney for Petitioner
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CERT. ROBERT KIM, ESQ., Attorney for Intervenor
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ALFRED LERMA, ESQ., Attorney for Intervenor
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Protect Kohanaiki Ohana
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Kailua-Kona, Hawaii 96740

DATED: Honolulu, Hawaii, this 17th day of June 1996.



ESTHER UEDA
Executive Officer