BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In the Matter of the Petition of	)	DOCKET NO. A00-731
	)	
DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
	)	
To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For Approximately 153.696 Acres Of Land At Makaweli, island of Kaua`i, State of Hawai`i, TMK 1-7-05: por. 1	)	

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

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DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on April 10, 2000; a First Amendment to Petition for Land Use District Boundary Amendment on May 1, 2000; a Second Amendment to Petition for Land Use District Boundary Amendment on June 5, 2000; a Third Amendment to Petition for Land Use District Boundary Amendment on June 20, 2000; and a Fourth Amendment to Petition for Land Use District Boundary Amendment on September 5, 2000, pursuant to chapter 205, Hawai`i Revised Statutes ("HRS"), and chapter 15-15, Hawai`i Administrative Rules ("HAR"), to amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 153.696 acres at Makaweli, island of Kaua`i, State

of Hawai`i, identified as TMK 1-7-05: por. 1 ("Property" or Petition Area") for the development of a resort and accessory uses.

The Land Use Commission ("Commission" or "LUC"), having heard and examined the testimony, evidence, and argument of the parties, both written and oral, presented during the hearing held on July 20 and 21, 2000; September 14 and 15, 2000; and November 2, 2000, and having reviewed the Stipulated Proposed Findings of Fact, Conclusion of Law, Decision and Order, and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner filed a Petition for Land Use District Boundary Amendment on April 10, 2000; a First Amendment to Petition for Land Use District Boundary Amendment on May 1, 2000; a Second Amendment to Petition for Land Use District Boundary Amendment on June 5, 2000; a Third Amendment to Petition for Land Use District Boundary Amendment on June 20, 2000; and a Fourth Amendment to Petition for Land Use District Boundary Amendment on September 5, 2000 (collectively "Petition"), to amend the Agricultural Land Use Boundary into the Urban Land Use District for approximately 153.696 acres at

Makaweli, island of Kaua`i, State of Hawai`i, identified as TMK No. 1-7-05: por. 1.

2. Petitioner is a Hawai`i company, and its business address is 4439 Via Abrigada, Santa Barbara, California, 93110.

3. On May 31, 2000, the Office of Planning, State of Hawai`i ("Office of Planning" or "OP"), filed an Office Of Planning's Statement Of Position In Support Of The Petition, recommending approval of the Petition with conditions. On July 6, 2000, the OP filed the Office Of Planning's Testimony In Support Of The Petition, recommending approval of the Petition with conditions.

4. On June 5, 2000, the County of Kaua`i Planning Department ("Kaua`i Planning Department" or "PD") filed a Statement Of Position Of The Kauai County Planning Department In Support Of The Petition, recommending approval of the Petition, with conditions. On June 21, 2000, the PD filed the Testimony Of The Kauai County Planning Department In Support Of The Petition, recommending approval of the Petition with conditions.

5. On June 29, 2000, a pre-hearing conference was conducted in Conference Room 405 of the Leiopapa A Kamehameha Building, 235 South Beretania Street, Honolulu, Hawai`i, with representatives of Petitioner, the OP, and the PD present. A Stipulated Prehearing Order was entered into by and between all of the parties and filed with the LUC on July 26, 2000.

6. On June 30, 2000, Joseph Punilei Manini, Sr., filed a Petition for Intervention with the LUC. On July 13, 2000, Mr. Manini filed a letter requesting that his Petition for Intervention be withdrawn. On July 20, 2000, Mr. Manini's request for intervention and request for withdrawal were heard by the LUC with Mr. Manini and the parties being present at the hearing held in Koloa, Kaua`i, Hawai`i. Without objection from the parties, the LUC voted, on July 20, 2000, to grant Mr. Manini's request to withdraw his Petition for Intervention. The LUC filed the Order Granting Request To Withdraw Petition For Intervention on August 22, 2000.

7. On July 20, 2000, the LUC made a site visit to the Property.

8. On July 20, 2000, and July 21, 2000, the LUC conducted a hearing on the Petition in Koloa, Kaua`i, Hawai`i, pursuant to a notice published in Midweek Hawaii State And County Public Notices on May 15, 2000.

9. Entering appearances at the July 20, 2000, and July 21, 2000, hearings were Michael J. Belles, Esq., and Scott Ezer for Petitioner; Sanjay Bhatt, Esq., and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the OP.

10. On July 20, 2000, the LUC entered the following into evidence:

Memorandum dated May 12, 2000, from Linnel T. Nishioka, Deputy Director of the Commission on Water Resource Management.

Letter dated June 23, 2000, from Don Hibbard, Administrator of the State Historic Preservation Division ("SHPD").

Request to Intervene dated June 28, 2000, from Joseph Punilei Manini, Sr.

Request to Withdraw Intervention dated July 12, 2000, from Joseph Punilei Manini, Sr., and request to be a public witness.

Facsimile letter dated July 14, 2000, from Bruce Pleas requesting to testify.

Facsimile letter dated July 17, 2000, from Carol A. Furtado requesting to testify.

Facsimile letter dated July 18, 2000, from Vida N. Mossman and Monica A. Davis requesting to testify.

Facsimile testimony dated July 18, 2000, from Mark Nellis, President of the West Kaua`i Business & Professional Association.

Letter received on July 19, 2000, from Toni Looney.

Letter received on July 20, 2000, from John Isobe, Coordinator of the Kaua`i Rural Development Project.

Testimony received on July 20, 2000, from Carol A. Furtado.

Approximately 157 facsimile letters in opposition to the resort.

Testimony received on July 20, 2000, from Vida Kilauano Mossman.

Testimony received on July 20, 2000, from Monica Anohea Davis.

Testimony dated July 20, 2000, from David Walker.

Testimony dated July 20, 2000, from Mamo P. Cummings, President of the Kaua`i Chamber of Commerce.

Testimony dated July 20, 2000, from Owen Moe, President of the West Kauai Community Development Corporation.

Testimony dated July 19, 2000, from Linda Faye' Collins, President of the Kikiaola Land Company, Ltd.

Testimony dated July 20, 2000, from Kris Nakata, Executive Director of the Kauai Economic Development Board.

Testimony dated July 20, 2000, from Pam Parker, Ready to Learn Coordinator of the Kauai Economic Development Board.

11. On July 20, 2000, the following persons appeared and testified as public witnesses:

Joseph Punilei Manini, Sr.
Bruce Pleas
Carol A. Furtado
Ian Emberson
Beryl Blaich
Charles Okamoto
Vida N. Mossman
Monica Anohea Davis (by Vida Mossman)
Mark Nellis
Paul Matsunaga
Tsutomu Kojiri
Randall Uyehara
Juan Villalobas
Douglas Aviguatero
Jerry Lagazo
Cayetano Gerado
Lissa Dunford
Angie Chinen
James Pacopac
Cheryl Lovell-Obatake
Rob Swigart
Kaleo Ho'okano
David Walker
Sandra Makuaole

12. On July 21, 2000, the LUC entered the following into evidence:

Letter from Judy Dalton, Chair of the Sierra Club, Kaua`i Group of the Hawai`i Chapter.

Letter dated July 20, 2000, from Rachel Watarai.

Memo dated July 3, 2000, from the Kaua`i Historic Preservation Review Commission to the Planning Commission received from Bruce Pleas on July 21, 2000.

13. On July 21, 2000, the following persons appeared and testified as public witnesses:

Bill Blackburn (for John Isobe)
Bruce Pleas
Ross Barker
Alan Carveiro
James Bennett
Evelyn Baniaga
Clement Lum
Richard Lutao
Ron Kouchi
Charles Carveiro

14. On July 21, 2000, the hearing on the Petition was continued to September 14, 2000, and September 15, 2000.

15. On September 14, 2000, and September 15, 2000, the LUC continued its hearing on the Petition. Entering appearances were Michael J. Belles, Esq., and Scott Ezer for Petitioner; Laurel Loo, Esq., and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the OP.

16. On September 14, 2000, the LUC entered the following into evidence:

Facsimile testimony dated July 18, 2000, from E. Kalani Flores.

Letter received on July 24, 2000, from Jim Kitamura.

Letter received on July 24, 2000, from Rob Swigart.

Letter dated July 20, 2000, from Richard S. Morris.

Letter received on August 1, 2000, from Barbara Guthrie.

Letter received on August 8, 2000, from Raymond, Jaclyn, and Cody Mierta.

Letter received on August 25, 2000, from Blair Goldberg.

Letter dated July 20, 2000, from Ken D. Bray.

Letter received on September 12, 2000, from Bruce Pleas.

Letter dated September 13, 2000, from Laure Dillon.

Approximately 95 facsimile letters in opposition to the resort.

17. On September 14, 2000, the following persons appeared and testified as public witnesses:

Joseph Punilei Manini, Sr.
Sunny Greer
Judy Naumu-Steward
Bruce Pleas
Don Heacock
Butch Kekahu
Cheryl Lovell-Obatake

18. On September 15, 2000, the hearing on the Petition was continued to November 2, 2000.

19. On November 2, 2000, the LUC continued its hearing on the Petition. Entering appearances were Michael J. Belles, Esq., and Scott Ezer for Petitioner; Laurel Loo, Esq.,

and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the OP.

20. On November 2, 2000, the LUC entered the following into evidence:

Copy of September 6, 2000, written testimony from Joseph Punilei Manini, Sr., to the Kaua`i County Council.

Facsimile letter dated September 13, 2000, from Emily Allgaier.

Facsimile letter dated September 13, 2000, from Jeff Fishman.

Letter from Bruce Pleas on October 30, 2000, with 3 videotapes.

Letter dated November 1, 2000, from Puanani Rogers of Ho`okipa Network.

21. On November 2, 2000, the following persons appeared and testified as public witnesses:

Joseph Punilei Manini, Sr.
Bruce Pleas
Cheryl Lovell-Obatake
Puanani Rogers

22. On November 2, 2000, at the conclusion of the testimony, the LUC closed the hearing.

DESCRIPTION OF THE PROPERTY

23. The Property is located at Makaweli, island of Kaua`i, State of Hawai`i, containing a total area of approximately 153.696 acres, and more particularly identified by TMK 1-7-05: por. 1. The total area of parcel 1 is 166.026 acres. There is a strip of land mauka of the shoreline that is

within the State Land Use Conservation District. This strip of land will remain in the State Land Use Conservation District and is not included as part of the Petition Area.

24. The Property is located adjacent to Kaumuali`i Highway. The town of Waimea (population: 1,840) is located about ½ mile to the northwest. The town of Hanapepe (population: 1,400) is located about 2 miles to the southeast. The town of Kekaha (population: 3,500) is located about 4 miles to the northwest.

25. An ancient Hawaiian fishpond, approximately 6.5 acres in size, is located in the central portion of the Property.

26. The now vacant former residence of the Robinson Family, constructed in 1897, is the primary building located on the Property. Other buildings and structures accessory to the main house, which are contemporary to the main house, include a dwelling (former guesthouse), a carriage house, and employee's quarters (now used as an office building by Robinson Family Partners). The former guesthouse is currently occupied. In addition, eight plantation-era houses are located in the northwest corner of the Property, between the entry drive and the former Robinson Family residence. These homes were constructed for employees of the Robinson Family. Currently,

five of the plantation-era dwellings are still occupied. The Property was, until recently, used for the grazing of bulls.

27. The Property is owned by Robinson Family Partners; Gay & Robinson, Inc.; and Bruce Robinson ("Owners").

28. Petitioner has an option agreement with the Owners to develop the Property and has been authorized by the Owners to submit this Petition.

29. Kaumuali`i Highway is the main roadway serving the region.

30. The Property is generally flat and characterized by gentle slopes from the direction of Kaumuali`i Highway towards the ocean, ranging from approximately 4 percent at the highway to approximately 1 percent at the shoreline. Elevations on the Property range from about 44 feet above mean sea level ("AMSL") in the center of the Property at Kaumuali`i Highway to about 5 feet AMSL in the southern makai corner of the Property. The area between the Mohaikana Street and A`akukui Stream is generally flat, with elevations averaging approximately 7 feet to 8 feet AMSL.

31. The Property is located on the leeward side of Kaua`i, and as such the Property is located in a generally dry region that receives the least amount of rainfall on the island, averaging an annual rainfall rate of approximately 21 inches.

32. The Property consists of seven soil types:

Beaches (Bs)
Fill land (Fd)
Jaucas loamy fine sand (JfB)
Kekaha silty loam (KoA)
Makaweli silty clay loam (MgC)
Makaweli stony silty clay loam (MhC)
Nonopahu stony clay (NoC)

The three soil types that comprise over 80 percent of the Property are Fill land, Jaucas loamy fine sand, and Makaweli silty clay loam.

Fill land (Fd)	This land type consists mostly of areas filled with bagasse and slurry from sugar mills. A few areas are filled with material from dredging and from soil excavations. Generally, these materials are dumped and spread over marshed, low-lying areas along the coastal flats, coral sand, coral limestone, or areas shallow to bedrock.
Jaucas loamy fine sand (JfB)	The Jaucas series consists of excessively drained, calcareous soils that occur as narrow strips on coastal plains adjacent to the ocean. They developed in wind and water-deposited sand from coral and seashells. The loamy fine sand soil of this series has slopes of 0 to 8 percent. In terms of agricultural capability, these soils are classified as "IVs," which have severe limitations because of stoniness, shallowness, unfavorable texture, or low water-holding capacity. They are well drained to excessively drained and are more than 20 inches deep.
Makaweli silty clay loam (MgC)	The Makaweli series consists of well-drained soils on uplands on the island of Kaua`i. These soils developed in material weathered from basic igneous rock. This silty clay loam has slopes

of 6 to 12 percent. Runoff is medium, and the erosion hazard is moderate. In terms of agricultural potential, if irrigated, these soils are classified as "IIIe," which are subject to severe erosion if they are cultivated and not protected. In most places, the soils are more than 20 inches deep.

33. The Land Study Bureau "Detailed Land Classification for the Island of Kauai" classifies the Property into two main categories: D and E, indicating poor to very poor suitability for agricultural use.

34. The State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) system which was developed to determine the relative agricultural importance of specific property identifies approximately 70 percent of the Property as "Other." The remaining 30 percent of the Property is identified as "Prime," and approximately half of the area designated as "Prime" consists of the compound defined by the main house, the accessory buildings, and the employee housing.

35. According to the flood insurance rate maps prepared by the Federal Emergency Management Association Federal Insurance Flood Map ("FEMA Maps"), portions of the Property are located in "AE", "VE," and "X" zones. In addition, the 100-year floodplain is based on the FEMA Maps, where areas designated "AE" and "VE" are subject to inundation. Both of these areas fall within "special flood hazard areas inundated by the 100-

year flood." Both zones also have base flood elevations determined. An area along the makai portion of the Property is within the AE zone, with a base flood elevation of 11 feet AMSL. A portion of the Property is affected by the AE zone, with base flood elevations of 9 feet AMSL. Another portion of the Property is affected by the VE zone, a coastal flood with wave velocity (tsunami). Base flood elevations in the area have been determined to be 11 feet AMSL. A band mauka of the AE zone has been designated "Zone X" which indicates an area which is affected by the 100-year flood but has flood depths of less than one foot.

PROPOSAL FOR RECLASSIFICATION

36. Petitioner proposes to develop a resort and accessory uses on the Property ("Project"). The Project includes 250 visitor units (or cottages) that are dispersed throughout the Property, resulting in an overall density of approximately 1.6 units per acre. Approximately 164 of the units will be free-standing, and 86 units will be constructed as 43 duplex units. The units will be setback and raised above grade (to comply with flood hazard requirements) utilizing post and beam construction. Average separation distance between units will be about 40 feet. Each of the single-story cottages will be about 400 square feet in size with a 200-square-foot

deck. No cooking facilities, phones, or televisions will be provided for the units.

A main pedestrian arterial, which will meet the Americans with Disabilities Act requirements, will connect cottages with adjacent parking areas and activity centers. The walkways will function as the principal means of circulation within the Property for resort guests. Vehicular access will be restricted to registration, parking areas, and restaurants.

One of the focal points for the Project will be the Robinson Family residence. The building footprint for the residence is approximately 17,000 square feet and includes an interior courtyard and wrap-around lanais on the exterior of the building and facing the interior courtyard. Original drawings for the residence (completed in 1897) included approximately 5,591 square feet in floor area for a variety of rooms, including: kitchen, pantry, bakery, milk room, store room, guest chambers, china room, dining room, library, sewing room, bedrooms, sitting room, bathrooms, and library. A 1,200-square-foot wing was later added to the eastern side of the house and included three bedrooms and one bathroom, resulting in a total floor area for the house of about 6,791 square feet.

The overall plan for the residence is to develop the main house and attached structures as a greeting space and as a museum, administration, and meeting room area. Some

renovations, including demolition of interior walls, are proposed on the interior to provide three meeting rooms, a lounge, and men's and women's restrooms. Part of a wall that had been moved out to the lanai edge on the eastside of the building will be returned to its original location. The library, sitting room, dining room, pantry, china room, and linen room, as well as the original portion of the kitchen building, will be used in their current layout as museum spaces and displays of furniture and other items currently in the house. Other areas of the house are also being considered for inclusion in the museum.

It is intended that guests will enter the Property via the existing driveway off Kaumuali`i Highway (which will be for entry purposes only). The driveway extends for about 2,000 feet and is bordered by low (3-foot) walls on either side. Guests will arrive near the current Robinson Family Partners' office building.

Amenities provided at the Project will include:

- Two restaurants
- Snackbar
- Luau grounds
- Public/Passive recreation area
- Museum (in the former family residence)
- Bar/Lounge (in the former family residence)
- Three swimming pools
- Fitness center/beach club
- Sport courts (tennis, basketball, volleyball, badminton)
- Amphitheater
- Public parking, restroom, showers and access

A second focal point for the Project will be the renovation, preservation, and maintenance of the 6.5-acre fishpond located in the central portion of the Property. Silt and noxious vegetation will be removed from the pond, re-establishing the open water character of the pond. Native Hawaiian customary and traditional rights relating to the fishpond will be provided.

A minimum of 465 parking spaces will be provided onsite in four parking areas. Parking will be available for guests, employees, and members of the public wishing to enjoy the beach fronting the Property. Both restaurants will be open to the public for dining.

37. In connection with the issue of housing impacts created by this Project and the corresponding need to develop low, low-moderate, and gap-group housing, Petitioner's consultant, Mikiko Corporation, prepared a report entitled "Market Assessment For Rental Housing In The Waimea District, Island Of Kauai," for the County of Kaua`i, and based upon the assessment, Petitioner agrees to continue to work with the County to develop such housing as may be required by the County in the pending zoning amendment process.

38. The total cost of the Project is estimated to be $35 million to $45 million.

39. Petitioner estimates that once all permits are obtained, the development timetable for the entire Project will be approximately 12 to 18 months.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

40. Petitioner's financial statement, including the Quarterly Report Under Sections 13 Or 15(d) Of The Securities Exchange Act Of 1934 for the quarter ending September 30, 1999, of Excel Legacy Corporation, reflected a total of $246 million in assets and $167 million in equity. Petitioner presented further testimony to the effect that the third quarter statement of Excel Legacy Corporation would demonstrate gross assets of approximately $1 billion and net assets of approximately $200 to $400 million.

41. Petitioner intends to finance the development of the Property from internally generated funds for all costs necessary to obtain permit approvals and thereafter to secure necessary funding through conventional real estate loan financing.

STATE AND COUNTY PLANS AND PROGRAMS

42. The Property is currently within the State Land Use Agricultural District, as reflected on the Land Use District Boundaries Map, K-5, Hanapepe.

43. The County General Plan designation for the Property was amended from Agriculture and Open to Resort on October 9, 2000.

44. The Property is zoned Agriculture and Open pursuant to the Comprehensive Zoning Ordinance of the County of Kaua`i. Petitioner has filed a petition for a zoning amendment with the County of Kaua`i seeking to reclassify the Petition Area from Agriculture and Open zoning classifications to the RR-10 Resort District. The Project is under the density requirements for the zoning district, and all accessory uses are also permitted. The rezoning cannot receive final approval, however, until this land use district boundary amendment is approved by the LUC.

45. A portion of the Property is located within the Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

46. Petitioner's market consultant, Mikiko Corporation, prepared a study entitled "Market Assessment For Kapalawai Resort," dated May 21, 1999, to analyze the market support for the Project in terms of target guest markets, average achieved room rates, and achieved occupancy rates.

47. The Project is planned as an upscale but low-key, self-contained retreat in a garden setting located on the oceanfront. Centered on the historic Robinson Family estate,

the Project will also draw on a previously private kama`aina heritage.

48. The shoreline frontage offers approximately one mile of white, sandy beach with areas for swimming, fishing, long walks, and shell hunting.

49. The island of Kaua`i is emerging from years of depressed economic indicators following Hurricane Iniki. The visitor industry remains the major source of income and employment for the island.

50. The Project is expected to benefit from Kaua`i's established image and visitor profile in that Kaua`i has tended to attract relatively high income, high occupational status visitors, who are more likely than the average visitor to find the Project desirable. Thus, the Project's upscale market orientation is supported by 1990 cluster averages of westbound travelers to the island which found that Kaua`i tends to be perceived as romantic, scenic, quaint and relaxing, which are the feelings that the Project seeks to promote.

51. The Project is expected to appeal predominately to vacationers, including families, couples, and those traveling for weddings and honeymoons. In addition, with its Waimea District location, the Project could also attract government, business, or corporate traffic related to the high technology and military installations in the region. Finally, the

development concept for the Project appears to build on Kaua`i's existing image and appeal to visitors, and to be compatible with the statewide focus on the westbound market segment as a source of near-term growth. Eastbound and other international markets are seen as promising and long-term market segments.

ECONOMIC IMPACTS

52. Petitioner's consultant, Mikiko Corporation, prepared a study entitled "Economic And Fiscal Impact Assessment For Kapalawai Resort," dated July 22, 1999, to analyze the economic and fiscal impacts within the State of Hawai`i and the County of Kaua`i. The Project could be expected to impact the State and County economies by: (1) attracting visitors who would make new expenditures; (2) generating construction activity, which would support expenditures for goods and services; and (3) creating and supporting jobs and business enterprises in its ongoing operations. The new jobs would, in turn, generate additional personal income in the County and throughout the State.

53. The Project, upon completion, is estimated to result in direct visitor expenditures of $17.8 million in 2002, increasing to approximately $21.2 million by 2004 in 1998 dollars. Including the indirect and induced multiplier effects within the State, visitors attracted to the Project could

account for over $36 million in new annual visitor expenditures by the time the Project is stabilized.

54. Petitioner estimates a minimum construction budget of $33 million, and perhaps as much as $40 - $45 million to develop the Project.

55. The development of the Project is estimated to require about 280 person-years of labor, with direct personal income amounting to approximately $15.7 million. Including the direct, indirect, and induced impacts, the Project's development could support approximately $30.2 million in wage, salaried, and proprietary incomes for Hawai`i residents.

56. In addition to the development and construction-related positions, the Project could support approximately 200 full-time equivalent ("FTE") positions and employment opportunities in management, sales and marketing, registration/reservation, human resources, food service, maintenance and engineering, housekeeping, landscaping, and related activities. The majority of the positions would be located onsite. Based on economic multipliers derived from the State's 1992 Input-Output Study (dated December 1998), the total employment impacts of the Project, including its direct and induced jobs, could represent about 320 FTE positions throughout the State. Direct wages and salaries paid to those employed at the Project could approximate $5.3 million in 1998 dollars.

Including personal income associated with the indirect and induced positions, the Project could generate approximately $12.3 million per year in ongoing payroll within the State.

57. The projected population on the Property, based on 250 cottages and an anticipated stabilized occupancy level of 75 percent, could average approximately 365 visitors per day. On average, the Project could also have approximately 240 construction workers onsite on any given day during development and approximately 143 operational employees after opening.

58. Additional County real property tax revenues resulting from the Project are anticipated to be approximately $420,000 annually in net new property tax revenues by 2003. In addition to real property taxes, the County is allocated a share of the transient accommodation taxes ("TAT") collected by the State (currently 6.5 percent), which could represent approximately $50,000 by 2003, and coupled together with miscellaneous tax sources, the County could net total new taxes approximating $480,000 per year by 2004 in 1998 dollars.

59. Additional operating revenues to the State, including the general excise tax, and the State's share of the TAT tax resulting from the Project could approximate $1.3 million in 2004 in 1998 dollars.

60. Additional County and State operating expenditures resulting from the Project are anticipated to be

$420,000 and $560,000, respectively, by the time of Project stabilization in 2004 in 1998 dollars. Thus, the County's operating revenues from the Project are anticipated to exceed its operating expenses in 2004 by approximately $60,000 in 1998 dollars, and the State's operating revenues from the Project are anticipated to exceed its operating expenses in 2004 by approximately $760,000 in 1998 dollars.

SOCIAL IMPACTS

61. Petitioner's consultant, Earthplan, prepared a study entitled "Issues Analysis," dated February 2000, to analyze community issues and social impacts relating to the Project. The majority of the residents of the Westside community of Kaua`i believed the Project: (1) was compatible with the rural nature of the region; (2) provided essential economic opportunities; (3) provided for the preservation and restoration of cultural and historic resources; and (4) provided improved public access to cultural, historic, and recreational resources on the Property and adjoining lands.

62. The most common community problem cited by residents was the declining economy and lack of jobs since Hurricane Iniki and, most recently, the termination of sugar operations.

63. Because of the historically exclusive use of the Property, the proposed Project would increase public access to

the shoreline and recreational resources, both on the Property and on the lands abutting the Project.

64. The Project's proposed restoration and maintenance of the onsite structures and the fishpond would contribute to preserving the culture and history of the Westside community.

65. Petitioner has worked with the community and sought community input in developing the Project. Petitioner will continue to work with the Westside community to mitigate or resolve any problems that may be created by the Project.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

66. Since the Property has been owned by the Robinson Family, the Property has never been used for commercial agriculture. The Robinson Family did use an approximately 3.5-acre area near the main house to raise fruits and vegetables for personal consumption. They also used other areas of the Property to raise livestock such as cattle, pigs, goats, chickens, and fish (in the fishpond). As recently as 2000, portions of the Property were used as pasturage for about 20 bulls. However, these animals have since been removed. Therefore, the development of the Project as a resort will have no impact on agricultural production on Kaua`i. Although the Property is designated "Agricultural" at various levels of State

and County land use designations, it has never supported agricultural use, except for the personal consumption of the family. The 3.5-acre "garden" will continue to be maintained, but the balance of the Property will not be used for agricultural activities.

67. The Gay & Robinson, Inc. ("G & R"), sugar plantation is the only remaining sugar plantation on the island of Kaua`i, and the additional income stream to be derived form the development of the Project is essential to subsidize the continuation of the G & R sugar plantation. Since 1994, G & R has invested in excess of $7 million in capital improvements for the sugar plantation operations. Despite having the highest yields of sugar in the world, sugar prices are at a twenty-year low.

Flora

68. Petitioner's consultant, Char & Associates, conducted a botanical survey of the Property in March 1999. The vegetation on the Property is dominated by introduced or alien plants. Portions of the Property have been used for employee housing, stables, corrals, pasturage, fruit orchards, and vegetable gardens. Today, the majority of the Property is covered by scrub vegetation, and has been used for grazing cattle over many decades. Wetland vegetation is found along the two streams (Mahaikona and A`akukui) which cross the Property.

A marshy area exists on the western side of the Property. This area was created by the flow of sugar irrigation runoff and pump discharges from mauka areas via a man-made ditch. A narrow band of coastal vegetation is found behind the white sand beach on the makai side of the Property. The former residence, employee housing area, and other actively maintained areas near the northwest corner of the Property were not included in the botanical survey because they were not expected to harbor remnant native plant-dominated communities.

69. Scrub vegetation type is basically open to closed canopy kiawe (Prosopis pallida) scrub forest with shrubs such as lantana (Lantana camara), hairy abutilon (Abutilon grandifolium), koa haole (Leucaena leucocephala), and patches of Guinea grass (Panicum maximum) and buffelgrass (Cenchrus ciliaris). Much of the area covered by scrub vegetation and identified as having "Fill land" as a soil type, supports patches of grasses and mostly weedy annual species. Scattered about are large old trees of kiawe, 'opiuma (Pithecellobium dulce), and monkeypod (Samanea saman). Commonly observed plants include swollen fingergrass (Chloris barbata), buffelgrass, guinea grass, spiny amaranth (Amaranthus spinosus), lion's ear (Leonotis nepetifolia), 'aheahea (Chenopodium murale), coffee senna (Senna occidentalis), and cocklebur (Xanthium strumarium). Golden crown-beard (Verbesina encelioides), a member of the

daisy family with large yellow flowers and up to two feet tall, is locally abundant. Along the makai perimeter of the Property, there is dense brand of kiawe and 'opiuma trees. In this area, there are scattered groves of coconut (Cocos nucifera) and date (Phoenix sylvestris) palms, and small stands of milo trees (Thespesia populnea). Lantana and wild basil (Ocimum gratissimum) shrubs are locally common under the trees. In the area between the two streams, the scrub vegetation consists of rather dense stands of 'opiuma trees, 6 to 20 feet tall and two to three feet in diameter. Bermuda grass, or manienie (Cynodon dactylon), and buffelgrass form extensive patches on the sand substrate. Shrubs of 'ilima (Sida fallax), a native species with orange flowers, is also common. Along the western portion of the Property is an area with many surface stones. This area supports a closed canopy kiawe forest with Guinea grass understory. Along the mauka portion of the Property, the scrub vegetation, in places, is composed of koa haole thickets 12 to 15 feet tall, with a ground cover of dense Guinea grass clumps up to three feet tall. There are also areas with open kiawe and Guinea grass scrub. These areas often have a few large trees of mango (Mangifera indica), Java plum (Syzygium cumini), Chinese banyan (Ficus microcarpa), monkeypod, royal palm (Roystonea sp.), and many large thickets of bougainvillea. There is also a large patch of spineless or cochineal cactus (Opuntia

cochenillifera) near the dirt road that accesses the employee's housing area.

70. Wetland vegetation is located near the banks of Mahaikona and A`akukui streams which are well defined with no low lying overflow areas. The top of the stream banks support scrub vegetation. Along the bottom banks, next to the water's edge, there are mats of California grass (Brachiaria mutica) and shrubs of Indian Pluchea (Pluchea indica). Wetland vegetation is denser and more varied along A`akukui Stream, especially in the area behind the beach. There are dense mats of California grass and thickets of India Pluchea, as well as clumps of bulrush, or kaluha (Schoenoplectus californicus), up to 7 feet tall, umbrella plant (Cyperus alternifolius), and Napier grass (Pennisetum purpureum). Further upstream, honohono (Commelina diffusa) is locally common. A grove of coconut trees lines the perimeter of the fishpond. Along the north side of the pond, there are dense thickets of purple and rose-red (Bougainvillea glabra) bougainvillea. Bulrush, 3 to 12 feet tall, has filled in much of the pond. A few open water areas are found mostly along the north side of the pond. These patches of open water support California grass along their margins and floating aquatics such as water hyacinth (Eichornia crassipes) and duckweed (Lemna aequinoctialis). The drainage canal which runs from the pond to the beach is covered by dense floating mats of

water hyacinth and water lettuce (Pistia stratiotes). A low lying area in the western portion of the Project site where discharge water from the fields mauka of the highway has been directed, supports dense clumps of umbrella plant, 2 to 4 feet tall, and standing water 6 inches to one foot deep. Job's tears (Coix lachryma-jobi) and primrose willow, or kamole (Ludwigia octovalvis), are locally abundant. Along the northern half of the low lying area are low, open grassy patches of Bermuda grass with scattered plants of primrose willow, false daisy (Eclipta prostrata), green kyllinga (Kyllinga brevifolia), honohono, and jungle rice (Echinochloa colona). A few mats of the aquatic azolla fern (Azolla filiculoides) are found in areas with small pools of water. There are a few large trees in and around this lowlying area, some of which have died due to the water-logged soils and anaerobic conditions.

71. A narrow band of coastal vegetation is composed primarily of pohuehue, or beach morning glory vine (Ipomoea pes-caprae), Bermuda grass, and 'aki'aki, or beach dropseed grass (Sporobolus virginicus). Scattered are low, windswept clumps of koa haole shrubs and trees of kiawe, 'opiuma, and milo. Also, a long-spined algarroba, or mesquite species (Prosopis juliflora), has become established in the coastal vegetation. This sprawling large shrub to medium-sized tree has thick spines up to two inches long. Several large plants had numerous clusters

of pale yellowish brown pods. A number of saplings were observed inland of the coastal vegetation.

72. None of the plants inventoried on the Property is a threatened or endangered species, nor is any plant a species of concern. All of the plants identified on the Property can be found in similar environmental habitats throughout the Hawaiian Islands. In this context, there will be no significant impacts to native vegetative habitats resulting from development of the proposed Project. This includes the man-made marshy area on the Waimea side of the Property that has been created by allowing irrigation runoff water and filter discharges to collect on the ground. The water source which created this habitat will soon be eliminated when a mauka detention basin is completed. Once this water flow is discontinued, wetland vegetation is expected to die back and be replaced by scrub vegetation. Other areas of the Property will benefit from development because irrigation water will be made available that will be able to support more plant life. This will also help to prevent soil erosion caused by the wind. To the greatest extent possible, native plants will be used to landscape the Property. From a botanical perspective, the presence of large numbers of the long-spined mesquite species (Prosopis juliflora) on the coastal area of the Property are a primary concern. To date, the plants have only been known from O`ahu at Sand Island and vicinity. If not

eradicated, the plants could form large, impenetrable, spiny thickets in low land, dry habitats throughout Kaua`i.

73. Eradication of individual Prospis juliflora plants will be coordinated with the State Department of Agriculture.

Fauna

74. Petitioner's consultant, Philip Bruner, conducted an avifauna and feral mammal survey of the Property in March 1999. No native land birds were recorded during the survey. Given the location, elevation, and type of habitats available at the Property, the absence of native land birds was not unexpected. The short-eared Owl, or Pueo (Asio flammeus sandwichensis), forages in agricultural fields and pastures as well as in upland forested habitat and is fairly common on Kaua`i. Although this species was not recorded during the present survey, it could forage in the area. Migratory shorebirds winter in Hawai`i between the months of August through May. Some juveniles will stay over the summer months as well. Three species of migratory shorebirds were recorded during the survey. These were the Pacific Golden-Plover (Pluvialis fulva), the Ruddy Turnstone (Arenaria interpres), and the Wandering Tattler (Heteroscelus incanus). None of these species are listed as endangered or threatened. Six individuals of the endangered Common Moorhen (Gallinula chloropus) were

observed near open streams and along the edges of the fishpond and the man-made marsh habitat. A pair of Hawaiian Duck, or Koloa (Anas wyvilliana), was flushed from A`akukui Stream. Koloa are endangered but are still relatively common on Kaua`i. A total of four Black-crowned Night Herons (Nycticorax nycticorax) were observed. This species is the only native waterbird that is not endangered. A total of 17 species of exotic birds were recorded during the course of the field survey. The more common of these species include: the Red Junglefowl (Gallus gallus), the Spotted Dove (Streptopelia chinensis), the Zebra Dove (Geopelia striata), the Northern Cardinal (Cardinalis cardinalis), the Red-crested Cardinal (Paroaria coronata), and the House Finch (Carpodacus mexicanus). The endemic and endangered Hawaiian Hoary Bat (Lasiurus cinereus semotus) is frequently seen on Kaua`i. This species is known to roost solitarily in trees and forages for insect using echolocation. They use a variety of habitats, including native forest, ranchlands, ponds and bays, as well as urban areas. Three bats were observed foraging for flying insects offshore of the Property, and one bat was observed flying back and forth over the man-made marsh. Evidence presented was not sufficient for the Commission to determine whether the proposed project would have an impact on the bats. Several feral cats were seen on the Property, and feral dog and pig tracks were also

observed. Rats and mice undoubtedly occur on the Property but were not seen.

75. The Property has been significantly altered by introduced vegetation and ranching activities. Although there are several wetland type habitats on the Property, most are overgrown with emergent vegetation. This restricts their access to water birds. If these areas were opened up by removal of vegetation, they would provide better habitat for water birds. A complete removal of vegetation in the fishpond would not be attractive to native water birds because they require some cover (in the form of emergent vegetation) to avoid predators or as a place to retreat when disturbed. The marsh area on the Waimea side of the Property, created by the sugar irrigation runoff and pump discharges, will lose its source of water in the near future as a detention basin being built by G&R is completed mauka of Kaumuali`i Highway. This will cause the area to dry up and lose its wetland characteristics. However, the loss of this area will not be significant because of the presence of the fishpond and other habitats associated with the Mahaikona and A`akukui Streams.

76. Some vegetation will be retained in the fishpond, particularly the vegetation on the small island in the center of the fishpond. The advantage of focusing vegetation on the island would be that the island would provide cover and nesting

opportunities for some species that would be protected from cats and other predators.

Archaeological and Historic Resources

77. Petitioner's consultant, Cultural Surveys Hawaii, prepared an archaeological inventory survey for the Property. This report has been accepted by the SHPD. In addition, interviews with knowledgeable individuals were conducted for the purpose of identifying and evaluating historic properties in conjunction with a study on cultural impacts. Within the Property, six sites were identified and recorded with the SHPD. Three of these were single feature sites, and three were multiple feature sites.

78. Site #50-30-9-762 consists of a series of rock walls and a terrace located in the northwest section of the Property, situated in and around the plantation-era homes. Two of the walls line the main driveway. Another wall continues makai as the western Property boundary. There are several wall segments in the plantation camp area that partition house lots. The terrace is mauka of the houses in the camp area.

79. Site #50-30-9-763 is a large oval platform measuring 155 feet long, north to south, by 73 feet wide east to west. This feature consists of pahoehoe cobbles and boulders of varying diameter (2" to 3.2'). The surface of the platform is relatively even with five distinguishing characteristics: (1) a

ridge down the middle; (2) and (3) two paved depressions; (4) a mound; and (5) a square pit. Large boulders are found around the perimeter of the site with small boulders and cobbles found mainly on the upper surface. There are several kiawe trees growing within the site's perimeter and some deadfall trees over the surface. The configuration of the platform and the pattern of boulder placement suggests that this structure has clearly been modified or altered, or entirely constructed during the historic period as a mound of cleared rocks. Testimonies given by individuals familiar with the Property describe the platform as a clearing pile. However, it does possess some other characteristics that suggest portions of the rock platform may be of indigenous construction and use.

80. Site #50-30-9-764 is described as the main house complex and is composed of 14 separate structures, each identified as a feature of the site. They include the main house, the guest house, servants quarters, the carriage house, the saddle house, the plant house, and eight employee dwellings. This site is situated in the northern quadrant of the Property and is fenced, protecting the grounds from the cattle pasture which encompasses the rest of the Property. The grounds are maintained and several structures are in use today; others are in disrepair.

81. Site #50-30-9-765, the Kapalawai Fishpond, is a 6.5-acre inland fishpond. According to the testimony of Dr. Kikuchi, it was probably discovered and used by the maka`ainana sometime after 1100 A.D. The ali`i may have taken control of this pond by the 1500s. Its ownership passed to Victoria Kamamalu after the 1848 Mahele. It then passed to the Robinson Family in 1865. They have restricted access to the pond. It is both a historical site and a cultural resource, and is discussed in detail in the Cultural Resource section of these Findings of Fact.

82. Site #50-30-9-766 is a mortared stone and brick structure commonly referred to as a "Portuguese Oven." Immigrants from Portugal introduced this type of wood-fired outdoor oven to Hawai`i. This structure is clearly of historic origin and is in very good condition.

83. Site #50-30-9-792 consists of two features. The first feature is a subsurface cultural layer that contains the remains of prehistoric habitation and other activities. The layer contains traditional Hawaiian food remains, including mammal and fish bone and marine shell, charcoal from combustion features, and artifacts such as basalt flakes and volcanic glass. The site also contains numerous intrusive features that extend from the cultural layer into the underlying, culturally sterile, beach sand. These features are the result of Hawaiian

excavations for many purposes, including hearths, earth-ovens, and structural supports such as post holes. This feature was located and documented during the backhoe subsurface testing of the Property. The second feature contains what is most likely a prehistoric human burial and is associated with the cultural layer at the first feature mentioned hereinabove. Based on the general context of the burial (an unmarked burial in coastal sand deposits, with no apparent historic artifacts in association within what is most likely a prehistoric cultural deposit), it is more likely that the burial is pre-historic/early historic native Hawaiian. After observation and recordation, the trench was backfilled. Appropriate State and Historic Preservation officials (Burials Program and Kaua`i archaeologist) were notified of the burial find.

84. Most of the structural historic sites identified on the Property will be retained and efforts will be made to restore them. Buildings in this category include: the former Robinson Family residence, the former guest house, the former servants quarters (current offices for Robinson Family Partners), the former carriage house/garage, and the former plant house. The eight employees houses will continue to be used as housing for employees of the development or G&R, continuing the historical use of the structures. Alteration will be limited to general repairs and maintenance whenever

possible, with replacement construction occurring only when necessary when buildings cannot be rehabilitated. The structures being retained have been surveyed to determine their condition and identify required repairs. All repairs will be implemented to match original material and design to the greatest extent possible, so the exterior appearance of these buildings will remain intact.

85. The three other historic sites, the Portuguese Oven, the platform, and a series of rock walls and terrace will be preserved as-is and integrated into the site design of the Project.

86. The recently discovered cultural layer is recommended for preservation for future archaeological research. The preservation plan will outline the short-term and long-term preservation measures that will safeguard the feature from damage during Project construction and subsequent land use. Similarly, the human burial is recommended for preservation in place within the combination archaeological and burial preserve area. The preservation of the burial will require the preparation of a burial treatment plan. As a previously recorded burial site (so designated because it was found during inventory survey investigations), the mitigation and treatment of these skeletal remains fall under the jurisdiction of the Kaua`i Island Burial Council who must approve all mitigation

and/or treatment measures. The request for preservation in place must be presented to the Burial Council in the form of the burial treatment plan. The requirements for a burial treatment plan are clearly outlined in chapter 13-300, HAR, "Rules of Practice and Procedure Relating to Burial Sites and Human Remains." Both the preservation plan and the burial treatment plan will be written, approved by SHPD (preservation plan) and the Kaua`i Island Burial Council (burial treatment plan), and implemented before development of the Property can begin.

87. A mitigation plan will be prepared and implemented for all historic properties identified on the Property. This plan will include interim mitigation measures to protect historic properties during construction and development relating activities. In addition, a long-term preservation plan and interpretive plan will be prepared.

88. Subsurface testing results indicate that two sites or feature types will potentially be found during ground disturbance: human-burials and subsurface prehistoric cultural layers. These sites/feature types are much more likely to be found in the Property's sand deposits along the coast. Accordingly, there will be archaeological monitoring for all portions of the Property containing sand deposits. Before construction begins, a monitoring plan will be written, approved by SHPD, and implemented. The monitoring plan will include

provisions for the documentation of inadvertently discovered prehistoric cultural deposits. Documentation of features will include plotting their location on the overall Project map, profile drawings, descriptions of their stratigraphic context, descriptions of the feature's contents, and, if possible, samples for radiocarbon dating analysis. The monitoring plan will contain provisions for the analysis of these samples, if they are encountered. If available, this information would provide a better understanding of the prehistoric coastal occupation in the region.

Groundwater Resources/Hydrogeology

89. The fishpond found on the Property is spring fed. Although it is now almost half-filled with silt and is heavily overgrown by vegetation, there are at least two discrete springs that are identified by water quality and temperature contrasts. By these same indications, there are also other springs in the pond which are more difficult to specifically locate. One of the two identifiable springs is at the inland end of the pond. Its water is relatively warm (72.0°F), has a notably high silica concentration, and has a salinity as low as many sources of drinking water. This water is likely to be discharging from the Koloa formation, possibly at its seaward end. As this water moves across the pond, its salinity becomes slightly elevated and there is some dilution of its silica concentration. The

second identifiable spring is in a hydraulically separate arm of the pond that is closer to the shoreline. Water issuing from the bottom of this makai portion of the pond is much colder (67.5°F), has only about half the silica concentration, and is lower in nitrogen and phosphorus than the first spring. The temperature and silica differences suggest that the two identifiable springs are discharging from different aquifiers. Water from the makai spring may be derived from the older Makaweli volcanics at depth and its nutrient levels may be altered by passage through the coastal sediments into the pond. Based on the analysis of three recorded levels of water variation in the pond, there is a continuous mauka-makai movement of water through the pond. The discharge rate for this movement is estimated to be about 1.8 million gallons per day ("MGD"). These measurements approximate the net discharge rate of springs that feed the larger portion of the pond. This flow combines with spring flow in the makai portion of the pond and discharges through a beach berm at the seaward end of the makai pond. Despite the significant magnitude of this flow rate, no leakage through the berm is visible or detectable as a change in nearshore salinity, even at low tide.

90. The current state of the fishpond is characterized by siltation and increased vegetation that covers most open water. Although there is approximately 1.8 MGD of

water flowing through the fishpond on a daily basis, many areas of the fishpond suffer stagnation. The implementation of the Project will remove most of the silt and vegetation during restoration and may include drawing between 360,000 gallons per day ("gpd") and 660,000 gpd for onsite irrigation. There would be a beneficial impact associated with drawing water for irrigation use in the form of better overall water quality within the fishpond. Increased withdrawal would result in increased turnover (decreased residence time), with a resultant decrease in the presence of algae and phytoplankton. As a result, turbidity would be reduced. The water level in the fishpond could drop slightly with increased withdrawal but would ultimately reach equilibrium balancing input and throughput. This withdrawal will be supervised by the pond management committee (See C of L 20(b)).

Recreational Resources

91. The West Kaua`i community includes some of the most diverse and spectacular recreation resources in Hawai`i. There are a number of federal, state, and county facilities that offer Kaua`i residents and visitors the opportunity to boat, fish, hike, swim, surf, picnic, camp, snorkel, and otherwise enjoy the outdoors. These facilities include:

Federal Facilities	State Facilities	County Facilities
Nohili Point	Polihale State Park	Salt Pond Beach Park
Kinikini	Waimea Canyon State Park	Lucy Wright Beach Park
Major's Bay	Koke`e State Park	Kekaha Beach Park
	Na Pali Coast State Park	Hanapepe Beach Park
	Port Allen Small Boat Harbor	
	Kikiaola Small Boat Harbor	

92. The addition of about 365 persons per day (Project guests present on an average day) to the defacto population of the Waimea District will add to the demand on recreational resources. However, 365 people represent only a 3.9 percent increase above the 1995 resident population of 9,220 for the Waimea District and a 0.5 percent increase to the defacto population of 69,900 for the entire island. Many of the recreational facilities in the Waimea District, including Waimea Canyon State Park, Koke`e State Park, Na Pali Coast State Park, and Polihale State Park attract users from all over Kaua`i, including visitors. In this context, the increased demand resulting from potential guests from the Project will be marginal. This is particularly evident when examining the area of many of these facilities. For example, Koke`e State Park and Waimea Canyon State Park are 4,345 acres and 1,866 acres in size, respectively, and offer numerous hiking, picnicking, hunting, and camping opportunities.

93. The Project will offer some recreational amenities to guests, thereby minimizing offsite impacts. These activities include tennis, swimming, beachcombing, and walking. Therefore, some recreational demand for guests of the Project

will be met on the Property. As a result, overall impact to any single offsite recreational resource is not expected to be significant. The Project will also provide onsite recreational opportunities for Kaua`i residents in the form of increased shoreline access to pursue activities such as fishing, diving, beachcombing, and picnicking, in addition to surfing. As a result, there will be a beneficial impact on recreational opportunities for Kaua`i residents.

94. At the present time, there is an informal agreement between the Robinson Family and the County of Kaua`i that allows beachgoers access to the shoreline on the southern side of the Project in the vicinity of A`akukui Stream. This access is primarily for surfers who want to surf at Pakalas. Other shoreline access in the region is provided at various federal, state, and county beach facilities from Hanapepe to Polihale.

95. Petitioner has proposed that the current access to the Pakalas surf break be improved. In addition, Petitioner has proposed various public facilities, including a parking area, restroom, shower, and a formal pedestrian footpath to the shoreline. Additional access will be available from parking areas within the Project where some parking spaces will be reserved for public use. In this context, access to the shoreline will be improved.

Scenic Resources

96. The physical ambience of West Kaua`i is characterized by its rural nature, dominated by open space and the presence of sugarcane. Sugarcane has been a dominant visual condition in West Kaua`i for many decades. Recently, other agricultural crops have been introduced in the region, most notably coffee on former sugar lands near `Ele`ele and corn in Makaweli. The dominant colors of the region are influenced by the bright blues of sky and ocean, the vibrant greens of agricultural fields, and the reds and browns of the soil. Development in the region is decidedly low-rise in nature and plantation-era in style, including the two main towns of Hanapepe and Waimea.

97. Driving along Kaumuali`i Highway in either direction, there are periodic views of the ocean and the mountains, depending on topography and vegetation immediately adjacent to the highway. The Project has approximately one mile of frontage along Kaumuali`i Highway. Views into the Project are transitory at the southern end of the Property near the bridge that spans the A`akukui Stream, and near a secondary dirt access road about a quarter-mile north of A`akukui Stream. At no time is the shoreline visible from the highway. Otherwise, views toward the Property are interrupted by dense, tall thickets of bougainvillea and other trees. After passing the

Property traveling in a northwesterly direction, vistas toward the ocean are restored as agricultural fields once again provide a clearer view of the shoreline areas.

98. The interior of the Project is not currently visible from Kaumuali`i Highway because of the dense vegetation on the mauka portion of the Property. Consequently, development of the Project will not be visible from the highway.

99. The existing entry drive into the Property will be formalized for the Project, thereby undergoing some modification, including the installation of a left-turn storage lane on the Waimea-bound side of Kaumuali`i Highway and a right-turn deceleration lane on the Hanapepe-bound side of the highway. In addition, a new exit drive for the Project will be created about 500 feet on the Hanapepe side of the entry drive. Appropriate signage and landscaping will be incorporated for both the entry and exit drives to the Project. These improvements will be kept in character with the region, and signage will be indirectly illuminated.

Cultural Resources

100. Petitioner's consultant, Cultural Surveys Hawaii, prepared a native Hawaiian traditional customs and practices impact assessment for the Project which has been reviewed by the SHPD. The purpose of the impact assessment was to consider the effect the proposed development may have on native Hawaiians as

it pertains to their traditions and customs which are protected by law under the Hawai`i State Constitution, Article XII, Section 7.

101. Notwithstanding

(a) The absence of any record of coastal trails and Land Commission awards of native tenant kuleana parcels within the Property's boundaries,

(b) Archeological evidence and oral histories which reflect very little Hawaiian activity at the Property other than in connection with the Kapalawai Fishpond, and suggest that Hawaiian settlements in the ahupua`a of Makaweli of which the Property is a part were concentrated further west and north of the Property in the Waimea-Makaweli-Mokuone river valleys where water and food were more abundant; however, there is evidence of prior human habitation by the maka`ainana in the pond area in the form of fire ash deposits carbon dated to approximately 1100 A.D.

Also, after the pond passed into the hands of the ali`i after 1500 A.D., maka`ainana were permitted some access to

use the Property for gathering and other cultural purposes prior to the Sinclair-Robinson Family's acquisition of the Property in 1865.

102. Exclusions in an 1857 lease between the guardians of Princess Victoria Kamamalu who was then the owner and a group of 120 people from Makaweli and Waimea suggest that at least as of then, native Hawaiians were allowed access to practice traditional gathering on the Property and in the waters offshore from the Property. The 1857 lease expressly exempted as kapu (protected/tabooed) the orange trees at Waikea, the large trees of Maha'iha'i, the fort, the Po'alima taro fields, the small and large ponds in Kekupua, the kapu fish ('o'opu), and firewood - if it was for sale for personal and monetary gain. Presumably, any other resource, including firewood, pili grass for thatching, hau for cordage, plants for medicinal use, pond harvesting, and marine resources in the offshore waters not subject to a specific kapu, could be gathered, as long as the resource was gathered for personal use and not sold.

103. Any gathering or other traditional or customary uses to which the Property may have been put by native Hawaiians prior to the Sinclair-Robinson Family's acquisition of the Property 135+ years ago appears to have been discontinued when the Property was purchased by Mrs. Sinclair in 1865. There is also no evidence of traditional customs and practices presently

being exercised on the Property. This reflects the geographic location of the parcel, as well as the nature of the land tenure. The Property is located on the flat pasture lands of Makaweli near the coast. There is no abundant source of surface water other than the fishpond. Because the Property was used by the Sinclair-Robinson Family as a ranch, farm and dairy, and because the family preferred complete privacy regarding all of their lands, it was not possible for outsiders to go onto the Property unless they had been invited or had received permission to do so.

104. In addition to being a historical site, the Kapalawai Fishpond is one of the Property's cultural resources. The fishpond predates the Sinclair-Robinson Family's acquisition of the Property from Princess Kamamalu. It was built and maintained for fish farming and to provide a home and watery realm for a legendary mo`o wahine that was known to sit on a pohaku (rock) near the pond's edge. Traditionally, mo`o were revered and worshipped. The presence of a mo`o in a pond contributed to the productivity of the pond, as well as to the health and welfare of the people in the pond's vicinity.

105. The 6.5-acre fishpond is fed by underground springs. It is a pu`uone type inland fishpond. Pu`uone ponds are a very common type of pond in the coastal zone of the major islands in the Hawaiian chain. On Kaua`i, this is the type of

pond most frequently used as a fishpond. Pu`uone ponds are created by the formation of a barrier sand berm that isolates the pond from the sea. Most have freshwater spring sources, a feature which converts them into an almost freshwater pool termed lokowai.

106. The fishpond is surrounded by a perimeter wall constructed of pahoehoe cobbles and boulders up to 2.5 feet in diameter which has since been rendered discontinuous by cattle disturbances, vegetation covering it, and fallen trees. A 19 feet wide and 352 feet long wall of the same material transects the width of the pond at its makai end, dividing the pond into two unequal parts.

107. Over the years, a number of extensive modifications have been made to the pond. A gate at the southern end is made of concrete. At the mauka terminus of the pond, a corrugated metal pump house was built on a concrete slag to house a combustion engine pump attached to a 6-inch cast iron pipe. Water was pumped from the pond for use on the rest of the Property.

108. Because of large deposits of accumulated silt and dense concentrations of vegetation throughout, the pond is presently incapable of supporting the fish farming purpose for which it was apparently built. The pohaku associated with the pond's mo`o wahine legend also could not be found because of the

overgrowth of vegetation and the debris in and around the pond. Nevertheless, the fishpond at Kapalawai is pristine and can be revitalized.

109. Petitioner has made a commitment to the community and the Sinclair-Robinson Family to fully restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond. The fishpond will be restored to an appearance similar to that of the late 19th century and the first half of the 20th century, for the life of the proposed Project. The fishpond's restoration will proceed generally as Dr. Kikuchi described. Consistent with traditional and cultural practices, the whole pond on the periphery should be cleaned. Then the stone lining around the whole pond should be restored and the makaha should be cleaned. The bulrush should be cut back, leaving some areas as habitat for native birds. Small sections, about 5 to 10 feet at a time, should be cleaned and the rubbish should be taken out, dried, and composted, later to be mixed with the sandy soil to allow planting of trees. There should be no burning and the slow process of cleaning the wall and cleaning the pond 10 feet at a time will allow the flow of fresh water to flush out the portion that is being cleaned.

110. Once the fishpond is physically restored, it will be stocked with fish. Since the fishpond is located inland, fish stock such as mullet would have to be cultivated by

constantly bringing juvenile mullet from sources such as other ponds or rivers. Mullet do not spawn in a fishpond. Papio, barracuda, eels and other predator fish, which traditionally inhabit fishponds like Kapalawai Fishpond, must also be controlled.

111. Petitioner is committed to maintaining and operating the restored Kapalawai Fishpond as a historical and cultural resource consistent with the traditional processes Dr. Kikuchi described, and other experts and literature in the field recommend. Petitioner's maintenance and operation plan for the fishpond will include procedures for sharing fish harvested from the pond. The plan will also include provisions to train a caretaker and others, preferably from Kaua`i's West Side, to maintain and operate the restored fishpond.

112. Petitioner has also committed to allowing the public access to the Kapalawai Fishpond to observe the traditional and cultural restoration process that Dr. Kikuchi described and which Petitioner has committed to use to restore the pond. This will be the first time on Kaua`i where the process used to restore a fishpond will be based on traditional practices. When the fishpond at Kapalawai is restored, it will be the only fishpond on the entire island of Kaua`i open to the public.

Coastal/Aquatic Resources

113. Petitioner's consultant, Marine Research Consultants, conducted a marine assessment of the nearshore area fronting the Project. A narrow sand beach stretches along the length of the Property boundary for about 5,200 feet. The nearshore marine environment along the southern end of the Property from near A`akukui Stream to the Makaweli Landing consists of a shallow, gently sloping plain of fine-grained red mud. Near the shoreline, the mud grades into a mix of mud and sand. The mud zone extends uninterrupted form near the shoreline to a distance of approximately 1 kilometer offshore. Within this area, there is virtually no exposed solid bottom, and as such, there is no reef development. It is apparent that Hoanuanu Bay receives (or has received) substantial quantities of terrigenous sediment during periods of runoff. It also appears that the typography (shape) of the bay is such that sediments are retained within the coastal indentation, and are not rapidly flushed from the area. As a result, there is a substantial permanent depositional zone of mud within the bight of Hoanuanu Bay at the southern end of the Property. The nearshore coastal waters fronting the Property are designated Class "A" waters. It is the objective of Class A waters that their use for recreational purposes and aesthetic enjoyment be protected by the State Department of Health ("DOH").

114. From the point where A`akukui Stream crosses the shoreline northward, the nearshore area is made up of two zones: an inner reef flat and an outer reef front that are separated by a shallow reef crest. Long-period swells become breaking waves on reaching the reef crest. Bottom composition of the reef flat consists of muddy sand and coral rubble; maximum water depth on the reef flat is approximately 2 meters ("m"). Because of the shallow depth, high terrigenous sediment content, and vigorous water motion from wave energy, water clarity on the reef flat is highly turbid. However, living colonies of corals were observed on the roof flat, predominately lobate hemispherical heads of Porites lobata and sturdy, branching colonies of Pocillopora meandrina.

115. Seaward of the reef crest, the bottom slopes gradually downward with distance offshore. The underwater physiographic structure in the nearshore zone consists of a platform of lithified reefal limestone. While areas of the platform are relatively flat, other regions are characterized by substantial vertical relief in the form of deep grooves and undercut ledges in what appears to be ancient coral reef platform. Vertical relief of the reef structures is generally not more than 1 m. Grooves and channels in the reef platform are generally filled with coarse sand and rubble. The surfaces of the reef platforms are heavily pitted, probably as a result

of bioerosion, resulting in an extremely friable (breakable) upper surface. A ubiquitous feature of the reef platform is a veneer of red mud sediment that appears to be bound to the limestone surface within a short layer of algal turf. The thickness of the muddy layer decreases with distance northward and offshore. The predominant biota on the inner reef platform are flat encrustations of several species of stony corals and calcareous algae.

116. The entire area offshore of the proposed Project is exposed to long-period swells generated by storms in the north Pacific during the winter months and the south Pacific in the summer months. As a result of the physical forces associated with winter waves, the nearshore areas off the Property are subjected to extreme stress from wave impact and scouring of sediment from wave action. As in many locations in the Hawaiian Islands, the composition of coral reef communities is structured primarily in response to physical forces of breaking waves. In addition, the high loading and accumulation of terrigenous sediment in the areas offshore of the Property appear to be a major factor in affecting biotic composition of the reef communities.

117. The predominant taxon of macrobenthos (bottom-dwellers) throughout the reef off the Kapalawai area are Sclerctinian (reef-building) corals and benthic macroalgae.

Reef coral occurrence did not occur in the area off Mahaikona Stream owing to deposition of substantial reservoirs of red mud. To the north of the stream bed, the mud bottom decreased, grading into a reef platform composed of pitted limestone. On the reef platform, living coral abundance was relatively consistent along the northern portion of the Property. Coral abundance also peaked within a zone approximately 5-100 m seaward of the reef crest in the region of the high relief limestone platform. With distance seaward, bottom topography flattened to a relatively featureless platform with low coral abundance.

118. Results of qualitative line transects conducted in type typical reef zones provide an estimate of coral community structure. In total, eight species of "stony" corals were encountered on transects. Total coral cover was substantially higher on the shallower transects (30-32 percent) compared to the deeper transects (2-3 percent). The dominant species on the two north transects and the deep southern transect was Porites lobata, which accounted for about 37 percent of total coral cover. The other dominant species, especially on the shallow southern transect, was an encrusting coral identified as Leptoseris spp. This coral is generally not found in abundance in shallow water on Hawaiian reefs and is usually limited to deeper water. The anomalously high abundance

of the species is likely a result of the consistently high sediment loads in the nearshore waters. Other coral species encountered on transects included several forms of the genera Montipora (M. verrucosa and M. patula) and Pocillopora (P. meandrina and P. damicornis). The growth form of most of the corals that were present in the study area consisted of flat encrustations or low sturdy lobate structures. Branching and vertically plated species were observed primarily on the sides of channel cuts.

119. The other dominant group of macro invertebrates generally found on Hawaiian reefs are the sea urchins (Class Echinoidea). However, on the reefs surveyed off the Property, urchins were very rare. The only urchin that was observed was Echinometra matheai, which are small urchins that are generally found within interstitial spaces bored into the limestone substrata. Several Crown-of-thorns starfish (Acanthaster plancii) were observed on the reef. Nearby bleached skeletons of colonies of Pocillopora meandrina suggested that the starfish have been feeding on these corals. Numerous sponge were also observed under ledges and in interstitial spaces. Several spiny lobsters (Panulirus spp.) were also observed under ledges.

120. Frondose benthic algae were common throughout the nearshore region. In addition, encrusting red calcareous algae (Porolithon spp., Peysonellia rubra, Hydrolithon spp.) were

common on exposed limestone surfaces throughout the study area. Dominant species of frondose algae observed on the reef included the genera Dictyopteris, Dictyota, Sargassum, and Turbinaria, and the red alga, Amansia, Asparagopsis, Corallina, Laurencia, Liagora, Martensia, and Plocamium. All of these plants occurred commonly on the limestone platform.

121. In general, the reef fish community off the Property was limited in numbers of both species and individuals. However, reef fish community structure was largely determined by the topography and composition of the benthos. On the outer flat reef platform, fish abundance was substantially lower than on the inner zones characterized by high vertical relief which affords shelter to fish. The most abundant fish throughout the survey area was the blue-lined snapper (ta'ape, Lutjanus kasmira). Most of the other fish observed were juvenile fish belonging mostly to the families Pomacentridae (damselfish), Acanthuridae (surgeonfish), with representatives from the families Labridae (wrasses), Mullidae (goatfish) and Chaetodontidae (butterfly fish). The complex habitat created by the eroded limestone reef provided limited shelter for small fish. Overall, fish community structure off the Property is poor when compared to assemblages found in relatively undisturbed Hawaiian reef environments. The lack of an abundant fish community suggests that either the area has been subjected

to substantial amounts of fishing pressure or the environmental conditions (e.g., suspended and deposited terrigenous sediments) result in a sub-optimal setting for fish.

122. Three species of marine animals that occur in Hawaiian waters have been declared threatened or endangered by federal jurisdiction. The threatened green sea turtle (Chelonia mydas) occurs commonly throughout the island chain and is known to feed on selected species of macroalgae. The endangered hawksbill turtle (Eretmochelys imbricata) also occurs but is considered rare compared to the green turtle. Several green sea turtles were sighted on the surface and underwater during the surveys off the Property. Many of the turtles sighted underwater were either swimming slowly near the bottom or resting within crevices or under ledges in the reef. Populations of the endangered humpback whale (Megaptera novaeangliae) are known to winter in the Hawaiian Islands from December to April. Hawaiian monk seals (Monachus schauinslandi) also occur occasionally in waters off the high islands. No monk seals were observed during the surveys off the Property.

123. Because there is no plan for work on the shoreline or in the nearshore region, there is no potential for activities that might affect the health or behavior of turtles (or any other protected species). Potential changes in water quality that might occur as a result of construction would be

undetectable, and hence would not affect turtle behavior. The shoreline bordering the Property is sand, and it is possible that turtles could haul ashore. While it has not been documented that the area serves as a turtle nesting ground, such activities are potentially possible. The beach also presents the possibility as a haul out area for monk seals. Transplanted seals have been documented to frequent many areas in the high islands. As such, human intervention to endangered species populations has resulted in increasing the potential for interactions between humans and the endangered species. As a result, it appears that the Property has the same potential for monk seal habitation as any other beach locale on Kaua`i.

124. The marine environment off the Property appears to have been subjected to substantial sediment stresses for a sufficient period of time (many decades) to have influenced community structure. Such stresses are much more destructive than the small temporary changes that could result from construction of the proposed development activity. If some unexpected event related to development activities does occur, the resulting alterations to marine community structure would be reversible and recovery rapid once the stress factor is mitigated. Tolerance to such changes appears to already be part of the physiological range of the community.

125. In order to ensure that land use activities do not alter behavior of green sea turtles or monk seals that haul out, the Project lighting in areas near the shoreline will be designed so as not to illuminate the beach strand. In addition, employees of the Project and its guests will be educated about possible interaction with these animals and appropriate human behavior for that interaction. For employees, this information could be included in training sessions, materials, and handouts. For guests, information, in the form of brochures, could be placed in all cottages, and signage in strategic locations on the Property may also be appropriate.

ENVIRONMENTAL QUALITY

Noise

126. The existing noise environment of this coastal Property is influenced by the sounds of ocean waves and the wind rustling vegetation. In most locations on the Property, traffic noise from Kaumuali`i Highway is not discernible. The cottages are proposed to be set back from the highway at distances ranging from about 400 feet to about 2,500 feet.

127. Short-term impacts of the development of the Project will involve grubbing, grading, some excavation, and the construction of infrastructure, cottages, restaurants, and other accessory facilities. Actual noise profiles generated by these activities will depend on the construction methods employed

during each phase of the Project. Typical noise levels of construction equipment will range from less than 60 dBA for pumps and vibrators to almost 100 dBA for jack hammers and rock drills. Earthmoving equipment, such as bulldozers and diesel powered trucks, will probably be the loudest equipment used during construction. The closest sensitive receptor is several hundred feet from the nearest point of construction activity, and there is a heavy growth of vegetation separating the areas. Therefore, sound from construction operations will be greatly attenuated before reaching any nearby dwellings. In addition, agricultural activity in the vicinity already includes the operation of heavy equipment and trucks. Therefore, noise impacts attributable to the construction period are expected to be minimal and of a temporary nature.

128. Long-term operational period impacts of the development will include potential noise sources attributable to the operation of the Project and would involve the following activities: use of lawnmowers and other landscape maintenance tools; pumps associated with the wastewater treatment plant and irrigation systems; and arrival and departure of supply, guest, and employee vehicles. Typical A-weighted noise levels at a 50-foot distance for the landscape equipment range from 74 dBA for a lawnmower to 82 dBA for a chainsaw. The nearest noise sensitive areas would be residences located several hundred feet

away. Due to the distance of separation, these noises should not be objectionable. The pumps for the wastewater treatment plant and the irrigation system will be located within buildings, which will limit their impact. In addition, there are no sensitive receptors in the immediate vicinity. Therefore, no significant offsite noise impacts are anticipated related to onsite mechanical equipment.

129. In order to mitigate the impacts of noise, Petitioner proposes that all construction vehicles must meet Title II, Administrative Rules of the DOH, chapter 42, Vehicular Noise Control. In addition, all construction activities must meet the provisions of Title II, Administrative Rules of the DOH, chapter 46, Community Noise Control.

Air Quality

130. The existing regional and local climatology significantly affect the air quality of a given location. Wind, temperature, atmospheric turbulence, mixing height, and rainfall all influence air quality. Present air quality in the vicinity of the Property is affected by air pollutants from natural, vehicular, and agricultural sources. Natural sources of air pollution which may affect the area but cannot be quantified accurately include the ocean (sea spray), plants (aero-allergens), and wind blown dust. In the case of the Property, wind blown dust could originate from agricultural fields

adjacent (mauka and Waimea side) to the Property. This particular pollutant would be affected by seasonal variations in factors affecting soil cover and moisture content (temperature, rainfall, wind speed and direction, and harvest schedule). Wind blown dust could also originate from within the Property. Kaumuali`i Highway, which borders the Property, is the region's major arterial roadway and, as a result, is the source of exhaust from motor vehicles. Agricultural operations in the area also affect air quality with the operation of the sugar mill at Kaumakani, approximately one mile east of the Property.

131. Short-term impacts on air quality associated with the proposed Project will result from construction activity, including construction vehicle emissions and particulate emissions connected with clearing, grubbing, and other site preparation work, and construction equipment and workers traveling to and from the Property. Factors favoring good air quality in the vicinity of the Property include good exposure to tradewinds and ample open space. Moreover, vehicular traffic flow along the section of Kaumuali`i Highway fronting the Property is relatively smooth, further enhancing air quality. Factors contributing to less favorable air quality include low annual rainfall (about 21 inches), which creates dusty conditions, and good exposure to tradewinds.

132. Long-term operational impacts on air quality that could result from the operation of the Project are increased vehicle emissions due to increases in traffic volume and fugitive dust from disturbance of dry exposed soil. After construction of the resort is completed, use of the proposed facilities will result in increased motor vehicle traffic on nearby roadways (from about 6 percent to 20 percent, depending on day and time of day). This could potentially cause long-term impacts on ambient air quality in the Project vicinity. The use of electric-powered vehicles by the Project will reduce onsite emissions. Increases in vehicular emissions will probably not have a significant impact in the vicinity of the Project because traffic flow is smooth and normal wind patterns prevent the accumulation of emissions. In addition, the elimination of lead-based gasoline has eliminated this source of motor vehicle-created pollution.

133. In order to mitigate the short-term impacts on air quality during construction of the Project, compliance with State of Hawai`i Air Pollution Control Regulations (Title II, chapter 60.1, HAR,) will ensure reduction of fugitive dust related to construction activities. Reasonable precautions, or best management practices ("BMPs"), would include: use of water on exposed soil (twice daily, if necessary); covering all moving, openbody trucks transporting materials which may result

in fugitive dust; use of wind screens to prevent migration of fugitive dust, as appropriate; prompt removal of earth or other materials which have been temporarily stockpiled; and limiting the land area exposed by construction.

Water Quality

134. Petitioner's consultant, Marine Research Consultants, performed water sampling on various locations fronting the Property. Water quality constituents that were measured included the specific criteria designated for open coastal waters in chapter 11-54, Section 06 (Open Coastal Waters) of the State of Hawai`i, DOH Water Quality Standards. An assessment to determine compliance with DOH standards was also done.

135. Water quality is strongly influenced by terrigenous sediment in the nearshore ocean. This sediment appears to originate from runoff from upland drainage basins and maintains a long residence time within the shoreline fronting the Property. Hence, even if delivery of sediment is halted, it appears that the material presently on the bottom would remain in the system for an extended period of time. Water quality in the nearshore zone reflects high levels of suspended sediment that appears to be a consistent characteristic of the area regardless of season and weather.

136. A surface layer of low salinity, high nutrient groundwater occurs in the nearshore area as a result of an efflux of groundwater. However, owing to rapid mixing and the high level of suspended material in the nearshore zone, there is little response to the input of high nutrient water in terms of benthic algal growth. Plans for the Project specify usage of an onsite wastewater treatment system that will result in effluent (reclaimed water) for use as an irrigation source on the Property. As a result, none of the wastewater generated by the Project will be discharged directly to the ocean. It is anticipated that this method of wastewater disposal will have no impact on the marine environment for several reasons. In light of the observed substantial input of dissolved inorganic nutrients to the nearshore ocean as a result of existing groundwater fluxes that reflect current and past land uses, the small augmentation to groundwater from the proposed disposal of wastewater is likely to be undetectable or very small. In addition, the unrestricted circulation of the offshore zone by tidal and wind-driven currents, eddies, and wave action promotes rapid dilution of water exchange. While the residence time of deposited sediment appears relatively long, the residence time of a parcel of water fronting the development is probably on the order of hours to day, so long-term buildup of any dissolved constituent is unlikely.

137. While the planned Project may result in a temporary increase in exposed soil during the construction that could reach the ocean through runoff, it is likely that such an increase would be essentially undetectable when compared to the existing situation. The increased impervious surfaces that will result from the construction of roadways on the Property may actually reduce sediment delivery to the ocean as the roadways will replace lands otherwise subject to erosion.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

138. Petitioner's consultant, Wilbur Smith Associates, prepared a report analyzing traffic conditions in the region and the anticipated impacts associated with the Project and identifying any roadway improvements that may be needed because of the Project.

139. During construction of the Project, there will be an increase in the number of trucks and other construction vehicles, including employees, that will be entering and exiting the Property. Vehicles making left turns into the Property from Kaumuali`i Highway may cause traffic to temporarily back up behind them. This potential impact should be minimized because direction of travel will be counter to peak directional flow and the duration of disruption would be temporary for the construction period. In an effort to minimize traffic

disruptions during the morning and afternoon peak hours, the start and finish times for work crews during the construction period should be timed to avoid these periods. Likewise, delivery of materials and heavy equipment should also be timed to avoid morning and afternoon peak hours.

140. Personnel will be stationed at the exit points to the Property during periods of high volume of deliveries and arrival of heavy equipment to assist in the direction of traffic.

141. The Project is estimated to increase the peak hour volumes on Kaumuali`i Highway just to the east of the Property by 8 percent during the weekday peak hours and by 20 percent on a Saturday with special events at the Property. To the west, the Project traffic would add an estimated 6 percent increase to the weekday peak hour volumes and 18 percent to the Saturday peak hour volumes on Kaumuali`i Highway near the Property.

142. The left-turn movements into and out of the Project driveway connections to Kaumuali`i Highway are forecast to operate at very acceptable conditions for each of the peak hour periods. The vehicles turning left from the mauka-bound exit driveway would operate at Level of Service ("LOS") C during each period. The left-turn movement from westbound Kaumuali`i Highway would operate at LOS A with the forecast volumes. Based

on the forecast peak hour volumes and traffic conditions, STOP sign controls would be appropriate for the exit driveway.

143. Because of the vehicular speeds along this section of Kaumuali`i Highway, a left-turn lane will be provided for the vehicles waiting to turn left from westbound Kaumuali`i Highway into the Project entrance driveway. This would reduce the potential for accidents, as well as delays to through traffic. The length of the left-turn storage lane should be sufficient to accommodate at least 3 or 4 waiting vehicles, or a minimum of 100 feet in length. Separate left and right-turn lanes are recommended for the exit driveway at the intersection with Kaumuali`i Highway to minimize any delay to vehicles turning right from the driveway. A right-turn deceleration lane is recommended on eastbound Kaumuali`i Highway at the entrance driveway for the Project for safety purposes and to minimize delays to through traffic. The left-turn storage lane will be constructed as soon after final permit approvals as is practicable. This action will also mitigate stacking of vehicles making left turns into the Property during employee arrivals.

144. During the hearing for this docket, Petitioner indicated that discussions had taken place with representatives of the State Department of Transportation ("DOT") and the PD concerning facilities to support public access to the ocean in

the vicinity of A`akukui Stream. Included in these discussions was consideration of an additional driveway access to Kaumuali`i Highway for the public facilities near A`akukui Stream. Should this driveway access be included as part of the Project, appropriate improvements to Kaumuali`i Highway may be required by the DOT. The costs of such improvements would be assumed by Petitioner.

Water Service

145. Water service from the Kaua`i Department of Water ("DOW") is not available for the Project. DOW's Waimea system ends at the Waimea River, 0.5 miles west of the Project. Even if water transmission lines were extended to the Project, the DOW system does not have source capacity to serve the Project. DOW's system serving the Hanapepe area ends four miles to the east of the Project.

146. A dual, private potable/irrigation water system is proposed for the Project. Both systems will be privately developed and operated. The choice to develop a dual (potable and irrigation) water system will take advantage of the supply potential of the spring-fed fishpond. Drawing water from this pond will augment its natural turnover rate, improving its water clarity while providing irrigation supply. It also allows elements of the potable system to be downsized accordingly.

147. Based on use rates in accord with DOW standards, it is estimated the year-round average potable water use to be approximately 0.12 MGD. Peak seasonal use could be about 50 percent higher, or approximately 0.18 MGD.

148. Based on available data, irrigation application rates in the summertime may be as high as 10,200 gallons per acre per day. Year-round irrigation use for the Project is estimated to be 0.36 MGD. In the summer months, the rate could be as high as 0.66 MGD.

Wastewater Disposal

149. Petitioner's consultant, Wagner Engineering Services, prepared a civil engineering report which included a discussion of wastewater demands. The County of Kaua`i operates a wastewater treatment plant ("WWTP") in Waimea, about one mile from the Project. The service area for this WWTP stops at the Waimea River, about 0.5 miles from the Project. The design flow for this facility is 0.3 MGD. The WWTP is presently operating at capacity, and there are no plans to include the Project in its service area. As a result, a private WWTP will be constructed onsite to handle all wastewater generated by the proposed Project. The proposed wastewater collection system includes the following elements: 14,600 linear feet of gravity sewer main, 15,500 feet of sewer laterals, 4,200 linear feet of force main, 44 sewer manholes, 4 sewage pumping stations, and 1

wastewater treatment plant. Three of the pumping stations will be located in the makai portion of the Property in order to receive flows from the cottages and other proposed facilities in that area. These pumping stations will lift wastewater to a main pumping station, which will lift and transmit wastewater to the WWTP. Proper design, operation, and maintenance of the pumping stations will assist in controlling odor problems. In order to prepare for the possibility of unforeseen odor problems, the stations will be designed to accommodate the addition of odor scrubbers, biofilters, or other appropriate odor-inhibiting appurtenances.

150. The WWTP must also be capable of accommodating peak diurnal flows from the Project. According to the County of Kaua`i's Maximum Rate of Flow Chart, a peaking factor of 5.0 should be applied to the peak season flow of 0.1020 MGD for a peak flow of 0.51 MGD.

151. Estimates for wastewater flow must also include infiltration. A common limit for an acceptable level of infiltration in a sewer system is approximately 500 gpd per inch-mile of pipe. This results in an estimated infiltration rate of about 20,000 gpd, or 0.02 MGD. The WWTP must therefore be sized for an average flow of approximately 0.12 MGD and a peak flow of 0.53 MGD.

152. The WWTP produces a solid product (sludge or biosolids) and a liquid product (effluent) for disposal or reuse. The biosolids can be safely disposed at the County of Kaua`i's Kekaha Municipal Landfill, as the County does with the biosolids from its own wastewater treatment plants. The biosolids must pass a "Paint Filter Test" at the landfill to ensure that it is sufficiently dewatered prior to disposal. The biosolids can also be used in a small onsite composting operation. Combined with green waste generated from landscaping maintenance operations on the Project, compost could then be reused for the Project's landscaping.

153. Traditional options for disposal of effluent include ocean outfall, injection well, rapid infiltration and irrigation. The best possible use of the effluent (especially on the Westside of Kaua`i where weather is hot and dry and water is a precious resource) is to recycle it as irrigation water. Irrigation will be the method of choice at the Project.

154. The use of reclaimed water will be accomplished in adherence with the DOH's Guidelines for the Treatment and Use of Reclaimed Water. If the effluent is treated to the R-1 level, it may be used to spray irrigate the Project with few restrictions, whereas R-2 quality effluent could be used for drip irrigation.

Drainage

155. Petitioner's consultant, Wagner Engineering Services, prepared a civil engineering report for the Project, which included the examination of drainage conditions for the Property to demonstrate that three offsite drainage basins are tributary to the Property. According to the United States Geological Survey Map, Hanapepe Quadrangle, they are, from west to east, the Nonopahu Ridge drainage basin (830 acres), the Waipao Valley drainage basis (4,617 acres), and the A`akukui Valley drainage basin (3,107 acres). All three drainage courses drain under Kaumuali`i Highway to the Property.

Nonopahu Ridge Drainage Basin. During the 100-year storm event, the Nonopahu Ridge drainage basin generates a peak flow of 1,578 cubic feet per second ("cfs"). Storm water from the drainage basin sheetflows makai and is also collected in a man-made ditch found in the G&R Akia field system. Two existing 36-inch culverts convey runoff under Kaumuali`i Highway and into a man-made ditch on the western side of the Property. These culverts do not have the capacity to accommodate the 100-year storm event, so the highway will be overtopped during the 100-year event.

Waipao Valley Drainage Basin. During the 100-year storm event, the Waipao Valley drainage basin generates a peak flow of 5,491 cfs. The watercourse for the drainage basin is

conveyed under an overpass on Kaumuali`i Highway, and then into a well-defined rock wall reinforced drainage channel (Mahaikona Stream) all the way to the ocean. The existing watercourse is approximately 36 feet wide, three to four feet deep, and clear of flow obstructions. During the 100-year storm event, the watercourse will overtop its banks.

A`akukui Valley Drainage Basin. During the 100-year storm event, this drainage basin generates a peak flow of 3,794 cfs. The drainage basin watercourse (A`akukui Stream) is conveyed under an overpass on Kaumuali`i Highway all the way to the ocean. The existing watercourse is approximately twelve feet wide, two to three feet deep, and overgrown in places. During the 100-year storm event, it is predicted that the watercourse will overtop its existing banks.

156. Aside from the three existing watercourses which traverse the Property, the remainder of the Property slopes from the highway to the ocean at approximately 4 percent immediately makai of the highway to approximately 1 percent at the shoreline. Sheet flow of the runoff to the ocean tends to minimize erosive effects on the Property. Peak flow runoff for a 100-year storm event is approximately 310 cfs, which comprises about 2.7 percent of the total 11,173 cfs generated within the tributary drainage basins (including the Property) that reach the Property. Makai of the highway, the ditch continues and

conveys runoff (the sugarcane irrigation filter discharge) to an area on the Property used as a settling basin by the plantation. G&R is presently constructing a new retention basin mauka of the highway within the Nonopahu Ridge drainage basin for the collection of irrigation filter discharge and storm water runoff. After settling, collection water will be pumped mauka for reuse. The retention basin will eliminate the irrigation discharge and most storm water runoff from the Nonopahu Ridge System from reaching the Property.

157. The most significant change to the topography of the Project involves the expansion of an existing drainage course on the Waimea side of the Property. This drainage course is a man-made ditch which stretches from the sugar fields above Kaumuali`i Highway, under the highway, and then makai on the Property whereupon it empties into the Property. The ditch primarily conveys overflow irrigation water and irrigation pump discharge. The proposed drainage plan requires that the existing drainage ditch be improved as a six-foot deep trapezoidal grass channel, with a bottom width of 30 feet and an overall top width of 54 feet, along a length of about 2,300 feet. The new channel will route runoff through the west portion of the site and outlet into a retention basin mauka of the shoreline, which will allow for sediment collection and controlled release. This grass channel will accommodate the

100-year storm with two feet of freeboard. In general, the overall topography of the Property will not be changed, and existing drainage courses will continue to be utilized. As a result, there will be no significant impacts to topography.

158. Drainage systems are proposed in certain areas to control storm water runoff for access roads and parking areas. Peak flow runoff for a 100-year storm event from the overall Property will increase from about 310 cfs in an undeveloped condition to about 589 cfs in a developed condition. The increase of 279 cfs for the 100-year storm event is insignificant (2.5 percent) when compared to the total peak offsite flow of 10,863 cfs from the three mauka watersheds which are tributary to the Property. Therefore, impacts to near coastal water quality will not be significant.

159. A second drainway will consist of a storm drain system that will drain the western portion of the main parking lot. This storm drain system will empty into the above-referenced drainway. A third storm drain system for the eastern portion of the main parking lot, the roadway to the main restaurant, and its parking lot will outlet to an open lawn area downstream of the fishpond. The fourth storm drain system for the parking area and roadway on the eastern portion of the Property will outlet into Mahaikona Stream. The remainder of

the site shall be graded to approximate the existing condition to promote sheetflow runoff from the Property.

160. Proper and regular maintenance of the existing streambeds and the proposed grass-lined channel is essential to ensure maximum flood protection for the Project. Maintenance of A`akukui Stream, which is currently overgrown in some places, will significantly improve its capacity. Also, inclusion of BMPs in the design of the drainage system will reduce the potential for sediments and other pollutants to reach the ocean and onsite streams. These BMPs include: grass channels, filter strips, and bioretention areas. Other more direct options, such as sand filters, will also be considered. Selection of final BMPs, which could include a combination of those listed, will be made at the time of detailed Project design.

Solid Waste Disposal

161. The County of Kaua`i's only municipal solid waste landfill is located in Kekaha, approximately seven miles to the northwest. The capacity and lifespan of the landfill were severely shortened after receiving waste and debris generated by Hurricane Iniki in 1992. At present, the landfill has approximately 5-1/2 years of capacity remaining. Based upon other resorts in Hawai`i, a development the size of the Project can be expected to generate 70 to 90 cubic yards ("cy") of waste per week.

162. According to the provisions of Article 7 (Landfills) of the Kaua`i County Code, the following materials are not allowed at the Kekaha Landfill from non-residential sources: corrugated cardboard, ferrous and non-ferrous metal objects, loads with more than 20 percent green waste, and liquid waste. As a result, the Project will implement an aggressive recycling program to minimize its impact on the County's diminishing landfill capacity.

163. Garden Island Disposal is the only commercial solid waste hauler on Kaua`i. Garden Island Disposal has contracted with the County of Kaua`i to handle recycling of the above-referenced materials. The key to any successful recycling program is maintaining a clean, uncontaminated waste stream. The Project should be able to recycle about 15 percent of its solid waste. In addition, the following items may also be diverted from the landfill: (1) Plastic - currently only number 2 plastics are recyclable on Kaua`i. Though not a significant portion of the waste stream, recycling of plastic fits in well as part of a larger recycling program and may grow to include other types of plastic in the future; (2) Food waste - restaurant food waste can be composted onsite and reused in Project landscaping; and (3) Green waste - the volume of green waste generated from landscape maintenance can be significant. The green waste can be composted onsite or delivered to the

Kekaha Landfill where the County of Kaua`i already has a green waste program in operation, provided the volume of green waste does not exceed 20 percent of any individual load.

164. Liquid wastes (other than wastewater) will be collected by a vendor and shipped off-island for recycling. In addition, the County of Kaua`i is currently evaluating proposals from private entities to handle large portions of the island's solid waste to avoid its placement in landfills.

Schools

165. The approximate number of individuals anticipated to move to Kaua`i from other islands due to employment opportunities created by the Project would be 14 dependent in-migrants for the construction phase and 10 dependent in-migrants for the operations phase. This factor, coupled together with Petitioner's commitment to seek employees from the Westside community and the island of Kaua`i, is not anticipated to have a significant impact on schools in the Westside community and the island of Kaua`i.

Police, Fire, and Emergency Services

166. The Waimea District (Hanapepe-Polihale/Koke`e) currently has one beat officer on patrol at any time. There are three nine-hour shifts (6 a.m. - 3 p.m., etc.), so there is some overlap between the patrol officers. One sergeant oversees four officers from Koloa to Polihale and provides backup to the beat

officers during the evening and late night shifts. During the day shift, the district commander takes care of administrative matters at the Waimea Substation and provides additional backup response to the beat officer and sergeant. Existing police manning and facilities are adequate to service current conditions. There are problems in the district with car break-ins in isolated areas. Increased traffic in the region could result in more traffic accidents. Having onsite security personnel would reduce impact to police services. In general, impacts to police services are not anticipated to be significant based on experience with other facilities in Koloa and Po`ipu, provided the Project provides onsite security.

167. Fire protection services are provided by Station 6 in Hanapepe and Station 7 in Waimea. Either or both stations would respond to structural fires on the Property. Only Station 7 would respond to brush fires unless additional backup was required. Each station has a 5-man crew. Response time from Waimea to the Project would be about 3 minutes; from Hanapepe, about 6 minutes. Petitioner will provide a private fire protection system consisting of storage tanks, lines, stand pipes, and access roads (to the cottages), so that existing fire protection equipment and manning could be sufficient to serve the Project.

168. Emergency services on Kaua`i are contracted by the State to American Medical Response. The Waimea unit serves the Property. Its service area runs from Polihale and Koke`e in the west to near Kalaheo in the east. It is an advanced life support unit with one paramedic and one emergency medical technician. The unit usually transports patients to Kaua`i Veterans Memorial Hospital, Waimea. Severe trauma and isolated orthopedic cases are transported to Wilcox Hospital in Lihu`e or to Honolulu. The Waimea unit responds to about 280 calls per year, or 31 calls per 1,000 population. This is the lowest incident rate on Kaua`i. The average response time of 10.5 minutes is considered excellent. If backup response is needed (e.g., the unit is already on a call), the Po`ipu unit will respond. The Fire Department co-responds on all calls. The Project would not require the addition of staff or equipment to the Waimea unit.

Electricity, Telephone, and Cable Services

169. Electric, telephone, and cable television service from Kauai Electric, GTE Hawaiian Tel, and Garden Isle Telecommunications, respectively, are readily available from overhead lines on Kaumuali`i Highway. Utility services will be brought underground from one or more of the several utility poles fronting the Property on Kaumuali`i Highway and looped through the Project to serve the various buildings within the

Project. High voltage primary electric service will be extended to several points within the Property and transformed for service to all facilities. The individual cottages are to be serviced with power only and telephone and cable service will be extended to common areas such as the restaurants, tennis facilities, the administrative facilities, and other guest services.

COMMITMENT OF STATE FUNDS AND RESOURCES

170. State and county operating revenues from the Project are anticipated to exceed their operating expenditures by $760,000 and $60,000 (in 1998 dollars), respectively, in 2004. Petitioner will assume complete responsibility for funding and construction of onsite and offsite infrastructural improvements, including potable/non-potable water and wastewater.

CONFORMANCE TO THE URBAN DISTRICT STANDARDS

171. Pursuant to section 205-17(2), HRS, and section 15-15-77(b)(2), HAR, reclassification of the Property conforms with the Urban District standards set forth in section 15-15-18, HAR, as amended, for determining the boundaries of the Urban District:

a. The Property is in proximity to existing urban areas which contain "city-like" concentrations of people, structures, streets, and urban levels of service. The Property

is in proximity to and in between Waimea Town, Makaweli, and Pakala Camp, which were designated in the Urban District when the State Land Use Districts were first adopted.

b. The Property is in proximity to various centers of trading and employment, including Waimea Town, Hanapepe Town, and Kekaha Town.

c. The Property is, or, upon the completion of necessary offsite and onsite infrastructure, will be adequately serviced by parks, wastewater, solid waste disposal, schools, drainage, water, transportation systems, private utilities, and police, fire, and emergency services.

d. The Property consists of satisfactory topography, drainage, and soil conditions; is reasonably free from the danger of flood, tsunami, seismic hazards, and unstable soil conditions; and is not affected by other adverse environmental conditions that would render it unsuitable for the proposed Project.

e. The Property is in an appropriate area for new urban concentration and has been classified Resort in the Kaua`i County General Plan.

f. The Property is in proximity to an existing commercial and residential community and will not contribute toward unreasonable scattered spot urban development. Petitioner will develop or arrange for all additional

infrastructure required to service the proposed Project, and public infrastructure and support services will not be unreasonably burdened by or require unreasonable investment as a result of the proposed Project.

g. The Property does not consist of lands having a slope of 20 percent or more.

CONFORMANCE WITH GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI`I STATE PLAN; RELATIONSHIP WITH APPLICABLE PROPERTY GUIDELINES AND FUNCTIONAL PLANS

172. Pursuant to section 205-17(1), HRS, and section 15-15-77(b)(1), HAR, the reclassification of the Property generally conforms to the Hawai`i State Plan, chapter 226, HRS, as amended, with respect to the following objectives and policies:

a. Section 226-6 Objectives and policies for the economy-in general

Section 226-6(a)(2) A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

Section 226-6(b)(1) Expand Hawai`i's national and international marketing, communication, and organizational ties, to increase the State's capacity to adjust to and capitalize upon economic changes and opportunities occurring outside the State.

Section 226-6(b)(2) Promote Hawai`i as an attractive market for environmentally and socially sound investment activities that benefit Hawai`i's people.

Section 226-6(b)(3) Seek broader outlets for new or expanded Hawai`i business investments.

Section 226-6(b)(4) Expand existing markets and penetrate new markets for Hawai`i's products and services.

Section 226-6(b)(10) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected economic problems.

The proposed Project represents a type of visitor industry product that is unique in Hawai`i. The Project will emphasize the historic nature of the Property and will encourage guests to leave the Property to experience other cultural and recreational experiences on Kaua`i in general, and Kaua`i's Westside in particular. The Project will attract guests who presently comprise a segment of the travel market that is not highly recruited in Hawai`i, the eco-tourist. Eco-tourism is a term that can be applied to a wide variety of travelers, including adventure-travel, cultural-travel, and agricultural tourism. These travelers are more interested in understanding the intrinsic values that define communities (such as: history, music, art, and food) rather than being pre-occupied solely with the physical attributes of an area. Traditionally, tourism in Hawai`i has relied heavily on its natural beauty. In addition to broadening the market base for visitors to Hawai`i, the demographics of this type of tourist show them to be more educated, more affluent, and more environmentally aware. In addition, the operating philosophy of Petitioner is to create business opportunities for other entrepreneurs who are

interested in providing services to the Project. Frequently, these services are provided by the resort. Allowing local companies to provide these services allows more profits to remain in the local community.

b. Section 226-11 Objectives and policies for the physical environment - land-based, shoreline, and marine resources.

Section 226-11(a)(1) Prudent use of Hawai`i's land-based, shoreline, and marine resources.

Section 226-11(a)(2) Effective protection of Hawaii's unique and fragile environmental resources.

Section 226-11(b)(1) Exercise an overall conservation ethic in the use of Hawai`i's natural resources.

Section 226-11(b)(2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.

Section 226-11(b)(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

Section 226-11(b)(4) Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage.

Section 226-11(b)(8) Pursue compatible relationship among activities, facilities, and natural resources.

An existing historic fishpond will be protected and improved. The grounds of the Property, which have deteriorated and been neglected for decades, will be managed once again. To the greatest extent possible, the majority of the Property will be left in open space and natural landscaping. The emphasis on individual cottages will allow more landscaping to create a

natural feel to the Project. The restriction of roadways and the development of a pedestrian network will also limit environmental impact and foster pedestrian activities within the Property.

c. Section 226-12 Objective and policies for the physical environment - scenic, natural beauty, and historic resources.

Section 226-12(a) Enhancement of Hawai`i's scenic assets, natural beauty, and multi-cultural/historical resources.

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

Section 226-12(b)(3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes and other natural features.

Section 226-12(b)(5) Encourage the design of developments and activities that complement the natural beauty of the islands.

The preservation and enhancement of an existing historic fishpond on the Property is an integral element of the Project. In addition to the preservation of the fishpond, other historic resources play an important role in the overall character of the Project. The master plan for the Project includes retaining and restoring the former Robinson Family residence, renovating its interior and exterior, and using a significant portion of the building as a museum dedicated to the history of the Property and the Robinson Family. The overall design of the Project will enhance the aesthetic enjoyment of

the Property and will not interrupt views of the ocean. The Property is currently shielded from view along Kaumuali`i Highway by existing vegetation. Thus, due to the low-rise nature of the Project, future development of the Property will not be visible from the highway.

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

Section 226-13(a)(1) Maintenance and pursuit of improved quality in Hawai`i's land, air, and water resources.

Section 226-13(a)(2) Greater public awareness and appreciation of Hawai`i's environmental resources.

Section 226-13(b)(2) Promote the proper management of Hawai`i's land and water resources.

Section 226-13(b)(5) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.

Section 226-13(b)(6) Encourage design and construction practices that enhance the physical qualities of Hawai`i's communities.

Section 226-13(b)(8) Foster recognition of the importance and value of the land, air, and water resources to Hawai`i's people, their cultures and visitors.

The Project will respect the natural aesthetics of the Property, the region, and the island. This is evident with the emphasis the Project design places on pedestrian experience. The Project will allow for the retention of large trees. In terms of coastal views, the Property is not presently visible from Kaumuali`i Highway because of dense vegetation fronting the

highway. Recycling wastewater, clearing the fishpond and using some of its spring water for irrigation, limiting paved surfaces, and returning to active landscape management and irrigation are intended to restore sensitive, ongoing land stewardship to the Property. The built environment will recognize constraints of the natural environment with adherence to regulations pertaining to flood hazards. The use of boardwalks and other walkways will enhance the preservation of vegetation on the Property, minimizing the trampling of vegetation on pathways or the construction of impervious surfaces. Similarly, automobiles will be parked after registration, and the main mode of onsite transport by guests will be pedestrian.

e. Section 226-15 Objectives and policies for facility systems - solid and liquid waste.

Section 226-15(a)(1) Maintenance of basic public health and sanitation standards relating to treatment and disposal of solid and liquid wastes.

Section 226-15(b)(2) Promote re-use and recycling to reduce solid and liquid waste and employ a conservation ethic.

Re-use and recycling will be incorporated into the Project design and management. These include recycling wastewater, composting green waste, and crushing and recycling glass containers.

f. Section 226-16 Objective and policies for facility systems - water

Section 226-16(a) Provision of water to adequately accommodate domestic, agricultural, commercial, industrial, recreational, and other needs within resource capacities.

Section 226-16(b)(3) Reclaim and encourage the productive use of runoff water and wastewater discharges.

Wastewater from the resort facilities will be collected, treated using an onsite wastewater treatment plant, and reclaimed as irrigation water elsewhere on the Property.

173. Pursuant to section 205-17(1), HRS, and section 15-15-77(b)(1), HAR, the reclassification of the Property generally conforms to the Recreational and Tourism Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

174. The reclassification of the Property generally conforms to the Coastal Zone Management Program, chapter 205A, HRS, in the areas of recreational resources, historical/cultural resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, and marine resources.

CONFORMANCE WITH THE COUNTY OF KAUA`I GENERAL PLAN

175. The reclassification of the Property generally conforms with the County of Kaua`i General Plan. The General Plan designation of the Property was amended from Agricultural and Open to Resort on October 9, 2000.

INCREMENTAL DISTRICTING

176. The Project is intended to be completed in its entirety within three years from the Commission's decision without phasing.

RULING ON PROPOSED FINDINGS OF FACT

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

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusions 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, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, this Commission finds upon the clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 153.696 acres of land at Makaweli, island of Kaua`i, State of Hawai`i, identified as TMK 1-7-05: por. 1, from the State Land Use Agricultural District into the State Land Use

Urban District, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to section 205-16 and 205-17, HRS.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, which is the subject of this Docket No. A00-731 filed by Destination Villages Kauai, a limited liability company, consisting of approximately 153.696 acres of land at Makaweli, island of Kaua`i, State of Hawai`i, identified as Tax Map Key 1-7-05: por. 1, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Agricultural District to the State Land Use Urban District, and the State land use district boundaries are hereby amended accordingly, subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawai`i to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kaua`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 the Petitioner and the County of Kaua`i.

2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the

Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources.

3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua`i and/or the State of Hawai`i.

4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies.

5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources.

6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health.

7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai`i Department of Defense, Office of Civil Defense.

8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed Project, it reasonably appears that an endangered specie or sensitive area may be affected by a particular development activity.

9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division

(SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas.

11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health.

12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required.

13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting.

14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts.

16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumuali`i Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner.

17. Petitioner shall dedicate a public easement to the State of Hawai`i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access

to Kaumuali`i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four hour security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community.

18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner.

19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1246 (1995), the Supreme Court in Ka Pa'akai o Ka'aina v. Land Use Commission, 94 Haw. 31, 46, 7 P.3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily

and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(1) the identity and scope of 'valued cultural, historical, or natural resources' in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources - including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id.

20. There is some evidence of native Hawaiians' entry onto the Property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka`ainana activity appears to have occurred only with the permission of the parcel's ali`i owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to

restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.

(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy-equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the

pond's restoration. The pohaku on which the fishpond's legendary mo`o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.

(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provisions for a fishpond management entity composed of a representative from the

Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any disputes which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua`i community who are familiar with the area and have a love for the 'aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the

duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation.

21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with

the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area.

22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses, as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies.

23. 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 the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law.

24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of

Planning, and the County of Kaua`i 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.

25. 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.

26. Within seven days of the issuance of 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.

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

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 8th day of March 2001. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

LAND USE COMMISSION
STATE OF HAWAI`I

By _____
MERLE A. K. KELAI
Chairperson and Commissioner

By _____
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

By (opposed)
P. ROY CATALANI
Commissioner

By (excused)
BRUCE A. COPPA
Commissioner

By _____
PRAVIN DESAI
Commissioner

By _____
ISAAC FIESTA, JR.
Commissioner

By (opposed)
M. CASEY JARMAN
Commissioner

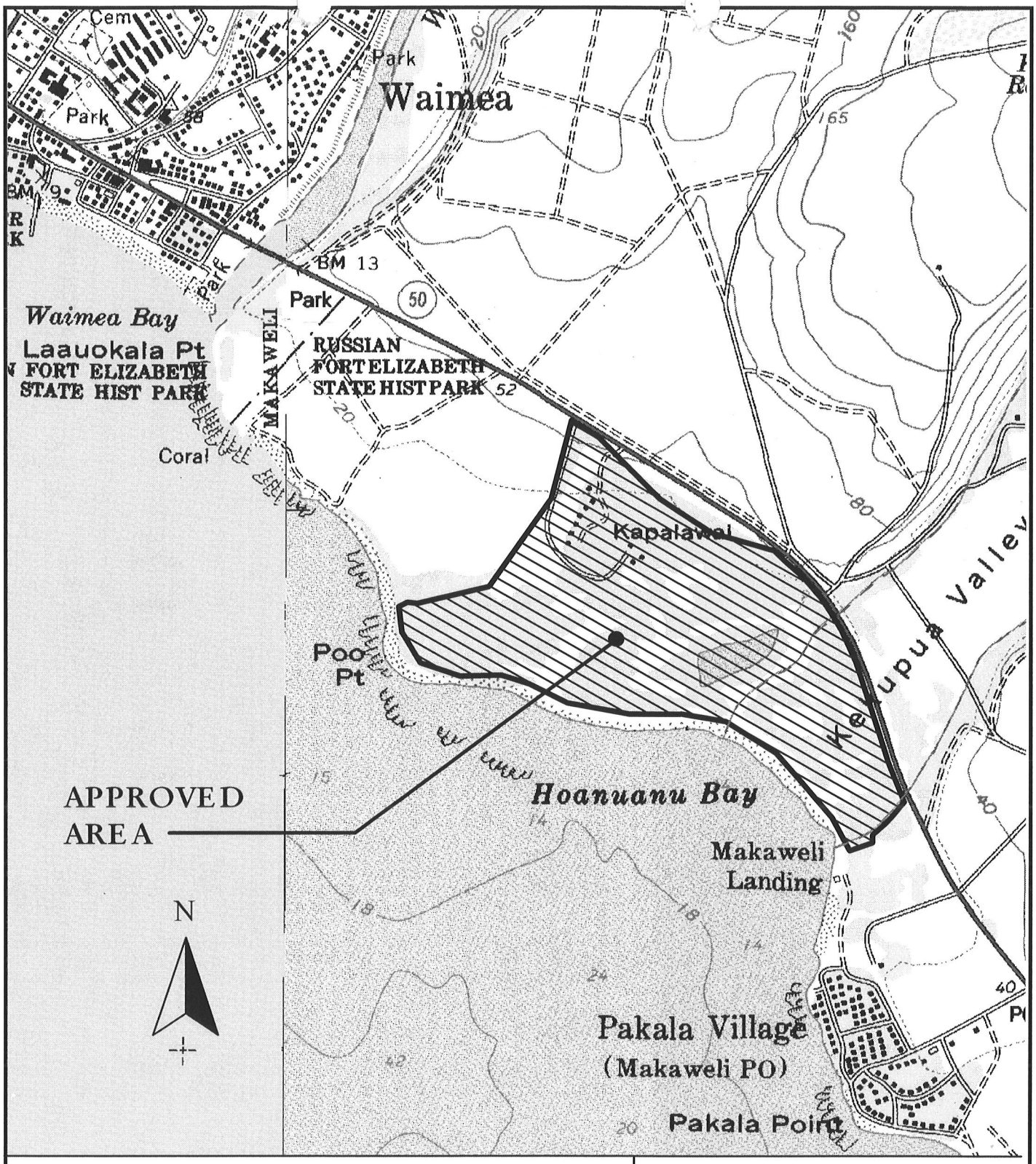
By
STANLEY ROEHRIG
Commissioner

By
PETER YUKIMURA
Commissioner

Filed and effective on
April 6, 2001

Certified by:

Acting Executive Officer

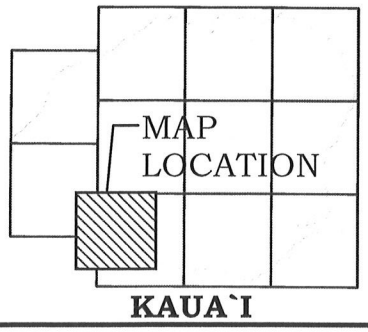


A00-731 DESTINATION VILLAGES KAUAI, a Limited Liability Company

LOCATION MAP

Tax Map Key: 1-7-05: por. 1
Makaweli, Island of Kaua`i,
State of Hawai`i

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In the Matter of the Petition of	)	DOCKET NO. A00-731
	)	
DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY	)	CERTIFICATE OF SERVICE
	)	
To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For Approximately 153.696 Acres Of Land At Makaweli, island of Kaua`i, State of Hawai`i, TMK 1-7-05: 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:

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DATED: Honolulu, Hawaii, this 6th day of April 2001.

Bert Saruwatari

BERT SARUWATARI
Acting Executive Officer