A00-731 - Destination Villages Kauai, LLC (Makaweli, Kauai) 2 of

DOCKET NO. A00-731/DESTINATION
VILLAGES KAUAI, LLC

SEE FILE 3 of

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

February 6, 2001

VIA CERTIFIED MAIL

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, Hawaii 96766

Mr. David W. Blane, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

John Chang, Esq.
Deputy Attorney General
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

Mr. Dee Crowell
Planning Director
Kauai County Planning Department
Suite 473, Building A
4444 Rice Street
Lihue, Hawaii 96766

Hartwell Blake, Esq.
County Attorney
Office of the County Attorney
County of Kauai
4444 Rice Street, #220
Lihue, Hawaii 96766

Dear Parties:

Subject: LUC Docket No. A00-731/Destination Villages Kauai, A Limited Liability Company

Pursuant to §15-15-82(b), Hawaii Administrative Rules (HAR), please find enclosed a copy of Commissioner Stanley Roehrig's proposed findings of fact and conclusions of law for the subject docket.

Pursuant to §15-15-82(c), HAR, each party may provide its position on the enclosed proposed findings of fact and conclusions of law within three (3) days of the date of service.

For your information, the action meeting on the subject docket has been scheduled for February 16, 2001

Should you have any questions, please feel free to call me at 587-3822.

Sincerely,

BERT SARUWATARI
Acting Executive Officer

BS:th

Enclosure

c: LUC (w/enclosure)

SENDER: *COMPLETE THIS SECTION*

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1. Article Addressed to:

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, HI 96766

RE: Proposed Findings of Fact, Conclusion of Law & Decision & Order
Proposed by: Stanley Roehrig

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C. Signature
X Scott Egu 2/16/01
☐ Agent
☐ Addressee

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Hartwell Blake, Esq.
County Attorney
County of Kauai
4444 Rice Street, #220
Lihue, HI 96766

by mailer) FEB 2001

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1. Article Addressed to:

Hartwell Blake, Esq.
County Attorney
County of Kauai
4444 Rice Street, #220
Lihue, HI 96766

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4. Restricted Delivery? *(Extra Fee)* ☐ Yes

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A00-731/Destination Villages Kauai

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

D/O

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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7000 0600 0027 7114 4092

A00-731/Destination Villages Kauai

Postage	$ 3.95
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 7.35

HONOLULU, HI DOWNTOWN STA
FEB 7 2001
USPS
Postmark Here

Mr. Dee Crowell, Director
Kauai County Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

PS Form 3800, February 2000 — See Reverse for Instructions

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Mr. Dee Crowell, Director
Kauai County Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

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C. Signature: ☐ Agent ☐ Addressee

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A00-731/Destination Villages Kauai

PS Form 3811, July 1999 — Domestic Return Receipt — 102595-00-M-0952

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	)	PROPOSED 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	)	Proposed By:
	)	
	)	STANLEY H. ROEHRIG Commissioner

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

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

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In the Matter of the Petition of DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY 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	)	DOCKET NO. A00-731 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER Proposed By: STANLEY H. ROEHRIG Commissioner

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

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. **[Petitioner's ("PET") Petition, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment (hereinafter collectively "PET")]** (STIP 1, as mod.)

2. Petitioner is a Hawai`i company, and its business address is 4439 Via Abrigada, Santa Barbara, California, 93110. **[PET Petition p. 1]** (LUC Finding)

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. **[OP Exhibit ("Ex") 1]** (STIP 2, as mod.)

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. **[PD Ex 1]** (STIP 3, as mod.)

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. (STIP 4, as mod.)

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. **[Transcript of Proceedings on July 20, 2000 ("TRI") pages ("pp.") 13 - 15]** (STIP 5, as mod.)

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

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. (STIP 6, as mod.)

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. **[TRI p. 9, line ("ln.") 25; TRI p. 10, ln. 8-11; TRI p. 10, ln. 12-16]** (STIP 7, as mod.)

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. (7/20/00 Minutes) (LUC Finding)

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

[TRI pp. 15 et seq., 36 et seq., 40-44, 44-47, 47 et seq. 55-56, 57-58, 58-59, 60-61, 61-62, 62-63, 63 et seq., 75-76, 77-78, 78 et seq., 80-82, 82-83, 83-85, 85-91, 91-93, 93 et seq., 98-100, 101-102, respectively] (STIP 8, as mod.)

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. (7/21/00 Minutes) (LUC Finding)

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

[Transcript of proceedings on July 22, 2000 ("TRII") TRII, pp. 4-7, 7-9, 9-11, 11-12, 12 et seq., 21-22, 22-24, 24-25, 25-26, 26 et seq., 35-37, respectively] (STIP 9, as mod.)

14. On July 21, 2000, the hearing on the Petition was continued to September 14, 2000, and September 15, 2000. (STIP 10, as mod.)

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. **[Transcript of proceedings on September 14, 2000 ("TRIII") p. 21, ln. 8-12; TRIII p. 21, ln. 13-16; TRIII p. 21, ln. 17-21]** (STIP 11, as mod.)

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. (9/14/00 Minutes) (LUC Finding)

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

[TRIII pp. 22-25, 25-29, 29-33, 33-36, 36-41, 41-43, 43-49, respectively] (STIP 12, as mod.)

18. On September 15, 2000, the hearing on the Petition was continued to November 2, 2000. (STIP 13)

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. **[Transcript of proceedings on November 2, 2000 ("TRV") p.2]** (STIP 14, as mod.)

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. (11/2/00 Minutes) (LUC Finding)

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

[TRV pp. 15 et seq., 30-40, 40-46, 46-51, respectively] (STIP 15, as mod.)

22. On November 2, 2000, at the conclusion of the testimony, the LUC closed the hearing. **[TRV p. 139, ln. 3-4]** (STIP 16)

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. **[PET Petition, p. 2; PET Ex 2, p. 2-2; PET Exs 4, 5, 6, 7; OP Ex 1, p. 2]** (STIP 17, as mod.)

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. **[PET Petition, p. 3; PET Ex 2, p. 2-1; OP Ex 1, p. 2]** (STIP 18, as mod.)

25. An ancient Hawaiian fishpond, approximately 6.5 acres in size, is located in the central portion of the Property. **[PET Petition, p. 6; PET Ex 2, pp. 2-7, 4-35, 4-36]** (STIP 23, as mod.)

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. **[PET Petition, p. 3; PET Ex 2, pp. 4-28 to 4-35; PET Letter dated 4/10/00]** (STIP 24, as mod.)

27. The Property is owned by Robinson Family Partners; Gay & Robinson, Inc.; and Bruce Robinson ("Owners"). **[PET Ex 2, pp. 1-1 and 1-2; PET Ex 9]** (STIP 25, as mod.)

28. Petitioner has an option agreement with the Owners to develop the Property and has been authorized by the Owners to submit this Petition. **[PET Ex 10, Ex 16, Ex17, Ex 19 and Ex 20]** (STIP 26, as mod.)

29. Kaumuali`i Highway is the main roadway serving the region. **[PET Ex 2, p. 2-1, p. 6-1; Transcript of Proceedings on September 15, 2000 ("TRIV") TRIV p. 49, ln. 13]** (STIP 27, as mod.)

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. **[PET Petition p. 9; PET Ex 2, pp. 4-1 and 4-2; Fig 10]** (STIP 28, as mod.)

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. **[PET Petition p. 9; PET Ex 2, p. 4-1]** (STIP 29, as mod.)

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. [PET Petition p. 7; PET Ex 2, pp. 4-5 and 4-7; PET Ex 2 Fig 11; PET Ex 28] (STIP 30, as mod.)

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. **[PET Petition p. 8; PET Ex 2, p. 4-8; PET Ex Fig 13; PET Ex 2 30; TRII p. 55, ln. 12-24]** (STIP 31)

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. **[PET Petition p. 8; PET Ex 2, p. 4-8; PET Ex 2 Fig 12; PET Ex 29; TRII p. 55, ln. 1-11]** (STIP 32, as mod.)

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. **[PET Ex 2, pp. 4-49 to 4-51; Fig 20; Appendix I, p. 1, Fig 1, PET Ex 32; TRII pp. 55-58]** (STIP 33, as mod.)

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. **[PET Petition pp. 5-6; PET Ex 2, pp. 2-4, 2-6, 2-7; Fig 5; PET Ex 11; PET Ex 22; PET Ex 23; PET Ex 38; TRII p. 64, ln. 5-24; PET Ex 54; TRV p. 54, ln. 19 to p. 106, ln. 11]** (STIP 34, as mod.)

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. **[PET Ex 52; TRII pp. 29-30; TRIII pp.113-114, pp. 127 et seq.; TRV pp. 62-63]** (STIP 35, as mod.)

38. The total cost of the Project is estimated to be $35 million to $45 million. **[PET Petition p. 6; PET Ex 2, pp. 2-7; TRV p. 77, ln. 16-25, p. 78, ln. 1-8]** (STIP 36, as mod.)

39. Petitioner estimates that once all permits are obtained, the development timetable for the entire Project will be approximately 12 to 18 months. **[PET Ex 2, pp. 2-7; TRV p.78, ln. 16-20]** (STIP 37, as mod.)

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. **[PET Petition p. 17; PET Ex 14; OP Ex 1, p. 4;TRV pp. 78-79]** (STIP 38, as mod.)

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. **[PET Petition p. 17; OP Ex 1, p. 4; TRV pp. 78-79]** (STIP 39, as mod.)

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. **[PET Petition p. 3; PET Ex 6]** (STIP 41, as mod.)

43. The County General Plan designation for the Property was amended from Agriculture and Open to Resort on October 9, 2000. **[PD Ex 1, p. 2; TRV p. 128, ln. 6-9]** (STIP 42)

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. **[PET Petition p. 17, PET Ex 27; OP Ex 1, p. 14; PD Ex 1, p. 2]** (STIP 43, as mod.)

45. A portion of the Property is located within the Special Management Area. **[PET Petition p. 13, PET Ex 2, pp. 3-10 to 3-17; PET Ex 25; OP Ex 1, p. 2]** (STIP 44)

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. **[PET Petition Ex 12, pp. 1-1 to 4-5; TR III p. 106, ln. 8, p. 108, ln. 7]** (STIP 45, as mod.)

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. **[PET Petition Ex 12, p. 1-1; TRIII p. 102, ln. 13, p. 103, ln. 1]** (STIP 46, as mod.)

48. The shoreline frontage offers approximately one mile of white, sandy beach with areas for swimming, fishing, long walks, and shell hunting. **[PET Petition Ex 12, p. 1-2; TRIII p. 106, ln. 2-5]** (STIP 47, as mod.)

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. **[PET Petition Ex 12, p. 1-4]** (STIP 48, as mod.)

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. **[PET Petition Ex 12, p. 1-5; TRIII p. 103, ln. 2 to p. 104, ln. 13]** (STIP 49, as mod.)

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. **[PET Petition Ex 12, pp. 1-6 to 1-7; TRIII p. 104, ln. 17- 25, p. 106, ln. 8 to p. 107, ln. 24]** (STIP 50, as mod.)

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. **[PET Ex 2, Appendix (hereinafter "App") F, p. 4; TRIII p. 108, ln. 25 to p. 112, ln. 16]** (STIP 51, as mod.)

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. **[PET Ex 2, App F, p. 5]** (STIP 52)

54. Petitioner estimates a minimum construction budget of $33 million, and perhaps as much as $40 - $45 million to develop the Project. **[PET Ex 2, App F, p. 6; TRV p. 77, ln. 16-25, p. 78, ln. 1-8]** (STIP 53, as mod.)

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. **[PET Ex 2, App F, p. 6; TRIII p. 109, ln. 5 to ln. 25]** (STIP 54, as mod.)

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. **[PET Ex 2, App F, p. 7; TRIII p. 110, ln. 1 to p. 111, ln. 6, p. 116, ln. 23 to p. 117, ln. 25]** (STIP 55, as mod.)

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. **[PET Ex 2, App F, pp. 7-8]** (STIP 56, as mod.)

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. **[PET Ex 2, App F, pp. 9-10]** (STIP 57, as mod.)

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. **[PET Ex 2, App F, p. 11]** (STIP 58)

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. **[PET Ex 2, App F, pp. 11-12; TRIII p. 111, ln. 7-17]** (STIP 59, as mod.)

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. **[PET Petition Ex 13, pp. 1-36; TRIV p. 57, ln. 1-6]** (STIP 60, as mod.)

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. **[PET Petition Ex 13, pp. 12-19; TRIV p. 49, ln. 2-12, p. 51, ln. 11-13, p. 52, ln. 3-25]** (STIP 61, as mod.)

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. **[PET Petition Ex 13, pp. 20-22; TRIV p. 53 ln. 16-24]** (STIP 62, as mod.)

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. **[PET Petition Ex 13, p. 19; TRIV p. 53, ln. 13-15]** (STIP 63, as mod.)

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. **[PET Petition Ex 13, pp. 27-29; TRIV p. 57, ln. 7-14]** (STIP 64, as mod.)

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. **[PET Ex 2, pp. 4-8 to 4-9; TRII p. 54, ln. 22 to p. 55, ln. 2]** (STIP 67, as mod.)

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. **[TRV p. 116, ln. 15-23; p. 121, ln. 11-22, p. 122, ln. 9-10, p. 124, ln. 8-13]** (STIP 68, as mod.)

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. **[PET Ex 2, p. 4-11; Ex 2, App A; TRIII p. 135, ln. 10 to p. 137, ln. 13]** (STIP 69, as mod.)

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. **[PET Ex 2, p. 4-12; PET Ex 2, App A; TRIII p. 135, ln. 18-23]** (STIP 70, as mod.)

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. **[PET Ex 2, p. 4-13; PET Ex 2, App A; TRIII p. 135, ln. 23 to p. 136, ln. 6]** (STIP 71, as mod.)

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. **[PET Ex 2, pp. 4-13 to 4-14; Ex 2, App A; TRIII p. 135, ln. 7-10, p. 136, ln. 26 to p. 138, ln. 17]** (STIP 72, as mod.)

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. **[PET Ex 2, p. 4-14; PET Ex 2, App A; TRIII p. 136, ln. 11 to p. 138, ln. 16]** (STIP 73, as mod.)

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

Agriculture. **[PET Ex 2, p. 4-15; PET Ex 2, App A; TRIII p. 136, ln. 19 to p. 137, ln. 1, p. 140, ln. 8-20]** (STIP 74, as mod.)

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. The Project should not adversely impact foraging opportunities for 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. **[PET Ex 2, pp. 4-15 to 4-16; PET Ex 2, App B; TRIII p. 70, ln. 9 to p. 84, ln. 23]** (STIP 75, as mod.)

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. **[PET Ex 2, pp. 4-16 to 4-17; PET Ex 2, App B; TRIII p. 70, ln. 9 to p. 84, ln. 23]** (STIP 76, as mod.)

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. **[PET Ex 2, p. 4-17; PET Ex 2, App B; TRIII p. 78, ln. 7-11, p. 79, ln. 11-15]** (STIP 77, as mod.)

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. **[PET Ex 2, pp. 4-26 to 4-48; PET Ex 2, App D; PET Ex 31; TRIV p. 70, ln. 23 to p. 71, ln. 1]** (STIP 78, as mod.)

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. **[PET Ex 2, p. 4-28; PET Ex 2, App D; TRIV p. 75, ln. 11-16]** (STIP 79, as mod.)

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. **[PET Ex 2, p. 4-28; PET Ex 2, App D; PET Ex 2, App G, pp. 41-42, p. 50, pp. 70-71; PET Ex 31; TRIV p. 72, ln. 22]** (STIP 80)

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. **[PET Ex 2, pp. 4-28 to 4-35; PET Ex 2, App D; App E; PET Ex 31; TRIV p. 74, ln. 21 to p. 75, ln. 10, pp. 26-43]** (STIP 81, as mod.)

81. Site #50-30-9-765 is a 6.5-acre inland fishpond. This site is a large enclosure constructed of pahoehoe cobbles and boulders up to 2.5 feet in diameter, which form a wall surrounding the fishpond. The wall is discontinuous. Some areas of the perimeter have been disturbed by cattle. Other spots have vegetation covering, or trees fallen over the perimeter wall. This fishpond is classified as a pu'uone type pond. A pu'uone pond is created by the formation of a barrier sand berm that isolates the pond from the sea. This is a very common type of pond in the coastal zone of the major island in the Hawaiian chain. On Kaua`i, this is the type of pond most frequently used as a fishpond. Most pu'uone ponds have freshwater spring sources, a feature which converts them into an almost freshwater pool termed lokowai. In addition to the wall constructed around the perimeter, there is a wall which transects the width of the pond at its makai end, essentially

splitting the pond into two unequal parts. This wall, which is approximately 19 feet across and 352 feet long, is constructed of the same materials as the perimeter wall. There have been a number of historic modifications to the pond. A gate at the southern end is made of concrete. At the mauka terminus of the pond, a pump house was built on a concrete slag. This structure is made from corrugated metal. Inside there is a combustion engine pump attached to a 6-inch cast iron pipe. Water was previously pumped from the pond for use on the rest of the Property. At the present time, the pond has large deposits of silt accumulated, and there are dense concentrations of vegetation throughout. Although the pond appears to have been used for fish farming in the past, it is not now in a state to support fish farming and exhibits extensive historic modification. **[PET Ex 2, pp. 4-35 to 4-36; PET Ex 2, App D; PET Ex 31; TR IV p. 72, ln. 2-21]** (STIP 82, as mod.)

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. **[PET Ex 2, p. 4-36; PET Ex 2, App D; PET Ex 31; TRIV p. 74, ln. 12-20]** (STIP 83, as mod.)

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. **[PET Ex 2, pp.**

4-36 to 4-37; PET Ex 2, App D; PET Ex 31; TRIV p. 71, ln. 8 to p. 72, ln. 1] (STIP 84, as mod.)

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. **[PET Ex 2, p. 4-44; PET Ex 2, App D; TRII p. 64, ln. 10-13; TRIV p. 31, ln. 5 to p. 33, ln. 4; p. 35, ln. 20 to p. 37, ln. 3]** (STIP 85, as mod.)

85. The fishpond will be cleared of exotic vegetation and restored to an appearance similar to that of the late 19th century and the first half of the 20th century. Some vegetation

will be retained. The exact method of pond clearance has not been determined, so impacts to the pond are difficult to determine at this time, and it is not known what type of heavy equipment will be required, if at all. If large heavy-equipment vehicles are needed, they could possibly impact the extant pond rock walls if the full weight of the vehicle is brought to bear on the walls. A mitigation plan will be prepared for the restoration of the fishpond. The mitigation plan will be reviewed by the SHPD prior to commencement of any such activity. Additionally, there is a pohaku (rock) in the fishpond associated with a mo'o wahine legend which could not be found due to vegetation and debris. Before restoration work on the fishpond begins, this pohaku will be located and preserved in place. **[PET Ex 2, p. 4-45; PET Ex 2, App D; TRIV p. 96, ln. 1-7]** (STIP 86, as mod.)

86. If the fishpond at Kapalawai is restored, this would be the only fishpond on the entire island of Kaua`i which would be open to the public. The fishpond at Kapalawai is pristine and it can be revitalized. It will be the first time on Kaua`i where the training for fishpond restoration will be based on traditional practices. **[TR IV, p. 121 ln. 12-15, p. 122 ln 2-17]** (STIP 87, as mod.)

87. The proposed restoration of the Kapalawai fishpond is described by Dr. Kikuchi as follows: First, 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. **[TR IV, p. 125 ln. 21-25, p. 126 ln. 9-25]** (STIP 88)

88. The public will have access to the Kapalawai fishpond to observe the traditional and cultural restoration that is taking place. Public access to other Hawaiian sites such as heiaus has been successful during the restoration process. **[TR IV, p. 128 ln. 2-17]** (STIP 89, as mod.)

89. The building and maintenance of a fishpond is labor intensive. However, once the fishpond is cleaned, it will take only one person to care for the fishpond. Since the Kapalawai fishpond is located inland, fish 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. The predator fish in the fishpond, such as

papio, barracuda, and eels, must also be controlled. **[TR IV, p. 129 ln. 2-12, p. 130 ln 1-15]** (STIP 90, as mod.)

90. The resource of the restored Kapalawai fishpond such as mullet, papio, barracuda, and eels would be harvested and an understanding should be reached between the owners/developers of the fishpond and the caretaker/cleaners as to how the harvest should be divided. In ancient times, the ali`i would order the caretaker to harvest mullet and the other fish such as the predator fish. The mullet were usually retained by the ali`i and the other fish were given to the caretaker/cleaners. **[TR V, p. 7 ln. 4-21]** (STIP 91, as mod.)

91. Petitioner is committed to establish a caretaker system for the Kapalawai fishpond building upon Dr. Kikuchi's expertise to train a caretaker and others, preferably from Kaua`i's west side. The recommendations and ultimate plan for the maintenance and operation of the fishpond would include Dr. Kikuchi's expertise as well as other literature or experts in the field. Petitioner intends to establish a plan relative to the sharing of the resources (fish) of the fishpond with the general public or native Hawaiians based upon the experience and knowledge of Dr. Kikuchi and others. Petitioner has made a commitment to the community and the Robinson Family to fully restore and maintain this Hawaiian Kapalawai fishpond for the

life of the proposed Project. **[TR V, p. 65 ln. 23-25, p. 66 ln. 1-25, p. 67 ln. 1-10]** (STIP 92, as mod.)

92. 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. **[PET Ex 2, p. 4-45; PET Ex 2, App D; TRIV p. 102, ln. 19-25, p. 75, ln. 22 to p. 76, ln. 15]** (STIP 93, as mod.)

93. 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. **[PET Ex 2, pp. 4-46 to 4-47; PET Ex 2, App D; TRIV p. 76, ln. 16-17; p. 77, ln. 6-13; p. 101, ln. 18-23; TRII p. 60, ln. 23 to p. 61, ln. 1; p. 61, ln. 23 to p. 62, ln. 11]** (STIP 94, as mod.)

94. 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. **[PET Ex 2, pp. 4-45 to 4-48; PET Ex 2, App D; TRIV p. 76, ln. 24 to p. 77, ln. 16]** (STIP 95, as mod.)

95. 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. **[PET Ex 2, pp. 4-47 to 4-48; PET Ex 2, App D]** (STIP 96, as mod.)

Groundwater Resources/Hydrogeology

96. 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. **[PET Petition p. 10; PET**

Ex 2, pp. 4-4 to 4-5; PET Ex 2, App J; TRIII p. 145, ln. 8 to p. 146, ln. 21] (STIP 103, as mod.)

97. 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 and will include drawing between 360,000 gallons per day ("gpd") and 660,000 gpd for onsite irrigation. None of these actions will have negative impacts on the hydrogeology of the fishpond. 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. **[PET Petition p. 10; PET Ex 2, p. 4-5; PET Ex 2, App J; TRIII p. 147, ln. 1-4, p. 151, ln. 4 to ln. 11]** (STIP 104, as mod.)

Recreational Resources

98. 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	

[PET Ex 2, p. 6-32] (STIP 106, as mod.)

99. 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. **[PET Ex 2, p. 6-33]** (STIP 107, as mod.)

100. 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. **[PET Ex 2, p. 6-33]** (STIP 108, as mod.)

101. 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. **[PET Ex 2, pp. 6-33 to 6-34]** (STIP 109, as mod.)

102. 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. **[PET Ex 2, p. 6-34; PET Ex 53; TRII p. 66, ln. 19 to p. 70, ln. 18]** (STIP 110, as mod.)

Scenic Resources

103. 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. **[PET Ex 2, p. 4-48]** (STIP 111, as mod.)

104. 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. **[PET Ex 2, pp. 4-48 to 4-49]** (STIP 112, as mod.)

105. 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. **[PET Ex 2, p. 4-49]** (STIP 113, as mod.)

106. 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. **[PET Ex 2, p. 4-49; TRII p. 65, ln. 10 to p. 66, ln. 18; PET Ex 2, App H]** (STIP 114, as mod.)

Cultural Resources

107. 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. **[PET Ex 2, p. 5-9; PET Ex 2, App G; TRIV p. 95, ln. 10-14]** (STIP 115, as mod.)

108. Native Hawaiians traditionally accessed coastal areas for gathering and subsistence and for trade. Though there is no record of coastal trails and no LCA record of native tenant kuleana parcels within the Property, it is likely that native Hawaiians did practice traditional gathering and use rights on the Property and the offshore waters prior to Eliza Sinclair's acquisition of the ahupua'a of Makaweli, which

included the Property. **[PET Ex 2, p. 5-10; PET Ex 2, App G; TRIV p. 103, ln. 14 to p. 105, ln. 22]** (STIP 116, as mod.)

109. An 1857 lease between the guardians of Victoria Kamamalu and a group of 120 people from Makaweli and Waimea indicates that the kapu (protected/tabooed) items exempted from the lease were 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. Thus, for example, firewood for personal use could be gathered, along with any other traditional resource items not mentioned, such as pili grass for thatching, hau for cordage, plants for medicinal use, and marine resources in the offshore waters. It is likely that any existing resources were utilized unless a specific kapu was placed on a particular item. **[PET Ex 2, pp. 5-10 to 5-11; PET Ex 2, App G; TRIV p. 110 ln. 5 -19; p. 106, ln. 20-24]** (STIP 117, as mod.)

110. There is one historic property associated with a cultural tradition - the legend of mo'o and a rock near the pond's edge where the mo'o wahine sits and can be seen. Very little is known about this particular mo'o who resides at Kekupua Pond. The pond is significant in that it houses the home and watery realm of the mo'o. Traditionally, mo'o were revered and worshipped, and shrines on which to lay offerings

were constructed. The presence of a mo'o in a pond contributes to the productivity of the pond, as well as to the health and welfare of the people. Though the stone cannot be seen due to fallen debris, it is likely that the stone exists and is still there. Prior to commencing restoration work on the pond, the exact location of the stone will be identified and be preserved in place. **[PET Ex 2, p. 5-11; PET Ex 2, App G; TRIV p. 116, ln. 19-23; p. 96, ln. 1-7]** (STIP 119, as mod.)

111. There is 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, which is fed by underground springs. **[PET Ex 2, pp. 5-11 to 5-12; PET Ex 2, App G; TRIV p. 96, ln. 15-19; p. 104, ln. 12-15; p. 107, ln. 4 to p. 108, ln. 15; p. 111, ln. 8-9]** (STIP 120, as mod.)

112. A document search did not disclose any kuleana (native tenant) claims within the Property, and oral interviews which were a component of the traditional customs and practices report did not indicate there were any Hawaiian settlements within the Property. **[PET Ex 2, p. 5-12; PET Ex 2, App G; TRIV p. 85, ln. 3-16]** (STIP 121, as mod.)

113. Archaeological evidence and research of Hawaiian trails within the ahupua'a support the settlement of a larger coastal and inland population utilizing the perennial streams of the Waimea-Makaweli-Mokuone river valleys. The historic record reflects very little Hawaiian activity at the Property, other than use of the fishpond. **[PET Ex 2, p. 5-12; PET Ex 2, App G; TRIV p. 85, ln. 3-11]** (STIP 122, as mod.)

114. The Sinclair-Robinson Family has owned the ahupua'a of Makaweli, which includes the Property, since 1865. Because the Property was utilized by the 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. Thus, if any traditional customs had been carried out at the Property prior to the family's arrival, these were most likely discontinued during the 135 years of the family's ownership. Anyone who might have been pursuing these customs and practices have long since passed away. However, pursuant to the PASH decision, this does not necessarily eliminate the existence of these historic, cultural rights. Petitioner will strive to ensure that Hawaiian traditional customs and practices will not be significantly affected by the proposed development. **[PET Ex 2, p. 5-12; PET Ex 2, App G; TRIV p. 106, ln. 4-11]** (STIP 123, as mod.)

Coastal/Aquatic Resources

115. 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"). **[PET Ex 2,**

p. 4-17; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21] (STIP 125, as mod.)

116. 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. **[PET Ex 2, p. 4-18; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21]** (STIP 126, as mod.)

117. 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. **[PET Ex 2, p. 4-18; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21]** (STIP 127, as mod.)

118. 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. **[PET Ex 2, p. 4-18; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21]** (STIP 128)

119. 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. **[PET Ex 2, pp. 4-21 to 4-22; PET Ex 2, App C]** (STIP 136, as mod.)

120. 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. **[PET Ex 2, p. 4-22; PET Ex 2, App C]** (STIP 137, as mod.)

121. 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. **[PET Ex 2, p. 4-22; PET Ex 2, App C]** (STIP 138)

122. 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. **[PET Ex 2, pp. 4-22 to 4-23; PET Ex 2, App C]** (STIP 139)

123. 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. **[PET Ex 2, p. 4-23; PET Ex 2, App C]** (STIP 140, as mod.)

124. 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. **[PET Ex 2, p. 4-23; PET Ex 2, App C; TRIII p. 90, ln. 9-18]** (STIP 141, as mod.)

125. 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. **[PET Ex 2, p. 4-25; PET Ex 2, App C]** (STIP 145, as mod.)

126. 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. **[PET Ex 2, pp. 4-25 to 4-26; PET Ex 2, App C; TRIII p. 90, ln. 19-20]** (STIP 146, as mod.)

127. 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. **[PET Ex 2, p. 4-26; PET Ex 2, App C]** (STIP 147, as mod.)

ENVIRONMENTAL QUALITY

Noise

128. 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. **[PET Ex 2, p. 4-53]** (STIP 148, as mod.)

129. 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. **[PET Ex 2, p. 4-54]** (STIP 149, as mod.)

130. 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. **[PET Ex 2, p. 4-54]** (STIP 150, as mod.)

131. 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. **[PET Ex 2, p. 4-55]** (STIP 151, as mod.)

Air Quality

132. 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. **[PET Ex 2, pp. 4-51 to 4-52]** (STIP 152, as mod.)

133. 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. **[PET Ex 2, p. 4-52]** (STIP 153, as mod.)

134. 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. **[PET Ex 2, pp. 4-52 to 4-53]** (STIP 154, as mod.)

135. 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. **[PET Ex 2, p. 4-53]** (STIP 155, as mod.)

Water Quality

136. 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. **[PET Ex 2, p. 4-19; PET Ex 2, App C; TRIII p. 88, ln. 24 to p. 89, ln. 11]** (STIP 129, as mod.)

137. 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. **[PET Ex 2, p. 4-24; PET Ex 2, App C; TRIII p. 91, ln. 10-17]** (STIP 142, as mod.)

138. 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. **[PET Ex 2, pp. 4-24 to 4-25; PET Ex 2, App C; TRIII p. 89, ln. 8-25]** (STIP 143, as mod.)

139. 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. **[PET Ex 2, p. 4-25; PET Ex 2, App C]** (STIP 144, as mod.)

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

140. 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. **[PET Ex 2, pp. 6-1 to 6-18; PET Ex 2, App H; TRIV p. 7, ln. 23 to p. 8, ln. 23]** (STIP 156, as mod.)

141. 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. **[PET Ex 2, pp. 6-11, 6-15 ; PET Ex 2, App H]** (STIP 157, as mod.)

142. 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. **[PET Ex 2, p. 6-15; PET Ex 2, App H]** (STIP 158, as mod.)

143. 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. **[PET Ex 2, p. 6-13; PET Ex 2, App H; TRIV p. 8, ln. 13-20]** (STIP 159, as mod.)

144. 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. **[PET Ex 2, p. 6-13; PET Ex 2, App H; TRIV p. 8, ln. 21-24]** (STIP 160, as mod.)

145. 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. **[PET Ex 2, pp. 6-15 to 6-16; PET Ex 2, App H; TRIV p. 8, ln. 25 to p. 9, ln. 9]** (STIP 161, as mod.)

146. 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. **[PET Ex 53; TRV p. 68, ln. 20-23; TRII p. 65, ln. 14 to p. 68, ln. 19; TRIV p. 16, ln. 2 to p. 17, ln. 24]** (STIP 162, as mod.)

Water Service

147. 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. **[PET Ex 2, p. 6-18; TRIII p. 142, ln. 5-12]** (STP 163, as mod.)

148. 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. **[PET Ex 2, p. 6-19; TRIII p. 142, ln. 18-24; TRII p. 76, ln. 25 to p. 77, ln. 21]** (STIP 164, as mod.)

149. 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. **[PET Ex 2, p. 6-19; TRII p. 77, ln. 16-18]** (STIP 165, as mod.)

150. 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. **[PET Ex 2, p. 6-19; TRIII p. 144, ln. 4-8; TRII p. 77, ln. 18-20]** (STIP 166)

Wastewater Disposal

151. 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. **[PET Ex 2, pp. 6-21 to 6-23; PET Ex 2, Fig 23; PET Ex 2, App I]** (STIP 167, as mod.)

152. 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. **[PET Ex 2, p. 6-25; PET Ex 2, App I]** (STIP 168, as mod.)

153. 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. **[PET Ex 2, p. 6-25; PET Ex 2, App I]** (STIP 169, as mod.)

154. 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. **[PET Ex 2, p. 6-25; PET Ex 2, App I]** (SITP 170, as mod.)

155. 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. **[PET Ex 2, p. 6-25; PET Ex 2, App I; TRII p. 77, ln. 11-15]** (STIP 171, as mod.)

156. 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. **[PET Ex 2, p. 6-25; PET Ex 2, App I]** (STIP 172, as mod.)

Drainage

157. 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. **[PET p. 8-9; PET Ex 2, p. 6-26; PET Ex 2, Fig 24; PET Ex 35; TRII p. 74, ln. 24 to p. 75, ln. 13; PET Ex 2, App I]** (STIP 97, as mod.)

158. 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. **[PET Petition p. 9; PET Ex 2, p. 6-28; PET Ex 2, App I; TRII p. 75, ln. 14-19]** (STIP 98, as mod.)

159. 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. **[PET Ex 2, p. 6-28; PET Ex 2, Fig 25; PET Ex 2, p. 4-3; PET Ex 36; TRII p. 75, ln. 20 to p. 76, ln. 1]** (STIP 99, as mod.)

160. 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. **[PET Ex 2, p. 6-28; PET Ex 2, App I]** (STIP 100, as mod.)

161. 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. **[PET Ex 2, p. 6-30; PET Ex 2, App I]** (STIP 101, as mod.)

162. 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. **[PET Ex 2, p. 6-30; PET Ex 2, App I]** (STIP 102, as mod.)

Solid Waste Disposal

163. 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. **[PET Ex 2, p. 6-30]** (STIP 173, as mod.)

164. 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. **[PET Ex 2, p. 6-31]** (STIP 174, as mod.)

165. 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. **[PET Ex 2, pp. 6-31 to 6-32]** (STIP 175, as mod.)

166. 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. **[PET Ex 2, p. 6-32]** (STIP 176, as mod.)

Schools

167. 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. **[PET Ex 2, p. 5-3; PET Ex 2, Section 12.0; TRIII p. 132, ln. 3 to p. 133, ln. 2]** (STIP 177, as mod.)

Police, Fire, and Emergency Services

168. 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. **[PET Ex 2, pp. 6-34 to 6-35]** (STIP 178, as mod.)

169. 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. **[PET Ex 2, p. 6-35]** (STIP 179, as mod.)

170. 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. **[PET Ex 2, p. 6-35]** (STIP 180, as mod.)

Electricity, Telephone, and Cable Services

171. 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. **[PET Ex 2, pp. 6-18 to 6-19; PET Ex 2, Fig 21;PET Ex 2, App. I]** (STIP 181, as mod.)

COMMITMENT OF STATE FUNDS AND RESOURCES

172. 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. **(PET Ex2, Sections 6.2 and 6.3, App F, pp. 11-12; TRIII p.111, ln. 7-17; TRII p. 64, ln. 18-24)** (LUC FINDING)

CONFORMANCE TO THE URBAN DISTRICT STANDARDS

173. 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. **[PET Ex 2, p. 2-1; TRII p. 47, ln. 2-19; PET Ex 21]**

b. The Property is in proximity to various centers of trading and employment, including Waimea Town, Hanapepe Town, and Kekaha Town. **[PET Ex 2, p. 21]**

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. **[PET Ex 2, Section 6.6, Section 6.3, Section 6.5, Section 5.1, Section 12.0, Section 6.4, Section 6.1, and Section 6.8]**

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. **[PET Ex 2, Section 4.11, Section 4.4; PET Ex 32; TRII p. 55, ln. 25 to p. 59, ln. 19]**

e. The Property is in an appropriate area for new urban concentration and has been classified Resort in the Kaua`i County General Plan. **[PET Ex 2, p. 2-1; TRII p. 47, ln. 8-19; PD Ex 5; TRV p. 128, ln. 6-8; PD Ex 1, p. 7]**

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. **[PET Ex 2, p. 2-1; PET Ex 32; TRII p. 47, ln. 8-19; PD Ex 1, p. 7; TRII p. 64, ln. 18-24, p. 76, ln. 25 to p. 77, ln. 3; PET Ex 2, Section 6.1; Section 6.2; Section 6.3; Section 6.4]**

g. The Property does not consist of lands having a slope of 20 percent or more. **[PET Ex 2, pp. 4-1 and 4-3, Figure 10; PET Ex 28]** (STIP 182, as mod.)

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

174. 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. **[PET Ex 2, pp. 3-1 to 3-2; PET Ex 12; TRIII p. 103, ln. 2 to p. 104, ln. 13; TRV p. 54, ln. 18 to p. 58, ln. 7, p. 61, ln. 3-15; TRIII p. 116, ln. 9-13, p. 117, ln. 2-25]**

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. **[PET Ex 2, pp. 3-2 to 3-3, Section 2.3, Fig 3, and p. 1-2; TRII p. 60, ln. 23 to p. 64, ln. 1-14; TRIV p. 125, ln. 21 to p. 127, ln. 6; TRV p. 57, ln. 11-20]**

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. **[PET Ex 2, pp. 3-3 to 3-4; Section 4.10; pp. 2-4, 2-6, 4-44 to 4-45; TRII p. 60, ln. 23 to p. 61, ln. 1, p. 64, ln. 10-13; TRV p. 57, ln. 22 to p. 58, ln. 22]**

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. **[PET Ex 2, pp. 3-4 to 3-5, Section 4.10, Section 6.3, Section 4.11, and Section 2.3]**

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. **[PET Ex 2, p. 3-5, Section 6.3 and Section 6.5]**

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. **[PET Ex 2, p. 3-5, Section 6.3]** (STIP 183, as mod.)

175. 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

176. 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. **[PET Ex 2, pp. 3-16 to 3-17, Section 4.7, Section 4.8, and Section 6.5; PET Ex 2, App B; TRII p. 64, ln. 14; TRIII p. 74, ln. 11-21, p. 77, ln. 25 to p. 78, ln. 14, p. 78, ln. 24 to p. 80, ln. 1]** (STIP 185, as mod.)

CONFORMANCE WITH THE COUNTY OF KAUA`I GENERAL PLAN

177. 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. **[PD Ex 1, p. 2; PET Ex 5; TRV p. 128, ln. 6-9]** (LUC Finding)

INCREMENTAL DISTRICTING

178. The Project is intended to be completed in its entirety within three years from the Commission's decision without phasing. **[PET. Ex 2 pp. 2-7; TRII p. 88, ln. 12-24; TRV p. 78, ln. 17-20]**

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.

PROPOSED 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. (STIP Cond. 1)

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. (STIP Cond. 2)

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. (STIP Cond. 3)

4. 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. (STIP Cond. 4)

5. 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. (STIP Cond. 5)

6. 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. (STIP Cond. 6)

7. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health. (STIP Cond. 7)

8. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai`i Department of Defense, Office of Civil Defense. (STIP Cond. 8)

9. 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 and obtain approval from the appropriate Federal and State agencies. (STIP Cond. 9)

10. 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. (STIP Cond. 10)

11. 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. (STIP Cond. 11)

12. 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. (STIP Cond. 12)

13. 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. (STIP Cond. 13)

14. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting. (STIP Cond. 14)

15. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses. (STIP Cond. 15)

16. 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. (STIP Cond. 17)

17. In order to ensure that this Project integrates into the community, the Petitioner shall address the future use of TMK 1-7-05:4 (65 acres). In the event the future use of this 65-acre parcel cannot be addressed, an understanding shall be established between the landowner and the County regarding the future of the 65-acre parcel prior to Zoning Amendment. (STIP Cond. 18)

18. 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. (STIP Cond. 19)

19. 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. (STIP Cond. 20, as mod.)

20. 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. (STIP Cond. 21)

21. The fishpond shall be subject to the Hawaiian customary and traditional rights as provided in Article XII, Section 7, of the Hawai`i State Constitution, and as discussed in Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission (hereinafter "PASH"), 79 Hawai`i 425, 903 P. 2d 1246, (1995), certiorari denied, 517, U.S. 1163, 116 S. Ct. 1559, 134 L. Ed 2d 660 (1996). Thus, the pond stewardship shall reflect recognition of these PASH rights balanced with an equitable policy of ownership by Petitioner in the restoration, utilization and management of the pond as a natural resource,

community resource and tourist destination asset. To this end, there shall be management of the resource balanced equally between the Hawaiian community's PASH rights, as defined in the PASH decision, and the Project management's rights in the development of their property. In the absence of any better plan that the Petitioner and the Hawaiian community shall agree on regarding the management of the premises, there shall be a management entity composed of a representative from the Petitioner, one from the West Kaua`i Hawaiian community, and if they deem it necessary, a selection of a third by the two of them. It is the intent that as far as possible, the Commission would like to see the Petitioner's management personnel on the pond selected from individuals living in the West Kaua`i community who are familiar with the area and have a love for the 'aina. The management shall utilize recognized ancient Hawaiian pond experts for guidance and assistance in the restoration and ongoing management of the fishpond such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawai`i. Reasonable management procedures shall be established according to traditional and customary Hawaiian practice. Restoration shall be done deliberately and with sensitivity to the preservation of the resource, including any marine and bird life at the site. Management procedures shall be established according to traditional and customary historic Hawaiian

practice. No buildings or structures shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall be made to prevent the contamination of the fishpond during the construction and operation of the Project. The duration and term of the management shall be coterminous with the term of the Petitioner's lease with the landowner. (STIP Cond. 22, as mod.)

22. 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. (STIP Cond. 23)

23. 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. (STIP Cond. 16)

24. 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. (STIP Cond. 24 and LUC Standard Condition)

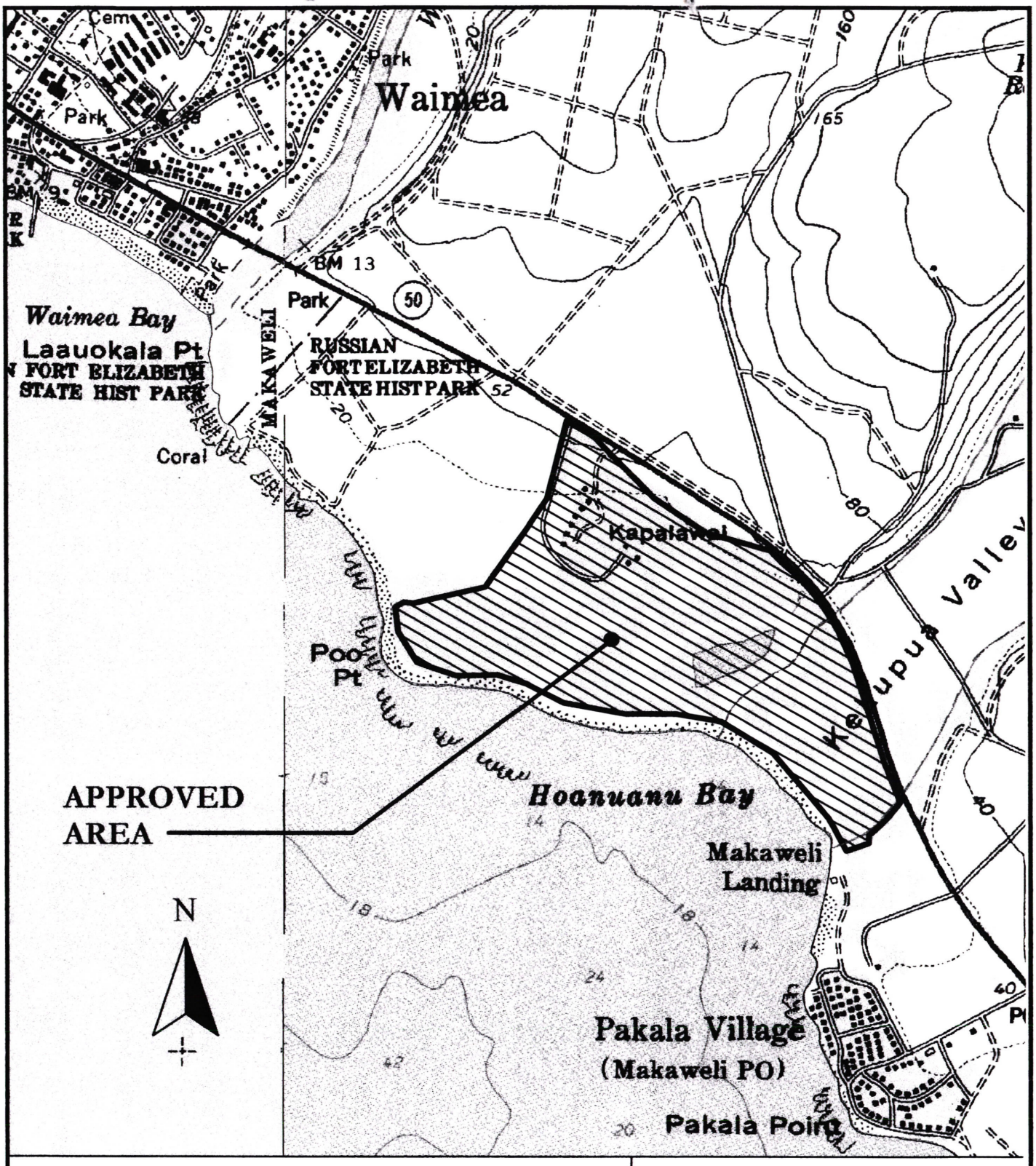
25. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kaua`i Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. (STIP Cond. 25 and LUC Standard Condition)

26. 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. (STIP Cond. 26 and LUC Standard Condition)

27. 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. (STIP Cond. 27 and LUC Standard Condition)

28. 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. (STIP Cond. 28 and LUC Standard Condition)

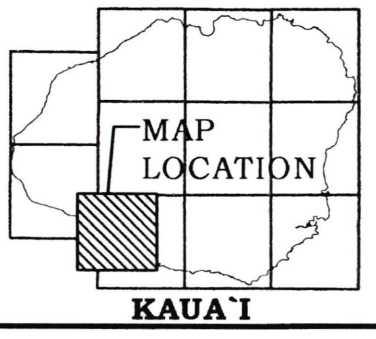


A00-731 DESTINATION VILLAGES KAUAI, a Limited Liability Company

LOCATION MAP

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

EXHIBIT "A"



Helber Hastert & Fee
Planners, Inc.

LAND USE COMMISSION
STATE OF HAWAII

2000 DEC 20 A 8:42

December 20, 2000

Ms. Esther Ueda, Executive Officer
State of Hawaii
Department of Business, Economic Development & Tourism
Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

Dear Ms. Ueda:

Stipulated Proposed Findings of Fact, Conclusions of Law and Decision and Order for State Land Use District Boundary Amendment Kapalawai Resort Makaweli, Kauai, Hawaii TMK 1-7-05: portion of 1 Docket No. A00-731

On behalf of our client Destination Villages Kauai, LLC, we submit herewith 15 copies and one original of the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order (hereinafter referred to as the Stipulated Decision and Order) for State Land Use District Boundary Amendment from Agricultural to the Urban District. A draft of the Stipulated Decision and Order was circulated to the State Office of Planning and the Kauai County Planning Department on November 30. Discussions with staff of both agencies culminated with a meeting of the parties on December 8 to discuss comments on the draft Stipulated Decision and Order. The Stipulated Decision and Order transmitted herein reflects the comments of all parties.

If you need additional information, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

Attachments

C: Michael J. Belles
Lewis P. Geyser

Grosvenor Center • 733 Bishop Street, Suite 2590 • Honolulu, Hawaii 96813
Tel. 808.545.2055 • Fax 808.545.2050 • www.hhf.com • e-mail: info@hhf.com

A00-731/DESTINATION VILLAGES KAUAI, LLC
(Stipulated Proposed Findings of Fact, Conclusions of Law and Decision and Order)

ORIGINAL

Stipulated Proposed Findings of Fact, Conclusions of Law and Decision and Order

Makaweli, Kauai, Hawai`i



KAPALAWAI

R E S O R T

LAND USE COMMISSION
STATE OF HAWAII
2000 DEC 20 A 8:41

December 20, 2000

ORIGINAL

BELLES GRAHAM PROUDFOOT & WILSON

MICHAEL J. BELLES 1577-0
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766-1388
Telephone: (808) 245-4705

Attorneys for Petitioner
DESTINATION VILLAGES KAUAI,
A LIMITED LIABILITY COMPANY

LAND USE COMMISSION
STATE OF HAWAII
2000 DEC 20 A 8:41

BEFORE THE LAND USE COMMISSION

OF THE

STATE OF HAWAII

In The Matter Of The Petition	)	DOCKET NO. A00-731
	)	
Of	)	
	)	
DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY	)	
	)	
To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For 153.696 Acres Of Land At Makaweli, Kauai, Hawaii, Further Identified As TMK No. (4)1-7-05: por. 1	)	
	)	
	)	

STIPULATED PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT

AND

CERTIFICATE OF SERVICE

BEFORE THE LAND USE COMMISSION

OF THE

STATE OF HAWAII

In The Matter Of The Petition Of DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For 153.696 Acres Of Land At Makaweli, Kauai, Hawaii, Further Identified As TMK No. (4)1-7-05: por. 1	)	DOCKET NO. A00-731 STIPULATED PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW, DECISION AND ORDER FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT

STIPULATED PROPOSED FINDINGS OF FACT,
CONCLUSION OF LAW, DECISION AND ORDER FOR A
STATE LAND USE DISTRICT BOUNDARY AMENDMENT

DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY (hereinafter "Petitioner") filed a Petition for Land Use District Boundary Amendment on April 10, 2000 (hereinafter "Petition"), a First Amendment to Petition for Land Use District Boundary Amendment on May 1, 2000 (hereinafter "First Amendment"), a Second Amendment to Petition for Land Use District Boundary Amendment on June 5, 2000 (hereinafter "Second Amendment"), a Third Amendment to Petition for Land Use District Boundary Amendment on June 20, 2000 (hereinafter "Third Amendment"), and a Fourth Amendment to Petition for Land Use District Boundary Amendment on September 5, 2000 (hereinafter "Fourth Amendment"), pursuant to Chapter 205, Hawaii Revised Statutes (hereinafter "HRS"), and Title 15, Subtitle 3, Chapter 15,

Hawaii Administrative Rules (hereinafter "HAR") to amend the Agricultural Land Use Boundary into the Urban Land Use District for 153.696 acres at Makaweli, Kauai, Hawaii, further identified as TMK No. (4)1-7-05: por. 1 (hereinafter "Property" or Petition Area") for the development of a low-density and low-impact resort on the property.

The Land Use Commission (hereinafter "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, conclusion of law, decision and order:

FINDINGS OF FACT

A. 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, to amend the Agricultural Land Use Boundary into the Urban Land Use District, for 153.696 acres at Makaweli, Kauai, Hawaii, and further identified as TMK No. (4)1-7-05: por. 1. **[Petitioner's ("PET") Petition, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment (hereinafter collectively "PET")]**

2. On May 11, 2000, the Office of Planning, State of Hawaii (hereinafter "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. **[OP Exhibit ("Ex") 1]**

3. On June 2, 2000, the County of Kauai Planning Department (hereinafter "Kauai 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 20, 2000, the PD filed the Testimony Of The Kauai County Planning Department In Support Of The Petition recommending approval of the Petition, with conditions. **[PD Ex 1]**

4. 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, Hawaii, with representatives of the Petitioner, the OP, and the PD present. A Stipulated Pre-hearing Order was entered into by and between all of the parties and filed with the LUC on July 26, 2000.

5. On June 30, 2000, Joseph Punilei Manini, Sr. (hereinafter "Manini") filed a Petition for Intervention with the LUC. On July 13, 2000, Manini filed a letter requesting that his Petition for Intervention be withdrawn. On July 20, 2000, Manini's request for intervention and request for withdrawal were heard by the LUC with Manini and the parties being present at the hearing held in Koloa, Kauai, Hawaii. Without objection from the parties, the LUC voted, on July 20, 2000, to grant Manini's request to withdraw his Petition, and the LUC filed the Order Granting

Request To Withdraw Petition For Intervention on August 20, 2000. **[Transcript of Proceedings on July 20, 2000 ("TRI") pages ("pp.") 13 – 15]**

6. On July 20, 2000 and July 21, 2000, the LUC conducted a hearing on the Petition at its meeting held in Koloa, Kauai, Hawaii, pursuant to a notice published in Midweek Hawaii State And County Public Notices on May 15, 2000.

7. Entering appearances at the July 20, 2000 and July 21, 2000 hearings were Michael J. Belles, Esq. and Scott Ezer for the Petitioner; Sanjay Bhatt, Esq. and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda and Lorene Maki for the OP. **[TRI p. 9, line ("ln.") 25; TRI p. 10, ln. 8-11; TRI p. 10, ln. 12-16]**

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

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

[TRI pp. 15 et seq., 36 et seq., 40–44, 44–47, 47 et seq. 55–56, 57–58, 58–59, 60-61, 61-62, 62-63, 63 et seq., 75-76, 77-78, 78 et seq., 80-82, 82-83, 83-85, 85-91, 91-93, 93 et seq., 98-100, 101-102, respectively]

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

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

[Transcript of proceedings on July 22, 2000 ("TRII") TRII, pp. 4-7, 7-9, 9-11, 11-12, 12 et seq., 21-22, 22-24, 24-25, 25-26, 26 et seq., 35-37, respectively]

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

11. 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 the Petitioner; Laurel Loo, Esq. and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda and Lorene Maki for the OP. **[Transcript of proceedings on September 14, 2000 ("TRIII") p. 21, ln. 8-12; TRI p. 21, ln. 13-16; TRI p. 21, ln. 17-21]**

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

Joseph Manini, Sr.
Sunny Greer
Juny Naumu-Stewart
Bruce Pleas
Don Heacock
Butch Kekahu
Cheryl Lovell-Obatake

[TRIII pp. 22-25, 25-29, 29-33, 33-36, 36-41, 41-43, 43-49, respectively]

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

14. On November 2, 2000, the LUC continued its hearing on the Petition. Entering appearances were Michael J. Belles, Esq. and Scott Ezer for the Petitioner; Laurel Loo, Esq. and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda and Lorene Maki for the OP. **[Transcript of proceedings on November 2, 2000 ("TRV") p.2]**

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

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

[TRV pp. 15 et seq., 30-40, 40-46, 46-51, respectively]

16. On November 2, 2000, at the conclusion of the testimony, the LUC closed the hearing. **[TRV p. 139, ln. 3-4]**

B. DESCRIPTION OF THE PROPERTY

17. The Property is located at Makaweli, Island and County of Kauai, containing a total area of approximately 153.696 acres, and more particularly identified by the following Kauai

Tax Map Key: 1-7-05: portion of 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 Conservation District. This strip of land will remain in the Conservation District and is not included as part of the Petition Area. Consequently, the Petition area is 153.696 acres. **[PET Petition, p. 2; PET Ex 2, p. 2-2; PET Exs 4, 5, 6, 7; OP Ex 1, p. 2]**

18. The Property is located adjacent to Kaumualii 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 southwest. The town of Kekaha (population: 3,500) is located about 4 miles to the northwest. **[PET Petition, p. 3; PET Ex 2, p. 2-1; OP Ex 1, p. 2]**

19. The Petition Area is currently in the State Land Use Commission Agricultural District. Petitioner seeks this amendment of the land use district boundary of the Petition Area from the Agricultural District to the Urban District. **[PET Petition, p. 3; PET Ex 2, p. 3-8]**

20. The County General Plan designation for the Property was amended from Agricultural and Open to Resort on October 9, 2000. In connection with the General Plan Amendment, the Petitioner filed an Environmental Impact Statement (hereinafter "EIS") with the County of Kauai, and the Acceptance Notice for the EIS was published in the April 23, 2000 edition of the Environmental Notice. **[PET Exs 2 and 3; PD Ex 1, p. 2; Ex 5, TRV p. 128, ln. 6-9]**

21. The Property is zoned Agriculture and Open pursuant to the Comprehensive Zoning Ordinance of the County of Kauai. The Petitioner has filed a Petition for a Zoning Amendment with the County of Kauai seeking to reclassify the Petition Area from Agriculture and

Open zoning classifications to the RR-10 Resort District. The proposed resort is well under the density requirements for this zoning district, and all proposed accessory uses are also permitted. The rezoning cannot receive final approval, however, until this land use district boundary amendment is approved by the LUC. **[PET Petition, p. 17, Ex 27; OP Ex 1, p. 14; PD Ex 1, p. 2]**

22. A portion of the Property is located within the Special Management Area. **[PET Petition, p. 13; PET Ex 2, pp. 3-10 to 3-17; PET Ex 25; OP Ex 1, p. 2]**

23. An ancient Hawaiian fishpond, approximately six and one-half (6.5) acres is size, is located in the central portion of the Property. **[PET Petition, p. 6; PET Ex 2, pp. 2-7, 4-35, 4-36]**

24. 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 guest house), 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 Family. Currently, four of the plantation-era dwellings are still occupied. Outside the compound of the main house and the accessory structures, the property was, until recently, used for the grazing of bulls. **[PET Petition, p. 3; PET Ex 2, pp. 4-28 to 4-35]**

25. The Property is owned by Robinson Family Partners, Gay & Robinson, Inc., and Bruce Robinson (hereinafter "Owners"). **[PET Ex 2, pp. 1-1 and 1-2; PET Ex 9]**

26. The Petitioner has an option agreement with the Owners to develop the Property and has been authorized by the Owners to submit this Petition. **[PET Ex 10, Ex 16, Ex17, Ex 19 and Ex 20]**

27. Kaumualii Highway abuts the mauka portion of the Property and is the main roadway serving the region. **[PET Ex 2, p. 2-1, p. 6-1; Transcript of Proceedings on September 15, 2000 ("TRIV") TRIV p. 49, ln. 13]**

28. The Property is generally flat and characterized by gentle slopes from the direction of Kaumualii Highway towards the ocean, ranging from approximately four percent (4%) at the highway, to approximately one percent (1%) at the shoreline. Elevations on the Property range from about forty-four feet (44') above mean sea level (AMSL) in the center of the Property at Kaumualii Highway, to about five feet (5') AMSL in the southern makai corner of the Property. The area between the Mohaikana Street and Aakukui Stream is generally flat with elevations averaging approximately seven feet (7') to eight feet (8') AMSL. **[PET Petition p. 9; PET Ex 2, pp. 4-1 and 4-2; Fig 10]**

29. The Property is located on the leeward side of Kauai and, as such, the Property is located in a generally dry region that receives the least amount of rainfall on the island, with the annual average rainfall at approximately twenty-one inches (21"). **[PET Petition p. 9; PET Ex 2, p. 4-1]**

30. The Property consists of seven (7) 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 Kauai. 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. **[PET Petition p. 7; PET Ex 2, pp. 4-5 and 4-7; PET Ex 2 Fig 11; PET Ex 28]**

31. 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. **[PET Petition p. 8; PET Ex 2, p. 4-8; PET Ex Fig 13; PET Ex 2 30; TRII p. 55, ln. 12-24]**

32. 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" comprises the compound defined by the main house, the accessory buildings, and the employee housing. **[PET Petition p. 8; PET Ex 2, p. 4-8; PET Ex 2 Fig 12; PET Ex 29; TRII p. 5, ln. 18-25, p. 55, ln. 1-11]**

33. According to the flood insurance rate maps prepared by the Federal Emergency Management Association Federal Insurance Flood Map (hereinafter "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 smaller portion of the Property is affected by the AE zone, with base flood elevations of 9 feet AMSL. Another small 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. Since a portion of the Property is affected by flood hazards and has been affected by overwash from Hurricane Iniki, structures will be

set-back behind the area affected by Hurricane Iniki and will comply with the requirements for elevation of structures within flood hazard areas. **[PET Ex 2, pp. 4-49 to 4-51; Fig 20; Appendix I, p. 1, Fig 1, PET Ex 32; TRII pp. 54-58]**

C. PROPOSAL FOR CLASSIFICATION

34. The Petitioner proposes to develop a low-density, low-impact resort on the Property (hereinafter also referred to as the "Project"). The proposed resort 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. 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 (ADA) 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 Kaumualii 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. Night-blooming cereus and cat's claw climber are abundant along the wall and create a memorable drive into the Property. Guests will arrive near the current Robinson Family Partners office building, which is covered by a dense canopy of monkey pod trees.

Amenities provided at the resort 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. Hawaii customary and traditional rights relating to the fishpond will be provided.

A minimum of 465 parking spaces will be provided on-site in four parking areas. Parking will be available for guests, employees, and members of the public wishing to enjoy the beach fronting the Project site. Both restaurants will be open to the public for dining. **[PET Petition pp. 5-6; PET Ex 2, pp. 2-4, 2-6, 2-7; Fig 5; PET Ex 11; PET Ex 22; PET Ex 23; PET Ex 38; TRII p. 64, ln. 5-24; PET Ex 54; TRV p. 54, ln. 19 to p. 106, ln. 11]**

35. 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, the Petitioner's consultant, Mikiko Corporation, prepared a Market Assessment For Rental Housing In The Waimea District, Island Of Kauai, for the County of Kauai, and based upon the assessment, the 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. **[PET Ex 52; TRII pp. 29-30; TRIII pp.113-114, pp. 127 et seq.; TRV pp. 62-63]**

36. The Petitioner estimates that the total cost of the Project will be $35 million to $45 million. **[PET Petition p. 6; PET Ex 2, pp. 2-7; TRV p. 77, ln. 16-25, p. 78, ln. 1-8]**

37. The Petitioner estimates that once all permits are obtained, the development timetable for the entire Project will be approximately twelve (12) to eighteen (18) months. **[PET Ex 2, pp. 2-7; TRV p.78, ln. 16-20]**

D. PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

38. The 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. The Petitioner presented further testimony to the effect that the third quarter statement of Excel Legacy Corporation would demonstrate gross assets of approximately one billion dollars, and net assets of approximately two to four hundred million dollars. **[PET Petition p. 17; PET Ex 14; OP Ex 1, p. 4;TRV pp. 78-79]**

39. The 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. **[PET Petition p. 17; OP Ex 1, p. 4; TRV pp. 78-79]**

E. STATE AND COUNTY PLANS AND PROGRAMS

40. The Project is consistent with the policies and objectives of the Hawaii State Plan. **[PET Petition p. 13; PET Ex 2, pp. 3-1 to 3-8; OP Ex 1, p. 13]**

41. The Property is currently within the State Land Use Agriculture District. **[PET Petition p. 3; PET Ex 6]**

42. The County General Plan designation for the Property was amended from Agriculture and Open to Resort on October 9, 2000. **[PD Ex 1, p. 2; PET Ex 5; TRV p. 128, ln. 6-9]**

43. The Property is zoned Agriculture and Open pursuant to the Comprehensive Zoning Ordinance of the County of Kauai. The Petitioner has filed a Petition for a zoning amendment with the County of Kauai seeking to reclassify the Petition Area from Agriculture and Open zoning classifications to the RR-10 Resort District. The proposed resort is well 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. **[PET Petition p. 17, PET Ex 27; OP Ex 1, p. 14; PD Ex 1, p. 2]**

44. A portion of the Property is located within the Special Management Area. **[PET Petition p. 13, PET Ex 2, pp. 3-10 to 3-17; PET Ex 25; OP Ex 1, p. 2]**

F. NEED FOR THE PROPOSED DEVELOPMENT

45. The Petitioner's market consultant, Mikiko Corporation, prepared the study, 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. **[PET Petition Ex 12, pp. 1-1 to 4-5; TR III p. 106, ln. 8, p. 108, ln. 7]**

46. The study indicates that the Project will be an innovative development in the Hawaii visitor accommodations market, with conceptual foundations in a number of well established and successful resort development models. The Project is planned as an upscale but low-key, self-contained retreat in a low-density, garden setting located on the ocean front. Centered on the

historic Robinson Family estate, the Project will also draw on a rich and previously private kamaaina heritage. **[PET Petition Ex 12, p. 1-1; TRIII p. 102, ln. 13, p. 103, ln. 1]**

47. The study further indicates that the Project site is extraordinary due to its extensive 170-acres, its long leeward shoreline frontage and excellent beach conditions. The shoreline frontage offers approximately one mile of white, sandy beach with areas for swimming, fishing, long walks and shell hunting. **[PET Petition Ex 12, p. 1-2; TRIII p. 106, ln. 2-5]**

48. The study notes that the island of Kauai 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. **[PET Petition Ex 12, p. 1-4]**

49. The Project is expected to benefit from Kauai's established image and visitor profile in that Kauai 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 Kauai tends to be perceived as romantic, scenic, quaint and relaxing, which are the feelings that the Project seeks to promote. **[PET Petition Ex 12, p. 1-5; TRIII p. 103, ln. 2, p. 104, ln. 13]**

50. The study concludes that 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 Kauai'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. **[PET Petition Ex 12, pp. 1-6 to 1-7; TRIII p. 104, ln. 17, ln. 25, p. 106, ln. 8 to p. 107, ln. 24]**

G. ECONOMIC IMPACTS

51. The Petitioner's consultant, Mikiko Corporation, prepared the study, Economic And Fiscal Impact Assessment For Kapalawai Resort, dated July 22, 1999, to analyze the economic and fiscal impacts within the State of Hawaii and the County of Kauai. In summary, the study concludes that 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. **[PET Ex 2, Appendix (hereinafter "App") F, p. 4; TRIII p. 108, ln. 25, p. 112, ln. 16]**

52. 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. **[PET Ex 2, App F, p. 5]**

53. The Petitioner estimates a minimum construction budget of $33 million, and perhaps as much as $40 - $45 million to develop the Project. **[PET Ex 2, App F, p. 6; TRV p. 77, ln. 16-25, p. 78, ln. 1-8]**

54. 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 Hawaii residents. **[PET Ex 2, App F, p. 6; TRIII p. 109, ln. 5 to ln. 25]**

55. In addition to the development and construction-related positions, the Project could support approximately 200 full-time equivalent (hereinafter "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 on-site. 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. **[PET Ex 2, App F, p. 7; TRIII p. 110, ln. 1, p. 111, ln. 6, p. 116, ln. 23, p. 47, ln. 25]**

56. The projected population on the Project site, based on 250 cottages and an anticipated stabilized occupancy level of 75% could average approximately 365 visitors per day. On average, the Project could also have approximately 240 construction workers on site on any given day during development, and approximately 143 operational employees after opening. **[PET Ex 2, App F, pp. 7-8]**

57. Additional County real property tax revenues resulting from the Project are anticipated to be approximately $420,000.00 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 (hereinafter "TAT") collected by the State (currently 6.5%), which could represent approximately $50,000.00 by 2003, and coupled together with miscellaneous tax sources, the County could net total new taxes approximating $480,000.00 per year by 2004 in 1998 dollars. **[PET Ex 2, App F, pp. 9-10]**

58. 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. **[PET Ex 2, App F, p. 11]**

59. Additional County and State operating expenditures resulting from the Project are anticipated to be $420,000.00 and $560,000.00, 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 2003 by approximately $60,000.00 in 1998 dollars, and the State's operating revenues from the Project are anticipated to exceed its operating expenses in 2003 by approximately $760,000.00 in 1998 dollars. **[PET Ex 2, App F, pp. 11-12; TRIII p. 111, ln. 12-17]**

H. SOCIAL IMPACTS

60. The Petitioner's consultant, Earthplan, prepared the study, Issues Analysis, dated February 2000, to analyze community issues and social impacts relating to the Project. The study concluded that, with few exceptions, the vast majority of the residents of the Westside community of Kauai 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. **[PET Petition Ex 13, pp. 1-36; TRIV p. 57, ln. 1-6]**

61. According to Earthplan's study, 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. Thus, the proposed Project provided a low-rise, low-density and low impact development that would bring much needed jobs to the Westside community without adversely impacting the environment. **[PET Petition Ex 13, pp. 12-19; TRIV p. 49, ln. 2-12, p. 51, ln. 11-13, p. 52, ln. 3-25]**

62. Earthplan's study reported that 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 Project site and on the lands abutting the Project. **[PET Petition Ex 13, pp. 20-22; TRIV p. 53 ln. 16-24]**

63. Earthplan's study further reported that the Project's proposed restoration and maintenance of the on-site structures and the fishpond would contribute to preserving the culture and history of the Westside community. **[PET Petition Ex 13, p. 19; TRIV p. 53, ln. 13-15]**

64. Earthplan's study observed that the community commended efforts by the Petitioner to work with the community and seek community input in developing the Project and recommended that the Petitioner continue to work with the Westside community to mitigate or resolve any problems that may be created by the Project. **[PET Petition Ex 13, pp. 27-29; TRIV p. 57, ln. 7-14]**

I. IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

65. Agricultural Lands of Importance to the State of Hawaii (hereinafter "ALISH") maps have been developed by the State Department of Agriculture to determine the relative agricultural importance of specific property. There are three possible ALISH designations found on the ALISH maps. These are:

Prime — Land which has the soil quality, growing season, and moisture needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods.

Unique — Land that has the special combination of soil quality, location, growing season, moisture supply, and is used to provide sustained high quality and/or high yields of a specific crop when treated and managed according to modern arming methods.

Other — Land other than Prime or Unique land that is also of State-wide or local importance for agricultural use.

Approximately 70 percent of the Project site has been designed as "Other." The remaining 30 percent of the Project site is identified as "Prime." Approximately half of the area designated as "Prime" comprises the compound defined by the main house and its accessory buildings, and the employee housing. **[PET Ex 2, p. 4-8, Figure (hereinafter "Fig") 12; TRII p. 55, ln. 3-11]**

66. The Detailed Land Classification publications were prepared by the University of Hawaii to provide an analysis of lands and their respectively suitability for agricultural production, taking into consideration a wide variety of factors, including soils, geology, topography, climate and water resources. The classification scheme provides ratings for overall agricultural usage,

which are useful in making general assessments of land qualities. Lands are classified from "A" to "E" according to their agricultural suitability. A rating of "A" indicates a master rating of very good; "B" indicates good suitability; "C" indicates fair suitability; "D" indicates poor suitability; and a rating of "E" indicates very poor suitability for agricultural use. The project site has a mixed rating of "D" and "E," indicating poor to very poor suitability for agricultural use. **[PET Ex 2, p. 4-8, Fig 13; TRII p. 55, ln. 12-24; PET Ex 30]**

67. Since the Property has been owned by the Robinson Family, the Property has never been used for commercial agriculture. The 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 this year (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 Kauai. 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. **[PET Ex 2, pp. 4-8 to 4-9; TRII p. 54, ln. 22 to p. 55, ln. 2]**

68. The Gay & Robinson, Inc. (hereinafter "G & R") sugar plantation is the only remaining sugar plantation on the Island of Kauai, 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, creating severe economic pressure on the G & R sugar plantation. **[TRV p. 116, ln. 15-23; p. 212, ln. 11-22, p. 122, ln. 9-10, p. 124, ln. 8-13]**

Flora

69. A botanical survey of the Project was conducted in March 1999 by Char & Associates. The survey reports that the vegetation on the Property is dominated by introduced or alien plants. This is not surprising as the site was a primary residence for the Robinson family. Portions of the Property have been used for employee housing, stables, corrals, pasturage, fruit orchards, and vegetable gardens. Today, the majority of the site 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 Aakukui) which cross the site. 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 very 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. **[PET Ex 2, p. 4-11; Ex 2, App A; TRIII p. 135, ln. 10 to p. 137, ln. 13]**

70. 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 enceliodes), 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 (Syzgium cumini), Chinese banyan (Ficus microcarpa), monkeypod, royal palm (Roysonea 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. **[PET Ex 2, p. 4-12; PET Ex 2, App A; TRIII p. 135, ln. 18-23]**

71. Wetland vegetation is located near the banks of Mahaikona and Aakukui 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 Aakukui 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 lachryyma-jobi) and primrose willow or *kamole* (Ludwigia octovalvis) are locally abundant. Along the northern half of the low lying area, there 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 low-lying area, some of which have died due to the water-logged soils and anaerobic conditions. **[PET Ex 2, p. 4-13; PET Ex 2, App A; TRIII p. 135, ln. 23 to p. 136, ln. 6]**

72. Coastal Vegetation. A narrow band of coastal vegetation is composed primarily of *pohuehue* or beach morning glory vine (Ipomea 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 algaroba 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 on the site had numerous clusters of pale yellowish brown pods. A number of saplings were observed inland of the coastal vegetation. **[PET Ex 2, pp. 4-13 to 4-14; Ex 2, App A; TRIII p. 135, ln. 7-10, p. 136, ln. 26 to p. 138, ln. 17]**

73. None of the plants inventoried on the site 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 Project site 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 Oahu at Sand Island and vicinity. If not eradicated, the plants could form large, impenetrable, spiny thickets in low land, dry habitats throughout Kauai. **[PET Ex 2, p. 4-14; PET Ex 2, App A; TRIII p. 136, ln. 11 to p. 138, ln. 16]**

74. The survey concluded by recommending that all individual Prospis juliflora plants be eradicated with appropriate methods of eradication being coordinated with the State Department of Agriculture. It was also recommended that native plants be incorporated into the landscape plan for the proposed resort. **[PET Ex 2, p. 4-15; PET Ex 2, App A; TRIII p. 136, ln. 19 to p. 137, ln. 1, p. 140, ln. 8-20]**

Fauna

75. An avifauna and feral mammal survey of the Property site was conducted in March 1999 by Petitioner's consultant, Philip Bruner. The survey reports that no native land birds were recorded during the survey. Given the location, elevation and type of habitats available at this site, the absence of native land birds was not unexpected. The short-eared Owl or *Pueo* (Asio flammeus sandwicensis) forages in agricultural fields and pastures as well as in upland forested habitat, and is fairly common on Kauai. Although this species was not recorded during the present survey, it could forage in the area. Migratory shorebirds winter in Hawaii 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 (Pluvalis fulva), the Ruddy Turnstone (Arenaria interpres) and the Wandering Tattler (Heterscelus

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) were flushed from Aakukui Stream. Koloa are endangered but are still relatively common on Kauai. 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 (Stretopelia 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 Kauai. 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 the project site, and one bat was observed flying back and forth over the man-made marsh. Several feral cats were seen on the site, and feral dog and pig tracks were also observed. Rats and mice undoubtedly occur on the property, but were not seen. **[PET Ex 2, pp. 4-15 to 4-16; PET Ex 2, App B; TRIII p. 70, ln. 9 to p. 84, ln. 23]**

76. The Property has been significantly altered by introduced vegetation and ranching activities. No unusual or unexpected species were recorded, even though three endangered species were observed on the Property: Common Moorhen (Gallinula chloropus); Koloa (Anas wyvilliana); and Hawaiian Hoary Bat (Lasiurus cinereus semotus). Although endangered, the Hawaiian Hoary Bat is fairly common on Kauai. The proposed development should not adversely

impact foraging opportunities for the bats. They are known to forage in urban as well as forested habitats. 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 Gay & Robinson, Inc. is completed mauka of Kaumualii 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 Aakukui Streams. This is particularly true for the fishpond and when streams are cleared, thereby creating additional open water habitat. **[PET Ex 2, pp. 4-16 to 4-17; PET Ex 2, App B; TRIII p. 70, ln. 9 to p. 84, ln. 23]**

77. The survey concluded by recommending that some vegetation 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. **[PET Ex 2, p. 4-17; PET Ex 2, App B; TRIII p. 78, ln. 7-11, p. 79, ln. 11-15]**

Archaeological and Historic Resources

78. An archaeological inventory survey was prepared for the Project site by Petitioner's consultant, Cultural Surveys Hawaii. This report has been accepted by the Department of Land and Natural Resources, Historic Preservation Division. 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 Project area, six sites were identified and recorded with the State Historic Preservation Division (hereinafter "SHPD"). Three of these were single feature sites, and three were multiple feature sites. Each of these sites is generally described hereinbelow. **[PET Ex 2, pp. 4-26 to 4-48; PET Ex 2, App D; PET Ex 31; TRIV p. 70, ln. 23 to p. 71, ln. 1]**

79. Site #50-30-9-762 consists of a series of rock walls and a terrace located in the northwest section of the Project site, 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. **[PET Ex 2, p. 4-28; PET Ex 2, App D; TRIV p. 75, ln. 11-16]**

80. 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. **[PET Ex 2, p. 4-28; PET Ex 2, App D; PET Ex 2, App G, pp. 41-42, p. 50, pp. 70-71; PET Ex 31; TRIV p. 72, ln. 22]**

81. Site #50-30-9-764 is described as the main house complex, and is comprised of 14 separate structures, each identified as a feature of the site, and 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 Project area, 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, while others are in disrepair. **[PET Ex 2, pp. 4-28 to 4-35; PET Ex 2, App D; App E; PET Ex 31; TRIV p. 74, ln. 21 to p. 75, ln. 10, pp. 26-43]**

82. Site #50-30-9-765 is a 6.5 acre inland fishpond. This site is a large enclosure constructed of *pahoehoe* cobbles and boulders up to 2.5 feet in diameter, which form a wall surrounding the fishpond. The wall is discontinuous. Some areas of the perimeter have been disturbed by cattle. Other spots have vegetation covering, or trees fallen over the perimeter wall. This fishpond is classified as a *pu'uone* type pond. A *pu'uone* pond is created by the formation of a barrier sand berm that isolates the pond from the sea. This is a very common type of pond in the coastal zone of the major island in the Hawaiian chain. On Kauai, this is the type of pond most frequently used as a fishpond. Most *pu'uone* ponds have freshwater spring sources, a feature which

converts them into an almost freshwater pool termed *lokowai*. In addition to the wall constructed around the perimeter, there is a wall which transects the width of the pond at its makai end, essentially splitting the pond into two unequal parts. This wall, which is approximately 19 feet across and 352 feet long, is constructed of the same materials as the perimeter wall. There have been a number of historic modifications to the pond. A gate at the southern end is made of concrete. At the mauka terminus of the pond, a pump house was built on a concrete slag. This structure is made from corrugated metal. Inside there is a combustion engine pump attached to a 6-inch cast iron pipe. Water was previously pumped from the pond for use on the rest of the Property. At the present time, the pond has large deposits of silt accumulated, and there are dense concentrations of vegetation throughout. Although the pond appears to have been used for fish farming in the past, it is not now in a state to support fish farming, and exhibits extensive historic modification. **[PET Ex 2, pp. 4-35 to 4-36; PET Ex 2, App D; PET Ex 31; TR IV p. 72, ln. 2-21]**

83. 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 Hawaii. This structure is clearly of historic origin, and is in very good condition. **[PET Ex 2, p. 4-36; PET Ex 2, App D; PET Ex 31; TRIV p. 74, ln. 12-20]**

84. 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 Project area. 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 Kauai archaeologist) were notified of the burial find. **[PET Ex 2, pp. 4-36 to 4-37; PET Ex 2, App D; PET Ex 31; TRIV p. 71, ln. 8 to p. 72, ln. 1]**

85. Most of the structural historic sites identified on the Project site 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 Gay & Robinson, Inc., 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. **[PET Ex 2, p. 4-44; PET Ex 2, App D; TRII p. 64, ln. 10-13; TRIV p. 31, ln. 5 to p. 33, ln. 4; p. 35, ln. 20 to p. 37, ln. 3]**

86. The study recommends that the fishpond be cleared of exotic vegetation and restored to an appearance similar to that of the late 19th century and the first half of the 20th century. The exact method of pond clearance has not been determined, so impacts to the pond are difficult to determine at this time, and it is not known what type of heavy equipment will be required, if at all. If large heavy-equipment vehicles are needed, they could possible impact the extant pond rock walls, if the full weight of the vehicle is brought to bear on the walls. A mitigation plan will be prepared for the restoration of the fishpond. The mitigation plan should be reviewed by the Department of Land and Natural Resources State Historic Preservation Division prior to commencement of any such activity. Additionally, there is a *pohaku* (rock) in the fishpond associated with a *mo'o wahine* legend, which could not be found due to vegetation and debris. It is recommended that before restoration work on the fishpond begins, this *pohaku* should be located and preserved in place. **[PET Ex 2, p. 4-45; PET Ex 2, App D; TRIV p. 96, ln. 1-7]**

87. If the fishpond at Kapalawai is restored, this would be the only fishpond on the entire island of Kauai which would be open to the public. The fishpond at Kapalawai is pristine and it can be revitalized with a little fixing. The process of restoring the fishpond is a good way to start training some of the young people. They can learn by participating in the process and making mistakes. It will be the first time on Kauai where the training for fishpond restoration will be based on traditional practices. **[TR IV, p. 121 ln. 12-15, p. 122 ln 2-17]**

88. The proposed restoration of the Kapalawai fishpond is described by Dr. Kikuchi as follows: First, 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. **[TR IV, p. 125 ln. 21-25, p. 126 ln. 9-25]**

89. The public should have access to the Kapalawai fishpond to observe the traditional and cultural restoration that is taking place. Public access to other Hawaiian sites such as heiaus has been successful during the restoration process. **[TR IV, p. 128 ln. 2-17]**

90. The building and maintenance of a fishpond is labor intensive. However, once the fishpond is cleaned, it takes only one person to take care of the fishpond. Since the Kapalawai fishpond is located inland, fish 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. The predator fish in the fishpond, such as papio, barracuda, and eels, must also be controlled. **[TR IV, p. 129 ln. 2-12, p. 130 ln 1-15]**

91. The resource of the restored Kapalawai fishpond such as mullet, papio, barracuda, eels, etc., would be harvested and understanding should be reached between the owners/developers of the fishpond and the caretaker/cleaners as to how the harvest should be divided. In ancient times the alii would order the caretaker to harvest mullet and the other fish such as the predator fish. The mullet were usually retained by the alii and the other fish were given to the caretaker/cleaners. **[TR V, p. 7 ln. 4-21]**

92. The Petitioner is committed to establish a caretaker system for the Kapalawai fishpond building upon Dr. Kikuchi's expertise to train a caretaker and others, preferably from Kauai's west side. The recommendations and ultimate plan for the maintenance and operation of the

fishpond would include Dr. Kikuchi's expertise as well as other literature or experts in the field. The Petitioner intends to establish a plan relative to the sharing of the resources (fish) of the fishpond with the general public or native Hawaiians based upon the experience and knowledge of Dr. Kikuchi and others. The Petitioner has made a commitment to the community and the Robinson family to fully restore and maintain this Hawaiian Kapalawai fishpond for the life of the proposed project. **[TR V, p. 65 ln. 23-25, p. 66 ln. 1-25, p. 67 ln. 1-10]**

93. The study recommends that the three other historic sites, the Portuguese Oven, the platform and a series of rock walls and terrace be preserved as-is and integrated into the site design of the Project. **[PET Ex 2, p. 4-45; PET Ex 2, App D; TRIV p. 102, ln. 19-25, p. 75, ln. 22 to p. 76, ln. 15]**

94. 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 Kauai 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, Hawaii Administrative Rules "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 Kauai Island Burial Council (burial treatment plan), and implemented, before development of the Property can begin. **[PET Ex 2, pp. 4-46 to 4-47; PET Ex 2, App D; TRIV p. 76, ln. 16-17; p. 77, ln. 6-13; p. 101, ln. 18-23; TRII p. 60, ln. 23 to p. 61, ln. 1; p. 61, ln. 23 to p. 62, ln. 11]**

95. A mitigation plan will be prepared and implemented for all historic properties identified in the Project area. 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. **[PET Ex 2, pp. 4-45 to 4-48; PET Ex 2, App D; TRIV p. 76, ln. 24 to p. 77, ln. 16]**

96. The study finally recommends that archaeological monitoring be required during construction. Subsurface testing results indicate that two site 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 Project area's sand deposits along the coast. Accordingly, archaeological monitoring is recommended for all portions of the Project area containing sand deposits. Before construction begins, a monitoring plan should be written, approved by SHPD, and implemented. It is recommended that the monitoring plan include provisions for the documentation of inadvertently discovered prehistoric cultural deposits. Documentation of features should include plotting their location on the overall Project area 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 should contain provisions for the analysis of these samples, if they are encountered. If available, this information

would provide better understanding of the prehistoric coastal occupation in the region. **[PET Ex 2, pp. 4-47 to 4-48; PET Ex 2, App D]**

Drainage

97. The 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 off-site 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 Aakukui Valley drainage basin (3,107 acres). All three drainage courses drain under Kaumualii Highway to the Project site.

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 Gay & Robinson, Inc. Akia field system. Two existing 36-inch culverts convey runoff under Kaumualii Highway and into a man-made ditch on the western side of the Project site. 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 Kaumualii 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.

Aakukui Valley Drainage Basin. During the 100-year storm event, this drainage basin generates a peak flow of 3,794 cfs. The drainage basin watercourse (Aakukui Stream) is conveyed under an overpass on Kaumualii 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. **[PET p. 8-9; PET Ex 2, p. 6-26; PET Ex 2, Fig 24; PET Ex 35; TRII p. 74, ln. 24 to p. 75, ln. 13; PET Ex 2, App I]**

98. Aside from the three existing watercourses which traverse the Project site, the remainder of the site slopes from the highway to the ocean at approximately four percent immediately makai of the highway, to approximately one 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 Project site) that reach the Project site. Makai of the highway, the ditch continues and conveys runoff (the sugar cane irrigation filter discharge) to an area on the Project site used as a settling basin by the plantation. Gay & Robinson, Inc. 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 Project site. **[PET Petition p. 9; PET Ex 2, p. 6-28; PET Ex 2, App I; TRII p. 75, ln. 14-19]**

99. 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 Kaumualii Highway, under the highway, and then makai on the Project site whereupon it empties into the Project site. 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. **[PET Ex 2, p. 6-28; PET Ex 2, Fig 25; PET Ex 2, p. 4-3; PET Ex 36; TRII p. 75, ln. 20 to p. 76, ln. 1]**

100. 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 Project site will increase from about 310 cubic feet per second (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%) 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. **[PET Ex 2, p. 6-28; PET Ex 2, App I]**

101. 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. **[PET Ex 2, p. 6-30; PET Ex 2, App I]**

102. Finally, the report recommends that 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 Aakukui Stream, which is currently overgrown in some places, will significantly improve its capacity. Also, inclusion of best management practices (hereinafter "BMPs") in the design of the drainage system will reduce the potential for sediments and other pollutants to reach the ocean and on-site 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. **[PET Ex 2, p. 6-30; PET Ex 2, App I]**

Ground Water Resources/Hydrogeology/Water Quality

103. 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 easily 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 easily 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. **[PET Petition p. 10; PET Ex 2, pp. 4-4 to 4-5; PET Ex 2, App J; TRIII p. 145, ln. 8 to p. 146, ln. 21]**

104. 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, and include drawing between 360,000 gpd and 660,000 gpd for on-site irrigation. None of these actions will have

negative impacts on the hydrogeology of the fishpond. In fact, 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. **[PET Petition p. 10; PET Ex 2, p. 4-5; PET Ex 2, App J; TRIII p. 147, ln. 1-4, p. 151, ln. 4 to ln. 11]**

Topography

105. The overall development program will not affect a large portion of the Project site. The cottages will be raised above grade (to comply with flood hazard requirements). Therefore, site alteration for these facilities will be minimal. The other major structural additions to the Project site will be the two restaurants, the snack bar, the tennis clubhouse, all other structures will be elevated to comply with flood hazard regulations. This method of construction (post and beam) involves less ground disturbance, and, therefore, less alteration of topography. Roadways and parking lots will change the surface characteristics of about seven acres of the Property (about 4 percent of the entire site) from pervious to impervious. Although surface characteristics will change, the general topographic features of the Property will not change, primarily because slopes are so small (1-4 percent). **[PET Ex 2, p. 4-3]**

Recreational Resources

106. The West Kauai community includes some of the most diverse and spectacular recreation resources in Hawaii. There are a number of federal, state and county facilities

that offer Kauai 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	Kokee State Park	Kekaha Beach Park
	Na Pali Coast State Park	Hanapepe Beach Park
	Port Allen Small Boat Harbor	
	Kikiaola Small Boat Harbor	

[PET Ex 2, p. 6-32]

107. The existing recreational resources in West Kauai are diverse, vast, and exceptional, and contribute to the overall quality of life for its residents. 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% increase above the 1995 resident population of 9,220 for the Waimea District, and a 0.5% increase to the defacto population of 69,900 for the entire island (Department of Business Economic Development and Tourism, 1996). Many of the recreational facilities in the Waimea District, including Waimea Canyon State Park, Kokee State Park, Na Pali Coast State Park and Polihale State Park, attract users from all over Kauai, 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, Kokee 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. **[PET Ex 2, p. 4-33]**

108. The Project will offer some recreational amenities to guests, thereby minimizing off-site 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 off-site recreational resource is not expected to be significant. The Project will also provide on-site recreational opportunities for Kauai 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 Kauai residents. **[PET Ex 2, p. 6-33]**

109. At the present time, there is an informal agreement between the Robinson family and the County of Kauai that allows beachgoers access to the shoreline on the southern side of the Project in the vicinity of Aakukui 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. **[PET Ex 2, pp. 6-33 to 6-34]**

110. The Petitioner has proposed that the current access to the Pakalas surf break be improved. In addition, the 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 resort, where some parking spaces will be reserved for public use. In this context, access to the shoreline will be improved. **[PET Ex E, p. 6-34; PET Ex 53; TRII p. 66, ln. 19 to p. 70, ln. 18]**

Scenic Resources

111. The physical ambience of West Kauai is characterized by its rural nature, dominated by open space and the presence of sugar cane. Sugar cane has been a dominant visual condition in West Kauai for many decades. Recently, other agricultural crops have been introduced in the region, most notably coffee on former sugar lands near Eleele, 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. **[PET Ex 2, p. 4-48]**

112. Driving along Kaumualii Highway in either direction, motorists enjoy 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 Kaumualii Highway. Views into the Project are transitory at the southern end of the Property near the bridge that spans the Aakukui Stream, and near a secondary dirt access road about ¼ mile north of Aakukui 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. **[PET Ex 2, pp. 4-48 to 4-49]**

113. The interior of the Project is not currently visible from Kaumualii 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. **[PET Ex 2, p. 4-49]**

114. 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 Kaumualii 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 is recommended for both the entry and exit drives to the Project. These improvements should be kept in character

with the region, and signage should be indirectly illuminated. **[PET Ex 2, p. 4-49; TRII p. 65, ln. 10 to p. 66, ln. 18; PET Ex 2, App H]**

Cultural Resources

115. The 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 Department of Land and Natural Resources, Historic Preservation Division. 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 Hawaii State Constitution, Article XII, Section 7. **[PET Ex 2, p. 5-9; PET Ex 2, App G; TRIV p. 95, ln. 10-14]**

116. The assessment reports that Native Hawaiians traditionally accessed coastal areas for gathering and subsistence and for trade. Though there is no record of coastal trails and no LCA record of native tenant *kuleana* parcels within the proposed Project area, it is likely that native Hawaiians did practice traditional gathering and use rights in the Project area and the off-shore waters prior to Eliza Sinclair's acquisition of the *ahupua'a* of Makaweli, which included the Petition area. **[PET Ex 2, p. 5-10; PET Ex 2, App G; TRIV p. 103, ln. 14 to p. 105, ln. 22]**

117. The assessment reports that a 1857 lease between the guardians of Victoria Kamamalu and a group of 120 people from Makaweli and Waimea indicate that the *kapu* (protected/tabooed) items exempted from the lease were 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. Thus, for example, firewood for personal use could be gathered, along with any other traditional resource items not

mentioned, such as *pili* grass for thatching, *hau* for cordage, plants for medicinal use, and marine resources in the off-shore waters. It is likely that any existing resources were utilized unless a specific *kapu* was placed on a particular item. **[PET Ex 2, pp. 5-10 to 5-11; PET Ex 2, App G; TRIV p. 110 ln. 5 –19; p. 106, ln. 20-24]**

118. The assessment reports that it is clear from the historic records that Kekupua Fishpond was reserved for the chiefs and, thus, mullet from the fishpond would have been *kapu* to the native tenants. When Eliza Sinclair acquired Makaweli *ahupua'a*, she controlled the whole *ahupua'a* and its resources, which would have included the fishpond. It is evident that she continued the practice of reserving the mullet for personal use and keeping the pond resources *kapu* to the native tenants. **[PET Ex 2, p. 5-11; PET Ex 2, App G; TRIV p. 106, ln. 25 to p. 108, ln. 15; p. 115, ln. 19-20; p. 116, ln. 5-7; p. 117, ln. 7; p. 121, ln. 25 to p. 126, ln. 1]**

119. The assessment identified one historic property associated with a cultural tradition – the legend of *mo'o* and a rock near the pond's edge where the *mo'o wahine* sits and can be seen. Very little is known about this particular *mo'o* who resides at Kekupua Pond. The pond is significant in that it houses the home and watery realm of the *mo'o*. Traditionally, *mo'o* were revered and worshipped, and shrines on which to lay offerings were constructed. The presence of a *mo'o* in a pond contributes to the productivity of the pond, as well as to the health and welfare of the people. Though the stone cannot be seen due to fallen debris, it is likely that the stone exists and is still there. The report recommends that prior to commencing restoration work on the pond, the exact location of the stone be identified, and that the stone be preserved in place. **[PET Ex 2, p. 5-11; PET Ex 2, App G; TRIV p. 116, ln. 19-23; p. 96, ln. 1-7]**

120. The assessment failed to turn up evidence of traditional customs and practices presently being exercised on the Project. This reflects the geographic location of the parcel, as well as the nature of the land tenure. The Project area is located on the flat pasture lands of Makaweli near the coast. There is no abundant source of surface water other than the fishpond, which is fed by three underground springs. The *ahupua'a* of Makaweli had always belonged to the *ali'i*, and it is likely that this particular fishpond was reserved solely for their use, and it would not have been accessible to the common people of the area. **[PET Ex 2, pp. 5-11 to 5-12; PET Ex 2, App G; TRIV p. 96, ln. 15-19; p. 104, ln. 12-15; p. 107, ln. 4 to p. 108, ln. 15; p. 111, ln. 8-9]**

121. The assessment records that a document search did not disclose any *kuleana* (native tenant) claims within the Project area, and oral interviews which were a component of the traditional customs and practices report, did not indicate there were any Hawaiian settlements within the Property. **[PET Ex 2, p. 5-12; PET Ex 2, App G; TRIV p. 85, ln. 3-16]**

122. The assessment reports that archaeological evidence and research of Hawaiian trails within the *ahupua'a* support the settlement of a larger coastal and inland population utilizing the perennial streams of the Waimea-Makaweli-Mokuone river valleys. The historic record reflects very little Hawaiian activity at the Property, other than use of the fishpond. **[PET Ex 2, p. 5-12; PET Ex 2, App G; TRIV p. 85, ln. 3-11]**

123. The assessment reports that the Sinclair-Robinson family has owned the *ahupua'a* of Makaweli, which includes the Property, since 1865. Because the Property was utilized by the 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. Thus, if any traditional customs had been carried out at

the Property prior to the family's arrival, these were most likely discontinued during the 135 years of the family's ownership. Anyone who might have been pursuing these customs and practices have long since passed away. During the oral history phase of the traditional customs and practices report, none of the interviewees could recall being told by Kualo, (a long-time employee of the Robinsons knowledgeable of native Hawaiian culture), or their elders, of any cultural practices in the Property. As a result, it is not likely that Hawaiian traditional customs and practices will be significantly affected by the proposed development. **[PET Ex 2, p. 5-12; PET Ex 2, App G; TRIV p. 106, ln. 4-11]**

124. The assessment reports that there is currently public access to the shoreline adjacent to the Property. The public is free to utilize this access and walk along the shoreline from Pakala all the way to the Waimea River. In addition to this, the Project includes Petitioner's commitments to improve shoreline access by providing access routes from designated public parking areas from within the Project. **[PET Ex 2, p. 5-11; PET Ex 2, App G; TRII p. 66, ln. 19 to p. 67, ln. 1; p. 83, ln. 19-22]**

Coastal/Aquatic Resources

125. A marine assessment of the nearshore area fronting the Project was conducted by Petitioner's consultant, Marine Research Consultants. The assessment determined that a narrow sand beach stretches along the length of the Property boundary for about 5,200 feet. Along the southern end of the Property from near Aakukui Stream to the Makaweli Landing, the nearshore marine environment 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 (km) 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. **[PET Ex 2, p. 4-17; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21]**

126. From the point where Aakukui 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. **[PET Ex 2, p. 4-18; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21]**

127. 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 one meter. 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. **[PET Ex 2, p. 4-18; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21]**

128. 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. **[PET Ex 2, p. 4-18; PET Ex 2, App C; TRIII p. 87, ln. 11 to p. 88, ln. 21]**

129. Water sampling was performed 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 Hawaii, Department of Health (DOH) Water Quality Standards. These criteria include: total nitrogen (TN), nitrate + nitrite nitrogen (NO3- + NO 2-, hereinafter referred to as NO3-), ammonium

(NH4+), total phosphorus, chlorophyll a (Chl a), turbidity, temperature, pH, and salinity. In addition, orthophosphate phosphorus (PO4-3) and silica (Si) are also reported because these parameters are sensitive indicators of biological activity and the degree of freshwater input to the ocean, respectively. **[PET Ex 2, p. 4-19; PET Ex 2, App C; TRIII p. 88, ln. 24 to p. 89, ln. 11]**

130. Examination of data revealed several distinct patterns with respect to horizontal stratification of water chemistry. The plot of salinity vs. distance (from shore) reveal a sharp gradient of increasing salinity on the reef flat between the shoreline and 50 m offshore. As there was no stream flow reaching the ocean during the sampling, the freshwater input to the area appears to be from efflux of groundwater in the nearshore zone that mixes with oceanic water (~35 0/00). Freshwater efflux appears to be greater on the northern transect relative to the southern transect. Seaward of the reef flat, there was little evidence of variation in salinity between the samples collected to 100 to 500 m from shore. **[PET Ex 2, p. 4-20; PET Ex 2, App C]**

131. The plots of dissolved nutrients Si, NO3-, TN, PO4-3, and TP exhibit patterns that are mirror images of the patterns of salinity. Groundwater normally contains high concentrations of these nutrients and low salinity, while seawater typically contains low nutrient content and high salinity. While salinity is also generally low in surface runoff (i.e., rainfall), nutrients are also low; hence there is relatively little corresponding increase in nutrients with decreased salinity. Hence, the mirror images of salinity and concentrations of nutrients off the Property indicate input of groundwater at the shoreline. **[PET Ex 2, p. 4-20; PET Ex 2, App C]**

132. As freshwater is lower in density than seawater, there is also an indication of vertical stratification of nutrients and salinity. Salinity is consistently higher in bottom samples than surface samples, which nutrient concentrations are elevated in surface samples relative to bottom

samples. However, at the sampling stations that exhibited the greatest variation in nutrient concentrations and salinity on the reef flat, the shallow depth of water precluded sampling at the surface and bottom. **[PET Ex 2, p. 4-20; PET Ex 2, App C]**

133. The patterns of distribution of dissolved organic nutrients (DON, DOP) and NH4+ that are not present in relatively high concentrations in groundwater are distinctly different from the patterns for inorganic nutrients. The concentrations of NH4+ on the south transect are essentially constant in value across the entire transect. On the north transect, the concentrations of NH4+ peak at the outer boundary of the reef flat. Profiles of DON and DOP show little pattern throughout the sampling regime. **[PET Ex 2, p. 4-20; PET Ex 2, App C]**

134. On both transects, TSS and turbidity peaked at the shoreline and decreased with distance from shore. TSS and turbidity were also higher on the northern transect compared to the southern transect from the shoreline to a distance of 300 m from shore. Chl a was also highest on the reef flat, peaking in concentration at the shoreline on the north transect and 25 m from shore on the southern transect. **[PET Ex 2, pp. 4-20 to 4-21; PET Ex 2, App C]**

135. The assessment also sought to determine compliance with DOH standards. DOH standards include specific criteria that are not to be exceeded during either 10% or 2% of the time, or as the geometric mean of the sampling set. With only one sample set collected to date from each sampling station, comparison of the 10% or 2% criteria or the geometric mean criteria for any sampling station are not statistically meaningful. However, comparing sample concentrations to these criteria provide an indication of whether water quality is near the stated specific criteria. Data shows samples seaward of the shoreline that exceed DOH water quality standards for open coastal waters under "wet" conditions. The criteria for wet conditions are applied to the Property because

this region probably receives at least 3 million gallons of groundwater input per mile, per day. During the March 1999 survey, several constituents exceeded the 10% or 2% limits. On the north transects NO3-, turbidity and Chl a in samples within 50 m of the shoreline exceeded specific criteria. On the south transect, these constituents, as well as NH 4+, exceeded specific criteria. The recorded concentrations of NH4+ and Chl a exceeded specific criteria from the shoreline to a distance of 300 m from shore on the southern transect. As noted hereinabove, NO3- is a natural component of groundwater. In areas that receive substantial input of groundwater, there is typically a zone of mixing near the shoreline where NO3- concentrations may consistently exceed DOH criteria as long as physical mixing processes remain low. However, NH4+ is not a normal component of groundwater. It is apparent that some other source of NH4+ than groundwater input is responsible for the elevated concentrations along almost the entirety of the south transect of the Property. **[PET Ex 2, p. 4-21; PET Ex 2, App C]**

136. The assessment also sought to determine coral communities. The assessment found that the predominant taxon of macrobenthos (bottom-dwellers) throughout the reef off the Kapalawai area are Sclerctinian (reef-building) corals and benthic macroalgae. Results of quantitative reconnaissance surveys indicated that 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. **[PET Ex 2, pp. 4-21 to 4-220; PET Ex 2, App C]**

137. 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%) compared to the deeper transects (2-3%). The dominant species on the two north transects and the deep southern transect was Porites lobata, which accounted for about 37% 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. **[PET Ex 2, p. 4-22; PET Ex 2, App C]**

138. 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. **[PET Ex 2, p. 4-22; PET Ex 2, App C]**

139. 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 algae, Amansia, Asparagopsis, Corallina, Laurencia, Liagora, Martensia, and Plocamium. All of these plants occurred commonly on the limestone platform. **[PET Ex 2, pp. 4-22 to 4-23; PET Ex 2, App C]**

140. The assessment also determined that 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 Labridau (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. **[PET Ex 2, p. 4-23; PET Ex 2, App C]**

141. The assessment also explored the issue of endangered and protected species. 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. **[PET Ex 2, p. 4-23; PET Ex 2, App C; TRIII p. 90, ln. 9-18]**

142. The assessment examined probable impacts of the Project on coastal and aquatic resources. The assessment concluded that the implementation of the proposed plan for the Project will involve grading and some vegetation removal associated with construction of the resort structures, although disturbed areas will be landscaped as part of the design. Construction of roadways and parking areas will increase the amount of impervious surfaces compared to the present situation. However, there are no changes planned to the existing shoreline or nearshore area. The overriding findings of the marine environmental assessment are that at present, both water quality and biotic community composition are 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 Project site. 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. While coral communities occur in the outer reef area, it appears that the composition of these communities are strongly biased toward species that are sediment-resistant. **[PET Ex 2, p. 4-24; PET Ex 2, App C; TRIII p. 91, ln. 10-17]**

143. Results of water chemistry surveys conducted off the Property reveal that a surface layer of low salinity, high nutrient groundwater occurs in the nearshore area as a result of 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 on-site 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. **[PET Ex 2, pp. 4-24 to 4-25; PET Ex 2, App C; TRIII p. 89, ln. 8-25]**

144. 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. Preliminary drainage calculations indicate that there are nearly 8,000 acres of land area that drain through the Project site. Thus, the changes to the approximate 100 (of 153.696) acres of the Project as a result of project implementation will have an insignificant impact to offshore water. **[PET Ex 2, p. 4-25; PET Ex 2, App C]**

145. The threatened green sea turtle occurs in the nearshore areas off the Project. Because there is no plan for work on the shoreline or in the nearshore region, there is no potential for activities that might affect 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 Kauai. **[PET Ex 2, p. 4-25; PET Ex 2, App C]**

146. The assessment concluded that the potential for impacts to marine communities as a result of development of the Project appear to be minimal or nonexistent. None of the developmental activities appear to have the potential to induce long-term changes in physic-chemical water quality parameters of a magnitude sufficient to cause changes in biological community structure. 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. **[PET Ex 2, pp. 4-25 to 4-26; PET Ex 2, App C; TRIII p. 90, ln. 19-20]**

147. The assessment also recommended that 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 be designed so as not to illuminate the beach strand. In addition, employees of the Project and its guests should 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. It can also be concluded that as long as reasonable steps (best management practices)

are taken during construction periods, and because operational procedures for the Project do not involve substantial changes in material delivery to the nearshore ocean, there should be no adverse impact to the marine environment. **[PET Ex 2, p. 2-26; PET Ex 2, App C]**

J. ENVIRONMENTAL QUALITY

Noise

148. 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 Kaumualii is not discernible. The cottages are proposed to be set back from the highway distances ranging from about 400 feet to about 2,500 feet. **[PET Ex 2, p. 4-53]**

149. 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. **[PET Ex 2, p. 4-54]**

150. 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 lawn mowers 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 chain saw. 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 off-site noise impacts are anticipated related to on-site mechanical equipment. **[PET Ex 2, p. 4-54]**

151. In order to mitigate the impacts of noise, Petitioner proposes that all construction vehicles must meet Title II, Administrative Rules of the Department of Health, Chapter 42, Vehicular Noise Control. In addition, all construction activities must meet the provisions of Title II, Administrative Rules of the Department of Heath, Chapter 46, Community Noise Control. **[PET Ex 2, p. 4-55]**

Air Quality

152. 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. Kaumualii 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. **[PET Ex 2, pp. 4-51 to 4-52]**

153. 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 Project site. Factors favoring good air quality in the vicinity of the Project site include good exposure to tradewinds and ample open space. Moreover, vehicular traffic flow along the section of Kaumualii Highway fronting the Project site 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. **[PET Ex 2, p. 4-52]**

154. Long-term operational impacts on air quality that could result from the operation of the resort 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% to 20%, 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 Resort will reduce on-site 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. **[PET Ex 2, pp. 4-52 to 4-53]**

155. In order to mitigate the short-term impacts on air quality during construction of the Project, compliance with State of Hawaii Air Pollution Control Regulations (Title II, Chapter 60.1, Hawaii Administrative Rules) 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. **[PET Ex 2, p. 4-53]**

K. ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

156. The 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. **[PET Ex 2, pp. 6-1 to 6-18; PET Ex 2, App H; TRIII p. 7, ln. 23 to p. 8, ln. 23]**

157. The report observed that during the 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 Kaumualii

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. **[PET Ex 2, pp. 6-11, 6-15 ; PET Ex 2, App H]**

158. The report also recommends that personnel 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. **[PET Ex 2, p. 6-15; PET Ex 2, App H]**

159. During the operational period for the resort, the traffic assessment reflects a peak season level of use for both a weekday and a Saturday. The Project is estimated to increase the peak hour volumes on Kaumualii Highway just to the east of the site by 8% during the weekday peak hours, and by 20% on a Saturday with special events at the site. To the west, the Project traffic would add an estimated 6% increase to the weekday peak hour volumes, and 18% to the Saturday peak hour volumes on Kaumualii Highway near the site. **[PET Ex 2, p. 6-13; PET Ex 2, App H; TRIV p. 8, ln. 13-20]**

160. The left-turn movements into and out of the Project driveway connections to Kaumualii 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 Kaumualii 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. **[PET Ex 2, p. 6-13; PET Ex 2, App H; TRIV p. 8, ln. 21-24]**

161. Because of the vehicular speeds along this section of Kaumualii Highway, it is recommended that a left-turn lane be provided for the vehicles waiting to turn left from westbound Kaumualii 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 Kaumualii Highway to minimize any delay to vehicles turning right from the driveway. A right-turn deceleration lane is recommended on eastbound Kaumualii 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. **[PET Ex 2, pp. 6-15 to 6-16; PET Ex 2, App H; TRIV p. 8, ln. 25 to p. 9, ln. 9]**

162. During the hearing for this docket, the Petitioner indicated that discussions had taken place with representatives of the State Department of Transportation and the PD concerning facilities to support public access to the ocean in the vicinity of Aakukui Stream. Included in these discussions was consideration of an additional driveway access to Kaumualii Highway for the public facilities near Aakukui Stream. Should this driveway access be included as part of the Project, appropriate improvements to Kaumualii Highway may be required by the State Department of Transportation. The costs of such improvements would be assumed by the

Petitioner. **[PET Ex 53; TRV p. 68, ln. 20-23; TRII p. 55, ln. 19 to p. 68, ln. 19; TRIII p. 16, ln. 2 to p. 17, ln. 24]**

Water Service

163. Water service from the Kauai Department of Water (hereinafter "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. **[PET Ex 2, p. 6-18; TRIII p. 142, ln. 5-12]**

164. A dual, private potable/irrigation water system is proposed for the Project. Both systems will be privately developed and operated because service from the Kauai DOW is not available in this area. 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. **[PET Ex 2, p. 6-19; TRIII p. 142, ln. 18-24; TRII p. 76, ln. 1 to p. 77, ln. 21]**

165. Based on use rates in accord with DOW standards, it is estimated the year-round average potable water use to be approximately 0.12 million gallons per day (MGD). Peak seasonal use could be about 50 percent higher, or approximately 0.18 MGD. **[PET Ex 2, p. 6-18; TRIII p. 143, ln. 14-15; TRII p. 77, ln. 16-18]**

166. 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. **[PET Ex 2, p. 6-18; TRIII p. 144, ln. 4-8; TRII p. 77, ln. 18-20]**

Wastewater Disposal

167. A civil engineering report was prepared by the Petitioner's consultant, Wagner Engineering Services, and included a discussion of wastewater demands. The report explains that the County of Kauai operates a wastewater treatment plant (hereinafter "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 million gallons per day (hereinafter "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 on-site to handle all wastewater generated by the proposed Project. The proposed wastewater collection systems 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 are 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. **[PET Ex 2, pp. 6-21 to 6-22; PET Ex 2, Fig 23; PET Ex 2, App I]**

168. The WWTP must also be capable of accommodating peak diurnal flows from the Project. According to the County of Kauai'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. **[PET Ex 2, p. 6-25; PET Ex 2, App I]**

169. Estimates for wastewater flow must also include infiltration. A common limit for an acceptable level of infiltration in a sewer system is approximately 500 gallons per day, per inch-mile of pipe. This results in an estimated infiltration rate of about 20,000 gallons per day, 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. **[PET Ex 2, p. 6-25; PET Ex 2, App I]**

170. 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 Kauai'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 on-site composting operation. Combined with green waste generated from landscaping maintenance operations on the Project, compost could then be reused for the Project's landscaping. **[PET Ex 2, p. 6-25; PET Ex 2, App I]**

171. 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 Kauai where weather is hot and dry and water is a precious resource), is to recycle the effluent as irrigation water. Irrigation will be the method of choice at the Project. **[PET Ex 2, p. 6-25; PET Ex 2, App I; TRII p. 77, ln. 11-15]**

172. The use of reclaimed water will be accomplished in adherence with the State Department of Health'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. **[PET Ex 2, p. 6-25; PET Ex 2, App I]**

Solid Waste Disposal

173. The County of Kauai's only municipal solid waste landfill is located in Kekaha, approximately seven miles to the northwest. The capacity and lifespan of the landfill was 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 Hawaii, a development the size of the Project can be expected to generate 70 to 90 cubic yards (cy) of waste per week. **[PET Ex 2, p. 6-30]**

174. According to the provisions of Article 7 (Landfills) of the Kauai 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% 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. Much of the 70 to 90 cy of solid waste anticipated for the Project is recyclable. **[PET Ex 2, p. 6-31]**

175. Garden Island Disposal is the only commercial solid waste hauler on Kauai. Garden Island Disposal has contracted with the County of Kauai 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% of its solid waste, as indicated hereinabove. In addition, the following items may also be diverted from the landfill:

(1) Plastic - currently only number 2 plastics are recyclable on Kauai. 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 on-site 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 on-site or delivered to the Kekaha Landfill where the County of Kauai already has a green waste program in operation, provided the volume of green waste does not exceed 20% of any individual load. **[PET Ex 2, pp. 6-31 to 6-32]**

176. Liquid wastes (other than wastewater) will be collected by a vendor and shipped off-island for recycling. In addition, the County of Kauai is currently evaluating proposals from private entities to handle large portions of the island's solid waste to avoid its placement in landfills. **[PET Ex 2, p. 6-32]**

Schools

177. The Petitioner's consultant, Mikiko Corporation, prepared the Economic and Fiscal Impact Assessment in which it was estimated that the approximate number of individuals anticipated to move to Kauai 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 the Petitioner's commitment to seek employees from the Westside community and the island of Kauai would result in an insignificant impact on schools in the Westside community and the island of Kauai. In addition, the Department of Education offered "no comment" in response to the Environmental Impact

Statement Preparation Notice (letter of Dr. Paul G. LeMahieu, dated August 4, 1999). **[PET Ex 2, p. 5-3; PET Ex 2, Section 12.0; TRIII p. 132, ln. 3 to p. 133, ln. 2]**

Police, Fire and Emergency Services

178. The Waimea District (Hanapepe-Polihale/Kokee) 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. The Police Department has indicated that there are problems in the district with car break-ins in isolated areas. Increased traffic in the region could result in more traffic accidents. Moreover, having on-site security personnel would reduce impact to police services. In general, impacts to police services are not anticipated to be significant, provided the Project provides on-site security, based on experience with other facilities in Koloa and Poipu. **[PET Ex 2, pp. 6-34 to 6-35]**

179. 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 Project. 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. The Fire Department has indicated that if the Petitioner provides a private fire protection system consisting of storage tanks, lines, stand pipes, and access roads (to the cottages), existing fire protection equipment and manning could be sufficient to serve the Project. **[PET Ex 2, p. 6-35]**

180. Emergency services on Kauai are contracted by the State to American Medical Response. The Waimea unit ("Medic 20") serves the Project area. Its service area runs from Polihale and Kokee 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 Kauai Veterans Memorial Hospital, Waimea. Severe trauma and isolated orthopedic cases are transported to Wilcox Hospital in Lihue, 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 Kauai. 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 Poipu unit will respond. The Fire Department co-responds on all calls. Emergency services staff indicated the Project would not require the addition of staff or equipment to the Waimea unit. **[PET Ex 2, p. 6-35]**

Electricity, Telephone and Cable Services

181. A civil engineering report was prepared by the Petitioner's consultant, Wagner Engineering Services, and included a discussion of existing and future utility demands. Electric, telephone and cable television service from Kauai Electric, GTE Hawaiian Tel, and Garden Isle Telecommunications, respectively, are readily available from overhead lines on Kaumualii Highway. Utility services will be brought underground from one or more of the several utility poles fronting the Project site on Kaumualii 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, and the administrative facilities, and other guest services. **[PET Ex 2, pp. 6-18 to 6-19; PET Ex 2, Fig 21;PET Ex 2, App. I]**

L. CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

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

a. The Property is in close proximity to existing urban areas, which contain "city-like" concentrations of people, structures, streets and urban levels of service. The Property is in close proximity to and in between the Urban Districts of Waimea town, Makaweli and Pakala Camp, which were designated Urban when the State Land Use Districts were first adopted. **[PET Ex 2, p. 2-1; TRII p. 47, ln. 2-19; PET Ex 21]**

b. The Project is in close proximity to various centers of trading and employment, including Waimea Town, Hanapepe Town and Kekaha Town. **[PET Ex 2, p. 21]**

c. The Property is, or upon the completion of necessary off-site and on-site infrastructure will be, adequately serviced by parks, wastewater, solid waste disposal, schools, drainage, water, transportation systems, private utilities, police, fire and emergency services. **[PET Ex 2, Section 6.6, Section 6.3, Section 6.5, Section 5.1, Section 12.0, Section 6.4, Section 6.1, and Section 6.8; TRIII p. 141-150, p. 6-4, ln. 18-24, p. 76, ln. 25 to p. 77, ln.3]**

d. The Property consists of satisfactory topography, drainage and soil conditions, and 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. **[PET Ex 2, Section 4.11, Section 4.4; PET Ex 32; TRII p. 55, ln. 25 to p. 59, ln. 19]**

e. The Property is in a close proximity to existing urban areas, and has been classified Resort in the Kauai County General Plan. **[PET Ex 2, p. 2-1; TRII p. 47, ln. 8-19; PD Ex 5; TRV p. 128, ln. 6-8; PD Ex 1, p. 7]**

f. The Property is in an appropriate area for new urban concentration, as it is in close proximity to existing Urban land, residential and other urban uses and activities. **[PET Ex 2, p. 2-1; TRII p. 47, ln. 8-19; PD Ex 1, p. 7]**

g. The Property is in close proximity to an existing commercial and residential community, and will not contribute toward unreasonable scattered spot urban development. The 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. **[PET Ex 2, p. 2-1; PET Ex 32; TRII p. 47, ln. 8-19; PD Ex 1, p. 7; TRII p. 64, ln. 18-24, p. 76, ln. 25 to p. 77, ln. 3; PET Ex 2, Section 6.1; Section 6.2; Section 6.3; Section 6.4]**

h. The Property does not consist of lands having a slope of 20 percent or more. **[PET Ex 2, pp. 4-1 and 4-3, Figure 10; PET Ex 28]**

M. CONFORMANCE WITH GOALS, OBJECTIVES AND POLICIES OF HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PROPERTY GUIDELINES AND FUNCTIONAL PLANS

183. Pursuant to Section 205-17(1), HRS, and Section 15-15-77(b)(1), HAR, the reclassification of the Property conforms to the Hawaii State Plan, Chapter 226, HRS, as amended, with respect to the following objectives and policies:

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

Section 226-6(b)(1) Expand Hawaii'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 Hawaii as an attractive market for environmentally and socially sound investment activities that benefit Hawaii's people.

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

Section 226-6(b)(4) Expand existing markets and penetrate new markets for Hawaii'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 resort represents a type of visitor industry product that is unique in Hawaii. The low-density and low-impact project (250 units on 153.696 acres) emphasizes the historic nature of the Project and will encourage guests to leave the Property to experience other cultural and recreational experiences on Kauai in general, and Kauai's Westside in particular. The resort will attract guests who presently comprise a segment of the travel market that is not highly recruited in Hawaii, the eco-tourist. Eco-tourism is a term that can be applied to a wide variety of travelers, including adventure-travel, cultural-travel, agricultural tourism, etc. These travelers are more interested in understanding the intrinsic values that define communities (such as: history, music, art, food, etc.), rather than being pre-occupied solely with the physical attributes of an area. Traditionally, tourism in Hawaii has relied heavily on its natural beauty. In addition to broadening the market base for visitors to Hawaii, 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 the 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. **[PET Ex 2, pp. 3-1 to 3-2; PET Ex 12; TRIII p. 103, ln. 2 to p. 104, ln. 13; TRV p. 54, ln. 18 to p. 58, ln. 7, p. 61, ln. 3-15; TRIII p. 116, ln. 9-13, p. 117, ln. 2-25]**

b. Section 226-1 Objective and Policies of the physical environment – land based, shoreline and marine resources.

Section 226-11(b)(1) Exercise an overall conservation ethic in the use of Hawaii'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.

In addition to a corporation and operational philosophy that is based on resource conservation and recycling, the Project is also dedicated to principles of environmental and ecological protection and enhancement. 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 overwhelming majority of the Project will be left in open space and natural landscaping. The emphasis on individual cottages will allow more landscaping to effectively 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. **[PET Ex 2, pp. 3-2 to 3-3, Section 2.3, Fig 3, and p. 1-2; TRII p. 60, ln. 23 to p. 64, ln. 1, p. 64, ln. 14; TRIV p. 125, ln. 21 to p. 127, ln. 6; TRV p. 57, ln. 11-20]**

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

As discussed hereinabove, 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 resort 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 Kaumualii 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. **[PET Ex 2, pp. 3-3 to 3-4; Section 4.10; pp. 2-4, 2-6, 4-44 to 4-45; TRII p. 60, ln. 23 to p. 61, ln. 1, p. 64, ln. 10-13; TRV p. 57, ln. 22 to p. 58, ln. 22]**

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

Section 226-13(b)(2) Promote the proper management of Hawaii'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 Hawaii's communities.

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

The low density and low profile of the Project respects 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 combination of low density and pedestrian experience allows for the retention of large trees. In terms of coastal views, the Property is not presently visible from Kaumualii Highway because of dense vegetation fronting the highway. Environmental sensitivity is a pervasive axiom for the design and operation of the proposed resort. 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, on-going 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 site, 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 on-site transport by guests will be pedestrian. **[PET Ex 2, pp. 3-4 to 3-5, Section 4.10, Section 6.3, Section 4.11, and Section 2.3]**

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

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

As discussed hereinabove, re-use and recycling are a fundamental corporate philosophy and educational objective of the Petitioner and will be incorporated into the Project design and management. Recycling wastewater, composting green waste, and crushing and recycling glass containers are a few of the programs employing a conservation ethic. **[PET Ex 2, p. 3-5, Section 6.3 and Section 6.5]**

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

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 on-site wastewater treatment plant, and reclaimed as irrigation water elsewhere on the Property. **[PET Ex 2, p. 3-5, Section 6.3]**

184. Pursuant to Section 205-17(1), HRS, and Section 15-15-77(b)(1), HAR, the reclassification of the property conforms to the following functional plans:

a. State Recreation Functional Plan

Issue Area: Public Access to the Shoreline and Upland Recreation Areas

Objective III-A: Prevent the loss of access to shoreline and upland recreation areas due to new developments.

Policy III-A(1); Require land use permits applications to fully address the impact on trails and public access.

Issue Area: Resource Conservation and Management

Policy IV-B(3): Protect surfing sites.

Presently, public access to the shoreline is allowed near Aakukui Stream, on the Hanapepe side of the Property, where beachgoers park alongside Kaumualii Highway and walk down a path through a pasture to reach the ocean. The path ends in the vicinity of the former Makaweli Landing. The primary interest for users of this path is reaching the well-known surf break, "Pakalas" (also known as "Infinities") on the southside of the landing. Fishermen and sunbathers also use this path. The Petitioner has proposed to improve the existing public access and to develop other public facilities, including restrooms, showers, and parking to serve this portion of the Property. **[PET Ex 2, pp. 3-6; PET Ex 53, TRII p. 66, ln. 19 to p. 70, ln. 18, p.53, ln. 6-12; TRV p. 68, ln. 16 to p. 69, ln. 6]**

b. State Tourism Functional Plan

Issue Area: Growth

Policy I.A.4: Ensure that the growth of the visitor industry assists in the overall State goal of expansion and diversification of the economy.

Policy I.A.5: Ensure that the benefits of tourism development are spread evenly throughout the State, to the extent desired by the counties, by making special efforts to distribute growth to the Neighbor Islands.

Issue Area: Physical Development

Policy II.A.2: Enhance tourism product and encourage continued development of a diverse range of tourism products.

Policy II.A.3: Facilitate the reasonable distribution of financial responsibilities between government and private parties to fund tourism-related capital improvements and related infrastructure requirements.

The proposed resort will target a previously under-marketed segment of Hawaii's visitor industry. This will broaden the economic base of the industry. The Project itself will be unique because of the emphasis on the historical, social, and environmental aspects of the Property.

This includes the restoration and improvement of structural elements on-site (former Robinson family residence and the fishpond) and the integration of these elements into the fabric of the resort, including an on-site museum. In terms of infrastructure requirements, the Petitioner will assume complete responsibility for funding and construction of on and off-site infrastructural improvements, including potable/nonpotable water and wastewater. **[PET Ex 2, pp. 3-6 to 3-7, Sections 6.2 and 6.3; PET Ex 12; TRIII p. 121, ln. 15-18; TRII p. 64, ln. 18-24]**

Issue area: Environmental Resources and Cultural Heritage

Objective III.A: Enhancement of respect and regard for the fragile resources which comprise Hawaii's natural and cultural environment. Increased preservation and maintenance efforts.

Policy III.A.2: Assist in preserving, perpetuating, and interpreting cultural, historic and archaeological resources.

A fundamental premise for the development of the Property is the preservation of important historic resources and their integration into the overall plan for the Project. The former Robinson family house, its accessory buildings, and the fishpond form the basic core of the Project. Architectural themes, site planning, and visitor experiences will all be enhanced by the preservation of these important historic resources, including the use of a significant portion of the house as a museum. **[PET Ex 2, p. 3-7, Section 2.3, and Section 4.9; TRII p. 64, ln. 5-14; PET Ex 2, App E; TRIV p. 28, ln. 8-13, p. 32, ln. 21 to p. 33, ln. 1, p. 37, ln. 12 to p. 41, ln. 7]**

c. **State Agricultural Functional Plan**

Issue area: Land and Water

Policy H(1): Conserve and protect important agricultural lands in accordance with the Hawaii State Constitution.

Language in the State Constitution relative to agricultural lands, directs the State to "conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable kinds." The constitution makes it clear that important agricultural lands shall not be reclassified without meeting appropriate standards (established by the State Land Use Commission) and a two-thirds vote of the Commission. As discussed hereinabove, the majority of the Property is not highly valued for its agricultural potential, and has never been used for commercial agricultural production. The Property has mainly been used as pasturage for livestock, and there is an amply supply of more highly suitable land elsewhere in the region. Thus, the conversion of the Property to a low-density resort will not compromise the State's ability to ensure the overall health of Hawaii's agricultural sector. The Property has served as a primary residence for the Robinson family beginning in 1897. **[PET Ex 2, p. 3-8, p. 1-2, pp. 4-8 to 4-11, Fig 12 and Fig 13]**

N. CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIONS AND POLICIES

185. In an effort by the State of Hawaii to preserve and protect the natural resources of the coastal zone, special controls on development along the shoreline have been implemented, as contained in Chapter 205A, Hawaii Revised Statutes (HRS), as amended (hereinafter referred to as Chapter 205A). The law defines the Coastal Zone Management Area to be all areas of the State of Hawaii, except forest reserve areas. As such, the Project lies within the Coastal Zone. In addition, Chapter 205A contains the general objectives and policies upon which all counties within the State of Hawaii (including the County of Kauai) have structured more

specific legislation which have created Special Management Area (SMAs) for each county. The requirements of Chapter 205A as related to the proposed Project, are discussed hereinbelow.

a. Recreational Resources

Objective: Provide coastal recreational opportunities accessible to the public.

Policies:

1. **Protect coastal resources uniquely suited for recreational opportunities that cannot be provided in other areas.**

2. **Require replacement of coastal resources having significant recreational value, including but not limited to surfing sites, fishponds, and sand beaches when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the state for recreation when replacement is not feasible or desirable.**

3. **Provide and manage adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value.**

4. **Provide an adequate supply of shoreline parks and other recreational facilities suitable for public recreation.**

5. **Ensure public recreational use of county, state and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources.**

6. **Adopt water quality standards and regulate point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters.**

7. **Develop new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing.**

8. **Encourage reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the planning commissions, and credit such dedication against the requirements of park dedication rules and regulations.**

The shoreline fronting the Project is used primarily by fishermen and strollers. There is also a popular surfing break beyond the southern boundary of the Property, although entry into

the water to paddle to this break occurs further down the beach. Access for fishermen, surfers, or others who wish to reach the beach is readily available from off Kaumualii Highway down an existing path paralleling Aakukui Stream. It takes less than 5 minutes to walk to the shoreline from Kaumualii Highway. Access to the shoreline will be improved and enhanced by the proposed Project. In addition, public access to the shoreline will also be encouraged and promoted with the provision of public restrooms, showers and parking on-site. **[PET Ex 2, pp. 3-10 to 3-11; PET Ex 53; TRII p. 66, ln. 19 to p. 67, ln. 23; TRV p. 68, ln. 16 to p. 69, ln. 8]**

b. Historic Resources

Objective: Protect, preserve, and where desirable, restore those natural and manmade historic and prehistoric resources in the Coastal Zone Management area that are significant in Hawaiian and American history and culture.
Policies:

1. **Identify and analyze significant archaeological resources.**

2. **Maximize information retention through preservation of remains and artifacts or salvage operations.**

3. **Support state goals for protection, restoration, interpretation and display of historic resources.**

An archaeological inventory survey was conducted for the Project site by Cultural Surveys Hawaii. The inventory survey identified six sites, including: the fishpond; a Portuguese oven; the former Robinson family house complex; a series of rock walls and a terrace; a cultural layer (with a burial); and a rock platform. Each of these sites will be preserved. While the entire residence will be renovated, a portion of the building will be dedicated to the creation of a museum, documenting the history and lifestyle of the Robinson family, who comprise such an important part of the history of Kauai. In addition, the fishpond will be cleaned of silt and vegetation in an attempt to restore its former condition. **[PET Ex 2, pp. 3-11 to 3-12, App D, and Section 4.9; TRII p. 60, ln. 17 to p. 61, ln. 1; TRV p. 57, ln. 11 to p. 58, ln. 22]**

c. Scenic and Open Space Resources

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

Policies:

1. **Identify valued scenic resources in the coastal zone management area.**

2. **Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public view to and along the shoreline.**

3. **Preserve, maintain, and where desirable, improve and restore shoreline open space and scenic resources.**

4. **Encourage those developments which are not coastal dependent to located in inland areas.**

Views of the interior of the Property are obstructed by dense trees and vegetation along the makai side of Kaumualii Highway. There are no views of the ocean along the entire length of the Property fronting the highway. Buildings on the Project would also be obstructed from view while traveling on the highway due to existing vegetation. Although the proposed use is not coastal dependent, many other successful resorts on Kauai, and throughout the State of typically are located on ocean front parcels. **[PET Ex 2, p. 3-12, Section 4.10]**

d. <u>Coastal Ecosystems</u>

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

Policies:

1. **Improve the technical basis for natural resource management.**

2. **Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance.**

3. **Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs.**

4. **Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.**

Planning for the Project has included consideration of impacts to aquatic habitats on-

site and marine habitats off-site. A primary goal for the Project is to improve the physical condition of the fishpond by removing plants and silt which are threatening to completely fill the fishpond. In addition to improving the water quality of the fishpond, clearing vegetation and silt will also create desirable habitat for endangered water birds. In addition, maintenance of the Mahaikona and Aakukui streams will likewise improve the open water habitats of these watercourses and increase their capacities to handle storm water runoff. Design of on-site drainage facilities is based on minimizing additional sediment load to nearshore receiving waters. These facilities include the grass-lined channel to be developed within an existing man-made drainage ditch. The new channel will end near the ocean emptying into a detention area that will settle sediments prior to overwash during large storm events. **[PET Ex 2, p. 3-13, Section 4.8, Section 4.7, Section 6.4, App B, App C, and App I; TRII p. 59, ln. 4-19; TRV p. 57, ln. 11-20; TRIII p. 74, ln. 7-22, p. 79, ln. 23 to p. 80, ln. 14]**

e. <u>Economic Uses</u>

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

Policies:

1. **Concentrate coastal dependent development in appropriate areas.**

2. **Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area.**

3. **Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:**

- **use of presently designated locations is not feasible**
- **adverse environmental effects are minimized**
- **the development is important to the State's economy**

Generally speaking, the Project is not coastal dependent, and the objective and policies in this area are not applicable to this type of development. Nevertheless, the Project has been designed to minimize adverse social, visual and environmental impacts. **[PET Ex 2, pp. 3-13 to 3-14 Chapter 5, Section 4.10, and Chapter 4; TRII pp. 44-90; TRII pp. 51-100, pp. 134-150; TRIV pp. 44-136]**

f. Coastal Hazards

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

Policies:

1. **Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence, and point and non-point source pollution hazards.**

2. **Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and non-point source pollution hazards.**

3. **Ensure that developments comply with requirements of the Federal Flood Insurance Program.**

   Prevent coastal flooding from inland projects.

4. **Develop a coastal point and non-point source pollution control program.**

Flood Insurance Rate Maps (FIRM) show that portions of the Property are subject to inundation in "AE" zones (see Section 4.8). All affected structures will be elevated above the base flood height. **[PET Ex 2, pp. 3-14 to 3-15, and Section 4.11; PET Ex 32; TRII p. 55, ln. 25 to p. 57, ln. 15]**

g. Managing Development

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

Policies:

1. **Use, implement and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development.**

2. **Facilitate timely processing of application for development permits and resolve overlapping or conflicting permit requirements.**

3. **Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the public to facilitate public participation in the planning and review process.**

The application for a Special Management Area Use Permit (SMP), the preparation of the EIS, including technical appendices, and the processing of the permit request, including public hearings, is consistent with the objective and policies. **[PET Ex 2, p. 3-15]**

h. <u>Public Participation</u>

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

Policies:

1. **Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program.**

2. **Disseminate information on coastal management issues, by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities.**

3. **Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.**

The objective and policies are geared primarily for agencies with jurisdiction for enforcing coastal zone management rules and regulations. **[PET Ex 2, pp. 3-15 to 3-16]**

i. Beach Protection

Objective: Protect beaches for public use and recreation.

Policies:

1. Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion.

2. Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at sites and do not interfere with existing recreational and waterline activities.

3. Minimize the construction of public erosion-protection structures seaward of the shoreline.

All structures at the Project will be located a minimum of 100 feet mauka of the certified shoreline. The shoreline fronting the Project appears stable and is protected with healthy vegetation. Thus, no erosion-protection structures are proposed as part of the development program. [PET. Ex 2, p. 3-16; TRII p. 58, ln. 11-17]

j. Marine Resources

Objective: Implement the State's ocean resources management plan.

1. Exercise an overall conservation ethic, and proactive stewardship in the protection, use, and development of marine and coastal resources.

2. Assure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial.

3. Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency.

4. Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone.

5. **Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources.**

6. **Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.**

The most basic aspects of the operating philosophy for the Project are rooted in environmental sensitivity and stewardship of resources. This includes recycling, education, protection of endangered and threatened species, and improvement of wildlife habitats. **[PET Ex 2, pp. 3-16 to 3-17, Section 4.7, Section 4.8, and Section 6.5; PET Ex 2, App B; TRII p. 64, ln. 14; TRIII p. 74, ln. 11-21, p. 77, ln. 25 to p. 78, ln. 14, p. 78, ln. 24 to p. 80, ln. 1]**

186. The County of Kauai, similar to other countries in Hawaii, has adopted: (1) boundaries which identify the Special Management Area (SMA); and (2) rules and regulations which are consistent with Chapter 205A, HRS that control development within the SMA. A portion of the Project lies within the SMA. The SMA Rules and Regulations of the County of Kauai include guidelines that are used by the County Planning Commission for the review of developments proposed within the SMA. These review guidelines, and the relationship of the proposed resort to them, are discussed hereinbelow.

a. **All development in the special management area shall be subject to reasonable terms and conditions set by the Authority to ensure that:**

- **Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas and natural reserves is provided to the extent consistent with sound conservation principles.**
- **Adequate and properly located public recreation areas and wildlife preserves are reserved.**
- **Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources.**

- **Alterations to existing land forms and vegetation except crops, and construction of structures shall cause minimum adverse effect of water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation or failure in the event of earthquake.**

Existing means of pedestrian access to the shoreline near Aakukui stream will continue and will be enhanced by the development of the Project. Additional shoreline access will be provided with designated public parking spaces in the main parking areas of the Project. In addition, public restrooms, shower facilities and public parking areas will be developed within the Project. Wastewater treatment will be provided by an on-site plant. Reclaimed water will then be recycled on-site as irrigation water. There will be no effluent discharge to the ocean or on-site streams. In regard to solid waste, the Project will implement an aggressive recycling program, including: glass; paper; and green waste. The balance of new-recyclable solid waste will be hauled to the Kekaha Landfill. Green waste will be composed and recycled. Glass bottles and aluminum cans will be collected and recycled. Paper products and cardboard will also be collected and recycled. In regard to liquid waste, wastewater will be treated by an on-site ultraviolet disinfecting wastewater treatment facility. The effluent from this wastewater treatment plant will be used for irrigation on the property. All affected structures will be elevated above base flood elevations. **[PET Ex 2, pp. 3-17 to 3-19, Section 6.3, Section 6.5, and Section 4.11; TRII p. 66, ln. 19 to p. 67, ln. 1; TRV p. 68, ln. 16 to p. 69, ln. 2, p. 69, ln. 10-23]**

b. **No development shall be approved unless the Authority has first found that:**

- **The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or compelling public interest. Such adverse effect**

shall include, but not be limited to, the potential cumulative impact of individual development, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.

- **The development is consistent with the objective and policies contained in Chapter 205A, HRS.**
- **The development is consistent with the County general plan, the zoning, subdivision and other applicable ordinances.**

The overall environmental and ecological effects of the Project will be beneficial. Positive impacts resulting from the Project will include protection and improvement of the wetland area and the initiation of a program to revegetate the site with native plants. As discussed hereinabove, the proposed Project is consistent with the policies and objective contained in Section 205-A, HRS. Further, the proposed project is consistent with the county general plan, and the Petitioner has applied for changes in County zoning, which are pending a decision for this docket. **[PET Ex 2, pp. 3-19 to 3-20, and Section 4.6; TRIV p. 137 ln. 2-5, p. 139, ln. 18-22, p. 140, ln. 11-20; PD Ex 5]**

c. **The Authority shall seek to minimize, where reasonable:**

- **Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon.**
- **Any development which would reduce the size of any beach or other area usable for public recreation.**
- **Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach.**
- **Any development which would substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast, or from existing public view to and along the shoreline.**
- **Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.**

The Project will not alter any water bodies, nor will it reduce the size of any beach or area usable for public recreation. As discussed hereinabove, access to and along the shoreline will be continued and improved. The line of sight from Kaumualii Highway to the sea will not be impacted by the proposed Project. The ocean is not now visible from the highway fronting the Property. Groundwater quality, and the marine environment, will not be impacted by the proposed Project. No effluent will be discharged to the ocean, and treated wastewater will be used for irrigation. **[PET Ex 2, p. 3-21, Section 4.10, Section 6.3, Section 4.8, Section 4.3, App C, and App I; PET Ex 53; TRV p. 68, ln. 20 to p. 69, ln. 17]**

O. INCREMENTAL DISTRICTING

187. The Project is intended to be completed in its entirety within three (3) years from the Commission's decision without phasing. **[PET. Ex 2 pp. 2-7; TRII p. 88, ln. 12-24; TRV p. 78, ln. 17-20]**

RULING ON PROPOSED FINDINGS OF FACT

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

CONCLUSION OF LAW

Pursuant to Chapter 205, HRS, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Land Use Commission finds upon the clear preponderance of the evidence that the proposed boundary amendment does conform to the

standards established for the Urban District by the State Land Use District Regulations, is reasonable and is not violative of Section 205-2, HRS, as amended, and is consistent with the Hawaii State Plan, as set forth in Chapter 226, HRS, as amended.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 153.696 acres of land in the State Land Use Agricultural District situate at Makaweli, Island of Kauai, County of Kauai, State of Hawaii, identified as Tax Map Key No. (4)1-7-05: portion 1, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District and the State Land Use District Boundaries shall be amended accordingly.

IT IS FURTHER ORDERED that the reclassification of the Property from the Agricultural District to the Urban District shall be subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kauai. 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 Kauai. **[OP Condition 1]**

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. **[OP Condition 2]**

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 Kauai and/or the State of Hawai`i. **[PET Ex 2, p. 6-30; PET Ex 2, APP I]**

4. 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 Kauai and/or the State of Hawaii **[PET Ex 2, p. 6-30; PET Ex 2, App I].**

5. 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. **[OP Condition 3]**

6. 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. **[OP Condition 5]**

7. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health. **[OP Condition 6]**

8. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawaii Department of Defense, Office of Civil Defense. **[OP Condition 7]**

9. The 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 and obtain approval from the appropriate Federal and State agencies. **[OP Condition 8]**

10. 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. **[OP Condition 9]**

11. 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. **[OP Condition 10]**

12. 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. **[OP Condition 11]**

13. 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. **[OP Condition 12]**

14. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting. **[OP Condition 13]**

15. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses. **[OP Condition 14]**

16. 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. **[OP Condition 15; PD Condition 3]**

17. 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. **[PD Condition 2]**

18. In order to ensure that this Project integrates into the community, the Petitioner shall address the future use of TMK 1-7-05:4 (65 acres). In the event the future use of this 65-acre parcel cannot be addressed, an understanding shall be established between the landowner and the County regarding the future of the 65-acre parcel prior to Zoning Amendment. **[PD Condition 4]**

19. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumualii 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. **[OP Condition 4, as amended; PD Condition 1, as amended; PET Ex 53; TRV, p. 68 ln. 16 to p. 69 ln. 9]**

20. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the fishpond substantially as represented by the Petitioner, and as shown on Petitioner's Exhibit 54. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner. **[PET Ex 54; TRV p. 65 ln. 4-22]**

21. 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. **[PET Ex 55; TRV p. 67 ln. 11 to p. 68 ln. 9]**

22. The fishpond shall be subject to the Hawaiian customary and traditional rights as provided in Article XII, Section 7, of the Hawaii State Constitution, and as discussed in Public Access Shoreline Hawaii v. Hawaii County Planning Commission (hereinafter "PASH"), 79 Hawaii 425, 903 P. 2d 1246, (1995), certiorari denied, 517, U.S. 1163, 116 S. Ct. 1559, 134 L. Ed 2d 660 (1996). Thus, the pond stewardship should reflect recognition of these PASH rights balanced with an equitable policy of ownership by Petitioner in the restoration, utilization and management of the pond as a natural resource, community resource and tourist destination asset. To this end, there shall be management of the resource balanced equally between the Hawaiian community's PASH rights, as defined in the PASH decision, and the Project management's rights in the development of their property. In the absence of any better plan that the Petitioner and the Hawaiian community shall agree on regarding the management of the premises, there shall be a management entity composed of a representative from the Petitioner, one from the West Kauai Hawaiian community, and if they deem it necessary, a selection of a third by the two of them. It is the intent that as far as possible, the Commission would like to see the Petitioner's management personnel on the pond selected from individuals living in the West Kauai community who are familiar with the area and have a love for the 'aina. The management shall utilize recognized ancient Hawaiian pond experts for guidance and assistance in the restoration and ongoing management of

the fishpond. Reasonable management procedures shall be established according to traditional and customary Hawaiian practice. Restoration shall be done deliberately and with sensitivity to the preservation of the resource, including any marine and bird life at the site. No buildings or structures shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall be made to prevent the contamination of the fishpond during the construction and operation of the Project. The duration and term of the management shall be coterminous with the term of the Petitioner's lease with the landowner. **[TRV p. 65 ln. 23 to p. 67 ln. 10, p. 81 ln. 2 to p. 83 ln. 4, p. 94 ln.9 to p. 106 ln. 11, and p. 138 ln. 2 to p. 139 ln. 20]**

23. 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. **[OP Condition 16]**

24. 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.

25. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai 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.

26. 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.

27. 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.

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

BELLES GRAHAM PROUDFOOT & WILSON

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Attorneys for Petitioner
DESTINATION VILLAGES KAUAI,
A LIMITED LIABILITY COMPANY

BEFORE THE LAND USE COMMISSION

OF THE

STATE OF HAWAII

In The Matter Of The Petition Of DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For 153.696 Acres Of Land At Makaweli, Kauai, Hawaii, Further Identified As TMK No. (4)1-7-05: por. 1	)	DOCKET NO. A00-731 STIPULATED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT

STIPULATED PROPOSED FINDINGS OF FACT,
CONCLUSION OF LAW, DECISION AND ORDER FOR A
STATE LAND USE DISTRICT BOUNDARY AMENDMENT

The parties hereto have agreed and stipulated to the attached Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

DATED: Lihue, Hawaii, December 18th, 2000

DESTINATION VILLAGES KAUAI, LLC,
Petitioner

_____
Michael J. Belles
Attorney for Petitioner

STATE OF HAWAII,
OFFICE OF PLANNING

_____
David W. Blane
Its Director of Planning

COUNTY OF KAUAI
PLANNING DEPARTMENT

_____
Dee Crowell
Its Director

DATED: Lihue, Hawaii, December 18TH, 2000

DESTINATION VILLAGES KAUAI, LLC,
Petitioner

MICHAEL J. BELLES
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PLANNING DEPARTMENT

DEE CROWELL
Its Director

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For 153.696 Acres Of Land At Makaweli, Kauai, Hawaii, Further Identified As TMK No. (4)1-7-05: por. 1	)	DOCKET NO. A00-731 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Scott H. Ezer, being first duly sworn, deposes and says:

1. Affiant is a Senior Associate at Helber Hastert & Fee, Planners, Inc. a duly authorized agent for the Petitioner, Destination Villages Kauai, LLC
2. He hereby certifies that on December 20, 2000, he served one copy of the foregoing Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment together with this Certificate of Service, by hand delivery to each of the following addresses:

Mr. Dee Crowell, Director
County of Kauai
Planning Department
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

Mr. David Blane, Director
State of Hawaii
Office of Planning
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, December 20, 2000.

Scott H. Ezer

Scott H. Ezer

ORIGINAL

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

BENJAMIN J. CAYETANO
GOVERNOR
SEIJI F. NAYA, Ph.D.
DIRECTOR
SHARON S. NARIMATSU
DEPUTY DIRECTOR
DAVID W. BLANE
DIRECTOR, OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Ref. No. P-8912

December 5, 2000

LAND USE COMMISSION
STATE OF HAWAII
2000 DEC -6 A 9:15

Mr. Dee Crowell, Director
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Attention: Mr. Keith Nitta

Dear Mr. Crowell:

Subject: Docket No. A00-731 Destination Villages Kauai, LLC
Draft Stipulated Proposed Findings of Fact, Conclusions of Law, Decision and Order

The Petitioner, Office of Planning (OP) and County of Kauai Planning Department have agreed to meet in Honolulu at the Office of Planning on December 8, 2000, to discuss mutual concerns and to reach an agreement on the subject draft.

It is our understanding that a final Stipulated Decision and Order is due to be filed with the State Land Use Commission (LUC) by December 20, 2000.

Should you have any questions, please call the Land Use Division at 587-2842.

Sincerely,

David W. Blane, AICP
Director
Office of Planning

cc: Scott Ezer, Helber, Hastert & Fee
✓Esther Ueda, LUC

Subject

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

November 30, 2000

Michael J. Belles, Esq.
Belles Graham Proudfoot &
Wilson
4334 Rice Street, Suite 202
Lihue, Hawaii 96766

Dear Mr. Belles:

Subject: LUC Docket No. A00-731/Destination Villages Kauai, A Limited Liability Company

We have received your letter dated November 30, 2000, requesting that the deadline for filing Proposed Findings of Fact, Conclusions of Law, and Decision and Order and responses be amended.

We understand that the extension will allow the parties to file Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order (Stipulated Decision and Order) with the Commission on or before December 20, 2000. We further understand that in the event the parties are unable to reach an agreement upon the Stipulated Decision and Order, exceptions will be filed on or before December 20, 2000.

Based on this understanding, your request is hereby granted, and the deadline for filing the Stipulated Decision and Order and any responses/exceptions is December 20, 2000.

Should you have any questions, please call me or Bert Saruwatari of our office at 587-3822.

Sincerely,

ESTHER UEDA
Executive Officer

EU:aa
c: John Chang, Esq.
Amy Esaki, Esq.

Helber Hastert & Fee,
Planners

Facsimile

Date:	November 30, 2000	**Project #**	98144
To:	**Esther Ueda**	**Project Name:**	Kapalawai Resort
Company:	Land Use Commission	**Fax #**	587-3827
From:	Scott Ezer	**Total Pages:** (including this page)	3

(If you did not receive all pages of this facsimile, please call (808) 545-2055.)

Esther:

Attached is a draft letter requesting extension of the deadlines related to the proposed findings and comments thereto, in order to allow for completion of stipulated findings by the parties. Please review the letter and call me with any comments as soon as you can. We would like to submit the later today. Thanks for all your help.

LAND USE COMMISSION
STATE OF HAWAII
2000 NOV 30 A 8:22

Helber Hastert & Fee
Grosvenor Center, Makai Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

DRAFT

November 29, 2000

Ms. Esther Ueda
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

LAND USE COMMISSION
STATE OF HAWAII
2000 NOV 30 A 8:23

Subject: LUC Docket No. A00-731
Destination Villages Kauai, A Limited Liability Company

Dear Ms. Ueda:

On behalf of the parties to the above-referenced proceedings, Destination Villages Kauai, LLC, the Office of Planning of the State of Hawaii, and the Planning Department of the County of Kauai, I hereby request that the deadlines originally established for the submission of the Proposed Findings of Fact, Conclusion of Law, Decision and Order, and Responses thereto, to the Land Use Commission (December 1, 2000 and December 15, 2000, respectively) be modified to allow the aforementioned parties to file Stipulated Proposed Findings of Fact, Conclusion of Law, Decision and Order (hereinafter referred to as the Stipulated Decision and Order) to the Land Use Commission.

It is, therefore, intended by the parties that the Stipulated Decision and Order will be filed with the Land Use Commission on or before December 20, 2000. Prior to the submission date, the parties have tentatively agreed to have Destination Villages Kauai, LLC transmit a draft

Stipulated Decision and Order to the Office of Planning and the Kauai Planning Department on or before December 1, 2000. Thereafter, the Office of Planning and the Kauai Planning Department will provide their comments thereon on or before December 13, 2000, and the final Stipulated Decision and Order will be filed with the Land Use Commission on or before December 20, 2000.

Based upon the foregoing discussion, I hereby request that the Stipulated Decision and Order executed by and between all parties be authorized, and that the deadline for filing such document be set for December 20, 2000.

Respectfully submitted,

BELLES GRAHAM
PROUDFOOT & WILSON

Michael J. Belles

MJB:spc
cc: Mr. David Blane
Mr. Dee Crowell

{C:\WINDOWS\TEMP\W0045689.DOC}

FACSIMILE TRANSMISSION SHEET

BELLES GRAHAM PROUDFOOT & WILSON
ATTORNEYS AT LAW

Watumull Plaza
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766

Telephone: (808)245-4705
Fax: (808)245-3277

DATE: November 30, 2000

TO: Ms. Esther Ueda
Land Use Commission, State of Hawaii

FROM: Michael J. Belles, Esq.

FAX NUMBER: (808)587-3827
No. of Pages (Incl. this page) 3

If you do not receive all pages, or some pages are illegible, please call (808) 245-4705 or you may fax this transmission sheet, indicating under message response, which pages are to be resent.

OPERATOR: Sandra

CONFIDENTIAL COMMUNICATION. THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS BY MAIL. THANK YOU.

MESSAGE

Re: LUC Docket No. A00-731
Destination Villages Kauai, A Limited Liability Company

Enclosed is a letter regarding the above-referenced proceeding.

LAND USE COMMISSION
STATE OF HAWAII
2000 NOV 30 P 2:01

BELLES GRAHAM
PROUDFOOT & WILSON
ATTORNEYS AT LAW

MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DAVID W. PROUDFOOT
DONALD H. WILSON

Federal I.D. No. 99-0317663

WAILUMULL PLAZA
4334 RICE STREET, SUITE 202
LIHUE, KAUAI, HAWAII 96766-1388

TELEPHONE NO.: (808) 245-4705
FACSIMILE NO.: (808) 245-3277
E-MAIL: ma...kauai-law.com

ASSOCIATE
PAMELA P. RASK

OF COUNSEL
JONATHAN J. CHUN

November 30, 2000

VIA FACSIMILE & REGULAR MAIL

Ms. Esther Ueda
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

2000 NOV 30 P 2:06
LAND USE COMMISSION
STATE OF HAWAII

Subject: LUC Docket No. A00-731
Destination Villages Kauai, A Limited Liability Company

Dear Ms. Ueda:

On behalf of the parties to the above-referenced proceedings, Destination Villages Kauai, LLC, the Office of Planning of the State of Hawaii, and the Planning Department of the County of Kauai, I hereby request that the deadlines originally established for the submission of the Proposed Findings of Fact, Conclusion of Law, Decision and Order, and Responses thereto, to the Land Use Commission (December 1, 2000 and December 15, 2000, respectively) be modified to allow the aforementioned parties to file Stipulated Proposed Findings of Fact, Conclusion of Law, Decision and Order (hereinafter referred to as the Stipulated Decision and Order) to the Land Use Commission.

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Based upon the foregoing discussion, I hereby request that the Stipulated Decision and Order executed by and between all parties be authorized, and that the deadline for filing such document be set for December 20, 2000.

Respectfully submitted,

BELLES GRAHAM
PROUDFOOT & WILSON

Michael J. Belles

MJB:spc
cc: Mr. David Blane
Mr. Dee Crowell

LAND USE COMMISSION
STATE OF HAWAII
2000 DEC -1 A 10:44

BELLES GRAHAM
PROUDFOOT & WILSON
ATTORNEYS AT LAW

MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DAVID W. PROUDFOOT
DONALD H. WILSON

Federal I.D. No. 99-0317663

WATUMULL PLAZA
4334 RICE STREET, SUITE 202
LIHUE, KAUAI, HAWAII 96766-1388

TELEPHONE NO: (808) 245-4705
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E-MAIL: mail@kauai-law.com

ASSOCIATE
PAMELA P. RASK

OF COUNSEL
JONATHAN J. CHUN

November 30, 2000

VIA FACSIMILE & REGULAR MAIL

Ms. Esther Ueda
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

Subject: LUC Docket No. A00-731
Destination Villages Kauai, A Limited Liability Company

Dear Ms. Ueda:

On behalf of the parties to the above-referenced proceedings, Destination Villages Kauai, LLC, the Office of Planning of the State of Hawaii, and the Planning Department of the County of Kauai, I hereby request that the deadlines originally established for the submission of the Proposed Findings of Fact, Conclusion of Law, Decision and Order, and Responses thereto, to the Land Use Commission (December 1, 2000 and December 15, 2000, respectively) be modified to allow the aforementioned parties to file Stipulated Proposed Findings of Fact, Conclusion of Law, Decision and Order (hereinafter referred to as the Stipulated Decision and Order) to the Land Use Commission.

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Based upon the foregoing discussion, I hereby request that the Stipulated Decision and Order executed by and between all parties be authorized, and that the deadline for filing such document be set for December 20, 2000.

Respectfully submitted,

BELLES GRAHAM
PROUDFOOT & WILSON

Michael J. Belles

MJB:spc
cc: Mr. David Blane
Mr. Dee Crowell

Subject

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

November 27, 2000

Ms. Beryl Blaich
Coastal Conservation Organizer
Sierra Club, Kauai Group
P.O. Box 3412
Lihue, Hawaii 96766

Dear Ms. Blaich:

Subject: LUC Docket No. A00-731
Destination Villages Kauai, LLC

We are in receipt of your letter dated November 3, 2000, raising concerns over the project proposed in the subject docket.

Please be advised that the hearing on the subject docket was closed on November 2, 2000, and therefore your letter is not part of the official record; however, your letter will be provided to the Commissioners for their consideration. As your organization is already on our mailing list, you will receive notification of future Commission meetings on this docket.

Should you have any questions, please feel free to call me or Bert Saruwatari of our office at 587-3822.

Sincerely,

ESTHER UEDA
Executive Officer

EU:aa

c: Michael Belles, Esq.
Office of Planning
County of Kauai Planning Dept.

bc: LUC

SIERRA CLUB
Kaua'i Group of the Hawai'i Chapter
Post Office Box 3412
Lihu'e, Kaua'i, Hawai'i 96766

LAND USE COMMISSION
STATE OF HAWAII
2000 NOV 20 A 11:07

Regarding Reclassification of lands at Kapalawai, Kaua`i
Docket No. A-oo-731-Destination Villages Kaua`i, LLC
November 3, 2000

Dear Members of the State Land Use Commission:

This written testimony supplements oral testimony provided at the first LUC hearing on July 20, 2000. I testified then and write now as Sierra Club Kauai`'s Coastal Conservation Organizer

The Sierra Club acknowledges strong, though not unanimous, Westside community support for the project proposed at Kapalawai. The project is in keeping with the area's vision of alternative tourist accommodations and with the focus, embodied by Kikiola Land Company, on preservation of historic buildings.

However, Sierra Club has raised concerns in the following areas:

- the advisability of substantial development at this location, particularly in the open zone;
- the adequacy of the setback of structures from the shoreline;
- the representation of the proposal as an "ecotourism" project and
- the adequacy of cultural preservation for this special landscape of ancient fishpond and unusual archaeological sites.

We are especially concerned about the issue of the **land suitability of this location,** based on information disclosed in the applicant's Environmental Impact Statement.

Also, I do **question whether this project meets State land Use Reclassification standards** for the Urban District.

Land Characteristics: the Open Zone - a flood plain
In the present Kaua`i General Plan, about 4/5th of the project area is in the County open category. (EIS. Figure 8. next to p. 3-23) the other 1/5th is agricultural. In the **County zoning map** (figure 9 of the EIS, adjacent to page 3-24) the categories are amost switched withabout 3/5th of the project in the agricultural zone and **2/5ths in the open zone.**

As you know, the open district delineates areas for which physical attributes dictate very limited development. In this case the open category was imposed because the subject property is largely a flood plain.

According to the civil engineering report in the EIS, "three off-site drainage basins are tributary to the project." (p. 1) The 170 acre property receives the stream waters from over 8000 acres of the Nonopahu Ridge drainage basin, the Waipoa Valley drainage

over 8000 acres of the Nonopahu Ridge drainage basin, the Waipoa Valley drainage basin and the Aakukui Valley drainage basin. (Please see appendix civil engineering report Figure 1 (map) Offsite Drainage Basins, p. 9) The floodways for the Mahaikona and Aakukui streams and flood fringes surrounding those streams run through the eastern third of the property which is in the open zone. In other words, this property naturally serves as a flood plain, partial wetland, functioning to spread and filter erosion sediments and high water flows.

About **3/5th of the property is in one or another category of inundation zone** which denote "subject to inundation", and the tsunami zone (EIS Sec. 4.11 pp. 4 -44- 45 and Fig 20, p. 4-46) :

- AE zone - "special flood hazard areas inundated by the 100 years flood" - with a base flood elevation of 1 feet above mean sea level. (AMSL) with a smaller portion affected by the AE zone, with base flood elevations of 9 feet AMSL
- Zone X, "affected by 100 years flood but depths of less than one foot"
- and VE zone, "coastal flood with wave velocity (tsunami)".

In addition there is a **Iniki** inundation line, closer to the coast. (No inundation zone is marked for Hurrican Iwa which Westsiders remember as producing deeper coastal inundation than Iniki did in this area.)

I have attached a section from the Hurricane Iniki **Hazard Mitigation Report of FEMA** . This is the recommendations sections #2 which states, "Given the the scope of destruction in coastal flooding areas, current land use policies must be reviewed to assess their effectivenss in light of Iniki's damage. Improvements to these policies, and new policies that more comprehensively address coastal hazard must be developed and implemented." (FEMA-961-DR-HI, p. 32) The report states that regarding the Coastal Zone Management Program, "current coastal setbacks are inadequate and should be deepened consistent with the 1991 recommendations" (which were not approved by the State Legislature).

The failure by Governmental agencies to expand our coastal hazard zones and to refrain from allowing development in identified flood zones raises **issues of liability** - who will be responsible for damages. It puts property owners and taxpayers in jeopardy of ever **increasing federally subsidized flood insurance coverage**. Kaua`i residents already pay higher flood insurance rates because the County has ignored identified best management practices. Kaua`i is vulnerable to further sanctions and possibly termination of the program for our recalcitrance.

Purpose of the Open Zone

The **stated purposes for the open zone** according to the County Zoning Ordinance include "to preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare" and " to define and regulate use and development within areas which may be potentially hazardous." (CZO Sec. 8-8.1 (b and c))

(I was able to attend the Land Use Commission field trip to Kapalawai which was excellent. On the Pakala's side of the property there is a dirt berm next to the stream as

you walk from the highway. I don't know the history of this, but it seems to show a need to prevent the stream waters from flooding on to the property. There is another berm and ditch on the Waimea side of the property which is slated to be widened in order to deal with on site and mauka drainage.)

I made a **very basic overlay map**, compounding all the pertinent maps of the EIS in order to look at the open zone and flood zones together. (See attached.) What struck me after doing this was the very limited area which is not in any flood zone. It is even more limited if you look at the SMA line. The area which seems particularly vulnerable to flooding is all the land surrounding and east of the fishpond.

Substantial Development in an Unsuitable Area
Considering the environmental function of this site and the restraint required in a flood area and imposed by the County CZO in the open zone, the footprint and the kinds of construction entailed by this project are substantial.

In the project's preliminary drawing in the EIS (Figure 4, p 2-7),the f**ollowing structures are to be located in land area surrounding and east of the fishpond:**

- about 73 units/ cottages (52 single and 21 duplexes or a little more than 1/5th of the units)
- 170 parking stalls on an impervious surface.
- 1 sizable restauarant - at the tip of the fishpond, apparently with a pool
- 1 pool pavillion /guest amentities.
- raised walkways, service parking and houskeeping/storage building (small) and less development amenities such as beach volleyball cours, luau grounds and picnic/ passive recreation areas.

For the whole project, the guest units and the walkways, as well as the two restaurants, the snack bar and the tennis clubhouse must be elevated "to comply with flood hazard regulations." (EIS) 1.3, p. 1-3. Structures are to be raised from one to about five feet above the existing grade. (EIS. "Probably Impacts", 4.11, p. 4-45). In light of information shared by the map (Figure 20) and the text (4.11 Flood Hazards, p. 4-44) it is not clear whether 5 feet is adequate mitigation for the variety of possible flooding conditions. What is clear is that the raised buildings and walkways will increase the visual impact of the project, looking from the shoreline direction.

The entire project requires **major infrastructure construction** for water, sewage and irrigation waters. The large needs are due to the lack of adjacent urban zoning and infrastructure, the density and the numerous resort amenities.

Off site :

- A 20 million gallon water tank and a 200 gallon per minute well, located about 1600 feet mauka) (Appendix Potable Water and Irrigation and Water Systems. p. 10)
- A retention basin (3.4 acres to redirect sugar cane effluent water).

On site:

- A 53 million gallon per day sewage treatment plant with 4 pumps stations treating water (hopefully to F-1 quality through that is not yet stated but it is what Health Department wants)

- An improved 6 feet deep by 30 feet (bottom width) by 54 feet (top width) drainage channel (Drainway A) with will route water into a retention basin near the ocean.
- 3 drain lines (B,C, and D) which are storm drains. Drain line B would outlet into Drainway A. Drain line C will deposit on to lawn in front of the fishpond near the restaaurant shown in the prreliminary drawing. Drain line D will deposit into the Mahaikona Stream flood fringe area. (In addition the entire site would be graded to "promote sheet flow runoff". (Wagner. Civil Engineering Report. p. 3, plus Figures 2 and 3 p. 10 and 11)
- An irrigation system using spring fed water from the historic fishpond as well as effluent.

The delivery of the non portable water system requires, of course, a separate system of lines and pumps. It is estimated that **.36 - .66 mil gal of water annually will be needed to irrigate property.** An average of **10,200 gallons per acre per day** are estimated to be used on the property. (Appendix Potable Water and Irrigation and Water Systems. p. 1) (Please check these figures because if 170 acres received 10,200 gal per acres for 90 days of summer, the gallons of water used multiply out as 156, 960,000.)

This is huge increase in the level of ground saturation in a place which annually has only an average of 24.8 inches of rainfall. (By the way, is that the rainfall in the district or at the site? The mauka rainfall, which the site receives, is likely to be greater)

This all amounts to substantial change to a constraint district (open/ flood and SMA) where limited physical alteration is the sound land use policy.

The **County General Plan Update** draft calls for the following land use **policies**:

- Avoid disturbance of natural drainage areas.
- Maintain post development area runoff rate and average volume at levels limited to predevelopment (Policy Sec. 3.4.2)
- Site area so as to protect areas particularly suscepitible to erosion and sediment loss such as spread banks,
- Promote use of permeable surface of driveways,
- Avoid disturbance of natural drainage features and vegetation.

Overall, recategorizing this land as resort cannot change its essential physical attributes and functions. But ignoring the appropriate application of the open zone to this land may jeopardize the health and safety of the public (visitors and employees) and may inadvertently cause negative impacts on already heavily degraded Ho'anuanu Bay.

About 2/3 of this project is actually within the **shoreline management area**. The purpose of the SMA is to preserve, protect and where possible , to restore the natural resources of the coastal zone of Hawai`i. This resort is supposedly "not coastal dependent", yet it fully utilizes and develops its coastal site. Another shoreline area which was largely used by residents will now be part of Kauai`'s visitor industry landscape, yet the issue of shoreline access - which should be a primary consideration in this project - has not been resolved.

Project Does Not Meet State Land Use Reclassification Standards
The project site is not contiguous to existing urban area

- is not characterized by concentrations of people, structures, streets, urban level of services, and other related land uses,
- is not yet an area slated for urban growth on the County General Plan and
- is not free from the danger of flood, tsunami and possible erodible soils.

While the developer will bear much of the substantial infrastructure costs, it does scatter resort development out of Kauai's designated resort areas where there are substantial zoned but undeveloped parcels. (Hawaii Administrative Rules: Ch.15-15-18)

In fact, it seems that **this area is more suited to be placed in the Conservation district than in the urban district** which may include land susceptible to flood and soil erosion and lands necessary for the conservation, preservation , and enhancement of scenic, cultural, historic or archaeologic sites....(15-15-20, (2)(4) About 15 acres of this land is already in the conservation zone.

Decision Making Criteria for Boundary Amendments
While this project meets State goals regarding economic development, it does not meet objectives and policies for the physical environment--land based shoreline and marine resources in the following particulars:
It does not exercise an overall conservation ethic (Section 226-11 (b) (1) nor does it manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage. (Section 26 -11 (b) (4).

It promotes preservation and restoration of significant historic resources but not of significant natural resources. (Section 226-12(b)1)

It does not reduce the threat to life and property from erosion, flooding, tsunamis, etc. (Section 226-13(b)(2)

It does not provide housing opportunities for residents in area where they are already needed. (15-15-77 (3) (F)

Project Is Not So Small Scaled
This project is depicted as small scaled and low density. In fact, it does spread many units over a fairly large site, but in number of units it is comparable to standard Kaua`i resort projects. The Princeville Hotel is 252 units. The Hanalei Bay Resort has 280 doors to units, meaning that sometimes units become double rather than single rooms. Destination Villages at Kapalawai has 250 units of which 40+ are shown as duplex units.

Recommendations
The public gain from this development seems to be limited to jobs and the opportunity to view a heretofore very private residence. One possibility which the Land Use Commission might consider in order to minimize development in flood hazard zones and provide real public access to this area is the following: **keep the project area surrounding and east of the fishpond, undeveloped and as open space and a low key shared resort/community park.** (This would encompass the County open zoned area, including the flood fring, floodways of the Mahaikona and Aakui Streams) This could

accomplish the following:

1. **Save the developer some infrastructure costs**. the number of units would be reduced but so would development costs by not having to provide one sewage lift pump, plus all the underground power, water and sewage and irrigation lines, amentities and parking. A park would require some toilets and water delivery. Composter toilets would seem appropriate to a true eco-camp experience.

2. **Better buffer the important ancient fishpond** and keep it more available for everyone to see.

3. Meet the stated goal of **eco tourism that guests actually interact with residents.**

4. **Create more park for the Westside** and, especially, make a low key park with some internal infrastructure that surfers may feel is better than the ideas proposed so far. Make parking for that facility be on a permeable surfaces only - no impervious surfaces to increase run-off.

4. **Improve the long term safety of the project and keep it more consistant with land suitability and State and County policies and regulations.**

Thank you for all your attention and work on this application.

Respectfully,

Beryl Blaich, Coastal Conservation Organizer Sierra Club, Kaua`i Group
PO Box 1434
Kilauea, HI 96754

HAZARD MITIGATION REPORT

Hurricane Iniki

In Response to the September 12, 1992
Federal Disaster Declaration

Covering the County of Kauai, City and County of Honolulu,
County of Maui, and County of Hawaii

FEMA-961-DR-HI

Recommendation 2: Given the scope of destruction in coastal flooding areas, current land use policies must be reviewed to assess their effectiveness in light of Iniki's damage. Improvements to these policies, and new policies that more comprehensively address coastal hazard must be developed and implemented.

Background. Through its Office of State Planning, Hawaii has in place a statewide land use management program. One goal of that program is to reduce the threat of coastal hazards. In 1991, the Office of State Planning's Coastal Zone Management Program released a review of its programs and activities to identify areas that needed improvement. (See Addendum to this Report) That review, which laid out a strategy for improving the management of Hawaii's shorelines, identified the need for deeper coastal setbacks based on shoreline characteristics, better enforcement of state and local land use provisions, and closing certain exemptions in the Special Management Area permitting process, et al. These improvements were submitted to the state legislature, which did not approve key changes that would have reduced the state's exposure to coastal hazards. The following recommendations include elements of the 1991 review:

1. Current coastal setbacks are inadequate and should be deepened consistent with the 1991 recommendations. Criteria for delineating setbacks should include geomorphological considerations such as annual beach erosion rates and the need to protect sensitive natural resources. Recognizing the political difficulties of delineating adequate setbacks, the following activities should be undertaken to support a deeper statewide setback:

    a. Conduct an analysis of aerial photographs taken immediately after the storm to examine direct storm effects and secondary damage (i.e projectile damage, damage from floating debris, high water/inundation lines), damage to physical features (i.e. wetlands and other sensitive areas), and zones of damage;

    b. Conduct analysis of primary damage and secondary damage to reefs and other natural protective features. Draw linkages to the importance of preserving and protecting reefs and other natural features as buffers for reducing storm effects with the goal of designing setbacks to minimize damage and to protect natural resources;

    c. Conduct an economic analysis of setbacks to consider the amount of damage, and its cost, without setbacks, and projected damage with various setback depths. In addition, the economic analysis should consider the economic value of setbacks in improving property values, coastal access aesthetics, etc.

2. Develop a special coastal hazards zone, either independent of other zoning or designations or linked to Special Management Areas, where additional, more stringent hazard mitigation measures would apply (i.e. zoning, siting, special coastal construction code, etc.).

3. Conduct a review of National Flood Insurance Program zone maps for accuracy and ensure that existing Special Management Areas at least cover the V and A zones. Develop better mechanisms for National Flood Insurance Program and county coordination to ensure all National Flood Insurance Program standards are enforced fully.

4. Conduct a review of single family structures on Kauai exempted from the Special Management Area review process in light of Iniki's damage to further justify closing that exemption.

5. County permit officials must use the base flood elevations and Special Flood Hazard Areas shown on the current Flood Insurance Rate Maps as a minimum standard for elevating new construction and substantial repairs or improvements to previously existing structures. However, the flood damage from both Iwa and Iniki far exceeded the base flood elevations and Special Flood Hazard Areas shown on the current flood maps. County officials should notify property owners of the actual flood elevations from Iwa and Iniki, along with the extent of flooding from those events and recommend that property owners build to a higher level of flood protection than the current flood maps require.

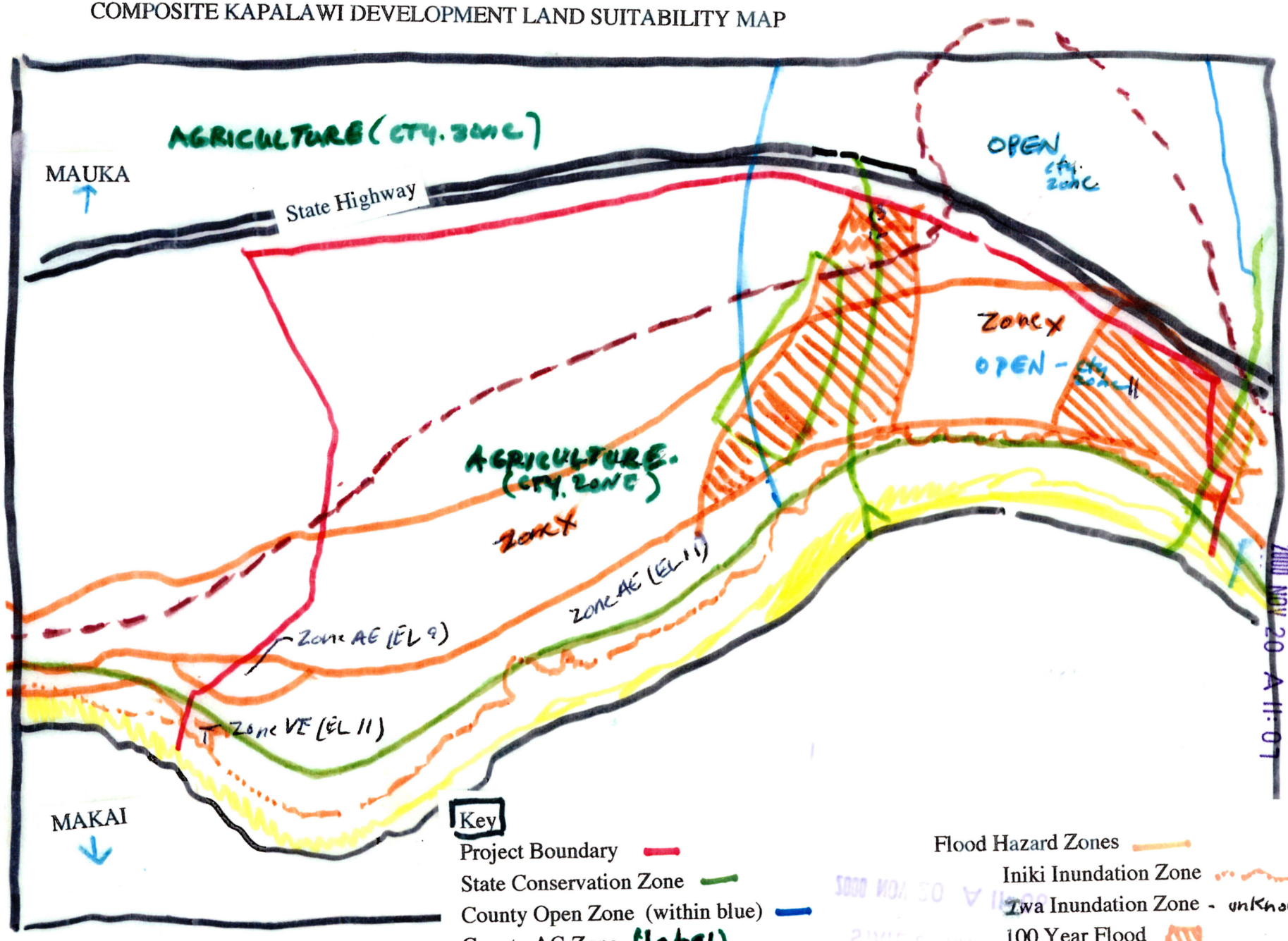
6. Assure that all buildings in Special Flood Hazard Areas that were substantially damaged and/or substantially improved are identified and elevated or floodproofed to at least the required base flood elevation. The floodplain management regulations require all new substantially improved/damaged buildings in the Special Flood Hazard Areas to be elevated or floodproofed to or above the base flood elevation shown on the map.

Involved Agencies: Federal Emergency Management Agency National Flood Insurance Program, State and County Civil Defense, Office of State Planning Coastal Zone Management Program

Funding: Federal Emergency Management Agency, State of Hawaii

Schedule: 24 months

COMPOSITE KAPALAWI DEVELOPMENT LAND SUITABILITY MAP



2000 NOV 20 A 11:07
LAND USE COMMISSION
STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII

2000 NOV 20 A 11: 06

Subject

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

November 21, 2000

Mr. Mike Harismendy
P.O. Box 1197
Koloa, Hawaii 96756

Dear Mr. Harismendy:

Subject: LUC Docket No. A00-731
Destination Villages Kauai, LLC

This is a follow-up to our letter to you dated November 14, 2000, regarding your concerns over the issue of beach access and your request to reopen the hearing in this matter.

Please be advised that during the Commission's November 2, 2000, hearing, Petitioner represented that in addition to providing a public parking area and restroom and shower facilities, the existing trail to the beach would be improved and maintained. Petitioner also represented that lateral shoreline access running parallel to the shoreline would be provided. We have enclosed for your information a copy of Petitioner's plan depicting the various proposed improvements to address the issue of beach access.

Should you have any questions, please feel free to call me or Bert Saruwatari of our office at 587-3822.

Sincerely,

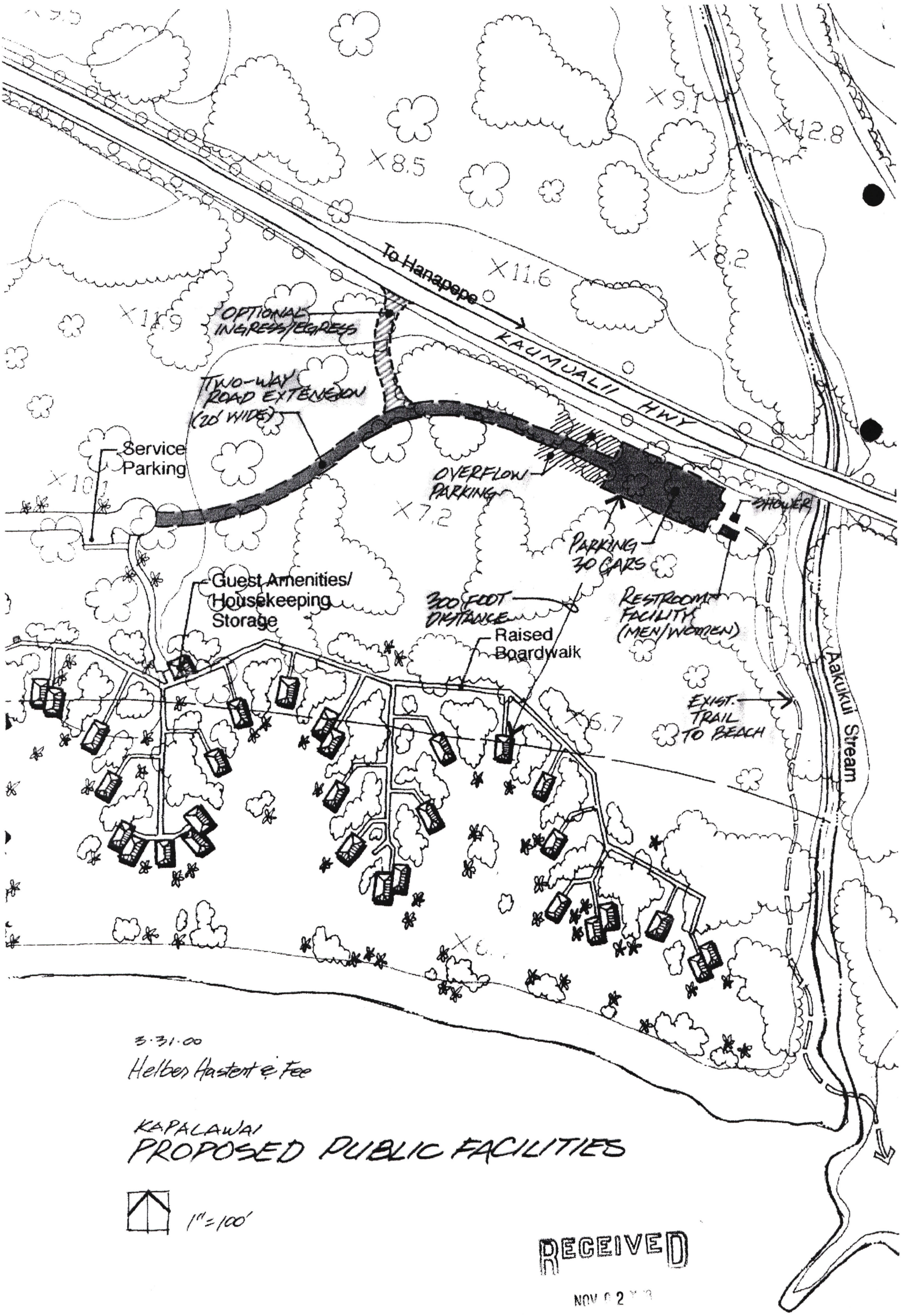
ESTHER UEDA
Executive Officer

EU:aa

Enclosure

c: Michael Belles, Esq. (w/o encl.)
Office of Planning (w/o encl.)
County of Kauai Planning Dept. (w/o encl.)

bc: LUC (w/o encl.)



3·31·00

Helber Hastert & Fee

KAPALAWAI

PROPOSED PUBLIC FACILITIES

1" = 100'

RECEIVED
NOV 0 2
LAND USE

Ref. Ex. 53

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

November 14, 2000

Mr. Mike Harismendy
P.O. Box 1197
Koloa, Hawaii 96756

Dear Mr. Harismendy:

Subject: LUC Docket No. A00-731/Destination Villages Kauai, LLC

We are in receipt of your letter dated November 6, 2000, expressing your concerns over the project proposed in the subject docket, and requesting that the Land Use Commission reopen the hearing in this matter.

Please be advised that the hearing on the subject docket was closed on November 2, 2000; however, your letter will be provided to the Commissioners for their consideration. We have placed your name on our mailing list to receive notification of future Commission meetings on this docket.

Should you have any questions, please feel free to call me or Bert Saruwatari of our office at 587-3822.

Sincerely,

ESTHER UEDA
Executive Officer

EU:th

c: Michael Belles, Esq.
Office of Planning
County of Kauai Planning Dept.

bc: LUC (w/letter)

Mike Harismendy, Real Estate Broker
Post Office Box 1197
Koloa, Kauai, Hawaii 96756

Phone 808-332-9603
Fax 808-332-5031

www.mhkauai.com
mhkauai@aloha.net

LAND USE COMMISSION
STATE OF HAWAII
2000 NOV -6 A 6:27

November 6, 2000

State Land Use Commission
Land Use Commissioners
P.O. Box 2359
Honolulu, HI 96804-2359

Via Fax to 808-587-3827, Total pages 2

RE: Docket #A00-731, Destination Village Kauai, L.L.C., Public Access to Beach, New Exhibit

Aloha Land Use Commissioners:

I was shocked and upset to learn recently that the developers of Kapalawai plan to stop the public use of the foot path that runs from Kaumualii Highway to Pakala Beach at the very East end of the development. This should not be allowed to happen. I also learned that Destination Village Kauai does plan to provide 30 parking spaces for beach go'ers on their property. This should not be a trade off. It is very important to also maintain the access to the beach as it is. The use of this path, as I recall, has been allowed by the Robinson Family Partners since approx. 1975. The County or State, I am not sure which, as I understand it, forced the land owners to allow beach access. It is my understanding that this use is in perpetuity. It is not in the public interest to allow this beach access to be taken away. Do not allow this. The hearing should be reopen. The public was not given adequate time to give their input to the parking and beach access issue. I am in favor of the Kapalawai development, but not at the expense of taking something away from the community which they have had for over 25 years. This does not serve the public. The 30 parking spaces are fine if that is what the developer wants to do. But not at the expense of loosing the highway parking and path to the beach. If it comes to a choice I know of no one who would prefer parking on the Resorts Property to the existing access and parking. This public access should be a major concern to the Commissioners, do not let us lose it. I'm sure some might have concerns about the safety of crossing Kaumualii Hwy. and parking on the road, but we have

11/14/00 - LMC, parties

been doing this for 25 years and there are no problems. The road shoulder on the North side of the road is very wide and on the South shoulder not as wide but wide enough to be safe. The public who use this path do not litter or cause any problems to the land. We cleanup after ourselves. It is just a peaceful walk, among the Kiewe trees, along a narrow dirt path to the beach. We respect the path, the land, the beach and the ocean. We want to continue to use this path. Pakala is a world class surf spot known for it long lefts and because of the waves near perfect shape and generally small size it is easy to ride. Surfers from all over the world come to surf here. This access is part of the character of Pakala. Residents and visitors alike appreciate the natural setting of the path. There should be a 100 foot development setback from the path to maintain the natural setting. Do not allow Destination Villages Kauai to take this access away from the public. Beach access should be a priority and existing access should not be allowed to be changed. Someone said that the developer wants to have control over all access areas and that by allowing the path to be used they would not have control. Well, the Robinsons have had control of this path during all these years and there have been little to no problems that I am aware of. It would be the same with Destination Village Kauai. They can still have control if there are any problems or issues but not to stop the public from using the path 365 days a year, 24 hours a day. They would have no more liability then the Robinson Family Partners have now. I believe the State and County have been moving towards allowing more beach access and not changing or taking away existing beach access.

Thank you for your time and consideration of my request. Any feed back from your office as to how I can pursue this further would be appreciated. Please reopen the Public Hearing.

Respectfully yours,

Mike Harismendy

cc: Destination Villages Kauai, Mr. Louis Geyser and Mr. Mike Belles

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

November 6, 2000

MEMORANDUM

TO: Michael J. Belles, Esq.
Mr. Scott Ezer
Mr. David W. Blane
Mr. Dee Crowell
Hartwell Blake, Esq.

FROM: Teri Hee
Land Use Commission

SUBJECT: A00-731/Destination Villages Kauai, A Limited Liability Company

The commission received the following correspondence:

1. Letter received on November 2, 2000 from Ho'okipa Network.
2. Letter received on November 2, 2000 from Joseph Punilei Manini, Jr.

Approved
12/8/00

LAND USE COMMISSION

Minutes of Meeting

Puna Ballroom
Kauai Marriott Resort
3610 Rice Street, Kalapaki Beach
Lihue, Kauai

November 2, 2000

COMMISSIONERS PRESENT: Bruce A. Coppa (portion of proceedings)
Pravin Desai
Isaac Fiesta, Jr.
Lawrence N.C. Ing
Merle Kelai
Stanley Roehrig
Peter Yukimura

COMMISSIONERS ABSENT: P. Roy Catalani
M. Casey Jarman

STAFF PRESENT: Presley Pang, Esq., Deputy Attorney General
Charleen Aina, Esq., Deputy Attorney General
Esther Ueda, Executive Officer
Bert Saruwatari, Staff Planner
Russell Kumabe, Staff Planner
Teri Hee, Chief Clerk

Holly Hackett, Court Reporter

Chairperson Kelai called the meeting to order at 9:35 a.m.

ACTION

A00-732 - TSA INTERNATIONAL, LIMITED

Chairperson Kelai announced that this is an action meeting to consider acceptance of TSA International, Limited's Final Environmental Impact Statement to reclassify approximately 102.3 acres of land currently in the Conservation District into the Urban District at Kaloko, North Kona, Hawaii for the development of a mix of light industrial and industrial-commercial uses.

The following documents were not included in Petitioner's Final Environmental Impact Statement and were entered into evidence by the Commission:

1. Letter dated October 6, 2000, from Gary Gill, Deputy Director of the Environmental Health Administration received by the Commission on October 16, 2000.

2. Letter dated October 16, 2000, from Mr. Peter Rappa of the University of Hawaii at Manoa Environmental Center received by the Commission on October 17, 2000.

3. Response letters from Rodney Funakoshi to Mr. Kenneth M. Kaneshiro of the Natural Resources Conservation Service, Mr. Gary Gill of the Department of Health, and Mr. Peter Rappa of the University of Hawaii at Manoa Environmental Center received by the Commission on October 26, 2000.

4. Letter dated October 20, 2000, from Kenneth M. Kaneshiro, State Conservationist of the Natural Resources Conservation Service received by the Commission on October 30, 2000.

5. Letter dated October 16, 2000, from Don Hibbard, Administrator of the State Historic Preservation Division received by the Commission on October 31, 2000.

6. Letter dated October 12, 2000, from Stephen K. Yamashiro, Mayor of the County of Hawaii, transmitting a resolution relating to the construction of improvements by assessments at Kealakehe, Honokohau, and Kaloko, District of North Kona, Hawaii received by the Commission on October 31, 2000.

Appearances

Nathan Natori, Esq., representing Petitioner

Rodney Funakoshi, Wilson Okamoto & Associates

Ann Ogata-Deal, Esq., Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Chairperson Kelai announced that the County of Hawaii Planning Department was not present to the proceeding.

PUBLIC WITNESSES

1. Jeff Mikulina

2. Gary Barbano

Russell Kumabe, staff planner, oriented the Commission to the subject area on the Land Use District Boundaries map and tax maps and gave background information on the motion.

A disclosure was made by Commissioner Desai. There were no objections by the parties to have Commissioner Desai participate in the proceedings.

Arguments were heard from Mr. Natori and Mr. Funakoshi.

PETITIONER'S WITNESSES

1. Tom Nance

CONTINUED HEARING

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

Presiding Officer Yukimura announced that this matter before the Commission is a continuation of the hearing previously held on September 14, 15, 2000 to reclassify approximately 153.696 acres of land currently in the Agricultural District into the Urban District at Makaweli, Kauai, for the development of a resort and accessory uses.

Commissioner Coppa was excused from this proceeding due to a previously declared conflict of interest.

Appearances

Michael Belles, Esq., representing petitioner

Scott Ezer, Helber, Hastert & Fee

Laurel Loo, Esq., Deputy Corporation Counsel

Keith Nitta, Kauai County Planning Department, Staff Planner

Ann Ogata-Deal, Esq., Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

PETITIONER'S WITNESS

1. Dr. William Kikuchi

CONTINUED ACTION

A00-732 - TSA INTERNATIONAL, LIMITED

PETITIONER'S WITNESSES (cont'd.)

2. Steve Dollar

3. Dr. Masu Fujioka

Questions were asked by the Commissioners.

Commissioner Roehrig moved to accept Petitioner's Final Environmental Impact Statement. The motion was seconded by Commissioner Fiesta.

Commissioner Roehrig identified his concerns as follows:

1. There should be a coordinated effort between the Petitioner, Lanihau Partners, the County of Hawaii and all other affected agencies for the development of a sewage treatment facility for the entire industrial area.

2. The Petitioner and the affected agencies and Lanihau Partners should get together immediately and work on the timetable for the implementation of this sewage treatment facility.

3. The sewage treatment facility should be put in place before this project sells any lots or leases them to any individuals for industrial purposes.

4. There should be a storm runoff treatment system preferably on-site to prevent increased runoff into the Kaloko-Honokohau National Historical Park area or into the abutting ocean.

Commissioner Roehrig suggested that Petitioner report back to the Commission before this matter comes up for hearing so that interested groups will have an opportunity to assess what's going to happen.

Commissioner Fiesta addressed his concerns with respect to the need for affordable housing.

The Commissioners were polled as follows:

Ayes: Commissioners Roehrig, Coppa, Fiesta, Ing, Yukimura, Desai, and Kelai

A lunch recess was taken at 11:35 a.m. to reconvene at 1:00 p.m.

- 1:20 p.m.

CONTINUED HEARING

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

PUBLIC WITNESSES

1. Joseph Manini

The Commission entered the following correspondence into evidence:

1. Copy of September 6, 2000, written testimony from Joseph Punilei Manini, Sr. to the Kauai County Council.

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

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

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

PUBLIC WITNESSES (cont'd.)

2. Bruce Pleas

3. Cheryl Lovell-Obatake

4. Puanani Rogers

The Commissioner entered a letter dated November 1, 2000, from Puanani Rogers of Ho`okipa Network into evidence.

PETITIONER'S WITNESSES (cont'd.)

2. Lew Geyser

EXHIBITS

1. Petitioner's Exhibit Nos. 53, 54, and 55 were admitted into evidence by the Land Use Commission.

2. County's Exhibit No. 5 was admitted into evidence by the Land Use Commission.

PETITIONER'S WITNESSES (cont'd.)

3. Warren Robinson

4. Alan Kennett

COUNTY'S WITNESS

1. Keith Nitta

STATE'S WITNESS

1. Abe Mitsuda

Presiding Officer Yukimura instructed all parties of the post hearing procedures. Proposed findings from the parties are due by December 1, 2000 and the parties have until December 15, 2000 in which to respond.

MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes for the meeting dates of October 19 and 20, 2000. The motion was seconded by Commissioner Desai and unanimously approved by voice votes.

2. ADOPTION OF DECISION AND ORDER

Commissioner Fiesta moved to adopt the Order Of Preliminary Determination For A Negative Declaratory Of An Environmental Assessment for Docket No. A00-733 - Harrison J. and Sharene Z. Klein. The motion was seconded by Commissioner Roehrig and unanimously approved by voice votes.

Commissioner Roehrig moved to adopt The Order To Consolidate The Proceedings At The Public Hearings For Luc Docket Nos. A88-622, A89-652, and A90-660. The motion was seconded by Commissioner Yukimura and unanimously approved by voice votes.

Commissioner Roehrig moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. SP89-371 - Christian Broadcasting Association. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

3. LITIGATION MATTERS

a) Kaupulehu Developments Supreme Court Case; Civil Nos. 96-189K & 96-190K (A93-701) - Mr. Pang reported that he will not be taking a position with respect to the Bill of Costs For Appellants Ka Pa`akai O Ka `Aina, et al. received from Michael J. Matsukawa since the Bill of Costs was not against the Commission.

The meeting was adjourned at 5:30 p.m.

LAND USE COMMISSION

NOTIFICATION OF LAND USE COMMISSION MEETING

DATE, TIME AND PLACE

November 2, 2000 - 9:30 a.m.
November 3, 2000*
Kauai Marriott Resort
Puna Ballroom
3610 Rice Street, Kalapaki Beach
Lihue, Kauai

'00 OCT 24 A10:24

LIEUTENANT GOVERNOR'S OFFICE

A G E N D A

I. ACTION

1. A00-732 - TSA INTERNATIONAL, LIMITED (Hawaii)

To consider acceptance of TSA International, Limited's Final Environmental Impact Statement to reclassify approximately 102.3 acres of land currently in the Conservation District into the Urban District at Kaloko, North Kona, Hawaii for the development of a mix of light industrial and industrial-commercial uses.

II. CONTINUED HEARING

1. A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

To reclassify approximately 153.696 acres of land currently in the Agricultural District into the Urban District at Makaweli, Kauai, for the development of a resort and accessory uses.

III. MISCELLANEOUS

1. Adoption of Minutes

2. Adoption of Decisions and Orders

3. Discussion of Litigation Matters

4. Discussion of Pending Matters

(Executive Sessions may be called in order for the Commission to consult with their attorney pursuant to Section 92-5, HRS.)

*The meeting will continue on November 3, 2000 if not completed on November 2, 2000.

10/24/00 Agenda (11/2 & 11/3/00) sent to D. Blane, A. Ogata-Deal, Esq., D. Crowell, H. Blake, Esq., M. Belles, Esq., and also to all persons & organizations on the following mailing lists: Statewide (10/03/00), Kauai (5/4/00), Kapalawai (10/24/00) & Joseph Manini

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

October 24, 2000

Mr. David W. Blane, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804

Dear Mr. Blane:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-732 - TSA INTERNATIONAL, LIMITED (Hawaii)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

c: Mr. Abe Mitsuda

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

October 24, 2000

Ann Ogata-Deal, Esq.
Deputy Attorney General
No. 1 Capitol District Building
Hemmeter Building, Room 108
250 S. Hotel Street
Honolulu, Hawaii 96813

Dear Ms. Ogata-Deal:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-732 - TSA INTERNATIONAL, LIMITED (Hawaii)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

October 24, 2000

VIA CERTIFIED MAIL

Mr. Dee Crowell, Director
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Crowell:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

7000 0600 0027 7114 4887

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

A00-731/Destination Villages Kauai

Postage	$ 37
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 2.98

HONOLULU, HI DOWNTOWN BTA Postmark OCT 24 2000 USPS

Mr. Dee Crowell, Director
Kauai County Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

PS Form 3800, February 2000 — See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Dee Crowell, Director
Kauai County Planning Department
~~4~~ 4444 Rice Street, Suite 473
Lihue, Hawaii 96766

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)*: ⊗ Wesley Nagamine
B. Date of Delivery: 10/26/00

C. Signature: ⊗ [signature]
☒ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*: 7000 0600 0027 7114 4887

A00-731/Destination Villages Kauai

PS Form 3811, July 1999 — Domestic Return Receipt — 102595-00-M-0952

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

October 24, 2000

VIA CERTIFIED MAIL

Hartwell H.K. Blake, Esq.
County Attorney
Office of the County Attorney
County of Kauai
4444 Rice Street, #220
Lihue, Hawaii 96766

Dear Mr. Blake:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

7000 0600 0027 7114 4863

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

A00-731/Destination Villages Kauai

Postage	$ .33
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 2.98

HONOLULU, HI DOWNTOWN STA
OCT 24 2000
Postmark Here
USPS

Hartwell Blake, Esq.
County Attorney
County of Kauai
4444 Rice Street, #220
Lihue, HI 96766

be completed by mailer)

See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hartwell Blake, Esq.
County Attorney
County of Kauai
4444 Rice Street, #220
Lihue, HI 96766

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) ☒ P. COX
B. Date of Delivery 10/26/00

C. Signature ☒ J. COX
☒ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
7000 0600 0027 7114 4863

A00-731/Destination Villages Kauai

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

October 24, 2000

VIA CERTIFIED MAIL

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, Hawaii 96766

Dear Mr. Belles:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

7000 0600 0027 7114 3927

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

A00-731/Destination Villages Kauai

Postage	$ 33
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 2.98

Postmark Here: HONOLULU, HI DOWN... OCT 24 2000 USPS ...STA

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, HI 96766

PS Form 3800, February 2000 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, HI 96766

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* Julieta Mararagan — B. Date of Delivery 10/26/00

C. Signature Julieta Mararagan — ☒ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 7000 0600 0027 7114 3927 — A00-731/Destination Villages Kauai

PS Form 3811, July 1999 — Domestic Return Receipt — 102595-00-M-0952

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 20, 2000

MEMORANDUM

TO: Michael J. Belles, Esq.
Mr. Scott Ezer
Mr. David W. Blane
Ann Ogata-Deal, Esq.
Mr. Dee Crowell
Hartwell Blake, Esq.

FROM: Teri Hee Teri Hee
Land Use Commission

SUBJECT: A00-731 - Destination Villages Kauai, A Limited Liability Company

The following unsigned facsimile letters were received by the Commission.

Dated September 13, 2000:

1. Emily Allgaier
2. Jeff Fishman

The Commission also received the following correspondence:

1. Copy of September 6, 2000, written testimony from Joseph Punilei Manini, Sr. to the Kauai County Council.

The following was received at the hearing on September 14, 2000:

1. Testimony of Sunny Greer, representing Kahea.

Minutes of Meeting

Approved 9/14/00

King Kamehameha's Kona Beach Hotel
Eha Room
75-5660 Palani Road
Kailua-Kona, Hawaii

August 17, 2000

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Isaac Fiesta, Jr.
M. Casey Jarman
Merle A. K. Kelai
Stanley Roehrig
Peter Yukimura

COMMISSIONER ABSENT: Lawrence N.C. Ing

STAFF PRESENT: Esther Ueda, Executive Officer
Presley Pang, Esq., Deputy Attorney General
Bert Saruwatari, Staff Planner
Russell Kumabe, Staff Planner
Teri Hee, Chief Clerk

Andrea Vasconcellos, Court Reporter

Chairperson Kelai called the meeting to order at 8:30 a.m.

ACTION

A92-680 - C. Brewer Properties, Inc., a Hawaii Corporation (Hawaii)

Chairperson Kelai announced that this matter before the Commission is an action to consider Petitioner's Motion to Withdraw Land Use Commission Approvals and Revert Land Use District Boundary Classification to Agriculture. The Petition reclassified approximately 288.240 acres of land from the Agricultural District into the Urban District at Puueo, South Hilo, Hawaii for residential, commercial, school, park, and open space uses.

Appearances

Ben Tsukazaki, Esq., for Petitioner

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Arguments on the motion were heard from Mr. Tsukazaki and Ms. Ogata-Deal.

Commissioner Jarman moved to approve Petitioner's Motion to Withdraw Land Use Commission Approvals and Revert Land Use District Boundary Classification to Agriculture. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

A91-665 - KAMAAINA EIGHT, a Hawaii general partnership (Hawaii)

Chairperson Kelai announced that this matter before the Commission is a continued action meeting to consider Petitioner Kamaaina Eight's Request to Withdraw their Motion to Release, Discharge and Delete All Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order Filed April 6, 1992 which reclassified approximately 70.65 acres of land from the Conservation and Agricultural Districts into the Urban District at Kohanaiki, North Kona, Hawaii for a commercial and light industrial development.

Appearances

Daryn Arai, Planner, County of Hawaii Planning Department

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Mr. Arai and Ms. Ogata-Deal had no objections to Petitioner's motion to withdraw.

Chairperson Kelai noted for the record that counsel for Petitioner was not present at today's meeting.

Commissioner Coppa moved to accept Petitioner's request to withdraw their motion. The motion was seconded by Commissioner Roehrig and unanimously passed by voice votes.

STATUS REPORT

A92-679 - WHITE HAT DEVELOPMENT CORP. (Hawaii)

Chairperson Kelai announced that the Commission received a letter dated August 9, 2000, from Petitioner's counsel, Renton L.K. Nip, informing the Commission that he would not be able to attend today's meeting and asking for a continuance to the next Commission meeting in Kona.

The request to continue was granted until the next available meeting in Kona.

A88-620 - KOHALA JOINT VENTURE (Hawaii)

Chairperson Kelai announced that this is a meeting to receive information on the status of development, which reclassified approximately 1,288 acres of land from the Agricultural District into the Urban District at Kahua and Waika, North Kohala, Hawaii for a residential community.

The Commission received a facsimile letter dated July 20, 2000, from Kelly Pomeroy and a facsimile testimony dated July 20, 2000, from Dr. John A. Broussard.

Appearances

R. Ben Tsukazaki, Esq., for Petitioner

Robert Acree, Petitioner

Lee Sichter, Belt Collins

Bill Moore, Planning Consultant

Daryn Arai, Staff Planner, County of Hawaii Planning Department

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Bert Saruwatari, staff planner, oriented the Commission to the subject area on the Land Use District Boundaries and tax maps.

PUBLIC WITNESSES

1. Norm Cohler
2. John Broussard
3. Kelly Pomeroy
4. Don Kephart
5. Jim Truitt
6. Jorene Lett
7. Phil Slott
8. Mary Spears
9. Susan Fischer

Mr. Tsukazaki introduced the following exhibits, which were entered into the record by Chairperson Kelai:

1. Figure One - Location Map
2. Figure Two - Vicinity Map
3. Kohala Ranch Map
4. Hawaii County Zoning Map

PETITIONER'S WITNESSES

1. Lee Sichter
2. Robert Acree

Mr. Tsukazaki addressed further concerns of the Commission and Ms. Ogata-Deal.

PRESENTATION

DEPARTMENT OF TRANSPORTATION

Stan Tamura, Big Island District Engineer from the Department of Transportation, gave a briefing regarding highway improvements in the North Kona area. After hearing the presentation, questions were asked by the Commissioners.

MISCELLANEOUS

1. ELECTION OF OFFICERS

Commissioner Fiesta moved to elect Merle Kelai as Chairperson. The motion was seconded by Commissioner Coppa. Commissioner Fiesta moved to close the nominations for chairperson. The motion was seconded by Commissioner Roehrig. Commissioner Kelai was unanimously elected as chairperson by voice votes. Commissioner Fiesta moved to elect Lawrence Ing as Vice-Chairperson. The motion was seconded by Commissioner Roehrig. Commissioner Fiesta moved to close the nominations for vice-chairperson. The motion was seconded by Commissioner Roehrig. Commissioner Ing was unanimously elected as vice-chairperson by voice votes.

2. ADOPTION OF MINUTES

Commissioner Jarman moved to approve the minutes for the meeting dates of July 20 & 21, 2000. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

3. ADOPTION OF DECISION AND ORDER

Commissioner Roehrig moved to adopt the Order Granting Request to Withdraw Petition for Intervention for Docket No. A00-731 - Destination Villages Kauai, LLC. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

4. OTHER PENDING MATTERS

Smart growth workshop will be held on September 22, 2000.

The following petitions will be forthcoming to the Commission:

a) Klein petition
b) Koa Ridge petition
c) KAIM special permit for time extension
d) HCDCH motions to amend housing condition (Kona, Oahu, Maui)

The Commission directed staff to arrange a field trip for Docket No. DR00-23 and that the meeting on the matter be held in Kona.

The meeting was adjourned at 11:25 a.m.

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 13, 2000

MEMORANDUM

TO: Michael J. Belles, Esq.
Mr. Scott Ezer
Mr. David W. Blane
Ann Ogata-Deal, Esq.
Mr. Dee Crowell
Hartwell Blake, Esq.

FROM: Teri Hee
Land Use Commission

SUBJECT: A00-731 - Destination Villages Kauai, A Limited Liability Company

The following unsigned facsimile letters were received by the Commission.

Dated September 11, 2000:

1. Melissa Armstrong
2. Neil Bajwa
3. Scott Barnes
4. Randy Bartlett
5. Ruth Ann Bates
6. Nathan Boddie
7. Terry Bunch
8. Lara Butler
9. Matthew Carr
10. Kevin Correll
11. Langanaksama Dasi
12. Nedra De Lima
13. Lynne Delabre
14. Michael Douglas
15. Matt Ellsworth
16. Jeffri H. Frontz
17. Amy Grubert
18. Siobhan Harrington
19. Elliott Harris
20. Kathy Harter
21. Tina Horowitz
22. Robin Johnson
23. Anjanette Kalb
24. Adrian Kamalii
25. Mary Lu Kelley
26. Eliza Linser
27. Kawika Liu
28. Leonard D. Logan
29. Timothy Mahar
30. Ryan Manro
31. Dick Miller
32. Dr. P. Neil
33. Kealii Pang
34. Alexandra Pharmakidis
35. Annette Ponnock
36. Paul Rodriguez
37. Shannon Rudolph
38. Lori Sgambati
39. Esther Shomper
40. Darrell Smith
41. Peter Sofman
42. Jeremiah Spence
43. Gabriel Andres Thoumi
44. Ricky Wright

Dated September 12, 2000:

45. Diana Bennett
46. Katherine Brede
47. Tina L. Cohenour
48. Rob Culbertson
49. Ian-James K. Custino
50. Laure Dillon
51. Autumn Marie Dion
52. Aubrey Eastman
53. Tyler Forman
54. Janice Francis
55. Sunny Greer
56. Stephen Herrington
57. Charley Ice
58. Bianca Isaki
59. Bob Jacobson
60. Jeff Laforteza
61. Barbara London
62. Daniel Lovejoy
63. C. Cabanilla Maza
64. Maya Moiseyev
65. Donovan Moretz
66. Gina Andrea Morresi
67. Titus Napoleon
68. Nathan Nazdrowicz
69. Claire Poertner
70. Kimberly Ramos
71. Gary Ratliff
72. Carrie Rex
73. Michael Rudzki
74. Ingrid Tillman
75. Healani Trembath
76. Raleigh Zellers

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 6, 2000

MEMORANDUM

TO: Michael J. Belles, Esq.
Mr. Scott Ezer
Mr. David W. Blane
Ann Ogata-Deal, Esq.
Mr. Dee Crowell
Hartwell Blake, Esq.

FROM: Teri Hee
Land Use Commission

SUBJECT: A00-731 - Destination Villages Kauai, A Limited Liability Company

The Commission received the following correspondence:

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

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

IN THE MATTER OF THE PETITION of DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY To amend the Agricultural Land Use Boundary into the Urban Land Use District for 153.696 acres at Makaweli, Kauai, Hawaii, further identified as TMK: (4) 1-7-05: portion of 1.	)	DOCKET NO. A00-731 CERTIFICATE OF SERVICE

LAND USE COMMISSION
STATE OF HAWAII
2000 SEP -5 A 10:57

CERTIFICATE OF SERVICE

SCOTT H. EZER, being first duly sworn, deposes and says:

1. Affiant is a Senior Associate at Helber Hastert & Fee, Planners, Inc. a duly authorized agent for the petitioner, Destination Villages Kauai, LLC.
2. He hereby certifies that on June 5, he served one copy of the foregoing Second Amended List of Exhibits and First Amended List of Witnesses either by hand-delivery or certified mail addressed to each of the following at the following addresses:

County of Kauai
Planning Commission
4444 Rice Street, Suite 473
Lihue, HI 96766

County of Kauai
Planning Department
4444 Rice Street, Suite 473
Lihue, HI 96766

State of Hawaii
Office of Planning
235 South Beretania Street, 6th Floor
Honolulu, HI 96813

County of Kauai
Office of the County Attorney
4444 Rice Street, Suite 235
Lihue, HI 96766

Robinson Family Partners
P.O. Box 690088
Makaweli, HI, 96769

Gay & Robinson, Inc.
P.O. Box 156
Kaumakani, HI 96747

Bruce Robinson
P.O. Box 11
Makaweli, HI 96769

Citizens Utilities Company
4463 Pahee Street
Lihue, HI 96766

DATED: Honolulu, Hawaii; September 5, 2000

Scott H. Ezer

Approved
9/29/00

LAND USE COMMISSION

Minutes of Meeting

Ko`olau Ballroom, Salon 3
Kauai Marriott Resort
3610 Rice Street, Kalapaki Beach
Lihue, Kauai

September 15, 2000

COMMISSIONERS PRESENT: P. Roy Catalani
Isaac Fiesta, Jr.
Lawrence N.C. Ing
Stanley Roehrig
Peter Yukimura

COMMISSIONERS ABSENT: Bruce A. Coppa (excused)
Pravin Desai
M. Casey Jarman
Merle Kelai

STAFF PRESENT: Presley Pang, Esq., Deputy Attorney General
Bert Saruwatari, Staff Planner
Teri Hee, Chief Clerk

Holly Hackett, Court Reporter

Presiding Officer Yukimura called the meeting to order at 9:00 a.m.

MISCELLANEOUS

Having no objections from the Commissioners, Deputy Attorney General Presley Pang announced that proposed legislation to give the Commission the authority to require mediation by the parties will be submitted for consideration.

CONTINUED HEARING

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

Presiding Officer Yukimura announced that this matter before the Commission is a continuation of the hearing, which was adjourned yesterday at 4:20 p.m.

Commissioner Coppa was excused from this proceeding due to a previously declared conflict of interest.

Commissioner Roehrig opened the hearing with a speech in Hawaiian.

Appearances

Michael Belles, Esq., representing petitioner

Scott Ezer, Helber, Hastert & Fee

Laurel Loo, Esq., Deputy Corporation Counsel

Keith Nitta, Kauai County Planning Department, Staff Planner

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

PETITIONER'S WITNESSES (cont'd.)

1. Terry Brothers

2. Glenn Mason

3. Berna Cabacungan

4. David Shideler

A lunch recess was taken at 12:00 noon to reconvene at 1:00 p.m.

- 1:15 p.m.

PETITIONER'S WITNESSES (cont'd.)

4. David Shideler

5. William Kikuchi

The meeting was adjourned at 2:30 p.m.

Approved
9/29/00

LAND USE COMMISSION

Minutes of Meeting

Ko`olau Ballroom, Salon 3
Kauai Marriott Resort
3610 Rice Street, Kalapaki Beach
Lihue, Kauai

September 14, 2000

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce A. Coppa (portion of proceedings)
Isaac Fiesta, Jr.
Lawrence N.C. Ing
Merle Kelai (portion of proceedings)
Stanley Roehrig
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai
M. Casey Jarman

STAFF PRESENT: Presley Pang, Esq., Deputy Attorney General
Bert Saruwatari, Staff Planner
Russell Kumabe, Staff Planner
Teri Hee, Chief Clerk

Holly Hackett , Court Reporter

Chairperson Kelai called the meeting to order at 9:30 a.m.

ACTION

A00-733 - HARRISON J. & SHARENE Z. KLEIN

Chairperson Kelai announced that this is an action meeting to consider whether the anticipated effects discussed in Petitioner's Draft Environmental Assessment to reclassify approximately 2.621 acres of land currently in the Conservation District into the Urban District at Keonepoko Iki, Puna, Hawaii for the cultivation of ti-leaf plants, coconut trees and palms, and recommence a commercial farming operation constitutes a "significant effect" pursuant to Chapter 343, H.R.S.

Appearances

Steven S.C. Lim, Esq., representing petitioner

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

Chairperson Kelai announced that the County of Hawaii Planning Department would not be present to the proceeding.

Russell Kumabe, staff planner, oriented the Commission to the subject area on the Land Use District Boundaries map and tax maps and gave background information on the motion.

Arguments were heard from Mr. Lim and Ms. Ogata-Deal.

Questions were asked by the Commissioners.

Mr. Lim will be providing additional information to the Commission before the Commission determines whether the anticipated effects discussed in Petitioner's Draft Environmental Assessment constitutes a "significant effect" pursuant to Chapter 343, H.R.S.

MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Catalani moved to approve the minutes for the meeting dates of August 16 and 17, 2000. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

2. ADOPTION OF DECISION AND ORDER

Commissioner Catalani moved to adopt the Order Granting Petitioner's Request To Withdraw The Motion To Release, Discharge And Delete All Conditions In The Land Use Commission's Findings Of Fact, Conclusions Of Law, And Decision And Order Filed April 6, 1992 for Docket No. A91-665 - Kamaaina Eight. The motion was seconded by Commissioner Coppa and unanimously approved by voice votes.

Commissioner Fiesta moved to adopt the Order Granting Motion To Withdraw Land Use Commission Approvals And Revert Land Use District Boundary Classification To Agriculture for Docket

No. A92-680 - C. Brewer Properties, Inc. The motion was seconded by Commissioner Ing and unanimously approved by voice votes.

Commissioner Fiesta moved to go into executive session to discuss legal matters with respect to the Supreme Court's September 11, 2000 Opinion on the Land Use Commission reclassification granted to Ka`upulehu Development. The motion was seconded by Commissioner Coppa and unanimously moved by voice votes.

Commissioner Coppa moved that the Land Use Commission not request the Supreme Court to reconsider its decision. The motion was seconded by Commissioner Fiesta and unanimously carried by voice votes. The Commission directed staff to set up a presentation regarding the issues of gathering, traditional, and customary rights.

CONTINUED HEARING

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

Presiding Officer Yukimura announced that this matter before the Commission is a continuation of the hearing previously held on July 20, 21, 2000 to reclassify approximately 153.696 acres of land currently in the Agricultural District into the Urban District at Makaweli, Kauai, for the development of a resort and accessory uses.

Commissioner Coppa was excused from this proceeding due to a previously declared conflict of interest.

Appearances

Michael Belles, Esq., representing petitioner

Scott Ezer, Helber, Hastert & Fee

Laurel Loo, Esq., Deputy Corporation Counsel

Keith Nitta, Kauai County Planning Department, Staff Planner

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

The Commission entered the following correspondence into evidence:

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

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

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

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

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

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

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

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

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

10. Letter dated September 13, 2000, from Laure Dillon notifying the Commission that Sunny Greer of the Kahea Board of Directors will be testifying on behalf of Kahea at today's hearing.

11. Approximately 95 facsimile letters in opposition to the project. (Staff read sample of letter into the record.)

EXHIBITS

1. Petitioner's Exhibit No. 52 was admitted into evidence by the Land Use Commission.

PUBLIC WITNESSES

1. Joseph Manini

2. Sunny Greer

3. Judy Naumu-Steward

4. Bruce Pleas

5. Don Heacock

6. Butch Kekahu

7. Cheryl Lovell-Obatake

A lunch recess was taken at 11:45 a.m. to reconvene at 1:00 p.m.

- 1:00 p.m.

PETITIONER'S WITNESSES (Cont'd.)

1. Scott Ezer

2. Phil Bruner

3. Steve Dollar

4. Ann Bouslog

5. Winona Char

6. Tom Nance

The meeting was adjourned at 4:20 p.m. with the announcement that the Commission will reconvene tomorrow at 9:00 a.m.

LAND USE COMMISSION

NOTIFICATION OF LAND USE COMMISSION MEETING

DATE, TIME AND PLACE

September 14, 2000 - 9:30 a.m.
September 15, 2000*
Kauai Marriott Resort
Ko`olau Ballroom, Salon 3
3610 Rice Street, Kalapaki Beach
Lihue, Kauai

'00 SEP -5 A10:51

LIEUTENANT GOVERNOR'S OFFICE

A G E N D A

I. ACTION

1. A00-733 - HARRISON J. & SHARENE Z. KLEIN (Hawaii)

To determine whether the anticipated effects discussed in Petitioner's Draft Environmental Assessment to reclassify approximately 2.621 acres of land currently in the Conservation District into the Agricultural District at Keonepoko Iki, Puna, Hawaii for the cultivation of ti-leaf plants, coconut trees and palms and recommence a commercial farming operation constitutes a "significant effect" pursuant to Chapter 343, H.R.S.

II. CONTINUED HEARING

1. A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

To reclassify approximately 153.696 acres of land currently in the Agricultural District into the Urban District at Makaweli, Kauai, for the development of a resort and accessory uses.

III. MISCELLANEOUS

1. Adoption of Minutes

2. Adoption of Decisions and Orders

3. Discussion of Litigation Matters

4. Discussion of Pending Matters

(Executive Sessions may be called in order for the Commission to consult with their attorney pursuant to Section 92-5, HRS.)

*The meeting will continue on September 15, 2000 if not completed on September 14, 2000.

9/5/00 Agenda sent to: D. Blane, Ann Ogata-Deal, Esq., M. Belles, Esq., D. Crowell, Hartwell Blake, Esq., all person & Organizations on the mailing lists: Statewide-8/22/00, Kauai-5/4/00 Kapalawai-8/24/00 & J. Manini, Jr.

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 5, 2000

Mr. David W. Blane, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804

Dear Mr. Blane:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-733 - HARRISON J. & SHARENE Z. KLEIN (Hawaii)

✓A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

c: Mr. Abe Mitsuda

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 5, 2000

Ann Ogata-Deal, Esq.
Deputy Attorney General
No. 1 Capitol District Building
Hemmeter Building, Room 108
250 S. Hotel Street
Honolulu, Hawaii 96813

Dear Ms. Ogata-Deal:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

A00-733 - HARRISON J. & SHARENE Z. KLEIN (Hawaii)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 5, 2000

VIA CERTIFIED MAIL

Mr. Dee Crowell, Director
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Crowell:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

7000 0600 0027 7114 3910

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

A00-731/Destination Villages Kauai

Postage	$ .33
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 2.98

HONOLULU, HI DOWNTOWN STA SEP 5 2000 USPS Postmark Here

Recipi Mr. Dee Crowell, Director
Street, Kauai County Planning Department
City, S 4444 Rice Street, Suite 473
Lihue, Hawaii 96766

PS Form 3800, February 2000 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Dee Crowell, Director
Kauai County Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* B. Date of Delivery 9/6/00

C. Signature X ☒ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 7000 0600 0027 7114 3910

A00-731/Destination Villages Kauai

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 5, 2000

VIA CERTIFIED MAIL

Hartwell H.K. Blake, Esq.
County Attorney
Office of the County Attorney
County of Kauai
4444 Rice Street, #220
Lihue, Hawaii 96766

Dear Mr. Blake:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

7000 0600 0027 7114 3934

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

A00-731/Destination Villages Kauai

Postage	$ .33
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 2.98

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SEP 5 2000
Postmark Here
USPS

Rec Hartwell Blake, Esq.
Stre County Attorney
COUNTY OF KAUAI
City 4444 Rice Street, #220
Lihue, HI 96766

PS

(to be completed by mailer)

See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

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1. Article Addressed to:

Hartwell Blake, Esq.
County Attorney
COUNTY OF KAUAI
4444 Rice Street, #220
Lihue, HI 96766

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* B. Date of Delivery

X OWEN TANGO 9/6/00

C. Signature

X [signature] ☑ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
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BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 5, 2000

VIA CERTIFIED MAIL

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, Hawaii 96766

Dear Mr. Belles:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition (s)

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

will be acted on or heard at that time. You or your representative should be present at this meeting. If you cannot attend this meeting, please contact our office as soon as possible.

Should you have any questions on this matter, please contact this office at 587-3822.

Very truly yours,

ESTHER UEDA
Executive Officer

EU:th

Enclosure

7000 0600 0027 7114 3903

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

A00-731/Destination Villages Kauai

Postage	$ 33
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 298

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Re
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Ci

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, HI 96766

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, HI 96766

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* X Jennifer A. Uyeda-Gali
B. Date of Delivery 8/6/00
C. Signature X Jennifer A. Uyeda-Gali
☒ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
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A00-731/Destination Villages Kauai

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