



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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|---|---|-------------------------|
| In The Matter Of The Petition Of |) | DOCKET NO. A83-557 |
| |) | |
| PRINCEVILLE DEVELOPMENT |) | FINDINGS OF FACT, |
| CORPORATION |) | CONCLUSIONS OF LAW, AND |
| |) | DECISION AND ORDER |
| To Reclassify Approximately 390 Acres Of |) | |
| Land Currently In The Agricultural District |) | |
| Into The Urban District At Hanalei, Kaua'i, |) | |
| Hawai'i, TMK: 5-3-06: 17 And Portion Of 14 |) | |
| _____ |) | |

LAND USE COMMISSION
STATE OF HAWAII
2011 JUL -1 A 10:32

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER,
EXHIBIT "A"
AND CERTIFICATE OF SERVICE



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

PRINCEVILLE PRINCE GOLF COURSE, LLC ("Petitioner"), filed a Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated March 28, 1985, on March 9, 2011 ("Motion"), pursuant to §§ 15-15-70 and 15-15-94, Hawai`i Administrative Rules ("HAR"), for an order: (1) recognizing Petitioner's standing to seek and obtain the relief requested; and (2) amending the Findings Of Fact, Conclusions Of Law, And Decision And Order in the above-entitled docket to delete the condition limiting the use of an approximately 120-acre portion of the Petition Area previously reclassified to the State Land Use Urban District, identified as Tax Map Key: ("TMK") 5-3-06: 35 (por.), 36 (por.), 37, 38 (por.), 39 (por.), 40 (por.),

and Roadway Lot A (5-3-06: 43 (por.)) (collectively "Subject Area"), to golf course uses for the proposed Princeville Ranch Agricultural Subdivision ("Project").

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

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 28, 1985, the Commission issued its Findings Of Fact, Conclusions Of Law, And Decision And Order in this docket reclassifying the Petition Area, consisting of approximately 390 acres from the State Land Use Agricultural District to the State Land Use Urban District, subject to the condition that the land be used only for golf course uses. The proposed development included an 18-hole golf course, a golf clubhouse with a pro office, snack bar, and cart storage.

2. On May 23, 1989, the Commission issued its Decision And Order Clarifying Condition Of Approval by stating that golf course use includes a clubhouse with a restaurant.

3. On July 26, 1989, the Commission issued its Findings Of Fact, Conclusions Of Law And Decision And Order On Petitioner's Motion To Clarify, Amend Or Delete, If Necessary, Condition Of Approval, And On Intervenor's Motion

To Amend Condition, which amended the March 28, 1985, and May 23, 1989, orders by permitting the development of a tennis/fitness complex.¹

4. On March 18, 2005, by Quitclaim Deed Petitioner acquired the Petition Area from Princeville Corporation, previously known as Princeville Development Corporation, the original Petitioner in the subject docket.

5. On March 9, 2011, Petitioner filed the Motion.

6. On April 28, 2011, Petitioner filed its Supplement To Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated March 28, 1985, and Exhibits 6 – 8.

7. On May 2, 2011, the State Office of Planning (“OP”) filed its Response To Petitioner’s Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated March 28, 1985.

8. On May 10, 2011, the Intervenor filed a Motion For Continuance Of Hearing On Petitioner’s Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated March 28, 1985 (“Motion For Continuance”).

9. On May 11, 2011, OP filed a Supplement To Response To Petitioner’s Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated March 28, 1985.

¹ The Commission had previously granted the Concerned Citizens of Anini (“Intervenor”) intervenor status in the proceedings.

10. On May 12, 2011, the Commission considered the Intervenor's Motion For Continuance at its meeting in Līhu'e, Hawai'i, pursuant to § 92-7(d), Hawai'i Revised Statutes ("HRS"). After due deliberation, the Commission denied the Motion For Continuance.

11. On May 12, 2011, following its denial of the Intervenor's Motion For Continuance, the Commission considered the Motion. Karin Carswell-Guest provided public testimony. OP supported the Motion, while the County of Kaua'i Planning Department ("Planning Department") did not oppose the Motion. After due deliberation, the Commission granted the Motion.

DESCRIPTION OF THE SUBJECT AREA

12. The Subject Area represents approximately 120 acres of land within the State Land Use Urban District that was urbanized as part of the 390-acre Petition Area pursuant to Findings Of Fact, Conclusions Of Law, And Decision And Order filed March 28, 1985. The Prince Golf Course and Prince Clubhouse have already been developed on the Petition Area. The Subject Area remains undeveloped and will not be developed for golf course uses as originally proposed.

13. The Subject Area is proposed to be included as part of the Project. The Project is a 21-lot subdivision located on an approximately 1,024-acre parcel on the north shore of Kaua'i on the central and eastern plateaus makai of Kūhiō Highway. Seventeen lots are proposed for agricultural and associated farm dwelling uses with a

combined total area of approximately 480 acres, inclusive of the Subject Area. The four remaining lots consist of the existing Prince Golf Course (two lots), lands entirely within the Special Management Area (one lot), and access and circulation routes within the subdivision area (one lot). Within the Project, the Subject Area encompasses one planned agricultural lot, a portion of four other planned agricultural lots, and a portion of the roadway lot.

14. The Subject Area is identified as TMK: 5-3-06: 35 (por.), 36 (por.), 37, 38 (por.), 39 (por.), 40 (por.), and Roadway Lot A (5-3-06: 43 (por.)), and is owned in fee simple by Petitioner.

15. The Subject Area is generally surrounded by steep drainage valleys and open pasture lands. The southwestern portion of the Subject Area is bordered by the eastern edge of the existing Prince Golf Course entry road. The Prince Clubhouse is located to the west of the border. Two closed landfill sites and a concrete batch plant are located to the east of the Subject Area, across from a drainage valley. Kūhiō Highway marks the southern boundary of the Subject Area. Princeville Airport is located across from the highway to the south of the Subject Area. While the Subject Area is generally undeveloped, it has been used for cattle grazing for over 170 years by Princeville Ranch and its predecessors.

16. The Subject Area is situated on a sloping plateau with natural topographical elevations that provide positive slopes for storm water runoff to natural

gulches. The majority of storm water from the Subject Area is surface drained in a northerly and easterly direction and eventually empties into the Pacific Ocean at Kalihi Kai Beach via small stream outlets. According to the Federal Emergency Management Agency's Flood Insurance Rate Map, the boundaries of the Subject Area fall outside the defined 100-year floodplain boundaries.

17. The Subject Area's plateau area has an elevation of approximately 200 feet above sea level and has less than 20 percent slope.

18. The Subject Area is adjacent to the State Land Use Agricultural and Urban Districts.

DESCRIPTION OF THE PROPOSED USE

19. Petitioner proposes to include the Subject Area as part of the Project. Within the Subject Area, there are potentially a maximum of 18 homesites, if each lot owner were to maximize the number of dwellings on each lot.

20. The Subject Area's maximum of 18 homesites will be capped by Petitioner through Housing Agreement (Doc. 2010-158386), and through Conditions, Covenants, and Restrictions ("CCRs"). Petitioner represents that it will not exceed the maximum homesites for the Subject Area.

21. Petitioner prepared a Planning Report which is attached as Exhibit 1 to the Motion. The Planning Report, among other things, includes recommendations

by Petitioner's consultants to mitigate potential impacts of development of the Subject Area.

22. Petitioner represented that it will implement the mitigation measures recommended by its consultants in the Planning Report.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

23. Petitioner's financial statements dated December 31, 2009, reflect total assets of \$8,661,567.43, total liabilities of \$604,844.82, and total equity of \$8,056,722.61. Petitioner intends to finance the development of the Subject Area through members' contributions and the sale of lots.

STATE AND COUNTY PLANS AND PROGRAMS

24. The Subject Area is located within the State Land Use Urban District.

25. The Subject Area is designated Agriculture and Open Land Use in the County General Plan.

26. The Subject Area is zoned Agriculture and Open.

27. The Subject Area is not located within the County Special Management Area.

NEED FOR THE PROPOSED USE

28. Ricky Cassiday prepared a market study for the Project, including the development on the Subject Area, dated April 13, 2010.

29. Petitioner no longer plans to use the Subject Area for golf course use. There is a market for high-end view lots on Kaua`i, particularly on the North Shore, such as those that will be provided by the Subject Area.

ECONOMIC IMPACTS

30. Plasch Econ Pacific LLC prepared an economic and fiscal impact assessment for the Project, including the development on the Subject Area, dated July 2009.

31. Over the 20-year analysis period, the State could net at full buildout approximately \$3,176,999 from development activities associated with the Subject Area, or an average of approximately \$158,850 per year. In 20 years, projected net tax revenues to the State could reach approximately \$149,947 per year for the Subject Area if fully built out.

32. In 20 years, projected net tax revenues to the County could reach approximately \$45,627 per year for the Subject Area if fully built out.

33. During the 20-year analysis period, construction employment could average approximately six jobs associated with development in the Subject Area if fully built out. It is anticipated that most construction jobs will be filled by workers already

living on Kaua'i. Approximately 15 direct-plus-indirect jobs will be attributable to construction in the Subject Area if fully built out.

34. In 20 years, up to 11 jobs may be created due to purchases of goods and services by occupants of the dwellings in the Subject Area if fully built out. Three of these jobs would be onsite annual employment related to dwelling and yard maintenance and repair for homes built in the Subject Area.

SOCIAL IMPACTS

35. The Project, including the development on the Subject Area, is designed to keep Princeville Ranch operating for the foreseeable future, and to perpetuate the open space character and lifestyle of the North Shore. The lands comprised by the Project, along with over 3,200 acres located mauka of Kūhiō Highway and in Hanalei Valley, will be maintained in agricultural uses to support the operations of the Princeville Ranch that currently leases these lands, as described in the Princeville Ranch Agricultural Master Plan.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

36. The Subject Area has been and is currently used for pasture and equestrian activities by Princeville Ranch, which currently leases the land from Petitioner, and will be included in the Princeville Ranch Agricultural Master Plan.

37. Petitioner proposes to subject the land outside of the homesites and roadway portions of the lots to agricultural easements which will allow a Master Association of owners of homesites and lots to use or lease these lands for agricultural activities. The Master Association will initially exercise this power by leasing these lands to the Princeville Ranch to allow it to continue its current ranching and trail ride activities on the lands.

Flora and Fauna

38. Rana Biological Consulting, Inc., conducted botanical, avian, and mammalian surveys of the Subject Area and prepared a report dated June 1, 2009.

39. No plant species currently listed as endangered, threatened, or proposed for listing under either the federal or the State of Hawai`i's endangered species programs were recorded within or close to the Subject Area. Modification of the habitat present on the plateau portions of the site, or the development of residential lots along the ridgeline here should not result in deleterious impacts to any plant species currently listed as endangered, threatened, or that are currently proposed for listing under either federal or State of Hawai`i endangered species statutes.

40. One or more koai`a—a tree closely related to koa—were identified in the biological survey within or in close proximity to the Subject Area. Petitioner's consultant made the following recommendation with respect to the finding of this unusual tree:

“Although the *koai`a* trees found at the eastern end of the project parcel are not protected by any statutes under state or federal law, given the unusual nature of this population (unique to Kaua`i), they should be preserved. All are located on slopes that would not be suitable for house construction. The purchaser of a lot that contains this species of tree...should be informed of the unusual nature of the tree. In as much as the trees appear to be producing seeds, the Princeville Resort nursery could attempt to propagate additional trees for outplanting in the area. *Koai`a* (a type of *koa*) are beautiful landscape trees not often seen at low elevations. Reviving this unusual population would be a benefit to both the resort and botanical science.”

41. Petitioner will implement consultant recommendations for the *koai`a* specimens on the Subject Area, including a program for seed collection, propagation, and outplanting in consultation with the State Department of Land and Natural Resources, Forestry and Wildlife Division.

42. Nineteen bird species were recorded during station counts. One of the species recorded, Hawaiian Goose, or Nēnē (*Branta sandvicensis*), is listed as an endangered species under both federal and State of Hawai`i endangered species statutes. One other species, Pacific Golden-Plover (*Pluvialis fulva*), is an indigenous migratory shorebird species. The remaining 17 species recorded are all considered to be alien to the Hawaiian Islands. Although not detected, it is probable that the Hawaiian endemic sub-species of the Short-eared Owl, or Pueo, use the resources in the general Subject Area. Two other species not detected during the survey, the endangered Hawaiian Petrel and the threatened Newell’s Shearwater, have been recorded flying over the Subject Area.

43. An endangered species awareness program will be developed, which includes general information on the endangered species act and protected species, specific restrictions that will be in force on the job site to protect endangered species, and a set of protocols on who, and how job site personnel will respond to any downed or injured endangered species that may occur on the site. The endangered species awareness program will be implemented by the master developer as well as individual homesite developers. If construction activity is planned to occur during the Nēnē nesting season, which typically runs from October through March on Kaua`i, the Subject Area and individual homesite areas will be surveyed by a qualified biologist before the onset of nesting, to determine if there is any active Nēnē nesting activity occurring on the site. If active Nēnē nesting does occur while construction is ongoing, a Nēnē monitoring protocol will be in place to ensure that no harm befalls the birds.

44. All exterior lighting associated with the operation of the proposed development and homesites will be shielded so as to reduce the potential for interactions of nocturnally flying Hawaiian Petrels and Newell's Shearwaters with external lights and man-made structures.

45. No mammalian species protected or proposed for protection under either the federal or State of Hawai`i endangered species programs were detected during the course of the survey. Although not detected, Hawaiian hoary bats have been recorded foraging for insects over the Subject Area in the past. To the degree that

any clearing of vegetation in gulches occurs, all contractors will be advised to avoid clearing and grubbing in the months of June and July to avoid disturbing female bats carrying pups as recommended by Petitioner's consultant.

46. Steven Lee Montgomery, Ph.D., conducted an invertebrate field survey of the Subject Area and prepared a report dated May 23, 2009.

47. There are no federally or state listed endangered or threatened species on the Subject Area. There is also no federally designated Critical Habitat for any invertebrate species on or adjacent to the Subject Area. The homesite development activity on the Subject Area is not expected to threaten entire species or entire populations of invertebrates. Petitioner's compliance with its consultant's recommendation to discourage removing native flora environments, including on steep slopes, and in ravines should provide habitats for the few native invertebrate species.

Archaeological, Historical, and Cultural Resources

48. Cultural Surveys Hawai'i, Inc. ("CSHI"), conducted an archaeological inventory survey for the Project, including the development on the Subject Area, dated April 2009. The survey was reviewed and accepted by the State Historic Preservation Division. A total of 11 historic properties consisting of 23 total features were identified within or near the study area. None of the 11 historic properties are located within the Subject Area.

49. Development in the Subject Area will have no impact on archaeological and historic properties.

50. CSHI also prepared a cultural impact assessment for the Subject Area dated July 2009.

51. The development on the Subject Area will have minimal to no impacts on Hawaiian cultural beliefs, practices, resources (historic and/or cultural properties), sites, and traditions. If `iwi or cultural resources are found during the ground disturbance and construction phases of the individual homesites, cultural and lineal descendants of the area and appropriate agencies will be notified and consulted in regard to preparation of appropriate mitigation plans, including a burial treatment plan.

Groundwater Resources

52. Tom Nance Water Resource Engineering prepared a hydrology assessment for the Project, including the development on the Subject Area, dated August 27, 2009.

53. The development of the Subject Area will not adversely impact the groundwater flow rate as it has been anticipated in planning as part of the Project by Princeville Utilities Company, Inc. ("PUCI"), a private Public Utilities Commission regulated company. Supply of 21,800 gallons per day ("GPD") for the 120-acre Subject Area will come from any of PUCI's four wells, two of which draw from the Waimea

volcanics and the other two from the Kōloa formation. These water supply amounts are not significant in terms of PUCI system's capacity or in comparison to the natural flow of groundwater in either volcanic formation.

54. With regard to onsite changes to the quantity of groundwater, the 120-acre Subject Area is likely to contribute approximately 7,620 GPD (5,120 GPD as wastewater and 2,500 GPD landscape irrigation return flow). This water will percolate below the soil mantle toward the groundwater below. Approximately 25 percent of onsite rainfall percolates below the root zone. Over the 120-acre Subject Area, this amounts to an annual average of approximately 150,000 GPD. The projected increase of 7,620 GPD will be an increase of approximately 5 percent.

55. Given the perching layers in the saprolite encountered in the two deep onsite boreholes, percolating rainfall or wastewater produced by the development on the Subject Area is not likely to reach the groundwater body, which exists at variable depths beneath the site. The percolate is more likely to drain into the gulches which are incised into the plateau.

56. Percolate from individual wastewater leach fields and as excess applied landscape irrigation water will be higher in dissolved nutrients than percolating rainfall recharge or in the groundwater at depth. However, essentially all of the phosphorus in the development's percolate would be absorbed during passage

through the sapprolite and a substantial portion of the nitrogen would also be removed by denitrification processes.

Scenic Resources

57. Kūhiō Highway is designated as a Scenic Roadway Corridor in the North Shore Planning District Heritage Resources Map of the County General Plan. The southern border of the Subject Area borders this scenic corridor. To minimize obstruction of views along the highway and public views toward the coast from the highway, homesites will be set away from Kūhiō Highway as much as possible and landscape plantings and dwelling orientation and design will be used to both screen noise and traffic from the homesites and preserve view corridors from the highway to the ocean. Setbacks from the bluffs will reduce visual impacts from `Anini Beach and Kalihi Kai Beach, and drainage valleys will separate the dwellings from the adjacent `Anini Vista Subdivision. Portions of the dwellings' roof lines may be visible from the highway and from `Anini Vista. The CCRs will require landscape screening to mitigate adverse visual impacts of the proposed dwellings.

Recreational Resources

58. There are several public recreational facilities in the vicinity of the Subject Area, including `Anini Beach Park, Kalihi Kai Beach Park, Hanalei Black Pot Beach Park, and Hanalei Pavilion Beach Park. Additionally, Princeville at Hanalei features two championship golf courses: the Prince Golf Course and the Makai Golf

Course. Princeville Ranch has recreational activities and resources that supplement the ranching activities, including horseback riding, zip-lines, eco-tours, and hiking.

Construction activities on the Subject Area will not involve the use of these recreational facilities or impede existing activities conducted there.

ENVIRONMENTAL QUALITY

Noise

59. D. L. Adams Associates prepared an environmental noise assessment report for the Project, including the development on the Subject Area, dated November 2008 and revised April 2011.

60. Noise from construction activities should be short term and will comply with State Department of Health noise regulations. After construction is complete, noise generated from stationary mechanical equipment within the Subject Area will meet the State of Hawai'i noise regulations.

61. The 2018 projections of traffic volumes along Kūhiō Highway indicate a minor change in traffic, so a negligible future increase in traffic noise along the highway can be expected. Dwellings within 50 feet from the edge-of-pavement of Kūhiō Highway will experience noise levels that exceed the federal maximum noise limit of 67 dBA for peak hour traffic volumes. No dwellings are planned to be located 50 feet from Kūhiō Highway. Airplane noise from the Princeville Airport is minimal

and infrequent and is not expected to impact the development on the Subject Area.

Helicopter noise from the Princeville Airport does not exceed FHA guidelines.

Air Quality

62. B. D. Neal & Associates examined the potential air quality impacts of the Project, including the development on the Subject Area.

63. Air quality in Princeville area is believed to be good at the present time. Regional and local climate together with the amount and type of human activity generally dictate the air quality of a given location. The climate of the Princeville area is very much affected by its windward and near coastal situation and by nearby mountains. Winds are predominantly trade winds from the east or northeast and provide good ventilation much of the time.

64. Short-term impacts from fugitive dust during construction may potentially occur. Because of this, an effective dust control plan for the period of construction will be prepared and implemented. After construction, any long-term impacts on air quality from motor vehicle traffic related to development of the Subject Area are anticipated to be negligible.

Energy and Resource Conservation

65. Petitioner will encourage prospective developers, homebuilders, and homeowners to design and build dwellings to achieve energy and resource

conservation in compliance with the U. S. Green Building Council's Leadership in Energy and Environmental Design requirements or a comparable standard.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

66. Wilson Okamoto Corporation prepared a traffic impact report for the Project, including the development on the Subject Area, dated November 2008.

67. The western portion of the Project is accessed from Kūhiō Highway via the existing access road for the Prince Golf Course and Princeville Ranch, and the eastern section of the Project is accessed via `Anini Vista Road. Both Kūhiō Highway approaches have one lane at unsignalized intersections that serves all traffic movements. The existing access road to the clubhouse and ranch is paved up to the asphalt parking lots serving the clubhouse. A new subdivision road is being constructed from the southern boundary of the Subject Area.

68. The roadways within the Subject Area will meet the County roadway and fire safety standards and preserve the open space character of the area.

69. Proposed roadway improvements which are required for subdivision approval are shown in the construction plans entitled "Construction Drawings for Lot 2-A-1, Princeville Phase II" prepared by Esaki Surveying and Mapping, Inc. The proposed collector road (Road A) is approximately 3,900 feet in total length, with 900 linear feet falling within the Subject Area. Collector road cross-sections

consist of a 24-foot-wide paved, normal crown travelway and 16-foot-wide grassed shoulders/swales on each side of the travelway.

70. The roadways serving the Project, including the development on the Subject Area, are expected to have a minimal impact to the environment and to the open space character of the area.

71. The traffic impact report made the following recommendations: (1) maintain sufficient sight distances for motorists to safely enter and exit all driveways/roadways of the Project, including the development on the Subject Area; (2) provide adequate on-site loading and off-loading service areas and prohibit off-site loading operations; (3) provide adequate turn-around area for delivery and refuse vehicles to maneuver on the site of the Project, including the Subject Area, to avoid vehicle reversing maneuvers onto public roadways; and (4) provide sufficient turning radii at all driveways/roadways of the Project, including the development on the Subject Area, to avoid or minimize vehicle encroachments to oncoming traffic lanes.

72. The change from a golf course to homesites on the Subject Area will not create a significant traffic change so long as the number of homesites is capped as represented by Petitioner, and that the development as described in the November 2008 traffic impact report reflecting 75 homesites also remains at 75 homesites. Any further changes to the proposed development plans that affect traffic operations will be provided to the State Department of Transportation, Highways Division ("DOT, HD")

for prior review and approval. In addition, Petitioner and any developer will continue to coordinate, through prior consultation and advance construction plans, with the DOT, HD, for all tasks associated with the Project, including the development on the Subject Area, that involves work on, in, adjoining, or affecting the State highway facility of Kūhiō Highway (Route 56).

73. Petitioner will implement the above recommendations. With the implementation of the recommendations in the traffic impact report, the Project, including the development on the Subject Area, is not expected to have a significant impact on traffic operations.

Water Service

74. R. M. Towill Corporation prepared an infrastructure study for the Project, including the development on the Subject Area, dated August 2009 that addressed water service requirements.

75. Drinking water demands for the entire Princeville area, between the Hanalei River and the Kalihiwai River, are served by PUCI. PUCI gets its water from three deep groundwater wells which have a total sustainable yield of 1.4 million gallons per day ("MGD"). Presently, the water demands total 1.1 MGD and PUCI has just completed drilling Well No. 5 which is estimated to have a yield of 0.8 MGD. With a maximum of 75 (3/4 acre) homesites, the calculated average drinking water demand is

140,625 GPD (0.141 MGD). The private water system will be able to accommodate the demand of the Project, including the development on the Subject Area.

Solid Waste Disposal

76. The County's Kekaha landfill is the primary solid waste disposal site on the island, located on the leeward coastline of Kaua'i near Kekaha town. The remaining permitted capacity of the landfill is 384,500 cubic yards as of May 19, 2006. The County is currently applying for a northwest horizontal expansion of the Phase II area to increase the landfill's capacity by an additional 370,000 cubic yards. There is also a possibility of expanding the Phase II landfill to the southwest over the northeast side slope of the closed Phase I landfill, which will add an additional 350,000 cubic yards of airspace for a total horizontal expansion volume of 720,000 cubic yards.

77. Petitioner will prepare a solid waste management plan for the Project, including the development on the Subject Area, as part of its sustainable development initiatives to reduce the impact that the development will have on the County solid waste management facilities. The solid waste management plan will identify efforts to minimize waste generated by the development during construction and at buildout.

Wastewater Disposal

78. R. M. Towill prepared an infrastructure study for the Project, including the development on the Subject Area, dated August 2009 that addressed wastewater disposal requirements.

79. Wastewater generated by dwellings built within the Subject Area will be treated and disposed of using individual wastewater systems ("IWS") consisting of a septic tank system and a leach field or seepage pit for effluent disposal. Each lot is allowed one IWS under chapter 11-62, HAR. It may be possible that more than one IWS per lot could be constructed if an individual lot owner decides to create a condominium property regime within his lot pursuant to the one-acre exception in § 11-62-31.1B, HAR. Proposed dwellings are expected to vary in size and each homesite is assumed to utilize a maximum 1,250 gallon IWS (which can accommodate a 5-bedroom dwelling).

80. Petitioner's geotechnical consultant encountered generally wet soils with frequent zones of groundwater seepage throughout the boring depths, indicating potential perched groundwater conditions. Therefore, specific percolation tests will be necessary to design and size each of the leach fields or seepage pits to ensure that installed IWSs will perform as designed. With proper design, installation, and maintenance of dwellings' IWS, there will be minimal adverse impact to groundwater, surface, and coastal waters from onsite wastewater treatment and disposal. The Project,

including the development on the Subject Area, is not expected to have an impact on public wastewater facilities.

Drainage

81. R. M. Towill prepared an infrastructure study for the Project, including the development on the Subject Area, dated August 2009 that addressed drainage requirements.

82. Within each of the homesites, retention facilities are planned to provide an equivalent amount of retention as the calculated increase in runoff due to development. Increases in runoff volume and peak flows due to the development on the Subject Area are calculated to be negligible with respect to the regional runoff volumes and peak flows. The natural gullies and drainageways are significant enough to handle the peak flows which are generated by the regional watershed areas. Considering that the proposed individual developments will be responsible to capture and retain their increases in runoff, the local or immediate impacts due to development will also be negligible. The calculated increases in runoff volume and peak flow from the Subject Area due to the ultimate buildout are not significant and will not significantly impact the downstream areas.

83. Petitioner will incorporate low impact development designs and practices for onsite stormwater management into the design and development of backbone infrastructure and drainage systems to the extent practicable, and will

promote the use of low impact development techniques by individual homesite developers. Petitioner will limit clearing of vegetation during construction of backbone infrastructure and CCRs will discourage clearing of vegetation by homeowners and occupants of dwellings to avoid the potential for non-point source pollution of surface and coastal waters due to soil erosion and debris from runoff.

Schools

84. The potential 18 single-family dwellings within the Subject Area will have minimal impact on the State Department of Education programs and facilities. Based on the existing excess capacity and the small numbers of students that will be generated by the development, no significant impact is anticipated.

Police and Fire Protection

85. The Kaua`i Police Department provides services to the North Shore District from their Hanalei Police Substation, which serves as a base of operations for police personnel patrolling this coastline. This substation is located approximately three miles west of the Subject Area on the mauka (south) side of Kūhiō Highway, adjacent to Prince Albert Park. The next closest station is located in Līhu`e approximately 25 miles away and can provide additional police protection if necessary.

86. The development on the Subject Area is anticipated to have minimal impact on the police department's operations or ability to provide adequate

police protection services to the surrounding community either during construction or upon completion of the development.

87. The Kaua`i Fire Department has one fire station in the North Shore District located in Princeville. The Hanalei Fire Station is located approximately three miles west of the Subject Area, on the makai (north) side of Kūhiō Highway. It is co-located with the Hanalei Police Substation. Back-up service is provided by the Kapa`a Fire Station.

88. The development on the Subject Area is anticipated to have minimal impact on the fire department's operations or ability to provide adequate fire protection services to the surrounding community either during construction or upon completion of the development.

Emergency/Medical Services

89. Medical facilities located within the North Shore District include Kaua`i Medical Clinic in Kīlauea. Emergency service is provided from its Līhu`e location. Emergency ambulance service also is provided by the Hanalei Fire Station.

90. The development on the Subject Area is not expected to adversely impact the provision of medical services to the community given the limited number of additional residents that will be generated.

Electricity and Telephone Service

91. Electrical power will be provided to the Subject Area by the Kauaʻi Island Utility Cooperative (“KIUC”). Primary electrical power is distributed from the main electrical generating facility located in Port Allen throughout the island via a 57 kilovolt (“KV”) overhead power transmission system to various substations. KIUC provides a three-phase 12 KV overhead primary distribution system in the vicinity of the Subject Area. Secondary electrical power is supplied to the site from three pole-mounted 25 KVA transformers located on the north (makai) side of Kūhiō Highway.

92. Hawaiian Telcom provides telephone service to the island of Kauaʻi. There are nine exchange areas on the island. A switching station serves each exchange area, although an exchange may have peripheral or remote locations. The Princeville switching station is located next to the Princeville Fire and Police Stations. It services the area from Princeville to Hāʻena.

93. Hawaiian Telcom has three aerial cables along Kūhiō Highway fronting the Project. One is a fiber optic trunking cable between Princeville and Kīlauea. Another is a 100 pair trunking cable between Princeville and Kīlauea. The third is a 100 pair cable that provides local service.

94. The development on the Subject Area will generate a minimal increase in demand for electrical and communication services and is not expected to have a significant impact on the distribution or power generation facilities. Petitioner

will coordinate with these utility companies during design of the development to ensure appropriate service and utility improvements are provided.

Civil Defense

95. In a letter to OP dated May 6, 2011, the State Civil Defense (“SCD”) office requested that Petitioner fund and install at least one 121 DBC solar-powered siren to provide outdoor siren warning coverage in the new development area. A final determination on the placement of the siren will be available as soon as SCD can view the final development plans. Petitioner will consult with SCD in complying with this request.

COMMITMENT OF STATE FUNDS AND RESOURCES

96. During development and upon buildout of the Subject Area, the total revenues to the State are expected to exceed the total expenditures, resulting in average annual net revenues of \$158,850 and \$149,947, respectively for the Subject Area. The positive return to the State reflects the amount of economic activity associated with selling lots and building the residences as well as the high income and consumption levels of the occupants of the residences. This differs from typical residential communities for which State services are partially subsidized by tax revenues derived from property development, visitor expenditures, and commercial activities.

CONFORMANCE WITH THE URBAN DISTRICT STANDARDS

97. The development on the Subject Area is in general conformance with the standards of the State Land Use Urban District.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

98. The Hawai'i State Plan, chapter 226, HRS, serves as a written guide for the future long-range development of the State. The Plan identifies statewide goals, objectives, policies, and priorities. Development of the Subject Area is consistent with the following provisions of the State Plan:

- a. § 226-7 Objectives and policies for the economy-agriculture. The proposed development within the Subject Area will set aside portions of the affected lots for agricultural use by lot owners or for lease to other agricultural and ranching interests, which will promote the viability of existing Princeville Ranch operations and future ranching operations.
- b. § 226-17 Objectives and policies for facility systems-transportation. Any necessary intersection improvements will be entirely financed by a private party who will be responsible for the cost of design and construction. In this regard, the development will address the State Plan objective of encouraging the reasonable distribution of

financial responsibility for ensuring completion of the development by the private sector.

99. The State Functional Plans are designed to implement the broader goals, objectives, and policies of the State Plan through specific actions identified as Implementing Actions. Development of the Subject Area maintains consistency with the Transportation and Agricultural Functional Plans through the following:

- a. State Transportation Functional Plan. Development within the Subject Area involves the design and construction of a privately financed roadway system that will serve a planned subdivision. The proposed improvements will comply with State and County requirements to provide for the safety of the driving public.
- b. State Agricultural Functional Plan. The development of the Subject Area will allow continued grazing and equestrian use of the property in support of the current ranching operations of Princeville Ranch. The proposed development should increase the viability of the long-standing ranching operations of Princeville Ranch.

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

100. Development of the Subject Area would not be inconsistent with Coastal Zone Management objectives provided that appropriate mitigation measures

are implemented to minimize any adverse impacts to groundwater, surface, and coastal water resources and the public's scenic views to and from the coast.

CONFORMANCE WITH THE COUNTY GENERAL PLAN

101. A portion of the Subject Area is within the General Plan Agriculture Designation, and a portion of the Subject Area is within the General Plan Open Land Use Designation. Development of the Subject Area is not inconsistent with the policies of both designations.

CONFORMANCE WITH THE KAUA'I NORTH SHORE DEVELOPMENT PLAN

102. Development of the Subject Area is consistent with the goals of the Kaua'i North Shore Development Plan by being compatible with the natural beauty of the area, providing economic opportunity, minimizing adverse impacts to the environment, and facilitating continued support for existing and future ranching operations.

RULING ON PROPOSED FINDINGS OF FACT

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

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

improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission Rules under chapter 15-15, HAR, the Commission finds upon the clear preponderance of the evidence that Petitioner's Motion to (1) recognize Petitioner's standing to seek and obtain the relief requested; and (2) amend the Findings Of Fact, Conclusions Of Law, And Decision And Order to delete the condition limiting the use of the Subject Area, consisting of approximately 120 acres of land within the State Land Use Urban District, and identified as TMK: 5-3-06: 35 (por.), 36 (por.), 37, 38 (por.), 39 (por.), 40 (por.), and Roadway Lot A (5-3-06: 43 (por.)), to golf course uses for the development of a large-lot residential subdivision on the Subject Area is reasonable, not violative of § 205-2, HRS, and is consistent with the policies and criteria established pursuant to §§ 205-16 and 205-17, HRS.

2. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by *ahupua`a* tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are

obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U. S. 1163 (1996).

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

4. Article XI, section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

5. Article XI, section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

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

DECISION AND ORDER

IT IS HEREBY ORDERED that the Findings Of Fact, Conclusions Of Law, And Decision And Order dated and entered herein on March 28, 1985, as amended by that certain Decision And Order Clarifying Condition Of Approval dated and entered herein on May 23, 1989, as further amended by that certain Findings Of Fact, Conclusions Of Law And Decision And Order On Petitioner's Motion To Clarify, Amend Or Delete, If Necessary, Condition Of Approval, And On Intervenor's Motion To Amend Condition dated and entered herein on July 26, 1989, be amended to (1) recognize Petitioner's standing to seek and obtain the relief requested; and (2) delete the condition limiting the use of the Subject Area, consisting of approximately 120 acres of land within the State Land Use Urban District, identified as TMK: 5-3-06: 35 (por.), 36 (por.), 37, 38 (por.), 39 (por.), 40 (por.), and Roadway Lot A (5-3-06: 43 (por.)), and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, to golf course uses for the development of a large-lot residential subdivision on the Subject Area, subject to the following conditions:

1. **Compliance with Representations to the Commission.** Petitioner shall develop the Subject Area, including the implementation of mitigation measures within the Subject Area as recommended by its consultants in the Planning Report attached as Exhibit 1 to the Motion, in substantial compliance with the representations made to the Commission. Failure to so develop the Subject Area may result in

reversion of the Subject Area to its former classification, or change to a more appropriate classification.

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

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

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

5. **Notice of Imposition of Conditions.** Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Subject Area is subject to conditions

imposed herein by the Commission; and (b) shall file a copy of such recorded statement with the Commission.

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

IT IS FURTHER ORDERED that the remaining Petition Area, consisting of approximately 270 acres of land within the State Land Use Urban District, identified as TMKs: 5-3-06: 1 (por.) and 5-3-13: 40, shall continue to be subject to the condition of the Findings Of Fact, Conclusions Of Law, And Decision And Order dated and entered herein on March 28, 1985, as amended by that certain Decision And Order Clarifying Condition Of Approval dated and entered herein on May 23, 1989, as further amended by that certain Findings Of Fact, Conclusions Of Law And Decision And Order On Petitioner's Motion To Clarify, Amend Or Delete, If Necessary, Condition Of Approval, And On Intervenor's Motion To Amend Condition dated and entered herein on July 26, 1989.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified
by this Commission.

Done at Honolulu, Hawai'i, this 30th day of June, 2011, per
motion on June 30, 2011.

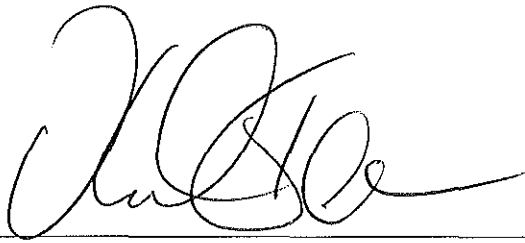
LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

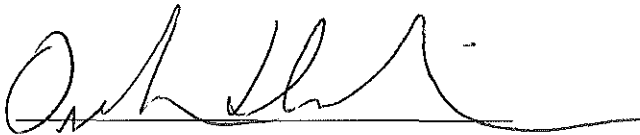
By 

VLADIMIR DEVENS
Chairperson and Commissioner

Filed and effective on:

July 1, 2011

Certified by:



ORLANDO DAVIDSON
Executive Officer

PRINCEVILLE - HIHIMANU RANCH
AGRICULTURAL SUBDIVISION
DOCKET A83-557



EXHIBIT "A"



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

| | |
|--|--|
| In The Matter Of The Petition Of)) PRINCEVILLE DEVELOPMENT) CORPORATION)) To Reclassify Approximately 390 Acres) Of Land Currently In The Agricultural) District Into The Urban District At) Hanalei, Kaua`i, Hawai`i, TMK:) 5-3-06: 17 And Portion Of 14) _____) | DOCKET NO. A83-557 CERTIFICATE OF SERVICE |
|--|--|


CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

| | HAND DELIVERED | REGULAR MAIL | CERTIFIED MAIL |
|--|-------------------|-----------------|-------------------|
| JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813 | X | | |
| BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813 | | X | |

| | HAND DELIVERED | REGULAR MAIL | CERTIFIED MAIL |
|---|-------------------|-----------------|-------------------|
| BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813 | | X | |
| BENJAMIN M. MATSUBARA, ESQ. Matsubara-Kotake 888 Mililani Street, 8 th Floor Honolulu, Hawai'i 96813 | | | X |
| ALFRED CASTILLO, ESQ. Office of the County Attorney, County of Kaua'i 4444 Rice Street, Suite 220 Lihu'e, Hawai'i 96766 | | | X |
| CONCERNED CITIZENS OF ANINI c/o Teresa Tico, Esq. P.O. Box 220 Hanalei, Hawai'i 96714 | | | X |
| Michael A. Dahilig Director of Planning 4444 Rice St. Suite 453 Lihu'e, Hawai'i 96766 | | X | |

Dated: Honolulu, Hawai'i, ____July1, 2011____.



ORLANDO DAVIDSON
Executive Officer