

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A81-525
Y-O LIMITED PARTNERSHIP )	
To Amend the District Boundary )	
of Property Situated in the )	
Land Divisions of Kaloko and )	
Kohanaiki, North Kona, Island )	
of Hawaii )	
_____ )	

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW  
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Petitioner, Y-O LIMITED PARTNERSHIP, a registered Hawaii limited partnership, initiated this boundary amendment proceeding on December 9, 1981, pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundary of certain lands consisting of approximately 410.913 acres, identified by Tax Map Key 7-3-9: 19 (hereinafter referred to as "subject property") situated in the land divisions of Kaloko and Kohanaiki, North Kona, Island and County of Hawaii, from the Agricultural to the Urban District. The Land Use Commission (hereinafter "Commission"), having heard the evidence presented on the matter during the hearings and having considered the full record in this document, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Commission held hearings on the petition on March 9, 1982, at Kailua-Kona, Hawaii; June 1 and 2, 1982, at Hilo, Hawaii; and September 10, 1982, at Hilo, Hawaii, pursuant to

notices published in the Honolulu Advertiser and the Hawaii Tribune-Herald on February 1, 1982, April 28, 1982 and August 6, 1982, respectively.

2. The Land Use Commission received no requests to intervene in the hearing.

3. On March 9, 1982, the Commission allowed Priscilla MacGregor to testify as a public witness and accepted the written testimony of Elizabeth Stone dated February 25, 1982.

DESCRIPTION OF THE SUBJECT PROPERTY

4. The subject property is situated at Kaloko and Kohanaiki, North Kona, Island and County of Hawaii. The subject property is approximately 3.5 miles southeast of the Keahole Airport site and approximately 2.7 miles north of Kailua Town. The subject site is located adjacent and West (Makai) of the Kona Heavens Subdivision, Units I and II.

5. Access to the site is from the Mamalahoa Highway, which lies to the East (Mauka) of the site. An existing roadway which services the adjacent Kona Heavens Subdivision affords access to the subject property from the Mamalahoa Highway.

6. The subject property is presently encumbered by two (2) recorded easements for roadway and utility purposes, the total area of which is approximately 7 acres. The easements will not adversely affect the Petitioner's residential development. In addition to the easements, the mauka boundary of the subject property is adversely affected by an action to quiet title filed in the Third Circuit Court in Civil No. 6811 on March 5, 1981. The parcels which are the subject of the quiet title action have a total area of 2.1934 acres. All of the area claimed by the Plaintiffs in Civil No. 6811, lies within the boundaries of Petitioner's property. Title to this affected portion of Petitioner's property is, thus, in question.

7. The U.S.D.A. Soil Conservation Service Soil Survey classifies the soils of the subject site as Punaluu extremely rocky peat (rPYD) and Kaimu extremely stony peat (RKED). The Punaluu soils consist of well-drained, thin organic soils over Pahoeheoe lava bedrock. These soils occur on the leeward side of Mauna Loa and exhibit slopes between 6 to 20 percent. Rock outcrops occupy nearly 40 to 50 percent of the surface. The peat surface is rapidly permeable and the erosion hazard is slight.

8. The Kaimu soils consist of well-drained thin organic soils over Aa lava. These soils occur along the lower elevations of Mauna Loa and exhibit slopes between 6 to 20 percent. The dark brown stony peat surface is about 3 inches thick and is underlain by fragmented Aa lava. These soils exhibit slow runoff and slight erosion hazard. Most of these soils have native woodland and are not suitable for cultivation. However, these soils may be used for pasture, macadamia nuts, papaya and citrus fruits.

9. The subject site is not situated in any designated flood plain but rather in an area of minimal flooding of Zone C designation according to the preliminary Flood Insurance Study for the Island of Hawaii prepared by the Federal Insurance Administration.

10. Vegetation on the subject property generally consists of ekoa, Christmas berry, guinea grass, and guava.

#### PROPOSAL FOR DEVELOPMENT

11. The Petitioner proposes to reclassify the subject property from the Agricultural to the Urban District to develop a residential subdivision. The Petitioner proposes the following development program:



Single Family Residential (15,000 sq. ft. lots)	289 lots-units
Single Family Residential (10,000 sq. ft. lots)	432 lots-units
Single Family Residential ( 7,500 sq. ft. lots)	<u>372 lots-units</u>

Sub-Total Single Family Residential	1,093 lots-units
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Multiple Family Residential (3,000 sq. ft. land per unit)	<u>340+ units</u>
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TOTAL RESIDENTIAL	1,433+ lots-units
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Commercial Development	5.5 acres
Park	5.0 acres
Water Reservoirs	2 sites

12. The Petitioner proposed to develop the subject property in two phases, composed of six (6) increments:

<u>Increment</u>	<u>RS-15</u>	<u>RS-10</u>	<u>RS-7.5</u>	<u>RM-3.0</u>	<u>Reservoir</u>	<u>Comm.</u>	<u>Park</u>
1	106	75	--	--	1100'	--	--
2	--	36	129	80		--	--
3	54	73	--	260	830'	5.5	5.0
4	51	122	85	--	--	--	--
5	78	86	--	--	--	--	--
6	--	40	158	--	--	--	--

TOTAL 1,093 residential lots, 340 multi-family residential units

The Petitioner has proposed to develop the first three increments within five years and the second three increments within a second five-year period.

13. The Petitioner's proposed sales price for the single family residential house and lot packages ranges between \$90,000 and \$150,000. The Petitioner intends to sell lots to purchasers who do not desire to purchase house and lot packages. The sales prices for the lots are as follows: \$58,500 for a 15,000 square foot lot, \$48,500 for a 10,000 square foot lot and \$43,500 for a 7,500 square foot lot. The multi-family residential units would be priced from \$90,000 to \$150,000.

14. The Petitioner proposes to develop commercial area on 5.5 acres to include an automobile service station, a mini-supermarket, and a launderette.

15. The Petitioner estimates that the total on-site and off-site construction cost will be approximately \$52.9 million.

STATE AND COUNTY PLANS AND PROGRAMS

16. The subject property is situated within the State Land Use Agricultural District as reflected on the Land Use Commission's District Boundary Map H-7 (Kailua). The subject site is surrounded on all sides by the Agricultural District. The closest Urban designated lands are situated approximately 0.7 mile to the South at Kealakehe.

17. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map (hereinafter referred to as the "LUPAG MAP"), as amended by Ordinance 456 in July, 1979, designates the subject property for Alternate Urban Expansion. Alternate Urban Expansion areas may allow alternative development patterns when:

- (a) Designated urban areas become largely developed;
- (b) Designated urban areas develop too slowly;
- (c) Developers propose to develop marginally acceptable areas and extend their own infrastructure;
- (d) The potential for urbanization exists via non-conforming subdivision;
- (e) New non-contiguous urban clusters may be desirable;
- (f) The urban form of an area has not yet been established.

18. The subject property and proposed development is consistent with the County of Hawaii General Plan LUPAG Map and urbanization patterns from a locational and spatial perspective.

19. The subject property is situated within the County's Unplanned zoned district (Chapter 8, Hawaii County Code, as amended), which district includes areas not subjected to sufficient studies to adopt a specific district classification.

20. The subject property is situated neither within the Special Management Area (SMA) nor within the boundaries of the Kailua Village Special District.

NEED FOR GROWTH AND DEVELOPMENT

21. The North Kona area has experienced an average annual rate of population growth in the period from 1970 to 1980 of 11%. The resident population of North Kona has grown from 4,832 in 1970 to 13,748 in 1980.

22. An average of 250 to 280 single family lots per year have been actually subdivided and offered for sale since 1970 in the West Hawaii region. An average of 260 single-family homes have been built per year in West Hawaii since 1970.

23. North Kona is expected to experience further population growth over the next 20 years. The Petitioner's market consultant, Corydon Corporation of Kailua-Kona, projects the North Kona population to be approximately 23,000 to 28,000 residents in the year 1990 and approximately 45,000 residents in the year 2000.

24. A minimum of 600 new single-family units per year will be needed to fulfill the housing demands of the anticipated population of North Kona by 1990.

25. The approximately 1,500 single-family and multi-family units which Petitioner expects to create from its property over the next ten years will help to meet the projected housing needs of the North Kona population for this period.

26. The Petitioner has offered to provide owner-financing to qualified buyers who may not otherwise qualify for conventional mortgage loans by way of agreements of sale.

27. The Petitioner proposes to cooperate with State and County housing agencies in order to offer ten per cent of the lots, house and lot packages, and apartments at prices that

will enable residents to qualify for Federal or State-assisted housing loan programs.

28. The Petitioner proposes to develop a five-acre portion of the subject property for commercial purposes to provide convenience goods and services to the residents of the development. This commercial development will provide limited employment opportunities to the residents of the development.

#### IMPACTS ON THE RESOURCES OF THE AREA

##### Agricultural Resources

29. According to the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system, approximately one-third of the subject property is classified as Other Important Agricultural Land.

30. The Land Study Bureau (1965) Maps classifies approximately one-fourth (1/4) of the subject property within the C category (fairly suited for agriculture) with the remainder of the property within the D or E category (poorly or very poorly suited for agriculture).

31. The subject property is used for pasture and does not have a high capacity for intensive agricultural use.

32. The Archaeological Research Center Hawaii, Inc. (ARCH) conducted an archaeological reconnaissance of the property. ARCH discovered no significant archaeological or historical findings within the area searched, including two lava tubes on 92 acres of the property, which had no historical value.

33. ARCH concludes that given the low density of sites for the subject property, a complete surface survey is unnecessary and would not be justified in terms of information gained in relation to time and cost.

##### Natural Resources

34. The subject property has no rare, unique or significant plant or animal life.

### Environmental Resources

35. The subject property has no apparent water resources which would be affected by the proposed development, nor do drainage or flooding problems originate on the property.

36. The proposed project will not adversely affect either the air quality or noise pollution in the vicinity of the subject property as it will be utilized primarily for residential purposes.

37. Noise pollution, which is more common to industrial uses, is not expected to be a by-product of the development.

### Recreational Resources

38. Owing to its irregular and sloping terrain, its dense vegetation and proximity to established residential subdivisions such as the Kona Heavens Subdivision, the property in its present condition has no apparent recreational value.

39. The Petitioner proposes to dedicate a five-acre park site to the County of Hawaii for recreational purposes.

### Scenic Resources

40. The project is not in an area identified as a scenic resource in the County of Hawaii General Plan. Development of the subject property will have an adverse impact on the view of Hualalai from the Queen Kaahumanu Highway.

### PUBLIC SERVICES AND FACILITIES

#### Fire Fighting and Police Services

41. The County of Hawaii provides police protection from Kona District Headquarters located in Captain Cook. The County is planning to build a new facility in Kailua-Kona to serve as the future district headquarters prior to the development of the first three increments of Petitioner's project. The building will be located adjacent to the present Kailua Fire Station, off Palani Road.

The County provides fire protection service from the Kailua Fire Station located on Palani Road immediately mauka of its intersection with Queen Kaahumanu Highway.

#### Schools

42. Residents of the subject property will attend the Kealakehe Elementary and Intermediate School (Grades K-8) and the Konawaena High School (Grades 9-12). The opening of the Kahakai Elementary School in September, 1982, which has a capacity of 670 students, alleviates the overcrowding at Kealakehe Elementary and Intermediate School. The Kealakehe and Kahakai school facilities are expected to meet the needs of the growing North Kona population for the next seven (7) years. The DOE plans to construct additional school facilities at the Kealakehe Intermediate School and the Konawaena High School during the late 1980's in order to meet the needs of the residents of petitioner's and other developments during the next 10-year period.

#### Electricity and Utility Services

43. Hawaii Electric & Light Company and Hawaiian Telephone Company lines serve the area. Petitioner will provide all necessary service connection and transmission lines necessary to transmit electricity and other utilities to the development as may be required by applicable state and county regulations.

#### Water

44. The Department of Water Supply of the County of Hawaii presently limits water service to the subject property to one (1) 5/8-inch water meter. The Department cannot commit sufficient water from available sources to serve petitioner's entire project. Existing source capacity for North Kona is presently 10.4 million gallons a day, of which 6 million gallons per day is presently used. The Department has committed an additional seven million gallons per day to other developers.

45. Petitioner, together with other developers, has entered into a written agreement, the Kona Source Agreement No. I, with the Water Commission of the County of Hawaii, to participate with the Department of Water Supply (DWS) in an exploratory drilling program in North Kona. The developers who have executed the agreement have agreed to contribute \$1.5 million for the drilling of three (3) exploratory wells. Petitioner has paid \$375,000.00, its proportionate share of the said \$1.5 million to the Department of Water Supply. As of September 8, 1982, developers have paid \$1,324,500.00 to the Department of Water Supply, which sum is sufficient to commence the exploratory drilling program.

46. Upon completion of Petitioner's development, the residents will require approximately .86 million gallons of water per day.

47. Each successful well that is drilled is expected to produce 1 million to 1.4 million gallons of water per day.

48. Upon successful completion of the exploratory drilling pursuant to Agreement I, the Department of Water Supply and the Agreement I developers contemplate executing Agreement No. II to provide for the development of the water system in North Kona to utilize the water produced by the successful well or wells. The DWS estimates that completion of Agreement No. I will require three years.

49. The County Department of Water Supply estimates that construction costs for the development of the water transmission system will be about \$23 million. Petitioner's proportionate share of this cost is approximately \$5 million.

50. The Department of Water Supply will issue water commitments to developers upon completion of the successful well drilling program and the developer's execution of Agreement II.

51. If the developers to whom the 7 million gallons per day have been committed by the Department of Water Supply have

not exhausted the remaining 4.4 million gallons per day, and if Petitioner's development is ready to utilize part of said 4.4 million gallons per day, such utilization may be approved by the Department of Water Supply prior to the completion of the off-site water system for the new source wells, provided the Petitioner has complied with its obligations under Agreements Nos. I and II.

#### Sewage Treatment and Disposal Services

52. Petitioner proposes to use cesspools for the disposal of sewage from single family lots. The Petitioner proposes to use a secondary treatment sewage disposal system for the multiple residential units. The effluence from the sewage treatment system would flow into injection wells or holding ponds. The Petitioner will comply with the State Department of Health requirements for installing the system.

53. Prior to construction, Petitioner will conduct studies into the impact on ground water resources by the development's proposed sewage system. If required by the Department of Health, the Petitioner will construct a master sewage treatment plant for the entire development.

#### Solid Waste

54. Because refuse collection service is not provided by the County, residents of the Petitioner's development will be required to haul their refuse to the Kona Sanitary Landfill or contract commercial haulers. The existing landfill has capacity for handling refuse for approximately ten more years.

#### Roadway and Highway Services

55. The proposed residential project is expected to have vehicular impact upon Mamalahoa Highway, Palani Road, and Queen Kaahumanu Highway. Beyond the third increment, an 80-foot wide Mauka-Makai connector road through the subject property will be developed. This roadway is intended as a



connector between the Mamalahoa and Queen Kaahumanu Highways. With the development of this connector roadway, traffic will be shared between the two (2) highways.

56. Mamalahoa Highway is the major thoroughfare nearest the property. Access to Mamalahoa Highway is from the subject property via Hinalani Street through the Kona Heavens Sub-division. Mamalahoa Highway (or Hawaii Belt Road), a two-lane, all weather surfaced road, links Kailua with Kamuela (and points beyond). The traffic capacity for Mamalahoa Highway utilizing the methods prescribed by the Highway Capacity Manual (1965) is 1,400 vehicles per hour.

57. Palani Road serves as a connector roadway between Mamalahoa Highway and Queen Kaahumanu Highway. The traffic capacity of Palani Road between Queen Kaahumanu Highway and Mamalahoa Highway is 1,160 vehicles per hour.

58. Queen Kaahumanu Highway is a major two lane thoroughfare connecting the Kawaihae Harbor area to Kailua Kona. It is located along the coastline makai of the subject property. The traffic capacity of Queen Kaahumanu Highway is 1,840 vehicles per hour.

59. The first three (3) increments of the project (813 residential units) are expected to utilize Mamalahoa Highway for vehicular access. The 813 units of Petitioner's Phase I will produce a peak traffic flow of 976 vehicles per two-hour period or 488 vehicles per hour. The 620 units of Petitioner's Phase II will produce a peak traffic flow of 744 vehicles per two-hour period or 372 vehicles per hour.

60. Traffic for all or a portion of Increments 1, 2, and 3 of Petitioner's first phase can be accommodated without unduly burdening Mamalahoa Highway, as the projected completion date for the first phase is 1987. The peak traffic flow for

Mamalahoa Highway is expected to be between 523 to 547 vehicles per hour in 1987.

61. Development of Petitioner's first phase will not burden Palani Road beyond its maximum capacity of 1,160 vehicles per hour. The anticipated traffic for both phases, if limited to access on Mamalahoa Highway, is expected to exceed the maximum capacity of both Mamalahoa Highway and Palani Road in 1992. Construction of an access road to Queen Kaahumanu Highway from Petitioner's development is needed to alleviate congestion on Mamalahoa Highway and keep traffic for both highways below their respective maximum capacities, prior to the commencement of Increments 4, 5 and 6 of Petitioner's development.

62. Petitioner is willing to construct such an access road through its property and to widen Hinalani Street if required. Petitioner has prepared and received tentative approval for plans for these roads by the Department of Public Works of the County of Hawaii.

63. The owners of properties between the subject property and Queen Kaahumanu Highway will construct that portion of the access road which crosses over their respective properties.

64. In the event that the property owners cannot raise sufficient funds to construct their share of the access road, Petitioner has indicated its willingness to extend loans to them for such purpose or otherwise assist them in the construction of an access road.

#### Drainage

65. There is no public drainage system in the area. Drainage is being handled on-site within the existing subdivisions. There are no drainage problems associated with the subject property.

#### CONTIGUITY OF DEVELOPMENT

66. The subject property is not contiguous to an existing Urban District; however, it is surrounded by existing non-conforming residential subdivisions which are developed with single-family residential uses.

#### PREFERENCES FOR DEVELOPMENT

67. Petitioner's development will provide temporary employment during the construction phase and permanent employment for the North Kona area through its 5-acre commercial project within the development.

68. Petitioner's development will provide a housing supply for various social and economic groups.

#### COMPLIANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

69. Reclassification of the subject property is reasonably necessary to accommodate urban growth and development projected for this section of the North Kona area.

70. Although the subject property and the adjoining lands are in an Agricultural District, the character of the area is residential or "city-like" due to the numerous residential subdivisions nearby.

71. The subject property does not have any adverse geographic or topographic constraints which would hinder or endanger the proposed development, nor is it susceptible to drainage problems, flooding, tsunami inundation, unstable soil conditions or other adverse environmental effects.

72. Basic services such as police and fire protection, utilities, sanitation, schools, sewage disposal and recreational areas are now available, or will be made available, to the property.

73. The property is conveniently accessible to established centers of trading and employment as it is only 2-1/2 miles north

of the city of Kailua and 6 miles from the resort community of Keauhou.

74. The proposed development is in conformance with the General Plan LUPAG Map.

75. The development will provide improved and unimproved lots for sale to various socio-economic classes of the public. The principals involved in the development have the financial ability, expertise and development capacity to undertake and successfully complete the project.

#### INCREMENTAL DISTRICTING

76. Full urban development of the property cannot reasonably be completed within five years from the date of Commission's approval of the redistricting; however, Petitioner's proposed schedule of development in two increments, each encompassing a 5-year period, appear reasonable and feasible. Petitioner will substantially complete development of the first phase consisting of three increments and the mauka-makai connector roadway, totaling 213.473 acres within five years, and the second phase, also consisting of three increments totaling 195.246 acres within the five years thereafter.

77. The first phase of Petitioner's development includes approximately 213.473 acres. This does not include the 2.1934 acres involved in Civil No. 6811 of the Third Circuit Court. The second phase includes approximately 195.246 acres of land. Phase I and Phase II of Petitioner's proposed development is illustrated in Exhibit A, attached and incorporated herein by reference.

#### RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties not already ruled upon by the Land Use Commission by adoption herein, or rejected by clearly

contrary findings of fact herein, are hereby denied and rejected.

#### CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure and District Regulations of the Land Use Commission, State of Hawaii, the Commission concludes that the reclassification of all of the lands within Phase I consisting of approximately 213.473 acres (Petitioner's Increments 1, 2 and 3; illustrated in attached Exhibit A) from the Agricultural to the Urban District and amendment of the Land Use District Boundaries to permit the development of Phase I is reasonable, non-violative of Section 205-2, Hawaii Revised Statutes, and is consistent with the Hawaii State Plan, as set forth in Chapter 226, HRS.

The Commission further concludes that although full development of the lands within Phase II (Petitioner's Increments 4, 5 and 6; illustrated in attached Exhibit A) cannot be reasonably completed within five years from the date of the Commission's decision on this matter, reclassification of the lands within Phase II consisting of approximately 195.246 acres from the Agricultural to the Urban District and amendment of the Land Use District Boundaries to permit the development of Phase II is reasonable, non-violative of Section 205-2, Hawaii Revised Statutes, and is consistent with the Hawaii State Plan, as set forth in Chapter 226, HRS, as amended. Therefore, incremental redistricting of the lands within Phase II of the Petitioner's development is reasonable and warranted.

DECISION AND ORDER

IT IS HEREBY ORDERED that the lands within Phase I of the Petitioner's development plan of the subject property consisting of Increment 1 (74.495 acres), Increment 2 (49.0 acres), Increment 3 (83.38 acres) and 6.598 acres for the connector roadway comprising a total of 213.473 acres, more particularly identified as Hawaii Tax Map Key Numbers 7-3-09: portion of 19, and illustrated in Exhibit A attached hereto and incorporated herein by reference, situated at Kaloko and Kohanaiki, County and State of Hawaii, shall be and the same is hereby reclassified from the Agricultural to the Urban classification and the District Boundaries are amended accordingly.

IT IS ALSO HEREBY ORDERED that the lands within Phase II of the Petitioner's development plan of the subject property consisting of Increment 4 (84.1 acres), Increment 5 (63.046 acres), and Increment 6 (48.1 acres), comprising a total of 195.246 acres, more particularly identified by Hawaii Tax Map Key Number 7-3-09: portion of 19, and more particularly described in said Exhibit A, situated at Kaloko and Kohanaiki, County and State of Hawaii, shall be and the same are hereby approved for incremental development pursuant to State Land Use District Regulation 6-2, and that redistricting from the Agricultural to the Urban classification will be granted upon receipt of an application by Petitioner for redistricting of this second phase upon a prima facie showing that Petitioner has made substantial completion of the onsite and offsite improvements within Phase I and in accordance with the Petitioner's development plan as indicated above, within five years of the date of this order, including but not limited to partial satisfaction of condition A, to the extent of the

number of lots to be created in Phase I and conditions D and E, to the extent possible, and full satisfaction of conditions B and C, below.

IT IS FURTHER HEREBY ORDERED that the reclassification and incremental districting of the subject property shall be subject to the following conditions:

A. Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring its interest in the subject property, by offering for sale, on a preferential basis, on its own or in cooperation with either or both the Hawaii Housing Authority or the County of Hawaii, ten per cent (10%) of the lots or houses and lots to be developed on the subject property, to residents of the State of Hawaii of low and moderate family income as determined by the Hawaii Housing Authority or County of Hawaii from time to time. The preferential lots or houses and lots shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain state-assisted financing (e.g., Act 105 or Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families; and

B. Petitioner shall afford lot purchasers public access from the subject property to Queen Kaahumanu Highway and to Mamalahoa Highway by participating in the construction of a roadway connecting the two highways and running through the subject property, the location and standard of design and construction of such roadway to be approved and accepted by the County of Hawaii. The Petitioner shall be responsible for constructing such portions of the roadway within the subject property. The Petitioner's participation for the portions of

the roadway outside the subject property may be by way of loans, loan guaranties, purchase of county obligations or otherwise.

C. Petitioner shall execute and perform its obligation as a Developer under its Agreement I made with the Water Commission of the County of Hawaii for water source development, and shall not submit any applications to the County of Hawaii for general plan or zoning changes, or for subdivision approvals or sell the subject property until it shall have submitted to the Commission an Agreement II for water source development executed by the Petitioner and County of Hawaii.

D. Petitioner shall dedicate to appropriate State and County Agencies sufficient land for the provision of necessary public facilities.

E. Petitioner shall submit annual progress reports to the Commission, Department of Planning and Economic Development and Hawaii County Planning Department as to its progress in satisfying these conditions.

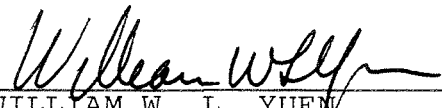
F. These conditions may be fully or partially released by the Commission as to all or any portion of the subject properties upon timely motion and provision of adequate assurance of satisfaction of these conditions by the Petitioner.

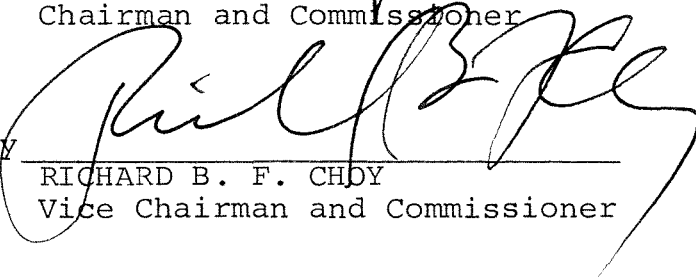


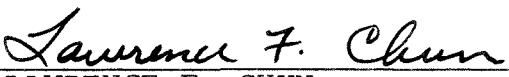
DOCKET NO. A81-525 - Y-O LIMITED PARTNERSHIP

Done at Honolulu, Hawaii, this 19th day of January,  
1983, per motion on December 2, 1982 & January 19, 1983.

LAND USE COMMISSION  
STATE OF HAWAII

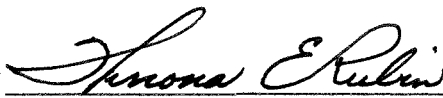
By   
WILLIAM W. L. YUEN  
Chairman and Commissioner

By   
RICHARD B. F. CHOY  
Vice Chairman and Commissioner

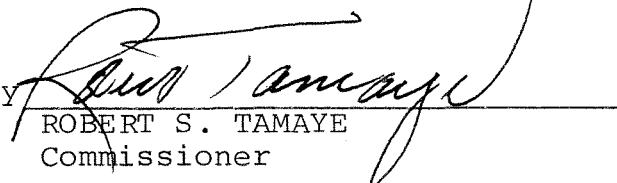
By   
LAWRENCE F. CHUN  
Commissioner


By   
EVERETT L. CUSKADEN  
Commissioner

By   
SHINSEI MIYASATO  
Commissioner

By   
WINONA E. RUBIN  
Commissioner

By   
TEOFILO PHIL TACBIAN  
Commissioner

By   
ROBERT S. TAMAYE  
Commissioner

By   
FREDERICK P. WHITTEMORE  
Commissioner



**PHASE I**      **PHASE II**

<b>ACREAGE BREAKDOWN</b>	
<b>PHASE I</b>	<b>PHASE II</b>
INC. 1 = 74.495	INC. 4 = 84.100
INC. 2 = 49.000	INC. 5 = 63.046
INC. 3 = 83.380	INC. 6 = 48.100
CONN. RD. = 6.598	
<b>TOTAL = 213.473 AC.</b>	<b>TOTAL = 195.246 AC.</b>

**EXHIBIT A**

**SCHEMATIC LAYOUT  
PROPOSED INCREMENTS**

INX 7-3109 POR 19  
TOTAL AREA = 418.918 ACRES  
KALOOKO, NORTH KONA, HAWAII  
DATE: JULY 17, 1981  
PREPARED BY: RICHARD M. SATO & ASSOC.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
Y-O LIMITED PARTNERSHIP )  
To Amend the State Land Use District ) DOCKET A81-525  
Boundaries at Kohanaiki and Kaloko, )  
North Kona, Island and County of )  
Hawaii )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

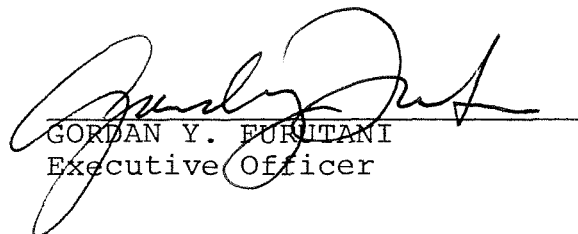
I hereby certify that a copy of the Land Use Commission's  
Decision and Order was served upon the following by either hand  
delivery or depositing the same in the U. S. Postal Service by  
certified mail:

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State of Hawaii  
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SIDNEY FUKU, Planning Director  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 20th day of January, 1983.

  
GORDAN Y. FURUTANI  
Executive Officer



LAND USE COMMISSION  
STATE OF HAWAII

2016 NOV 22 P 12:48

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A81-525
	)	
Y-O LIMITED PARTNERSHIP	)	
	)	ORDER GRANTING IN PART
	)	AND DENYING IN PART
To Amend the Agricultural Land Use	)	PETITIONER'S MOTION FOR
District Boundary to the Urban Land Use	)	AN ORDER REGARDING
District for Approximately 408.719 Acres of	)	SATISFACTION OF AFFORDABLE
Land at Kaloko and Kohanaiki, North Kona,	)	HOUSING CONDITION
Hawai'i, TMK Nos.: (3) 7-3-009:019, 020, 032,	)	
and 057 to 062.	)	
_____	)	

ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION FOR  
AN ORDER REGARDING SATISFACTION OF AFFORDABLE HOUSING CONDITION

This is to certify that this is a true and correct  
Copy of the document on file in the office of the  
State Land Use Commission, Honolulu, Hawai'i

\_\_\_\_\_ 11/22/16 \_\_\_\_\_ by

Daniel E. Orodener, Executive Officer





LAND USE COMMISSION  
STATE OF HAWAII

2016 NOV 22 P 12:48

BEFORE THE LAND USE COMMISSION  
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In the Matter of the Petition of	)	DOCKET NO. A81-525
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and 057 to 062.	)	
	)	

ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION FOR  
AN ORDER REGARDING SATISFACTION OF AFFORDABLE HOUSING CONDITION

On July 19, 2016, RCFC Kaloko Heights, LLC <sup>1</sup> ("Petitioner") filed a Motion for an Order Regarding Satisfaction of Affordable Housing Condition, Memorandum in Support of Motion, Exhibit A, and a Certificate of Service ("Motion"), pursuant to sections 15-15-70, 15-15-78, and 15-15-94, Hawai'i Administrative Rules ("HAR").

The Motion requested an order from the Land Use Commission ("Commission") that donation of a 10.775-acre parcel of land to the Hawai'i Island Community Development Corporation would satisfy the affordable housing requirements contained in Condition 1 of the

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<sup>1</sup> RCFC Kaloko Heights, LLC is the successor petitioner to Kaloko Heights Associates, who was the successor petitioner to Y-O, Ltd.

Commission's Decision and Order dated January 20, 1983 for Phase I of the Petition Area, as amended by Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of Decision and Order dated January 20, 1983, and June 13, 1990, as entered by the Commission on November 17, 1992 (the "Affordable Housing Condition") for Phase I of the Petition Area; and to allow any affordable housing units developed in excess of the 10% required for Phase I to be applied to Petitioner's obligation to satisfy the affordable housing condition on Phase II of the Petition Area.

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On July 19, 2016, Petitioner filed the Motion.
2. On July 21, 2016, Petitioner submitted the required filing fee for its Motion and digital copies of all documents.
3. On July 26, 2016, the State Office of Planning ("OP") filed a request for 30-day extension to provide comments following receipt of Petitioner's supplemental materials.
4. On July 26, 2016, the County of Hawai'i Department of Planning ("County"), requested via e-mail to join the OP request for a 30-day extension to file a response to the Motion.
5. On July 26, 2016, Petitioner's counsel responded via e-mail stating Petitioner had no objection to OP and County's request for 30-day extension.
6. On July 26, 2016, the Commission acknowledged OP's request and granted a 30-day extension for all parties to file responses to Petitioner's Motion once Petitioner files supplemental materials.
7. On July 28, 2016, the Commission received County's written request to join OP's request for an extension.

8. On September 1, 2016, Petitioner filed a Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition, Exhibit B, and Certificate of Service.
9. On September 27, 2016, Petitioner filed a Second Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition, and Certificate of Service.
10. On September 30, 2016, OP filed Office of Planning's Memorandum in Partial Opposition to Petitioner's Motion for an Order Regarding Satisfaction of Affordable Housing Condition and two Supplemental Memorandums, and Certificate of Service.
11. On October 5, 2016, the County filed Respondent County of Hawai'i Planning Department's Memorandum in Opposition to Petitioner's Motion for an Order Regarding Satisfaction of Affordable Housing Condition and Petitioner's two Supplemental Memorandums, and Certificate of Service.
12. On October 5, 2016, the Commission mailed a notice of meeting and agenda for its October 13, 2016 meeting in Kailua-Kona to the Parties, and the Statewide and Hawai'i County mailing lists.
13. On October 13, 2016, the Motion came on for hearing before the Commission in Kailua-Kona, Hawai'i. William W.L. Yuen, Esq. of Alston Hunt Floyd & Ing, and Mark Meyer of RCFC Kaloko Heights, LLC appeared on behalf of Petitioner. William Brilhante, Esq., and Duane Kanuha, appeared on behalf of the County. Dawn Takeuchi-Apuna, Esq. and Rodney Funakoshi, appeared on behalf of OP.
14. At the hearing on October 13, 2016, the Commission heard public testimony from Mr. Keith Kato, Executive Director of the Hawai'i Island Community Development Corporation

("HICDC"). Mr. Kato described his organization and the current agreement between HICDC and Petitioner relating to an approximately 10-acre parcel in the Petition Area, and what future development plans are being considered to develop affordable housing on that parcel.

15. The Petitioner provided the Commission updated information on past and current progress in development activities for Phase I of the Petition Area. Petitioner thereafter discussed how negotiations between Petitioner, County and OP had resulted in revised language for the amendment to Condition 1 of the Commission's Decision and Order and amended the intention stated in the original Motion from seeking an order regarding Satisfaction of Affordable Housing Condition to seeking to amend Condition 1 to read as stated in an October 5, 2016 correspondence from Petitioner's counsel to the Commission staff, OP, and County that had not been filed with the Commission.

16. The County described the efforts it had contributed to crafting the language of the amendment to Condition 1 and that the language contained in the October 5, 2016 letter accurately portrayed the County's agreement regarding amendment of Condition 1.

17. OP summarized its position and described the matters OP considered in crafting the language contained in the amended Condition 1 in the October 5, 2016 letter. OP recommended approval of the amendment to Condition 1.

18. At the hearing on October 13, 2016, after Petitioner had presented its case and the other parties provided their positions; the Petitioner requested the Commission's acceptance of Petitioner's Exhibit 1<sup>2</sup>. The County and OP had no objections to the exhibit. The Commission accepted Petitioner's Exhibit 1 into the record.

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<sup>2</sup> Petitioner's Exhibit 1 was a letter correspondence dated October 5, 2016 to the Commission staff, OP, and County containing the language of a revised amendment to Condition 1 (the affordable housing requirement) that reflected negotiations between Petitioner, the County, and OP.



19. The specific language of Petitioner's Exhibit 1 is as follows:

*"Petitioner shall provide housing opportunities for low and moderate income residents, by offering for sale or rental on a preferential basis, on its own or in cooperation with both the Hawaii Housing Finance and Development Corporation ("HHFDC") and the County of Hawaii, affordable housing units equivalent to ten per cent (10%) of the lots and residential units to be developed in the Petition Area, to residents of the State of Hawaii of low and moderate family income as determined by HHFDC and the County of Hawaii Office of Housing and Community Development ("OHCD") from time to time (the "Affordable Housing Requirement"). The affordable housing units shall be offered for sale or rent at prices or rents not exceeding prices or rents ("Affordable Prices") that enable such purchasers and renters to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families, or that provide affordable rental housing opportunities to such families. This affordable housing condition shall be implemented to the satisfaction of OHCD."*

20. Thereafter, a motion was made and seconded to grant Petitioner's Motion to amend Condition 1 (the affordable housing condition) by adopting the language contained in Petitioner's Exhibit 1 filed and entered into the record in this Docket on October 13, 2016, and denying the rest of Petitioner's Motion. There being a vote tally of 8 ayes, 0 nays, and 1 excused, the motion carried.

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DECISION AND ORDER

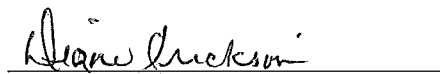
Having duly considered Petitioner's Motion, the supporting Memoranda, the oral and written arguments presented by the parties, and further representations made by Petitioner during the hearing, and a motion having been made at a hearing on October 13, 2016, in Kailua-Kona, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission GRANTS Petitioner's modified Motion to amend Condition 1 of the Commission's Decision and Order dated January 20, 1983 for Phase I of the Petition Area and as later amended on November 17, 1992, to read as contained in Petitioner's Exhibit 1 filed on October 13, 2016 with the Commission. All other aspects of Petitioner's Motion are DENIED.

DATED: Honolulu, Hawai'i November 22, 2016.

LAND USE COMMISSION  
STATE OF HAWAII


  
By EDMUND ACZON  
Chairperson and Commissioner

APPROVED AS TO FORM:

  
Deputy Attorney General

Filed and effective on  
November 22, 2016

Certified by:

  
Executive Officer

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A81-525
	)	
Y-O LIMITED PARTNERSHIP	)	
	)	CERTIFICATE OF SERVICE
	)	
To Amend the Agricultural Land Use	)	
District Boundary to the Urban Land Use	)	
District for Approximately 408.719 Acres of	)	
Land at Kaloko and Kohanaiki, North Kona,	)	
Hawai'i, TMK Nos.: (3) 7-3-009:019, 020, 032,	)	
and 057 to 062.	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting In Part and Denying in Part Petitioner's Motion for an Order Regarding Satisfaction of Affordable Housing Condition was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

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DATED: Honolulu, Hawai'i, 11/22/2016.

  
\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer