BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of GAMREX, INC. To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Incremental Redistricting of Increment II For Approximately 49 Acres of Land at North Kona, County, Island and State of Hawaii, Tax Map Key No.: (Third Division) 7-6-21:15 and portions of 4, 9, 10, 11 and 17.	DOCKET NO. A83-549 GAMREX, INC.

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

MAY 10 1993 by _____
Date Executive Officer

LAND USE COMMISSION
STATE OF HAWAII
MAY 10 11 17 AM '93

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

05520

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of GAMREX, INC. To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Incremental Redistricting of Increment II For Approximately 49 Acres of Land at North Kona, County, Island and State of Hawaii, Tax Map Key No.: (Third Division) 7-6-21:15 and portions of 4, 9, 10, 11 and 17.	)	DOCKET NO. A83-549 GAMREX, INC.

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

GAMREX, INC., a Hawaii corporation, as successor in interest to Kalott Properties, Inc. and Gamlon Corp., (hereinafter "Petitioner") filed on June 4, 1992, a Motion to Approve Redistricting of Increment II, pursuant to Chapter 205, Hawaii Revised Statutes, (hereinafter "HRS") and Section 15-15-78, Hawaii Administrative Rules, (hereinafter "Commission Rules"), to amend approximately 49 acres of land in the Agricultural District to the Urban District at North Kona, County, Island and State of Hawaii, Tax Map Key No. (Third Division) 7-6-21:15 and portions of parcels 4, 9, 10, 11 and 17 (hereinafter "Increment II"), and comprising the second increment of lands described in the Land Use Commission's (hereinafter "Commission") Decision and Order dated

December 13, 1983, (hereinafter "Order") in the Petition by Gamlon Corp. in this docket. The Commission, having heard and examined the testimony, evidence and argument of the parties, the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the parties' stipulation filed thereto, does hereby make the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Motion to Approve Redistricting of Increment II and Memorandum in Support of Motion was filed on June 4, 1992, by Petitioner to reclassify Increment II, consisting of approximately 49 acres of land in the Agricultural District to the Urban District for certain land situated at North Kona, County, Island and State of Hawaii.

2. On June 12, 1992, Petitioner filed a Motion to Approve Change of Name of Petition from Gamlon Corp. to Gamrex, Inc.

3. On August 3, 1992, Petitioner filed its List of Witnesses and List of Exhibits, together with Exhibit Nos. 1 through 5. These exhibits were subsequently withdrawn by Petitioner.

4. A prehearing conference was held on August 11, 1992, at the conference room of the Department of Business, Economic Development and Tourism, 11th Floor, Central Pacific Plaza, 220 South King Street, in Honolulu with the Petitioner

and the Office of State Planning present. The County of Hawaii Planning Department was not present. At the prehearing conference, witness and exhibit lists, and exhibits were exchanged among the parties present.

5. On August 19, 1992, Petitioner filed its Supplemental Memorandum in Support of Motion to Approve Redistricting of Increment II.

6. On August 19, 1992, Petitioner filed its Revised List of Witnesses, Revised List of Exhibits, and Exhibit Nos. 1 to 16.

7. On August 27, 1992, Petitioner filed a Motion to Continue Motion to Approve Redistricting of Increment II.

8. The Commission held a hearing on August 27, 1992, at the Kamakahonu Ballrooms, King Kamehameha Kona Beach Hotel, Kailua-Kona, Hawaii pursuant to notice published in the Honolulu Advertiser, Hawaii Tribune-Herald and West Hawaii Today on July 17, 1992. At the hearing, the Commission approved Petitioner's Motion to Approve Change of Name of Petition and Petitioner's Motion to Continue Motion to Approve Redistricting of Increment II.

9. On January 21, 1993, Petitioner filed its Second Revised List of Witnesses, Second Revised List of Exhibits, and Exhibit Nos. 17 to 20.

10. On January 21, 1993, Petitioner filed its Second Supplemental Memorandum in Support of Motion to Approve Redistricting of Increment II.

11. On January 28, 1993, Petitioner filed its Third Revised List of Witnesses, Third Revised List of Exhibits, and Exhibit Nos. 21 and 22.

12. The Commission held a continued hearing on the Motion to Approve Redistricting of Increment II on January 28, 1993, at the Kamakahonu Ballrooms, King Kamehameha Kona Beach Hotel, Kailua-Kona, Hawaii.

DESCRIPTION OF PROPERTY

13. The subject property was approved for incremental districting by the Commission's Order dated December 13, 1983, and consists of approximately 173.66 acres, at North Kona, County, Island and State of Hawaii, Tax Map Key Nos. (Third Division) 7-6-21:4, 9, 10, 11, 12, 13, 15, 16 and 17 (hereinafter the "Property").

14. Increment I, approved by the Commission's Order dated December 13, 1983, consists of approximately 124.66 acres (hereinafter "Increment I"), and Increment II consists of approximately 49 acres.

15. The Property is bound to the north by undeveloped lands, the south by the Kalani Sunset, Leilani Sunset and Kainana Subdivisions, the west by the old Kailua-Keauhou Middle Road, and the east by the Iolani Subdivision. Increment II is generally located in the eastern portion of the Property.

16. The Property is owned in fee by Petitioner.

17. By Order dated December 13, 1983, the Commission reclassified from the Agricultural District to the Urban

District on an incremental basis approximately 124.66 acres of land comprising Increment I. Pursuant to Section 15-15-78 of the Commission Rules, and the above-mentioned Order dated December 13, 1983, Petitioner may apply to reclassify Increment II from the Agricultural District to the Urban District upon a prima facie showing by Petitioner that it has substantially completed the on and off site improvements within Increment I, in accordance with the approved development plan for Increment I.

18. On November 16, 1988, Petitioner filed a Motion to Extend Time to Complete Substantial Development of Increment I and to Apply for Incremental Districting of Increment II with the Commission.

19. The Commission approved the Motion to Extend Time to Complete Substantial Development of Increment I and to Apply for Incremental Districting of Increment II per motion on January 10, 1989 and subsequently by Decision and Order dated February 10, 1989. The time limit was extended until December 13, 1993.

IMPROVEMENTS COMPLETED WITHIN INCREMENT I

20. After Increment I was reclassified to the Urban District by the Commission by its Order dated December 13, 1983, the following approvals affecting Increment I have been processed by the County of Hawaii:

a. County of Hawaii incremental zoning approval pursuant to County of Hawaii Ordinance Nos. 84-23, 84-42, 88-4, 90-62 and 91-96 ("Zoning Ordinance").

b. County of Hawaii's final subdivision approval for County of Hawaii Subdivision Units I-A and I-B which consists of single-family residential areas in Increment I. Petitioner has also received County of Hawaii preliminary subdivision approval for County of Hawaii Subdivision Unit I-C.

21. The on-site improvements which have been substantially completed or in progress to date within Increment I are as follows:

a. Improvements for Units I-A and I-B. All infrastructure improvements, including roads, water system, electrical system, and telephone transmission system, within the portion of Increment I which comprises County of Hawaii Subdivision Units I-A and I-B have been completed.

b. Improvements for Unit I-C. Roads and utilities are partially completed within County of Hawaii Subdivision Unit I-C.

c. Drainage system for multi-family residential area. The construction of the drainage system for the multi-family residential areas has been delayed because:
(a) Petitioner did not control the lands below Queen Kaahumanu Highway which the County of Hawaii determined were needed to complete the portion of the Holualoa drainage system running through Petitioner's property; and (b) the County of Hawaii has

required Petitioner to participate in certain flood studies and improvements for the area below Queen Kaahumanu Highway. In June of 1989, Petitioner completed the purchase of a 12-acre parcel (Tax Map Key No. (Third Division) 7-6-24:25) located west (makai) of Queen Kaahumanu Highway, at a cost of $1,000,000 to resolve a problem concerning the construction of its portion of the Holualoa drainage system which portion runs mainly through the multi-family residential areas within Increment I. All flood studies have been completed and have been submitted to the County of Hawaii Department of Public Works, which will submit them to the Federal Emergency Management Agency (hereinafter "FEMA"). Upon approval by FEMA, Petitioner will be permitted to construct its portion of the Holualoa drainage system. After completion of the drainage system, the County of Hawaii will permit construction of the infrastructure improvements within the multi-family residential areas within Increment I.

d. Drainage System for Unit I-C. Petitioner, in connection with adjacent landowners and the County of Hawaii, have completed a study for the drainage system, which affects only a small portion of County of Hawaii Subdivision Unit I-C. After approval by the FEMA, the drainage system which affects Unit I-C will be completed and Petitioner will complete the infrastructure improvements within Unit I-C. After completion of such improvements, all of the infrastructure improvements

within the single-family areas within Increment I will have been completed.

e. Infrastructure Improvements for Multi-Family Residential Area Within Increment I. The water system master plan for the area requires Petitioner to develop the water system and other infrastructure improvements within Increment II prior to development of infrastructure improvements in the multi-family residential areas within Increment I.

f. Model Homes and Recreation Center. Petitioner has completed eight model homes and a recreation center within Increment I.

22. The off-site improvements which have been substantially completed or in progress to date within Increment I are as follows:

a. Petitioner has completed construction of the main access road from Kuakini Highway to the project which is the Lako Street extension. Petitioner has also completed construction of the Lako Street/Kuakini Highway intersection.

b. Off-Site Drainage. Petitioner has submitted drainage plans for the 12-acre parcel of land located west (makai) of Queen Kaahumanu Highway (Tax Map Key No. (Third Division) 7-6-24:25) and these plans are currently being reviewed by the County of Hawaii Department of Public Works and FEMA. Petitioner is also participating in flood (HEC2) studies for the area west (makai) of the 12-acre parcel and these

studies have been submitted to the County of Hawaii Department of Public Works and FEMA.

23. Total costs, including on and off-site improvement costs, expended by Petitioner is approximately $20,000,000.

24. Due to the existing water system for the area, Petitioner cannot construct any additional water system and other infrastructure improvements in Increment I without urban districting of Increment II and cannot proceed with further development of the multi-family residential areas within Increment I without such urban redistricting of Increment II.

25. The County of Hawaii will allow Petitioner to construct the water system and other infrastructure improvements within Increment II subject to subsequent adjustments, realignments, or other revisions to such infrastructure improvements as may be required by the County of Hawaii zoning and subdivision process.

26. Petitioner has already commenced preparation of plans for the construction of infrastructure improvements within Increment II in order that it can proceed with such construction without delay if the Commission approves Petitioner's request for redistricting of Increment II.

27. Based on the aforesaid findings, and the findings in the Commission's Order filed December 13, 1983 in this docket, the proposed reclassification of Increment II conforms with the following objectives, policies and priorities of the

Hawaii State Plan provided under HRS §§226-19(a)(1), 226-19(b)(1), and 226-19(b)(3).

28. The Commission, by Order dated December 13, 1983, imposed the following conditions on the reclassification and incremental districting of the Property:

A. Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring (except by way of mortgage or assignment as security) 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 percent (10%) of the lots or house 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 (i.e., Act 205 or Hula Mae) or federally-insured or assisted financing (i.e., FHA Section 245 program) intended to encourage home ownership by low and moderate income families (hereinafter "Condition A"); and

B. In making the ultimate decision as to whether a historical or archaeological site is significant enough to warrant preservation, the Petitioner shall consult with and accept the decision of the Historic Preservation Officer of the Department of Land and Natural Resources (hereinafter "Condition B"); and

C. Petitioner shall submit annual progress reports to the Commission, Department of Planning and Economic Development, and the Hawaii County Planning Department as to its progress in satisfying these conditions (hereinafter "Condition C").

29. Petitioner has addressed Condition A by entering into an agreement with the County of Hawaii Housing Department providing for conveyance of the 12-acre parcel, Tax Map Key No. (Third Division) 7-6-24:25, to the County of Hawaii, in satisfaction of the affordable housing requirement.

30. Petitioner has addressed Condition B by receiving approval of its archaeological report from the State Historic Preservation Division of the Department of Land Natural Resources.

31. Petitioner has addressed Condition C by submission of Exhibit A to its Second Supplemental Memorandum filed January 21, 1993, which the Commission accepted as Petitioner's Annual Report for 1992, and having filed previous annual reports with appropriate parties.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the 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 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 and construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the Commission Rules including Section 15-15-78 thereof, the Commission finds upon a preponderance of evidence that the incremental redistricting of lands within Increment II of the Property, and approximately shown on Exhibit A attached hereto and incorporated herein by reference, consisting of approximately 49 acres of land situate

at North Kona, County, Island and State of Hawaii, identified as Tax Map Key No. (Third Division) 7-6-21:15 and portions of parcels 4, 9, 10, 11 and 17 from the Agricultural District to the Urban District, subject to the additional conditions provided in this Order, conforms to the standards established in the Commission Rules including Section 15-15-78 relating to incremental districting, is reasonable, non-violative of Section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in Chapter 226, HRS.

DECISION AND ORDER

IT IS HEREBY ORDERED that the lands within Increment II of the Property, consisting of approximately 49 acres situate at North Kona, County, Island and State of Hawaii, more particularly identified by Tax Map Key No. (Third Division) 7-6-21:15 and portions of parcels 4, 9, 10, 11 and 17 and approximately shown in Exhibit A attached hereto and incorporated herein, for incremental redistricting from the Agricultural District to the Urban District shall be and the same is hereby approved, and the district boundaries are amended accordingly, subject to the following additional conditions:

1. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

2. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

3. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

4. The Land Use Commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

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

6. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a Statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

DOCKET NO. A83-549 - GAMREX, INC., a Hawaii corporation

Done at Honolulu, Hawaii, this 10th day of May 1993, per motion on April 29, 1993.

LAND USE COMMISSION
STATE OF HAWAII

By _____
ALLEN Y. KAJIOKA
Chairman and Commissioner

By (absent)
KAREN S. AHN
Vice Chairperson and Commissioner

By _____
JOANN N. MATTSON
Vice Chairperson and Commissioner

By _____
ALLEN K. HOE
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By (absent)
RENTON L. K. NIP
Commissioner

By _____
TRUDY K. SENDA
Commissioner

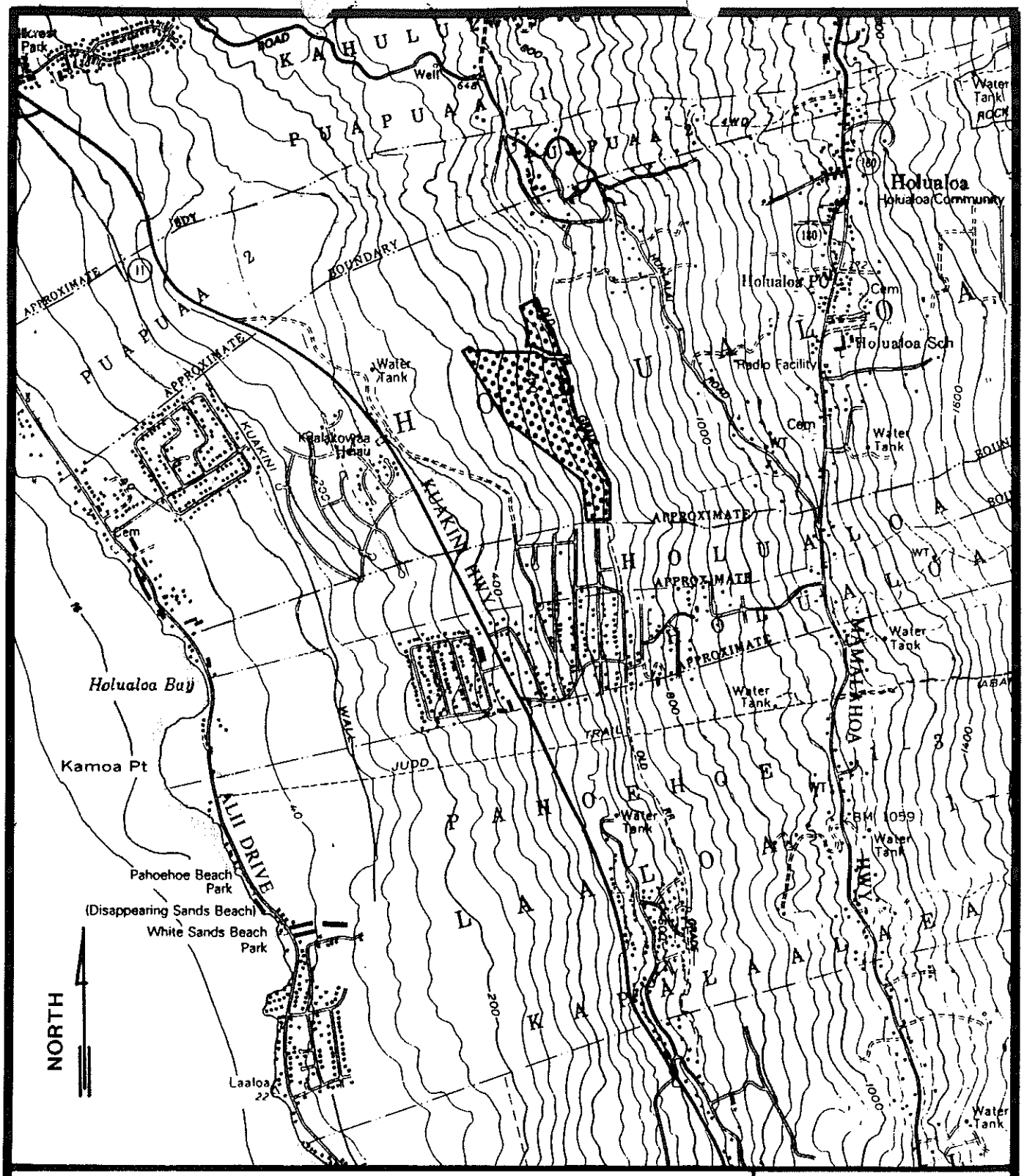
By _____
ELTON WADA
Commissioner

By _____
DELMOND J. H. WON
Commissioner

Filed and effective on
May 10, 1993

Certified by:

_____
Executive Officer



DOCKET NO. A83 - 549 / GAMREX, INC.,

a Hawaii Corporation

LOCATION MAP

TAX MAP KEY: 7 - 6 - 21: por. 4, por. 9, por. 10, por. 11, por. 17 & 15

HOLUALOA 1ST & 2ND, NORTH KONA, HAWAII

SCALE: 1" = 2,000 ft. ±

APPROVED AREA (INCREMENT II)

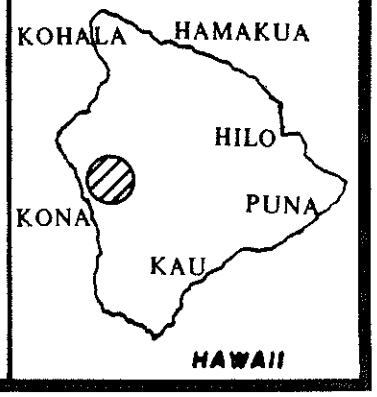


EXHIBIT "A"

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of GAMREX, INC. To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Incremental Redistricting of Increment II For Approximately 49 Acres of Land at North Kona, County, Island and State of Hawaii, Tax Map Key No.: (Third Division) 7-6-21:15 and portions of 4, 9, 10, 11 and 17.	)	DOCKET NO. A83-549 GAMREX, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. KARL K. KOBAYASHI, ESQ., Attorney for Petitioner
Carlsmith Ball Wichman Murray
Case Mukai & Ichiki
2200 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 10th day of May 1993.

ESTHER UEDA
Executive Officer