





## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On May 9, 1983, Gamlon Corp. (hereinafter referred to as "Petitioner") filed this Petition to amend the Agricultural District boundary at Holualoa First and Second, North Kona, County, Island and State of Hawaii, to reclassify the subject property into the Urban District.

2. The Land Use Commission (hereinafter referred to as "Commission") held a public hearing on this Petition on September 8, 1983, in the Resolution Room, Kona Hilton Hotel, Kailua-Kona, Hawaii, pursuant to notice of hearing published in the Honolulu Advertiser and the Hawaii Tribune Herald on August 3, 1983.

3. The Commission received one timely request for intervention on July 20, 1983 from Elizabeth Ann Stone on behalf of the Honest Environmental Citizen's Against Progress, and denied the request in the absence of Ms. Stone at the hearing. The Commission received two untimely requests to appear as public witnesses from James Sogi representing Mr. and Mrs. Roy Nagle, property owners in the area, Maile Akimeseu, representing the Friends of Kamo Point, Inc., and permitted them to testify as public witnesses.

### DESCRIPTION OF SUBJECT PROPERTY

4. The subject property is located mauka of Kuakini Highway approximately 2.6 miles south of the Palani Road - Kuakini

Highway intersection in Kailua-Kona, Hawaii. The subject property is bordered by vacant, undeveloped lands to the north and generally to the east, by the Kalani Sunset, Leilani Sunset, and Kainana Subdivisions to the south, and by the old Kailua-Keauhou Middle Road to the west.

5. With the exception of an undivided interest in five acres of Tax Map Key No. 7-6-21: 17, which is owned in fee simple by Hawaii Preparatory Academy, Kalott Properties N.V., a Netherland-Antilles corporation, a wholly-owned subsidiary of Petitioner, owns all of the subject property. Petitioner holds an option to purchase the subject property from Kalott Properties N.V. Hawaii Preparatory Academy and Kalott Properties N.V. have authorized Petitioner to file this Petition.

6. Hawaii Tax Map Keys Nos. 7-6-21: 14, 18 and 19 are within the general boundary of the subject property but are not being considered for reclassification as a part of this Petition. Parcel 18, owned by the County of Hawaii and the Dillingham Investment Corporation, and Parcel 19, owned by the County of Hawaii, are an existing and proposed drainage way for the Holualoa School and Horseshoe Bend streams. Parcel 14 is owned by John P. Ellbogen.

7. On August 23, 1982, the State of Hawaii instituted an eminent domain action against Kalott Properties, N.V. to condemn a portion of Tax Map Key Nos. 7-6-21, parcels 13 (.578 acres) and 16 (2.202 acres) for the Kuakini Highway realignment

project. As of the date of the public hearing, final judgment had not been entered in this action.

8. The subject property is currently leased to and utilized by the Palani Ranch for cattle grazing under a month-to-month lease.

9. The United States Department of Agriculture's 1973 Soil Conservation Service Soil Survey Map of Island of Hawaii, classifies the soil of the subject property as being in the Punaluu series and an extremely rocky peat. Permeability is moderately rapid, runoff is slow, and erosion hazard is slight.

10. The elevation of the subject property ranges from 350 feet to 700 feet at its mauka boundary. The slope generally ranges from 6% to 20%.

11. Vegetation on the subject property is composed of almost entirely exotic specimens, with Koa-haole the dominant species. The subject property does not support any plant life considered rare, threatened or endangered. Several native species and exotic species common to Kona and found throughout the State also grow on the subject property.

12. Approximately 75% of the subject property is located within the defined boundaries of the Holualoa drainage basin. The Federal Insurance Administration has designated two portions of the subject property adjacent to the both sides of the

Horseshoe Bend and Holualoa School intermittent streams in Flood Zone "A," which is defined as areas susceptible to a 100-year flood, in the Flood Insurance Rate Maps for the Island of Hawaii.

PROPOSAL FOR DEVELOPMENT

13. With the exception of the five acres owned by the Hawaii Preparatory Academy, Petitioner proposes to develop a single-family and multi-family residential subdivision on the subject property. Petitioner intends to develop approximately 500 residential units of which 215 would be single-family residential units and 285 would be multi-family residential units.

14. Petitioner proposes to build the single-family residential units on approximately 103 acres, with each unit having a minimum lot size of approximately 15,000 sq. ft. The Petitioner estimates that single-family density will be at approximately 2.1 units per acre.

15. Petitioner proposes to build multi-family townhouse residential units on approximately 65 acres at an estimated density of RM-8.0 (1 unit per 8,000 feet of land area) or 4.4 units per acre.

16. Petitioner proposes to use the Holualoa School Stream as a boundary between the single-family units (to the south) and the multi-family units (to the north).

17. Petitioner intends to market 25% to 50% of the single-family units as house/lot packages and 50% to 75% as lot-only sales. Petitioner intends to market the multi-family units as residential, as opposed to resort, townhouse, condominiums. Pursuant to the County of Hawaii's incremental zoning requirements, Petitioner is required to construct dwellings on at least 25% of the lots in its first phase proposed residential subdivision in order to obtain rezoning of second phase.

18. Petitioner estimates that it will sell the vacant house lots for approximately \$70,000 (1983 dollar) and three- and four-bedroom house/lot packages for \$150,000 (1983 dollar). The multi-family units will range in price from \$90,000 to \$180,000 (1983 dollar).

19. Petitioner has agreed in principle to work jointly to provide housing opportunities for low- and medium-income residents. Petitioner proposes to cooperate with State and County housing agencies in order to offer ten percent of the lots and house and lot packages at prices that will enable residents to qualify for Federal- or State-assisted housing loan programs.

20. Hawaii Housing Authority (HHA) feels that approximately 10% of the housing units should be affordable by low and moderate income families.

21. HHA recommends that a condition be included to assure that 10% of the units will be affordable to low and

moderate income families, as determined by the County of Hawaii and HHA.

22. The Draft Kona Regional Plan estimates that approximately 40% of the households in Kona are currently facing some kind of housing problem which ranges from the household paying too large a percentage of its income for housing, living in substandard or unsafe housing, living in a crowded household or combinations thereof.

23. Petitioner estimates construction costs for on-site and off-site improvements to be approximately \$35 million (1983 dollar). This estimate includes major drainage improvements, road construction, site preparation, and labor and materials.

24. Petitioner estimates that Phase 1 and 2 can be completed within 8 1/2 years from the date of the Commission's approval of this Petition.

25. Petitioner is a wholly-owned subsidiary of Blue Chip Corporation, a Japan corporation. Petitioner holds approximately \$14 million of investment property free of any mortgages and can use said property to finance the proposed project. If necessary, Blue Chip Corporation will provide any additional funds needed to complete the project.

#### STATE AND COUNTY PLANS

26. The subject property is situated within the State Land Use Agricultural District. It is contiguous to urban classified lands to the south which have been developed for low density



residential uses (Kalani Sunset, Leilani Sunset, and Kainana Subdivisions). To the west, the Kailua-Keauhou Middle Road (40 foot right-of-way), which is in the Agricultural District, separates the subject property from adjoining Agricultural and Urban Districts. Lands to the north are designated Agricultural. Lands to the east are designated Rural.

27. The County of Hawaii General Plan Land Use Pattern Allocation Guide (LUPAG) map designates most of the subject property as "Alternate Urban Expansion" and a small area as "Low Density Urban." The two stream beds and adjacent areas are designated as "Flood Plains."

28. The draft Kona Regional Plan prepared by the County of Hawaii's Planning Department recommends that the subject property be developed for low density residential (RES-4, 4 units per acre), and moderate density residential (RES-10, 10 units per acre) uses. Petitioner's proposed project is consistent with the draft Kona Regional Plan.

29. The Kailua-Honalo Urban Zone Map (Ordinance No. 74, 1967) zones the entire subject property as "Unplanned" with a minimum lot size of five acres. Petitioner must obtain a rezoning of the subject property.

30. The subject property is not situated within either the Special Management Area or the boundaries of the Kailua Village Special District.

NEED FOR GROWTH AND DEVELOPMENT

31. The draft Kona Regional Plan poses three growth alternatives for Kona with corresponding population forecasts for the period 1980-2000. The population projections to the year 2000 are as follows: Alternative I: 33,200; Alternative II: 39,400; and Alternative III: 46,300.

32. Using these population projections and the anticipated decline in household size, the draft Kona Regional Plan indicates future new housing requirements at between 5,240 to 9,915 units or a production rate of 262 to 496 units per annum for Kona.

33. In addition, 1,580 units will reach obsolescence by the year 2000 and will need to be replaced. Petitioner's consultant assumes 40% of the above enumerated housing units reaching obsolescence will not be repaired.

34. Using the draft Kona Regional Plan's estimates of new housing units required and the obsolescence factor developed by Petitioner's consultant, the total number of new housing units needed for Kona ranges from 5,872 to 10,547 units.

35. Petitioner's market study of 32 existing residential subdivisions of ten or more units in the North Kona area (as defined geographically by the market study) identified a total of 4,580 existing residential lots. Of that total, 2,352 or 51% of the lots have houses built on them and contribute to the existing

housing stock. The balance of 2,228 lots or 49% are vacant. In addition, only 345 vacant lots are for sale.

36. If all the existing vacant lots counted in the market study become available for housing by the year 2000, the current available inventory of finished lots represents between 21% and 38% of the projected need.

37. Petitioner's market study estimates that 80% of the housing units needed for Kona will be built in the area studied by Petitioner (hereinafter referred to as "study area"), which encompasses the Kailua-Kona-Keauhou segment of the draft Kona Regional Plan prepared by the County of Hawaii's Planning Department. This amounts to between 4,698 to 8,437 units.

#### IMPACTS ON THE RESOURCES OF THE AREA

##### Agricultural Resources

38. The State Department of Agriculture does not place the subject property in any of its important agricultural land categories in its ALISH Maps for North Kona.

39. The Land Study Bureau's Detailed Land Classification Map for the Island of Hawaii indicates that two land types, D293 and E295, are distributed across the subject property. The D and E ratings indicate that the land is poorly or very poorly suited for agricultural activities.

40. Although the subject property is currently used for cattle grazing, it does not have a high capacity for intensive

agricultural use. Approximately 24 to 30 head of cattle are located on the subject property.

41. The draft Kona Regional Plan, which was developed in consultation with farmers and governmental agencies concerned with agricultural activities, recommends that the subject property be used for residential purposes.

#### Archaeological Resources

42. Cultural Surveys Hawaii conducted an archaeological reconnaissance in January of 1983. It discovered 47 archaeological sites on the subject property, some of which are merely remnants.

43. Based on preliminary observations, none of the sites discovered are historically significant except for research purposes. Petitioner will conduct further archaeological work as recommended by Cultural Surveys Hawaii, the State of Hawaii and the County of Hawaii.

#### Recreational Resources

44. Petitioner intends to develop a private recreation area for residents of the proposed development.

#### PUBLIC SERVICES AND FACILITIES

##### Fire Fighting and Police Services

45. The County of Hawaii will provide police service from the Kona District Headquarters located in Captain Cook. Fire protection service will be provided by the County from its Kailua Fire Station located on Palani Road.

### Schools

46. Students from the proposed project 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.

### Electrical Utilities Services

47. Hawaii Electric & Light Company, Inc. 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

48. Petitioner does not have a water commitment from the Board of Water Supply for this project, but Petitioner is a participant in the Kona Source Agreement I with the County development of Water Supply and other developers for development of new

domestic water sources in Kona. Petitioner has paid \$125,000 as a contribution for its prorata share for 500 water units.

49. Should the exploratory activities conducted pursuant to the water agreement prove successful, Petitioner will execute a subsequent water source development agreement II and the Board of Water Supply will issue water commitments issued to participating developers, including Petitioner.

#### Drainage

50. Although approximately 75% of the subject property lies in the defined boundaries of the Holualoa Drainage Basin, intermittent flooding is limited to the Horseshoe Bend and the Holualoa School Streams. Petitioner will build and dedicate to the County of Hawaii all drainage facilities recommended in the Drainage Master Plan for the North Kona Flood Control Project within the boundaries of the subject property.

51. Properties located makai of the subject property (below Kuakini Highway) to the coastline have received various development approvals conditioned on the requirement that development of these projects may not commence unless the developers implement their portion of the drainage facilities recommended in the Drainage Master Plan for the North Kona Flood Control Project.

52. The development of the subject property and properties located makai of the subject property will result in a

continuous drainage system from the mauka boundary of the subject property to the ocean.

Sewage Treatment and Disposal Services

53. Petitioner proposes to dispose of sewage waste generated by the single-family residential area by individual cesspools. Petitioner proposes that the multi-family residential area will be served by private treatment plants.

54. Petitioner shall design and construct all sewage treatment facilities to satisfy the requirements specified in Chapter 38, Public Health Regulations, State of Hawaii.

Solid Waste Disposal Services

55. The County of Hawaii does not provide refuse collection service. Petitioner will require purchasers to haul refuse to the Kona Sanitary Land Fill or make arrangements with commercial disposal services. The landfill, which serves the North and South Kona districts, is located about four miles north of Kailua Village off of Queen Kaahumanu Highway.

56. The existing land fill has a life expectancy of approximately 10 years. The County of Hawaii is planning to install a refuse shredding facility to alleviate problems.

Roadway and Highway Services

57. The State Department of Transportation has approved two accesses from the proposed project to Kuakini Highway. Petitioner proposes to connect present north/south lateral road

system, specifically Kilohana, Leilani, and Pualani Streets to the proposed internal roadway system for the development. The lateral connections and intersection improvements would provide safer and more convenient ingress and egress to Kuakini Highway for residents of these adjacent subdivisions.

58. Petitioner anticipates that traffic generated by the proposed project should be mitigated by the completion of the Kuakini Highway realignment project which is already under construction by the State of Hawaii and which State expects to complete before the proposed project is completed.

#### CONTIGUITY OF DEVELOPMENT

59. The subject property is contiguous to an Urban District to the south which has been developed for low density residential uses (Kalani Sunset, Leilani Sunset, and Kainana Subdivisions). The Kailua-Keauhou Middle Road (40 foot right-of-way) separates the subject property from an existing Urban District along part of the subject property's makai (west) boundary.

#### COMPLIANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

60. The character of the area is "city like" due to the adjacent residential subdivisions located to the south of the subject property. In addition, proposed commercial development by Dillingham Investment Corporation on lands between Kuakini Highway and the subject property further amplify the "city like" character of the area.



61. The subject property is centrally located to established employment centers. It is only 2 1/2 miles south of Kailua Village and 4 miles north of the Keauhou resort community. Dillingham Investment Corporation has proposed to construct a shopping center and medical center on nearby land already designated for commercial use.

62. Although the development of the subject property for residential use will not create permanent employment opportunities, the development of this project at a cost of \$35 million will provide short-term employment opportunities for persons associated with the construction and real estate industries.

63. Reclassification of the subject property is reasonably necessary to accommodate urban growth projected for the North Kona area.

64. The subject property does not have any adverse geographic or topographic constraints which will hinder or endanger the proposed development. The proposed project will be designed and constructed to be reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects.

65. The proposed development will not result in "spot" urban development because an existing Urban District which has been developed for low-density residential uses is located adjacent

to the subject property on the south and a Rural District, which permits the development of residential housing on half acre lots, is contiguous to the subject property on its east (mauka) boundary.

66. Petitioner will install all on-site utility lines, roads, sewage disposal, and water systems at no cost to the state or county governments. Petitioner will also construct and dedicate to the County of Hawaii a major drainage facility within the boundaries of its property.

#### COMPLIANCE WITH THE HAWAII STATE PLAN

67. Petitioner's proposed project is consistent with the Hawaii State Plan's objectives and policies relating to population, the economy (general), and housing.

#### INCREMENTAL DISTRICTING

68. Petitioner cannot complete full urban development of the subject property within five years from the date of the Commission's approval of the redistricting; Petitioner proposes to develop the property in two increments, encompassing 5 years and 3 1/2 years. Petitioner will substantially complete development of the first 124.660 acre increment, consisting of the makai portion of the single-family residential area, all of the multi-family area, and all infrastructure systems within five years. The second increment consisting of the mauka portion of the single-family residential area, totalling 49 acres, is scheduled for completion within 3 1/2 years thereafter. The descriptions of Increment I and Increment II of Petitioner's proposed development

are illustrated on the map attached hereto as Exhibit A and incorporated herein by reference. Petitioner cannot start development on the second increment until development on all on-site and off-site improvements within Increment I have been substantially completed.

#### RULING ON PROPOSED FINDINGS OF FACT

The Land Use Commission hereby rejects any of the proposed findings of fact submitted by the Petitioner or the other parties not already ruled upon by adoption herein, or rejected by clearly contrary findings of fact herein.

#### 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 Commisison, State of Hawaii, the Commission concludes that the reclassification of all of the lands within Increment I, consisting of approximately 124.660 acres (as shown on Exhibit A attached hereto), from the Agricultural to the Urban District and amendment of the land use district boundary to permit the development of Increment I is reasonable, in conformity with Section 205-2, Hawaii Revised Statutes, and is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended, and the District Regulations of the Land Use Commission.

The Commission further concludes that although full development of the lands within Increment II (as shown on Exhibit A attached hereto) cannot be reasonably completed within five years from the date of the Commission's decision on this matter, reclassification of the lands within Increment II, consisting of approximately 49 acres, from the Agricultural to the Urban District and the amendment of the land use district boundary to permit the development of Increment II is reasonable, in conformity with Section 205-2, Hawaii Revised Statutes, and is consistent with the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, as amended, and the District Regulations of the Land Use Commission. Therefore, incremental redistricting of the lands within Increment II of Petitioner's development is reasonable and warranted.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that the lands within Increment I of Petitioner's development plan of the subject property, consisting of 124.660 acres, as depicted in Exhibit A attached hereto and incorporated herein by reference, situated in the ahupua'a of Holualoa First and Second, North Kona, County, Island and State of Hawaii, shall be and the same is hereby reclassified from the Agricultural to the Urban District, and the district boundaries are amended accordingly.

IT IS ALSO HEREBY ORDERED that the lands within Increment II of Petitioner's development plan of the subject property/consisting of approximately 49 acres, as depicted in Exhibit A attached hereto and incorporated herein by reference, situated in the ahupua'a of Holualoa First and Second, North Kona, County, Island and State of Hawaii, shall be and the same are hereby approved for incremental development pursuant to State Land Use Commission's District Regulation 6-2, and that redistricting from the Agricultural to the Urban District will be granted upon receipt of an application by Petitioner for redistricting of Increment II, and upon a prima facie showing by Petitioner that it has substantially completed the on-site and off-site improvements within Increment I, in accordance with Petitioner's development plan as indicated above, within five years of the date of this Order, including but not limited to partial satisfaction of the condition A below, to the extent of the number of lots to be developed in Increment I and full satisfaction of condition B 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 (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 105 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; 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; and

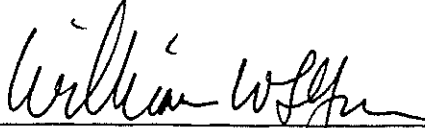
C. Petitioner shall submit annual progress reports to the Commission, Department of Planning and Economic Development, and Hawaii County Planning Department as to its progress in satisfying these conditions; and

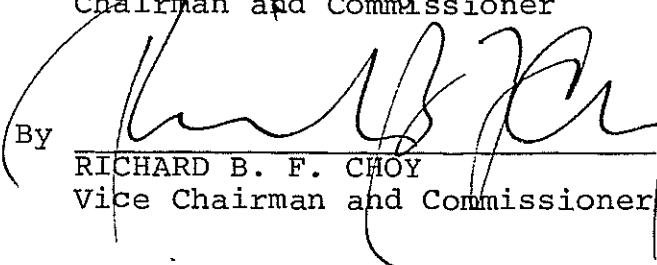
D. These conditions may be fully or partially released by the Commission as to all or any portion of the subject properties upon timely motion and provision of adequate assurance of satisfaction of these conditions by the Petitioner.

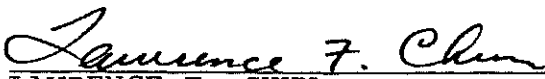
DOCKET NO. A83-549 - GAMLON CORP.

Done at Honolulu, Hawaii, this 13th day of December,  
1983, per motions on December 1, 1983 and December 13, 1983.

LAND USE COMMISSION  
STATE OF HAWAII


By   
WILLIAM W. L. YUEN  
Chairman and Commissioner

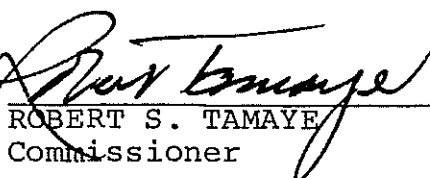
By   
RICHARD B. F. CHOY  
Vice Chairman and Commissioner

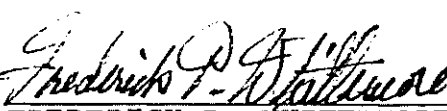
By   
LAWRENCE F. CHUN  
Commissioner

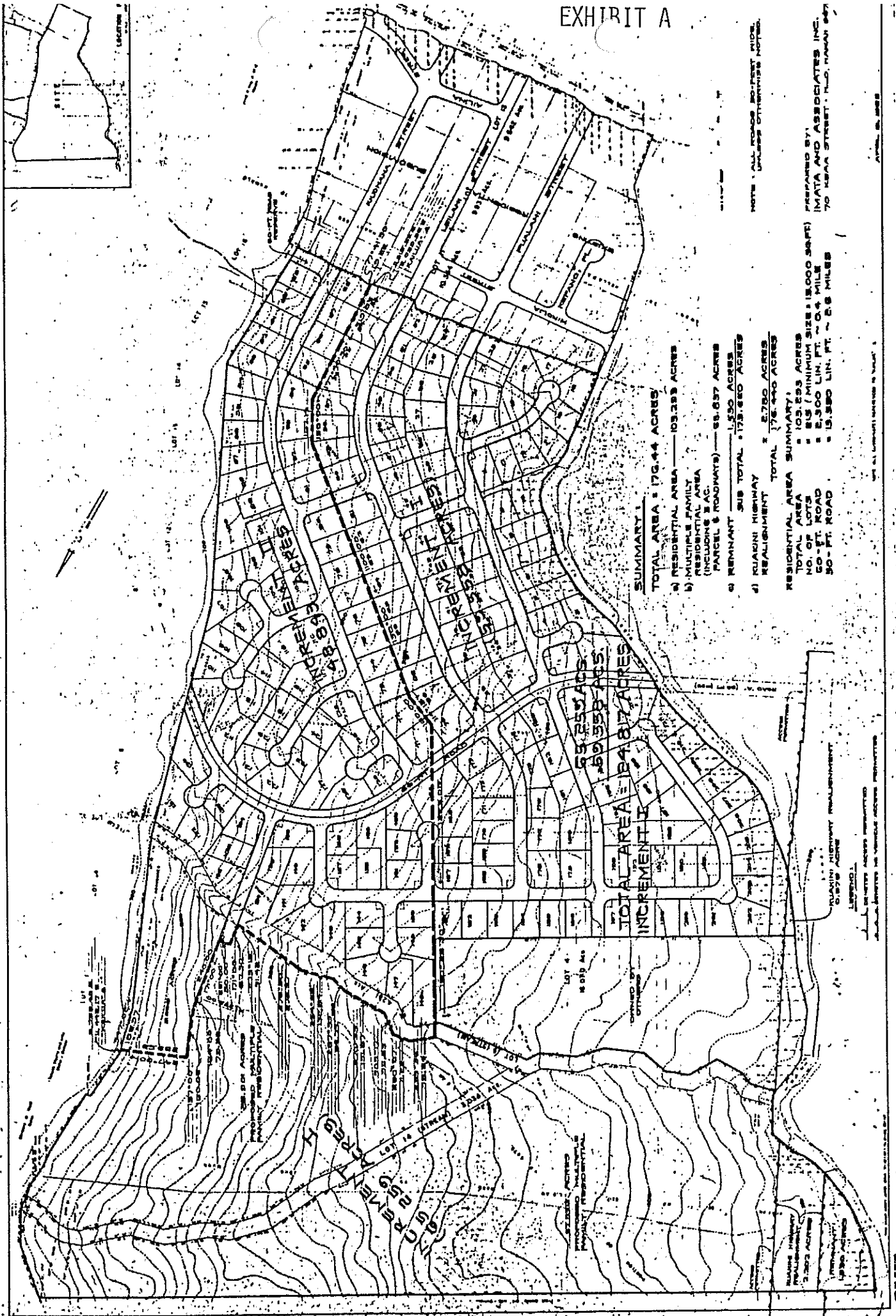
By   
SHINSEI MIYASATO  
Commissioner

By   
WINONA E. RUBIN  
Commissioner

By   
TEOFILO PHIL TACBIAN  
Commissioner

By   
ROBERT S. TAMAYE  
Commissioner

By   
FREDERICK P. WHITTEMORE  
Commissioner



NOTE: ALL ROADS 30-FOOT WIDE, UNLESS OTHERWISE NOTED.

PREPARED BY:  
IMATA AND ASSOCIATES INC.  
70 KEA STREET, H.W.O. HAWAII 967

DATE: 11-28-83

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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
GAMLON CORP. ) DOCKET NO. A83-549  
For Amendment of District Boundary ) GAMLON CORP.  
and Reclassification of Certain )  
Lands Situated at North Kona, County, )  
Island and State of Hawaii )

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CERTIFICATE OF SERVICE

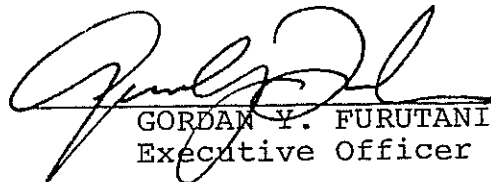
I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

KENT M. KEITH, Director  
Department of Planning and Economic Development  
State of Hawaii  
250 South King Street  
Honolulu, Hawaii 96813

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

RICHARD G. MACMILLAN  
KARL K. KOBAYASHI  
The Queen Street Building  
345 Queen Street, Suite 800  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 26th day of January, 1984.

  
GORDAN Y. FURUTANI  
Executive Officer

Doc file 534

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 *Robert Leida*  
Date Executive Officer

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

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

05520

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A83-549
GAMREX, INC.	)	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.	)	

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

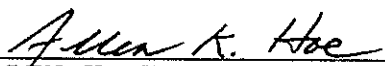
Done at Honolulu, Hawaii, this 10th day of May 1993,  
per motion on April 29, 1993.

LAND USE COMMISSION  
STATE OF HAWAII

By   
ALLEN Y. RAJIOKA  
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

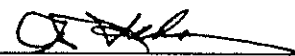
By (absent)  
RENTON L. K. NIP  
Commissioner

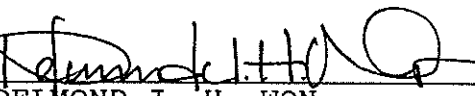
By   
TRUDY K. SENDA  
Commissioner

Filed and effective on  
May 10, 1993

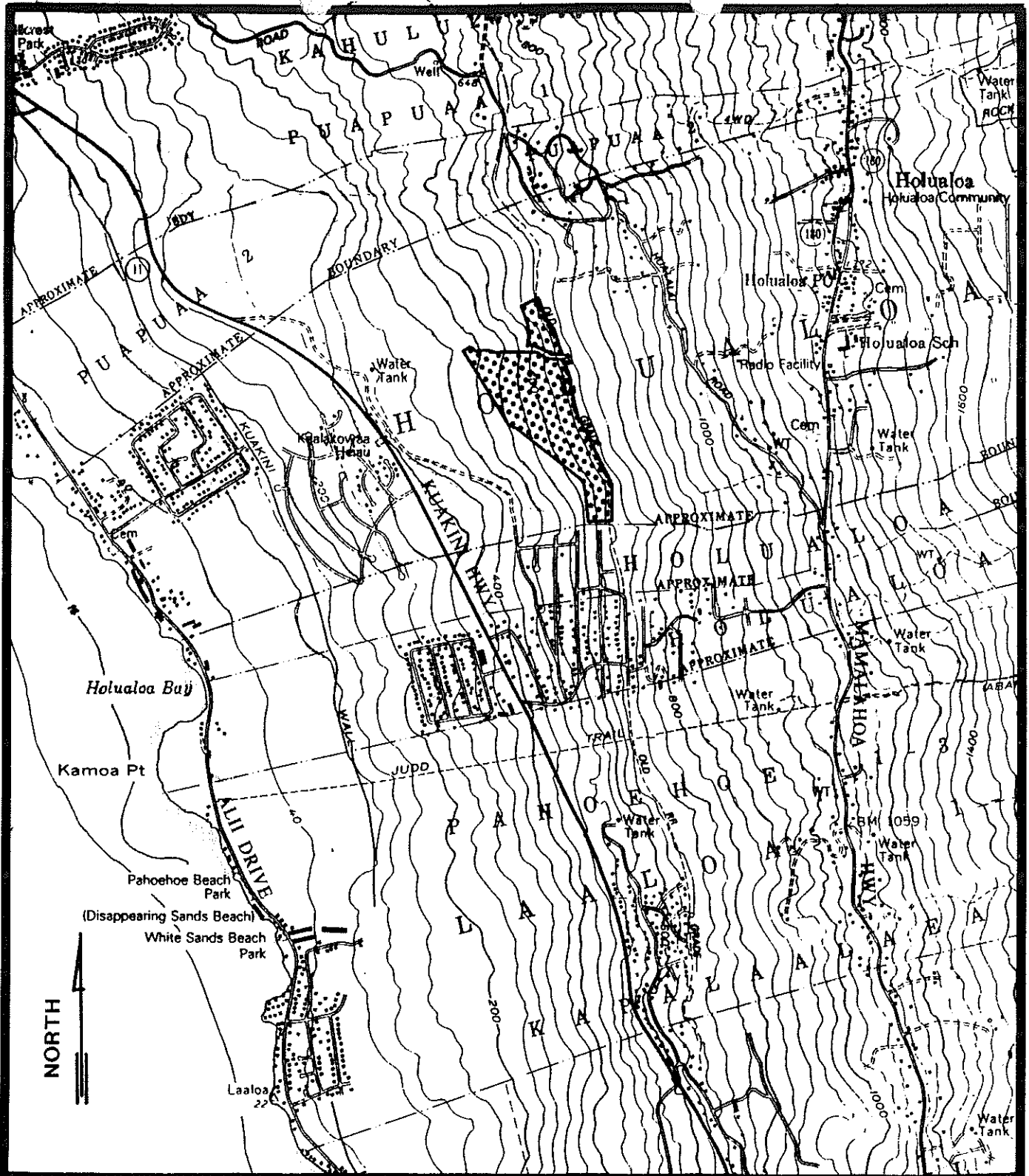
Certified by:

  
Executive Officer

By   
ELTON WADA  
Commissioner

By   
DELMOND J. H. WON  
Commissioner





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

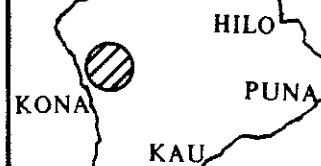
HOLUALOA 1ST & 2ND, NORTH KONA, HAWAII

SCALE: 1" = 2,000 ft. ±



APPROVED AREA  
(INCREMENT II)

KOHALA HAMAKUA



HAWAII

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A83-549
GAMREX, INC.	)	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.	)	

CERTIFICATE OF SERVICE

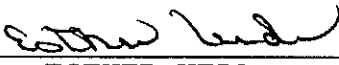
I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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