

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A84-574
MAUNA KEA PROPERTIES, INC. )	MAUNA KEA PROPERTIES, INC.
To reclassify approximately 399 )	
acres of land currently in the )	
Agricultural District into the )	
Urban District at Ouli 1, )	
South Kohala, Hawaii, Hawaii, )	
TMK: 6-2-01:62, 63, 78, 79 )	
and Portion of 51 )	
_____ )	

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION AND ORDER

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition ) DOCKET NO. A84-574  
 )  
 of ) MAUNA KEA PROPERTIES, INC.  
 )  
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 Agricultural District into the )  
 Urban District at Ouli 1, )  
 South Kohala, Hawaii, Hawaii, )  
 TMK: 6-2-01:62, 63, 78, 79 )  
 and Portion of 51 )  
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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION AND ORDER

MAUNA KEA PROPERTIES, INC., a Hawaii corporation, (the "Petitioner"), filed this petition on August 3, 1984, pursuant to Chapter 205, Hawaii Revised Statutes, and the State Land Use Commission Rules of Practice and Procedure, to amend the land use district boundary for approximately 399 acres of land, identified as Hawaii Tax Map Key Nos. 6-2-01:62, 63, 78, 79 and portion of 51 (the "Property") situate at Ouli 1, District of South Kohala, County of Hawaii, State of Hawaii from the Agricultural District to the Urban District. The State Land Use Commission (the "Commission") having heard the testimony and evidence presented on this matter and by having considered the full record as presented in Docket No. A84-574, hereby makes the following Findings of Fact,

Conclusions of Law and Decision and Order:

FINDINGS OF FACT

PROCEDURAL HISTORY

1. The Commission conducted hearings on this petition on November 14th and 15th, 1984, pursuant to notices published in the Honolulu Star Bulletin and the Hawaii Tribune-Herald on October 12, 1984.

2. The Commission permitted Jerry Rothstein to testify as a public witness on November 14, 1984.

3. Pursuant to Chapter 205, Hawaii Revised Statutes, the Department of Planning and Economic Development, State of Hawaii and the Planning Department, County of Hawaii, were made parties to the proceedings.

DESCRIPTION OF SUBJECT PROPERTY

4. The Property consists of five (5) separate parcels situated at Ouli 1, District of South Kohala, County of Hawaii, and described as follows:

TMK: 6-2-01: 51 (por.)	393.88 ac
TMK: 6-2-01: 62	.52
TMK: 6-2-01: 63	1.15
TMK: 6-2-01: 78	.56
TMK: 6-2-01: 79	<u>3.22</u>
Total	399.33 ac

5. Petitioner is presently the lessee of four parcels of the Property under a ninety-nine (99) year lease from the fee owner Richard P. Smart Personal Trust, which lease terminates on June 30, 2059. The lease permits commercial development of the Property. The Trustees of the Richard P. Smart Personal Trust have consented to the filing of this petition.

The County of Hawaii is the fee owner of Hawaii Tax Map Key No. 6-2-01:63, the remaining 1.15 acre parcel of the Property, which parcel the County Board of Water Supply presently uses for water storage. The County Board of Water Supply does not object to the filing of this petition.

6. The Property is bounded by Queen Kaahumanu Highway, Waiulaula Gulch, the planned Waimea-Kawaihae Road and State-owned lands. The Property is the mauka portion of the proposed Hapuna Beach Resort. The makai portion of the proposed resort, (the "Makai Land"), in the Urban District, is bounded by the Mauna Kea Resort, Queen Kaahumanu Highway, the seashore, and State-owned lands. Together, the proposed resort will occupy approximately 539 acres.

7. Ground elevations at the Property are approximately 600 feet above sea level. Slopes of the Property range between six to twelve percent.

8. Rainfall on the Property averages less than ten inches annually. Most of the rain falls during the winter months.

9. The United States Department of Agriculture (USDA) classifies soils of the Property as Kawaihae extremely stony very fine sandy loam (KNK). These soils range in depth from less than

one inch in areas of exposed pahoehoe bedrock to several feet in scattered pockets and depressions.

10. The USDA Soil Conservation Service indicated through its Soil Survey that the soil on the Property is not suited for agricultural use. The capability classification of this type of soil is "VIIs" in a system which rates the suitability of soil on a scale from a high of I through VII. The VII rating indicates this soil is unsuitable for cultivation, and the subscript "s" indicates this soil's main limitations are shallow, droughty or stoney conditions.

11. The University of Hawaii, Land Study Bureau's "Detailed Land Classification - Island of Hawaii" classifies soils on the Property as Land Type 93, Kawaihae soil series with a productivity rating of "E" on a scale ranging from A to E, indicating that the land type is very poorly suited for agricultural use.

12. The State Department of Agriculture's "Agricultural Lands of Importance to the State of Hawaii" (ALISH) classification system does not classify the Property having any agricultural significance.

13. The Property is currently undeveloped except for an existing brackish water reservoir on Hawaii TMK: 6-20-01:63 which serves the Mauna Kea Beach Golf Course and the County water storage tank.

14. There is no recent grazing activity, although grazing may have taken place on the Property in the past.

15. The Federal Insurance Administration (FIA) in its May 1982 Flood Insurance Study for Hawaii County, designates most of the Property as Zone C, an area of minimal flooding, except for an area along the Waiulaula Gulch which the FIA has designated in Zone A, an area subject to a 100-year flood. The 100-year flood has a one-percent chance of occurring in any given year.

PROPOSAL FOR DEVELOPMENT

16. Petitioner proposes to develop the Property primarily for residential and recreational uses to be part of the proposed Hapuna Beach Resort, a self-contained resort to be operated independently of the Mauna Kea Resort.

Petitioner proposes to have this resort serve the luxury market, on a slightly lower level in quality than a super luxury resort such as the Mauna Kea Resort.

17. Petitioner proposes to develop a luxury resort hotel, a championship eighteen-hole golf course, single and multi-family residential units, unimproved lots, and the requisite infrastructure in the following manner:

Property (Mauka Lands)

<u>Use</u>	<u>Acres</u>	<u>No. of Residential Units</u>
Multi-family Residential	90	450
Single-family Residential	50	100
Golf Course, Open Space, Roads, etc.	244	--
Halfway Station and Recreation Ctr.	6	--
Utility Park	<u>10</u>	<u>--</u>
Total (Approximate)	400	550

Makai Lands (Existing Urban Area)

<u>Use</u>	<u>Acres</u>	<u>#Units</u>
Hotel	32	350
Residential (The Bluffs)	38	150
Single-family residential (The High Bluffs)	8	10
Golf Course, Open Space, Roads, etc.	53	--
Golf Clubhouse	5	--
Beach and Tennis Club	<u>4</u>	<u>--</u>
Total (Approximate)	140	510

18. Petitioner estimates its construction costs and sales prices of house and lot packages on a leasehold basis both expressed in 1984 dollars as follows:

<u>Property (Mauka Lands)</u>	<u>Estimated Const. Cost</u>	<u>Price Range</u>
<u>Use</u>		
Multi-family Residential (450 units)	\$115,000,000	\$400,000 - 450,000
Single-family Residential (100 units)	33,000,000	500,000 - 600,000
Halfway Station and Recreation Center	500,000	
Utility Park	--	
<u>Makai Lands (Existing Urban Area)</u>		
Hotel	\$65,000,000	\$150-199 per day
Multi-family Residential (The Bluffs)	60,000,000	\$650,000 - 700,000
Single-family Residential (The High Bluffs)	5,000,000	800,000 - 950,000
Golf Clubhouse	2,000,000	
Beach and Tennis Club	500,000	
<u>Mauka-Makai</u>		
Golf Course and Driving Range	\$6,000,000	
Infrastructure (incl. roads & utilities)	8,000,000	
Landscaping	<u>3,000,000</u>	
Total Construction Cost	\$298,000,000	\$336,000,000 -
Total Anticipated Revenue For Residential Units		377,000,000*

19. Property (Mauka Lands) Petitioner proposes to complete the construction of approximately 100 multi-family units on the Property by 1990 and the remaining 350 units by 1995. Petitioner anticipates that average unit size will be approximately 2000 square feet. Petitioner also proposes to complete development of approximately 35 single family units averaging one-half acre each by 1990 and the remaining 65 units by 1995.

\*excluding hotel revenues



Petitioner, however, will require reclassification of sufficient land for approximately 150 single-family and/or multi-family housing units in order to assure flexibility in development planning. The approximate location of single-family and multi-family units Petitioner intends to complete by 1990 is shown in Exhibit A attached hereto and incorporated by reference herein.

20. Petitioner proposes to develop golf course facilities and open space areas on 297 acres of makai land (presently in the Urban District) and mauka of Queen Kaahumanu Highway. The driving range, access roads, open space and two holes of the golf course will be located on 53 acres of makai lands. The remaining sixteen holes, access roads, and open space will be located on 244 acres of the mauka lands. Petitioner also proposes to develop a half-way station, recreation center, clubhouse, and a beach club.

Petitioner proposes to complete development of the golf course, driving range, clubhouse, and half-way station by 1988, development of the beach club by 1990, and development of the recreation center by 1995.

21. Makai lands (existing Urban District) Petitioner proposes to complete construction of the proposed Hapuna Beach hotel by 1989. Petitioner also proposes to complete construction of 100 of the 150 multi-family units (the Bluffs) and all of the single-family units (High Bluffs) by 1990. The remaining multi-family units will be completed by 1995.

22. Petitioner expects to complete development of road and utility infrastructure for the Property and the makai lands by 1990.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE  
PROPOSED PROJECT

23. Petitioner's audited balance sheet as of December 31, 1983, list total assets of \$127,810,000, stockholders equity of \$55,412,000 and total liabilities of \$72,398,000.

STATE AND COUNTY PLANS AND POLICIES

24. The County of Hawaii's General Plan, Land Use Pattern Allocation Guide (LUPAG) Map designates the Property for "Alternate Urban Expansion." The LUPAG map designates the Makai Land for "Resort, Medium Density, and Open." Petitioner will not require General Plan Amendment for development of the Project.

25. The Property is not situated within the County Special Management Area (SMA).

26. Hawaii County designates the Property as "Unplanned" on its zoning map. Petitioner must obtain a zoning change to the "Multi-family", "Single-family", and "Open" districts from the County after reclassification to the Urban District.

NEED FOR THE PROPOSED DEVELOPMENT

27. Petitioner's consultant Ming Chew Associates (MCA) conducted a market study for the proposed Hapuna Beach Resort in March of 1984. Ming Chew Associates recommended that the proposed golf course be in operation before the proposed resort hotel opens. MCA concluded that market demand could absorb three-fourths of all proposed units to be developed in Hapuna by 1990, and all the remaining units by 1995. The following

table details the consultant's projected marketability and recommendations for the Hapuna resort:

Projected Marketability for the  
Proposed Hapuna Beach Resort

Location	Proposed Use	Recommendation	Projected Marketability		
			1990	1995	2000
Mauka Lands (Property)	Multi Family Units	450	300	600	1,000
	Single Family Units	100	70	150	270
	(Lots)	--	(35)	(75)	(135)
	(House and Lots)	--	(35)	(75)	(135)
Makai Land	Multi Family Units	150	100	200	400
	Single Family Units	10	10	10	10
	(Lots)	--	(5)	(5)	(5)
	(House and Lots)	--	(5)	(5)	(5)
	Hotel Rooms	350	300	500	600
	Total	1,060	780	1,460	2,280
Mauka/Makai	Rounds of Golf per annum	45,000	41,000	72,000	128,000

28. In support of its recommendations, Ming Chew Associates stated that: "Continued development of high-quality resort amenities and accommodations, direct flights from the U.S. Mainland west coast to Ke-ahole Airport by United Airlines, cooperative advertising for the Kohala Coast Resort Region between the existing resorts and United Airlines (the largest carrier of westbound visitors to Hawaii), programs to promote neighbor island destinations by Japan Air Lines (the largest carrier of eastbound visitors to Hawaii) and increased promotions and marketing efforts by the new facilities on the Kohala Coast are expected to expand basic demand to the Region."

MCA estimated that the net new demand for transient accommodations for North and South Kohala in excess of the 1983 inventory would be 2,300 units by 1990, 4,600 units by 1995 and 6,600 units by the year 2000.

MCA also estimated that new demand for luxury hotel units in the Hapuna Beach Resort would be 300 by 1990, 500 by 1995 and 600 by the year 2000.

MCA estimated that the greatest market potential will be for rooms offered at published daily rates of \$150 to \$199.

29. Demand For Resort Subdivision Houselots. Petitioner has developed only 65 resort-oriented single family residential lots for sale in the Kohala Coast Resort Region at the Mauna Kea Resort. Petitioner has marketed in its "Fairways South" development, 33 lots, each containing 10,000 to 15,000 square feet, and the 32 lots in its "Fairways North" development each containing 22,000 square feet. To date, all of the lots in "The Fairways South" have been sold on a leasehold basis and two-thirds of these lots have improvements. The "Fairways North" lots have been on the market since 1982 on a leasehold basis. To date, Petitioner has sold six of these lots.

30. Demand For Resort Multi-Family Residential Units. Resort multi-family units may serve as primary residences, may serve on a short-term basis as transient accommodations, may be rented on a long term basis, or may be used as a vacation home by its owners. Petitioner estimates that the proposed Hapuna Beach Resort will capture 20 percent of the potential hotel and

multi-family demand for transient accommodations in North and South Kohala.

31. Demand For the Proposed Hapuna Beach Resort Golf Course. Petitioner anticipates that the existing Mauna Kea Golf Course will achieve effective capacity by late 1985. Capacity to accommodate overflow from transients and owners from nearby resorts is available at the Waikoloa Beach Resort and the Mauna Lani Resort courses. However, these courses will reach capacity as resort occupancies increase. Therefore, Petitioner will require a high quality golf course within the resort in order to support the golf demand associated with the proposed Hapuna Beach Resort by 1990.

#### TIMETABLE FOR DEVELOPMENT

32. Petitioner proposes to complete the golf course and required infrastructure and one quarter of the residential units for the Property by 1990. The remaining residential units are to be completed by 1995 or within ten years of Commission approval.

#### CONTIGUITY OF THE PROPOSED RECLASSIFICATION

33. Reclassification of the Mauka Lands will result in an Urban District abutting the Urban Districted Makai Lands.

#### CONFORMANCE TO THE HAWAII STATE PLAN

34. The proposed Hapuna Beach Resort is in conformance with the following goals, objectives and policies of Chapter 226, Hawaii Revised Statutes:

a. State Goal

The proposed Hapuna Beach Resort Development will create employment opportunities for Hawaii residents in compliance with Section 4(1).

b. Policies

The proposed Hapuna Beach Resort Development will complement the existing high-quality Mauna Kea Resort and the South Kohala Visitor Destination Area in compliance with Section 8(b)(3).

Petitioner estimates that development of the Project will result in the creation of approximately 865 to 965 direct jobs from 1985 to 1990, approximately 33 percent in construction and approximately 67 percent in operations. Petitioner further estimates that it will create approximately 1,020 to 1,255 direct jobs from 1990 to 1995, with approximately 20 percent in construction and 80 percent in operations.

IMPACT UPON RESOURCES OF THE AREA

35. Agricultural Resources. Soils of the Property are poorly suited for agricultural use.

36. Drainage. Petitioner proposes to design the Hapuna Beach Resort to minimize impacts to the natural drainage patterns on the Property.

37. Flora. Petitioner proposes, to the extent possible, to leave intact existing vegetation during the clearing, grading, and construction phases of development.

38. Fauna. Phillip Bruner conducted an ornithological and feral mammal survey in February, 1984, and found various species of birds, mostly exotic, on the proposed Hapuna Beach Resort area. Mr. Bruner anticipates that the development will result in an increase in the numbers of common myna, Japanese White-Eye and Pacific Golden Plover and reduce the population of the game birds, Gray Francolin and Japanese Quail at the site. He observed no endangered species of mammals or birds.

39. Archaeological Resources. Staff archaeologists from the State Department of Land and Natural Resources (DLNR) inspected the Property on March 21-23, 1984, and discovered cultural features of Hawaiian origin including a shell scatter, rock alignments and possible terraces. DLNR determined that these sites were not of sufficient significance to warrant further archaeological testing and excavation.

40. Visual. Petitioner does not expect the development of the Property will significantly alter any existing view corridors. Petitioner proposes to situate residential units on the Property and along the golf course fairways to achieve an overall low-density pattern and allow the resort to retain an open feeling which also characterizes the adjacent Mauna Kea Resort.

41. Recreation. Petitioner does not believe that the proposed Hapuna Beach Resort will increase use of most of the State and County recreational facilities. Petitioner will make available to transient guests at the Hapuna Beach Resort extensive on-site recreational opportunities, including a championship golf course, driving range, beach and tennis club and a recreation center.

42. Petitioner expects increased use of Hapuna Beach, particularly at the northern end adjacent to the proposed Hapuna Beach Hotel. Petitioner will coordinate the management of recreational resources of the Hapuna Beach area through respective State and County land use controls.

Petitioner has adequately provided public access to the shoreline through the existing Mauna Kea Beach Resort and the proposed Hapuna Beach Resort.

43. Air Quality. Petitioner anticipates short-term adverse impacts on air quality from the construction activity, including increased automotive pollutants and potential for fugitive dust and frequent watering of roads and exposed soils, timely landscaping, and dust barriers are recommended as mitigation measures. Petitioner anticipates long-term adverse impacts on air quality due to increased emissions from traffic.

44. Noise. Petitioner expects significant increases to noise level due to increased traffic volume for 1986. Petitioner's proposed golf course will provide a noise buffer



for residential lots on the Property.

45. Potable Water. Petitioner's consultant, Belt, Collins & Associates, estimates that the proposed Hapuna Beach Resort, when fully developed, will generate a demand for approximately 0.42 million gallons per day (MGD) of potable water by 1990 and an additional 0.37 mgd by 1995 for a total of 0.79 mgd. Petitioner projects that when fully developed, the Property will generate a demand of approximately 0.33 mgd. Petitioner's allocation of 0.94 mgd from the Lalamilo Water System is sufficient to meet the projected long-term requirements of the proposed Hapuna Beach Resort.

46. Waste Water. Petitioner will construct a 0.5 mgd private sewage treatment plant and a sewer collection system for the proposed resort to comply with all state and federal water quality and public health standards. Petitioner proposes to dispose of treated sewage primarily as golf course irrigation water. Petitioner will dispose of any excess beyond irrigation capacity through injection wells located on the sewage treatment plant grounds.

47. Solid Waste. Petitioner anticipates the Hapuna Beach Resort will generate approximately 3.7 tons of solid waste per day. County of Hawaii does not provide refuse collection service to individual residences or businesses. Petitioner will dispose its refuse or contract with private collectors to dispose of solid waste at the county landfill in Waimea or Kailua-Kona.

48. Other Municipal Services. Petitioner can obtain other urban services, such as electricity, gas, telephone, police and fire protection and health care.

49. Schools. Petitioner expects the proposed Hapuna Beach Resort to have minimal direct impact on schools because the Hapuna Beach Resort's population will consist primarily of transients.

50. Roadway and Highway Services and Facilities. Belt, Collins & Associates estimated that the proposed resort will generate a maximum traffic volume of approximately 6,758 vehicles per day or an average of 642 vehicles per hour during the peak hour. Queen Kaahumanu Highway is presently carrying less than 20 percent of its 1,900 vehicles per hour open-road capacity.

Petitioner will construct all highway improvements required by the State Department of Transportation, including, but not limited to channelization and lighting of the proposed intersection at Queen Kaahumanu Highway, and noise and visual screening between the proposed Waimea-Kawaihae Road and the proposed housing to be built on the Property.

51. The State Department of Transportation will permit one access to the Hapuna Beach Resort to be located approximately 2,800 feet south of the Mauna Kea Resort entry road on the makai side of Queen Kaahumanu Highway. Petitioner will provide access from the Makai Lands to the Property (Mauka Lands) by constructing an underpass beneath the Queen Kaahumanu Highway for vehicular, golf cart, and pedestrian traffic.

52. Employee Housing. Petitioner is willing to construct and offer for sale or lease ten percent (10%) of the number of units to be developed on the Property for low and moderate income Hawaii County Residents and employees of Petitioner at prices and rents affordable by them, or to contribute to the building of such housing on a site outside of the Property.

PREFERENCES FOR DEVELOPMENT

53. Petitioner anticipates that the Hapuna Beach Resort will enhance and become an integral part of Kohala Coast Resort Region as a world-renowned resort destination area.

COMPLIANCE WITH STANDARDS OF DETERMINING URBAN DISTRICT BOUNDARIES

54. Petitioner's request for reclassification of the Property from the Agricultural District to Urban District is reasonably necessary to accommodate growth and development of residential and commercial uses within the State of Hawaii.

55. The Hapuna Beach Resort will not have significant adverse effects upon agricultural, natural, environmental, recreational and scenic resources of the area.

56. Adequate and sufficient public services and facilities are available to the Property or can be so provided at reasonable cost.

57. The Property is contiguous to land in an Urban District, and its development will not result in scattered urban development.

58. Commercial uses in the Hapuna Beach Resort will provide permanent employment to State of Hawaii residents.

59. Petitioner's proposal is consistent with the General Plan for the County of Hawaii.

#### INCREMENTAL DISTRICTING

60. Petitioner proposes to complete approximately 100 multi-family units and approximately 35 single-family units by 1990, and to complete the remaining 350 multi-family units and 65 single-family units by 1995. Incremental redistricting of the Property is therefore reasonable and warranted.

#### RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or 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, the Rules of Practice and Procedure and the District Regulations of the State Land Use Commission, the Commission finds upon a preponderance of evidence that the reclassification of Phase I constituting Petitioners proposed golf course and approximately 150 units of single-family housing and/or condominium units, and consisting approximately 317 acres from Agricultural District to the Urban District at Ouli 1, District of South

Kohala, County of Hawaii, State of Hawaii, as shown on Exhibit A attached hereto and incorporated by reference herein for the purpose of developing the Hapuna Beach Resort, subject to the conditions stated below, conforms to the standards established in the State Land Use District Regulations, is reasonable and non-violative of Section 205-2, Hawaii Revised Statutes, as amended, and is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

The Commission further concludes that reclassification of the remaining 82.33 acres consisting of that portion of the Property constituting the balance of the residential units and being Phase II from the Agricultural District to the Urban District, as shown on Exhibit A attached hereto and incorporated by reference herein, is not necessary to accommodate growth at this time, and that incremental redistricting of the lands within Phase II is reasonable, non-violative of Section 205-2, Hawaii Revised Statutes, and is consistent with the Hawaii State Plan set forth in Chapter 226, Hawaii Revised Statutes, as amended, and the District Regulations of the Land Use Commission.

ORDER

IT IS HEREBY ORDERED that the lands within Phase I of the Property comprising the golf course and approximately 150 units of single-family housing and/or condominium units and consisting of approximately 317 acres, more particularly identified by Hawaii Tax Map Keys 6-2-01: 62, 63, 78, 79, and Portion of 51; situated at Ouli 1, South Kohala, Island and State of Hawaii, and more specifically described in Exhibit A

attached hereto and incorporated herein by reference, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and the District Boundaries are amended accordingly.

IT IS ALSO HEREBY ORDERED that lands within Phase II of Petitioner's development comprising the balance of the residential units and consisting approximately 82.33 acres, more particularly identified as Hawaii Tax Map Key 6-2-01: Portion of 51, situated at Ouli 1, South Kohala, Island and State of Hawaii, and more specifically described in Exhibit A attached hereto and incorporated herein by reference, shall be and the same is hereby approved for incremental development pursuant to State Land Use District Regulation 6-2, and that redistricting from the Agricultural to the Urban classification be granted upon a showing of substantial progress and completion of Phase I and development of Petitioner's Hapuna Beach Resort Hotel.

IT IS FURTHER HEREBY ORDERED that the reclassification and incremental redistricting of the Property shall be subject to the condition that Petitioner shall provide housing opportunities for low and moderate income Hawaii County residents and employees by constructing and offering for sale or lease, on a preferential basis on its own or in cooperation with either or both the Hawaii Housing Authority and the County of Hawaii, ten percent (10%) of the residential units to be developed on Phases I and II on the Property, at prices determined by

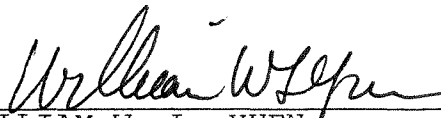
standards promulgated by the Hawaii Housing Authority and County of Hawaii from time to time, or by contributing to the development of such housing outside of the Property. The preferential residential units shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify 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.

This condition may be released by the Commission upon a motion and a showing of compliance or provision of assurance of compliance.

DOCKET NO. A84-574 - MAUNA KEA PROPERTIES, INC.

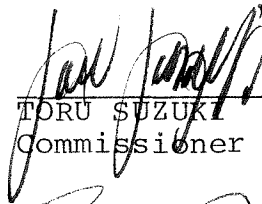
Done at Honolulu, Hawaii, this 6th day of May,  
1985, per motions on February 21, 1985 and May 1, 1985.

LAND USE COMMISSION  
STATE OF HAWAII

By   
WILLIAM W. L. YUEN  
Chairman and Commissioner

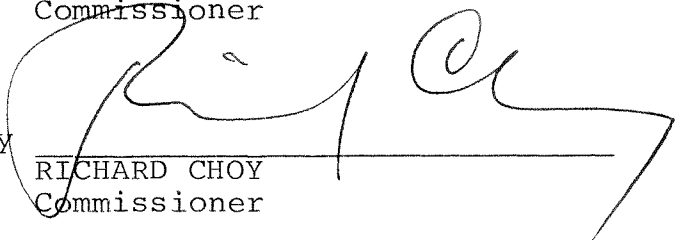
By   
TEOFILO PHIL TACBIAN  
Vice Chairman and Commissioner

By   
WINONA RUBIN  
Commissioner

By   
TORU SUZUKI  
Commissioner

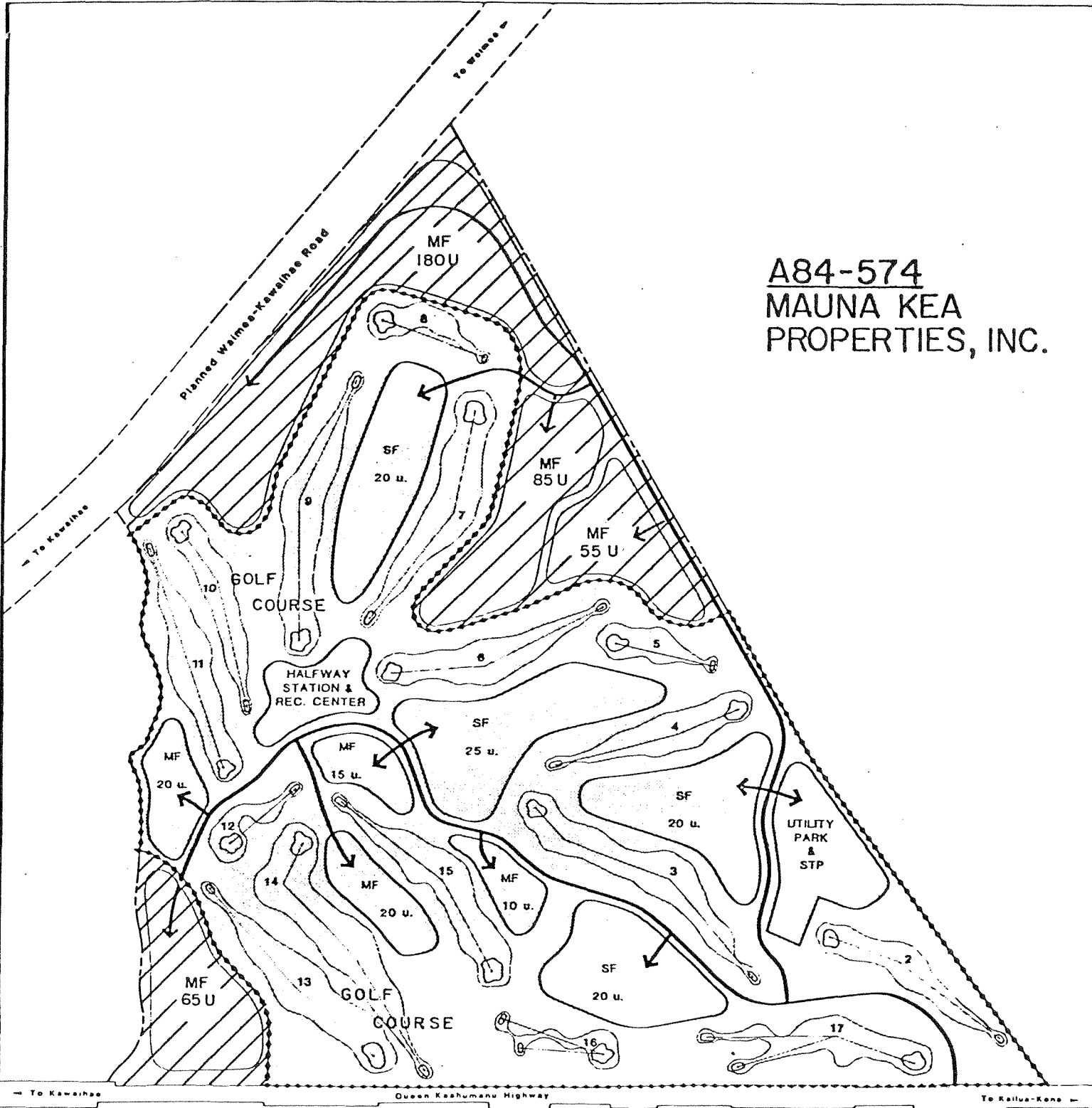
By   
FREDERICK WHITTEMORE  
Commissioner

By   
EVERETT CUSKADEN  
Commissioner

By   
RICHARD CHOY  
Commissioner



**A84-574**  
**MAUNA KEA**  
**PROPERTIES, INC.**



**LEGEND**

AREA RECLASSIFIED TO URBAN DISTRICT

AREA SUBJECT TO INCREMENTAL DISTRICTING

MF - MULTI-FAMILY  
 SF - SINGLE-FAMILY

U - UNITS

NORTH



0 200 400 600 800 1000

FEET

**EXHIBIT A**

HAPUNA BEACH RESORT  
 SOUTH KOHALA, HAWAII

BEFORE THE LAND USE COMMISSION  
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TMK: 6-2-01:62, 63, 78, 79 )	
and Portion of 51 )	
_____ )	

CERTIFICATE OF SERVICE


I hereby certify that a copy of the Land Use Commission 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

ALBERT LONO LYMAN, Planning Director  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

J. DOUGLAS ING, Attorney for Petitioner  
8th Floor, Hawaii Building  
745 Fort Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 6th day of May, 1985.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer

DOCKET NO. A84-574 - MAUNA KEA PROPERTIES, INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on

EVERETT KANESHIGE, Deputy Attorney General  
Department of the Attorney General  
State Capitol, 4th Floor  
Honolulu, Hawaii 96813

RONALD IBARRA  
Office of the Corporation Counsel  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

WILLIAM F. MIELCKE  
Vice President and Project Director  
Mauna Kea Properties, Inc.  
P. O. Box 218  
Kamuela, Hawaii 96743

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DEC 6 11 18 AM '94  
LAND USE COMMISSION  
STATE OF HAWAII

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

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A84-574
MAUNA KEA PROPERTIES, INC.	)	FINDINGS OF FACT,
To reclassify approximately 399	)	CONCLUSIONS OF LAW,
acres of land currently in the	)	AND DECISION AND
Agricultural District into the	)	ORDER
Urban District at Ouli 1, South	)	
Kohala, Hawaii, TMK: 6-2-01:62,	)	
63, 78, 79 and Portion of 51	)	
_____	)	

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

MAUNA KEA PROPERTIES, INC., a Hawaii Corporation ("Petitioner"), filed a Motion to Extend Time and Approve Second Increment on June 30, 1994, a First Amendment was filed on August 12, 1994, and a Second Amendment was filed on September 15, 1994 (cumulatively referred to herein as "Motion"), pursuant to Chapter 205, Hawaii Revised Statutes, ("HRS"), and Chapter 15-15, Hawaii Administrative Rules, ("HAR") to (1) extend time to show substantial progress on Phase I and to commence Phase II of the incremental redistricting; (2) approve the second increment of the South Kohala Resort, consisting of approximately 82.08 acres, formerly known as the Hapuna Beach Resort; and (3) obtain a release of the housing condition imposed by the Land Use Commission in its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985. The State Land Use Commission ("Commission"), having heard and examined the testimony, evidence and argument of counsel presented during the

hearing, and having reviewed Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the Office of State Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

#### FINDINGS OF FACT

##### BACKGROUND AND PROCEDURAL MATTERS

1. Petitioner filed a Petition to reclassify approximately 399 acres of land in the Agricultural District into the Urban District at Ouli 1, South Kohala, Hawaii (the "Property") on August 3, 1984. In its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985, the Commission granted the reclassification of Phase I of the Property (consisting of approximately 317 acres) from the Agricultural District to the Urban District. This phase was comprised of the golf course and approximately 150 units of single-family housing and/or condominium units.

2. The Commission also approved the remaining area of Petitioner's Property, referred to as Phase II, for incremental development. This phase was comprised of the balance of the residential units and consisted of approximately 82.33 acres for incremental development. With respect to Phase II, the Commission ordered that redistricting from the Agricultural to the Urban classification be granted upon a showing of substantial progress and completion of Phase I and development of the Hapuna Beach Prince Hotel.

3. The Commission further ordered that reclassification and incremental redistricting was subject to the condition that Petitioner provide low and moderate income housing opportunities for low and moderate income Hawaii County residents and employees by constructing and offering for sale, on its own or in cooperation with the Hawaii Housing Authority and/or the County of Hawaii, ten percent (10%) of the residential units to be developed on Phases I and II, or by contributing to the development of such housing outside the Property.

4. Petitioner filed a Motion for Extension of Time to show substantial progress on Phase I and for approval of Phase II and for Release of Housing Condition on February 7, 1990. Petitioner subsequently withdrew its request to release the housing condition on March 20, 1990.

5. The Commission, by its Order Approving Motion for Extension of Time, dated May 10, 1990, granted Petitioner an extension of time to substantially complete Phase I and to apply for redistricting of Phase II to December 31, 1993.

6. Petitioner filed a Motion to Extend Time and to Approve Second Increment on June 30, 1994. Petitioner filed a First and Second Amendment to its Motion to Extend Time and to Approve Second Increment on August 12, 1994 and September 15, 1994, respectively.

7. On September 7, 1994, a prehearing conference was conducted at the Old Federal Building, 335 Merchant Street, Conference Room 238, Honolulu, Hawaii with representatives of the Petitioner, County of Hawaii Planning Department ("County"), and

the Office of State Planning ("OSP"), present, and at which time the parties exchanged exhibits and witness lists.

8. On September 6, 1994, the County filed a Statement of Position of the County of Hawaii Planning Department and Planning Commission in Support of the Motion.

9. On September 20, 1994, the OSP filed Testimony of the Office of State Planning in support of the Motion.

10. On September 22, 1994, the Commission held a public hearing and evidentiary hearing on the Motion at the King Kamehameha's Kona Beach Hotel, Kamakahonu Ballrooms, 75-5660 Palani Road, Kailua-Kona, Hawaii. The hearing was held pursuant to notices published in the Hawaii Tribune-Herald, West Hawaii Today, and Honolulu Advertiser on August 11, 1994.

11. On September 22, 1994, the Commission entered into evidence a letter from Dennis Krueger attorney for Mauna Kea Community Association.

12. The Commission conducted a field trip to the Property on September 23, 1994.

#### DESCRIPTION OF THE PROPERTY

13. The Property consists of approximately 399 acres of land located at Ouli 1, South Kohala, Hawaii. The Property is a portion of the 539 acre South Kohala Resort, formerly known as the Hapuna Beach Resort. The South Kohala Resort is comprised of land which is located both makai and mauka of Queen Kaahumanu Highway. The Property which is the subject of Petitioner's motion is located on the mauka lands.



14. The Property is bounded by Queen Kaahumanu Highway, Waiulaula Gulch, the planned Waimea-Kawaihae Road and State-owned lands.

15. At the time of the reclassification of the Property in 1985, the Property consisted of five (5) separate parcels situated at Ouli 1, District of South Kohala, County of Hawaii, identified as Tax Map Key Numbers 6-2-01: portion of 51, 6-2-01:62, 63, 78 and 79. However, subsequent to the Commission's issuance of its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985, the Tax Map Key numbers for the Property changed.

16. The Property currently consists of ten parcels, identified as Tax Map Key Numbers 6-2-13:01 through 10, inclusive.

17. At the time of the reclassification of the Property in 1985, Petitioner was the lessee of four parcels of the Property under a ninety-nine (99) year lease from the fee owner Richard P. Smart Personal Trust. The County of Hawaii owned the remaining parcel (TMK No. 6-2-01:63). Petitioner subsequently obtained the fee simple interest in the parcels that were owned by the Richard M. Smart Personal Trust.

18. Petitioner subsequently transferred fee title to its lands to its affiliates, South Kohala Resort Corp. and Mauna Kea Beach Hotel Corp. South Kohala Resort Corp. is presently the fee owner of parcels identified as Tax Map Key No. 6-2-13:01 and 6-2-13:06. Mauna Kea Beach Hotel Corp. is the fee owner of parcels identified by Tax Map Key No. 6-2-13:05 and 6-2-13:09.

South Kohala Resort Corp. and Mauna Kea Beach Hotel Corp. are the fee owners of parcels identified as Tax Map Key No. 6-2-13:02, 03, 04 and 07.

19. The State of Hawaii is the fee owner of a small parcel identified as Tax Map Key No. 6-2-13:08, which is under the control and management of the County of Hawaii, Board of Water Supply, through Executive Order No. 2291, the State of Hawaii set aside this parcel, known as the Kaunaoa Tank Site.

20. The County of Hawaii is the fee owner of the parcel identified as Tax Map Key No. 6-2-13:10. All fee owners have consented to the filing of Petitioner's Motion.

21. In addition, Hawaii Electric Light Co., American Cable TV Investors 4, Ltd., Mauna Kea Development Corp., and GTE Hawaiian Telephone Company Incorporated hold easements in the Property. These parties have consented to the filing of Petitioner's Motion.

22. Petitioner is presently the developer of the South Kohala Resort under a development agreement with South Kohala Resort Corp and holds a proprietary interest in the Property.

MOTION FOR EXTENSION OF TIME

23. Petitioner requested an extension of time to show substantial progress on Phase I and to apply for Phase II redistricting from December 31, 1993 to September 30, 1994.

24. On May 10, 1990, the Commission issued its Decision and Order to grant Petitioner an extension of time to substantially complete Phase I and apply for redistricting of Phase II to December 31, 1993. At that time, Petitioner

anticipated that the Hapuna Beach Prince Hotel would be completed in 1992. However, Petitioner was unable to obtain project financing and building permits in sufficient time to complete the hotel by year end 1992. A downturn in Hawaii's tourism market and an excess supply of hotel rooms in West Hawaii made hotel construction financing and development questionable.

25. Petitioner missed the December 31, 1993 deadline because it was involved in extensive litigation with the Queen Emma Foundation over the development of an approximately 944 acre parcel in the South Kohala area. The litigation was not resolved until May 1994.

26. Petitioner missed the December 31, 1993 deadline in part because it was focused on the completion of the Hapuna Beach Prince Hotel in 1994.

#### PETITIONER'S PROGRESS ON PHASE I

27. Infrastructure development for the Property was scheduled to commence in four phases. The first phase, consisting of the construction of underground utilities and roads, was completed in July 1991. The second phase, which included the construction of additional roads, utilities, retention basins and a drainage system, was completed in August of 1992.

28. The third and fourth phases consisted of other offsite improvements such as the construction of a highway bridge and underpass, highway intersection and widening, detour road, resort service area, a 0.5 million gallon reservoir, wastewater treatment plant, and the undergrounding of existing utilities.

These projects were completed in April 1992. Petitioner also built a golf course halfway house and did landscaping and improvements at the resort entrance.

29. All on-site infrastructure has been completed and stubbed out to the residential parcels. The total cost of the infrastructure improvements is approximately \$50.9 million.

30. The Hapuna Beach Prince Hotel is located makai of the Queen Kaahumanu Highway on lands that had been previously classified in the Urban District. Petitioner obtained financing for construction of the Hapuna Beach Prince Hotel in early 1992. Construction of the hotel commenced in February 1992 and the hotel opened for business in August of 1994. Petitioner spent approximately \$151.5 million dollars to construct the hotel.

31. The Hapuna Golf Course is an 18 hole championship golf course. The construction notice to proceed was issued in November of 1989. Grassing of the golf course was completed in June of 1991 and the golf course opened in September 1992.

32. Petitioner has expended approximately \$21 million dollars to construct the golf course, and approximately \$7.4 million dollars to construct the golf clubhouse.

33. The driving range, club house, and two (2) holes are located on lands makai of the Queen Kaahumanu highway that were previously urbanized. Almost all of the remainder of the golf course is located in Phase I of the Property that was reclassified to Urban in 1985. A portion of the golf course holes are located on Phase II (2nd increment) of the Property.

34. The golf course design was modified because of changes in the location of the resort entry road off of Queen Kaahumanu Highway, as required by the State of Hawaii Department of Transportation. In order to meet vertical sight distance requirements, Petitioner was required to relocate the highway access which also caused the relocation of golf holes into Phase II of the Property.

35. As a result, Petitioner was required to obtain a use permit to develop portions of the golf course on lands within Phase II of the Property.

PROPOSAL FOR RECLASSIFICATION

36. Petitioner proposes to construct 550 single family and multi-family residential units on the Property, the same total number of units originally planned in 1985. As originally planned, Petitioner proposed to construct 100 single family units and 450 multi family units. Petitioner now proposes to develop the single and multi-family residential units in the following manner:

<u>Land Use</u>	<u>Phase I</u>	<u>Phase II</u>	<u>Total Units</u>
Single Family	80	75	155
Multi Family	195	200	<u>395</u>
TOTAL			550

37. Petitioner plans to develop the single-family and multi-family residential units in phases. Petitioner anticipates obtaining necessary government permits by 1995. Phase 1 of the residential development, to commence in 1996 and be completed by the year 2000, consists of 65 single family units and 30

multi-family units. Petitioner believes that the most attractive and marketable residential parcels within the Property are parcels B, C and F as designated in Petitioner's Exhibit "M".

38. Petitioner plans to develop 95 multi-family units and 45 single family units in Phase 2 of Petitioner's residential development schedule. Petitioner plans to construct the remainder of the residential units, the tennis recreational and commercial center in Phase 3, to commence in 2000.

39. The development schedule of the parcels is based upon marketing factors such as the view of the ocean and Kohala Coast, physical elevation above the golf course and noise considerations.

PETITIONER'S FINANCIAL CAPABILITY  
TO UNDERTAKE THE PROPOSED DEVELOPMENT

40. Petitioner will seek conventional financing for the single and multi-family residential projects necessary to complete the first increment and for single and multi-family projects in the second increment from local, national, and international banks and lending institutions. If local economic, real estate, and financial factors make conventional financing difficult or impractical, Petitioner may seek joint venture partners to assist in developing the project through equity or other contributions. Petitioner may also seek financing from its parent corporations and owners by way of loans or capital contributions.

RELEASE OF HOUSING CONDITION

41. The Commission's Decision and Order in this docket dated May 6, 1985, ordered that reclassification and incremental redistricting was subject to the condition that Petitioner provide low and moderate income housing opportunities by constructing and offering for sale or lease, on its own or in cooperation with the Hawaii Housing Authority and/or the County of Hawaii, ten percent (10%) of the residential units to be developed on Phases I and II, or by contributing to the development of such housing outside the Property.

42. By agreement dated January 26, 1990 between Petitioner, the County of Hawaii and the Hawaii County Housing Agency, Petitioner agreed to pay an "in lieu" amount of \$2,043,612 to satisfy the condition imposed by the Commission in its Decision and Order dated May 6, 1985.

43. The "in lieu" amount was calculated based upon satisfying housing needs for both the 350 unit hotel and the 550 residential units.

44. Petitioner paid \$2,043,612 in February of 1990 to the County of Hawaii as required under the Agreement. A Release of Agreement was executed by all parties and filed with the Bureau of Conveyances.

45. The Housing Finance Development Corporation of the State of Hawaii agrees that Petitioner's contribution to Hawaii County fulfills the affordable housing condition.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding not adopted by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the Commission Rules, under chapter 15-15, HAR, this Commission finds upon the clear preponderance of evidence that Petitioner has made a good faith effort towards development of Phase I, and that an extension of time to September 30, 1994, to show substantial progress on Phase I and to apply for Phase II redistricting is reasonable and non-violative of Section 205-2, HRS, and chapter 15-15, HAR.

The Commission further finds that Petitioner has substantially completed Phase I of the Property, including the infrastructure improvements and golf course, and has developed the Hapuna Beach Prince Hotel in accordance with the approved incremental plan.

The reclassification of Phase II of the Property consisting of approximately 82.08 acres of land at Ouli, South Kohala, State of Hawaii, from the Agricultural District to the Urban District conforms to the standards for establishing Urban



District Boundaries, is reasonable, not violative of Section 205-2, HRS.

The Commission further finds that Petitioner has complied with the condition imposed by the Commission in its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985 for Petitioner to provide housing opportunities for low and moderate income Hawaii County families.

ORDER

IT IS HEREBY ORDERED that Petitioner's Motion to Extend Time and Approve Second Increment is approved. Petitioner is granted an extension of time to September 30, 1994 to show substantial progress and completion of Phase I and to apply for redistricting of Phase II.

IT IS FURTHER HEREBY ORDERED that the condition imposed by the Commission in its Findings of Fact, Conclusions of Law and Decision and Order dated May 6, 1985, requiring Petitioner to provide housing opportunities for low and moderate income Hawaii County families, is hereby released.

IT IS ALSO HEREBY ORDERED that lands within Phase II of the Property, consisting of approximately 82.08 acres and more specifically identified as TMKs 6-2-13: por. 1, por. 2, and por. 7, and described in Exhibit A attached hereto and incorporated herein by reference, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and the District Boundaries are amended accordingly, subject to the following 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 timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

5. 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 that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

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

DOCKET NO. A84-575 - MAUNA KEA PROPERTIES, INC.

Done at Honolulu, Hawaii, this 6th day of December 1994,  
per motion on December 1, 1994.

LAND USE COMMISSION  
STATE OF HAWAII

By Allen K. Hoe  
ALLEN K. HOE  
Chairperson and Commissioner

By Allen Y. Kajioha  
ALLEN Y. KAJIOHA  
Vice Chairperson and Commissioner

By (absent)  
EUSEBIO LAPENIA, JR.  
Vice Chairperson and Commissioner

By M. Casey Jarman  
M. CASEY JARMAN  
Commissioner

By Lloyd F. Kawakami  
LLOYD F. KAWAKAMI  
Commissioner

By Joann N. Mattson  
JOANN N. MATTSON  
Commissioner

By (conflict)  
RENTON L. K. NIP  
Commissioner

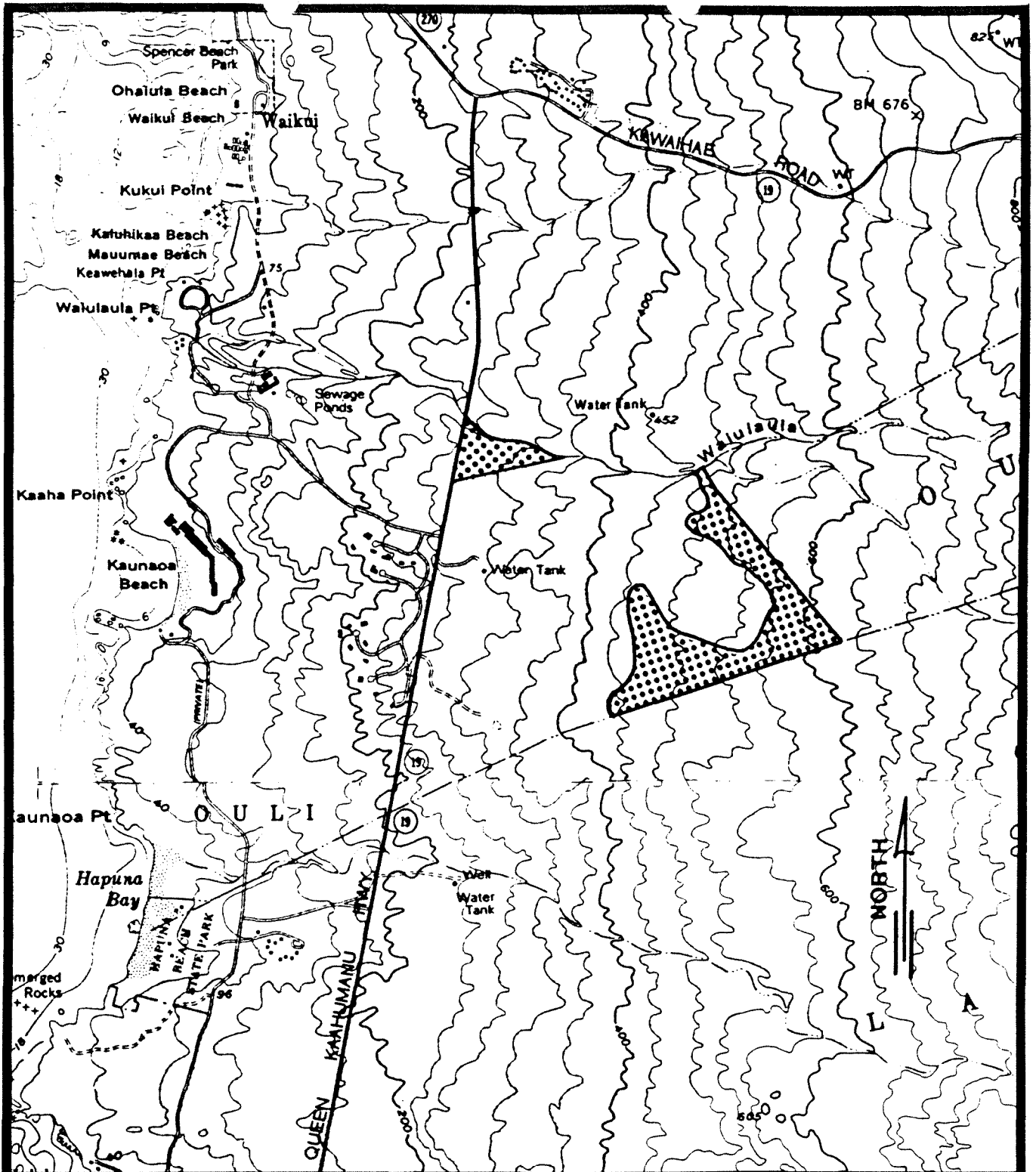
Filed and effective on  
December 6, 1994

By Trudy K. Senda  
TRUDY K. SENDA  
Commissioner

Certified by:

Elton Wada  
Executive Officer

By Elton Wada  
ELTON WADA  
Commissioner



**LOCATION MAP**

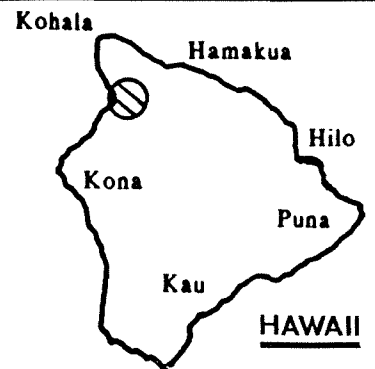
Docket No. A84-574 / MAUNA KEA PROPERTIES, INC.  
(Second Increment)

TAX MAP KEY NO: 6-2-13: por. 1, por. 2, & por. 7

OULI, SOUTH KOHALA, HAWAII

SCALE: 1" = 2,000 ft.±

 APPROVED AREA



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A84-574  
MAUNA KEA PROPERTIES, INC. ) CERTIFICATE OF SERVICE  
To reclassify approximately 399 )  
acres of land currently in the )  
Agricultural District into the )  
Urban District at Ouli 1, South )  
Kohala, Hawaii, TMK: 6-2-01:62, )  
63, 78, 79 and Portion of 51 )  
\_\_\_\_\_ )

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:

NORMA WONG, 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. J. DOUGLAS ING, ESQ., Attorney for Petitioner  
Watanabe, Ing & Kawashima  
5th Floor, Hawaii Tower  
745 Fort Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 6th day of December 1994.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer