BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of PALACE DEVELOPMENT CORPORATION, a Hawaii corporation, and HAWAII KA'U AINA, a Hawaii general partnership To Amend the Agricultural District Boundary into the Urban District for approximately 900 acres and to Amend the Conservation District Boundary into the Urban District for approximately 2,420 acres, at Kahuku, Ka'u, Island, County and State of Hawaii, Hawaii Tax Map Key Nos. 9-2-1: por. 72, por. 75 and por 76.	Docket No. A88-630 PALACE DEVELOPMENT CORPORATION, a Hawaii corporation, and HAWAII KA'U AINA, a Hawaii general partnership

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.

JUN - 4 1991 by _____
Date Executive Officer

LAND USE COMMISSION
STATE OF HAWAII
JUN 4 8 15 AM '91

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

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

PALACE DEVELOPMENT CORPORATION, a Hawaii corporation, and HAWAII KA'U AINA, a Hawaii general partnership (hereinafter collectively referred to as "Petitioner") filed a petition and amendment to petition (hereinafter collectively referred to as "Petition") pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended ("Commission Rules"), to amend the Land Use District Boundary to reclassify approximately 900 acres of land from the State Land Use Agricultural District to the State Land Use Urban District and approximately 2,420 acres of land from the State Land Use Conservation District to the State Land Use Urban

District situate at Kahuku, Ka'u, Island, County and State of Hawaii, Hawaii Tax Map Key Numbers: 9-2-1:por. 72, por. 75 and por. 76 (hereinafter "Property"), to develop a resort and marina, with a regional airport and support community connected by access roadways. The Land Use Commission of the State of Hawaii (hereinafter "Commission"), having heard and examined the testimony, evidence and arguments of the parties presented during the hearings and the parties' proposed Findings of Fact, Conclusions of Law and Decision and Order, and responses or exceptions thereto, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

FINDINGS OF FACT

Procedural Matters

1. Petitioner is comprised of PALACE DEVELOPMENT CORPORATION, a Hawaii corporation, whose principal place of business is located at Central Pacific Place, 220 South King Street, Suite 1201, Honolulu, Hawaii 96813, and HAWAII KA'U AINA, a Hawaii general partnership, whose principal place of business is located at 1993 South Kihei Road, Suite 208, Kihei, Maui, Hawaii 96753, who have entered into a joint venture agreement to develop the Property.

2. Petitioner HAWAII KA'U AINA is a general partnership consisting of three Hawaiian partnerships and three individual trusts formed for the purpose of developing the Property.

3. Petitioner filed the Original Petition which included an Environmental Impact Statement on October 4, 1988. On October 27, 1988, and by Order filed on November 23, 1988, the Commission accepted Petitioner's Environmental Impact Statement, and accepted the Petition for filing as of October 27, 1988.

4. Petitioner amended the Original Petition on December 2, 1988, to increase by 76 acres the land to be reclassified from the State Land Use Conservation District to the State Land Use Urban District from 2,344 acres to 2,420 acres to include land for roadway access.

5. On December 29, 1988, a petition to Intervene was filed by Glen M. Winterbottom, and on January 3, 1989, a petition to Intervene was filed for Pa'a Pono Miloli'i, Inc. by its president Gilbert Kahele (hereinafter "Intervenors").

6. On January 27, 1989, and by Order filed on February 28, 1989, the Commission granted intervenor status to Glen Winterbottom and Pa'a Pono Miloli'i, Inc., through Gilbert Kahele.

7. On January 5, 1989, a petition to Intervene was filed by Elizabeth Ann Stone. On January 27, 1989, and by Order filed March 1, 1989, the Commission denied Elizabeth Ann Stone's petition to Intervene.

8. On January 13, 1989, a prehearing conference was conducted at the Commission's office.

9. The Commission conducted hearings on the Petition on October 27, 1988, January 27, 1989, March 10, 1989, March 22, 1989, March 23, 1989, April 6, 1989, April 7, 1989, July 13, 1989, July 14, 1989, September 7, 1989, September 8, 1989, February 23, 1990, May 21, 1990, May 22, 1990, July 26, 1990, July 27, 1990, October 11, 1990, October 12, 1990, November 28, 1990, February 7, 1991 and February 8, 1991, pursuant to notice(s) published in the Hawaii Tribune-Herald and the Honolulu Advertiser on December 19, 1988.

10. The Commission allowed the following persons to testify as public witnesses: Gilbert Kahele, Glen Winterbottom, Robert Makuakane, Eusebio Lapenia, Sandra Blanco, Aurora Blanco, James Kuahiwinui, Barbara Meheula, Clyde Crawfoot, Beatrice Hague, Franco Jose Longakit, Alfred Galeza, Sr., Helen Tayamen, Harry Ruddle, Ruth Bass, Patricia Poppe, Herbert Kaopua, Edison Keomaka, Mel Kalama, Walter Fisher, Boyd Christensen, Nelson Ho, Elaine Fountain, Edward Crook, Bert Thomas, Clinton Taylor, George Yokoyama, Anna Cariage, Patricia Baxter, Lily Kong, Jessie Kaopu, George Hua, Jr., Beverly Byouk, Irene Hughes, Walt Taylor, George Manoha, William Kalewainui, Mona Paulo, Elaine Quimby, Yaeko Aoki, Jack Delaney, Dolores McMan, Jessie Kay, Maitland Akau, Francis Hogan, James Kalili, Jr., Jerry Reiman, Elizabeth Cole, Jonathan Cole, Glenn Fletcher, Julia Kaupu, Miriam Baker, Elizabeth Ann Stone, Moanikeala Akaka, Lois Tyler and James S. Greenwell.

11. The Commission accepted into evidence timely and untimely written testimonies or letters from numerous other persons.

12. On March 8, 1990, Petitioner proposed an alternative development schedule, which would reduce the acreage of the Property to be redistricted from the Conservation District to the Urban District, from approximately 2,420 acres to 732 acres, and from the Agricultural to the Urban District from 800 to 440 acres.

DESCRIPTION OF PROPERTY

13. The Property is located within the Kahuku Ahupua'a, District of Ka'u, near the southern tip of the Island of Hawaii, approximately 6.5 miles northwest of the intersection of the Ka Lae Point (South Point) Road and Mamalahoa Highway. The Property is approximately 12 miles southwest of Na'alehu, about 40 miles south of Kailua-Kona and 77 miles southwest of Hilo.

14. The Property is situated makai of and along the Mamalahoa Highway and extends to the coastline for a distance of approximately 5.4 miles. At the shoreline, the Property extends 6.4 miles from the Manuka-Kahuku boundary at Humuhumu Point on the northwest to Kaimu'uwala Point on the southeast. The Property is bounded on the west side by the Manuka Forest Reserve and abuts various subdivisions along the northwest boundaries. Lands owned by Sea Mountain Hawaii Ranch Co., Inc. lie to the east, and Bishop Estate lands lie to the south.

15. The nearest communities of Na'alehu, Waiohinu and Pahala are comprised of low density urban uses as well as agricultural and rural uses.

16. There are approximately 12,465 lots located in five adjacent substandard non-conforming subdivisions. These lots range from one acre to three acres in size. A general store, service station, real estate office and community center service these subdivisions.

17. The Property is currently undeveloped, consisting entirely of a'a and pahoehoe lava flows. Petitioner's final Environment Impact Statement, prepared by Belt Collins & Associates and other individual consultants (hereinafter collectively referred to as "BCA"), indicated the presence of other geological features especially in the coastal east end of the Property, such as sea cliffs, littoral cones, black cinder and white coralline sand beaches, and anchialine ponds of various sizes on the Property, and especially in the coastal and east end. A number of littoral cones are located east of Pohue Bay. Sea cliffs are located along approximately thirty percent (30) of the coastline and have an average elevation of about thirty (30) feet above sea level. BCA observed two (2) large sea caves shoreward of Pu'u Kahakahakea. A barren lava landscape with occasional forested kipukas (older section of a lava field surrounded by new flows) in the upper elevations dominate the inland areas.

18. The Property is located on the southwest flank of Mauna Loa approximately six miles northwest of Ka Lae (South Point). This flank is subject to coverage by lava flows issuing from Mauna Loa's Southwest Rift Zone.

19. BCA determined that the oldest known historic eruption of Mauna Loa was in 1843 (beginning of historic record). Since that eruption, there have been 39 known eruptions of Mauna Loa. Twenty-three (23) of these eruptions have been at the summit of Mauna Loa and have caused no damage to private property. There have been seven known eruptions (all of significant duration) in excess of 12 days, with most lasting more than twenty (20) days at the northeast rift zone with two historic eruptions occurring on the north flank of Mauna Loa in 1859 and 1877.

20. The southwest rift of Mauna Loa has produced 7 eruptions (the most recent was in 1950). Three of the lava flows, the 1868, 1887 and 1907 entered on or near the Property. The 1868 flow just entered the northeast corner of the Property. The 1887 flow ran along the eastern side of the Property and serves as a natural barrier against lava flows approaching the proposed resort from the east. The 1907 flow terminated at approximately the makai or oceanside boundary of the Hawaiian Ranchos Subdivision. All previous studies of Mauna Loa's historic eruptive activity have noted an uprift migration of the vent location away from the Property. There

has been no eruption activity on the Property for over eighty (80) years.

The recurrence interval of Mauna Loa rift zone eruptions since 1843, is approximately once every eight (8) years until 1950 (gaps were 3-12 years). Since 1950 there has been only one (1) rift eruption (1984). This is a strong indication that the high rate of eruption activity prior to 1950 may be decreasing, and the period of high lava flow production prior to 1950 may be anomalous.

A study done by Lockwood and Lipman (1987) indicated that there were no lava flows in the Property area for at least 650, and possibly as much as 1,000 or more years prior to the 1868 flow. In the context of the prehistoric record, lava flow inundation to the Property has been rare. The three flows that did occur near the Property may have been anomalous in the recent history of Mauna Loa.

21. The USGS divides the island of Hawaii into nine lava flow hazard zones with Zone 1 having the highest lava flow risk and Zone 9 having the lowest. The Property is located in Zone 2, which is defined as:

> "several areas that are adjacent to and down slope from the active rift zones of Kilauea and Mauna Loa and therefore subject to burial by lava flows of even small volume erupted in those rift zones . . . On Mauna Loa, long and voluminous lava flows have repeatedly entered the areas included in Zone 2, covering about five percent (5%) of those areas since 1950 and about 20 percent (20%) within historical time."

Changes in the magnitude of hazard within a zone commonly occur along sharp topographical features, and local topographical features in a zone may have a magnitude of hazard very different from that of the zone as a whole. The magnitude of hazard assigned to a zone applies only to that zone as a whole, and differences within it are not shown. Such differences can best be determined by specific site studies. Studies pertaining to local topography are most appropriately undertaken at the detailed site design stage of the planning process.

22. The Property has not been used for agricultural purposes. BCA anticipates the development will have no adverse impact upon agricultural resources. The U.S. Department of Agriculture Soil Conservation Service (December 1973) has classified soils (a'a, pahoehoe, cinder land and beach) on nearly the entire portion of the Property as belonging to Capability Class Rating of VIII, making them completely unsuitable for cultivation. The Land Study Bureau's Overall Master Productivity Rating for agricultural use is Class E, indicating poor productivity potential for most agricultural uses. The Property is not classified as either Prime Agricultural Land, "Unique" Agricultural Land or "Other Important" Agricultural Land by the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

23. There are no streams or natural drainage ways located within the Property. The average slope of the Property between the shoreline and the 240 foot elevation is 3 degrees, or approximately five to six percent (5% - 6%). The slope above the Property is approximately five degrees (5°), or eight percent (8%).

24. Significant geologic faults are located at both Kealakekua and Ka Lae which define the boundaries of this 40-mile wide geological region.

25. Petitioner's consultant Dames & Moore located ground cracks that run parallel to the coastline along portions of the Property's shoreline and at some inland areas of the western portion of the Property.

26. Based upon a combination of investigative techniques, including observation of physical characteristics, depth probing, geophysical measurements, paleomanetic age dating and geologic survey data, Dames & Moore described the ground cracks as follows:

a. Cracks are generally two feet or less in width, with a few cracks with widths up to 4.5 feet.

b. Displacements are characterized by horizontal movement normal to the axis of the ground cracks, with the downslope side having moved away from the upslope side.

c. The cracks formed over a long period of time over a period of several hundred to 500 years ago. The cracks are caused by simple tensional fracturing associated with the

relief of deformational stresses due to densification or readjustment of clastic debris underlying the lava flows. It is also possible that the release of stress and formation of existing cracks may have been triggered by seismic activity of high magnitudes. However, it appears that earthquakes registering 6.5 on the Richter Scale at Kealakekua (1951) and Kalapana (1989) did not result in observable or measurable adjustments.

d. Future opening and closing of cracks will likely occur at very slow rates and in very small increments, and along existing crack systems. There is no evidence of recent movement of ground cracks. New loading imposed by the addition of structures is not considered to be a likely cause of significant additional movement.

27. Climatic conditions at Kahuku are similar to those along the South Kona coast. Coastal temperatures vary between 75 and 85 degrees Fahrenheit with cooler temperatures at the higher elevations. Wind direction is characterized by northeastern and east-northeasterly trades with a mean wind speed of 14 miles per hour. Rainfall averages 30 inches per year along the coastal areas and increases to 50 inches per year at higher elevations.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

28. Petitioner originally proposed to develop the Property as an extensive visitor destination area consisting of two separate resorts contained on a total of 2,344 acres. One

resort component, the Hawaiian Palace Resort, would contain a total of 1,500 visitor units, including 900 hotel rooms distributed between two hotels, 375 luxury villa apartments, 225 garden apartments, and 727 residential units, a 400 slip marina, an 18-hole championship golf course, tennis facilities, equestrian facilities, including a polo field, and a cruise ship docking facility. The second resort component, the Hawaii Ka'u Aina Resort, would include 1,500 visitor units, including three hotels with a total of 1,200 rooms and 200 multi-family condominium units and 100 detached units, and 200 residential units, two 18-hole golf courses, a petroglyph park and cultural center and a public boat launching ramp. This development would have required reclassification of 2,344 acres of land from the State Land Use Conservation District to the State Land Use Urban District and 900 acres of land from the State Land Use Agriculture District to the State Land Use Urban District. On December 2, 1988, Petitioner amended the Original Petition to increase by 76 acres the area to be reclassified from the State Land Use Conservation District to the State Land Use Urban District from 2,344 to 2,420 acres. The increase was due to Petitioner's desire to include the portions of the access road in the Conservation district to be reclassified to the Urban District.

29. On March 8, 1990, Petitioner proposed an alternative development schedule ("Development Plan"), pursuant to which Petitioner would first develop the Hawaiian Riviera

Resort within five years and subsequently develop the Ka'u Aina Resort at some future time. Petitioner proposes to develop only the portions of the land owned by Petitioner comprising the Hawaiian Palace Resort located in the conservation and agricultural district totalling approximately 1,172 acres. The Development Plan includes development of the Hawaii Ka'u Aina Resort at a later date for which Commission approval will be required.

30. Under the Development Plan, Petitioner designated 656 acres for the resort area, 340 acres for the support community, 100 acres for a regional airport, and 76 acres for a portion of the roadway presently in the State Land Use Conservation District (collectively the "Project"). Petitioner believes the Project will be economically feasible with either a marina or other water-related feature which, in conjunction with the golf course, tennis facility, equestrian facility, cruise ship docking facility, commercial promenade and the hotel and residential sites will form the high-activity core of the Project.

Hotel Units

31. The Development Plan includes a unique resort complex comprised of three grand luxury five-star hotels, with a total of 950 to 1,050 rooms surrounding the proposed marina. Two hotels will be located on opposite sides of a harbor entrance and the third hotel is located on the main promenade.

32. Petitioner proposes to construct two hotels, totaling no more than 650 rooms within five years after obtaining of County zoning approval for the Project. Construction of the third hotel would begin after completion of the first hotel.

33. Petitioner intends to construct a resort residential component comprised of 250 full-service luxury villas, 300 residential condominium units and 166 residential lots.

34. Petitioner intends to construct other major components such as a cruise ship docking facility, a 200-slip marina and support facilities, a marina retail center and promenade consisting of 120,000 square feet of leasable retail commercial space serving as a high activity center of the resort.

35. Petitioner intends to construct an 18-hole championship golf course, an 18-court tennis complex and stadium, a polo field, riding stables, a regional airport, a residential support community and a public boat ramp. Petitioner will create an Open space Shoreline Corridor consisting of a series of parks along the coastline of the Property to ensure the preservation of coastal areas, anchialine ponds, and archaeological sites. Petitioner will design the proposed swimming lagoons in a manner similar to the lagoon at Magic Island on Oahu. Petitioner will excavate the lagoons mauka of the existing shoreline. Large barrier rocks

at the mouth of the lagoon will prevent the loss of beach sand while enabling adequate circulation of water in the lagoons through circulation channels connected to the ocean at either end of the lagoon.

Development Timeframe

36. Petitioner will construct various components of the on-site infrastructure on all portions of the Property within five (5) years after obtaining County zoning approvals for the Project. Petitioner will proceed to construct the Project during the following fifteen (15) years at a rate dependent upon absorption and market factors.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

37. Petitioner HAWAII KA'U AINA had a net worth of $10,785,000 as of September 15, 1988, with the majority of this figure attributable to the value of HAWAII KA'U AINA's ownership of approximately 17,572 acres of land based upon the original cost of land owned in fee, excluding appreciation.

38. Petitioner PALACE DEVELOPMENT CORPORATION had a net worth of $7,420,000 as of June 30, 1988, based upon the original cost of 3,250 acres of land owned in fee.

39. The individual partners of HAWAII KA'U AINA and PALACE DEVELOPMENT CORPORATION funded the planning and pre-development phases of the Project through short-term borrowing from Sleipner UK, Ltd. merchant banking company. Dan Norske Bank, formerly Bergen Bank, and Bankers Trust Company

have expressed serious interest in providing construction financing for the Project.

40. Petitioner estimates the total construction costs for all aspects of the Development Plan, including infrastructure, mitigation measures and contingencies to be between $700,000,000 and $980,000,000.

41. Petitioner intends to secure one or more joint venture partner(s) to provide $100,000,000 as additional equity following subsequent zoning and permit processes to assist in financing pre-construction costs for the Project. Petitioner intends to raise the additional equity either through intermediate investors, a syndication of banks and/or an international construction company as a junior partner of Petitioner's Hawaii-based construction company for the Project.

42. Petitioner anticipates that following the issuance of permits necessary for development, the construction loan would have a term of approximately five to seven years. The construction loan would bear interest at a floating rate approximately one to two percentage points above the Prime or Base Rate in effect from time to time.

43. Petitioner intends to repay the construction loan amount through sales of condominiums and residential lots and permanent financing of the hotels, commercial complex, golf course and other income-producing sources on a fully amortized basis.

STATE AND COUNTY LAND PLANS AND PROGRAMS

State Programs

44. A major portion of the Property is situated within the State Land Use Conservation District, while the support community and airport areas are within the State Land Use Agricultural District as reflected on Land Use District Boundary Maps H-22 (Pohue Bay), H-23A (Puu Hou), and H-33 (Kahuku Ranch).

45. Adjoining lands to the north of the Property are within the State Land Use Agricultural District; lands to the west of the Property in the Conservation District have been designated as the Manuka Natural Area Reserve. Lands to the east of the Property are designated Agricultural and Conservation.

46. The Project conforms with the County of Hawaii's General Plan which designates the area as a major resort destination area. The County of Hawaii redesignated the Property from Conservation and Extensive Agriculture to Resort, Medium Density and Low Density Urban, Industrial, and Open Space designations on the Hawaii County General Plan in Ordinance 88-118.

47. The Project is situate within the County's Agricultural-20 acre (A-20a) and Open zone (O) districts. Petitioner will request necessary zoning changes following reclassification.

48. Shoreline portions of the resort area of the Property are located within the Special Management Area (SMA) of the Coastal Zone Management Program administered by the County of Hawaii. The objectives of this program as expressed through Chapter 205A, HRS, and Rule 9 of the Hawaii County Planning Commission are the protection of coastal recreational resources, historical and cultural resources, scenic values, coastal ecosystems and coastal dependent economic uses. An SMA Permit would be necessary for the development of the Property.

NEED FOR THE PROPOSED DEVELOPMENT

Hotel Units

49. Petitioner's strategy is to attract international luxury travelers from locations such as Europe, the Orient, and the Americas. Petitioner's marketing consultant Pannell Kerr Forster ("PKF") projects that these visitor markets will increase through the 1990s given the strong desire for travel to exotic destinations, extended vacation periods and strong exchange rates.

50. Petitioner has reached tentative understanding with three leading international operators, Hilton International, Orient Express from London, and Miramar representing Europe, Asia and the Americas to attract growth in international tourism for ultra luxury destination resorts.

51. PKF expects that each hotel will have the following occupancy rates and average daily rates based on an assumed unit count of 950 rooms.

	350 Room Anchor Hotel (1994)		250 Room Marina Hotel (1994)		350 Room Anchor Hotel (1995)	
Year	Occupancy	*ADR	Occupancy	*ADR	Occupancy	ADR
1994	60.2%	$344	59.4%	$345	-	-
1995	63.3%	$381	62.6%	$382	63.3%	$381
1996	69.4%	$408	68.5%	$410	69.4%	$408
1997	75.0%	$433	74.7%	$434	75.0%	$433
1998	75.0%	$464	79.3%	$465	75.0%	$464
1999	75.0%	$487	79.3%	$489	75.0%	$487
2000	75.0%	$512	79.3%	$513	75.0%	$512
2001	75.0%	$537	79.3%	$539	75.0%	$537
2002	75.0%	$564	79.5%	$566	75.0%	$564
2003	75.0%	$592	79.5%	$594	75.0%	$592

* = Average Daily Rate

Residential and Apartment Units

52. Petitioner expects to attract the buyers of the residential lots and residential condominiums from Asia, Europe and the Americas. PKF indicated that demand for resort residential units and lots has risen sharply in recent years with further room for absorption in the near future. PKF projects the following market absorption of the residential condominiums and residential lots as follows:

	SALES ABSORPTION					
	1993	1994	1995	1996	1997	1998
Luxury Villas	50	116	53	40	27	14
Marina Condominiums	75	165	69	45	21	-
Residential Lots	17	42	33	50	41	-

Commercial Areas

53. Petitioner has designed the marina retail commercial complex as a high activity center for the Project,

with the marina hotel integrated with the retail activities. Petitioner expects to generate most of the revenues derived for the retail complex from hotel guests and residents of the luxury villas and condominiums. Petitioner also expects to generate revenues from cruise ship passengers and day-time visitors on circle island drive tours. PKF predicts the marina retail complex will generate following sales:

Year	Retail Sales/Square Feet	Food & Beverage Sales/Square Feet	Marina Supportable Commercial Space
1994	$ 932	$ 877	24,600
1995	978	921	52,300
1996	1,027	967	68,900
1997	1,079	1,015	81,100
1998	1,133	1,066	86,100
1999	1,189	1,119	89,600
2000	1,249	1,175	89,600
2001	1,311	1,234	89,600
2002	1,377	1,295	89,600
2003	1,445	1,360	89,600

54. Petitioner will construct most of the retail establishments within the marina retail complex. Petitioner desires to build 120,000 square feet of gross leasable area initially in order to avoid disruption of marina operations that would occur if the retail center were built in incremental stages. Petitioner would use unleased portions of the retail center during the retail demand growth period for a museum, theater, conference or meeting facilities.

55. PKF predicted the following patronage and average green fees of the golf course operations:

Year	Total Rounds	Average Green Fees
1994	22,442	$65
1995	39,104	67
1996	46,252	70
1997	53,400	74
1998	56,893	78
1999	58,015	81
2000	58,015	86
2001	58,015	90
2002	58,015	94
2003	58,015	99

Petitioner expects to derive income from golf course use by resort and residential guests, with approximately ten percent (10%) play from off-resort patronage.

56. Petitioner considers the 18-court tennis complex, including one championship tennis stadium suitable for international tournament play, essential amenities for the resort guests and should provide some level of profitable operations for the resort. PKF predicts the following forecast for the tennis complex patronage and court fees:

Year	Total Games	Court Fees
1994	6,079	$10
1995	9,776	11
1996	11,563	11
1997	13,350	12
1998	14,223	12
1999	14,504	13
2000	14,504	14
2001	14,504	14
2002	14,504	15
2003	14,504	16

IMPACT OF THE PROPOSED DEVELOPMENT

Nearshore and Marine Environment

57. BCA describes the shoreline of the Property as lava cliffs interspersed with occasional sand or cobble strewn beaches.

58. The underwater topography is characterized by a narrow basaltic shelf 50 to 70 feet wide terminating in a shelf break and steep sandy slope extending to abyssal depths. Offshore depths greater than 200 feet occur within 100 feet from the shore.

59. The edge of the coral-covered shelf along much of the shoreline is marked by steep vertical basalt cliffs. In some areas of the coastline, extensive deposits of shoreline basaltic sand enter the ocean and form a sediment layer on the nearshore "reef". Topographic features such as caves and arches are common in areas where lava flows have reached the ocean.

60. BCA's analysis of marine chemistry indicates that the offshore waters are ocean waters typical of the west coast of Hawaii with indications of groundwater extrusion. All other water quality parameters generally fall within the Department of Health classification AA for wet and dry environments.

61. BCA observed a typical marine biological community of the offshore environment of West Hawaii with seventeen (17) coral species identified in the nearshore zones, and 100 fish species in all reef areas off the Project.

62. BCA observed numerous small endangered green sea turtles in the nearshore regions during a survey, with no nesting sites on any of the beaches within the Property.

63. Permanent direct impacts of development on the nearshore and marine environment include alteration of the existing shoreline for entrance channels to the proposed marina and inland swimming lagoons and the construction of a public boat launching ramp. Construction of the marina will involve the excavation of basaltic rock inland of the existing shoreline, as will the development of two inland swimming areas, one on each side of the marina entrance. BCA believes that operation of the marina will not adversely affect water quality, although ground water or brackish water will be more concentrated in the marina.

64. Petitioner will undertake excavation of the marina entirely on dry land approximately 200 feet from the existing shoreline which Petitioner believes will have little or no effect on the marine environment. Petitioner will implement monitoring programs to insure that marine mammals are not in the immediate area during blasting associated with marina construction or to restrict such blasting to the months when whales are not present within the deep nearshore waters.

65. Petitioner will construct the entrance channel after digging the marina resulting in a temporary increase in turbidity of nearshore waters. BCA predicts that the high energy regime of the entire coastline, ground water flushing,

the steep off shore slope, and the tendency of sediments to drift offshore will rapidly disburse suspended materials leaving no permanent settlement on the sea floor. Petitioner will install siltation curtains to minimize the disbursal of sediment.

66. Petitioner will place fixed moorings consisting of two concrete or steel pile supported breasting platforms for temporary cruise ship dockings at a distance within approximately 250 feet of the shoreline. Petitioner will also construct a light pile access pier for pedestrians and small vehicles to provide a link between the ship and the shore.

Anchialine Ponds

67. BCA identified and classified by type according to overall structure and bottom composition, a total of twenty (20) anchialine ponds within the Property. The anchialine ponds presently exist in an unmodified state.

68. BCA found all four shrimp and three snail species classified by Maciolek and Brock as representative pond organisms in the anchialine ponds.

69. BCA expects that construction activities will not substantially impact the anchialine ponds because of the lack of existing topsoil in the majority of the construction area which reduces the potential for particulate emissions, natural flushing of the ponds of fine particulate matter generated by the construction, and the prevailing wind patterns which will blow the particulate matter away from the ponds.

70. BCA does not expect measurable degradation of nearshore and anchialine pond water quality from irrigation of the golf courses with treated sewage effluent due to absorption of nutrients by plants, unrestricted circulation of the offshore area by tidal and wind driven currents, meso-scale eddies, wave action, rapid dilution and water exchange. Petitioner intends to implement a monitoring program which includes water sampling and biotic surveys to assure that the ponds are not negatively impacted during construction or operation of the Project.

Offshore Fishery Resources

71. Petitioner will operate a 200-slip marina as a recreational marina and not a major berthing facility for commercial fishing boats. Petitioner will design the marina to accommodate recreational boats in the 25 to 50-foot size to meet the demand from visitors of the resort for recreational boating opportunities, and larger sailboats and motorized vessels up to 120 to 150 feet in length.

72. Pursuant to General Plan Ordinance No. 88-118, Petitioner established a Marine Resource Advisory Committee to address the concerns of the commercial fishermen from Miloli'i and to provide recommendations for monitoring the potential marina and ocean-related activities and to develop a coastal marine and fishery resource with appropriate state and federal agencies.

73. At the recommendation of the Marine Resource Advisory Committee, Petitioner commissioned a detailed study of coastal biomass resources along with a water quality monitoring program along a two mile area north of the Property to establish additional baseline data and to conduct periodic studies throughout the construction and operation phases of the Project.

Drainage

74. There are no streams or natural drainageways located within the boundaries of the Property. Due to the existing topography, varying between smooth expanses of pahoehoe lava and rugged a'a rubble, no significant runoff occurs. The increase in surface run-off resulting from the development will be minimal and the Project is designed to avoid impacting the natural drainage pattern of the area.

Water Service

75. BCA estimates that development of the Project will require withdrawal of 1.5 million gallons per day ("mgd") of potable groundwater and 1.4 mgd of brackish water via a series of new wells to be located on the other lands owned by Petitioner above the Property. Irrigation activities and the treatment of sewage generated daily at the Project will return much of the water originally extracted with the net loss largely attributable to transpiration. BCA anticipates that such withdrawal may have the potential of affecting the flow of groundwater to the coastline and result in an adjustment of the

basal lens to this withdrawal. Petitioner will site new wells in a manner that ensures that long-term average groundwater withdrawal will not cause instability of the basal lens configuration.

Agricultural Resources

76. The Property has not been used for agricultural purposes. BCA does not anticipate that the Project will have an adverse impact upon agricultural resources.

Flora and Fauna

77. Petitioner's consultants Char & Associates conducted a flora survey of the Property and inventoried a total of 140 vascular plant species, of which 85 are either introduced or exotic species, five are of Polynesian origin, 22 are indigenous, and 28 are endemic.

78. Char found no officially endangered or threatened plant species on the Property.

79. The mauka portion of the Property (the site of the support community) has a dense cover of mixed grass, shrub species and several kipukas with ohi'a forests on the prehistoric pahoehoe lava flow.

80. Vegetation in the makai portion of the Property (the site of the resort and airport) is generally sparse. Pahoehoe flows in this area support a mixed scrub vegetation; a'a flows are usually barren or support only a few scattered plants.

81. The coastal, low-land areas do not support any rare, threatened or endangered plant species and are abundant with Pohuehue and koali vines, members of the morning-glory family. Vegetation surrounding the anchialine ponds include tree species such as coconut, kou, false kamani, milo and hala and other plants such as 'uki and makaloa. The vegetation in the mauka portion of the coastal area is composed largely of a scrub community consisting of the introduced Natal redtop and the weedy native specie hi'aloa.

82. Construction of the Project will involve clearance of the sparse vegetation from the site and importation of grass and exotic species for landscaping and ground cover for the proposed golf course(s), polo field and park areas.

83. Petitioner will use native species and those introduced by Hawaiians already found on the Project or nearby areas for landscaping. Petitioner will use only sterile, hybrid cultivars and ornamental species such as bougainvilleas, plumerias, hibiscus, hybrid turf grasses, etc. in landscaping.

84. Petitioner will preserve the kipuka of 'ohi'a forest which lies adjacent to the 1887 Lava Flow.

Fauna

85. Phillip L. Bruner ("Bruner") conducted a fauna survey, and identified a variety of resident endemic birds in the mauka forest area of the support community. These birds include the Apapane, Common Amakihi, Japanese White-eye,

Hawaiian Hawk ('Io), Short-eared Owl (Pueo), and Northern Cardinal. Mr. Bruner observed no other native resident land birds during the survey. The Property may also be the home of species of resident native land and waterbirds such as the 'Elepaio, Hawaiian Goose (Nene), American Coot, Hawaiian Duck, Black-necked Stilt, and Black-crowned Night Heron.

86. No native resident waterbirds were sighted near the coastal anchialine ponds, nor was there any evidence to indicate usage of the ponds by these birds.

87. Only two migratory indigenous birds were sighted at the Property, the Pacific Golden Plover and the Wandering Tattler.

88. A total of ten exotic bird species were sighted during the field survey.

89. Only mongoose were observed on the Property, although eye-witness reports, skeletal remains, scats and tracks confirmed the presence of feral goats, pigs and the Hawaiian Hoary Bat.

90. Bruner recommended preservation of the mauka forested areas of the Property and anchialine ponds which provide significant resources for bird and mammal populations, and that development be confined to open lava flows.

Archaeological/Historical Resources

91. Paul H. Rosendahl, Inc. ("PHRI") conducted a reconnaissance survey of the Property in April and June 1987 and identified a total of 302 archaeological sites with 1,167

component features and a large petroglyph field within the Property. Previous archaeological studies identified a total of 33 sites. PHRI field investigations relocated 32 of the previously identified sites and identified a total of 291 new sites. Of the 32 relocated sites, 21 are subsumed under five PHRI temporary site numbers as component features or areas.

92. PHRI observed a variety of formal types in fairly good condition within the Property distributed in a series of fairly dense concentrations along the coast, usually centered at Pohue Bay and Kipuka Kanohina and where anchialine ponds are present. The types include C-, U- and L-shape walls, enclosures, platforms, cairns, trails, linear and curved walls, petroglyphs, mounds, alignments, pahoehoe excavations, modified and unmodified anchialine ponds, unmodified overhangs, lava tubes and lava blisters, and miscellaneous leveled, walled, and/or otherwise modified areas. Approximately half of the C-shape walls, curved walls, and cairns occur in aligned pairs. PHRI believes that a great majority of the sites were temporary habitation sites.

93. PHRI believes most of the sites are of prehistoric origin, possibly between the fifth and fourteenth century suggesting a long period of occupation.

94. Petitioner will implement a Historic Preservation Mitigation Plan in compliance with State and federal guidelines and standards administered by the State Historic Preservation Office of the Department of Land and Natural Resources

(DLNR-SHPO). Petitioner will not commence construction in the vicinity of the sites until all data recovery field work is completed and Petitioner installs appropriate short-term preservation measures.

Scenic and Visual Resources

95. The only distinguishing feature of the Project visible from Mamalahoa Highway will be the Project entrance, the residential support community located along the highway, and the regional airport. The view of the resort from the highway includes the landscaped home sites, golf course, polo field, and equestrian facilities which extend inland behind the terraced village.

96. The central portion of the Project, including the marina, hotels and marina village, will be concealed from upland viewers. The marina village will be terraced into a slope behind the marina; the terraces and the marina would not be seen from the upper regions of the Property.

Air Quality

97. BCA determined that the general air quality in the vicinity of the Project is good, although visibility is affected during infrequent and unpredictable volcanic eruptions by the presence of fine particulates.

98. The Project is subject to winds predominately from the east to northeast (greater than 71% of the time), while the coastal area shows greater variability in wind direction.

99. Petitioner will take fugitive dust control measures such as frequent watering of unpaved roads and areas of exposed soil during the construction period and will promptly install landscaping for completed areas.

100. BCA believes that project-related traffic will contribute to an initial increase in carbon monoxide, nitrogen oxide and hydrocarbons levels at the Project followed by a decline as new cars with lower emissions required by federal guidelines continue to replace older cars with higher emissions. Long-term emissions related to electrical generation and aircraft operation will result in minor increases to the Big Island's emission inventory.

Noise

101. There are presently no noise generating activities occurring on the Property and the only noise is that of the ambient wind level. Although on-site short-term noise levels will increase during grading and construction, Petitioner expects this noise to have little or no impact on existing uses in the region.

102. Petitioner chose the proposed location of the regional airport based on the need to reduce potential noise impacts on surrounding land uses and the need for a relatively level site. Petitioner utilized noise contour levels as low as 40 ldn to determine the site of the airport to minimize potential noise impacts on existing noise sensitive properties and future guests and residents of the Property and to adjust

flight corridors, although the EPA and other federal agencies consider 55 ldn as an acceptable outdoor noise exposure level. BCA believes that the proposed airport's daily flight patterns will not adversely impact the resort, support community, or existing residential subdivisions in the area. The specific configuration of the airport facilities, including the runway, may be adjusted within the 100-acre area to be set aside for the airport to accommodate existing topography and wind conditions.

Social and Economic Impacts

103. The economy of Ka'u is presently based on agriculture including sugarcane, macadamia nuts and cattle. Fishing and the visitor industry also contribute to the economy. In the South Kona district, a large portion of the work force is employed in administration, service and trade categories.

104. C. Brewer and Company, Limited's ("C. Brewer") subsidiary, Ka'u AgriBusiness Co., Inc., an operator of the existing sugar mill, had recently announced tentative plans to lay off 150 of its 366 employees in its sugar workforce. C. Brewer has initiated a destination resort area at Punalu'u, which consists of a restaurant, golf and tennis facilities, a conference center and 35 condominium units. C. Brewer's master plan provides for the development of up to three hotels and presently proposes construction of one 100-room hotel, a commercial and recreational village, up to 1,868

multiple-family residential units and up to 80 single-family residential lots. Other resort amenities include modifications to the existing golf course, expansions to the tennis facilities, a health spa and additional restaurants.

105. The Volcano House and Shirakawa motel are two other smaller visitor facilities in Ka'u.

106. The 1980 population figures for Ka'u and South Kona was 3,699 and 5,914 respectively. The State Department of Business, Economic Development & Tourism estimated population for Ka'u in 1985 to be 4,543, or an average increase of 22.8% since 1980.

107. As of 1980, the principal ethnic groups in Ka'u, in order of their percentages, were Filipino, Caucasian, Hawaiian or part-Hawaiian, and Japanese. The Population of South Kona is presently predominantly Caucasian or Hawaiian.

108. BCA determined the following forces for social and economic change in Ka'u other than the development of the Project:

a. During the period from 1980 to 1988, net in-migration to Ka'u and South Kona was 862 and 474, respectively. Resident population will increase substantially, independent of economic growth, to 17,900 in the year 2009 as a result of in-filling of existing residential subdivisions by immigrants due to the large numbers of existing and planned resort jobs in West Hawaii, relatively low housing costs

compared to Kona, in-migration of retirees, urban refugees or Filipino immigrants joining the rest of their families, and expansion of Hawaiian Homelands.

b. Agricultural industries face an uncertain future and will afford few new employment opportunities, given the difficulties the sugar industry has faced both statewide and in the Pahala to Ka'u area, and the competition to the macadamia nut industry posed by low-cost foreign producers.

c. Resort growth is expected to occur in the Ka'u District due to C.Brewer's plans for expansion of its resort facilities.

109. Petitioner proposes the following steps to develop a program in conjunction with the County Office of Economic Opportunity to provide job training and other assistance for current residents and existing agencies with ongoing efforts to assist current residents in capturing as many resort-generated business opportunities as possible (both on and off the Project):

a. Manpower Training Program

(1) Prior to the issuance of a building permit for the first hotel, Petitioner will provide seed money to the Hawaii County Economic Opportunity Council to assist in the development of a manpower training program. Subsequent to the development of the program, Petitioner will provide additional funds in the amount of $50,000 pursuant to an agreed upon time schedule.

(2) Petitioner will require each hotel operator to provide individual manpower training programs to satisfy their respective employment needs.

b. Social Services

Prior to the issuance of a building permit for the first hotel, Petitioner will provide seed money to the Hawaii County Economic Opportunity Council to assist in the development of a program which addresses social issues associated with population growth, single-parent families, and two-parent working families. Subsequent to the development of the program, Petitioner will provide additional funds in the amount of $50,000 pursuant to an agreed upon time schedule for implementation of the program.

c. Day Care Facility

Prior to the issuance of a building permit for the first hotel, the Petitioner will provide seed money to the Hawaii County Economic Opportunity Council to assist in the development of a day care needs study/program for resort employees. Subsequent to the development of the program, Petitioner will provide additional funds in the amount of $50,000 pursuant to an agreed upon time schedule for implementation of the program.

d. Economic Diversification

Petitioner will create and fund a nonprofit corporation with a Board of Directors including representatives from the local community, Hawaii County and State, whose

purpose will be to enhance economic diversification in the Ka'u district by providing additional opportunities for job training, education, scholarships, low interest financial assistance, and buyers' counseling for small businesses operated by Ka'u residents. Petitioner will provide an initial grant of $1,000,000 and following occupancy of the second hotel will make annual contributions of the greater of $50,000 or 0.5% of actual cash flow of all hotels before payments of debt service and income taxes, i.e., net profit, for a ten-year period.

110. BCA determined that the Project will have the following socio-economic impacts on the Ka'u and South Kona districts:

a. The percentage of workers employed in the service and tourist industry will rise although the character of the area will remain largely rural.

b. Land values and housing costs will increase as functions of increasing housing demand and decreasing housing supply.

c. The racial distribution and age distribution of the population will be generally younger in character. The racial distribution will be a function of the racial distribution of employees from out of state.

111. Petitioner expects the more affluent guests of the Project who desire to purchase second homes will choose to

purchase undeveloped land which is in great supply in the area rather than compete for available housing.

112. By 1998, assuming 950 units have been built, the Project will require 2,430 workers on site and 330 in the study area off-site. The Project would create a total of 3,580 on-site and off-site jobs island-wide and 5,420 jobs Statewide.

113. Hawaii County Planning Department concluded that real property tax revenues generated from the Project will be sufficient to cover the Hawaii County's operating costs for services to the Property, but will be insufficient to cover off-site capital improvement costs that will result from the Project.

114. Petitioner and Hawaii County have agreed to determine Petitioner's fair share contribution for off-site improvement costs for the Project and to address housing and socio-economic impacts when the Hawaii County Council considers Petitioner's rezoning application.

115. The State annual average unemployment rate in 1988 was 3.1% and the Hawaii County annual average unemployment rate in 1988 was 5.1% and 4.4% in 1989.

Ground Cracks

116. Petitioner's consultants Dames and Moore ("Dames and Moore") recommended the following mitigation measures to minimize possible future deformation of structures in areas where ground cracks are present:

a. Mat foundations (a single block of concrete united with the structure above as opposed to a spread footing) should be used in constructing buildings near any known ground cracks. Utility lines and roadways crossing the ground cracks should be specially designed to tolerate potential differential ground movements.

b. No building shall straddle a crack having a width of more than one foot unless the building foundation is separated from bedrock by a layer of granular cushion fill. Cushion fill thicknesses can be reduced by fragmentation of the bedrock accomplished by controlled blasting along and surrounding a significant crack.

c. Fragmentation of rock surrounding and adjacent to cracks can be used to eliminate the single plane where future movement along individual crack traces might occur, which would also create stress relief points at the end of existing cracks to control future lengthening of cracks.

d. Where special treatment of the cracks is not used, buildings should be set back a minimum of 25 feet from any crack of more than two feet in width and not sited within 500 feet from the longitudinal extension of cracks over two feet in width. Longitudinal extension set back requirements can be reduced to 25 feet if fragmentation of the bedrock at a crack terminus is performed by means of controlled blasting.

e. Petitioner should conduct an earthquake engineering study of the site in order to derive an earthquake

design response spectra for the structural design, with the additional purpose of evaluating earthquake recurrence intervals and the potential triggering of additional crack movements. Building owners should conduct ongoing monitoring to determine if deformation is proceeding at the Project, which monitoring should incorporate the existing Hawaii Volcano Observatory geodetic network and basic measurements across selected cracks at periodic intervals.

Lava Inundation

117. The distance between Petitioner's alternative escape routes at the western portion of the Property and the main access road is greater than the width of historic flows, thus allowing for safe evacuation of the residents and guests of the Project.

118. BCA believes that the 1887 flow serves as a natural barrier (with a height up to 4 to 5 meters) against lava flows approaching the Project from the east. BCA believes that lava would likely be turned and would flow parallel to the 1887 flow.

Seismic Hazards

119. According to the Uniform Building Code for the State of Hawaii, the entire Island of Hawaii is classified in seismic zone 3, on a scale of 1 to 4. The majority of earthquakes occurring in Hawaii are the result of magma moving at shallow depths which characteristically cause little

damage. Structural design will need to comply with Uniform Building Code requirements.

Tsunami Hazards

120. The coastline along the Property is not directly exposed to tsunamis generated in the Aleutian Islands or South American coast, which have historically had considerable impact on the Island of Hawaii, particularly in Hilo. Tsunamis generated within the Pacific Basin or locally may have a direct impact upon the Property. The predicted 100-year tsunami evaluations range between 9.5 to 12 feet above mean sea level.

121. While the federal government has not developed a Flood Insurance Rate Map (FIRM) for the Property, Petitioner's consultant Sea Engineering, Inc. ("SEI") conducted a detailed analysis to determine the specific impacts a tsunami may have along the coastline of the Property. SEI observed the 100-year tsunami water surface elevation at twenty-four (24) locations along the shoreline of the Property at approximately 1,000 foot intervals beginning at Humuhumu Point at the northwest end of the Property. SEI considers most of the tsunami elevations at the selected sites final tsunami run-up elevations as they are less than 100 feet from shore and do not exceed the existing land elevation 200 feet inland of the coastline. SEI expects tsunami inundation to have a minimal impact upon the Project with the exception of the Kanonone ponds and the extreme southeast end of the Property where the predicted tsunami inundation would extend about 400 to 450 feet inland.

122. Petitioner will create a buffer zone corresponding to estimated tsunami run-up distances. Habitable portions of structures within the tsunami inundation zones will be elevated above projected wave heights.

123. Potential hurricane run-up elevations typically range from ten (10) to thirty (30) feet above sea level. While waves will top the berms of the swimming lagoons, the design and height of the marina entrance will protect the marina from storm waves.

124. Petitioner will reserve an Openspace Shoreline Corridor extending along the entire length of the Project's coastline to provide an adequate buffer for wave run-up, including low-lying areas where more extensive run-up can occur.

125. Petitioner will specifically design the proposed cruise ship docking facility with a minimum height of 14 feet above sea level to keep the structure above potential wave heights and to withstand the sudden rise and impact of ocean waves or tsunamis.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Police and Fire Protection

126. Hawaii County maintains a 13-member police force at the Ka'u substation in Na'alehu and is planning a new police facility at a 10-acre site, east of Na'alehu to accommodate natural population growth and other potential projects in the area.

127. Hawaii County maintains a four-person 24-hour fire station in Pahala. The station has one truck and ambulance service to serve the entire district. Hawaii County also maintains volunteer back-up forces in Pahala, Na'alehu, and Hawaiian Ocean View Estates.

128. Petitioner proposes to reserve a five-acre site in the support community area for a police/fire substation facility sufficient to serve the Project. In addition, Petitioner proposes to construct a two-bay (with capacity to expand to three-bay) fire station with a fire crash vehicle in the vicinity of the proposed airport. Petitioner will use private security personnel to patrol the resort area.

Electrical and Utility Services

129. Hawaiian Telephone Company (HTCO) and Hawaii Electric Light Company, Inc. (HELCO) will provide telephone and electrical service lines along Mamalahoa Highway. HELCO currently maintains a 69KV overhead electrical transmission line and a 12KV capacity electric distribution line.

130. The Project will require a daily supply of 20 megawatts of electricity. HELCO will need to install transmission or distribution lines and additional generator lines in Kona and transmission line(s) from Hilo. On-site work will require at least three 69KV transmission lines, a major substation and 12KV distribution lines.

131. HTCO must install transmission poles or underground lines from the Mamalahoa Highway to a new service

center of approximately 400 square feet located on the Property in order to provide telephone service to the Project.

Health Care Facilities

132. Health care facilities serving the Ka'u region include Ka'u Hospital, a 15-bed facility located in Pahala, a Day Hospital Program for care of elderly and infirm individuals, and the Ka'u Family Health Clinic, a privately operated facility located in Ka'u Hospital which provides out-patient services for minor illnesses.

133. Petitioner will reserve a 3.8-acre site for a privately-operated medical facility to provide out-patient care services. Petitioner proposes to fund or make available an emergency medical facility to serve the emergency needs of visitors, employees and area residents. The regional airport may also be used for air transportation of emergency patients for Honolulu and other locations.

Schools

134. The two public school complexes, Na'alehu Elementary/Intermediate and Ka'u High/Elementary in Pahala, serving the Ka'u District are currently operating at capacity levels.

135. Petitioner intends to provide a 10-acre site for a future school in the support community. Prior to completion of the first hotel, Petitioner will construct three additional classrooms at a public school in the District of Ka'u, to be

designed by the Department of Education. Petitioner may contribute additional impact assessments based upon further detailed impact analyses and Petitioner's fair share of the impacts.

Wastewater and Disposal

136. There is no municipal sewerage system available in the District of Ka'u. Petitioner will develop up to three privately-owned and operated wastewater treatment facilities with an ultimate capacity of 1.4 million gallons/day to collect, treat, and dispose of wastewater generated from the Project. Petitioner will use the treated effluent with brackish water primarily for golf course irrigation. The support community will utilize individual wastewater systems (cesspools or septic tanks) for collection of its wastewater.

137. Petitioner will construct and operate a privately funded wastewater infrastructure facilities to transmit sewage collected by gravity systems from the hotels to the treatment plants situated at higher elevations by lift stations. The facilities will be landscaped and buffered from surrounding land uses.

Solid Waste Disposal

138. The Project will generate approximately 25 tons of solid waste per day upon completion. The existing refuse facilities consist of a transfer station in Waiohinu, approximately eight miles from the Project's main access road,

and two landfills, one located in Hilo and the other in North Kona at Kealakehe. The County presently trucks the collected refuse to the North Kona landfill once a week.

139. Petitioner intends to engage a private firm to collect refuse from the Project for disposal at either the Kona or Hilo landfill.

140. Petitioner will, upon request, donate a 40-acre site within the Property for a future County landfill site and will participate on a fair share basis to provide improvements to address solid waste impacts associated with the Project. Petitioner may contribute to the appropriate County agency up to $4.18 million for solid waste disposal, parks and police protective service requirements in the form of cash or value of improvements.

141. There is no existing water system serving the Property. The County Department of Water Supply maintains the South Kona System serving the northern half of the district and which ends at Hookena. The Kau System ends approximately 6.5 miles northeast of the Property.

Water Service

142. The total non-potable water requirement for the Project will be 1.4 mgd assuming no natural rainfall.

143. Sources of irrigation water include shallow wells drilled at an elevation where the brackish mix of the water is sufficient to support vegetation, augmented by the use of treated effluent.

144. The total potable water requirement for the Project will be 1.5 mgd. Petitioner intends to provide potable water for the Project by a series of wells located at the 2,000-foot elevation mauka of the Property. Non-potable wells for irrigation will be located at lower elevations on the Property.

145. A series of resistivity tests conducted by BCA on the Property indicate that a substantial subterranean dam-like feature paralleling the shoreline may be creating a large reservoir of brackish or potable water similar in size to the Lalamilo system, which produces 4.5 mgd. BCA estimates that the recharge rates of the ground water is more than sufficient to sustain the amounts of water Petitioner expects to draw.

146. In the event potable water sources cannot be found to meet the Project total demand, Petitioner will construct and operate a desalination plant to supplement the potable water supply, along with more restrictive irrigation techniques.

Highway and Roadway Facilities

147. The Mamalahoa Highway (Hawaii Belt Road) is the only major highway serving the Ka'u district from Hilo to Kailua-Kona. Current lane width varies from eight feet to twelve feet.

148. Petitioner's engineering consultant, stated the P.M. traffic volumes are expected to increase about twenty six

percent (26%) without the proposed project by 1992, and about fifty one percent (51%) without the project by 1997. Based on the existing capacity of the roadway, the level of service (LOS) will remain between A and C. The heaviest impact of the resort development will be between South Point and the Property.

149. The projected traffic impacts generated by the development of the Project during the peak afternoon traffic period are estimated to be 687 vehicles inbound and 759 vehicles outbound.

150. The State Department of Transportation ("DOT") has proposed that the Petitioner be solely responsible for the construction of a by-pass road at Waiohinu, the cost of which DOT estimates to be $19,000,000.00. The DOT has not yet developed a formula to determine a procedure to implement the payment of the amounts which developers should contribute towards improving deficient highways.

151. Petitioner proposes to construct a new main access road with its entrance located approximately 2.3 miles east of the entrance to the Hawaiian Ocean View Ranchos Subdivision between the Mamalahoa Highway and the coastline to link the Project to Mamalahoa Highway.

152. The new access road will provide two-lane access, a 120-foot wide right-of-way, and a future addition of a second two-lane roadway with buffer median.

153. Petitioner will design the intersection of the proposed access road and Mamalahoa Highway to DOT standards.

Petitioner will, if required, fund the construction of improvements to the intersection of the Project's access road with Mamalahoa Highway. Petitioner will undertake a detailed traffic analysis addressing project-related traffic generation, turning movements, intersection requirements and responsibility for road improvements in conjunction with the zoning approval process.

154. Petitioner has offered the following traffic impact mitigation plan for the Project:

a. The Project will be self-contained and internal roadways will reduce the volume of traffic generated by the resort. Petitioner will privately maintain the roadways.

b. Petitioner proposes to construct the proposed marina during the first phase of construction to enable the shipment of construction materials to the Project Area by barge, significantly reducing construction-related traffic.

c. The planned regional airport will help to reduce traffic on the regional road system.

d. Petitioner will employ a resort transportation manager at Petitioner's expense for a minimum of the first ten years at the beginning of the construction. The transportation manager would create and implement a program of transportation alternatives which could include car-pooling, employee busing, staggered work hours and monitoring to measure the impact of the resort regional traffic.

e. Development of an on-site construction-housing program and a plan for busing construction workers living off-site.

f. Petitioner will post a $5 million letter of credit following completion of construction of the marina at a date agreed upon between Petitioner and the Department of Transportation to fund engineering, design and construction of improvements to the road system within the region reasonably affected by the Project.

g. Petitioner will prepare a construction phasing program to address projected increased traffic.

h. After completion of the third hotel under the Development Plan, the State will determine Petitioner's fair share of highway improvements required for the Project, based upon a study performed by a third party selected by agreement between Petitioner, the State and the County. The $5 million letter of credit shall be credited against Petitioner's fair share contribution and other contributions made by Petitioner toward improving the regional highway system. In the event such contributions exceed Petitioner's fair share amount, the surplus will be credited towards fair share contributions Petitioner might be required to make towards other impact assessments.

Air Transportation

155. Keahole Airport in Kona and the General Lyman Airport in Hilo both handle direct flights from mainland and interisland flights.

156. Petitioner's small regional airport will provide service to the Project as well as the surrounding Ka'u area. The facility will link the resort to the Kona and Hilo airports and may also accommodate small commuter interisland flights.

Recreational Facilities

157. The coastline and nearshore waters at the Project site have been utilized for commercial trolling, small boat fishing, shore fishing, spear fishing, opihi and a'ama crab gathering, offshore diving, and some commercial tropical fish collecting. The white sand beach at Pohue Bay is used for sunbathing, swimming, and snorkeling. Previous landowners have allowed camping. The inland areas are infrequently used by goat and pig hunters.

158. Access to the shoreline is by jeep roads off the Mamalahoa Highway. One road connects to an existing street in the Hawaiian Ocean View Ranchos Subdivision, the other road (the "Road to the Sea") traverses the Kona Gardens Subdivision and Manuka State land, ending at Humuhumu Point near the western boundary of the Property.

159. The Ka'u and South Kona district have several active land-based parks, and a number of resource-based recreational facilities. Community parks and school yards

provide recreational opportunities to a variety of residents. Facilities include gyms, ball fields, basketball courts, tennis courts, community centers, and limited boat ramp facilities.

160. Petitioner intends to provide or contribute to the following recreational amenities for the public:

a. A 142-acre petroglyph park.

b. A Shoreline Openspace Corridor along the shoreline of the resort and the entire coastal area, including access to anchialine ponds and beaches of the Project.

c. A cultural center providing information and services relating to the petroglyph park, prehistoric Hawaiian fishing sites and anchialine ponds.

d. A second golf course which would be privately owned but would allow for unlimited public play subject only to operational considerations.

e. Petitioner will donate a site of up to 40 acres of land within the proposed support community for use as a park, upon request of Hawaii County.

f. Hawaii County will also be able to utilize up to $4.18 million in 1989 dollars, at its discretion, from a cash or improvements contribution to be made by Petitioner to the

county, with the schedule of such contributions to be determined at the time of zoning consideration of the Project.

Housing

161. The Project will require approximately 620 employee housing units by 1998. Petitioner proposes to construct a support community on 340 acres of the Project to accommodate some of the anticipated in-migration.

162. Petitioner will submit a housing assessment needs study to the Hawaii County prior to the issuance of a building permit for the first hotel to address the housing impacts.

163. Petitioner proposes to construct affordable housing units in a number equal to 60% of the hotel units actually constructed.

164. Petitioner proposes to construct 390 of the affordable houses prior to the completion of the marina to house construction employees, which homes would thereafter be offered to operational employees for rent with an option to purchase, with the balance of homes to be constructed simultaneously with the third hotel.

165. Petitioner proposes that Housing Finance and Development Corporation, Hawaii County, and the Petitioner shall agree as to the details of the rental and acquisition program. Petitioner intends to sell units at cost and to provide owner financing to facilitate employee purchases.

CONFORMITY WITH HAWAII STATE PLAN

166. Reclassification of the Property generally conforms to the objectives, priorities and policies of the Hawaii State Plan as defined in the Hawaii Revised Statutes ("HRS") §226 in the following respects:

State Energy and Transportation Plan, HRS §226-17 and 18.

167. The Project complies with the State Energy and Transportation Plans. The Project is designed to be self-sufficient with an energy conservation program to minimize waste and maximize efficient energy use and promote energy-efficient alternate transportation systems, including footpaths, roadways, regional airport and marina.

State Water Resources Development Plan, HRS §226-16

168. The Project complies with the State Water Resources Development Plan. Petitioner designed the Project to have a self-sufficient potable water system and to use treated sewage effluent and other non-potable water for irrigation purposes. Petitioner will implement programs to protect the nearshore and offshore environment.

State Historic Preservation Plan, HRS §226-12

169. The Project complies with the State Historic Preservation Plan. Petitioner will conduct surveys of the archaeological resources at the Project and, where appropriate, will further evaluate and preserve significant sites prior to construction. The historic and natural resources preserved on-site within the archaeological park will further the

public's understanding of their historic, cultural and scientific significance.

State Health Plan, HRS §226-20

170. The Project complies with the State Health Plan. Petitioner will implement public health programs in compliance with all necessary requirements of the Department of Health ("DOH") permitting procedures, including review of private wastewater treatment systems, administering permit programs for discharges to the air, all surface and groundwater, treatment and disposal of solid wastes, review of plans for new sources of drinking water, and review of plans for air conditioning and mechanical ventilation systems for buildings that are used by the public. Petitioner will develop additional medical and health services and facilities for the resort residents and guests.

State Education Plan, HRS §226-21

171. The Project complies with the State Education Plan. Petitioner proposes to develop a public school site in the support community subject to approval as to design by the Department of Education. Petitioner will contribute its fair share towards improvement of the school facilities in the region.

State Housing Plan, HRS §226-19

172. The Project complies with the State Housing Plan. Petitioner proposes to develop a 340 acre support

community on the mauka portion of the Project to provide affordable housing units for employees and their families. The development of single-family and multi-family units within the Project will increase the opportunities for home ownership on the Island of Hawaii.

State Conservation Lands Plan, HRS §226-11

173. The Project complies with the State Conservation Lands Plans in the following respects:

a. Petitioner has designed the Project to be compatible with the natural on-site resources with proper management and mitigative measures to protect, preserve and conserve the critical and significant natural resources of the Property.

b. Petitioner will prepare a detailed Coastal Zone Management Assessment evaluating the Project's relationship to the specific policies of the Coastal Zone Management program for the construction of the Project to be reviewed by the DLNR.

c. Petitioner will comply with the rules and regulations for the Conservation District Use permit system and subsequent permit applications will allow extensive review by government agencies and the public.

d. Petitioner will implement programs to protect and preserve endangered flora and fauna on the Property.

State Agriculture Plan, HRS §226-7

174. The Project complies with the State Agriculture

Plan because none of the land located in the State Land Use Agricultural District is identified as being of importance to the agricultural resources of the State of Hawaii.

State Tourism Plan, HRS §226-8

175. The Project complies with the State Tourism Plan. The Project will provide new employment opportunities, job training and education for upward mobility in the visitor industry and generate growth in the overall job market enhancing economic development during and after construction.

State Recreation Functional Plan

176. The Project complies with the State Recreation Plan. Petitioner will provide a 300+/-acre Shoreline Openspace Corridor for public access approximately four and one-half miles along the shoreline of the Hawaiian Riviera Resort from the marina to the southern boundary of the resort. Petitioner will develop over 900 acres of open space areas on the Project Area to provide specific opportunities for passive recreational activities as well as parking and comfort station facilities for people who utilize the Shoreline Openspace Corridor.

CONFORMANCE TO URBAN DISTRICT STANDARDS

177. The proposed reclassification generally conforms to the State Urban Land Use District Standards stated in Section 15-15-18 of the Land Use Commission Rules in the following respects:

a. The Project will create a new economic and employment center through the establishment of a major resort

destination area and the development of well-planned community support facilities and services.

b. The Development Plan includes the construction of the complete range of infrastructure in the initial development phase. Petitioner will provide most basic services on-site and contribute land and capital to upgrade public facilities in the Project.

c. The Project will be reasonably free from adverse environmental effects through the use of mitigation measures. The Property has satisfactory topography and soil conditions.

d. The Project is a new self-contained growth area surrounded by lands with urban potential, including the five large nonconforming subdivisions containing more than 12,000 lots. The Project's distance from existing major urban areas is intended to help to mitigate social impacts. The Hawaii County General Plan indicates the area is appropriate for future urban use.

e. Hawaii County redesignated the Property from Conservation and Extensive Agriculture to Resort, Medium Density and Low Density Urban, Industrial, and Open Space designations on the Hawaii County General Plan in Ordinance 88-118 adopted August 17, 1988.

f. The Project is designed with a concentrated medium density activity center and core surrounded by a relatively low density development. Petitioner intends to fund

virtually all of the on-site support construction and services. While the Project will require the investment in upgraded public infrastructure or support services, Petitioner will contribute to its fair share of the cost of such improvements and the long-range fiscal cost/benefit does not make such an investment unreasonable.

COMMITMENT OF STATE FUNDS AND RESOURCES

178. Development of the Project as proposed by Petitioner should not have unreasonable impact on governmental resources. Petitioner has committed to provide its (pro rata) fair share to minimize impacts upon State and County facilities.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

179. The proposed reclassification generally conforms with the policies and objectives of the Coastal Zone Management Program, Chapter 205A, HRS, as amended.

INCREMENTAL DISTRICTING

180. Petitioner will construct all of the infrastructure for the Project and will commence construction of the golf course and first hotel within five years after the date of final County zoning approval. Petitioner's request to reclassify the Project to the Urban District at this time is appropriate and incremental districting is not warranted.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties not already ruled upon by the

9ommission 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 the 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 of the Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, the Commission finds and concludes upon a preponderance of the evidence that the partial reclassification of the Property, consisting of approximately 732 acres of land from the Conservation Land Use District to the Urban District for an ultra-luxury resort, marina, 2 golf courses, tennis courts, riding stables, and access road, and approximately 440 acres of Agricultural District land for a "Support Community," and airport situated at Kahuku, Ka'u, Island, County and State of Hawaii, identified as Tax Map Key No. 9-2-01: por. 72, por. 75, por. 76 subject to the conditions in the Order, is reasonable, nonviolative 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, and Section 205A-2, Hawaii Revised Statutes, as amended, and conforms to the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules.

The Commission further concludes that (1) the reclassification of the 1,688 acres of land classified in the State Land Use Conservation District, and (2) approximately 560 acres of land in the State Land Use Agricultural District, Tax Map Key Nos. 9-2-01: por. 72, por. 75, por. 76 is not reasonable under Hawaii Revised Statutes, Section 205-2, and Chapter 226, HRS as amended, and shall remain in the Conservation and Agricultural District, respectively.

ORDER

IT IS HEREBY ORDERED that a portion of the Property which is the subject of this Docket No. A88-630 filed by Palace Development Corporation, a Hawaii corporation, and Hawaii Ka'u Aina, a Hawaii corporation, and Hawaii Ka'u Aina, a Hawaii general partnership, collectively referred to as "Petitioner," consisting of approximately 1,688 acres in the State Land Use Agricultural District at Kahuku, Ka'u, Island, County and State of Hawaii, Hawaii Tax Map Key Nos. 9-2-01: por 72, por 75, por 76 identified on Exhibit "A" attached hereto and incorporated herein, shall be denied reclassification to the Urban District,

IT IS HEREBY FURTHER ORDERED that the remaining Conservation District of the Property consisting of approximately 732 acres, and the remaining Agricultural District of the Property consisting of approximately 440 acres situated at Kahuku, Ka'u, Island, County and State of Hawaii, Hawaii Tax Map Key Nos. 9-2-01: por 72, por 75, por 76, and approximately identified on Exhibit "A" attached hereto and

incorporated herein, shall be reclassified to the Urban District, subject to the following conditions:

1. Petitioner shall construct no more than an aggregate total of seven hundred (700) hotel rooms in three separate structures upon the Property during a period of fifteen (15) years from the date of the Order. Petitioner shall commence site preparation and visible construction of the foundation of at least one (1) construction within ten (10) years from the date of this Order. Petitioner may commence construction of the third structure only upon completion of the exterior of the first structure. In the event Petitioner shall fail to commence such site preparation or visible construction of the foundation of at least one (1) hotel on the Property or any portion thereof within ten (10) years from the date of this Order. Petitioner shall neither object to nor oppose reclassification of the Property or any portion thereof by the Commission from the Urban Land Use District to the Property's original Agricultural and Conservation Land Use District classifications upon notice and hearing to the parties hereto.

2. Petitioner shall generate one (1) non-tourism related job, or the equivalent value thereof as provided in subparagraphs (a), (b) and (c) below, to the satisfaction of the Department of Business, Economic Development and Tourism (DBEDT) for each hotel or hotel/condominium unit Petitioner constructs on the Property. At the time Petitioner obtains a certificate of occupancy for the first hotel, Petitioner shall

satisfy this condition by depositing cash, posting a bond or depositing a letter of credit in favor of DBEDT, in an amount equal to the product of Twenty-five Thousand and no/100 Dollars ($25,000.00) multiplied by the number of hotel or hotel/ condominium units for which a certificate of occupancy is issued, less any job credits previously earned. Petitioner shall deposit additional monies or letter(s) of credit for additional hotel or hotel/condominium units for which certificates of occupancy are issued, less any job credits previously earned. Petitioner may submit a motion to the Commission for the refund of the funds paid to OSP or a reduction of the bond or letter of credit for any job credits earned subsequently. DBEDT shall have the right to retain cash or make claim on the bond or letter of credit for the remaining amount less any job credits previously earned after ten years from the date of the issuance of the first certificate of occupancy. Petitioner shall provide annual progress reports with detailed accounting of job credits accrued and such other information as the Commission may from time to time reasonably request. As used herein, "non-tourism related job" is a job not related to hotels or residential condominiums intended for use as transient accommodations, or recreational, entertainment or other facilities and services used primarily by tourists.

a. Credit for Jobs Generated Via Construction of Non-Tourism Related Projects. Petitioner may receive one job credit for each 25 man-years for labor generated for

construction of non-tourism related projects developed or initiated by Petitioner either within or outside of the Project. One man-year shall equal 1920 hours of work. Labor generated by the construction of such non-tourism related projects shall include all work performed in the development and construction of such projects. Job credits shall be considered to have accrued upon payment for the labor or such earlier date as may be approved by the Commission.

b. Credit for Jobs Generated Via Development of Non-Tourism Related Projects. Petitioner may receive one job credit for one non-tourism related job created for each new non-tourism related project or facility developed or initiated by Petitioner either within or outside the Project. Credits for jobs created by such new facilities will be calculated by DBEDT on the basis of the degree of integration of the intended use of the facility with the tourist industry. Petitioner shall consult with DBEDT to identify jobs which qualify for credits under this category. DBEDT shall consider job credits to have accrued upon issuance of a certificate of occupancy for each facility or such earlier date as may be approved by the Commission.

c. Credit for Funding Non-Tourism Related Start- Up Capital, Business Incentives and Job Training. Petitioner may receive one job credit for (i) each $25,000.00 invested or initiated by Petitioner in a start-up of a non-tourism related business (by way of equity or investment

into a loan fund for such business), (ii) each $25,000.00 in incentives provided to a new, non-tourism related business, (iii) each $25,000.00 contributed in training programs for non-tourism related jobs and/or (iv) contributions made by Petitioner to develop a program in conjunction with the County Office of Economic Opportunity to provide job training and other assistance for current residents. Petitioner shall consult with DBEDT to identify investments, incentives and training programs which qualify for credits under this category. DBEDT shall consider job credits to have accrued upon the funding of investment or such earlier date as may be approved by the Commission.

3. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii by offering for sale or lease a number of units equal to at least thirty percent (30%) of the residential units to be constructed on the Property at prices which families with an income range of up to and including one hundred twenty percent (120%) of the County of Hawaii's median income can afford, and a number of units equal to at least thirty percent (30%) of the residential units to be constructed on the Property at prices which families with an income range of one hundred twenty to one hundred forty percent (120% - 140%) of the County of Hawaii's median income can afford. This condition may be fulfilled through construction of units under such terms as may be mutually

agreeable between Petitioner, the County of Hawaii and Housing Finance and Development Corporation of the State of Hawaii.

This condition may also be fulfilled, with the approval of Housing Finance and Development Corporation and the County of Hawaii, through construction of rental units to be made available at rents which families in the specified income ranges can afford. In addition, Petitioner may obtain special credit, as determined by Housing Finance and Development Corporation, for the provision of housing at prices which families with an income range of less than fifty percent (50%) of the County of Hawaii's median income can afford and for the provision of housing for special needs groups, as determined by Housing Finance and Development Corporation. A determination of median income, as the term is used in this condition, shall be based on median income published by the United States Department of Housing and Urban Development at the time Petitioner commences construction of such affordable housing units.

4. Prior to applying to Hawaii County for a change of zoning districts to accommodate the project, Petitioner shall present to the Land Use Commission evidence to demonstrate the availability, at reasonable rates, of insurance coverage to insure residential structures for the support community against the perils of earthquake, volcanic eruption, fire, flood and tsunami damage.

5. Petitioner shall pay its pro rata share of the cost, as determined by the State Department of Transportation, for the local and regional traffic impacts resulting from the the development of the Property. The Department of Transportation shall identify the transportation improvements required as a result of the development of the Property and assess Petitioner's share of the cost for the design and construction of these improvements. The extent of Petitioner's participation in the funding and construction of transportation improvements shall not exceed its fair share of the increased community traffic impacts in the region. In the event the Hawaii County adopts an impact fee for transportation improvements, the foregoing requirements shall be deleted to the extent that the cost of specific transportation improvements are also included in the Hawaii County's impact fee computation. Such improvements may include Petitioner's share of the Belt Highway improvements and a bypass road in the Waiohinu Area (the "Waiohinu Bypass Road").

In the alternative, Petitioner may satisfy this condition by depositing into a fund administered by the State Department of Transportation for the construction of the Waiohinu Bypass Road one or more irrevocable standby letter(s) of credit in the aggregate principal amount of its fair share of the estimated development cost of Nineteen Million and no/100 Dollars ($19,000,000.00) in favor of the State Department of Transportation upon obtaining fifty percent (50%)

of binding sales contracts for its residential lots or residential condominium units to be developed or built on the Property. The letter(s) of credit may be issued by any U.S. or foreign bank but shall be presentable to a confirming bank in the State of Hawaii under terms acceptable to the State Department of Transportation, the issuing bank, the confirming bank and Petitioner. In lieu of such letter(s) of credit, Petitioner shall have the option, at any time prior to completion of the foundation for the first hotel to be built on the Property, to deposit the sum of its fair share of $19,000,000.00 in cash into such fund.

6. Petitioner shall undertake periodic monitoring of the traffic conditions within and adjacent to the Property throughout the development of the Property with the approval of the State Department of Transportation. Petitioner shall appoint a transportation manager whose function is the formulation, use and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems. In the alternative, Petitioner may participate in a regional program for transportation management with other developers and/or land owners which is acceptable to the State Department of Transportation and the County of Hawaii. This program shall address the formulation, use and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems.

7. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the County of Hawaii, and where applicable, the State Department of Transportation.

8. Petitioner shall fund the design and construction of the appropriate wastewater treatment and disposal facilities for the Property to the satisfaction of the State Department of Health and the County of Hawaii.

9. Petitioner shall provide its pro rata share for school services and facilities as may be required by and to the satisfaction of appropriate State and County agencies. In the alternative, Petitioner may satisfy Petitioner's pro rata share for school services and facilities by: (a) providing a usable site within the Support Community upon mutual agreement between Petitioner and the Board of Education for the construction of a school, and (b) fund and construct prior to the issuance of a Certificate of Occupancy for the first hotel constructed on the Property, a number of additional classrooms at a public school in the district of Ka'u to be determined by agreement of Petitioner and the Board of Education pursuant to engineering plans and permits supplied by the State Department of Education.

10. No on-site hotel or residential construction shall be permitted prior to the identification of adequate sources of potable and non-potable water supplies for the Property. Petitioner shall develop, at its expense, the

necessary on-site and off-site water sources, storage, and transmission facilities to provide adequate supplies of potable and non-potable water to serve the Property.

11. Petitioner shall develop and utilize only non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for golf course and landscape irrigation requirements for the Property.

12. Petitioner shall comply with the "Eight (8) Conditions Applicable To This New Golf Course Development," as amended, issued by the State Department of Health, and identified as OSP's Exhibit 20.

13. Petitioner shall either: (i) construct one public golf course, or (ii) make available an annual average of forty (40) tee times throughout the normal playing day for the resort golf course developed within the Property, for public play by Hawaii state residents at affordable rates as determined by the County of Hawaii based on prevailing rates for public play at privately owned golf courses on the island of Hawaii.

14. Petitioner shall engage the services of a qualified golf course manager certified by the State Department of Agriculture in the application of fertilizers and pesticides to oversee the irrigation of the golf course and application of fertilizers and pesticides to the golf course within the Property.

15. Petitioner shall assume Petitioner's fair share of the cost of providing public services and facilities, including police, park and fire facilities as may be required by and to the satisfaction of the Hawaii County. In the event that the Hawaii County adopts an impact fee ordinance which addresses impacts of the development of the Property on public services and facilities, the foregoing fair share contributions shall be included as credits towards any specific imposition included in the County's impact fee computations.

16. Petitioner is permitted to develop a privately owned, operated, maintained and financed regional airport, which shall be limited to an airport landing strip with required aircraft control facilities, in coordination with the Federal Aviation Administration, State Department of Transportation, County of Hawaii Planning Department, and any other applicable federal, state or county agencies. No industrial development shall be permitted in and around the airport area.

17. Petitioner shall not construct residential units or condominium units within areas exposed to airport composite noise levels of 60 Ldn or greater.

18. Because Petitioner acknowledges and agrees that it presently does not have a specific plan for its proposed marina or water feature and its operations, it has offered to make the following commitment. Prior to applying for a change of zoning districts, a Special Management Area Use Permit or

any other federal, state, or county permit for the Project, Petitioner shall submit to the Commission for its approval a special plan including appropriate mitigative actions proposed to address environmental concerns regarding the development of the proposed marine or water feature and the concerns of the residents and fisherman of Milolii as to the impacts of the marina or water feature upon their life-style and economic well-being.

19. Petitioner shall fund a base line study of the socio-economic fabric of Miloli'i in order to establish a standard by which to assess future impacts, if any, on Miloli'i as a result of development of the Property.

20. Petitioner shall provide public access to the shoreline as may be required by the State Department of Land and Natural Resources and the Hawaii County.

21. Petitioner shall establish a Shoreline Open space Corridor to preserve the coastline along the Property, and protect the natural, scenic and open space condition of the coastline pursuant to Chapter 198, HRS, as amended.

22. The Petitioner shall develop a detailed historic preservation mitigation (management) plan to treat the significant historic sites in the Property. This plan shall have two elements: (a) a preservation plan and (b) an archaeological data recovery plan. The preservation plan will cover at least the sites recommended for preservation with the understanding that other sites may be shifted from data

recovery into the preservation plan. The archaeological data recovery plan will cover the sites recommended to undergo data recovery. Both component plans must be approved by the State's Historic Preservation Division of the Department of Land and Natural Resources. The Historic Preservation Division must also verify the successful completion of these plans. Petitioner may not construct in the vicinity of these significant historic sites until (i) Petitioner obtains all such approval of these plans, (ii) the buffer zones of the sites to be preserved are fixed and marked by short-term protection elements of the preservation plan, and (iii) the archaeological data recovery fieldwork is successfully executed.

Petitioner shall, subject to review and approval by DLNR, preserve those significant historic sites designated "preserve as is" (PAI) and "preserve with interpretive development" (PID) in cooperation with DLNR, in perpetuity, by establishing historical sites preserve area(s) protected by a conservation easement, pursuant to Chapter 198, HRS, as amended, covering the sites and buffer zones. In addition, Petitioner shall immediately cease work and contact DLNR should Petitioner encounter any previously unidentified archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls during the development of the Property. Petitioner shall complete a preservation and management plan approved by the Historic Preservation Division, State Department of Land and Natural

Resources and the County of Hawaii prior to filing a Coastal Zone Management Special Area Application.

23. Petitioner shall ensure that rare, threatened or endangered native plant and animal species and the anchialine ponds and their micro-climate are not significantly adversely impacted. Petitioner shall submit mitigation and management plans to the appropriate federal, state and county agencies, boards and commissions for review and approval. Full execution of the mitigation plans shall be verified by these agencies, boards and commissions prior to the start of any ground disturbing activities.

24. Petitioner shall inform all prospective occupants through deed covenants running with the land of possible volcanic, seismic, and tsunami hazards.

25. Petitioner shall formulate, in consultation with County and State civil defense agencies and shall comply with and implement, an emergency preparedness and evacuation plan for the Property.

26. Petitioner shall grade and maintain for evacuation purposes only, no less than two lateral access roads from the Property to Mamalahoa Highway and one access road parallel to the coast, which shall link the lateral access roads along the makai portion of the Property.

27. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

28. Petitioner shall submit three copies of a metes and bounds map and description of the Property prepared by a registered professional surveyor to the Commission within thirty days (30) of the date of this Order.

29. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest or development interest in Petitioner's Property prior to visible commencement of construction on the Property; provided, however, that Petitioner may transfer ownership of the Project or any portion thereof to an affiliate, or to a joint venture of which Petitioner is a partner, or to make any other transfer in a manner consistent with prior representations made before the Commission, and may mortgage the Property or any portion thereof at any time without notice to the Commission.

30. Petitioner shall develop the Property in substantial compliance with representations made to the Commission in obtaining the reclassification of the Property. Should non-compliance occur, the Property or any portion thereof may be subjected to reclassification back to the original state land use district classifications of Conservation or Agriculture after notice and hearing to the parties hereto.

31. Because Petitioner acknowledges and agrees that it presently does not have a specific financial plan or financing commitment for the Project, it has offered to make

the following commitment. Prior to applying for a change of zoning districts, a Special Management Use Area Permit or any other federal, state, or county permit for the Project, Petitioner shall submit to the Commission for its approval a specific financial plan, together with all requisite commitments from financiers or lenders, demonstrating the financial capacity of the Petitioner to develop the Project as represented in these proceedings. In the event that such plan and commitments fail to obtain Commission approval, Petitioner has offered that it shall neither object to nor oppose reclassification of the Property or any portion thereof by the Commission from the Urban Land Use District to the Property's original Agricultural and Conservation Land Use classifications upon notice and hearing to the parties hereto.

32. Petitioner shall provide annual reports to the Commission, OSP, and the County of Hawaii Planning Department in connection with the status of the development of the Property and Petitioner's progress in complying with the conditions imposed by the Commission.

33. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and notice to all parties hereto, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner. Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has

been satisfied, in whole or in part. OSP will certify for itself and all state departments and agencies, and the Hawaii County Planning Department will certify for itself and all county departments and agencies.

DOCKET NO. A88-630 - PALACE DEVELOPMENT CORPORATION, a Hawaii corporation, and HAWAII KA'U AINA, a Hawaii general partnership

Done at Honolulu, Hawaii, this 4th day of June 1991, per motion on May 14, 1991.

LAND USE COMMISSION
STATE OF HAWAII

By _____
RENTON L. K. NIP
Chairman and Commissioner

By _____
ALLEN K. HOE
Vice Chairman and Commissioner

By (opposed)
ALLEN Y. KAJIOKA
Vice Chairman and Commissioner

By _____
KAREN S. AHN
Commissioner

By (conflict)
EUSEBIO LAPENIA, JR.
Commissioner

By _____
JOANN N. MATTSON
Commissioner

By (absent)
JAMES M. SHINNO
Commissioner

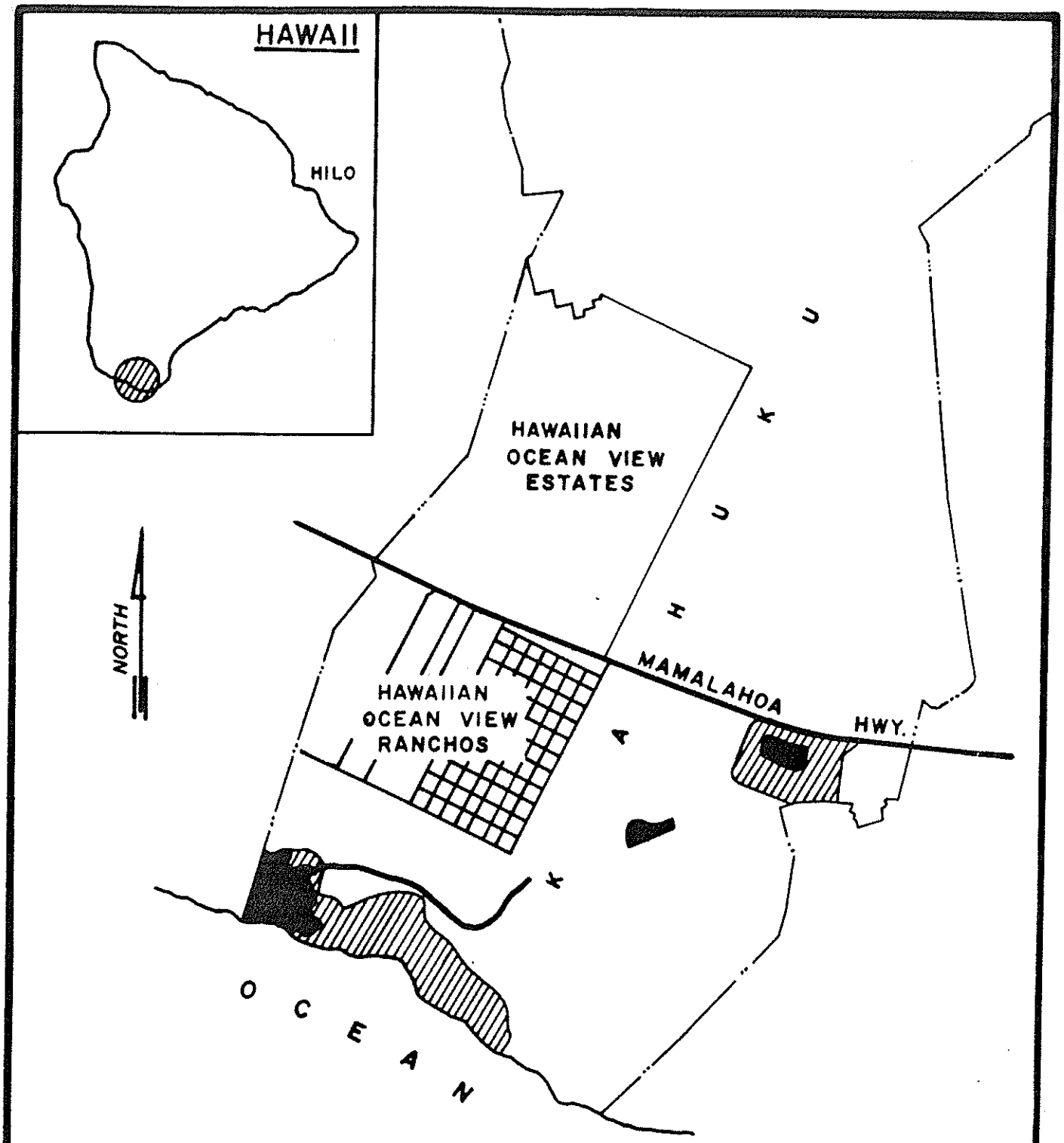
By _____
ELTON WADA
Commissioner

By _____
DELMOND J. H. WON
Commissioner

Filed and effective on June 4, 1991

Certified by:

_____
Executive Officer



DOCKET NO. A88-630 / PALACE DEVELOPMENT CORPORATION AND HAWAII KA'U AINA

L O C A T I O N M A P

TAX MAP KEY : 9-2-01: por. 72, por. 75, & por. 76
KAHUKU, KA'U, HAWAII
SCALE : 1" = APPROXIMATELY 2.27 MILES

APPROVED AREA AREA DENIED

EXHIBIT "A"

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of PALACE DEVELOPMENT CORPORATION, a Hawaii corporation, and HAWAII KA'U AINA, a Hawaii general partnership To Amend the Agricultural District Boundary into the Urban District for approximately 900 acres and to Amend the Conservation District Boundary into the Urban District for approximately 2,420 acres, at Kahuku, Ka'u, Island, County and State of Hawaii, Hawaii Tax Map Key Nos. 9-2-1: por. 72, por. 75 and por 76.	)	Docket No. A88-630 PALACE DEVELOPMENT CORPORATION, a Hawaii corporation, and HAWAII KA'U AINA, a Hawaii general partnership

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:

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Honolulu, Hawaii 96813

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DATED: Honolulu, Hawaii, this 4th day of June 1991.

ESTHER UEDA
Executive Officer