September 28, 1993

Ms. Esther Ueda, Executive Officer
State Land Use Commission
Old Federal Building, Room 104
335 Merchant Street
Honolulu, HI 96813

Dear Ms. Ueda:

State Land Use Boundary Amendments No. 797-803
Applicant: Hamakua Sugar Company

By letter dated April 8, 1992, the Planning Director transmitted copies of Ordinance Nos. 91-124 through 91-130. These Ordinances were initially enacted by the County Council to amend the State Land Use Boundary from Agricultural to Urban for several parcels each less than 15 acres in size.

The enclosed copy of an Order granting Plaintiff's motion for partial summary judgment by the Third Circuit Court determined that the adoption of Bills 91-506 through 91-513, 91-515 and 91-516 are null and void. Bills 91-506 through 91-512 were enacted into Ordinance Nos. 91-124 through 91-130.

Please make the necessary revisions to your records. Should you have any questions, please contact Rodney Nakano of my staff at 961-8288.

Sincerely,

for VIRGINIA GOLDSTEIN
Planning Director

RKN:mjs
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Enclosure

xc: Planning Commission

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Steven D. Strauss, Esq. (5242)
ATTORNEY AT LAW
P.O. Box 11517
Hilo, Hawaii 96721
Telephone: (808) 969-9731

Attorney for Plaintiffs

THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

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STACEY ENOKA
CLERK

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

GREENPEACE FOUNDATION HAWAII, INC., and IAN P. HAIGHT, Plaintiffs vs. COUNTY COUNCIL OF THE COUNTY OF HAWAII, INC., RUSSELL S. KOKUBUN in his capacity as Chairperson of the Hawaii County Council, COUNTY OF HAWAII, LORRAINE R. INOUYE in her capacity as Mayor of Hawaii County, NORMAN K. HAYASHI in his capacity as Hawaii County Planning Director, PLANNING COMMISSION of Hawaii County, MIKE LUCE in his capacity as Chairperson of Hawaii County Planning Commission, JOHN DOES 1-10, JANE DOES 1-10, and DOE GOVERNMENTAL ENTITIES 1-10, Defendants.	Civil No. 92-068 (HILO) (DECLARATORY JUDGMENT) COMPLAINT; SUMMONS

COMPLAINT

Plaintiffs Greenpeace Foundation Hawaii, Inc. ("GREENPEACE") and Ian P. Haight ("HAIGHT") allege:

I. PARTIES

1. GREENPEACE is a Hawaii nonprofit corporation having its principal address at 56 Waianuenue Avenue, Hilo, Hawaii.

2. HAIGHT is a resident of Kamuela, Hawaii.

I hereby certify that this is a full, true and correct copy of the original on file in this office

Clerk, Third Circuit Court, State of Hawaii

3. Defendant County of Hawaii ("HAWAII COUNTY") is a municipal corporation having a principal place of business in Hilo, Hawaii.

4. Defendant County Council of the County of Hawaii ("COUNTY COUNCIL") is the county legislative body having a principal place of business in the County Building, Hilo, Hawaii.

5. Defendant Russell S. Kokubun ("KOKUBUN") is Chairperson of the COUNTY COUNCIL.

6. Defendant Lorraine R. Inouye ("MAYOR INOUYE") is mayor of Hawaii County.

7. Defendant Norman K. Hayashi ("HAYASHI") is Planning Director of Hawaii County.

8. Defendant Planning Commission ("PLANNING COMMISSION") is an administrative body of Hawaii County comprising appointed members and charged with certain planning decisions.

9. Defendant MIKE LUCE is Chairperson of the PLANNING COMMISSION.

10. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE GOVERNMENTAL ENTITIES 1-10, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names and will ask leave of court to amend this complaint to substitute the true names and capacities when same are ascertained.

11. Due and diligent search by Plaintiffs and their counsel was done to ascertain the names and identities, and parts thereof

of these unnamed Defendants, JOHN DOES 1-10, JANE DOES 1-10, DOE GOVERNMENTAL ENTITIES 1-10, inclusive.

12. Such due and diligent search included the interviewing of the clients and known witnesses and the examination of all reports, documents and records retrievable by either Plaintiffs or counsel pertaining to the alleged actions complained of herein.

13. Plaintiffs are informed and believe and therefore allege that each of the specified Defendants and those designated herein as JOHN DOES 1-10, JANE DOES 1-10, and DOE GOVERNMENTAL ENTITIES 1-10, inclusive, are responsible in some manner for the alleged actions complained of herein.

14. Defendants, and each of them, acted as the agents, servants and employees of the other Defendants herein, and each of them, and were acting within the scope of the agency and employment concerned.

15. Defendants, and each of them, were in some manner responsible for each of the violations of law alleged herein.

II. STANDING, JURISDICTION AND VENUE

16. Plaintiffs have standing under H.R.S. § 343-7(a) and H.R.S. § 205A-6. GREENPEACE and its members derive recreational, aesthetic, conservational, scientific, and environmental benefits from Hawaii's terrestrial and marine environments, including Waipio Valley, Waipio Valley Rim, and surrounding areas. GREENPEACE members include residents and landowners of lands in and around Waipio Valley which are subject to direct impact from the proposed Waipio Valley Rim project.

17. HAIGHT has surfed, fished and camped Waipio Valley beach for the past 18 years. During this period, he has surfed Waipio Valley beach at least 180 days each year.

18. The Court has jurisdiction over the subject matter of this action under H.R.S. § 343-1 et seq. and H.R.S. § 205-1 et seq.

19. The causes of action complained of herein arose in the District of Hilo, therefore this matter is properly before this Court.

III. FACTS COMMON TO ALL COUNTS

20. Through the above-named Defendant persons and agencies and each of them and with the cooperation of the Hawaii County Council, the present Hawaii County administration has attempted to assist Hamakua Sugar Company, Inc. in selling certain agricultural lands adjacent Waipio Valley for resort development.

21. On May 16, 1991, Hamakua Sugar Company, Inc. applied for zoning amendments and permits necessary to deliver these Waipio Valley Rim lands to a potential buyer.

22. Defendant County Planning Commission and Defendants Hawaii County Council and Hawaii County Mayor Lorraine Inouye have approved permits, interim general plan amendments and State Boundary Land Use Amendments for development of three golf courses, a hotel, a lodge, a retreat resort, shops and ancillary facilities, 1400 residential units, including 210 condominiums, and other structures ("proposed Waipio Valley Rim project").

COUNT I

(Violation of H.R.S. § 343-5(a)(1))

23. The proposed Waipio Valley Rim project proposes the use of state or county lands. Specifically, the proposed Waipio Valley Rim project proposes construction of a golf course over at least one government road as shown on Government Registered Map 2640.

24. The government road has not been abandoned by either state or county government in the manner required by law.

25. H.R.S. § 343-5(a)(1) requires preparation of an environmental assessment for an action which proposes the use of state or county lands. For purposes of H.R.S. § 343-5(a)(1), state or county lands include state or county roads.

26. Defendant HAYASHI failed to cause an environmental assessment to be prepared. Moreover, Defendant HAYASHI failed to make a formal determination that an environmental impact statement was or was not required for the proposed Waipio Valley Rim project despite the proposed use of at least one state or county road.

27. Defendant HAYASHI's conduct is in violation of H.R.S. § 343-5(a)(1).

28. Defendant HAYASHI's failure to cause preparation of an environmental assessment and/or environmental impact statement for the proposed Waipio Valley Rim project frustrates the purpose of the environmental review process stated in H.R.S. § 343-1 et seq., including the ability of decision makers to be alerted to significant environmental effects, including socioeconomic effects, which may result from the proposed Waipio Valley Rim project.

Moreover, Defendant HAYASHI's conduct prevents meaningful public participation in the environmental review process, including participation of Plaintiffs.

29. As a result of Defendant HAYASHI's unlawful acts and ratification and approval of same by Defendant COUNTY COUNCIL and MAYOR INOUYE, the quality and frequency of Plaintiffs' recreational and aesthetic enjoyment of Waipio Valley and its environs is threatened. Moreover, Defendant HAYASHI's unlawful acts threaten the ecosystems and habitat of endangered species in Waipio Valley and the nearshore marine environment.

30. Accordingly, Plaintiffs are entitled to injunctive relief preventing any further action in connection with the Waipio Valley Rim project prior to preparation of an environmental assessment and/or completion of an environmental impact statement.

COUNT II

(Violation of H.R.S. § 343-5(a)(6))

31. Under H.R.S. § 343-5(a)(6), an environmental assessment is required for proposed county general plan amendments resulting in designations other than agriculture, conservation or preservation initiated by an applicant.

32. In this case, Hamakua Sugar Company, Inc. initiated the interim general plan amendment necessary to effect zoning changes, permits and boundary amendments incidental to the proposed Waipio Valley Rim project by its application dated May 16, 1991. Such zoning changes require change of zone from agricultural to urban for the project.

33. Defendant HAYASHI attempted to "initiate" the proposed general plan amendment after receiving Hamakua Sugar Company, Inc.'s application for same and negotiating with Hamakua Sugar Company, Inc. Defendant HAYASHI's conduct violates County of Hawaii Planning Department Rules of Practice and Procedure (March 1991) Rules 4-4(d) and 5-2(b) which provide that the Planning Director shall not accept or process an application for a zoning change or general plan amendment from a member of the public which is incomplete as to form or content.

34. On information and belief, Plaintiffs allege that, with the approval of Defendant MAYOR INOUYE, Defendant HAYASHI attempted to "initiate" the proposed general plan amendment for the purpose of speeding the Waipio Valley Rim project through land use approvals by avoiding an environmental assessment. Such conduct frustrates the express legislative purpose of encouraging public participation in the environmental review process stated in H.R.S. § 343-1.

35. Defendant HAYASHI refused to acknowledge official receipt of the date-stamped application of Hamakua Sugar Company, Inc. for a general plan amendment. At the same time, however, Defendant HAYASHI distributed the same application for review and comment by state and county agencies.

36. Later, Defendant HAYASHI claimed to still have not officially received Hamakua Sugar Company, Inc.'s application at the same time he was processing revisions to such application.

37. Defendant HAYASHI's failure to cause preparation of an environmental assessment and/or environmental impact statement for the proposed Waipio Valley Rim project frustrates the purpose of the environmental review process stated in H.R.S. § 343-1 et seq., including the ability of decision makers to be alerted to significant environmental effects, including socioeconomic effects, which may result from the proposed Waipio Valley Rim project. Moreover, Defendant HAYASHI's conduct prevents meaningful public participation in the environmental review process, including participation of Plaintiffs.

38. As a result of Defendant HAYASHI's unlawful acts and ratification and approval of same by Defendant COUNTY COUNCIL and MAYOR INOUYE, the quality and frequency of Plaintiffs' recreational and aesthetic enjoyment of Waipio Valley and its environs is threatened. Moreover, Defendant HAYASHI's unlawful acts threaten the habitat of endangered species in Waipio Valley and the nearshore marine environment.

39. Accordingly, Plaintiffs are entitled to injunctive relief preventing any further action in connection with the Waipio Valley Rim project prior to preparation of an environmental assessment and/or completion of an environmental impact statement.

COUNT III

(Violation of H.R.S. § 343-5(a)(6))

40. Under H.R.S. § 343-5(a)(6), an environmental assessment is required for proposed interim county general plan amendments resulting in designations other than agriculture, conservation or

preservation, no matter who initiates the amendment.

41. Defendants admit that the proposed general plan amendment is interim in nature. Accordingly, an environmental assessment and/or environmental impact statement is required.

42. Defendant HAYASHI's failure to cause preparation of an environmental assessment and/or environmental impact statement for the proposed Waipio Valley Rim project frustrates the purpose of the environmental review process stated in H.R.S. § 343-1 et seq., including the ability of decision makers to be alerted to significant environmental effects, including socioeconomic effects, which may result from the proposed Waipio Valley Rim project. Moreover, Defendant HAYASHI's conduct prevents meaningful public participation in the environmental review process, including participation of Plaintiffs.

43. As a result of Defendant HAYASHI's unlawful acts and ratification and approval of same by Defendant COUNTY COUNCIL and MAYOR INOUYE, the quality and frequency of Plaintiffs' recreational and aesthetic enjoyment of Waipio Valley and its environs is threatened. Public access to Waipio Valley, including access of Plaintiffs, is threatened by increased urbanization resulting from the Waipio Valley Rim project. Moreover, Defendant HAYASHI's unlawful acts threaten the habitat of endangered species in Waipio Valley and the nearshore marine environment.

44. Accordingly, Plaintiffs are entitled to injunctive relief preventing any further action in connection with the Waipio Valley

Rim project prior to preparation of an environmental assessment and/or completion of an environmental impact statement.

COUNT IV

(Violation of H.R.S. § 205-4(a))

45. The land use changes sought by Hamakua Sugar Company, Inc. on a contiguous area of land for the proposed Waipio Valley Rim project require amendment of district boundaries totaling more than 15 acres. Accordingly, the County and its agencies have approved segmentation of the project into multiple 15 acre components.

46. Proposed district boundary amendments involving land areas greater than 15 acres, however, must proceed through the state land use commission. Thus, Defendants' actions violate H.R.S § 205-4(a).

Wherefore, Plaintiffs pray for relief as follows:

1. For a declaration that an environmental assessment or environmental impact statement is required for the Waipio Valley Rim project;

2. For a declaration that the permits, general plan amendment, and rezoning are void for failure to comply with the environmental review process;

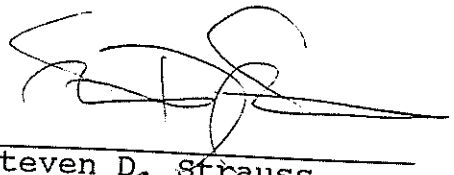
3. For a declaration that the district boundary amendments are void for failure to proceed through the land use commission;

4. For injunctive relief preventing any further actions with regard to the Waipio Valley Rim project until completion of the environmental review process and land use commission approval;

5. For attorney's fees and costs as to Plaintiffs; and,

6. For such other and further relief as this court deems proper.

Dated: Hilo, Hawaii, February 18, 1992.



Steven D. Strauss
Attorney for Plaintiffs

STATE OF HAWAII CIRCUIT COURT OF THE THIRD CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER

PLAINTIFF S	VS.	DEFENDANTS
GREENPEACE FOUNDATION HAWAII, INC. AND IAN P. HAIGHT		COUNTY COUNCIL OF THE COUNTY OF HAWAII INC., RUSSELL S. KOKUBUN in his capacity as Chairperson of the Hawaii County Council, COUNTY OF HAWAII, LORRAINE R. INOUYE in her capacity as Mayor of Hawaii County, NORMAN K. HAYASHI in his capacity as Hawaii County Planning Director, PLANNING COMMISSION of Hawaii County, MIKE LUCE in his capacity as Chairper of Hawaii County Planning Commission, JOHN DOES 1-10, JANE DOES 1-10 and DOE GOVERNMENTAL ENTITIES 1-10.
PLAINTIFF'S ATTORNEY (NAME, ADDRESS, TEL. NO.) Steven D. Strauss (5242) Attorney at Law P.O. Box 11517 Hilo, HI 96721 Tel.: (808) 969-9731		

TO THE DEFENDANT(S):

You are hereby summoned and required to serve upon plaintiff's attorney, whose address is stated above, an answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.

DATE ISSUED	CLERK	
FEB 1 8 1992	STACEY ENOKA (SEAL)	
I do hereby certify that this is a full, true, and correct copy of the original on file in this office.	CIRCUIT COURT CLERK	