

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
HILO ONE, INCORPORATED)
To Amend the Agricultural Land)
Use District Boundary in the)
Urban Land Use District for)
Approximately 24.659 acres at)
Paukaa, South Hilo, Hawaii,)
State of Hawaii, Tax Map Key No.:)
2-7-03:27)

DOCKET NO. A92-676

HILO ONE, INCORPORATED

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.

JUL 02 1993

Date

by

Ethel Reed
Executive Officer

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

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LAND USE COMMISSION
STATE OF HAWAII

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

HILO ONE, INCORPORATED, a Hawaii corporation (hereinafter "Petitioner"), filed a Petition on April 20, 1992, pursuant to Chapter 205, Hawaii Revised Statutes (hereinafter "HRS"), and Chapter 15-15 Hawaii Administrative Rules, (hereinafter "H.A.R."), to amend the State land use district boundary by reclassifying approximately 24.659 acres of land situate at Paukaa, South Hilo, Island and County of Hawaii, State of Hawaii, Hawaii Tax Map Key No.: 2-7-03:27 (hereinafter "Property"), from the Agricultural Land Use District to the Urban Land Use District for a residential lot subdivision. The Hawaii State Land Use Commission (hereinafter "Commission"), having heard and examined the testimony, evidence, and arguments of counsel presented during the hearing and the parties' proposed stipulated findings of fact, conclusions of

law, and decision and order, and exceptions filed by the Office of State Planning (hereinafter "OSP") and the Hawaii County Planning Department (hereinafter "Planning Department"), hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner filed a Petition for a Land Use District Boundary amendment (hereinafter "Petition") on April 20, 1992.

2. Petitioner is Hilo One, Incorporated, a Hawaii corporation, with its principal place of business and mailing address at 714 Kanoelehua Avenue, Hilo, Hawaii 96720.

3. On July 2, 1992, a prehearing conference was held in the conference room of the Department of Business, Economic Development and Tourism, 11th Floor, Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii with all parties in attendance.

4. The Commission conducted a hearing on the Petition on July 23, 1992, pursuant to notices published on June 8, 1992 in the Honolulu Advertiser and the Hawaii Tribune Herald.

5. There were no public witnesses testifying on this Petition at the July 23, 1992 hearing and the hearing was closed by the Commission on July 23, 1992.

6. On September 23, 1992, OSP filed a Motion to Reopen Hearing, citing a letter dated September 8, 1992 to the

Commission from residents of the Paukaa community opposing the Petition.

7. By written stipulation dated October 29, 1992, the Planning Department and Petitioner stipulated to OSP's Motion to Reopen the Hearing to address concerns raised about the Petition by the residents of the Paukaa community.

8. On October 29, 1992 and by Order dated November 17, 1992, the Commission approved the parties' stipulated Motion to Reopen the Hearing on the Petition for the purpose of submitting additional evidence related to the concerns raised by residents of the Paukaa community about Petitioner's project.

9. The Commission reopened the hearing on the Petition on April 29, 1993, pursuant to notices published on March 19, 1993 in the Honolulu Advertiser and the Hawaii Tribune Herald.

10. At the reopened hearing, Robert Shioji and Seiji Nakamura testified as public witnesses in support of the Petition and Patrick Moore, Edward Johnston, Jim Wang, and Perry Hotchkiss testified as public witnesses in opposition to the Petition. The Commission received into evidence without objection written testimony from Gordon Kurokawa as a public witness in support of the Petition.

DESCRIPTION OF THE PROPERTY

11. The Property is situated at Paukaa, South Hilo, Hawaii, approximately 2.5 miles north of downtown Hilo. It is

bounded by the Hawaii Belt Road on the makai side and Kulana Road or the Old Mamalahoa Highway on the mauka side.

12. The Property is immediately north and adjacent to the Honolii Pali Tract No. 2 and the Paukaa Village Residential Subdivisions.

13. The Honolii By the Sea Residential Subdivision developed by Petitioner and reclassified by the Commission in 1984 under LUC Docket No. A83-556/Honolii Partners from the Conservation and Agricultural Districts to the Urban District is located directly east of the Property on the makai side of the Hawaii Belt Road.

14. The Property is contiguous to the State Land Use Urban District to the east and the south and to the State Land Use Agricultural District to the north and west.

15. The Property is owned in fee simple by Petitioner.

16. The Property contains an area of approximately 24.659 acres. A steep gulch, approximately 200 feet wide and 50 to 75 feet deep, with an area of approximately three acres, intersects the Property through the center of the Property. A gully runs along the entire northern boundary of the Property. The Paukaa Stream is located at the base of the gulch (hereinafter collectively "Paukaa Stream gulch") and an unnamed stream runs along the northern gully. A drainageway extends along the southern boundary of the Property.

17. The Property has a frontage along the Hawaii Belt Road of approximately 1,900 feet and a frontage along Kulana Road of approximately 2,100 feet.

18. The Property slopes downward in the makai or easterly direction at an average grade of 12 percent, except near the Paukaa Stream gulch and the gully. The elevation of the Property in a makai to mauka orientation ranges from approximately 132 feet to approximately 200 feet above sea level. The Property is also approximately 390 feet inland or mauka from the shoreline.

19. The Property was formerly in sugarcane. Ginger is currently being cultivated on a portion of the Property.

20. The United States Department of Agriculture Soil Conservation Service (hereinafter "SCS") Soil Survey of the Island of Hawaii identifies the soils throughout the Property as being of the Hilo Series. Hilo silty clay loam, 0 to 10 percent slopes (HoC) is found on approximately 60 percent of the Property and Hilo silty clay loam, 20-25 percent slopes (HoD) is found on approximately 30 percent of the Property. The soil in the Paukaa Stream gulch area is classified as Hilo silty clay loam, 20 to 30 percent slopes (HoE).

21. The Hilo Series soil is a well-drained silty clay loam. A representative profile contains a surface layer of dark brown silty clay loam approximately 12 inches thick and a subsoil of dark brown, dark reddish-brown, and very dark

grayish-brown silty clay loam approximately 48 inches thick. The permeability of HoC Soil is rapid, runoff is slow, and the erosion hazard is slight. Runoff on HoD soil is moderate and the erosion hazard is slight to medium. In areas classified as HoE, the runoff is medium and the erosion hazard is moderate.

22. The SCS identifies the Hilo Series soil as having low load bearing capacity for building foundations, high shrinkage, and subject to possible sliding. There is also a limitation on the use of septic tank filter fields on this type of soil depending on slope.

23. The Property is classified as Prime under the Agricultural Lands of Importance in the State of Hawaii (ALISH) classification system. The University of Hawaii's Land Study Bureau's overall master productivity rating classifies the Property as "C" or Fair, with the Paukaa Stream gulch area classified as "E" or very poor.

24. The Lava Flow Hazard Zone Map, prepared by the U.S. Geological Survey designates the Property within Zone 8, or an area that has almost no likelihood of a risk of lava flow.

25. Located on the windward side of the island, the average rainfall on the Property is approximately 125 to 150 inches.

26. Winds in the vicinity of the Property are normally northeast trades and the mean annual temperature is approximately 75 degrees Fahrenheit.

27. The Flood Insurance Rate Map prepared by the U.S. Army Corps of Engineers designates the Property within Zone X, which is an area outside of the 500-year floodplain.

28. The Property is located outside of any tsunami inundation area.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

29. Petitioner proposes to develop a 41-lot single-family residential lot subdivision on the Property. The preliminary conceptual plan includes 33 lots on the Hamakua or northern side of the Paukaa stream intersecting the Property, and eight lots on the Hilo or southern side of this stream (hereinafter "Development"). Based upon concerns of the Paukaa community regarding the lot sizes for the Development and the maintenance of the rural Paukaa lifestyle, the Development includes lots ranging in size from approximately 15,000 square feet to approximately 1.04 acres.

30. Petitioner proposes to establish a two-acre park as a community benefit on the Hilo or southern side of the Development. The park is intended to satisfy a community need to provide a place for people to congregate, the community association and other groups to meet, and a safe place for children to play. The park is also intended to serve as a buffer between the Development and the Paukaa community. Petitioner proposes to survey, grade, and grass the park and turn it over to the County of Hawaii.

31. In order to maintain open space and to satisfy the community concerns regarding the potential double density of this Development, Petitioner proposes to prohibit the construction of ohana dwellings on the subdivided lots.

32. The traffic problem along Kulana Road is a major concern of the Paukaa community. In order to minimize this problem, access to the 33 lots on the Hamakua or northern side of Paukaa Stream will be provided off of the Hawaii Belt Road, by relocating the present designated access point along that highway. Access to the remaining eight lots and the park on the Hilo or southern side of Paukaa Stream will be provided off of Kulana Road.

33. Petitioner proposes that no curbs, gutters, or sidewalks be provided along the roads of the Development in order to make the Development fit into the rural type lifestyle of the Paukaa area.

34. The high biological value of the Paukaa Stream has been noted by the State Department of Land and Natural Resources, Division of Aquatic Resources (hereinafter "DAR"), and the Paukaa community. In order to protect this stream and the environment in the vicinity of the stream from the impacts of the Development, Petitioner proposes to establish a conservation easement, in favor of the State of Hawaii, over the Paukaa Stream and the entire gulch surrounding the stream.

35. Lots will be sold as improved land. Improvements made by Petitioner will be constructed to County of Hawaii

subdivision standards, and will include the construction of roads, drainage structures, sewer lines, water transmission lines, electrical, telephone, and cable TV transmission facilities.

36. The total improvement costs for the Development are presently estimated to be approximately \$1,350,000 or \$32,927 per lot. The estimated dollar value of the park to be contributed as a community benefit is \$200,000.

37. The intended market for the subdivided lots will be buyers in the middle income range. Petitioner does not intend to market the subdivided lots outside of the State of Hawaii.

38. The State Housing Finance and Development Corporation (hereinafter "HFDC") has stated that Policies A(30) and B(3) of the State Housing Functional Plan seek to ensure that (1) housing projects and (2) projects which impact housing provide a fair share or adequate amount of affordable home ownership or rental housing opportunities, and that the park proposed by Petitioner in lieu of providing housing for low, low-moderate, and moderate income residents does not address these affordable housing policies.

39. HFDC has also stated that it appears that a portion of the 41 proposed lots could be provided at affordable prices based upon the estimated development cost of approximately \$32,927, and HFDC is open to working with Petitioner and the County of Hawaii Housing Agency to find an

acceptable means for Petitioner to provide a fair share of affordable housing.

40. OSP recommends that Petitioner provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii as a condition of the Commission's approval of this Petition. However, Petitioner is proposing to provide the park as a community benefit in lieu of providing affordable housing.

41. Petitioner will begin construction of the subdivision improvements immediately after all land use, zoning and subdivision approvals are received from the State and County. The Development on the Property will be substantially completed within five years after the date of final zoning approval of the Property by the County.

PETITIONER'S FINANCIAL CAPABILITY TO
UNDERTAKE THE PROPOSED DEVELOPMENT

42. Petitioner's financial statement for the year ending December 31, 1990 lists Petitioner's total assets at \$645,415.55 and total liability and stockholders' equity at \$645,415.66. Petitioner's financial statement for the year ending December 31, 1991 lists Petitioner's total assets at \$1,614,350.89 and total liability and stockholders' equity at \$1,614,350.89.

43. Petitioner has experience in developing residential subdivisions in the South Hilo area. Petitioner has experience in the processing of required governmental

permits, the arranging for and securing of financing for the construction of projects, and the overseeing of construction of projects.

44. Petitioner proposes to finance the Development by obtaining development loans from financial institutions, and by using the Property as collateral to secure the loans. Petitioner has used this means of financing in the past for residential development projects.

45. Petitioner has the financial capability to develop the Property based on Petitioner's financial condition and past experience in real estate development.

STATE AND COUNTY PLANS AND PROGRAMS

46. The Property is located within the State Land Use Agricultural District as reflected on the Land Use District Boundary Map H-65, Papaikou.

47. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map designates the Property for Low Density Urban development. Single-family residential development is permitted within this General Plan designation.

48. The County zoning designation for the Property is Agricultural, with a minimum lot size of 20 acres. Petitioner intends to obtain a County zoning change to Residential, with a minimum lot size of 15,000 square feet (RS-15).

49. The Property is not located within the Special Management Area as administered by the County of Hawaii.

NEED FOR THE PROPOSED DEVELOPMENT

50. There is a demand and a need for single-family residential lots in South Hilo because of the lack of available inventory of buildable residential lots.

51. There is a market in the Hilo area for lots intended for the middle income range buyer, priced at \$90,000 and above as proposed by Petitioner.

IMPACT UPON THE RESOURCES OF THE AREA

Agricultural Resources.

52. The Property was cultivated in sugarcane by Mauna Kea Sugar Company until the early 1980s. A portion of the Property is presently being used for the cultivation of ginger.

53. Macadamia nut orchards are located on land immediately west or mauka of the Property and sugarcane is planted on land to the north of the Property.

54. The State Department of Agriculture ("DOA") believes that the agricultural resources of the area, and the plans, programs, and activities of DOA will not be adversely affected by the approval and development of Petitioner's Development. However, DOA believes that existing farm businesses should be protected from nuisance complaints and the cost of implementing mitigating measures when there is a conflict between agriculture and non-agricultural uses.

Water Quality

55. Petitioner does not anticipate that the development on the Property will adversely affect the quality

of the groundwater in the area, because the Development will utilize the County sewer system for sewage disposal.

56. Surface water generated by the Development will be controlled by drainage structures constructed by Petitioner as required by County standards.

57. To mitigate the potential impacts of soil erosion from the proposed Development on the existing streams, Petitioner will establish a soil erosion plan which will be submitted to the State Department of Health (hereinafter "DOH"), and made a part of the construction contract for the proposed Development.

58. The Army Corps of Engineers (hereinafter "COE") has not determined whether any wetland areas exist in the Paukaa Stream gulch area, the gully on the northern boundary, or the drainageway on the southern boundary of the Property.

59. A COE Department of the Army (hereinafter "DA"), permit will be required for any grading or filling of a wetland area. The COE has recommended that a botanical study and/or wetland delineation be performed for the Property so that DA permit requirements can be determined.

60. Although Petitioner had assistance from Hawaii Tropical Botanical Garden in identifying the plants on the Property, Petitioner did not have a formal botanical study prepared in conjunction with this Petition.

61. OSP has recommended that Petitioner have a botanical study or a wetland delineation performed for the

Property so that the COE permit requirements can be determined. Petitioner has no objection to this recommendation.

Air Quality

62. Because of the high rainfall in the area, the potential for short-term air quality impacts from fugitive dust associated with construction activities on the Property is minimal.

63. The impacts upon the air quality can be mitigated by the development and implementation of a dust and erosion control plan submitted to DOH for approval as part of the construction contract for the Development.

Aural Quality

64. The aural quality of the area may be adversely affected for a short time during the construction phase. However, the completed residential Development should not have any long-term noise impacts on the area.

65. The impacts of the Development upon the aural quality of the area will be negligible.

Archaeological Resources

66. Petitioner's archaeological assessment was conducted by Paul H. Rosendahl. No archaeological or historic features were located on the Property and no further studies were needed. DLNR concurs with the findings of the assessment.

67. Petitioner agrees that work on the Development will be temporarily stopped in the event that any archaeological resources such as artifacts, shell, bones or

charcoal deposits, human burials, rock or coral alignments, paving or walls of historic or prehistoric significance, are found during construction, and that the Historic Preservation Division of DLNR will be contacted.

Flora and Fauna

68. As indicated in earlier findings, an informal investigation of plants in the area was conducted by the staff of the Hawaii Botanical Garden to identify whether any endangered or threatened plant species are located on the Property. No endangered or threatened species were found.

69. Except for the occasional sighting of an owl, there are no known rare or endangered animal species on the Property. Petitioner knows of no nesting of owls on the Property.

Aquatic Resources

70. DAR found significant populations of all five of the endemic Hawaiian freshwater fishes along with various invertebrate species in the Paukaa Stream. DAR concluded that the Paukaa Stream is of high biological value and needs some protection from the impacts of development.

71. Based upon DAR's recommendation, OSP is recommending that Paukaa Stream gulch be reclassified into the Conservation District or that a conservation easement be established in favor of the State of Hawaii for the Paukaa Stream gulch, to the satisfaction of DLNR.

72. Petitioner agrees to provide a conservation easement for the Paukaa Stream gulch in favor of the State of Hawaii, with the terms of said easement to be satisfactory to DLNR. Petitioner also agrees to record the easement with the State of Hawaii Bureau of Conveyances or Land Court, as appropriate, prior to the sale of the Property or any subdivided lot within the Property.

Scenic/Visual Resources

73. The Property is situated mauka of the Hawaii Belt Road, above the highway. The proposed Development will not interfere with the coastal and shoreline views. It is also proposed to be designed to utilize the existing topography of the land without substantial alteration.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadway and Highway Services and Facilities

74. Access to the Property via Kulana Road is presently available from a designated access point along the Hawaii Belt Road, a State maintained two-lane arterial highway with a pavement width of 22 feet within a 100-foot corridor. Kulana Road is a County-maintained roadway having a pavement width of 17 feet within a 40-foot right-of-way.

75. Because of the Paukaa community concerns about traffic along Kulana Road, Petitioner intends to provide access off of Kulana Road only to the eight lots and the park in the Development which are situated on the Hilo or southern side of the Paukaa Stream.

76. Petitioner intends to relocate the access point along the Hawaii Belt Road to provide direct access to the 33 remaining lots in the Development which are situated on the Hamakua or northern side of the Paukaa Stream, in order to minimize the traffic impact of the Development along Kulana Road.

77. Petitioner is willing to participate in the funding and construction of regional and local traffic improvements on a pro rata basis.

Water Service

78. An 8-inch County water line extends along the Hawaii Belt Road adjacent to the Property. Petitioner intends to provide potable water to the proposed Development through the County water system.

79. The County Department of Water Supply (hereinafter "DWS") does not have sufficient water capacity in its system to provide water service to the Property at the present time. However, DWS is presently in the process of acquiring land in Papaikou from C. Brewer for the purpose of drilling another well. Water from the well should be sufficient to service the proposed Development and other lots in the Papaikou area.

80. Funding for the proposed Papaikou well has been appropriated in the DWS 1992-1993 budget, and DWS anticipates that the additional source could be on line in late 1993 or 1994.

Wastewater Treatment and Disposal

81. An 8-inch County sewer line extends along the Hawaii Belt Road adjacent to the Property. Petitioner proposes to dispose of sewage by connecting the Development to the County sewer system.

82. Under County Department of Public Works (hereinafter "DPW") Wastewater Division standards, 400 gallons per day (hereinafter "gpd") of sewage is generated by a single-family residential lot and the total amount of sewage that will be generated by the Development will be 31,600 gpd.

83. There is presently sufficient capacity in the County sewer system to accommodate the sewage to be generated by the proposed Development, but an additional pump for the system may be required.

84. Petitioner is willing to participate in its proportionate share of the funding and construction of adequate wastewater transmission and disposal facilities for the Development.

Drainage

85. DPW requires that all development generated surface water runoff be disposed of onsite and not be directed towards any adjacent properties.

86. Petitioner is willing to design and construct drainage improvements to the satisfaction of the County of Hawaii and the State Department of Transportation.

Solid Waste Disposal

87. Solid waste generated by the proposed Development can be disposed of at an existing County solid waste transfer station located approximately one-half mile to the south of the Property at Puueopaku. Solid waste can also be disposed of at any other approved disposal site in South Hilo.

88. Petitioner is willing to cooperate with DOH and DPW to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, HRS.

Electrical and Telephone Service

89. Electrical power for the proposed Development will be provided by Hawaii Electric Light Company, Inc.. Electrical power and telephone facilities are available to provide service to the proposed Development.

Police and Fire Protection

90. The Property is located within an existing serviceable region by police and fire facilities. The Hilo Police Station is situated approximately 4.3 miles away from the Property, and the Hilo Central Fire Station is situated approximately 3.6 miles away from the Property.

Schools

91. The State Department of Education (hereinafter "DOE") estimates that 33 additional students will be added to the school population by reason of the proposed Development, with 25 additional students at Kalaniana'ole Elementary and

Intermediate Schools and eight additional students at Hilo High School.

92. Kalaniana'ole School has had a 16 percent decline in enrollment over the last 10 years. DOE projects that the enrollment of 580 students at this school as of 1991 will continue to decrease annually, so that by 1997 the projected enrollment will be 488 students.

93. DOE has concluded that Kalaniana'ole Intermediate and Elementary Schools will not be impacted by the proposed Development. It has also concluded that the impact of eight additional students at Hilo High School is negligible.

Civil Defense

94. There are presently civil defense sirens located near the Property in the Paukaa area, and in Papaikou and Pepeekeo.

95. Although the State Department of Defense, Office of the Director for Civil Defense, has recommended the installation of a new siren on the Property in order to provide alerting coverage for the residents of the proposed Development, it is the Hawaii County Civil Defense administrator's position that a siren would not be warranted for a subdivision of this size.

96. OSP has recommended that Petitioner fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies. Petitioner has no objection to this recommendation.

Park and Recreation Services and Facilities

97. There are existing recreational facilities within the vicinity of the Property. A ballfield is located at Papaikou approximately one mile away from the Property, and Wainaku Gym is approximately two miles away from the Property.

CONFORMANCE TO URBAN DISTRICT STANDARDS

98. The proposed Development generally conforms to the standards applicable in establishing boundaries of the State Land Use Urban District set forth in Section 15-15-18, H.A.R., as follows:

(a) The Development is in reasonable proximity to centers of trading and employment facilities. The Property is less than three miles away from downtown Hilo, the largest commercial and industrial area in the County of Hawaii.

(b) Petitioner has substantiated the economic feasibility of the Project through Petitioner's financial statements, the report of Kenneth Tanaka, and Petitioner's testimony regarding his experience in the development of residential subdivisions in South Hilo.

(c) The Property is in proximity to existing and developing facilities such as roads, water, sewer and solid waste disposal. Public services, such as police, fire, parks and schools area also in reasonable proximity to the Property.

(d) The Development will help to provide a sufficient reserve area for urban growth in an appropriate location based on a ten-year projection. The Big Island has

been experiencing an acute housing shortage for many years. In addition, there is an absence of available residential lots in the Hilo area. The proposed Development, situated in an area designated by the County for urban expansion, will help to mitigate this shortage by the infusion of additional residential lots into the market.

(e) The Property has a slope not exceeding 20 percent, except in the Paukaa Stream gulch area. The Property is also reasonably free from the threat of flooding, tsunami, unstable soil, and other adverse environmental effects.

(f) The Property is contiguous to the Urban Land Use District to the south, the east and the southeast, with residential developments existing in those Urban areas. The Property is also designated for "Low Density Urban" use under the Hawaii County General Plan, which contemplates future residential development in the area.

(g) The urbanization of the Property will not contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services, since it is contiguous to an existing urban and residential area.

CONFORMANCE WITH THE HAWAII STATE PLAN

99. The proposed reclassification of the Property generally conforms with the objectives, policies and priority guidelines of the Hawaii State Plan for the physical environment, relating to land, air and water quality; for

socio-cultural advancement relating to housing; and for regional growth distribution and land resource utilization as follows:

(a) Encourages urban development in close proximity to existing services and facilities (Section 226-13(b)(7), HRS).

(b) Provides greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, livable homes located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals (Section 226-19(a)(1), HRS).

(c) Increases home ownership opportunities and choices in terms of quality, location, cost, densities, style and size of housing (Section 226-19(b)(3), HRS).

(d) Promotes design and location of housing developments, taking into account the physical setting, accessibility to public facilities and services and other concerns of existing communities and surrounding areas (Section 226-19(b)(5), HRS).

(e) Makes available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the Agricultural District (Section 226-104(b)(2), HRS).

CONFORMANCE TO COASTAL ZONE POLICIES AND OBJECTIVES

100. The proposed reclassification of the Property for the proposed Development generally conforms to the policies

and objectives of the Coastal Zone Management Program, Chapter 205A, HRS.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner and the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the Hawaii Land Use Commission Rules under Chapter 15-15, H.A.R., and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property consisting of approximately 24.659 acres of land situated at Paukaa, South Hilo, Island and County of Hawaii, State of Hawaii and identified as Hawaii Tax Map Key No. 2-7-03:27, from the Agricultural Land Use District to the Urban Land Use District, subject to the conditions hereinafter stated in the Order, is reasonable, conforms to the standards for establishing the urban district boundaries, non-violative

of Section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in Chapter 226, HRS.

ORDER

IT IS HEREBY ORDERED that the Property, being the subject of Docket No. A92-676, filed by Hilo One, Incorporated, consisting of approximately 24.659 acres of land situated at Paukaa, South Hilo, Island and County of Hawaii, State of Hawaii and identified as Hawaii Tax Map Key No.: 2-7-03:27, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, shall be and the same is hereby reclassified from the Agricultural Land Use District to the Urban Land Use District and the State land use district boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended. The location and distribution of the affordable housing or other provision for affordable housing shall be under such terms as may be mutually agreeable among Petitioner, the State Housing Finance and Development Corporation, and the County of Hawaii.

2. Petitioner shall immediately stop work on the impacted area and contact the Historic Preservation Division, State Department of Land and Natural Resources, should any archaeological resources such as artifacts, shell, bones or charcoal deposits, human burials, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property.

3. Petitioner shall participate in the funding and construction of regional and local traffic improvements, on a pro rata basis, as determined by the State Department of Transportation.

4. Petitioner shall submit construction plans for roadway work required for the Development within the State Highway right-of-way to the Department of Transportation for approval.

5. Petitioner shall implement effective soil erosion and dust control measures both during and after construction.

6. Petitioner shall fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies.

7. Petitioner shall provide notification to all prospective buyers of the single family dwellings of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities

may be deemed a nuisance. If conflicts do occur, the owners of the Property and not the existing farm businesses, shall bear the full cost of implementing mitigating actions.

8. Petitioner shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a pro rata basis, as determined by the State Department of Health and the County Department of Public Works.

9. 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 the State Department of Transportation.

10. Petitioner shall grant a conservation easement, or easements, to the State of Hawaii for Paukaa Stream and gulch, to the satisfaction of the State Department of Land and Natural Resources. The conservation easement, or easements, shall be recorded with the State of Hawaii Bureau of Conveyances or Land Court prior to the sale of the Property or any portion thereof. Petitioner shall submit a copy of the recorded easement, or easements, to the Land Use Commission, the Office of State Planning, and the County of Hawaii.

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

12. Petitioner shall cooperate with the State Department of Health and the County Department of Public Works

to conform to the program goals and objectives of the Integrated Solid Waste Management Act.

13. Petitioner shall have a botanical study and/or wetland delineation performed for the Property so that the Department of Army Corps of Engineers permit requirements can be determined.

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

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

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

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

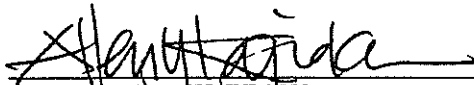
18. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner


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

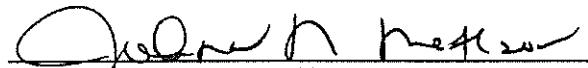
19. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Title 15, Chapter 15, Section 92, Hawaii Administrative Rules.

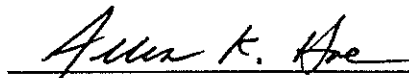
Done at Honolulu, Hawaii, this 2nd day of July 1993,
per motion on June 29, 1993.


LAND USE COMMISSION
STATE OF HAWAII

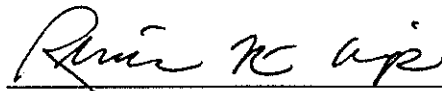
By 
ALLEN Y. KAJIOKA
Chairman and Commissioner


By 
KAREN S. AHN
Vice Chairman and Commissioner

By 
JOANN N. MATTSON
Vice Chairman and Commissioner

By 
ALLEN K. HOE
Commissioner

By 
EUSEBIO LAHENIA, JR.
Commissioner

By 
RENTON L. K. NIP
Commissioner

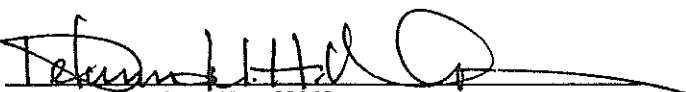
By 
TRUDY K. SENDA
Commissioner

Filed and effective on
July 2, 1993

Certified by:


Executive Officer

By (absent)
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner

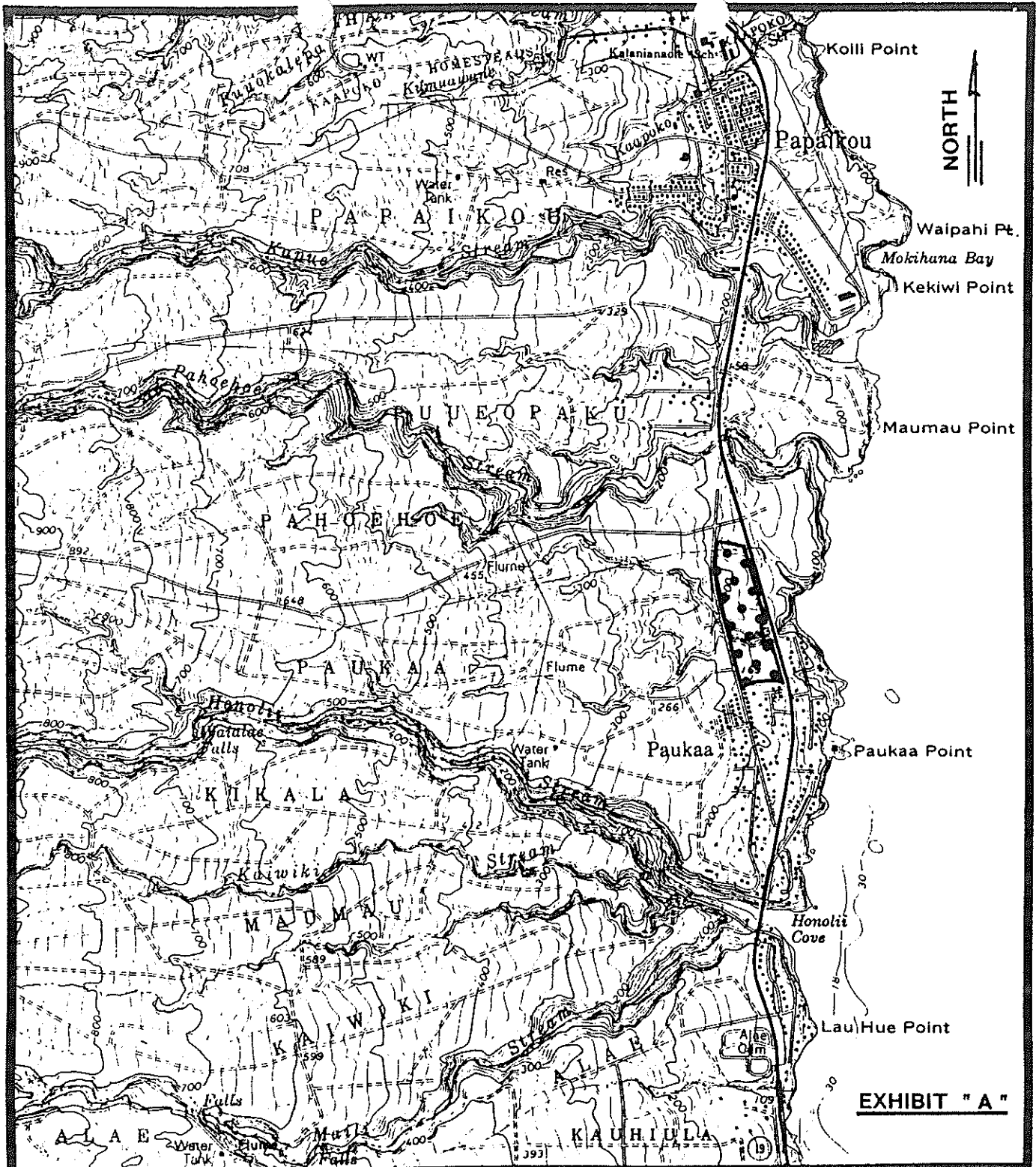


EXHIBIT "A"

DOCKET NO. A92 - 676 / HILO ONE, INCORPORATED

LOCATION MAP

TAX MAP KEY: 2-7-03:27

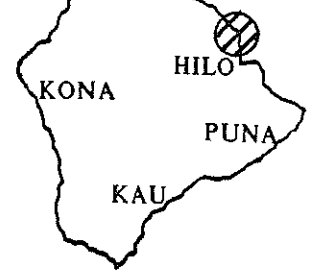
PAUKAA - PAHOEHOE, SOUTH HILO, HAWAII

SCALE: 1" = 2,000 ft ±



APPROVED AREA

KOHALA HAMAKUA



KAU

HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A92-676
)
HILO ONE, INCORPORATED) HILO ONE, INCORPORATED
)
To Amend the Agricultural Land)
Use District Boundary in the)
Urban Land Use District for)
Approximately 24.659 acres at)
Paukaa, South Hilo, Hawaii,)
State of Hawaii, Tax Map Key No.:)
2-7-03:27)
_____)

CERTIFICATE OF SERVICE

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

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

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

CERT. SANDRA PECHTER SCHUTTE, ESQ., Attorney for Petitioner
Roehrig, Roehrig, Wilson, Hara, Schutte & De Silva
101 Aupuni Street, Suite 124
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 2nd day of July 1993.



ESTHER UEDA
Executive Officer