SLU 861

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of C. BREWER PROPERTIES, INC., a Hawaii corporation, To Amend the Agricultural Land Use District Boundary into the Urban District for approximately 288.240 acres of land at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, TMK Nos.: 2-6-08: 17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15	DOCKET NO. A92-680 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

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.

JAN 05 1994 by _____
Date Executive Officer

LAND USE COMMISSION
STATE OF HAWAII
JAN 5 9 00 AM '94

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

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of C. BREWER PROPERTIES, INC., a Hawaii corporation, To Amend the Agricultural Land Use District Boundary into the Urban District for approximately 288.240 acres of land at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, TMK Nos.: 2-6-08: 17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15	DOCKET NO. A92-680 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

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

C. BREWER PROPERTIES, INC., a Hawaii corporation ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on July 24, 1992, pursuant to Chapter 205, Hawaii Revised Statutes ("HRS"), and Chapter 15-15, Hawaii Administrative Rules ("H.A.R."), to amend the State land use district boundary by reclassifying approximately 288.240 acres of land situated at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, identified as Tax Map Key Nos.: 2-6-08:17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15 ("Property"), from the Agricultural Land Use District to the Urban Land Use District.

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence and arguments of counsel presented during the hearings; Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; the subsequent stipulation and exceptions of the County of Hawaii Planning Department to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; the Office of State Planning's ("OSP") Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Petitioner's Exceptions to OSP's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner is C. Brewer Properties, Inc., a Hawaii corporation, with its principal place of business and mailing address at 827 Fort Street Mall, Honolulu, Hawaii, 96813.

2. Petitioner filed a Petition for a Land Use District Boundary Amendment on July 24, 1992 ("Petition").

3. Petitioner filed a First Amendment to its Petition on September 16, 1992, clarifying the TMK parcels comprising the Property.

4. Petitioner filed a Second Amendment to its Petition on November 23, 1992.

5. On December 1, 1992, a prehearing conference on the Petition was held at which time the parties exchanged exhibits and lists of witnesses.

6. The Commission conducted hearings on the Petition on December 17, 1992 and April 29, 1993, pursuant to a public notice published November 4, 1992 in the Honolulu Advertiser and the Hawaii Tribune Herald.

7. On December 17, 1992, Robert Williams testified in support of the Petition. The Commission entered into the record, without objection, a letter dated November 23, 1992 from Clifford H. Dodo; a letter dated December 9, 1992 from Julia D. Simmons; and a letter dated December 17, 1992 from Mitsugu Sumada.

8. On April 29, 1993, the Commission entered into the record, without objection, a letter dated February 7, 1993 from Lenny Sutton.

9. On May 21, 1993, Petitioner filed a Motion to Re-Open Hearing ("Motion"), which was granted by the Commission on June 16, 1993, and by a written Order dated July 9, 1993.

10. On August 18, 1993, the Commission issued its "Order Re: Submission of Exhibits and Identification of Witnesses" for this docket.

11. The Commission conducted the reopened hearing on September 20, 1993, pursuant to a public notice published on August 6, 1993 in the Honolulu Advertiser and Hawaii Tribune

Herald. At the hearing, the Commission entered into the record, without objection, a letter dated May 12, 1993 from Russell Kokubun.

12. On December 2, 1993, the matter was presented for decision making before the Commission. At that time, Petitioner orally moved to defer consideration of the Petition at a later date. The Commission granted, without objection, Petitioner's oral motion.

DESCRIPTION OF THE PROPERTY

13. The Property is situated at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii.

14. The Property is generally bound to the north by Pukihae Stream, to the south by Wailuku River, to the east by the Puueo community, and to the west by sugarcane and a macadamia nut orchard. The Property is situate to the west (and mauka) of the Hawaii Belt Highway and north of Waianuenue Avenue. Wainaku Street is at the eastern base of the Property. The Property is north of downtown Hilo, and separated from Hilo proper by the Wailuku River.

15. There are two exclusions from the Property, Amauulu Camp, consisting of approximately 19.381 acres, and a small, approximately 1.604-acre kuleana lot mauka of Dodo Mortuary. Amauulu Camp is located within the Urban District while the 1.604-acre lot is located within the Agricultural District.

16. The Property is owned in fee by Mauna Kea Agribusiness, Co., Inc. ("MKA"), a subsidiary of C. Brewer and Co., Ltd., and an affiliate of Petitioner.

17. MKA has authorized Petitioner to prepare, file, and process the Petition.

18. Previous historic and current uses of the Property include sugarcane cultivation.

19. The Property is located at the foot of Mauna Kea, sloping towards the ocean. From the mauka or western edge of the Property, elevation ranges from 400 feet above mean sea level ("MSL") near the lower cane haul road, to approximately 100 feet MSL near the boundary of the Property adjacent to Wainaku Street.

20. The Property's average slope is between six to 10 percent.

21. Major topographical features form the drainage pattern and include Mokupau Stream, Kiohoole Gulch, the Wailuku River, and Pukihae Stream. Much of the natural drainage empties into Pukihae Stream to the north and the Wailuku River to the south.

22. The Property is predominately exposed to the northeast tradewinds, with daytime temperatures ranging between the high 70°s to the low 80°s throughout the year. Nighttime temperatures range from the high 60°s to the low to mid 70°s. Average rainfall is approximately 125 inches per year.

23. The United States Department of Agriculture Soil Conservation Service Soil Survey of the Island of Hawaii identifies the soils of the Property as primarily HoC and HoD, the Hilo silty clay loam series, with slopes between 10 and 20 percent. Permeability is rapid, runoff is slow to medium, and the erosion hazard is slight to moderate. These soils are used for sugarcane, truck crops, orchards, and pasture.

24. The Land Study Bureau Detailed Land Classification rates the productivity of the Property's soils as "C," fair to good productivity potential for most agricultural uses.

25. The soils of the Property are classified "Prime" by the Agricultural Lands of Importance to the State of Hawaii classification system.

26. The Property is located within Zone X on the Federal Emergency Management Agency's ("FEMA") Flood Insurance Rate Maps ("FIRM"). Zone X represents areas determined to be outside the 500-year floodplain.

27. The Property is designated as Zone 8 on the U.S. Department of the Interior, U.S. Geological Survey Volcanic Hazards Map. Zone 1 areas represent the most hazardous, while Zone 9 is the least hazardous.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

28. Petitioner proposes to develop an approximately 303-acre master planned community (of which the Property represents approximately 288.240 acres) consisting of: up to a

maximum of 1,000 residential units; a neighborhood commercial center to service the proposed project residents; park and open space ("Project"); and a school site, if it is determined an additional facility is needed by the State Department of Education ("DOE").

29. Petitioner also proposes to expand the existing Clem Akina Park, which abuts the Property to the east, by approximately 3.9 acres.

30. Petitioner anticipates the residential component of the Project will include between 650 and 1,000 homes to be developed as completed single-family residential units, rather than vacant home lots. Lot sizes will range from 7,500 to 20,000 square feet for 650 homes, or 7,500 to 10,000 square feet for 1,000 homes.

31. Depending upon the number of units developed and the final product mix, construction costs are expected to range between $121.5 million and $170.8 million, in addition to $44.6 million in estimated infrastructure development costs.

32. Petitioner anticipates beginning construction in 1995, with development occurring over a six to 14-year period, depending upon market conditions and cyclical fluctuations in market demand. Petitioner anticipates that the development would occur in three to four phases, with each phase consisting of on-site construction of infrastructure, home construction, and/or sales. Off-site construction, including water well and storage development, and roadway improvements would occur

within the first year of development. Petitioner anticipates that the first phase would be completed within the third or fourth year of construction.

33. Petitioner proposes to furnish a range of residential housing types for a range of socioeconomic groups. Should affordable housing be accommodated on-site, Petitioner anticipates that approximately 50 percent of the residential units will be offered at prices at which families in the 80 to 140 percent range of Hawaii County's median income can afford. The remaining 50 percent will be composed of the market units, targeting those families in the 150 to 180 percent of median income range.

34. The State Housing Finance and Development Corporation ("HFDC") comments that Policies A(3) 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/adequate amount of affordable homeownership or rental housing opportunities. Based upon the 1992 median income for a family of four in the County of Hawaii, an affordable sales price for a single-family house and lot package for families earning from 80 percent to 140 percent of the median income is estimated to range from $82,800 to $158,200 (assumes a 30-year mortgage at 8.5 percent interest, a housing expense not exceeding 33 percent of income, a customer trust fund of $130 for property taxes and insurance, and a down payment of five percent). Estimated rents for a family of four

earning from 50 percent to 80 percent of the area median range from approximately $420 to $670 per month.

35. Petitioner has proposed to satisfy some or all of its affordable housing requirements by donating land in the Kulaimanu area to the County of Hawaii. The extent to which the affordable housing requirement is satisfied in this manner is dependent upon community needs and market conditions at the time, as well as County and State regulations. Under this proposal, Petitioner anticipates the County would work with HFDC on the particular mix of the affordable units.

36. The County of Hawaii is in full agreement in principle with the proposal by Petitioner to address its affordable housing requirements.

37. Petitioner is aware that the current State policy on affordable housing is that 60 percent of a project must be in the affordable range and that HFDC's affordable housing guidelines can be used for credits to work from that 60 percent base figure.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

38. Petitioner's Consolidated Balance Sheet as of December 29, 1991 (Exhibit 5) reflects total assets of $75,195,000 (including total current assets of $29,066,000; total investments of $3,493,00; total property, plant and equipment of $42,361,000; deferred charges of $96,000; and other assets of $179,000). Total liabilities were $9,785,000,

and stockholders' equity was $65,410,000. Petitioner is a wholly-owned subsidiary of C. Brewer and Co., Ltd. Petitioner has represented that in addition to acquiring bank financing, it has in the past relied on the parent company's ability to support Petitioner's balance sheet and income.

STATE AND COUNTY PLANS AND PROGRAMS

39. The Property is located within the State Land Use Agricultural District, as reflected on the Commission's Official Map H-66 (Hilo).

40. The Hawaii County General Plan Land Use Pattern Allocation Guide map designates the Property as Low Density Urban Development (Single-family residential in character, ancillary community and public uses, and convenience type commercial uses). The Property was reclassified to its current land use designation in 1989 during the Comprehensive General Plan Review Program.

41. The County zoning designation for the Property is Agricultural 20-Acre (A-20a).

42. The Property is not within the County of Hawaii's Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

43. By the year 2010, the resident population of the South Hilo District is estimated to be between 58,900 and 72,840 persons, an increase of 13,400 to 27,340 individuals over existing levels. These additional residents will be a result of natural increases in the population, in-migration by

people who are seeking a quality lifestyle and reasonable housing prices, and new employees for expanding governmental, private industry, and resort services.

44. In order to fully service the housing needs of the community over the next 19 years, an additional 6,706 to 13,263 units beyond the 16,200 currently in place must be constructed. Petitioner's Project is intended to address a portion of this demand.

45. Petitioner estimates that approximately 45 to 50 percent of the Project purchasers will be relocating Big Island households, 20 to 25 percent will be in-migrating households, 20 to 25 percent newly formed households, and five percent non-resident owners.

46. Approximately 22 percent to 30 percent of existing and future Hilo households could afford a home priced at $250,000 (1992-93 price). An additional 15 percent to 20 percent could qualify for homes priced from $150,000 to $250,000.

47. While there are large numbers of substandard, outlying lots available for development, there is insufficient competitive housing supply available or proposed providing the inventory mix anticipated for the evolving Hilo market.

48. The commercial center, with a gross leasable area of approximately 52,000 square feet, will be primarily a "neighborhood" center serving the needs of the Project's households. The Project's residents will create demands for

upwards of 30,000 square feet by the year 2000, reaching a maximum of 48,000 square feet during the following decade. Secondary demand will be created by residents of the abutting makai housing units.

SOCIO-ECONOMIC IMPACTS

49. The Project will provide additional housing inventory to meet growing community needs as well as employment opportunities, both short and long term, in keeping with the diversification of the economy of the Hilo region.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

50. Due to increasingly unfavorable production economics, acreages used for sugar production have been steadily decreasing. Statewide, acreages in sugarcane cultivation have decreased 22 percent between 1979 and 1989, from 218,800 to 170,800 acres. On the Big Island, sugarcane acreage has decreased from 98,700 in 1974 to 57,900 in 1990. Big Island sugarcane acreage reductions have been more rapid than the Statewide decline.

51. During the period 1981 through 1986, 2,730 acres of fallowed cane lands were converted to macadamia by MKA. An additional net of approximately 2,000 acres were withdrawn from sugar cultivation by independent cane growers, due to market conditions. Sugar operations at MKA and Hilo Coast Processing Company ("HCPC"), a cooperative composed of MKA and independent cane growers which harvests, transports, and processes the

cane, have not been economically feasible for the last 12 years. In mid-1992, it was announced that the HCPC would be closing. The failure is principally due to increases in the costs of production which are greater than increases in the value of production (sugar prices). Since the cost of production is largely a function of acreage in production, reductions in acreage in production have been necessary to reduce costs in the face of inadequate prices.

52. Approximately 231 acres of cane will be removed from cultivation over time upon development of the Property. This acreage represents less than 0.2 percent of the total State cane acreage currently cultivated, or approximately one-half of one percent of the Big Island's cane acreage. This would represent approximately 1.7 percent of the total cane acreage of MKA.

53. Because the Property is the southernmost of the cane lands owned by MKA it formed part of the acreage that is ultimately to be excluded from cane cultivation, based on operational considerations. These decisions are based on consolidation of the most cost effective fields with the associated savings created by reducing "longhaul fields" and therefore production costs.

54. In addition to the 13,700 cane acres in cultivation, more than 500 fallowed cane areas (not including the Property) are suitable for return to cane production should additional requirements for cane arise. Thus, no significant

negative impact to the operations of MKA or to State agricultural activities overall are anticipated due to the development of the Project.

55. Petitioner's parent corporation and affiliates will continue with their on-going efforts in East Hawaii to support agriculture operations and employment with diversified agriculture, including sylviculture, guava, macadamia, oranges, and mangoes, as well as providing land to farmers in small scale noncorporate agriculture.

Flora

56. Winona Char of Char & Associates prepared an uncontroverted report for the Property entitled, "Botanical Survey, Pu'u'eo Makai Project Site, South Hilo District, Island of Hawaii," dated March 1992.

57. No rare, endangered or threatened plants were found on the Property. While certain common native plants were found in gulch areas, most of the species found on the Property are introduced. Approximately 95 percent of the Property is cultivated in sugarcane.

Fauna

58. Dr. Phillip L. Bruner of BYU-Hawaii prepared an uncontroverted report for the Property entitled, "Survey of the Avifauna and Feral Mammals at Puueo Makai, Hilo, Hawaii," dated November 7, 1990.

59. There were no rare animals on the Property. One Hawaiian Hawk or I'o (Buteo solitarius), which is endemic and

endangered, was observed over the Property. No special or unique habitat for birds was found on the Property. Migratory shorebirds and 10 species of exotic birds were recorded.

Archaeological Resources

60. Joseph Kennedy of Archaeological Consultants of Hawaii prepared an uncontroverted report for the Property entitled, "Archaeological Inventory Report Located at Puueo, Island of Hawaii, TMK 2-6-08: 26-29, 31-33, 35-39; 2-6-29: 9-12, 14, 15 (Revised November 1991)."

61. Only a single surface site, in a gulch where no development is anticipated, was found. In the event any development is to occur within the area of the site, a detailed mitigation plan approved by the State Historic Preservation Division would be required.

Groundwater Resources

62. The hydrological characteristics of the Property include perched water on volcanic cinder and basal groundwater beneath the site. The Property falls within Hydrologic Zone II of the County of Hawaii's Water Master Plan ("WMP"). According to the WMP, Zone II areas receive 7,335 million gallons per day ("mgd") of rainwater. Approximately 1,730 mgd is lost to evapotranspiration, 2,510 mgd to runoff, and 3,095 mgd is retained for groundwater recharge. Based upon the County's present calculations for Zone II areas, there appears to be ample groundwater projected to be available for the Project.

Recreational Resources

63. Based on the presence of existing recreational facilities, many of the recreational needs generated by the Project can be accommodated by existing facilities in the area.

64. An on-site park developed by Petitioner will address the recreational needs of new residents, and comply with the County of Hawaii park dedication requirements. The proposed parks to meet the needs of the residents of the Project would consist of a 3.9-acre expansion to Clem Akina Park and a new centrally located four-acre parcel site within the Property.

Scenic and Visual Resources

65. Area view planes will not be significantly impacted by the Project. The low-rise nature of the Project will not detract from the Mauna Kea backdrop, and no makai views will be affected due to the Project's location mauka of the belt highway. Off-site views of Rainbow Falls will not be affected, however, a small portion of the Project will be visible from the upper viewing station at the falls.

ENVIRONMENTAL QUALITY

Noise

66. Any increase in noise level from construction and increased traffic is anticipated to remain well within acceptable levels (not exceeding 55 Ldn.). No significant impacts are expected from the Project. Petitioner has

represented that standards and guidelines established by the Department of Health, such as limiting construction to daylight hours and requiring emission controls on motorized equipment, will be followed to mitigate any impact on ambient noise levels.

Air Quality

67. Vehicle emissions during construction and fugitive dust during construction will cause temporary impacts, although these impacts will be mitigated by Petitioner by use of modern mitigative techniques. These measures include: minimizing the number of concurrent construction and grading projects, watering to minimize fugitive dust, and utilizing electrical and fuel burning equipment with air pollution control devices installed.

68. Upon completion of the Project, the additional volume of traffic and fugitive dust is not anticipated to violate State or Federal air quality standards. Mitigation measures which would reduce carbon monoxide emissions from motor vehicles include: increased use of public transportation, ride sharing, limitation of parking spaces, use of shuttle services, and installation of bike lanes.

69. Impact on air quality from ongoing agricultural operations, particularly burning sugarcane, will be minimal due to the predominant tradewinds which originate from the northeast and the Property's location on the windward side of the remaining sugarcane land in the area.

mitigated. Proper mitigation includes elimination of on-street parking on Wainaku Street in the vicinity of the access roadways to provide two through lanes and a left turn lane; widening of Amauulu Road to three lanes at Wainaku Street to provide one inbound and two outbound lanes: one left through and one right turn; design of the proposed access roadway to three lanes at Wainaku Street as with Amauulu Road; and if warranted by traffic conditions, traffic signalization at the intersections of Hau Lane and Hawaii Belt Road and at Wainaku and Wailuku Streets.

74. Project traffic would utilize an improved Amauulu Road and a new access road to connect to Wainaku Street. From Wainaku, traffic would either travel south to downtown Hilo, or north to the Hawaii Belt Road via Hau Lane.

75. The proposed roadway system within the Property will be composed of streets classified into two categories: collector and local (minor). The collector street will require a 60-foot right of way and the local street will require a 50-foot right of way in accordance with the Hawaii County Standards and will contain the elements of pavement, utilities, and sidewalk. The proposed design speed for collector and local streets will be 30 mph. Petitioner has represented that roadway geometrics, including horizontal and vertical alignment and sight and stopping distance requirements, will be designed in accordance with the Hawaii County Standards.

76. The Project will not generate sufficient traffic to warrant improvements to State facilities.

77. The State Department of Transportation plans to widen the Hawaii Belt Highway. The Project may have to participate in funding the construction costs of future traffic signalization.

Water Service

78. Serving the Puueo district at the present is the Piihonua Well with a pumping capacity of 3.02 mgd. An existing reservoir with a 1.0 million gallon ("MG") capacity stores water from the Piihonua Well. The transmission line to the Property consists of a 16-inch pipe and a 10-inch pipe. The existing 10-inch transmission system runs along Wainaku Street.

79. The Project will require an estimated average daily demand of 0.728 mgd of potable water at build out.

80. The County of Hawaii, Department of Water Supply ("DWS"), has stated that for a development of this size, Petitioner must provide a water source regardless of the availability of existing water sources. The location of this new source will be determined based on further hydrological studies of the Property, and in coordination and consultation with DWS and the Department of Land and Natural Resources ("DLNR").

Petitioner has represented that prior to the actual development of the new well, Petitioner will submit water use, well construction, and pump installation permits to DLNR,

Commission on Water Resource Management. Petitioner has also represented that it will submit plans and supporting data to the Department of Health in order to obtain new source approval. The proposed location of the reservoir site is mauka of the Property at an elevation of approximately 500 feet MSL.

81. The water system for the Project will consist of a well with a minimum pump capacity of 500 gallons per minute and a new 1 MG reservoir. A 12-inch transmission line will connect the 1.0 MG reservoir to the existing 10-inch waterline on Wainaku Street. Branch waterlines off the main 12-inch waterline will consist of six-inch and eight-inch pipelines with fire hydrants.

Wastewater Disposal

82. The Project is expected to generate an average wastewater flow of approximately 0.38 mgd and a peak flow of 1.41 mgd.

83. The wastewater system servicing the Project to be developed on the Property will be connected to the municipal system that currently services the area makai of the Project. Minor improvements to the existing sewer system may be required. The present wastewater treatment plant has an existing capacity of 7.0 mgd and currently treats a dry weather wastewater flow of 3.9 mgd. The new wastewater treatment plant in Hilo, which will have a capacity of 5.0 mgd, will have sufficient capacity to handle the Project.

Drainage

84. The existing drainage area at the Property covers 331 acres, broken up into 11 sub-areas which are natural drainage basins within the Property. Elevations range from 80 to 400 feet MSL, with average ground slopes of 0 to 20 percent. The drainage basins mauka of the Property are approximately 0.6 miles away and cover approximately 218 acres. Elevations range from 400 to 940 feet MSL, with average ground slopes of 10 to 20 percent. The soils (Hilo soil series) are a well-drained, silty clay loam.

85. The existing drainage system consists of storm runoff, sheetflowing into natural water courses, which ultimately discharge to the ocean. The quantities of runoff estimated for the 11 drainage basins ranged from a low of 16.7 cubic feet per second ("cfs") to a high of 851.7 cfs.

86. The proposed change in land use would increase the amount of impervious surfaces, and thus increase surface runoff. The drainage within the Project will be managed by utilizing typical roadside curbs and gutters, and underground reinforced concrete drainlines connected by catch basins and drain manholes. The system will lead to on-site drywells to accommodate the additional surface runoff from the Project.

87. The State Coastal Zone Management ("CZM") Program comments that the increase in surface runoff, due to an increase in impermeable surfaces, will likely carry with it

residential nonpoint sources of pollution such as pesticides, fertilizers, petroleum products and other hazardous materials.

88. In order to accommodate the runoff mauka of the Property, diversion channels are recommended. These diversion channels would discharge into Pukihae Stream and Kiohoole Gulch which drains into Wailuku River. (OSP 82)

89. One of the significant problems to surface water habitats associated with channelization will be a change in sediment supply and delivery from upland forest reserve and agricultural lands. Channelization can lead to an increased rate of delivery and quantity of sediments and nutrients, and other pollutants to downstream sites. Furthermore, channelization will concentrate freshwater input into surface and marine waters, rather than allowing the natural sheetflow and percolation.

90. The CZM Program recommends that Petitioner consider alternative measures to minimize runoff volumes and velocities, and to treat pollutants entrained in runoff to mitigate adverse impacts to the freshwater and marine ecosystems.

91. Potential impacts on water quality are primarily associated with drainage and its diversion and ultimate discharge. The Department of Health requires a permit for the discharge into streams by means of the National Pollutant Discharge Elimination System permit. The process of obtaining

the permit provides for detailing of the potential impacts and their mitigation.

Solid Waste Disposal

92. The solid waste system for the County of Hawaii consists of landfills located in Hilo and Kailua, supported by transfer stations strategically sited at various communities throughout the island. Because of its proximity to the landfill in Hilo, Puueo does not have a transfer station. However, based on initial conversations with the County of Hawaii, Petitioner will be required to provide a transfer station. The location and capacity of the transfer station would be determined after consultation with the County.

Schools

93. According to the DOE, the Project would impact area schools, as follows:

	Grades	Projected students
Haaheo Elementary School	K- 5	260
Hilo Intermediate School	6- 8	70
Hilo High School	9-12	100

94. DOE states that Haaheo Elementary School is already operating at capacity and is projected to increase in enrollment beyond capacity by 1997. The projected increase in students will result in a need for additional land and/or facilities. Hilo High School is operating beyond capacity and will require four additional classrooms. DOE indicates it

cannot assure the availability of adequate classroom space to accommodate the additional enrollment generated by this Project.

95. Petitioner would work with DOE to see that impacts of the Project on local schools are mitigated through provision of land on-site or off-site, or a combination of both. Petitioner anticipates that the school site shown on the conceptual plan would be held in reserve for DOE for a period of two years. If the site is not utilized by DOE at the end of that time, it would then be converted to residential use. Petitioner has represented that it will keep the DOE apprised of the Project schedule to assure the educational needs of the Project's residents are met in a timely manner.

Police and Fire Protection

96. The Project is expected to increase the population and number of dwelling units in the Hilo area, but is not anticipated to significantly affect the ability of the local police and fire departments to provide required levels of service. Some adjustments to existing manpower levels and equipment may be necessary, however, these changes can be accommodated as Project phases are implemented.

Electrical and Telephone Service

97. Electrical, telephone, and cable television utilities are available to service the Project. Based on the availability of present service capabilities and planned improvements to the electrical and telephone utilities, significant impacts are not expected to result from the Project.

Civil Defense

98. The State Department of Defense, Civil Defense Office, recommends that Petitioner provide two new siren devices within the project site. These devices, 115 DB and 120-121 DB solar powered outdoor warning sirens, are recommended to be installed within the two parks proposed by Petitioner. The proposed 115 DB siren requires a 100-foot radius and the 121 DB siren requires a 300-foot radius buffer zone in which no residential buildings are situated.

CONFORMANCE TO THE URBAN DISTRICT STANDARDS

99. The proposed reclassification is in accordance with the standards set forth in section 15-15-18, H.A.R. in that:

a. The proposed reclassification takes into consideration:

(1) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;

(2) Substantiation of economic feasibility by Petitioner;

(3) Proximity to basic services such as sewers, transportation systems, water, sanitation, schools, parks, and police and fire protection; and

(4) Sufficient reserve areas for urban growth in appropriate locations based upon a 10-year projection;

b. The proposed reclassification includes lands with satisfactory topography and drainage and is reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects;

c. The proposed reclassification includes lands contiguous with existing urban areas and indicated for urban use on the County General Plan; and

d. The proposed reclassification includes lands in appropriate locations for new urban concentrations as shown on the County General Plan.

CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

99. The proposed reclassification is generally consistent with the objectives and policies of the Hawaii State Plan, chapter 226, HRS, as follows:

a. The Project will conform with section 226-4(1), HRS, by contributing to provide a strong, viable economy characterized by stability diversity, and growth that enables the fulfillment of the needs and expectations of Hawaii's present and future generations. The present economy of the State and County of Hawaii is influenced by agricultural activities and tourism. However, sugar cultivation by MKA along the Hilo coast, as well as sugar cultivation Statewide have been cut back due to current market conditions. The Project would offer new jobs during the 1994 to 2005 planned

development stage. Over the long-term, the Project would add to the housing opportunities of Hawaii County residents employed in the area.

b. The Project will conform with section 226-4(2), HRS, by contributing to provide a desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness that enhances the mental and physical well-being of the people. The Project would be a master-planned residential community in East Hawaii that will furnish an enhanced physical environment to residents of the community.

c. The Project will conform with section 226-4(3), HRS, by contributing to provide a physical, social, and economic well-being for individuals and families in Hawaii that nourishes a sense of community responsibility, of caring, and of participation in family life. The increased job opportunities generated through construction of the Project and the proposed neighborhood commercial development and additional housing stock provided by the Project would increase the economic well-being of the community as a whole.

101. The State Functional Plans have been prepared to manage and coordinate the various functional area activities of the State Plan, and to guide resource allocation and decision making. The Project is consistent with the State's Housing and Recreational Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

102. The Project conforms to the following CZM objectives:

a. The Project will conform with the objective for Scenic and Open Space Resources under section 205A-2(b)(3), HRS, by protecting, preserving, and improving the quality of coastal scenic and open space resources. Reclassification of the Property will not result in the degradation of the region's scenic and open space resources. The coastal scenic resources mauka will be improved as the Project would provide landscaped open space. The residential development would provide landscaped open space. Although the residential development would be situated to take advantage of coastal views, the low rise nature of the single-family residential units within the Property will not obstruct any existing coastal view plane. Landscape buffers would be incorporated into the Project's design to minimize the visual impingement due to the Project's development.

b. The Project will conform with the objective for Coastal Ecosystem under section 205A-2(b)(4), HRS, by protecting valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems. The Project will not have any significant adverse impacts to the coastal ecosystem which cannot be effectively mitigated. Storm runoff from the Property would utilize the existing drainage system that will lead to on-site dry wells.

c. The Project will conform to the objective for Coastal Hazards under section 205A-2(b)(6) by reducing the hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence. The Property is not subject to coastal related flooding. FEMA's FIRM designate the Property outside of the 500-year floodplain. Zone A lands (i.e., special flood hazard areas inundated by 100-year flood; no base flood elevation determined) are within the present Conservation District and outside the bounds of the Property. Petitioner has represented that development of the Project's drainage systems will follow design standards of the County of Hawaii to ensure safe conveyance and discharge of storm runoff.

INCREMENTAL DISTRICTING

103. Petitioner anticipates that the Project will not be substantially completed within five years after the date of final county zoning approval. Petitioner's request to reclassify the entire Property to the Urban district is appropriate at this time as major commitments regarding construction of on and off-site infrastructure for the entire development will be required during the initial five year period.

RULINGS ON PROPOSED FINDINGS OF FACT

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

Any conclusions of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law shall 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's 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 288.240 acres of land at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, identified as Tax Map Key Nos.: 2-6-08: 17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15, from the Agricultural Land Use District to the Urban Land Use District subject to the conditions hereinafter stated in the Order, is reasonable and conforms to the standards for establishing the urban district boundaries, is 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, which is the subject of this Docket No. A92-680 filed by Petitioner C. Brewer Properties, a Hawaii corporation, consisting of

approximately 288.240 acres of land at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, and identified as Tax Map Key Nos.: 2-6-08:17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Agricultural District to the State Land Use Urban District, and that 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 in cooperation with the State Housing Finance and Development Corporation considering the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended, pursuant to an affordable housing plan approved by the County of Hawaii, which addresses proportionate household income distribution, location, and other appropriate affordable housing policies as determined by the County of Hawaii. The location and distribution of the affordable housing or other provision for affordable housing shall be under such terms as may be mutually agreeable to Petitioner, the Housing Finance and Development Corporation, and the County of Hawaii.

2. If during construction, any previously unidentified sites or remains, such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings, or walls are encountered, work shall stop and the State Department of Land and Natural Resources, Historic Preservation Division shall be notified immediately. Work in the immediate area shall remain stopped until the Historic Preservation Division is able to assess any impact and make further recommendations for mitigative activity.

3. Petitioner shall contribute to the development, funding, and/or construction of school facilities on a pro rata basis as a result of the development on the Property, as determined by and to the satisfaction of the Department of Education (DOE). Agreement by DOE on the level of funding and participation shall be obtained prior to Petitioner applying for county zoning.

4. Petitioner shall participate in the funding and construction of local and regional transportation improvements and programs necessitated by the proposed development, including dedication of rights-of-way, as determined by the State Department of Transportation and County of Hawaii. Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to Petitioner applying for county zoning.

5. Petitioner shall fund and construct water source, transmission, and storage facilities and improvements to accommodate the proposed Project.

6. 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.

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

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

9. Petitioner shall notify all prospective buyers of Property in the Project 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.

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

11. 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.

12. 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 appropriate State and County of Hawaii agencies.

13. Petitioner shall establish a program to monitor groundwater, stream water, and ocean water quality as specified by the State Department of Health. Should any adverse impacts affect the area as the result of Petitioner's activities, Petitioner shall immediately implement remedial and corrective actions to the satisfaction of the State Department of Health.

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 the complete development of the Property and as represented by the Petitioner.

16. Petitioner shall promptly provide without any prior notice, annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and 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 portion of the

Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

18. Petitioner shall obtain all other governmental approvals which may be required for the proposed Project.

19. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (1) 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 (2) shall file a copy of such recorded statement with the Commission.

20. Petitioner shall record the conditions imposed by the Land Use Commission with the Bureau of Conveyances pursuant to Section 15-15-92, H.A.R.

DOCKET NO. A92-680 - C. BREWER PROPERTIES, INC.

Done at Honolulu, Hawaii, this 5th day of January 1994, per motion on December 15, 1993.

LAND USE COMMISSION
STATE OF HAWAII

By _____
JOANN N. MATTSON
Chairperson and Commissioner

By _____
KAREN S. AHN
Vice Chairperson and Commissioner

By _____
TRUDY K. SENDA
Vice Chairperson and Commissioner

By _____
ALLEN K. HOE
Commissioner

By _____
LLOYD F. KAWAKAMI
Commissioner

By _____
EUSEBIO LAPENIA, JR.
Commissioner

By (excused)
RENTON L. K. NIP
Commissioner

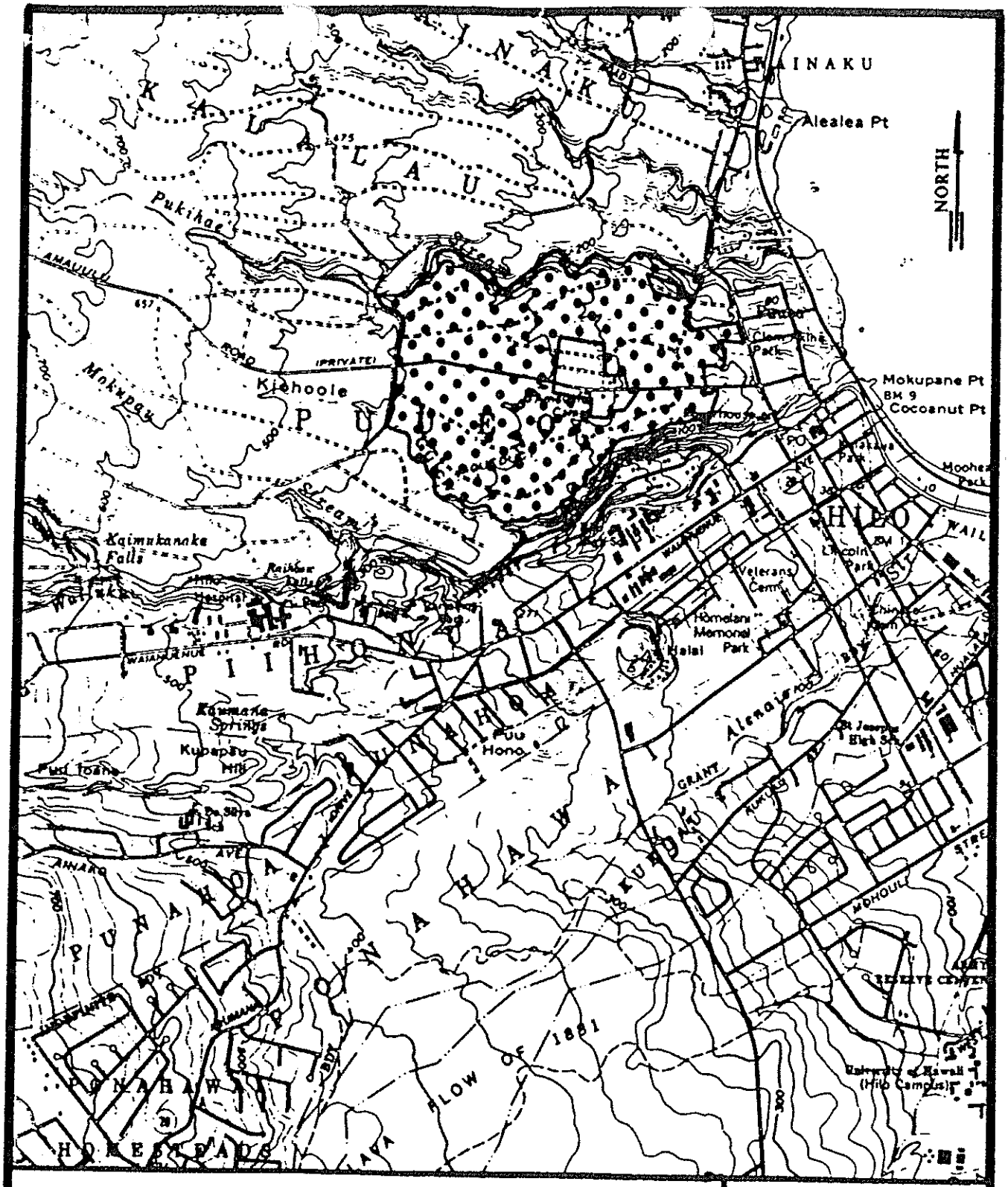
By _____
ELTON WADA
Commissioner

By _____
DELMOND J. H. WON
Commissioner

Filed and effective on
January 5, 1994

Certified by:

_____
Executive Officer



DOCKET NO. A92-680 C. BREWER PROPERTIES, INC.

LOCATION MAP

T.M.K.: 2-6-08 : 17, 26, 27, por. 28, 29, por. 31, por. 32, por. 33, por. 34, 36, por. 37, por. 38, 39 ; 2-6-29 : 14 & 15

PUUEO, SOUTH HILO, HAWAII

SCALE : 1" = 2,000 ft ±

APPROVED AREA

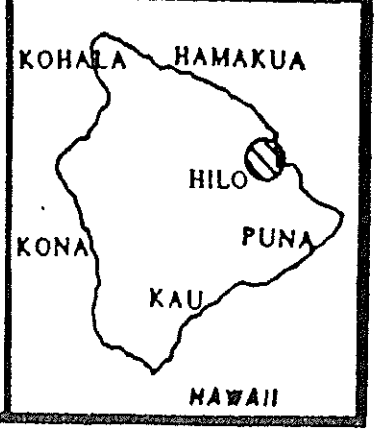


EXHIBIT "A"

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of C. BREWER PROPERTIES, INC., a Hawaii corporation, To Amend the Agricultural Land Use District Boundary into the Urban District for approximately 288.240 acres of land at Puueo, South Hilo, Island and County of Hawaii, State of Hawaii, TMK Nos.: 2-6-08: 17, 26, 27, 28 (por.), 29, 31 (por.), 32 (por.), 33 (por.), 34 (por.), 36, 37 (por.), 38 (por.), 39; 2-6-29: 14 and 15	DOCKET NO. A92-680 CERTIFICATE OF SERVICE

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. ERIC T. MAEHARA, ESQ.
JORDAN D. WAGNER, ESQ., Attorneys for Petitioner
Foley Maehara Judge Nip & Chang
Grosvenor Center, Suite 2700
737 Bishop Street
Honolulu, Hawaii 96813

CERT. B.G. MOYNAHAN
C. Brewer Properties, Inc.
827 Fort Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 5th day of January 1994.

ESTHER UEDA
Executive Officer