BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

2001 NOV 6 PM 12 48
PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A00-733
	)	
HARRISON J. & SHARENE Z. KLEIN	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend the Conservation Land Use	)	DECISION AND ORDER
District Boundary into the Urban Land Use	)	
District for Approximately 2.621 acres of	)	
land at Keonepoko Iki, District of Puna,	)	
Island, County and State of Hawai`i.	)	
TMK No: (3) 1-5-09: 39	)	
	)	

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.
NOV 0 5 2001 by
Date Executive Officer

LAND USE COMMISSION
STATE OF HAWAII
2001 NOV -5 A 11: 05

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

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In the Matter of the Petition of	)	DOCKET NO. A00-733
	)	
HARRISON J. & SHARENE Z. KLEIN	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend the Conservation Land Use	)	DECISION AND ORDER
District Boundary into the Urban Land Use	)	
District for Approximately 2.621 acres of	)	
land at Keonepoko Iki, District of Puna,	)	
Island, County and State of Hawai`i.	)	
TMK No: (3) 1-5-09: 39	)	
	)	

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

Harrison J. and Sharene Z. Klein, Trustees under the Klein Living Trust dated September 17, 1999 ("Petitioner") submitted a Verified Petition for Amendment of District Boundaries and Reclassification from Conservation to Agricultural dated August 21, 2000, a First Amended Verified Petition for Amendment of District Boundaries and Reclassification from Conservation to Urban dated October 6, 2000, and a Second Amended Verified Petition for Amendment of District Boundaries and Reclassification from Conservation to Urban dated April 5, 2001, pursuant to Section 205-3.1(c) and 205-4, Hawai`i Revised Statutes ("HRS"), and Chapter 15-15, Hawai`i Administrative Rules ("HAR"), to amend the State land use district boundary by reclassifying approximately 2.621 acres of land situate at Keonepoko Iki, District of Puna, Island, County and State of Hawai`i, and designated by TMK No: (3) 1-5-09:39 ("Property" or "Petition Area"), from the Conservation Land Use District to the Urban

Land Use District to conform with the existing residential nature of the area and of the Property which abuts the Hawaiian Beaches Subdivision in the Urban District.

The Land Use Commission ("Commission" or "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law and decision and order. The parties have stipulated to accept the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner submitted a Verified Petition for Amendment of District Boundaries and Reclassification from Conservation to Agricultural dated August 21, 2000 ("Petition"). Petitioner concurrently submitted a Draft Environmental Assessment ("DEA") as required by Section 343-5(a)(7), HAR.

2. Petitioner is Harrison J. and Sharene Z. Klein, Trustees under the Klein Living Trust dated September 17, 1999. Petitioner informed the Commission, in its letter dated June 5, 2001, its mailing address is 15-2678 Welea Street, Pahoa, Hawai`i 96778-8568.

3. On September 14, 2000, the LUC continued action on determining whether the anticipated effects discussed in Petitioner's DEA constituted a "significant effect" pursuant to Chapter 343, HRS, and identified several issues that required further analysis at its meeting in Lihue, Kauai. Petitioner agreed that additional work on the DEA was needed prior to LUC action on the DEA.

4. On October 5, 2000, the LUC issued an Order Continuing Land Use Commission Action on Determining Whether the Anticipated Effects Discussed in Petitioner's Draft Environmental Assessment Constitutes a Significant Effect Pursuant to Chapter 343, HRS.

5. On October 6, 2000, Petitioner filed concurrently an Amended Verified Petition for Amendment of District Boundaries and Reclassification from Conservation to Agricultural ("First Amended Petition") and revised DEA.

6. On October 19, 2000, the LUC made a preliminary determination for a negative declaration of an environmental assessment or an anticipated finding of no significant impact ("FONSI") regarding Petitioner's revised DEA pursuant to Chapter 343, HRS, at its meeting in Honolulu, Hawai`i. In its preliminary determination, the LUC requested that the following be included in Petitioner's Final Environmental Assessment ("FEA"):

- Identity of the hula halau that was consulted regarding native Hawaiian gathering rights in the Petition Area;
- Copies of all assessments from the agencies that were consulted;
- Clarification of Petitioner's consultation with the Office of Environmental Quality Control, Department of Health ("OEQC"); and
- Identity of community groups in vicinity of the Petition Area that was consulted.

7. On November 8, 2000, notification of Petitioner's DEA was published in the OEQC Environmental Notice.

8. On November 9, 2000, the LUC issued its Order of Preliminary Determination for a Negative Declaration of an Environmental Assessment.

9. On December 18, 2000, Petitioner informed the LUC Staff that the DEA was not circulated for agency review until December 14, 2000, and it would voluntarily extend the public comment period to January 15, 2001.

10. On January 18, 2001, Petitioner filed the FEA with the Commission.

11. On January 19, 2001, the LUC determined that more time was needed to review the FEA, and that action will continue on determining if Petitioner's FEA justified a FONSI at its meeting in Lihue, Kauai.

12. On January 31, 2001, the LUC issued its Order Continuing LUC Action on Determining Whether the Anticipated Effects Discussed in Petitioner's Final Environmental Assessment Constitutes a Significant Effect Pursuant to Chapter 343, HRS.

13. On February 16, 2001, the LUC determined that the First Amended Petition did not require an environmental impact statement and issued a FONSI, which accepted Petitioner's FEA at its meeting in Honolulu, Hawai`i.

14. On March 15, 2001, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order Determining a Negative Declaration for a State Land Use District Boundary Amendment.

15. On April 6, 2001, the Petitioners filed a Second Amended Verified Petition dated August 21, 2000 ("Second Amended Petition"). The Second Amended Petition converted Petitioner's reclassification request from the Agricultural to the Urban District for improvements to an existing single-family dwelling and related improvements and resuming the agricultural activities described in Petitioner's First Amended Petition.

16. In regard to the standing of the FONSI and compliance of Petitioner's change of the reclassification request with Chapter 343, HRS, OEQC informed LUC staff that no further public review was required.

17. On April 19, 2001, the LUC accepted Petitioner's FEA for the Second Amended Petition and retained the standing of the FONSI issued on March 15, 2001.

18. On May 14, 2001, the hearing notice for the Second Amended Petition was published in the Midweek and Hawaii Tribune Herald.

19. On May 23, 2001, the FONSI for the Second Amended Petition was published in the OEQC Environmental Notice.

20. On June 5, 2001, the LUC issued its Order Accepting Petitioner's Final Environmental Assessment for Petitioner's Second Amended Petition.

21. On June 13, 2001, the County filed its Testimony of the County of Hawai`i Planning Department In Support of the Petition.

22. On June 28, 2001, the Office of Planning ("OP") filed its Office of Planning's Testimony In Support Of The Petition, subject to three conditions of approval.

23. On June 29, 2001, a prehearing conference was held at Leiopapa A. Kamehameha, Conference Room 405, 235 S. Beretania Street, Honolulu, Hawai`i, which was attended by all parties.

24. OP recommended approval of the Second Amended Petition subject to three (3) conditions of approval.

25. The County of Hawai`i Planning Department recommended approval of the Second Amended Petition.

26. On August 9, 2001, the public hearing for the Second Amended Petition was held at the County Council Room, Hawai`i County Building, 25 Aupuni Street, Room 201, Hilo, Hawai`i.

27. No public witnesses testified at the hearing.

28. On August 9, 2001, the public hearing for the Second Amended Petition was closed.

DESCRIPTION OF THE PETITION AREA

29. The 2.621-acre parcel is located adjacent to and north of the Hawaiian Beaches Subdivision, which is similarly classified in the Urban District. The Property is within the State Conservation District, Resource Subzone. The State Agricultural District lies immediately mauka of the Property's access road.

30. The Property is identified as Lot 8, a subdivision of a portion of R.P. Grant 1533 to Kekoa, situated at Keonepoko Iki, District of Puna, Island, County and State of Hawai`i, and designated by TMK No: (3) 1-5-09:39. The Property's southern boundary abuts the Waiakahiula 1st ahupua`a, and Welea Street, a dead-end street within the Hawaiian Beaches Subdivision. The Property's shoreline is approximately 253 feet in length and its frontage along the Government Beach Road (also known as the Puna Trail) is approximately 107 feet. A 40-foot wide building setback line runs along the makai side of the Government Beach Road within the mauka portion of the Property. A rockwall borders the Property's south boundary. The street address of the Property is 15-2678 Welea Street.

31. Existing improvements on the Property include:

A. Split-level Single-Family Residential Dwelling. The split-level single-family dwelling of approximately 2,900 square feet living area is situated approximately 175 feet inland from the shoreline. Construction of the single family dwelling was approved by the Board of Land & Natural Resources ("BLNR") under Conservation District Use Permit No. HA-1605 on December 2, 1983 and consists of two levels:

- A lower level comprised of two bedrooms, two full bathrooms, a sitting room and laundry room (approximately 914 square feet) and basement deck (approximately 734 square feet).
- A main level consisting of the master bedroom, one and one-half bathrooms, living room, kitchen, and covered lanai (approximately 1,965 square feet), and a covered deck (approximately 1,601 square feet).

B. Garage/Storage Unit. A 1,200 square feet enclosed garage and storage area which is used to store gardening tools and equipment is located adjacent to and mauka (west) of the main dwelling and was approved by the Board of Land & Natural Resources under Conservation District Use Permit No. HA-1605A on July 27, 1984.

C. At-grade Lap Pool. A 370 square feet at-grade lap pool is located adjacent to and south of the single-family residential dwelling and was approved by the Board of Land & Natural Resources under Conservation District Use Permit No. HA-1605A on July 27, 1984.

D. Cesspool. The cesspool is located adjacent to and south of the single-family dwelling.

E. Landscaping. The Property is extensively landscaped with coconut trees, lauhala, fruit trees, Norfolk pines, and palms, an extensive gravel driveway, a putting green, and two ponds. An entrance gate and rockwall border the mauka (southwestern) boundary of the Property. A rockwall borders the Property's southern boundary.

32. The garden sprinkler system approved by the BLNR on July 27, 1984 under CDUP Permit No. HA-1605A was not installed by prior owners, Jerry E. and Patricia E. Merrill.

33. The elevation of the Property ranges from sea level to approximately 54 feet above mean sea level along the mauka (southwesterly) boundary at the Government Beach Road. The overall slope of the Property is approximately 6 to 12% along the coastline and 0 to 6% inland.

34. The United States Department of Agriculture, Soil Conservation Services, Soil Survey Report identifies the soil on the Property as "rLW" or "Lava Flows, A`a", a miscellaneous land type. This lava has practically no soil covering and is rough and broken.

35. The Land Study Bureau Overall Master Productivity Rating classifies the soil within the Property as "E" or "Very Poorly Suited" to agricultural productivity.

36. The State of Hawai`i, Department of Agriculture's Land of Importance to the State of Hawai`i ("ALISH"), which lists all of the land in Hawai`i with agricultural significance classifies a portion of the Property as "Other Important Agricultural Lands" and the remaining area is not classified as "Prime", "Unique", or "Other Important Agricultural Lands".

37. The shoreline characteristics of the Property and adjoining oceanfront properties are historical A`a flows. The shoreline along the Property is approximately 253 feet in length and is characterized by a general gradual slope with low/medium sea cliffs to the sea. The shoreline portion of the Property is located within the County of Hawai`i Civil Defense Agency's evacuation area for hazards due to tsunami and possible surges from hurricanes. Although the Property is located within the coastal high hazard area, there is no tsunami data for the Property and the shoreline along the Property has remained stable during coastal storms.

38. The U. S. Corps of Engineers Flood Insurance Rate Map (FIRM) designates the Property in Zone X. Zone "X" is designated for those areas outside of the 500-year flood plain.

39. The shoreline area of the Property is located within the 40-foot shoreline setback area as defined by Rule 8 of the County of Hawai`i Planning Commission Rules. Improvements on the Property are located approximately 175 feet inland from the shoreline, and exceed the mandatory minimum 40-foot shoreline setback requirement.

40. The Property is located within Lava Flow Hazard Zone 2, which include the areas that are adjacent to, and down slope from, the East Rift Zone of Kilauea volcano. The entire area south of the East Rift Zone.

PROPOSAL FOR RECLASSIFICATION

41. Petitioner proposed improvements to the existing single-family residential dwelling and related improvements, to include without limitation, an

interior stairway. In addition, Petitioners propose to pursue cultivation of ti-leaf plants, coconut trees and palms on approximately one-half acre of the Property. Although the soil is rocky in character and content, it can support the cultivation of ti-leaf plants, coconut trees and palms as evidenced by the thriving ti-leaf plants and coconut trees on the Property.

PETITIONER'S FINANCIAL CONDITION

42. The Property is already substantially developed for residential use and no significant development is proposed. Petitioner's Financial Statement of May 31, 2000, was submitted as Exhibit A in the Second Amended Petition.

COUNTY AND STATE PLANS

43. The Property is zoned "Agricultural" with a minimum lot size of one-acre (A-1a), under the Hawai`i County Zoning Code (Chapter 25, Hawai`i County Code).

44. The LUPAG map designates a narrow coastal strip of the Property along the shoreline as "Open" and the remaining portion of the Property as "Low Density Urban". The Open designation includes parks and historic sites, and the Low Density designation is intended for single-family residential in character, ancillary community and public uses, and convenience type commercial uses.

45. The proposed uses do not conflict with the Low Density designation of the General Plan and conforms to the Land Use-General and Land Use-Single Family Residential elements of the General Plan. The reclassification would foster the land use goals, policy and standards of the Hawai`i County General Plan as the Property is designated Low Density Urban and is conveniently located to public and private services and other community amenities and activities for immediate use as follow.

A. Land Use - General

Goal:

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.

Policies:

- Zone urban- and rural- types of uses in areas with ease of access to community services and employment centers and with adequate public utilities and facilities.
- Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.
- The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

B. Land Use - Single-Family Residential

Goals:

- To ensure compatible uses within and adjacent to single-family residential zoned areas.
- To provide single-family residential areas conveniently located to public and private services, shopping, other community activities and convenient access to employment centers.

Policy:

- Rural-style residential-agricultural developments, such as new small scale rural communities or extensions of existing rural communities, shall be encouraged in appropriate locations.

Standards:

- Areas shall have basic improvements and amenities necessary for immediate use.
- Areas shall be limited to low-density and medium density residential uses.

NEED FOR PROPOSED RECLASSIFICATION

46. Petitioner initially requested the reclassification of the Petition Area from the Conservation District to the Agricultural District. OP recommended Petitioner

amend the request to reclassify the Property to the Urban District. The amendment would allow the residential nature of the Property to conform with the abutting Hawaiian Beaches Subdivision. The Property is also conveniently located to public and private services and other urban community amenities and activities for immediate use.

ECONOMIC IMPACT OF DEVELOPMENT

47. The proposed improvements on the Property should generate minor improvements to the economy resulting from the creation of construction and agricultural related jobs. Petitioners will employ a part-time groundskeeper.

IMPACTS UPON THE RESOURCES OF THE AREA

Flora and Fauna

48. No plant species listed by the U.S. Fish & Wildlife Services or State protected plant species as threatened or endangered, proposed, or a candidate species or "species of concern" occur on the Property or immediate vicinity. The shoreline of the Property and adjoining oceanfront properties are bare of vegetation. Coconut (*Cocos nucifera*), Norfolk pines and naupaka kahakai (*Scaevola sericea*) border the coastline. The Property is extensively landscaped with coconut trees, Norfolk pines, ti-leaf, naupaka kahakai, lauhala, palms, dry land taro, fruit trees, and ornamental plants.

49. No endangered or otherwise rare bird or mammal species were observed within the Property. The area is not included within the critical habitat for protected species. Known occupied fauna within the Property consists predominantly of lowland urban birds, such as common mynah (*Acridotheres tristis*), house finch (*Carpodacus mexicanus*), northern cardinal (*Cardinalis cardinalis*) and Japanese white-eye (*Zosterops japonica*). None of these species are rare or endangered. Additionally, no resident endemic and indigenous land birds, resident indigenous seabirds, resident endemic and indigenous water birds and migratory indigenous birds have been recorded on the Property.

50. Mammal species which are expected to occur on the Property include mongoose, feral cat, mouse and rat. These are common species which are found throughout the island.

51. The Department of Land and Natural Resources has indicated by letter dated May 1, 2001, that the Property contains no listed or candidate endangered plant or wildlife species, and the proposed reclassification will not impact any of the Division of Forestry and Wildlife's management programs.

Marine Resources

52. Although marine mammals and sea turtles frequent the waters offshore, the Petitioners have not observed any marine mammals and sea turtles along the low/medium height jagged, barren lava sea cliffs of the Property.

53. There are 4 species of Marine animals that are threatened or endangered in Hawaiian waters, however, since there is no additional development proposed seaward of the existing single family dwelling, the reclassification to Urban should not have any significant impact on marine mammals.

Groundwater Resources

54. The Commission on Water Resources Management, in a letter dated May 4, 2001, has indicated that they have no comment on this Petition. The proposed reclassification will have no adverse impact on the groundwater resources for the region.

Historical/Cultural and Archaeological Resources

55. The Lower Puna area was well-populated by Hawaiians before 1800, but was nearly abandoned during the 19th century. Extensive cattle raising and scattered agriculture dominated land use during in the late 1800s and the population in Puna remained the lowest of any district on the island during that time. The production of plantation sugar in the 1900s brought with it a need for laborers, and villages occupied by immigrants were developed. Homesteads were offered to farmers

throughout Puna, and the population has grown steadily. Growth has accelerated since 1970 as a result of low costs for agricultural lots within the Puna District subdivisions.

56. Based upon consultation with native Hawaiian gatherers and local area residents, the absence of such practices on the Property are due to the continued residential development of the Property for over 15 years and the improvements that ensued. The consultation identified that the shoreline areas are used for fishing and opihi and limu gathering, but the gathering of medicinal plants are practiced elsewhere in the mauka areas of Puna. A portion of the Property along the shoreline is included in the 40-foot shoreline setback established by the County. The Petitioners have committed to allow access along the shoreline area of their Property for traditional and customary cultural practices and related shoreline access.

57. There are no known historical and/or cultural sites on the Property as confirmed by the Department of Land & Natural Resources, State Historic Preservation Division by letters dated January 11, 2000, and January 10, 2001 which states that "we believe there are no historic properties present in the subject parcel. The proposed action of a boundary amendment will have no effect on significant historic sites."

58. The Property is not among those listed as historic properties in the Hawai`i State Register of Historic Places, has not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan within the Puna district. The Honolulu Landing Habitation Complex (TMK: 1-4-03:19), located approximately one mile south of the Property is listed as a historic site in the Hawai`i State Register of Historic Places.

Scenic and Visual Resources

59. The Property is extensively landscaped with coconut trees, Norfolk pines, lauhala, naupaka, palms, dry land taro, fruit trees, and ornamental plants. The Property is not listed as a distinctive and identifiable land form distinguished as

landmarks or as having a frontyard vista of distinctive features as identified in the General Plan within the Puna district. The Waiakahiula Shoreline Reserve located one mile south of the Property is identified in the General Plan as an example of natural beauty in the Puna district and is designated as a future Hawaiian Shores Community Association park site. The scenic and visual resources should not be adversely impacted.

Coastal Resources

60. The coastal resources between the low-tide mark and the upper reaches of the wave-splash zone consist of low/medium height jagged, barren lava sea cliffs. The Waiakahiula Shoreline Reserve is located south of the Property. Given the limited scope of the proposed improvements, and the continued residential use of the Property for over 15 years, no formal assessment has been conducted.

Recreational Resources

61. The County of Hawai`i Public Access to the Shoreline Inventory (1979) does not list the Property as one which provides mauka-makai public access from the Government Beach Road.

62. Lateral pedestrian access to the coastal shoreline within the Property will not be curtailed since pedestrian public shoreline access to the shoreline is secured along the coastline. Any cultural, historical or natural resources customarily and traditionally gathered along the shoreline area will be recognized and continued by the Petitioners.

ENVIRONMENTAL QUALITY

63. The air quality in the Puna district is largely affected by air pollutants from natural rather than vehicular sources. The most predominant source of natural pollutants is from the Kilauea volcano's east rift eruption located west of the Property. Emissions from the ongoing eruption can be seen in the form of a volcanic

haze which intermittently blankets the area. Vehicular exhaust is a lesser source of air pollutants.

64. The noise generated in the vicinity of the Property is associated with existing vehicular sources along the Government Beach Road. Other noises in the Property come from natural sources (ocean and wind).

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Services and Facilities

65. Access to the Property is provided from the Keaau-Pahoa Highway that connects to the Kahakai Boulevard in Hawaiian Beaches, and to the Government Beach Road, also known as the Puna Trail, an improved gravel/dirt roadway having a 10-foot wide right-of-way. The existing roadway is sufficiently adequate to accommodate the proposed residential use of the Property, which is not anticipated to create any substantial adverse traffic impact within the area.

66. By letter dated April 27, 2001, the State Department of Transportation indicated that the Petition, "will not impact our State transportation facilities."

67. By letter dated May 2, 2001, the County Department of Public Works, indicated that the County right-of-way is 40 feet and maintained by the County. "The County Planning Department will determine whether this road should continue through the subject lot. The Government Beach Road, along with the 80-foot wide right-of-way is a County owned and maintained roadway. This occurs only within the Hawaiian Beaches Subdivision, up to the southern corner of the subject property. The Government Beach road along the property's frontage is 10-ft. wide and is not owned nor maintained by the County. This 10-ft. wide roadway is not wide enough to handle any increase in traffic. Consult with our Planning Department to figure out what the 40-ft. setback line is, fronting the subject lot."

68. Fire and police protection services are provided from the Puna police and fire stations located in Pahoa, approximately six miles west of the Property. The Property is not anticipated to increase the demand for police and fire services which are available to the Property.

Water Service

69. No municipal water system is available to the Property. The nearest County of Hawai`i municipal water system is provided by a 12-inch line located within the vicinity of Keonepoko School. Potable water is drawn from the Hawaiian Beaches Subdivision private water system managed by Miller & Lieb Water Company, Inc. The mean annual rainfall within the area is about 100" to 125". Since there is no municipal water service to the Property, there will be no adverse impact upon the municipal system by reason of the proposed uses to the Property. The availability of potable water from the private water system and ample rainfall within the Property area is sufficient to service the requirements for the proposed use.

70. The Department of Water Supply, indicated by letter dated May 4, 2001, that the parcel has a private water system, so they have no comments.

Electrical and Telephone Services

71. Underground electrical and telephone service entries are located at the end of Welea Street within the Hawaiian Beach Subdivision, and the Property is serviced by Hawaii Electric Light Company and Verizon. There is no anticipated adverse impact upon electrical and telephone utility services by reason of the proposed use since services are already available to the Property.

Wastewater Treatment and Disposal

72. State Department of Health ("DOH"), by letter dated May 14, 2001, indicated that the existing single family dwelling is serviced by a cesspool, and continued use is permitted.

CONFORMANCE TO URBAN DISTRICT STANDARDS

73. The Petition Area meets the standards applicable in establishing boundaries of the Urban District as set forth in Section 15-15-18, HAR as follows:

A. The Property is located adjacent to the Urban District classified Hawaiian Beaches Subdivision which is characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

B. The Property is located within close proximity to centers of trading and employment in Puna.

C. Basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation system, public utilities, and police and fire protection are currently available to the Property.

D. Given the Property's existing topography and drainage, it is reasonably free from the danger of any flood, tsunami, unstable soil conditions, and other adverse environmental effects.

E. The Property is located adjacent to the Hawaiian Beaches Subdivision which is within the State Land Use Urban designation and therefore is contiguous with existing urban areas.

F. The Property conforms to the County of Hawai`i General Plan designation of "Low Density Urban".

G. The Property will not contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services as it is located adjacent to and is contiguous with existing State Land Use Urban designation lands, and public infrastructure is currently available to the Property.

CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAI`I STATE PLAN

74. The reclassification of the Property is in conformance with the Hawai`i State Plan, priority guidelines and functional plan policies, as set forth in Chapter 226, HRS:

A. Section 226-19. Objective and policies for socio-cultural advancement-housing.

Objective:

- The orderly development of residential areas sensitive to community needs and other land uses.

Policies:

- Effectively accommodate the housing needs of Hawai`i's people.
- Promote appropriate improvement, rehabilitation, and maintenance of existing housing units and residential areas.
- Promote 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.
- Foster a variety of lifestyles traditional to Hawai`i through the design and maintenance of neighborhoods that reflect the culture and values of the community.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT

75. The Property is located within the 40-foot setback of the Special Management Area ("SMA") which runs makai of the Government Beach Road, as defined in Chapter 205A, HRS, and Rule 9 of the County of Hawai`i Planning Commission Rules.

76. The Planning Director, by letter dated November 4, 1983, determined that the construction of the proposed single-family dwelling would be exempt from the permitting requirements of Hawai`i County's SMA if prior owners, Jerry E. and Patricia E. Merrill either incorporated an interior stairway into the single-

family dwelling or executed a Single-Family Dwelling Agreement ("Agreement"). The Merrills entered into the Agreement with the Hawai`i County Planning Department dated November 7, 1983, which was recorded in the Bureau of Conveyances of the State of Hawai`i on January 3, 1984, as Document No. 17566, Page 781. The Agreement restricts the use of the dwelling on the Property to single-family dwelling uses. The Petitioners intend to request a release of the Agreement from the County Planning Department with its intention to incorporate an interior stairway.

77. The proposed uses will not adversely affect any coastal zone management objectives or policies as the shoreline area of the Property is located within the 40-foot shoreline setback area as defined by Rule 8 of the County of Hawai`i Planning Commission Rules. Improvements on the Property are located approximately 175 feet inland from the shoreline, and exceed the mandatory minimum 40-foot shoreline setback requirement.

78. The proposed uses conform to the objectives and policies of Chapter 205A, HRS as follows:

A. Recreational resources. The proposed uses should not impact upon recreational resources, since lateral public shoreline access is available along the shoreline.

B. Historic resources. The proposed uses do not conflict with the historic resources objectives and policies which aim to protect, preserve and where desirable restore significant historic and prehistoric resources in the coastal zone management area. There are no known historical and/or cultural sites on the Property as confirmed by the Department of Land & Natural Resources, State Historic Preservation Division by letters dated January 11, 2000 and January 10, 2001, which states that "we believe there are no historic properties present in the subject parcel. The proposed boundary amendment will have no effect on significant historic sites." The Property is not among those listed as historic properties in the Hawai`i State Register of Historic Places, has not been determined to be

eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan within the Puna district. The proposed activities will not involve an irrevocable commitment to loss or destruction of any natural or cultural resources.

C. Scenic and open space resources. The Property is not listed as a distinctive and identifiable land form distinguished as landmarks or as having a frontyard vista of distinctive features as identified in the General Plan within the Puna district. The Proposed Action is not anticipated to change the visual attributes of the improved Property. The proposed uses will continue to foster the goals, policies and standards of the scenic and open space resources of the General Plan.

D. Coastal ecosystems. The proposed development is consistent with the coastal ecosystem objectives and policies which aim to protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems. The coastal resources between the low-tide mark and the upper reaches of the wave-splash zone consist of low/medium height jagged, barren lava sea cliffs. The County of Hawai`i Public Access to the Shoreline Inventory (1979) does not list the Property as one which provides mauka-makai public access from the Government Beach Road. The proposed use does not involve any direct or indirect chemical modifications to the nearshore environment, nor will it cause additional erosion and sedimentation seepage into the coastal ecosystem. There should be no physical disruption of the existing habitat, and more importantly, no changes that would affect the amount of wave energy striking the shoreline. Lateral pedestrian access along the coastal shoreline within the Property will not be curtailed since pedestrian public shoreline access to the shoreline is secured along the coastline. Known traditional and customary native Hawaiian practices and other valued cultural, historical or natural resources on the Property are located at the shoreline area and will be recognized and allowed by the Petitioners.

E. Economic uses. The proposed uses will provide short-term economic benefits by supporting construction related employment opportunities. The long-term economic or social welfare of the community will not be affected by the proposed improvements to the single-family residential dwelling and farming activities, and will not preclude the development of coastal dependent economic uses or public and private facilities.

F. Coastal hazards. The proposed uses are consistent with the coastal hazards objectives and policies which provide for the control of development in areas subject to tsunami, flood, erosion and subsistence hazard. The proposed uses will not be subject to coastal hazards due to their location 175 feet from the shoreline. The Property is designated as "X" or outside the 500-year flood plain, per the U.S. Corps of Engineers Flood Insurance Rate Maps (FIRM).

HAWAIIAN CUSTOMARY AND TRADITIONAL RIGHTS

79. The Commission finds that there are no impacts upon traditional and customary native Hawaiian practices in the Petition Area. Based upon Petitioner's consultation with native Hawaiian gatherers and local area residents, as discussed in Petitioner's FEA, the absence of impacts upon traditional and customary native Hawaiian practices may be explained by: the co-existence of residential activity and permitted improvements on the Property with fishing, opihi and limu gathering along shoreline areas that may traverse across the Petition Area; and the critical gathering area for most of the rare medicinal plants are located in the mauka areas of Puna outside the Petition Area. A portion of the Property that runs along the shoreline is included in the 40-foot shoreline setback established by the County. The Petitioners have committed to allow access along the shoreline area of the Property for traditional and customary cultural practices and related shoreline access.

RULING ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSION OF LAW

Pursuant to Chapter 205, HRS, and the Hawai`i Land Use Commission Rules under Chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds and concludes upon the clear preponderance of the evidence that the reclassification of the Petition Area consisting of approximately 2.621 acres of land situate at Keonepoko Iki, District of Puna, Island, County and State of Hawai`i, and designated by TMK No: (3) 1-5-09:39, from the Conservation Land Use District to the Urban Land Use District subject to the conditions herein stated in the Order, is reasonable, conforms to the standards for establishing the Urban District boundaries, is non-violative of Section 205-2, HRS, and is consistent with the policies and criteria established pursuant to Sections 205-16, 205-17, and 205-A2, HRS, and Section 15-15-18, HAR.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, being the subject of Docket No. A00-733, filed by Harrison J. and Sharene Z. Klein, Trustees under the Klein Living Trust dated September 17, 1999, consisting of approximately 2.621 acres of land situate at Keonepoko Iki, District of Puna, Island, County and State of Hawai`i, and designated by TMK No: (3) 1-5-09:39, and identified on Exhibit "A" attached hereto and

incorporated herein by reference herein, is hereby reclassified from the Conservation Land Use District to the Urban Land Use District and the State Land Use Boundaries are amended accordingly, subject to the following conditions:

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

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

3. Petitioner shall timely provide without prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawai`i Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed therein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

4. Petitioner shall provide a 10-foot wide lateral pedestrian access corridor along the shoreline edge of its Property for access to surrounding shoreline areas that may be used by the general public and practitioners of traditional and customary native Hawaiian gathering practices.

5. Petitioner shall continue to provide adequate wastewater treatment, transmission, and disposal facilities as determined by the State Department of Health.

6. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources. The significance of these finds shall then be

determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

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

8. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

9. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawai`i Administrative Rules.

Done at Kona, Hawai`i, this 5th day of November, 2001, per motion on November 1, 2001.

CARLSMITH BALL LLP

By _____
STEVEN S.C. LIM, ESQ.
Attorney for Petitioner

OFFICE OF PLANNING

By _____
DAVID W. BLANE
Director

COUNTY OF HAWAI`I
PLANNING DEPARTMENT

By _____
CHRISTOPHER J. YUEN
Planning Director

SO ORDERED:

LAND USE COMMISSION
STATE OF HAWAI`I

By _____
MERLE A. K. KELAI
Chairperson and Commissioner

By _____
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

By _____
P. ROY CATALANI
Commissioner

By _____
BRUCE A. COPPA
Commissioner

By (absent)
PRAVIN DESAI
Commissioner

By _____
ISAAC FIESTA, JR.
Commissioner

By _____
M. CASEY JARMAN
Commissioner

By _____
STANLEY ROEHRIG
Commissioner

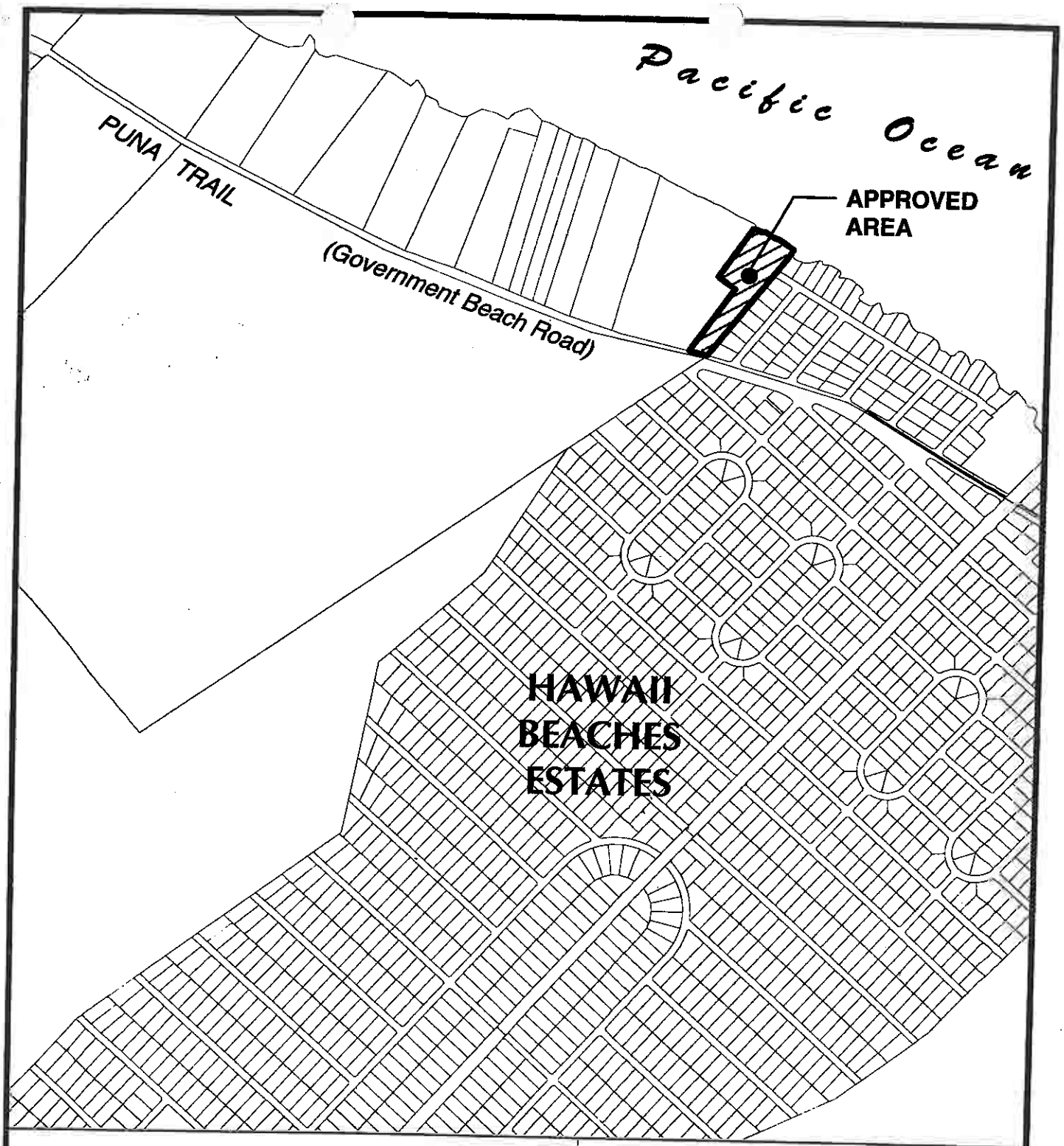
By _____
PETER YUKIMURA
Commissioner

APPROVED AS TO FORM:

_____
Deputy Attorney General

Filed and effective on
November 5, 2001
Certified by:

_____
Executive Officer

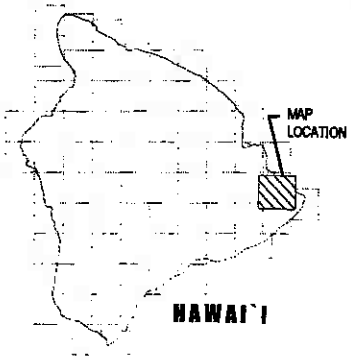


A00-733 HARRISON J. & SHARENE Z. KLEIN

LOCATION MAP

Tax Map Key: 1-5-09: 39
Keonepoko Iki, Puna, Hawaii
Scale: 1" = 800 ft.

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In the Matter of the Petition of	)	DOCKET NO. A00-733
	)	
HARRISON J. & SHARENE Z. KLEIN	)	CERTIFICATE OF SERVICE
	)	
To Amend the Conservation Land Use District Boundary into the Urban Land Use District for Approximately 2.621 acres of land at Keonepoko Iki, District of Puna, Island, County and State of Hawai`i. TMK No: (3) 1-5-09: 39	)	

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:

DEL. DAVID W. BLANE, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

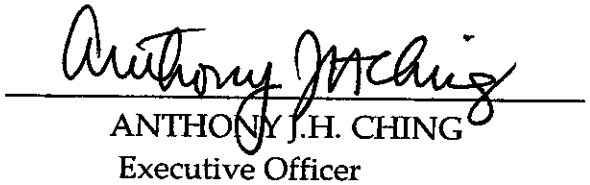
CERT. CHRISTOPHER YUEN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. LINCOLN ASHIDA, ESQ.
Corporation Counsel
County of Hawaii
The Hilo Lagoon Center
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

CERT. STEVEN S.C. LIM, ESQ., Attorney for Petitioner
Carlsmith Ball
121 Waianuenue Avenue
Hilo, Hawaii 96720

CERT. HARRISON J. & SHARENE Z. KLEIN
15-2678 Welea Street
Pahoa, Hawai`i 96778-8568

DATED: Honolulu, Hawaii, this 5th day of November 2001.



ANTHONY J.H. CHING
Executive Officer