

### **Commitment of State Funds and Resources**

469. The proposed Kaloko Industrial Park Phases III and IV will be funded through a combination of conventional financing and property sales and will not require direct expenditures by either the State of Hawaii, or the County of Hawaii.

### **Conformance to Applicable District Standards**

470. The proposed reclassification is in general conformance to Section 15-15-18 (1) to (8) of the Land Use Commission rules, standards for determining “U” Urban District boundaries.

471. The Property will be zoned and developed for light industrial use, and industrial-commercial mixed use and is located close to other industrial uses.

472. The Petition area is included within a larger area that was recommended for reclassification from the State Land Use Conservation District to the State Land Use Urban district during the State’s Five-Year Boundary Review.

### **Hawaii State Plan**

473. Pursuant to Section 205-17(1), HRS, and Section 15-15-77(b)(1), HAR, and subject to the conditions of approval set forth herein, the reclassification of the Property conforms to the applicable goals, objectives, and policies of the Hawaii State Plan, Chapter 226, HRS, as amended with respect to the following State Plan objectives and policies, based upon the following:

- SEC. 226 – 6 (a) (1) and (b) (6): Objectives and policies for the economy
  - The development phase of the Kaloko Industrial Park Phases III and IV is expected to generate nearly 29,018 "worker years" of direct employment resulting in an estimated \$874 million in total wages;
  - Petitioner expected that more than \$200 million in local business profits will occur over a 15-year build-out period (infrastructure and finished buildings);
  - Secondary effects include the creation of an additional 4,197 permanent jobs in the regional economy, \$124.5 million in yearly wages, and \$300 million annually in purchases, receipts and expenditures into other West Hawaii businesses and suppliers.
- SEC. 226-11 (b) (6) and (b) (8): Objectives and policies for the physical environment – land-based, shoreline, and marine resources.
  - Protection and preservation of the candidate endangered species ko`oko`olau (*Bidens micrantha* subspecies *ctenophylla*) plant located along the Petition Area's eastern boundary;

- Reduction of potential interactions between the endangered endemic, nocturnally flying Dark-rumped petrels with external lights and man-made structures through shielded exterior lighting;
  - Mitigation of impacts to the quality of groundwater and marine waters affecting the natural and cultural resources of KAHO through conditions of approval imposed herein.
- SEC 226-12 (b) (3) and (4) Objectives and policies for the physical environment – scenic, natural beauty, and historic resources.
    - The requirement of landowners and/or tenants of the individual lots to provide and maintain on-site landscaping to further enhance the visual environment in accordance with the landscaping criteria;
    - Architectural design criteria to reduce visual impacts of the proposed structures would include consideration of building profiles and design, exterior color and surface treatment such as the use of non-reflective building materials and colors to blend with the surrounding environment, and exterior lighting and sign standards; and

- Measures to protect and preserve cultural resources that may be affected by the project as required by the conditions of approval imposed herein.
- SEC. 226-13(b) (3) and (7): Objectives and policies for the physical environment – land, air and water quality.
  - Mitigation of impacts to the quality of groundwater and marine waters affecting the natural and cultural resources of KAHO through conditions of approval imposed herein.
- SEC. 226-104 (b) (1) and (9): Population growth and land resources priority guidelines.
  - The Petition Area is located in close proximity to urban areas where adequate public facilities are available, including the adjacent Kaloko Industrial Park, Phases I and II, Kona International Airport at Keahole approximately 3 miles to the north, and Kailua-Kona town approximately 3.4 miles to the south.
  - The Petition Area has been identified as an area recommended for urban development according to the State Office of Planning's Five-Year Boundary Review (1992), which is made within the context of other existing State and County land use policies for the site and the region as a whole.

## **Hawaii Coastal Zone Management Program**

474. Hawaii's Coastal Zone Management ("CZM") Program, established pursuant to Chapter 205A, HRS, as amended, is administered by the OP and provides for the beneficial use, protection and development of the State's coastal zone. The objectives and policies of the CZM Program encompass broad concerns such as impact on recreational resources, historic and archaeological resources, coastal scenic resources and open space, coastal ecosystems, coastal hazards, and the management of development. The proposed project is consistent with the following applicable CZM objectives and policies as conditions of approval are imposed herein:

- **Recreational Resources:** Petitioner proposed implementation of BMPs and a PPP by individual lot owners to prevent pollution from being discharged into a receiving water, and may include structural BMPs, such as berms or oil/water separators; and procedural BMPs, such as training in spill response procedures; or administrative, such as record keeping.
- **Historic Resources:** Petitioner stated it will implement a Data Recovery Plan prepared for review and approval by the DLNR-HPD for significant historical sites found in the Petition Area.
- **Scenic and Open Space Resources:** Petitioner will require landowner

and/or tenants to provide and maintain on-site landscaping; and implement architectural design criteria to reduce visual impacts.

- Coastal Ecosystems: Petitioner proposed implementation of BMPs and a pollution prevention plan by individual lot owners to prevent pollution from being discharged into a receiving water, and may include structural BMPs, such as berms or oil/water separators; procedural, such as training in spill response procedures; or administrative, such as record keeping.
- Coastal Hazards: The Petition Area is located within Zone X, areas determined to be outside the 500-year flood plain according to the FEMA FIRM, and is not subject to coastal hazards such as tsunami inundation.

Petitioner proposed implementation of BMPs and a PPP by individual lot owners to prevent pollution from being discharged into a receiving water, and may include structural BMPs, such as berms or oil/water separators; procedural, such as training in spill response procedures; or administrative, such as record keeping.

## **Incremental Districting**

475. Pursuant to Section 15-15-78 of the LUC Rules, incremental districting is not required because full development of the subject property can substantially be completed within ten years after the date of the Land Use Commission's approval.

## CONCLUSIONS OF LAW

1. The Commission finds upon the clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 102.016 acres situated at Kaloko, North Kona, Island and State of Hawaii, identified as Tax Map Key No: 7-3-051: por. 060, from the Conservation District to the Urban District, upon the conditions set forth in this Decision and Order, is reasonable, conforms to the standards for establishing the Urban District boundaries, is not violative of section 205-2, HRS, is consistent with the Hawaii State Plan as set forth in Chapter 226, HRS, the Coastal Zone Management Program, as set forth in Chapter 205A, HRS, and the policies and criteria established pursuant to section 205-17, HRS, and conforms to Chapter 15-15, HAR.

2. Article XII, Section 7 of the Hawaii Constitution requires the Commission to protect native Hawaiian traditional and customary rights: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

3. The State's power to regulate the exercise of customarily and traditionally exercised native Hawaiian rights allows the State to permit development that interferes with such rights if the preservation and protection of such rights would result in actual



harm to the recognized interests of others. Nevertheless, the State is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible. *Public Access Shoreline Hawaii v. Hawaii County Planning Commission*, 79 Hawai'i 425, 450, n. 43, 903 P.2d 1246 (1995).

4. Native Hawaiian rights protected by the Hawaii Constitution that are practiced within Kaloko-Honokohau National Historical Park include pole, spear and net fishing; gathering of limu, wana, opihi, and octopus; gathering the opae`ula in anchialine pools for bait and chum for offshore fishing; religious ceremonies, including pikai ceremonies using near-shore waters.

5. The ancient fishponds and anchialine pools within the National Park are valued and important natural and cultural resources.

6. The endangered, endemic birds and the threatened and endangered sea turtles within the National Park are valued and important natural resources.

7. The aforesaid native Hawaiian rights and natural and cultural resources would be damaged or destroyed by the pollution of groundwater that reaches the National Park from surrounding areas, including Petitioner's proposed development at the Kaloko Industrial Park. Appropriate mitigation measures are, therefore, required under the Hawaii Constitution and the Commission's decision-making criteria in order to approve reclassification of the project area.

## DECISION AND ORDER

IT IS HEREBY ORDERED that the Property being the subject of Docket No. A00-732, filed by Petitioner, TSA Corporation, consisting of approximately 102.016 acres of land in the State Land Use Conservation District at Kaloko, North Kona, Island of Hawaii, County of Hawaii, State of Hawaii, identified as Tax Map Key No. 7-3-051: portion of 060, is hereby reclassified into the State Land Use Urban District, and the State land use district boundaries are amended accordingly, subject to the conditions of approval set forth herein.

This Commission is acutely aware that continuous development is planned for this coastline. Although each developer might claim that only a “small amount” of pollution will result from their development and that the area’s ecosystem will show “little” effects, these developments and their impacts are cumulative and, absent strong mitigation measures, have the potential to devastate the fragile resources of the coastal and marine aquatic environments of the entire Kona coastal region.

Absent adequate, effective and enforceable conditions of approval, including removal of wastewater nutrients and surface runoff contaminants, Petitioner’s proposed industrial development has the potential to cause unacceptable adverse impacts to coastal resources, particularly the natural and cultural resources of the adjacent National Park and the traditional and customary native Hawaiian practices

that depend on the pristine nature of such resources.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the customary and traditional native Hawaiian practices, the cultural resources, and the important natural systems and habitats of the National Park that have been identified herein shall be adequately protected by the conditions of this decision and order.

To protect the exercise of customary and traditional native Hawaiian practices; to protect the historical and cultural resources of the coastal area including the Kaloko-Honokohau National Historical Park; to ensure the health and preservation of the natural systems and habitats of the National Park, including the endangered, threatened, and endemic species and their habitat, the reclassification of the Property shall be subject to the following conditions.

**Wastewater**

1a. The Petition Area shall be developed with dry sewer lines for eventual connection to the Kealakehe Wastewater Treatment Plant (WWTP).

1b. The Petition Area shall be required to connect to the WWTP, when such connection is available. The Petitioner, its successors, and assigns, shall collaborate with the County of Hawaii to include the Petition Area within an improvement district, if one is developed to fund the connection to the WWTP. The Petitioner or individual

lot owners within the Petition Area shall pay for their fair share of the cost to fund such connection to the WWTP, whether or not an improvement district is established.

1c. The Petitioner and/or any future owner(s) of the Petition Area shall refrain from constructing upon or occupying any portion of the Petition Area until such time as the portion (e.g., lot) to be constructed upon or occupied is connected to the WWTP, unless in the interim, the portion to be constructed upon or occupied has installed a septic tank system [i.e., Individual Wastewater System (IWS)] designed to remove no less than 60% Total Nitrogen from the treatment system (e.g., septic tank with FAST, Biofilter, Recirculation Filters, Sequential Batch Reactor, or comparable technology) and an absorption field of import material which is designed to achieve no less than 80% reduction of nitrogen; featuring adequate percolation rate; and offering additional phosphorus removal. Installation is subject to conditions of approval dictated by the Director of the Hawaii State Department of Health and Hawaii Administrative Rules (HAR) Title 11 Chapter 62. When connection to the WWTP becomes available, all portions of the Petition Area, including all individual lots therein, shall connect to the WWTP, whether or not an interim wastewater treatment system has been installed.

1d. Utilization of the IWS described above (i.e., septic tank with FAST, Biofilter, Recirculation Filters, Sequential Batch Reactor, or comparable technology and an absorption field of import material which is designed to achieve no less than 80%

reduction of nitrogen; featuring adequate percolation rate; and offering additional phosphorus removal) shall be limited to no more than 45% of the individual lots to be developed in the Petition Area.

1e. The owner of the IWS shall certify with the Hawaii State Department of Health that the IWS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

1f. Petitioner and/or each individual lot owner(s), shall develop and participate in a Wastewater Treatment System Maintenance Agreement, before constructing upon or occupying any portion of the Petition Area, that shall provide for safe and effective operation and maintenance of the treatment unit(s), whether shared or individual, and/or the temporary sewage line. This requirement shall be included in the conditions of sale of any lot and/or parcel in the Petition Area.

1g. Should the National Park Service elect to pursue installation of a temporary sewage line to the WWTP for the Kaloko-Honokohau National Historic Park Visitor Center construction project, the Petitioner may elect, subject to prior authorization by the National Park Service, to dispose of wastewater from not more

than 20 one-acre lots in the Petition Area, via such temporary line to the WWTP. In no event shall the temporary sewage connection be in place and utilized for longer than five (5) years from the date of completion of construction of such temporary line except at the sole discretion of the National Park Service. The Petitioner shall pay its fair share cost to fund such temporary connection to the WWTP, as determined by the National Park Service, the Petitioner and the County of Hawaii. When connection to the WWTP becomes available through permanent sewer lines, all portions of the Petition Area, including all individual lots that may have been connected to the above described temporary sewage line, shall connect to the WWTP through permanent lines, whether or not one or more lots were connected via the temporary sewage line. Connection of not more than twenty (20) one-acre lots to the WWTP via such temporary sewage line does not release any other individual lots within the Petition Area from compliance with any other condition(s) of this decision and order.

### **Storm and Surface Water Runoff**

2a. To the extent possible, all storm and surface water runoff shall be captured on the premises. To the extent possible, all runoff entering the ground shall be first treated to remove all industrial waste so that no industrial pollutants will reach the Kaloko-Honokohau National Park or enter the water table. Petitioner shall be subject to and prepare covenants, conditions, and restrictions for the Petition Area to contain

spills and prevent materials associated with light industrial uses attributable to the operations of property, including petroleum products, chemicals, or other pollutants from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants shall be subject to the approval of the Hawaii State Department of Health, upon consultation with the National Park Service, and the County of Hawaii. The Petitioner and/or tenant shall obtain all required permits and construct required improvements for storm water discharge on and from the property. These conditions shall include the following:

2b. Prior to the occupancy of any part of the Petition Area, the Petitioner shall engineer, construct (or require to be constructed) and maintain surface water/storm water containment systems that ensure no State water quality standards will be violated.

2c. No injection well shall be constructed as an element of a surface water/storm water containment system in the Petition Area unless, prior to the start of any construction, appropriate requirements of HAR Chapter 11-23 are satisfied and the Hawaii State Department of Health issues an UIC (Underground Injection Control) permit. Contaminants shall be monitored and removed with best efforts prior to entering injection wells.

2d. If a large void, such as a lava tube or solution cavity, is encountered

during drilling, where the drill rod drops more than three feet, measures shall be taken to prevent migration of the injected fluids to the Kaloko-Honokohau National Park to the satisfaction of the Hawaii State Department of Health as described in HAR §11-23-09(f).

2e. All injection wells established in the Petition Area shall be operated in such a manner that they do not violate any of the Hawaii State Department of Health's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and chapters 342-B, 342-D, 342-F, 342-H, 342-J, 342-L, and 342-N, Hawaii Revised Statutes (HRS). Relevant HAR include but, are not limited to:

- i. Chapter 11-20, "Rules Relating to Potable Water Systems";
- ii. Chapter 11-62, "Wastewater Systems"; and
- iii. Chapter 11-55, "Water Pollution Control".

2f. The operator of any injection well or wells in the Petition Area shall keep detailed records of the operation of the well or wells, including, but not limited to, the type and quantity of injected fluids, and the method and rate of injection for each well. Such records will be available for inspection or review by the Hawaii State Department of Health as specified under appropriate sections of HAR Chapter 11-28.

2g. Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of HRS and HAR as they relate to (but



are not limited to): Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.

2h. The Petitioner, successors and/or individual lot owners in the Petition Area shall ensure that all drainage injection wells or subsurface drainage structures be designed with a debris catch basin to allow the detention and periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin's volume should be at least two (2) cubic yards (or approximately 4'x4'x4'). The debris catch basin shall be periodically inspected and cleaned accordingly. Oil/water separators shall be utilized where petroleum products are used.

### **Pollution Prevention**

3a. Any public or private industrial development within the Petition Area which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

3b. Before constructing upon or occupying any portion of the Petition Area, a Pollution Prevent Plan (PPP), after consultation with the National Park Service, shall be developed that addresses each of the types of uses permissible in the light industrial park, by specifically designating Best Management Practices (BMPs) tailored to each

specific use. Emphasis shall be given to structural BMPs to prevent any and all pollutants that may be associated with such industries from being released into the environment, including reaching the groundwater. Structural BMPs shall include, but shall not be limited to, oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination. The PPP shall include but not be limited to:

- i. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid acidic or caustic liquids, antifreeze, detergents, degreasers, etc. shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors if necessary, shall pass through a separator sump before being discharged.
- ii. Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain.

(The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed along with the local fire code.)

- iii. All employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial spill onto the bare ground.

In the event that a specific use is proposed for the Petition Area that is not specifically addressed in the PPP, the Petitioner and/or the individual lot owner(s) proposing such use shall consult with the National Park Service to establish a set of BMPs appropriate for such proposed use and consistent with the goal of preventing any and all pollutants from being released into the environment. In the event that the Petitioner and the National Park Service cannot agree upon a mutually acceptable PPP within 12 months of the date of issuance of the boundary reclassification, the Commission shall review the draft PPP, along with written comments from Petitioner, the National Park Service and the other parties, and shall issue a final PPP. In no event shall the Petitioner and/or individual lot owner(s) construct upon or occupy any portion

of the Petition Area until such time as the final PPP is complete. The final PPP shall be recorded and shall run with the land within the Petition Area in the same manner as all conditions of approval imposed by the Commission.

3c. The Petitioner, its successors or individual lot owners shall provide signage for all drainage/injection wells in the Petition Area with warnings such as the following: DUMP NO WASTES. GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT. Signage shall be either stand-up (legible from at least 30 feet, permanently posted at an effective and safe height) or painted on the ground next to the drainage well's inlet.

3d. For parking areas, BMPs will be established as covenants running with the land, which emphasize pollution prevention rather than treatment. All large vehicles such as buses, trucks, or construction equipment shall utilize drip pans to avoid release of petroleum onto paved surfaces. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid buildup of oil or other automotive fluids. Maintenance work other than emergency work on vehicles will be banned in parking areas.

3e. Where site geometry permits, the Petitioner, its successors or individual lot owners shall design and construct (or require to be constructed) landscaped areas,

including grassed or vegetative swales to capture storm water drainage from all perimeter lots, facilities, and parking areas of the Petition Area.

3f. Owner or operator covenants developed for the Petition Area shall expressly disclose to all future individual lot owner(s) the existence of the National Park System Resource Protection Act, 16 U.S.C. Sections 19jj-19jj-4, and the consequences of violation of such act. In particular, future land owners shall be made aware that any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury.

3g. The Petitioner shall participate and collaborate in a regional (Kaloko-Honokohau) pollution prevention forum to be convened by the Commission within one year from the issuance of this decision and order. Intervenor shall be invited as well. Topics to be discussed include: pollution prevention planning; best available control technologies (BACT); structural and operation BMPs addressed to the type of uses permissible in the light industrial park, and formulas for determining fair and reasonable pro-rata share costs relating to any ground water monitoring program. Participants in this forum should include but not necessarily be limited to individuals

or entities with property or development interests impacting the Queen Kaahumanu Highway corridor extending from the Kona International Airport to the Palani Road intersection.

### **Groundwater Quality Monitoring**

4. The Petitioner shall contribute its fair and reasonable pro-rata share of costs relating to a ground water monitoring program of USGS Wells 4161-01, 4161-02 and 4061-01, Aimakapa Pond, Kaloko Pond and two (2) other anchialine ponds of the Kaloko-Honokohau Historic National Park as identified by the National Park Service. Monitoring would continue once every six months for 10 years from initial occupancy, or until such time as sewer lines and hookup to the WWTP is implemented.

Constituents to be monitored shall be of a full suite of nutrients (including nitrogen and phosphate), contaminants (including metals, phenolic compounds, pesticides and pesticide breakdown products, chlorinated solvents, BTEX compounds, selected pharmaceutical endocrine disruptive compounds, such as ethinyl estradiol, and nonylphenol), and standard water quality parameters (including pH, temperature, dissolved oxygenates, and salinity). The fair and reasonable pro-rata share of costs will be determined by the Commission and in conjunction with the findings generated at the regional pollution prevention forum discussed above.

## **Regional/Local Transportation**

5a. The Petitioner shall participate and collaborate in a regional (Kaloko-Honokohau) transportation planning forum to be convened by the Commission within one year from the issuance of this order. Participants in this forum to be convened include but, are not limited to individuals or entities with a property or development interest impacting the Queen Ka'ahumanu Highway corridor extending from the Kona International Airport to the Palani Road intersection. Topics to be discussed include: regional transportation planning issues; the timing and cost of necessary improvements to the Queen Ka'ahumanu Highway as described in the Hawaii Long Range Transportation Plan; determination of individual fair share contributions; and process for resolving any conflicts which may arise.

5b. The Petitioner shall contribute their fair and reasonable pro-rata funding and construction of regional transportation improvements and programs to the satisfaction of the State Department of Transportation for the Petition Area.

5c. The Petitioner shall participate and collaborate with the County of Hawaii Department of Public Works and other affected agencies in the development of County feeder streets within the Petition Area.

5d. Petitioner shall participate in the fair and reasonable pro-rata funding and construction of any such roadways from its northern boundary to the southern

boundary in accordance with the roadway requirements of the County of Hawaii.

5e. Petitioner shall provide an appropriate easement as determined by the County of Hawaii on the south end of Kamanu Street in order to provide a North-South connection with the adjoining property.

### **Financial Contribution Plan**

6. The Petitioner shall coordinate with affected State or County agencies the development of a financial plan for satisfying any financial contributions or requirements associated with this petition. All such plans may provide for an annual fair share incremental payment to the affected agency by the Petitioner out of the development revenues or otherwise. The affected State or County agency may establish a dedicated escrow account for the deposit and utilization of the financial contribution from Petitioner to facilitate this plan.

### **Affordable Housing**

7. The Petitioner shall submit a housing needs assessment and implementation plan to the Commission and appropriate County housing agency for their review and approval within six months of the issuance of this decision and order and comply with the County of Hawaii affordable housing policy. The housing needs assessment shall be based on an analysis of the jobs generated by the development, the projected number of qualified households which may be entitled to housing assistance



as specified by the County of Hawaii, the number and availability of affordable housing units and rentals in the West Hawaii area (both planned and built), the projected number of employees from the development who might be expected to commute from East Hawaii, the number of owner occupants (within the Petition Area) who reside in the West Hawaii area and the number of employees who might already reside in the West Hawaii area.

### **Archaeological/Historical Sites**

8a. Eight sites (21999, 22010, 22014, 22016, 22017, 22018, 22023, and 22032) retain the potential to yield information important for understanding prehistoric and historic land use. If Petitioner believes that one or more of these sites cannot be preserved, it shall provide to the Land Use Commission no later than six (6) months after this decision and order is issued a mitigation plan for its review and approval.

8b. Should any previously unidentified burial, archaeological or historical sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, the Petitioner, developer(s) and/or landowners of the affected properties shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. 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.

### **Landscaping**

9a. Petitioner shall develop a landscaping plan for the Petition area that can be followed by each subsequent lot owner/tenant. Fishermen knowledgeable of traditional reference points used in locating fishing grounds, and the National Park Service shall be consulted on the development of building and landscape design guidelines prior to construction to maintain these reference points.

9b. Petitioner, where feasible, shall use indigenous and water conserving plants such as the papyrus (native paper plant) and incorporate the same into common area landscape planting.

9c. The Amy B.H. Greenwell Botanical Garden, Kaloko-Honokohau National Historical Park and other interested parties and educational institutions shall be afforded the opportunity to gather seeds and cuttings of native plants on the property that cannot be rescued or incorporated into the project's landscaping plan.

9d. The Petitioner shall provide buffer fences/buffer strips to protect the *Bidens Micrantha*, a candidate endangered species by establishing a buffer zone with a minimum width of 30 feet, in the immediate vicinity of *Bidens Micrantha* #1 plant identified in the EIS. The Petitioner shall ensure that genetic material (seeds and

cuttings) are propagated from the other three Bidens Micrantha plants located within the makai portion of the Petition area.

### **Soil Erosion and Dust Control**

10. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the Hawaii State Department of Health.

### **Civil Defense**

11. Petitioner, developers and/or landowners of the affected properties shall add a solar powered siren with 115 Dbc omni directional speaker array, and insure that the siren be installed in a central location funded and constructed according to adequate civil defense measures as determined by the County of Hawaii and State Civil Defense agencies.

12. Petitioner shall develop the Petition area in full compliance with all material representations made by the Petitioner to the Commission. Failure to do so for any reason including but not limited to economic feasibility, may result in the imposition of fines as provided by law for each and every separate violation, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification or a change to a more appropriate classification and/or any other legal remedies, including but not limited to

suit for actual and punitive damages under Federal or State law or suit for injunctive relief that requires the developer to restore the project area to its former condition.

13. 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 Petition Area, prior to development of the Petition Area.

14. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of 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 herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

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

Petitioner shall record the conditions imposed by the Commission with the

Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules. All such conditions shall run with the land.

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ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this \_\_\_\_\_ day of \_\_\_\_\_, 2002. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

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 \_\_\_\_\_  
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  
\_\_\_\_\_, 2002

Certified by:  
\_\_\_\_\_  
Executive Officer