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KEEP THE NORTH SHORE COUNTRY
and SIERRA CLUB, HAWAII CHAPTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KEEP THE NORTH SHORE COUNTRY,)
a Hawai'i non-profit corporation,)
SIERRA CLUB, HAWAII CHAPTER, a)
foreign non-profit corporation,)

Plaintiffs,)

vs.)


CITY AND COUNTY OF HONOLULU;)
HENRY ENG, Director of Department)
of Planning and Permitting in his)
official capacity; KUILIMA RESORT)
COMPANY, a Hawai'i general)
partnership; JOHN DOES 1-10; JANE)
DOES 1-10; DOE PARTNERSHIPS)
1-10; DOE CORPORATIONS 1-10;)
DOE ENTITIES 1-10; and DOE)
GOVERNMENTAL UNITS 1-10,)

Defendants.)

CIVIL NO. 06-1-0867-05 (GWBC)
(Declaratory Judgment)

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF; EXHIBITS 1
- 4; SUMMONS; CERTIFICATE OF
SERVICE**

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


Clerk, Circuit Court, First Circuit

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Pursuant to Rule 15(a) of the Hawai'i Rules of Civil Procedure, Plaintiff KEEP THE NORTH SHORE COUNTRY ("Keep the North Shore Country") and Plaintiff SIERRA CLUB, HAWAI'I CHAPTER ("Sierra Club") (hereinafter collectively "Plaintiffs") amend their complaint as of right and allege and aver as follows:

I. INTRODUCTION

This is the classic case of when a supplemental environmental impact statement is required. In 1985, Kuilima Development Company ("KDC"), a currently dissolved corporation, proposed a project known as the Kuilima Resort Expansion, which proposed three new oceanfront hotels and expansion of the existing hotel (a total of 1,450+ new visitor units); three new oceanfront and four new inland resort condominium project (a total of 2,060+ new visitor units); a new 70,000+ square foot commercial complex; and other renovations or projects ("the Project"). In order to obtain necessary zoning re-classifications and permits, KDC completed, and Defendant CITY AND COUNTY OF HONOLULU accepted, a Revised Environmental Impact Statement for the Kuilima Resort Expansion dated October 7, 1985 ("1985 EIS") that evaluated potential environmental impacts associated with the Project. KDC assigned its interests in the Project to Defendant KUILIMA RESORT COMPANY ("KRC"), a subsidiary of Oaktree Capital Management LLC.

Construction on the last phase of the Project was intended to be initiated, at the latest, by 1996. However, major portions of the Project, such as the new hotels, condominiums, and commercial complex, were delayed or put on hold. Recently, however, KRC has sought to reactivate the Project, taken steps to subdivide property, grade land, and develop the long dormant portions of the Project.

Keep the North Shore Country and Sierra Club's directors, supporters and/or members, and their families live, work, and participate in recreational activities in the North Shore area and along the Kahuku coastline, in and around Kuilima and Kawela Bay. Plaintiffs are concerned that the 1985 EIS is stale and relies on outdated information. In the past 20 years since the 1985 EIS was completed, the North Shore has experienced substantial and significant changes in traffic, demands on infrastructure (e.g., water, sewage), residential development, and other environmental impacts that affect the entire North Shore community. By proceeding with the dormant portions of the Project without evaluating these changes, the Defendants will cause unanticipated and significant environmental impacts, including but not limited to, traffic gridlock during peak and non-peak hours, increased burdens on taxed infrastructure, and irreversible changes to the unique rural and country character of the North Shore.

In light of these concerns, Plaintiffs' First Amended Complaint seeks a supplemental environmental impact statement ("supplemental EIS") updating

the 1985 EIS and evaluating these changed circumstances and unanticipated environmental impacts. Plaintiffs therefore request that the Court order Defendants THE CITY AND COUNTY OF HONOLULU, HENRY ENG, Director of Department of Planning and Permitting (“DPP”), in his official capacity (together, “the County”), and KRC to prepare a supplemental EIS in accordance with the Hawai‘i Environmental Policy Act (“HEPA”), Haw. Rev. Stat. (“HRS”) Chapter 343, and the Hawai‘i Administrative Rules (“HAR”) Title 11, Chapter 200, promulgated by the Hawai‘i Environmental Council, which govern EISs and supplemental EISs.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to HRS §§ 343-7 (HEPA), 603-21.5 (general jurisdiction), 632-1 (declaratory judgment), and HRS Chapter 91 (administrative procedure).

2. Venue is appropriate pursuant to HRS § 603-36(5) because the Defendants are domiciled in the City and County of Honolulu, State of Hawai‘i, and the claim for relief arose in the City and County of Honolulu, State of Hawai‘i.

III. PARTIES

A. Plaintiff

3. Plaintiff Keep the North Shore Country is a Hawai‘i non-profit corporation organized under Hawai‘i law. Keep the North Shore Country’s principal place of business is located in Hale‘iwa, Hawai‘i.

4. Keep the North Shore Country's directors and supporters are homeowners, residents, and families that live and work on the North Shore of O'ahu, Hawai'i. Keep the North Shore Country's directors and supporters have in the past, and continue today, to enjoy, use, and appreciate the areas along the Kahuku coastline, in and around Kuilima and Kawela Bay, and the areas proposed for development by KRC, for aesthetic and recreational purposes, including but not limited to, walking, hiking, surfing, kayaking, fishing, picnicking, sun-bathing, organizing family beach excursions, and appreciating the natural beauty of the environment. Directors and supporters of Keep the North Shore Country participated in or commented on proceedings relating to the 1985 EIS, including the Land Use Commission proceedings, and proceedings before the Honolulu City Council regarding certain permits that relied upon the 1985 EIS.

5. Plaintiff the Sierra Club, is a California non-profit organization, with a Chapter that is registered to do business in Hawai'i. Plaintiff Sierra Club is America's oldest and largest grassroots environmental organization, with 700,000 members joined together to protect and preserve natural ecosystems and work against environmental degradation from a variety of causes. The Sierra Club, Hawai'i Chapter has long been concerned about urban sprawl and poor planning. Members of the Sierra Club, Hawai'i Chapter include residents of O'ahu who in the past, and continue today, to enjoy, use, and appreciate the areas along the Kahuku coastline, in and around Kuilima

and Kawela Bay, and the areas proposed for development by KRC, for aesthetic and recreational purposes, including but not limited to, walking, hiking, surfing, kayaking, fishing, picnicking, sun-bathing, organizing family beach excursions, and appreciating the natural beauty of the environment. These Sierra Club members are concerned about the potential environmental impacts of the Project, whether the Project's impact have been adequately evaluated and assessed, and the potential impacts of the property and their activities and enjoyment of the area.

B. Defendants

6. Defendant the CITY AND COUNTY OF HONOLULU is a municipality incorporated under the laws of the State of Hawai'i.

7. Defendant HENRY ENG is the Director of DPP. As Director, Mr. Eng has authority and is responsible for directing and managing DPP's processing of permits, determining the need for EISs and supplemental EISs, and ensuring proper publication of decisions under HEPA with the State of Hawai'i's Department of Health's Office of Environmental Quality Control ("OEQC"). Plaintiffs sue Mr. Eng in his official capacity.

8. Defendant KRC is Hawai'i general partnership, formed under the laws of the State of Hawai'i with its principle place of business located in Honolulu, Hawai'i. The original developer, KDC, assigned its interests in the Project to KRC. KRC is a subsidiary of Oaktree Capital Management LLC.

9. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; and DOE GOVERNMENTAL UNITS 1-10 (collectively "Doe Defendants") are sued herein under fictitious names for the reason that, despite diligent and good faith efforts to obtain information, their true names and identities are presently unknown to Plaintiffs, except that they are or were connected in some manner with the above-named Defendants and/or agents, principal partners, officers, directors, servants, employees, employers, representatives, co-venturers, associates, consultants, vendors, suppliers, manufacturers, subcontractors, contractors, sureties, insurers, owners, lessees, sublessees, lessors, sublessors, guarantors, assignees, assignors, licensees, and/or licensors of the above-named Defendants, or in some manner presently unknown to Plaintiffs are or were engaged in the activities alleged and/or were in some manner responsible for the injuries and/or damage to Plaintiffs and/or in some manner are or may be related to and jointly liable with one or more of the above-named Defendants.

IV. FACTUAL BACKGROUND

A. Procedural History

1. The Project

10. In 1985, KDC, a presently dissolved corporation different from KRC, proposed the Project, which included:

three new oceanfront hotels and expansion of existing hotel, for a total of 1,450+ new visitor units; three new ocean front and four new inland resort condominium

projects totaling 2,060+ visitor units; new 70,000+ sq. ft. commercial complex; renovations to the existing and construction of new equestrian center; roadway and other infrastructure improvements required to serve the new uses; entry improvements at two new and one existing access points; and replacement of ocean outlets for two drainage channels.

Application for Special Management Area Use Permit for Turtle Bay Resort, dated May 1986 at 1, a true and correct copy of which is attached hereto as Exhibit 1.

11. The County required, and KDC submitted, the 1985 EIS in support of: (1) the Project's zoning re-classification before the Land Use Commission and the County, and (2) the Project's Special Management Area permit ("SMP") and Shoreline Setback Variance before the County.

2. Zoning Change

12. On June 14, 1985, KDC filed a petition with the State Land Use Commission ("LUC") to amend the land use district boundary for approximately 236 acres of land at Kahuku, Ko'olauloa, from the Agricultural District to the Urban District for the Project's resort and golf course uses.

13. KDC relied upon the 1985 EIS in requesting the zoning re-classification.

14. On March 27, 1986, the LUC issued its Findings of Fact, Conclusions of Law and Decision and Order which granted the Project's zoning re-classification subject to certain conditions. Attached hereto as Exhibit 2 is a

true and correct copy of the LUC Findings of Fact, Conclusions of Law and Decision and Order.

15. The LUC relied upon the 1985 EIS in granting the zoning reclassification.

16. On or about August 14, 1986, County Ordinance No. 86-99 changed the applicable zoning classifications. Attached hereto as Exhibit 3 is a true and correct copy of County Ordinance No. 86-99.

17. KDC relied upon the 1985 EIS in requesting the zoning reclassification from the County.

18. The County relied upon the 1985 EIS in granting the zoning reclassification.

3. SMP

19. On May 23 1986, KDC applied for a Special Management Area Use Permit ("SMP") for the Project. Attached hereto as Exhibit 1 is a true and correct copy of KDC's Application for Special Management Area Use Permit for Turtle Bay Resort, dated May 1986.

20. On October 1, 1986, Resolution No. 86-308 was adopted by the Council of the City and County of Honolulu which granted KRC an SMP and Shoreline Setback Variance for the Project subject to certain conditions. Attached hereto as Exhibit 4 is a true and correct copy of Resolution No. 86-308.

21. KDC relied upon the 1985 EIS in requesting the SMP and the Shoreline Setback Variance.

22. The County relied upon the 1985 EIS in granting the SMP and the Shoreline Setback Variance.

B. Change In Timing Has Had A Significant Effect.

23. Since 1985, much has undeniably changed in the North Shore. Once a sleepy rural community, a wide range of economic changes have occurred that have attracted substantial development, increased the resident population, and lured substantially higher numbers of visitors to the North Shore, all of which have cumulatively had a significant impact on the North Shore Community's quality of life, cultural context, environment, and rural character. Substantial additional residential development has also occurred or is planned, including projects in Mālaekahana (120 housing lots) and Lā'ie (550 housing units). The current portions of the Project which KRC is now proposing to undertake, 20 years after the 1985 EIS, will result in significant environmental impacts or increased intensity of impacts not previously evaluated, considered, predicted, or planned. These impacts, include, but are not limited to, environmental impacts and cumulative effects relating to increased visitor trips; increased peak and non-peak traffic; increased demand on limited water resources, wastewater capacity, electrical peak capacity, and infrastructure; increased impacts on sensitive wetland and endangered water

bird habitat; and increased impacts on public access to the shoreline, visual view planes and aesthetics values.

V. CLAIMS

CLAIM FOR RELIEF (HEPA - Failure to Prepare A Supplemental Environmental Impact Statement)

24. Plaintiffs reallege, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

25. Article XI, Section 1 of the Hawai'i State Constitution requires that the County "conserve and protect Hawai'i's natural resources . . . promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of self-sufficiency" and mandates that these resources are held "in trust . . . for the benefit of the people."

26. To facilitate this constitutional mandate, HEPA was enacted: "to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations." HRS § 343-1.

27. HEPA's administrative rules set forth the:

system of environmental review at the state and county levels which . . . provide agencies and persons with procedures, specifications of contents of environmental assessments and environmental impact statements, and criteria and definitions of statewide application.

HAR § 11-200-1.

28. The dormant portions of the Project that KRC currently seeks to reactivate involve the use of county or state lands and lands within the shoreline area, and relate to a re-classification of land zoned agriculture to urban.

29. Under HRS 343-5(c), an environmental impact “statement shall be required if the agency finds that the proposed action may have a significant effect on the environment.”

30. The County required, and the KDC completed the 1985 EIS in support of the zoning re-classification, SMP, and Shoreline Setback Variance for the Project.

31. KDC relied upon the 1985 EIS in requesting the zoning re-classification and the SMP and Shoreline Setback Variance for the Project.

32. The LUC relied upon the 1985 EIS in granting the zoning re-classification for the Project.

33. The County relied upon the 1985 EIS in granting the zoning re-classification and SMP and Shoreline Setback Variance for the Project.

34. Under HEPA, the Environmental Council is empowered to “[p]rescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of an [EIS].” HRS § 343-6(a)(4).

35. Pursuant to this authority, the Environmental Council promulgated regulations on the standards for “acceptance” and when a supplemental EIS is required.

36. Under HAR §11-200-26, the Environmental Council qualified the acceptance of an EIS with the following:

A statement that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and **timing of the action**, among other things. A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required, **to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing**, among other things. **If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared** and reviewed as provided by this chapter.

Id. (emphasis added).

37. HAR §11-200-27 further provides that:

The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements whenever the proposed action for which a statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. **A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously**

dealt with.

Id. (emphasis added).

38. The Project proposed three phases: "Phase I generally indicates a 1986 start of construction date, Phase II, commencement between 1988 to 1989, and Phase III, commencement between 1993 to 1996." Kuilima EIS at 31.

39. Over 20 years elapsed since completion of the 1985 EIS, over 20 years have passed since the anticipated start date of the Project, and approximately 10 years passed since the last phase of the Project was anticipated to be initiated.

40. The Project has changed "substantively in timing, among other things." HAR § 11-200-6. The change in timing will or has resulted in increased intensity of environmental impacts. Further, new circumstances or evidence have brought to light different or likely increased impacts not previously dealt with in the 1985 EIS. HAR §11-200-26.

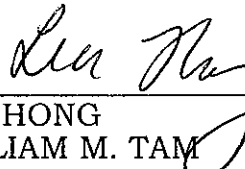
41. Therefore, to comply with HEPA, the DPP must require KRC to prepare a supplemental EIS for the remaining portions of the Project. Because DPP has, to date, continued to process KRC's application for subdivision approval and has allowed KRC to move forward without requiring a supplemental EIS, DPP is in violation of HEPA and the rules promulgated thereunder. Court intervention is required to compel DPP to comply with HEPA and to require KRC to prepare a supplemental EIS.

VI. PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiffs respectfully request that this Court enter judgment and provide the following relief:

- A. A declaratory judgment that a supplemental EIS must be prepared for the Project and submitted in accordance with HEPA.
- B. An injunction against any further ground work or construction by KRC relating to the Project until a supplemental EIS is completed.
- C. Other appropriate preliminary and permanent injunctive relief.
- D. Plaintiffs' reasonable attorneys' fees and costs.
- E. For such other and further relief as this Court deems just and appropriate

Dated: Honolulu, Hawai'i, June 7, 2006.


LEA HONG
WILLIAM M. TAM
LAURA P. COUCH
BLAKE K. OSHIRO
Attorneys for Plaintiffs
KEEP THE NORTH SHORE COUNTRY
and SIERRA CLUB, HAWAI'I CHAPTER

Application for
SPECIAL MANAGEMENT AREA USE PERMIT

TURTLE BAY RESORT
Kahuku, Koolauloa District, Oahu

KULIMA DEVELOPMENT COMPANY
MAY 1986



GROUP 70 • Architects • Planners • Interior Designers • 924 Bethel St. • Honolulu, HI • 96813 • PH. (808) 523-5866

EXHIBIT 1

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF LAND UTILIZATION

APPLICATION FORM

Additional data, drawing/plan, and fee requirements are listed on a separate sheet titled "Instructions for Filing." PLEASE ASK FOR THESE INSTRUCTIONS. The specified materials and fees must accompany this form or the application is considered incomplete.

(Print or Type)

(Check one or more as appropriate. You are encouraged to consult with the Central Coordinating Agency if you have questions. Phone: 523-4254.)

- Cluster Development
- Conditional Use Permit
- Existing Use
- Flood Hazard Variance
- Historic, Cultural, Scenic District

(Indicate District)

- Park Dedication
- Plan Review Use
- Planned Development
- Shoreline Setback Variance

- Site Development Plan
- Special Design District

(Indicate District)

- Special Management Area Permit/Assessment
- Special Permit
- State Special Use Permit
- Subdivision
- Waiver
- Zone Change: From _____ To _____
- Variance, Section(s) _____

RECORDED FEE OWNER (PORTION)

Name : James Campbell Estate
Mailing : 828 Fort Street, Suite 500
Address : Honolulu, HI 96813
Phone No. : 536-1961
Signature : Michael A. Wain

AUTHORIZED AGENT

Name : Group 70
Mailing : 924 Bethel
Address : Honolulu, HI 96813
Phone No. :
Business Phone: 523-5866
Signature : [Signature]

APPLICANT/RECORDED FEE OWNER (PORTION)

Name : Kuilima Development Company
Mailing : Paushi Tower, Suite 1980
Address : 1001 Bishop Street
PHONE NO. : Honolulu, HI 96813
Business Phone: 524-7622
Signature : [Signature]

Tax Map Key(s): See attached list.
Lot Area : 740+ acres
Zoning District : P-1, AG-1, R-6; A-1, H-1

Street Address/Location of Property At Turtle Bay Resort in Kahuku, makai of Kamehameha Highway, between Kawela Bay and Kahuku Airport (Marconi) Road.

Present Use of Property/Building Single-family residences, hotel cabanas and tennis courts, golf course, wastewater stabilization pond, sand vehicle trails, truck farming, cattle grazing.

PROJECT PROPOSAL

Briefly describe the proposed activity or project. Expansion of Turtle Bay Resort involving three new oceanfront hotels, and expansion of the existing hotel, for a total of 1,450+ new visitor units; three new oceanfront and four new inland resort condominium projects totalling 2,060+ visitor units; new 70,000+ sq. ft. commercial complex; renovations to the existing and construction of a new 18-hole championship golf course; new golf clubhouse and tennis center complex; new equestrian center; roadway and other infrastructure improvements required to service the new uses; entry improvements at two new and one existing access points; and replacement of culvert outlets for two drainage channels.

DEPARTMENT USE ONLY

Date Application Accepted _____
Accepted by (Initial) _____
Date of Public Hearing _____
Fee Received \$ _____

State Land Use _____
DLUM/DP _____
Zoning _____
Setbacks _____

IV. DESCRIPTION OF THE ENVIRONMENTAL SETTING
AND THE PROBABLE IMPACTS OF THE RESORT DEVELOPMENT
ON THE COASTAL ENVIRONMENT

Extensive studies of the existing environmental setting, and of the probable impacts new developments planned for the Turtle Bay Resort will have on the area, were conducted in connection with the preparation and processing of the Environmental Impact Statement. A copy of the Revised EIS, dated 7 October 1985, is submitted with this application. Subject areas covered in the Revised EIS which relate especially to coastal area impacts, and their page references are as follows:

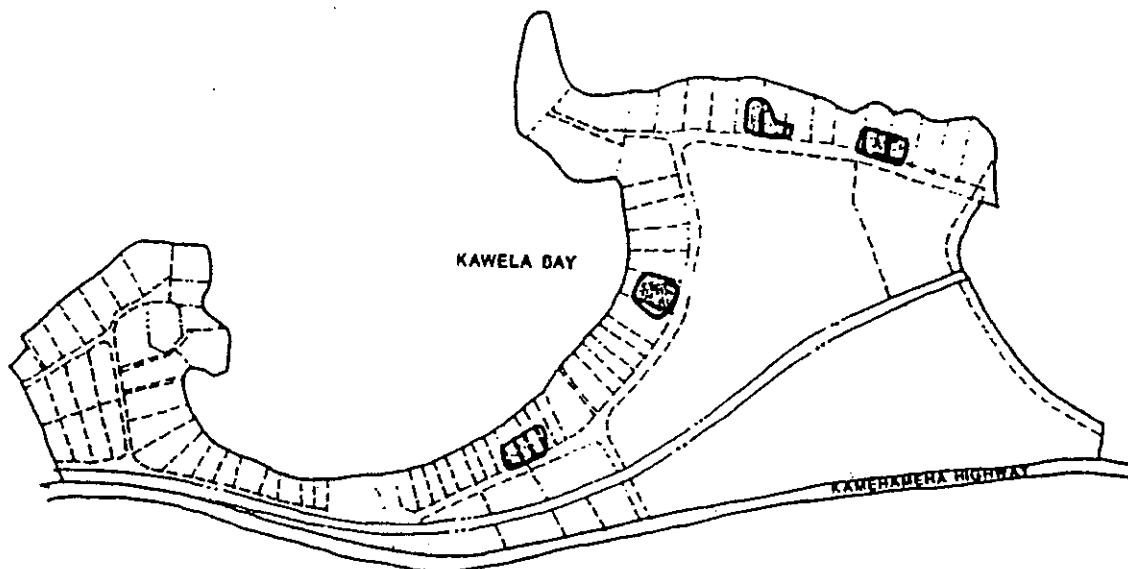
<u>Subject Areas</u>	<u>Revised EIS Pages</u>
A. Topography and Drainage	33-35
B. Soils and Grading	35-40
C. Water Resources and Usage	40-42
D. Tsunami/Flood Hazard	42-44
E. Coastal Water Quality	45-59
F. Vegetation	59-76
G. Sand Dunes	76-78
H. Terrestrial Vertebrates	78-81
I. Punahoolapa Marsh	81-83
J. Historical/Archaeological Resources	83-89
K. Infrastructure and Public Services	
1. Traffic and Roads	114-129
2. Recreational Resources	129-131
3. Wastewater Disposal	132, 134-135
4. Solid Waste Disposal	136
5. Drainage	33-35
6. Public Access and Parking	137-139

Since completion of the Revised EIS, work is continuing on the archaeological sites within the resort area which were found to have a high research value (Site T-1 at Kahuku Point, Site T-6 at Kawela Bay, and Punahoolapa Marsh). The current status of these efforts and the process which will be followed to minimize resort development impacts are described below. Also updated below are plans for the removal of sediments in a portion of Kawela Bay and for the disposal of wastewater.

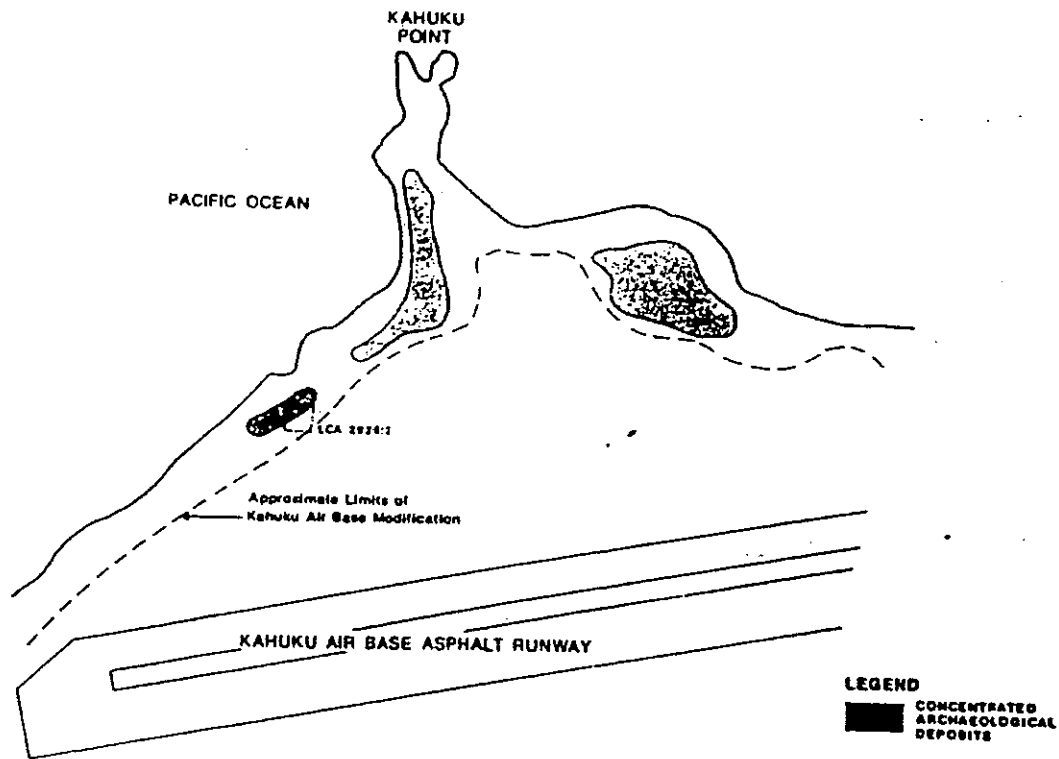
Historical/Archaeological Resources

Status of Site T-6 at Kawela Bay--Based on the findings of the subsurface reconnaissance survey conducted in 1984, an extensive subsurface cultural deposit was identified at Kawela Bay. An intensive survey and test excavations were recommended in the Revised EIS for this area, designated as Site T-6, on the basis of its potential for archaeological research.

The survey and excavations were conducted in January 1986 in accordance with a program approved by the State Historic Preservation Officer (SHPO). While only the field work has been completed, and detailed data analyses and report preparation are now underway, preliminary conclusions indicate the presence of four areas of concentration within Site T-6 (Figure 2) which will require subsequent mitigation work, most likely in the form of data recovery research excavations.



KAWELA BAY ARCHAEOLOGICAL AREA



KAHUKU POINT ARCHAEOLOGICAL AREA

TURTLE BAY RESORT
KUILIMA DEVELOPMENT COMPANY



FIG. 2 AREAS OF CONCENTRATED ARCHAEOLOGICAL DEPOSITS

The scattered presence of human burials within the Kawela Bay site area overall was also confirmed. These burials will eventually have to be dealt with in an acceptable manner, most likely disinterment, as they are encountered in the course of construction operations. The apparent absence of any nonrandom distribution of the burials (i.e., a cemetery or concentrated burial ground) suggests that any pre-construction attempt to locate and remove human burials inferred to be scattered within the site area would be both inefficient and costly in comparison to the proposed alternative strategy of archaeological monitoring and disinterment during construction operations.

Status of Punahoolapa Marsh--The 1984 subsurface reconnaissance survey also identified possible subsurface cultural deposits at several locations within and immediately adjacent to Punahoolapa Marsh. An intensive survey and test excavations, as approved by the SHPO, were conducted between mid-February and mid-March. Detailed analysis is currently in progress.

Virtually all of the marsh will be included within a proposed wildlife preserve, and no filling within this area is anticipated. If found to be appropriate on the basis of the findings of the intensive survey and test excavations, archaeological monitoring will be recommended for any fill or excavation activities to be done in connection with development of immediately adjacent areas.

Status of Site T-1 at Kahuku Point--The 1984 subsurface reconnaissance survey identified an extensive subsurface cultural deposit on both the east and west side of Kahuku Point. Preliminary conclusions from the just completed intensive survey and test excavations field work indicate that Kahuku Point site area overall to be discontinuous, but suggest this situation probably results from impacts upon a once continuous site area made in the course of the construction of Kahuku Air Base during WWII.

On the east side of the point, the cultural deposit is present as noncontiguous, though still substantial, remnants containing firepits, hearths, and a variety of portable remains. Major portions of the deposit are presently either exposed, or partially covered by only a shallow mantle of sand, as a result of the earlier dune buggy operations and subsequent natural wind erosion. Several reports of human bones in recent years indicated the presence of human burials within the site area, and the just completed test excavations encountered additional human burials less than 50 cm beneath the existing surface of the site. The presence of this combined amount of human skeletal remains within a relatively small area suggests the presence of a prehistoric cemetery or burial ground.

With the exception of the remnant deposits identified at the seaward end of the point itself, the portion of the site on the west side of Kahuku Point was found to contain cultural deposits that were deeper, better preserved, and more extensive than those on the east side of the point. Recent natural erosion along the seaward face of the dune has exposed numerous firepits, hearth, and pit features, as well as a continuous, multiple component cultural deposit extending to the west of the point for several hundred meters. Extensive coring and test excavations have determined the basic horizontal and

vertical extent of this deposit, which variably consists of two to three distinct cultural layers. In some areas, the deposit is very shallow or actually exposed on the surface, while in other areas the deposit lies beneath a meter or more of sand. The presence of human burials within the dune on the west side of the point was also confirmed during the test excavations, and their proximity suggests the possibility of a small prehistoric cemetery or burial ground.

Based on the findings of the recently completed field work at Kahuku Point, it is likely that subsequent mitigation work in the form of data recovery research excavations and burial disinterments will be necessary. The specific scope and scale of such work will depend upon the results of the dating and other data analyses that are now beginning. However, it is already obvious that data recovery excavations would constitute more appropriate mitigation than would any attempt to preserve the Kahuku Point site deposits in place, especially within the context of the proposed dedication of the area to the City and County for a public park.

The most important factors arguing for the data recovery alternative would be the following:

1. Actual and continued physical preservation would be difficult to accomplish. The deposits in many places are very shallow or exposed, and presently suffering active damage from both natural erosion forces (winds and high surf) and human activities within the area.
2. Any development of the area for use as a public park would involve both initial physical improvements and subsequent human activities which most likely could not avoid damaging the cultural deposits present within the site area.

Process for Mitigating Potential Development Impacts--The basic purposes of the above-described intensive survey work are two-fold: (a) to determine more fully and substantiate in detail the previously inferred potential scientific research value of these two sites; and (b) to determine the scope and scale of any subsequent mitigation work that might be appropriate. Such work would most likely consist of a data recovery program involving research excavations. All of the past work has been done in consultation and close coordination with staff archeologists of the SHPO. This practice will be continued.

The SHPO and the U.S. Army Corps of Engineers (COE) have indicated that a federal (COE) permit will be required for the resort expansion work planned for the Kawela Bay area, but that no permits will be required for work planned for the Punahoolapa Marsh or Kahuku Point areas. Thus, all archaeological mitigation work to be done at the Kawela Bay site would have to be done under the terms of a Memorandum of Agreement (MOA) to be agreed to among the COE, the SHPO, and the Advisory Council on Historic Preservation. A detailed Data Recovery Plan (DRP) agreeable to all parties would be stipulated by the MOA, and would comprise the scope of work for mitigation work to be done at the Kawela Bay site.

While there will be no federal involvement in any further archaeological work at Punahoolapa Marsh or Kahuku Point, the SHPO has indicated that it would request a comparable DRP for any mitigation work. Review and approval of the DRP by the SHPO would be required prior to such mitigation work being conducted.

While there will be no federal involvement in any further archaeological work at Punahoolapa Marsh or Kahuku Point, the SHPO has indicated that it would request a comparable DRP for any mitigation work. Review and approval of the DRP by the SHPO would be required prior to such mitigation work being conducted.

Sediment Removal in Kawela Bay--Kawela Bay is both very picturesque and one of two excellent ocean swimming areas within the resort (the other being Kuilima Cove). However, fine silt and clay bottom sediments cover a small nearshore area in the southeastern corner of the bay (roughly 1.2 acres, or 2 to 3 percent of the total bay area--see Figure 3). Patches of the sediments are anaerobic, which are characterized by a dark grey to black color, gelatinous texture and/or slight hydrogen sulfide smell.

To further enhance the attractiveness of Kawela Bay to users, it is proposed that these sediments be removed. This activity is regulated under Section 10 of the Rivers and Harbors Act of 1899, and will require a Department of the Army Permit before work can proceed.

If approved, the silt will be removed by means of a suction dredge after isolating the area with a silt curtain. The desilting device will consist of a shore-launched floating platform with jack-up legs. Silt dredged from the bottom will be pumped via a pipeline to a containment pond on the adjacent shore. Silt and clay-sized particles which settle out in the pond will be removed from the resort site and disposed of in a landfill.

Wastewater Disposal

As noted in the Revised EIS, the existing wastewater stabilization pond will be removed and replaced with a wastewater treatment plant to be built off-site, mauka of Kamehameha Highway. The specific location of the site is still being negotiated with the Campbell Estate.

Design of the wastewater treatment plant is underway. The current schedule for its completion is as follows:

Design	Jan. 85 - Sept. 86
City Review and Approval	Sept. 86 - Feb. 87
Bid Process	Mar. 87 - May 87
Construction	May 87 - Oct. 88
Inspection	Nov. 88 - Jan. 89
Approval	Feb. 89 - Mar. 89
Removal of Stabilization Pond	Mar. 89 - Apr. 89

As indicated in Appendix A, the Kuilima (Turtle Bay) Wastewater Master Plan has been approved by the City and County Department of Public Works.

The treated effluent from the plant will be used for irrigation of the resort golf courses. In the event of a system breakdown, or the lack of a need for irrigation water due to heavy rains, the effluent will be disposed of via injection wells. The injection wells will be sited between fairways and in other locations on the new golf course which will not interfere with play.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
KUILIMA DEVELOPMENT COMPANY)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for approximately)
236 acres at Kahuku, Koolauloa,)
Oahu, Hawaii, Tax Map Key Nos.:)
5-6-03: 37, 41, 42, 43, 44 and)
portion 40, 5-7-01: portion 17 and)
portion 33)

DOCKET NO. A85-595
KUILIMA DEVELOPMENT
COMPANY

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

3/22/06 by Anthony J. Kelly
Date Executive Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A85-595
KUILIMA DEVELOPMENT COMPANY)	
To Amend the Agricultural Land Use)	KUILIMA DEVELOPMENT
District Boundary into the Urban)	COMPANY
Land Use District for approximately)	
236 acres at Kahuku, Koolauloa,)	
Oahu, Hawaii, Tax Map Key Nos.:)	
5-6-03: 37, 43, portion of 40,)	
portion of 41, portion of 42,)	
and portion of 44, 5-7-01:)	
portion of 33)	

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

Kuilima Development Company, a Hawaii general partnership, (hereinafter referred to as "Petitioner") filed this Petition on June 14, 1985, and amended this Petition on July 11, 1985 and on October 7, 1985, pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundary of approximately 236 acres of land situate at Kahuku, Koolauloa, County of Honolulu, State of Hawaii, Oahu Tax Map Key Nos.: 5-6-03: 37, 43, portion of 40, portion of 41, portion of 42 and portion of 44, 5-7-01: portion of 33 (hereinafter referred to as the "Property"), from the Agricultural District to the Urban District for resort and golf course uses. The Land Use Commission (hereinafter referred to

as the "Commission"), having heard and examined the testimony, evidence, argument of counsel, the proposed findings of fact and conclusions of law, presented at the hearing, hereby makes the following findings of fact and conclusions of law, and decision and order:

PROCEDURAL MATTERS

1. The Commission conducted the hearing on the Petition on October 16, 1985, pursuant to notice published in the Honolulu Star-Bulletin on September 3, 1985.

2. Abe Kealoha, Raymond Ako, James Zane, Millie Keawe, and Guy Nakamoto testified as public witnesses on October 16, 1985.

3. The Commission received no petitions to intervene.

DESCRIPTION OF THE PROPERTY

4. The Property is located at Kahuku, near the northernmost point of the island of Oahu. The Property's boundaries are: to the south, Kamehameha Highway; to the east, Marconi Road (also known as the Kahuku Airport Road); to the north, the shoreside Conservation District; and to the west, the existing Turtle Bay Hilton and Country Club, also known as the Kuilima Resort, and the Punahoolapa Marsh.

5. Most of the Property is vacant. Sand dunes and the abandoned Kahuku airfield are located on the makai side of the Property.

Approximately 138 acres of the Property are leased by four farmers on a month-to-month basis but only 20 acres of the

Property is in active crop production.

6. Petitioner, a wholly-owned subsidiary of Prudential Insurance Company of America, owns approximately 225 acres of the Property and leases from the Trustees Under the Will and of the Estate of James Campbell ("Campbell Estate"), the balance of 11 acres. Campbell Estate has consented to the Petition for boundary amendment.

7. A majority of the Property is flat with an elevation ranging between five to ten feet above sea level. Rainfall in the area, including the Property, averages approximately 40 inches annually.

8. The Land Study Bureau's "Detailed Land Classification - Island of Oahu" classifies most of the soils within the Property as "C" and "E". Eighty-one acres adjacent to Kamehameha Highway are classified as "A" and "B".

9. The United States Department of Agriculture's Soil Conservation Service Soil Survey Report for the island of Oahu identifies four soil series within the Property: Pearl Harbor, Jaucas, Waialua and Kaena.

The Pearl Harbor (Ph) soils are very poorly drained on nearly level coastal plains. They developed in alluvium overlying organic material. In a representative profile the surface layer is very dark gray, mottled clay about 12 inches thick. The subsoil is very dark gray and very grayish-brown, mottled clay that has angular and subangular blocky structure. The substratum is muck or peat. The soil is neutral in the

surface layer and mildly to moderately alkaline in the subsoil. Permeability is very slow. Runoff is very slow to ponded, and the erosion hazard is no more than slight. These soils are appropriate for taro, sugarcane, and pasture. The natural vegetation consists of cattails, mangrove trees, California grass, and sedges.

The Jaucas Series, 0 to 15 percent slopes (JaC) consists of excessively drained, calcareous soils that occur as narrow strips on coastal plains, adjacent to the ocean. They developed in wind- and water-deposited sand from coral and seashells. Jaucas sand, 0 to 15 percent slopes, in most places does not exceed 7 percent slope. In a representative profile the soil is single grain, pale brown, to very pale brown, sandy, and more than 60 inches deep. In many places the surface layer is dark brown as a result of accumulation of organic matter and alluvium. The soil is neutral to moderately alkaline throughout the profile. Permeability is rapid, and runoff is very slow to slow. The hazard of water erosion is slight, but wind erosion is a severe hazard where vegetation has been removed. These soils are appropriate for pasture, sugarcane, truck crops, alfalfa, recreational areas, wildlife habitat, and urban development.

The Waialua Series, 0 to 3 percent slopes (WkA) and 3 to 8 percent slopes (WkB), consists of moderately well drained soils on alluvial fans. These soils developed in alluvium, weathered from basic igneous rock. They are nearly level to

steep. Waialua silty clay, 0 to 3 percent slopes, is located on smooth coastal plains. In a representative profile the surface layer is dark reddish-brown silty clay about 12 inches thick. The subsoil, about 265 inches thick, is dark reddish-brown and reddish-brown silty clay that has subangular blocky structure. The substratum is dark reddish-brown, mottled silty clay. The soil is neutral in the surface layer and slightly acid in the subsoil. Permeability is moderate. Runoff is slow, and the erosion hazard is no more than slight. Waialua silty clay, 3 to 8 percent slopes, exhibits slow runoff and slight erosion hazard. Waialua soils are appropriate for sugarcane, truck crops, orchards, and pasture. The natural vegetation is swollen fingergrass, koa haole, and uhaloa.

Kaena Series consists of very deep, poorly drained soils on alluvial fans and talus slopes. These soils developed in alluvium and colluvium from basic igneous material. They are gently sloping to steep and are commonly stony. In a representative profile of the surface layer of Kaena clay, 2 to 6 percent slopes (KaB), the soil is very dark gray clay about 10 inches thick with few or no stones. The next layer is 36 to more than 48 inches thick and is dark-gray and dark grayish-brown clay that has prismatic structure. It is underlaid by highly weathered gravel. The soil is very sticky and very plastic, and is mottled. It is slightly acid to neutral. Runoff is slow, and the erosion hazard is slight.

This soil is appropriate for sugarcane, truck crops, pasture, and urban development.

10. The Department of Agriculture in its Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system classifies approximately 25 percent of the south-mauka corner of the Property as "prime agricultural land", and the central portion and the south-west corner as "other important agricultural land". The remaining balance in the makai portion of the Property is not classified.

11. The Federal Insurance Administration in its Flood Insurance Rate Map for Oahu indicates that the makai portion of the Property is subject to the 100-year tsunami inundation with approximate inundation ranging between 6 and 18 feet above sea level. Portions of the Property are designated Zone "AH" indicating areas of 100-year shallow flooding with depths between 1 and 3 feet above sea level. The 100-year flood has a one percent chance of being equaled or exceeded in any given year.

12. The Property surrounds Punahoolapa Marsh which is not part of this Petition for Urban classification and will remain in the Agricultural District.

PROPOSAL FOR DEVELOPMENT

13. Petitioner proposes to develop the Property as part of the Kuilima Resort Expansion area (hereinafter referred to as the "Resort"). The Resort will be a low density resort development and include two activity areas - the western

portion consisting of hotels and a commercial complex, and the eastern portion consisting of low density residential and recreational uses. The Resort will include the following uses:

KUILIMA RESORT EXPANSION

Property

<u>Land Use</u>	<u>Acres</u>	<u>Units</u>
Golf Course (portion)	132	
Resort Condominium Units	78	1,000
Public Beach Park (portion)	10	
Private Park	6	
Stable	10	
Subtotal	236	1,000

Existing Urban District Proposed for Development

<u>Land Use</u>	<u>Acres</u>	<u>Units</u>
Hotels (3 new, one for expansion)	69	1,450
Resort Condominiums	59.2	1,063
Public Parks	31.8	
Private Park	2	
Commercial	9	
Golf Course (portion)	62	
Club House	5	
Subtotal	238	2,513
TOTAL	474	3,513

14. Petitioner proposes to preserve Punahoolapa Marsh, in accordance with the U.S. Fish and Wildlife Service's recommendations, by constructing a moat and chain link fence around the marsh to improve drainage, opening additional waterways and creating new islands within the waterways. Petitioner will also provide a six-acre park adjacent to the marsh to provide an "area for the public to observe the animals within the marsh".

15. Petitioner proposes to develop the following off-site improvements: one production water well, one standby well, a new reservoir, new distribution lines and a wastewater treatment plant.

16. Petitioner estimates the total infrastructure costs for all resort improvements, in 1984 dollars, to be approximately \$82,000,000.00 of which the first phase of development would be approximately \$32,000,000.00.

Petitioner estimates that \$5,224,000.00 would be needed to fund construction of off-site infrastructure improvements for the Property.

17. Petitioner proposes to include the following improvements in the first phase: sewage treatment plant, improvement of portions of Kamehameha Highway fronting the resort, drainage improvements, internal roadway, wells, water distribution system, electrical/telephone lines, improvement of Punahoolapa Marsh, improvement of existing golf course, new

golf course, hotel along Kawela Bay, commercial area, building pads for condominium sites and a stable.

18. Petitioner proposes to start constructing the first phase condominiums on the Property by 1988 after obtaining all necessary governmental approvals.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

19. Petitioner's balance sheet as of September 30, 1984, list total assets and total liabilities of \$18,511,552.00 and a net worth of \$18,511,552.00. Petitioner is a wholly-owned subsidiary of Prudential Insurance Company of America whose balance sheet as of December 31, 1983, lists total assets and total liabilities of \$72,249,000,000.00 and a net worth of \$72,249,000,000.00.

STATE AND COUNTY PLANS AND PROGRAMS

20. The Property is classified Agricultural on the State Land Use Commission's Official Land Use District Boundary Map 0-7.

21. The City and County of Honolulu ("County") Koolauloa Development Plan Land Use Map designates the Property as Golf Course, Resort, Park and Agriculture.

22. County zoning ordinance map designates the Property in P-1 Preservation and AG-1 Agriculture.

23. A portion of the Property along the coast is in the County's Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

24. Petitioner's marketing consultant, the Hallstrom Appraisal Group, Inc., ("Hallstrom") forecasts a demand for a total of 59,700 resort units on Oahu by the year 2000 which is a 21,000 resort unit increase over current island totals. Hallstrom anticipates the Resort could absorb between 5,000 and 6,000 resort units.

Hallstrom also indicated the demand for resort condominiums at the Resort will exceed demand at other resort destinations because: lack of proximate competing inventory; Oahu's recognition as a visitor destination area; and a low sales price.

Petitioner believes that these condominiums can be sold at a rate of 90 to 200 units annually.

25. Hallstrom projects that major destination resorts which currently have a twenty percent share of Hawaii's total resort units (approximately 12,405 hotel and condominium units) will increase that share to 37.56% or 40,000 units by the year 2000.

26. Petitioner believes the Kuilima Resort area needs to achieve a "critical mass" in order to be a successful destination resort area, and that the 1,000 resort condominium units proposed for the Property will play an important part in attaining critical mass and in a successfully marketing of the proposed Resort development.

27. Petitioner anticipates the proposed Resort could generate approximately 2,600 jobs on site and approximately 6,300 job opportunities on an island-wide basis.

28. Petitioner projects that when completed, the proposed Resort would generate net revenues of approximately \$3,600,000.00 annually mainly from excise and income taxes.

29. Petitioner proposes to develop 3,500 resort units in the Resort which is below the 5,000 to 6,000 resort units Hallstrom forecasted could be supported in the area.

30. The State Tourism Functional Plan Technical Reference Document and the County General Plan designate the Kuilima area as an appropriate area for accommodating the growing visitor industry. The County's 1985 Koolauloa Development Plan plans for 4,000 additional resort units within the Kuilima Resort area.

IMPACT UPON RESOURCES OF THE AREA

Agriculture

31. Petitioner's agricultural economist, Dr. Frank Scott, Jr., prepared an agricultural feasibility study for the Property. Dr. Scott concluded that no adverse impacts on agriculture would result from redistricting the Property from the Agricultural to the Urban District, except for the displacement of four farmers who currently have month-to-month lease agreements.

Petitioner is working closely with the farmers presently occupying the Property, and proposes to assist them

in relocating to Campbell Estate or Castle & Cooke, Inc. lands in Central Oahu.

Flora and Fauna

32. Earthwatch conducted vegetation surveys in 1978 and 1984 for the proposed Resort and observed no listed or proposed endangered or threatened plant species on the Property or in the remainder of the Resort.

33. Dr. Andrew J. Berger surveyed the entire Kuilima Resort area and observed four endangered waterbirds: Koloa or Hawaiian Duck, Hawaiian gallinule or 'Aloe 'Ula, Hawaiian coot or 'Alae Ke'oke'O, and the Hawaiian stilt or Ae'O in the Punahoolapa Marsh.

34. Petitioner proposes to improve the marsh to enhance the habitat for the endangered waterbirds as described in Finding of Fact No. 14. The Department of Land and Natural Resources ("DLNR") recommended that the Petitioner carry out improvements to Punahoolapa Marsh in accordance with recommendations of the U. S. Fish and Wildlife Service and the DLNR.

Archaeological/Historical Resources

35. Bishop Museum conducted a surface reconnaissance survey of the Property in 1977 and Dr. Paul Rosendahl conducted a subsurface reconnaissance survey of the Property in 1984 and identified both prehistoric and historic-period occupation remains.

The more significant remains are located along the coast. Dr. Rosendahl recommends that sites F4-14 and T-1, located along the coastal stretches of Kahuku Point, require immediate attention to prevent further destruction by sand vehicles.

36. Petitioner will coordinate work with the State Historic Preservation Office to protect sites F4-14 and T-1 from further disturbance and conduct intensive archaeological testing on other sites as recommended by Dr. Rosendahl in his study "Subsurface Archaeological Reconnaissance Survey Kuilima Resort Expansion Project" dated November 1984.

Recreational Resources

37. Petitioner proposes to use approximately 158 acres of the Property for active and passive recreational uses, including a 132 acre golf course, a 10-acre stable, a 6-acre nature park and 10 acres for a public beach park (portion of a 37-acre public park).

Petitioner has agreed to set all buildings back at least 180 feet from the shoreline and to omit construction in the area 100 to 300 feet from the shoreline.

Petitioner will dedicate a 4.8-acre park at Kawela Bay to the County and provide a 2-acre privately owned park to be open to the public outside of the Property but within the Resort, for additional public recreational resources.

38. Petitioner proposes to provide five public rights-of-way to the shoreline with 15 free public parking

stalls at each right of way to encourage public access to the shoreline and park usage. In addition, Petitioner will dedicate a continuous pedestrian access along the shoreline of the proposed Resort for public recreational use.

39. The County Department of Parks and Recreation has accepted Petitioner's proposal for recreational resource improvements.

Noise

40. Petitioner's proposed Resort will involve land clearing, site preparation, construction of infrastructure and buildings and landscaping. Petitioner does not anticipate to exceed allowable noise levels after the construction phase is completed.

Air Quality

41. Petitioner will conform to the County grading ordinance and State and Federal guidelines in mitigating adverse impacts on air quality during construction. Petitioner anticipates long term impacts from increased emissions from increased vehicular traffic and expects that air pollutant concentrations will be within allowable air quality standards.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Water Services

42. Petitioner's proposed Resort will generate a demand for approximately 2.982 million gallons of water per day (MGD) upon completion with approximately 0.756 MGD to be

generated by the Property. The Kuilima Resort water system presently includes a 2.0 million gallon reservoir on lands mauka of Kamehameha Highway.

43. Petitioner proposes to develop the Opana (Kawela) Well field by constructing one production well and one standby well to meet Kuilima Resort's potable water requirements. In the event that water withdrawal from the Opana (Kawela) Well field nears capacity, Petitioner will develop the Opana wells situated north of Waialeale. Petitioner will construct a second 1.0 MGD reservoir adjacent to the existing 2.0 MGD reservoir when required. Petitioner has obtained a commitment from Campbell Estate to draw 3 to 4 MGD from the Waialeale Aquifer subject to availability and State and County approvals.

Wastewater

44. Petitioner proposes to develop and dedicate to the County a 1.3 MGD capacity wastewater treatment plant mauka of Kamehameha Highway to provide secondary treatment of wastewater from the Kuilima Resort.

Petitioner's proposed sewer system will consist of gravity sewers and a lift station to convey the wastewater to a pump station, which will pump wastewater to the treatment plant.

45. Petitioner proposes to rechlorinate and filter effluent for irrigating the golf courses.

Storm Drainage

46. Surface runoff from the Property, areas within the proposed Resort and areas across Kamehameha Highway, drains

into the Punahoolapa Marsh. Petitioner anticipates that increased drainage will flow through the marsh and drain into the shorewaters by way of the 100-foot drainage swale shown on Petitioner's Resort Master Plan Exhibit 1, Figure 1.

47. DLNR recommends that the Petitioner be required to monitor coastal resource conditions at the west and east main drains during development and during subsequent resort/residential operation to minimize the impact of development on shorewaters and marine ecosystems.

Flood Hazard

48. Petitioner proposes to develop portions of the Resort within the Federal Insurance Administration-designated flood plain in accordance with County and National Flood Insurance Program flood hazard ordinances and requirements. A portion of the Resort is within Zone V24 and is proposed for park (P-2) to be dedicated to the County.

49. Petitioner will construct habitable floors of the proposed resort condominium units at least 5 feet above the finished grade of the golf course to mitigate potential flood hazards to occupants and property.

Traffic and Highway Facilities

50. Kamehameha Highway, a two-lane two-way undivided state highway, provides access to the Property. Petitioner's traffic consultant, Austin, Tsutsumi, & Associates, Inc. ("ATA"), concludes that the greatest increase in traffic caused

by the proposed Resort will occur near Kahuku. However, the total peak period traffic will be below the highway's capacity for the year 2000 and the proposed Resort will have minimal impact on highway traffic in Hauula.

51. Petitioner proposes to construct a left-turn lane on Kamehameha Highway at Kuilima Drive; construct fully channelized intersections on Kamehameha Highway at the proposed West Kuilima Drive and the existing Marconi Road; and install traffic signals on the highway at all of these intersections in order to mitigate the impact of traffic entering and leaving the proposed Resort.

52. ATA recommended construction of regional improvements, which Petitioner believes is a governmental responsibility and not that of any single developer, to include: construction of the Haleiwa Bypass Road, improvements to Kamehameha Highway between the proposed Haleiwa Bypass and Kaaawa, and improvements to Kamehameha Highway at Waimea Bay.

Schools

53. The Department of Education (DOE) indicated that Kahuku High and Elementary school is operating at or beyond capacity. The DOE is in the process of updating the master plan for this school. The DOE indicated that additional facilities are needed and will require expansion in the near future.

Health Care Services

54. Kahuku Hospital offers 24-hour comprehensive medical, surgical and intensive care, as well as long-term skilled nursing and childbirth services.

Electrical/Telephone Services

55. Commercial electrical power and telephone services are available at the existing resort. Petitioner will extend service to the Property and the rest of the Resort through underground ducts to be linked to overhead service on Kanehameha Highway.

Fire and Police Protection Services

56. The County provides fire protection to the Property from Sunset Beach and Kahuku Fire Stations located along Kanehameha Highway approximately three miles from the Property.

Honolulu Police Department through its Kaneohe District Headquarters provides police protection to the Property.

Solid Waste Disposal

57. Petitioner proposes to hire private collection companies to collect and dispose solid waste at public or private landfills.

Employee Housing

58. Petitioner anticipates that the proposed development will add to an existing demand for residential housing in the region since some of its employees may require housing.

Petitioner proposes to provide affordable housing units to accommodate additional housing demand by developing a number of units equal to ten percent of the proposed units to be developed within the Property or elsewhere off the Resort in Kahuku.

Petitioner also proposes to implement other mitigation measures including an employee housing information pool and job training activities to maximize employment among current residents, thus reducing in-migration and additional housing needs. Petitioner proposes to organize the Kuilima Development Company North Shore Career Training Corp. to do vocational counseling and job training by offering management training programs and creating scholarship opportunities.

CONFORMANCE TO STATE LAND USE DISTRICT REGULATIONS

59. Petitioner's proposed development conforms to Part II, Section 2-2, "Standards for Determining District Boundaries" as follows:

Petitioner's proposed development is contiguous to the Urban District and is part of the Resort which Petitioner believes is needed to provide the appropriate mix of resort uses in attaining critical mass in order to be a successful resort destination.

Petitioner's proposed development conforms to the County General Plan, the

Koolauloa Development Plan and the State
Tourism Functional Plan Technical Reference
Document which identifies the area
surrounding the Turtle Bay Hilton and Country
Club as an area designated for resort
development.

Petitioner's proposed development of the
Property will support the development of
three new full-service hotels and the
expansion of the current Turtle Bay Hilton
and Country Club for a total of 1,450 new
units. Development of full-service hotels
will provide new employment opportunities for
the area.

Public services and facilities are
available or can be made available to service
the Property. Petitioner will develop
additional water sources and a sewage
treatment plant to meet anticipated demand
and will fund traffic improvements as may be
required by State and County agencies.
Petitioner will also dedicate two parks
within the Resort area to the County, provide
free access to five public rights-of-way, and
maintain two private parks for public use.

INCREMENTAL DISTRICTING

60. Petitioner proposes to complete substantial portions of the infrastructure as described in Finding of Fact No. 17 as well as 315 of the proposed 1,000 resort condominium units within five years of Commission's approval and to complete the entire Resort development by 1996.

CONFORMANCE WITH THE HAWAII STATE PLAN

61. Petitioner's proposed development generally conforms with the following objectives, policies and Priority Directions of the Hawaii State Plan:

Objectives and Policies

Section 226-5(b)(4) "Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands."

Petitioner will participate in efforts to maximize employment benefits for the people of the Koolauloa and North Shore regions.

Section 226-5(a)(1) "Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people."

Section 226-6(b)(9) "Encourage labor-intensive activities that are economically satisfying."

Section 226-6(b)(11) "Promote economic activities, especially those which benefit areas with substantial unemployment problems."

Section 226-6(b)(14) "Encourage businesses that have favorable financial multiplier effects within Hawaii's economy."

When fully developed, the labor-intensive, resort development within the Property will provide employment and new business opportunities (to service the Resort development) for the Koolauloa and North Shore areas.

Section 226-8(b)(3) "Improve the quality of existing visitor destination areas."
Petitioner's proposed resort expansion is needed to enhance the resort use of the area and add those uses needed to create a successful major destination area.

Section 226-23(b)(4) "Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values."

Section 226-23(b)(5) "Ensure opportunities for everyone to use and enjoy Hawaii's recreational resources."

Section 226-105(1) "Preserve and improve shoreline open spaces and scenic resources."

Section 226-105(2) "Seek to utilize Hawaii's limited land resources wisely in order to insure the protection of the environment and the availability of the shoreline, conservation lands and other limited resources for future generations."

Petitioner proposes to improve Punahoolapa Marsh into a wildlife park with pedestrian rights-of-way and public parking.

Petitioner will also dedicate two parks within the Resort area to the County, provide free access to five public rights-of-way, and maintain two private parks for public use.

Section 226-104(c)(7) "Seek participation from the private sector for the cost of building infrastructure, utilities, and open spaces."

Petitioner will develop additional water sources and a sewage treatment plant to meet anticipated demand and will fund traffic improvements as may be required by State and County agencies.

CONFORMANCE TO THE HAWAII
COASTAL ZONE MANAGEMENT PROGRAM

62. Petitioner's proposed development conforms to the following objectives of the Hawaii Coastal Zone Management Program as follows:

1. "Provide coastal recreational opportunities accessible to the public."

Petitioner's proposed development will not alter the recreational activities normally associated with the shoreline makai of the Property, such as surfing, throw net fishing, pole and line fishing, and spear fishing. The dedication of park space to the County will assure unimpeded access along the shoreline and from areas mauka.

2. "Protect, preserve, and, where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture."

Dr. Rosendahl has located one site, T-1, which partially extends into the Property and has recommended intensive survey and testing of the site in order to determine and document its nature and significance. Petitioner intends to implement this

recommendation by dedicating area T-1 to the County as a beach park.

3. "Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources."

Petitioner believes that the proposed condominium structures within the Property will not significantly alter views towards the ocean since the building heights will be lower than the tops of the existing ironwood trees.

4. "Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems."

Petitioner will not construct within the waters makai of the Property and will not allow point discharge of treated or untreated wastewater directly into offshore waters.

5. "Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence."

Petitioner will not construct habitable spaces below the Federal Insurance Administration's 100-year tsunami/flood elevation contour.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties not adopted by the Commission herein, or rejected by clear contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Commission finds upon a preponderance of evidence that the reclassification of the Property, which is the subject of the Petition, Docket No. A85-595 by Kuilima Development Company, consisting of approximately 236 acres of land from the Agricultural District to the Urban District at Kahuku, Koolauloa, Oahu, Hawaii, Oahu Tax Map Key Nos.: 5-6-03: 37, 43, portion of 40, portion of 41, portion of 42, and portion of 44, 5-7-01: portion of 33, for resort and golf course uses, subject to the conditions stated in the Order, conforms to the standards established in the State Land Use District Regulations, is reasonable and non-violative of Section 205-2, Hawaii Revised Statutes, and the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes.

ORDER

IT IS HEREBY ORDERED that the Property being the subject of this Docket No. A85-595 by Kuilima Development Company, consisting of approximately 236 acres, situate at Kahuku, Koolauloa, Oahu, and identified as Oahu Tax Map Key Nos.: 5-6-03: 37, 43, portion of 40, portion of 41, portion of 42, and portion of 44, 5-7-01: portion of 33, and approximately identified on Exhibit A attached hereto and incorporated by

reference herein, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and the State Land Use District Boundaries are amended accordingly subject to the following conditions:

1. The Petitioner shall develop full-service hotels on lands outside of the Property as designated in Petitioner's Master Plan for the Kuilima Resort in order to ensure employment opportunities for North Shore Residents.

2. Petitioner shall provide housing opportunities for low and moderate income Hawaii residents and employees employed at the Kuilima Resort by constructing and offering for sale or rent, on a preferential basis on its own or in cooperation with either or both the Hawaii Housing Authority and the City and County of Honolulu, within or without the Property, a number of residential units, not less than ten percent of the number of resort condominium residential units to be developed on the Property to residents of Hawaii and employees employed at the Kuilima Resort of low and moderate income as determined by the Hawaii Housing Authority or the City and County of Honolulu from time to time, or by contributing to the development of such housing without the Property. The preferential residential units shall be offered for sale or rent at prices not exceeding prices that enable such purchasers or including bargaining unit employees of the Petitioner or the full service hotels at the Kuilima Resort to qualify for and obtain State

assisted financing, i.e. Act 105 or Hula Mae or federally insured or assisted financing, i.e. FHA, Section 245 Program, intended to encourage home ownership by low and moderate income families.

3. Petitioner shall fund the design and construction of improvements to Kamehameha Highway for the Kuilima Resort Expansion as required by the State Department of Transportation, including fully channelized intersections at Marconi Road, Kuilima Drive and West Kuilima Drive. Petitioner shall also assist the State Department of Transportation in its attempt to acquire a 50-foot right-of-way for widening Kamehameha Highway parallel to the boundary of the Kuilima Resort Expansion.

4. Petitioner shall develop additional water sources and related infrastructure to accommodate the water demand of the Kuilima Resort Expansion.

5. Petitioner shall assist the U.S. Fish and Wildlife Service and the Department of Land and Natural Resources in their activities to improve Punahoolapa Marsh.

6. Petitioner shall take such measures as required by the State Historic Preservation Office to protect archaeological sites F4-14 and T-1 from further disturbance and to monitor construction activities. Should any archaeological resources be discovered during the project's development, the Petitioner shall comply with directives of the State Historic Preservation Office.