

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Hawaiian Island Development Co., Inc. Address 931 University Avenue, Suite 207, Honolulu, Hawaii 96826

Project Name(*): PAHALA PLANTATION Address: District of Ka'u, Island and County and State of Hawaii; for TMK Nos., see Exhibit "A"

Registration No. 5144 Effective date: August 1, 2003 Expiration date: September 1, 2004

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports: Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

- X PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[] No prior reports have been issued.
[] This report supersedes all prior public reports.
[] This report must be read together with
SUPPLEMENTARY: (pink) This report updates information contained in the:
[] Preliminary Public Report dated:
[] Final Public Report dated:
[] Supplementary Public Report dated:
And
[] Supersedes all prior public reports.
[] Must be read together with
[] This report reactivates the public report(s) which expired on

(* Exact as named in the Declaration This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request. FORM: RECO-30 286/986/189/1190/892/0197/11098/0800/0203

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report as Exhibit J Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

SPECIAL ATTENTION

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

1. This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency, nor does it ensure that all applicable County codes, ordinances and subdivision requirements have been complied with.
2. Facilities and improvements normally associated with county approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.
3. The land may be subject to rollback real property taxes. The failure of an owner to observe restrictions on the use of the land may cancel the County dedication and special real property tax assessment. Please refer to the Director of Finance, County of Hawaii for further information.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owner/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Hawaiian Island Development Co., Inc. Phone: (808) 951-8976
Name* (Business)
931 University Avenue, Suite 105
Business Address
Honolulu, Hawaii 96826

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

Peter Savio (President, Secretary, Treasurer, Director)
Phyllis Savio (Vice-President, Director)

Real Estate Broker*: Hawaiian Island Homes Ltd. Phone: (808) 951-8979
Name (Business)
931 University Avenue, Suite 207
Business Address
Honolulu, Hawaii 96826

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 532-5155
Name (Business)
235 Queen Street, 1st Floor
Business Address
Honolulu, Hawaii 96813

General Contractor*: _____ Phone: _____
Name (Business)

Business Address

Condominium Managing Agent*: Self-managed by Association Phone: _____
Name (Business)

Business Address

Attorney for Developer: Chun, Kerr, Dodd, Beaman & Wong Phone: (808) 528-8200
a Limited Liability Law Company (Business)
Name
745 Fort Street, 9th Floor
Business Address
Honolulu, Hawaii 96813
Attn: Andrew R. Bunn, Esq.

* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**II. CREATION OF THE CONDOMINIUM;
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed
 Recorded - Bureau of Conveyances Document No. _____
Book _____ Page _____
 Filed - Land Court Document Number _____

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

Proposed
 Recorded - Bureau of Conveyances Condo Map No. _____
 Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed
 Recorded - Bureau of Conveyances Document No. _____
Book _____ Page _____
 Filed - Land Court Document No. _____

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents.** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>Majority of quorum of apartment owners</u>

* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: District of Ka'u Tax Map Key (TMK): See Exhibit "A"
County and Island and State of Hawaii

Address TMK is expected to change because _____

Land Area: 1,918.58 square feet acre(s) Zoning: Agricultural

Fee Owners: Ka'u Agribusiness Co., Inc. and Mauna Kea Agribusiness Co., Inc. Roman Catholic Church in the State of Hawaii
 Name 311 Pacific Street Name 1184 Bishop Street
 Address Honolulu, HI 96817 Address Honolulu, HI 96813

James Douglas Keauhou Ing, Constance Hee Lau, Charles Nainoa Thompson, Robert Kalani Uichi Kihune, and Diane Joyce Plotts, Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased
 Name 567 South King Street, #200
 Address Honolulu, HI 96813
 Name

Developer Hawaiian Island Development Company, Inc.
 Name 931 University Avenue, Suite 105
 Address Honolulu, Hawaii 96826

C. Buildings and Other Improvements:

1. New Building(s) (water tank structures)
 Conversion of Existing Building(s)
 Both New Building(s) and Conversion

2. Number of Buildings: 202 Floors Per Building: 1
 Exhibit B contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other Mortar sand floor and berm; galvanized, corrugated steel panels

4. Uses Permitted by Zoning:

	No. of Apts.	Use Permitted By Zoning	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>*202</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?
 Yes No

*NOTE: The subject property is within the State Land Use Agricultural District and is zoned Agricultural by the County of Hawaii. "Farm Dwellings" and other structures appropriate to agricultural usage are permitted, subject to certain guidelines of Chapter 25 of the Hawaii County Code.

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

Pets _____

Number of Occupants: _____

Other: See Exhibit C _____

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Approx. Unit Area (ht. x diameter)</u>	<u>(Identify)</u>	<u>Agricultural Area (acres)</u>
<u>**</u>	<u>91</u>	<u>N/A</u>	<u>44" x 21'7"</u>	<u>Water tank</u>	<u>0 to 5 acs.</u>
<u>**</u>	<u>59</u>	<u>N/A</u>	<u>44" x 21'7"</u>	<u>Water tank</u>	<u>5 to 10 acs.</u>
<u>**</u>	<u>12</u>	<u>N/A</u>	<u>44" x 21'7"</u>	<u>Water tank</u>	<u>10 to 15 acs.</u>
<u>**</u>	<u>21</u>	<u>N/A</u>	<u>44" x 21'7"</u>	<u>Water tank</u>	<u>15 to 20 acs.</u>
<u>**</u>	<u>19</u>	<u>N/A</u>	<u>44" x 21'7"</u>	<u>Water tank</u>	<u>20+ acs.</u>

Total Number of Apartments: 202

* Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

**All initial apartment types will be water tank structures to be installed by Developer. See Condominium Map and Exhibit D for further details.

Boundaries of Each Apartment: See Exhibit D

Permitted Alterations to Apartments: See Exhibit E

Apartments Designated for Owner-Occupants Only: **N/A**

Fifty percent (50%) of residential apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement. Developer has not elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 0*

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	_____	_____	_____	_____	_____	_____	_____
Guest/Recreational Visitor	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>0</u>		<u>0</u>		<u>0</u>		<u>0</u>

Each apartment will have the exclusive use of at least *1 parking stall(s).
Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

Exhibit _____ contains additional information on parking stalls for this condominium project.

*There are no designated parking stalls. However, there is ample area within the limited common elements of each unit for parking.

8. Recreational and Other Common Facilities.

There are no recreational or common facilities.

Swimming pool Storage Area Recreation Area

Laundry Area Tennis Court Trash Chute/Enclosure(s)

Other: See description of common elements in Exhibit F

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

There are no violations. Violations will not be cured.

Violations and cost to cure are listed below: Violations will be cured by _____
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations (For conversions of residential apartments in existence for at least five years):

N/A .

11. Conformance to Present Zoning Code

- a. No variances to zoning code have been granted.
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u> X </u>	<u> </u>	<u> </u>
Structures	<u> X </u>	<u> </u>	<u> </u>
Lot	<u> X </u>	<u> </u>	<u> </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit F.

as follows:

2. **Limited Common Elements:** Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit *F.

as follows:

*Note: Land areas referenced herein are not legally subdivided lots.

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit F.

as follows:

- E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit G describes the encumbrances against the title contained in the title reports dated (See Exhibit G for report dates) and issued by Title Guaranty of Hawaii, Inc. and Security Title Incorporated.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

There are no blanket liens affecting title to the individual apartments.

There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien Foreclosed Prior to Conveyance</u>
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F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements: N/A

2. Appliances: N/A

G. Status of Construction and Date of Completion or Estimated Date of Completion:

The water tank structures will be installed by Developer after closing on the sale of a Unit in the approximate locations shown on the Condominium Map.

H. Project Phases:

The developer has has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

See Exhibit J.

IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer
- self-managed by the Association of Apartment Owners
- the Developer or the Developer's affiliate
- Other: _____

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit K contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- None Electricity (_____ Common Elements only _____ Common Elements & Apartments)
- Gas (_____ Common Elements only _____ Common Elements & Apartments)
- Water Sewer Television Cable
- Other _____

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- Notice to Owner Occupants
- Specimen Sales Contract
Exhibit H contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated June 6, 2003
Exhibit I contains a summary of the pertinent provisions of the escrow agreement.
- Other _____

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
 - 1) Either the Final Public Report OR the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; AND
 - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); AND
- C) One of the following has occurred:
 - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
 - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
 - 3) The apartment is conveyed to the buyer within 30 days after the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. **Rights Under the Sales Contract:** Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended..
- D) House Rules, if any.
- E) Condominium Map, as amended.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other _____

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu, Hawaii 96809, at a nominal cost.

This Public Report is a part of Registration No. 5144 filed with the Real Estate Commission on June 26, 2003.

Reproduction of Report. When reproduced, this report must be on:

YELLOW paper stock WHITE paper stock PINK paper stock

C. Additional Information Not Covered Above

1. Initial Apartments. The initial apartments will be water tank structures to be installed by Developer after closing on the sale of a Unit in the approximate locations shown on the Condominium Map (which apartments are hereinafter referred to as the "Agricultural Units " or "Units"). Each Agricultural Unit owner has the right under the Declaration to alter such owner's Unit by removing any existing improvements and constructing additional improvements within the limited common element Agricultural Area which is appurtenant to such Unit, subject to all requirements of law and the Declaration.

2. Agricultural Project District. The Project is currently zoned Agricultural, and will be rezoned to Agricultural Project District zoning ("APD") by the County of Hawaii upon approval of Developer's application to the Department of Planning of the County of Hawaii. The uses currently permitted in the Agricultural district will be permitted under APD zoning. APD zoning permits a mix of small-scale agricultural activities and associated residential uses as well as larger agricultural projects. APD zoning is an amendment to Chapter 25 of the Hawaii County Code, which changes the district boundaries in accordance with the individual APD. The proposed APD is consistent with the intent and purpose of the zoning regulations of the Hawaii County Code, substantially conforms to the Hawaii County general plan, and provides an environment of sustained desirability and stability for the district.

In the Project, the property is presently configured as 0-5 acre, 5-10 acre, 10-15 acre, 15-20 acre, and 20 or more acre lots. The Developer anticipates that issues such as overall density and proposed land uses will be presented and discussed as a master conceptual plan before the Hawaii County Council, appropriate County agencies and interested parties so as to facilitate the adoption of such plan into an APD enabling ordinance. After adoption of an APD enabling ordinance, Developer will submit detailed site plans for the APD to the Planning Department, showing planned infrastructure improvements and information required to complete the application in accordance with the conditions of the enabling ordinance and Ch. 91, HRS. After a series of review, comment, public hearing and approval by various County agencies, the APD may then be established. The entire process is expected to take approximately twelve (12) months to complete.

Roads and electricity are the major infrastructural requirements for the area and will be upgraded to meet County requirements for approval of the APD zoning. Developer's construction and installation of such Project improvements, however, will not commence until after County approval and planning has been accomplished as described above. Moreover, while the anticipated APD zoning will permit buyers to build residential houses on their lots, buyers' construction of houses may not commence until after the Project roadways are brought up to County standards. Funding for infrastructure improvements will be provided in part by funds Developer will contribute from a portion of each buyer's purchase price.

3. Roadway Maintenance; Trust Fund. Presently, certain of the existing roadways within the Project area are unusable and/or unimproved. As described above, until the Project roadways are upgraded to County standards, residential dwelling structures cannot be constructed by Unit owners. To achieve compliance with the requirements of the County Code, and to facilitate the timely construction and installation of the Project improvements and infrastructure, including the roadways, Developer shall establish a trust fund on behalf of the Association to be used toward the construction of such improvements and infrastructure ("the Trust Fund"). The Trust Fund shall be held separate and apart from any reserves the Association is required to maintain under the Act, and shall be used for Project improvements and infrastructure. Developer shall deposit an initial \$1,000,000 into the Trust Fund. Additionally, Developer shall deposit funds into an account for the start-up of the Association's maintenance reserves. Developer will make these contributions by setting aside a total of \$800 per acre upon the closing of the sale of each Unit and by disbursing such \$800 per acre as follows: (a) \$600 per acre shall be deposited into the Trust Fund, and (b) \$200 per acre shall be deposited into the Association's maintenance reserve account. The foregoing contributions are being made on behalf of the owners of Units in Project and shall be credited accordingly in any reserve study performed for the Project. Because the Units and the Project are being sold in "AS IS" condition with "ALL FAULTS", the foregoing sums may be insufficient to make all necessary repairs and improvements in the Project, and the Unit owners may be required by the Association to contribute additional sums for repairs and maintenance in the future. Developer will not contribute any additional sums to the Association in excess of the foregoing amount.

[This section is continued on page 20.a]

C. Additional Information Not Covered Above (continued)

4. The underlying property is classified and zoned "Agricultural." County ordinance and the Hawaii Land Use laws allows only the construction of farm dwellings on such lands. A farm dwelling is a single family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling. More than one farm dwelling may be allowed on a parcel of land if (a) a farm dwelling agreement is executed for each additional farm dwelling which requires that the dwelling be used for farm-related purposes and (b) the applicant for the permit submits an agricultural development and use program, farm program or other evidence of the applicant's continual agricultural productivity or farming operations in the County of Hawaii and such plan shows how the farm dwelling will be utilized for farm related purposes.

Buyers are advised that the developer makes no representations or warranties with respect to (i) the improvements that are or will be allowed on the real property, (ii) the uses that are allowed or required for real property located in an "Agricultural" land use classification or (iii) the restrictions, requirements or conditions that may be imposed by any government entity with respect to the proposed uses of the real property and/or the apartments or the proposed construction of improvements thereon or therein. Prospective buyers are advised to verify the legality of and the requirements for the buyer's intended use of the apartment and the land with the County of Hawaii.

Residential Dwellings within State Land Use Agricultural District

Purchasers should be aware that the State Land Use Commission issued a Declaratory Ruling in December, 1994, regarding the construction of residential dwellings on properties located within the State Land Use Agricultural District. In response to said ruling, the Hawaii County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

FARM DWELLING NOTICE

To: Applicants for Building Permits on Land in State Land Use Agricultural District

This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

Farm Dwelling is defined in Chapter 205.4.5(a)(4) as "a single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling."

Penalty for violation of Section 205.4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

I acknowledge that I have read the above
and have been given a copy

Signature of Witness

Signature of Applicant

5. Mailboxes. Mailboxes have not been provided for the units, as there is no mail delivery to this area. People in this area customarily maintain a post office box at the local post office.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

HAWAIIAN ISLAND DEVELOPMENT CO., INC., a Hawaii corporation

Printed Name of Developer

By 
Duly Authorized Signatory*

June 25, 2003

Date

Peter Savio, President, Secretary, Treasurer

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii

Planning Department, County of Hawaii

****Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.***

EXHIBIT A

***PAHALA PLANTATION
CONDOMINIUM PROPERTY REGIME***

No.	TAX MAP KEY
1.	(3) 9-6-3-2
2.	(3) 9-6-3-por.12
3.	(3) 9-6-3-22
4.	(3) 9-6-5-10
5.	(3) 9-6-5-12
6.	(3) 9-6-5-13
7.	(3) 9-6-5-15
8.	(3) 9-6-5-56
9.	(3) 9-6-6-5
10.	(3) 9-6-6-6
11.	(3) 9-6-6-7
12.	(3) 9-6-6-8

DESCRIPTION OF APARTMENTS

Initial Apartments. The number of apartments and their location, dimensions and other data are more particularly described in the Condominium Map and in Exhibit C attached to the Declaration. The initial apartments are water tank structures in the location shown on the Condominium Map (which apartments are hereinafter referred to as the "Agricultural Units" or "Units"). There shall be two hundred two (202) Agricultural Units as more particularly described in Exhibit C to the Declaration and on the Condominium Map. A typical Unit is approximately 44 inches in height and 21 feet and 7 inches feet in diameter with a capacity of 10,000 gallons and is principally constructed of galvanized, corrugated steel panels with mortar sand flooring and berm. Each Agricultural Unit owner has the right under Section 19 of the Declaration to alter such owner's Unit by removing any existing improvements and constructing additional improvements within the Agricultural Area (as defined in Section 6 of the Declaration) which is appurtenant to such Unit, subject to all requirements of law and the Declaration.

Surrounding Area. The Project is located in agricultural lands of the Ka'u District of the Island of Hawaii. The town of Pahala is located east of the Project and is located off of Mamalahoa Highway. To the northeast of the Project are the areas of Wood Valley, Kapapala, and the Hawaii Volcanoes National Park. To the southwest of the Project lies the area and town of Naalehu.

USE RESTRICTIONS FOR AGRICULTURAL UNITS AND COMMON ELEMENTS

Section 10 of the Declaration describes the restrictions on the use of the Units and the common elements of the Project as follows:

10. **USE RESTRICTIONS.**

a. **Permitted Use.** The initial Agricultural Units shall be used as water tanks for agricultural, farming and accessory purposes. In the event the initial Agricultural Units are replaced, expanded, or modified as permitted in Section 19 below, the Agricultural Units may be used for any purposes permitted by applicable laws and ordinances and by the covenants and restrictions contained in this Declaration and in the Bylaws. The Agricultural Areas appurtenant to each Agricultural Unit may be used for any purposes permitted by current zoning for the Land and as permitted by all applicable laws and ordinances and the covenants and restrictions contained in this Declaration and in the Bylaws, including, without limitation, farming, agricultural processing and other accessory uses. Each Unit owner may use all limited common elements appurtenant to such owner's Unit for any use deemed appropriate by such owner, so long as such use is permitted by law and does not interfere with the use by other owners of the common elements or the limited common elements appurtenant to such other owners' Units. The Developer makes no representations or warranties, express or implied, with respect to any of the foregoing uses, and each Unit owner is responsible for obtaining all necessary permits and approvals required to maintain such uses and structures.

b. **Nuisance.** The owner of a Unit shall not use the same for any purpose which will injure the reputation of the Project. Except as provided in this Declaration, such owner shall not do or suffer anything to be done or be kept in, on, or around said Unit or its appurtenant Agricultural Area or elsewhere which will jeopardize the safety or soundness of the Project, or interfere with or unreasonably disturb the rights of other owners, or increase the premiums for fire insurance or any other form of insurance paid by the Association or any other Unit owner, or which will materially alter, hinder, interfere with or create flooding or a flooding hazard on the Project, material erosion of the natural environment or which will reduce the value of any Unit, common element, or limited common element appurtenant to the Unit of any other owner, or impair any easement or hereditament or alter the appearance of the exterior of such owner's Unit or limited common element without conforming to the provisions of the Act and this Declaration, and the guidelines and restrictions set forth in **Exhibit D** hereto ("the Design Requirements").

c. **Hazardous Materials.**

1. **Restriction on Use.** Each Unit owner, and any party holding by through or under such Unit owner or occupying the Unit or Agricultural Area, shall comply with all federal, state and local statutes, regulations, ordinances or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment ("the Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, "the Hazardous Materials"). No Unit owner or occupant shall use, generate, manufacture, store, release, dispose of or permit to exist in, on, under or about any Unit, Agricultural Area, the common elements or any portion of the Project, or transport to or from any portion of the Project any Hazardous Materials except in compliance with the Environmental Laws.

2. **Notices.** A Unit owner or occupant shall give written notice to the Board within three (3) business days after the unit owner learns or first has reason to believe that (i) a discharge of Hazardous Materials has occurred, or (ii) a Hazardous Materials claim has been made by any governmental agency or third person, or (iii) any report, notice or complaint has been made to or filed with any governmental agency concerning the presence, use or disposal of any Hazardous Material at the Project. The notice shall be accompanied by copies of (i) all permits, licenses, and proofs of disclosure to governmental agencies pertaining to the hazardous material that is the subject of the claim, (ii) copies of any material safety data sheets pertaining to such substances that are required by applicable law, and (iii) copies of any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the Unit owner or occupant. The Association and any Unit owner shall have the right to join and participate, as a party, if it so elects in any actions initiated in respect of any hazardous materials claims.

3. **Indemnity.** If the generation, use, transportation, storage, or disposal of Hazardous Materials by a Unit owner, or any party holding by through or under such Unit owner or occupying or using such owner's Unit or Agricultural Area, results in contamination of a Unit, an Agricultural Area or the common elements, the Unit owner shall hold harmless the Association, the Board and all other Unit owners from all damages, including foreseeable and unforeseeable consequential damages, diminution in value of a Unit, losses and damages for the loss or restriction on use of a Unit, any part of the common elements or of any amenity of the Project and sums paid in settlement of claims, all reasonable expenses, including attorneys' fees, consultant fees and expert fees which arise as a result of any investigation by the association, the defense of hazardous materials claims (whether or not formal administrative or legal action is filed) by the Association or any Unit owner; and all costs incurred in connection with any investigation of site conditions or any clean-up remedial, removal, or restorative work required by any governmental agency because of a Hazardous Material present in the soil or ground water on or under the Unit or

Agricultural Area.

4. **Cleanup.**

(a) **By an Owner.** Without limiting the foregoing, if the presence of any Hazardous Material at a Unit, Agricultural Area or the common elements caused or permitted by an owner results in any contamination of the Project, the owner shall promptly take all actions at his or her sole expense as are necessary to return the project to the condition existing prior to the hazardous discharge; provided that the Board's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

(b) **By the Association.** If the presence of any Hazardous Material on the common elements results in any contamination of the common elements, the Association shall promptly take all actions as are necessary to clean up and restore the common elements in accordance with all hazardous materials laws, and all owners shall be severally liable for the cost of any such cleanup and restoration as a common expense to the extent such costs are not chargeable to the owners of one or more units, as provided in this Declaration, and are not reimbursed to the Association by those owners.

5. **Survival.** The obligations under this Section 10.c. shall survive the termination of the ownership of a Unit in the project.

d. **Prohibited Alterations.** Except as otherwise specifically provided in this Declaration or in the Bylaws, an Agricultural Unit owner shall not, without the prior written consent of the Board, make any material alterations of or any additions to the exterior of a Unit or to any other portion or portions of the Agricultural Area or other limited common elements appurtenant to a Unit or the common elements unless otherwise specifically permitted herein, in the Bylaws or in the Design Requirements, and by applicable zoning and building rules, regulations and laws. The planting of crops and installation of fences and other agricultural fixtures and equipment in the ordinary course of farming shall not be considered a material alteration to the Agricultural Area.

e. **Drainage.** No Unit owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any common element or area designated by the Association as a drainage easement. For the purpose hereof, "normal" drainage is defined as the drainage that exists at the time the Unit or common elements, or portions thereof, as the case may be, is or are conveyed to an Unit owner or the Association by Developer. Normal drainage may include drainage from common

element areas or other property across any lot or other common element areas. This Section 10.e shall not be deemed to restrict or otherwise affect rights reserved to Developer to alter or change drainage patterns within or upon the Project.

f. **Limitation on Leasing.** Any lease agreement for a Unit in the Project or license agreement for any Agricultural Area shall provide that the terms of such lease or license shall be subject in all respects to the provisions of the Act, this Declaration, the Unit owner's Deed, the Bylaws and the rules and regulations of the Association promulgated thereunder and that the failure of any party to such lease or license to comply with the terms of such documents shall be a default under the lease.

g. **Setback.** No building or structure (but not including roads, walkways, fences, walls or underground utilities) may be located within the Agricultural Area appurtenant to each Unit which is closer than twenty (20) feet (measured from any portion of such building or structure) to the interior boundary lines separating and defining the respective Agricultural Area appurtenant to the respective units.

DESCRIPTION OF INITIAL AGRICULTURAL UNITS AND TYPES

Units. The Project contains a total of two-hundred two (202) Agricultural Units, initially intended for agricultural use, as shown on the Condominium Map. Each Agricultural Unit is designated as a condominium apartment and a separate freehold estate pursuant to the Act. Each Unit consists of the entire physical structure (including exterior finishes) and space within such structure that makes up the Unit as shown on the Condominium Map. The Agricultural Units are more particularly described below and in Exhibit C attached to the Declaration. Located in and around the respective Agricultural Units are Agricultural Areas, configured into land areas as follows: 0 to 5 acres, 5 to 10 acres, 10 to 15 acres, 15 to 20 acres, and 20 or more acres. Said Agricultural Areas, as shown on the Condominium Map, shall be appurtenant to and for the exclusive use of the Unit within such area.

Each Unit is designated on Exhibit C attached to the Declaration by a Unit number. Each Unit as so designated and identified by a Unit number is located in the Project as shown on the Condominium Map. The approximate dimensions of the initial Agricultural Units consist of the exterior height and diameter measurements of the Unit. The dimensions of a typical Unit are shown on the Condominium Map. In the event that a Unit is altered or expanded as permitted by the Declaration, and should such Unit be converted to a residential structure, the approximate net living area of each such altered Unit shall consist of the enclosed portion of such Unit measured from the interior surface of such Unit's perimeter walls and shall be reported separately from the areas of agricultural, residential and/or commercial structures, lanais, patios and garages, which may be added to such Unit and any structures built within the Agricultural Area appurtenant to such Unit which may form a part of such Unit.

Limits of Agricultural Units. Each initial Unit shall include all exterior surfaces, panels, foundations, joints, supporting fixtures, the interior of the water tank structure and all ducts, pumps, pipes, conduits, wires and other utility lines running through such structure which do not serve or are not utilized by any other Unit. Each Unit also includes, but is not limited to, all structural improvements (with the exception of common elements as defined below) which may be hereafter constructed within the Agricultural Area appurtenant to such Unit, whether contiguous to the existing Agricultural Unit or separately standing. In the event a Unit owner alters or adds to the Agricultural Unit, such Unit shall be deemed to include all perimeter walls and exterior surfaces, ceilings, floors, slabs, foundations, roof, all glass windows, window frames, louvers (if any), shutters (if any), panels, and doors and door frames along its perimeter. Each Unit shall not be deemed to include any pipes, wires, conduits or other utility lines running over, under or through such Unit which are utilized by or which serve more than one Unit, the same being deemed common elements as hereinafter provided.

Access. Primary access to the Ka'u District area is by Hawaii State Highway 11, which crosses through the district and connects to Hilo on the east and Kona on the west. Access

to the Project from the town of Pahala is by way of Mamalahoa Highway. Within the Project, each Agricultural Unit and the limited common element land areas appurtenant to such Unit has immediate access to the paved and unpaved common element roadways of the Project as shown on the Condominium Map. The width of the travel surfaces on the Project roadways is between approximately 16 to 20 feet on each of the paved roadways and between approximately 12 to 20 feet on each of the unpaved roadways. The current existing paved roadways are Roads A and B and are shown on the Condominium Map. All other existing roadways in the Project are currently unpaved (collectively, all paved and unpaved Project roadways are hereinafter referred to as "the Project roadways"). The Project roadways, including a five (5) foot shoulder area extending from the edge of all Project roadways, will be held and maintained by the Association as private roads. Unit owners, and anyone holding an interest by through and under such owners, shall have a non-exclusive access easement over the Project roadways (subject to the right of the Association to dedicate such roads to governmental authority as set forth in the Declaration).

ALTERATION OF PROJECT

Paragraph 19 of the Declaration provides as follows:

a. **General.** Except as otherwise expressly set forth and reserved in this Declaration or the Act or as otherwise required by law (including, without limitation, the requirement of obtaining the prior approval of the Director of the Department of Planning of the County of Hawaii as more particularly set forth in Section 26 hereof), restoration or replacement of the Project or of any building or other facility thereof which is a common element or construction of any additional building or structural alterations or additions to any structure which is a common element different in any substantial and material respect from the Condominium Map, shall be undertaken by the Association or any Unit owner(s) only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote of not less than seventy-five percent (75%) of the Unit owners, and promptly upon completion of such restoration, replacement or construction the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer. Any additions to or alterations of any Unit made within such Unit shall be permitted without the consent of the Board or any other Unit owner, except that if such additions or alterations would jeopardize the soundness or safety of the Project, reduce the value thereof, or impair any easement or hereditament, then the prior consent of seventy-five percent (75%) of all Unit owners, together with the consent of all other Unit owners directly affected thereby, shall be first obtained.

b. **Alterations and Additions to Agricultural Units.** Notwithstanding anything to the contrary contained in this Declaration, provided that an Agricultural Unit owner shall have the right, at any time and from time to time, at such Unit owner's sole cost and expense, and without the consent or joinder of any other Unit owner, but with the prior written consent of the Board, to alter such Unit owner's Unit by removing any existing improvements and/or constructing additional improvements within the Agricultural Area which is appurtenant to such Unit owner's Unit. Such alterations may include, without limitation, the removal and/or relocation of the improvements described in Section 3 above and/or the construction of new improvements within the perimeter of the Agricultural Area which is appurtenant to the Unit being altered. The effect of such alterations may be to enlarge or diminish the size of a Unit since each Unit, as altered, shall include all walls, ceiling, floors, slabs, foundations, doors, and door frames, window and window frames, supporting beams and fixtures, if any, and all ducts, pumps, pipes, conduits, wires and other utility lines running through such Unit which do not serve

or are not utilized by any other Unit and excluding all easements shown on the Condominium Map. Each Unit, as altered, shall not be deemed to include any pipes, wires, conduits or other utility lines running over, under or through such Unit which are utilized by or which serve more than one Unit, the same being deemed common elements as herein provided.

c. **Design Control.** The following terms and conditions shall control any such alteration:

(1) The plans and specifications shall conform to all applicable federal, state and county statutes, ordinances, rules and regulations and codes, subject to the following conditions:

(a) In applying for a building permit from the County of Hawaii for any such alterations, each Agricultural Area shall be treated as if it was a separated subdivided lot. This will affect the requirements for, among other things, setbacks, signage, lot coverage and maximum floor area.

(b) The owner of such Unit shall provide to the Board (or the Managing Agent at the Board's request) a true and correct copy of the county-approved building permit for such Unit. The building permits shall be made available to the Board to aid the Board in tracking each Unit's assigned shares and corresponding common interests as alterations to the Units are made.

(2) Such Unit owner shall, at such Unit owner's sole cost and expense, without the consent or joinder of any owner of any Unit or lienholder thereof, but with the prior written consent of the Board, execute and file an amendment or amendments to the Declaration and Condominium Map:

(a) to describe the layout, location, Unit number and dimensions of the altered Unit, as built, as shown on said plans and specifications;

(b) when applicable, to add, delete, relocate, realign, reserve and grant all easements and rights-of-way over, under and on the common elements necessary or desirable, including but not limited to easements and rights-of-way for utilities, cesspools, sanitary and storm sewers, television cables, refuse disposal, driveways and parking areas and roadways, provided that such easements and rights-of-way do not materially impair the use of any Unit or its appurtenant interest in the common elements.

(3) Every Unit owner and all mortgagees and holders of liens affecting any of the Units in the Project shall, if necessary or desirable to the exercise

of the reserved rights of each Unit owner herein, join in, consent to or execute all instruments and documents necessary or desirable to effect the alteration of Units provided for in this subsection 19.d, and, by execution of a contract for the purchase or sale of a Unit or by acceptance of any deed, lien or security interest therein, such Unit owner, mortgagee and holder of lien shall be deemed to have consented to the reservation contained in this subsection 19.d and irrevocably appointed each such Unit owner and the Association as its lawful and fully authorized attorneys-in-fact, with power to act singly, with full right and power to join in, consent to or execute all such instruments and documents for and on behalf of the Unit owner, mortgagee and lienholder to effect the alteration of Units as provided for in Section 514A-13(b) of the Act.

(4) Each such amendment to the Declaration shall be recorded in the Bureau of Conveyances of the State of Hawaii ("the Bureau") and the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("the Land Court"), and the effective date of the amendment shall be the date on which the said amendment shall be recorded as aforesaid.

(5) Each and every conveyance, lease and mortgage or other lien given for or on any Unit created by this Declaration and all common interests and other appurtenances thereto shall be subject to the provisions of this subparagraph 19.b even though not expressly mentioned in the conveyance or other instrument. This subparagraph 19.b shall not be amended except upon the vote or with the prior written consent of Unit owners of not less than ninety percent (90%) of the interests in the common elements.

d. **Landscape Control.** Native Hawaiian plants, eucalyptus forests, and native flora and fauna currently exist within or near the Project area. In accordance with the rules and regulations of the Association, affected Unit owners shall be responsible for reasonable maintenance and care of such designated plants and shall not make any excavation, or cut or remove any designated trees or plants from such lot, or do any act that would affect the environment thereof.

e. **Interior Improvements by Unit Owners.** Notwithstanding anything to the contrary contained herein, the owners of all Units shall have the right at any time and from time to time, at their respective sole cost and expense, without the consent or joinder of any other Unit owners, to install, maintain, remove, and rearrange partitions and other improvements from time to time within such Units, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the ceilings, floors and walls within any such Unit and to finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such Unit by such owner or the tenants

or licensees thereof (provided, that such plumbing and electrical alterations and/or substitutions shall not adversely affect the plumbing, drainage, water distribution and electrical systems of the Project as determined by the Board in the exercise of its sole discretion). Any of the foregoing provisions to the contrary notwithstanding, any such alteration shall be performed strictly in accordance with the requirements of applicable law. Provided, that no work shall be done which would jeopardize the soundness or safety of the Project, reduce the value thereof, detract from permitted uses of the Project, or impair any easement, without in every such case the prior written consent of the mortgagees of such Units, the Board and all other Unit owners directly affected thereby (as determined by the Board).

f. **Limited Common Element.** Any part of the common elements of the Project which, because of the alterations as provided for in this Section 19, serve or are used exclusively by one Unit or a group of Units shall become limited common elements appurtenant to and for the exclusive use of such Unit or Units and any costs in connection therewith shall be borne as provided in Section 13 hereof.

**DESCRIPTION OF COMMON ELEMENTS,
LIMITED COMMON ELEMENTS AND COMMON INTERESTS**

1. Common Elements.

Paragraph 5 of the Declaration describes the common elements as all portions of the Project other than the Agricultural Units (except as specifically included), and all other common elements mentioned in the Act which are actually included in the Project, including specifically without limitation:

- a. The Land in fee simple.
- b. All natural and concrete drainage ditches and culverts, irrigation ditches, flumes, swales, berms, hiking trails, walkways, hunting areas, water reservoir and roadways in the Project shown on the Condominium Map.
- c. The improved and unimproved Project roadways as outlined on the Condominium Map, any parking areas that may be created by Developer and/or the Association, and any trees and other landscaping located thereon not located within the Agricultural Areas.
- d. Any wells, pipelines and related facilities and all other pipelines, water pumps and well facilities located within the Project which serve more than one Agricultural Unit.
- e. All electrical equipment, wiring, utility yards and equipment, pipes and other central and appurtenant transmission facilities and installations on, over, under and across the Project which serve more than one Agricultural Unit for services such as but not limited to electricity, water, gas, telephone, radio, television and cable television signal distribution.
- f. Any property located within the Agricultural Areas designated below, but not located within any Agricultural Unit, that becomes the responsibility of the Association by agreement of the Association and the County or the State of Hawaii.
- g. Any and all other apparatus and installations of common use and all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- h. The limited common elements described below.

2. Limited Common Elements.

Paragraph 6 of the Declaration describes the limited common elements as certain parts of the common elements that are set aside and reserved for the exclusive use of certain

parts of the common elements that are set aside and reserved for the exclusive use of certain Agricultural Units, such Units having appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

a. The various separate land areas located in and around the respective Agricultural Units, as shown on the Condominium Map within dashed lines designed by the legend "Limited Common Element" on the Condominium Map, shall be appurtenant to and for the exclusive use of the Unit within such area (such areas are hereinafter referred to as the "Agricultural Areas"). Except as otherwise provided herein, the Agricultural Areas shall be subject to the exclusive possession, occupancy, use and control of the owner of the appurtenant Unit, and may be used only for the purposes described in and permitted under the Declaration, the Bylaws and applicable law.

b. The existing structures located within the Agricultural Areas which are not a part of the Agricultural Unit shall be appurtenant to the Agricultural Unit located within such Agricultural Area.

c. All other common elements of the Project which are rationally related to less than all of said Units shall be limited to the use of such Units.

3. **Common Interest.** Each Unit shall have appurtenant thereto an undivided percentage interest (hereinafter referred to as the "common interest") in all common elements of the Project and in all common profits and expenses of the Project and for all other purposes including voting. The common interest for each Unit is determined by assigning points to each Unit based on the size and density of each Unit as follows:

a. Two (2) shares shall be assigned to each Agricultural Unit with an appurtenant Agricultural Area, regardless of actual size, which does not have any structure other than the original water tank Agricultural Unit.

b. At such time that a Unit owner substantially completes construction of a residential dwelling structure on his or her Agricultural Area, such Unit shall have (i) one (1) additional share if such dwelling has a living area between a minimum of six hundred (600) square feet and a maximum of one thousand five hundred (1,500) square feet, and (ii) two (2) additional shares if such dwelling has a living area of more than one thousand five hundred (1,500) square feet.

c. At such time that a Unit owner substantially completes construction of a structure for commercial and /or agricultural use, such Unit owner shall be assigned one (1) additional share per each one thousand (1,000) square feet of usable floor area in such structure.

Initially, there shall be four hundred four (404) shares, based on two hundred two (202) Agricultural Units in the Project. Thus, all Units shall have, at least initially, an undivided percentage interest of 0.004950495%, calculated as follows: 2 shares divided by 404 total shares equals 0.004950495%.

ENCUMBRANCES AGAINST TITLE

A. **TAX KEY (3) 9-6-3-2:**

That certain Status Report dated June 17, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.
4. Any unrecorded leases and matters arising from or affecting the same.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
6. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

B. **TAX KEY (3) 9-6-3-por.12:**

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.
2. Memorandum of Ka'u Forestry Lease dated effective as of January 26, 1998, recorded as Document No. 98-063752, by and between Henry Haalilio Peters, Oswald Kofoad Stender, Richard Sung Hong Wong, Marion Mae Lokelani Lindsey, Gerard Aulama Jervis, Trustees of the Estate of Bernice Pauahi Bishop, as "Lessor" and Prutimber Fund Four Limited Partnership, a Delaware limited partnership, as Tenant in Severalty, as "Lessee"; leasing and demising the land described as Tax Map (3) 9-6-3-12 (besides other lands) for a term commencing January 1, 1998 and expiring on December 24, 2010.

3. Easements A-1 and A-4 for roadway and utility purposes as described in Memorandum of Ka'u Forestry lease dated effective as of January 26, 1998, recorded as Document No. 98-063752.

4. The land has no recorded access to a public roadway.

5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

C. TAX KEY (3) 9-6-3-22:

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Triangulation Survey Station "Moaula 20" located within Tax Key No. (3) 9-6-003-022, as shown on the Tax Map. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments.

4. As to that portion of Royal Patent Grant No. 2877 to Kealiinui, roads (shaded in green) as shown on Hawaii Territory Survey (HTS Plat 110) prepared by Walter E. Wall, dated December, 1914, attached as Exhibit "A" and made a part thereof.

5. Road and Utility Easement "8" shown on tax map.

6. Grant dated June 12, 1986, recorded in Liber 19573 at Page 633, in favor of Mauna Loa Macadamia Partners, L.P. and Others, granting a nonexclusive easement for road and utility purposes, to be used in common with the Grantor and all others entitled thereto, over, under and across Easement 7.

7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained that certain Deed and Grants of Easements dated June 12, 1986, recorded in Liber 19573 at Page 633, made by and between Ka'u Agribusiness Co., Inc., a Hawaii corporation and Mauna Loa Macadamia Partners, L.P., a Delaware limited partnership regarding water pipeline maintenance and easement rights.

8. The terms and provisions, including the effect of any failure to comply with any

covenants, conditions and reservations contained in that certain Water Agreement dated _____, and amended by unrecorded Amended Water Agreement, effective as of October 1, 1989, set forth in Memorandum of Amended Water Agreement dated _____, Acknowledged on October 17, 1989, and recorded on October 27, 1989 in Liber 23813 at Page 295.

9. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.

10. Any unrecorded leases and matters arising from or affecting the same.

D. TAX KEY (3) 9-6-5-10:

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Issuance of Land Patent on Land Commission Award Number 10755 to S. Palau.

4. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.

5. As to that portion of Royal Patent Grant No. 2877 to Kealiinui, roads (shaded in green) as shown on Hawaii Territory Survey (HTS Plat 110) prepared by Walter E. Wall, dated December, 1914, attached as Exhibit "A" and made a part thereof.

6. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.

7. Any unrecorded leases and matters arising from or affecting the same.

8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

9. Claims arising out of the failure to convey the land described in the title report together with an easement or right of access.

E. TAX KEY (3) 9-6-5-12:

That certain Preliminary Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.
4. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.
5. Any unrecorded leases and matters arising from or affecting the same.
6. The land has no recorded access to a public roadway.
7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
8. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
9. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described in the title report.

F. TAX KEY (3) 9-6-5-13:

That certain Preliminary Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.

4. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.

5. Any unrecorded leases and matters arising from or affecting the same.

6. The land has no recorded access to a public roadway.

7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

8. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

9. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described in the title report.

G. TAX KEY (3) 9-6-5-15:

That certain Title Insurance Commitment dated April 23, 2003, issued by Stewart Title Guaranty Company, discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

3. Easements, claim of easement or encumbrances which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage on area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. Unpatented mining claims; reservations or exceptions in patents or in acts

authorizing the issuance thereof; water rights, claims or title to water.

6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

H. TAX KEY (3) 9-6-5-56:

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.

4. Easement A-1 for road and utility purposes (area: 2.28 acres) as shown on survey map prepared by Robert K.Y. Lee, Registered Land Surveyor, with R.M. Towill Corporation, dated September 15, 1994.

5. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.

6. Any unrecorded leases and matters arising from or affecting the same.

7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

8. Claims arising out of the failure to convey the land described in the title report together with an easement of right or access.

I. TAX KEY (3) 9-6-6-5:

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii

Tax Assessor for further information.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.
4. Claims arising out of the failure to convey the land described in the title report together with an easement of right or access.
5. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.
6. Any unrecorded leases and matters arising from or affecting the same.
7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

J. TAX KEY (3) 9-6-6-6:

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.
4. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.
5. Any unrecorded leases and matters arising from or affecting the same.
6. Claims arising out of the failure to convey the land described in the title report together with an easement of right or access.

K. TAX KEY (3) 9-6-6-7:

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.
4. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.
5. Any unrecorded leases and matters arising from or affecting the same.
6. Claims arising out of the failure to convey the land described in the title report together with an easement of right or access.

L. TAX KEY (3) 9-6-6-8:

That certain Status Report dated May 2, 2003, issued by Title Guaranty of Hawaii, Inc., discloses that the land identified by the above tax key number underlying the Project is subject to the following encumbrances:

1. Real property taxes as may be due and owing. Check with the County of Hawaii Tax Assessor for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Grant of Easement and Agreement Regarding Use of Land, dated May 8, 1987, recorded in said Bureau at Liber 20684 at Page 240, made by and between Seamountain-Hawaii Ranch Company, Inc., a Hawaii corporation, and Ka'u Agribusiness Co., Inc., a Hawaii corporation.
4. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.

5. Any unrecorded leases and matters arising from or affecting the same.
6. Claims arising out of the failure to convey the land described in the title report together with an easement of right or access.

**SUMMARY OF THE PERTINENT PROVISIONS
OF THE SALES CONTRACT**

A specimen Deposit Receipt and Sales Contract, Attachment 1 and Addendum "A" ("the Contract") has been submitted to the Real Estate Commission. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE CONTRACT IN FULL, since this summary is NOT A COMPLETE DESCRIPTION of its provisions. The Contract, among other things, covers in more detail the following items:

1. Seller, in its sole discretion, and in addition to any other rights of cancellation or termination reserved to Seller, may elect to cancel the Contract if Buyer defaults under the Contract. If the Contract is cancelled prior to opening escrow, Buyer shall be entitled to receive its entire deposit with Escrow and Seller. If the Contract is cancelled after escrow is opened, Buyer will lose its \$25 deposit with Escrow, and may be subject to a \$200 cancellation fee in the event that the cancellation or termination occurs after Escrow has had the necessary conveyance documents prepared. Seller may, at its option, pursue other legal remedies. If Seller defaults under the Contract, Buyer shall be entitled to specific performance of the Contract, or shall have the right to cancel and terminate the Contract.

2. The closing dates are as described in the Contract.

3. Buyer is required to prepay maintenance fees, Additional Sums, Closing Costs and Prorations as more particularly described in the Contract.

4. The Contract confirms that Buyer has had the opportunity to read and approve the project documents, including the Declaration, the Bylaws, the Condominium Map, the House Rules, the form of Apartment Deed, the Escrow Agreement, this Public Report and all amendments and supplements to all such documents. Buyer (or Buyer's lender, if any) may inspect copies of each of these documents at Seller's sales office. Buyer's right to inspect the Apartment is limited and is more particularly described in the Contract. The Contract also provides that the rights of any construction lender with a mortgage against the Project will be superior to the rights of Buyer under the Contract.

5. Buyer specifically acknowledges and accepts certain enumerated conditions regarding on-going development and marketing of the project stated in the Contract as well as any inconvenience or annoyance which Buyer may experience as a result of such conditions, and expressly waives any rights, claims or action which Buyer might otherwise have against Seller or third parties as a result of such circumstances.

6. If Buyer cancels the Contract because of Seller's default, Seller will repay to Buyer all sums paid by Buyer to the Seller or to Escrow under the Contract, without interest (except that Buyer will get interest on sums held by Escrow in an interest-bearing account in favor of Buyer, if Buyer checked the appropriate box on the first page of the Contract). Buyer agrees that if Seller defaults at any time, Buyer will only have the rights mentioned in the Contract and that Buyer waives any other rights Buyer might otherwise have.

7. Seller shall have certain rights and remedies against Buyer in the event Buyer fails to perform any of the terms and conditions of the Contract, including failure to comply with the pre-closing and closing requirements, as more particularly described in the Contract, including the right to retain Buyer's deposit and the right to other actual and liquidated damages, the right to specifically enforce the Contract, and the right to charge late fees on amounts past due.

8. The Contract prohibits Buyer from assigning the Contract.

9. At Closing, Seller will instruct Escrow to transfer to the Trust Fund (as described in the Declaration) and an account of the Association the sum of \$800 per acre (\$600 to be deposited into the Trust Fund, and \$200 to be deposited into the Association's maintenance reserves); the Trust Fund to be used for roadway and other infrastructure construction, and the maintenance reserves to be used as the Association deems appropriate for construction, maintenance, repair or upgrading of Project improvements and common areas. In consideration of Seller's contribution of the foregoing sum, Buyer agrees to release Seller from any continuing or further obligations to the Project.

10. By signing the Contract, Buyer acknowledges and agrees that the Apartment is being sold in AS IS, WHERE IS condition with no warranties whatsoever. The Contract contains various disclaimers and disclosures about the Project, including disclosures pertaining to current zoning, hazardous materials, environmental concerns, herbicidal and pesticide use affecting the Project's land.

ALL BUYERS SHOULD READ THE SALES CONTRACT IN FULL AS THIS SUMMARY IS NOT ALL-INCLUSIVE AND DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS OF THE SALES CONTRACT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE SALES CONTRACT, AND DOES NOT ALTER OR AMEND THE SALES CONTRACT IN ANY MANNER. IF ANY PROVISIONS OF THIS SUMMARY CONTRADICT THE PROVISIONS CONTAINED IN THE SALES CONTRACT IN ANY WAY, THE PROVISION OF THE SALES CONTRACT SHALL OVERRIDE THE PROVISIONS OF THIS SUMMARY.

SUMMARY OF THE PERTINENT PROVISIONS OF THE ESCROW AGREEMENT

A copy of the Escrow Agreement between the Seller and Title Guaranty Escrow Services, Inc. ("Escrow") has been submitted to the Real Estate Commission. The Escrow Agreement, among other things, covers in more detail the following items:

1. Seller shall deliver an executed copy of each sales contract for the sale of a unit to Escrow. Each sales contract shall be accompanied by the initial deposit required thereunder.

2. Seller shall pay Escrow monies received from Purchasers under sales contracts covering units in the Project. Escrow shall receive and hold in escrow and disburse funds as set forth in detail in the Escrow Agreement. Escrow shall deposit all funds so received in an account at a federally-insured interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. Except for specific circumstances stated in the Escrow Agreement, any interest earned on funds deposited in escrow under the Escrow Agreement shall accrue to the credit of Seller.

3. No disbursements of funds held in escrow shall be made unless and until, among other conditions, (a) an effective date for a Final Public Report has been issued; (b) the Purchaser has been given a copy of said Final Public Report and shall have acknowledged receipt of the same or shall have been deemed to have acknowledged receipt of the same; and (c) Seller or Seller's attorney shall have delivered a written opinion to Escrow that the Purchaser's sales contract has become effective.

4. A Purchaser shall be entitled to a return of funds and Escrow shall pay such funds to such Purchaser, together with any interest that may have accrued to the credit of Purchaser, if any one of the following has occurred: (a) Seller and the Purchaser shall have together requested Escrow in writing to return to the Purchaser the funds of the Purchaser held hereunder by Escrow; or (b) Seller shall have notified Escrow of Seller's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Seller; or (c) the Purchaser has exercised such Purchaser's right to cancel or rescind the contract pursuant to the Condominium Act.

In the event of a default by the Purchaser in any matter being handled by Escrow, upon certification by the Seller of Seller's termination of the sales contract, Escrow will thereafter treat all funds of the Purchaser paid on account of such Purchaser's sales contract as funds of Seller and not as funds of the Purchaser.

5. Except for the sales contract and any note and mortgage that is to be closed by the mortgagee thereof, Escrow shall promptly and diligently arrange for and supervise the execution of all documents related to the Project and shall promptly, and diligently close the transactions and perform such services as are necessary or proper therefor, in the manner established in the Escrow Agreement.

NOTE: ALL BUYERS AND PROSPECTIVE BUYERS SHOULD READ THE ESCROW AGREEMENT AND ALL AMENDMENTS, IF ANY, IN FULL AS THIS SUMMARY IS NOT ALL-INCLUSIVE AND DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS OF THE ESCROW AGREEMENT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE ESCROW AGREEMENT, AND DOES NOT ALTER OR AMEND THE ESCROW AGREEMENT IN ANY MANNER.

EXHIBIT J

PAHALA PLANTATION CONDOMINIUM PROJECT **REGISTRATION NO. 5144**

DISCLOSURE ABSTRACT **as of June 25, 2003**

This disclosure abstract is made by HAWAIIAN ISLAND DEVELOPMENT CO., INC., a Hawaii corporation ("the Developer"), as the owner of the land underlying the Pahala Plantation condominium project ("the Project"), which Project consists of various parcels of land containing an approximate total area of 1,918.58 acres at District of Ka'u, Island and County of Hawaii, State of Hawaii, and identified by the Tax Map Keys and the respective areas all as more particularly set forth in Exhibit A attached to this Public Report and made a part hereof by reference. The Developer is exercising, or has exercised, its right to subdivide the parcels into two-hundred two (202) individual water tank structures serving as condominium apartment units (hereinafter referred to as "Agricultural Unit" or "Unit") and to designate portions of the Project as common elements and limited common elements by recording the Declaration of Pahala Plantation Condominium Property Regime in the Bureau of Conveyances of the State of Hawaii and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("the Declaration"). This disclosure describes the legal status of the Project, including the common elements and all Agricultural Units therein, as of the date of the recordation of the Declaration and the physical condition of the Project as of the date hereof.

1. **Project:** Pahala Plantation
 District of Ka'u
 Island and County of Hawaii

2. **Developer:** Hawaiian Island Development Co., Inc.
 931 University Avenue, Suite 105
 Honolulu, Hawaii 96826
 (808) 951-8976

3. **Managing Agent:** Self-managed by the Association

4. **Real Estate Broker:** Hawaiian Island Homes Ltd.
 931 University Avenue, Suite 207
 Honolulu, Hawaii 96826
 (808) 951-8979

5. **Maintenance Fees:** The estimate of initial maintenance fees and the breakdown of the estimated maintenance fee disbursements, which are certified to be based on generally accepted accounting principles, is set forth in Exhibit K attached to this Public Report and is made a part hereof by reference. The Developer advises that the maintenance fees of a condominium project are difficult to estimate prior to actual operation of the Project and even if maintenance fees have been accurately estimated, such fees will tend to increase in an inflationary economy and as improvements, such as the Project roadways, age. The estimated maintenance fees and monthly fees for the Units are based on the latest information available to the Developer and the Association and are subject to revision based on actual costs for items enumerated. Maintenance fees can vary depending on services desired by Unit owners. Each buyer should check the attached maintenance fee schedule to see what services are included therein.

6. **Description of Project and Location.**

a. **Description of the Project.** The Project will be an agricultural farming community containing uses supportive of agriculture practices, such as farming, light ranching and grazing. The Project, based on the plans, drawings and specifications dated June 23, 2003, prepared by William H.Q. Bow, P.E., consists of:

1) Two-hundred two (202) Agricultural Units, which shall initially be water tank structures for agricultural use, to be installed by the Developer after closing on the sale of a Unit in the approximate locations shown on the Condominium Map;

2) The various separate land areas located in and around the respective Agricultural Units, as shown on the Condominium Map within dashed lines designed by the legend "Limited Common Element" on the Condominium Map, appurtenant to and for the exclusive use of the Unit within such area (such areas are hereinafter referred to as the "Agricultural Areas"). Except as otherwise provided in the Declaration, the Agricultural Areas shall be subject to the exclusive possession, occupancy, use and control of the owner of the appurtenant Unit, and may be used only for the purposes described in and permitted under the Declaration, the Bylaws and applicable law.

3) The Project common elements including without limitation, all natural and concrete drainage ditches and culverts, irrigation ditches, swales, berms, flumes, hiking trails, walkways, hunting areas, water reservoir and roadways in the Project, improved and unimproved private roadways, any parking areas that may be created by Developer and/or the Association, any trees and other landscaping located thereon not located on limited common elements, wells and all other pipelines, water pumps and well facilities, all sewer lines, electrical equipment, wiring, utility yards and equipment, pipes and other central and appurtenant transmission facilities to be installed on, over, under and across the Project which serve more than one Unit for services such as but not limited to electricity, water, gas, sewer, telephone, radio, television and cable television signal distribution; and

- 4) An AOA resident manager's office and/or a sales office, if any.

Each Agricultural Unit owner has the right under the Declaration to alter such owner's Unit by removing or extending any existing improvements and constructing additional improvements within the Agricultural Area appurtenant to such Unit, subject to all requirements of law and the Declaration. The Units may be altered to include residential dwellings for farmers who wish to live on the properties they farm. Additionally, the Units may be altered to include commercial ancillary farm buildings. The Project may also include parking and public areas to accommodate public access to hiking, hunting, gathering and other public uses, to be designated by the Developer on the final condominium map. Portions of land within the Project are currently being farmed. Approximately 638 acres are under license to forty-five (45) farmers. Produce includes macadamia nut, coffee and small vegetable farms. Cypress and eucalyptus trees cover portions of land that may be unusable for farming but can be used for grazing or other types of low grade farming.

b. **Location of the Project.** The Project is located in agricultural lands of the Ka'u District of the Island of Hawaii. The town of Pahala is located east of the Project and is located off of Mamalahoa Highway. To the northeast of the Project are the areas of Wood Valley, Kapapala, and the Hawaii Volcanoes National Park. To the southwest of the Project lies the area and town of Naalehu.

7. **The Agricultural Units.** There will be a total of two-hundred two (202) Agricultural Units consisting of water tank structures to be installed by Developer. The Units are initially intended for agricultural use and the approximate location of the Units are as shown on the Condominium Map. Each Agricultural Unit is designated as a condominium apartment and a separate freehold estate pursuant to the Act. Each Unit consists of the entire physical structure (including exterior finishes) and space within such structure that makes up the Unit as shown on the Condominium Map. The Agricultural Units are more particularly described below and in the Declaration. Located in and around the respective Agricultural Units are the Agricultural Areas, configured into land areas as follows: 0 to 5 acres, 5 to 10 acres, 10 to 15 acres, 15 to 20 acres, and 20 or more acres. Said Agricultural Areas, as shown on the Condominium Map, shall be appurtenant to and for the exclusive use of the Unit within such area.

Each Unit is identified by a Unit number. Each Unit as so designated and identified by a Unit number is located in the Project as shown on the Condominium Map. The approximate dimensions of the initial Agricultural Units consist of the exterior height and diameter measurements of the Unit. In the event the Units are altered or expanded as permitted by the Declaration, and should such Unit be converted to a residential structure, the approximate net living area of each such altered Unit shall consist of the enclosed portion of each such Unit measured from the interior surface of such Unit's perimeter walls and shall be reported separately from the areas of agricultural, residential and/or commercial structures, lanais, patios and garages, which may be added to the such Units and any structures built within the Agricultural Area appurtenant to such Unit which may form a part of such Unit.

8. **Existing Land Use / Zoning Regulations:**

a. **Agricultural Project District.** The Project is currently zoned Agricultural, and will be rezoned to Agricultural Project District zoning ("APD") by the County of Hawaii upon approval of Developer's application to the Department of Planning of the County of Hawaii. The uses currently permitted in the Agricultural district will be permitted under APD zoning. APD zoning permits a mix of small-scale agricultural activities and associated residential uses as well as larger agricultural projects. APD zoning is an amendment to Chapter 25 of the Hawaii County Code, which changes the district boundaries in accordance with the individual APD. The proposed APD is consistent with the intent and purpose of the zoning regulations of the Hawaii County Code, substantially conforms to the Hawaii County general plan, and provides an environment of sustained desirability and stability for the district.

In the Project, the Land is presently configured into lots with areas of 0-5 acres, 5-10 acres, 10-15 acres, 10-20 acres, and 20 or more acres. The Developer anticipates that issues such as overall density and proposed land uses will be presented and discussed as a master conceptual plan before the Hawaii County Council, appropriate County agencies and interested parties so as to facilitate the adoption of such plan into an APD enabling ordinance. After adoption of an APD enabling ordinance, Developer will submit detailed site plans for the APD to the Planning Department, showing planned infrastructure improvements and information required to complete the application in accordance with the conditions of the enabling ordinance and Ch. 91, HRS. After a series of review, comment, public hearing and approval by various County agencies, the APD may then be established. The entire process is expected to take approximately twelve (12) months to complete.

Roads and electricity are the major infrastructural requirements for the area and will be upgraded to meet County requirements for approval of the APD zoning. Developer's construction and installation of such Project improvements, however, will not commence until after County approval and planning has been accomplished as described above. Moreover, while the anticipated APD zoning will permit buyers to build residential houses on their lots, buyers' construction of houses may not commence until after the Project roadways are brought up to County standards. Funding for infrastructure improvements will be provided in part by funds Developer will contribute from a portion of each buyer's purchase price.

b. **Public Access.** The Project will comply with the requirements of Chapter 34, HRS regarding public access to shoreline and mountain areas. Currently existing unpaved plantation roads provide sufficient access to mountainous areas within the Project. As the Project is not situated near any shoreline, there is no requirement to provide access to such areas. The Project may include the development of parking areas for recreational visitors and hunters, and discussions with the County regarding the same are underway. Public access ways to such areas, the dedication of public access roads, and costs to be assumed by the County for improvements and maintenance of public access ways will be determined through discussions with the Director of Planning.

9. **Warranties**: Except as set forth herein, the Developer cannot determine whether the Project contains any existing legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes. The Developer does not give any warranties or assurances that the Units can be expanded or that variances are obtainable from the County of Hawaii for any proposed improvements. The Project, the Units, the Agricultural Areas and anything installed or contained therein are being sold as "AS IS" condition "WITH ALL FAULTS" by the Developer, without any warranties whatsoever, express or implied. Article IV, Section D.1 of Addendum "A" to the Deposit, Receipt and Sales Contract used in connection with the Project provides, in part, as follows:

1. **Seller Makes No Warranties or Promises**. Buyer understands and agrees that the Agricultural Unit and the Agricultural Area are being sold "**as is, where is**" with all faults and that Seller makes no warranties or promises of any kind, express or implied, about the Agricultural Unit, the Agricultural Area, the property or the Project (including the common elements of the Project), or about any furnishings, fixtures or anything else installed, attached, affixed or otherwise contained in the Agricultural Unit, the Agricultural Area, the property or the Project (including the common elements of the Project), including any warranties or promises of "merchantability", "workmanlike construction" or "fitness for a particular use or purpose".

Without limiting the generality of any of the foregoing, Seller makes no warranties or promises: (a) that the Project or any improvements in the Unit, the Agricultural Area, the property or the Project (including the common elements) will be free from damage; (b) regarding the value of the Project; (c) regarding the physical or environmental condition of the Project, including, without limitation, the existence of hazardous materials; or (d) regarding the suitability, conformance, compliance or lack of compliance of the Project with any state, federal, county or local law, code, ordinance, order, permit, administrative requirement, or regulation, including, without limitation, those related to the consolidation and subdivision of land, the operation and use of the Project and accessibility of the Project by persons with disabilities. In other words, Seller makes no warranties or promises at all.

Buyer for itself and its successors, heirs and assigns, releases Seller and its affiliates, and their and each of their respective past, present and future directors, officers, managers, employees, shareholders, managers, trustees, agents, and each of their respective successors and assigns from and waives any claim, action or liability which arises from or relates to any latent or patent defect in the Project, the Agricultural Unit or the Agricultural Area, known or unknown, which exists now or in the future, or which arises from or relates to any lack of compliance of the Project with any state, federal, county or local law, code, ordinance, order, permit, administrative requirement, or regulation, that Buyer may have against Seller under

any federal, state or local law, ordinance, rule or regulation now existing or hereafter enacted or promulgated, including without limitation, those related to pest management (pesticides), weed and fungus control (use of herbicides and pesticides), irrigation of any and all Project and surrounding lands with reclaimed water, treated effluent, or other sources of non-potable water, hazardous materials and environmental conditions or matters in, on, under, about or migrating from or onto or into the property or the Project, or by virtue of any common law right relating to pest management (pesticides), weed and fungus control (use of herbicides and pesticides), irrigation of any and all Project and surrounding lands with reclaimed water, treated effluent, or other sources of non-potable water, hazardous material and environmental conditions or matters in, on, under about or migrating from or onto or into the property or the Project. Seller and Buyer agree that this release from liability has been specifically negotiated between Seller and Buyer.

Buyer acknowledges and agrees that Seller's disclaimer of warranties contained in this Section D.1 is an essential element in the determination of the low purchase price for the Unit being sold to Buyer. This means that the Unit would not have been sold to Buyer for the amount of the purchase price stated in this Agreement without Seller's disclaimer of warranties.

10. **Use Restrictions.**

a. **Permitted Use.** The initial Agricultural Units shall be used as water tanks for agricultural, farming and accessory purposes. In the event the initial Agricultural Units are replaced, expanded, or modified as permitted in the Declaration, the Agricultural Units may be used for any purposes permitted by applicable laws and ordinances and by the covenants and restrictions contained in the Declaration and in the Bylaws. The Agricultural Areas appurtenant to each Agricultural Unit may be use for any purposes permitted by current zoning for the Land and as permitted by all applicable laws and ordinances and the covenants and restrictions contained in the Declaration and in the Bylaws, including, without limitation, farming, agricultural processing and other accessory uses. Each Unit owner may use all limited common elements appurtenant to such owner's Unit for any use deemed appropriate by such owner, so long as such use is permitted by law and does not interfere with the use by other owners of the common elements or the limited common elements appurtenant to such other owners' Units. The Developer makes no representations or warranties, express or implied, with respect to any of the foregoing uses, and each Unit owner is responsible for obtaining all necessary permits and approvals required to maintain such uses and structures.

b. **Nuisance.** The owner of a Unit shall not use the same for any purpose which will injure the reputation of the Project. Except as provided in the Declaration, such owner shall not do or suffer anything to be done or be kept in, on, or around said Unit or its appurtenant Agricultural Area or elsewhere which will jeopardize the safety or soundness of the Project, or interfere with or

unreasonably disturb the rights of other owners, or increase the premiums for fire insurance or any other form of insurance paid by the Association or any other Unit owner, or which will materially alter, hinder, interfere with or create flooding or a flooding hazard on the Project, material erosion of the natural environment or which will reduce the value of any Unit, common element, or limited common element appurtenant to the Unit of any other owner, or impair any easement or hereditament or alter the appearance of the exterior of such owner's Unit or limited common element without conforming to the provisions of the Act and the Declaration.

c. **Hazardous Materials.**

(1) Restriction on Use. Each Unit owner, and any party holding by or through or under such Unit owner or occupying the Unit or Agricultural Area, shall comply with all federal, state and local statutes, regulations, ordinances or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment ("the Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, "the Hazardous Materials"). No Unit owner or occupant shall use, generate, manufacture, store, release, dispose of or permit to exist in, on, under or about any Unit, Agricultural Area, the common elements or any portion of the Project, or transport to or from any portion of the Project any Hazardous Materials except in compliance with the Environmental Laws.

(2) Notice. A Unit owner or occupant shall give written notice to the Board within three (3) business days after the unit owner learns or first has reason to believe that (i) a discharge of Hazardous Materials has occurred, or (ii) a Hazardous Materials claim has been made by any governmental agency or third person, or (iii) any report, notice or complaint has been made to or filed with any governmental agency concerning the presence, use or disposal of any Hazardous Material at the Project. The notice shall be accompanied by copies of (i) all permits, licenses, and proofs of disclosure to governmental agencies pertaining to the hazardous material that is the subject of the claim, (ii) copies of any material safety data sheets pertaining to such substances that are required by applicable law, and (iii) copies of any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the Unit owner or occupant. The Association and any Unit owner shall have the right to join and participate, as a party, if it so elects in any actions initiated in respect of any hazardous materials claims.

(3) Indemnity. If the generation, use, transportation, storage, or disposal of Hazardous Materials by a Unit owner, or any party holding by through or under such Unit owner or occupying or using such owner's Unit or Agricultural Area, results in contamination of a Unit, an Agricultural Area or the common elements, the Unit owner shall hold harmless the Association, the Board and all other Unit owners from all damages, including foreseeable and unforeseeable consequential damages, diminution in value of a Unit, losses and damages for the loss or restriction on use of a Unit, any part of the common elements or of any amenity of the Project and sums paid in settlement of claims, all reasonable expenses, including attorneys' fees, consultant fees and expert

fees which arise as a result of any investigation by the association, the defense of hazardous materials claims (whether or not formal administrative or legal action is filed) by the Association or any Unit owner; and all costs incurred in connection with any investigation of site conditions or any clean-up remedial, removal, or restorative work required by any governmental agency because of a Hazardous Material present in the soil or ground water on or under the Unit or Agricultural Area.

(4) Cleanup.

(a) By an Owner. Without limiting the foregoing, if the presence of any Hazardous Material at a Unit, Agricultural Area or the common elements caused or permitted by an owner results in any contamination of the Project, the owner shall promptly take all actions at his or her sole expense as are necessary to return the project to the condition existing prior to the hazardous discharge; provided that the Board's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

(b) By the Association. If the presence of any Hazardous Material on the common elements results in any contamination of the common elements, the Association shall promptly take all actions as are necessary to clean up and restore the common elements in accordance with all hazardous materials laws, and all owners shall be severally liable for the cost of any such cleanup and restoration as a common expense to the extent such costs are not chargeable to the owners of one or more units, as provided in the Declaration, and are not reimbursed to the Association by those owners.

The above obligations shall survive the termination of the ownership of a Unit in the Project.

d. **Prohibited Alterations.** Except as otherwise specifically provided in this Declaration or in the Bylaws, an Agricultural Unit owner shall not make any material alterations of or any additions to the exterior of a Unit or to any other portion or portions of the Agricultural Area or other limited common elements appurtenant to a Unit or the common elements unless otherwise specifically permitted by applicable zoning and building rules, regulations and laws. The planting of crops and installation of fences and other agricultural fixtures and equipment in the ordinary course of farming shall not be considered a material alteration to the Agricultural Area.

e. **Drainage.** No Unit owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any common element or area designated by the Association as a drainage easement. For the purpose hereof, "normal" drainage is defined as the drainage that exists at the time the Unit or common elements, or portions thereof, as the case may be, is or are conveyed to a Unit owner or the Association by Developer. Normal drainage may include drainage from common element areas or other property across any lot or other common element areas. This use restriction

shall not be deemed to restrict or otherwise affect rights reserved to Developer to alter or change drainage patterns within or upon the Project.

f. **Limitation on Leasing.** Any lease agreement for a Unit in the Project or license agreement for any Agricultural Area shall provide that the terms of such lease or license shall be subject in all respects to the provisions of the Act, this Declaration, the Unit owner's Deed, the Bylaws and rules and regulations of the Association promulgated thereunder and that the failure of any party to such lease or license to comply with the terms of such documents shall be a default under the lease.

g. **Setback.** No building or structure (but not including roads, walkways, fences, walls or underground utilities) may be located within the Agricultural Area appurtenant to each Unit which is closer than twenty (20) feet (measured from any portion of such building or structure) to the interior boundary lines separating and defining the respective Agricultural Area appurtenant to the respective units.

11. **Roads.**

a. **Access to the Project.** Primary access to the Ka'u District area is by Hawaii State Highway 11, which crosses through the district and connects to Hilo on the east and Kona on the west. Access to the Project from the town of Pahala is by way of Mamalahoa Highway.

b. **Access within the Project.** Within the Project, each Agricultural Unit and the limited common element land areas appurtenant to such Unit has immediate access to the paved and unpaved common element roadways of the Project as shown on the Condominium Map. The width of the travel surfaces on the Project roadways is between approximately 16 to 20 feet on each of the paved roadways and between approximately 12 to 20 feet on each of the unpaved roadways. The current existing paved roadways are Roads A and B and are shown on the Condominium Map. All other existing roadways in the Project are currently unpaved (collectively, all paved and unpaved Project roadways are hereinafter referred to as "the Project roadways"). The Project roadways, including a five (5) foot shoulder area extending from the edge of all Project roadways, will be held and maintained by the Association as private roads. Unit owners, and anyone holding and interest by through and under such owners, shall have a non-exclusive access easement over the Project roadways (subject to the right of the Association to dedicate such roads to governmental authority as set forth in the Declaration).

c. **Roadway Improvement and Detour Easement.** Developer reserves to itself and the Association, acting through its Board, the right and an easement to enter upon, across, over, in, and under any portion of the Project, including the Units, common element areas and the roadways, for the purpose of roadway installation, repair, maintenance, road widening, shoulder installation and other related purposes, and, in the event of flooding, an easement to enter upon, across, over, in, and under any portion of the Project, including the Units, common element areas

and the roadways, for the purpose of providing detours around the flooded and washed-out areas so as to provide continued access to all Agricultural Units within the Project. The Association shall have the right to widen any Project roadway to a width of thirty (30) feet from the average midline of the existing Project roadways and to temporarily or permanently locate detours as far upstream or downstream from a flooded or washed-out area as is reasonably necessary to provide safe and reasonable passage along the Project roadways. Reasonable efforts shall be made to use these easements so as to disturb as little as possible the uses of the Unit owners, the Association and Developer, as applicable, to prosecute such roadway and/or detour work promptly and expeditiously, and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work. In the event of a permanent road widening or detour, the Association shall file an amendment to the Condominium Map within 30 days of completion to reflect such changes.

The roadway at the junction of Roads C and F where Moaula Stream traverses is presently washed-out due to flooding. The detour around this washed-out area will be maintained over the Agricultural Areas appurtenant to Units 11 and 18 by the Association as an unimproved roadway until such time as the original roadway and stream crossing is restored or a decision is made by the Association to abandon the original roadway and stream crossing.

12. **Realignment of Easements.** Developer reserves unto itself, its successors and assigns, the right to delete, relocate, realign, reserve and grant any and all easements and rights-of-way over, under and on the common elements and limited common elements deemed necessary or desirable in Developer's sole discretion, including, without limitation, easements and/or rights of way for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways, provided that such easements and/or rights of way shall not be located on or within any existing structure in the Project and shall not be exercised as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by the Unit owners. Each and every party acquiring an interest in the Project, by such acquisition, consents to such granting and/or realignment of easements and/or rights of way and to the recordation of any and all documents necessary to effect the same, including any amendment or amendments of the Declaration; agrees to execute such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer, its successors and assigns as such party's attorney-in-fact with full power of substitution to execute such documents and instruments and to do such things on such party's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

13. **Water Rights.** Developer has reserved to itself and the Association, acting through its Board, all water and water rights within and/or appurtenant to the Land or any easement areas over, under, across, along, upon or through which easements or other rights are hereby granted, including, without limitation, all surface and subterranean waters on and under the Land, and all rights, if any, to wells, springs, streams, and percolating waters located on or under the Land, with

the right to assign and transfer any such water and/or water rights to the State of Hawaii, the County of Hawaii, or other appropriate governmental agency, or any public or private utility or other corporation, partnership, individual or entity. Unit owners and anyone holding by through or under a Unit owner shall not drill any well within the Project except after first obtaining the written consent of the Association, which consent may be denied if such well will interfere with the Associations contractual rights and obligations to provide water to the County of Hawaii or any other party. Nothing in this section is a promise by Developer or the Association to provide water to any Agricultural Unit or a promise by Developer or the Association that any Unit owner acquires any rights to the water by purchasing the Agricultural Unit.

14. **Recreational Easement.** Developer reserves to itself and to the Association, acting through its Board, the right to designate and grant easements, exclusive or nonexclusive, for public access by right-of-way from the Project roadways to areas in the mountains where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding, and other recreational purposes, and where there are existing mountain trails; provided, however, that such easement rights must be exercised in such manner as to not unreasonably interfere with the use of the Project by the Unit owners and those claiming by, through or under the Unit owners.

15. **Dedication of Common Elements.** Developer has reserved to itself and to the Association, acting through its Board, the right to dedicate any portion of the common elements, including the Project roadways, but excluding the Agricultural Units and the Agricultural Areas appurtenant thereto, and any easement or areas to the County of Hawaii or to the State of Hawaii or other governmental or quasi-governmental agency, provided such dedication shall be in accordance with all ordinances, rules and regulations then in effect regarding dedication of such property. In the event the Association shall pursue dedication of any portion of the common elements, it shall be the responsibility of the Association, at its expense, to improve to dedicable standards all such property to be dedicated. Dedication of any portion of the common elements shall not relieve the Association of its maintenance obligations pursuant to the Declaration, except to the extent agreed by the terms of the dedication.

16. **Farming Reservation.** Each Unit owner shall have the unrestricted right to engage in any type of farming operation or agricultural commercial activities within the Agricultural Areas appurtenant to such owner's respective Agricultural Unit, including, but not limited to, all activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other nuisances to be discharged or emitted over and upon the Project, subject to the rules and regulations of the Association with respect to the same.

17. **Erosion Control and Drainage Easements.** Developer reserves to itself and to the Association, acting through its Board, an easement to install and maintain within the Agricultural Areas such erosion control measures (including, without limitation, grading, planting of hedges, trees, grasses and construction and installation of ditches, swales, berms, flumes, revetments, retaining walls and pilings) as may be necessary to implement soil conservation measures, to prevent

erosion of the Land, and to improve drainage of storm waters and run-off over and across the Project and to divert waters from anywhere within the Project into existing streams, flumes, canals, ditches and other water courses located within the Project. Nothing in this section is a promise by Developer or the Association to implement such erosion control and drainage measures or shall be construed as to relieve the obligation of each Agricultural Unit owner and those holding by through or under such owners to implement and maintain such measures within each such owner's Agricultural Areas.

18. **Water.**

a. **Water Supply.** According to the Ka'u River Basin Study dated February 1994 and prepared by the U.S. Department of Agriculture Soil Conservation Service ("the River Basin Study"), hydrology in the Pahala and surrounding areas exists as follows:

All water sources in the study area have little storage capability and are highly responsive to fluctuations in rainfall. Poor soil conditions, frequent seismic activity, and steep slopes have precluded, for the most part, the construction of large storage facilities in the study area. . . .

Most springs and perched sources have greatly diminished output during the dry season. Nevertheless, they supply 94 percent of the current water use in the study area. . . . In the Pahala and Na'alehu regions, perched sources in the Ka'u area include about forty tunnels that were dug into the hillsides to develop perched water as of 1943[.] The tunnels usually are about four-foot high and three-foot wide. They were dug at the contact of the ash and lava and follow the ash layer surface. Water usually occurs in lava filled gullies in the ash layer. . . . These perched water sources have been successfully developed in the past and used for fluming sugar cane to the mill.

. . .
Sources of water for the domestic systems include catchment systems, wells, tunnels or springs, or delivered water. . . . The County operated municipal system for Pahala relies on the Alili Tunnel and supplements from the Pahala well during dry weather. Average usage in 1991 was 0.3-Mgd.

Related resource concerns raised in the River Basin Study are as follows:

b. **Water Quantity.** The major natural resource concern in the area is insufficient supply of Agricultural and rural water during drought periods. At the time of the Study, rural and Agricultural water was supplied from two wells, one spring development and two tunnel sources. Insufficient water supply is caused by the seasonally fluctuating water sources, inadequate storage facilities, and increased demand caused by a population increase. Development of additional water sources and increased storage capacity was cited as ways to alleviate the water shortage

problem. There is a need to improve the water distribution system and provide additional storage to expand service.

c. **Water Quality.** Deterioration of water quality is another concern. Protection of groundwater resources is necessary due to use of shallow well basal water and shore line spring water. Controls over the use of household cesspools, animal waste systems, and disposal of industrial waste from raising crops will be required.

A copy of the pertinent provisions of the River Basin Study is attached hereto as **Exhibit 1**. Based upon past and current usage, the area has sufficient water allocation; however, the information set forth in this section is only a summary of the observations and recommendations made by the engineers and consultants in **Exhibit 1** and is not intended, nor should be construed by its incorporation herein, to be a representation or warranty of the Developer or more important than any other observation or recommendation contained in said **Exhibit 1** and not contained herein.

19. **Soil Conditions; Drainage.** In addition to water studies the River Basin Study referenced above describes various resource concerns and observations for the general Pahala area, summarized as follows:

a. **Erosion/Sedimentation.** Accelerated erosion on farmland is a resource concern caused and aggravated by human activities. Accelerated erosion includes sheet, rill, ephemeral gully, gully and streambank erosion. Sheet, rill and ephemeral gully erosion in macadamia nut and citrus orchards is a problem due to the lack of ground cover beneath the canopy of mature trees, which is desirable for harvesting and crop development. Sheet and rill erosion on mature orchards is approximately 8 tons per acre per year. Harvesting also causes a problem by wind erosion on dry soil caused by mechanical sweepers. Sedimentation causes problems by plugging culverts and necessitating cleanup of road. Storm runoff erodes streambanks and causes headcutting along stream channels, ultimately resulting in the deposit of eroded sediments into flat areas, culverts and bridges, causing such areas to have diminished flow capacities.

b. **Flooding.** The area is susceptible to flooding due to inadequate capacity at bridge crossings, and results in severe road flooding two to three times a year. The bridges were built in the 1930s, are poorly sized, were not built in anticipation of changes in land use, were misplaced in relation to the stream channel geometry, and were installed in attempts to siphon the stream under the bridge.

20. **Exposure to Natural Hazards.** The Project is not generally susceptible to natural hazards, however, the Project area is situated on the southwest slope of Mauna Loa, which erupts less frequently than Kilauea but produces a greater volume of lava in a shorter period of time. This may periodically affect some or all of the Units. Associated with volcanic eruptions are earthquakes, which are mostly small although larger ones occasionally occur. Feral pigs are abundant and cause extensive damage to native vegetation and are hunted for sport and sustenance. Mongoose have become pests and continue to threaten the native bird population.

Other various nuisances, risks and hazards include noise, dust, smoke, soot, ash, odor, other adverse environmental conditions of any other kind or other nuisances and annoyances to buyers (including but not limited to those attributable to winddrift and other weather factors) created by historical, existing and prospective surrounding agricultural, industrial, commercial, development, sales and other non-residential uses and activities (including ongoing development, construction and sales activities at the Project and on properties in the vicinity of the Project). These uses and activities include, but are not limited to the possibility of:

- (a) maintenance of common element areas including pest management (pesticides), weed and fungus control (use of herbicides and pesticides);
- (b) construction, development, grading, improvement, sales and maintenance of adjacent and surrounding properties, including residential and non-residential property and roadways;
- (c) irrigation of any and all surrounding lands and the common element areas with reclaimed water, treated effluent, or other sources of non-potable water; and
- (d) recreational land uses in the vicinity, such as hunting and gathering, which may create noise and traffic congestion.

All or portions of the Project may be subject to steep grades, filled grounds, sandy soil and/or erosion from heavy rainfall. Buyers should seek the advice of appropriate experts, such as geotechnical engineers, to help buyers determine what effect, if any, such steep grades, filled grounds and/or sandy soil, as well as adverse weather conditions, may have on buyers' use and development of their Units and limited common elements. Developer makes no representations or express or implied warranties with respect to the condition of the soil or site conditions of any of the Units. Nor does Developer make any representations or warranties regarding soil compactation or drainage for the Units or the need for, or the extent of any required, finished grading, fill and/or drainage improvements in connection with construction of an Unit.

21. **Developer's Improvements.** Developer shall have the right, at any time prior to the conveyance of the Units to third party purchasers, to construct improvements on the limited common elements and to amend the Declaration and the Condominium Map.

22. **Roadway Maintenance; Trust Fund.** Presently, certain of the existing roadways within the Project area are unusable and/or unimproved. As described in the Declaration, until the Project roadways are upgraded to County standards, residential dwelling structures cannot be constructed by Unit owners.

To achieve compliance with the requirements of the County Code, and to facilitate the timely construction and installation of the Project improvements and infrastructure, including the roadways, Developer shall establish a trust fund on behalf of the Association to be used toward the construction of such improvements and infrastructure ("the Trust Fund"). The Trust Fund shall

be held separate and apart from any reserves the Association is required to maintain under the Act, and shall be used for Project improvements and infrastructure.

Developer shall deposit an initial \$1,000,000 into the Trust Fund. Additionally, Developer shall deposit funds into an account for the start-up of the Association's maintenance reserves. Developer will make these contributions by setting aside a total of \$800 per acre upon the closing of the sale of each Unit and by disbursing such \$800 per acre as follows: (a) \$600 per acre shall be deposited into the Trust Fund, and (b) \$200 per acre shall be deposited into the Association's maintenance reserve account. The foregoing contributions are being made on behalf of the owners of Units in the Project and shall be credited accordingly in any reserve study performed for the Project. Because the Units and the Project are being sold in "AS IS" condition with "ALL FAULTS", the foregoing sums may be insufficient to make all necessary repairs and improvements in the Project, and the Unit owners may be required by the Association to contribute additional sums for repairs and maintenance in the future. Developer will not contribute any additional sums to the Association in excess of the foregoing amount.

23. **Declaration of Restrictive Conditions.** Developer plans to record a Declaration of Restrictive Conditions that states, among other things, that (a) the Association shall be obligated for the perpetual repair and maintenance of the common elements and certain limited common elements, including, without limitation, the private roadways and drainage system referred to therein, and (b) future additions and alterations to Units, limited common elements and common elements shall require the review and approval of the Director of the Department of Planning and the Association.

24. **Existing License Agreements.** Approximately 638 acres of the land underlying the Project are currently being farmed under license to 45 farmers as set forth in the Condominium Map. Prior to offering the Units for sale to the general public, Developer plans to offer to such farmers the right of first refusal to purchase the Unit which corresponds with their respective licensed lands. If a farmer does not wish to purchase his or her respective Unit on the terms and conditions offered by Developer, then Developer may offer the proposal to any other party, subject, however, to the buyer's agreement that said buyer is purchasing the Unit subject to the existing license agreement. It is intended that Developer shall have these rights as long as the license terms are in effect.

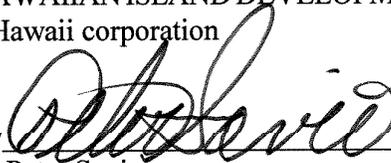
25. **General Disclaimer.** Because the Units in the Project are being sold by the Developer in "AS IS" condition with "ALL FAULTS", each buyer should carefully review the exhibits attached to this Disclosure in their entirety. Furthermore, each buyer should inspect the buyer's Unit and the Project or have the Unit and the Project inspected by buyer's own experts to buyer's complete satisfaction.

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DATED: Honolulu, Hawaii, June 25, 2003.

HAWAIIAN ISLAND DEVELOPMENT COMPANY, INC.,
a Hawaii corporation

By

A handwritten signature in black ink, appearing to read "Peter Savio", written over a horizontal line.

Peter Savio
Its President

Developer



**United States
Department of
Agriculture**

**Soil
Conservation
Service**

KA'U RIVER BASIN STUDY

Hawaii County, Hawaii

February 1994

Prepared for and in cooperation with

County of Hawaii

Ka'u Soil and Water Conservation District

PREPARED BY

U.S. DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

HONOLULU, HAWAII

EXHIBIT 1



"To lead the way in helping our customers conserve, sustain, and enhance Hawaii's natural resources through efficient service of the highest quality."

EXECUTIVE SUMMARY

The purpose of this study was to provide an evaluation of the soil and water related problems and concerns in the Ka'u area. Scoping of the problems focused the study to inadequate agricultural water supply coupled with a lack of crop suitability maps. The study area was divided into seven subareas based on similar land-use. With many external influences and unknowns acting upon the area, exact formulation of alternatives was not possible. This study can be used to stimulate dialogue and further action among decision makers and stock holders regarding agriculture in the Ka'u area.

For the inadequate agricultural water supply problem, alternatives were formulated for each subarea. These alternatives show some infrastructure for options that could be available if sponsors were found for the project. At that time, a more detailed analysis of a given alternative would be made.

Analysis of the area for crop suitability of selected crops was accomplished using a Geographical Information System (GIS). Rainfall, temperature, pan evaporation, land use and soil parameters were analysed to produce maps showing areas of good, fair and poor suitability for coffee, Macadamia nuts, and general truck crops.

This study can be used to stimulate dialogue and further action among decision makers and stakeholders regarding agriculture in the Ka'u area.

INTRODUCTION

The County of Hawaii and the Ka'u Soil and Water Conservation District (SWCD) had requested United States Department of Agriculture's (USDA) assistance to improve domestic and agricultural water supply, and address other soil and water problems in the Ka'u area. Twenty-four items were identified from public meetings as being concerns of the sponsors and general public (Table 1). USDA participation was needed to provide comprehensive evaluation of the resource concerns and leadership in coordinating the study with other federal, state, and county agencies and private industry. The Soil Conservation Service (SCS) was the lead USDA agency and coordinated the USDA Cooperative River Basin Study.

The County of Hawaii and the Ka'u SWCD were the study sponsors. The Hawaii County Council unanimously adopted Resolution Number 45-89, on April 19, 1989, which gave their support for the Ka'u River Basin Study. The Application for Federal Assistance was filed by the County of Hawaii, in April

1989. The study was authorized by the Chief of the SCS on September 22, 1989.

The County of Hawaii's Department of Water Supply (DWS) has county-wide authority to operate and maintain public water systems on the Island of Hawaii. The County of Hawaii has the authority to levy taxes on real property, fund resource programs within its boundaries, and acquire land rights needed for program implementation.

Through the authority of Chapter 1809 Hawaiian Revised Statutes (HRS) and the Hawaiian County Grading Ordinance, the Ka'u SWCD has review authority over agricultural and construction activities that impact soil and water resources within their jurisdiction. The SWCD represents about 24 percent of the land-use cooperators in the Ka'u District.

TABLE 1 Summary of Scoping Concerns from Meetings and Response Sheets-1989/90¹

Problem or Concern	Ranking
Flooding	High
Agricultural Water Supply	High
Wind Erosion	High
Rural Water Supply	High
Sheet & Rill Erosion	High
Streambank Erosion	Medium
Gully Erosion	Medium
Ephemeral Gully Erosion	Medium
Water Quality	Medium
Cultural Resources	Medium
Wetlands	Medium
Important Agricultural Lands	Medium
Groundwater	Medium
Municipal & Industrial Water	Medium
Visual Resources	Medium
Ocean Ecosystem	Medium
Threatened & Endangered Species	Medium
Transportation	Medium
Recreation	Medium
Wildlife Habitat	Medium
Navigation	Low
Sedimentation	Low
Noxious Plant Control	Low
Monitoring Needs	Low

¹The concerns were ranked based on the frequency of mention, degree of institutional or public recognition, and the capability of SCS programs to evaluate and address the concern.

STUDY AREA DESCRIPTION

General Description: The Ka'u River Basin Study Area is located in the Ka'u District of the Island of Hawaii. The study area lies in Hawaii Congressional District Two and Hydrologic Unit Number 20010000. The study area consists of 297,800 acres in the southernmost portion of the Island of Hawaii.

The study area is bounded by Hawaii Volcanoes National Park and the Kapapala Forest Reserve on the east and northeast. To the west, limits of the study area include the northwestern boundaries of the Ka'u Forest Reserve, and the South Kona/Ka'u District boundary near Manuka State Park. The shore-line boundary extends from Kamoi Point on the west to Kapao Point on the east (See Figure 1).

Seven subareas were delineated based upon similar land-use. The boundaries of these subareas are mostly of political origin combined with some hydrologic boundaries in the upper areas. The seven subareas from northeast to southwest are:

Kapapala,
Wood Valley,
Pahala,
Naalehu,
South Point,
Kahuku, and
Manuka.

Socioeconomic: The study area includes the communities of Wood Valley, Pahala, Naalehu, Waiohinu, Punaluu, and Hawaiian Ocean View Estates. Access to the area is by Hawaii State Highway 11 that crosses through the study area and connects to Hilo on the east and Kona on the west. There are no commercial airports or harbors in the Ka'u District.

The 1990 population of the Ka'u District was approximately 4,440 with 970 persons in Hawaiian Ocean View, 1,030 persons in Naalehu, 1,520 persons in Pahala and 40 persons in part of Volcano. There has only been an increase of about 1,000 people in the last 20 years.² However, the average percentage change in population was nine percent in the 1970's while it increased sharply to twenty percent in the 1980's. By the year 2010, the population is expected to grow to about 7,100³

According to the 1990 Census of Population, there are 51 percent males and 49 percent females in the Ka'u District. The median age is 35.5 years. The labor force (ages 18 to 60) accounts for 46 percent of the population in the district, with six percent of the unemployment rate in 1990. Table 2 shows the ethnic breakdown of the Ka'u district.

²Source: Hawaii County Water Use and Development Plan, Review Draft February, 1992.

³Source: The State of Hawaii Data Book, 1992.

There are about 1,960 housing units in the district with a twelve percent vacancy rate. The median value of the housing unit is \$73,700, which is 35 percent and 70 percent lower than that of Hawaii County (at \$113,000) and the State (at \$245,300), respectively. The average persons in each household is 2.87 while the state average is 3.01.

Personal income data are available on the County basis. Per capita personal income for the County of Hawaii was \$10,800 in 1989 (1982 dollars), while the State had an average of \$13,300.

While tourism and its related businesses are the largest economic contributors for the island of Hawaii, agriculture is still the predominant source of income in the Ka'u area. Sugar cane, Macadamia nut, citrus crops, and cattle are the primary agricultural commodities produced. Other economic activities include tourism at Punaluu and Volcanoes National Park, and recreation including golf, fishing and other ocean-based activities.

Punaluu is a small-scaled resort community with an 18-hole golf course and tennis facilities. Expansion of this resort was being planned by the developer, but is currently on hold.

TABLE 2 Resident Population by Race ⁴		
Race	Population	Percent
White	1,621	36.5
Black	19	0.4
American Indian, Eskimo & Aleut	39	0.9
Chinese	77	1.7
Filipino	1,084	24.4
Japanese	521	11.7
Korean	1	<0.1
Vietnamese	0	0
Hawaiian	968	21.8
Samoaan	19	0.4
Guamian	3	<0.1
Micronesian	20	0.4
Other & unspecified Asian & Pacific Islanders	25	0.6
Other Races	41	0.9
Total	4,438	100

⁴Source: County of Hawaii Department of Research & Development Data Book, 1991.

Construction of a large resort development called the Hawaiian Riviera Resort along the shoreline west of South Point, is proposed, but currently on hold.

Development of a commercial space launch facility is being planned for the Palima Point area to the southeast of Pahala. Lockheed Missile and Space Company withdrew from the project on October 27, 1993. The Environmental Impact Statement was in the comment review stage until November 22, 1993.

Diary operations from neighboring islands are looking into the feasibility of relocating to the Ka'u area.

The Department of Hawaiian Home Lands (DHHL) is in the process of initiating long-term development of its 11,000 acres of land holdings in the South Point area. The department plans to initially develop 76 agricultural lots ranging from 2 to 25 acres in size. Infrastructure and homestead site development is expected to begin in 1993.

Land Ownership: The major landowners in the study area are the State of Hawaii, Department of Hawaiian Home Lands, C. Brewer Co., Bernice P. Bishop Estate, and Samuel M. Damon Estate (Figure 2).

Land-use: Approximately two-thirds of the study area is classified as agricultural land by the State Land-Use Commission (Figure D-4). The other one-third is in

TABLE 3 Land-use-Ka'u District		
Land-use	Acres	Percent ⁵
Grazing Land ⁶	83,600	28.1
Sugar cane	18,800	6.3
Macadamia Nuts	5,300	1.8
Rural	25,600	8.6
Urban/Resort	500	0.2
Forest Reserve	75,100	25.2
Naturalized Vegetation ⁷	80,900	27.2
Other ⁸	7,900	2.6
Federal	1	<0.1
Total	297,700	

⁵Source: USDA-Soil Conservation Service, Natural Resources Planning Staff, Honolulu, HI

⁶Includes Rangeland and Pastureland

⁷Naturalized vegetation is vegetation that has been introduced from other parts of the world that now acts as native plants.

⁸Citrus, Persimmon, Biomass, Coffee, Avocado, Banana, Wind Farm

conservation land, while pockets of urban land exist at the towns of Pahala, Naalehu, and Waiohinu. The majority of the agricultural land is used for grazing with sugar cane being second. Orchard crops include Macadamia nuts, citrus, avocado, banana, coffee, persimmon and biomass. Another major industry is cattle ranching including one dairy operation.

Geology: The study area is situated on the south and southwest slope of Mauna Loa, which is the second highest mountain in the state at 13,680 feet mean sea level (m.s.l.). Elevation of the study area ranges from sea level to approximately 6,600 feet m.s.l.

The landform of the area is geologically young because of the two active volcanoes, Mauna Loa and Kilauea, located to the north and northeast. The percent of the area covered by lava flows since 1800 range from none to greater than 25 percent. During the last 750 years, the area covered by lava flows ranged from near zero to greater than 65 percent.

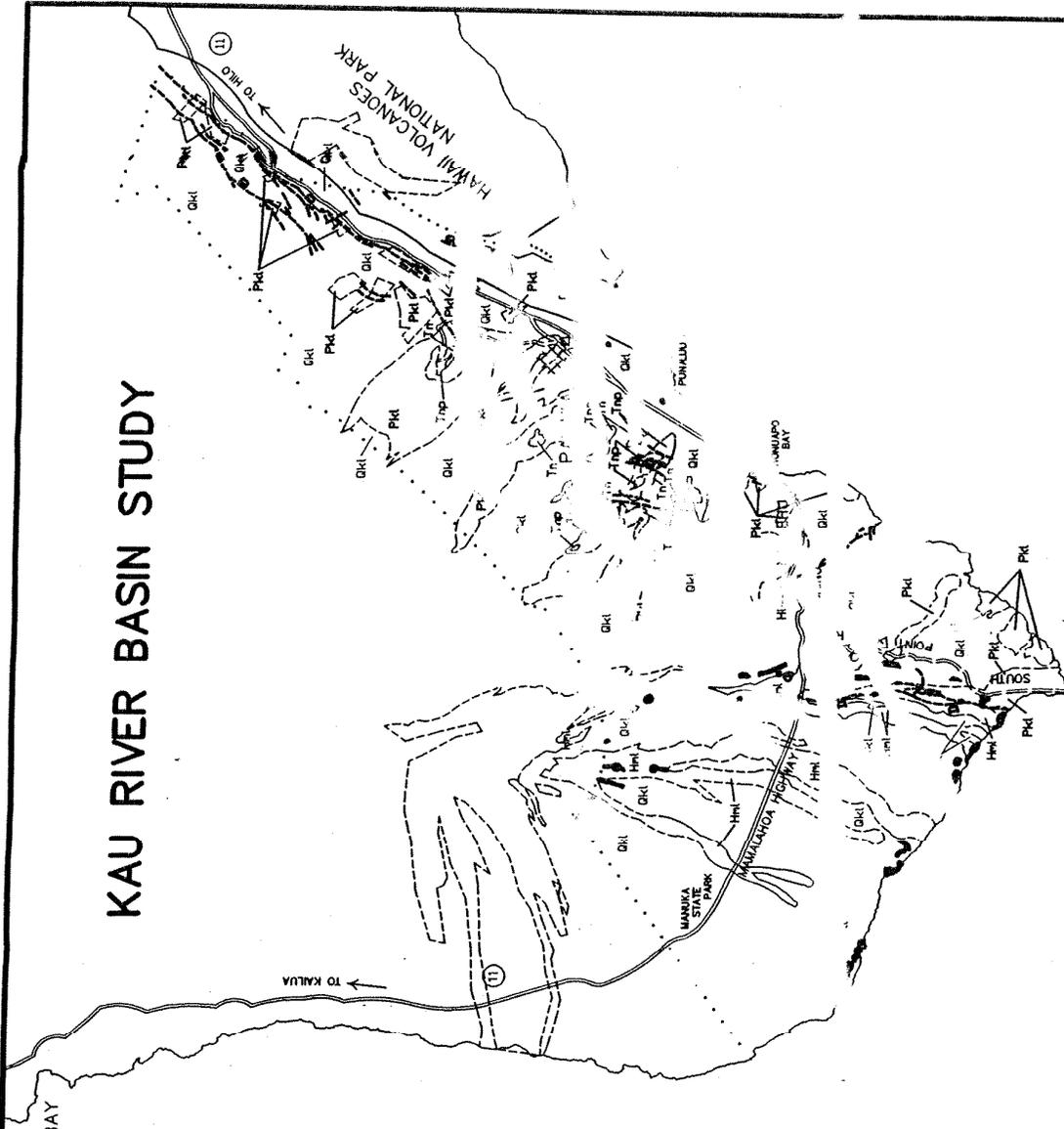
TABLE 4 Subareas on Volcanoes	
Mauna Loa	Kilauea
Kapapala	Kapapala
Wood Valley	Pahala
Pahala	
Naalehu	
South Point	
Kahuku	
Manuka	

On its east rift zone Kilauea has been in a singular eruptive phase since 1983. Kilauea erupts infrequently from its southwest rift zone, only five times in the last 200 years. The last being in 1974. The southwest rift zone affects the study area in a strip along Highway 11 from the summit to Pahala and then south of the highway to Ninole.

Mauna Loa erupts less frequently than Kilauea but produces a greater volume of lava in a shorter period of time. About 20 percent of the area west of South Point has been covered by lava in historical times and five percent since 1950. Historical flows were in 1868, 1887, and 1907. Two portions of the study area are relatively safe from lava flows: near Naalehu and the slope southeast of the present summit caldera. The rest of the study area north of Highway 11 has been covered by 15 to 20 percent by lava in the last 750 years.

The oldest exposed rocks of Mauna Loa are the Ninole volcanic series (Figure 3). This series is more than 2,100 feet thick. The upper layer of the Ninole series is a dominantly massive,

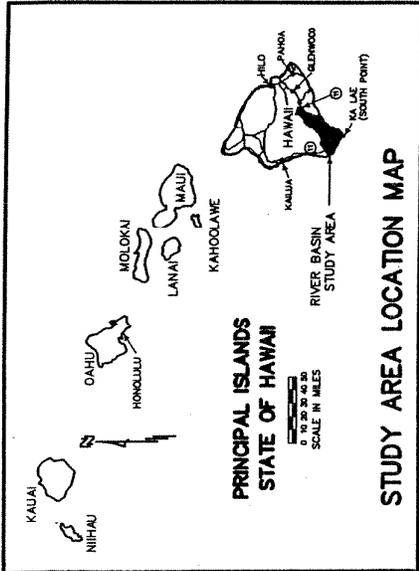
KAU RIVER BASIN STUDY



KA LAE (SOUTH POINT)

**FIGURE 3
GENERAL GEOLOGY**

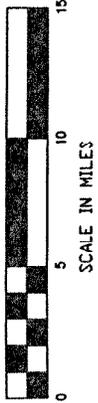
KEALAKEKUA BAY



LEGEND

- HI Landslides & Mudslides of 1868
- Hml Basaltic Lava Flows, Historic member
Kau Volcanic Series
- Oki Basaltic Lava Flows, Prehistoric member
Kau Volcanic Series
- Cinder cones, Spatter cones, Littoral
cones, Pit craters or Fissure vents;
Prehistoric member Kau volcanic series
- Pki Basaltic lava flows capped w/Pahala Ash and with
intercalated ash beds, Kahuku volcanic series
- GREAT EROSIONAL UNCONFORMITY
- Tn Basaltic lava flows with an intercalated tuff bed
500 ft below the top, Ninole volcanic series
- Tnp Basaltic lava flows covered w/Pahala Ash,
Ninole volcanic series
- - - Normal fault showing downthrown side
dashed where inferred

AFTER STEARNS & MACDONALD, 1946



gray, slightly weathered pa'hoehoe with interbedded a'a lava from 10 to 75 feet thick of the late Pleistocene epoch (0.1-0.5 million years (m.y.) before present (BP)). A reddish-brown tuff is sometimes found between the volcanic layers. This volcanic series crops out as prominent steep hills between Waiohinu and Wood Valley.

Overlying the Ninole volcanic series is the Kahuku volcanic series. This series is separated in time from the Ninole series by a long period of erosion which allowed the canyons to be formed. The Kahuku volcanic series consists of basalt flows and interbedded ash beds that were laid down before the deposition of the Pahala Ash. The a'a and pa'hoehoe lava flows average 15 feet thick for a total of about 1,000 feet and originated from Mauna Loa. This is capped by the Pahala Ash which is red to yellow and 12 to 50 feet thick. These deposits are of the Pleistocene epoch (0.01 to 1.6 m.y. BP) and are characterized by the Kahuku Pali north of South Point.

The Kau volcanic series comprises a'a and pa'hoehoe lava from late Pleistocene to Recent times (0 to 1.6-m.y. BP) originating from Mauna Loa. It is further subdivided into prehistoric and historic (after 1832) lava flows.⁹ This series is what covers most of Mauna Loa.

The volcanics from Kilauea volcano occur in the southeastern portion of the study area downslope of Highway 11. The oldest is the Hilina volcanic series which comprises lava flows averaging 10 feet thick prior to the deposition of Pahala Ash. The series is represented by Hilina Pali on the south slope of Kilauea.

The Puna volcanic series comprises all a'a and pa'hoehoe flows from Kilauea after the Pahala Ash. Like the Kau volcanic series, it is divided into Prehistoric and Historic (after 1750) flows. This series is what covers most of Kilauea.

Geological Hazards: Associated with volcanic eruptions are earthquakes. Most of these are small and can not be felt but occasionally larger ones occur. Figure 4 shows the location of historic earthquake epicenters¹⁰ that occurred within 200 kilometers of the center of the Big Island and were greater than Richter magnitude 4.0. The following table gives the probable recurrence interval for earthquakes of various magnitudes.

⁹The historic period is the period when there was a written record for that area.

¹⁰An epicenter is the point on the earth's surface directly above the focus of an earthquake.

TABLE 5 Earthquake Magnitude and Recurrence Interval for the Island of Hawaii	
Earthquake Magnitude (M) ¹¹	Recurrence Interval (Years) ¹²
3.8	0.7
4.0	0.7
4.3	1.4
4.9	3.1
5.0	3.5
5.6	4.8
5.8	5.8
6.0	6.5
6.2	11.3
6.8	24.1
6.9	33.8
7.0	42.3
7.2	84.5
7.9	169.0

Soils: There are 52 different soil types (phases) in the Ka'u area. Soil descriptions and-acreages of each soil type in each subarea is found in Appendix C.

Soil Suitability for Crops: The soil suitability by crops is found in Appendix D.

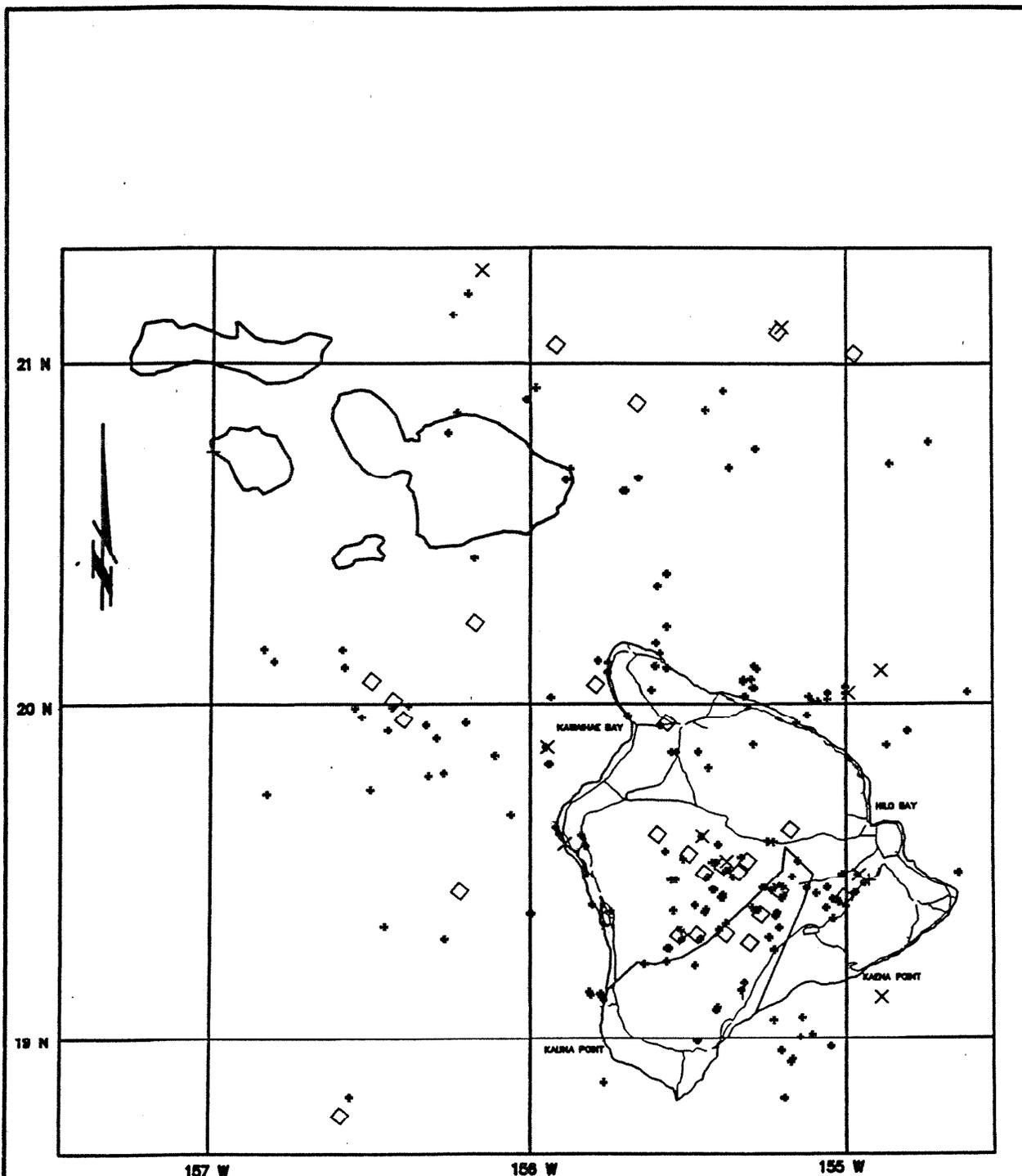
Climate: Mean annual precipitation ranges from less than 20-inches per year at Ka Lae, near sea level, to 125-inches per year at the 3,000-foot elevation in the Ka'u Forest Reserve. Most of the annual rainfall occurs during the months from October to March. Humidity averages 60- to 70 percent.

The annual mean temperature along the coast is about 72-degrees and decreases with elevation to about 55-degrees at about 5,500-foot elevation. Temperatures vary about 15-degrees throughout the year with only a five degree variation for the average monthly minimum or maximum temperature.

Northeasterly trade winds prevail much of the time in Hawaii. Although these winds are fairly constant, when they encounter the island they combine with local winds on the mountain slopes and lowlands and are thus distorted as they transverse the island to form complex wind patterns. During the cooler

¹¹M is the Richter magnitude, a measurement of the force of the earthquake.

¹²The recurrence interval can also be considered the probability of an earthquake occurring of a particular magnitude as being once in so many years. The reciprocal will give one the percent chance of the earthquake occurring within a year, for example a magnitude 5.6 quake has a 20 percent chance of occurring within a year.



Magnitudes

- 4 +
- 5 ◇
- 6 X
- 7 +

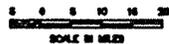


FIGURE 4

Historic Earthquake Epicenters

Start Date: March 28, 1868
 End Date: March 27, 1992

From: U. S. Geological Survey
 National Earthquake Information Center

winter months, the trade winds are replaced by other general winds, primarily southerlies. During the summer, wind velocity is the highest exceeding 12-miles per hour 50 percent of the time. During the winter this drops to about 40 percent of the time.

Hydrology: The area has no perennial streams or fresh water lakes because most of the volcanic series are extremely permeable. The historic members of the volcanic series (after 1832 for Mauna Loa and after 1750 for Kilauea) are extremely permeable but carry no water except near the coast where it is brackish. The prehistoric members of the volcanic series are also extremely permeable.

In the wet upland areas, the relatively impermeable Pahala Ash creates pockets of high elevation groundwater. This perched water creates high level springs and bodies of perched water, some of which have been tapped by tunnels. For the Ninole volcanic series, the basalt member is highly permeable and carries fresh water at sea level and perched water above the ash layer. The Hilina volcanic series is highly permeable but carries only brackish water along the coast.

Lateral movement of fresh water along the upper surface of the basal lens creates numerous fresh and brackish seeps and springs along the coastline. High drilling costs and thinness of the fresh water basal lens due to high permeability have prevented widespread use of basal water wells.

All water sources in the study area have little storage capability and are highly responsive to fluctuations in rainfall. Poor soil conditions, frequent seismic activity, and steep slopes have precluded, for the most part, the construction of large storage facilities in the study area. Most of the existing water storage facilities are owned and operated by Ka'u Agronomics Company for plant operation purposes. Agricultural water storage, at one time consisted of 10 small, dugout type or above ground, structures totaling 20.2-Mgal (million gallons). Currently only three reservoirs are used totaling 15.3-Mgal. The largest reservoir is the Keaiwa, with a total storage of 13.9-Mgal, which collects water from the Noguchi No. 2 tunnel with an average flow 0.23-Mgd (million gallons per day). It is concrete lined, but due to age and seismic activity, it has major cracks that produce a leakage rate of about 27 percent of the water that enters the reservoir under average conditions. The Meyer Reservoir has a capacity of 1.1-Mgal and the Pahala Factory Reservoir has a capacity of 0.3-Mgal.

Most springs and perched sources have greatly diminished output during the dry season. Nevertheless, they supply 94 percent of the current water use in the study area. Ninole springs, the second largest basal spring on the island, was estimated to have a discharge of 20- to 25-Mgd in 1943.

Kawa'a Springs was estimated to have a discharge of 10-Mgd. Neither has been exploited in modern times as a water source. In the South Point area, the basal water is brackish due to the extreme permeability of the young lavas allowing sea water to move inland through cracks and crevices.

In the Pahala and Na'alehu regions, perched sources in the Ka'u area include about forty tunnels that were dug into the hillsides to develop perched water as of 1943 (See Appendix A and Figure 5). The tunnels usually are about four-foot high and three-foot wide. They were dug at the contact of the ash and lava and follow the ash layer surface. Water usually occurs in lava filled gullies in the ash layer. New Mountain House tunnel is 7,048 feet long. These perched water sources have been successfully developed in the past and used for fluming sugar cane to the mill. Many of these sources were abandoned when trucking of sugar cane to the mill was begun.

In eastern Ka'u (Kapapala subarea), there is no prospect of developing perched water due to low rainfall and the coarseness of the ash beds. In central Ka'u (Wood Valley, Pahala and Na'alehu subareas), water tunnels were developed to flume sugar cane to the mills. Noguchi No. 2 tunnel averages 238,000-gpd (gallons per day) and New Mountain House tunnel yields 1,286,000-gpd. Most of the other tunnels produce less than this. Pahala Factory shaft is being pumped at the rate of 4.5-Mgd and has a maximum capacity of 7.2-Mgd. Unfavorable geology and low recharge greatly diminish the chances of developing high elevation water in western Ka'u (Kahuka Ranch, South Point, and Manuka subareas).

Sources of water for the domestic systems include catchment systems, wells, tunnels or springs, or delivered water. See Appendix A for a listing of all drilled water wells in the area as of 1991. The County operated municipal system for Pahala relies on the Alili Tunnel and supplements from the Pahala well during dry weather. Average usage in 1991 was 0.3-Mgd. The County operated Waiohinu-Na'alehu municipal system uses the New Mountain House Tunnel, a well and Ha'ao Spring. This water is piped to Waiohinu and also distributed to Na'alehu and South Point. Average winter usage was 0.36-Mgd in 1991. Wood Valley and Kapapala use the private agricultural distribution system from Noguchi 2 and Makakupu tunnels.

Punaluu Resort uses two wells with 0.9-Mgd of their 1.2-Mgd usage going to irrigate the golf course. Effluent from the resorts wastewater treatment plant is sometimes blended with the irrigation water. The South Point area uses the Naalehu/Waiohinu community system. A deep well with an initial capacity of 1,000-gpm was drilled in 1990, but is not operational due to high salinity. Hawaiian Ocean View Estates and Ranchos, (west of Ka Lawe and south of the highway from

Hawaiian Ocean View Estates, uses individual catchments supplemented with delivered water.

Stock water comes from springs, wells, catchments, seeps, and water tunnels. Water in the coastal area from the basal aquifer tend to be brackish. Rain sheds are used in the higher elevations to catch and store rainwater. A rain shed consists of a pitched, usually corrugated iron, roof that directs any water falling on it to a collection system that leads to a storage tank. Water flowing from the storage tank flows to stock water troughs is usually controlled by a type of float valve.

The State of Hawaii has developed an aquifer classification system as part of the Water Resources Protection Plan (Figure 6). This plan estimated sustainable yields. The sustainable yield does not take into account whether the water resource is feasible to develop. Table 6 shows the named aquifer systems and sustainable yields for portions of the Southeast Mauna Loa and Kilauea aquifer sectors.

TABLE 6 Sustainable Yield for Aquifer Systems ¹³		
Aquifer System Name	Aquifer System Code	Sustainable Yield (Mgd)
Ka Lae	80504	31
Na'alehu	80503	117
Kapapala	80502	19
Keaiwa	80804	17

Currently, the present water uses in the Ka'u district are:¹⁴

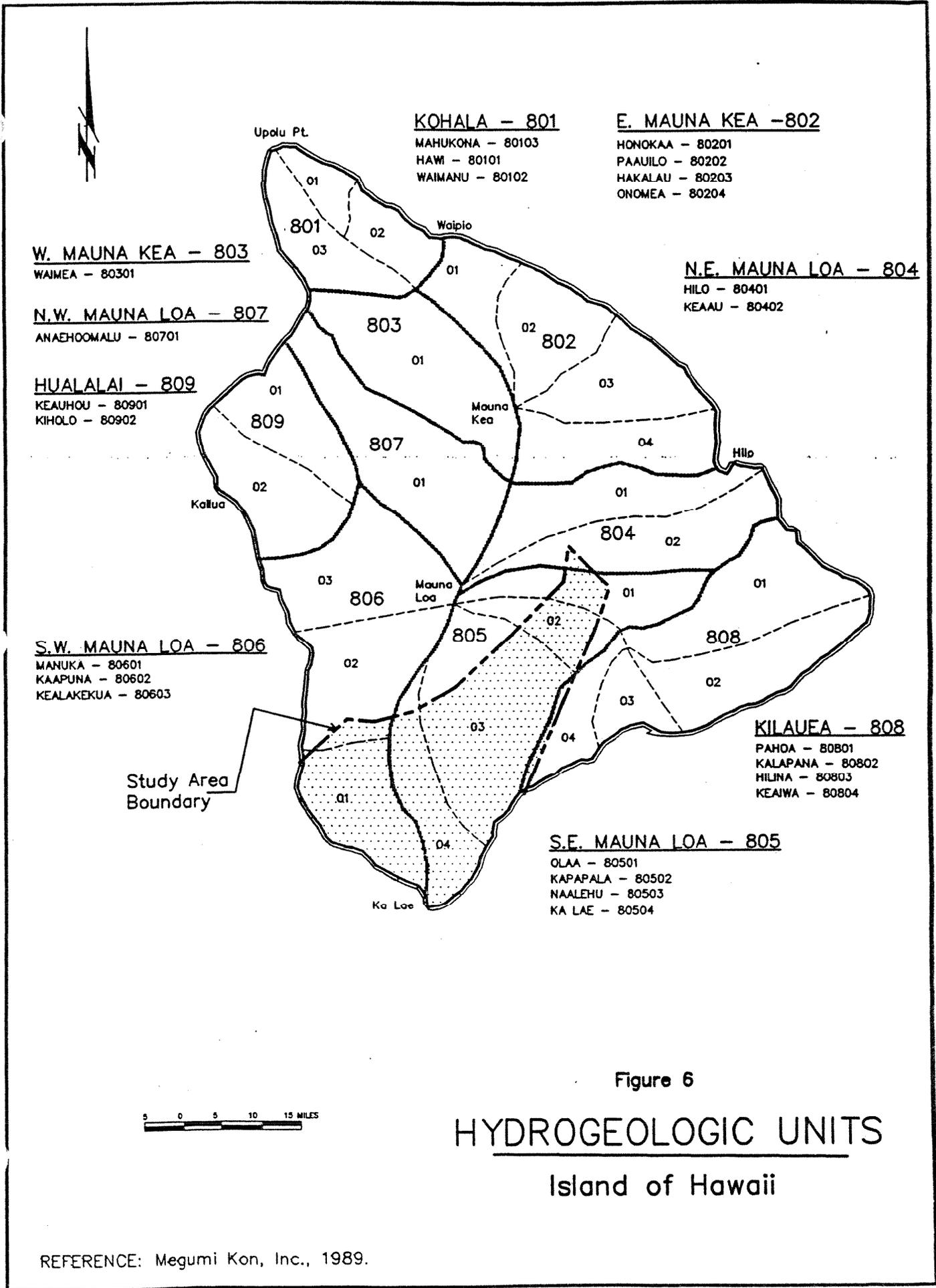
TABLE 7 Present Water Uses In Ka'u District		
Use	Water Usage	Percent
Municipal	0.95-Mgd	8%
Agricultural	3.74-Mgd	30%
Private DCI ¹⁵	1.41-Mgd	11%
Others ¹⁶	6.34-Mgd	51%

¹³Source: Hawaii County Water Use and Development Plan, Review Draft February, 1992.

¹⁴ibidem.

¹⁵Domestic, Commercial and Industrial

¹⁶Industrial cooling and wash water



W. MAUNA KEA - 803
WAIMEA - 80301

N.W. MAUNA LOA - 807
ANAHOOMALU - 80701

HUALALAI - 809
KEAUHOU - 80901
KIHOLO - 80902

S.W. MAUNA LOA - 806
MANUKA - 80601
KAAPUNA - 80602
KEALAKEKUA - 80603

KOHALA - 801
MAHUKONA - 80103
HAWI - 80101
WAIMANU - 80102

E. MAUNA KEA - 802
HONOKAA - 80201
PAAUILO - 80202
HAKALAU - 80203
ONOMEA - 80204

N.E. MAUNA LOA - 804
HILO - 80401
KEAAU - 80402

KILAUEA - 808
PAHOA - 80801
KALAPANA - 80802
HILINA - 80803
KEAIIWA - 80804

S.E. MAUNA LOA - 805
OLAA - 80501
KAPAPALA - 80502
NAALEHU - 80503
KA LAE - 80504

Study Area
Boundary

Figure 6

HYDROGEOLOGIC UNITS
Island of Hawaii

REFERENCE: Megumi Kon, Inc., 1989.

Ninety-four percent of the 12.44-Mgd is supplied by ground water sources with the remaining six percent by surface water.

Water Quality: Surface water on the Island of Hawaii is characterized by low concentrations of dissolved solids, average 64 parts per million (ppm), and minimal hardness as calcium carbonate (CaCO₃), average 29-ppm. Ground water however has higher concentrations of dissolved solids, average 125-ppm and hardness, average 112-ppm. Hardness is caused by calcium and magnesium compounds with some sulfate. A high silica content is derived from the lava.

Public water supplies from both surface and ground water supplies contain chemical substances in amounts generally well below the recommended limits. However, basal ground water sources along the coastal areas are susceptible to high chloride levels caused by salt water intrusion.

The Federal Safe Drinking Water Act Amendments of 1991 pertains to all public water systems whether publicly or privately operated with over 15-connections or serving 25 or more persons. Under this regulation, all public water systems must meet stringent monitoring requirements to test for lead, microbiological, radiological and disinfection by-products. In addition, they must monitor for the presence of a large number of chemicals and a list of non-regulated contaminants.

Water systems that use springs, surface water, and tunnels as water sources maybe required to be treated before distribution. The State Department of Health will determine which tunnel and spring systems are subject to the surface water rule of the Federal Safe Drinking Water Act by June 29, 1994, for community systems, and June 29, 1997, for noncommunity systems. These requirements must be met 18 months after the determination is made. Compliance with these regulations can be a major cost item with a high cost per customer for those systems with a small number of users.

The County of Hawaii is anticipating a problem bringing spring and surface water sources into compliance with Federal safe drinking water regulations and water quality standards. In addition, older systems require upgrading not only to meet future needs but to minimize losses through leakage.

Hawaii Administrative Rules Title 11, Department of Health, Chapter 54, Water Quality Standards establishes the water quality goals for water bodies in the State of Hawaii. This document identifies the following areas in the Ka'u study area

as being classified as State Waters and thus having a zero degradation policy in effect:¹⁷

- a. All lava rock shorelines not in Class I water areas;
- b. All marine pools and protected coves on the Island of Hawaii [Class I]; and
- c. The following wave exposed reef communities [Class I]:
 - 1823 Lava Flow (Punaluu)
 - 1868 Lava Flow (South Point)
 - 1887 Lava Flow (South Point).

NATURAL RESOURCES

Forestland: The Ka'u Forest Reserve is located on the southern slope of Mauna Loa. It is approximately 20-miles long and five-miles wide, covering approximately 75,100 acres. The land is generally rough consisting of old, weathered a'a and pa'hoehoe flows with numerous large gulches and valleys. The reserve ranges from 2,100 to 6,600 feet in elevation with slopes of 0 to 26 percent. It consists of native vegetation and ohia with a prominent tree fern undercover. Some koa is present. About 154 acres of eucalyptus and silk oak were planted primarily in the Kapapala and Wood Valley subareas. In the northwest portion of the reserve alpine plants like pukiaawe, 'a'ali'i, ohelo, and kukaenene are abundant. Timber harvesting is remotely possible. There is a small amount of marketable ohia and koa.

Rangeland: Cattle grazing has reduced the native vegetation to low levels and minimal diversity. Koa haole (Leucaena glauca) was introduced to fatten cattle and to feed cattle during periods of little rainfall. The above conditions combined with low management result in an Animal Unit Month¹⁸ (AUM) being 10 acres or more. The AUM's will drop to 2-3 acres with intensive management. Buffel grass, yellow foxtail, Natal redtop, kikuyugrass, pangolagrass, green panic, tinaroo glycine, siratro, and guineagrass are introduced species. Lantana (Lantana camara) is encroaching on areas.

Naturalized Vegetation: Naturalized vegetation¹⁹ occurs in kipukas or is coming back in areas that are not grazed anymore. Vegetation ranges from lichen, moss, ohia, 'ama'uma'u fern, mamani, naio, Kentucky bluegrass, Christmas berry, guava, noni and sweet vernal on lava flows depending on elevation and side of island. Lantana, Natal redtop, yellow foxtail, Japanese tea, buffelgrass, and kiawe are predominant at South Point.

¹⁷Source: Hawaii's Assessment of Nonpoint Source Pollution Water Quality Problems, State Dept. of Health, November, 1990.

¹⁸An animal Unit Month is the amount of dry weight feed that a 1,000 pound cow with or without a calf will consume in one month or the equivalent-acreage based on management practice.

¹⁹Naturalized vegetation is vegetation that has been introduced from other parts of the world that now acts as native plants.

Wetlands: Figure 7 indicates the general location of wetlands in the study area. The wetland types identified in the study area include several marine areas along the shoreline, an estuarine area near Ka Lae, several palustrine areas close to shore and further inland, and several intermittent riverine wetland areas. This map is for general purposes only and is not meant to identify the exact location or all of the different types of wetlands.

Wildlife: Feral pigs are abundant. The pigs cause extensive damage to the native vegetation and are hunted for sport and sustenance. Introduced pheasants, quail and chukar are also found at higher elevations. Mongoose were introduced to control the rat population but have become a pest and continue to threaten the bird population. There is some discussion to improve the fencing along the forest reserve boundaries to protect the reserves from impacts due to ranching activities and feral animals. Specifically, the Mouflon sheep is expanding its range and is feeding on the Silversword, a threatened and endangered listed plant species found in the area. Silversword is fenced on the Kahuku Ranch. The U.S. Fish and Wildlife Service has not mapped for wildlife habitat. The Department of Land and Natural Resources provided a map delineating the public hunting areas (Figure 8).

Threatened and Endangered Species (T & E): The State of Hawaii, since statehood, has been in a dynamic phase of social and economic development with some interruptions caused by periodic national economic recessions. The rapid increases in urban, rural and agricultural development, tourism, recreation and social requirements for open spaces cause direct or indirect impacts to threatened and endangered wildlife, plants, and invertebrates and their habitats.

The unique and sensitive nature of native flora and fauna of Hawaii is thoroughly documented. The state of Hawaii has approximately 80 endangered species, this is 25 percent of all rare and endangered plants and animals found in the United States. About 75 percent of all extinctions in the United States have occurred in the State of Hawaii.²⁰

Of approximately 2,400 different kinds of native plants, half have been proposed as threatened or endangered and 273 are probably extinct. Of the 70 birds and one land mammal species native to Hawaii, 24 bird species have become extinct and 30 bird and one mammal species are now threatened or endangered with extinction. Table 8 depicts endangered and threatened species in the Ka'u River Basin. The plant species survey is approximately 30 percent completed. Land-use changes and exotic plants and animals continue to cause the major problems effecting native species.

²⁰Source: State Land-use District Boundary Review-Hawaii, Office of State Planning, 1992.

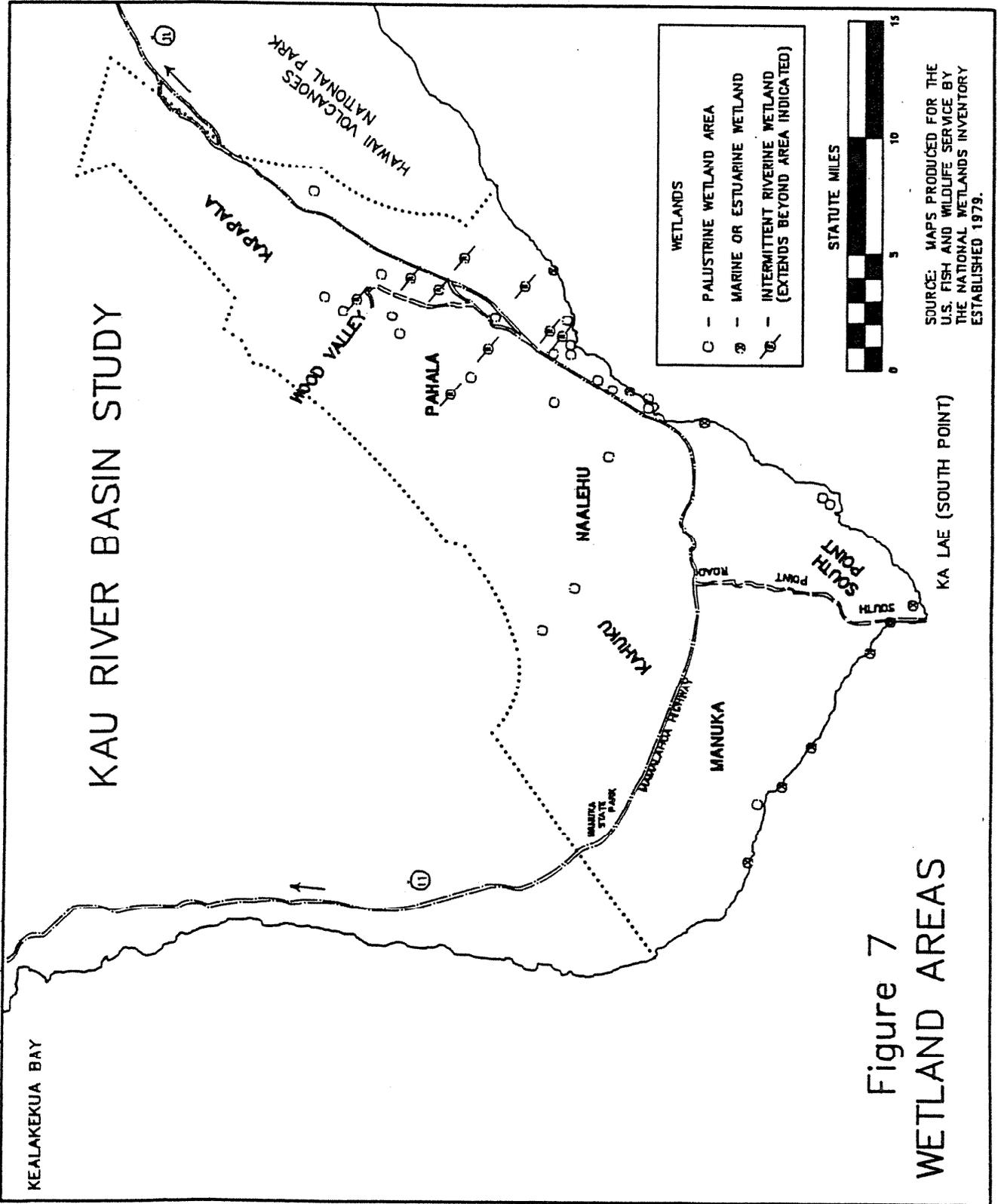
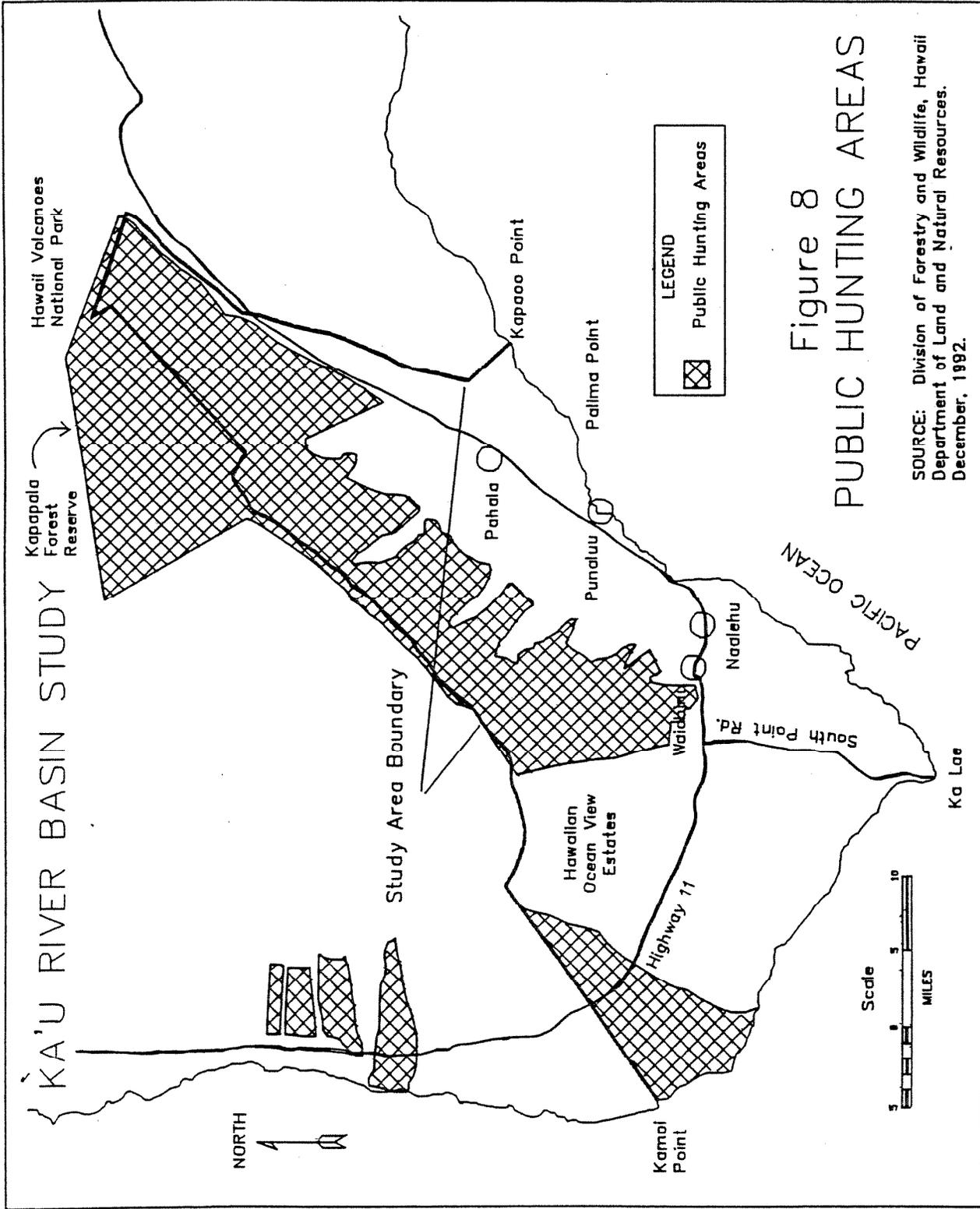


Figure 7
WETLAND AREAS



Tables 9 and 10 contain State listed plant species. This list is updated as of May 18, 1993. Table 8 shows Listed and Proposed Federally Threatened and Endangered Species in the Ka'u River Basin Study area. Figure 9 shows a map of the concentration of Threatened and Endangered Plant Species. Note that there has been no formalized plant survey completed by the Department of Natural Resources for the entire area. The map (Figure 9) shows data collected by individuals on a voluntary basis. Figure 10 delineates Native Bird Habitat Boundaries for forest birds, nene, and water birds.

The U.S. Fish and Wildlife Service does not yet have designated official critical habitats for native bird species with the exception of the Palila, Loxioides bailleui.

In Hawaii, the problem of protecting native species is complex because native species generally lack strong natural defense mechanisms. Due to geographical isolation, few species reached the islands and those that did flourished with minimal competition. Most native plants are easily damaged by feral animals and do not compete well with introduced, aggressive plants. Because of their limited range, the native flora and fauna are particularly sensitive to human disturbances and to alteration of specialized habitat niches in the environment.

The main threat to the study areas surviving native species and natural communities is the destructive effect of non-native species introduced by people. With the advent of sugar cultivation and development of the cattle industry in the area, native flora and fauna were adversely impacted. Some species continue to survive in isolated non-rangeland high elevation areas and habitat niches between cultivated lands. Protection of the threatened and endangered species is a multi-level governmental function. In the State of Hawaii, the Division of Forestry and Wildlife is directly responsible for resource management on state-owned forest reserves, surrendered lands, wildlife sanctuaries, private and military lands under cooperative agreement, and public hunting areas. Where species occur on areas beyond their immediate responsibility, the Division will provide technical assistance to the land owner and seek cooperative efforts for T & E preservation and restoration on their lands.

TABLE 8 Federal Threatened and Endangered Species Listed and Proposed

FLORA		
Scientific Name	Common Name	Status ²¹
<u>Clermontia lindseyana</u>	haha	PE
<u>Clermontia pyrularia</u>	haha	PE
<u>Ischaemum byrone</u>	Hilo ischaemum	PE
<u>Mariscus fauriei</u>	no common name	PE
<u>Portulaca sclerocarpa</u>	'ihi	PE
<u>Silene hawaiiensis</u>	no common name	PE
<u>Diellia erecta</u>	no common name	C1, in PE process
<u>Flueggea neonwawraea</u>	mehamehame	C1, in PE process
<u>Plantago hawaiiensis</u>	laukahi kuahiwi	C1, in PE process
<u>Sesbania tomentosa</u>	no common name	E
FAUNA		
Scientific Name	Common Name	Status ¹⁶
Forest Birds		
<u>Loxops coccineus</u> <u>coccineus</u>	Akepa, Hawaii	E
<u>Hemignathus munroi</u>	Akiapolaau	E
<u>Buteo solitarius</u>	Hawaiian Hawk	E
<u>Psittirostra psittacea</u>		Ou E
<u>Corvus hawaiiensis</u>	Hawaiian Crow alala	E
<u>Nesichen sandvicensis</u>	Hawaiian Goose nene	E
<u>Oreomyzta Nana</u> (<u>Loxops maculata mana</u>)	Creeper, Hawaiian	E
Sea Birds		
<u>Oceanodroma castro</u> <u>cryptoleucura</u>	Band-rumped storm petrel	C2
<u>Pterodroma phaeopygia</u> <u>sandwichensis</u>	Hawaiian dark-rumped petrel	E
<u>Puffinus auricularis</u> <u>newelli</u>	Newell's shearwater	E
Mammals		
<u>Lasiurus cinereus</u> <u>semotus</u>	Hawaiian hoary bat	E
Sea Turtles		
<u>Chelonia mydas</u>	Green sea turtle	T
<u>Eretmochelys imbricata</u>	Hawksbill turtle	E

²¹Status: E = Endangered, PE = Proposed Endangered, will be listed within 1 year, C1 = Candidate for immediate listing, C2 = Potential candidate for listing, T = Threatened.

TABLE 9 State Proposed Endangered Plant List
for the Big Island, HI [May 1993]

Scientific Name	Common Name	Eff. Date	Critical Habitat Designated
<u>Clermontia lidseyana</u> Rock	'Oha wai	12/17/92	No
<u>Clermontia peleana</u> Rock	'Oha wai	12/17/92	No
<u>Clermontia pyrularia</u> Hillebr.	'Oha wai	12/17/92	No
<u>Colubrina oppositifolia</u> Brongn. ex H. Mann	Kauila	12/17/92	No
<u>Cyanea hamatiflora</u> Rock var. <u>carlsonii</u> (Rock) Lammers	Haha	12/17/92	No
<u>Cyanea shipmanii</u> Rock	Haha	12/17/92	No
<u>Cyanea stictophylla</u> Rock	Haha	12/17/92	No
<u>Cyrtandra giffardii</u> Rock	Ha'iwale	12/17/92	No
<u>Cyrtandra tintinnabula</u> Rock	Ha'iwale	12/17/92	No
<u>Gouania vitifolia</u> A. Gray	--	12/14/92	No
<u>Mariscus fauriei</u> (Kukenth.) T. Koyama	--	12/17/92	No
<u>Portulaca sclerocarpa</u>	Po'e	12/17/92	No
<u>Pritchardia affinis</u> Becc.	Loulu	12/17/92	No
<u>Silene hawaiiensis</u> Sherff	--	12/17/92	No
<u>Tetramolopium arenarium</u> (A. Gray) Hillebr.	--	12/17/92	No

TABLE 10 State Endangered Plant List
for the Big Island, HI [May 1993]

Scientific Name	Common Name	Eff. Date	Critical Habitat Designated
<u>Abutilon menziesii</u> Seem.	Ko'oloa'ula	10/27/85	None
<u>Argyroxiphium kauense</u> (Rock & M. Neal) Degener & I. Degener	Ka'u silversword	5/7/93	None
<u>Argyroxiphium sandwicense</u> DC ssp. <u>sandwicense</u>	'Ahinahina Mauna Kea silversword	4/21/86	None
<u>Caesalpinia kawaiensis</u> H. Mann	Uhiuhi, kea kalamona	8/7/85	None
<u>Gardenia brighamii</u> Mann	Nanu, nau	9/20/85	None
<u>Huperzia mannii</u>	Wawae'iole	6/15/92	None
<u>Isodendrion hosakae</u> St. John	Aupaka	2/13/91	None
<u>Kokia drynarioides</u> (Seem.) Lewt.	Hau-hele'ula koki'o, Hawaiian tree cotton	1/3/85	Yes
<u>Stenogyne angustifolia</u> Gray var. <u>angustifolia</u>	--	12/29/79	None
<u>Vicia menziesii</u> Spreng	--	5/27/78	None

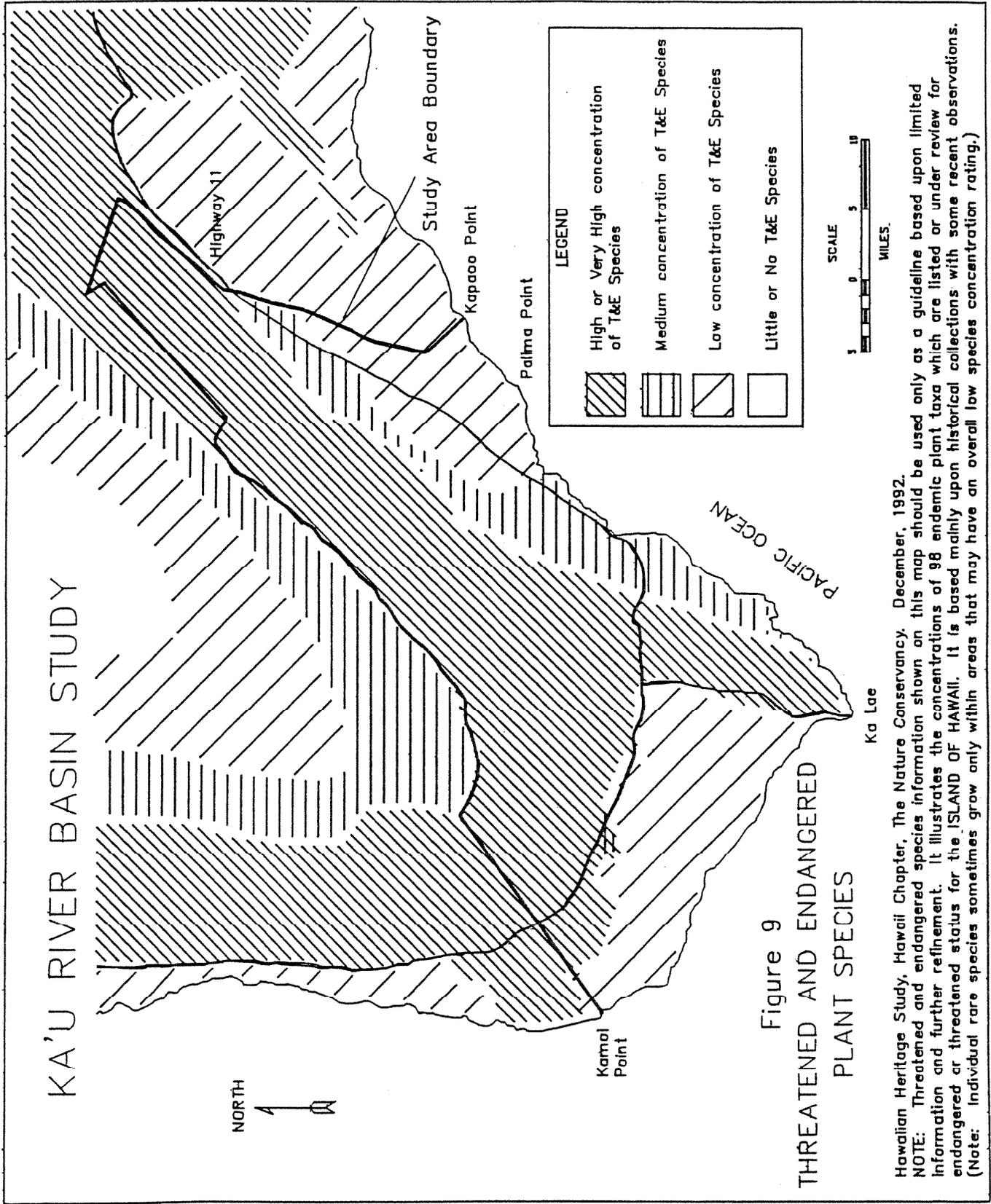


Figure 9

THREATENED AND ENDANGERED PLANT SPECIES

Hawaiian Heritage Study, Hawaii Chapter, The Nature Conservancy, December, 1992.

NOTE: Threatened and endangered species information shown on this map should be used only as a guideline based upon limited information and further refinement. It illustrates the concentrations of 98 endemic plant taxa which are listed or under review for endangered or threatened status for the ISLAND OF HAWAII. It is based mainly upon historical collections with some recent observations. (Note: individual rare species sometimes grow only within areas that may have an overall low species concentration rating.)

KA'U RIVER BASIN STUDY

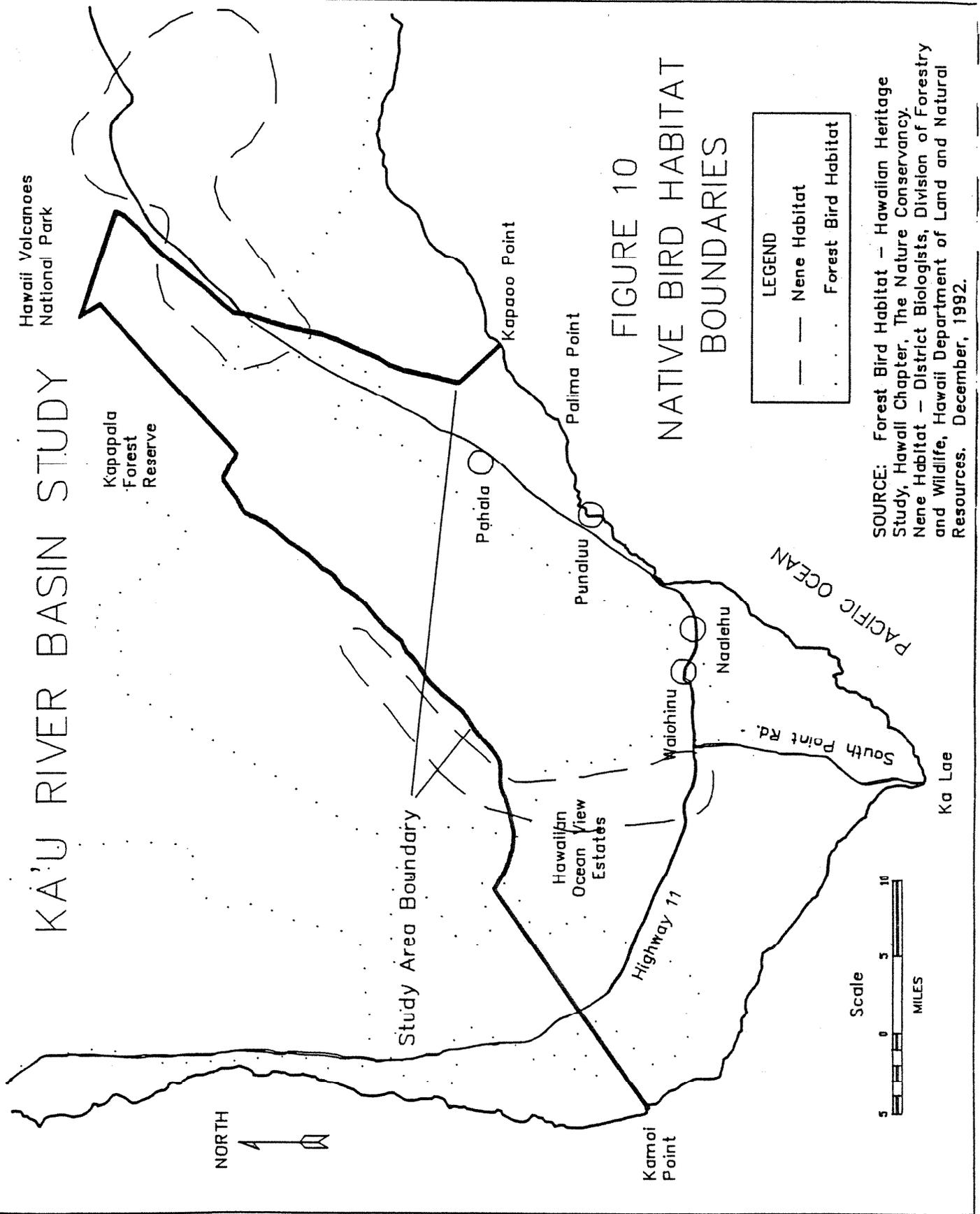


FIGURE 10
NATIVE BIRD HABITAT
BOUNDARIES

LEGEND

- — — Nene Habitat
- · · Forest Bird Habitat

SOURCE: Forest Bird Habitat - Hawaiian Heritage Study, Hawaii Chapter, The Nature Conservancy.
Nene Habitat - District Biologists, Division of Forestry and Wildlife, Hawaii Department of Land and Natural Resources. December, 1992.

The United States Department of Interior, National Park Service operates Hawaii Volcanoes National Park just outside of the Ka'u study area. The park is designated an International Biosphere Reserve. Resource management and reasearch are on-going in the areas of nene recovery, ugulate and weed control, fire management, turtle nest protection and cultural resource protection. They are willing to share any information or techniques that they have found.

The Akiapolau and Hawaii creeper occupy forests in the 3,000-7,000-foot elevation range. The Akepa is found in old lava fields at the same elevations where Ahakea flowers are present. The Alala is found in endemic forests greater than 3,000 feet in elevation. The Io is found in woody vegetated areas less than 8,500 feet in elevation. The Nene likes old a'a lava flows in the 5,000 to 8,000 foot elevation range. The 'Au'u nests in old lava at the 7,200 to 9,600 foot elevation range.

Keauhou is a former ranch inholding within Hawaiian Volcanoes Observatory which contains regenerating ohia woodland. The native rain forests of Kilauea-Keauhou, Kapapala and the lands below the forest reserve are known or believed to provide habitat for endangered forest birds. Kilauea-Keauhou is a potential national wildlife refuge. Ocean View Estates, though heavily subdivided, still manages to have small patches of vegetation containing apapane.²²

Anchialine pools and native pockets of coastal-strand vegetation are scattered along the south Ka'u coast.

The proposed spaceport may impact species and other natural resources within the Ka'u River Basin study area.

Cultural Resources: Numerous known archaeology sites exist in the study area. Many historic areas also warrant recognition as valuable cultural resources. An example of such an historic resource are the water tunnels in the Pahala area developed in the early 20th century.

The Ka'u District presented the Hawaiians with different problems in their adaptation to and modification of the natural environment from that of other districts. A part of the district is so arid and overrun by fresh lava flow as to deserve the name desert. In contrast, a small area centering around Waiohinu was evidently one of the most desirable areas on Hawaii in which to live.

The Ka'u River Basin contains a variety of archaeological features, including petroglyphs²³, enclosures, platforms,

²²Source: State Land-use District Boundary Review-Hawaii, Office of State Planning, 1992.

²³A prehistoric rock carving.

terraces, ahu²⁴, shelters, auwai systems²⁵, Heiau²⁶, a historic railroad bed, and walls.

The remains of the Hawaiian occupation of Ka'u have generally not been disturbed until the 1970's because of the lava flows, the aridness of the nearshore coastal lands, the lack of suitable harbors and remoteness from Hilo and Kailua. Since that decade, the level of development and historical site disturbance have tapered off considerably. Therefore, it is still possible to construct, through archaeological and historical research, a well-rounded picture of Ka'u's past.

The Ka Lae or South Point area has been viewed as one of the most important and significant regions in the Hawaiian Archipelago. This is due not only to the richness of the cultural resources present, but also to the landmark studies conducted during the 1950's. This provided a significant impetus towards the development and intensification of archaeological research in Hawai'i. Excavation data from this area have provided the basis for seriation and the relative chronology of fishhook types, which in turn have affected theories on the origin and migration of the Polynesians who settled Hawai'i. The South Point region has subsequently been the focus of archaeological research and specifically in Kama'oa-Pu'u'eo ahupua'a with work concentrating in the coastal area. This work has shown that the coastal zone of the Ka'u River Basin was, in general, densely settled by the native Hawaiians prior to the late 1800's and exploited over an extended period of time.

The vegetation in the coastal region is predominantly dominated by buffel grass on the pastures and guineagrass on the plains, with dense thickets of lantana and koa haole interspersed. The a'a flows are generally barren toward the sea coast and sparsely covered with grasses and lantana above the 250 foot elevation. The intermediate 50 to 250 foot elevation on the a'a is densely covered with koa haole. The coastal zone has little vegetation other than beach vitex, naupaka, beach heliotrope, and several trailing vines in sparsely scattered areas. Exceptions to the general trend are noted in the site description sections.

Table 11 lists the Significant Historical Sites in the Ka'u River Basin Study Area and the approximate location is shown in Figure 11.

To date, relatively few historic sites, accompanied by interpretation for the public, have been preserved in the Ka'u area. The National Historic Landmark at South Point includes two permanent village clusters on the shore, a fishing heiau,

²⁴A boundary marker usually consisting of a rock pile.

²⁵An irrigation system.

²⁶A temple.

**TABLE 11 Significant Historical Sites in the Ka'u Area
October 1992**

Cultural Resource	Quadrangle	Location	Remarks
Petroglyphs	Naliikakani	Kapapala	Kuee Village, HV 121, HV 122, HV 124 to HV 128
Ka'u Inland Trail		Kamooalii	Heiau, 3665, HV 210
Petroglyphs	Wood Valley	Kailiula	Kapapala Cave, B3-1
Petroglyphs	Pahala	Piikea	Turtle Cave, cluster-varied, 3500, B5-1
Archaeological sites		Paauuu	Cluster, varied
Archaeological sites		Pueo	Cluster, varied
Petroglyphs	Punaluu	Moalua Gulch	3505 (B7-1)
Petroglyphs	Pahala	West of Kamehameha Hill	3506, (B7-2)
Archaeological sites		Kamaehameha Hill	Cluster, varied
Winding coastal trail		Keoneleele	3508, (B7-9)
Petroglyphs		Flat Nahuluhulu	3509, (B7-10)
Petroglyphs		Point	
Archaeological site		Mohokea	Cluster 3510, (B7-11)
Stepping Stone Trail	Punaluu	Punaluu	Heiau of Kanelele, heiau of Iuakini class, 3511, (B8-1) Also a cist burial, 3514-15 (B8-4 and 5)
Archaeological Site			Heiau of Lanipao, 3512 (B8-2)
Petroglyphs			Located along shore between Ninole and Punaluu 3513 (B8-3)
Archaeological Sites		Ninole	Ninole pond 3517 (B9-2)
			Heiau named Mokini, 3518 (B9-3)
			Cluster 3519-24 (B9-4 to 9)
			Heiau of Kalele, 3516 (B9-1)
			Complex of sites, including fishing shrine 3525-27 (B910 to 12)
			Two ancient trails 3528-29 (B9-13 and 14)
			Trail, partially paved with water-worn stones 3545 (B10-17)
Archaeological Sites		Hilea Iki	Cluster of sites, 3546-50, (B10-18 to 22)
			A north-south trail 3551 (B10-11)
Archaeological Site	Naalehu	Kuhua Bay	Cluster of sites, 3539-44 (B10-11 to 16)
Archaeological Sites		Kawa Bay	Heiau Keeku, a major heiau of human sacrifice, 3530 (B10-1) Complex of house site and a burial, 3531-36 (B10-2 to 7)

**TABLE 12 Significant Historical Sites in the Ka'u Area continued
October 1992**

Cultural Resource	Quadrangle	Location	Remarks
Petroglyphs	Naalehu		3537 (B10-8) Extensive complex of sites, major settlement near spring 3552 (B11-1 to 97)
Archaeological Site		Hokukano	Cluster of sites, 3553-58 (B12-1 to 6)
Archaeological Site		Puhiopapeepahee	Cluster of sites, 3559-3563 (B12-7 to 11)
Archaeological Site		Hiona	Cluster of sites, 3564-3580 (B12-12 to 28)
Archaeological Sites		Honuapo	Cluster of site, 3581 (B13-1 to 10)
			Heiau Auolele, a human sacrifice heiau 3587 (B16-6 to 8)
			Heiau Kamalai, 3583 (B13-12)
Archaeological Site		Kaunamano	Shelter cave with complex of sites, 3584 (B14-1 to 24)
Archaeological Site		Kalainakakua	Heiau Makamakaole, 3585 (B14-25)
Archaeological Site		Waikapuna	Complex of sites, 3586 (B16-1 to 5)
Archaeological Sites		Kahilipali Nui Waikapuna	Complex of sites 3587, (B16-6 to 8)
			Poninau Heiau, 3591 (B16-23)
Archaeological Site		Kahilipali Point	Complex of sites, 3588 (B16-9 to 20)
			Petroglyphs, on coarse pahoehoe lava, 3589 (B16-21)
Archaeological Site		Luanunu	Luanunu cave, important lava tube cave 3599 (B17-8)
Petroglyphs	Ka Lae	Kii	National Historic Site 3598 (B17-7)
Petroglyphs		Keonekahuku	3597 (B17-6)
Petroglyphs		Kamilo	3596 (B17-5)
Archaeological Site	Kahuku Ranch	Kiolakaa	Heiau Alaipamona 3601 (B18-1)
Archaeological Site	Ka lae	Kamaoa Puueo	House sites, 3903 to 3907 located along the coast
Archaeological Site		Kaulana Bay	Ancient village complex of houses and shelters, 3911
Archaeological Site		Lua Makalei	Lava tube cave complex, 3606 (B20-2)
Archaeological Site		Lua O	Large brackish water source, 3610 (B20-7)
			Palahemo
Archaeological Sites		Pinao Bay	Complex of House sites, 3809, 3808 (B20-6, B20-15)
		Puu Aili	
Archaeological Sites		Puu Aili	Ancient Fishermen's establishment
		Sand Dune	Extensive burial site 3605 (20-1)

**TABLE 12 Significant Historical Sites in the Ka'u Area continued
October 1992**

Cultural Resource	Quadrangle	Location	Remarks
Archaeological Sites	Ka Lae	West of Puu Ali	Part of Pinao Bay Complex of sites 3909, 3910, 80 mooring-holes drilled in the west ledges 3608, B20-5 Heiau Kalalea, fisherman's heiau, 3607 (B20-8) Buried midden site 3902 (b20-8) Large house site 3901 (B20-4) National Historic Site dwelling site with midden deposits 3900 (B20-3) Midden site 3912 (B20-19) Extensive complex of sites, Heiau Mollilele (B21-1) (B21-2 to 19), (B22-14 to 24) Complex of sites (B22 1-3, 7-8) Petroglyphs, human figures (B22-10) Two U-shaped shelters 3916-7 (B22-12) Petroglyphs 3918 (B22-12) Complex of house sites, shelter, and canoe shed 3920-27 (B22-25 to 32) A water hole and shelter cave 3919 (B22-13) Complex of house sites 3928-38 (B22-33) Complex of platform house sites and several cairns 3939-3944 (B22-44 to 49) Shelter cave 3945 (B22-50) Shelter cave 3646 (B23-35) Complex of Shelter caves 3640-45, (B23-29) Petroglyphs, 3648 (B23-410) Complex of Shelter caves 3635, (B23-24), 3636 (B23-25), 3637, (B23-26) Shrine 3638 (B23-28) Extensive petroglyph field, several hundred figures 3647 (B23-40) Shelter cave 3639 (B23-27) Complex of house sites, burial platforms, and pens 3612-27 (B23-1 to 16) Shelter cave 3654 (B23-47) Walled structures indicating camp site Heiau of Malino 3657 (B23-50) Cluster of "Ahu" 3697-99 (B23-57)
Archaeological Sites		Kahukupoko Kaalo Waiahukini	
Archaeological Sites		Kailikii Hawea Kalipaa Kahio	
Archaeological Sites	Puu Hou	Waialu Kahio Point Kalipaa Puu Waimanalo Hopelua Hopelua Kahakahakea	
Archaeological Sites	Pohue Bay	Pohue Bay	
Archaeological Sites		Kahuku Humuhumu Point	

**TABLE 12 Significant Historical Sites in the Ka'u Area continued
October 1992**

Cultural Resource	Quadrangle	Location	Remarks
	Pohue Bay	Keawaiki Kaheawai Manuka State Park Kipuka Kaupuaa	Complex of house site, shelter and trail 3670-73 (B24-12) Petroglyphs 3669 (B24-11) Burial cave 3679 (B24-27)
			Lava tube shelter cave 3688 (B24-18)
			Large corral 3690 (B24-25, 26)
			Six sided house site 3667 (B24-9)
		Manuka-Mawai Trail	Shrine 3663 (24-7)
Archaeological Sites	Manuka Bay	Kauna Point Kaiakakua	Complex of House sites 3666 (B24-8), 3668
(B24-10), 3664 (24-6), 3662 (B24-3)		Kipuka Malua	Single petroglyph 3676 (B24-22), Enclosure with shrine 3676 (B24-22)
		Manuka Bay	Small shelter cave 3677 (B24-23)
			Extensive complex of sites including house platforms, kuleana, trail, heiau, and holua slide.
			3675 (B24-20), 3681 (B24-29), 3682 (24-39)
			3683 (B24-31), 3661 (B24-2), 3660 (B24-1)
			Petroglyphs 3674 (B24-19)

and some very early temporary fishing sites; work is being done for better interpretation. Sites are also being preserved at Punalu'u (a small heiau, stepping stone trail and petroglyphs), and there are plans to expand the preservation to include permanent habitation and the large heiau of Punalu'u nui. As yet, no upland concerns in Ka'u fields or sites have been preserved. In general, historic interpretation and preservation efforts are just starting in Ka'u and the study area.

RESOURCE CONCERNS

Water Quantity: The major natural resource concern in the study area is insufficient supply of agricultural and rural water during drought periods.

Presently, rural and agricultural water is supplied from two wells, one spring development and two tunnel sources. Insufficient water supply is caused by the seasonally fluctuating water sources, inadequate storage facilities, and increased demand caused by a population increase. Development of additional water sources and increased storage capacity is needed to alleviate the water shortage problem.

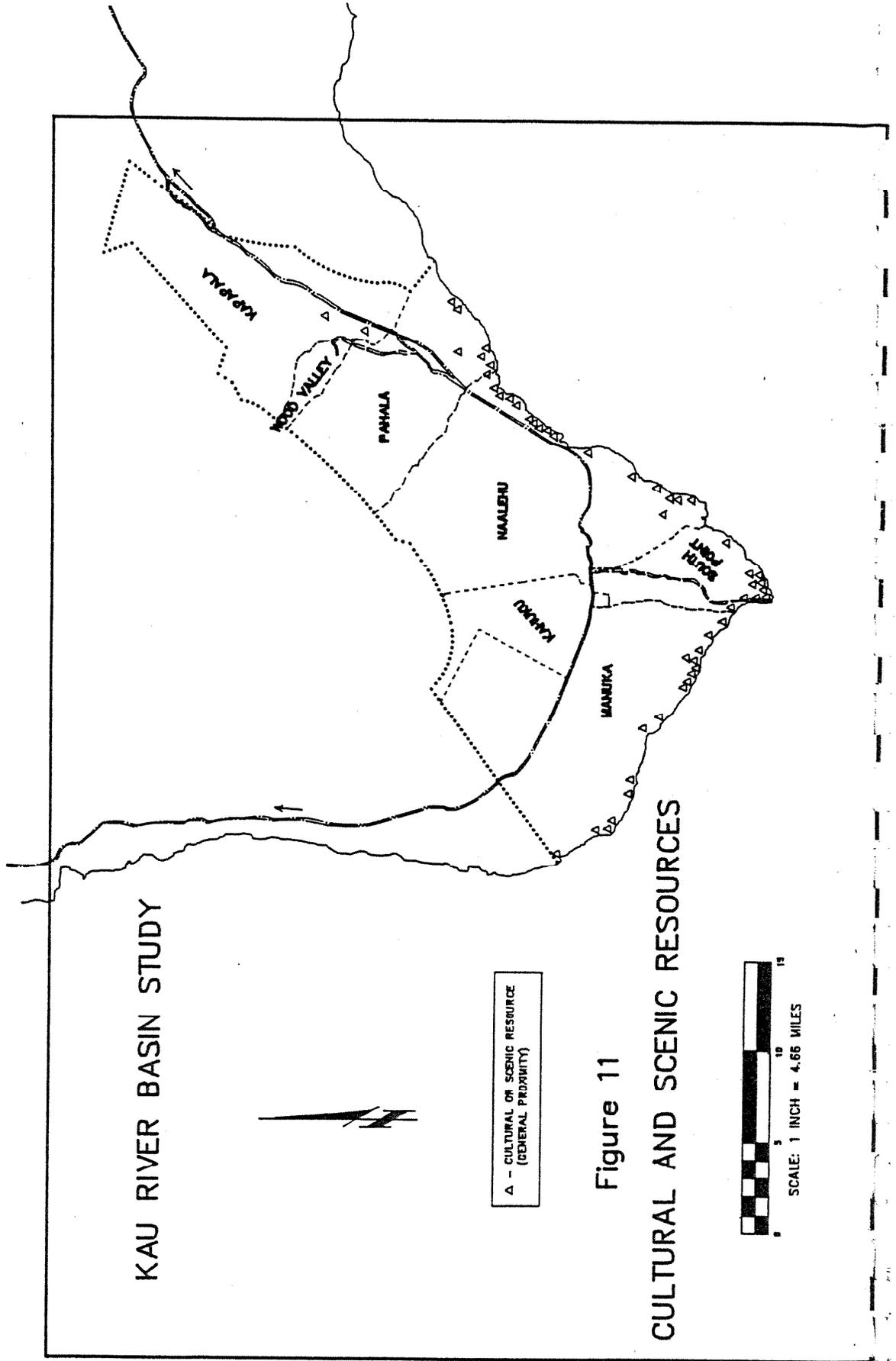
Limited development of the water supply in the Ka'u area restricts the potential for farms and residential developments in the area. Due to limited rainfall in most of the Ka'u area rain catchments are generally not practical, thus, limiting development to the vicinity of water sources or distribution lines. There is a need to improve the water distribution system and provide additional storage to expand service.

Recently, Ka'u Agribusiness has reduced its sugar-acreage from a maximum of 13,000 acres to slightly less than 12,500 acres¹ and has investigated cultivation of alternative crops, such as citrus, mangos and Macadamia nuts. Development of irrigation water is needed to effectively utilize the former sugar cane land for other crops.

Projected resort and industrial development in the study area will require additional water supply development. Some proposed developments, such as the Hawaiian Riviera, offer to develop private water sources.

Water Quality: Deterioration of water quality is another concern. The use of shallow well basal water and shore line spring water in the future will require the protection of groundwater resources. Controls over the use of household cesspools, animal waste systems, and disposal of industrial waste, including sugar mill effluent, will be required.

¹Source: State Land-use District Boundary Review-Hawaii, Office of State Planning, 1992.



Ka'u Agribusiness transports its sugar mill effluent through settling basins to deposit soil and organic matter washed off of the sugar cane before processing. This effluent is not discharged into the ocean.

Identified non-point pollution sources are livestock and landfills near Na'alehu.¹ An irrigation source near Na'alehu has shown 0.14-ppb (parts per billion) Atrazine.² The drinking water standard is 3.0-ppb. Atrazine is a selective pre-emergent and post-emergent herbicide and plant growth regulator used for weed control on corn, sorghum, coffee, sugar cane, pineapple, citrus fruits and bananas.

Erosion/Sedimentation: Soil erosion on farmland is another resource concern. Erosion is the group of processes whereby earthy or rock material is loosened or dissolved and removed from any part of the earth's surface. There are two general classes of erosion: geologic and accelerated. Geologic erosion is the naturally occurring erosion. Accelerated erosion is erosion occurring at rates greater than geologic erosion, usually caused by human activities.

Accelerated erosion includes sheet, rill, ephemeral gully, gully and streambank erosion. Sheet erosion is the uniform movement of soil on a slope by sheets of running water as distinct from streams. Rill erosion is the erosional action of water that forms small (less than one foot deep), steep-sided channels called rills. Left unchecked, rills progress through ephemeral gullies to gullies. Ephemeral gullies are small gullies that appear in the same place every year which the landowner plows shut. The area affected is the area of lessened productivity due to the loss of topsoil caused by the closing of the gully each year. Land treatment or conservation practices only affect accelerated erosion.

Sheet, rill and ephemeral gully erosion in Macadamia nut and citrus orchards is a problem usually due to the lack of ground cover beneath the canopy of mature trees. Bare ground under the trees is desirable for harvesting or to induce conditions for crop development. Sheet and rill erosion on mature Macadamia orchards without ground cover is approximately eight tons per-acre per year. Younger orchards with ground cover and terraces are lower depending on soil type, slope, etc.

Sheet and rill erosion on a new field of sugar cane ranges from 2 to 20 tons per-acre per year and for an established field about 2 to 10 tons per-acre per year depending upon soil type and slope. Steep fields are susceptible to ephemeral

¹Source: Hawaii's Assessment of Nonpoint Source Pollution Water Quality Problems, State Dept. of Health, November, 1990.

²Source: Hawaii Groundwater Quality Protection Strategy, State Dept. of Health, March, 1990.

gully and gully erosion particularly following sugar cane harvest.

Another problem to the soil resource is erosion caused by harvesting. In Macadamia nut orchards, mechanical sweepers induce wind erosion on dry soil. In sugar cane harvesting, soil attached to the cane is removed from the field. The soil loss can be excessive in wet soils where little crop residue is left. Ka'u Agribusiness minimizes this erosion by leaving crop residue during harvesting. No research has been done in this area to quantify this problem.

Due to windiness and fragile soils, excessive wind erosion rates are expected if land in the vicinity of South Point is cultivated.

Sediment causes problems by plugging culverts and necessitating cleanup of roads. Sediment is solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, or ice, and has come to rest on the earth's surface either above or below sea level.

Storm runoff erodes streambanks and causes headcutting along stream channels. Most of the streams in the area have a stream bottom of basalt bedrock. With the increased energy of storm events, the stream can not easily erode down through the basalt, so it meanders back and forth eroding more of the channel banks. In areas of the stream channel where a headcut occurs, turbulent action of the water erodes clinker layers out from underneath the overhanging basalt flow until large pieces of the lava break off into the stream channel. These basalt boulders are reduced in size during large storm events by the abrasion caused by them rolling along the stream bottom and banging into each other. Eroded sediments are deposited in flatter areas, culverts and bridges resulting in diminished flow capacities. The former wetland and pond site at Ninole Cove has been filled in by coarse sediment. The apparent source of this sediment is the increased erosion and flushing of within-channel sediment caused by large frequency storm events.

Flooding: Flooding across the state highway between-mile posts 49 and 57 is common. This stretch of highway includes Punaluu Gulch, Moaula Gulch, Hionamoia Gulch, Paaau Gulch, Keiawa Gulch, Piikea Gulch, Hilea Gulch, Ninole Gulch, or Kaalaala Gulch. A low water crossing known locally as "The Ford" is identified by red painted reflector posts. Traffic is not to enter the low spot if water is in the red area. The flooding stops vehicular traffic for several hours two to three times each year. This traffic stoppage has caused aggravation to local residents who can not get home or have to drive around the island to get home. The flooding has also resulted in lost work days for workers and professionals,

including teachers and physicians. Flood waters also damage road surfaces, shoulders, and bridges.

The major cause of the flooding appears to be inadequate capacity at the bridge crossings. When the bridges were built in the 1930s, poor sizing of the bridges they did not anticipate the changes in land-use during the last 60 years, placement of the bridge in relation to the stream channel geometry, and trying to siphon the stream under the bridge. All of these tend to cause storm waters to backup and overtop the road now.

Severe storms have caused residential flooding. The incidence of such flooding may increase if properties in flood plains are developed. Inadequate storm water conveyance also contributes to the problem.

Land Conversion: The maintenance of agricultural land in agricultural use is another concern. The tenuous financial position of the Hawaiian sugar industry and state-wide resort/industrial expansion along with possible spaceport development may create pressures to convert agricultural land to non-agricultural use. The viability of agricultural production in Ka'u is dependent on factors such as water, transportation, and market conditions.

Biodiversity: The loss of habitat of native flora and fauna continues to affect the biodiversity of the Ka'u District. Losses due to agricultural and residential development continue to adversely impact the area. Feral animals and introduced plants also impact the native plant and animal populations.

OPPORTUNITIES

Recreation: The Ka'u area has an abundance of minimally disrupted land and shoreline which provide wildlife habitat, contain archaeological and historic sites, and provide recreational opportunities to residents and nonresidents.

Recreational activities, such as hunting, fishing, camping, and hiking, require maintenance of the natural resources of the area. Park facilities can be expanded. Recreational facilities should be maintained and improved in some areas. Sediment discharges into reef environments should be reduced. Visual resources should be preserved.

Wildlife Habitat: Opportunities to maintain or enhance unique wildlife habitats and ecologic communities exists, an example being the marshes and springs along the coastline. Nesting areas for the protected nene and green sea turtle exist in or adjacent to the study area. An opportunity to check the

EXHIBIT K

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
1 Unit (5 shares)	\$151.61 x 12 = \$1,819.32

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency

Estimate of Maintenance Fee Disbursements:

Monthly Fee x 12 months = Yearly Total

Utilities and Services	None	
Air Conditioning		
Electricity		
<input type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Elevator		
Gas		
<input type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Refuse Collection		
Telephone		
Water and Sewer		
Maintenance, Repairs and Supplies		
Building		
Grounds	\$4,166.67	\$50,000.04
Management		
Management Fee	\$2,500.00 (manager)	\$30,000.00
Payroll and Payroll Taxes	\$1,666.67 (security)	\$20,000.04
Office Expenses	\$ 416.67	\$ 5,000.04
Insurance	\$1,666.67	\$20,000.04
Reserves(*)	\$1,666.67	\$20,000.04
Taxes and Government Assessments	\$ 166.67	\$ 2,000.04
Audit Fees		
Other		
TOTAL	\$12,250.02	\$147,000.24

I, PETER SAVIO, as agent for/and/or employed by Hawaiian Island Development Company, Inc. the condominium managing agent/developer for the Pahala Plantation condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.



 Signature

June 25, 2003

 Date

(*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

Attachment to Exhibit K

Developer's Explanation Regarding Reserves

In arriving at the figure for "Reserves" herein, the Developer has not yet conducted a reserve study in accordance with § HRS 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Rather, the Developer has designated the Reserves amount from its own account to assist the Association in achieving compliance with the requirements of the Hawaii County Code, and to facilitate the timely construction and installation of the Project improvements and infrastructure, including the roadways. The Developer plans to establish a trust fund on behalf of the Association to be used toward the construction of such improvements and infrastructure ("the Trust Fund"). The Trust Fund will be held separate and apart from any reserves the Association is required to maintain under the Act, and shall be used for Project improvements and infrastructure.

As described in the Disclosure Abstract attached to this public report as Exhibit J, the Developer shall deposit an initial \$1,000,000 into the Trust Fund. Additionally, the Developer shall deposit funds into an account for the start-up of the Association's maintenance reserves. The Developer will make these contributions by setting aside a total of \$800 per acre upon the closing of the sale of each Unit and by disbursing such \$800 per acre as follows: (a) \$600 per acre shall be deposited into the Trust Fund, and (b) \$200 per acre shall be deposited into the Association's maintenance reserve account. The foregoing contributions are being made on behalf of the owners of Units in the Project and shall be credited accordingly in any reserve study performed for the Project.

Harry Kim
Mayor



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Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

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County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

July 9, 2003

Andrew R. Bunn, Esq.
Chun, Kerr, Dodd, Beaman & Wong
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813-3815

Dear Mr. Bunn:

Pahala Plantation Condominium Project
Tax Map Keys: (3) 9-6-003:2, por. 12 & 22; 9-6-005:010, 012, 013 & 056 and
9-6-006:005, 006, 007 & 008

We are in receipt of your letter, dated June 26, 2003, and the accompanying Notice of Intention and Questionnaire, Preliminary Public Report and supporting documents for the proposed Pahala Plantation Condominium Property Regime (CPR) project and the Condominium Map for the project.

We understand the developer intends to create a 202-unit CPR project on a 1,918.58-acre parcel identified by the referenced Tax Map Key (TMK) parcels and parcel portions that are situated in the State Land Use (SLU) Agricultural district. The Preliminary Public Report also talks about the developer seeking a change of zone from the existing Agricultural (A-20a) district to and Agricultural Project District (APD). The proposed project would establish a density of approximately 9.5 acres per building site, which is consistent with the maximum density of one acre per building site permitted in an APD.

We wish to emphasize that the project, as described, could not be implemented without a rezoning of the property.

In view of the recently adopted Ordinance 02-111 (ORD 02-111), we have the following comments regarding the proposed CPR project for the consideration of your client:

1. Any CPR project in the Agricultural or APD zoning district is subject to ORD 02-111, which requires the Planning Director's final map approval for the CPR project.

EXHIBIT L

Andrew R. Bunn, Esq.
Chun, Kerr, Dodd, Beaman & Wong
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2. The application for map approval for a CPR project shall conform to the procedures for subdivision approval, except as otherwise provided in ORD 02-111.
3. A preliminary map as defined by the Subdivision Code and ORD 02-111 will be subject to the review and comments of other departments and agencies under the same standards as for the creation of new lots in a subdivision application.
4. Pursuant to §23-76 of the Subdivision Code, "land shall not be offered for sale, lease or rent in any subdivision, nor shall options or agreements for the purchase, sale or leasing or rental of the land be made until approval for recordation of the final plat is granted by the director." It is our understanding that the developer intends to provide the necessary infrastructure improvements as the units are sold and, at least partially, with the funds generated from said sales. Therefore, final approval of the CPR map can only be granted upon completion of the necessary infrastructure improvements or the entering into an agreement conforming to §23-82 and secured by a bond pursuant to §23-83 guaranteeing completion of the required construction.

Provided the proposed CPR project is created in compliance with all applicable codes and ordinances, Hawaii County does not have any objection to the developer opting to employ the condominium method of ownership rather than the outright creation and sale of individual lots. However, it should be noted that we will require that the subject TMK parcels and parcel portions be consolidated into a single lot and that any remainder lots resulting from the inclusion of portions of existing TMK parcels shall conform to the requirements of the Zoning Code and Subdivision Code.

A copy of ORD 02-111 has been enclosed for your reference. Should you have questions, please feel welcome to contact Larry Brown or Daryn Arai of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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Enclosure: ORD 02-111

Andrew R. Bunn, Esq.
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July 9, 2003

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xc: Real Estate Commission – Condominium Review Committee

COUNTY OF HAWAI'I

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PLANNING DEPARTMENT
COUNTY OF HAWAI'I



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ORDINANCE NO. 02 111

AN ORDINANCE AMENDING CHAPTER 23 (SUBDIVISION CODE) OF THE HAWAI'I COUNTY CODE, RELATING TO CONDOMINIUM PROPERTY REGIMES.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Findings. The Subdivision Code is meant to ensure that when land is subdivided, the new lots have adequate access, drainage, and other infrastructure. The Subdivision Code specifies the minimum requirements for subdivision, such as road standards. The County has many examples of infrastructure problems from subdivisions developed before there was a strong subdivision code. The Zoning Code works with the Subdivision Code to specify the minimum area and dimension of lots. This is the basic control of density.

The condominium property regime ("CPR") law allows separate ownership of apartments in real estate projects, while allowing for "common elements" like the roof, hallways, driveways, yards, and so forth, to be held in common. The CPR disclosure and review process is regulated by the State Real Estate Commission.

CPR permits ownership of a lot by separate owners owning separate apartments. These apartments may have "limited common elements" which are certain type of common elements reserved for the use of a certain apartment or apartments to the exclusion of other apartments. The "limited common element" is often an area of land. The apartments can be sold separately and individually mortgaged. In Hawai'i County, CPRs have been used in the agricultural and residential districts to create separate areas of ownership on a single lot, without following the

subdivision code, by defining set areas of land as “limited common elements.” The result can be similar to subdivision, although not officially called subdivision. The CPRs typically have not complied with the subdivision code. The CPR is typically not reviewed by the Department of Public Works for adequacy of the roads or drainage. A CPR may be created simply by filing a declaration, bylaws, and condominium map with the Bureau of Conveyances, although the individual apartments cannot be sold until the Real Estate Commission issues an effective date for a final public report. The definition of “apartment” is very broad and can include a toolshed, a parking stall, a portion of a warehouse, a portion of a loading dock, a lobby or front desk area in a condo hotel, etc.

Most CPR’s in Hawai‘i County, in the agricultural district, have actually involved lots that could not legally be subdivided because they were not large enough to meet the minimum lot size required for additional lots in the Zoning Code. For example, a 20-acre lot in the A-20a zone cannot be legally subdivided because it is already the smallest legal parcel, but it has been possible to create several CPR units and sell them off separately. This completely destroys the intent of the minimum lot size established by the zoning, and is, in effect, a do-it-yourself rezoning.

In response to concerns about the use of the CPR to circumvent the zoning and subdivision codes, the 2000 State Legislature passed Act 251, which added a new section to the condominium law to state that “any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property...” H.R.S. sec. 514A-45 gives the county council the power to enact supplemental regulations governing CPRs.

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In trying to regulate CPRs that are the equivalent of subdivisions of land it is important not to interfere with the use of the CPR to own multi-unit buildings. For that reason, the proposed ordinance does not cover zoning districts in which multi-unit buildings are allowed.

The implementation of Act 251 may cause hardship for some individuals who made investments in the expectation that it would be possible to do a CPR. The council finds that it is reasonable to allow some to complete the CPR process in this transitional period, but limited to owners who had made their initial filings within one year of the enactment of Act 251, or who wish to create a CPR on property which had two legal dwellings, or permits for two dwellings. (Act 251 took effect on June 19, 2000.) The council also finds it reasonable to allow certain lots with two dwellings to do a CPR as long as water, roads and off-street parking meet stated standards.

SECTION 2. Chapter 23, Hawai'i County Code, is hereby amended by adding a new article which shall read as follows:

“Article . Condominium Property Regimes.

Section 23A-1. Purpose. The purpose of this article is to ensure that when land is placed under a condominium property regime, the individual units created are adequately served by roads, water systems, and other infrastructure, and that wastewater, drainage and flooding issues are properly addressed. It also clarifies the applicability of zoning regulations to condominium developments.

Section 23A-2. Definitions.

“Apartment” shall mean any area designated as an “apartment” in the declaration.

“Common element” means any area designated as a “common element” in the

declaration.

“Condominium” means the ownership of single units, with common elements, located on property within a condominium property regime.

“Condominium property regime” means the legal status created by Chap. 514A, H.R.S.

“Declaration” means the instrument by which property is submitted to Chap. 514A, H.R.S., and as such declaration is amended from time to time.

“Developer” means a person who undertakes to develop a real estate condominium project.

“Limited common element” means any common element designated in the declaration as reserved for the use of a certain apartment to the exclusion of the other apartments.

“Minimum building site area” means the minimum building site area established for the zoning district by the zoning code. For example, in the FA-3a district, the minimum building site area is 3 acres. In the RS-10 district, the minimum building site area is 10,000 square feet.

“Project” means a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the condominium property regime is offered or proposed to be offered for sale.

“Unit” means an apartment and any contiguous limited common elements.

Section 23A-3. Applicability. Sections 23A-1 to 23A-20 apply only to condominium property regimes in the RS, RA, A, FA, IA, and APD zoning districts, and to no other zoning districts.

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Section 23A-4. Approval required.

(a) No developer shall certify that the project is in compliance with all applicable county permitting requirements, pursuant to H.R.S. §514A-1.6, §514A-11(13) and §514A-40(a)(9) or any successor statute, unless the project has received final map approval for a condominium property regime from the director as provided herein.

(b) The director shall not certify that the project is in compliance with all applicable county permitting requirements, pursuant to H.R.S. §514A-1.6, §514A-39.5(c), and §514A-40(b)(1), or any successor statutes, unless the project has received final map approval for a condominium property regime from the director as provided herein.

(c) The application for map approval for a condominium property regime shall conform to the procedures for subdivision approval except as otherwise stated herein.

Section 23A-5. Submission of preliminary map. The applicant shall submit a preliminary map for a condominium property regime containing the information required by a preliminary plat. It shall also show the location of all apartments, limited common elements, and common elements, shall identify which apartment each limited common element is appurtenant to, and shall identify each unit. The preliminary map shall conform to the declaration.

Section 23A-6. Standards of review. In considering the application for preliminary map approval, the reviewing agencies shall consider each unit as a lot for the purpose of determining the necessary improvements. The applicant shall pay an application fee per unit equal to the fee required by a subdivision application containing the same number of lots.

Section 23A-7. Common elements. The project may have common elements that are not included within a unit.

Section 23A-8. Maximum number of units. The number of units shall not exceed the area of the project divided by the minimum building site area.

Section 23A-9. Minimum building site area and unit dimensions.

(a) Each unit shall contain no less than the minimum building site area, except as stated in (b). No limited common element may be included in more than one unit for the purpose of determining the minimum building site area.

(b) The director may allow a reduction of the minimum building site area for a project not exceeding two acres, or for a project not exceeding three units, if the director finds that the overall development is consistent with the zoning district, and that the project would meet the applicable criteria for a planned unit development. In such projects, not exceeding two acres or three units, common areas not included in a unit may be apportioned to the units in determining whether the units meet the minimum building site area. The director shall not waive the requirement that the number of units shall not exceed the area divided by the minimum building site area. In the state land use agricultural or rural districts, the unit shall not be less than the minimum lot size required by the state land use law.

Section 23A-10. Minimum unit dimensions. The width and length of a unit shall conform to the requirements for a building site established by the zoning district in question, except that the director may allow modification of dimensions if the director finds that the overall development is consistent with the zoning district, and that the project would meet the

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applicable criteria for a planned unit development. Common elements not included in a unit may be considered in making this determination.

Section 23A-11. Tentative approval. The director shall grant tentative approval to a preliminary map for a condominium property regime in the same manner as tentative approval of a preliminary plat, with conditions consistent with those that would be imposed for a preliminary subdivision plat.

Section 23A-12. Final approval if no infrastructure required. If the project requires no construction of streets, private streets, drainage improvements, sewers, water systems, utilities, or other infrastructure, the director shall issue final map approval for a condominium property regime at the same time as tentative approval.

Section 23A-13. Construction plans. After the developer has secured tentative approval pursuant to sec. 23A-11, and before beginning construction, the developer shall submit construction plans for approval pursuant to sec. 23-79.

Section 23A-14. Final approval. After approval of construction plans under sec. 23-79, the director shall issue final map approval for a condominium property regime after the developer has (1) obtained certification of completion under sec. 23-98; or (2) entered into a bond for completion of improvements under sec. 23-81 to 83.

Section 23A-15. Conformance with conditions of approval required. The developer shall disclose the tentative approval and any conditions attached thereto in any filings with the real estate commission for obtaining an effective date for a final public report.

Section 23A-16. Final condominium map. The developer shall prepare and file a final map for a condominium property regime that conforms to the preliminary map as tentatively

approved. The review and approval of the final map shall conform to sec. 23-72 to 23-74, insofar as applicable.

Section 23A-17. No change in condominium after approval. After final approval of the map for a condominium property regime, no change may be made in the boundaries of the limited common elements or their assignment to apartments, or to the boundaries of the common elements, without the approval of the director. Approval shall be granted only if the changes also conform to the provisions of this chapter.

Section 23A-18. Effect of condominium map approval. A unit within a project that has received final map approval for a condominium property regime and an effective date for a final public report shall be considered a legal building site and a lot for purposes of the Zoning Code and Subdivision Code.

Section 23A-19. Development as a PUD or CPD. A project may be developed as a planned unit development or a cluster plan development. The standards of the approved planned unit development or cluster plan development shall supercede the standards of this chapter.

Section 23A-20. Exemptions.

(a) Notwithstanding sec. 23A-4, the director shall certify compliance with all county laws if requested under H.R.S. sec. 514A-40, to permit the developer to obtain an effective date for a final public report for a condominium property regime creating 2 units on a lot, if the project complies with applicable county requirements, except for the minimum building site area, minimum dimensions, and the provisions of this article, and, on or before June 19, 2001:

- (1) the declaration involving the condominium property regime had been filed with the Bureau of Conveyances, pursuant to H.R.S. section 514A-20, or

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- (2) a notice of intent had been filed with the real estate commission, pursuant to H.R.S. section 514A-31, or
 - (3) fees had been committed for attorneys or surveys directly related to creating a condominium property regime on the lot.

Documentary evidence to qualify under paragraph (3) shall be submitted to the director within six months of the approval of this ordinance.

Under this section, the developer may also amend a declaration or notice of intent filed on or before June 19, 2001, creating more than two units, to allow the creation of only two units.

(b) Notwithstanding sec. 23A-4, the director shall certify compliance with all applicable county laws under H.R.S. sec. 514A-40(b), to permit the issuance of an effective date for a final public report creating two condominium units on a lot, if the lot contained, on June 19, 2001, two or more legal dwellings, either completed or with valid building permits, and the project complies with applicable county requirements, except for the minimum building site area, minimum dimensions, and the provisions of this article. The declaration establishing the condominium property regime shall be filed with the Bureau of Conveyances no later than one year after the effective date of this ordinance.

(c) Notwithstanding sec. 23A-4 and sec. 23A-20(a) and (b), the director shall certify compliance for no more than two units on a lot if the following exist:

- (1) The lot is in the County's RS zoned district;
- (2) The lot contains at least two completed legal dwelling units;
- (3) The lot has legal access on a state or county road having a minimum 20-foot wide pavement or on a private road built to current county-dedicable standards;
- (4) The lot is serviced by a county or private water system with fire hydrants; and
- (5) A minimum of two off-street parking spaces are provided for each unit.

Section 23A-21. Assessments and rollback taxes on condominiums. In all zoning districts, if a rezoning ordinance applicable to the property imposes a fair share assessment, impact fee, or other similar assessment payable upon subdivision, said fee shall be paid prior to final map approval for a condominium property regime or prior to the effective date of a final public report, if a condominium is created on the property. For purposes of rollback taxes under Hawai'i County Code sec. 19-53, the creation of units by condominium property regime shall be treated as subdivision into lots of like size.

Section 23A-22. Effect of modification of state law. If state laws regulating condominium property regimes are amended or modified the provisions of this chapter shall be interpreted to preserve the intent of this article.

Section 23A-23. No retroactive effect. This ordinance shall not affect the legal status of any project that had received an effective date for a final public report before the effective date of this ordinance."

SECTION 3. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or

applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

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SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY: DEPT. OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

[Signature]
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: July 31, 2002
Date of 1st Reading: July 31, 2002
Date of 2nd Reading: September 11, 2002
Effective Date: September 25, 2002
~~REFERENCE:~~ Comm. 632-40

OFFICE OF THE COUNTY CLERK
 County of Hawaii
Hilo, Hawaii

(DRAFT 2)

Introduced By: Bobby Jean Leithead-Todd
 Date Introduced: July 31, 2002
 First Reading: July 31, 2002
 Published: N/A

REMARKS: _____
8/14/02-held over for publ
8/28/02-Public Hearing

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Jacobson	X			
Leithead-Todd	X			
	X			
Safarik	X			
Tyler	X			
Yagong	X			
	8	0	1	0

(DRAFT 6)

Second Reading: September 11, 2002
 To Mayor: September 17, 2002
 Returned: September 25, 2002
 Effective: September 25, 2002
 Published: October 9, 2002

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki		X		
Chung	X			
Elarionoff	X			
Jacobson		X		
Leithead-Todd	X			
Pisicchio	X			
Safarik	X			
Tyler	X			
Yagong			X	
	6	2	1	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
 FORM AND LEGALITY:

[Signature]
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 9/24/02

[Signature]
 COUNCIL CHAIRMAN

[Signature]
 COUNTY CLERK

Bill No.: 220 (Draft 6)
 Reference: C-632.40/PC-86
 Ord No.: 02 111

Approved Disapproved this 25th day
17th September, 2002
[Signature]
 MAYOR, COUNTY OF HAWAII

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

July 11, 2003

Danton S. Wong, Esq.
Chun, Kerr, Dodd, Beaman & Wong
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813-3815

Dear Mr. Wong:

SUBJECT: Pahala Plantation Condominium Project
Tax Map Keys: (3) 9-6-003:2, por. 12 & 22; 9-6-005:010, 012, 013 & 056 and
9-6-006:005, 006, 007 & 008

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DEPT OF COMMUNITY
& CONSUMER AFFAIRS
STATE OF HAWAII

Thank you for your letter, which was received by facsimile transmission on July 2, 2003, informing us of the probable reduction in the total number of CPR units for the subject CPR project and the elimination of any units with an area of less than 5 acres.

The proposed amendments to the project CPR map, Declaration of Condominium Property Regime or Public Report does not effect the substance of our June 9, 2003 letter to Mr. Bunn in response to the CPR documents provided to this office. Until such time that the developer has secured the necessary change of zoning and CPR map final approval, pursuant to Ordinance 02-111, the project cannot be certified to comply with Hawaii County codes and ordinances.

Should you have questions, please feel welcome to contact Larry Brown or Daryn Arai of my staff at 961-8288.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN
Planning Director

LMB:mad
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EXHIBIT M

Danton S. Wong, Esq.
Chun, Kerr, Dodd, Beaman & Wong
Page 2
July 11, 2003

xc: Real Estate Commission – Condominium Review Committee