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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

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P. O. BOX 1879  
HONOLULU, HAWAII 96805

May 26, 2015

TO: Daniel E. Orodener, Executive Officer  
Land Use Commission

FROM: Jobie M. K. Masagatani, Chairman *Jobie M. K. Masagatani*  
Hawaiian Homes Commission

SUBJECT: Department of Hawaiian Home Lands  
2014 Annual Report for East Kapolei  
LUC Docket No. A99-728(c), Kapolei, Oahu

The following is the annual report for the calendar year ending December 31, 2014, on the Department of Hawaiian Home Lands (DHHL) activities regarding the conditions imposed by the Land Use Commission (LUC) for East Kapolei developments affecting those approximately 67.184 acres of land, identified as Tax Map Key No. (1) 9-1-016:142 and more particularly described in Exhibit "A" attached hereto ("Property").

The Department of Land and Natural Resources (DLNR) conveyed 159.365 acres of the subject lands, Tax Map Key (1) 9-1-016:por. 108 to DHHL in September 2005 ("East Kapolei I" and "East Kapolei Commercial"). The Board of Land and Natural Resources also approved the conveyance of portions of Tax Map Key (1) 9-1-017:071 and 088 ("East Kapolei II").

The Land Use Commission created a new docket number, DOCKET NO. A99-728(c), by that Order Amending Findings of Fact, Conclusions of Law and Decision and Order, entered January 14, 2013, (January 14, 2013 Decision and Order), that applies solely to this 67.184 acres ("Petition Area C"). Petition Area C was released from the conditions set forth in the Findings of Fact, Conclusions of Law, and Decision and Order dated September 8, 1999 in Docket No. A99-728. Petition Area C will retain its classification to the State Land Use Urban District. The remaining approximately 715 acres of lands within the Petition Area in Docket No. A99-728 and not part of Docket Nos. A99-728(a) or A99-728(b)

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will continue to be subject to the conditions in the 1999 Decision and Order, as amended.

Project Status.

DHHL has executed General Lease No. 276 with Kapolei Hawaii Property Company with the effective date of December 1, 2014, to develop the regional commercial center "Ka Makana Alii". It is a mixed use regional shopping center, with a variety of commercial land uses such as retail (Macys), restaurant (McDonald's) and entertainment space (Consolidated Theatre), business traveler oriented hotels (Hampton Inn), office space, open space amenities, and a variety of transportation related linkages. The project will represent the largest revenue generator for DHHL which will contribute significantly to achieving financial self-sufficiency and provide greater financial support towards fulfilling its mission.

Final Environmental Assessment dated November 2011 was completed in compliance with Chapter 343, Hawaii Revised Statutes, as amended.

Condition 1: If applicable, Petitioner, its successors, and assigns shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable affordable housing requirements of the City and County of Honolulu. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner, its successors, and assigns, and the City and County of Honolulu.

Status: DHHL lands at East Kapolei will be developed for the purpose of providing affordable housing in accordance with the requirements of the Hawaiian Homes Commission Act (HHCA), as amended.

Condition 2: Petitioner, its successors, and assigns shall coordinate and/or participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by appropriate State and County agencies.

Status: DHHL coordinated the development of a 4.0 million gallon reservoir and water transmission main with the City and

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County Board of Water Supply (BWS) and these two projects have been completed in November 2010 and January 2010 respectively. The 4.0 million gallon reservoir was accepted by BWS in February 2011. The system provides water services to the DHHL projects, including the commercial project in Petition Area C, as well as portions of the University of Hawaii West Oahu Campus (UHWOC).

Condition 3: If residential use is established in Petition Area C, Petitioner, its successors, and assigns shall comply with Hawaii Revised Statutes section 302A-1601 *et seq.*, to the extent applicable to the Petitioner.

Status: There is no residential use planned in Petition Area C. DHHL set aside two parcels in East Kapolei II (approximately 12 acres and 18 acres) for an elementary school and middle school, respectively.

Condition 4: Petitioner, its successors, and assigns shall coordinate and/or fund and construct adequate wastewater transmission and disposal facilities, as determined by the City and County of Honolulu and State Department of Health, to include the planning design, construction, and scheduling of the proposed Kapolei Interceptor Sewer.

Status: DHHL, UHWOC, and D.R. Horton executed an Assessment Agreement to fund and construct a wastewater transmission trunk line to connect to the Kapolei Interceptor Sewer. The wastewater trunk line from the Kapolei Interceptor Sewer to the Kapolei Parkway was completed in 2007 and the trunk line within Kualaka'i Parkway fka North-south Road was completed in January 2010. The system provides wastewater services to the DHHL projects, including the commercial project in Petition Area C, as well as portions of UHWOC.

Condition 5: Petitioner, its successors, and assigns shall grant to the State of Hawaii an avigation (right of flight) and noise easement in a form prescribed by the State Department of Transportation on any portion of the Property subject to noise level exceeding 55 Ldn.

Status: By letter dated June 23, 2005, the DOT, Airports Division determined that: "The project is outside the 55 DNL noise contour line (aircraft noise) of Kalaeloa

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Airport." The project as noted in the DOT letter include the proposed development within Petition Area C.

Condition 6: If applicable, Petitioner, its successors, and assigns shall not construct residential components within areas exposed to noise levels of 60 Ldn or greater.

Status: There is no residential use planned in Petition Area C.

Condition 7: Petitioner, its successors, and assigns shall be responsible for implementing sound attenuation measures to bring noise levels from sporting events, vehicular and air traffic in and within the Property down to levels acceptable to the State Department of Health.

Status: DHHL will plan for sound attenuation measures to bring noise level from sporting events, vehicular and air traffic in and within the Property down to levels acceptable to the State Department of Health.

Condition 8: [reserved]

Condition 9: Petitioner, its successors, and assigns shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation and the City and County of Honolulu. Petitioner and/or the State Department of Transportation shall submit the construction plans as they relate to drainage issues for the North-South Road to the City for review and approval.

Petitioner, its successors, and assigns shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to State roadway facilities caused by the proposed Project as set forth in a Memorandum of Agreement ("MOA") agreed to and executed between the State Department of Transportation ("DOT") and Petitioner. Petitioner shall obtain acceptance of the Project's Traffic Impact Analysis Report ("TIAR") from DOT and consider written comments from City prior to the execution of the MOA. The MOA shall be executed prior to occupancy.

The MOA shall include, but not limited to, the following terms and conditions: (a) the accepted TIAR shall be incorporated in the MOA by reference; (b) Petitioner's responsibilities for

funding, construction, and implementation of improvements and mitigation; (c) a schedule of agreed to improvements and a schedule of future updates and revisions to the TIAR to be accepted by DOT; (d) development of the Project shall be consistent with the executed TIAR and MOA; and (e) any fees or in-kind contributions that are roughly proportional to any indirect or secondary impacts caused by the Proposed Project.

Status: A Memorandum of Agreement (MOA) was executed between DOT and Hawaii DeBartolo, LLC to address the terms and conditions imposed under this Condition 9 dated April 25, 2014.

Condition 10: Petitioner, its successors, and assigns of Petition Area C shall fund and construct adequate civil defense measures as determined by the City and County of Honolulu and State Civil Defense agencies. The civil defense measures shall be operational prior to occupancy of any residences or business.

Status: DHHL will participate in Civil Defense measures as determined by the City and County of Honolulu and State Civil Defense agencies.

Condition 11: Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, Petitioner, its successors, and assigns of Petition Area C shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

Status: DHHL will stop work and notify the SHPD if previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found. Subsequent work will proceed upon proper approvals.

Condition 12: Petitioner, its successors, and assigns shall coordinate the design and construction of drainage improvements on Petition Area C required as a result of the development of Petition Area C to the satisfaction of Federal, State, and County agencies with the goal of executing an agreement on the interim and ultimate regional drainage plan as soon as possible. Petitioner, its

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successors, and assigns shall participate in the planning and coordination of offsite improvements with all landowners and developers in the Kalo'i drainage basin, the intervenor, and other Federal, State and City and County agencies.

Status: DHHL will plan for and coordinate the design and construction of drainage improvements required as a result of the development of Petition Area C with surrounding landowners and developers to the satisfaction of Federal, State and County agencies.

Condition 13: Petitioner, its successors, and assigns agrees to work with the City to implement interim and long-range regional drainage solutions as follows:

- a. Petitioner shall submit a drainage master plan for the Petition Area C to the City for its review and approval prior to any subdivision approvals other than for minor matters, such as easements.
- b. Drainage solutions for Petition Area C shall be compatible with the Ewa Villages Drainage Master Plan and drainage designs for other developments in the Kaloi Gulch drainage basin.
- c. Drainage improvements for Petition Area C shall be consistent with the policies and principles in the Ewa Development Plan.
- d. Petitioner shall also take reasonable measures to minimize non-channelized flows from Petition Area C by construction of berms, detention basins, or other appropriate methods. All flows and drainage patterns that cross the southern boundary of Petition Area C shall remain as conceptually described in the Ewa Villages Drainage Master Plan. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.
- e. Should Petitioner sell various residential or commercial components prior to the completion of the construction of the master infrastructure, any such sale shall be conditioned upon the completion of the appropriate master infrastructure improvements for that portion of the residential or commercial component.

Status: DHHL is working with the City to implement interim and long-range regional drainage solutions as follows:

- a. The Drainage Master Plan for East Kapolei I Development, including Petition Area C, was submitted to the City in November 2006 to satisfy a requirement for Tentative Subdivision Approval. The master plan was accepted by the City on November 20, 2006. The drainage master plan for East Kapolei II was accepted by the City in August 2008.
- b. DHHL has participated in the Kaloi Gulch Regional Drainage meetings convened by the City and County Department of Planning and Permitting, and intends to develop drainage solutions for the Property which shall be compatible with the Ewa Villages Drainage Master Plan and drainage designs for other developments in the Kaloi Gulch drainage basin.
- c. Noted. The drainage improvements will be consistent with the policies and principles in the Ewa Development Plan.
- d. DHHL intends to implement interim drainage improvements that will limit channelized runoff to 2,500 cubic feet per second (cfs) at the Properties' southern boundary.
- e. DHHL has not sold, and does not intend to sell any residential or commercial property.

Condition 14: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall apply for City zoning approval after the State Land Use Commission reclassifies the Project site from Agriculture to the Urban District. Said zone change application shall be accompanied by a conceptual master plan with land use information sufficient to satisfy county zoning and development plan requirements.

Status: DHHL is not subject to the City zoning authority and jurisdiction. DHHL has no intention to sell or trade Petition Area C subject to Docket No. A99-728(c). Notwithstanding the foregoing, DHHL has declared its intention with the City to develop Petition Area C under the BMX-3 and BMX-4 standards.

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Condition 15: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall comply with County zoning requirements. This condition is not intended to delay the construction of public uses or infrastructure to service the Property.

Status: DHHL has no intention to sell or trade Petition Area C. DHHL intends to comply with the zoning requirements in accordance with the zoning districts that DHHL has declared for the various uses within Petition Area C.

Condition 16: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit within Petition Area C, submit an Open Space and Pedestrian/Bikeway Master Plan to the City for its review and approval. Regardless of the fee ownership, Petitioner, its successors and assigns, shall consider all timely comments submitted by the City.

Status: DHHL has no intention to sell or trade Petition Area C. DHHL intends to comply with the zoning requirements in accordance with the zoning districts that DHHL has declared for the various uses within Petition Area C.

Condition 17: In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit with Petition Area C, submit a conceptual Urban Design Plan to the City for its review and approval. The Urban Design Plan shall depict the overall design theme and architectural character of streetscapes, residential neighborhoods and town centers. The Plan shall also include a conceptual landscape plan showing treatment of Project entries, major roadways, and common areas. Regardless of the fee ownership Petitioner, its successors and assigns shall consider all timely comments submitted by the City.

Status: As long as DHHL is the fee simple owner, DHHL is not required to obtain approval of a conceptual Urban Design Plan from the City. Notwithstanding that, DHHL, with its tenant, submitted the Conceptual Urban Design Plan for the proposed Ka Makana Alii to the City on May 10, 2013. Comments were received from the City on June 27, 2013.



Condition 18: Petitioner, its successors, and assigns, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting. To the extent feasible, Petitioner shall implement best management practices for onsite stormwater capture, treatment, and reuse into the Petition Area's site design and landscaping to reduce stormwater runoff and control stormwater quality and mitigate nonpoint source of pollution.

Status: DHHL will recommend the use of indigenous plants and xeriscaping, and implement best management practices for onsite stormwater capture, treatment, and reuse into the Petition Area's site design and landscaping, where feasible.

Condition 19: Petitioner, its successors, and assigns, where feasible, shall facilitate an air quality monitoring program as specified by the State Department of Health. Petitioner, its successors, and assigns shall notify all prospective buyers of property, and buyers of individual lots or homes of the potential odor, noise and dust pollution resulting from surrounding agricultural and other uses, said notification to include a reference to potential odors emanating from the Honouliuli Wastewater Treatment Plant.

Status: The tenants of the Ka Makana Alii project will be notified of the potential odor, noise and dust pollution resulting from surrounding agricultural and other uses, said notification to include a reference to potential odors emanating from the Honouliuli Wastewater Treatment Plant.

Condition 20: If applicable, Petitioner shall fund an approved Habitat Conservation Plan to facilitate the propagation of the *abutilon mensiesii* in accordance with Department of Land and Natural Resources and US Fish and Wildlife requirements.

Status: DHHL has contributed its pro-rata share toward a contingency fund as part of the approved Habitat Conservation Plan. In addition, DHHL received a certificate of inclusion on the DOT's taking permit specifically for this project site.

Condition 21: Vertical residential and commercial components of the Project will not be developed and major site work for those

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areas shall not be undertaken until master drainage and infrastructure improvements for these components are completed.

Status: Construction of the required off-site infrastructure improvements (Kapolei Parkway Extension, off-site trunk sewer, 4.0 million gallon water reservoir, and water transmission line) have all been completed.

The Kapolei Parkway extension was completed in February 2008 and open to traffic in February 2010; Phase 2 of the off-site sewer trunk infrastructure was completed in January 2010; construction of the 4.0 million gallon water reservoir was completed in November 2010; the water transmission line within the North-South Road was completed in January 2010; and the 20-foot deep detention basin to contain storm run-off from Kaloi and Hunehune Gulches on UHWO was completed in February 2012.

Condition 22: Petitioner or landowner shall develop Petition Area C in substantial compliance with the representations made to the Commission, as reflected in these Findings of Fact, Conclusion of Law, and Decision and Order. Failure to do so may result in reversion of the Petition Area to its former classification, or a change to a more appropriate classification.

Status: As represented to the Commission, DHHL plans to use Petition Area C as a regional shopping center, with a variety of commercial land uses such as retail, restaurant and entertainment space, business traveler oriented hotels, office space, open space amenities, and a variety of transportation related linkages.

Condition 23: Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in Petition Area C, prior to the development of Petition Area C.

Status: DHHL executed General Lease No. 276 with Kapolei Hawaii Property Company for a 65-year term to develop Petition Area C as a regional shopping center, to be known as Ka Makana Alii.

Condition 24: Petitioner shall timely provide without any prior notice, annual reports to the Commission, the State Office of Planning, and the City and County of Honolulu Department of

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Planning and Permitting in connection with the status of the subject Project and Petitioners progress in complying with conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Status: Noted.

Condition 25: The Commission may fully or partially release the conditions provided herein as to all or any portion of Petition Area C upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Status: Noted.

Condition 26: Within 7 days of the issuance of the Commissions Decision and Order for the subject classification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.

Status: Noted.

Condition 27: Petitioner or landowners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, Hawaii Administrative Rules.

Status: The Declaration of Conditions was recorded in the State of Hawaii Bureau of Conveyances, Office of the Assistant Registrar, Land Court, as Document No. Doc T-8442325, CT 830719 dated February 11, 2013.

Condition 28: Oahu Railway & Land Company ("OR&L") Right-of-Way. Petitioner, its successors, and assigns shall work with State Department of Transportation ("DOT") and State Historic Preservation Division ("SHPD") to formulate an agreement on the number and location of accesses and improvements required for vehicular access to the Project across the OR&L tracks and right-of-way from Roosevelt Avenue. The access agreement shall be finalized prior to DOT's approval for access to Roosevelt.

Status: DHHL, with Hawaii DeBartolo, continue to discuss and consult with Hawaii Railroad Society (HRS), State Historic Preservation Division (SHPD), and State

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Department of Transportation (DOT) regarding impacts to the historic OR&L Right-of-Way.

March 24, 2012, HRS agreed to allow for the construction of one (1) crossing over the forty-foot DOT right-of-way (ROW), which encompasses the historic OR&L tracks.

April 20, 2012, DOT approved in principal for two (2) access points over the forty-foot DOT ROW subject to identified conditions.

December 3, 2013, DHHL notified of delegation of responsibility to DeBartolo to fund, construct and implement all transportation improvements and measures required to mitigate impacts to State roadway facilities that may be impacted by the proposed Ka Makana Alii project.

April 9, 2014, HDOT, under authority delegated by the Federal Highway Administration (FHWA), initiates consultation with the SHPD, HRS, and HHF in accordance with Section 106 of the National Historic Preservation Act (Section 106) to allow the KMA-Roosevelt access point to cross the forty-foot DOT ROW also known as the historic OR&L ROW.

September 4, 2014, U.S. Fish and Wildlife Service, in accordance with Section 7 of the Endangered Species Act (Section 7), concurs with the "no effect" determination. This concludes Section 7 requirements for the KMA-Roosevelt access.

December 8, 2014, SHPD concurs with the FHWA determination of "No Adverse Effect with Conditions" for impacts to the historic OR&L ROW in accordance with Section 106 and HRS Chapter 6e-8. SHPD acknowledges FHWA's notice of intent to issue a Section 4(f) De Minimis Impact Finding. Section 106 and Section 4(f) processes are concluded.

January 12, 2015, FHWA issues National Environmental Policy Act (NEPA) Categorical Exclusion to authorize the KMA-Roosevelt Avenue crossing.

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January 29, 2015, Hawaii DeBartolo LLC submits 60% plans and specifications to HRS and SHPD for the crossing of the former OR&L ROW for review and comment.

February 17, 2015, Hawaii DeBartolo LLC receives comments from HRS for the 60% plans and specifications for the crossing of the former OR&L ROW.

February 25, 2015 HDOT requests formal authorization from FHWA and SHPD for the KMA-Roosevelt crossing, as required by the OR&L Deed of Transfer.

May 1, 2015 per SHPD, HDOT revises request letter for formal authorization from SHPD for the KMA-Roosevelt crossing, as required by the OR&L Deed of Transfer.

The foregoing status report has been provided as a courtesy to the Commission on the ongoing and planned activities of DHHL on lands that were made subject to certain conditions as set forth in that certain Declaration of Conditions dated February 8, 2014 in Docket No. A99-728(c). This status report shall not constitute a waiver or acquiescence of jurisdiction as between DHHL and the Commission.

Should you have any questions, please call Linda Chinn of our Land Management Division at 808.620.9451.

c: Mr. Leo R. Asuncion, Jr., Office of Planning  
Mr. George Atta, Department of Planning and Permitting