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**SCHULER DIVISION**

June 19, 2013

Mr. Daniel Orodener  
Executive Officer  
Land Use Commission  
P. O. Box 2359  
Honolulu, HI 96804-2359

2013 JUN 19 P 2:51  
LAND USE COMMISSION  
STATE OF HAWAII

Dear Mr. Orodener:

2013 Annual Report  
Docket No. A06-771  
Ho'opili

D.R. Horton Schuler Homes LLC ("Owner"), submits this first annual progress report to the Land Use Commission ("LUC"), the state Office of Planning, and the city Department of Planning and Permitting pursuant to Condition 23 of the June 21, 2013 LUC order in Docket No. A06-771.

The subject of this annual report is the petition area currently identified as the "Ho'opili" project. The petition area is comprised of 1,525.516 acres located at Ewa, Island of Oahu, Tax Map Key Nos. 9-1-017:004 (por.), 9-1-017:059 (por.), 9-1-17:072, 9-1-018:001, and 9-1-018:004 (hereinafter referred to collectively as the "Property").

LUC Reclassification (Docket No. A04-753)

Pursuant to the Findings of Fact, Conclusions of Law, and Decision and Order dated June 21, 2013, the Property was reclassified by the LUC from the Agricultural District into the Urban District for development.

Status of Compliance with Conditions

The conditions to reclassification are reproduced boldface followed by a description of the progress being made to comply with them.

**1. Agriculture and Phasing of Development.** Petitioner shall hold or cause the phasing of development of the petitioned lands in a manner that will allow farmers unimpeded access to and use of agricultural lands not yet needed for development and continue the supply of sufficient irrigation water to meet crop production requirements. Petitioner shall inform the affected farmers that the phasing of development and the subsequent incremental termination of farming activities may be accelerated or decelerated, depending on market demand. Petitioner's annual report shall include an updated development timetable with maps of the phasing plan as relevant to the incremental termination of farming activities, copies of any notification sent to farmers regarding the phasing of development, and information on acreage farmed and the names of farms.

Petitioner/Owner (hereinafter "P/O") is in the process of preparing its rezoning application for submittal to the City and County of Honolulu. Until final rezoning approval is provided by the Honolulu City Council, no updated phasing information is available. The current farming acreage remains the same as represented to the LUC. Current farming tenants include Sugarland Farms, Aloun Farms, Syngenta Inc. and Fat Law Farms.

**2. Ho'opili Urban Agriculture Initiative.** Petitioner shall cause the full and complete development of no less than 251 acres of Urban Agriculture and establish the management entity responsible for compliance with Hoopili Sustainability Plan for the areas identified as Urban Agriculture prior to Hoopili's full build-out. The distribution of acreage for the Urban Agriculture component shall not be less than 159 acres of Civic (commercial) Farms, 8 acres of Community Gardens, and 84 acres of Steward Farms (home gardens). The uses and activities of the Civic Farms shall be restricted to agricultural production and uses and activities directly accessory to agricultural production. This restriction shall run with the land. With respect to the 84 acres of Steward Farms, the Petitioner shall offer homeowners a professionally designed edible landscape plan to be installed in their respective lots upon the purchase of their home from the Petitioner that includes adequate irrigation. In addition, the Petitioner shall include explicit reference to the purpose and intent of Steward Farms in all promotional and sales material. Petitioner shall obtain the approval from the State Department of Agriculture ("DOA") for the location of the Civic Farms prior to the submittal of a subdivision application. Petitioner's annual report shall include a status of the progress in establishing the Civic Farms; a copy of the DOA approved map of the location of the Civic Farms; a copy of the paperwork establishing the management entity for the Civic Farms; and a copy of the draft edible landscaping package for the Steward Farms (home gardens).

**a. Civic Farms.** Petitioner will ensure that 159 acres of Civic Farms will meet the DOA's standard that it "can be practicably used for an economically successful commercial farming operation." If it is determined that certain areas identified are not feasible, the Petitioner shall locate other lands to replace those lands determined to not meet the DOA's criteria set forth above and ensure that no less than 159 acres are set aside for Civic Farms.

**b. Steward Farms. Petitioner shall establish the Steward Lot program, design the gardens, and set up agriculture friendly covenants; but consistent with current practice, the individual homeowners shall be responsible for the cost of installation and ongoing care.**

Petitioner has satisfied Condition 2.a. as evidenced by the attached letter from Russell S. Kokubun dated May 23, 2013 with accompanying map delineating those lands set aside for Civic Farms.

P/O will comply with remaining conditions set forth in Condition 2.

**3. Compliance with HRS § 205-3.5, Relating to Agriculture Uses on Adjacent Agricultural Land. For all land in the Petition Area or any portion thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following:**

- a. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, “farming operations” shall have the same meaning as provided in HRS § 165-2; and**
- b. Petitioner shall notify all prospective developers or purchasers of land or interest in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS Chapter 165, the Hawaii Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.**

P/O intends to comply with this condition.

**4. Affordable Housing. Petitioner shall provide affordable housing opportunities for residents in the State of Hawaii in accordance with applicable affordable housing requirements of the City and County of Honolulu (“City”). 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 the Petitioner and the City.**

P/O will comply with this condition.

**5. Public School Facilities.** Petitioner shall contribute to the development, funding for and construction of school facilities, on a fair-share basis, as determined by, and to the satisfaction of, the State of Hawaii Department of Education (“DOE”). Terms of any contribution shall be agreed upon in writing by the Petitioner and the education agency.

Petitioner has complied with Condition 5 as evidenced by the attached “Education Contribution Agreement for Hoopili” dated November 5, 2009.

**6. Water Resources.** Petitioner shall provide potable and non-potable water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area, to the satisfaction of the City Board of Water Supply (“BWS”) and other appropriate State and County agencies. The Project shall use non-potable water for irrigation of the Project’s greenbelts, parks and roadway medians if a suitable supply is available.

P/O will comply with this condition.

**7. Water Conservation Measures.** Petitioner shall implement water conservation measures and Best Management Practices, such as use of endemic, indigenous and drought-tolerant plants and turf, and incorporate such measures into the Petition Area’s site design and landscaping.

P/O will comply with this condition.

**8. Wastewater.** Petitioner shall develop a wastewater collection and transmission system and other sewer improvements in the Petition Area and offsite, as required by the State Department of Health (“DOH”) and the City and County of Honolulu.

P/O will comply with this condition.

**9. Notification of Potential Nuisances.**

**a.** Petitioner shall properly disclose to all prospective purchasers, residents and/or occupants in the Petition Area of the potential adverse impacts of aircraft activity at and from Kalaeloa Airport such as, but not limited to, noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

**b.** Petitioner shall provide as part of any grant or transfer of interest in the Petition Area the notification of potential aircraft and airport activity by including it in any disclosure required for the sale or transfer to buyers and lessees and to other future owners, lessees or occupants.

P/O will comply with this condition.

**10. Transportation.**

**a. Petitioner shall fulfill its commitment to making substantial contributions in land and cash toward traffic and roadway improvements, to include but not limited to:**

- i. \$30 million dollars to the City's Ewa Impact Ordinance Fee Program;**
- ii. participation in improvements to Farrington Highway estimated to cost \$50 million dollars;**
- iii. contribute 20 acres of land along Farrington Highway for widening of that highway;**
- iv. contribute land to the State of Hawaii Department of Transportation ("DOT") for the East-West connector;**
- v. contribute lands in the Petition Area necessary for the city's rail transit system;**
- vi. contribute land for park and right areas;**
- vii. contribute land for park and ride areas;**
- viii. contribute additional lands for the Kunia Interchange as requested by the DOT; and,**
- ix. work with the DOT to create additional capacity on the H-1 Freeway from Kunia to Waiwa.**

**Petitioner recognizes that there will be additional future contributions and requirements by the DOT that are yet to be determined.**

**b. Petitioner shall submit an updated Traffic Impact Analysis Report ("TIAR") for review and acceptance by the DOT, the City and County Department of Planning and Permitting ("DPP"), and the City and County of Honolulu Department of Transportation Services ("DTS"). The updated TIAR shall include the most current updated traffic data, and shall provide an validate all recommended mitigation measures for potential project-related traffic impacts on State and City facilities to the satisfaction of the DOT, the DPP and the DTS. The updated TIAR shall include the construction status and timeline for the City's rail transit project, and shall specifically address the potential effects on traffic the rail project does not proceed as anticipated. Petitioner shall obtain acceptance of the updated TIAR from the DOT, the DPP, and the DTS, prior to submittal of a change in zoning application with the City and County.**

c. Any significant changes in Project phasing and development shall require the TIAR to be further updated to include any adjustments in the sequencing and timing for when the traffic improvements are to be built and/or scheduled to correspond to the adjusted phasing and development. Any updates to the TIAR shall include an update with respect to the construction status and projected timeline for the City's rail transit project. Any additional mitigation required as a result of these changes shall be provided within the updated TIAR. Based on the foregoing, all changes to the updated TIAR shall be provided to the DOT, the DPP, and the DTS for review and acceptance.

d. Petitioner shall fund the planning, design and construction of all traffic improvements to mitigate local or direct project-generated and/or related traffic impacts, in accordance with the updated TIAR, as accepted by the DOT, the DPP, and the DTS. Petitioner shall fund its fair share of the planning, design and construction of all traffic improvements required to mitigate regional Project generated and/or traffic improvements in accordance with the updated TIAR, as accepted by the DOT, the DPP, and the DTS, or as set forth in a formal Memorandum of Agreement described in Condition No. 10(e) below. All required traffic improvements for each phase of the Project shall be constructed in accordance with the timing and schedule as recommended in the updated/revised TIAR.

e. A formal Memorandum of Agreement shall be established between Petitioner and the DOT, documenting all aspects of the agreed-upon improvements required to mitigate Project generated and/or related transportation impacts to State transportation facilities.

f. Petitioner shall continue to coordinate with the DOT, the DPP, and the DTS to ensure that all traffic impacts are adequately addressed and properly mitigated.

P/O will comply with this condition.

11. **Stormwater.** Petitioner shall construct stormwater and drainage system improvements as designed in compliance with applicable federal, State and County laws and rules.

a. Prior to any subdivision approval, for lands that may drain onto adjacent Navy lands, the Petitioner shall provide a master drainage plan for review by the State Department of Health ("DOH"), the State Office of Planning ("OP"), and DPP, that either includes a letter of consent from the Navy allowing drainage onto its properties or a specific explanation of strategies to be employed so that drainage onto Nave lands is not necessary.

b. To the extent feasible, Petitioner shall mitigate non-point source pollution by incorporating low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping, provided that such low impact development practices do not prevent dedication of drainage facilities to the

**counties, to prevent runoff onto affected State highway facilities, downstream properties and receiving gulches, streams, and estuaries that connect with coastal waters.**

P/O will comply with this condition.

**12. Archaeological Survey. Petitioner shall comply with the conditions recommended and approved by the State Department of Land and Natural Resources, State Historic Preservation Division (“SHPD”), prior to issuance of a permit for grubbing and grading. Petitioner shall confirm in writing to the State of Hawaii Land Use Commission (“Commission”) that the SHPD has found Petitioner’s preservation mitigation commitments, if any, to be acceptable and has determined that any required historic preservation measures have been successfully implements.**

P/O will comply with this condition.

**13. Previously Unidentified Burials and Archaeological/Historic sites. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Oahu Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified and studies referred to herein, are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.**

P/O will comply with this condition.

**14. Established Access Rights Protected. Pursuant to Article XI, Section 7 of the Hawaii State Constitution, Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices or for access to other areas.**

No established access rights pursuant to Article XI, Section 7 of the Hawaii State Constitution have been identified within the Petition Area.

**15. Civil Defense. Petitioner shall fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawaii Department of Defense, State Civil Defense (“SCD”) and they shall be operational before occupancy of any homes or businesses. The location of such measures shall be determined in consultation with the SCD.**

P/O will comply with this condition.

**16. Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the DOH and the City and County of Honolulu to conform to the program goals and objectives of HRS Chapter 342G and the City and County of Honolulu's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities.

P/O will comply with this condition.

**17. Best Management Practices.** Petitioner shall implement all appropriate Best Management Practices applicable to each proposed land use in order to minimize runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the DOH guidelines.

P/O will comply with this condition.

**18. Infrastructure Deadline – Within 10 Years.** Petitioner shall complete construction of (a) offsite backbone sewer and water infrastructure; and (b) all onsite backbone roadway infrastructure, such as the North-South Spine Road ("Spine Road") and the University of Hawaii West Oahu Connector Road ("Campus Drive"), and major utility infrastructure within said roads within ten (10) years from the date of the decision and order.

P/O will comply with this condition.

**19. Infrastructure Deadline – Within 20 Years.** Petitioner shall complete all backbone infrastructure, associated subdivision roadway and utility systems for the proposed residential, mixed-use/live-work commercial space, and commercial office and retail space within twenty (20) years from the date of the decision and order.

P/O will comply with this condition.

**20. Hoopili Sustainability Plan.** Petitioner shall substantially comply with the Hoopili Sustainability Plan, Petitioner's Hearing Exhibit 89B, including the implementation of the mitigation technologies, strategies and measures listed therein or the implementation of equivalent or better mitigation technologies, strategies, or measures. Petitioner shall detail the progress made in implementing the Hoopili Sustainability Plan.

P/O will comply with this condition once planning and design for homes within Hoopili has commenced.

**21. Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the



**Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.**

P/O intends to complete development of the Property in substantial compliance with the representations made before the LUC.

**22. Notice of Change of Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.**

P/O will notify the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development.

**23. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DPP in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual reports shall be submitted in a form prescribed by the Executive Officer of the Commission.**

P/O is herewith submitting this Annual Report to the LUC, OP and the DPP to show the current status of the Project and the progress in complying with the imposed conditions.

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

P/O acknowledges that the Commission may fully or partially release the conditions provided herein.

**25. Notice of Imposition of Conditions. Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the State of Hawaii Bureau of Conveyances ("Bureau of Conveyances") a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.**

P/O complied with this condition.

Mr. Daniel Orodener

June 19, 2013

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**25. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.**

P/O complied with this condition.

If you have any questions do not hesitate to contact me at 528-9074.

Sincerely,

Cameron W. Nekota  
Vice President

cc: Jesse Souki, Office of Planning  
George Atta, Director, Department of Planning and Permitting

NEIL ABERCROMBIE  
Governor



RUSSELL S. KOKUBUN  
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

May 23, 2013

Mr. Daniel Orodener, Executive Officer  
Land Use Commission  
235 South Beretania Street, Suite 406  
Honolulu, Hawaii 96813

Dear Mr. Orodener:

Subject: Land Use Commission Docket No. A06-771  
D. R. Horton – Schuler Homes, LLC

This letter acknowledges that pursuant to Condition 2 of the Findings of Fact, Conclusions of Law, and Decision and Order dated June 21, 2012 ("Decision and Order") in the above-referenced case, the State Department of Agriculture ("DOA") has approved the location of the Civic Farms as set forth in a map attached hereto as Exhibit 1.

Condition 2 of the LUC's Decision and Order states in relevant part as follows:

Petitioner shall obtain the approval from the State Department of Agriculture ("DOA") for the location of the Civic Farms prior to the submittal of a subdivision application. Petitioner's annual report shall include a status of the progress in establishing the Civic Farms; a copy of the DOA approved map of the location of the Civic Farms; a copy of the paperwork establishing the management entity for the Civic Farms; and a copy of the draft edible landscaping package for the Steward Farms (home gardens).

(a) Civic Farms. Petitioner will ensure that 159 acres of Civic Farms will meet the DOA's standard that it "can be practicably used for an economically successful commercial farming operation." If it is determined that the certain lands identified are not feasible, the Petitioner shall locate other lands to replace those lands determined to not meet the DOA's criteria set forth above and ensure that no less than 159 acres are set aside for Civic Farms. [emphasis added]

On January 9, 2013, the DOA inspected portions of the Petition area identified by the Petitioner for Civic Farms. The Petitioner represented that these lands designated for Civic Farms will be provided sufficient irrigation water and vehicular access. Furthermore, land designated for Civic Farms pursuant to Condition 2 will be restricted through covenants



Mr. Daniel Orodener  
May 23, 2013  
Page -2-

recorded against such parcels to agricultural production and uses and activities directly accessory to agricultural production.

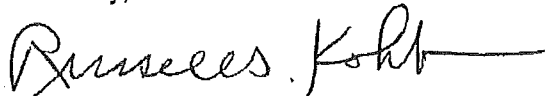
We understand that Condition 3 of the Decision and Order may not apply to the Civic Farms areas which are classified as Urban and are not adjacent or contiguous to the boundary of the Petition area. Nevertheless, the purpose and intent of Condition 3 is to protect agricultural uses, such as those which will occur within the Civic Farms.

After discussing this situation with the Petitioner, the Petitioner has agreed to carry out the intent of Condition 3a (Petitioner not take action that would interfere with or restrain farming operations that are being carried out in a manner consistent with "generally accepted agricultural and management practices") and 3b (notification to those occupying land adjacent to agricultural activities of potential nuisances) as they apply to the Civic Farms.

Based on the foregoing inspection, the representations of the Petitioner, and a criteria-based review of the proposed sites, the DOA hereby approves the location, size, and configuration of approximately 200 acres designated in Exhibit 1 specifically for Civic Farms as meeting the DOA standard that these lands "can be practicably used for an economically successful commercial farming operation" in satisfaction of Condition 2a.

Should you have any questions regarding this matter, please contact Earl Yamamoto at 973-9466 or email him at earl.j.yamamoto@hawaii.gov.

Sincerely,



Russell S. Kokubun  
Chairperson, Board of Agriculture

Attachment (Exhibit 1)

- c: Mr. Cameron Nekota, Vice President  
D. R. Horton – Schuler Homes, LLC
- Mr. Jesse Souki, Director  
Office of Planning
- Mr. George Atta, Director Designate  
City Department of Planning and Permitting
- Ms. Dawn Takeuchi-Apuna  
City Department of the Corporation Counsel
- Mr. Bryan Yee, Deputy Attorney General  
Ms. Myra Kaichi, Deputy Attorney General  
Department of the Attorney General



**AGRICULTURAL LAND USE SUMMARY**

AGRICULTURAL USES	GROSS LAND AREA (Acres)
<b>COMMERCIAL FARMS</b>	
Parcel 1	33.06
Parcel 2	24.39
Parcel 3	2.77
Parcel 4	14.16
Parcel 5	8.30
Parcel 6	19.73
Parcel 7	20.49
Parcel 8	44.66
Parcel 9	5.14
Parcel 10 (Off-site)	30.80
<b>TOTAL</b>	<b>203.50</b>

APPROVED: \_\_\_\_\_ DATE \_\_\_\_\_  
 STATE OF HAWAII,  
 DEPARTMENT OF AGRICULTURE

**DRABRON HO'OPILI**

EXHIBIT 1- COMMERCIAL FARMS

Educational Contribution Agreement for  
Ho'opili

THIS INDENTURE (hereafter "Agreement"), made this 5<sup>th</sup> day of November, 2009, by and between D.R. Horton - Schuler Homes, LLC, d.b.a. D.R. Horton - Schuler Division, hereinafter referred to as "Horton," whose principal place of business and mailing address is 828 Fort Street Mall, 4th Floor, Honolulu, Hawai'i 96813, and the State of Hawai'i DEPARTMENT OF EDUCATION, hereinafter referred to as "DOE," whose mailing address is Department of Education, Facilities Development Branch, 4680 Kalaniana'ole Highway, Honolulu, Hawai'i 96821.

WHEREAS Horton is the developer and recorded owner of that certain parcel of land comprised of approximately 1,553.884 acres of land at Honouliuli, 'Ewa District, island of O'ahu, and designated by Tax Map Key Numbers (1) 9-1-017: por. 004, (1) 9-1-017:059, (1) 9-1-017:072, (1) 9-1-18:001, and (1) 9-1-18:004, also known as "Ho'opili" and as shown on Exhibit A;

WHEREAS Ho'opili is, among other uses, anticipated but not required to contain 11,750 residential units in the entire project;

WHEREAS Horton and DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy any and all present and future DOE educational contribution requirements for Ho'opili, based on a maximum of 11,750 net residential units, less any units that prohibit school age children; and

WHEREAS the parties recognize that the first dwelling unit at Ho'opili is anticipated to be completed sometime around 2012, the completion of the project could take multiple decades, and that there is a likelihood that the final project density and subsequent determination of single-family and multi-family units will change over time;

NOW THEREFORE, Horton and DOE agree as follows:

1. Horton's Cash Contribution. Based upon Horton's currently projected residential densities for Ho'opili at project completion of two thousand three hundred fifty (2,350) single-family units and nine thousand four hundred (9,400) multi-family units, Horton shall contribute a Cash Contribution of twelve million eight hundred sixty-three thousand nine hundred dollars (\$12,863,900) to DOE.
  - a. The Cash Contribution has been determined in accordance with the following schedule:
    - i. One thousand seven hundred sixty-six dollars (\$1,766) for each single-family unit within Ho'opili.
    - ii. Nine hundred twenty-seven dollars (\$927) payable for each multi-family unit within Ho'opili.
    - iii. For the purposes of this Agreement, a "single-family unit" is a room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen, or a building containing one single-family unit on a single zoning lot which is to be attached on a side or rear property line with another single-family unit, otherwise called a duplex. A "multi-family unit" is a building containing three or more single-family units. An "ohana unit," also known as an accessory dwelling, means a second single-family unit on a zoned lot. Ohana units are considered the same as multi-family units. Where a zoned lot contains a freestanding single-family unit and a freestanding Ohana unit, the single-family unit and Ohana unit will be considered one single family unit and one multi-family unit.

b. Horton shall contribute to the State of Hawaii thirty (30) gross acres of land within Ho'opili ("Land in Lieu"). For the purposes of this Agreement, "gross acres" is defined as developable land entirely suitable for the development and construction of school facilities and related uses, with a slope not exceeding five percent (5%) over any portion of the site, as determined in the reasonable discretion of the DOE and as more specifically referenced hereinafter ("School Site"). Horton's contribution of the Land in Lieu shall constitute complete satisfaction of the Cash Contribution described in this Section 1.

2. Horton's Land Contribution. Horton shall contribute to the State of Hawai'i 0.00873 gross acres of land for each single-family unit and 0.00462 gross acres of land for each multi-family unit, for a combined total of approximately sixty-four (64) gross acres within Ho'opili for use as School Sites.

3. Total Land Contribution. Together with the gross thirty (30) acres Land in Lieu, DOE and Horton agree that based on the formula set forth in section 2 that Horton will contribute to the State of Hawai'i sixty-four (64) gross acres of land, for a total of approximately ninety-four (94) gross acres (hereafter, "Total Land Contribution"). The Total Land Contribution shall completely satisfy all cash, land and any other educational contribution requirements to be imposed by the State of Hawai'i for Ho'opili.

a. The Total Land Contribution will be distributed amongst five locations within Ho'opili shown on Exhibit B ("School Sites"), which is attached hereto and incorporated herein by reference. The School Sites will comprise two elementary school sites of approximately twelve (12) gross acres and one elementary school of approximately ten (10) gross acres (which for this 10-acres site the parties at this time intend to be located near or within a transit-oriented development zone), one middle school site



of approximately fifteen (15) gross acres, and one high school site of approximately forty-five (45) gross acres.

- b. The parties understand that the number and type of School Sites are fixed; however, the parties also understand that Exhibit B is for planning purposes only and that the locations, sizes, spacing, and configurations of the School Sites may change in consultation with DOE provided that in no way shall the Total Land Contribution exceed the ninety-four (94) gross acres agreed to herein.
- c. The School Sites shall each have a minimum of two vehicular access points, along two different boundaries of the parcel, at locations subject to DOE's reasonable approval.
- d. For each School Site, Horton shall conduct an initial title search at the request of the DOE and may be required to update the search at the request of DLNR, at no cost to the State of Hawai'i.
- e. Horton shall convey to the State of Hawai'i, at no cost, fee simple title to each School Site in accordance with the terms to be set forth in the State's Warranty Deed (Exhibit C). Horton shall be required to clear title, encumbrances or liens as required by DOE or DLNR, prior to conveyance and at no cost to the State of Hawai'i. In the event Horton cannot clear title, encumbrances or liens, or it is not economically feasible to do so; Horton shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).
- f. Prior to the start of the design phase for any particular school site, Horton shall provide a topographic map at two (2)-foot elevation contours for

each School Site. The School Sites shall contain no ravines or streambeds. Horton shall have no obligation to grade or otherwise improve the School Sites, since the definition of "gross acres" includes land with a slope of no more than five percent (5%) over any portion of the site.

- g. If necessary, Horton shall be responsible for rezoning the School Sites to a residential land use designation prior to conveyance to the State of Hawai'i.
- h. Horton shall provide a schedule for the submission of soils reports, acceptable to the DOE within six (6) months of the signing of this agreement. A new soils report shall be provided within ninety (90) days following the addition of any subsequent fill. In addition, a copy of any grading report that includes the School Sites shall be provided to the DOE.

To the extent the soils report identifies any structurally unsuitable soils that would prohibit the construction of school improvements, the DOE shall act reasonably and in good faith to develop site plans for its use that avoid placing school buildings, parking lots and other of its contemplated improvements on such structurally unsuitable soils.

However, in the event the soils report and documentation indicate conditions unacceptable to the DOE; Horton shall propose mutually agreeable alternative site(s) or remove the objectionable material and replace it with soil acceptable for construction, at compaction levels suitable for construction as determined by a geotechnical engineer and concurred by DOE. The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- i. Horton shall conduct Phase I Environmental Site Assessments ("Phase I ESAs") for the School Sites, at no cost to the State of Hawai'i. The Phase I ESA's shall comply with the All Appropriate Inquiries ("AAI") requirement of CERCLA section 101 (35) and ASTM Standard E-1527-05, and satisfy the requirements of the State Department of Health (DOH) and DLNR. Two copies of the study shall be provided to DOE within ninety (90) days of a DOE request.

Horton shall provide an updated Phase I ESA or updates to sections thereof when requested by DOE; provided that, updated reports shall not be required for Phase I ESA's provided within six (6) months prior to closing.

If the Phase I ESAs identify the potential for hazardous material release and/or the presence of naturally occurring hazardous materials, or if required by DOH or DLNR, Horton shall also conduct a Phase II Environmental Site Assessment and complete any and all abatement and disposal as may be warranted to the standards required by the United States Environmental Protection Agency and/or the DOH, all at no cost to the State of Hawai'i.

In the event Horton cannot conduct any and all abatement and disposal to the standards described above, or it is not economically feasible to do so, Horton shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- j. The School Sites shall not contain any known historical or archaeological sites. Horton shall be responsible for verifying such state with the DLNR-

State Historic Preservation Division ("SHPD") and/or take appropriate mitigation measures that are acceptable to the SHPD and the DOE.

In the event Horton cannot provide sufficient mitigation, or it is not economically feasible to do so, Horton shall propose mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- k. Horton shall be responsible for the subdivision of the School Sites from existing parcels at no cost to the State of Hawai'i, including Land Court recordation. Following recordation, conveyance of subdivided parcels shall take place in accordance with Subsection 3.q.
- l. Horton shall provide metes and bounds descriptions and map of the School Sites in accordance with the subdivision process.
- m. For each School Site, Horton shall prior to the start of construction of a school on the site provide at no cost to the State of Hawaii adequate allocations (as set forth in subsection n below) for the following services and demonstrate that the following subdivision infrastructure systems are or will be available up to the property line of the School Site and in allocations set forth in subsection 3.n. below:
  - (1) Potable water distribution systems for irrigation, domestic, and fire flow needs;
  - (2) Non-potable water distribution system, if required, for irrigation;
  - (3) Sewage collector, treatment and disposal systems;
  - (4) Drainage collector and disposal systems;

- (5) Access roadway systems sufficient for bus and vehicular traffic (a minimum right-of-way to accommodate the turning radius of a 40 foot long bus); and
  - (6) Electrical, television and telecommunication services.
- n. The subdivision infrastructure systems and allocations provided under subsection 3.m. shall meet the minimum capacities set forth below. For the purposes of this Agreement, such capacities shall mean infrastructure will be sized to appropriately service the School Sites, but Horton shall not be required to pay municipal and other connection fees (including facility charges and meter charges etc.) charged by any entities that provide such services. Allocations will be as follows:
  - (1) Subdivision water system allocations based on up to 60 gallons per person per day (850 people per elementary school; 1,100 people at the middle school; and 1,800 people at the high school) for domestic use plus 4,000 gallons per day per acre for irrigation.
  - (2) Subdivision water system capacity of 2,000 gallons per minute for a 2-hour duration (with residual critical pressure of 20 psi at the fire hydrants), as required for fire flow requirements, with related reservoir storage capacity.
  - (3) Average sewage flow allocations based on 25 gallons per person, per day (850 people per elementary school; 1,100 people at the middle school; and 1,800 people at the high school) plus 1,250 gallons per acre per day for wet weather infiltration/inflow or plus 2,750 gallons per acre per day for wet weather if the sewer line is laid below the normal ground water table.
  - (4) Actual allocations and size of utility lines for potable and non-potable water, sewer, drainage, power, and any necessary school communication systems shall be confirmed in writing prior to recordation of the conveyance documents.
- o. Horton shall grant all utility easements (over lands owned by Horton) required to provide utility service to the School Sites without charge to the State of Hawai'i.

- p. The School Sites shall be exempt from Ho'opili's community Declaration of Covenants, Conditions and Restrictions ("DCC&Rs"), including Ho'opili's association rules, design committee rules and other internal subdivision design guidelines. The DOE will use best faith efforts to see that the designs of the schools are compatible with the Ho'opili community.
  
- q. The School Sites shall be conveyed to the State of Hawai'i based on a mutually agreeable schedule to be determined by DOE and Horton, following the final resolution of the School Sites' locations within Ho'opili and after the rezoning, subdivision and Land Court recordation of the School Sites. The parties acknowledge that the conveyance schedule will generally be dependent on the timing and completion of Horton's development of abutting properties and the roadways and major infrastructure systems servicing the School Sites. Horton is under no obligation to follow any timeline to develop Ho'opili, and may proceed with the development as it deems appropriate in its sole and absolute discretion.
  
- r. Conveyance of the School Sites shall be via Warranty Deed ("Warranty Deed") in a form approved by the Department of the Attorney General, Land/Transportation Division and the DLNR, incorporating the appropriate language restricting use of the School Sites described in subsection s.
  
- s. Use of the School Site(s) shall be limited to public school and ancillary school recreational uses and community gatherings, regardless of the zoning of the land, unless, after the school is constructed and in operation, the School Site(s) is sold under the terms provided in Hawaii Revised

Statutes, section 302A-1608 and any amendments thereto. Appropriate covenants shall be contained within the deed to the State of Hawai'i.

t. Horton recognizes that the State's acquisition and disposition of private property is subject to approval by the Board of Land and Natural Resources.

4. Temporary Right-of-Entry. Horton shall grant a right-of-entry to the State of Hawai'i and its consultants for preliminary data gathering (archaeological, soil testing, topographic surveys, etc.) design on the School Sites prior to the transfer of title and within sixty (60) days of a written request by the DOE.

a. The DOE shall notify Horton in writing, in accordance with the requirements of Section 7 below, at least forty-eight (48) hours prior to the initial entry onto the School Sites. The DOE shall also notify Horton in writing, in accordance with section 7, when the data gathering and design activities have been completed.

b. The DOE hereby agrees and acknowledges that Horton has not made and will not make any representation or warranty, implied or otherwise, with respect to the condition of the School Sites, including any dangerous or defective conditions existing upon the School Sites, whether or not such conditions are known to Horton or reasonably discoverable by Horton. The DOE accepts each entry upon the School Sites with full assumption of the risks of said conditions and consequences thereof. The DOE agrees that any property and equipment of the DOE brought onto the School Sites shall be at the sole risk of the DOE.

c. The DOE hereby releases Horton from liability for any and all damages to the School Sites and for any and all damages, injuries or death suffered by

the DOE, the DOE's employees, agents, independent contractors or invitees while on or about the School Sites except when such damage, injury or death is caused by the gross negligence or willful misconduct of Horton. As a condition precedent to the DOE's entry on the School Sites, the DOE shall obtain a written release on the same terms set forth above from third parties who participate in the DOE's activities and shall deposit each such executed release with Horton. The provisions contained in this Section shall survive the termination of this Agreement.

- d. In relation to the DOE's use of the School Sites and work on the School Sites, the DOE shall be responsible for damages or injury caused by the DOE's agents, officers, employees, contractors, invitees and consultants in the course of their entry on to the School Sites to the extent that the DOE's liability for such damage or injury has been determined by a court or otherwise agreed to by the DOE, and the DOE shall pay for such damage and injury to the extent permitted by law.
  
- e. The DOE shall require its contractors, consultants, and invitees for the Project to purchase and maintain at their expense, the following insurance, naming Horton as an additional insured for the term of the Right-of-Entry Agreement:
  - (1) Comprehensive General Liability Insurance, including automobile accident liability, contingent liability, contractual liability, and products on the School Sites with a combined minimum single limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than three (3) years.



- (2) Workers' Compensation Insurance as required by applicable law.
    - (3) Employers' Liability Insurance with limits of liability no less than the minimum single limit of One Hundred Thousand Dollars (\$100,000).
  - f. The aforesaid insurance policies (except for the Workers' Compensation Policy) shall name Horton as an additional insured, and DOE shall deliver to Horton an additional insured certificate, in compliance with insurance requirements set forth herein, prior to any entry on to the School Sites.
  - g. Horton agrees not to unreasonably interfere with the DOE's operations and activities, including the activities of the DOE's consultants, in, on, or connected with the School Sites.
  - h. DOE agrees not to interfere with Horton's operations and activities, including the activities of Horton's contractors, consultants, employees, agents and representatives, in, on, or connected with the School Sites or on Ho'opili.
  - i. The terms of this Temporary Right-of-Entry section shall begin within sixty (60) days of a written request by the DOE until transfer of title to the State of Hawaii, unless this Temporary Right of Entry is sooner terminated by Horton.
5. This Agreement shall be voidable at the discretion of Horton if any portion of Ho'opili is not entirely reclassified by the State of Hawai'i Land Use Commission ("Commission") from the Agriculture District to the Urban District as requested by Horton and subsequently rezoned for urban uses by the City and County of Honolulu ("City") pursuant to Horton's future rezoning application, or if Horton,

using its sole and absolute discretion, decides for any reason to either withdraw said petition before the Commission or not pursue said rezoning of Ho'opili by the City. If Horton intends to only develop some portions of Ho'opili, a new agreement must be executed, prior to the voiding of this initial agreement.

6. This Agreement (i) constitutes the parties' entire agreement, including all terms, conditions, definitions, warranties, representations and covenants, with respect to the subject matter hereof; (ii) merges all prior discussions and negotiations between or among any or all of them as to the subject matter hereof; and (iii) supersedes and replaces all terms, conditions, definitions, warranties, representations, covenants, agreements, promises and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may not be amended, altered or modified except by an amendment in writing signed by the parties.
  
7. All notices, demands and requests which may be given or which are required to be given by either Party to the other, and any exercise of a right of termination provided by this Contract, shall be in writing and shall be deemed effective when: (i) personally delivered to the intended recipient; (ii) five (5) business days after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) delivered in person to the address set forth below for the Party to whom the notice was given; (iv) three (3) business days after being deposited into the custody of a recognized overnight delivery service such as FedEx or UPS, designated for next day delivery, and addressed to such Party at the address specified below; or (v) sent by facsimile, provided that receipt for such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. For purposes of this Contract, the addresses of the Parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

Horton:

D.R. Horton – Schuler Homes, LLC  
828 Fort Street Mall, 4<sup>th</sup> Floor  
Honolulu, HI 96813  
Attn: Dean Uchida, Vice President – Ho‘opili

DOE:

Department of Education  
P.O. Box 2360  
Honolulu, HI 96804  
Attn: Patricia Hamamoto, Superintendent

With copies to:

D.R. Horton – Schuler Homes LLC  
501 W. Broadway, Suite 1050  
Carlsbad, CA 92101  
Attn: William Mayer, Vice President &  
Region Counsel

With copies to:

Department of Education  
Facilities Development Branch  
4680 Kalaniana‘ole Hwy., TB1A  
Attn: Heidi Meeker, Planner

D.R. Horton Tower  
301 Commerce Street  
Suite 500  
Fort Worth, TX 76102  
Attn: Ted Harbour, Senior Vice President &  
Chief Legal Officer

8. This Agreement and any amendments may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this Agreement and any amendment, the parties may execute and exchange facsimile counterparts of the signature pages, and facsimile counterparts shall serve as originals. The parties agree to provide original hard copies of such signature pages to the other parties within five (5) business days of execution by such party.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

Approved as to form:

By *Abby J. Schubert* *WS*  
Attorney General  
State of Hawai'i

Date: *Sept. 6, 2009*

D.R. Horton – Schuler Homes, LLC,  
a Delaware limited liability company

By Vertical Construction Corporation,  
a Delaware corporation,  
Its Manager

By: *Michael T. Jones*

Name: Michael T. Jones

Its: Division President of the Hawaii Division

DEPARTMENT OF EDUCATION

By *Patricia Hamamoto*  
Patricia Hamamoto  
Its Superintendent

Date: *11.05.09*  
*10-29-09*

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU )

ss.

On this 5th day of November, 2009, before me personally appeared Patricia Hamamoto, Superintendent of the State of Hawai'i DEPARTMENT OF EDUCATION, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

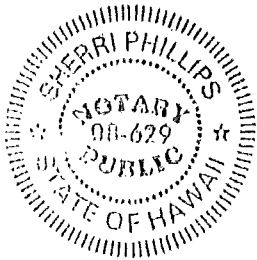
Sharon K. M. Tong LS.  
Notary Public, State of Hawai'i

My commission expires: 11-27-2010

NOTARY CERTIFICATE (Hawai'i Administrative Rules §5-11-8)	
Document Identification or Description: <u>Edu Contrib Agreement between Schula Homes &amp; DOE for Hoopili Residential Project in Ewa</u>	
Document Date: <u>Undated at Notary</u>	
No. of Pages: <u>17</u>	Jurisdiction: <u>1st</u> Circuit (in which notarial act is performed)
<u>Sharon K. M. Tong</u> Signature of Notary	<u>11-5-2009</u> Date of Certificate
<u>Sharon K. M. Tong</u> Printed Name of Notary	(Official Stamp or Seal)

STATE OF HAWAII )  
 ) SS.  
 CITY AND COUNTY OF HONOLULU )

On October 20, 2009, before me personally appeared **Michael T. Jones**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

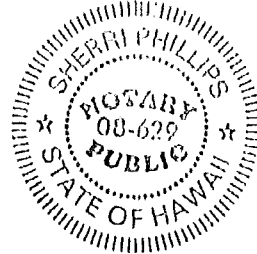


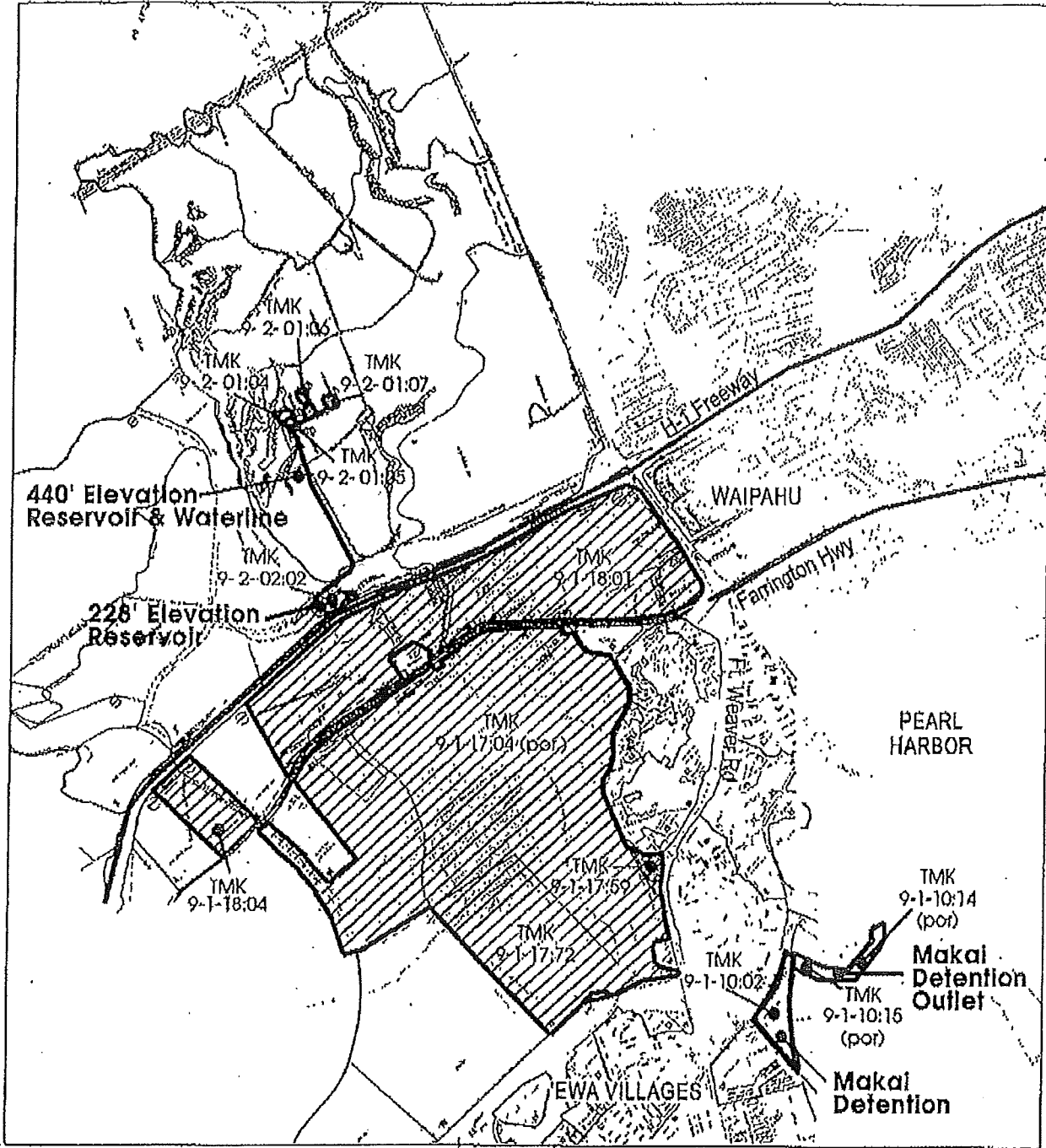
*Sherri Phillips*

Type or print name: : Sherri Phillips



Notary Public, State of Hawaii  
 My commission expires: December 28, 2012

Date of Doc: Undated at time of notarization	# Pages: 17
Name of Notary: : Sherri Phillips	Notes: Unsigned by Grantee (counterparts)
Doc. Description: Educational Contribution Agreement	
For Ho'opili	
(stamp or seal)	
<i>Sherri Phillips</i>	10-20-09
Notary Signature	Date
First Circuit, State of Hawaii	
<b>NOTARY CERTIFICATION</b>	





LEGEND

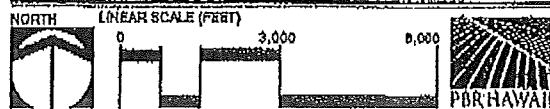
-  Project Site Boundary
-  Petition Area

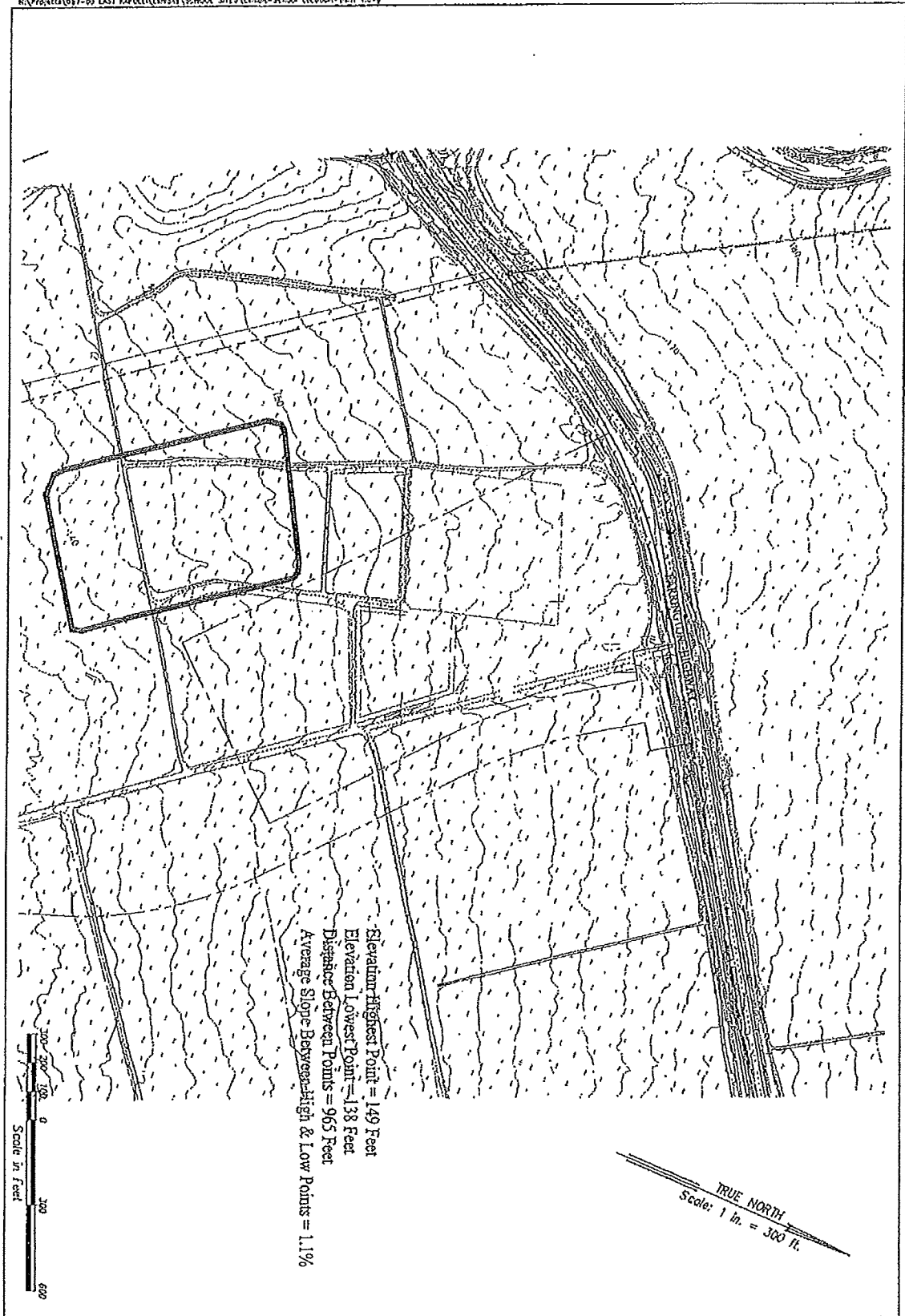
Source: Tax maps Zone 9, Sec. 1, Plates 10, 17 and 18  
Zone 9, Sec. 2, Plat 1 and 2

Disclaimer: This graphic has been prepared for  
general planning purposes only

# HO'OPI LI

O'ahu, Hawai'i

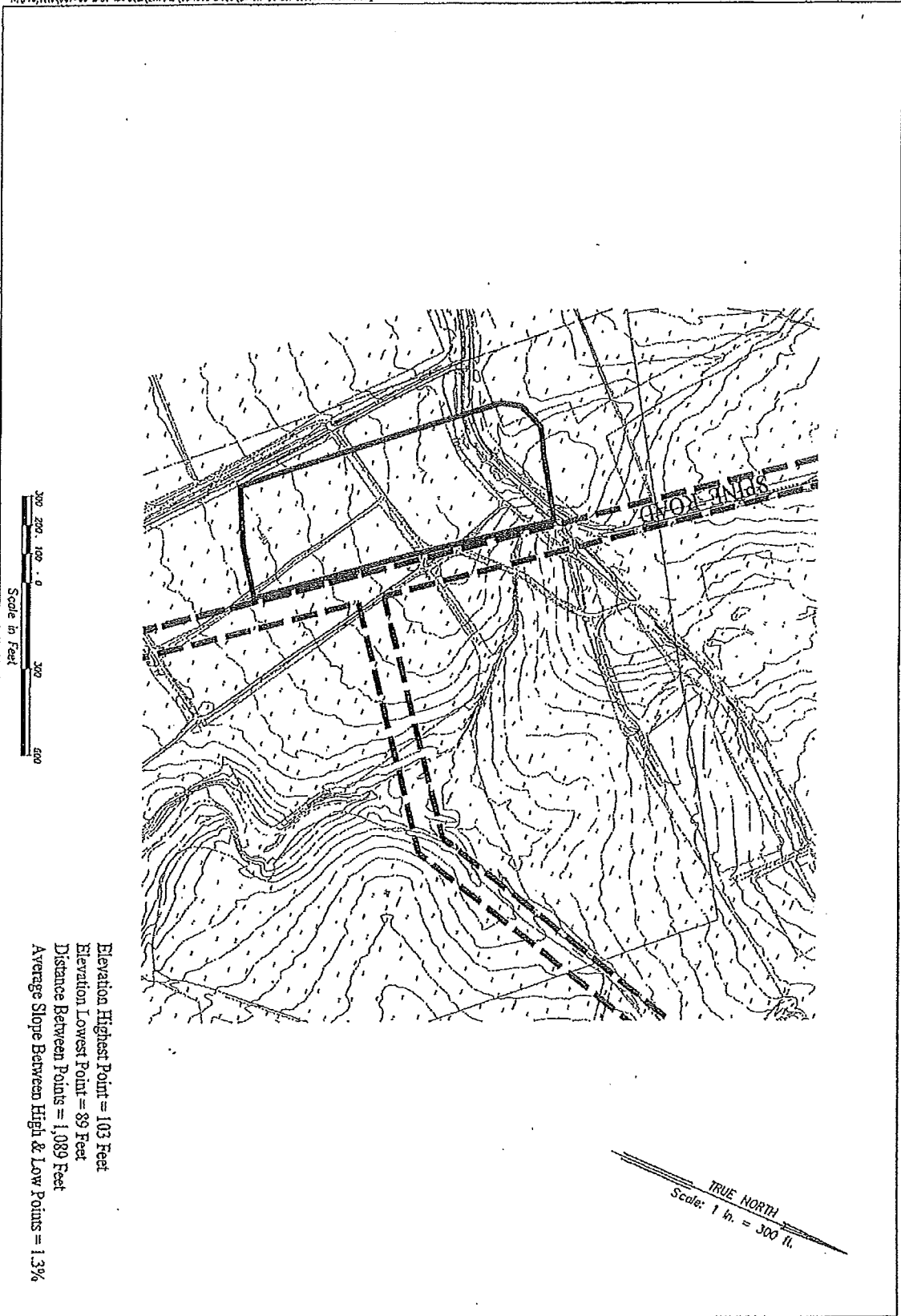




Elevation Highest Point = 149 Feet  
 Elevation Lowest Point = 138 Feet  
 Distance Between Points = 965 Feet  
 Average Slope Between High & Low Points = 1.1%

CAD: 067 Elem School 1 SCALE: 1" = 300' DATE: MARCH 2, 2009	<b>Bills Engineering Inc.</b> Civil/Environmental Engineering 1124 Fort Street Mall, Suite 200 Honolulu, HI 96813	HO'OPIHI HONOLULU, OAHU, HAWAII ELEMENTARY SCHOOL SITE 1 TOPO EXHIBIT
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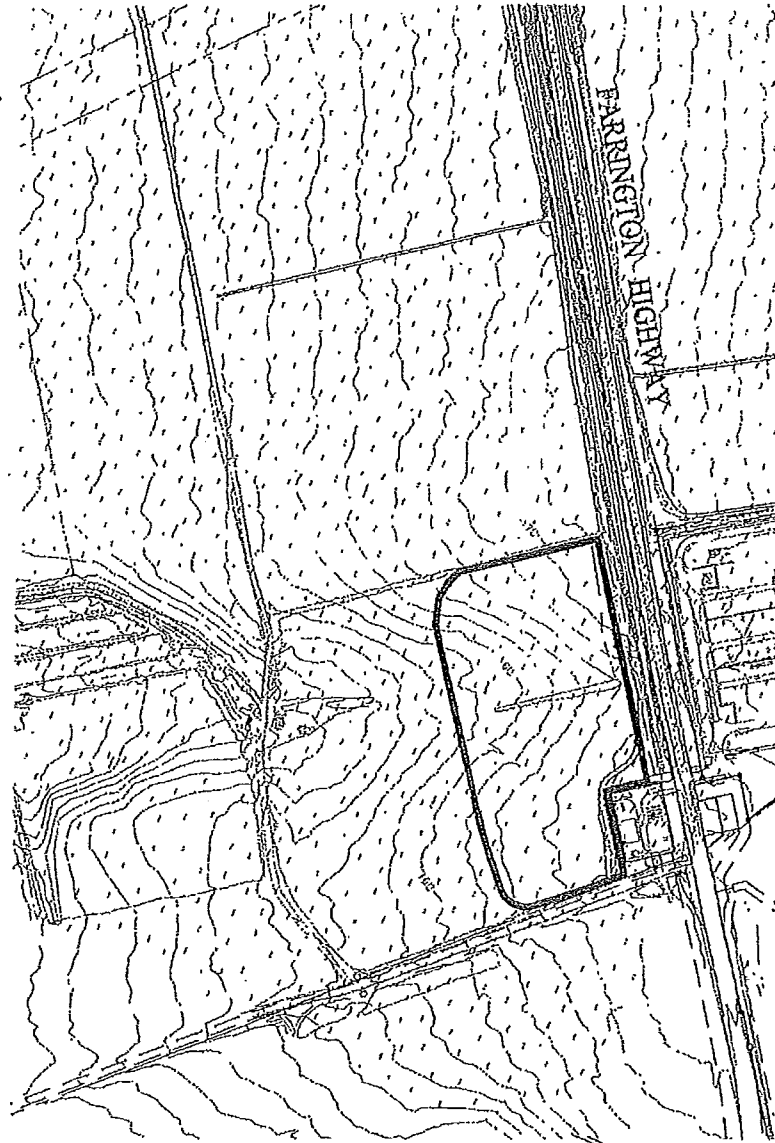
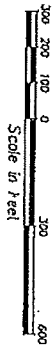
Elevation Highest Point = 103 Feet  
 Elevation Lowest Point = 89 Feet  
 Distance Between Points = 1,089 Feet  
 Average Slope Between High & Low Points = 1.3%

CADD:	067 Elem School 2
SCALE:	1" = 300'
DATE:	MARCH 2, 2009

**Bills Engineering Inc.**  
 Civil/Environmental Engineering  
 1124 Fort Street Mall, Suite 200  
 Honolulu, HI 96813

**H'O'OPILI**  
 HONOLULU, OAHU, HAWAII  
 ELEMENTARY SCHOOL SITE 2  
 TOPO EXHIBIT

Elevation Highest Point = 172 Feet  
 Elevation Lowest Point = 157 Feet  
 Distance Between Points = 596 Feet  
 Average Slope Between High & Low Points = 2.5%

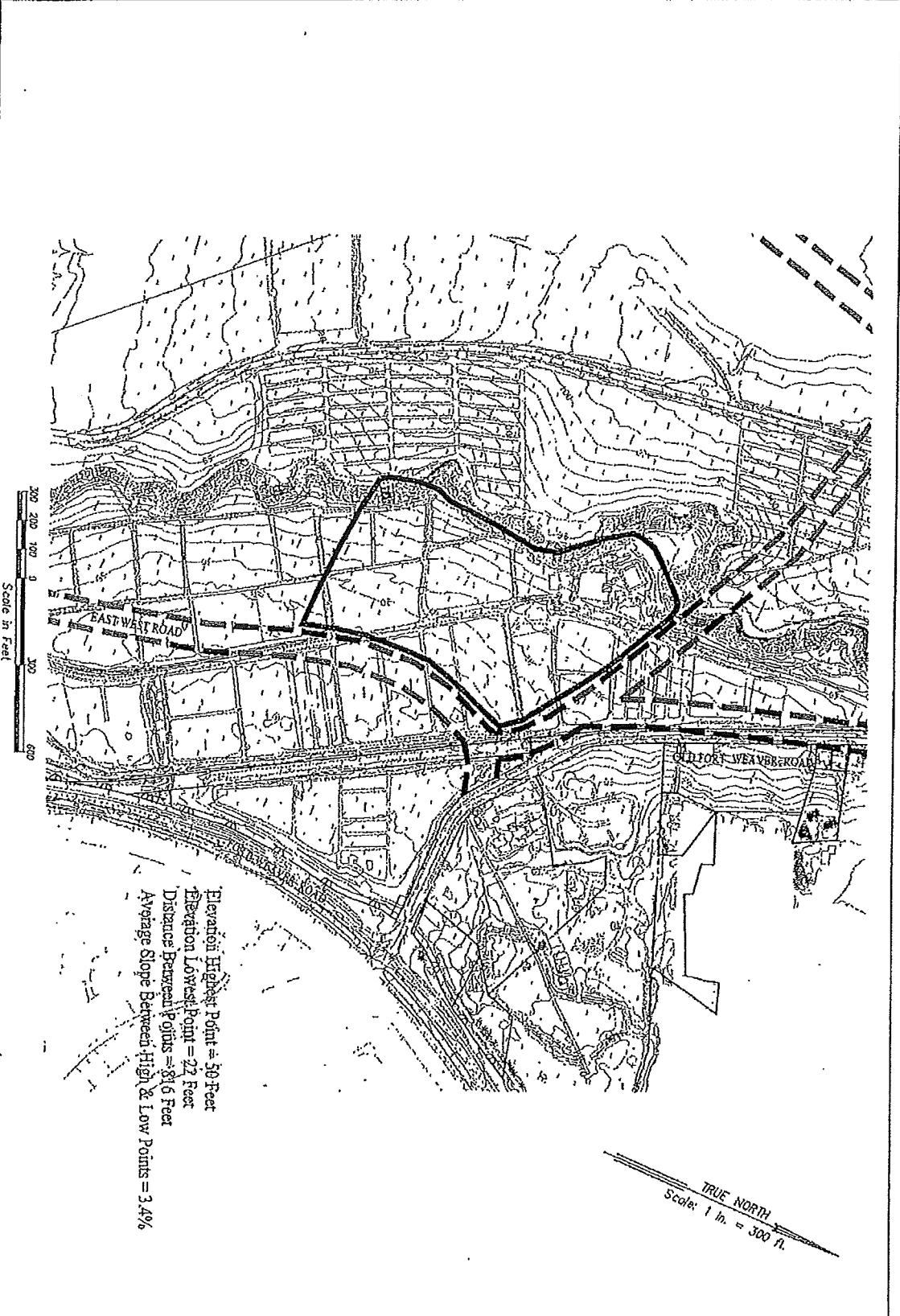


TRUE NORTH  
 Scale: 1 in. = 300 ft.

CADD:  
 057 Elem School 3  
 SCALE:  
 1" = 300'  
 DATE:  
 MARCH 2, 2009

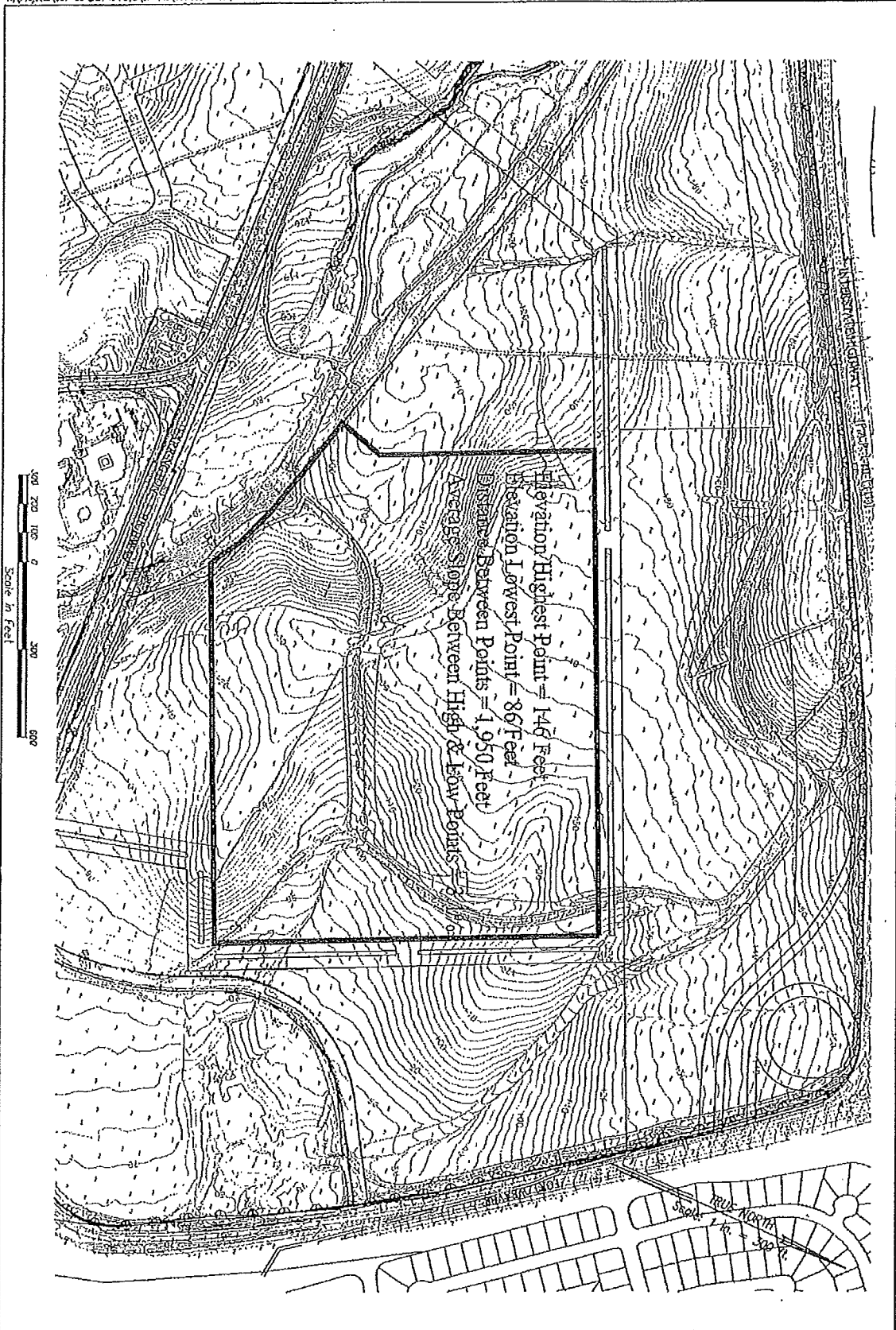
**Bills Engineering Inc.**  
 Civil/Environmental Engineering  
 1124 Fort Street Mall, Suite 200  
 Honolulu, HI 96813

HO'OPIKI  
 HONOLULU, OAHU, HAWAII  
 ELEMENTARY SCHOOL SITE 3  
 TOPO EXHIBIT



Elevation Highest Point = 50 Feet  
 Elevation Lowest Point = 22 Feet  
 Distance Between Points = 816 Feet  
 Average Slope Between High & Low Points = 3.49%

<p>CADD: 067 Middle School SCALE: 1" = 300' DATE: MARCH 2, 2009</p>	<p>Bills Engineering Inc. Civil/Environmental Engineering 1124 Fort Street Mall, Suite 200 Honolulu, HI 96813</p>	<p>HO'OPILI HONOLULUI, OAHU, HAWAII MIDDLE SCHOOL SITE TOPO EXHIBIT</p>
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<p>CADD: 087 High School</p> <p>SCALE: 1" = 300'</p> <p>DATE: JULY 27, 2009</p>	<p><b>Bills Engineering Inc.</b>          Civil/Environmental Engineering          1124 Fort Street Mall, Suite 200          Honolulu, HI 96813</p>	<p><b>HO'OPILI</b>          HONOLULU, OAHU, HAWAII</p> <p><b>HIGH SCHOOL SITE</b>          TOPO EXHIBIT</p>
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prepared by the Survey Division, Department of Accounting and  
General Services, State of Hawaii, designated as C.S.F. No. \_\_\_\_\_  
\_\_\_\_\_ and dated \_\_\_\_\_.

AND the reversions, remainders, rents, income and  
profits thereof, and all of the estate, right, title, and  
interest of the Grantor, both at law and in equity, therein and  
thereto.

TO HAVE AND TO HOLD the same, together with all  
improvements, rights, easements, privileges and appurtenances  
thereunto belonging or in any ways appertaining or held and  
enjoyed therewith in fee simple unto said Grantee, the Grantee's  
successors and assigns, forever, free and clear of all liens and  
encumbrances (./, \*except as noted herein.)

The Grantor, for itself, its successors and assigns,  
does hereby covenant with the Grantee, its successors and  
assigns, that the Grantor is lawfully seised in fee simple and  
possessed of the above-described land and premises, that it has  
a good and lawful right to convey the same as aforesaid, that the  
same is free and clear of all liens and encumbrances, (\*except as  
noted herein,) and that it will and its successors and assigns,  
shall WARRANT AND DEFEND the same unto the Grantee, its  
successors and assigns, forever, against the claims and demands  
of all persons whomsoever.

AND, the Grantor warrants that if any lender or  
governmental agency shall ever require testing to ascertain  
whether there has been any release of hazardous materials by  
Grantor on or adjacent to the Property, as determined by Grantee  
in its sole discretion, then the Grantor shall be responsible for  
the reasonable costs thereof. In addition, Grantor shall execute  
affidavits, representations and the like from time to time at  
Grantee's request concerning Grantor's best knowledge and belief  
regarding the presence of hazardous materials on the Property  
placed or released by Grantor.

The Grantor agrees to indemnify, defend, and hold  
Grantee harmless, from any damages and claims resulting from the  
release of hazardous materials on or about the Property occurring  
while Grantor was in possession of the Property, or elsewhere if  
caused by Grantor or persons acting through or under Grantor.

For the purpose of this deed "hazardous material" shall  
mean any pollutant, contaminant, toxic substance, hazardous  
waste, hazardous material, hazardous substance, or oil, as all of  
the above are defined in or pursuant to the Resource Conservation

and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

AND, Grantor shall conduct a Phase I environmental site assessment no later than thirty days before the effective date of this deed, and then conduct any and all abatement and disposal, as warranted by that Phase I environmental site assessment, all as satisfactory to the standards required by the Federal Environmental Protection Agency, and the Department of Health, as determined by Grantee in its sole discretion.

AND, the Grantee covenants that this gift of real Property has had prior approval by the Attorney General pursuant to section 26-7 and section 107-10, Hawaii Revised Statutes as to legality and form, exceptions, and reservations.

The Grantor shall be responsible for payment of all property taxes up to the date of execution of this Warranty Deed.

IN WITNESS WHEREOF, \_\_\_\_\_,  
the Grantor herein, has caused these presents to be executed this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the STATE OF  
HAWAII, by its Board of Land and Natural Resources, the Grantee  
herein, has caused the seal of the Department of Land and Natural  
Resources to be hereunto affixed and these presents to be  
executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, both effective  
as of the day, month, and year first above written.

(NAME OF GRANTOR)

Approved by the Board of  
Land and Natural Resources  
at its meeting(s) held on  
\_\_\_\_\_.

By \_\_\_\_\_  
Its

And By \_\_\_\_\_  
Its

GRANTOR

APPROVED AS TO LEGALITY,  
FORM, EXCEPTIONS, AND  
RESERVATIONS:

STATE OF HAWAII

\_\_\_\_\_  
Deputy Attorney General

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Chairperson  
Board of Land and  
Natural Resources

GRANTEE

\*Include only if there are encumbrances



STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively, of \_\_\_\_\_, a \_\_\_\_\_ corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
My commission expires: \_\_\_\_\_