



FN 1288.016
ADD. 155816

September 23, 2011

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

Dear Mr. Davidson:

2011 Annual Report
Docket No. A87-613
The City of Kapolei

Aina Nui Corporation, an affiliate of the James Campbell Company LLC, submits this 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 11 of the September 23, 1988 LUC Decision and Order in Docket No. A87-613, as amended on March 29, 1989; on May 30, 1989; on June 4, 1993; and on June 28, 1995.

The subject of this annual report is the reclassification of approximately 890 acres of land located in Honouliuli, Ewa, Island of Oahu, State of Hawaii ("Property") from the Agricultural District to the Urban District. Which was subsequently amended by reducing the land area to approximately 813.02 acres. Which was further amended by exchanging approximately 8.5 acres and redrawing boundaries between Increment I and Subsequent Increments. Which was further amended by reducing the land area in Subsequent Increments to approximately 586.49 acres. Which was further amended by modifying Condition 1 of the Decision and Order dated June 17, 1993 to allow for a residential component within the Subsequent Increments. Which was further amended by reclassifying approximately 586.49 acres of land comprising the Subsequent Increments to the Urban District.

I. Status of Compliance with Conditions

These conditions to reclassification are reproduced boldface followed by a description of the progress being made to comply with them by Order filed on June 17, 1993. In addition, conditions of the Order of June 28, 1995 are also included and cross referenced where similar to the June 17, 1993 Decision and Order or listed separately in Section III as necessary to provide for full review of compliance.

- 1. Kapolei Town Center shall be a commercial, industrial, government and business and residential center which may include mixed uses. (Also Decision and Order June 28, 1995, Condition 1)**

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The City of Kapolei is continuing to develop as planned. A number of major projects are in design, under construction or recently completed. Specific milestones in its progress are reported in the section entitled "Other Significant Milestones".

- 2. Petitioner shall fund and construct the necessary transportation improvements to mitigate impacts from the Project on an equitable basis with adjoining landowners and developers and/or other federal, state or county agencies as determined by the state Department of Transportation. These improvements shall be implemented on a schedule acceptable to and approved by the state Department of Transportation.**

Progress continues to be made in providing the necessary transportation improvements.

The Petitioner executed the Master Kapolei Highway Agreement on June 1, 2010 with the State Department of Transportation. This Agreement sets forth a framework for a complete satisfaction of the aforementioned condition. The necessary actions towards this end are underway.

- 3. Petitioner shall participate in an air quality monitoring program as specified by the state Department of Health.**

This condition has been satisfied as reported in the second annual report.

- 4. Petitioner shall immediately stop work and contact the state Historic Preservation office should any archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, paving or walls be encountered during the Project's development.**

No significant archaeological resources have been uncovered during the past year within the Project.

- 5. Petitioner shall provide water source and transmission to service the subject Project.**

The major storage transmission and booster pumping infrastructure for the 228/215 system servicing the City of Kapolei has been completed.

The Petitioner completed negotiations with the Board of Water Supply regarding the condemnation of Ewa Shaft (EP 15/16) to provide a major water source to meet the present and future water demands of the Ewa Area which encompass the City of Kapolei.

The distribution system infrastructure tied to specific projects will be built on an "as needed" basis.

- 6. Petitioner shall provide drainage improvements for the subject Project and shall coordinate off-site improvements with the state HCDCH and the Barbers Point Naval Air Station ("BPNAS").**

The Petitioner has provided drainage improvements for the subject Project as needed. The Petitioner continues to coordinate with the HHFDC (formerly HCDCH) and the Barbers Point Redevelopment Commission (now Hawaii Community Development Authority - HCDA) as needed.

- 7. Petitioner shall construct or produce binding agreements to construct in the 135-acre Increment I a minimum of 1.0 million square feet of facilities for office space, commercial space, business park/light industrial and other uses.**

This condition has been satisfied as reported in the fifth annual report.

- 8. Petitioner shall construct the Kapolei Shopping Center situated on 30 acres within the existing Urban District.**

This condition has been satisfied as reported in the fifth annual report.

- 9. As Petitioner has advanced, as justification for a secondary urban core at the Kapolei Town Center, the provision of affordable housing at Kapolei Village, the potential relocation of governmental offices to the town center and the potential expanded uses of the Barbers Point Deep Draft Harbor, the reclassification shall be subject to the following pre-conditions listed in these sub-paragraphs 9.a., b. and c.:**

- a. The execution of an agreement with the state HCDCH for the sale of 830 acres at \$19,400 per acre for the development of Kapolei Village in accordance with the state HCDCH's master plan and for provision of 175,000 gallons per day of water for the first phase of development.**
- b. The execution of an agreement or document evidencing the Petitioner's commitment to provide 40 acres to the State of Hawaii at no cost for governmental offices or other uses in the Kapolei Town Center with all off-site costs to be borne by the Petitioner.**
- c. The execution of an agreement or document evidencing the Petitioner's commitment to provide 87 acres at no cost to the state and the sale of 56.5 acres to the state at 50 percent of fair market value not to exceed \$1.50 per square foot, plus escalation based on comparables in the adjoining industrial area, to increase the productive capacity of Barbers Point Deep Draft Harbor.**

The agreement referenced in sub-paragraphs 9.a., b. and c. is the oral agreement entered into between the State of Hawaii and Petitioner involving mutual rights and obligations.

The only pre-conditions to reclassification (as opposed to conditions upon approval of reclassification) are those listed in these sub-paragraphs 9.a., b. and c.

The foregoing preconditions have been satisfied as reported in the first annual report.

- 10. As Petitioner has testified that the portion of the agreement set forth in sub-paragraph 9.c. hereinabove is subject to approval by the Probate Court of the State of Hawaii, Petitioner shall obtain approval of the Probate Court of such portion of the agreement as is described in 9.c. above.**

This condition has been satisfied as reported in the first annual report.

- 11. Petitioner shall implement effective soil erosion and dust control measures during construction to the satisfaction of the state Department of Health.**

The Petitioner will ensure the implementation of soil erosion and dust control measures during construction to the satisfaction of the state Department of Health.

- 12. Petitioner shall cooperate with the state Department of Health and the City and County of Honolulu, Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.**

The Petitioner will comply with this condition.

- 13. Petitioner shall fund and construct adequate civil defense measures as determined by the State and City and County of Honolulu civil defense agencies.**

Construction of adequate civil defense measures has been completed as reported in the ninth annual report.

- 14. Petitioner shall contribute to the development, funding and/or construction of school facilities on an equitable pro-rata basis as a result of the development of the Property, as determined by and to the satisfaction of the Department of Education ("DOE"). Agreement by DOE on the level of funding and participation shall be obtained prior to Petitioner applying for county zoning.**

The Petitioner will comply with this request. In conjunction with Ordinance No. 04-46, petitioner and the developer, D.R. Horton, Schuler Division have reached agreement with the Department of Education on school facilities for the Mehana project. In Ordinance No. 04-45, petitioner is obligated to provide school facilities.

- 15. Petitioner shall provide annual reports to the state Land Use Commission, the state Office of Planning and the City and County of Honolulu, Department of Planning and Permitting in connection with the status of the entire Property and Petitioner's progress in complying with the conditions imposed on the anniversary date of the Decision and Order approving Increment I. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. (Also, Decision and Order, June 28, 1995, Condition 7).**

This annual report submitted in continuing compliance with this condition.

- 16. Petitioner shall develop the Property in substantial compliance with representations made to the state Land Use Commission in obtaining the reclassification of the petition area. Failure to so develop the petition area may result in reversion of the land to its former classification, or change to a more appropriate classification. (Also, Decision and Order, June 28, 1995, Condition 5).**

The Petitioner has and will continue to develop the Property in substantial compliance with representations made to the state Land Use Commission.

- 17. Petitioner shall give notice to the state Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the Property covered by the approved petition prior to the development of the land within the Property. (Also, Decision and Order, June 28, 1995, Condition 6).**

Development in the City of Kapolei commenced in 1990. Transfers of Property prior to the commencement of development activity have been noted in past annual reports.

- 18. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner. (Also, Decision and Order, June 28, 1995, Condition 8).**

The Commission has determined that Preconditions 9.a., 9.b., 9.c. and Condition 3 have been satisfied. Conditions 7, 8, 10, 19, and 20 have been satisfied as described in earlier reports.

- 19. Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a Statement to the effect that the petition area is subject to conditions imposed by the state Land Use Commission in the reclassification of the petition area, and (b) shall file a copy of such recorded statement with the Commission.**

This condition has been satisfied as reported in the first annual report for Subsequent Increments.

- 20. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.**

This condition has been satisfied as reported in the first annual report for Subsequent Increments.

II. Additional Conditions

As a result of the Fourth Amendment, additional conditions were added. Conditions similar to those in Section II are discussed in Section III. Petitioner's response is listed following the text of the remaining conditions which are numbered to conform to the June 28, 1995 Decision and Order.

- 1. The developer and/or landowner of the subject Property shall provide affordable housing opportunities for low, low moderate, and gap group income residents of the State of Hawaii to the satisfaction of the state HCDCH in accordance with the Affordable Housing Guidelines, adopted by HCDCH as periodically amended. 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 developer and/or landowner of the subject Property and the state HCDCH and the City and County of Honolulu. Agreement by the HCDCH on the provision of affordable housing shall be obtained prior to the developer and/or landowner applying for county zoning.**

In both Ordinance No. 04-46 and Ordinance No. 04-45, petitioner (and D.R. Horton, Schuler Division in Ordinance No. 04-46), must execute an agreement with the City and County of Honolulu providing for no less than 30 percent of the total housing units to be delivered in affordable ranges.

The Petitioner will comply with this requirement.

2. **The Petitioner, at no cost to the state, shall appoint a permanent transportation manager whose function is the formulation, use, and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems. In the alternative, the Petitioner may participate in a regional program for transportation management with other developers and/or landowners. This program shall address the transportation opportunities that would optimize the use of existing and proposed transportation systems. Either option will continue to be in effect unless otherwise directed by the state DOT. The program for either option shall be reviewed by the state DOT prior to implementation. The transportation manager or the Petitioner shall conduct periodic evaluations of the program's effectiveness and shall make reports of these evaluations available to the state DOT for program review and modification; if necessary.**

The Petitioner is no longer a member of the Leeward Oahu Transportation Management Association ("LOTMA"). Instead, the Petitioner has chosen to internally direct the formulation, use, and continuation of alternative transportation opportunities. The Petitioner will continue to provide information on transportation alternatives in a similar fashion as LOTMA.

3. **The Petitioner shall attenuate the noise in noise sensitive areas within residential areas exposed to noise levels of 65 Ldn (day-night average sound level) by a minimum of 25 decibels (A-weighted).**

The Petitioner will address this requirement as residential areas are developed.

4. **The Petitioner shall enter into an agreement with the State of Hawaii for aviation (right of flight) and noise easement in the form agreed to by the state Department of Transportation and the developer and/or landowner on any portion of the Property subject to noise levels exceeding 55 Ldn.**

The Petitioner will comply with this requirement.

5. **Petitioner shall (a) refile the Document Listing Conditions to Reclassification, as amended, against the current certificates of title and new lot designation numbers with the Bureau of Conveyances, and (b) shall file a copy of such recorded Document with the Commission.**

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The Petitioner has refiled the Document and filed a copy with the Commission.

6. **Within seven days of the issuance of the Commission's Decision and Order for the subject Motion, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to additional conditions imposed herein by the Land Use Commission, and (b) shall file a copy of such recorded statement with the Commission.**

The Petitioner has accomplished the required recordation and filed a copy with the Commission.

7. **Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.**

The Petitioner has recorded the condition imposed herein by the Commission with the Bureau of Conveyances.

III. Other Significant Milestones

Other recent milestones are:

- Construction continues on the remaining roads to build out the City of Kapolei grid roadway network. It is anticipated that the remaining roadway network to serve the urban core of the City of Kapolei will be completed in 2013-2014.

If you have any questions, please call me at 674-3289.

Sincerely,



Steve Kelly
Vice President, Development

ga:15033200/K11626

Enclosure

cc: Office of Planning
David Tanoue, Department of Planning & Permitting

Agreement No. A02125800

MASTER KAPOLEI HIGHWAY AGREEMENT

THIS MASTER KAPOLEI HIGHWAY AGREEMENT ("Agreement") is entered into as of this 15 day of JUNE, 2010, by and among KAPOLEI PROPERTY DEVELOPMENT LLC, a Hawaii limited liability company ("Kapolei Property Development LLC"), and AINA NUI CORPORATION, a Hawaii corporation ("Aina Nui Corporation"), MAKAIWA HILLS, LLC, a Delaware limited liability company ("Makaiwa Hills, LLC"), (collectively, Kapolei Property Development LLC, Aina Nui Corporation and Makaiwa Hills LLC being sometimes referred to as the "Kapolei Group"), JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company ("James Campbell Company LLC"), CAMPBELL HAWAII INVESTOR LLC, a Hawaii limited liability company ("Campbell Hawaii Investor LLC") (James Campbell Company LLC and Campbell Hawaii Investor LLC being sometimes referred to as the "Landowner Group") and the DEPARTMENT OF TRANSPORTATION, State of Hawaii (the "Department of Transportation" or the "DOT");

WHEREAS, there is a need for the Kapolei Group and DOT to regularly coordinate fair share transportation improvements that serve the Kapolei area;

WHEREAS, the intent of this Agreement is to address transportation planning and improvement participation and funding for the Kapolei area including the master planned projects owned by the Kapolei Group;

WHEREAS, there are State of Hawaii Land Use Commission ("LUC") conditions of approval ("LUC Conditions") related to transportation planning, participation and coordination with the DOT that are required of the following projects (collectively, the "Projects") that are being undertaken by individual members of the Kapolei Group: City of Kapolei ("City of Kapolei Project"), Kapolei West project ("Kapolei West Project"), Kapolei Harborside project ("Kapolei Harborside Project"), and the Makaiwa Hills project ("Makaiwa Hills Project");

WHEREAS, there are also City and County of Honolulu ("City") conditions of approval ("Zoning Conditions") relating to transportation, planning and coordination with the DOT that are required for the Projects;

WHEREAS, the Kapolei Group, and the DOT agree that this Agreement, as amended, modified or supplemented from time to time, is intended to enhance transportation improvement planning and implementation and fulfill the requirements set forth in the LUC Conditions (defined below) and the Zoning Conditions (defined below), and wish to memorialize their understandings; and

WHEREAS, members of the Landowner Group own lands in the vicinity of the Projects that are necessary for the construction of the transportation improvements set forth in the LUC Conditions and the Zoning Conditions, and the Landowner Group is entering into this Agreement to memorialize their understandings with regard to the use of such lands;

NOW THEREFORE, the parties do here by agree as follows:

1. Purpose. This Agreement is intended to create a framework to coordinate State (defined below) transportation improvements in the Kapolei area and a framework for the complete satisfaction of the following conditions (the conditions referenced in subsections a

through g, inclusive, are referred to as the “**LUC Conditions**”, and the conditions set forth in subsections h, i and j below, are referred to as the “**Zoning Conditions**”):

a. Condition No. 2 of that certain Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751 for LUC Docket No. **A87-613** for the City of Kapolei Project;

b. Condition No. 2 of that certain Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119177 for LUC Docket No. **A87-613** for the City of Kapolei Project;

c. Condition No. 2 of that certain Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119179 for LUC Docket No. **A87-613** for the City of Kapolei Project;

d. Condition No. 2 of that certain Declaration of Conditions dated April 19, 1991, made by West Beach Estates, and the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1815687 for LUC Docket No. **A90-655** for the Kapolei West Project;

e. Condition No. 3 of that certain Document Listing Conditions to Reclassification dated December 29, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2105980 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-002350 for LUC Docket No. **A92-687** for the Makaiwa Hills Project;

f. Condition No. 4 of that certain Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban dated May 26, 2006, made by Aina Nui Corporation, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3437501 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-105645 for LUC Docket No. **A04-753** for the Kapolei West Project;

g. Condition No. 2 of that certain Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban dated January 21, 2008, made by Kapolei Property Development LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3703757 for LUC Docket No. **A06-763** for the Kapolei Harborside Project;

h. Condition No. 13.a of that certain Unilateral Agreement and Declaration for Conditional Zoning dated September 11, 2008, made by Makaiwa Hills, LLC, filed

in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No.3788456 for the Makaiwa Hills Project;

i. Condition No. 6.a of that certain Unilateral Agreement and Declaration for Conditional Zoning dated September 11, 2008, made by Aina Nui Corporation and Kapolei Property Development LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No.3788915 for the Kapolei West Project;

j. Condition No. 4.a of that certain Unilateral Agreement and Declaration for Conditional Zoning dated September 11, 2008, made by Aina Nui Corporation, Kapolei Property Development LLC and James Campbell Company LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No.3788916 for the Harborside Project;

2. Regional Traffic Study. The Kapolei Group has retained Wilson Okamoto Corporation, traffic consultants, to prepare traffic projections for the Kapolei region, and has provided to DOT the Kapolei Comprehensive Traffic Analysis Report dated December, 2008 prepared by such consultants. DOT has reviewed this Report and acknowledges that it satisfies the LUC Condition for the preparation of a regional traffic study. The Kapolei Group agrees to periodically update this Report to reflect any changes in the traffic projections for the Kapolei region, upon the written request of DOT. This Report, as amended, is referred to as "**CTAR**". The Kapolei Group shall be responsible for the implementation of the transportation mitigation measures for DOT facilities, recommended in the CTAR and in the Traffic Impact Assessment Reports ("**TIAR**") conducted for the Projects.

3. Kapolei Interchange Complex. The Kapolei Interchange Complex ("**KIC**") is comprised of the following general Phases: (i) at grade Kapolei Makakilo Interchange ramps ("**Phase I**"); (ii) grade separated Kapolei Interchange ("**Phase II**"); (iii) at grade Palailai Interchange ramps ("**Phase III**"); and (iv) grade separated Palailai Interchange ("**Phase IV**"). The final compositions of the Phases are to be defined by DOT prior to the commencement of their design. The respective obligations of the Kapolei Group, DOT and the Landowner Group for each Phase of the KIC are set forth below.

a. Phase I. The respective responsibilities of the Kapolei Group, DOT and the Landowner Group with regard to Phase I are fully set forth in that certain Memorandum of Understanding dated July 9, 2007, by and among James Campbell Company LLC, Kapolei Property Development LLC, Aina Nui Corporation, Campbell Hawaii Investor LLC and DOT (the "**Phase I MOU**"), which remains in full force and effect, and which shall continue to be the operative agreement with regard to Phase I.

b. Phase II.

(1) Configuration. The conceptual configuration of Phase II is shown in (i) the Final Environmental Assessment for Interstate H-1 Addition and Modification of Highway Access, Palailai Interchange/Makakilo Interchange (Kapolei Interchange Complex), Federal Aid Interstate Project No. IM-H1-1(257) dated November, 2006, prepared for the DOT ("**EA**"), and (ii) the Updated I-H1 Addition and Modification of Highway Accesses Palailai Interchange/Makakilo Interchange dated May 3, 2006 ("**FHWA Report**"). The specific right-of-way maps will be finalized prior to the execution of the Phase II MOU (defined below).

(2) Design. The Kapolei Group shall be responsible for the design and engineering services for Phase II, with the intent that (i) such services shall qualify for a "soft match" under federal law, in the same way as the similar services that it provided on Phase I are treated in the Phase I MOU, and (ii) DOT shall be solely responsible for overseeing the design and construction of Phase II, in the same way that it is responsible for overseeing the design and construction of Phase I in the Phase I MOU.

(3) Funding. The Kapolei Group shall be responsible for funding the design and engineering of Phase II. DOT shall be responsible for funding the construction of Phase II, subject to the availability of federal funds.

(4) Construction. DOT shall be responsible for the construction of Phase II, in the same way as provided for in the Phase I MOU.

(5) Land. The Kapolei Group, and the Landowner Group agree to donate the land necessary for the Phase II right-of-ways in the same manner as the donation for the Phase I right-of-ways are treated in the Phase I MOU. The Kapolei Group, the Landowner Group and DOT shall agree upon the value of the rights-of-way being contributed prior to the execution of the Phase II MOU.

(6) Timing. Construction of Phase II will start when DOT obtains the federal funds necessary for the construction of Phase II. Prior to DOT commencing construction of Phase II, the Kapolei Group, the Landowner Group and DOT shall enter into a Memorandum of Understanding for Phase II ("**Phase II MOU**"), similar in form and content to the Phase I MOU, modified as necessary to incorporate the provisions of this Agreement.

c. Phase III.

(1) Configuration. The conceptual configuration of Phase III is shown in the EA and the FHWA Report. The specific right-of-way maps will be finalized prior to the execution of the Phase III MOU (defined below).

(2) Design. The Kapolei Group shall be responsible for the design and engineering services for Phase III, with the intent that (i) such services shall qualify for a "soft match" under federal law, in the same way as the similar services that it provided on Phase I are treated in the Phase I MOU, and (ii) DOT shall be solely responsible for overseeing the design and construction of Phase III, in the same way that it is responsible for overseeing the design and construction of Phase I in the Phase I MOU.

(3) Funding. The Kapolei Group shall be responsible for funding the design and engineering of Phase III. DOT shall be responsible for funding the construction of Phase III subject to the availability of federal funds. In addition, as set forth in Section 8 below, DOT agrees to join with the Kapolei Group in requesting the City to amend Chapter 33A of the Revised Ordinances of Honolulu (the "**Impact Fee Ordinance**") to add Phase III, so that DOT can use Impact Fee Ordinance funds to construct Phase III, and the Kapolei Group can receive impact fee credits for costs incurred in designing and engineering Phase III.

(4) Construction. DOT shall be responsible for the construction of Phase III, in the same way as provided for in the Phase I MOU.

(5) Land. The Kapolei Group, and the Landowner Group agree to donate the land necessary for the Phase III right-of-ways in the same manner as the donation for the Phase I right-of-ways is treated in the Phase I MOU. The Kapolei Group, the Landowner Group and DOT shall agree upon the value of the rights-of-way being contributed prior to the execution of the Phase III MOU.

(6) Timing. Construction of Phase III will start when DOT obtains the federal funds necessary for the construction of Phase III and when the Impact Fee Ordinance is amended as set forth in Section 3.c.(3) above. Prior to DOT commencing construction of Phase III, the Kapolei Group, the Landowner Group and DOT shall enter into a Memorandum of Understanding for Phase III ("**Phase III MOU**"), similar in form and content to the Phase I MOU, modified as necessary to incorporate the provisions of this Agreement.

d. Phase IV.

(1) Configuration. The conceptual configuration of Phase IV is shown in the EA and the FHWA Report. The specific right-of-way maps will be finalized prior to the execution of the Phase IV MOU (defined below).

(2) Design. The Kapolei Group shall be responsible for the design and engineering services for Phase IV, with the intent that (i) such services shall qualify for a "soft match" under federal law, in the same way as the similar services that it provided on Phase I are treated in the Phase I MOU, and (ii) DOT shall be solely responsible for overseeing the design and construction of Phase IV, in the same way that it is responsible for overseeing the design and construction of Phase I in the Phase I MOU.

(3) Funding. The Kapolei Group shall be responsible for funding the design and engineering of Phase IV. DOT shall be responsible for funding the construction of Phase IV subject to the availability of federal funds. In addition, as set forth in Section 8 below, DOT agrees to join with the Kapolei Group in requesting the City to amend the Impact Fee Ordinance to add Phase IV, so that DOT can use Impact Fee Ordinance funds to construct Phase IV, and the Kapolei Group can receive impact fee credits for costs incurred in designing Phase IV.

(4) Construction. DOT shall be responsible for the construction of Phase IV, in the same way as provided for in the Phase I MOU.

(5) Land. The Kapolei Group, and the Landowner Group agree to donate the land necessary for the Phase IV right-of-ways in the same manner as the donation for the Phase I right-of-ways are treated in the Phase I MOU. The Kapolei Group, the Landowner Group and DOT shall agree upon the value of the rights-of-way being contributed prior to the execution of the Phase IV MOU.

(6) Timing. Construction of Phase IV will start when DOT obtains the federal funds necessary for the construction of Phase IV and when the Impact Fee Ordinance is amended as set forth in Section 3.c.(3) above. Prior to DOT commencing construction of Phase IV, the Kapolei Group, the Landowner Group and DOT shall enter into a Memorandum of Understanding for Phase IV ("**Phase IV MOU**"), similar in form and content to the Phase I MOU, modified as necessary to incorporate the provisions of this Agreement.

4. Road D Interchange.

a. Configuration. The conceptual configuration of the Road D Interchange is shown on Exhibit A attached here to and incorporated herein by reference. ("**Road D Interchange**"). The specific design and right-of-way maps will be finalized prior to the execution of the Road D MOU (defined below).

b. Design. The Kapolei Group shall be responsible for the design and engineering services for the Road D Interchange, with the intent that the design and engineering of the Road D Interchange will be subject to DOT review and approval prior to commencement of construction. The design of the Road D Interchange will be based on the conceptual configuration shown on Exhibit A.

c. Funding. The Kapolei Group shall be responsible for funding the cost to design, engineer and construct the Road D Interchange. Nothing herein shall prevent the Kapolei Group from seeking federal funding, the creation of a Community Facilities District ("**CFD**") or other alternative financing mechanisms to fund the cost to design, engineer and construct the Road D Interchange.

d. Construction. The Kapolei Group shall be responsible for the construction of the Road D Interchange. In the event that federal funding becomes available for construction of the Road D Interchange, DOT may assume construction responsibility for the Road D Interchange.

e. Dedication. Upon the completion of construction, the Kapolei Group agrees to dedicate the Road D Interchange to DOT. The Landowner Group agrees to dedicate any land owned by it that is necessary for the Road D Interchange right-of-ways. All lands dedicated by the Kapolei Group under this subsection e shall be free and clear of liens and encumbrances, excepting those imposed by governmental authorities.

f. Timing. The Kapolei Group shall complete design and commence construction of the Road D Interchange, so as to complete construction by the date that the City issues the building permit on the 2,175th residential unit in the Makaiwa Hills Project. Prior to the Kapolei Group commencing construction of the Road D Interchange, the Kapolei Group, the Landowner Group and DOT shall enter into a Memorandum of Understanding for the Road D Interchange ("**Road D MOU**"), similar in form and content to the Phase I MOU, modified as necessary to incorporate the provisions of this Agreement.

5. Harbor Access Road.

a. Configuration. The conceptual configuration of the Harbor Access Road, including proposed access intersections, is shown on Exhibit B attached hereto and incorporated herein by reference. ("**Harbor Access Road**"). The specific design and right-of-way maps will be finalized prior to the execution of the Harbor Access Road MOU (defined below).

b. Design. The Kapolei Group shall be responsible for the design and engineering services for the Harbor Access Road, with the intent that the design and engineering of the Harbor Access Road will be subject to DOT review and approval prior to commencement of construction. The design of the Harbor Access Road will be based on the conceptual configuration shown on Exhibit B.

c. Funding. The Kapolei Group shall be responsible for funding the cost to design, engineer and construct the Harbor Access Road. Nothing herein shall prevent the Kapolei Group from seeking federal funding, the creation of a CFD or other alternative financing mechanisms to fund the cost to design, engineer and construct the Harbor Access Road. DOT agrees to join with the Kapolei Group: (i) in seeking to obtain federal funding for the Harbor Access Road; and (ii) in requesting the City to amend the Impact Fee Ordinance to add the Harbor Access Road, so that DOT can use Impact Fee Ordinance funds to construct the Harbor Access Road, and the Kapolei Group can receive impact fee credits for costs incurred in designing and constructing the Harbor Access Road.

d. Construction. The Kapolei Group shall be responsible for the construction of the Harbor Access Road. In the event that federal funding becomes available for construction of the Harbor Access Road, DOT may assume construction responsibility for the Harbor Access Road.

e. Dedication. Upon completion of construction of all or a portion of the Harbor Access Road, the Kapolei Group agrees to dedicate portions of the Harbor Access Road as it is completed to DOT. The Landowner Group agrees to dedicate any land owned by it that is necessary for the completed portions of the Harbor Access Road right-of-ways. All lands dedicated by the Kapolei Group and the Landowner Group under this subsection e shall be free and clear of liens and encumbrances, excepting those imposed by governmental authorities. Upon such dedication, DOT may request the United States Congress to designate Harbor Access Road as part of the National Highway System, and to delete Kalaeloa Boulevard and Malakole Road from the National Highway System at that time.

f. Timing. The Kapolei Group shall complete design and commence construction of the Harbor Access Road, so as to complete construction by the date that DOT completes construction of Phase III of the KIC. Prior to the Kapolei Group commencing construction of the Harbor Access Road, the Kapolei Group, the Landowner Group and DOT shall enter into a Memorandum of Understanding for the Harbor Access Road ("**Harbor Access Road MOU**"), similar in form and content to the Phase I MOU, modified as necessary to incorporate the provisions of this Agreement.

6. Satisfaction of Fair Share Requirement. DOT acknowledges and agrees that the undertakings by the Kapolei Group under this Agreement, fully satisfy the obligations of the members of the Kapolei Group under the LUC Conditions to pay their "fair share" or "equitable share" of the cost of the additional transportation improvements that are under the jurisdiction of DOT, and that are necessary to mitigate the impacts of the Projects they are developing, as more fully set forth in the LUC Conditions. DOT acknowledges that the members of the Kapolei Group have advised it that they will internally allocate the costs imposed on the Kapolei Group by this Agreement amongst themselves.

7. Waiver of Access and Connection Payments. DOT agrees not to assess any access or connection payments in connection with: (i) the construction of the Road D Interchange including its connection to Farrington Highway; (ii) the Harbor Access Road including, without limitation the construction of the intersections shown on Exhibit B; or (iii) any crossings of the OR&L right-of-way that are necessary for the development of the Projects.

8. Ewa Highway Impact Fee Ordinance Revisions. The Kapolei Group and DOT agree to join in requesting that the City amend the Impact Fee Ordinance to (i) add the portions of the KIC, not currently covered by the Impact Fee Ordinance, to the Ordinance, and

(ii) add the Harbor Access Road to the Impact Fee Ordinance. DOT acknowledges that the Kapolei Group shall be entitled to receive credits under Section 33A-1.10(b) for the costs it incurs in designing and constructing improvements covered by the Impact Fee Ordinance, as same may be amended from time to time.

9. Old Farrington Highway. Within thirty (30) days after the date of this Agreement, DOT agrees to initiate, in accordance with applicable law, and to thereafter diligently pursue to completion, the actions necessary for the State of Hawaii (the "State") to abandon the Old Farrington Highway right-of-way ("OFH") through the Makaiwa Hills Project and to convey OFH to Makaiwa Hills LLC, at no cost to the Kapolei Group or the Landowner Group.

10. Kalaeloa Harbor Weigh Station. Upon the initial dedication of the Harbor Access Road to DOT, Kapolei Property Development LLC will convey to the DOT approximately two (2) acres of land adjacent to the Kalaeloa Harbor and the Harbor Access Road to be used as a DOT truck weigh station, in satisfaction of the Kapolei Harborside Project LUC Conditions. The location of this weigh station shall be mutually agreed upon by Kapolei Property Development LLC and DOT, and shall be included in the Harbor Access Road MOU. The land conveyed by Kapolei Property Development LLC to DOT by under this Section 10 shall be free and clear of liens and encumbrances, excepting those imposed by governmental authorities. Upon conveyance of the land for the weigh station, the DOT shall release all claims that it may have to any existing or planned truck weigh station along Kalaeloa Boulevard owned by the Kapolei Group.

11. Other Roads.

a. Kalaeloa Boulevard. The Landowner Group shall provide the right-of-way, and the Kapolei Group shall design and construct, or cause to be designed and constructed, upgrades to Kalaeloa Boulevard from Kapolei Parkway to Malakole Road to City dedicable standards. The Kapolei Group shall cause the dedication of this portion of Kalaeloa Boulevard to the City. The Landowner Group agrees to dedicate any land owned by it that is necessary for the dedication of this portion of Kalaeloa Boulevard.

b. Malakole Road. If needed for the development of the Kapolei Harborside Project, the Landowner Group shall provide the right-of-way, and the Kapolei Group shall design and construct, or cause to be designed and constructed, upgrades to Malakole Road from the approximate location of the intersection of Hanua Street and Malakole Road west to its intersection with John Wayne Avenue to City dedicable standards. The Kapolei Group shall cause the dedication of this portion of Malakole Road to the City. The Landowner Group agrees to dedicate any land owned by it that is necessary for the dedication of this portion of Malakole Road.

c. Fort Barrette Road. The widening and upgrading of Fort Barrette Road shall be a DOT project constructed within the DOT's own existing right-of-way, funded and implemented by the DOT within a time frame necessary for the DOT's own purposes, but anticipated to occur in 2014.

12. Assignment. Upon ninety (90) days prior written notice to the DOT, the members of the Kapolei Group shall have the right to assign their respective interests and responsibilities in this Agreement to the buyer of all or substantially all of the Projects they are developing. Upon ninety (90) days prior written notice to the DOT, the members of the

Landowner Group shall have the right to assign their respective interests and responsibilities in this Agreement to a buyer of the lands subject to conveyance to DOT under this Agreement.

13. Force Majeure. In the event that a party's performance of any of its obligations under this Agreement is delayed due to Force Majeure, then the time for the completion of such performance shall be extended by a time period equal to the duration of such delay. For purposes of this Agreement, "**Force Majeure**" is defined as an act of God (such as tsunamis, earthquakes or other natural disasters), war, strike in the State of Hawaii or on the Island of Oahu, national emergencies or civil disturbances, general transportation or shipping strikes, or strikes which affect the delivery of materials critical to construction of the improvements in question, or any act (or failure to act) of the United States, the State of Hawaii, or the City or any department thereof, due to conditions that are not within a party's control and that could not reasonably be avoided by such party.

14. Notices. All communications hereunder will be in writing and shall be deemed duly communicated when delivered in person, sent by facsimile transmission or four (4) days after being sent by certified or registered mail, postage prepaid, addressed to:

If to the Kapolei Group:

Kapolei Property Development LLC
James Campbell Building, Suite 250
1001 Kamokila Boulevard
Kapolei, HI 96707
Attention: Steve Kelly

Makaiwa Hills, LLC
7727 Herschel Avenue
La Jolla, California 92037
Attention: Rodney F. Stone

If to the DOT:

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813
Attention: Director

If to the Landowner Group:

James Campbell Company LLC
James Campbell Building, Suite 200
1001 Kamokila Boulevard
Kapolei, HI 96707
Attention: Chief Financial Officer

or, in each case, to such address as may hereunder have been designated most recently. The parties agree that any written notice given by DOT to Kapolei Property Development LLC and Makaiwa Hills LLC shall be deemed given to all members of the Kapolei Group, and that written

notice given to James Campbell Company LLC shall be deemed given to all members of the Landowner Group.

15. No Party Deemed Drafter. This Agreement shall not be construed either for or against any of the parties hereto, but this Agreement shall be construed simply, according to its fair meaning.

16. No Waiver. The failure in any case to enforce any of the provisions of this Agreement shall not constitute a waiver of any right to enforce such provision of this Agreement in any other case.

17. Partial Invalidity. If any term, provision, covenant or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement, or the application of such term, provision, covenant or condition of this Agreement to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. Binding Effect. All the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the successors, successors in trust and assigns of the respective members of the Kapolei Group and the Landowner Group, and the successors and assigns of the DOT, to the same extent as said terms, covenants and conditions inure to the benefit of and are binding upon the Kapolei Group, the Landowner Group, and the DOT, respectively.

19. Governing Law. The laws of the State of Hawaii shall govern the validity, performance and enforcement of this Agreement.

20. No Recordation. Neither this Agreement nor a memorandum or short form may be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or recorded in the Bureau of Conveyances of the State of Hawaii.

21. Entire Agreement. There are no outstanding oral agreements between the parties hereto with respect to the subject matter of this Agreement, and this Agreement supersedes any prior negotiations, arrangements, agreements and understandings, if any, incorporated herein by reference and made a part hereof.

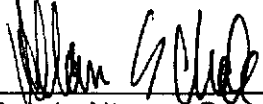
22. Amendment. This Agreement may only be amended in writing, executed by the DOT, the Kapolei Group and the Landowner Group, unless such amendment affects the donation of parcels of land owned by members of the Kapolei Group and/or the Landowner Group, in which case such amendment shall be signed by the applicable land owning member of the Kapolei Group and/or the Landowner Group.

23. Counterparts. The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

[remainder of this page intentionally left blank; signature(s) on following page(s)]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above.

APPROVED AS TO FORM:



Deputy Attorney General

DOT:

STATE OF HAWAII

By 


BRENNON MORIOKA
Its Director of Transportation


IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above.

Kapolei Property Development LLC:

KAPOLEI PROPERTY DEVELOPMENT LLC, a Hawaii limited liability company

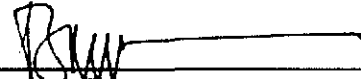
By Aina Nui Corporation, a Hawaii corporation, its member manager


By 
Name: Bradford J. Myers
Its: President

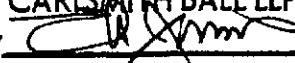
By 
Name: D. Charles Hill
Its: Vice President

Aina Nui Corporation:

AINA NUI CORPORATION, a Hawaii corporation

By 
Name: Bradford J. Myers
Its: President

By 
Name: D. Charles Hill
Its: Vice President


Approved as to Form
CARLSMITH BALL LLP
By 


APPROVED NON STANDARD FORM
Contents:
Checked <u>J. Hannemann</u>
Approved <u>B. Myers</u>
.....
Date <u>5/14/2010</u>

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above.

Makaiwa Hills, LLC:

MAKAIWA HILLS, LLC, a Delaware limited liability company

By  _____
Name: Rodney F. Stone
Its Manager

By  _____
Name:
Its Manager

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above.

James Campbell Company, LLC:

JAMES CAMPBELL COMPANY, LLC, a Delaware limited liability company

By _____
Name: Stephen H. MacMillan
Its President/Chief Executive Officer

By Landon H.W. Chun
Name: Landon H.W. Chun
Its Executive Vice President/
Chief Financial Officer

Campbell Hawaii Investor LLC:

CAMPBELL HAWAII INVESTOR, LLC, a Hawaii limited liability company

By James Campbell Company LLC, a Delaware limited liability company, its member manager

By _____
Name: Stephen H. MacMillan
Its President/Chief Executive Officer

By Landon H.W. Chun
Name: Landon H.W. Chun
Its Executive Vice President/
Chief Financial Officer

EXHIBIT A

Source: Road D Interchange Memo dated September 3, 2008 prepared by Wilson Okamoto Corporation.

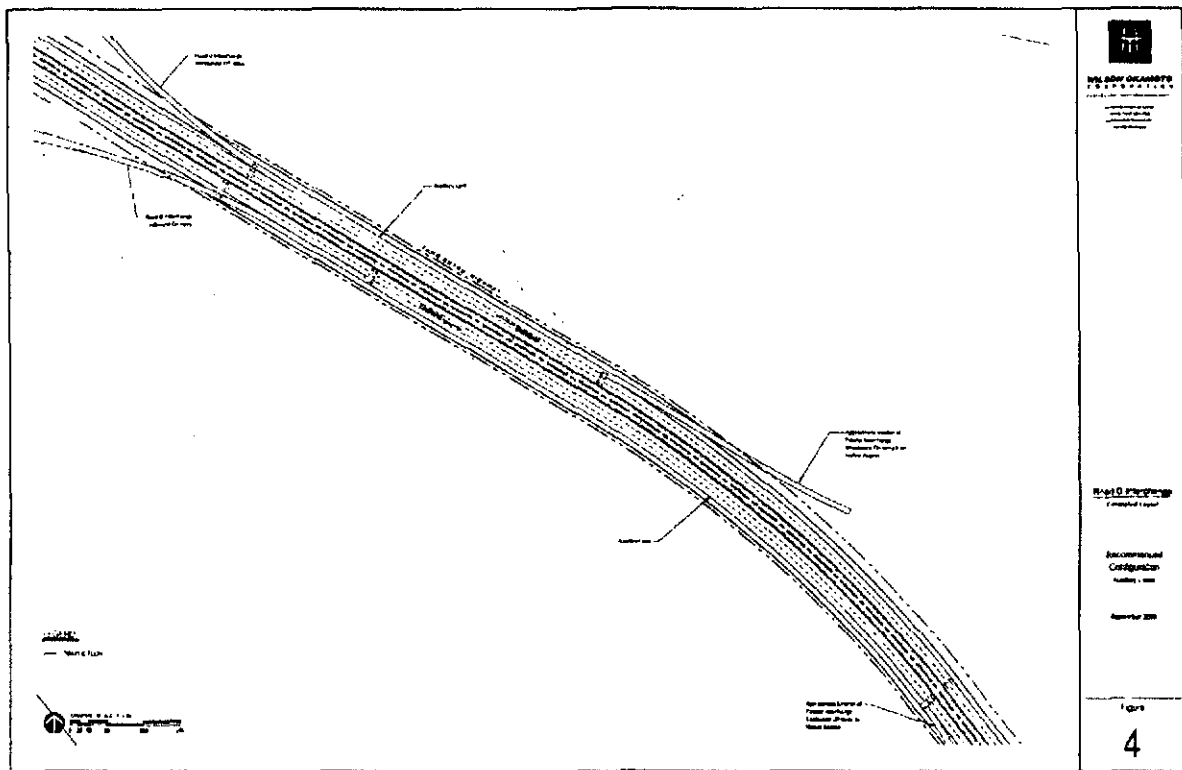
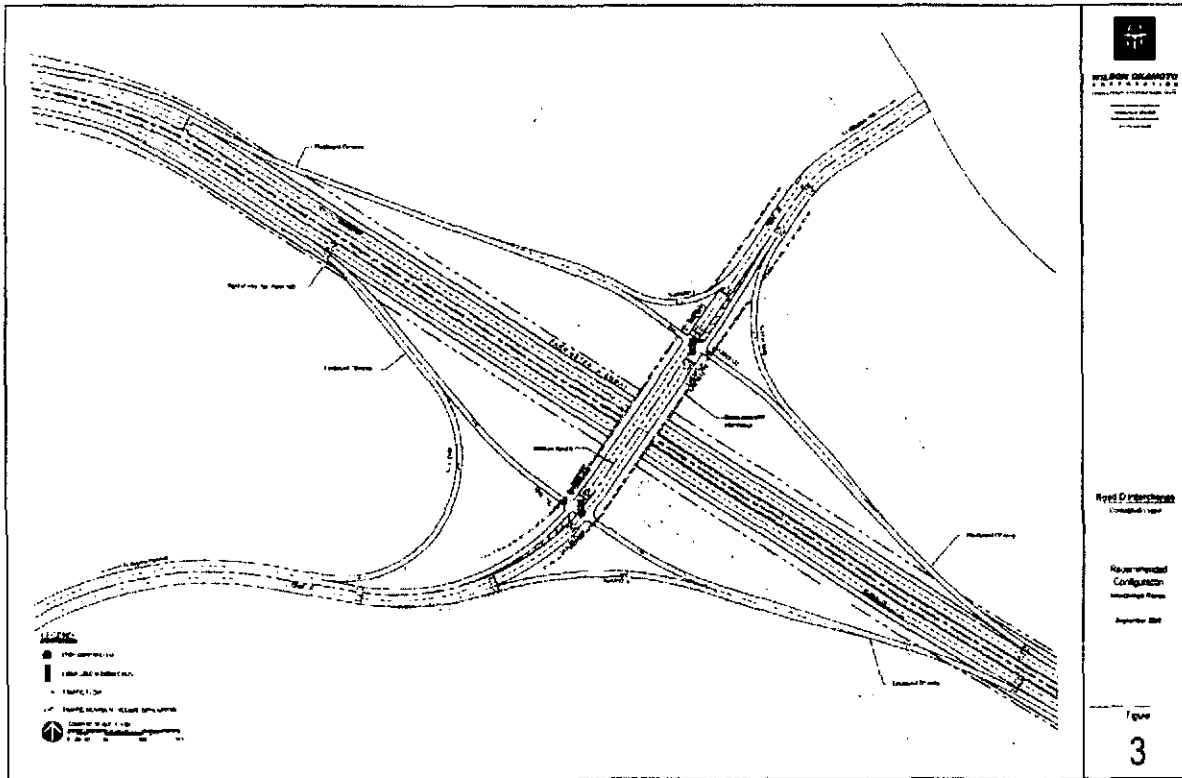


EXHIBIT B

Source: Harbor Access Memo dated September 4, 2008 prepared by Wilson Okamoto Corporation.

