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DOCKET NO. A10-788

Hawai`i Housing Finance Development Corporation and Forest City Hawai`i Kona, LLC

PETITION FOR LAND USE DISTRICT
BOUNDARY AMENDMENT

STAFF REPORT

Hearing
October 21-22, 2010



Orlando Davidson, Executive Officer

Submitted: October 15, 2010

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1. BACKGROUND INFORMATION

Petitioner: Hawai`i Housing Finance and Development Corporation (HHFDC) and Forest City Hawai`i Kona, LLC, (“Petitioner”).

Petitioner’s Representatives: Jennifer A. Benck, Esq. for Forest City Hawai`i Kona, LLC
Steven S.C. Lim, Esq. for Forest City Hawai`i Kona, LLC
Craig Y. Iha, Esq. for HHFDC

Reclassification Request/Acreage: Agricultural to Urban/271.837 acres (“Petition Area”). The Petition Area has been in the Agricultural District since August 1964. “Project Area” includes remnant pieces of additional land already in the Urban District.

Location/TMK: Keahuolū, North Kona, Hawai`i.
(3) 7-4-021: 020 (por.); (3) 7-4-021: 024, (3) 7-4-021: 025, (3) 7-4-021: 026, and (3) 7-4-021: 027.

Landowners: FHT Kamakana, LLC, a Hawai`i limited liability company;

Zoning: State Agricultural District;
County General Plan Land Use Pattern Allocation Guide (“LUPAG”) Urban Expansion and Low Density Urban; County Zoning Agricultural A-5a; and, within the Kona Community Development Plan (CDP) Urban Area and has been identified as a Transit Oriented Development Neighborhood Village.

Major Permits/ Approvals Needed: State of Hawai`i - District Boundary Amendment
As a 201H affordable housing project, is entitled to be “exempt from all statutes, ordinances, charter provisions, and rules.... (201H-38, HRS)

Even though as a 201H affordable housing project the Project is entitled to be “exempt from all statutes...” the Petition and attached D&O does not seek any exemptions from State requirements.

County of Hawai`i – A County Council 201H, HRS Resolution authorizing exemptions from various land use and zoning standards is needed in order to accommodate the development of the Project. The County has indicated a Change of Zone/Project District application will be required.

DBA Dockets Docket No. A89-646 Lili`uokalani Trust – Involved the reclassification of approximately 919 acres of land from the Conservation District to the Urban District for an urban activity center, including a centralized business and financial plaza, retail and commercial office space, a government center or civic plaza, a

regional shopping center, a professional center, a region-serving hospital, a business park and light industrial center, a business-serving hotel complex, a college campus for West Hawai'i, and a historic preserve. This parcel is not within the Petition area but is directly adjacent. Approved by the LUC.

Docket No. A90-660 HHFDC – Involved the reclassification of approximately 727 acres of land from the Agricultural District to the Urban District for a mixed-use, master-planned community, including approximately 4,100 residential units. Approved by the LUC.

Docket No. A94-705 County of Hawai'i Planning Department – Involved the reclassification of approximately 955 acres of land from the Agricultural District to the Urban District to allocate sufficient land for future urban growth and also to direct growth in appropriate areas designated on the County General Plan. The petition involved 16 different privately-owned properties that represented a subset of lands identified during the 1990 State Land Use District Boundary Review done by the Office of State Planning (OP). Partially approved by LUC (432.91 acres).

Existing Uses:

The Petition Area is comprised of vacant, open land with scrub vegetation and lava rock.

Project Need:

According to the Market Study, Economic Impact Analysis, and Public Costs/Benefits Assessment provided as Appendix E of the Environmental Report (Petitioner's Exhibit 3) the resident population of West Hawai'i is expected to increase by about 60% over the next two decades. This is expected to generate a need for 7,560 - 10,162 new housing units in the Greater Kailua-Kona between 2010 and 2030, approximately 44% of which will be for resident housing at affordable prices. Even with the 2,330 residential units proposed for the Project, the projected shortfall for housing by 2030 is approximately 5,858 residential units.

Nearby existing development is complimentary; it is proximate to supporting services, employment and businesses in central Kailua-Kona; and, is in an area the market considers as having urban use potentials. Project residents will generate a demand for more than 110,000 sq. ft. of neighborhood commercial floor space comprised of retail, restaurant, service/support, business/office and medical uses based on regional and statewide spatial demand trends. Approximately 197,000 sq. ft. of commercial space is proposed within the Petition Area.

Proposed Uses: The Project will consist of the following uses:

Proposed Units by Type and Phase								
Phase	Single Family (SF)		Multi-Family (MF)		Total	Market	Affordable	Cumulative Units
	Market/Affordable		Market/Affordable					
Phase 1 2012-2014 and 41,833 ft ² commercial	73	3	94	265	435	167	268	435
Phase 2 2015-2018 and 24,500 ft ² commercial	88	6	114	323	531	202	329	966
Phase 3a 2019-2020 and 32,667 ft ² commercial	89	5	57	79	230	146	84	1,196
Phase 3b 2020-2021	78	4	26	35	143	104	39	1,339
Phase 4 2022-2024	88	8	86	192	374	174	200	1,713
Phase 5 2025-2026	76	4	97	162	339	173	166	2,052
Phase 6 2027-2028 and 98,000 ft ² commercial	138	1	57	82	278	195	83	2,330
TOTAL					2,330	1,161	1,169	2,330
197,000 ft ² of neighborhood commercial space								

*Development
Timetable:*

Petitioner states that development of the Petition Area is planned to occur in six Phases (see Table above) and span approximately 18 years from the start of infrastructure construction in late 2010 - early 2011, to full absorption of all residential and retail product by the end of 2028. The Petition Area is subject to a Development Agreement, which requires completion of all affordable units no later than 2023, subject to a 5-year extension. Petitioner's Exhibit 27 provides a schedule for development of the project (Incremental Development Plan).

Petitioner requests that the Commission reclassify the entire Petition Area in order to allow for the financing and development of onsite and offsite internal infrastructure necessary to support the

Project at full build out. Despite Petitioner's preference for reclassification of the Petition Area in its entirety, Petitioner has filed an Incremental Development Plan (Petitioner's Exhibit 27) pursuant to 15-15-50(c)(19), Hawai'i Administrative Rules (HAR).¹

Petitioner indicates the Increment 1 consists of Phases 1, 2, and 3a, which are planned to be fully developed by the fall of 2020. Increment 2 consists of Phases 3b, 4, 5, and 6, which are planned to be fully developed by 2029. The off-site sewer system, most of the water source and transmission system, electrical transmission and the interior mauka-makai connector roadways are planned to be completed by 2020. The backbone infrastructure is anticipated to be complete before 2021.

Construction of approximately 130-150 residential units per year is projected; with approximately 1,196 units planned within Increment 1 and will be developed and sold by 2020. Roughly 99,000 square feet of neighborhood commercial space is planned to be built within Increment 1. Also within Increment 1 – the larger DOE elementary school site, the other school/civic site, and two of three main parks.

Increment 2 is expected to begin in 2020 with an average of 130 residential units per year being developed. Approximately 98,000 square feet of commercial space is planned within Phase 6. In addition, a third park site, two large archaeological preserves will be provided during Phases 3b and 5, respectively.

*OP's
Representatives:*

Abe Mitsuda, Land Use Division Manager
Bryan C. Yee, Esq., Deputy Attorney General
Mary Alice Evans, Staff Planner.

OP's Position:

Support (Statement of Position filed October 11, 2010). OP supports the reclassification.

*County Of Hawai'i
Representatives:*

Bobby Jean Leithead Todd, Planning Director.
Gerald Takase, Esq., Deputy Corporation Counsel.

*County Of Hawai'i
Position:*

Support (Statement of Position filed October 11, 2010). The County supports the reclassification.

¹ Section 15-15-50(c)(19), HAR, requires petitioners who submit applications for reclassification to the Urban District to represent that development of the subject property in accordance with the demonstrated need will be accomplished before 10 years after the date of LUC approval. In the event full urban development cannot substantially be completed within such period, the petitioner is required to submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a 10-year period.

Queen Lili`uokalani Trust (QLT): Queen Lili`uokalani Trust’s (QLT) granted permission to intervene without limitations by LUC action on October 7, 2010.

QLT Position: Opposed (Statement of Position filed late on October 14, 2010).

Hearing Date: October 21-22, 2010.

45-Day Deadline ²: November 5, 2010.

2. SUMMARY OF PROJECT IMPACTS

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources: The soils on the Petition Area are classified as follows:

U.S. Department of Agriculture, Natural Resources Conservation Service (formerly Soil Conservation Service)

Lava Flows, pāhoehoe (rLW)
 Lava Flows, `a`ā (rLV)
 Kaimu extremely stony peak (rKED)
 Punalu`u extremely rocky peat (rPYD)

University of Hawai`i Land Study Bureau

Overall (Master) Productivity Rating Class A through E – highest productivity to lowest productivity

The soils within Petition Area are classified as overall (master) productivity rating class E.

State Department of Agriculture Agricultural Lands of Importance to the State of Hawai`i (ALISH)

Most of the Petition Area lands are not classified under ALISH, however, two small areas are designated as Other³.

Based upon the historical uses of the land and the poor soils within the Petition Area, the development of Petition Area is not expected to have an adverse impact on agriculture. The Petition Area is not

² As a government sponsored housing project per Section 201H, HRS and LUC administrative rules Section 15-15-97, HAR, the deadline for Commission action is 45 days from the Petition being deemed a complete filing.

³ “Other” The lands in this classification are important to agriculture in Hawaii yet they exhibit properties, such as seasonal wetness, erodibility, limited rooting zone, slope, flooding, or droughtiness, that exclude them from the Prime or Unique Agricultural Land classifications.

under agricultural production and has not been during any time in recent history.

*Flora & Faunal
Resources:*

Isle Botanica conducted a botanical survey of the Petition Area in November 2007 (Appendix B of Final EIS, Petitioner's Exhibit 2). The entire area within the Petition Area was resurveyed and an updated botanical survey was prepared in April 2010 (Petitioner's Exhibit 31). The botanical survey identified 50 plant species within the Project Area, of which 13 are native, with one candidate species reported once in the study area.. The botanical survey concluded that there is no indication that development of the area as now planned will adversely affect the Candidate species *Bidens micrantha* ssp. *ctenophylla*. Therefore, it will also have no effect on any Threatened, Endangered, or Candidate species, nor on any culturally significant Hawaiian plants.

Phil Bruner conducted an avifaunal and feral mammal survey in May 2008 (Appendix C-1 and C-2 in FEIS, Petitioner's Exhibit 2) in which no endangered or threatened avifaunal, feral mammal or invertebrate species were located within the Petition Area. No native waterbirds, nesting seabirds or migratory shorebirds were observed, nor was there any evidence of the Hawaiian Hawk or Hawaiian Short-eared Owl. In addition, no Hawaiian Hoary Bats were detected.

The Biological Survey of Lava Tube Caves conducted in May 2008 (Appendix H in FEIS, Petitioner's Exhibit 2) concluded that there were no cave resources that could be threatened by development of the area.

*Archaeological/
Cultural Resources:*

PHRI conducted An archaeological inventory survey that covered approximately 1,100 acres, and which included the Petition Area, was approved by the SHPD in 1993 and an archaeological mitigation plan was also approved in 1993. Additional archaeological field work was done in 2007, Appendix D of the FEIS (Petitioner's Exhibit 2). In consultation with SHPD, Haun & Associates prepared an Archaeological Mitigation Plan Update in October 2009. Most recently Petitioner commissioned a 100% surface examination of the Petition Area with surveyors spaced at a maximum of 10.0 meters referred to as the Addendum AIS (Petitioner's Exhibit. 32). The AIS Addendum documented 136 sites as significant for research potential. No further work or preservation is recommended for 22 sites; 28 sites are recommended for preservation; 86 sites are recommended for data recovery. The AIS Addendum has been approved by SHPD (Petitioner's Exhibit 33).

The Petitioner represents that development of the Project should not result in adverse impacts to historic resources in the area. Archaeological sites conforming to the significance criteria established under State and Federal regulations will be preserved in coordination and consultation with the SHPD. Petitioner represents that they will prepare a burial treatment/preservation plan, as well as a data recovery plan. Also Petitioner has proposed the following conditions⁴:

“Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), prior to issuance of any permit for grubbing and grading. Petitioner shall confirm in writing to the Land Use Commission that the SHPD has found Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented.”

“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, Hawaii 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 in 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.”

“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.”

“Petitioners shall preserve any lava tube caves or subgrade cavities not previously identified in studies referred to herein, if required to be preserved by SHPD or

⁴ Petitioner’s First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner’s Exhibit 17).

the Hawaii Island Burial Council as part of an approved burial treatment plan.”

PHRI prepared a Cultural Impact Assessment for the Petition Area in 2007 (CIA) as Appendix D of the FEIS, Petitioner’s Exhibit 2. The CIA recommended that care be taken to preserve the habitat of endemic plants, particularly pilo and alahe’e. The CIA concluded that the development of Kamakana Villages would have no significant impact on Hawaiian cultural resources, beliefs and practices.

The Petitioner represents that they will take steps to preserve the habitat of endemic plants, in addition to preserving access for gathering activities. And, Petitioner will preserve over nine acres of land for cultural resources, and native plants that have adapted to the specific climate and rainfall around the Petition Area will be favored in the landscaping selections for Kamakana Villages.

Groundwater Resources:

There are three reserve types of regional water resources for Kona: basal groundwater, brackish basal groundwater, and dike-impounded perched groundwater. The specific groundwater resources in the project area are currently unknown.

There is no existing water system within the Project Area. Kamakana Villages will need 1.7 million gallons per day (mgd) of potable water at full build-out in 2028. The existing exploratory Keōpū Well will be developed by the County and HHFDC into a production well with a capacity of 1.5 mgd, of which 1.0 mgd is planned to be utilized for Phases 1-3 of the Project Area. A second well is planned for Phases 4-6 to provide the balance of 0.7 mgd near or upgradient to the County’s Moeauoa Tank site. The Komo Monitoring Well completed by the United States Geological Survey (USGS) at this location demonstrated that high level water exists and could provide 1.5 mgd.

Petitioner represents that, as recommended in the Final EIS, they will install monitors for each source well, and reactivate the Komo Well as a monitoring well and will also develop the Kamakana Well to provide monitoring. Petitioner represents that development of the Project is not expected to have any significant effect on groundwater resources in the area.

Petitioner has proposed the following condition⁵:

“As recommended in the Final EIS, Petitioner shall install monitors for each source well, and reactivate the Komo Well as a monitoring well. Petitioner will also develop the Kamakana Well to provide monitoring. In providing potable water for the Project, Petitioner shall comply with all applicable laws and regulations to assess the potential impacts and identify the appropriate mitigation measures for such water source.”

Recreational Resources:

The Petitioner represents that the proposed Project will enhance the recreational resources of the area by providing more than 20 acres for park space and approximately 18 acres in open space. Kamakana Villages will be designed to encourage the use of on-site pedestrian and bike pathways.

Visual Resources:

The Property is currently vacant and sparsely vegetated. The Project site is not located within a scenic view corridor, nor is it part of any identified valuable open space resource area. The Petitioner represents that development of Kamakana Villages will change the existing views from Palani Road and neighboring developments from the current undeveloped, overgrown land to a built environment. Petitioner further represents that they are committed to protecting the natural beauty of the region and the character of the Project will be consistent with that of surrounding communities and the principles set forth in the Kona Community Development Plan (CDP).

ENVIRONMENTAL QUALITY

FEIS

By letter dated December 11, 2008, Governor Lingle conditioned her acceptance of the Final EIS (FEIS) upon the performance of certain listed mitigation measures, or alternative and at least equally effective mitigation measures at the discretion of the permitting agencies (Petitioner’s Exhibit 30).

Energy and Resource Conservation:

Petitioner represents that all feasible energy conservation and renewable energy measures, especially solar energy, will be designed into the Project’s sustainability principles. Further, that as currently configured, Kamakana Villages could qualify for a Gold rating under the proposed LEED ND⁶ Rating System (Petitioner’s Exhibit 29).

⁵ Petitioner’s First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner’s Exhibit 17).

⁶ Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND).

Petitioner has proposed the following conditions⁷:

“To the extent practicable Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that all commercial and institutional facilities be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for New Construction (LEED-NC), Silver level or higher. Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that, to the extent practicable, all homes be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED-H), Silver level or higher.”

“To the extent practicable Petitioner shall plan, design and construct the Project to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND), Certified or higher.”

“Petitioners shall implement water conservation measures and Best Management Practices (BMPs), such as the use of indigenous and drought-tolerant plants and turf and incorporate such measures in the Project's landscape planting.”

Noise: Petitioner represents that noise is not expected to result in any long term negative impacts on area noise levels. Noise impacts are expected during construction. Petitioner represents that during construction, the Department of Health's noise regulations and conditions for construction activities will be followed. Petitioner further represents that traffic noise generated from the Project at full build-out will be insignificant.

Air Quality: The construction and completion of the Project will generate both short and long-term impacts on air quality. Petitioner represents that all construction activities will be conducted in accordance with the fugitive dust measures required under Section 11-60.1-33, HAR. Long-term impacts to air quality are anticipated to remain well within the State or Federal standards.

⁷ Petitioner's First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner's Exhibit 17).

Petitioner has proposed the following condition⁸:

“Petitioners shall participate in an air quality monitoring program as required by the DOH.”

Water Quality:

Petitioner does not any significant effect on groundwater resources in the area. During and after development, precipitation will continue to percolate to the underlying groundwater.

Petitioner represents that materials will be managed to prevent the discharge of pollutants to the ground as required by the National Pollutant Discharge Elimination System (NPDES) permit; will design storm and surface runoff Best Management Practices (BMP) to treat first flush runoff and prevent pollutants from reaching the water table or coastal waters; implement landscaped areas or other comparable BMPs, and implement landscape management practices and community association covenants to minimize fertilizer, pesticide, and herbicide use that could enter the groundwater.

Petitioner has proposed the following conditions⁹:

“Prior to the occupancy of any residential unit within the Petition Area and as recommended in the Final EIS, Petitioner shall engineer, construct (or require to be constructed) and/or implement (or require to be implemented) and maintain storm and surface-water runoff BMPs, subject to any applicable review and approval of the State of Hawaii Department of Health (DOH), designed to minimize pollution and to prevent violations of State water quality standards as a result of storm-water discharges originating from the Petition Area.

To the extent practicable and consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the water table or coastal waters.

To the extent practicable and consistent with applicable laws, Petitioner shall implement landscaped areas, such as grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable BMPs engineered to treat the first flush runoff volume including the removal of suspended solids and oils

⁸ Petitioner’s First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner’s Exhibit 17)

⁹ *ibid.*

and greases from all streets and parking lots, and debris catch basins to allow the detention and periodic removal of rubbish and sediments deposited by runoff using current industry and engineering standards.

Not less than 45 days before submitting an application for subdivision approval for residential lots, Petitioner shall submit a copy of its designs for storm and surface water runoff BMPs to the National Park Service for consultation.

As recommended in the Final EIS, Petitioner shall create and provide a pollution prevention plan for residential and commercial facilities, and provide copies to property purchasers. To reduce the amount of pollutants from entering the groundwater, Petitioner shall provide educational materials and programs to residents, establish community association covenants and implement BMPs. Educational materials and programs, and community association covenants would include, but not be limited to, the landscape management and vehicular maintenance controls recommended in the final EIS.”

“Petitioners shall implement applicable BMPs for each proposed land use to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for 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.”

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Affordable Housing: Kamakana Villages is proposed to consist of approximately 2,330 residential units, of which over 50% or approximately 1,169 will be affordable units, offered for sale or rent to buyers who earn no more than 140% of the median income in the County of Hawai`i.

The County of Hawai`i, Office of Housing and Community Development (OHCD) has certified that Kamakana Villages involves a Chapter 201H, HRS, affordable housing project (Petitioner’s Exhibit 20).

Petitioner has proposed the following condition¹⁰:

¹⁰ Petitioner’s First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner’s Exhibit 17).

“Petitioners shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County of Hawaii's Office of Housing and Community Development and the certification of the Project as an HRS §201H-38 housing project. The location, distribution, and production schedule of the affordable units shall be under such terms as may be mutually agreeable between the Petitioners and the County.”

*Highway/Roadway
Facilities:*

The three principal roadways located near the Petition Area are Queen Ka`ahumanu Highway, Kealakehe Parkway and Palani Road. In addition, the Ane Keohokalole Highway will run along the makai edge of the Petition Area. Queen Ka`ahumanu Highway is a two-way, two- to four-lane, high quality arterial highway between Kailua-Kona and Kawaihae, and is the primary arterial highway along the South Kohala and North Kona coasts. Queen Ka`ahumanu Highway is a four-lane divided highway between Henry Street and Kealakehe Parkway. The State Department of Transportation (DOT) recently awarded the bid to construct the second phase of the Queen Ka`ahumanu Highway widening from two lanes to four lanes between Kealakehe Parkway and the Kona International Airport Access Road. Kealakehe Parkway is a two- to three-lane, two-way arterial highway between Honokōhau Harbor and Keanalehu Drive. Kealakehe Parkway is signalized at its four-legged intersection with Queen Ka`ahumanu Highway. Palani Road is a two-way, two- to four-lane roadway, between Kuakini Highway and Māmalahoa Highway. Palani Road is signalized at Henry Street, Queen Ka`ahumanu Highway and, recently, at the intersection of Kealaka`a Street and Palihiolo Street. Ane Keohokalole Highway is a planned two-lane, two-way roadway which extends from the West Hawai`i Civic Center on Kealakehe Parkway to Pū`ohulihuli Street. The County will extend Ane Keohokalole Highway from Pū`ohulihuli Street to Palani Road.

The Traffic Management Consultant prepared a study entitled "Traffic Impact Analysis Report for the Proposed Kamakana Villages at Keahuolū" dated August 9, 2010 (TIAR, Petitioner's Exhibit 28). The TIAR supersedes the traffic analysis report submitted as Appendix D of the ER (Petitioner's Exhibit 3). The TIAR analyzed potential Project-related traffic impacts on the roadway system in the vicinity of the Project.

Based on the TIAR traffic counts the intersection of Queen Ka`ahumanu Highway and Kealakehe Parkway, Makala Boulevard, Palani Road and Henry Street all operate at Level of Service (LOS) C during the existing AM peak hour of traffic. The Palani Road intersections with Kamaka`eha Avenue, Henry Street and Kealaka`a Street operate at LOS B, C and F respectively. The

PM peak hour traffic at those intersections range from C to F. Queen Ka`ahumanu Highway and Kealakehe Parkway is at LOS E, the intersections at Makala Boulevard and Henry Street are at LOS D, and the intersection at Palani Road is at LOS C. The Palani Road intersections with Kamaka`eha Avenue, Henry Street and Kealaka`a Street operate at LOS C, C and F respectively.

The DOT recently completed the first phase of the Queen Ka`ahumanu Highway, and the second phase (from Kealakehe Parkway to the Kona International Airport Access Road) is expected to be complete by 2014. The first phase of the Kealakehe Parkway, eventually planned to run through the Kealakehe area between Queen Ka`ahumanu Highway and Palani Road/Māmalahoa Highway, has been completed. However, the future extension of Kealakehe Parkway to Palani/Māmalahoa was not included in the TIAR analysis. The County is in the process of having Phase 1 of the Ane Keohokalole Highway (to run from Pū`ohulihuli Street to Palani Road) constructed, to be followed by Phase 2, which will run from South Street to Hina Lani Street.

Petitioner represents that they will construct certain traffic improvements as in conjunction with the development of the Project. Petitioner's proposed traffic mitigation measures and the timing for the construction of those measures are identified on the Incremental Development Plan. However, the exact improvements are subject to Petitioner's agreement with the DOT.

Petitioner has proposed the following condition¹¹:

“Petitioners shall mitigate all project generated traffic impacts as recommended and/or required by the Traffic Impact Analysis Report (TIAR) prepared for the project that has been reviewed and accepted by the State Department of Transportation (DOT). Petitioner shall not submit applications for subdivision of the residential lots or plan approval for the multiple family and/or commercial units within the Project until the Petitioner has executed an agreement with DOT committing to the implementation of all necessary measures to mitigate the direct impacts of the project on the surrounding roadway system as well as to the level of funding and participation for Petitioner's pro rata share of regional transportation improvements.”

In addition the Petitioner has also represented that as an affordable housing project, under Hawai`i County Code Sec. 25-2-46,

¹¹ Petitioner's First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner's Exhibit 17).

Petitioner will not be required to perform area mitigation traffic improvements. Area mitigation is defined as: "improvements which increase the capacity of an arterial or other major road, such as additional lanes, in the general region containing the project, or construction of a new arterial or collector road in the general area containing the project, or improvements to public transportation such as buses or park and ride facilities, sufficient to offset the traffic demand generated by the project."

Civil Defense: Petitioner represents that they will install one outdoor warning siren at a central location within the Petition Area.

Petitioner has proposed the following condition¹²:

"Petitioners shall fund and install one or more outdoor solar-powered warning sirens serving the Petition Area as determined by the State Department of Defense, Office of Civil Defense."

Solid Waste Disposal: The County of Hawai`i currently operates an active landfill, north of the Property, at Pu`uanahulu. The 2002 Updated Integrated Solid Waste Management Plan for the County estimates that there is 12 million cubic yards of air space at the Pu`uanahulu Landfill, which is enough to accommodate the waste generated by West Hawai`i for approximately the next 40 years.

Petitioner represents that they will emphasize waste diversion and recycling as part of the solid waste management plan for Kamakana Villages. Recyclables and wastes would be managed in either a centralized system or by private individuals, and hauled directly to recycling centers, transfer stations, and the landfill. Educational materials and information on recycling programs will also be provided to encourage residents to minimize and divert solid wastes.

Petitioner has proposed the following condition¹³:

"Petitioners shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS §342G. Petitioners' solid waste management plan shall be approved by the County of Hawaii and the DOH."

¹² Petitioner's First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner's Exhibit 17).

¹³ Petitioner's First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner's Exhibit 17).

Water Service:

At full build-out, the maximum daily demand for water at Kamakana Villages will be less than 1.7 million gallons per day ("**MGD**"), and the average daily demand will be less than 1.12 MGD. To provide water for the project, HHFDC, in collaboration with the County Department of Water Supply ("**DWS**"), is pursuing the development of the existing, exploratory Keōpū Well No. 3957-05 as a production well. Once developed, Well 3957-05 is planned to provide water to Kamakana Villages and other water users in North Kona.

Water system infrastructure is already located near Kamakana Villages. Waterlines forming a looped system are located within Keanalehu Drive and Manawale'a Street, at Palani Road and planned for development within Ane Keohokalole Highway. In addition, the County of Hawai'i has prioritized construction of water re-use infrastructure, which would provide reclaimed water for irrigation in North Kona. Kamakana Villages will make accommodations to include reclaimed water in its irrigation design.

Petitioner has proposed the following condition¹⁴:

“As recommended in the Final EIS, Petitioner shall install monitors for each source well, and reactivate the Komo Well as a monitoring well. Petitioner will also develop the Kamakana Well to provide monitoring. In providing potable water for the Project, Petitioner shall comply with all applicable laws and regulations to assess the potential impacts and identify the appropriate mitigation measures for such water source.”

*Wastewater
Disposal:*

Presently, there are no public or private wastewater treatment facilities on the. The Petitioner represents that at full build out Kamakana Villages will generate an average flow of 673,778 gallons per day ("**GPD**"), with a peak flow of 2,555,477 GPD. The County has reserved 431,360 gallons per day capacity at the Kealakehe Sewage Treatment Plant ("**STP**") for Kamakana Villages, which is sufficient capacity to serve Phases 1 through 4. Increased capacity at the Kealakehe STP would be required to accommodate full development for Kamakana Villages.

The Department of Environmental Management is currently reviewing options to expand and upgrade the Kealakehe STP. Two (2) improvement projects are planned which include: 1) sludge removal (\$8,600,000 has been appropriated for the sludge removal, of which \$600,000 has been allotted for design

¹⁴ *ibid.*

work); and 2) aeration upgrade (\$8,250,000 has been appropriated for the aeration upgrade, of which \$750,000 has been allotted for design work). Petitioner represents that these improvement projects will allow the Kealakehe STP to continue to operate at the present capacity and allow for future capacity upgrades necessary to service the later Phases of Kamakana Villages and other users within the Kealakehe service territory.

Petitioner has proposed the following condition¹⁵:

“Petitioners shall fund, design and construct transmission lines and connect to the County of Hawai`i's Kealakehe Sewage Treatment Plant to the satisfaction of the County Department of Environmental Management and the DOH.”

Drainage:

No drainage facilities or defined natural drainage ways exist within the Petition Area. The development of Kamakana Villages will increase the amount of impermeable surfaces within the Petition Area.

Petitioner represents it will to the extent practicable and consistent with applicable laws, design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the water table or coastal waters; shall implement landscaped areas or other comparable BMPs engineered to treat the first flush runoff volume including the removal of suspended solids and oils and greases from all streets or any parking lot designed for more than 50 vehicles; and debris catch basins. Also, Petitioner may further ensure that best management practices are continued by recording a Declaration of Covenants, Conditions, and Restrictions (CC&Rs) relating to storm and surface water runoff.

Petitioner has proposed the following condition¹⁶:

“Petitioners shall fund, design and construct any drainage system improvements required to prevent adverse impact resulting from the development of the Project. Petitioners shall be required to prevent runoff from the Petition Area from adversely affecting State highway facilities and downstream properties. Petitioners shall submit plans to the DOT and appropriate State and County agencies for review and approval.”

¹⁵ Petitioner’s First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner’s Exhibit 17).

¹⁶ *ibid.*

*Educational
Facilities:*

Kamakana Villages is within the Kealakehe school catchment area and is served by three (3) DOE schools: (i) Kealakehe Elementary School, which serves nearly 990 students from kindergarten through grade five; (ii) Kealakehe Intermediate School, which serves approximately 900 students in grades six through eight; and (iii) Kealakehe High School, which serves approximately 1,638 students from Hualālai to Waikoloa Village.

In a letter dated May 1, 2007, the Department of Education (DOE) commented that the project's impact. Petitioner has worked since then with the DOE on an Education Contribution Agreement that provides conveyance of 10.95 acres of land, plus acquisition of no more than two additional acres for two school sites within the Project Area, one public elementary school and one charter school, and cash contribution of approximately \$2.68 million to the construction component of the school impact fee authorized by Act 245, SLH 2007. The terms of the agreement will satisfy the DOE requirements for school impact fees.

Petitioner has proposed the following condition¹⁷:

“Petitioners shall enter into an agreement with the State Department of Education to provide land for a school site and a cash contribution to the construction component of a school impact fee by prior to submission of any applications for subdivision for the residential lots or plan approval for the multiple family and/or commercial units within the Project.”

*Police & Fire
Protection:*

The Petition Area is located approximately 1.5 miles from the County Police Department's Kona station at Kealakehe. Primary fire protection is provided by the County's North Kona fire station located in Kailua-Kona approximately .75 miles from the Petition Area.

*Electrical &
Telephone
Services:*

The Petition Area is not currently served by any existing Hawaiian Electric Light Company, Inc. (HELCO) facilities and no Hawaiian Telcom telephone facilities or cable communications (CATV) facilities. Petitioner represents that the proposed electric and communications systems would be developed in accordance with the specifications and standards of Hawai'i Electric Light Company, Hawaiian Telcom Inc., and Oceanic Time Warner Cable.

¹⁷ Petitioner's First Proposed Findings of Fact, Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment, submitted as part of their 201H State Land Use District Reclassification Petition (see Petitioner's Exhibit 17).

3. AREAS OF GENERAL AGREEMENT AND CONCERN AMONG PARTIES

Petitioner, OP, and the County of Hawai'i appear to be in general agreement (or at least the parties have not raised any concerns) with respect to the following areas¹⁸:

- Consistent with the State Plan and conforms to State Urban District Standards
- Conformance with the County General Plan and Kona Community Development Plan (CDP) for the North Kona District
- Affordable Housing
- Air Quality
- Noise
- Archaeological and Cultural Resources
- Agricultural Resources
- Water Supply
- Public Services and Facilities
- Development Timetable and Implementation Plan (Petitioner's Exhibit 27)
- Transportation
- Flora and Fauna
- Energy Conservation
- Wastewater

The Intervenor has expressed concerns in the following areas:

- Potential direct impacts to QLT lands, including, but not limited to
 - Noise;
 - Air quality;
 - Traffic;
 - Water and drainage;
 - Electrical and communications systems;
 - Preservation of archaeological and cultural resources;
 - QLT's use of its land; and,
 - Whether Petitioners will follow and comply with the terms and conditions under which conveyance of the Petition Area from QLT to the State occurred.

4. SUMMARY OF SIGNIFICANT ISSUES

Transportation/TIAR

Petitioner submitted a TIAR (Petitioner's Exhibit 28) which the DOT is reviewing. The Petitioner has agreed to mitigate all project-generated traffic impacts on the surrounding roadway system as recommended and/or required by the approved TIAR, and to also pay a pro-rata share of regional transportation improvements. DOT is in general agreement (OP Position Statement) with the mitigation concepts, and has proposed that a determination be made as to Petitioner's share of traffic mitigation at full build-out, and

¹⁸ All parties, with the exception of Intervenor, have indicated they are actively working to reach stipulated agreement on as many issues as possible prior to scheduled hearing on October 21, 2010.

that an agreement be reached that Petitioner will make certain actual and specific traffic improvements of an equivalent value.

However, Petitioner has also represented that as an affordable housing project, under Hawai'i County Code Sec. 25-2-46, that Petitioner will not be required to perform area mitigation traffic improvements. Area mitigation is defined as: "improvements which increase the capacity of an arterial or other major road, such as additional lanes, in the general region containing the project, or construction of a new arterial or collector road in the general area containing the project, or improvements to public transportation such as buses or park and ride facilities, sufficient to offset the traffic demand generated by the project." In reviewing the TIAR, particularly Table 9 Summary of Traffic Mitigation (pages 114-116) it appears that the majority of the mitigation measures required to accommodate impacts due to the Project are categorized as "Area" mitigation. This would indicate that Petitioner will not be undertaking any of these "Area" mitigation projects as they would not be required under County code.

Petitioner should clarify (i) how the local, area, and regional traffic mitigation measures identified in the draft TIAR will be addressed, by whom, and when; and (ii) whether Petitioner's proposed condition with DOT might supersede any exemptions granted by the County.

Archaeological, Historic, and Cultural Resources

The Petition Area contains archaeological and cultural resources. DLNR-SHPD has reviewed and approved Petitioner surveys and preservation plans.

The Petitioner submitted a revised draft report entitled Addendum Archaeological Inventory Survey (AIS) to SHPD in June 2010 in satisfaction of Section 13-276, HAR. On September 2, 2010, SHPD responded to Alan E. Haun, of Haun & Associates, by letter. The September 2, 2010, letter indicated that the report is approved in accordance with Section 13-276, HAR. The report contains recommendations for listing sites, preservation, possible preservation, and no further work. SHPD concurs with the recommendations and indicated they looked forward to receiving a preservation and/or burial treatment plan for sites to be preserved and a data recovery plan for those sites recommended for data recovery.

The LUC should ensure that the record in this proceeding is sufficient to determine whether it has fulfilled its obligation to reaffirm and protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

201H, HRS Affordable Housing

LUC rules (Subchapter 13 Government Sponsored Housing Projects, Section 15-15-97, HAR) provides the procedure for processing petitions for housing projects under Section 201H, HRS. Housing projects that are qualified by the State housing authority or one of the county housing authorities are eligible for expedited processing under LUC rules.

Under LUC rules for 201H projects the Commission shall approve or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in Section 205-4, HRS.

Pursuant to LUC rules, the petitioner must file a petition that conforms to subchapters 5 (Proceedings before the Commission) and 6 (Application Requirements for Boundary Amendment Petitions). This indicates that although a 201H petition is to be treated differently for processing in terms of decision-making time frames, a petitioner is still required to provide all the same information as that required under a normal boundary amendment petition. In addition, to facilitate an expedited review and decision-making process, LUC rules also require a petitioner in a 201H proceeding to file additional information at the time of filing:

- A negative declaration or approved environmental impact statement if conservation district lands are involved (see Petitioner's Exhibit 2);
- A proposed decision and order (see Petitioner's Exhibit 17);
- An affidavit that the petitioner has met with interested community groups to discuss the proposed project (see Petitioner's Exhibits 18 and 19); and,
- A certification from the housing and community development corporation of Hawai'i or county housing agency that the petition involves a section 201H, HRS, housing project (see Petitioner's Exhibit 20).

On December 2, 2010, the County of Hawai'i, Office of Housing and Community Development (OHCD), certified the application for the Kamakana Villages project, as "...an eligible affordable housing project, pursuant to Hawai'i Revised Statutes, 201H,..." (see Petitioner's Exhibit 20). Further, the OHCD supports the proposed development as 50% (plus one) of the total residential units will be affordable to residents whose incomes do not exceed 140% of median income.

The Petitioner has provided the necessary documentation to substantiate that the Petition has met the requirements under LUC rules Section 15-15-97, HAR, to be processed as a government sponsored housing project, requiring the LUC to act to approve or disapprove a boundary change within 45 (forty-five) days of petition being submitted and deemed complete. The Petition was deemed complete for processing on September 21, 2010; therefore, the 45-day deadline for decision-making is November 5, 2010.

Incremental Development Plan

Pursuant to LUC rules Section 15-15-50(c)(19), HAR, petitioners who submit applications for reclassification to the Urban District are required to represent that development of the subject property in accordance with the demonstrated need will be accomplished before 10 years after the date of LUC approval. In the event full urban development cannot substantially be completed within such period, the petitioner is required to submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a 10-year period.

Petitioner states that development of the Petition Area is planned to occur in six Phases and span approximately 18 years from the start of infrastructure construction in late 2010 - early 2011, to full absorption of all residential and retail product by the end of 2028. Additionally the Petition Area is subject to a Development Agreement between HHFDC and Forest City, which requires completion of all affordable units no later than 2023, subject to a 5-year extension.

Petitioner requests that the Commission reclassify the entire Petition Area in order to allow for the financing and development of onsite and offsite internal infrastructure necessary to support the Project at full build out. Despite Petitioner's preference for reclassification of the Petition Area in its entirety, Petitioner has filed an Incremental Development Plan (Petitioner's Exhibit 27) pursuant to 15-15-50(c)(19), Hawai'i Administrative Rules (HAR).

Should the Commission consider approval of the Petition, the Commission will need to determine, based on the submittals and testimonies of Petitioner and other parties, whether the Project should be approved in its entirety or incrementally.