

LINDA LINGLE  
GOVERNOR



KAREN SEDDON  
EXECUTIVE DIRECTOR


## STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
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IN REPLY REFER TO:  
10:DEV/0120

September 30, 2010

To: Orlando Davidson, Executive Officer  
Land Use Commission

From:  Karen Seddon  
Executive Director

Subject: Docket No. A89-652 – Annual Report for 2010  
Villages of Leiali'i  
Lahaina, Maui, Hawaii

Pursuant to the Land Use Commission's (LUC) Decision and Order in Docket No. A89-652, transmitted herewith is an original and one copy of an annual report on the status of the Villages of Leiali'i (VOL) development and our progress in complying with conditions imposed by the LUC. In accordance with the LUC's letter to the Hawaii Housing Finance and Development Corporation (HHFDC) dated October 1, 2007, an electronic pdf version of the annual report is being concurrently emailed to the LUC at [LUC@dbedt.hawaii.gov](mailto:LUC@dbedt.hawaii.gov).

### Land Use Commission Action

Reclassification of approximately 1,097.765 acres from Agricultural District into Urban District, situate at Wahikuli, Lahaina, Island of Maui, State of Hawaii, identified as Maui Tax Map Keys: 4-5-21: 9; portion of 3; portion of 4; portion of 5; and 4-5-14: 58, for the development of the VOL project was approved by the LUC on May 18, 1990.

### Project Status

In accordance with Act 196, Session Laws of Hawaii (SLH) 2005, and Act 180, SLH 2006, as of July 1, 2006, the Housing and Community Development Corporation of Hawaii (HCDCH) is now known as HHFDC.

Orlando Davidson, Executive Officer  
September 30, 2010  
Page 2

The Department of Land and Natural Resources and HHFDC are the landowners and HHFDC is the master developer of the VOL project in Lahaina, Maui, Hawaii. HHFDC acquired title to approximately 544 acres of the VOL project from DLNR by Land Patent Grant No. S-15,792 dated November 4, 1994.

On November 4, 1994 and November 7, 1994, OHA and Aluli, et al., filed lawsuits against DLNR and HHFDC's predecessor agency, the Housing Finance and Development Corporation (HFDC), aimed at: 1) stopping the alienation of lands from the public land trust to private third parties, and 2) ordering a reappraisal of the subject lands.

On July 14, 1995, the plaintiffs consolidated and amended their lawsuits to name only HFDC as defendant and to stop alienation of public trust lands.

On July 17, 1995, the Attorney General issued a legal opinion affirming the State's right to alienate or dispose of ceded lands provided that the public land trust was compensated.

On August 10, 1995, the Governor requested that HFDC proceed with the projects which were held in abeyance due to the ceded lands issue. However, a cloud remains on the title due to the unresolved lawsuits.

A trial on the alienation issue was held in November 2001. On December 5, 2002, State Circuit Judge Sabrina McKenna ruled that the State could sell ceded lands, however her decision was appealed to the Hawaii Supreme Court.

On January 31, 2008, the Hawaii Supreme Court overturned the trial court's decision and held that the State of Hawaii was barred from selling, exchanging, or transferring ceded lands to any third party. On April 29, 2008, the Attorney General announced that a Petition for a Writ of Certiorari was filed with the U.S. Supreme Court seeking to overturn the Hawaii Supreme Court decision. On June 4, 2008, the Circuit Court of the State of Hawaii implemented the decision of the Hawaii Supreme Court and entered an injunction order barring the State of Hawaii from selling or transferring ceded lands to third parties, "except that the State of Hawaii, and its departments, agencies, agents, officers, and employees may continue its practice of transferring remnants, and issuing licenses, permits, easements and leases concerning ceded lands."

In October 2008, the U.S. Supreme Court decided to hear the State's appeal of the Hawaii Supreme Court decision. Arguments were heard by the U.S. Supreme Court on February 25, 2009 and on March 31, 2009, the U.S. Supreme Court unanimously reversed the decision of the Hawaii Supreme Court on the grounds that the U.S. Apology Resolution did not prevent the alienation of ceded lands, and remanded the

case back to the Hawaii Supreme Court for further action. On May 6, 2009, The Honolulu Advertiser reported that the ceded lands litigation had been settled for all plaintiffs, except one (Jonathan Osorio). On October 28, 2009, the Honolulu Advertiser reported that the ceded lands litigation by the remaining plaintiff, Osorio, was ordered dismissed by the Hawaii Supreme Court.

On July 13, 2009, the Governor signed SB1677 SD1 HD2 CD1 into law as Act 176 Session Laws of Hawaii 2009. This Act requires a community informational meeting, appraisal and two-thirds vote approval of both houses of the legislature for conveyance of State land to third parties in fee simple.

The subdivision improvements for Village 1A, consisting of 104 single family lots on 24.617 gross acres, were completed and accepted from the contractor, Goodfellow Bros., Inc., on December 15, 1993, however not dedicated because the County has refused dedication because of the ceded lands litigation. The County of Maui granted final subdivision approval of Village 1A on September 8, 1994.

On August 21, 2000, HCDCH filed a motion with the LUC to amend Condition No. 9 of the Decision and Order for this project. The motion sought to amend the affordable housing requirement of 60% of the units to families up to 120% of the HUD median income for the County of Maui to a requirement established by agreement with the County. This matter came up for hearing before the LUC on October 18, 2000 and was continued.

Meanwhile, Act 100, SLH 2001 was enacted which waived, for undeveloped lands at VOL, the affordable housing requirement of 60% of the units to families up to 120% of the HUD median income for the County of Maui imposed by Act 15 SLH 1988, to a requirement established by agreement between HHFDC and the County of Maui.

On November 23, 2003, the Department of Hawaiian Home Lands (DHHL) expressed an interest in acquiring certain HCDCH lands including Village 8 of the Villages of Kapolei and Village 1A of the VOL. On May 13, 2004, the HCDCH Board approved the negotiations with DHHL to sell HCDCH's interest in Village 8 of the Villages of Kapolei, Villages 1A and 1B of the VOL, and the undeveloped lands at the Villages of La'i'opua. On June 17, 2004, the HCDCH Board approved the execution of a transfer agreement to sell the following properties to DHHL at a price of \$33 million in equal annual payments over a 15 year period:

- Village 8 of the Villages of Kapolei;
- Villages 1A (24.617 acres; TMK 4-5-36: 1-111) and 1B (50.858 acres; TMK 4-5-21: 20) of the VOL;
- HCDCH's interest in the undeveloped lands at the Villages of La'i'opua, except Villages 9 and 10; and

- Waiahole Valley Agricultural Park Subdivision and Residential Subdivision.

On July 20, 2004, the Hawaiian Homes Commission approved the transfer of the above properties to DHHL. A transfer agreement identifying all terms and conditions of the sale was executed by DHHL, DLNR and HCDCH on December 30, 2004 (Transfer Agreement). In the Transfer Agreement, DHHL is required to comply with all conditions of the LUC Decision and Order in Docket No. A89-652 and continue with the annual reporting requirements to the LUC for Villages 1A and 1B of the VOL development.

In accordance with the Transfer Agreement, Villages 1A and 1B were conveyed to DHHL by quitclaim deed dated April 8, 2005.

On May 2, 2006, HCDCH and DHHL executed the First Amendment of Transfer Agreement which essentially modifies the Transfer Agreement as follows:

- Excludes the Waiahole Valley Agricultural Park Subdivision and Residential Subdivision from the sale to DHHL;
- Excludes the non-ceded lands at the Villages of La'i'opua from the sale to DHHL; and
- Includes Village 10 at the Villages of La'i'opua in the sale to DHHL.

HHFDC received a copy of DHHL's 2005 Annual Report of Villages 1A and 1B of the Villages of Leialii to the LUC dated May 26, 2006. In 2007, DHHL completed the construction of homes on 104 houselots in Village 1A and the conveyance of these homes to their native Hawaiian beneficiaries.

At the request of the Department of Transportation (DOT), on September 16, 2004, the HCDCH Board approved the sale of the following remnant areas to the DOT for Phase 1A of the Lahaina By-Pass Highway:

- Parcel 2                                      0.159 Acre    TMK (2) 4-5-21: por. 003
- Slope Easement 2                        0.055 Acre    TMK (2) 4-5-21: por. 003
- Slope Easement 3                        0.174 Acre    TMK (2) 4-5-21: por. 003

Conveyance documents for Parcel 2 and Slope Easement 3 to DOT were recorded at the Bureau of Conveyances on December 8, 2006. Slope Easement 2 was not needed by DOT.

By easement dated September 12, 2006, HHFDC granted easements to Hawaiian Telcom, Inc. and Maui Electric Company, Limited, for telecommunications equipment on approximately 1,125 square feet mauka and adjacent to Village 1A to service the neighborhood of the Villages of Leialii.

In November 2006, the DOT selected Hawaiian Dredging Construction Co. for Phase 1A of the Lahaina By-Pass Highway at a cost of \$48 million. Phase 1A is a two-lane

highway connecting Lahainaluna Road to the County's Keawe Street Extension project. Due to the discovery of archaeologically significant agricultural terraces in the alignment of the By-Pass Highway within the Villages of Leiali'i project by Kahoma Stream, DOT re-aligned the By-Pass Highway within the Villages of Leiali'i project to curve farther makai into a T-intersection with the County's Keawe Street Extension, and allowed the Villages of Leiali'i a second access to its mauka lands at a location between the its intersections with Keawe Street and Leiali'i Parkway. An Environmental Assessment for this realignment was completed by DOT in 2009.

On December 19, 2008, the HHFDC Board of Directors approved the subdivision and dedication of the rights-of-way over the Villages of Leiali'i project to the DOT for the re-aligned Phase 1A of the Bypass Highway as well as the County's Keawe Street Extension Project. DOT is working on ROW maps for HHFDC approval and conveyance to DOT. Construction of the Bypass Highway commenced in December 2008 from the south end of Phase 1A.

On January 11, 2007, the HHFDC Board of Directors approved the conveyance of land and drainage easements to the County of Maui for their Keawe Street Extension project. This project is located at the southerly portion of the Villages of Leiali'i project and will extend the existing Keawe Street to provide a connection from Honoapiilani Highway to Phase 1A of the Lahaina By-Pass Highway. Because of the realignment of the By-Pass Highway, DOT has undertaken the completion of the Keawe Street Extension project as part of Phase 1A of the By-pass Highway project. Dedication of the Keawe Street Extension to the County will be subject to Act 176 SLH 2009.

On November 5, 2007, HHFDC procured Belt Collins Hawaii Ltd. to complete an update of the master plan and an EIS for the Villages of Leiali'i project. Two draft land use plans were completed and distributed to government agencies and stakeholders for comments on July 9, 2008 and a community meeting on the draft land use plans was held on January 28, 2009 at the Lahaina Civic Center. Approximately 60 people were in attendance and 24 provided comments. The revised master plan for the Villages of Leiali'i was completed in December 2009 and HHFDC issued a Notice to Proceed to Belt Collins to commence an EIS for the revised master plan on December 23, 2009. An EIS Preparation Notice was published in the OEQC Bulletin on March 8, 2010. Preparation of the draft EIS for the Villages of Leiali'i revised master plan is pending.

HHFDC has had discussions with OHA and DHHL for the resumption of development of affordable housing at the Villages of Leiali'i under a mutually agreeable arrangement. In the absence of any agreement with OHA and DHHL, upon completion of the revised master plan and the EIS for the Villages of Leiali'i, HHFDC proposes to procure a developer by the issuance of a Request for Proposals (RFP) for the initial development of the Villages of Leiali'i, on the lands makai of the By-Pass Highway (Phase A), in

leasehold, or in compliance with Act 176 SLH 2009. Because of the significance of the revision of the Villages of Leiali'i master plan, e.g., the elimination of a golf course, the RFP developer may be required to seek a re-approval of the Villages of Leiali'i project by the LUC.

At the request of the County of Maui Department of Water Supply (DWS), the HHFDC Board of Directors approved a 15' waterline easement on the makai (western) portion of the Villages of Leiali'i project at TMK (2) 4-5-21: 3, near the existing Easements A and B of EO No. 2189, TMK (2) 4-5-14: 58, for the County's waterline replacement project to service the existing Wahikuli Houselots Subdivision. The waterline replacement project was completed in summer of 2009 and the County is working on a draft of the easement. After the new 15' easement is issued, the existing Easements A and B and EO No. 2189 will be cancelled.

On August 14, 2009, the Board of Land and Natural Resources approved the set aside of TMK (2) 4-5-21: 4 to the Department of Fish and Wildlife for an off-highway vehicle park, subject to withdrawal of lands south of Hanakea Gulch for the Villages of Leiali'i project, and a management right of entry to HHFDC over TMK (2) 4-5-21: 4 for lands south of Hanakea Gulch as well as over TMK (2) 4-5-21: 22.

On December 22, 2009, HHFDC published a Request for Interest for solar renewable energy projects on approximately 23 acres of the proposed light industrial area at the southern portion of the Villages of Leiali'i project, TMK (2) 4-5-21: 3 (por.). On January 22, 2010, HHFDC received two proposals and on March 10, 2010, HHFDC issued a conditional selection letter to HEA Hawaii Solar, LLC. On August 5, 2010, a right-of-entry was issued to HEA for planning studies at the proposed site.

#### Land Use Conditions

The following is a progress report on conditions imposed by the LUC for the VOL development:

##### Condition No. 1:

The survey of the Property to identify structures relating to the sugar cane plantation and the significance of any identified structures shall be evaluated. Findings shall be submitted in report format to the State's Historic Preservation Program. If significant, acceptable mitigation measures for their treatment shall be worked out in consultation with the State Historical Preservation Program and shall be included in a detailed mitigational plan.

Orlando Davidson, Executive Officer  
September 30, 2010  
Page 7

In addition, sites 2478, 2479, 2481, 2482 and 2484 shall undergo data recovery. Sites 2480, 2483, 2485, 2488, 1203 and 2486 shall be preserved. A detailed mitigation plan, with preservation and data recovery components shall be submitted to the State Historic Preservation Program for approval prior to the implementation of such plan.

Petitioner shall also cause work to stop immediately and shall contact the State Historic Preservation Office should archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project development.

*Status: On October 2, 1997, a final report on the inventory of Pioneer Mill Co.'s sugarcane plantation structures was submitted to the State Historic Preservation Division (SHPD). In October 1997, a HABS and HAER Level 2 recording of the irrigation features in the project site, identified as State Site 50-50-03-4420, Wahikuli Ahupua'a, Lahaina District, Island of Maui, TMK: 4-5-21: 3, 18-20, 22 (SHPD Doc. No. 9709BD12) was completed and a report filed with SHPD. By letters dated November 25, 1997 and December 17, 1998, SHPD accepted the report and its mitigation.*

Condition No. 2:

Petitioner shall cause all prospective occupants to be informed of (a) possible odor, noise, and dust pollution resulting from surrounding agricultural operations, and (b) the Hawaii Right-to-Farm Act, Chapter 165, HRS which limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

*Status: Due to the ceded land litigation and the ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 3:

Petitioner shall develop the golf course in compliance with the provisions of the document entitled "Eight (8) Conditions Applicable to New Golf Course Development" dated April 7, 1989.

*Status: Due to the ceded land litigation and the ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 4:

Petitioner shall submit a revised traffic report that addresses the secondary impacts on County roadways and pedestrian traffic to the Maui Department of Public Works for review and approval prior to submittal of the Project's traffic master plan.

*Status: This condition was satisfied in May 1992.*

Condition No. 5:

Petitioner shall coordinate with the Maui Department of Water Supply, adjoining and owners, and/or other Federal, State or County agencies regarding measures designed to obtain the required water for the Project. Petitioner shall fund on an equitable basis, necessary water sources, storage, transmission facilities, and filtration system development.

*Status: Due to the ceded lands litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 6:

Petitioner shall participate pro-rata in the funding, development, and construction of improvements to the Lahaina Wastewater Treatment Plant. Occupancy of the housing units shall be phased with the increased capacity of the treatment plant.

*Status: HFDC participated with the County of Maui in the expansion of the Lahaina Wastewater Treatment Plant in accordance with an agreement dated September 13, 1991. The expansion was completed in 1994 and provided for 1.8 mgd of sewer capacity for the VOL project, however, in accordance with HFDC's agreement with the County, any capacity not used before September 13, 2006 may be used by the County. By letter dated November 10, 2005, the County of Maui refused HCDCH's request for an extension, and therefore HCDCH's sewer capacity agreement with the County for the VOL project lapsed on September 13, 2006.*

Condition No. 7:

Petitioner shall fund and construct all necessary drainage improvements which are within the property. The drainage plans shall be submitted to DOT and the County of Maui, Department of Public Works.



*Status: Due to the ceded land litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 8:

Petitioner shall make land, with infrastructure up to the lots, available to the State Department of Education (DOE) for the development of school facilities.

*Status: Due to the ceded lands litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 9:

Petitioner shall provide housing opportunities for low, low-moderate, and moderate income residents of the State of Hawaii by offering for sale or lease a number of units equal to 60% of the residential units in the Petition Area at prices which families with an income range of up to one hundred twenty percent (120%) of the County of Maui's median income can afford.

*Status: In October 2000, the HCDCH requested the State Land Use Commission to amend the condition to allow the County of Maui to establish the affordable housing condition in consultation with the HCDCH. However, the Commission believed they did not have the authority to amend the Act 15 provision and deferred decision-making on HCDCH's request. Meanwhile, Act 100 SLH 2001 was enacted which waived, for undeveloped lands at VOL, the affordable housing requirement of 60% of the units to families up to 120% of the HUD median income for the County of Maui imposed by Act 15 SLH 1988, to a requirement established by agreement between HHFDC and the County of Maui.*

Condition No. 10:

Petitioner shall coordinate with the County of Maui development of the Project in conjunction with the improvements to County services and facilities such as fire and police protection.

*Status: Due to the ceded land litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 11:

All infrastructure improvements for the Project shall be developed in accordance with County of Maui standards.

*Status: To date, all existing infrastructure improvements such as water, sewer, drainage, and roadway systems were constructed in accordance with County of Maui standards.*

Condition No. 12:

Petitioner shall submit to the County of Maui, Department of Public Works all master plans for drainage, water, roadways, utilities, and sewers for review and approval prior to submittal of the individual construction plans of the various villages.

*Status: This condition was previously satisfied in 1992.*

Condition No. 13:

The State of Hawaii shall maintain responsibility for the preservation area which includes the existing crater and reservoirs.

*Status: Except for the golf course development, the area including the existing crater and water reservoir will be preserved as open space. Due to the ceded land litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 14:

Petitioners shall fund, design, and construct improvements to the various community/neighborhood parks including but not limited to grading, installation of landscaping and irrigation, construction of retaining walls and safety fences, and installation of service utilities.

*Status: Due to the ceded lands litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 15:

Restrictive covenants for the golf course shall include conditions regarding preferential rates and tee times for the resident golfer. Rates shall not exceed 200% of the municipal course rates of the County of Maui and at least 50% of the prime tee times shall be reserved for the resident golfer.

*Status: Due to the ceded lands litigation and ongoing revision of the master plan and EIS, the plans for the golf course development is held in abeyance. As of*

*September 1999, PMCo ceased its sugar cultivation and the lands have been fallow since.*

Condition No. 16:

Petitioner shall incorporate noise attenuation measures or devices to reduce noise impacts along Honoapiilani Highway, by-pass highway and cane haul road.

*Status: Due to the ceded lands litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 17:

Petitioner shall incorporate appropriate measures to mitigate impacts from wind, etc., along the existing and proposed highways and cane haul roads.

*Status: Due to the ceded lands litigation and ongoing revision of the master plan and EIS, no progress was made to satisfy this condition.*

Condition No. 18:

Petitioner shall not commence the construction of Villages 7 through 11 until the construction of the by-pass road through the Petition Area is substantially underway.

*Status: Villages 6 (previously 7) through 14 (previously 11) will not be developed until the construction of the by-pass highway is substantially underway. HHFDC may request approval to install non-traffic-generating improvements such as water, sewer reclamation and drainage improvements, above the by-pass highway, as required by the residential development makai of the by-pass highway.*

Condition No. 19:

Conditions requiring County agency review, coordination, or approval are subject to the powers of the HFDC as expressed in Act 15, Session Laws of Hawaii, 1988.

*Status: As of July 1, 2006, all requests for County approvals, exemptions, waivers, and variances will be processed through the County under Chapter 201H, HRS, pursuant to Act 180, SLH 2006.*

Orlando Davidson, Executive Officer  
September 30, 2010  
Page 12

Condition No. 20:

Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining reclassification of the Property.

*Status: Except for future changes in housing policy, unit count, marketing strategy and pricing, HHFDC plans to continue development of the property in substantial compliance with the representations made to the Land Use Commission in obtaining this reclassification of the property. In the event new housing policies are adopted which adversely impact HHFDC's ability to satisfy the above-stated conditions, HHFDC will inform the Land Use Commission of the appropriate course of action.*

Condition No. 21:

Petitioner shall file annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the Project and petitioner's progress in complying with the conditions imposed.

*Status: Annual reports regarding the status of this Project will continue to be filed with the County of Maui Planning Department, the Office of State Planning, and the State Land Use Commission.*

Condition No. 22:

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 the Petitioner.

*Status: HHFDC acknowledges this condition.*

Should there be any questions or comments regarding this matter, please contact Stan S. Fujimoto, Project Manager, at 587-0541.

Attachments

c: Office of Planning, w/attachments  
County of Maui Department of Planning, w/attachments

AGRICULTURE

KAHOMA  
STREAM

KANAKA  
STREAM

CRATER  
RESERVOIR

WAHUKUI  
RESERVOIR

FUJ  
LAKA

LAHADALUNA  
HIGH  
SCHOOL

LAHADNA  
INTERMEDIATE  
SCHOOL

NAHEKAENA  
ELEMENTARY  
SCHOOL

KELAWEA  
SUBDIVISION

PROJECT SITE

KAANAPALI  
GOLF  
COURSE

HONOLULU  
HIGHWAY

KAANAPALI

LAHADNA  
CIVIC  
CENTER

WAHUKUI  
SUBDIVISION

THE CANNERY  
SHOPPING  
CENTER

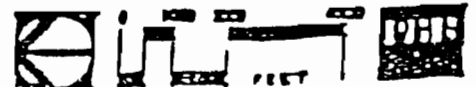
FIRST PHASE 1-A

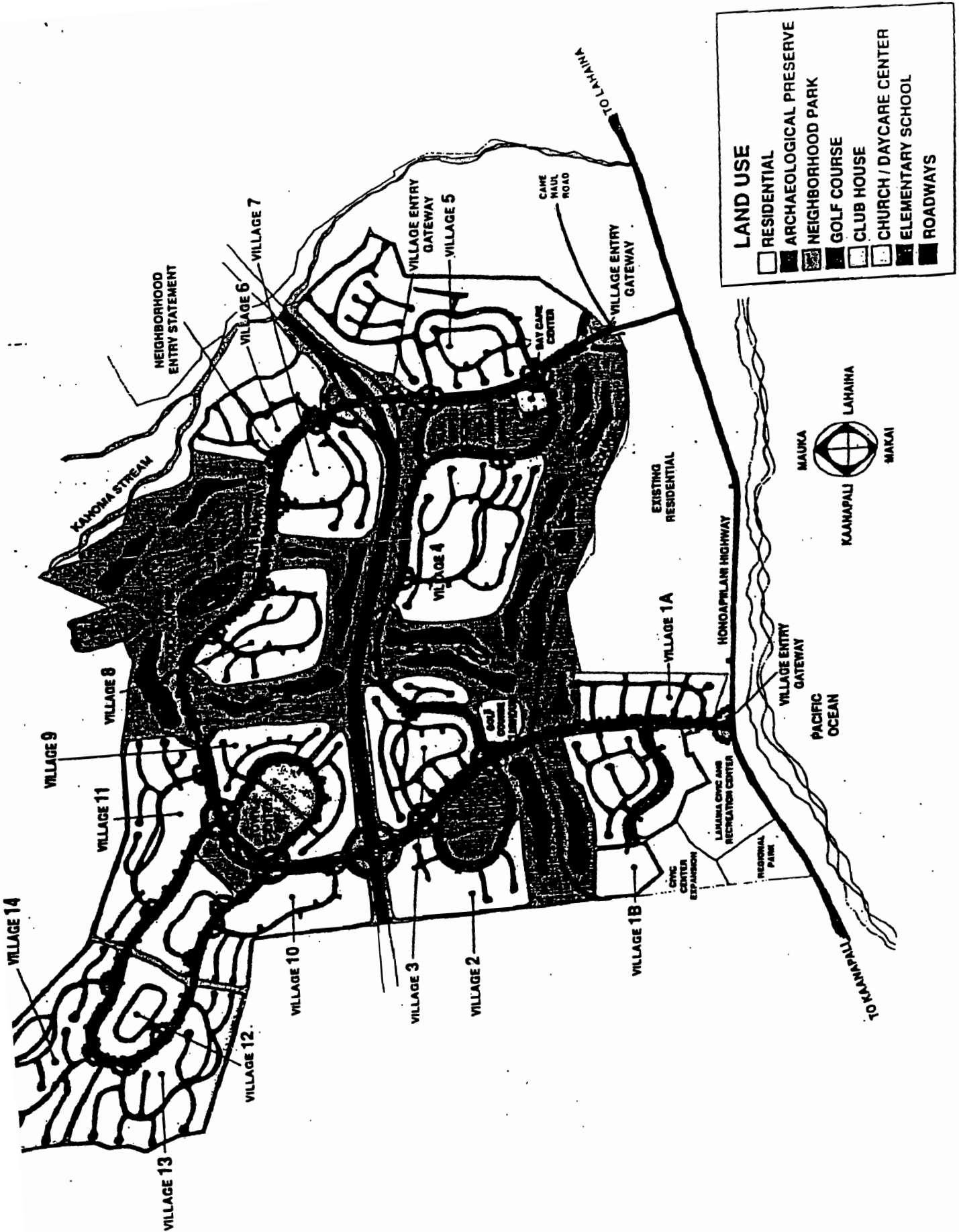
OS 1963

Prepared for: Housing Finance and  
Development Corporation  
Prepared by: PER HAWAII

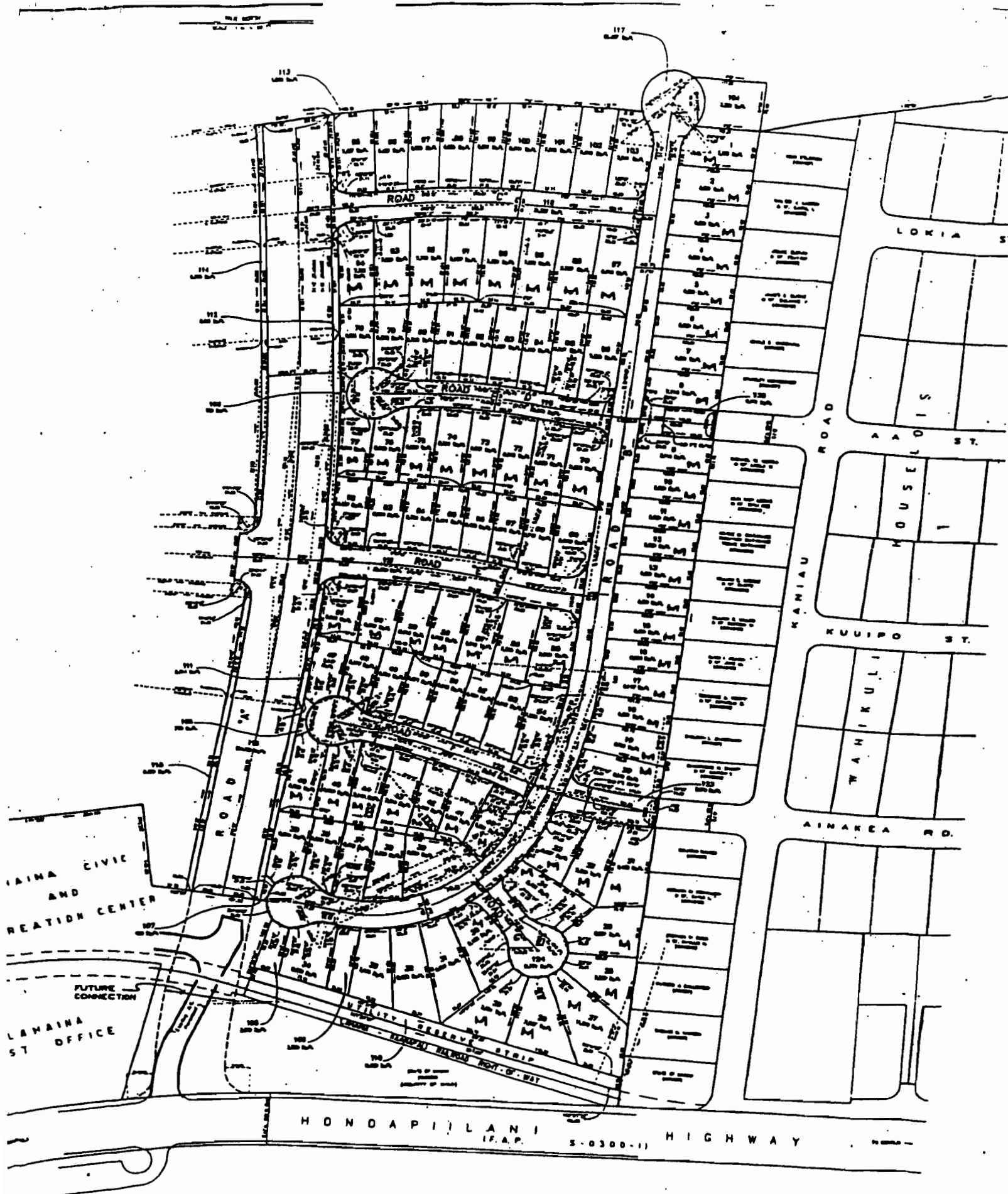
AL LOCATION MAP w/surrounding land uses  
(A MASTER PLANNED PROJECT)

EXHIBIT





**CONCEPT PLAN**  
**VILLAGES OF LEIALOI MASTER PLANNED COMMUNITY**  
 HCUSING FINANCE AND DEVELOPMENT CORPORATION MAUI, HAWAII



**ENLARGEMENT**  
SCALE 1" = 60 FT.