

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A06-763
)
KAPOLEI PROPERTY DEVELOPMENT,) FINDINGS OF FACT,
LLC) CONCLUSIONS OF LAW, AND
) DECISION AND ORDER
To Amend The Agricultural Land Use)
District Boundary Into The Urban Land Use)
District For Approximately 344.519 Acres Of)
Land At `Ewa, O`ahu, Hawai`i, Tax Map)
Keys: 9-1-14: Por. 33, 34, And 35 And 9-1-15:)
Por. 20)
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

KAPOLEI PROPERTY DEVELOPMENT, LLC (“Petitioner”),¹ filed a
Petition For Land Use District Boundary Amendment (“Petition”) on March 17, 2006; an
Amended Petition on August 7, 2006; and a Second Amended Petition on November 22,
2006, pursuant to section 205-4, Hawai`i Revised Statutes (“HRS”), and chapter 15-15,
Hawai`i Administrative Rules (“HAR”), to amend the land use district boundary to
reclassify approximately 344.519 acres of land at `Ewa, O`ahu, Hawai`i, identified as
Tax Map Keys (“TMK”): 9-1-14: por. 33, 34, and 35 and 9-1-15: por. 20 (“Petition Area”),
from the State Land Use Agricultural District to the State Land Use Urban District to

¹ Petitioner is a Hawai`i limited liability company whose principal place of business is 1001 Kamokila Boulevard, Suite 250, Kapolei, Hawai`i, 96707. Petitioner and Aina Nui Corporation (“ANC”) are affiliates of James Campbell Company, LLC (“JCC”), a Hawai`i-based national real estate company and successor to the Estate of James Campbell (“Campbell Estate”).

allow for the development of the Kapolei Harborside Center ("Project") for business and industrial park uses.

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings; the Stipulated Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order entered into by Petitioner and the City and County of Honolulu ("City and County"); the State Office of Planning's ("OP") Exceptions To Petitioner Kapolei Property Development, LLC's Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order; Petitioner's Motion To Dismiss And Strike From The Record, Or In The Alternative, To Deny The Office Of Planning's Exceptions To Petitioner Kapolei Property Development, LLC's Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order ("Motion To Dismiss And Strike"); and the OP's Memorandum In Opposition to Petitioner's Motion To Dismiss And Strike, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 17, 2006, Petitioner filed the Petition, which included an Environmental Impact Statement Preparation Notice, pursuant to section 343-5(a)(1), HRS, and section 11-200-6(b)(1)(A), HAR. Petitioner also filed Exhibits 1 to 16 and the appropriate filing fee.

2. On April 6, 2006, and by a written Order dated May 24, 2006, the Commission agreed to be the accepting authority pursuant to chapter 343, HRS, and determined that the proposed action may have a significant effect on the environment to warrant the preparation of an Environmental Impact Statement (“EIS”).

3. On April 20, 2006, the Commission conducted a field trip to the Petition Area.

4. On August 7, 2006, Petitioner filed an Amended Petition wherein Petitioner clarified the boundaries of the Petition Area, Petitioner’s interest therein, and provided Exhibits 1-1, 1A-1, 2A, 3A, 4A, 9A, 11A, 12A, 13A, 16A, and 17 through 20.

5. On October 26, 2006, Petitioner filed the Final EIS for the Petition.²

6. On November 2, 2006, and by a written Order dated November 21, 2006, the Commission accepted Petitioner’s Final EIS.

7. On November 22, 2006, Petitioner filed a Second Amended Petition wherein Petitioner provided information regarding (i) the transfer of certain ownership interests in certain parcels within the Petition Area; (ii) lot numbers; (iii) the sinkhole preserve; and (iv) the number of lots, and further provided Exhibits 2A-1, 3A-1, 9A-1, 12A-1, 21, 22, and 23.

² The Final EIS noted that in addition to the use of State lands, two historical sites, a plantation-era drainage ditch and staked stone mounds, were identified within or near the Petition Area which triggered chapter 343 review pursuant to section 343-5(a)(4), HRS, and section 11-200-6(b)(1)(D), HAR.

8. By letter dated November 29, 2006, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of November 22, 2006.

9. On December 8, 2006, a Notice of Hearing ("Notice") was published in the *Honolulu Star-Bulletin*, the *West Hawaii Today*, the *Hawaii Tribune-Herald*, *The Maui News*, and *The Garden Island*. No petitions for intervention were filed with the Commission within 15 days after the publication of the Notice as required by section 15-15-52(e), HAR.

10. On January 10, 2007, a prehearing conference was held in Honolulu, Hawai'i to identify the parties and their respective positions, to identify and clarify issues, to arrange for the timely submission of exhibits, and to set schedules. Representatives were present for Petitioner, the OP, and the Department of Planning and Permitting ("DPP"). Among other things, a deadline for filing a final witness list, a final exhibit list, and all exhibits was set for January 26, 2007. A Prehearing Order was subsequently issued on January 11, 2007.

11. On January 10, 2007, the DPP filed its Statement Of Position (Exhibit 1); Testimony Of The Department Of Planning And Permitting In Support Of Petition With Conditions (Exhibit 2); List Of Witnesses (Exhibit 3); and List Of Exhibits (Exhibit 4). On the same day, the OP filed Exhibits 2, 3, 5, List Of Exhibits, and List Of Witnesses.

12. On January 12, 2007, the OP filed its Statement Of Position Of The Office Of Planning In Support Of The Petition.

13. On January 19, 2007, Petitioner filed Exhibits 1, 2, 4 through 12, and 13 through 48 and Petitioner's List Of Exhibits and List Of Witnesses.

14. On February 1, 2007, the Commission conducted a hearing on the Petition at the Leiopapa A Kamehameha Building, 2nd Floor, Conference Room 204, 235 South Beretania Street, Honolulu, Hawai'i.

15. On February 1, 2007, Petitioner filed Exhibit 49 and Petitioner's Amended List Of Exhibits. The Commission admitted into the record, without objections, Petitioner's Exhibits 1 through 49.

16. On February 1, 2007, the Commission admitted into the record, without objections, DPP Exhibits 1, 2, 3, 3a, 3b, 3c, 4, 5, 6, and 7.

17. On February 1, 2007, the Commission admitted into the record, without objections, OP Exhibits 1, 2a, 3a, 4, 5, 6, 7, 8, 10 and 12.

18. On February 1, 2007, the Commission heard public testimony from Shad Kāne; Sara L. Collins, Ph.D.; Wilma Keawe; Orin Tsutsumi; Ati Jeffers-Fabro; Mike Yamamoto; and Majorie Ziegler. The Commission also admitted into the record the written public testimonies of Sara L. Collins, Ph.D.; Patrick Conant; Hanale Hopfe; Wilma Keawe; Aileen Suzara; Lei Tafuna; Chris Cramer; Shad Kāne; Thomas S. Dye, Ph.D.; Keith Krueger; Charles E. Helsley; Charles A. Prentiss, Ph.D.; Jennie Peterson;

Mary Ikagawa; Dr. Samuel M. `Ohukani`ohi`a Gon, III; Stanley Bergstrom; Majorie Ziegler; Cha Smith; Earl Neller; Norine Ornellas; Dr. Floyd W. McCoy; Jonnetta K. Peters; Jade Emory; William L. Ernst; Annette Kaohelauli`i; Lisa Fabro; Suzanne Varady; Phyllis Ha; the Hawaii Audubon Society; Ati Jeffers-Fabro; Christopher Albrecht; Stephen Canham, Ph.D.; and Rodney Chun.

19. On February 1, 2007, the City and County and the State stipulated to Petitioner's list of expert witnesses and the Commission granted Petitioner's request to accept its list of expert witnesses in their respective fields. Petitioner also started its case and presented the following expert witnesses: Jeffrey Overton, Bryant Terry Brothers, Robert Gardner, Dr. Bruce Plasch, Eric Guinther, and Reginald David.

20. On March 14, 2007, Petitioner filed a Motion To Amend The Written Direct Testimony Of Gregory J. Brenner And Exhibit List ("Motion To Amend").

21. On March 15, 2007, the Commission considered the Motion To Amend and resumed the hearing on the Petition at the Leiopapa A Kamehameha Building, 4th Floor, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i. The Commission granted the Motion To Amend and admitted into the record, without objections, Petitioner's Exhibits 6-A and 50. At the continued hearing, Petitioner continued its case and presented the following expert witnesses: David Shideler, Gregory Brenner, Jeffrey Morrell, Craig Arakaki, Barry Neal, and Todd Beiler.

22. On March 29, 2007, the Commission issued its Order Granting Petitioner's Motion To Amend.

23. On April 4, 2007, Petitioner filed a Motion To Submit The Written Direct Testimony Of Brad Myers And Amend The Exhibit List ("Motion To Submit").

24. On April 12, 2007, the Commission resumed the hearing on the Petition at the Leiopapa A Kamehameha Building, 4th Floor, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i. The Commission granted the Motion To Submit and admitted into the record, without objections, Petitioner's Exhibit 51. At the continued hearing, Petitioner presented its last witness, Brad Myers. The City and County presented its two witnesses, Raymond Sakai and Kathy Sokugawa. The Commission also admitted into the record, without objections, OP's Exhibits 4A and 10A. The OP presented its witnesses, Laura Thielen, Gail Suzuki-Jones, Brennon Morioka, and Fred Pascua.

25. On May 1, 2007, the Commission issued its Order Granting Petitioner's Motion To Submit.

26. On May 18, 2007, the Commission resumed the hearing on the Petition at the Leiopapa A Kamehameha Building, 4th Floor, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i. At the continued hearing, the Commission heard public testimony from Steven Montgomery, Ph.D., and admitted his written testimony into the record. Following the presentation of public testimony, the OP

continued the presentation of its final witness, Laura Thielen.³ Following the completion of the parties' respective cases, the Commission closed the hearing on the Petition.

27. On June 21, 2007, the Commission scheduled a presentation by the parties of their respective post hearing filings pertaining to proposed findings of fact, conclusions of law, and decision and order at the Leiopapa A Kamehameha Building, 4th Floor, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i. At the meeting, the Commission heard public testimony from Steven Montgomery, Ph.D.; Bob Nakata; and Kathleen Hasegawa pursuant to section 92-3, HRS. The Commission subsequently postponed this matter to its meeting on July 13, 2007.

28. On July 3, 2007, Petitioner filed the Motion To Dismiss And Strike.

29. On July 12, 2007, the OP filed a Memorandum In Opposition To Petitioner's Motion To Dismiss And Strike.

30. On July 13, 2007, the Commission resumed the meeting on the parties' presentation of their respective post hearing filings at the Leiopapa A Kamehameha Building, 4th Floor, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i. At the meeting, the Commission received written testimonies from Representatives Jon Riki Karamatsu and Maile Shimabukuro and Senator Suzanne

³ During Petitioner's closing statement, Petitioner stated that it would submit a post-hearing brief regarding the legal points and authorities pertaining to the imposition of a workforce or affordable housing condition for the Project. Petitioner filed the post-hearing legal brief with the Commission and served it upon the parties on May 25, 2007.

Chun Oakland pursuant to section 92-3, HRS. The Commission also heard testimony from Steven Montgomery, Ph.D., as an individual and on behalf of Representative Jon Riki Karamatsu; Representative Maile Shimabukuro; Randy Ching; and Evelyn Cho on behalf of Senator Suzanne N. J. Chun Oakland pursuant to section 92-3, HRS. The Commission deferred the parties' presentation to a future meeting.

31. On August 9, 2007, the Commission resumed the meeting on the parties' presentation of their respective post hearing filings and to consider Petitioner's Motion To Dismiss And Strike at the Leiopapa A Kamehameha Building, 4th Floor, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i. At the meeting, the Commission received written testimonies from Representative Maile Shimabukuro, Hanalei Aipoalani, Michael Miyamura, Gladys Quinto, Christopher Lewis, Lorraine Martinez, Maeda Timson, Brent Buckley, David Arakawa, and Representative Karen Awana pursuant to section 92-3, HRS. The Commission also heard testimony from Kimo Keli'i on behalf of Representative Karen Awana; Maeda Timson; Lorraine Martinez; Pat Chardon; Representative Maile Shimabukuro; Theresia McMurdo on behalf of Hanalei Aipoalani; and Steven Montgomery, Ph.D., pursuant to section 92-3, HRS. Following the receipt of public testimony, the Commission denied Petitioner's Motion To Dismiss And Strike. The Commission subsequently continued the meeting on the docket to a future date.

32. On August 22, 2007, the Commission issued its Order Denying Petitioner's Motion To Dismiss And Strike.

33. On November 1, 2007, the Commission resumed the meeting on the docket at the Leiopapa A Kamehameha Building, 4th Floor, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i. At the meeting, the Commission received written testimony from David Arakawa who testified pursuant to section 92-3, HRS.

DESCRIPTION OF THE PETITION AREA

34. The Petition Area consists of approximately 344.519 acres of land, identified by Tax Map Keys: 9-1-14: por. 33, 34, 35 and 9-1-15: por. 20, in 'Ewa, O'ahu, Hawai'i.

35. The acreage of each parcel by its respective portion of the Petition Area is as follows: Parcel 33, 137.529 acres; Parcel 34, 19.947 acres; Parcel 35, 12.845 acres; and Parcel 20, 174.198 acres.

36. Parcels 20, 33, and 34 are owned in fee simple by Petitioner and ANC. Parcel 35 is owned in fee simple by the JCC. Petitioner has authorization from ANC and the JCC to file this Petition.

37. The Petition Area is located in Honouliuli, 'Ewa, O'ahu, Hawai'i, and is bounded on the east, west, and south by existing industrial uses and on the north by vacant land proposed for the master-planned community of Kapolei West.

38. The adjacent lands that surround the Petition Area are within the State Land Use Urban District.

39. The most recent uses of the land within the Petition Area include a nursery, a greenwaste collection and processing operation, fill material stockpiling, a coal conveyor belt that transports coal from Kalaeloa Harbor to power stations to the south of the Petition Area, and intermittent agricultural uses. Full-time agricultural uses in the Petition Area ended in 1995 after Oahu Sugar Company, Limited, ceased cultivation of approximately 145 acres in sugarcane cultivation. Over 200 acres of the Petition Area were previously utilized for coral mining operations for the manufacture of cement and concrete products.

40. The H-1 Freeway is located north of the Petition Area.

41. Ground surface elevations at the Petition Area range from 5 feet above mean sea level ("msl") near the intersection of Kalaeloa Boulevard and Malakole Street to approximately 75 feet above msl near the northwest corner of the Petition Area.

42. Slopes of less than 0.5 percent to 5 percent are found on the Petition Area. In general, the area slopes down from the Oahu Railway and Land Company Right of Way ("OR&L ROW") to Malakole Road, with an average slope of approximately 1 percent.

43. The annual rainfall on the Petition Area is light, averaging approximately 21 inches per year.

44. Several soil types are found within the Petition Area based on the U. S. Department of Agriculture, Natural Resource Conservation Service's, descriptions: (i) Coral Outcrop, constituting approximately 82.7 percent (285 acres) of the Petition Area; (ii) Mamala stony silty clay loam, 0 to 12 percent slopes, constituting approximately 15.6 percent (54 acres) of the Petition Area; and (iii) `Ewa silty clay loam, moderately shallow, 0 to 2 percent slopes, constituting approximately 1.7 percent (6 acres) of the Petition Area.

45. The agricultural utility of land in Hawai`i was assessed and mapped in the 1970s by the former U. S. Soil Conservation Service in the Agricultural Lands of Importance to the State of Hawai`i ("ALISH") map series. In the Petition Area, 84.3 percent (290.7 acres) of the native soils are poor and, therefore, are not rated in the ALISH classification system. Approximately 14.6 percent (50.3 acres) of the Petition Area is ALISH-designated as "Other," and 1.1 percent (4 acres) is "Prime."

46. The Land Study Bureau ("LSB") of the University of Hawai`i also evaluated the lands in the Petition Area. The LSB system rates 19 percent (65.7 acres) as Category "B," or good; 31 percent (105.6 acres) as Category "C," or fair; and the remaining 50 percent (173.7 acres) is classified as Category "E," or very poorly suited for agriculture.

47. The Flood Insurance Rate Map designates the Petition Area as Zone D, where there are possible but undetermined flood hazards—no analysis conducted. The Petition Area is outside of the tsunami inundation zone.

PROPOSAL FOR RECLASSIFICATION

48. Reclassification of the Petition Area is being sought to allow for the development of approximately 345 acres of primarily vacant land for industrial use in the Secondary Urban Center. The Project will offer approximately 250 acres for industrial and commercial uses consistent with the City and County's IMX zoning designation, which includes wholesaling and distribution, storage and warehousing, general manufacturing, and office, retail, and industrial uses. Petitioner intends to sell some of the Project's industrial lots with vertical construction, while other lots will be sold undeveloped. The remaining acreage will be used for drainage, roadways, a wastewater pumping station, a proposed park area, and a preservation area to protect coral sinkholes, which represent unique geological sites and are a repository for subfossil bones of extinct Hawaiian birds. The sinkholes also have the potential to contain cultural deposits related to traditional native Hawaiian land use activities, including human burial internment.

49. Approximately six acres of the Petition Area contain a cluster of more than 40 coral sinkholes within a fenced archaeological/paleontological preserve area. Measures will be implemented to protect those resources from vandalism and/or

destruction from unauthorized entry. The existing chain link fence that was erected in the early 1990s to enclose the preserve area has gaps in two portions. Petitioner is in the process of soliciting bids to reconstruct a new fence around the perimeter of the preserve. Petitioner is prepared to convey the property to a governmental entity, such as the Department of Land and Natural Resources (“DLNR”), that would be capable of providing appropriate stewardship of the preserve.

50. Development costs for the Project, including construction expenditures for infrastructure and building space, are approximately \$596.6 million.

51. Buildout of the Project is anticipated to be completed by 2018. This includes completion of the backbone infrastructure consisting of Hanua Street improvements, drainage improvements, and sewer improvements.

AFFORDABLE AND WORKFORCE HOUSING

52. The City and County does not have a policy for imposing an affordable housing requirement on industrial developments.

53. Presently the City and County does not impose an affordable housing requirement on industrial projects. The `Ewa region was planned as a complete community with a variety of jobs and a mixture of housing for different housing types and housing incomes.

54. It is anticipated that the Project will provide jobs with the types of wages that enable employees to afford the types of homes being built or planned for in the `Ewa region.

55. The Project will create a demand for approximately 2,500 homes, of which 1,800 would be in the `Ewa region. Approximately 35,500 homes are planned for the region, of which approximately 10,000 will be at affordable prices.

56. As part of the City and County's policy to create a second city in `Ewa, the *`Ewa Development Plan ("DP")* provides for, and encourages residential development.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

57. Petitioner submitted the consolidated financial statements independently prepared by KPMG, LLP, for December 31, 2005 and 2004. As of December 31, 2005, Petitioner reflected total assets of \$43,343,010, total liabilities of \$3,605, and total stockholder's equity of \$43,339,405.

58. Petitioner intends to use proceeds from sales of its other properties to fund the Project. In conjunction with sale proceeds, Petitioner will also obtain funding from additional borrowing within the JCC, or from capital contributions from Campbell Estate.

59. Petitioner has the necessary economic ability to carry out the representations and commitments relating to the development of the Project.

STATE AND CITY AND COUNTY PLANS AND PROGRAMS

60. The Petition Area is currently within the State Land Use Agricultural District as reflected on the Commission's official map, O-6 (ʻEwa).

61. The Petition Area is within the City and County's urban growth boundary and in an area designated "Industrial" in the ʻEwa DP.

62. The Petition Area is zoned by the City and County as Ag-1 (Restricted Agriculture) and Ag-2 (General Agriculture). Petitioner intends to apply for rezoning of the Petition Area to IMX (Industrial-Commercial Mixed Use) zoning in the first quarter of 2008.

63. The Petition Area is not within the City and County's special management area ("SMA").

NEED FOR THE PROPOSED PROJECT

64. Robert Charles Lesser and Co., LLC, prepared a study entitled *Industrial Market Feasibility, 345-Acre Kapolei Harborside Center, Kapolei, Hawaii* dated January 31, 2006, for the Project.

65. The City and County has a low market supply—less than 2 percent—of industrial space.

66. Industrial demand in the City and County has three components: pent-up demand, annual employment-driven demand, and transient demand. In 2004, total pent-up demand was estimated at 73 acres for the City and County. Between 2004

and 2009, City and County employment growth would add to industrial demand. The annual employment-driven demand will be approximately 25 acres per year, based on employment growth forecasts and the historical relationship between industrial acreage and employment for the City and County (80 square feet of industrial space per worker). Transient demand is estimated at 11 acres per year for West O`ahu.

67. Without a growing industrial land supply, the ever higher rents faced by industrial firms will lead to higher operations costs that firms will pass through to businesses and consumers in the local and regional economies.

68. The Project is expected to capture a significant share of the City and County's growing industrial demand given the lack of available industrial land elsewhere on the island of O`ahu.

ECONOMIC IMPACTS

69. Decision Analysts Hawai`i, Inc., prepared a report entitled *Proposed Kapolei Harborside Center: Economic and Fiscal Impacts* dated July 2006 for the Project.

70. During construction, the Project is anticipated to create on average approximately 450 construction jobs during the 10-year development period with an annual payroll of approximately \$29.6 million. It is expected that on average, approximately 640 additional jobs that are dependent on construction activities will be supported with an annual payroll of approximately \$24.5 million. Of the construction

and construction-related employment projected, approximately 710 direct and indirect jobs are anticipated to be in the Kapolei/`Ewa region.

71. At full development, approximately 3,830 new industrial jobs will be created with a payroll of approximately \$176 million per year. Approximately 2,300 offsite jobs will be generated by the industrial operations, along with a payroll of approximately \$88.4 million per year. Of the operational and operational-related employment projected, approximately 4,630 are anticipated to be in the Kapolei/`Ewa region. During construction, construction workers will earn approximately \$65,000 a year. At Project buildout, industrial workers will earn approximately \$46,000 a year.

72. At full development, the Project is anticipated to generate net revenues of approximately \$8 million per year for the City and County.

73. The Project is expected to generate net revenues of approximately \$8.4 million per year for the State.

SOCIAL IMPACTS

74. Kapolei's population is approximately 84,150 and is projected to grow to 129,000 by 2015.

75. Kapolei provides a full range of public and private goods and services to residents, visitors, and businesses in the region.

76. New jobs provided by the Project will contribute to the ongoing transformation of the `Ewa region from a suburb from which workers commute to jobs

outside the region, to O`ahu's second urban center with jobs for those living in the region and surrounding communities.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

77. Decision Analysts Hawai`i, Inc., prepared a study entitled *Proposed Kapolei Harborside Center: Impact on Agriculture* dated July 2006 for the Project.

Development of the Petition Area involves the loss of too little good agricultural land to significantly affect (i) the availability of land to farmers in Hawai`i; (ii) agricultural land rents; (iii) the growth of diversified crop farming; and (iv) potential agricultural employment. Without the Project, land is available for diversified crops with available supply far exceeding likely or potential demand.

78. The Petition Area is an agricultural remnant entirely surrounded by existing and planned urban development.

79. The loss of 344.5 acres of agricultural land, of which approximately 54 to 171 acres are good or suitable for farming, will be offset by over 3,800 jobs at full development of the Project. Currently, there are approximately 40 jobs provided by the nursery and composting operations on the Petition Area.

Flora and Fauna

80. Rana Productions, Ltd., and AECOS Consultants prepared a floral and faunal survey entitled *A Survey of Botanical, Avian, and Mammalian Resources, Kapolei Harborside Center, `Ewa District, O`ahu, Hawai`i* dated October 2, 2006, for the Project.

81. The Petition Area is characterized mostly by naturalized, introduced (non-native) species that typify the lowlands of leeward O`ahu and by species that tend to establish populations on disturbed lands. Of some 73 flowering plant species described in the survey, eight are believed to be native. None of the species encountered on the Petition Area are considered threatened or endangered by either the State or the federal government.

82. `Ewa `akoko (*Chamaesyce skottsbergii* var *skottsbergii*) and `Ewa hinahina (*A. splendens*), which are listed as threatened or endangered, were not located on the Petition Area. The population of `Ewa hinahina observed on the `Ewa Plain by Char and Balakrishnan in the late 1970s was destroyed when the deep draft harbor was dredged. `Ewa hinahina has not been seen on the Petition Area in the last two decades.

83. Nineteen different avian species were recorded on the Petition Area. Fifteen are alien species and four are native bird species. The native bird species are the Black-crowned night-heron (*Nycticorax nycticorax hoactli*), Pacific golden-plover (*Pluvialis fulva*), Black-necked stilt (*Himantopus mexicanus knudseni*), and ruddy turnstone (*Arenaria interpres*). The Black-necked stilt is a resident endangered, endemic

sub-species. The Black-crowned night-heron is an indigenous resident species, and the Pacific golden-plover and ruddy turnstone are both indigenous migratory waterbird species. Three alien mammalian species, the domestic dog (*Canis f. familiaris*), small Indian mongoose (*Herpestes a. auropunctatus*), and cat (*Felis catus*), were also recorded.

84. Man-made ephemeral standing coral settling ponds do not represent stable or consistent nesting habitat for Black-necked stilts. These birds use the Petition Area for incidental foraging and loafing resources. The coral settling ponds were visited on at least nine occasions over the past two-and-a-half years and on four additional occasions (most recently in January 2007), but no nesting stilt was located on the Petition Area, likely due to the industrial nature of the site and because the vegetation present provides minimal cover for nesting. The Project presents no adverse impact on endangered or threatened terrestrial vertebrate species in the Petition Area.

85. Pacific Analytics, LLC, conducted an arthropod inventory and assessment entitled *Arthropod Inventory and Assessment, Kapolei Harborside Center Site, Ewa District, O`ahu, Hawaii`i* dated October 2006 for the Project.

86. One hundred ninety-five species of insects representing 16 orders were collected on the Petition Area. An additional 19 species of spiders, 3 species of other arthropods, and 5 species of fossilized snail shells were collected. More than 90 percent of the specimens collected in the survey of the Petition Area were non-indigenous.

87. No juvenile caterpillars of the listed species, Blackburn's Sphinx moth (*Manduca blackburni*), were found on nearly two hundred tree tobacco plants on the Petition Area nor were any adults detected during the sampling.

88. There are currently six species of `ōpae`ula federally designated as candidates for listing, one of which may occur on O`ahu. There are also species of `ōpae`ula not designated as candidate species, including *Halocaridina rubra*, which is known as `ōpae`ula to most Hawaiians.

89. *Halocaridina rubra* is readily distinguished from other species. For example, their body length is less than 15 millimeters and they have stout first and second claws. The top of the head is short, triangular, and pointed and does not reach the end of the first antennular segment. Other identifying characteristics include the curvature of the middle part of the shrimp and the spination and length of the arms and the claws. Identification is facilitated by extensive taxonomic literature available concerning shrimp from Hawai`i.

90. There are two known wet sinkholes in the preserve area within the Petition Area, a southeast sinkhole and the northwest sinkhole. *Halocaridina rubra* was located only in the southeast sinkhole. No other species of `ōpae`ula was found in either of the wet sinkholes. There are no additional wet sinkholes within the preserve.

Archaeological and Cultural Resources

91. Cultural Surveys Hawai'i, Inc. ("CSH"), prepared an archaeological inventory survey entitled *Archaeological Inventory Survey for the Proposed 345-Acre Kapolei Harborside Center, Honouliuli Ahupua`a, `Ewa District, O`ahu Island* ("Archaeological Inventory Survey") dated July 2006 for the Project. The Archaeological Inventory Survey was prepared in accordance with chapters 13-276 and 13-284, HAR, governing archaeological inventory surveys and reports.

92. There are six historic properties identified on or in proximity to the Petition Area:

SIHP # 50-80-12-6679: An historic plantation-era drainage channel. This is actively used and is in fair to good condition but has clearly been repaired repeatedly.

SIHP ## 50-80-12-6876 and 50-80-12-6877: Stacked stone prehistoric or early historic enclosures. Site 6876 was evaluated as in good condition and Site 6877 was evaluated as in fair condition.

SIHP # 50-80-12-6878: Approximately 40+ coral sinkhole features within the Petition Area's archaeological/paleontological preserve area. They appear to be in good condition.

SIHP # 50-80-12-2888: The Barber's Point Harbor Archaeological District. Portions of the archaeological preserve within the current Petition Area appear to have already been completely disturbed by historic and modern land use. It is likely that the previously documented surface archaeological features within this portion of the Petition Area have been completely removed. Accordingly, the Project is not anticipated to have an impact on SIHP # 50-80-12-2888.

SIHP # 50-80-12-9714: The OR&L ROW is located immediately adjacent to the Petition Area. This portion of the railway is actively used by the Hawaiian Railway Society and is in good condition.

93. The State Historic Preservation Division (“SHPD”) concurs with CSH’s preservation recommendations and accepted the Archaeological Inventory Survey in accordance with chapters 13-284 and 13-276, HAR, by a letter from SHPD to CSH dated February 13, 2007.

94. The sinkholes within the preserve area are regarded as an exemplary assemblage of sinkholes in terms of the paleontological resources and the archaeological resources believed to be present. Because of the potential to provide further information both about the biological past of Hawai`i and of early Hawaiian utilization of the biota, the sinkholes are recommended for preservation.

95. Petitioner has represented and committed to the continued protection of the sinkhole preserve within the Petition Area.

96. CSH also prepared a study entitled *Cultural Impact Assessment for the Proposed 345-Acre Kapolei Harborside Center, Honouliuli Ahupua`a, `Ewa District, O`ahu Island* dated May 2006 for the Project, which included an examination of historical documentation, review of archaeological studies, and community consultations and interviews.

97. Various organizations and informants were contacted. The people contacted were not aware of any ongoing cultural practices, archaeological sites, or

trails within the Petition Area. Consulted parties generally noted the practice of sinkhole burials. Reclassification and development of the Petition Area will have minimal or no effect on cultural resources after the implementation of the recommended mitigation measures within the Archaeological Inventory Survey in consultation with the SHPD. As recommended in the study, the Hawaiian community will continue to be consulted throughout the construction of the Project.

98. No native Hawaiian customary and traditional rights or practices were identified as having occurred on the Petition Area and none currently exist on the Petition Area.

Groundwater Resources

99. The Petition Area is located within the `Ewa (Limestone) Caprock Aquifer of the Pearl Harbor Aquifer Sector. Groundwater is recharged through local rainfall (averaging 21 inches per year) and infiltration from surface water drainage. Based on proximity to the ocean and geology, the water beneath the Petition Area is tidally influenced and likely to have moderate to high salinity. Groundwater beneath the Petition Area does not meet drinking water standards due in part to high salinity, and has been used primarily as irrigation water.

Scenic Resources

100. Makai views from within the Petition Area are limited by surrounding industrial development in James Campbell Industrial Park ("JCIP") and

Kapolei Business Park. Onsite mounding, uneven terrain, and scrub vegetation limit views within and across the Petition Area at ground level. JCIP obstructs coastal viewplanes from Farrington Highway and the proposed Kapolei West development.

101. Petitioner intends to create Conditions, Covenants, and Restrictions imposing design standards for the industrial structures on the Petition Area.

102. The height of the industrial structures will be within the allowable height limits for the area. In addition, the golf course and park spaces on the adjacent Kapolei West development will provide open space relief in contrast to the surrounding industrial uses at Kalaeloa Harbor and JCIP.

103. Petitioner will coordinate with the State Department of Transportation (“DOT”), Airports Division, as the Project progresses to examine appropriate height considerations as it relates to aviation and airport operations at Kalaeloa Airport.

ENVIRONMENTAL QUALITY

Noise

104. D. L. Adams Associates, Ltd., prepared an acoustical study entitled *Environmental Noise Assessment Report, Kapolei Harborside Center, Kapolei, Oahu, Hawaii* dated April 2006 for the Project. Based on the acoustical study, existing and future traffic noise levels are below Federal Highway Administration, U. S. Department of Transportation, maximum noise limits.

105. The Petition Area is outside of the 55 day-night equivalent sound level noise contour of the Kalaeloa Airport; therefore, the Project will not be impacted by aircraft noise.

106. Noise from construction activities will be significant and occur on the Petition Area; however, there are no existing residences close to the Petition Area. Future residential areas to the north will have the golf course as a noise buffer zone. Noise from construction activities should generally be short term and must comply with community noise control rules administered by the State Department of Health ("DOH"), which require the contractor to obtain a construction noise permit.

Air Quality

107. B. D. Neal & Associates prepared an air quality study entitled *Air Quality Study for the Proposed Kapolei Harborside Center Project, Kapolei, Oahu, Hawaii* dated July 2006 for the Project. Short-term impacts from fugitive dust will likely occur during the Project's construction phase. To a lesser extent, exhaust emissions from stationary and mobile construction equipment, from the disruption of traffic, and from workers' vehicles may also affect air quality during the period of construction. State air pollution control regulations, administered by the DOH, require no visible fugitive dust emissions at the property line.

108. After construction, motor vehicles coming to and from the Petition Area will result in a long-term increase in air pollution emissions on the Petition Area.

At full buildout of the Project in 2018, carbon monoxide concentrations were estimated to remain nearly unchanged at the intersection of Kapolei Parkway and Kalaeloa Boulevard compared to the without-Project case, while concentrations at other locations studied would increase. Even with those increases, worst-case concentrations should remain within both national and State standards through 2018 with or without the Project. Any long-term impacts on air quality in the area should be minimal.

109. Due to the proximity of industries located at JCIP, occasional impacts on the Petition Area from emissions emanating from these facilities may occur in conjunction with coincidental occurrences of industry malfunctions and southerly winds, both of which are relatively infrequent events. Increased scrutiny by the DOH, an air quality task force mandated by the State Legislature, and the modernization by some industrial park tenants should help to mitigate future impacts on the Petition Area and Project.

110. There is the potential for accidents at the neighboring JCIP that could result in adverse impacts to the air quality of the immediate area, including the Petition Area. The tenants at JCIP have emergency plans that are prepared pursuant to the rules of the DOH to address any potential emission discharges. The Project is not anticipated to include those types of industries that have the potential to generate emissions.

Hazardous Wastes

111. LFR Inc., prepared a report entitled *Environmental Summary Report, Kapolei Harborside Center, Former Hawaiian Western Steel Waste Pile, Malakole Road Parcel North of Chevron Refinery, Kapolei, Hawaii* (“Environmental Summary Report”) dated July 6, 2006, for the Project. The report addressed the two sites within the Petition Area named in its title and proposed mitigation measures where necessary.

112. The Hawaiian Western Steel (“HWS”) parcel, located adjacent to and north of the sinkhole preserve area, is 12.5 acres, six acres of which are affected.

113. HWS began operations in 1959 and ceased operations in 1986. During its operation, HWS used the HWS parcel to dispose of mill scale, wet scrubber material, slag, scrap steel, electrode remnants, and furnace bricks.

114. In February 1992, the U. S. Environmental Protection Agency (“EPA”) issued an Administrative Order on Consent under the Comprehensive Environmental Response, Compensation, and Liability Act, which required HWS to, *inter alia*, consolidate waste material and construct a containment cap over the site that comprised of six to eight inches of compact coral fines, covered with 30 and 40-mil high density polyethylene geomembrane liner, and covered again with six to nine inches of additional compacted coral fines.

115. In 1995, additional investigation was conducted including a geophysical survey, trenching, installation of soil borings and monitoring wells,

collection and analysis of soil and groundwater samples, and water table elevation monitoring. Additional capping was conducted later in 1995 and included the following: installing a perimeter drainage pipe, extending the geomembrane liner to the Hanua Street extension roadway, installing an additional five layers of permanent cap, and extending coverage of the cap to three additional areas.

116. Following the completion of construction of the waste pile cap, monitoring was conducted under EPA supervision from 1996 through 1999, which consisted of nine rounds of groundwater monitoring. No significant migration of lead or cadmium was found in the groundwater. The EPA approved termination of groundwater monitoring and required that the integrity of the engineered containment system must be maintained through the post-closure period and deed restrictions controlling access and excavation must be maintained at the site in perpetuity.

117. During a 100-year storm, there is a possibility that groundwater would migrate from the HWS site to the sinkhole preserve; however, groundwater monitoring wells in the area have shown that contaminants are not transported with groundwater.

118. The Malakole Street area, north of the Chevron refinery, and situated at the southwestern corner of the Petition Area, is affected by a hydrocarbon plume from spillage at the Chevron site. The Chevron refinery occupies approximately 25 acres, approximately three acres of which are affected by the leakage. The

hydrocarbon plume is believed to be caused by tank overfill incidents, pipeline releases, and historical releases of various petroleum products leaching through the side wall or bottom of the aboveground bulk fuel storage tanks at the refinery site before they were retrofitted with double wall construction between 1985 and 2005.

119. In 1996, with oversight from the EPA Region 9 and the DOH, a remediation skimming system was successful in reducing the amount of hydrocarbon in the soil and reducing the source of dissolved petroleum compounds in the groundwater. In 2006, a soil and groundwater investigation indicated that hydrocarbon levels had dropped below DOH action levels.

120. Natural bioattenuation is occurring at the Malakole site and the remaining affected soil and dissolved plume are stable and slowly receding. Over time, the petroleum chemicals at the Malakole site will continue to naturally degrade and the exposure risk will continue to diminish.

121. Containment, institutional controls, and construction procedures detailed in the Environmental Summary Report must be maintained and enforced, including hazardous material training for workers, sampling of soils excavated greater than four feet, and water pumped from the Malakole site for dewatering must be treated first. Petitioner is committed to following the mitigation measures as specified in the Environmental Summary Report.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

122. Wilbur Smith Associates prepared the traffic impact assessment report entitled *Kapolei Harborside Center Traffic Impact Assessment Report, City of Kapolei* (“TIAR”) dated July 20, 2006, for the Project.

123. Kalaeloa Boulevard is a four-lane divided highway that connects JCIP to the H-1 Freeway at the Pālailai Interchange, and will be used as the initial access to the Petition Area. Its connection to the H-1 Freeway provides regional access to both the central Honolulu area and to the Wai`anae Coast area.

124. Existing roadways in the vicinity of the Petition Area include the following: (i) Kapolei Parkway, which is a partially completed four- to six-lane divided roadway in the Kapolei area. The roadway will be extended westward from Kalaeloa Boulevard during the development of the Kapolei Commons and Kapolei West developments. At present, the Kapolei Parkway connects with Kamokila Boulevard one block Kokohead of Kalaeloa Boulevard to provide access to the City of Kapolei area. Design and construction work is underway to complete the Kapolei Parkway sections Kokohead of Kamokila Boulevard to connect to Fort Barrette Road and to extend to the communities in the Fort Weaver Road corridor; (ii) Malakole Street, which is a two-lane east-west roadway that currently extends from the Kalaeloa Harbor area along the southern boundary of the Petition Area to Kalaeloa Boulevard with the

roadway currently ending just west of the Kalaeloa Redevelopment Area boundary; and (iii) Hanua Street, which is a two-lane collector street in JCIP. Plans are to extend Hanua Street as a four-lane divided roadway parallel to Kalaeloa Boulevard to connect to the H-1 Freeway with new ramp connections at the Pālailai Interchange. A portion of the extension would pass through the Petition Area.

125. The TIAR recommends the following improvements: (i) at the Kalaeloa Boulevard-Kapolei Parkway Intersection, add a right-turn lane to eastbound approach and construct a second (double) right-turn lane if warranted by future traffic volumes and conditions; (ii) at the Kalaeloa Boulevard-Malakole Street Intersection, add a westbound left-turn lane, add a makai-bound second (double) left-turn lane, widen Malakole Street to provide two eastbound lanes for a distance of approximately 400 feet from Kalaeloa Boulevard intersection, and modify signal phasing and timing to reflect geometric changes; (iii) at the Hanua Street-Kapolei Parkway Intersection, add a right-turn lane on the eastbound Kapolei Parkway approach and convert right-turn lane on makai-bound approach to shared through/right-turn lane to increase capacity for through traffic; and (iv) at the Hanua Street-Malakole Street Intersection, provide a second (double) left-turn lane on makai-bound approach, widen Malakole Street east of the intersection for a distance of approximately 400 feet to provide two eastbound lanes to receive double left-turn lanes, and provide signal controls at intersections.

126. Improvements are not necessary for access to Kalaeloa Harbor from the Petition Area, since traffic from the Project could continue to use the existing access through Malakole Street.

127. The TIAR assumes that the following seven roadway improvements to access the Petition Area would be constructed by parties other than Petitioner without development of the Project: (i) construction of the Hanua Street Extension from Malakole Street to the Pālailai Interchange; (ii) construction of additional ramps at the Pālailai Interchange to accommodate the Hanua Street connection to the H-1 Freeway; (iii) construction of Kapolei Parkway as a six-lane roadway from the Hanua Street Extension to Kamokila Boulevard; (iv) extension of Malakole Street eastward to connect to the roadway network within the Kalaeloa Redevelopment Area; (v) construction of the makai end extension of Lauwiliwili Street westward to access Kalaeloa Harbor; (vi) construction of `Ōpakapaka Street between Kalaeloa Boulevard and Hanua Street; and (vii) installation of traffic signals at Kalaeloa Boulevard intersections with `Ōpakapaka and Lauwiliwili (makai) Streets, and at the Hanua Street intersections with Malakole and Lauwiliwili (makai) Streets. The TIAR does not calculate the impact on traffic if the Petition Area was developed without any of these roadway improvements.

128. Petitioner is in discussions with the DOT on implementing the major improvements necessitated by the traffic impacts of the Project.

129. In Docket No. A04-753, this Commission placed a condition on the Kapolei West development that requires a set aside of land necessary for the future construction of Hanua Street to Malakole Street as a four-lane highway through the current Petition Area.

130. If Petitioner is able to reach an agreement with the DOT to construct and/or dedicate lands for State roads in the Petition Area, Petitioner will ask the City and County to credit the cost of construction and/or land dedication to Petitioner's fair-share under the Impact Fees for Traffic and Roadway Improvements in `Ewa, chapter 33A, Revised Ordinances of Honolulu ("`Ewa Impact Fee Ordinance").

131. Petitioner and the DOT have reached a tentative agreement regarding traffic improvements which include the following provisions: (i) Petitioner will construct a four-lane divided highway to State standards, alignment yet to be determined, from the Pālailai Interchange to the Kalaeloa Harbor. The State will construct the Pālailai Interchange extension; (ii) two acres along the proposed Lauwiliwili portion of the Petition Area will be set aside for the State—the method of acquisition is yet to be determined—to be used for a weigh station for the State in order to weigh trucks coming out of the harbor; (iii) Petitioner will update its TIAR to reflect certain changes in the road alignment as well as changes to the assumptions relating to the construction of certain roadway improvements; and (iv) the State will work with the City and County to update the `Ewa Impact Fee Ordinance to include the Pālailai

Interchange and Hanua Street improvements to qualify for the application of impact fees, and that Petitioner's contributions for construction and/or dedication of lands for State roads are credited to Petitioner under the `Ewa Impact Fee Ordinance.

132. The DOT supports the improvements of the tentative agreement because the improvements will benefit the region in terms of its regional circulation. Improvements will provide a critical mauka-makai access to Kalaeloa Harbor from the State's interstate facility, thereby reducing the amount of traffic volume on Kalaeloa Boulevard.

Water Service

133. Engineering Concepts, Inc., prepared a report entitled *Preliminary Engineering Report for Kapolei Harborside Center, Kapolei, Oahu, Hawaii* ("Engineering Report") dated June 2006, which addressed the water service requirements for the Project.

134. The Petition Area will be served by existing water lines in the adjacent Kalaeloa Boulevard. New water lines will be extended within roadways leading to the Petition Area. An additional water storage tank above the H-1 Freeway will also be constructed to provide storage for the Petition Area and adjacent properties.

135. Potable⁴ water will be supplied by the Board of Water Supply ("BWS") wells. One source of water is the `Ewa Wells 15 and 16 near Honouliuli Gulch,

⁴ As used herein, the term "potable" means safe drinking water in compliance with Federal and State statutory and administrative requirements.

which are currently being improved by the BWS. The potable water will be used for domestic and fire protection purposes. It is expected that the Project will use approximately 1.8 million gallons per day (“mgd”) of potable water at full buildout.

136. Petitioner will construct a dual water system to serve the Project that consists of two separate lines within the roadways serving the Petition Area. The non-potable water will be reclaimed effluent from the Honouliuli Wastewater Treatment Plant (“HWTP”). Petitioner will construct the connection from its non-potable water system to the non-potable water supply lines. The non-potable water system will be used primarily for irrigation purposes. It is expected that the Project will use approximately 0.5 mgd of non-potable water at full buildout.

137. There may be an abandoned monitoring well within the Petition Area. Petitioner represented that if it finds the abandoned monitoring well, it will cap the well with the approval of the Commission on Water Resource Management (“CWRM”).

138. The Petition Area has been provided for in the planning of the regional water systems, resulting in minimal impact to the existing system.

Wastewater Disposal

139. Engineering Concepts, Inc.’s, Engineering Report also addressed the wastewater disposal requirements for the Project.

140. The Project is estimated to generate average wastewater flows of 2.9 mgd, with peak design flows possibly reaching 7.4 mgd. The wastewater is expected to be primarily of domestic origin. Any industrial discharges will require onsite pre-treatment before release into the municipal sewer system.

141. The Project will be served by an underground collection system, which will convey the collected wastewater to a proposed sewer pump station in the vicinity of the Malakole Street/Hanua Street intersection and will pump wastewater to the OR&L ROW, where it will connect to an existing gravity system for conveyance to the HWTP.

142. The HWTP has a liquid stream treatment capacity of approximately 38 mgd and a solids treatment capacity of approximately 25 mgd.

143. The HWTP can currently accommodate the additional liquid stream anticipated to be generated by the Project. The solids handling capacity is currently near capacity; however, plans for improvements to the HWTP for increased solids handling have been prepared. The City and County's Department of Environmental Services selected a contractor to begin construction of the solids handling improvements. These improvements are scheduled to be completed before the start of construction of the Project.

Drainage

144. Engineering Concepts, Inc.'s, Engineering Report also addressed the drainage requirements for the Project.

145. The Petition Area is part of a watershed that encompasses approximately 2,400 acres, reaching almost six miles inland. Runoff from the area above the H-1 Freeway is collected in three gulches that converge just mauka of the freeway before crossing it. The drainageway, a former irrigation ditch, continues parallel to the freeway for a short distance before heading makai through abandoned canefields. The drainageway crosses under the OR&L ROW into the Petition Area, winding its way towards Malakole Street. The defined drainageway ends approximately halfway between the OR&L ROW and Malakole Street at an existing service road used by Hawaiian Cement.

146. The Petition Area will serve as part of a regional drainage system.

147. The Project will increase the peak rate of runoff in the watershed; however, this increase will be mitigated by the proposed drainage improvements. The mitigative measures include consideration of the overall increases in the watershed which extends from the Petition Area up to the Wai`anae Range.

148. The Project will have a drainage channel crossing the Petition Area, from the OR&L ROW to Malakole Road. This channel will collect and convey runoff

from the Petition Area, as well as offsite runoff, to the ocean. The drainage channel is projected to be approximately 280 to 300 feet wide and approximately 10 feet deep.

149. Preliminary grading and drainage studies have indicated that the Petition Area can be developed so that Project runoff is directed to the major drainage channel. Petitioner has represented that runoff from the Project will not impact Kalaeloa Harbor. Project runoff will be collected and diverted away from the harbor to the major drainage channel.

150. Construction of major drainage improvements, including the major drainage channel and roadway drainage systems, will mitigate the potential drainage impacts based on the City and County's 100-year flood standard. These improvements will improve existing drainage conditions by eliminating ponding and uncontrolled runoff as is currently experienced.

151. During future phases of the Project, Petitioner will prepare a Drainage Master Plan and submit it to the DPP. Petitioner will coordinate development of the Drainage Master Plan with the DOT, Harbors Division, and area participants.

152. During construction, soil erosion will be minimized by compliance with the City and County's grading ordinance and the applicable provisions of the DOH Water Quality Standards (Title 11, chapter 54, HAR) and Water Pollution Control requirements (Title 11, chapter 55, HAR). Additionally, standard Best Management Practices ("BMPs") will be employed to minimize soil erosion impacts.

153. During operation, the lessees of the Project will be required to operate their businesses in accordance with State and federal regulations, including compliance with hazardous and regulated materials handling, storage, transport, and waste disposal.

Solid Waste Disposal

154. Engineering Concepts, Inc.'s, Engineering Report also addressed existing solid waste conditions, projected solid waste generation and characteristics, solid waste collection and service, and impacts and mitigation measures for the Project.

155. The Project will generate solid waste during construction and after development. It is anticipated that at full buildout, the Project will generate approximately 17 tons per day of solid waste. Construction wastes will primarily consist of vegetation, rocks, and debris resulting from clearing the Petition Area prior to construction. Most of these wastes will be combustible. After buildout, solid waste generation will be a function of the type of uses. Typical commercial-industrial wastes for warehouses and baseyards could include a high percentage of combustible material suitable for power generation or recycling.

156. The City and County is currently operating a landfill site in Waimānalo Gulch and the Honolulu Program of Waste Energy Recovery facility on the leeward side of O`ahu. These facilities have adequate capacity to handle the amount of solid waste. It is anticipated that private refuse collectors will service the Project. The

City and County is currently exploring alternative means of handling solid waste as an ongoing county-wide concern.

Police and Fire Protection

157. The Petition Area is within the Honolulu Police Department's District 8, which encompasses the Leeward Coast and the `Ewa Plain. There are approximately 100 field officers assigned to this district, and the City and County opened the Regional Kapolei District Station at 1100 Kamokila Boulevard several years ago. The City and County anticipates the need for two additional substations to service the region; the proposed locations are `Ewa Villages and Ko `Olina. It is anticipated that existing offsite service facilities and their planned improvements will be adequate to accommodate the needs of the Project.

158. Fire protection in Kapolei and `Ewa is provided by the Honolulu Fire Department's `Ewa Beach Fire Station (an engine company), Makakilo Fire Station (an engine company), and Kapolei Fire Station (an engine and ladder company and the Battalion 4 Headquarters). The nearest fire station is Kapolei Fire Station in the Kapolei Business Park. New fire stations are planned at `Ewa Villages, Ko `Olina, and Makaīwa Hills. It is anticipated that existing offsite service facilities and their planned improvements will be adequate to accommodate the needs of the Project.

Emergency/Medical Services

159. The Petition Area is serviced by a variety of health care facilities. There are more than 25 choices of health care providers. St. Francis Medical Center West (now known as Hawaii Medical Center West) is the nearest hospital. Ambulance service is coordinated with the City and County and the hospital has a helipad. Hawaii Medical Center, Pali Momi Medical Center, and Wahiawa General Hospital are full service general, emergency, and surgical medical facilities with the capabilities of treating injuries that might be expected from light industrial uses. It is anticipated that existing offsite service facilities and their planned improvements will be adequate to accommodate the needs of the Project.

Electricity and Telephone Services

160. The Engineering Report also addressed existing electrical and communication service conditions, required power modifications, and impacts and mitigation measures as they relate to the Project.

161. Additional power requirements will be needed to serve the Petition Area. Petitioner is working closely with Hawaiian Electric Company ("HECO") to determine regional requirements. Petitioner is also coordinating routes for Hawaiian Telcom ("HawTel") lines as well as potential substations. Preliminary consultation with HECO and HawTel indicate that these services can be provided for the Project.

162. It is estimated that power requirements for the Project may range from 100 to 150 kilovolt amperes per acre, and projected load requirements are estimated to range from 43.5 to 65.2 megavolt amperes for the Project based on information provided by HECO.

163. An existing HECO substation is located adjacent to the Petition Area, next to the OR&L ROW and west of Kalaeloa Boulevard, and several overhead lines traverse the Petition Area.

Energy Conservation

164. Petitioner is supportive of sustainable design but not Leadership in Energy and Environmental Design® (“LEED®”) standards.

165. Chapter 196, HRS, and a similar City and County ordinance do not apply to private developers.

166. Presently five buildings in the state are LEED® certified, three of which are State buildings.

167. Approximately 12 of the 42 buildings registered in the State for LEED® certification are State buildings.

168. LEED® Silver compliance can increase building construction costs between 1 and 3 percent. For the Project, with an anticipated development cost of \$596.6 million, LEED® Silver could increase development costs between \$5.97 and \$17.9 million.

COMMITMENT OF STATE FUNDS AND RESOURCES

169. Government costs incurred as a result of the Project are not expected to exceed the revenues derived. The State's operating revenues, derived principally from general excise taxes, income taxes, and specific licenses, fees, fines, and other payments, are anticipated to exceed the State's additional operating expenses throughout the Project's development and operating periods. The State's net revenues from the Project after full buildout are projected to amount to \$8,424,027 annually.

CONFORMANCE TO URBAN DISTRICT STANDARDS

170. The reclassification of the Petition Area is in general conformance to section 15-15-18, HAR, standards for determining "U" Urban District boundaries as follows:

- (1) *It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses;*
- (2) *It shall take into consideration the following specific factors:*
 - (A) *Proximity of centers of trading and employment except where development would generate new centers of trading and employment;*
 - (B) *Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and*
 - (C) *Sufficient reserve areas for foreseeable urban growth;*
- (3) *It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;*

- (4) *Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans;*
- (5) *It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans;*
- (6) *It may include lands which do not conform to the standards in paragraphs (1) to (5):*
 - (A) *When surrounded by or adjacent to existing urban development; and*
 - (B) *Only when those lands represent a minor portion of this district;*
- (7) *It shall not include lands, of which the urbanization will contribute towards scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services; and*
- (8) *It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.*

The reclassification of the Petition Area is consistent with the Urban District standards, including its location contiguous to existing urban areas and its proximity to existing industrial centers. The Petition Area is within the City and County's Urban Growth Boundary and has been identified for future urban growth in the `Ewa DP. It is highly developable, with satisfactory topography consisting of slopes ranging from less than 0.5 percent to 5 percent. In general, the Petition Area slopes down from the OR&L ROW to Malakole Road, with an average slope of approximately 1 percent. The Petition Area is free from natural hazard potential, such as flooding or

tsunami inundation. Services, such as wastewater systems, water, sanitation, and police and fire protection would be available to serve the Petition Area.

CONFORMANCE TO THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

171. The reclassification of the Petition Area is in general conformance to the following goals, objectives, policies, and priority guidelines of the Hawai'i State Plan:

Section 226-4 State goals

Section 226-4(1) A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawai'i's present and future generations.

Section 226-4(3) Physical, social, and economic well-being, for individuals and families in Hawai'i, that nourishes a sense of community responsibility, of caring, and of participation in community life.

The development and operation of the Project are expected to positively impact the economy by increasing employment opportunities, personal income, net operating revenues to the State and the City and County, and by addressing the pent-up demand for industrial space on O'ahu. The Project is also anticipated to improve the quality of life in the region by providing jobs in the 'Ewa region, thus reducing traffic congestion. The Project is the job center component of the *Kapolei Long Range Master Plan* and the *'Ewa DP*, which includes providing an urban core (The City of Kapolei); providing significant other job centers (JCIP, Kapolei Business Park, Ko 'Olina, Kalaeloa

Harbor, University of Hawai`i West O`ahu); providing residential areas for people to live; and providing regional infrastructure designed to serve all the proposed uses.

Section 226-5 Objective and policies for population

Section 226-5(b)(1) Manage population growth statewide in a manner that provides increased opportunities for Hawai`i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.

Section 226-5(b)(3) Promote increased opportunities for Hawai`i's people to pursue their socio-economic aspirations throughout the islands.

The Petition Area is located in the `Ewa region in West O`ahu, designated by City and County policy as the location of O`ahu's Secondary Urban Center. During construction of the Project, it is anticipated that approximately 450 construction jobs will be created. Approximately 650 offsite jobs will be generated by construction activities. Of these jobs, an average of 710 direct and indirect jobs will be created in the Kapolei/`Ewa region. At full buildout, the Project is expected to generate approximately 3,830 permanent new industrial jobs and approximately 2,300 indirect jobs that are dependent upon the industrial operations. Approximately 4,630 of these jobs are expected to be in the Kapolei/`Ewa region. These are expected to be well paying jobs in the form of direct, indirect, and induced jobs during operation of the Project. During construction, construction workers will earn approximately \$65,000 a year. At Project buildout, industrial workers will earn approximately \$46,000 a year.

Section 226-6 Objectives and policies for the economy – in general

Section 226-6(a)(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawai`i's people.

The key contribution of the Project is jobs in `Ewa which are needed in the region to provide a better balance. The Project will create direct, indirect, and induced employment opportunities in the Kapolei/`Ewa region during its construction and operation.

Section 226-13 Objectives and policies for the physical environment – land, air, and water quality

Section 226-13(b)(7) Encourage urban developments in close proximity to existing services and facilities.

Lands surrounding the Petition Area are in the State Land Use Urban District, and uses on the east, west, and south perimeters of the Petition Area are industrial. The adjacent properties are the Kapolei West master-planned development, JCIP, Kapolei Business Park, and the maritime and supporting industrial activities at Kalaeloa Harbor. Normal harbor operations may involve inconveniences to nearby properties, including the Petition Area. The DOT has requested that disclosures be made to purchasers and occupants of the Project about noise, odors, vehicular traffic, lights, dust, and actual ship operations. A golf course on the Petition Area's north boundary will provide a buffer between Kapolei West and the Project.

Section 226-104 Population growth and land resources priority guidelines

Section 226-104(b)(1) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public

expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.

Section 226-104(b)(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

The Project will constitute an addition to an already compact, concentrated area of development with JCIP to the south, Kalaeloa Harbor to the east, and the City of Kapolei to the north and east. The soil in much of the Petition Area is coral outcrop. Based on the various soil classification systems that rate Hawai'i soils, the majority of the Petition Area (from 0 percent to 25 percent depending on the particular soil rating system) does not consist of good soils. It is, for the most part, marginal land for agricultural productivity.

172. The reclassification of the Petition Area conforms to the *State Employment and Transportation Functional Plans*.

CONFORMANCE TO THE COASTAL ZONE MANAGEMENT PROGRAM

173. The Petition Area is not located on the shoreline, and is separated from the shoreline by Kalaeloa Harbor to the west and JCIP to the south. The Project does not involve the direct use of marine and coastal resources.

174. Industrial parks generally are not appropriate sites for providing recreational opportunities, and this specific location neither abuts the shoreline nor provides coastal access; accordingly, the recreation objective and policy are not applicable.

175. The height of the industrial structures will be within the allowable height limits of the area to address scenic and open space resources.

176. Petitioner will preserve the unique sinkhole habitats found on the site; no other valuable coastal ecosystems are found on the Petition Area. Proposed drainage improvements will be made by Petitioner to alleviate runoff and flooding concerns.

177. The reclassification of the Petition Area will further urbanize the area. Areas surrounding the Petition Area are already in commercial and industrial use.

178. Due to its location, elevation and other characteristics, the Petition Area is not subject to coastal hazards, such as tsunami, storm waves, subsidence, and erosion. Drainage improvements implemented by Petitioner will alleviate runoff and flooding concerns.

179. The public has and will continue to have an opportunity to participate throughout the land use entitlement process for the Project.

CONFORMANCE TO THE CITY AND COUNTY GENERAL PLAN

180. The *General Plan* provides for population growth in Kapolei/`Ewa by indicating the `Ewa DP share of O`ahu's population. The *General Plan* further encourages the development within the Secondary Urban Center at Kapolei and the `Ewa and Central O`ahu urban fringe areas to relieve development pressures in O`ahu's

remaining urban fringe and rural areas and to meet the housing needs not readily provided in the Primary Urban Center. A major consideration in public policy is to redirect traffic currently flowing into Honolulu proper by providing alternative employment centers and residences outside of the existing urban core. The Project is consistent with these goals and the concept of growth in the Secondary Urban Center.

INCREMENTAL DISTRICTING

181. The Project will be phased over a ten-year period and will implement the *‘Ewa DP’s* phasing development to provide adequate infrastructure so congestion and capacity shortfalls are minimized as development proceeds.

182. Petitioner intends to complete buildout of the Project by 2018, including completion of the backbone infrastructure consisting of Hanua Street improvements, drainage improvements, and sewer improvements. Therefore, incremental districting is not necessary.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein

improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission rules under chapter 15-15, HAR, and upon consideration of the decision-making criteria in section 205-17, HRS, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 344.519 acres of land in the State Land Use Agricultural District at `Ewa, O`ahu, Hawai`i, and identified as TMKs: 9-1-14: por. 33, 34, and 35 and 9-1-15: por. 20, to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16 and 205-17, HRS.

2. Article XII, Section 7, of the Hawai`i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms and shall 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, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised

native Hawaiian rights to the extent feasible. Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Hawai'i 425, 903 P.2d 1246, certiorari denied, 517 U. S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. Ka Pa`akai O Ka`Aina v. Land Use Commission, 94 Hawai'i 31, 7 P.3d 1068 (2000).

4. The Petition Area is separated from the coast by JCIP and Kalaeloa Harbor and is situated on the `Ewa limestone plain. Historical documentation and archaeological studies indicate that this area was probably never permanently inhabited by native Hawaiians. There is no evidence to suggest that any native Hawaiian traditional and customary rights are currently being exercised within the Petition Area.

5. Six sites have been identified as having historical or cultural significance and are recommended for preservation. Petitioner will work with the SHPD to formulate a preservation plan and archaeological monitoring plan and will adhere to the accepted preservation plan to ensure that there will be no adverse impact to these sites. In the event any previously unidentified archaeological sites are found, Petitioner will comply with all applicable statutes and rules of the DLNR.

6. Article XI, Section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources,

including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

7. There are no floral or faunal species that are threatened, endangered, or of concern under State or federal law on the Petition Area.

8. Air quality of the Petition Area will be impacted in the short-term by fugitive dust and exhaust emissions from stationary and mobile equipment during the construction phase of the Project. Petitioner will implement BMPs and all required and applicable regulations to mitigate the effects of fugitive dust and exhaust emissions.

9. The long-term impacts to air quality that will result from the development of the Petition Area are minimal and no mitigation measures are necessary.

10. Petitioner will construct a dual water system to conserve the supply of potable water, and non-potable water, consisting of reclaimed effluent from the HWTP, will be used where appropriate and permitted.

11. Article XI, Section 3, of the Hawai`i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

12. The reclassification of the Petition Area will urbanize approximately four acres of prime agricultural land. However, due to the large amount of agricultural land that has been released from plantation agriculture, it is anticipated that the urbanization of these four acres will not adversely impact the potential growth of diversified agriculture on O`ahu.

13. Article XI, Section 7, of the Hawai`i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai`i's water resources for the benefit of its people.

14. The Petition Area is within a designated water management area that is managed by the CWRM. Water will be provided by the BWS. One source of water is the `Ewa Wells 15 and 16 near Honouliuli Gulch which are currently being improved by the BWS. A dual water system will serve the Project, having two separate lines within the roadways serving the Petition Area. The potable water will be supplied by BWS wells through existing water mains and existing and proposed storage tanks. The non-potable water will be reclaimed effluent from the HWTP.

15. The Project is generally consistent with the *`Ewa DP* which provides for balanced growth in the region by including various housing options for different incomes and employment centers as adopted by the City and County. The Project is an employment component of the *`Ewa DP* and will provide jobs at wages that will allow employees to purchase homes in the `Ewa region.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 344.519 acres of land at `Ewa, O`ahu, Hawai`i, identified as TMKs: 9-1-14: por. 33, 34, and 35 and 9-1-15: por. 20, and shown approximately on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State land use district boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. **Wastewater Facilities.** Petitioner shall provide wastewater system improvements on the Petition Area as required by the DOH and appropriate City and County agencies.
2. **Transportation.** Petitioner shall reach an agreement with the DOT and the DPP for the construction of a four-lane divided highway meeting applicable state highway standards from the anticipated Pālailai Interchange extension to Kalaeloa

Harbor. This agreement shall be executed prior to the submittal of Petitioner's application for subdivision for development of the Petition Area.

Based upon the change in anticipated roadway alignments to be defined by the aforementioned agreement, Petitioner shall prepare a revised TIAR subject to the approval and acceptance by the DOT and the DPP. The TIAR shall not include assumptions that the State will construct traffic improvements to serve the Petition Area other than improvements to the Pālailai Interchange. Petitioner shall implement traffic improvements and mitigation measures consistent with the revised TIAR.

Petitioner shall set aside two acres for a DOT weigh station in the Petition Area. The precise location of the weigh station and the terms of any land purchase(s) or exchange(s) shall be determined by mutual agreement between Petitioner and the DOT.

Petitioner shall contribute its fair share for regional transportation improvements, as required by the City and County's `Ewa Highway Master Plan Impact Fee ordinance (chapter 33A, Revised Ordinances of Honolulu).

3. **Harbor Security.** Petitioner shall enter into an agreement with the DOT, Harbors Division, under terms and conditions acceptable to the DOT, to provide an adequate security zone between the Petition Area and Kalaeloa Harbor. The agreement shall be entered into prior to the commencement of any construction of individual lot buildings or structures along the common boundary between the Petition Area and Kalaeloa Harbor.

4. **Previously Unidentified Burial/Archaeological/Historic Sites.**

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, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then 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.

5. **Solid Waste Management Plan.** Petitioner shall develop a Solid Waste Management Plan for the Petition Area in conformance with the Integrated Solid Waste Management Act, chapter 342G, HRS. Petitioner's Solid Waste Management Plan shall be approved by the City and County Department of Environmental Services. The Plan shall address and encourage awareness of the need to divert the maximum amount of waste material caused by developments away from the City and County's landfills.

6. **Air Quality Monitoring.** Petitioner shall implement soil erosion and dust control measures and participate in an air quality monitoring program for the Petition Area as specified by the DOH.

7. **Notification of Potential Harbors Nuisances.** Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Project, in the accordance with State law, of the potential adverse impacts of Kalaeloa Harbor

operation, such as but not limited to noise, lights, truck and car traffic, dust fumes, odor, temporary construction activities, operations that occur 24 hours per day, seven days per week, and other incidences of harbor operations.

8. **Notification of Potential Airports Nuisances.** Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Project, in accordance with State law, of the potential adverse impacts of aircraft and airport activity from the adjacent airfields at Kalaeloa and Honolulu International Airport, such as but not limited to noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, to buyers and lessees and to other future owners, lessees or occupants, to release claims against the State of nuisance relating to aircraft and airport operations.

9. **Drainage Plan.** Petitioner shall prepare and submit a detailed Petition Area drainage plan to the DPP and the DOT for review and approval. In preparing its drainage plan, Petitioner shall consider and incorporate the drainage requirements for other regional developments within the same watershed.

10. **Drainage Improvements.** Petitioner shall construct drainage improvements, including interim detention basins as may be necessary, as a result of the development of the Petition Area, to the satisfaction of appropriate State and City and County agencies, including the DOT, Harbors Division.

11. **Water Conservation Measures.** Petitioner shall implement water conservation measures and BMPs, such as use of indigenous and drought tolerant plants and turf and the use of non-potable water alternatives, and incorporate such measures into the landscape planting.

12. **Best Management Practices.** Petitioner shall implement BMPs to protect surface and groundwater resources. The BMPs shall be designed to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and employ dust control measures during and after the development process in accordance with the DOH guidelines.

13. **Hazardous Materials.** Storage and/or disposal of hazardous materials/wastes on the Petition Area shall be in conformance with all applicable DOH and EPA requirements.

14. **Civil Defense.** Petitioner shall fund and construct its fair-share of adequate solar-powered civil defense measures serving the Petition Area as required by the State; U. S. Department of Defense, Office of Civil Defense; and the City and County Civil Defense Agency.

15. **Energy Conservation Measures.** Petitioner shall, to the extent possible, incorporate energy conservation and sustainable design measures, such as the standards and guidelines promulgated by the Building Industry Association of Hawai`i, the U. S. Green Building Council, the Hawai`i Commercial Building Guidelines for

Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai`i, and the applicable City and County building codes, as amended, into the design and construction of the Project and the structures within the Petition Area.

16. **Sinkhole Preserve.** Petitioner shall implement measures to protect and preserve the coral sinkholes within the Petition Area.

17. **Completion of Project.** Petitioner shall complete buildout of the Project, including completion of the backbone infrastructure consisting of Hanua Street improvements, drainage improvements, and sewer improvements, by December 31, 2018.

18. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

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

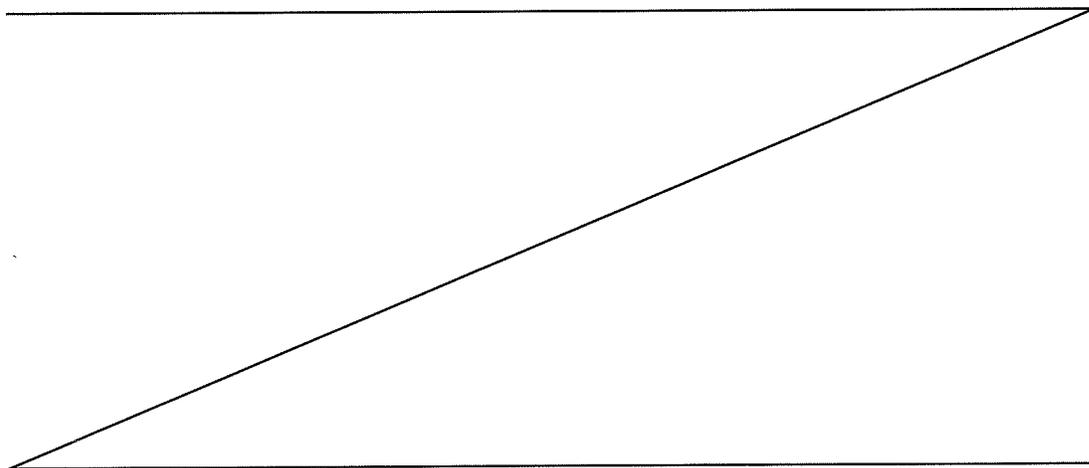
20. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and DPP in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the

conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

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

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



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 20th day of November, 2007. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu Hawai'i, this 20th day of November, 2007, per motion on November 1, 2007.

APPROVED AS TO FORM

Deane Jackson
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By Lisa Judge
LISA JUDGE
Chairperson and Commissioner

By Duane Kanuha
DUANE KANUHA
Vice-Chairperson and Commissioner

By Kyle Chock
KYLE CHOCK
Commissioner

By _____ (absent)
THOMAS CONTRADES
Commissioner

By 
VLADIMIR PAUL DEVENS
Commissioner

By _____
NORMAND LEZY
Commissioner

By 
RANSOM PILTZ
Commissioner

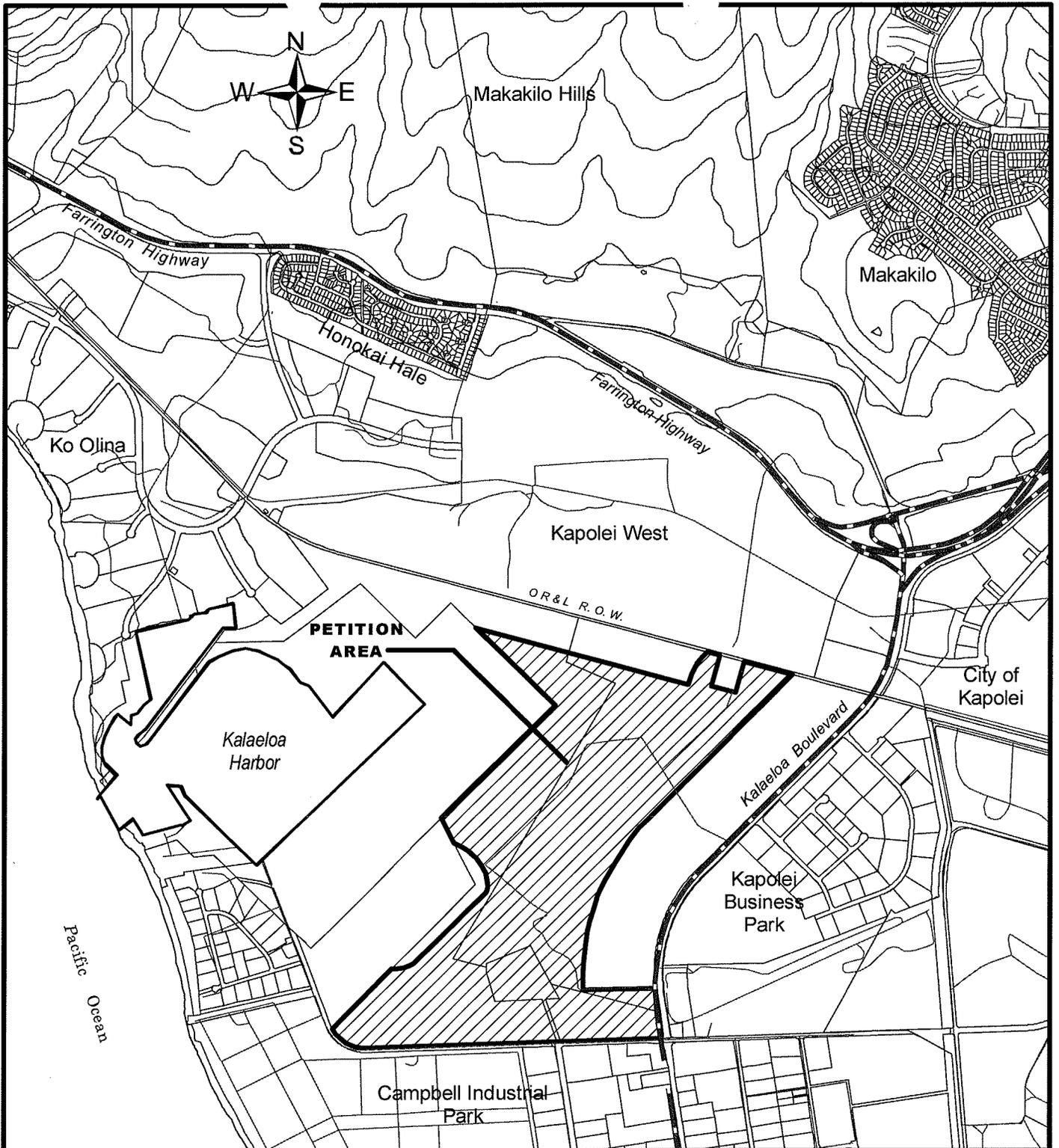
By 
NICHOLAS STEVES
Commissioner

Filed and effective on
NOV 20 2007

By 
REUBEN WONG
Commissioner

Certified by:


ANTHONY J. H. CHING



A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC

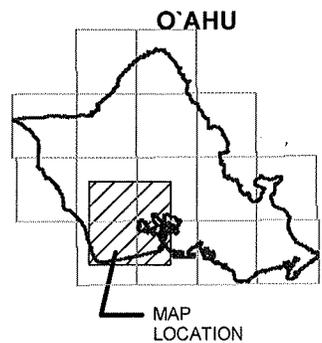
Location Map

Tax Map Key: 9-1-14: por. 33, 34, & 35 & 9-1-15: por. 20

ʻEwa, Oʻahu, Hawaiʻi

Scale: 1" = 2,000 ft.

Exhibit "A"



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A06-763
)	
KAPOLEI PROPERTY DEVELOPMENT, LLC)	CERTIFICATE OF SERVICE
)	
To Amend The Agricultural Land Use District Boundary Into The Urban Land Use District For Approximately 344.519 Acres Of Land At `Ewa, O`ahu, Hawai`i, Tax Map Keys: 9-1-14: Por. 33, 34, And 35 And 9-1-15: Por. 20)	
_____)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular and certified mail:

DEL. MARY LOU KOBAYASHI
 Office of Planning
 P. O. Box 2359
 Honolulu, Hawaii 96804-2359

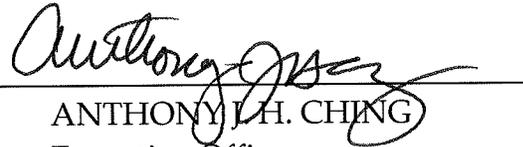
BRYAN YEE, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, Hawaii 96813

HENRY ENG, Director
Department of Planning and Permitting
650 South King Street
Honolulu, Hawaii 96813

CARRIE OKINAGA, Esq.
Corporation Counsel
City and County of Honolulu
530 South King Street
Honolulu, HI 96813

CERT. BENJAMIN A. KUDO, Esq.
NAOMI U. KUWAYE
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813

Dated: Honolulu, Hawaii, NOV 20 2007.



ANTHONY H. CHING
Executive Officer