



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A99-728(b)
	)	
THE SALVATION ARMY	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
To Amend the Agricultural Land Use	)	AND DECISION AND ORDER
District Boundary into the Urban Land Use	)	
District of Approximately 15,000 Acres of	)	
Land at Kapolei, `Ewa, O`ahu, Hawai`i,	)	
TMK Nos. 9-1-017: portion of 071	)	
_____	)	

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

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

November 13, 2009 by

Executive Officer

Orlando Davidson, Executive Officer



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A99-728(b)
	)	
THE SALVATION ARMY	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
To Amend the Agricultural Land Use	)	AND DECISION AND ORDER
District Boundary into the Urban Land Use	)	
District of Approximately 15.000 Acres of	)	
Land at Kapolei, `Ewa, O`ahu, Hawai`i,	)	
TMK Nos. 9-1-017: portion of 071	)	
_____	)	

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



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A99-728(b)  
)  
THE SALVATION ARMY ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
To Amend the Agricultural Land Use ) AND DECISION AND ORDER  
District Boundary into the Urban Land Use )  
District of Approximately 15.000 Acres of )  
Land at Kapolei, `Ewa, O`ahu, Hawai`i, )  
TMK Nos. 9-1-017: portion of 071 )  
\_\_\_\_\_ )  
|

INTRODUCTION

The Salvation Army, a California nonprofit corporation ("Petitioner"), filed a Motion for Order Amending the Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 8, 1999 ("Motion to Amend"), on April 28, 2009, pursuant to §15-15-70 and §15-15-94, Hawaii Administrative Rules ("HAR"), to: (1) recognize Petitioner as the successor in interest to approximately 15.000 acres of land at Kapolei, `Ewa, O`ahu, Hawai`i, identified as TMK Nos. 9-1-017: portion of 071 ("Property"), which property was a part of the approximately 1,300 acres of land reclassified in the Findings Of Fact, Conclusions Of Law, And Decision And Order dated September 8,

1999 ("1999 Decision and Order"); (2) re-designate a new docket for the Property, separate and apart from the remaining 785 acres reclassified under Docket No. A99-728; (3) release the Property from the conditions of the 1999 Decision and Order; and (4) issue a new findings of fact, conclusions of law, and decision and order for the Property.

The Land Use Commission of the State of Hawai'i ("Commission"), having reviewed Petitioner's Motion to Amend, subsequent pleadings thereto, affidavits, testimony, arguments, and evidence presented at the August 27, 2009 hearing, by Petitioner, City and County of Honolulu Department of Planning and Permitting, State of Hawaii Office of Planning, and Intervener Haseko (EWA) Inc., makes the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL BACKGROUND

1. In July of 1998, the Governor accepted the Final Environmental Impact Statement ("EIS") for the Housing and Community Development Corporation of Hawaii ("HCDCH") East Kapolei Master Plan Development Project, a 1,300 acre master planned residential community at Ewa, Oahu, Hawai'i ("1998 FEIS"). The East Kapolei Master Plan included the Property.

2. On March 5, 1999, the HCDCH, an agency of the State of Hawai'i, filed a Petition for Land Use District Boundary Amendment ("1999 Petition") in Docket No. A99-728 to reclassify approximately 1,300 acres of land owned by the State of Hawai'i,

located in Kapolei, Oahu, City and County of Honolulu, Hawai`i, identified as Tax Map Key Nos. (1) 9-1-016: 8, 108, 109; (1) 9-1-017: 071, 0861 and (1) 9-1-018: 003, 005, ("Petition Area") from the State Land Use Agricultural District to the State Land Use Urban District for a master planned community referred to as the East Kapolei Master Plan Development Project ("East Kapolei"). The 1999 Petition was designated as Docket No. A99-728.

3. The HCDCH intended to be the master developer of East Kapolei. As the master developer, the HCDCH committed to providing the backbone infrastructure, including major roadways and expansion of the electrical and communications systems, a sports complex, water and wastewater system master plans, and development of open space recreation areas. The HCDCH proposed to sell large lot parcels to individual developers for construction of proposed land uses.

4. Components of East Kapolei included the following:

<u>Use</u>	<u>Units</u>	<u>Acreage</u>
Single-Family Residential	4,300-5,800	722
Multi-Family Residential	2,100-2,600	211
Commercial		18
Parks		
Neighborhood (6)		21
District (1)		15
Sports Complex		64
Schools		
Elementary (3)		36
Intermediate (1)		20
Major Roads		74
Other Open Space/Public Facilities		<u>119</u>

TOTAL

1,300

5. On September 8, 1999, the Commission issued the 1999 Decision and Order.

6. By Deed dated November 8, 2002, recorded at the Bureau of Conveyances as Document No. 2860229 on November 13, 2002, the State of Hawai'i conveyed approximately 500 acres of the Petition Area to the University of Hawaii.

7. In September 2005, the Department of Land and Natural Resources, State of Hawaii ("DLNR") conveyed 159.365 acres of the Petition Area to the Department of Hawaiian Home Lands, State of Hawaii ("DHHL") ("East Kapolei I" and "East Kapolei Commercial"). The Board of Land and Natural Resources ("BLNR") also approved the conveyance of an additional 318 acres of the Petition Area to the DHHL ("East Kapolei II").

8. On April 19, 2006, the DHHL requested verification from the Office of Environmental Quality Control, State of Hawaii ("OEQC") that the DHHL's 318 acre East Kapolei II project, consisting of approximately 1,000 single family residential lots to be awarded as homestead leases, approximately 1,300 multi-family rental units, an elementary school, a middle school, and The Salvation Army Kroc Community Center, will not require the preparation of an environmental assessment or supplemental environmental impact statement given that there will be no greater impacts than the

impacts described in the 1998 FEIS, which included the 318 acre East Kapolei II project site.

9. On May 4, 2006, OEQC replied to the DHHL's April 19, 2006 letter and concluded that an environmental assessment or supplemental EIS is not required for the East Kapolei II project because the proposed development is generally consistent with the project description in the 1998 FEIS.

10. On March 9, 2007, the University of Hawaii filed its Motion to Amend the 1999 Decision and Order to, *inter alia*, modify certain conditions in the 1999 Decision and Order to be specific only to the 500 acres conveyed to the University of Hawaii. The University of Hawaii's Motion to Amend was based substantially on the conveyance of the 500 acres for the development of the newly envisioned UH West O`ahu campus, thus significantly changing the concept of East Kapolei as described in the 1999 Decision and Order. Specifically, the University of Hawaii's project includes the relocation of the UH West O`ahu campus makai of the H-1 Freeway, residential uses, mixed uses, student housing or campus expansion, an elementary school site, roads, detention basins, and electrical substations. Under East Kapolei as described in the 1999 Decision and Order, the 500 acres had been proposed to be sold as large lot parcels to private developers to fund the development of the UH West O`ahu campus.

11. On May 29, 2007, the Governor signed into law Act 104 which authorized that State of Hawai`i to sell at fair market value not more than 15 acres to an

eleemosynary organization that has been certified to be tax exempt under section 501(c)(1) or (3) of the Internal Revenue Code of 1986, as amended, to be used as the site of a community center, subject to conditions, including the condition that if the site ceases to be used as a community center, then the land and all improvements will revert back to the State.

12. On July 27, 2007, OEQC informed the DLNR that the sale of the Property to Petitioner for the development of the Kroc Community Center would not require the preparation of an environmental assessment and that the conclusion is in concurrence with the OEQC's letter of May 4, 2006, stating that the East Kapolei II project is generally consistent with the project description in the 1998 FEIS.

13. On August 13, 2007, a new docket number was issued specifically for the 500 acres owned by the University of Hawaii, Docket No. A99-728(a), and the Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A99-728(a) was filed by the Commission, substantially amending the conditions in the 1999 Decision and Order to address the significant changes to the concept of East Kapolei as a result of the University of Hawaii's new UH West O`ahu campus project.

14. On October 2, 2007, Petitioner sought written confirmation from the Department of Planning and Permitting, City and County of Honolulu, State of Hawaii ("DPP") that no environmental assessment would be required in anticipation of a future

zone change application for the Kroc Community Center Property, based on the Property being a component of the 1998 FEIS.

15. On November 28, 2007, DPP replied to Petitioner's October 2, 2007 letter and indicated its conclusion that the 1998 FEIS meets the need for an EA/EIS for significant zone change as required by Section 5.4.1 of the Ewa Development Plan.

16. On November 12, 2008, Petitioner's application for zone change from AG-1 Restricted Agriculture to A-2 medium density apartment for the Kroc Community Center was approved.

17. On January 12, 2009, Petitioner acquired the Property in fee simple.

#### PROCEDURAL MATTERS

18. On April 28, 2009, Petitioner filed the Motion to Amend requesting that the Commission: (1) recognize Petitioner as the successor in interest to the Property, which was a part of the 1,300 acre Petition Area reclassified in the 1999 Decision and Order; (2) re-designate a new docket for the Property, separate and apart from the remaining 785 acres; (3) release the Property from the conditions of the 1999 Decision and Order; and (4) issue a new findings of fact, conclusions of law, and decision and order for the Property for the purpose of proceeding with Petitioner's Kroc Community Center ("Project").

19. The Motion to Amend sought the issuance of a new findings of fact, conclusions of law, and decision and order which would include conditions that are

based upon the conditions of the 1999 Decision and Order subject to requests to delete or modify those conditions as appropriate to the Project, specifically the deletion of conditions 1, 3, 6, 8, 13, 16, 17, 19 and 21 and modifications to conditions 5, 12 and 20.

20. On May 4, 2009, Petitioner filed its Errata To The Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 8, 1999.

21. On May 5, 2009, Intervenor Haseko (Ewa), Inc. filed its Memorandum In Opposition To The Motion Filed By The Salvation Army On April 28, 2009.

22. On July 7, 2009, Petitioner filed its Second Errata To The Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 8, 1999.

23. On August 19, 2009, Petitioner filed its Third Errata To The Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 8, 1999.

24. On September 17, 2009, Petitioner filed its First Amendment To The Motion For Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 8, 1999.

25. The First Amendment to the Motion for Order Amending The Findings of Fact, Conclusions Of Law, And Decision and Order Dated September 8, 1999 provided additional facts unique to the Project that further revised which conditions of the 1999

Decision and Order were requested to be deleted or modified, specifically, the deletion of conditions 14, 16, 17, and 21; and modifications to conditions 1, 3, 4, 8, 12, 13, 19, and 20.

26. On September 17, 2009, Petitioner filed the Stipulated Findings Of Fact, Conclusions Of Law, And Decision And Order, executed by the Office of Planning, State of Hawaii, City and County of Honolulu, and Haseko (EWA), Inc.

27. On August 27, 2009, the Commission held a hearing on the Motion to Amend. Entering appearances were Benjamin Matsubara, Esq., Curtis Tabata, Esq., and Bram Begonia on behalf of Petitioner; Bryan Yee, Esq., Abbey Mayer, and Lorene Maki on behalf of the State of Hawaii Office of Planning; Don Kitaoka, Esq. and Matthew Higashida on behalf off the City and County of Honolulu Department of Planning and Permitting; and Dana Viola, Esq. on behalf of Intervener Haseko (Ewa), Inc. .

28. Upon completion of the parties' presentations of their respective cases, Petitioner's Motion to Amend was granted to:

- a. Recognize The Salvation Army as the successor-in-interest to the 15-acre property described in the Motion ("Property");
- b. Issue a new docket number, Docket No. A99-728(b), for Land Use Commission proceedings pertaining to the Property;
- c. Release the Property from the conditions of the September 8, 1999 Decision and Order; and

d. Issue a new Findings of Fact, Conclusions of Law, and Decision and Order for the Property, incorporating the following conditions from the 1999 Decision & Order: 2, 6, 7, 9, 10, 11, 15, 18, 22, 23, 24, 25, 26, and 27 with no modifications; and including conditions 1, 3, 4, 5, 8, 12, 13, 19, and 20 from the 1999 Decision and Order as proposed by the Petitioner to be modified.

29. On August 27, 2009, the Commission received public testimony from Todd Apo, Councilmember of the City and County of Honolulu.

#### DESCRIPTION OF THE PROPERTY

30. The Property is identified as Tax Map Key No. (1) 9-1-017: portion of 071, and comprises approximately 15.000 acres of land.

31. Petitioner is the owner of the fee simple interest in the Property.

32. The Property is located at the western end of an area known as East Kapolei in the `Ewa District of the City and County of Honolulu on the island of O`ahu. The Property is relatively flat land and fallow. It is bounded on the north by the proposed alignment of the North-South Road, and is surrounded on the other three sides by East Kapolei Phase II. It is situated approximately 1,100 feet due north of Tenney Village and immediately south of the future University of Hawaii (UH) West O`ahu Campus, located on the opposite side of the North-South Road alignment.

33. The Property is located within the State Urban district and is surrounded by State Urban District lands. The Property is situated approximately 3 miles east of the town center of Kapolei, and approximately 5 miles west of Waipahu. Other major areas of trading and employment include Mililani, 10 miles to the northeast; and Pearlridge Center, 10 miles to the east.

34. The Property was formerly planted with sugar cane but has been vacant since the Ewa Mill closed in the 1970's.

35. The Property is currently unused and has been unused for the past two years.

36. The Property is relatively flat with a slope of less than two percent. There are no natural variations in the topography.

37. The Property is classified as Flood Zone D by the Federal Emergency Management Agency's Flood Insurance Rate Map (FIRM). A designation of Flood Zone D means that the potential for flooding is undetermined.

#### PROPOSAL FOR RECLASSIFICATION

38. The Kroc Community Center will include approximately 120,000 square feet under roof and an estimated 450 parking stalls. Standard hours of operation for the Project will be from 6:00 am to midnight seven days a week with an average staff of 100-150, and an estimated 2,000 clients daily. Activities will be scheduled for all age groups

ranging from toddlers to seniors. Shuttle service will be provided for seniors and after-school children.

39. The Kroc Community Center will include the following components:
  - a. Performing Arts Theater & Worship Center, with Church and Ballroom. This component will be utilized for concerts, theater performances, youth orchestras, graduations, banquets, and church worship services, and will accommodate up to 500 people at a time.
  - b. Administrative Offices for the Kroc Community Center. This component will include administrative offices and rooms for The Salvation Army service programs.
  - c. Education/Preschool/Day Care Center. This component will provide preschool, childcare and babysitting services.
  - d. Conference Center with commercial kitchen.
  - e. Digital/Audio Visual Arts & Computer Lab. This component will provide computer training and accessibility, and will be heavily used after school and during evening hours to accommodate students.
  - f. General Multi-Use Classrooms. This component will include five individual multi-purpose rooms and one large multi-purpose room that can be divided into three smaller rooms. The rooms will be used for

tutoring, mentoring, job training, and family enrichment and personal development classes.

g. Athletic and Fitness Center. This component will be suitable for high school and college sports. It will include a NCAA sized gymnasium, a fitness center, a dance/aerobic studio, and a multi-purpose facility for classes and activities.

h. Aquatics Center. This component will include two large outdoor swimming pools for public swimming, lap swimming, swimming lessons, and water polo and swim meets. The facility will include spectator bleachers, a shaded pavilion for family use, and a *Keiki* pool.

i. Sports Fields. The Project envisions two soccer fields, a baseball diamond, and an outdoor basketball court.

j. Back of House, Circulation and Support. The Project will include approximately 450 parking stalls, a warehouse, a mechanical room, locker room for the pools, and loading docks.

k. A two-family dwelling unit to house key staff members.

l. A twelve room dormitory to house visiting youth participating in events on site. Each of the 12 rooms will have four beds. As a boarding facility, it may also be used for church functions and seminars.

40. The estimated cost for the Kroc Community Center is \$103,000,000.00.

41. The Project is intended to break ground in 2009, and is expected to be completed in 18 months.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

42. The financial statement for The Salvation Army, a California corporation (Western Territory) is provided as part of the 2007 National Annual Report of The Salvation Army of the United States of America, identified as Exhibit "10" to the Motion to Amend.

43. The Kroc Community Center is being made possible in large part through the generosity of Mrs. Joan Kroc. Mrs. Kroc passed away in October of 2003 and bequeathed approximately \$1.6 billion to The Salvation Army National Corporation, a New Jersey corporation, for the construction of Kroc Community Centers around the country.

STATE AND COUNTY PLANS AND PROGRAMS

44. The Property is located within the State Urban District.

45. The Property is designated for Medium Density Residential Use by the City and County of Honolulu's *`Ewa Development Plan*.

46. The Property is located within the Urban Growth Boundary of the City and County of Honolulu's *`Ewa Development Plan*.

47. The Property is zoned A-2, Medium Density Apartment by the City and County of Honolulu.

48. On June 25, 2009, a Conditional Use Permit (2009/CUP-19) was issued by the City and County of Honolulu for the Property to allow for meeting facility and day-car facility uses as well as a two-family dwelling. Additionally, 2009/CUP-19 addressed issues related to setbacks, height limits, landscaping, hours of operation, as well as parking and loading

49. The Property is located outside of the Special Management Area.

#### NEED FOR THE PROPOSED DEVELOPMENT

50. The Project responds to need from the immediate area and from the larger region for community-oriented services and will contribute to the integration of Ewa as a region, by helping to make the North-South Road the axis for important public facilities. The North-South Road and its H-1 interchange will serve the key educational center for Leeward Oahu, a regional recreation center, and a regional shopping center. This combination of land uses will help to limit traffic growth on local roadways that are now highly congested.

51. The regional population has been growing at high rates in recent years, and is projected to continue to grow by more than 3% annually through 2030. The East Kapolei area is expected to have more than 30,000 residents by 2030. For the combined area of Kapolei Villages, East Kapolei and Ewa Villages, annual growth is expected to

average over 5% through 2030, reaching a total of 62,136 persons.

52. The UH West O`ahu property is expected to include 1,484 housing units on University land, and an additional 2,557 units on the private developer's portion of the site. The DHHL anticipates construction of some 2,800 housing units in its East Kapolei lands in addition to units in Kaupe`a, Village 8 of the Villages of Kapolei.

### ECONOMIC IMPACTS

53. Construction of the Project will involve an estimated 192 person-years of direct employment. "Direct jobs" are jobs in the construction firms building the Project. Some are off-site, in offices and baseyards. "Indirect jobs" are jobs supported by spending of the firms in the Project; "induced jobs" are generated by spending by the direct and indirect workforce. Some 267 indirect and induced person-years of employment are associated with construction of the Project. If Project construction takes two years, then the average direct construction workforce would be 96 jobs each year, and the total (direct, indirect and induced) construction-related workforce would amount to 230 jobs annually. Construction-related wages would amount to \$12.7 million (2008 dollars) for the direct workforce, and \$11.4 million for the indirect and induced workforce.

54. When the Kroc Community Center opens, it will house a wide range of education, recreation, and religious programs. Staff and instructors employed at the Kroc Community Center will account for about 92 full-time equivalent jobs. (The actual

number of workers involved will be larger, since many of the jobs will be part-time.) About 52 indirect and induced jobs would be associated with operational employment at the Kroc Community Center. Annual wages for operations and programs at the Kroc Community Center are estimated as amounting to \$3.5 million (2008 dollars). Wages for the associated indirect and induced workforce would total about \$2.2 million annually.

### IMPACTS UPON RESOURCES OF THE AREA

#### Agricultural Resources

55. The soils on the Property consist of Honouliuli series. They are nearly level. Permeability is moderately slow and erosion hazard is considered to be slight. The surface layer is about 15 inches thick. In representative samples, it is dark reddish brown, very sticky and very plastic clay throughout. Workability is slightly difficult because of the very sticky and very plastic clay. The shrink-swell is high.

56. The Property is identified as Prime Agricultural land under ALISH, Agricultural Lands of Importance in the State of Hawaii.

57. The Land Study Bureau classified the Property as B16i. The Bureau's five-class productivity rating uses the letters A through E, with A representing the class of highest productivity and E the lowest.

58. Agricultural activity on the Property was discontinued approximately 30 years ago and the Property has remained fallow since then. The Project will have no significant impact upon agricultural activity. Reclassification of the East Kapolei

property to the State Urban district in 1998, including the Property, effectively removed it from the inventory of agricultural lands.

### Flora and Fauna

59. Development of the Project will result in the replacement of existing scrub vegetation with a landscaped urban environment including buildings and extensive parking lots. Landscape materials will include lawn areas, ornamental shrubs, and trees. Drought resistant plants will be incorporated into the landscaping palette wherever practicable. The Unilateral Agreement And Declaration For Conditional Zoning dated November 6, 2008 requires that Petitioner comply with the following: "Prior to subdivision approval, or building permit approval, whichever comes first, Declarant shall obtain a Certificate of Inclusion from the Division of Forestry and Wildlife (DOFAW) to allow DOFAW to physically remove and relocate any endangered plants that may be present on the subject site. Prior to building permit approval, Declarant shall also notify DOFAW regarding the latitude and longitude coordinates where construction will occur and, if any endangered plants are affected, these plants shall be relocated to the Contingency Reserve Area."

60. Development of the Project will displace fauna and avifauna temporarily. However, this is not considered to constitute a significant adverse impact as no endangered or threatened species have been identified on the Property.

## Historic and Cultural Resources

61. As discussed in the 1998 FEIS, no significant archaeological or cultural resources are associated with the East Kapolei property, including the Property. The presence of any significant archaeological sites on the surface or subsurface of the Property is unlikely due to the disruption caused by continuous cane cultivation for nearly 70 years. According to the archaeological survey, literature search, and assessment of potential significant sites by the State Historic Preservation Division (SHPD), there are no significant archaeological or cultural resources associated with the Property. According to a letter received from SHPD (Appendix G to the 1998 FEIS) "it is unlikely that historic sites will be found and believe that this project will have 'no effect' on historic sites." However, should any unknown sites be uncovered during Project construction, work in the area of the site will stop and the SHPD will be notified in accordance with applicable state regulations.

62. Petitioner is aware of and sensitive to the existence and practice of native Hawaiian customary and traditional rights that are protected by Article XII, Section 7 of the Hawai'i State Constitution. There are no known traditional gathering activities or cultural practices affecting the Property.

## Groundwater Resources

63. The construction and operation of the Project is not anticipated to result in a significant adverse impact upon the region's groundwater resources. The Project will

be connected to the City's sanitary wastewater collection and treatment system. In compliance with the East Kapolei Drainage Master Plan which was approved by the City and County of Honolulu in 2007, storm water from the Project site will drain into the North-South Road drainage canal and retention basin.

#### Recreational Resources

64. The Project includes a significant recreational component in the form of a gymnasium, a fitness center, and an aquatics center and will have a significant beneficial impact upon the recreational resources in the region

65. The *ʻEwa Development Plan* region includes beach parks, neighborhood parks, community parks, and space for regional park development. The development park acreage totals approximately 211.6 acres. Nearby in Central Oʻahu, the City and County of Honolulu has created regional parks (Central Oʻahu Regional Park) and a soccer facility serving the entire island (Waipio Peninsula Soccer Park).

66. Plans for the UH West Oʻahu property show playfields and a gymnasium. The Hoʻopili project could have both passive and active park space. Hoʻopili project plans suggest that extensive bike trails will be incorporated into the project design. The Kalaeloa Community Development Area includes beach parks, a golf course, and stables. Hundreds of acres have been identified as appropriate for redevelopment as open space, to include a cultural preserve.

67. The proposed Kroc Community Center will make a significant contribution to the expansion of recreational facilities in the `Ewa region.

#### Scenic Resources

68. As discussed in the 1998 FEIS, the visual appearance of East Kapolei will change from vacant scrub vegetation to a built urban environment. In the case of the Property, approximately half the area will remain in open space when development is completed. These open space components will include a 450 stall at grade parking lot and outdoor recreational fields.

69. The proposed Project will consist of several structures ranging in height from 16 feet to a 74-foot high chapel. The proposed Project will be visible from abutting roadways including North-South Road and the future East-West Road. It will also be visible from other portions of the East Kapolei development project, Village 8 to the west, and Varona Village to the east. The taller structures on the Property will likely be visible from Farrington Highway, and the entire Project will be visible from the eastbound lanes of H-1 Freeway.

#### ENVIRONMENTAL QUALITY

70. As discussed in the 1998 FEIS, "Potential environmental impacts will occur primarily during the construction period from noise soil erosion, increased construction machinery exhaust emissions, and temporary disruption of traffic. After project development and implementation of appropriate mitigation measures, no

significant impacts affecting water quality will occur, surface drainage will be significantly improved, the diversity of plant and animal species will increase, and archaeological resources will not be impacted”.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Highway and Roadway Facilities

71. The Property is a part of a much larger 204 acre parcel that is in the process of being subdivided as Phase II of the East Kapolei Master Plan. Future plans for the East Kapolei Master Plan include mixed-density housing, parks, elementary and middle schools, major road connections to the surrounding communities, and a transit station.

72. Adjacent to the Property is the future North-South Road (presently under construction), which will connect to Farrington Highway to the north and with Kapolei Parkway to the south, and is part of the proposed route for the future Honolulu High Capacity Transit Corridor project. To the west of the future North-South road is the remainder of the East Kapolei Master Plan site, which will include the future UH West O`ahu Campus.

73. A traffic demand study and parking management plan were submitted as a part of Petitioner's CUP application which was approved on June 25, 2009. As a condition of CUP approval, the Petitioner must submit a detailed traffic management plan ("TMP") prior to issuance of a Certificate of Occupancy. In addition, the TMP

must be updated regularly. Also, a parking management plan ("PMP") that focuses on large events and overflow parking strategies must be submitted. Lastly, the Petitioner's detailed plans for on-site vehicular access points, pedestrian circulation patterns, including access to nearby schools, parks and family housing, must be submitted to the City prior to issuance of a building permit.

#### Water Service

74. Drinking water demand will increase in the East Kapolei area, with the distribution system extended to support the individual developments. The improvements made by Hawaii Housing Finance and Development Corporation ("HHFDC"), successor to HCDCH, and DHHL were based on the regional master plans, and the drinking water system will be able to support the master planned land uses. The use of non-drinking water, as promoted and required by the City and County of Honolulu Board of Water Supply (BWS), will provide the means of meeting landscape demands and maintaining drinking water resources.

75. The projected average daily demand for both drinking and non-drinking water for the Project is approximately 50 gallons-per-day and 1,600 gallons-per-day, respectively. All facilities located within the Project, including the sports fields, will be serviced by the proposed water system.

76. The BWS indicated that both drinking and non-drinking water will be available for the Project, with payment of the current water system facilities charges.

Due to the storage system improvements made by DHHL, the Project will need to pay only the portion of the facilities charges associated with resource development and transmission.

77. Under the zone change approval, the Petitioner is required to connect to the non-potable water system to be installed along the North-South Road corridor, so that the Project has a dual water system.

#### Wastewater Disposal

78. The City and County of Honolulu ("County") sewerage system serves the Property. A 42-inch diameter County trunk sewer is located along the western side of the North South Road right-of-way. The trunk sewer conveys wastewater to the Honouliuli Wastewater Treatment Plant ("WWTP") for processing and reuse as RI water.

79. The trunk sewer was designed and constructed to serve developments within the East Kapolei region. Construction was financed by the County, HHFDC, and affiliates of the Estate of James Campbell, with each contributor provided a wastewater flow allocation in the main. Under the Kapolei Interceptor Sewer Allocation and Usage Agreement ("Usage Agreement"), the HHFDC has a peak flow allocation of 11.346 million gallons per day (MGD), which needs to be further allocated to its originally owned lands in the region, including the Property. At this time HHFDC has not provided an official wastewater flow allocation associated with the formerly

HHFDC-owned lands to the County. DHHL is coordinating with HHFDC to provide the assignment of flow allocations, including the allocation for the Property, to the County.

80. The East Kapolei area is being developed in accordance with the various master plans of the current land owners. The developments will need to follow wastewater allocations established under the Usage Agreement and as assigned by HHFDC. The County's Honouliuli WWTP has adequate capacity to treat wastewater generated by the region. Based on the East Kapolei Wastewater Master Plan, the Project was planned to have an average daily sewer flow 0.036mgd. The wastewater collection system will be a gravity flow system, consisting primarily of 8-inch sewer lines. The proposed 8-inch sewer lines will connect to the existing 8-inch sewer line located in Road E, discharging to an 8-inch diameter sewer in East-West Road. From the East-West Road, the sewer increases to 10-inch diameter and is routed through the proposed park to the then 36" diameter sewer trunk main located along the southern boundary of DHHL's East Kapolei II property. This main then connects to the 42-inch diameter trunk sewer.

#### Drainage

81. The Property is located in the drainage basin of Kaloi Gulch and Hunehune Gulch. The basin is drained by gulches that are characterized as dry gulches which then enter modified drainage channels, portions of which are man-made

consisting of levees built on relatively flat ground. The Kaloi Gulch and Hunehune Gulch Drainage Basin are 4,918 acres in size and have a total 100-year runoff flow of 8,730 cubic feet per second ("cfs"). The current drainage from the Property within the Kaloi Gulch and Hunehune Gulch Drainage Basin flows *makai* towards Mango Tree Road where it passes through a series of culverts and drains into the Ewa Villages Golf Course. According to the Ewa Villages Drainage Master Plan (EVDMP) (rev. March 1997), the detention facilities within Ewa Villages Golf Course were designed to accommodate the current 100-year runoff from the Kaloi-Hunehune Gulch Drainage Basin that assumed urban use on the Property.

82. Drainage problems associated with Kaloi Gulch have limited further development of the East Kapolei region. The area is subject to shallow inundation and requires on- and off-site retention to mitigate 100-year runoff flows. DHHL East Kapolei I and II developments are impacted by regional storm runoff from the Kaloi Gulch and the Hunehune Gulch drainage basins. Without drainage improvements to the gulches and to the outlet, DHHL properties are required to limit on-site runoff to predevelopment conditions, provide for a channelized flow of 2,500 cfs as set by the Kaloi Gulch Technical Committee's restriction, and retain any excess runoff on property. Detention and retention basins, as well as timely realignment of Kaloi and Hunehune Gulches and improvements to the gulch outlet are required for development on the Property.

83 The constructed and proposed drainage facilities of North-South intended to intercept flows from the gulches and divert it into the roadway's drainage channel and retention/detention basin.

84. The East Kapolei Master Plan and the North-South Road Revised EIS (July 2004) recommend realigning Kaloi Gulch to the east side of North-South Road and diverting runoff from the gulch to a detention basin located at the southwestern boundary of the East Kapolei II Development. The plans also propose a box drain system to divert flow from Hunehune Gulch along the southern boundary of the UH West O'ahu property to the detention basin. As part of Phase 1A of the North-South Road, a 110-acre retention/detention basin and about 4,400 feet of the drainage channel were constructed. Phase 1B of the North-South Road, which is currently being constructed, will install the remaining channel, culverts under the North-South Road to accommodate developments west of North-South Road, and the outlet structure from the detention basin into the Ewa Villages Golf Course, maintaining the 2,500 cfs flow. With the development of UH West O'ahu, storm flows from Hunehune Gulch will be redirected to the North-South Road drainage system via culverts under North-South Road. Until the stormwater flows are diverted by the North-South Road drainage system and development of UH West O'ahu, DHHL's East Kapolei developments will be partially impacted by stormwater runoff from the Kaloi and Hunehune Gulch drainage basins. To mitigate adverse impacts during this interim period, a 10-foot high

earth berm will be constructed on-site as part of the mass grading construction to protect early phases of DHHL's East Kapolei developments. Phase 1A of the North-South Road is currently completed. Phase 1B and 1C of the North-South Road is planned to be completed by December of 2009. An East Kapolei Regional Drainage Study was completed in 2005. Discussion of drainage improvements are included in the North-South Road Revised EIS and UH West O'ahu EIS. Road are intended to intercept flows from the gulches and divert it into the roadway's drainage channel and retention/detention basin.

85. Under Ordinance 08-31, the Petitioner is required to submit a drainage master plan to the County and State Department of Transportation ("DOT") prior to subdivision or building permit approval, whichever comes first. The plan shall include maintenance of the current 2,500 cfs drainage flow limit, until released by the County.

86. Stormwater runoff generated by the Project will be collected through a system of swales, catch basins, and pipes, and will discharge to the North-South Road Drainage Channel. The proposed discharge pipes range in size from 18-inches to 30-inches in diameter. The estimated total discharge from the Project site under the 10-year 1-hour rainfall event is approximately 18.95 cfs.

87. The proposed Project drainage system will have no adverse impacts to existing neighboring properties. Hydraulic analysis of the planned drainage system

indicates the anticipated runoff generated from the Project can be discharged to the North-South Road Drainage Channel in compliance with the County Storm Drainage Standards. Off-site runoff will either be diverted away from the Property or routed through the on-site drainage system. The proposed North-South Road along the *mauka* boundary will intercept and convey runoff to the Kaloi Gulch.

88. The regional downstream drainage facilities have adequate capacity to accommodate stormwater runoff from the Project as proposed. The Project is consistent with the land use identified in the *Drainage Master Plan*. Computations show the total 12 ac-ft volume of runoff produced by the Kroc Community Center and proposed Low-Density Apartments #3 lots is well within the capacity of the 110 ac-ft detention/retention basin that provides storage for the North-South Road Drainage Channel.

#### Solid Waste Disposal

89. The County Department of Environmental Services (ENV) Refuse Collection and Disposal Division manages solid waste disposal facilities for the island of O`ahu. There are two County solid waste disposal facilities: the H-POWER refuse to energy plant at Campbell Industrial Park, with a 2,160 tons-per-day capacity, and Waimanalo Gulch Landfill. Expansion of the Waimanalo Gulch Landfill is being pursued by the County, along with alternatives such as shipping wastes to the Mainland United States.

90. PVT Land Company operates a privately owned and operated, licensed, solid waste facility for recovery of recyclable materials and disposal of construction and demolition materials. The PVT Landfill accepts wastes on a pre-arranged basis from haulers and contractors registered with them. Waste loads are screened with recyclable materials removed for sale/reuse, and the remaining wastes are land filled. The capacity of the PVT Landfill as currently licensed is about 20 years, with expansion areas available.

91. The solid wastes generated by the construction and operations phases of the Project are projected to be 130 to 228 tons-per-year and 4,022 tons-per-year, respectively. The waste generated by the Project will be collected on site and managed by the Petitioner's operations. Private haulers will be contracted for waste and recyclable material removal from the Property for disposal or reuse/recovery.

### Schools

92. The *`Ewa Development Plan* area includes eleven public elementary schools, two middle schools, and two high schools. Private schools in the area include Island Pacific Academy in Kapolei, Friendship Christian and Lanakila Baptist in Ewa Villages, and Messiah Lutheran and Our Lady of Perpetual Help in `Ewa Beach.

93. Additional schools are proposed for sites in the UH West O`ahu lands, the Ho`opili project, the DHHL East Kapolei I and II, including a new elementary school

adjacent to the Project. When and if the Kalaeloa Community Development Area is redeveloped, additional schools would be needed in that area.

94. UH West O`ahu currently enrolls some 971 students at its Pearl City campus. After the move to its new site, scheduled for 2009, initial enrollment is estimated at 1,520 with campus design/long term enrollment for 7,600 students.

95. The Kroc Community Center will not generate a school population. It will serve a growing regional population, and will provide pre-school child care, after-school recreational programs for youth, and adult educational classes.

#### Police and Fire Protection

96. District 8 of the City and County of Honolulu Police Department covers most of the *`Ewa Development Plan* area and all of the Wai'anae Coast. (Part of `Ewa near Waipahu is included in District 3). A district station was opened in Kapolei in 2000. A substation is located in Wai'anae.

97. District 8 communities had 31 citizens patrol programs involving about 600 members in 2006, and Neighborhood Security Watch programs covering nearly 8,900 members.

98. The Kalaeloa Redevelopment area is patrolled in part by US Navy security. The Honolulu Police Department responds to calls from that area.

99. The demand for police protection and traffic control will increase with the continuing development of the `Ewa Plain. The number of officers needed in the `Ewa

area will likely increase with population growth. A new substation has been identified as planned for `Ewa Villages.

100. The Kroc Community Center is intended to serve the existing and future community, however it will not induce population growth and will not adversely impact police protection.

101. The Honolulu Fire Department's Battalion 4 covers Waipahu, `Ewa, and the Wai'anae Coast. Its headquarters, in Kapolei, has both an engine and a ladder truck. The station in `Ewa Beach has a single engine. These stations are supported by stations in Waipahu, Waikele, Makakilo, Nanakuli, and Wai'anae.

102. Brush fires have been a serious concern in Leeward O`ahu, notably along the Wai`anae Coast. In 2007, O`ahu's largest recorded brush fire burned for nearly a week above Waialua on the North Shore. Parts of the Kalaeloa Redevelopment Area have burned due to both dry conditions and arson.

103. The Honolulu Fire Department plans to open a station at `Ewa Villages, which would be the closest station to the Property. According to the *`Ewa Development Plan*, the new station is to be built by 2015.

104. The Project will be built to current fire control standards, with access to structures via roadways large enough to meet Fire Department standards. The development of the Project is not anticipated to adversely impact fire protection.

### Electrical , Gas, and Telephone Services

105. Public utilities will be provided to the Project by the Gas Company, HECO, and Sandwich Island Communications (telephone, cable television, and broadband).

### CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

106. The Project is consistent with the standards for urban districts pursuant to HAR §15-15-18. The Project will have "city-like" concentrations of people, structures, streets and urban level of services, and the Project is proximately located to centers of trading and employment, accessible to basic services, has satisfactory topography, reasonably free from adverse environmental effects, and is contiguous with planned urban areas.

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

107. The Project is consistent with the goals of HRS § 226-4(3) by supporting the 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.

108. The Project is consistent with the objectives of HRS § 226-21(b)(1) by supporting educational programs and activities that enhance personal development, physical fitness, recreation, and cultural pursuits.

109. The Project is consistent with the objectives of HRS § 226-21(b)(2) by providing educational services and facilities that are designed to meet individual and community needs.

110. The Project is consistent with the objectives of HRS § 226-23(a) by providing diverse cultural, artistic, and recreational needs for present and future generations.

111. The Project is consistent with the priority guidelines of HRS § 226-17(8) by developing resources and programs for early childhood education.

112. The Project is consistent with the State Employment Functional Plan (1990) by creating approximately 100 new full time job positions.

113. The Project is consistent with the State Recreational Functional Plan (1991) by providing a variety of recreational uses.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

114. The Project conforms to the objectives and policies of the Coastal Zone Management Program.

CONFORMANCE WITH APPLICABLE COUNTY GENERAL PLANS, DEVELOPMENT OR COMMUNITY PLANS

115. The Oahu General Plan designates the `Ewa area as O`ahu's second city. According to the 1997 *`Ewa Development Plan* Urban Land Use Map, the property is

within the Urban Growth boundary. Further, the 1997 *`Ewa Development Plan* Land Use Map designates the Property as Medium Density Residential.

#### 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 Hawaii Revised Statutes ("HRS") chapter 205 and the Commission Rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 15,000 acres of land at Kapolei, `Ewa, O`ahu, Hawai`i, identified as TMK Nos. 9-1-017: portion of 071, from the State Land Use Agricultural District to the State Land Use Urban District for the development of the Project, 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 HRS

section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 205-16, 205-17, and 205A-2.

2. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai'i 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 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (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. There is no evidence to suggest that any native Hawaiian traditional and customary rights are currently being exercised within the Property.

5. In the event any previously unidentified archaeological sites are found, Petitioner will comply with all applicable statutes and rules of SHPD.

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. The endangered plant (*Abutilon menziesii*) also known as the red ilima, has not been identified on the Property, but has been identified in close proximity, and may be on the Property. Otherwise, there are no floral or faunal species that are threatened, endangered, or of concern under State or federal law in the Property.

8. Air quality of the Property will be impacted in the short-term by fugitive dust and exhaust emissions from stationary and mobile equipment during construction of the Project. Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions.

9. 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.

10. The Property is not classified as Important Agricultural Land under Part III of HRS chapter 205.

11. Reclassification of the Property will not have an adverse impact on agricultural resources in the region or in the State.

12. 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.

13. The Project will not adversely impact the State's water resources.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 15.000 acres of land at Kapolei, `Ewa, O`ahu, Hawai`i, identified as TMK Nos. 9-1-017: portion of 071, 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 Property 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 Property from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. If applicable, Petitioner, its successors, and assigns shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable housing requirements for the City and County of Honolulu. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner, its successors, and assigns, and the City and County of Honolulu.

2. Petitioner, its successors, and assigns shall coordinate and/or participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the Project. Water transmission facilities and improvements shall be coordinated and approved by appropriate State and County agencies.

3. If applicable, Petitioner, its successors, and assigns shall contribute to the development, funding, and/or construction of public schools as mutually agreed with the Department of Education.

4. Petitioner, its successors, and assigns shall coordinate and/or fund and construct adequate wastewater transmission and disposal facilities, as determined by the City and County of Honolulu, and the State Department of Health.

5. If applicable, Petitioner, its successors, and assigns shall grant to the State of Hawaii an avigation (right of flight) and noise easement in a form prescribed by the DOT on any portion of the Property subject to noise levels exceeding 55 Ldn.

6. Petitioner, its successors, and assigns shall not construct residential components within areas exposed to noise levels of 60 Ldn or greater.

7. Petitioner, its successors, and assigns shall be responsible for implementing sound attenuation measures to bring noise levels from sporting events, vehicular and air traffic in and within the Property down to levels acceptable to the Department Of Health.

8. Petitioner shall attenuate within noise sensitive components of the Property that are exposed to noise levels of 60 Ldn (day-night average sound level) by a minimum of 25 decibels.

9. Petitioner, its successors, and assigns shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed Project in designs and schedules accepted and determined by the DOT and the City and County of Honolulu. Petitioner and/or DOT shall submit construction plans as they relate to drainage issues for the North-South Road to the City and County of Honolulu for review and approval.

10. Petitioner, its successors, and assigns of the affected properties shall fund and construct adequate civil defense measures as determined by the City and County of Honolulu and State Civil Defense agencies.

11. Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms,

pavings or walls be found, Petitioner, its successors, and assigns of the affected properties shall stop work immediately. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

12. Petitioner, its successors, and assigns shall coordinate the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of Federal, State and County agencies with the goal of executing an agreement on the interim and ultimate regional drainage plan as soon as possible. Petitioner, its successors, and assigns shall participate in the planning and coordination of off-site improvements with all landowners and developers in the Kalo`i drainage basin, the intervenor, and other Federal, State and City and County agencies.

13. Petitioner, its successors, and assigns, agrees to work with the County to implement interim and long-term regional drainage solutions as follows:

- a. Petitioner shall submit a drainage master plan to the County for its review and approval prior to any subdivision approvals other than for minor matters, such as easements.
- b. Drainage solutions for the Property shall be compatible with the `Ewa Villages Drainage Master Plan and drainage designs for other developments in the Kalo`i Gulch drainage basin.
- c. Drainage improvements for the Property shall be consistent with the policies and principles in the `Ewa Development Plan.
- d. Petitioner shall be responsible for implementing interim drainage improvements that will limit channelized runoff to 2,500 cfs at the

Property's southern boundary (specifically at the `Ewa Villages Golf Course's Kalo`i Gulch Inlet Structure) for events up to a 100-year storm. Petitioner shall also take reasonable measures to minimize non-channelized flows from the Property by construction of berms, detention basins, or other appropriate methods. All flows and drainage patterns that cross the southern boundary of the Property shall remain as conceptually described in the `Ewa Villages Drainage Master Plan. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.

- e. Should Petitioner sell various residential or commercial components prior to the completion of the construction of the master infrastructure, any such sale shall be conditioned upon the completion of the appropriate master infrastructure improvements for that portion of the residential or commercial component.

14. Petitioner shall comply with City and County zoning requirements. This condition is not intended to delay the construction of public uses or infrastructure to service the Property.

15. Petitioner, its successors, and assigns, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting.

16. Petitioner, its successors, and assigns shall facilitate an air quality monitoring program as specified by the State Department of Health. Petitioner, its successors, and assigns shall notify all prospective buyers of the Property of the potential odor, noise, and dust pollution resulting from surrounding agricultural and

other uses, said notification to include reference to potential odors emanating from the Honouliuli WWTP.

17. Petitioner shall comply with the approved Habitat Conservation Plan performed by DHHL to facilitate the propagation of the *Abutilon mensiesii*. The Habitat Conservation Plan for the *Abutilon mensiesii* has been performed by the DHHL and Petitioner will comply with plan in the event specimens are found on the Property.

18. Petitioner or landowners shall develop the Property in substantial compliance with the representations made to the Commission. Failure to do so may result in reversion of the Property to its former classification, or a change to a more appropriate classification.

19. 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 the development of the Property.

20. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the State Office of Planning, and the City and County of Honolulu Department of Planning and Permitting in connection with the status of the subject Project 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. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

22. Within 7 days of the issuance of the Commission's Decision and Order for the subject classification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

23. Petitioner or landowners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i.

IT IS FURTHER ORDERED that the Property is hereby released from the conditions of the 1999 Decision and Order, and that the remaining approximately 785 acres of land within the Petition Area at Kapolei, 'Ewa, O'ahu, Hawai'i, identified as TMKs: 9-1-16:8, 108, and 109; 9-1-17: por. 71, 86, and por. 88; and 9-1-18: 3 and 5, shall continue to be subject to the conditions in the 1999 Decision and Order, as amended, that the docket relating to the Property is and shall be known as A99-728(b), and unless and until this docket is further amended, Petitioner is identified as The Salvation Army.

#### ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 24<sup>th</sup> day of

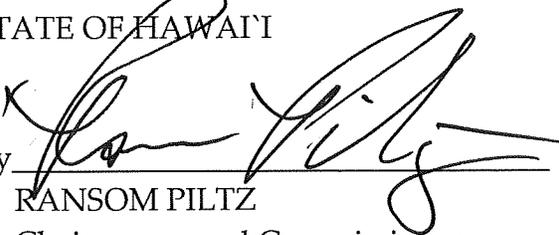
September, 2009. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is filed by this Commission.

Done at Honolulu, Hawaii, this 24th day of September, 2009, per motion on September 24, 2009.

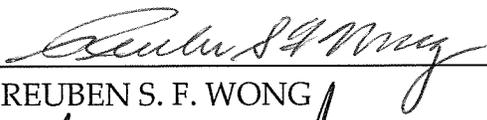
APPROVED AS TO FORM

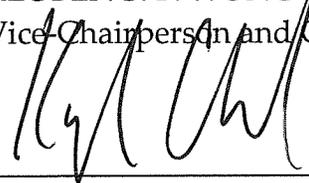
  
\_\_\_\_\_  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

By   
\_\_\_\_\_  
RANSOM PILTZ  
Chairperson and Commissioner

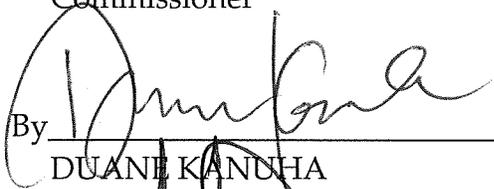
By (Excused)  
\_\_\_\_\_  
VLADIMIR PAUL DEVENS  
Vice-Chairperson and Commissioner

By   
\_\_\_\_\_  
REUBEN S. F. WONG  
Vice-Chairperson and Commissioner

By   
\_\_\_\_\_  
KYLE CHOCK  
Commissioner

By \_\_\_\_\_  
THOMAS CONTRADES  
Commissioner

By \_\_\_\_\_  
LISA M. JUDGE  
Commissioner

By  \_\_\_\_\_  
DUANE KANUHA  
Commissioner

By \_\_\_\_\_  
NORMAND LEZY  
Commissioner

By  \_\_\_\_\_  
NICHOLAS W. TEVES, JR.  
Commissioner

Filed and effective on:

November 13, 2009

Certified by:



ORLANDO DAVIDSION  
Executive Officer

By Lisa M. Judge  
LISA M. JUDGE  
Commissioner

By \_\_\_\_\_  
DUANE KANUHA  
Commissioner

By \_\_\_\_\_  
NORMAND LEZY  
Commissioner

Filed and effective on:

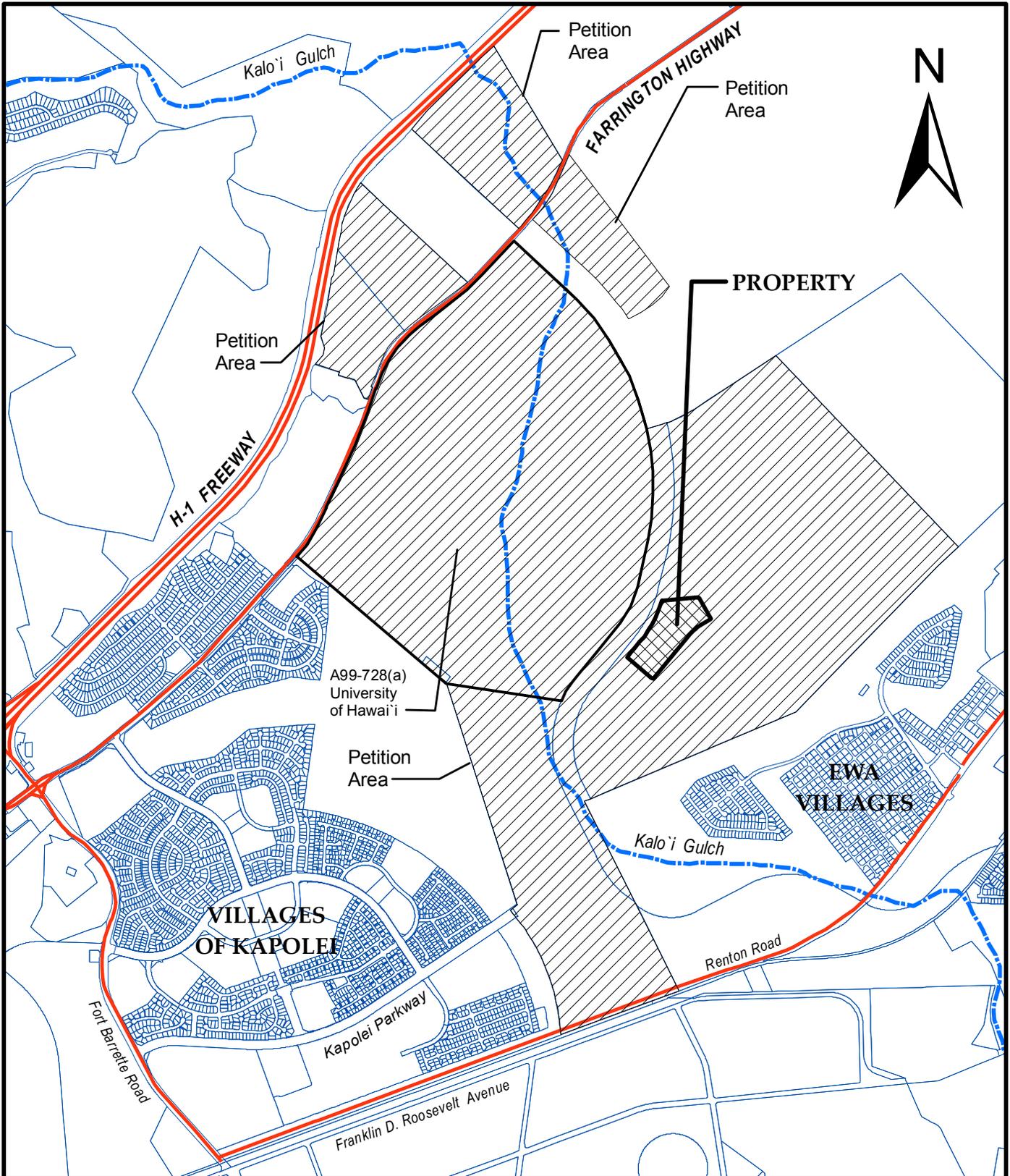
November 13, 2009

Certified by:



ORLANDO DAVIDSION  
Executive Officer

By \_\_\_\_\_  
NICHOLAS W. TEVES, JR.  
Commissioner



**A99-728(b) THE SALVATION ARMY**  
**(Formerly Part of A99-728 Housing and Community**  
**Development Corporation of Hawai'i, State of Hawai'i)**

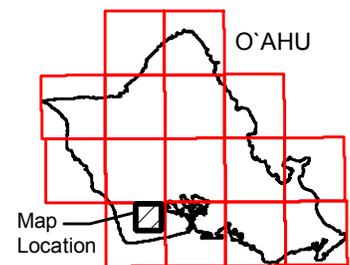
**LOCATION MAP**

Tax Map Key: 9-1-017: portion of 071

Kapolei, 'Ewa, O'ahu, Hawai'i

Scale: 1" = 2,000 feet

**EXHIBIT "A"**





BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A99-728(b)
	)	
THE SALVATION ARMY	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
To Amend the Agricultural Land Use	)	AND DECISION AND ORDER
District Boundary into the Urban Land Use	)	
District of Approximately 15.000 Acres of	)	
Land at Kapolei, `Ewa, O`ahu, Hawai`i,	)	
TMK Nos. 9-1-017: portion of 071	)	
_____	)	

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

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 or certified mail as noted:

DEL. Abbey Seth Mayer, Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

REGULAR MAIL Bryan Yee, Esq.  
Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, Hawaii 96813

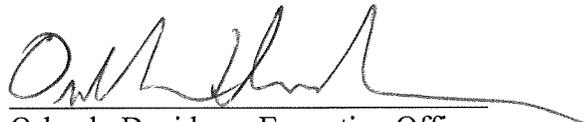
REGULAR MAIL David Tanoue, Director  
Department of Planning and Permitting  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

REGULAR MAIL Carrie Okinaga, Esq.  
Corporation Counsel  
City & County of Honolulu  
530 South King Street  
Honolulu, Hawaii 96813

CERT. Benjamin Matsubara, Esq.  
Matsubara-Kotake  
888 Mililani Street, 8<sup>th</sup> Floor  
Honolulu, Hawaii 96813

CERT. Yvonne Izu, Esq.  
Davies Pacific Center  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

Dated: November 13, 2009, Honolulu, Hawaii.

  
Orlando Davidson, Executive Officer