

Affidavit of Dr. Kioni Dudley

I attest that I am Michael Kioni Dudley, also known as Dr. Kioni Dudley, and my address is 92-1365 Hauone Street, Kapolei, Hawai'i 96707.

I attest that I am the President of The Friends of Makakilo, Inc, an organization that keeps in touch through relatively frequent emails about activities that affect Makakilo and the island of O'ahu. The current list of members includes more than 600 names. I have contacted the membership and received their permission to file this Motion for an Order to Show Cause.

As president of the Friends of Makakilo, Inc., I have been an Intervenor in the Ho'opili case since it began in 2009. I have attended all of the hearings, and have been present at all of the appeals hearings.

I have been studying and writing this Motion for an Order to Show Cause for more than six months. I know the case extremely well. I attest that everything I have written in this Motion is the truth to the very best of my knowledge. I also affirm that the information here is both accurate and complete, and that relevant information has not been omitted. I also attest that the accompanying exhibits are the true and faithful documents they claim to be.

Signed Michael Kioni Dudley
Michael Kioni Dudley

Date 7-21-2015

SUBSCRIBED AND SWORN to before me this
21st day of July 2015
Debra J. T. Corpuz
Notary Public, First Judicial Circuit,
State of Hawaii
My commission expires: OCT 19 2015

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DEBRA J. T. CORPUZ



KIONI DUDLEY, PRESIDENT
Friends of Makakilo
92-1365 Hauone Street
Kapolei, HI 96707

Kioni Dudley
Appearing pro se for the
Friends of Makakilo

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the PETITION of)	DOCKET NO. A06-771
)	
D.R. HORTON-SCHULER HOMES, LLC., a)	INTERVENOR FRIENDS OF MAKAKILO'S
Delaware limited liability company,)	MOTION FOR AN ORDER TO SHOW CAUSE
d.b.a. D.R. HORTON SCHULER DIVISION)	WHY THE PROPERTY SHOULD NOT REVERT TO
)	ITS FORMER LAND USE CLASSIFICATION;
To Amend the Agricultural Land Use District)	AFFIDAVIT BY DR. KIONI DUDLEY; EXHIBITS 1
Boundaries into the Urban Land Use District)	TO 61; AND CERTIFICATE OF SERVICE
for Approximately 1,525.516 Acres in Ewa)	
District, Island of Oahu, Tax Map Key Nos.)	
(1)9-1-017:004(por.). 059, and 072;(1) 9-1-)	
018:-001 and 004)	
_____)	

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INTERVENOR FRIENDS OF MAKAKILO'S MOTION FOR AN ORDER TO SHOW CAUSE
WHY THE PROPERTY SHOULD NOT REVERT TO ITS FORMER LAND CLASSIFICATION

Comes now the FRIENDS OF MAKAKILO ("FoM") by and through its President, KIONI DUDLEY, who hereby submits its MOTION FOR AN ORDER TO SHOW CAUSE WHY THE PROPERTY SHOULD NOT REVERT TO ITS FORMER LAND USE CLASSIFICATION. KIONI DUDLEY, as president of the Friends of Makakilo, was an Intervenor in this case during its first phase in 2009, and again in its second phase in 2011-2012. The Friends of Makakilo primarily live on the Wai'anae side of the H-1/H-2 merge, beyond the Ho'opili project. This puts them behind every car from

the 11,750 homes of the Ho'opili project in the morning rush. Traffic from the Ho'opili project, when added to the traffic from the other 58,000 homes already zoned and yet to be built, will greatly increase their travel time, perhaps by more than an hour each way, causing them great stress and fatigue both at work and at home, and taking a great toll on family life and the safety and well-being of their latchkey children left alone for so many hours, without guidance, fending for themselves.

During the 2011-2012 sessions of the Land Use Commission hearings, The Friends of Makakilo, the Sierra Club, and Senator Hee were instructed to work together and to share witnesses. One of those witnesses was Michael Lee, who is also a member of the Friends of Makakilo. Mr. Lee is a native Hawaiian practitioner who is the *kahu* or keeper of threatened *limu* growing in the near-shore sea water of 'Ewa Beach just below the string of retention basins which were created for catchment of stormwater run-off from the Kalo'i Gulch and a small *part* of Ho'opili on the Wai'anae side. Mr. Lee uses the *limu* in his cultural practices. The developers of Ho'opili had planned to direct run-off from another major portion of the project into an off-site retention basin near the Diamond Head side of the property, with excess crossing Navy land and into the West Loch of Pearl Harbor. Since the Navy has repeatedly and firmly stated that it will not allow the wastewater runoff from that portion of Ho'opili to cross their property, developer D.R. Horton will have to find another place to dispose of that water. The only possible place would seem to be into the above mentioned Kalo'i Gulch retention basins. Such a large inflow of water may cause the lowest of them to spill over into the ocean. The Friends of Makakilo shares the concern of Mr. Lee that pesticides and poisons in the stormwater run-off will kill the *limu* used by Mr. Lee.

Section I. HISTORY OF THIS CASE

1. D.R. HORTON-SCHULER HOMES, LLC., a Delaware limited liability company, d.b.a. D.R. HORTON SCHULER DIVISION (“Petitioner”), filed a petition on January 24, 2007 pursuant to Chapter 205, Hawaii Revised Statutes, as amended (“HRS”), and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended (“Commission Rules”) to amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 1,525.516 Acres in Ewa District, Island of Oahu, Tax Map Key Nos. (1)9-1-017:004(por.), 059, and 072;(1) 9-1-018:-001 and 004, which was amended on September 19, 2008, to develop a mixed-use, transit-ready urban community that includes 11,750 homes and related commercial development.

2. On December 3, 2008, the Friends of Makakilo (“FoM”) filed its petition to intervene in the above-titled case, and was granted status as an Intervenor on traffic, education, open space, agricultural lands, and sociological issues on January 8, 2009.

3. On December 10, 2008, Haseko (Ewa) Inc. filed its petition to intervene and was granted status as an Intervenor on regional drainage issues on January 8, 2009.

4. On March 19, 2009, the first hearing was held. Subsequent hearings were held on March 20, April 19, May 15, June 5, June 25, June 26, 2009

5. On August 5, 2009, FoM filed a “Motion to deny the Petition; or in the Alternative to Declare the Petition Deficient, Allowing the Petitioner to cure the Defects, Including Amending the EIS, with the Date of Filing Changed to the Date the Commission Determines that the Defects Are Cured.” This Motion was based upon the repeated refusal of the Petitioner to revise the Petition into two ten-year phases of development with accompanying maps as required by HAR 15-15-50(c)(20).

6. On August 28, and by a written order dated September 30, 2009, the Commission granted in part Friends of Makakilo's Motion and determined that the Petition was defective or deficient.

7. Nearly two years later, on May 18, 2011, Petitioner filed its Second Amended Petition to cure the deficiency of its First Amended Petition.

8. On July 25, 2011, Senator Hee and the Sierra Club filed their petitions for intervention pursuant to HAR § 15-15-52(d). That same day, Petitioner filed its Third Amended Petition that excluded from the Petition Area approximately 28.328 acres of land that were or scheduled to be conveyed to the State of Hawaii for Kualaka`i Parkway.

9. On September 9, 2011, the Commission granted Sierra Club's petition to intervene and granted Senator Hee's petition to intervene solely in his individual capacity.

10. The Commission held hearings on the Third Amended Petition on January 5, and 19, 2012, and on March 1, 2, 15, and 16, 2012.

11. On May 22, 2012, the Commission held a discussion on writing briefs on the applicability of Article XI, Section 3 of the State Constitution regarding Important Agricultural Lands. On May 24, 2012, the Commission mailed the Order Granting Motion for Leave for the Parties to Submit Written Legal Briefs and for Hearing.

12. On June 8, 2012, the Commission held an action meeting in Honolulu, Hawai'i, to consider the Petition. At the meeting, the Commission received oral arguments from the parties. Thereafter a motion was made and seconded to grant the Petition subject to conditions. There being a vote tally of 8 ayes and 1 nay, the motion carried.

13. On June 21, 2012, the Commission voted to adopt the Findings of Fact, Conclusions of Law, and Decision and Order which transferred the Ho’opili property from the Agriculture district to the Urban district.

Section II. REASONS FOR FILING THE MOTION:

First Reason

14. As will be detailed and documented below in Section V, the Land Use Commission was greatly concerned about freeway traffic and the lack of clear information it was receiving. They had good reason. Lawyers for the Petitioner offered an outdated Traffic Impact Analysis Report (TIAR) for presentation and discussion at the hearings, and when told to present a current TIAR, they offered a version that covered only the first half of the twenty-year build-out period. They then objected to it being the basis for testimony because another was in preparation. Commissioners also found the testimony of State DOT witness, Alvin Takeshita evasive and unsettling. The Chair questioned whether the State Department of Transportation could be trusted. In the Commissioners’ closing comments before voting, three Commissioners expressed grave concern about freeway traffic, and they specifically wrote into the Conditions the requirement that a new Transportation Impact Analysis Report (TIAR) be prepared, and that three agencies—the State Department of Transportation (DOT), the City Department of Transportation Services (DTS), and the City Department of Planning and Permitting (DPP)—accept the TIAR before the Petitioner could file its Application for Zone Change. To make this requirement of approval from all three crystal clear, the three agencies were specifically mentioned three times in the single 152 word paragraph of Condition 10b.

15. On July 16, 2014, Cameron Nekota, Vice President of D.R. Horton, the Petitioner, wrote to the Land Use Commission, stating that D.R. Horton had satisfied Condition 10b and was proceeding to file its Application for Zone Change.(Exhibit 1) He submitted letters from State DOT, City DTS, and City DPP as evidence. (Exhibits 2-4) Nekota's letter however did not state the truth. The letter from the City DTS said nothing whatever about acceptance of the TIAR, and instead attached a copy of an earlier letter which contained a number of DTS's further requirements for the TIAR that had never been addressed.(Exhibit 5) It appears that D.R. Horton knowingly and intentionally submitted false evidence to the Commission. Not suspecting that they had been hoodwinked, the LUC office did not carefully read the submissions. D.R. Horton then moved ahead with their application for zone change. In doing so, and in all its subsequent actions, D.R. Horton and all working with them, acted in direct contradiction to Condition 10b.

16. These actions of non-compliance with Condition 10b, in themselves, provide grounds for this Motion to Show Cause, requiring the Land Use Commission to re-open the Ho'opili case. However, there is also a much, much greater problem. Condition 10 also has wording that the TIAR must "include the most current updated traffic data, and shall provide and validate all recommended mitigation measures for potential project-related traffic impacts on State and City facilities." While the new TIAR certainly is replete with "new" traffic data and does contain recommendations for mitigations, the numbers used in all of that data do not at all correspond with official counts in cited sources, and this necessarily results in claimed outcomes that are purposefully misleading, meaningless fabrications.

17. Although, like other matters in this section, this topic will be detailed and documented below in Section V, let us look briefly at these facts.

	2007	2035 (without Hoopili)	2035 [with Hoopili]	Percentage of Island-wide Inventory
Households	22,048	(39,669) <i>17,621 increase</i>	[51,469]	7% (9%) [11%]
Employment (Jobs)	29,167	(94,353)	[101,353]	5% (14%) [15%]

Table 4.1: ORTP 2007 vs. 2035 socioeconomic data.

18. Table 4.1 of the TIAR, above, lists 22,048 houses as the number existing in the ‘Ewa-Kapolei region for Base Year 2007. The Oahu Regional Transportation Plan 2035 (ORTP 2035) lists 25,800 houses in the Ewa-Kapolei region for 2007. (Exhibit 7) The TIAR is thus listing the base-year number of homes as 15% lower than the source the numbers must be taken from.

19. The number of houses listed in the TIAR for ‘Ewa-Kapolei at 2035 full build-out is 39,669, while ORTP 2035 lists that as 57,100. (Exhibits 7) This is a huge 31% undercount.

20. Growth over the period is also badly undercounted. Table 4.1 shows growth from 2007 to 2035 as 17,621 homes, while ORTP 2035 lists it at 31,300 homes, (Exhibit 7) and the ‘Ewa Development Plan, which is also cited as a source, lists an increase of 34,805 homes (not including Ho’opili). (Exhibit 8) The growth number in the TIAR is thus between 46% and 50% less than the growth anticipated by the sources!

21. Worse yet, for freeway consideration, it is not clear if future housing increases for Central O’ahu and the Wai’anae Coast have even been considered in the TIAR. These areas

also feed the H1/H-2 merge--the principal point of congestion—and would almost double the over-all new housing numbers from Ewa-Kapolei, and double the traffic. (Exhibit 7)

22. If these base numbers and growth numbers are undercounted or not included at all, all the projections for traffic will necessarily be undercounted and completely unreliable.

23. The new TIAR was created for D.R. Horton by Austin, Tsutsumi, & Associates. This report was completed in April of 2013 and revised on May 30, 2014. As a mitigation of the freeway standstill that Ho'opili would cause, it recommends that Horton create, at its own expense, one more lane in each direction between Kunia Road and the Wai'awa Interchange (another name for the H-1/H-2 merge), and it recommends the completion of ORTP Project 29 which would continue that lane through the merge, and beyond to Aloha Stadium. (Exhibit 9) The TIAR claims that, after completing the addition of this one lane in each direction, the Level of Service (LOS) on the freeway will, by 2023, return from LOS F (standstill) to LOS C and D, (eight car-lengths between cars or better). (Exhibit 10)

24. The real-world experience of the tens of thousands of H-1 commuters who currently inch along in snarled traffic--which is alternately rated as the worst, 2nd worst, or 3rd worst in the nation—offers convincing evidence that this simply can't happen. There are currently roughly 95,000 houses on the Leeward and Central sides of the H-1/H-2 merge. These homes feed five lanes at the merge itself, and the traffic rating is deep into LOS F, backed up 4 ½ miles on H-1, and two miles on H-2 on a good morning. The new TIAR asserts that even though we build enough new homes to almost double the traffic on the freeway, adding just one lane will solve all current and future problems and will vastly improve peak hour traffic

from the current LOS F to relatively free-flowing LOS C and D. If 95,000 houses feeding five lanes currently causes LOS F and a back-up of four and a half miles on H-1 and two miles on H-2, how is it possible that 165,000 houses feeding only six lanes will miraculously return the freeways to LOS C and D. The answer is not found in the Rail, which, if full, can carry only 7,800 an hour. One must conclude, then, that the numbers used in the TIAR were cooked.

25. In summary, by starting with numbers that are 15% lower than reality, and then counting growth at only one half of the houses already zoned and vested in 'Ewa, while not counting any of the existent houses or houses already zoned in Central and on the Wai'anae Coast, it is pretty easy to forecast that adding one lane and the rail would cause the freeway problems to disappear and the level of service to rise from F to C and D. But while this may be fine in a fantasy world, it is a crime against the tens of thousands of current commuters on the H-1 and H-2 who will see their travel time double and more, and their lives turn into a daily hell, a curse they cannot but watch pass on to future generations of commuters.

Second Reason

26. How is it possible that this happened? Primary approval of the TIAR lay with the State DOT Highways Division chief. This was Alvin Takeshita, who testified for the DOT at the Land Use Commission hearings in 2012. In February of this year, Mr. Takeshita was fined \$5,700 by the Ethics Commission for accepting gifts from companies, all of which could profit greatly from approval of the Ho'opili project. (Exhibit 11-12) Mr. Takeshita has since retired from the State DOT. It is not known that Mr. Takeshita approved the TIAR because of these gifts. Governor Abercrombie became a strong proponent of the Ho'opili development, and

kept a tight rein on his departments, and Mr. Takeshita could have just been “doing his job.” Whatever the case might be, Takeshita secured approval of DOT for the TIAR, and sent it on to the city Department of Planning and Permitting and the Department of Transportation Services.

27. The Directors of both departments work directly under the Mayor, and, like Takeshita, it was their job to carry out his wishes. Mayor Caldwell was elected because of the \$3.5 million advertising support of the Pacific Resource Partners (PRP), a consortium of developers and unions, many of whose members have testified at every stage in support of the project. PRP’s \$3.5 million also bought every department under the Mayor. In Section V below, I will detail how DTS, DPP, and the Planning Commission, all mayoral appointees, refused to even look into whether Horton had fulfilled Condition 10b.

28. The City Council also refused to hear of problems. Following the December 2014 approval of the Planning Commission, in February of 2015, the City Council took up the Horton’s application for zone change as Bill 3. I wrote all Council members telling them in detail how D.R. Horton had not fulfilled Condition 10b which required that they get acceptance of the TIAR from DOT, DTS, and DPP before filing their Application for Zone Change, and I wrote them about the major problems I had discovered in the TIAR. (Exhibit 13) I asked them repeatedly for appointments to discuss the matter. Only four of the nine were even willing to meet with me. I urged them to call in DTS and force DTS to prove that one additional lane on the freeway would solve all of its problems. To my knowledge, they did nothing.

29. It will be shown below that the Council Members in truth *could not* do anything to oppose the project. Indeed, there does come a point where developers and unions have spent so much money and time courting Council Members and other government officials, that

government “for the people” can no longer work. The Council Members all read disclosure statements before voting, telling of their connections with the D.R. Horton. What they neglected to tell was of the other huge contributions by contractors, unions, Pacific Resource Partners, cement companies, lawyers, and banks, who would profit either directly from a Yes vote on Ho’opili, or were associates of these direct beneficiaries who had been used by them to get around limits of contributions to campaigns of Council Members. As will be detailed in Section V below, in the case of every Council Member, these contributions comprised such a major part of the campaign funds that they couldn’t *afford* to vote No, or to even show any recognition of problems with the project. Their simple goal at the hearings was to minimize damage to them by passing Bill 3 before the public became aware of the calamity it would bring to them. Every vote at the five hearings held was unanimous in support of the project.

30. The City and County has the obligation to enforce all Conditions of the Land Use Commission. They have shown by the actions of DTS, DPP, the Planning Commission, and of the City Council that they pick and choose the conditions of the Land Use Commission which they will enforce. There will yet be many check points at which the City can write agreements, and enforce or modify them to protect the people. However, the City has shown that it is incapable of standing up to or refusing the wishes of D.R. Horton, and they cannot be expected to change in the future.

31. The second reason for filing this motion, then, is that the City and County government has reached a point where its obligations to those in the building industry are so compelling that it *truly cannot* fulfill its obligation to protect the people. With no remedy in the offering, and D. R. Horton free to insist on its will, we are left with no recourse except to return to

the Land Use Commission asking that the LUC require the D.R. Horton to show cause why this Ho'opili land should not revert to its former Agriculture designation.

Third Reason

32. The third reason for filing this motion is concern about stormwater. Condition 11 reads: "Prior to any subdivision approval, for lands that may drain onto adjacent Navy lands, the Petitioner shall provide a master drainage plan for review by the State Department of Health ("DOH"), the State Office of Planning ("OP"), and DPP, that either includes a letter of consent from the Navy allowing drainage onto its properties or a specific explanation of strategies to be employed so that drainage onto Navy lands is not necessary."

33. As recently as July 2014, D.R. Horton's Application for Zone Change described an off-site detention basin for stormwater, and noted that "an overflow from the detention basin would discharge to the West Loch of Pearl Harbor. The overflow from the detention basin would have to cross Navy property, and permission from the Navy would be required. While the Navy has rejected any considerations to allow increased runoff to cross Navy land to date, the Applicant will continue to explore this option in the future."(Exhibit 14) Reliable sources tell me that the Navy will not change its stand and allow the stormwater to run over its property. Members of The Friends of Makakilo believe that the only other route for stormwater runoff is the connected series of retention basins created for the Kalo'i Gulch runoff between the property and the ocean. One member of the Friends is a recognized native practitioner whose traditional cultural practices, protected by Condition 14 of the LUC Decision and Order, could be negatively impacted by Horton's redirection of the water, should this

added stormwater cause the lowest of the connected basins to overflow into the ocean, bringing pesticides and other poisons in the run-off water that might kill the fragile *limu* living in the area. Forty years ago, 'Ewa beach was so filled with thickets of *limu* one or two feet high, that it was difficult to reach the ocean. Today that is all gone. Small areas survive underwater, near fresh water springs coming through the karst. The poisons coming with stormwater-overflow could easily kill them.

34. We are in the period now where the next step for D.R. Horton should be applying for subdivision approval, so Horton should be ready to detail their alternative. The Friends of Makakilo ask the Commission to require Horton to present its plans for stormwater run-off, and to restrict the developer from re-directing its stormwater run-off into the Kalo'i Gulch system of retention basins unless it can prove that in a hundred-year storm, the retention basins already created can hold all of the water and keep it from flowing into the ocean.

Fourth Reason

35. Condition 22, "Notice of Change of Ownership," requires that D.R. Horton 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, any time prior to completion of the development of the Petition Area. An article in *Pacific Business News* on September 23, 2014 reported that Horton was in negotiations to sell the "Ho'opili Gateway," a noncontiguous piece of the Ho'opili property between Farrington Hwy. and the freeway, for \$33 million.(Exhibit 15) A February 10, 2015 article in *Pacific Business News* told that MacNaughton Group and partners were buying the property. (Exhibit 16) A March 31, 2015 article in *Pacific Business*

News told of how Horton gave five acres of the property to the Hawaii Humane Society. (Exhibit 17) A May 31, 2015 article in *Pacific Business News* told of their giving an acre to the Waianae Coast Comprehensive Health Center. (Exhibit 18) D. R. Horton did not notify the Land Use Commission of any of these actions as required by Condition 22. They told the world of their actions. The world mattered. Condition 22 of the LUC did not. The sale of the Gateway property would be an instance of flipping profit for great profit after development approvals. It will be shown in Section V that Horton also made representations to the Land Use Commission that it would not flip property, but rather would develop commercial space before selling it.

Fifth Reason

36. Referring to *HRS § 205-17(6): The representations and commitments made by the petitioner in securing a boundary change*, paragraph 27 on page 165 of the Decision and Order states: “The Commission will require that Petitioner abide by the representation and comments made to the Commission during this district boundary amendment proceeding.” During the hearings, much was made by Horton of the fact that Aloun Farms and Jefts Farms would be moving to Galbraith Estate, the former Del Monte pineapple land near Wahiawa. The two farmers would leave 1555 acres in ‘Ewa and share 500 acres at Galbraith. Our witnesses testified about the huge problems that would be encountered there, among them, that crops that required the abundance of sunshine found in the lowlands would not grow in that rainy climate. Horton’s witnesses insisted that it was a fine trade-off. Today, the Galbraith land stands empty. The well upon which the whole project depends was repaired, but broke on the same day, and there is no money for further repairs. No leases have been given. It is said that

Aloun Farms asked for 300 acres, but is in line to get only 150. Further, it is much more clearly recognized today that crops are geared by their DNA to flourish at certain levels of altitude, with certain levels of rain and overcast skies, and with certain elements in the ground. They don't grow well when out of their preferred setting. The Ho'opili acreage is Oahu's last remaining lowland farmland in a primarily sunny lowland area. Many believe that future generations will need it to grow sun-requiring foods should the island become cut off for some reason. More than a million people live on this island. The Commission needs to carefully review what is happening at Galbraith, and reconsider the value of the current farms to provide basic foods necessary for a healthy diet for the future populace.

Section III. DESCRIPTION OF THE PROPERTY

37. The Ho'opili project consists of approximately 1,525.516 acres of land located in the 'Ewa District, Island of O'ahu, identified by the following five Tax Map Key Numbers or a portion thereof: (1) 9-1-017:004 (por.), 059 and 072; and (1) 9-1-018:001 and 004.

38. This land is currently in active agricultural production. To the north of the proposed Ho'opili project, there is more agricultural land which extends for several miles, and which the city and state have committed to keep in agriculture. To the east of the property is the idyllic rural enclave known as Hono'uli'uli. This is also the name for the entire *moku* in which the proposed Ho'opili development is situated. Farther to the east are the town of Waipahu, and the residential areas of West Loch, and West Loch Fairways. To the south of the property are the historic 'Ewa Villages and 'Ewa Villages Golf Course. To the southwest are

vacant lands being developed by the Department of Hawaiian Homelands. To the west lies the University of Hawaii West Oahu. Most of its lands remain in agriculture.

39. The project land currently provides a major green belt separating the first and second cities of O'ahu. Once the farmland is gone, the only thing separating the housing of the two cities will be busy Fort Weaver Road.

40. From times far in Hawaiian antiquity, this land has been continuously used for agricultural purposes. In more recent times it was leased to the 'Ewa Plantation Company/Ewa Sugar Company and the O'ahu Sugar Company for sugarcane cultivation. This is the last undeveloped portion of what was called the Golden Triangle in sugar times, the best of all sugar lands. It constitutes 32% of the Oahu farmland currently producing crops for the O'ahu market.

41. In 2007, the last year records were kept, Ho`opili land produced more than 40% of Oahu's fresh broccoli, beans, romaine lettuce, and zucchini, and more than 70% of Oahu's fresh corn, cantaloupe, pumpkin, and honeydew, along with smaller percentages of a number of other crops. (Exhibit 19)

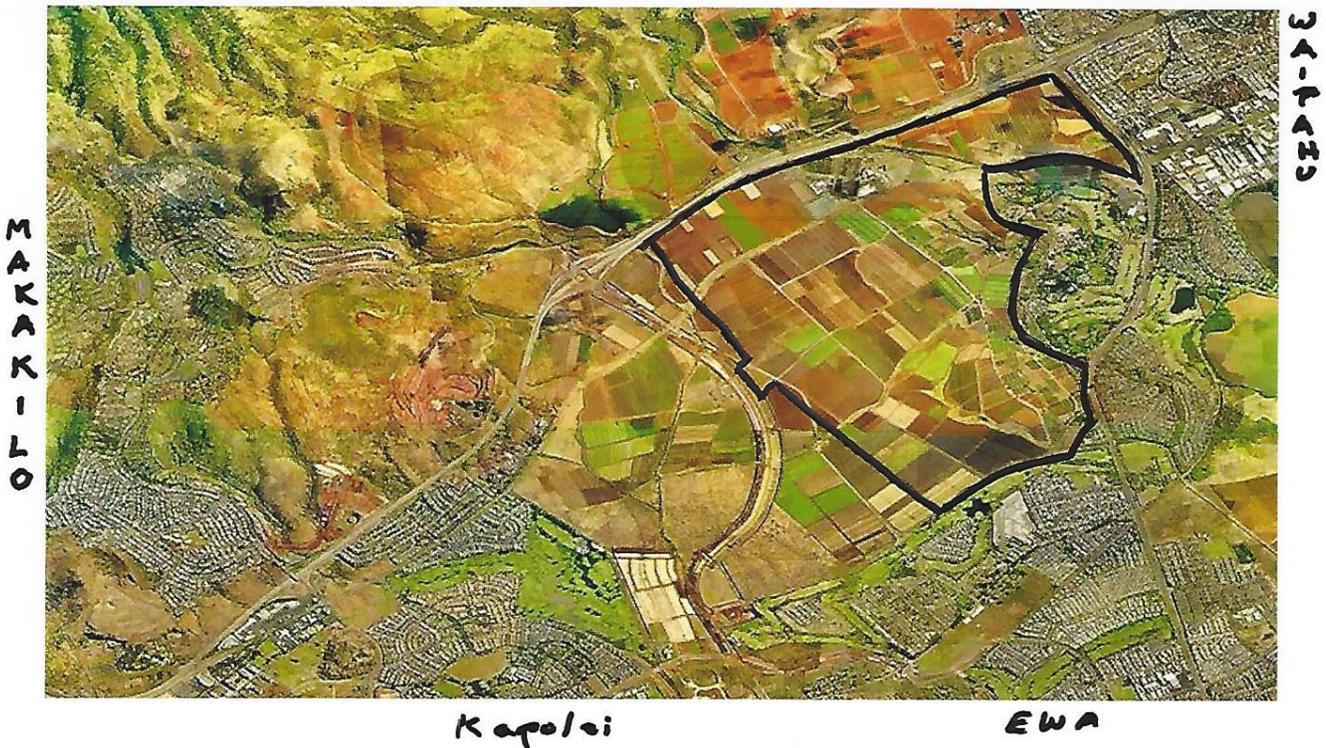
42. Close to 90% of the property is composed of high acidity clays, which are characterized by very high nutrient retention capacity, and high fertility. Fifty percent of the soils come from two groupings: Molosols and Vertisols. Of the 12 soil types on the planet, these two fall at the very top in terms of fertility and agricultural productivity. The property has just about perfect ph levels. Being in the lowlands, its crops experience no rot or mildew. There are very few insects, and little need for pesticides.

43. The Petition Area is gently sloped. Average annual daily minimum and maximum temperatures are 65 and 84 degrees Fahrenheit, respectively. The annual prevailing wind

direction is east northeast at approximately 10 knots (12 miles per hour) about 40 percent of the time. The 'Ewa Plain experiences light rainfall with a mean annual precipitation of about 20 inches per year, most of which occurs between the months of November and April. Its wells provide abundant supply of fresh water.

44. Many of our basic foods require the sun and warmth of the lowlands in order to flourish. While frequently overcast Waimanalo can produce two crops, and the less rainy north slopes can produce three, this sunny low farmland can produce four. This is the last undeveloped farmland in the sunny lowlands of Oahu.

MAP OF HO'OPILI



Section IV. CONDITIONS ORDERED BY THE COMMISSION
WHICH HAVE NOT BEEN PERFORMED OR SATISFIED

45. IT IS HEREBY 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:*

46. Condition 10. TRANSPORTATION

b. Petitioner shall submit an updated Traffic Impact Analysis Report ("TIAR") for review and acceptance by the DOT, the City and County of Honolulu Department of Planning and Permitting ("DPP"), and the City and County of Honolulu Department of Transportation Services ("DTS"). The updated TIAR shall include the most current updated traffic data, and shall provide and validate all recommended mitigation measures for potential project-related traffic impacts on State and City facilities to the satisfaction of the DOT, the DPP and the DTS. The updated TIAR shall include the construction status and timeline for the City's rail transit project, and shall specifically address the potential effects on traffic if the rail project does not proceed as anticipated. Petitioner shall obtain acceptance of the updated TIAR from the DOT, the DPP, and the DTS, prior to submittal of a change in zoning application with the City and County of Honolulu. (LUC Decision and Order pg. 172-3.)

47. Condition 11. STORMWATER.

Petitioner shall construct stormwater and drainage system improvements as designed in compliance with applicable federal, State and County laws and rules.

a. Prior to any subdivision approval, for lands that may drain onto adjacent Navy lands, the Petitioner shall provide a master drainage plan for review by the State Department of Health ("DOH"), the State Office of Planning ("OP"), and DPP, that either includes a letter of consent from the Navy allowing drainage onto its properties or a specific explanation of strategies to be employed so that drainage onto Navy lands is not necessary.

b. To the extent feasible, Petitioner shall mitigate non-point source pollution by incorporating low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping, provided that such low impact development practices do not prevent dedication of drainage facilities to the counties, to prevent runoff onto affected State highway facilities, downstream properties and receiving gulches, streams, and estuaries that connect with coastal waters. (LUC Decision and Order pg. 174)

48. Condition 14. ESTABLISHED ACCESS RIGHTS PROTECTED. Pursuant to Article XI, Section 7 of the Hawai'i State Constitution, Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices or for access to other areas.

49. Condition 22. 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, any time prior to completion of the development of the Petition Area. (LUC Decision and Order p.177)

50.. Referring to *HRS § 205-17(6)*: *The representations and commitments made by the petitioner in securing a boundary change*, paragraph 27 on page 165 of the Decision and Order states: “The Commission will require that Petitioner abide by the representation and comments made to the Commission during this district boundary amendment proceeding.” (LUC Decision and Order p. 165)

Section V. FACTS GIVING RISE TO A BELIEF THAT A CONDITION ORDERED BY THE COMMISSION HAS NOT BEEN PERFORMED OR SATISFIED

Understanding D.R. Horton

51. This section will begin by discussing and documenting D.R. Horton’s mindset of superiority and of disdain towards the Commission, the Conditions of the Decision and Order, and the City Council, which has caused Horton to do things their way, no matter what the cost to themselves or anyone else. It is the attitude that “In the development business, D.R. Horton, supported by its friends, runs this town, and everybody better just fall in line.”

52. This became obvious back in 2009 when Horton was asked 14 times by the Commission to rewrite their petition so as to divide the project into two ten year periods, as the law required. Rather than comply with this relatively simple request, they stonewalled again and again, on the last day even accepting their entire case being thrown out of the LUC, rather than capitulate. Look at the historical facts:

53. On January 24, 2007, Petitioner filed this Petition with the Land Use Commission, along with an Environmental Impact Statement Preparation Notice.

54. On February 22, LUC Executive Director, Anthony Ching, wrote Mr. Benjamin A. Kudo commenting on many things that needed to be addressed in the EIS, including the need

for a schedule for development of phasing increments and a map, pursuant to 15-15-50 (c)(19).(Exhibit 20)

55. On March 27, 2008, LUC Interim Executive Officer, Rodney Maile, in a letter to Mr. Vincent Shigekuni on the Draft EIS, noted that the Final EIS needed to include a development timetable and map of incremental phasing. (Exhibit 21)

56. And on April 8, 2008, the Office of Planning wrote Mr. Vincent Shigekuni requesting the same. (Exhibit 22) No timetable or phasing map was included in the FEIS.

57. The Office of Planning noted the lack of a development schedule in its oral comments to the Commission on the proposed FEIS.

58. The Office of Planning brought the topic up again in a meeting with the Petitioner and believed the Petitioner had agreed to submit an incremental development schedule and plan. OP later states, "The Petitioner believed otherwise."

59. On October 28, 2008, Counsel for the Office of Planning repeated the request, and expressed his opinion that an incremental development schedule and plan was necessary for a complete petition. The petitioner replied with a polite refusal.(Exhibit 23)

60. On December 16, 2008, the Office of Planning filed a Motion to Declare Petition Deficient.(Exhibit 24) Petitioner asked the Office of Planning to withdraw its Motion, and promised to bring to OP an explanation of the phasing and a map. The Office of Planning withdrew its motion. When the phasing material arrived, however, the Office of Planning found it to be minimal, and deemed it to be unsatisfactory.

61. On December 24, 2008, Imanaka, Kudo & Fujimoto, attorneys for the developer, filed "D.R. Horton-Schuler Homes, LLC's Response to the Office of Planning's Motion to Declare

Petition Deficient, a sixty-one page document. This response argued that the petitioner was not required to submit the schedule and map. (Exhibit 25)

62. On April 16, 2009, the Commission voted to defer the hearings scheduled for the two days to give the Petitioner time to regroup and come back to the Commission with more substantive information, a more complete record. At that time, Chair Kanuha noted that “the question has been raised in my mind as to whether or not this should more appropriately be an incremental petition.” He asked the Petitioner to give that some consideration during the regrouping period. (Exhibit 26) Nothing came of it.

63. On June 5, 2009, the closing day for the Petitioner’s direct, several people asked about a schedule for phasing.

64. Commissioner Reuben Wong brought up 15-15-50 (c)(19). Mr. Benjamin Kudo answered him, giving great detail about the historical background for the rule.

65. Mr. Kudo then asked Mr. Mike Jones to tell how incremental districting of the project would affect his ability to proceed. Mr. Jones spoke of the delay for much needed housing and jobs, and the costs of delays, and the need to be flexible for transit. (Exhibit 27)

66. Mr. Bryan Yee asked Mr. Jones, “Do you remember submitting a development schedule setting what’s going to happen in the first five years?” Mr. Jones answered, “Yes, I think that’s part of my slide presentation actually.” Mr. Yee, asked, “That’s as detailed as you have with respect to a development schedule, correct?” Mr. Jones answered. “Yes.”(Exhibit 28)

67. Later Mr. Yee asked, “Do you know where the first 650 homes will be built?” Mr. Jones answered, “No, not at this time.” Mr. Yee said, “Bruce Plasch proposed that the land be developed gradually. Do you have a schedule for the gradual development of the land?” Mr.

Jones responded, "I don't know what he means by "gradually." Again, we don't have a schedule. The houses could be built in different areas within Ho'opili."

68. Mr. Yee continued, "So if Mr. Plasch deferred to you as to what you're going to do or whether you're actually going to gradually develop the property in order to allow the agricultural tenants to stay as long as possible, you don't have anything to commit to at this time?" ... Mr. Yee re-stated his question, "But you don't have a schedule or a list of the areas?" Mr. Jones answered, "No."(Exhibit 29)

69. Later Commissioner Lisa Judge asked, "And I think your counsel told us just earlier after ten years you expect to be 40 percent complete, is that correct?" Mr. Jones answered, "Yes." Commissioner Judge said, "So given that information, would D. R. Horton be willing to submit an incremental development plan based on our rule 15-15-78?" Mr. Jones answered, "I really don't feel that's appropriate at this point in time. Again, just because, again I think that the delays that having an incremental zoning would put on the Project, with the timing of getting permits and everything else I think it's critical we are able to roll through the Project, keep flexibility as far as where we are starting housing, where we're starting jobs. So again, it's our thought that, you know, incremental really doesn't make sense in this particular site."(Exhibit 30)

70. Later, Commissioner Normand Lezy asked, "At any point in time during your planning process, was incremental development given any serious consideration?" Mr. Jones answered, "By us? Not really, no." Commissioner Lezy continued. "There was no sort of evaluation done of cost benefit or anything along those lines?" Mr. Jones answered. "No." (Exhibit 31)

71. From the citings above, it is clear that the Petitioner at no time had any intention of submitting the required schedule and map. Until the end, D.R. Horton thought it could push its weight and win. They went down with the ship rather than capitulate. The Commission voted to declare the Petition deficient.

72. It would be two years before Horton would return to the Commission with a Petition that divided the project into two ten year phases, with accompanying maps, as required. When they came back in 2011, Horton had become obsequiously compliant. They had learned their lesson. Their new stance of concern to be accommodating proved successful. At the end of the 2011-2012 hearings, the Commission approved the project.

73. Once the project was passed-----Horton themselves had a few lessons to teach.

The Concerns of the Land Use Commissioners about Freeway Traffic

74. But, before moving on to that, in order to keep events in time sequence, let us look at the closing days of the 2011-2012 LUC hearings on Ho'opili, and let us take note of the great concerns expressed by the Commissioners about traffic on the H-1 freeway. They had reason for their concern. At the end of the hearings in 2009, the Commission had received testimony from former state DOT Director, Brennan Morioka, stating that no mitigation means were known that would solve the freeway problem. (Exhibit 32) In 2011-2012, witnesses from state DOT were very evasive. Horton offered a TIAR as a major Exhibit, and then declared it to be out of date and useless.(Exhibit 33)

75. For some months during the hearings, the mitigation offered for the gridlocked freeway was adding a fifth lane from Ho'opili up to, but stopping before, the H-1/H-2 merge, which would result in five lanes instead of four narrowing down to three to get through the merge. Without a fourth lane going through the merge, this additional fifth lane would cause a far worse traffic jam than just four.

76. When asked if it was possible to build a fourth lane through the H-1/H-2 merge, DOT traffic head, Alvin Takeshita, said it had not been studied, but he believed there were possibilities. (Exhibit 34) This answer was unsettling.

77. Commissioner Lisa Judge, herself a county planner from Maui, further grilled Alvin Takeshita, nailing down the process that would follow LUC approval and getting his agreement on the need to have the TIAR and a Memorandum of Agreement "agreed upon and completed prior to the submittal of a change in zoning application." (Exhibit 35)

78. Many commissioners were still wary of State DOT. Chairman Normand Lezy asked Professor Prevedouros, "So I guess my last question would be, do you have faith in the state as far as vetting the traffic situation and providing their opinion as to whether or not there can be effective mitigation?" To which the Professor answered: "It's a very strong question. But I think my answer would lean to No as far as faith. (Transcript LUC March 2, 2012 pp. 93-94)

79. The Commissioners wanted to put Conditions into the Decision and Order that would require a number of departments to take responsibility for the traffic problem. On the day the Commission voted for the project, Commissioner Heller made these comments and a motion: "One of my other concerns is traffic and transportation issues. I have very serious doubts about the adequacy of the traffic studies that have been completed and the sufficiency

of the mitigation measures that are being proposed. In particular, the proposed Project will clearly affect traffic on the H-I Freeway. And the concept of fixing that by repainting the lane lines raises a lot of questions. I'm not a traffic engineer and I don't claim to be an expert on traffic mitigation. But it seems to me that having more cars on the same physical pavement has to result in more traffic problems regardless of whether or how you repaint the stripes. I do want to make sure those issues are adequately addressed. Therefore, one of the conditions that I would like to suggest as an amendment is the specific requirement of a new TIAR based on reasonably current data addressing the proposed phasing of the development, and proposing mitigation measures that are acceptable to the state Department of Transportation and the city Department of Transportation Services." (Transcript LUC June 8, 2012 Pp. 158 - 159) This was formalized as a motion.

80. Commissioner Heller was followed by Commissioner Jaye Makua, who said, "The traffic is also a concern of mine. Alvin Takeshita said that "D" service level [LOS D] is considered acceptable. Right now there are many areas that are already F. I just heard on the radio the other day that we were just, Honolulu was just rated the worst city in the nation as far as traffic. He also said that quality of life is considered when making these decisions to support a Petition. But it was also confirmed that they never surveyed -- there was no survey done of the residents in the area. When asked by Commissioner Heller if there was contingency plans if the rail does not proceed, he answered that would have to be worked out later. For me there's just a lot of pukas, for lack of a better term. And we're asked to make a leap of faith that all these things will be worked out and that, you know, 12, almost 12,000 homes which have the average of three people, so 30,000 people won't be driving on that road and that won't impact, negatively impact these highways. For me that's a huge leap of faith and

one that I in conscience cannot make today. She voted No, opposing the project because of the traffic. (LUC Transcript June 8, 2012 pp. 162-163)

81. Commissioner Lisa Judge, in her closing comments, said: "I am deeply, deeply troubled by the traffic issue as you've heard from all of our Commissioners. I'm not a resident of O'ahu. But from the testimony and just from watching the television and watching the jams, the traffic is very bad on H-1. And I can say that I was very disappointed in the state DOT's testimony in really not giving us any answers or any mitigation of how they intend to solve that. I think Commissioner Heller's amendment regarding the TIAR is a very good one." (Transcript LUC June 8, 2012 pp. 170-171)

82. From all of this, it is clear that the Commissioners were extremely concerned about the freeway situation, and that they did not trust state DOT on traffic. They wanted another agency to have equal voice. That entity was city DTS. They put it into the motion, and Condition 10 b states it clearly: "Petitioner shall obtain acceptance of the updated TIAR from the DOT, the DPP, and the DTS, prior to submittal of a change in zoning application with the City and County of Honolulu."

83. It has been shown, then, that this Condition was a fundamental requirement, an essential part of their decision to approve the project, and a critical component of the Decision and Order.

Horton Makes a Bold Move

84. All of this was wasted breath and wasted effort. Once Horton had their project approved by the Land Use Commission, they thought they were beyond the touch of the LUC. They commissioned a TIAR that embodied every worst fear of the Commission members.

85. Condition 10b required that they get acceptance of the TIAR by DOT, DPP, and DTS before they could apply for zone change. But when they were ready to apply, DTS had not provided a letter. They knew they needed three letters, so, flaunting their new invulnerability, they simply faked the one from DTS, expecting no one at the Land Use Commission to notice. (Exhibit 1) Staff at the LUC was busy when Horton's cover letter with the three acceptance letters from DOT, DPP, and DTS came in. Never suspecting Horton would send a bogus letter, they published it on line without reading it.

Executive Branch of the City Unwilling (Incapable) to Act

86. How it was discovered begins the tale of City's executive branch being so committed to the project that nothing would be allowed to slow or stop its approval. In August of 2014, I was surprised to hear that Horton was moving ahead with their application for zone change, many months before the Supreme Court would hear the Ho'opili case. I called Tim Hata at DPP to ask how they could do this, since the Supreme Court case could reverse everything. He was stunned to hear that the case was still active. On August 25, 2015, however, he wrote me that Corporation Counsel had advised him that there was no problem with Horton filing before a decision from the Supreme Court. (Exhibit 36)

87. It then occurred to me that Horton might be doing other things that were questionable. I checked the Land Use Commission website and found that the supposed DTS “letter of acceptance,” dated February 4, 2014, was really a DTS letter to Austin Tsutsumi & Associates, creator of the TIAR, saying DTS had no further comments, but still needed that earlier comments in a September 11, 2013 letter be answered. I realized that if DTS still had unanswered questions, they could not be “accepting” the TIAR. Having heard that Tim Hata was working on a “Director’s Report” to send to the Planning Commission for their upcoming hearings, I wrote to him again on September 19, 2014, telling him of Condition 10b, and that the DTS had not accepted the TIAR, and telling him of the great traffic problems on the H-1 freeway that had not been addressed.(Exhibit 37) I got no response.

88. On September 22, 2014, I wrote DTS asking for a copy of the September 11, 2013 letter, which they sent to me the next day. It had three pages of questions about the TIAR, and many of the questions indeed concerned substantial problems that needed to be corrected. (Exhibit 5) I wrote DTS that same day asking if, up till that time, there had ever been any response or responses to the questions asked in that September 11, 2013 letter. I also wrote, “Also, if DTS ever wrote a letter to Austin-Tsutsumi or to D.R. Horton accepting in full the revised TIAR, could you please send me a copy of that?”

89. After several reminder notes, a month later, October 22, 2014, I received a letter from DTS stating that “To date, they [Austin, Tsutsumi & Associates] have not responded to DTS letters dated September 11, 2013 or February 4, 2014.” (Exhibit 38) If they had not responded, and DTS still had open questions, there was no way that DTS could have accepted the TIAR.

90. The paragraph continues, “As the Department of Planning and Permitting is the accepting agency for the City, DTS has not sent a letter of acceptance to ATA. (Emphasis mine.) Interestingly, the DTS letter also included *all* of the correspondence relevant to the subject. *None* of it, of course, mentioned acceptance of the TIAR whatsoever. (Exhibit 38 a-m)

91. In the weeks to follow, I wrote to DTS and DPP asking for meetings to discuss the problems caused by Horton’s non-compliance and to discuss the problems the TIAR would cause for commuter traffic on H-1. Neither would meet with me. I also wrote a long letter to the Planning Commission chair, Kai’ulani Sodaro, explaining the critical problem caused for the Planning Commission by Horton in filing the application for zone change before securing the acceptance of the TIAR by DTS. What I explained was that clearly Horton had not gotten DTS acceptance before the date of filing. And since Condition 10 b required that acceptance be secured *before* filing, the second after the application was filed, it was already too late to correct the wrong. There was no possibility to remedy the problem in the present. Further, since there were no instructions accompanying the Conditions for remedying non-compliance, there was no body other than the LUC—which had written the Conditions—that was empowered to come up with a remedy and apply it. I wrote the Planning Commission that their only alternative was to defer action, and refer the matter back to the Land Use Commission. (Exhibits 39). There was no response.

92. As their reason for ignoring my complaint, City officials picked up the mantra that DPP was the only agency that accepted traffic studies, and the DPP acceptance was enough to satisfy Condition 10b. When I testified on the problem before the Planning Commission hearing on Ho’opili, on December 3, 2014, DPP brought Michael Formby, Director of DTS to

testify to contradict me. He said, "I'm here to tell you today, that the Department of Transportation Services received the TIAR, revised the TIAR and updated the TIAR. My planners, my engineers reviewed, commented upon, eventually reaching a position where they were in agreement with the Department of Planning and Permitting, which also has the Traffic Review Branch within it. And, the position was that we had accepted the TIAR, revised the TIAR, and the updated TIAR. And, we communicated that to DPP, and DPP as a matter of City policy communicates the acceptance on behalf of DPP and DTS. And the reason for that policy is that DPP is accepting authority for the City. So we don't have two departments be accepting authority for one document. So, DPP is the acknowledged, accepting authority. They communicate acceptance on behalf of both departments. (Exhibit 40)

93. This statement, however, given with such assurance, was soon proved by the former Planning Commission chair, to be nothing but hogwash. For at the end of the same meeting on Ho'opili, later in the day, when the Planning Commission was voting on its own Conditions for the Ho'opili project, Commissioner Kai'ulani Sodaro, who certainly had been on the Commission long enough to know what was proper and what was not, what was policy and what was not, which department could give acceptance and which could not, said:

Sodaro: "But given the three amendments, I'd ask member Tolentino to consider. . . changing the word *should* to "*shall* be submitted prior to Department of Transportation Services," the insertion of DTS prior—oh excuse me, insert "to DTS for acceptance." Do you need me to restate that Gloria?"

Hearings reporter: Yes, please.

Sodaro: Okay. So the sentence, "Should the amendment be voted on" should read,

“the CTMP shall be submitted to DTS for acceptance prior to any subdivision which will establish a boundary of any major roadway within this development.”

(Exhibits 41)

94. The words and the meaning used by Sodaro in this Planning Commission Condition that “the CTMP be submitted to DTS for acceptance prior to any subdivision....” closely mimic the key ideas in the LUC condition 10b that the “Petitioner shall obtain acceptance of the updated TIAR from...the DTS prior to submittal of a change in zoning application with the City and County of Honolulu.”

95. Clearly then, if the former chair of the Planning Commission, who had been deeply involved in interactions with DPP and DTS for years and knew extremely well how to word a condition, was carefully correcting her wording of the Planning Commission’s condition so that it required DTS to “accept” a CTMP, then DTS does “accept” traffic studies. It must be granted then that 1) Condition 10b required DTS to accept the new TIAR, and 2) DTS does indeed accept TIARs, and 3) the DTS letter to me dated October 22, 2014, states the real truth when it says, “DTS has not sent a letter of acceptance to ATA.” Therefore, Horton’s filing an Application for Zone Change with the City before securing a letter of acceptance put them in direct non-compliance with Condition 10b.

96. It is obvious from all of this, also, that Directors of Departments would take time off and travel twenty miles to lie in public testimony in order to get the Ho’opili project approved. The city administration was simply hell-bent on getting Ho’opili zoning approved, and they would let *nothing* stand in the way.

97. It is the obligation of the City and County to make sure that *all* Conditions of the Land Use Commission are fulfilled. The city and county, however, cannot be relied upon to do this. When a project gets to the City, they do what fits into their agenda, and ignore obligations that don't. The public has no one to appeal to. The reason for this unflinching mayoral and department support for the project, unfortunately, can all be traced back to vast financial campaign support from the construction industry that compels the executive branch to do as the construction community wills.

The City Council Is Immobilized by Contributions

98. When the Ho'opili Zone Change Application reached the Honolulu City Council, it met nine more good friends, anxious to pass it. It was an extremely strange situation. One would expect that, this being the largest project ever to come before them, Council Members would be anxious to scrutinize it carefully. Instead, they took steps not to hear anything negative. At the first hearing of the Zoning and Planning Committee, Chair Ikaika Anderson gave the developer time for a full formal presentation of the project. Even though repeated requests had been made, he refused to let the opposition give a similar presentation of the problems. During the weeks the bill was under consideration, five of the Council Members would not schedule appointments with any leaders from the opposition.

99. At the final hearing, as their reason for supporting Ho'opili, one Council member after another noted the dire need for houses, even though DPP had stated that we will only need 46,800 by 2035, and 58,000 were already zoned and ready to build in Central and West O'ahu alone, and approval of the Ho'opili project would bring the houses zoned to nearly

double the number needed. They also told of the need for jobs, even though rail and the 58,000 homes already zoned would easily clear the bench and require recruiting from the mainland.

100. One of the requirements in Bill 3, the bill giving zoning approval to the project, is that D.R. Horton add one additional lane to the freeway, each way from Kunia Road up to, but not through, the H-1/H-2 merge. In a gift to the developers at the expense of a public facing ever-more-maddening traffic stall, the Bill states that 4,999 houses, almost half of the massive project, can be built before any work has to be done adding lanes to the freeway. Should Horton build 4,999 homes and find that sales have waned because the other 58,000 homes zoned in the area are also being constructed, and that the over-crowded freeway is killing interest, there is nothing that can keep them from walking away before building the 5000th house, without ever doing anything at all towards building another lane on the freeway, and with traffic backed up for ten miles during the many hours of the morning and afternoon rush hours.

101. How could a Council do such a thing to its people? The answer is plain. They were so deeply indebted to contributors in the construction industry that they were not free to do otherwise and vote otherwise.

102. Before reading further, one must realize that in the eyes of the Council, and of the Mayor and Department of Planning and Permitting, and in the eyes of HART and the Ho'opili developers, and of the whole construction industry, "Rail" and "zoning approval for Ho'opili" are one issue. This is because they all want to see large Transit Oriented Developments (TODs) around the stations on Ho'opili lands, which will feed those stations with

commuters. Council members receiving a donation from anyone who would directly benefit from either Rail construction or Ho’opili rezoning would see it as an encouragement to support bills for both.

103. With this in mind, Members of the Friends of Makakilo, Inc. have scrutinized the Campaign contributors listed at <https://data.hawaii.gov/Community/Campaign-Contributions-Received-By-Hawaii-State-an/jexd-xbcg>. To the best of our knowledge, the list we have compiled includes only companies, unions, and individuals who stand to profit from approval of Ho’opili zoning or Rail, or whose contribution would be recognized as coming from someone connected to those entities. The Friends of Makakilo, Inc. takes full responsibility for the listing. We deeply apologize to anyone who was incorrectly included.

104. Politicians need contributions in order to get elected. And they also need repeat contributions in future elections. In a democratic society, a politician is elected to represent his or her constituents, and to vote for what is best for the people. They are free to do this if their donations are from the people who elect them. Our state has limits on campaign donations in order to not let one segment of a politician’s supporters donate so much that it exerts undue pressure to vote its way. In recent decades, however, the construction industry—developers, unions, banks, contractors, truckers, cement companies, etc.—have found that if they all give, and none exceed individual limits, they can stay within the law, yet contribute a “compelling” proportion of the money a politician receives.

105. The question thus arises, at what point does a politician realize that he or she has received so much of their money from this group that he or she no longer has any choice and *must* vote in support of construction? Let us look at that. Knowing they will face re-

election challengers, would they feel they *must* vote for construction rather than lose 20% of their total contributions? Would the breaking point be at 30%, the point where that's too big a portion of fund raising to sacrifice by voting no? Is it at 40%? How many of us could vote against a project if we knew that 40% of our current campaign donations would likely go to our next competitor if we voted the wrong way?

106. Certainly there is some point at which our City Council members no longer have the "free will" that is necessary to cast a valid vote. Most honest, fair-minded people would agree that that point is probably reached well before campaign contributions reach 40%.

107. According to our study, Carol Fukunaga received 40% of her donations from people who stand to profit from a Yes vote on Ho'opili. Shocking as this might be, it is not the highest of the percentages. It is the lowest. Ann Kobayashi received 43% from building industry sources. Joey Manahan received 46%. The contributions from construction sources for the other six Council members was over 50%. Trevor Ozawa collected 57%.

108. Only five votes were necessary to pass the bill. How much did the highest five rake in? Chair Ernie Martin collected \$268,017 from people who would profit from Ho'opili and Rail, 59% of his money. Brandon Elefante, who collected only \$37,322 nevertheless got 65% of his money from these sources. The top three tied. Ron Menor, Ikaika Anderson, and Kymberly Pine all reached a dazzling 72%! Ron Menor, Ikaika Anderson, and Kymberly Pine got 72% of their campaign money from people who stand to profit directly from passage of zoning for Ho'opili and the building of Rail. How stunning! How disgraceful.

109. These are contributions for the most recent election, which were received between January 1, 2012 and December 31, 2014:

Name	Total contributions	Amount from Ho’opili and Rail	Percent from Ho’opili and Rail
J. Ikaika Anderson	\$139,518	\$100,668	72%
Brandon Elefante	\$ 37,322	\$ 24,292	65%
Carol Fukunaga	\$258,321	\$104,565	40%
Ann Kobayashi	\$ 57,136	\$ 24,450	43%
Joey Manahan	\$182,215	\$ 83,512	46%
Ernest Martin	\$451,240	\$268,017	59%
Ron Menor	\$ 48,405	\$ 34,650	72%
Trevor Ozawa	\$183,320	\$104,550	57%
Kymberly Pine	\$160,879	\$116,801	72%

It is likely that these amounts considerably under-report the total contributions linked to those that will profit from a “Yes” vote on Ho’opili and Rail, since no employer was listed for most donors, and it was not always possible to identify a spouse, relative, or employee of a principal donor.

The complete listing of campaign contributions for each Council Member for the period of the most recent election, January 1, 2012 – December 31, 2014, with donors connected with Ho’opili and Rail highlighted in yellow, is found in (Exhibits 42-50) The highlight on copies is in gray. Please take a look at these pages. You will be astounded.

110. Lest it seem that the Council Members are being picked on unfairly, let us also note D.R.Horton’s role in this purchase. Three of their officers, Robert Bruhl, Cameron Nekota, and Mike Jones; three employees, Mary Flood, Alan Labbe, and Traci Nagata; two attorneys for the case, Benjamin Kudo and Naomi Kuwaye; and a law partner Mitchell Imanaka; made contributions to Council Members, usually in multiple, smaller donations so as to ring the bell noting their gift more often. (Source is Exhibits 42-50)

	Bruhl	Nakota	Jones	Flood	Labbe	Nagata	Kudo	Kuwaye	Imanaka	TOTAL
Martin	2000	2000	2500		500	500	1350	500	550	10,100
Ozawa				500	500	500			3800	5300
Fukunaga	750	1000	1500				500		1500	5250
Pine	500	1500	2500						500	5000
Anderson	1000	500	1500				1000	500	500	5000
Manahan		1000	2000						1000	4000
Menor	200	500	500							1200
Kobayashi									700	700
Elefante		200							150	350

111. No Council Member has committed any crime by receiving these donations. No donor has committed a crime by giving within the lawful limits. But any honest, fair-minded person must conclude from all of this that the building industry has spent so much money buying votes, that the votes they have bought cannot be considered valid.

112. Council Members are required to vote on all issues. They are required to announce any conflicts of interest before the vote however. Almost all Council Members declared donations from, or a personal relationship to, D.R. Horton. Brandon Elefante also mentioned donations from three unions. Carol Fukunaga mentioned one. No other donors from the construction community were declared by any Council member, even though the huge percentages of contributions from the building community clearly required disclosure by each. (Exhibit 59) Kymberly Pine, who received at least 72% of her campaign contributions from the construction community, and who has been one of the strongest proponents of the Ho’opili project, mocked the requirement for disclosure of interest by flippantly naming her long friendship with me and with three others who testified *against* the Ho’opili project as her only four conflicts of interest. (Exhibits 60) In the mind of the Chair of the Ethics Commission, the lack of declaration of conflict of interest by the council members invalidates their vote. It is also

dishonest. And it is against the law. If the Ethics Commission chair is right, the vote of every single City Council member is invalid.

113. In light of all that has been written thus far, it should also be clear at this point, that the entire city government—the Mayor whose election was bought with \$3.5 Million in support from PRP, and his departments and the Planning Commission who all take directions from him, and the City Council—have all been corrupted by excessive donations from the building industry. Up to this time, these donations have prevented them from functioning freely in regard to Ho’opili and the Rail. What of the future? The city will have a number of opportunities to guide, redirect, require, and set limits as the project moves ahead. There is no reason to think the branches of City government will do anything other than what it has done, i.e., to bow completely to the wishes of D.R. Horton.

114. Before leaving this topic, another point needs to be made clear: Although the Council, HART, and many others view the full buildout of the Ho’opili project and of the the success of Rail as dependent on each other, this is not true. The rail across the Ho’opili property has already been built. Ho’opili is doing just fine with the pillars and raised tracks passing through it. The crops will continue to flourish as commuters enjoy the relaxing view from the train. Rail, too, will do fine with one less station. It is also not true that “so much has been invested” that the projects must move ahead. Rail has yet to put money into anything substantial that will not do just fine without the Ho’opili development. And, D.R. Horton has been careful not to put money into the property until the court cases have been concluded. The idea that “too much has been invested that would be lost” is a complete misstatement of the facts.

Fatal Problems with the TIAR

115. Returning to discussion of the TIAR. To state the problem again: we now have 95,000 houses feeding five lanes on the freeway, and this causes a daily back-up of four and a half miles on H-1, which is Level of Service F, with traffic regularly rated between the first and third worst in the nation. By 2035 we will have 165,000 homes feeding the freeway (with Ho'opili). The TIAR tells us that, with only one more lane added, all of our problems will be solved and we will return to Level of Service C and D. This is impossible, even with rail.

116. Recognizing this, Austin, Tsutsumi & Associates, created a TIAR where it would be difficult to substantiate problems because the fundamental bases upon which the TIAR is built is found in two different places and is different in each place, and, further, most of the numbers used to describe the two bases greatly disagree with the numbers in the sources cited. Throughout the TIAR, there are *hundreds* of things important things that are contradicted in other places. That sounds incredible, but it is true. They fabricated numbers, created false leads, and made sure that crucial points could not be nailed down and verified. After days of working with the TIAR, one concludes that it would be impossible for professional traffic engineers to produce anything this bad without intending to obfuscate the real problems. But it does do just what Horton needed it to do, muddy the facts and claim all problems are solved.

117. To cite one example, Traffic Analysis Zones (TAZ) are the core of any TIAR, taking up many pages. This TIAR has 2 pages, one a map showing the various zones, the other a listing of the numbers for growth of population, employment, and households. These two pages are the total contents of "Appendix F" titled "2007 and 2035 Land Use Comparison and TAZ Map."

TIAR Appendix F Table F1: Growth in Population, Employment and Household between 2007 and 2035

TIAR 2035 ORTP

TAZ	Population	Total Employment	Total Household	Projects
444	48	147	23 <u>26</u>	
445	-24	128	1	
446	-91	136	1	
447	547	209	254 <u>322</u>	
450	-260	90	0 <u>19</u>	
451	-30	516	55 <u>59</u>	
452	-110	75	0	
453	-2	130	25 <u>29</u>	
454	-183	103	3 <u>4</u>	
456	317	156	137 <u>150</u>	
457	-228	136	0	
458	-170	122	1	
459	-125	134	1	
460	-192	100	0	
461	-110	518	9 <u>10</u>	
541	3982	2899	1375 <u>1647</u>	Royal Kunia I & II
542	110	256	128 <u>26</u>	Royal Kunia I
543	99	84	101 <u>6</u>	Royal Kunia I +
544	-289	304	7 <u>8</u>	
545	2752	1973	863 <u>951</u>	Hoopili
546	4653	779	1459 <u>1607</u>	East Kapolei II
547	500	510	169 <u>137</u>	
548	-133	-429	0	
549	8790	1255	2760 <u>3052</u>	Hoopili
550	-203	68	0	
551	590	135	244 <u>362</u>	
552	-296	50	3 <u>0</u>	
553	-13	527	17 <u>13</u>	
554	-218	58	18 <u>3</u>	
555	1511	309	548 <u>312</u>	
556	-163	128	2 <u>1</u>	
557	-229	136	1	
558	-160	157	1	
564	2144	-57	859 <u>741</u>	
566	1553	647	509 <u>1276</u>	
567	1147	444	374 <u>463</u>	
568	360	374	131 <u>154</u>	
569	1304	586	413 <u>363</u>	
570	-45	28	-8 <u>7</u>	
571	3698	2127	1227 <u>1348</u>	Kamakana Alii
591	350	555	104 <u>130</u>	
597	235	1331	80 <u>90</u>	
598	95	1421	30 <u>39</u>	
599	825	855	260 <u>305</u>	
600	9459	7553	2966 <u>3268</u>	Hoopili
601	1065	85	416 <u>427</u>	
602	98	51	94 <u>48</u>	
603	3334	953	1046 <u>1152</u>	Hoopili
604	1073	3813	339 <u>419</u>	UHWO
605	93	2084	33 <u>28</u>	Part of Hoopili
606	18	38	47 <u>0</u>	
618	-1	74	0	
763	4972	852	1562 <u>1772</u>	UHWO
764	1563	1380	490 <u>540</u>	Hoopili

ORTP 2035
 Total houses
 21,258
 Total in
 Hoopili:
 8991
 Total outside
 Hoopili
 12,267
 ↑
 TIAR
 undercount:
 ORTP2035
 by 10%
 ↓

Source: Data obtained from the OMPO Model dated 2011 ?? TIAR { Total 19,178 New households 2007-2035
 Total 8,158 Hoopili, NOT 11,750
 Total 11,020 outside Hoopili

118. Notice the fourth column where the TIAR lists the growth of households by TAZ zone. Notice how many have corrected handwritten correct numbers that are found in Oahu Regional Transportation Plan (ORTP 2035) which *must* be used as the TAZ number source.

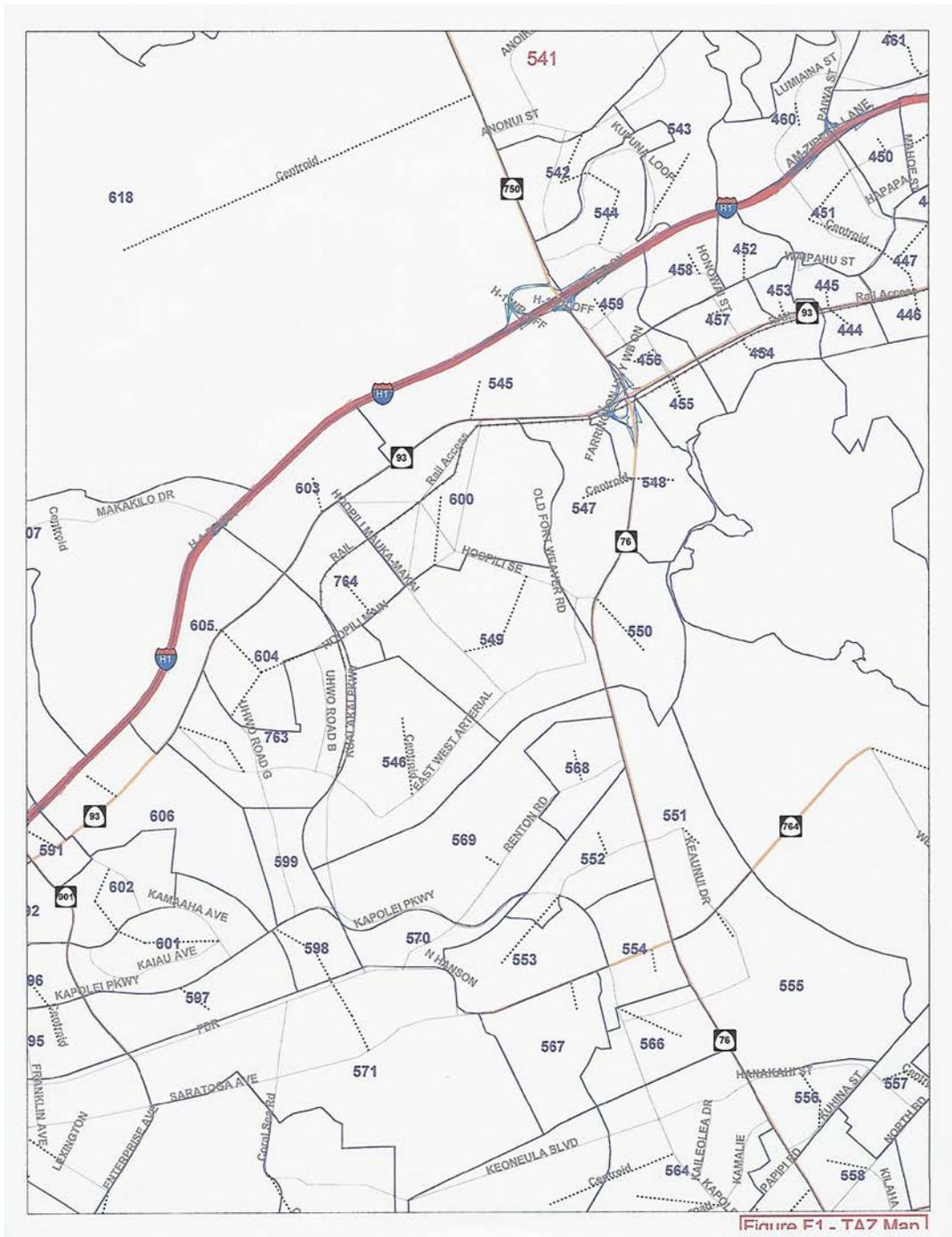
Amazingly, of the 54 TAZ zones listed, for 44 of them, the TIAR has created its own numbers. (See Exhibit 61 for the ORTP 2035 listing.) The bottom line on the page offers a false-lead come-on for those who might think the TIAR numbers aren't real. It cites: "Source: Data obtained from the OMPO Model dated 2011??" One need not bother trying to look that up.

119. Before leaving the page, notice also that the numbers for growth, 19,178, that the TIAR has invented are 10% lower than the numbers given in the ORTP, 21,258.

120. It can't even get the numbers for Ho'opili itself correct, listing 8,158, compared to the conservative number of 8,995 listed in ORTP 2035. The minimum Horton actually expects to build at Ho'opili by 2035 is 11,750.

121. On the next page, let us now look carefully at the map of the TAZ zones from which these numbers have been taken. Notice that it includes much of Waipahu, Village Park, Royal Kunia, but none of Makakilo, Kapolei West, Makaiwa Hills, Kapolei Harborside, Ko 'Olina, or Hoakalei, or even all of Mehana, a D.R. Horton project.

122. This is the basic area that is being considered in this traffic study, according to Appendix F. However, it is very different from the basic area described and fully discussed in Section 4.1 of the text where of Makakilo, Kapolei West, Makaiwa Hills, Kapolei Harborside, Ko 'Olina, Hoakalei, and all of Mehana are included, and Waipahu, Village Park and Royal Kunia are excluded.



123. Let's again look at Section 4.1, which, as you recall, has its own similar set of major problems. Section 4.1 uses the area covered by the 'Ewa Development Plan as the basis for the TIAR. As was discussed in paragraphs 17-25 above, Table 4.1 lists the number of Households for 2007 as 22,046, and the houses to be built by 2035 (without Ho'opili) as 39,669,

a difference in growth of 17,621 over those years. In those earlier paragraphs, we show that these numbers do not at all correspond with the numbers in the 'Ewa Development Plan (EDP) which is cited as the source, or with the numbers in the Oahu Regional Transportation Plan (ORTP) 2035. The EDP lists growth at twice that amount of growth, 34,805. The ORTP lists growth in the same area at 31,300.

114. in this case, Austin Tsutsumi & Associates needed a far smaller growth number, however, so they simply cut the number in half, erratically picking which areas to include. On the following page, page 24 of the TIAR, they name the housing projects they *are* counting. They are listed here with the corresponding number of houses found on page 2-10 of the 'Ewa Development Plan.

- University of Hawaii 2,660
 - East Kapolei II 2,100
 - Makaiwa Hills 4,100
 - Kapolei West 2,500
 - Hoakalei 2,095
 - Hunt's Development 4,000
- Total: 17,455

The Ewa Development Plan on page 2-10 lists an equal number of already-zoned and ready to build developments which ATA has ignored or under-reported.

Those ignored completely are:

- | | | | |
|------------------------|-------|-----------------------|-------|
| • Mehana | 1,130 | • Ko Olina | 3,286 |
| • Leihano | 714 | • Makakilo | 422 |
| • Ewa by Gentry | 658 | • Villages of Kapolei | 660 |
| • Ewa Villages | 580 | • Ewa by Gentry Makai | 1,067 |
| • Palailai Residential | 350 | • Downtown Kapolei | 4,000 |

Those that are under-reported and by how much:

• UHWO	1,380	• Kalaeloa	2,500
● DHHL	413	• Makaiwa	<u>280</u>

Total: 17,460 (See also Exhibits 6, 7, 8, 51)

125. There is no rhyme or reason for picking the projects they decided to count while not counting others. The picked and unpicked are all intermixed and scattered over a large area. Two of the ignored developments are even active D.R. Horton projects.

126. As another example of nothing fitting, nothing matching, note that the numbers for growth listed on page 23 are 17,621, yet the developments listed on page 24 total 17,455 just enough so that the numbers clearly don't jibe.

127. Note also that Appendix F undercounts the growth of its area by 2,080 (10% below the correct number) to arrive at as 19,178, and Section 4.1 undercounts its growth area by 17,184 (50% less) to arrive at 17,621. Whatever it takes—adopting a less populated area for the land base and fudging on the TAZ numbers by 10%, or taking the more realistic land base and whacking down the TAZ numbers by 50%--Horton and ATA are willing to do what it takes to get a land base in the needed 17,500-19,000 number starting range so that they can do their magic in supposedly getting real-world cars from 70,000 new homes into one lane of the freeway.

128. One gets so concerned with all of these inconsistencies, that he or she also doesn't notice that the 23,000 already zoned and yet-to-be-built homes on the Wai'anae Coast and in Central O'ahu are not mentioned in either of these sections, though they are crucial in understanding preventing the crisis on the freeway.

129. Again, why is all of this so important? The whole TIAR is built upon, and justified by, the TAZ zones that comprise the “original basis,” and how many houses are in those zones. Further, getting numbers for the original basis as small as possible, will keep all of the growth numbers through the years equally small. If the TIAR is based upon only half of the number of future houses in the ‘Ewa Development Plan area, and includes no future houses from Wai’anae and Central O’ahu, less than one-third of the new cars that will use the freeway are being counted. This allows the TIAR to make all kinds of impossible claims, like “one additional freeway lane will accommodate traffic from all future houses and bring traffic back up to Level of Service C and D.”

130. What’s at stake here? Tens of thousands of Leeward and Central people currently endure the stress of commuter traffic for more than two hours every day. This time could double, doubling loss of time with family, loss of time watching kids in sports, loss of time seeing one’s family grow up; stealing time for exercise, time for participation in community, time for leisure; taking a toll on personal health and performance at the workplace; and leaving tens of thousands of latchkey kids of all ages alone and unsupervised for twice the number of hours every day. The costs to our society are staggering.

131. Tens of thousands of individuals and businesses will face staggering losses in dollars if the daily commute expands to two hours each way. According to The Texas Transportation Institute model, today’s two hours of delay in traffic cost individuals \$7,300 a year. This will double to \$14,600. Commercial vehicles delayed in today’s traffic cost businesses \$38,500. This will double to \$77,000, enough to drive many out of business. (Exhibit 52)

132. With all of this in mind, the Friends of Makakilo hired James Watson, a Traffic Engineer and Consultant in San Francisco, California, to review the TIAR with the instructions to be scrupulously truthful, and to submit conclusions only if they can withstand all attack. Below is his final report:

July 3, 2015

Kioni Dudley, Ph.D.
92-1365 Hauone Street
Kapolei, Hawai'i 96707

Subject: Review of the Hoopili Traffic Impact Analysis Report (2014) by Austin, Tsutsumi & Associates

Dr. Dudley

Per your request, I have independently reviewed the Hoopili Traffic Impact Analysis Report (dated May 30, 2014 (revised)) as prepared by Austin, Tsutsumi & Associates. This document is herein referred to as the "ATA 2014 TIAR". My review was focused on the project impacts on the H-1 Freeway. Based on the information you have provided, I have the following comments specific to the operational analyses and travel demand forecasting:

Travel Demand Growth Projections

Based on Section 4.3 and Section 4.4 of the ATA 2014 TIAR, the background traffic volumes on the H-1 Freeway in the project area are projected to increase by 7 percent by 2023 and an additional 17 percent by 2035. The 24 percent growth between 2012 and 2035 equates to approximately 1 percent per year.

Per Section 4.1.1, the household and employment growth in Kapolei and Ewa Beach is expected to grow substantially (households and employment are the main contributing factors to traffic volume growth). Without the Hoopili project, the number of households is expected to increase from 22,048 in 2007 to 39,669 in 2035 (80 percent total or 3 percent per year). The number of jobs is expected to increase from 29,167 in 2007 to 94,353 in 2035 (223 percent total or 8 percent per year). The difference between annual household / employment growth (3 percent / 8 percent) and annual traffic growth (1 percent) requires an explanation. No explanation is provided in the ATA 2014 TIAR. From my experience, this would suggest that incorrect travel demand growth projections were used.

Between the ATA 2014 TIAR and the corresponding appendix, very little information is provided to support the travel demand growth projections. Within the 1,364 page appendix, only a 2 page section is dedicated to traffic forecasting. The brief section does not provide any detail as to how the volumes were calculated, input assumptions (e.g., modal splits for rail and bus), or model outputs. Given the low growth rate ascribed to the area, it is likely that inaccurate or unrealistic assumptions were used for the travel demand growth analysis. Typically, an independent travel demand forecasting report is provided to document assumptions and outputs. A travel demand forecasting report for a project of this size would be expected to be hundreds of pages long (not including appendices) and contain the following:

- Forecast model information
- Source data
- Land use assumptions
- Mode split assumptions (auto, bus, rail, etc.)
- Forecasting methodology
- Trip distribution diagrams
- Traffic volume diagrams
- TAZ maps

Additionally, the nearby projects identified in Section 4.1.1 of the ATA 2014 TIAR are only a subset of the projects identified in the Ewa Development Plan and Kapolei Master Plan. To confirm that the travel demand growth projections are consistent and correct, a travel demand forecasting report or memo

should be provided that reconciles the following on a TAZ basis:

- Ewa Development Plan
- Kapolei Master Plan
- OMPO Model Land Use Assumptions
- ATA 2014 TIAR

Without detailed travel demand growth documentation, the accuracy and validity of the travel demand growth projections and ATA 2014 TIAR analyses cannot be confirmed.

As is, the reviewer cannot assess the fidelity of the travel demand growth projections. Based on a brief review of a small fraction of the detailed calculation sheets in the ATA 2014 TIAR appendix, some inconsistencies in the traffic volumes were discovered. From the existing conditions ramp analysis (Appendix G, page 1,013), an existing freeway volume of 4,495 vehicles per hour (vph) was used at the H-1 EB Exit 3 Kualakai during the weekday AM peak hour. Given the assumption from Section 4.3 that H-1 traffic volumes are expected to increase by 7 percent between the existing conditions and 2023, the year 2023 traffic volume should be 4,810 vph (increase of 315 vph). However the volume used at that location for the base year 2023 ramp analysis (Appendix G, page 1,056) was 4,430 vph. This equates to a decrease of more than 1 percent from existing conditions to year 2023 (decrease of 65 vph). As a result, the calculated LOS is incorrect. A comparison of these detailed calculation sheets is as follows:

Existing Conditions (2012)
 Freeway Volume = 4,495 vph
 (Appendix G, page 1,013)

Base Year 2023 Conditions
 Freeway Volume = 4,430 vph
 (Appendix G, page 1,056)

HCS 2010: Freeway Merge and Diverge Segments Release 6.2

HCS 2010: Freeway Merge and Diverge Segments Release 6.2

Phone: Fax:
 E-mail:

Diverge Analysis

Analyst:
 Agency/Co.: ATA
 Date performed: 5/2/2012
 Analysis time period: AM
 Freeway/Dir of Travel: H-1 EB
 Junction: H1 EB Exit 3 Kualakai
 Jurisdiction:
 Analysis Year:
 Description: with downstream adjacent ramp

Freeway Data

Type of analysis	Diverge		
Number of lanes in freeway	3		
Free-flow speed on freeway	58.5	mph	
Volume on freeway	4495	vph	

Off Ramp Data

Side of freeway	Right		
Number of lanes in ramp	1		
Free-Flow speed on ramp	35.0	mph	
Volume on ramp	250	vph	
Length of first accel/decel lane	500	ft	
Length of second accel/decel lane		ft	

Adjacent Ramp Data (if one exists)

Does adjacent ramp exist?	Yes		
Volume on adjacent ramp	432	vph	
Position of adjacent ramp	Downstream		
Type of adjacent ramp	On		
Distance to adjacent ramp	2830	ft	

Conversion to pc/h Under Base Conditions

Junction Components	Freeway	Ramp	Adjacent Ramp	
Volume, V (vph)	4495	250	432	vph
Peak-hour factor, PHF	0.90	0.90	0.90	
Peak 15-min volume, v15	1249	69	120	v
Trucks and buses	2	2	2	%
Recreational vehicles	2	2	2	%
Terrain type:	Level	Level	Level	
Grade	0.00 %	0.00 %	0.00 %	
Length	0.00 mi	0.00 mi	0.00 mi	
Trucks and buses PCE, ET	1.5	1.5	1.5	
Recreational vehicle PCE, ER	1.2	1.2	1.2	

Phone: Fax:
 E-mail:

Diverge Analysis

Analyst:
 Agency/Co.: ATA
 Date performed: 1/11/13
 Analysis time period: AM
 Freeway/Dir of Travel: H-1 EB
 Junction: H1 EB Exit 3 Kualakai
 Jurisdiction:
 Analysis Year:
 Description: with downstream adjacent ramp

Freeway Data

Type of analysis	Diverge		
Number of lanes in freeway	3		
Free-flow speed on freeway	58.5	mph	
Volume on freeway	4430	vph	

Off Ramp Data

Side of freeway	Right		
Number of lanes in ramp	1		
Free-Flow speed on ramp	35.0	mph	
Volume on ramp	360	vph	
Length of first accel/decel lane	500	ft	
Length of second accel/decel lane		ft	

Adjacent Ramp Data (if one exists)

Does adjacent ramp exist?	Yes		
Volume on adjacent ramp	830	vph	
Position of adjacent ramp	Downstream		
Type of adjacent ramp	On		
Distance to adjacent ramp	2830	ft	

Conversion to pc/h Under Base Conditions

Junction Components	Freeway	Ramp	Adjacent Ramp	
Volume, V (vph)	4430	360	830	vph
Peak-hour factor, PHF	0.90	0.90	0.90	
Peak 15-min volume, v15	1231	100	231	v
Trucks and buses	2	2	2	%
Recreational vehicles	2	2	2	%
Terrain type:	Level	Level	Level	
Grade	0.00 %	0.00 %	0.00 %	
Length	0.00 mi	0.00 mi	0.00 mi	
Trucks and buses PCE, ET	1.5	1.5	1.5	
Recreational vehicle PCE, ER	1.2	1.2	1.2	

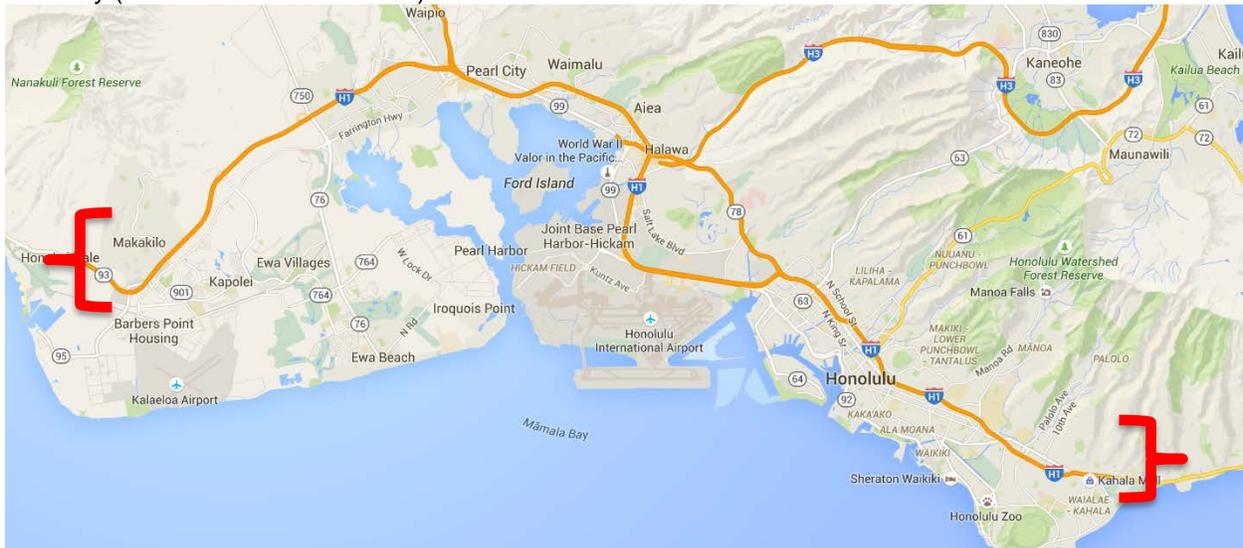
Based on my review of several existing conditions and base year 2023 conditions calculation sheets within the appendix, the traffic volume growth in all was less than the 7 percent growth discussed in Section 4.3 of the TIAR. The traffic volumes used in the analysis appear to be incorrect and underestimating future year conditions.

Area of Influence

Given the size and location of the Hoopili development, the project study area does not adequately evaluate the potential impacts of the project on the transportation network. Of the 8,569 weekday AM peak hour trips and 11,434 weekday PM peak hour trips generated by the project (as included in Table 5.5 of the ATA 2014 TIAR), 50 percent are to / from the east to the Mililani area, the Honolulu Business Core, and Waikiki area; however, the ATA 2014 TIAR does not evaluate the impact of these trips to the east of Waiawa interchange. Traffic from the Hoopili development and other projects that have been approved could significantly impact locations on the H-1 Freeway to the east of the H-2 Freeway merge, including:

- Farrington / Kamehameha Highway Ramps
- Waimalu Ramps
- Stadium Interchange
- H-3 Freeway Interchange
- Viaduct / Lunalili Freeway Interchange
- Likelike Highway Interchange
- Vineyard Boulevard Ramps
- Pali Highway Interchange
- Punchbowl Ramps
- Kinau Street / Lunalilo Street Ramps
- Punahou Street Ramps
- University Avenue Ramps
- King Street / Kapahulu Ramps

The project study area should be expanded to include all ramps and freeway segments on the H-1 Freeway (limits shown below in red):



Operational Analysis Methodology

The Highway Capacity Software (HCS) was used for the freeway segment and ramp analysis in the ATA 2014 TIAR. This methodology is effective for evaluating freeway segments in isolation, but does not adequately evaluate the freeway as a whole system. For example, delays from downstream bottlenecks are not captured when using the HCS software. Traffic simulation would accurately capture such

conditions. Per the Highway Capacity Manual 2000 (HCM), the advantages of a traffic simulation model are as follows:

Traffic simulation models use numerical techniques on a digital computer to create a description of how traffic behaves over extended periods of time for a given transportation facility or system. As compared with empirical and analytical models, simulation models predict performance by stepping through time and across space, tracking events as the system state unfolds. Time can be continuous or discrete, and system state is a technical term that effectively describes the status or current condition of the system. Empirical models predict system performance on the basis of relationships developed through statistical analysis of field data, whereas analytical models express relationships among system components on the basis of theoretical considerations as tempered, validated, and calibrated by field data.

Traffic simulation software, such as CORSIM, should be used to accurately measure the impacts of the project on the freeway network. Throughout the United States, this is the standard methodology for evaluating freeway impacts. This operational analysis methodology would likely, and realistically, show that the project will cause hours of delay to motorists.

Existing Conditions

The majority of the ramp and freeway analyses (included in Table 3.2 and Table 3.3 of the ATA 2014 TIAR, respectively) show that the H-1 Freeway operates at Level of Service (LOS) C or LOS D during the weekday peak hours. However, based on observations during the peak hours, motorists experience significant delays and traffic congestion. Much of this congestion is caused by downstream bottlenecks on the H-1 Freeway.

As shown in the diagram below, the existing conditions in the project area are consistent with LOS F:

<h2 style="text-align: center;">LEVELS OF SERVICE</h2> <p style="text-align: center;">for Multi-Lane Highways</p>			
Level of Service	Flow Conditions	Operating Speed (mph)	Technical Descriptions
A		60	Highest level of service. Traffic flows freely with little or no restrictions on maneuverability. No delays
B		60	Traffic flows freely, but drivers have slightly less freedom to maneuver. No delays
C		60	Density becomes noticeable with ability to maneuver limited by other vehicles. Minimal delays
D		57	Speed and ability to maneuver is severely restricted by increasing density of vehicles. Minimal delays
E		55	Unstable traffic flow. Speeds vary greatly and are unpredictable. Minimal delays
F		<55	Traffic flow is unstable, with brief periods of movement followed by forced stops. Significant delays

Source: 2000 HCM, Exhibit 21-3, Speed-Flow Curves with LOS Criteria for Multi-Lane Highways

As suggested, the proper LOS could be represented by extending the area of influence and developing a calibrated traffic simulation model to represent freeway operations. Congestion is caused by downstream bottlenecks that spill back into the project area. Specific locations that contribute to congestion and queuing (LOS F conditions) on the H-1 Freeway and are not represented in the ATA 2014 TIAR, include:

- Fort Weaver Road
- Waiawa Interchange

By not including these bottleneck locations in the analysis and not using a calibrated traffic simulation model, traffic conditions in the project are unrealistically represented during the weekday peak hours (generally LOS C and LOS D). In reality, the observed traffic conditions in the project area during the weekday peak hours are LOS F. Since the existing conditions analysis understates the traffic conditions, the future year conditions are understated, as well. The analysis should be revised to represent this.

Motorists experience miles of traffic congestion and hours of travel delays upstream of each of these locations on a daily basis, which is representative of LOS F conditions. These delays are only exacerbated by the frequent (weekly) collisions throughout the corridor. Local freeway improvements, such as the extension of an off-ramp deceleration lane, would not resolve these delays. By properly representing the existing conditions, the analysis would likely, and realistically, show that the project will significantly impact motorists throughout the H-1 Freeway corridor and Central Oahu – not just those from the Hoopili development.

Regional Improvements

The following regional improvements are shown in Figure 4.2 of the ATA 2014 TIAR:

- 20 WIDEN FARRINGTON HIGHWAY FROM TWO TO FOUR LANES, FROM GOLF COURSE ROAD TO JUST WEST OF FORT WEAVER ROAD.
- 22 WIDEN KUALAKAI PARKWAY FROM THREE TO SIX LANES FROM INTERSTATE ROUTE H-1 TO KAPOLEI PARKWAY. EXTEND KUALAKAI PARKWAY BY SIX LANES FROM KAPOLEI PARKWAY TO FRANKLIN D. ROOSEVELT AVENUE.
- 25 WIDEN THE INTERSTATE ROUTE H-1 BY ONE LANE, IN THE WESTBOUND DIRECTION, THROUGH THE WAIAWA INTERCHANGE. THIS PROJECT WILL BEGIN IN THE VICINITY OF THE WAIAWA INTERCHANGE AND END AT THE PAIWA INTERCHANGE.
- 35 EXTEND MAKAKILO DRIVE (VICINITY PUEONANI STREET) SOUTH TO THE INTERSTATE ROUTE H-1 FREEWAY INTERCHANGE AS A FOUR-LANE ROADWAY, CONNECTING MAKAKILO DRIVE TO KUALAKAI PARKWAY.
- 59 WIDEN FARRINGTON HIGHWAY FROM KUNIA ROAD TO WAIAWA INTERCHANGE BY ONE LANE IN EACH DIRECTION, FROM WEST OF FORT WEAVER ROAD TO WAIAWA INTERCHANGE.
- 61 WIDEN THE INTERSTATE ROUTE H-1 BY ONE LANE IN THE EASTBOUND DIRECTION, FROM THE WAIAWA INTERCHANGE TO THE HALAWA INTERCHANGE.

These improvements suggest an increase in freeway capacity between the project area and the Halawa interchange. However, these would be unlikely to mitigate project impacts as many of the vehicle trips would extend to the east of the Halawa interchange. Downstream bottlenecks would result in significant delays that would spill back into the project area despite the improvements.

The widening of the H-1 Freeway in the project area would do very little to offset project impacts or reduce congestion caused by the Hoopili project. To mitigate the impacts of the Hoopili project, multiple lanes would need to be added to each direction of the entire H-1 freeway from the Farrington Highway in

Kapolei to the Kalanianaʻole Highway in Kahala. This is not programmed for construction and is not feasible due to:

- Physical constraints (e.g. columns) at interchanges – a lane addition would necessitate the reconstruction of most interchanges on the H-1 Freeway.
- Right-of-way acquisition constraints – a lane addition would require the acquisition of at least 24 feet of right-of-way along the freeway, resulting in the demolition of many homes and businesses.
- Extraordinary costs – The cost of such a project would be billions of dollars and would take decades to complete.

The effectiveness of these regional improvements cannot be properly assessed without extending the area of influence and developing a calibrated traffic simulation model to represent freeway operations. Even with these regional improvements, the analysis would likely show that the project will cause hours of delay to motorists. The traffic improvements proposed in the ATA 2014 TIAR will not mitigate project impacts and the trips generated by the 70,000 homes (anticipated in the Ewa Development Plan and other Department of Planning and Permitting documents) in western Oahu will significantly impact traffic operations throughout Oahu.

Conclusions

Based on my review, my professional assessment is that the analysis provided in the ATA 2014 TIAR does not accurately represent potential project impacts to the H-1 Freeway. In summary, my comments are as follows:

- **Travel Demand Growth Projections** – The increase in traffic volumes appears to be low and incorrect. The number of households and employment growth in the Kapolei / Ewa Beach area are expected to increase by 3 percent and 8 percent annually, respectively; however, traffic volumes are only expected to increase by 1 percent annually. This discrepancy would suggest that incorrect travel demand growth projections were used. A traffic forecasting document must be provided to document detailed assumptions and projections. The corresponding operations analysis is insufficient and the traffic volumes used for the calculations are low and incorrect.
- **Area of Influence** – The project study area is too small. The analysis area should be expanded to other locations that may be impacted by the project. For a project of this size, the analysis should include the entire H-1 Freeway, intersecting roadways (including the H-2 Freeway and H-3 Freeway), and the communities they serve.
- **Operational Analysis Methodology** – The methodology utilized for this analysis results in optimistic findings and does not capture true project impacts. A more sophisticated approach to the analysis will yield less optimistic, more realistic findings.
- **Existing Conditions** – The existing conditions presented in the analysis are not representative of the observed conditions. Locations on the H-1 Freeway that are observed to operate as LOS F during the weekday peak hours are shown as LOS C and LOS D in the ATA 2014 TIAR. This is caused by an absence of calibration and an insufficient analysis methodology. As a result, future scenarios and the corresponding project impacts are not representative.
- **Regional Improvements** – The recommended improvements are insufficient for mitigating impacts caused by the project and additional homes already zoned in the area.

A more complete, thorough, and advanced transportation analysis would demonstrate significant impacts that are not presented in the ATA 2014 TIAR. Based on the size of the proposed development and the proposed mitigation measures, the Hoopili project will result in catastrophic consequences for the people of Oahu.

Please let me know if you have any questions.

Sincerely,
James Watson

133. Let us amplify some of the points made above. In the section, “Regional Improvements,” it is stated that “multiple lanes would need to be added.” But creating more than one additional lane on the freeway is simply impossible. The picture below shows the H-1 freeway, eastbound, just a few feet beyond the merge with H-2. Notice the six columns on each side of the freeway ahead. There is 70’ between them--five lanes at 12’ width, taking up 60’, with a 10’ shoulder. By code, freeway lanes are 12’ wide, but can be narrowed to 11’ for short distances. So six lanes and a 4’ shoulder can be squeezed between the columns in the future. But that is it. More lanes can never be squeezed in. We have 95,000 houses feeding five lanes now, with the worst traffic in the nation. We will be adding 70,000 houses, including Ho’opili, all squeezing into that one additional lane. There is no way this can work, let alone raise the Level of Service from deep into F, up to LOS C and D, even with rail.



134. It needs to be further emphasized that lanes merging together is the cause of bottle-necks and traffic back-up. It is possible that one more lane can be added to the H-1 between Kapolei and the Stadium, but that would still leave five lanes narrowing to four on H-1 before the merge, and seven lanes narrowing to six at the merge itself, followed shortly after with seven narrowing to six at the Farrington Hwy. onramp. Given that these are unsolvable problems, the only way to lessen the unendurable impact of more cars adding to the back-up is to build less houses.

The D.R. Horton of the Past, Present, and the Future

135. The D.R. Horton of the past was a “we do things our way” organization that refused fourteen requests from the Land Use Commission and others to simply recast their original petition into two parts reflecting ten year periods, a task their lawyer said could be done in two weeks. **(Exhibit 53)** They endured their petition being declared deficient, and the two year setback for the project that came with it, rather than capitulate. The D.R. Horton of today and tomorrow has the same determination to do what *they* want, but more importantly, they have now attained the position as the leader, the *luna*—the developers who *hire* the unions and contractors and materials providers, and architects and planners and banks and mayor and council members and on and on. And as that sole leader, they can force, and are forcing, what they want on everyone on the island.

136. Horton established this stance by hiring Austin, Tsutsumi & Associates (ATA) and having them produce this bogus TIAR. They needed a document that would make traffic do what it needed to do in order for them to build the unneeded houses of Ho’opili. ATA supplied their needs. Their friends in government went along with approving it, even though tens of thousands of commuters will eventually be caught up in more than an hour longer traffic-stall twice a day, each workday for decades to come.

137. They further established that they were in complete charge by sending the LUC a phony acceptance letter from DTS, and by moving all the way through the City Council zoning process in spite of the Commission's Condition requiring a genuine DTS acceptance before they would file their Application for Zone Change.

138. On September 23, 2014, *Pacific Business News* ran an article titled, "D.R. Horton in negotiations to sell West O'ahu land for new retail center near Ho'opili." The LUC's Condition 22 requires that notice be given the Commission of any "intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest." It's now July of 2015, and The Land Use Commission still waiting for notice of this intent to sell. (Exhibit 15)

139. On February 10, 2015, *The Pacific Business News* ran a follow-up article, "MacNaughton Group, partners to buy 38-acre Oahu parcel from D.R. Horton for retail center." (Exhibit 16) This article insulted both the Commission and the City Council. The Council was still a week away from even beginning Zone Change hearings on Ho'opili, and Horton was telling the world that it was selling a major piece of its property for purposes not allowed with its current zoning of Ag-1. Horton's unspoken message to the public: "We've got the Council in the bag, so we're moving ahead." Horton's unspoken message to the Council: "Check on your campaign donations before you give the first thought to being a problem."

140. Before moving on, it must be pointed out here that in selling this land to the MacNaughton Group and others, D.R. Horton was acting contrary to it representations and commitment to not flip the property, but rather to stick with the project until the end. The possibility of flipping it was a major part of the problem in 2009 when the LUC declared the petition to be deficient: the Commission and others feared that Horton was doing as little as possible, refusing to map out the phases by which they were going to develop the property, because the really planned to get the Urban designation and then sell it at great profit for others to develop.

141. Robert Harris, spokesperson for the Sierra Club in Hawaii, testified:

During questioning they [Horton] steadfastly refused to indicate anything in regards to incremental plan. We can speculate as to the reason why... Perhaps they wanted to be able to flip the land and sell it to others before actually commencing development.(Transcript, 8/28/09 p. 17:1-8)

142. Horton attorney Benjamin Kudo noted that the rule requiring the detailing of the project in two ten-year phases “was created to address speculation. That is, developers and landowners that would come before the Commission simply get the approvals and then sell the property. They have no serious intent to actually develop and go forward with the property and the development of that project.” (Transcript 8/28/09 p 122: 15-20.)

143. He answered this by saying: “Again, the purpose [of the rule requiring phasing] is to thwart ~~anti~~-speculation by landowners to simply use the land use entitlement to sell property at higher value. **We are going to develop this property. That is the statement that we are making before this Commission.** (Transcript 8/28/09 p 123:15-19. Emphasis mine. More found at 124:12-18).

144. Kudo’s team attorney, Ms. Naomi Kuwaye, specifically addressed commercial areas, saying, “The record clearly reflects Petitioner's intention to develop and sell off commercial and light industrial use property proposed in Phase I to finance the construction of backbone infrastructure. (Transcript 8/28/09 p. 163:20-23.) Her statement was “develop and sell off.” That did not allow for selling off commercial areas without developing them first.

145. Horton paid \$73 million for the property in 2006. Less than ten years later, they are attempting to sell just 38 of the 1,525 acres for almost half that amount, \$33 Million. They need to explain to the Commission why this is not flipping the property.

146. Returning to discussion of the series of actions in which Horton showed the city who was in charge: On March 31, 2015, *The Pacific Business News* ran an article titled, “D.R.

Horton gives five acres of Hoopili to Hawaiian Humane Society.” (Exhibit 17) This pandering for support from all animal lovers was also another embarrassing slap down to the City Council. In this case, Horton actually donated the land, completed the deal with the Humane Society, for an animal shelter and other uses, weeks before the Council would take its final vote. The land at the time was still zoned Ag-1 by the city. Chapter 21 of the Honolulu Land Use Ordinances strictly forbids anything but agriculture on Ag-1 land. (Exhibit 54) And Table 21-3 at <http://www.honolulu.gov/rep/site /ocs/roh/ ROHChapter21a3.pdf> specifically mentions “no kennels, no zoos.”(Exhibit 55) In giving away land specifically for a purpose that necessitated re-zoning, Horton was telling the Council, “We need to do this now to gain public support, and you are just going to have to live with it. Our project is more important than any law. So forget what the law says. We are only a few weeks till your final vote. Just smile. That’s what you are paid for.” Asked by one Council member at the May 6, 2015 hearing, how they could give away property for a purpose not allowed on Ag-1 property, Cameron Nekota simply lied, saying that the Humane Society was a state agency, so it could legally use the property for any purpose. As Exhibit 56 shows, however, the Humane Society has no connection with the state government; it is an independent non-profit organization.

147. Not yet satisfied with giving away Ag-1 land for then illegal purposes, and to win more public support as the final Council vote neared, as the *Pacific Business News* reported on April 28, “D.R. Horton donates land at Ho’opili to Wai’anae Coast Comprehensive Health Center.” (Exhibit 18) Again, Table 21-3 of Chapter 21 of the Land Use Ordinance specifically forbids “medical clinics” on Ag-1 land. (Exhibit 55) Their unspoken message to the Council, “A check is in the mail.” Their unspoken message to the Land Use Commission: “You can’t touch

us, so you don't count." The unspoken message to the world: "In the areas of concern to D.R. Horton, D.R. Horton owns this town, and everybody better get in step."

148. We constantly hear the comment that there is no worry about traffic or anything else because Horton has to go through so many check points where they can be stopped. DOT can stop them on traffic. DPP can stop them every time they apply for a permit. That would be true if these agencies had not long ago "gotten in step." D.R. Horton owns this town. There's nobody to stand up for the public.

149. But there is this one, little-known Motion for Order To Show Cause in HAR 15-15-93 that can call it all back into the control to the Land Use Commission if and when Conditions, Representations, or Commitments are not complied with. There are extremely serious matters here in traffic, stormwater, agriculture and flipping property that cry out for the Land Use Commission to step in and reassert its rights. It is time for Horton to show cause why the land should not be reverted to Agriculture status.

Farmland Issues

150. When the Land Use Commission was hearing the Ho'opili case in 2011-2012, great assurances were made by D.R.Horton witnesses, state Department of Agriculture Chairman Russell Kokuban, (Exhibit 57) and Agriculture expert Bruce Plasch, (Exhibit 58) that agriculture on O'ahu would be just as successful without Ho'opili.

151. Friends of Makakilo and Sierra Club witnesses strongly disagreed. Jeffs Farms and Aloun Farms would be leaving 1555 acres to share only 500 acres. But beyond this, the

new property, Galbraith Estates, had been idle for years because Del Monte had found it too wet and otherwise problematic to profitably grow pineapple.

152. Horton's agriculture expert, Bruce Plasch, testified that all that was needed for the wetter area was to get a different variety of the same plants, varieties that would grow well in that climate. But there is no such "different variety" for most plants that grow in Ho'opili.

153. Paragraphs 424-437 of the Ho'opili Decision and Order, found on pages 84-87, give further assurances that there are plenty of lands available and food production will do fine. (Exhibit 62) Paragraph 437 states: "The Project will have little or no adverse impact on Hawai'i's agricultural production, as other farmland is available on the island of O'ahu to accommodate the relocation of the existing 'Ewa farms, as well as to accommodate the future growth of diversified crop farming."

154. It has been more than three years since the Land Use Commission Decision and Order. The dust has settled. Reality has set in. The sale of Galbraith Estate to the State, the military, and the Office of Hawaiian Affairs has been complete for a couple of years. That's about all that is. No leases have been given. Nothing is growing on the land. Money was allocated for repair of the water pump. It broke on the first day it was restored. There is no more repair money. The word is that the state overseer, Agriculture Development Corporation (ADC), will be giving the Ho'opili farmers smaller amounts of acreage.

155. In 2007, the last year records were kept at state DOA, Ho'opili produced more than 40% of the broccoli, green beans, zucchini, and romain lettuce grown on O'ahu and more than 70% of the sweet corn, cantaloupe, honeydew, and pumpkin. (Exhibit 19) Many other basic foods also do exceptionally well on the property.

156. No one is now claiming that different varieties of the same crops grown in Ho'opili will be grown at this elevation. The plan is to shift to different crops entirely. This will result in the lowland crops not being grown anywhere on the island.

157. This is a very serious matter. The DNA of crops determines where they will grow well—at certain altitudes, with certain temperatures, with certain amounts of water, with certain amounts of cloud cover or sunshine, with certain elements in the soil. Crops that need dry, warm, sunny climates don't grow well in rainy uplands. Period. The Ho'opili farmland is the last low farmland on the sunny south side of the island. When it's gone, there are no others.

158. Since 2011-2012 much have been learned of climate change. Our California bread basket is shrinking due to lack of water. To off-set this, world leaders will soon agree on carbon caps to slow use of oil and coal. This will eventually cause a steep rise in oil price and the cost of transportation. Much of the 90% of our food that is imported will be too expensive to bring in. One day, O'ahu, with its million people, will most likely have to survive on its own. Given this knowledge, it is a crime against our people and our descendants to sacrifice our last sunny, lowland farms for unneeded houses. The Commission must hold the Petitioner to its representations.

159. Referring to HRS § 205-17(6) "The representations and commitments made by the petitioner in securing a boundary change," paragraph 27 on page 165 of the Decision and Order states: "The Commission will require that Petitioner abide by the representation and comments made to the Commission during this district boundary amendment proceeding."

160. In showing cause why the land should not be returned to the Agriculture District, the Land Use Commission must require Horton to show proof that the 1525 acres of lowland Ho’opili farms can be fully replicated elsewhere, and that all of the substantial crops grown in the Ho’opili lowlands over the last ten years, or varieties of those plants, will flourish in those new areas. If Horton is not able to do this, the Commission must recognize the impending disaster caused by climate change that will await us if we sacrifice our lowland farms, and the Commission must revert this land to Agriculture status.

Stormwater

161. The problems with Stormwater have been adequately discussed in paragraphs 32-34 and 47-48 above.

WHY THIS CASE IS DIFFERENT FROM BRIDGE ‘AINA LEA

162. This Motion evokes memories of the Bridge Aina Lea case, in which the Land Use Commission attempted to revert the property back to the Agricultural District. In that case, The Supreme Court found against the Land Use Commission because “Bridge and DW had substantially commenced use of the land in accordance with their representations. Specifically, they had constructed sixteen townhouses on the property, commenced construction of numerous other townhouses, and graded the site for additional townhouses and roads.” This is not the case with D.R. Horton and Ho’opili. Horton has been very careful to hold off until the Supreme Court decision before putting money into the property.

163. It might be argued that Honolulu Area Rapid Transit (HART) has already spent many, many millions constructing the Rail across the Ho’opili land. But HART is not the owner

of the property, and D.R. Horton, the owner of the land, did not pay for construction of the Rail. To my knowledge, Horton has had no expenses other than those that any other landowner would bear if rail crossed their property, willingly or unwillingly. It is also true that, even though the pillars and elevated passageway cross the land, this does not, and will not, have much effect on farming on the land. Millions of pieces of farmland around the world have railways running through the middle of them. The fact that this one is elevated far reduces the negative effects that others experience.

164. Further, the farmland can be a blessing for riders of the Rail. It provides beautiful open space that can only lift spirits as the train emerges from the urbanized core.

165. In the Bridge Aina Lea case the lower court had said the commission's order to show cause was improper because it was initially filed in late 2008, put on hold in early 2009 and brought back in late 2010. Such orders to show cause must be completed within one year, under state law. This Motioner asks the Commission to be particularly aware of this problem, especially if the Commission considers holding off the Order to Show Cause until the Supreme Court makes its decision.

REMEDY SOUGHT

166. In the LUC's Order on Ho'opili, the third paragraph of the "Decision and Order" section reads: "IT IS HEREBY 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:** (LUC Decision and Order pg. 168.) There is no mistaking the intent of this sentence. The reclassification of Ho'opili shall be *subject to* the conditions laid

down in the Order, and if the Conditions are not followed, the reclassification is nullified and the property reverts back to the Agriculture District.

167. It has been the purpose of the Friends of Makakilo to show that major Conditions in the Decision and Order and major Representations made to the Land Use Commission during the hearings and in the Decision and Order itself are being ignored as the developer goes about doing as he wishes. With traffic, with farmland, and seemingly with stormwater, D.R. Horton has set upon a path of action that will have a crippling effect on our society. As has been shown, the City will do nothing to stop them, is incapable of doing anything to stop them.

168. HAR 15-15-93 provides the way for the Land Use Commission to reassume control of the case, investigate the situation, and revert the property to the Agriculture District. Section (a) states that “Any party or interested person may file a motion with the commission requesting an issuance of an order to show cause upon a showing that there has been a failure to perform a condition, representation, or commitment on the part of the petitioner.” This is that Motion, filed by The Friends of Makakilo, a party which has had standing in the case as an Intervenor since 2009.

169. **The “Remedy Sought” by the Friends of Makakilo *in first part*** is for the Land Use Commission to issue an order to Petitioner D.R. Horton to show cause why the Ho’opili property should not revert to the Agriculture District by defending itself on the following points:

1. Petitioner D.R. Horton has flouted Condition 10b by filing a bogus letter of acceptance of the new TIAR by the city Department of Transportation Services and, based on that false filing, has moved ahead with filing an Application for Zone Change with the City in spite

of the fact that Condition 10b specifically forbids filing for Zone Change before receiving acceptance of the new TIAR from DTS. Planning Commission member, and former chair, Kai'ulani Sodaro, in moving for a Condition to the Ho'opili Zone Change Application, disproved the City's claim that DTS does not "accept" TIARs. She used the words, "the CTMP [Construction Traffic Management Plan] shall be submitted to DTS for acceptance prior to any subdivision" which perfectly parallels the wording in Condition 10b of the Ho'opili D&O that "Petitioner shall obtain acceptance of the updated TIAR from the DOT, the DPP, and the DTS, prior to submittal of a change in zoning application." D.R. Horton must show how the letter they submitted from DTS satisfied Condition 10b since the letter said nothing of acceptance and instead requested that questions asked many months earlier be answered.

2. Petitioner D.R. Horton has further defied Condition 10b by paying Austin, Tsutsumi & Associates to create a bogus TIAR which included falsified traffic data that did not accurately assess current and future traffic situations, which data was then fraudulently used to purportedly validate mitigation measures for potential project-related traffic impacts. This deception, if allowed to stand, would force hundreds of thousands of commuters over several generations to endure an additional hour or more of fighting freeway traffic in both the morning and the afternoon every single workday, causing an immeasurably negative impact on personal health and well being, family life, performance at work, and the functioning of the society as we know it. To establish that its traffic projections are valid, D.R. Horton must adequately respond to all points in paragraphs 16 to 25 and 115 to 134 above. And it must prove beyond any doubt that the

one lane it will add to the freeway in each direction, up to but not through, the H-1/H-2 merge will not only absorb the traffic from an additional 70,000 zoned houses (including Ho'opili), but will cause the daily four and a half mile back-up to completely vanish, and the Level of Service on the freeway to be restored to LOS C and D.

3. The Navy has again refused to allow the overflow of stormwater from Ho'opili to pass over Navy property and into West Loch. Petitioner D.R. Horton has offered no information about how it will handle stormwater run-off for those major sections of the property which had been scheduled to drain into the non-contiguous Ho'opili retention basin in the Blast Zone to the East of the property, and which will not be allowed to pass over the Navy property from that basin. It would seem that there is no place that can adequately receive such a huge amount of run-off. This is the period, prior to any subdivision approval, during which Condition 11 requires that "the Petitioner shall provide a master drainage plan for review by the State Department of Health ("DOH"), the State Office of Planning ("OP"), and DPP, that either includes a letter of consent from the Navy allowing drainage onto its properties or a specific explanation of strategies to be employed so that drainage onto Navy lands is not necessary." If the Kalo'i Gulch system of connected retention basins leading to the sea is intended as the recipient, D.R. Horton must be required, now, to prove that this additional run-off will not result in poisonous overflowing into the sea which would kill the nascent *limu* which is barely surviving along the shore. Friends of Makakilo member, Michael Lee, is a native Hawaiian practitioner who uses this *limu* in his practices. In accordance with Condition 14, "Established Access Rights Protected," Horton must also establish that his

access to this limu will not be prevented because the *limu* has been destroyed by poisonous stormwater runoff.

4. In 2012, Horton made representations to the Land Use Commission that farmland that could produce different varieties of the same crops grown in the lowlands would be available at higher levels to replace Ho'opili. This is not proving to be the case. Water is not available; no leases have been given; the limited size of the land to be leased might make farming uneconomical for the large farmers of Ho'opili, and completely different foods will be grown since there are no "different varieties" of the same crops that flourish in the sunny lowlands which will similarly flourish in the wetter, overcast uplands. Climate change, diminishing farm productivity in the California central valley, carbon caps that will result in higher oil prices and high transportation costs, make it ever more essential that O'ahu be able to feed its million people. There is no other government entity than the Land Use Commission that is positioned to assure this. D.R. Horton must convince the Land Use Commission that the loss of this highest quality farmland, which constitutes roughly one third of the O'ahu farmland currently active in producing food for the local market, and which is the last piece of lowland farm acreage in a sunny section of the island, can be replaced with farmland that duplicates the productivity of Ho'opili and has conditions that will allow currently grown foods to flourish. Where is the land? Where is the water? Where is the financial plan that will allow farmers to make a go of it?

5. D.R. Horton is deep into negotiations with the Mac Naughton Group and others to sell the non-contiguous piece of Ho'opili land facing onto Kualakai Parkway, between the H-1 freeway and Farrington Hwy. The selling price is \$30 million for the 38 acres. This is nearly half of the \$73 million that D.R. Horton paid for the entire 1,525 acres. This is a case of flipping—when a developer gets through the permit process and sells the property at great profit. As paragraphs 139-145 above show, this was a concern of the Commission, and Horton made representations to the Commission that “We are going to develop this property ourselves”(Para. 128), and it is “the petitioner’s intention to develop and sell off commercial and light industrial use property.”(Para.129) D.R. Horton must answer the question why this is not contrary to its representations and commitments to the Commission. It must also show why its neglect to inform the Commission of this impending sale is not a violation of Condition 18.

170. **The “Remedy Sought” by the Friends of Makakilo in second part is:** After study of the responses of D.R. Horton, if the LUC concludes that the developer has not complied with Condition 10b or 11 or 14 or 18 or has not fulfilled its representations and commitments about farmland and developing the property itself, the Land Use Commission will revert the Ho’opili property back to the Agriculture District.

July 23, 2015 Kapolei, Hawai'i
Dated

Dr. Kioni Dudley
Dr. Kioni Dudley
President, The Friends of Makakilo
Intervenor, Land Use Commission hearings on Ho'opili

Certificate of Service

I, Dr. Kioni Dudley, certify that I have delivered copies of this Motion for an Order to Show Cause to the following individuals:

Land Use Commission 235 Beretania Street Honolulu, Hawaii 96813 1 original 1 printed copy 1 CD	HAND DELIVERED
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Dated July 23 2015, Kapolei, Hawai'i

Dr. Kioni Dudley

Dr. Kioni Dudley