



BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the matter of the Petition of

THE SHOPOFF GROUP, L.P.

To Amend the Agricultural Land Use District
Boundaries into the Urban Land Use District
for Approximately 129.99 Acres in North
Kona District, Island of Hawai'i, Tax Map
Key Nos. (3) 7-3-007:038, 039, and (3) 7-
3009:007

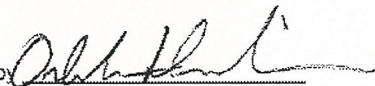
DOCKET NO. A06-770

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND
ORDER FOR A STATE LAND USE
DISTRICT BOUNDARY
AMENDMENT; EXHIBIT "A";
CERTIFICATE OF SERVICE

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A
STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

This is to certify that this is a true and correct
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State Land Use Commission, Honolulu, Hawaii.

OCT 21 2008

by 
Executive Officer



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STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

THE SHOPOFF GROUP, L.P. ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on November 27, 2006, as amended by amendment filed on November 1, 2007 (the Petition as so amended is referred to as "Petition"), pursuant to Hawai'i Revised Statutes ("HRS") section 205-4, and Hawai'i Administrative Rules ("HAR") chapter 15-15, to amend the land use district boundary to reclassify approximately 129.99 acres of land, situated in the North Kona District, Island of Hawai'i, Tax Map Key Nos.

(3)7-3-007:038, 039, and (3)7-3-009:007 ("Petition Area"), from the state Land Use Agricultural District to the state Land Use Urban District. The classification is necessary to allow for the development of the Kula Nei Project ("Project"), a low-density residential development.

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

I. PROCEDURAL MATTERS

1. On November 27, 2006, the Petitioner filed the Petition, Petition Exhibits "1" through "22", and submitted a check for the filing fee in the amount of \$500.00.
2. On December 18, 2006, the Commission issued its order determining, (1) that the Land Use Commission agreed to be the accepting authority pursuant to HRS Chapter 343, and (2) that the proposed action may have a significant impact to warrant the preparation of an environmental impact statement ("EIS").
3. On August 24, 2007, the Petitioner filed Petitioner's final EIS Volumes 1, 2 and 3.
4. On October 4, 2007, the Commission voted to accept the Petitioner's final EIS.
5. On October 25, 2007, the Petitioner filed Petitioner's Motion to Submit Missing Pages from the Kula Nei Project Final Environmental Impact Statement Accepted by the Land Use Commission on October 4, 2007, Memorandum in Support of Motion, Affidavit of Lee W. Sichter and Exhibit "A".
6. On November 1, 2007, the Petitioner filed an Amended Petition and Petition Exhibits "1A"-"7A", "10A"-"12A", "15A"-"18A", "23"-"26".
7. On November 1, 2007, the Commission voted to grant Petitioner's motion to submit missing pages from the final EIS that was accepted on October 4, 2007.
8. On November 19, 2007, the notice of hearing was published statewide.
9. On December 6, 2007, the U.S. National Park Service ("NPS") filed an Application to Intervene.
10. On December 6, 2007, the Petitioner filed the Affidavit of Naomi U. Kuwaye Attesting to the Mailing of the Notice of Hearing and the Affidavits of Publication of Notice of Hearing.
11. On December 10, 2007 the State Office of Planning ("OP") filed the Position Statement of the Office of Planning in Support of the Petition, List of Witnesses, List of Exhibits, and OP's Exhibit Nos. 2A, 2B, 2C, 2D and 3.
12. On December 11, 2007, the County of Hawai'i Planning Department ("County") filed its Statement of Position in Support of the Petition.

13. On December 31, 2007, a Prehearing Order was issued which required that all exhibits were to be filed with the Commission no later than the close of business on January 11, 2008.

14. On January 10, 2008, the NPS submitted a letter to the Commission withdrawing its Application to Intervene.

15. On January 10, 2008, the Petitioner filed Petitioner's List of Witnesses, List of Exhibits, and Exhibits "1" through "19", "19A", "20", "20A", "21", "21A" and "22" to "46"; and the County filed its testimony in support of the Petition.

16. On January 11, 2008, the OP filed the Testimony of the OP in Support of the Petition.

17. On January 23, 2008, the Petitioner filed Petitioner's Motion to Amend the Exhibit List; Memorandum in Support of Motion; Declaration of Naomi U. Kuwaye; Amended List of Exhibits; Exhibits "6A", "21B", "21C" and "47".

18. On March 13, 2008, the County filed its Amended List of Witnesses.

19. On March 17, 2008, the Petitioner filed the Petitioner's Motion to Amend Its Amended Exhibit List, Memorandum in Support of Motion, Declaration of Jesse K. Souki; Second Amended List of Exhibits and Petitioner's Exhibits "48", "49", and "50".

20. On March 18, 2008, OP filed OP's Second Amended List of Witnesses.

21. On March 18, 2008, Petitioner filed Petitioner's Exhibit "51", a letter from Stanford Carr Development, LLC, regarding Project access through Kaloko Heights.

22. On April 8, 2008, Petitioner filed Petitioner's Motion to Amend Its Second Amended List of Exhibits and to Amend Its List of Witnesses, to Add a Rebuttal Witness, Memorandum in Support of Motion, Declaration of Jesse K. Souki, Third Amended List of Exhibits, Amended List of Witnesses, Exhibits "52" and "53"; and OP filed OP's Second Amended List of Exhibits, and Exhibit No.7.

23. The Commission held evidentiary hearings in this docket on January 24, 2008, January 25, 2008, March 19, 2008, March 20, 2008, and April 10, 2008, in Waikoloa, Hawai'i.

24. On April 10, 2008, the Commission closed the evidentiary portion of the proceedings.

25. On May 30, 2008, the Petitioner filed Petitioner's Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order entered into by Petitioner and the County.

26. On May 30, 2008, OP filed The Office of Planning's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

27. On June 6, 2008, OP filed The Office of Planning's Response to Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

28. On June 6, 2008, Petitioner filed Petitioner The Shopoff Group, L.P.'s Exceptions to The Office of Planning's Proposed Findings of Fact, Conclusions of Law and Decision and Order.

29. On June 12, 2008, Petitioner filed Petitioner The Shopoff Group, L. P.'s Response to Office of Planning's Response to Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

30. On June 12, 2008, OP filed The Office of Planning's Response to Petitioner The Shopoff Group, L. P.'s Exceptions to The Office of Planning's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

31. On June 12, 2008, the County filed County of Hawai'i Planning Department's Exceptions to Petitioner's Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

32. On June 12, 2008, Petitioner filed Petitioner The Shopoff Group, L. P.'s Response to The County of Hawai'i Planning Department's Exceptions To Petitioner's Partially Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

33. On July 24, 2008, the Commission conducted its deliberations at the Waikoloa Marriott Hotel, 69-275 Waikoloa Beach Drive, Waikoloa, Hawai'i. On September 18, 2008, the Commission conducted further deliberations at the Waikoloa Marriott Hotel, 69-275 Waikoloa Beach Drive, Waikoloa, Hawai'i.

Public Testimony

34. On January 24, 2008, the Commission heard public testimony from Geraldine Bell, superintendent at Kaloko-Honokohau National Historical Park (the "National Park"), NPS; Elizabeth Lee; Curtis Tyler, a resident of Kona Acres; Mark McGuffie, executive director of the

Hawai'i Island Economic Development Board; and Barbara Scott, Co-Chair of the Kona Traffic Safety Committee.

II. FINDINGS OF FACT

A. Description of the Petition Area

35. The Petition Area consists of approximately 129.99 acres comprising three tax map key parcels located in the O'oma Homestead region of the North Kona District on the island of Hawai'i, as follows: (3) 7-3-007:038 ("Lot 57"), which contains approximately 44.905 acres; (3) 7-3-007: 039 ("Lot 56"), which contains approximately 39.420 acres; and (3) 7-3-009:007 ("Lot 59"), which contains approximately 45.667 acres.

36. Lots 57 and 56 are owned in fee simple by TSG Kula Nei, L.P., formerly known as TSG O'oma, L.P. TSG O'oma, L.P. was formerly known as Wasson Canyon Investments, L.P. Lot 59 is owned in fee simple by Springbrook Investments, L.P.

37. The Petitioner is authorized by TSG Kula Nei, L.P. and Springbrook Investments, L.P. to represent them in reclassification of the Petition Area. The Petitioner, as the managing entity, is responsible for managing the development process on behalf of TSG Kula Nei, L.P. and Springbrook Investments, L.P.

38. The Petition Area is situated about four miles inland from the shoreline and 1.9 miles upslope of the National Park.

39. The Petition Area is situated several thousand feet due west of Mamalahoa Highway, and is surrounded by a number of existing residential subdivisions. Kona Palisades is directly to the north of the Petition Area, as is Kona Acres. O'oma Plantation, a single family subdivision, is also located north of the Petition Area. Kona Estates, which is a single-family gated community, is located *mauka* of the Petition Area. Directly south of the Petition Area is the proposed Stanford Carr development known as Kaloko Heights. *Makai* of the Petition Area is a vacant 900-acre parcel of State land that is currently in the state Urban Land Use District.

40. Homestead Road runs *mauka-makai* beginning at the Kona Estates Subdivision and runs through the middle of the Petition Area.

41. The County has jurisdiction over Homestead Road. Homestead Road is not part of the Petition Area.

42. The lands adjacent to the Petition Area are within the state Urban Land Use District and/or are planned or built residential subdivisions, except for a portion of the Petition Area's border to the northwest edge of the Petition Area.

43. The Petition Area is presently vacant, overgrown with mostly non-native vegetation. During pre-contact times before 1778 and early post-contact time up into the mid 1800s, it was the site of native Hawaiian habitation and cultivation activities. Subsequent to the decline of the Hawaiian population, habitation on the Petition Area all but disappeared and its use was generally limited to the grazing of livestock and a few residences.

44. Site elevations range from approximately 750 to 1,100 feet above mean sea level.

45. The Petition Area slopes down from *mauka* to *makai*, with an average slope of approximately 10 percent, with areas of slopes of 20 percent or more comprising less than 10 percent of the total Petition Area.

46. The annual rainfall in the region is 25 to 30 inches per year.

47. The entire Petition Area is designated as Zone X by the Federal Insurance Administration's Flood Insurance Study, which indicates that the Petition Area has a very low risk of flooding.

B. Proposal For Reclassification

48. The Petition Area is presently classified in the state Agricultural Land Use District. It is identified by both the County General Plan and the State's West Hawai'i Regional Plan as being appropriate for low-density urban development.

49. To achieve residential densities greater than a half acre per unit, the Petition Area must be reclassified to the state Urban Land Use District and subsequently rezoned from its present zoning of Ag 5A, which allows 5-acre lots, to a zoning classification consistent with low density residential development.

50. The proposed improvements concentrate on the subdivision of the Petition Area to allow for the development of approximately 270 residential units including approximately 216 to 220 single-family homesites, as well as affordable housing units that are needed to conform to County affordable housing requirements. Subdivided residential lots may be sold in bulk to one or more homebuilders, individual lots may be sold to home purchasers, or the lots may be disposed of using a combination of both methods. The number of required affordable housing

units is approximately 54 units, and Petitioner has represented that they will be located in the Petition Area.

51. The Petition Area will be connected to the Queen Ka'ahumanu Highway and Mamalahoa Highway by two existing roadways, Ka'iminani Drive and Hina Lani Street.

52. Proposed Project improvements include a 4.4-acre private community park, a wastewater treatment plant to serve the affordable housing area and residential lots immediately surrounding the affordable housing area, individual wastewater systems to serve the remaining residential lots, an offsite drinking water well, storage reservoirs, water transmission lines, an internal roadway circulation system and offsite roadway connections. The Project includes construction of Holoholo Street, a key mid-level connector in the North Kona region, through the Petition Area.

53. Additionally, Petitioner represents that it will preserve Homestead Road as a pedestrian trail open to the public. Homestead Road existed in the mid 1800s. It is a narrow roadway that is lined on each side by a lava rock wall. It ranges in width from about 10 to 20 feet and is overgrown with vegetation. Homestead Road is not suitable for a vehicular access, because it is lined on each side by existing lava walls and was never intended to accommodate motorized vehicles. There will be parking available to the public at various locations so the public can access Homestead Road.

54. The Lee family, including Robert Lee and Aunty Elizabeth Lee and their families, owned and lived on land in the Petition Area. The Lee family will develop the *makai* 10-acre portion of the Petition Area.

55. Petitioner will process grading plans and infrastructure improvement plans and anticipates construction of the Project to commence in 2011. Backbone infrastructure improvements would be completed within 10 years from the last discretionary land use approval for the Project. Backbone infrastructure is the construction of Holoholo Street through the Petition Area and the loop road within the Petition Area, access points, waterlines, and utilities to serve the future lots, the park, and construction of the water supply infrastructure.

56. Infrastructure construction, including a regional water supply well, reservoir, roadways (both on and potentially off the Petition Area), will take two to five years, putting aside market considerations.

57. Zoning and tentative subdivision approvals are anticipated to occur two to three years after issuance of the Commission's Decision and Order.

C. Petitioner's Financial Capability to Undertake the Project

58. Evidence of Petitioner's financial condition in the form of its financial statements was attached to the Petition as Exhibit "19".

59. Financing for land acquisition and entitlement (through subdivision approval) will be through limited partnerships, including TSG Kula Nei, L.P. and Springbrook Investments, L.P. An offering for investment in each of the two limited partnerships was made available to qualified investors to raise capital to finance the land acquisition and entitlements for the Project. Should additional capital be required for Project entitlements, it will be raised through the limited partnerships.

D. Need For The Proposed Development

60. Belt Collins Hawai'i, Ltd., under the direction of John Kirkpatrick, prepared a report titled, "Market Assessment, Kula Nei Residential Project, North Kona, Hawai'i County," dated September 2006, revised to include updated Project information, March 2007.

61. The Project meets demand for both market and affordable housing in West Hawai'i.

62. Housing near the urban center in Kailua-Kona is attractive to residents of West Hawai'i because they would not need to commute long distances to work or school.

63. Taking into account competing projects, the approximately 54 affordable units proposed for the Project could be absorbed in two years, and lot sales for market lots could take five years to be fully absorbed.

64. Absorption estimates in the Market Assessment take into account the slowing housing market since the analysis is based on long- term historical trends.

E. Economic Impacts

65. Over a seven-year period, it is estimated approximately 70 full-time construction jobs would be created annually on average from the Project. It is estimated the total employment impact of construction comes to an average of 161 jobs per year over that period; this includes both direct construction jobs and indirect and induced jobs associated with construction.

66. The State gains revenues from taxes on construction activity and on sales. The total revenue for the State is estimated at \$8.7 million at the end of construction of offsite and onsite infrastructure and housing construction.

67. The County would gain revenues from real property taxes, which would reach an estimated cumulative total of \$10.1 million by the year 2020.

F. Social Impacts

68. The Project will create improved connectivity through road improvements that will make it easier for residents of the area to reach the Kaloko commercial area and reduce the area's dependence on the major highways, Queen Ka'ahumanu Highway and Mamalahoa Highway.

69. Nearby residents will also see increased recreational opportunities near their homes with the development of trails, including Homestead Road, and a community park within the Project.

70. Petitioner will provide funding for schools. It has entered into an agreement with the State Department of Education ("DOE") that establishes fair-share contribution to mitigate the impacts of the Project. The fair share contribution is comprised of two elements: a construction in-lieu fee and a land contribution in-lieu fee.

71. The Project will not have a negative socioeconomic impact on the region.

G. Impacts Upon Resources of the Area

1. Agricultural Resources

72. Decision Analysts Hawai'i, Inc., under the direction of Bruce Plasch, prepared a study titled, "The Kula Nei Project: Impact on Agriculture," dated June 2007.

73. The Petition Area has poor agronomic conditions for commercial farming and grazing cattle because the soils are extremely rocky, rainfall is comparatively low, and water is not currently available for irrigating crops.

74. The Petition Area soil conditions are as follows:

Soil Conservation Service Rating. About 122 acres of the Petition Area is extremely rocky peat with a classification of VII, which means the soils have very severe limitations that make them unsuitable for cultivation and restrict their use largely to pasture range or

nonagricultural uses. The other 8 acres are rated VIII, which basically precludes use for any type of agriculture.

Agricultural Lands of Importance to the state of Hawai'i ("ALISH"). None of the Petition Area soils are rated Important. They are not classified.

Land Study Bureau. Twelve acres in the Petition Area have a rating of D, which is next to the lowest rating. One hundred eighteen acres, 91 percent of the Petition Area soils, have a rating of E, which is the lowest quality agricultural land.

75. Based upon the soil ratings systems, the entire Petition Area is comprised of very low quality soils.

76. There are no current agriculture activities in the Petition Area.

77. Reclassification and development of the Petition Area will not have an adverse impact on agriculture resources in the region or in the State.

2. Fauna

78. A survey was prepared for the Petition Area titled, "Avifaunal and Feral Mammal Survey for the Kula Nei Project, North Kona, Island of Hawai'i," dated April 25, 2007 (Revised).

79. Species of birds and mammals in the Petition Area were documented, the Petition Area was examined to identify natural resources available to wildlife, and special attention was devoted to documenting the presence and possible use of the Petition Area by native and migratory species, particularly those that are listed as threatened or endangered.

80. The study was conducted over a two-day period, which included walk arounds and the use of ultrasound detectors.

81. The Petition Area is disturbed and therefore good native habitat is absent.

82. Only introduced, non-native species of avifauna were observed.

83. An attempt was made to locate two native species that could potentially occur in the Petition Area: the Hawaiian owl or *pueo* and the *'io* or Hawaiian hawk, but none were found. The Hawaiian Hawk uses the same nest year after year and no Hawaiian Hawk nests were observed in the Petition Area.

84. The Newell Shearwater's population is predominantly on Kaua'i, and there is no data to show the extent to which they may occur in the region of the Petition Area.

85. It was recommended that if a Hawaiian Hawk (an endangered species) nest were discovered in the Petition Area the U.S. Fish and Wildlife Service should be notified of its presence.

86. No mitigation recommendations were made because of the lack of listed species in the Petition Area.

87. The chances of a Hawaiian Hawk being in the Petition Area are so small that it would not justify mandatory monitoring.

88. No mammalian species of concern were observed.

89. A particular effort was made to locate the Hawaiian Hoary Bat (an endangered species), but none were observed.

90. The Hawaiian Hoary Bat could only be found solitarily in trees, including trees in a neighbor's backyard, and urbanization of the Petition Area will not restrict or exclude the Hawaiian Hoary Bat.

91. No mitigation recommendations were made for mammalian species.

3. Flora

92. Isle Botanica, under the direction of Art Whistler, prepared a study titled, "Botanical Survey of Kula Nei Development Area, North Kona, Island of Hawai'i," dated May 2007.

93. All plant species encountered during the survey were recorded along with an indication of their frequency.

94. Most of the species were identified in the field; some were taken to the Bishop Museum and identified there.

95. Three types of vegetation were found in the Petition Area: Managed Land Vegetation; Schinus/Psydrax scrub (i.e., Christmas berry and *alahe'e*); and Disturbed Dospyros/Psydrax, dryland forest (i.e., *lama alahe'e* disturbed forest).

96. One hundred nine native and alien plant species were recorded from the Petition Area. Native plants comprise two types based on their distribution: indigenous and endemic species. Nineteen native plants were recorded: fourteen indigenous and five endemic.

97. No threatened or endangered plant species or species of concern were found in the Petition Area.

98. Because of the extensive disturbance of the forest and the scrub presence on the Petition Area, it is unlikely that any threatened or endangered plant species would have been missed in the survey, and it is also unlikely that any would become reestablished in the future.

99. Landscaping with native drought-tolerant plant species where practicable is recommended; but not to the exclusion of non-native species.

100. Petitioner will incorporate the use of native Hawaiian and drought-tolerant plants into the landscaping for the Homestead Road trail and green belt along Homestead Road, within the community park and in common open space areas of the Project that are to be landscaped. Petitioner will also support and recommend the use of native Hawaiian drought-tolerant plants by homeowners within the Project.

4. Archaeological and Historical Resources

101. Archaeological inventory survey reports were prepared for the Petition Area by Rechtman Consulting, LLC ("Rechtman Consulting") under the direction of Dr. Robert Rechtman. These reports are as follows: "An Archaeological Inventory Survey of TMKs:3-7-3-07:39 and 3-7-3-46:105," dated November 2005; "An Archaeological Inventory Survey of TMK:3-7-3-07:38," dated June 2005 (revised June 2006); "An Archaeological Inventory Survey of TMK:3-7-3-009:007," dated April 2006 (Revised March 2007); "An Archaeological Inventory Survey of a Proposed Holoholo Street Extension Across State-Owned Land (TMK:3-7-3-009:008 por.)," dated July 2006.

102. The archaeological studies were prepared in accordance with HAR title 13 subtitle 13, and HRS Chapters 275 through 284.

103. Rechtman Consulting also prepared an archaeological assessment survey for the offsite water system, which is a part of a letter from Dr. Rechtman to Department of Land and Natural Resources ("DLNR"), State Historic Preservation Division ("SHPD"), dated September 26, 2006.

104. The purpose of the archaeological inventory surveys was to identify and record all the archaeological features within the Petition Area, to define sites and assess their significance, and to propose treatment recommendations.

105. Rechtman Consulting documented 87 archaeological sites, eleven of which were considered significant to native Hawaiian people.

106. No further work was recommended for 31 sites as they were fully documented during the inventory surveys. Data recovery was recommended for 40 sites; preservation was recommended for 16 sites, including the 11 sites identified to be associated with cultural practices or beliefs.

107. The archaeological studies and site treatment recommendations were submitted for review to SHPD, and were approved by SHPD.

108. Rechtman Consulting is currently preparing data recovery, preservation, and burial treatment plans. Petitioner will work with SHPD to formulate data recovery, preservation, and burial treatment plans. Adherence to a SHPD accepted preservation plan ensures there will be no adverse impact to these sites.

5. Cultural Resources

109. Rechtman Consulting, prepared a cultural survey of the Petition Area titled, "Cultural Impact Assessment for the Kula Nei Project Area," dated September 2006, which included an assessment of whether any traditional and customary Hawaiian rights are being exercised in the Petition Area.

110. A visual inspection of the Petition Area was conducted as well as oral interviews with Elizabeth Maluihi Lee and Kinoulu Kahananui. Portions of the Petition Area have been in their families since the early 20th century and remained under their ownership until very recently.

111. There are no native Hawaiian traditional and customary practices currently being exercised in the Petition Area.

112. In light of the recommendations contained in the archaeological inventory surveys and the cultural impact assessment, the reclassification and development of the Petition Area will not have an adverse impact on archaeological and cultural resources. In addition, a protocol for any inadvertent discoveries will effectively mitigate any adverse impact.

6. Groundwater Resources

113. Waimea Water Services, Inc., under the direction of Stephen Bowles, prepared a report titled, "Review of Potential Well Development (TMK (3) 7-3-6:por36-New lot B), also known as "DWS lot" For the Kula Nei Project," dated May 2007.

114. Mr. Bowles was retained by the Petitioner to provide the necessary information for the planning, design and construction of a well to provide 700 to 1,000-gallon per minute ("GPM") capacity for the Project.

115. The Petition Area will use water from the Keauhou aquifer, which the State Commission on Water Resource Management estimates has a sustainable yield of 38 million gallons per day.

116. The Project would have a water demand for 270 water units or about 120,000 gallons per day on average as agreed to by the County Department of Water Supply ("DWS").

117. The 700 to 1,000 GPM well is projected to supply the necessary water for the Project, with excess amounts available to DWS and other projects in the area.

118. Based on previous work that was performed by Waimana Water Services, Inc. for the Kamehameha Schools and Kukio Resorts, consisting of a hydrologic or water budget, along with the work of others, there are adequate water resources to support the proposed well and the Project.

119. There will be no anticipated adverse impact on ground water quality from the development of this proposed well.

7. Lava Tube Cave Resources

120. SWCA Environmental Consultants, under the direction of Dr. Kemble White, prepared a report titled, "Biological Surveys of Lava Tube Caves, The Kula Nei Project, Kona, Island of Hawai'i," dated August 2006, Updated May 2007.

121. A field investigation to locate known lava tube caves in the Petition Area was performed by a team conducting a site walk-through using ground-penetrating radar.

122. Thirteen different lava tube cave segments, all part of the same system, were studied.

123. 32 species of cave arthropods were found and none of the species is protected under the law as endangered or threatened.

124. A follow up field study was conducted to investigate the effect of the earthquake of October 2006.

125. During the follow-up study of the lava tube caves, no new entrances were observed. There was evidence of a few rock falls within the tubes but the report as written in 2006 is still current, valid information.

126. Most of the lava tube caves are short segments that are fairly dry and they contain too much air circulation to provide suitable habitat for the cave life. The main section, which is divided into three pieces, is where much of the significant biology occurs.

127. The lava tube caves that have been identified as having active cave biology are the same as those within the preservation areas identified and recommended to be preserved.

128. The three lava tube cave segments within the preservation area should be made inaccessible for the protection of the public and the biological and archaeological resources that are contained within those tubes. Methods should include a combination of fencing, gating, or blocking some of the entrances with large boulders.

129. If subgrade cavities are collapsed and a space large enough to be explored and surveyed and that could support cave biology is encountered, the space should be inspected by a cave or karst expert to identify what protective or mitigation measures, if any, should be undertaken.

8. Scenic Resources

130. Petitioner is committed to protecting the natural beauty of the region and ensuring that the character of the Project is consistent with that of the surrounding communities.

H. Environmental Quality

1. Noise

131. Noise impacts would occur during construction. These impacts are not considered significant since they would be temporary, and construction work would be conducted in compliance with applicable state Department of Health ("DOH") noise regulations.

132. No significant noise impacts are expected during the operational phase of the Project. Ambient noise may increase slightly due to additional vehicular traffic.

2. Air Quality

133. B. D. Neal & Associates, under the direction of Barry Neal, prepared a report titled, "Air Quality Study for the Proposed Kula Nei Project, North Kona, Hawai'i," dated May 2007.

134. The air quality impacts during construction would be related to fugitive dust emissions and, to a lesser extent, exhaust emissions from stationary and mobile construction

equipment, the disruption of traffic, and workers' vehicles coming to and from the Petition Area during construction operations.

135. Mitigation measures during construction will include a dust control plan that includes provisions for watering of active work areas, using windscreens in some dust-sensitive areas, keeping adjacent paved roads clean, and covering open-bodied trucks traveling to and from the Project construction site. Other dust control measures include limiting the area that can be disturbed at any given time and mulching or chemically stabilizing inactive areas that have been worked. Paving and landscaping of Project areas early in the construction schedule will also help to reduce dust emissions.

136. After construction is completed the primary issue as far as air quality impacts from the Project is concerned is related to motor vehicle traffic coming to and from the Petition Area and the long-term increase in air pollution emissions resulting therefrom.

137. Air quality with or without the Project should remain within both the national and State standards through the year 2020.

138. Due to the small impact the Project is expected to have, implementing mitigation measures for traffic-related air quality impacts is unnecessary and unwarranted.

J. Adequacy of Public Services and Facilities

1. Highway and Roadway Facilities

139. Fehr & Peers, Kaku & Associates prepared a study, under the direction of Dick Kaku, titled, "Traffic Study for the Kula Nei Residential Development, North Kona, Island of Hawai'i, Hawai'i," dated May 2007.

140. The traffic study analyzed the potential Project-related traffic impacts on the roadway system in the vicinity of the proposed Project for the Petition Area in North Kona, Hawai'i.

141. New baseline traffic volume data was collected for use in the study to establish existing base conditions. The impact analysis was conducted by examining projected future conditions during the typical weekday morning and afternoon peak hours both with and without the Project at five study intersections and four roadway segments.

142. The five intersections studied are as follows: Ka'iminani Drive and Holoholo Street; Ka'iminani Drive and Mamalahoa Highway; Mamalahoa Highway and Hina Lani Street;

Queen Ka'ahumanu Highway and Hina Lani Street; and the currently nonexistent but future intersection of Holoholo Street and Hina Lani Street.

143. The four road segments are as follows: A portion of Ka'iminani Drive just *mauka* of Queen Ka'ahumanu Highway; a portion of Mamalahoa Highway north of Ka'iminani Drive; portion of Hina Lani Street just *mauka* of Queen Ka'ahumanu Highway; and a portion of Mamalahoa Highway just south of its intersection with Hina Lani Street.

144. The projected completion year of the proposed Project is 2017, but for planning purposes, the study evaluated projected 2020 conditions, which coincided with projected roadway improvements for the area.

145. Cumulative and Project-related impacts were identified and mitigation measures were developed to adjust these impacts based upon Level of Service ("LOS") standards adopted by the County of Hawai'i.

146. County LOS standards indicate that if an intersection operates at LOS D after the addition of Project traffic, it is not impacted by the Project.

147. Petitioner has met with representatives of the state Department of Transportation ("DOT"), regarding the Project's fair-share contribution to mitigate the traffic impacts of the Project. The Project's fair-share contributions involve three intersections: Mamalahoa Highway and Ka'iminani Drive; Mamalahoa Highway and Hina Lani Street; and *makai* of the intersection of Queen Ka'ahumanu Highway and Hina Lani Street.

148. There are three potential scenarios for access to state highways via different parallel connector roads, and the DOT agrees with what the traffic impact assessment report ("TIAR") indicates in terms of the percentages of additional traffic at each of those intersections.

149. The fair-share contribution amount will be the total agreed upon cost for each intersection improvement multiplied by the Petitioner's contribution to traffic for each of the intersection improvements. Petitioner's total fair-share contribution is the sum of all three intersection improvements.

150. Current access to the Project is through Lot 105, which is owned by the Petitioner. Lot 105 is a vacant lot in the Kona Acres Subdivision that abuts Kukuna and Punawale Streets.

151. Access to the Petition Area will be through the future extension of Holoholo Street from Kona Acres subdivision to the Petition Area, and/or Kealaka'a and Holoholo Streets

through the Kaloko Heights Subdivision. Petitioner anticipates two connections through the Kaloko Heights project -a *makai* connection and a *mauka* connection - to Hina Lani Street.

152. Holoholo Street intersects with Ka'imīnani Drive. The County of Hawai'i plans to extend Holoholo Street as a lateral access in the North Kona area. The Petitioner has proposed the extension of Holoholo Street across a parcel of state owned property that is northwest and adjacent to the Petition Area. Stanford Carr Development is proposing to construct Holoholo Street across the Kaloko Heights property to the south of the Petition Area, to connect to Hina Lani Street.

153. By letter dated January 29, 2008, Stanford Carr Development acknowledges Petitioner's efforts to coordinate the extension of the Holoholo/Kealaka'a extension from Project south through the Kaloko Heights subdivision.

154. As a condition of subdivision approval, Stanford Carr Development would be required to build Holoholo Street from Hina Lani Street, through the Kaloko Heights subdivision, up to the Petition Area.

155. Petitioner is also working with representatives of the County of Hawai'i and DLNR to facilitate the extension of Holoholo Street through the vacant State parcel north of the Petition Area.

156. There is currently no public transportation available in this area of North Kona. However, Petitioner is amenable to providing bus turnouts along Holoholo Street within the Petition Area to facilitate future public transportation if desired by the County of Hawai'i.

2. Grading

157. Belt Collins Hawai'i, Ltd., under the direction of Walter Billingsley, prepared a report titled, "Civil Infrastructure, Kula Nei Subdivision, TMK: 7-3-007:38, 39; 7-3009: 007," dated June 2007.

158. The grading design for the Project will be in compliance with County of Hawai'i standards and will eliminate any potential risk associated with localized relatively steep slopes on the Petition Area. A detailed geotechnical exploration of the Petition Area will be conducted to provide a basis of grading design for the Project.

159. The geotechnical engineer will identify any needed remediation for existing slopes and recommend maximum angles for cut slopes and fill slopes.

160. The grading design will accommodate the existing steeper slopes on the Petition Area by benching or terracing the surface to create roadbeds and building sites. The isolated areas with slopes greater than 20 percent will be incorporated into this pattern without any detrimental effects on the Project.

3. Water Service

161. The Petition Area will be served by existing water lines to the north of the Petition Area.

162. Offsite water supply, storage and transmission consisting of a well, reservoir and transmission lines will be constructed specifically for the Project. Petitioner has a construction easement for constructing waterlines through the O'oma Plantation Subdivision.

163. The County of Hawai'i Department of Water Supply ("DWS") will review and approve the proposed water system.

4. Solid Waste Disposal

164. Solid waste, including construction waste and domestic solid municipal waste, will be discharged to the West Hawai'i Landfill, approximately 15 miles north of the Project.

165. Biosolids from individual wastewater systems in the Project and the Project's proposed wastewater treatment plant will be periodically discharged to the County of Hawai'i wastewater treatment plant in Kona.

166. Sufficient landfill capacity is available at the West Hawai'i Landfill to accommodate the solid waste generated by the Project at full buildout, based on the assumption that when the existing landfill's capacity is reached, the County will at that time have another landfill or some other method of handling municipal solid waste.

5. Wastewater Disposal

167. Wastewater disposal for the Project includes individual wastewater systems for lots of 10,000 square feet and larger, and the small centralized wastewater treatment plant for the affordable housing area and nearby lots. The lots surrounding the affordable housing area that will be served by the wastewater treatment plant may be smaller than 10,000 square feet.

168. The Project's wastewater disposal plan eliminates the need for offsite construction of two and a half miles of sewer line, and it minimizes discharge to the County of Hawai'i wastewater system.

169. The centralized wastewater treatment plant for the affordable housing area and nearby lots, as well as the individual wastewater systems for the Project, will be designed to remove most of the nutrients in the wastewater in accordance with requirements contained in the Agreement between the Petitioner and the NPS, Petitioner's Exhibit 46.

170. Onsite wastewater treatment and disposal will not have a significant impact on the existing County of Hawai'i wastewater infrastructure, because the wastewater will be treated and disposed on the Petition Area, not piped to the County of Hawai'i wastewater system. Only biosolids from septic tanks and the centralized wastewater treatment plant will be transported offsite from the Petition Area by pumper trucks on an as-needed basis and discharged to the County of Hawai'i system.

6. Drainage

171. The Petition Area slopes down *mauka* to *makai* at an average slope of approximately 10 percent. Because the surface of the Petition Area is very uneven and the existing soils are very porous, most rainwater percolates into the ground at or near where it falls. For this reason, there are no streams or natural drainage channels in the vicinity of the Petition Area.

172. The Petition Area has a very low risk of flooding.

173. The Project is projected to have only a minor impact on the existing natural drainage conditions at the Petition Area and is projected not to have any impact on the existing regional drainage conditions.

174. The low density of the Project will allow rainwater to continue to percolate into the ground over most of the Petition Area. Stormwater runoff from buildings, roads and other paved areas on the Petition Area will be directed into porous sumps and shallow drywells in the nearby vicinity.

175. Stormwater quality measures such as debris catch basins will be designed as components of the shallow drywells in accordance with requirements contained in the Agreement between Petitioner and NPS.

176. The Petitioner agreed to follow the terms of the Agreement between Petitioner and NPS regardless of whether the Commission imposes it as a condition, but only if the requested district boundary amendment is granted by the Commission.

7. Police and Fire Protection

177. The Kona station of the Hawai'i County Police Department is located at Kealahou, just above Queen Ka'ahumanu Highway, about 2.5 miles from the Petition Area. It serves as the local station and main office for West Hawai'i bureaus. Some 78 positions were authorized for the Kona district as of 2005 (Hawai'i County Police Department 2006).

178. While population and housing growth will lead to increased demand for police services, the impact of the Project is likely to be small.

179. The County of Hawai'i's North Kona fire station is located in Kailua-Kona, about 4.5 miles from the Petition Area. The Keahole Airport station is about three miles from the Petition Area. In addition, Kalaoa Volunteer Fire Company 7 Bravo is located on Ka'iminani Drive, at the *makai* end of the Kona Palisades subdivision. Its 15 volunteers are trained in firefighting and work in support of the regular Fire Department personnel. Funds for a new Kalaoa Fire Station are in the current budget before the County Council. The net impact of the Project on the demand for firefighting services is likely to be minimal.

8. Emergency/Medical Services

180. The primary medical facility for the Kona region is Kona Community Hospital in Kealahou, South Kona. This 94-bed hospital is part of the Hawai'i Health Systems Corporation supported by the State. It has 24-hour emergency services, an intensive care unit, maternity, oncology, and other units. It is located about 15 miles from the Petition Area. In Waimea, the North Hawai'i Community Hospital is a privately owned non-profit facility, with 40 beds, a 24-hour emergency room, and acute care services. It is located about 30 miles from the Petition Area.

9. Electricity and Telephone Services

181. The Petition Area is located within a region that has a well-developed electrical and communications infrastructure base that is expanding over time to meet the needs of ongoing development in the region.

182. The Project's demand for electrical and communications infrastructure resources is well within the existing providers' capabilities, and will not adversely impact the regional electrical and communications infrastructure resources.

183. Hawai'i Electric Light Company, Hawaiian Telcom and Oceanic Time Warner Cable have indicated that they can provide service for the Project.

10. Energy Conservation

184. HRS Chapter 196, imposes a condition that State buildings, but not private buildings, be designed and constructed to meet LEED¹ silver standards. There is no county ordinance that imposes LEED on any developments. LEED is a voluntary program.

185. The LEED program's goal is, through building design and construction, to increase energy efficiency and water conservation, reduce the amount of material that is sent to the landfill, and improve indoor environmental quality.

186. There are other programs in addition to LEED that are designed to produce buildings with greater energy efficiency and water conservation, and reduce the amount of material sent to the landfill. These programs include Energy Star for Homes, Hawaii Built Green, and Green Communities.

187. Danielian and Associates, under the direction of Jeffrey Stevens, prepared a document titled, "LEED-H Silver Cost Summary for Kula Nei," dated April 4, 2008.

188. According to the study, LEED-H Silver compliance would add \$35,000.00 per unit, which includes construction costs and the LEED related fees. A home constructed in Hawaii would cost about \$130-\$150 per square foot.

189. For residential projects, LEED costs to the builder, among other costs, are generally passed directly on to the homeowner. Although LEED certification may increase initial costs, the energy, water and other savings and benefits over the life of the building may offset the increased initial costs, and reduce energy consumption and the release of greenhouse gases.

190.A. Energy efficiency and demand management are part of the Hawaii State Plan. One of the decision-making criteria for the Commission is conformance to the Hawaii State Plan, and the impact on environmental resources.

190.B. The State has a great concern for the amount of resources available to service all developments such as fuel, water, and solid waste disposal for the future health of its residents. State concerns are the impacts the future development would have on energy consumption and the promotion of energy conservation measures.

¹ LEED is the U.S. Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System.
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191. The County of Hawai'i does not have the resources and/or expertise to enforce a mandatory LEED or similar requirement; however, the Petitioner has agreed to work with the future masterbuilder(s) to identify energy conservation measures that can be incorporated into the Project covenants, conditions, and restrictions where practicable.

K. Commitment of State Funds and Resources

192. In respect to improvements to the Petition Area, the Petitioner or its successors will fund site work and the initial construction of on-site and off-site infrastructure, including roadways; wastewater collection and treatment; drinking water wells, reservoirs, and transmission lines; and utilities.

L. Conformance With Urban District Standards

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

Criterion No.1. The Petition Area is located in an area generally surrounded by existing residential subdivisions as well as undeveloped property that has been reclassified to the Urban District.

Criterion No. 2A. The Petition Area is situated in close proximity to West Hawai'i's commercial, industrial and economic center, Kailua-Kona.

Criterion No. 2B. Transportation systems, schools, parks, solid waste disposal, and energy systems including police and fire protection are all available to the Petition Area. The Petitioner will develop drinking water resources and wastewater collection and treatment for the Petition Area. The completed water systems will be dedicated to the County of Hawai'i and become part of the County's regional system.

Criterion No. 2C. The State and the County presently designate the Petition Area as a reserve area for urban growth.

Criterion No. 3. The topography of the Petition Area is consistent with state Urban Land Use District design standards, and it is generally free of potential adverse environmental conditions such as floods, tsunami, or unstable soil conditions.

Criterion No. 4. The Petition Area is contiguous to and abuts property classified as urban on the north, south and west sides.

Criterion No. 5. The Petition Area is classified for low-density urban growth by both the state plan and County General Plan.

Criterion No. 6. The Petition Area represents a relatively small portion of a large urban area that presently extends *makai* from the Petition Area to the Queen Ka'ahumanu Highway and then north nearly two miles.

Criterion No. 7. The Petition Area is surrounded on three sides by existing or approved subdivisions and would be an infill project.

Criterion No. 8. The average slope of the Petition Area is approximately 10 percent.

M. Conformance With The Goals, Objectives, and Policies of The Hawai'i State Plan

194. The Project is generally supportive of Part I of the Hawai'i State Plan including the themes and the objectives and policies inherent to it. In particular, the Project will provide market-priced house lots and affordable housing units.

195. The proposed reclassification of the Petition Area actively supports or is in general conformance with the following goals, objectives, policies, and priority guidelines of the Hawai'i State Plan:

Section 226-4 State goals. As a matter of state and County land use policy, the lower slopes of Hualalai in North Kona are intended for residential development to provide housing opportunities for the fast growing population of West Hawai'i. The proposed Project is consistent with that purpose. The Project will provide a range of housing opportunities in a desirable physical location, including affordable housing opportunities on site.

Section 226-5 Objective and policies for population. Developing a residential project for the primary and affordable housing markets in a location specifically designated by the State for urban expansion and by the County for low density urban directly contributes to government's goal of directing population growth to areas with the greatest economic benefit.

Section 226-6 Objectives and policies for the economy - in general. As the fastest growing region on the Big Island, the North Kona area is in need of a wide range of housing opportunities to support visitor industry and service sector employees. The proposed Project will help fulfill West Hawai'i's employees' demand for housing.

Section 226-7 Objectives and policies for the economy - agriculture. The Petition Area is ill-suited for agricultural use because of its poor soil quality and its physical setting. It is surrounded on three sides by existing residential subdivisions. Development of the Petition Area for residential uses will not adversely impact agriculture because no productive agricultural land is being removed from the inventory.

Section 226-8 Objectives and policies for the economy - visitor industry. The health of the Big Island's economy is influenced by the availability of housing in reasonable proximity to job centers. Reducing commute times is important to workers' well being. Because West Hawai'i is a high growth visitor destination, its current housing opportunities are outstripped by its employment opportunities.

Section 226-9 Objectives and policies for the economy - federal expenditures. While there is little relationship between private residential development and matters related to federal expenditures and national defense, increasing the availability of housing has a beneficial impact upon existing and potential federal workers by helping to provide housing opportunities in reasonable proximity to West Hawai'i's job centers.

Section 226-10 Objectives and policies for the economy - potential growth activities. The goals and policies set forth in HRS section 226-10 correspond with the changes and growth occurring in the West Hawai'i region. The Project will have a beneficial indirect impact upon economic diversification by providing housing opportunities that may support State and county economic initiatives.

Section 226-10.5 Objectives and policies for the economy - information industry. As is the case with other segments of the economy, the availability of affordable housing in reasonable proximity to employment centers will have a beneficial impact upon the industry's ability to attract and keep workers.

Section 226-11 Objectives and policies for the physical environment – land based, shoreline, and marine resources. The siting of the Project is consistent with sound planning principles for the preservation of the environment and Hawai'i's natural resources. The Petition Area was carefully surveyed to ensure that no significant habitats are present and that no endangered, threatened or candidate species will be impacted.

Section 226-12 Objectives and policies for the physical environment - scenic, natural beauty, and historic resources. The existing Homestead Road will be preserved as a cultural feature. To that end, the Homestead Road, including its abutting dry-stack lava walls, has been incorporated into the Project as a pedestrian trail. In addition, significant archaeological sites that have been identified, including burials, will be preserved. The large lava tube will also be preserved. These preserved areas become important open space elements in the scenic landscape.

Section 226-13 Objectives and policies for the physical environment - land, air, and water quality. The Project's wastewater collection and treatment system includes a combination of individual septic systems and a centralized privately developed and operated Waste Water Treatment Plant ("WWTP"). They will be designed to minimize impacts to the environment. The proposed subdivision plan for the Project includes a variety of lot sizes which will enhance the visual character of the community. Multiple vehicular access points are provided for safe ingress and egress. The Project also includes the development of regional water supply and reservoirs.

Section 226-14 Objectives and policies for facility systems - in general. The Project proposes a combination of individual septic systems with a centralized wastewater treatment system. The Project also includes a drinking water well, reservoirs and a transmission system.

Section 226-15 Objectives and policies for facility systems - solid and liquid wastes. By privately funding wastewater collection and treatment, the Project will not overburden the existing regional wastewater system.

Section 226-16 Objectives and policies for facility systems - water. The Petitioner will fund the development of a new regional drinking water system for the Petition Area and surrounding areas, including a well, reservoirs and transmission lines. Construction of the water system will enhance service to the surrounding area by improving water supply, storage capacity and connectivity.

Section 226-17 Objectives and policies for facility systems - transportation. Petitioner will fund the connection of major collector roads (the Holoholo Street extension per the Keahole to Kailua Development Plan), so the Project will help to improve regional traffic circulation and provide alternate routes to Queen Ka'ahumanu and Mamalahoa Highways.

Section 226-18 Objectives and policies for facility systems - energy. As a residential subdivision, the Project can contribute to energy efficiency in two arenas: transportation and residential energy consumption. From the perspective of transportation, the regional roadway connections that will result from the Project's implementation will contribute to an improvement in vehicular circulation in North Kona, which translate to fewer delays and less energy consumption. Specifically, extending Holoholo Street through the Petition Area and mitigating Project impacts with the installation of a traffic signal at the Holoholo Street/Ka'iminani Drive intersection will improve level of service from "F" to "B". Specific steps to be taken for

improved energy efficiency at the residential level will include ventilation design, landscaping, and the installation of energy saving devices, such as reduced consumption lighting fixtures.

Section 226-18.5 Objectives and policies for facility systems - telecommunications.

Hawaiian Telcom has an existing system with the capacity to serve the Project along Kukuna Street. Hawaiian Telcom proposes to extend its systems from Pole 10 on Kukuna Street via new support structures located along the Holoholo Street Extension to the entry of the Petition Area in the vicinity of the affordable housing site.

Section 226-19 Objectives and policies for socio-cultural advancement - housing. The Project will offer a range of lot sizes, as well as affordable housing. The Project's location on the west-facing slope of Hualalai makes the Project attractive to potential homebuyers. The Project's affordable housing component will be constructed in compliance with the County of Hawai'i's affordable housing requirements.

Section 226-20 Objectives and policies for socio-cultural advancement - health. The Project's wastewater collection and treatment strategy includes individual septic systems for residential lots in excess of 10,000 square feet, with smaller lots being served by a privately funded WWTP. The entire system will be constructed to comply with DOH standards.

Section 226-23 and 226-25 Objectives and policies for socio-cultural advancement leisure and culture. The Petition Area includes significant archaeological and cultural features that will be preserved, including burials, a large lava tube, and a portion of a former historic region-serving transportation route known as Homestead Road. The large lava tube will be preserved. Homestead Road, including its abutting dry-stack lava rock walls, will be preserved and incorporated into the Project as a pedestrian trail open to the public. The Project will ensure access by lineal descendants to burials. Access to sites for traditional and customary Native Hawaiian practices will be provided.

N. Relationship With Applicable Priority Guidelines and Functional Plans

196. The Project is supportive of the goals, objectives, and policies of the State Functional Plans, in particular, the Educational Plan, the Higher Educational Plan, the Employment Plan, the Energy Plan, the Health Plan, the Historic Preservation Plan, the Housing Plan, the Recreation Plan, the Transportation Plan and the Water Resources Plan, as follows:

Educational Functional Plan. The Petitioner will provide a fair-share contribution to the State DOE to mitigate for the impacts of the Project on public education.

State Higher Education Functional Plan. The Project will contribute to the availability of market priced and affordable housing. Some of this housing may be available for faculty and staff at the West Hawai'i College.

State Employment Functional Plan. The Project will generate over 200 construction jobs during each of the first three years of construction. In the long-run, the Project will provide housing within proximity to regional job centers.

State Energy Functional Plan. From the perspective of transportation, the regional roadway connections that will result from the Project's implementation will contribute to an improvement in vehicular circulation in North Kona, which should translate into fewer delays and less energy consumption. Specific steps to be taken for improved energy efficiency at the residential level will include ventilation design, landscaping, and the installation of energy saving devices such as reduced consumption lighting fixtures.

State Health Functional Plan. Project construction will conform to DOH regulations relating to erosion control, fugitive dust control, solid waste disposal, and noise controls. In addition, the Project's proposed wastewater collection and treatment strategy, which includes a combination of individual septic systems and a privately funded and operated WWTP, will fulfill the goal of improving environmental health and protection.

State Historic Preservation Functional Plan. Archaeological inventory surveys have been conducted in the Petition Area and a cultural impact assessment has been prepared. Sites conforming to the significance criteria established under state and federal regulations will be preserved in coordination and consultation with the SHPD and all other recommendations of the consultant will be followed.

State Housing Functional Plan. The Project is supportive of the Housing Functional Plan's goal of providing more homes for Hawai'i's population. In addition, the Project's affordable housing component will address the demand for affordable homes in West Hawai'i.

State Recreation Functional Plan. The Project improvements include a 4.4-acre private community park and preservation of the Homestead Road as a pedestrian trail open to the public.

State Transportation Functional Plan. The Petitioner will construct the portion of Holoholo Street within the Petition Area and will participate on a fair share basis in the funding of the extension of Holoholo Street, linking Ka'iminani to Hina Lani Street, which will provide

routing alternatives to Queen Ka'ahumanu and Mamalahoa Highways and help to reduce congestion on these regional arterials.

State Water Resources Development Functional Plan. The Project includes a new regional drinking and irrigation water well and storage reservoir. The transmission system to be installed by the Petitioner will be integrated into the County of Hawai'i's regional distribution system, improving water supply, storage, and transmission in the vicinity of the Petition Area.

O. Conformance With The Coastal Zone Management Program

197. The Project is consistent with applicable objectives of the Coastal Zone Management ("CZM") Program. In particular, it is consistent with four objectives pertaining to the preservation of natural and historic resources, the provision of public and private facilities important to the economy, the reduction of flooding and erosion hazards, and encouragement of public participation in the management of coastal resources.

198. Of the archaeological sites identified in the Petition Area those determined to be significant will be preserved. In addition, Homestead Road is part of the Project and will be preserved as a pedestrian trail open and available to the public.

199. Most CZM Program objectives are not applicable because the Petition Area is four miles from the coast.

P. Conformance With The County General Plan

200. The Project either actively supports or generally conforms to the relevant goals and policies of the County General Plan.

201. The Project is consistent with applicable portions of the County General Plan as follows:

Economic. As a residential community, the Project's ability to directly influence the economy is limited to a supportive role: the provision of new homes, including affordable units, in an area designated by the County General Plan for low-density residential development to support the larger economy.

Energy. The Project is supportive of improving energy efficiency and promoting alternative energies. The Petitioner will work with the future master builder(s) to identify energy conservation measures that can be incorporated into Project covenants, conditions, and restrictions where practicable.

Environmental Quality. The Petitioner is supportive of environmental policies and will comply with all applicable laws, ordinances, rules, and regulations.

Flooding and Other Natural Hazards. The design of the Project and construction of the storm water drainage system will retain Project runoff on the Petition Area. The Petitioner will minimize erosion and minimize sedimentation down slope from the Petition Area.

Historic Sites. The Petitioner will preserve archaeological and cultural sites identified in the Petition Area as significant. The preservation of Homestead Road as a pedestrian trail open to the public will benefit not only the residents of the Project but also the greater community.

Natural Beauty. The Petitioner is committed to protecting the natural beauty of the region and ensuring that the character of the Project is consistent with that of the surrounding communities.

Natural Resources and Shoreline. The preservation of the lava tube within the Petition Area is consistent with the County of Hawai'i's General Plan's policies for preserving natural resources.

Housing. The range of lots sizes in the Project, as well as the Project's affordable housing component, is consistent with the county General Plan's housing goals.

Public Utilities. Master planning the Project enables the provision of utilities to be coordinated, which helps lower costs and maximize connectivity with the regional system.

Public Utilities-Water. The Project includes the privately funded development of a new regional well, storage reservoir, and a transmission system for drinking water that will not only serve the Project but will also provide linkage to the regional system.

Public Utilities-Telecommunications and Electricity. Electrical and telecommunication utility lines will be buried underground in the Petition Area.

Public Utilities-Sewer. The Project is situated *mauka* of the DOH's Underground Injection Control (UIC) line, and is prohibited from utilizing injection wells. In addition, it is located a considerable distance from the Kealahou WWTP. Therefore, it will rely upon a combination of individual wastewater treatment systems (septic systems) for larger lots and a privately funded and operated WWTP for smaller lots and the affordable housing portion of the Project.

Recreation. The Project includes the development of a passive private recreational park and the preservation of Homestead Road as a pedestrian trail open and available to the public.

Transportation and Transportation Roadways. The Petitioner supports the applicable transportation goals of the County General Plan.

Land Use. Reclassification of the Petition Area to the state Urban Land Use District and a change in County zoning would be in accordance with the existing or projected needs of the neighborhood, community, region, and the County.

Land Use Agriculture. The Petition Area is classified in the state Agricultural District, but is of limited agricultural productivity due to its soil quality. It is surrounded on three sides by existing or planned residential development. In addition, it is designated for urban expansion by the State and as Low-Density Residential by the county. Therefore, its proposed reclassification to the state Urban Land Use District is not anticipated to have a significant negative impact upon agriculture in the region.

Land Use-Multiple Residential. The Petition Area is designated as Low-Density Residential by the county General Plan's Land Use Pattern Allocation Guide (LUPAG), and multiple residential development will be generally limited to some multi-plex development within the affordable housing component of the Project.

Land Use-Single-Family Residential. The Project includes a range of lot sizes, and an affordable housing component, which will implement the county General Plan's housing policies.

Land Use-Open Space and Public Lands. The Project includes the use of Homestead Road as a public pedestrian trail and the designation of a lava tube preservation area as open space. These elements are consistent with the intent of the county General Plan's open space policies.

Q. Conformance To The Keahole To Kailua Regional Development Plan

202. The Project conforms to the goals of the Keahole to Kailua Regional Development Plan to provide a significant number of new residential units in the region. The Petition Area is designated for low density development and the Project is consistent with the Keahole To Kailua Regional Development Plan. The Project also includes the extension of Holoholo Street and the development of a new regional drinking water well, storage reservoir and transmission system.

R. Conformance With Keahole To Honaunau Regional Circulation Plan

203. The Project conforms with strategies 2, 2D, 5, 5B, 6, and 6A of the Keahole to Honaunau Regional Circulation Plan ("Circulation Plan") as follows: The Project conforms to

the goals of the Circulation Plan by spreading traffic rather than funneling all the traffic to the major arterials; making improvements that will contribute to development of Kalaoa Connector Roads; developing affordable housing near an urban area; and creating housing closer to jobs thereby reducing commuting.

S. Incremental Districting

204. The Project is expected to be completed within 10 years of the date of receipt of the last land use entitlement allowing site work and development activities. Therefore, incremental districting is not necessary.

III. RULINGS ON PROPOSED FINDINGS OF FACT

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

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

IV. CONCLUSIONS OF LAW

1. Pursuant to HRS section 205 and the Commission Rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 129.99 acres of land in the state Land Use Agricultural District in the North Kona District, Island of Hawai'i, Tax Map Key Nos. (3) 7-3-007:038, 039, and (3) 7-3-009:007, to the state Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the state Land Use Urban District, is reasonable, not violative of HRS section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 205-16, 205-17, and 205A-2.

2. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and

religious purposes and possessed by *ahupua'a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n.43, *certiorari denied*, 517 U.S. 1163 (1996).

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

4. There is no evidence to suggest that any native Hawaiian traditional and customary rights are currently being exercised within the Petition Area.

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

6. Article XI, Section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

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

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

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

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

11. The reclassification of the Petition Area will urbanize land that is not suitable for agricultural uses. The Petition Area's soil classifications and low annual rainfall make it unsuitable for intensive agricultural use.

12. The Petition Area is not classified as Important Agricultural Land under the ALISH rating system or Part III of HRS chapter 205.

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

14. The proposed drainage system will not increase offsite runoff, nor cause an adverse impact to adjacent and downstream properties.

15. The design of the Project will minimize adverse visual impacts of the Project.

16. The West Hawai'i Landfill has adequate capacity to support the needs of the Project, based on the assumption that when the existing landfill's capacity is reached the County will at that time have another landfill or some other method of handling the municipal solid waste.

17. The fair share agreement with the DOE is sufficient to mitigate the impact of the Project on the educational resources of the area.

18. Petitioner will enter into an agreement with the State Department of Transportation which will satisfy the Petitioner's fair share contribution obligation regarding mitigation of the traffic impacts of the Project.

V. DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 129.99 Acres in the state Land Use Agricultural District in the North Kona District, Island of Hawai'i, Tax Map Key Nos. (3) 7-3-007:038, 039, and (3) 7-3-009:007, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the state Land Use Urban District, and the state Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the

preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

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

1. Order to Show Cause. The Commission on its own motion, or at the request of any party or interested person, shall issue an order to show cause and require the Petitioner to appear before the Commission to explain why the Petition Area, or any part thereof, should not revert to its original classification or more appropriate classification for any of the following:

A. Failure to accomplish development of the Petition Area as represented to the Commission or to secure a bond for the completion thereof within 10 years from the date of the Commission's decision and order. For purposes of this decision and order, "development" means completion of backbone infrastructure as defined in finding of fact 55; or

B. Failure to accomplish substantial progress in developing the Petition Area as represented to the Commission by the commencement of construction of the Project in 2011, if necessary county approvals have been obtained or in any event no later than five years from issuance of the decision and order; or

C. Failure to perform a condition of approval, or a representation or commitment made on the part of the Petitioner.

2. **Water Resource Allocation.** Petitioner shall fund and construct drinking water source, storage and transmission facilities and improvements as required to accommodate development of the Petition Area, to the satisfaction of the County of Hawai'i and appropriate State agencies.

3. **Water Conservation Measures.** Petitioner shall implement water conservation measures as may be required by the applicable provisions of the Hawai'i County Code, including, but not limited to, low-flow water fixtures, and shall also implement BMPs, such as the use of indigenous and drought tolerant plants and turf and incorporate such measures in the Project's landscape planting. Petitioner shall recommend the use of native and require the use of drought tolerant plants in the Petition Area in the Conditions, Covenants and Restrictions (CC&Rs) associated with the Project or in deed restrictions for each lot in the Project. Petitioner

shall also recommend that homeowners consider some form of water reuse or rainwater harvesting system for irrigation purposes.

4. **Transportation.** Based on an analysis of traffic-related impacts, Petitioner shall fund, design, and/or construct necessary local and regional roadway improvements related to the impact from the Project in accordance with the recommended mitigation measures and schedules accepted by the DOT and the county.

5. **Holoholo Street.** Petitioner shall construct that portion of Holoholo Street within the Petition Area. The Petitioner shall reach an agreement with the County of Hawai'i to cause the construction of the north-south road (Holoholo Street) from Ka'imani Drive to Hina Lani Street prior to receipt of Final Subdivision Approval for the Project. The obligation to construct any portion of the roadway may be bonded as part of Final Subdivision Approval.

6. **Street Lights.** Petitioner shall use shielded or low sodium street lights within the Project to avoid impacts to flight birds and other populations.

7. **Affordable Housing.** Petitioner shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County. The affordable units shall be constructed and offered for sale prior to the sale of more than fifty per cent of the market lots.

8. **Previously Unidentified Burials and Archaeological/Historic Sites.** Without any limitation to an other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop. The finds shall be protected from additional disturbances, and SHPD shall be contacted immediately. Work shall not resume until the issuance of an archaeological clearance from SHPD that mitigative measures have been implemented to its satisfaction.

9. **Archaeological Survey.** Petitioner shall comply with the conditions recommended and approved by SHPD, prior to issuance of a permit for grubbing and grading. Petitioner shall confirm in writing to the Commission that SHPD has found Petitioner's

preservation mitigation commitments, if any, to be acceptable and has determined that any required historic preservation measures have been successfully implemented.

10. **Homestead Road.** Homestead Road shall be kept as a pedestrian trail open to the public, with public parking available at several locations to access it.

11. **Lava Tube Cave Preservation.** Petitioner shall preserve the areas recommended for preservation and comply with the list of mitigation measures recommended by Dr. White in Appendix F of the EIS, section 4.0, page 12.

12. **Subgrade Cavities.** If subgrade cavities are collapsed and a space large enough to be explored and surveyed is encountered where biology can exist, the space shall be inspected by a karst expert who shall recommend what mitigation measures, if any, should be implemented. Petitioner shall comply with such mitigation measures.

13. **NPS Agreement.** Petitioner shall comply with the agreement entered into between Petitioner and NPS regarding stormwater runoff and wastewater as follows:

A. Storm and Surface Water Runoff

i. Prior to the occupancy of any residential unit within the Petition Area, Petitioner shall engineer, construct (or require to be constructed) and maintain storm and surface-water runoff best management practices ("BMPs") designed to prevent violation of State water quality standards as a result of storm-water discharges originating from the Petition Area. To the extent practicable and consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the KalokoHonokohau National Historical Park (hereinafter, "National Park") or entering the water table. Petitioner shall submit designs for storm and surface water run off BMPs to the National Park Service for consultation, review, and approval prior to construction. Said approval by the National Park Service shall not be unreasonably withheld. The National Park Service shall complete a review of the design for storm and surface water runoff BMPs within forty-five (45) calendar days of receiving the plan. If no response from the National Park Service is received within forty-five (45) calendar days of the submittal date, the plans will be considered approved by the National Park Service. Petitioner and/or its successors or assigns shall obtain all required permits and construct required improvements for storm water discharges related to the Project, on and from the Petition Area.

ii. No drainage injection well shall be constructed as an element of a storm and surface water runoff containment system in the Petition Area unless, prior to the start of any construction, applicable requirements of HAR Chapter 11-23 are satisfied and the Hawai'i State Department of Health issues an UIC (Underground Injection Control) permit,

iii. All drainage injection wells established in the Petition Area shall be operated and maintained in full compliance with Hawai'i State Department of Health's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and HRS Chapters 342D and 342E. Relevant HAR include but, are not limited to:

- a. Chapter 11-20, "Rules Relating to Potable Water Systems";
- b. Chapter 11-23, "Underground Injection Control";
- c. Chapter 11-54, "Water Quality Standards";
- d. Chapter 11-55, "Water Pollution Control"; and
- e. Chapter 11-62, "Wastewater Systems".

iv. Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of the HRS and HAR as they relate to (but are not limited to): Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.

v. Petitioner shall seek to participate with the County of Hawai'i in its pilot storm drain program for roadways within the Kaloko-Honokohau region (i.e., County Ordinance No. 02-114 condition F).

vi. Petitioner, successors and/or Home Owners Association in the Petition Area shall ensure that all drainage injection wells or subsurface drainage structures be designed with a debris catch basin to allow the detention and periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin's volume should be designed using current industry and engineering standards. The debris catch basin shall be periodically inspected and cleaned accordingly.

vii. To the extent practicable and consistent with applicable laws the Petitioner shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable advanced storm water BMPs, specifically engineered to treat the first flush runoff

volume from roadways, and from exposed parking lots designed for more than 10 vehicles within the Petition Area to remove pollutants. Additionally, Petitioner shall consult with the National Park Service to design and install storm water BMPs for treating the first flush runoff volume to remove suspended solids and oils and greases from storm runoff from Holoholo Street and parking lots designed for more than 50 vehicles.

viii. Petitioner shall provide signage for all drainage injection wells in the Petition Area with warnings such as the following: DUMP NO WASTES. DUMPING IS ILLEGAL AND MAY BE REPORTED TO 974-4000, ext. 64258 GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT. Signage shall be stand up signs or riveted placards, or be painted on a paved surface next to the drainage well's inlet. Signage shall be situated so that it will not obscure scenic views, contribute to visual blight, or obstruct an accessible route.

B. Pollution Prevention

i. Before constructing any portion of the Petition Area, Petitioner shall develop, in consultation with the National Park Service, a Home Owner's Pollution Prevention Plan that 1) addresses environmental stewardship and the non-point sources of water pollution that can be generated in residential areas, and 2) provides BMPs for pollution prevention. The Home Owner's Pollution Prevention Plan shall include, but not be limited to: water conservation, lot and landscape runoff, erosion control, use of fertilizers, use of pesticides, environmentally safe automobile maintenance, and management of household chemicals. The Plan shall include information on the National Park and the nationally significant cultural and natural resources within the National Park.

C. Wastewater

i. Petitioner and/or its successors and assigns shall refrain from obtaining a certificate of occupancy for a residential lot within the Petition Area until such time as the respective residential lot to be occupied is connected to one of the following: (1) a public wastewater treatment plant ("WWTP"); (2) a private WWTP and effluent disposal system serving the Petition Area (or portion thereof) designed to remove at least 80% Total Nitrogen and at least 90% Total Phosphorus (aerobic nitrification processes combined with anoxic/anaerobic process and/or intermittent sand filters/anaerobic sand filters to perform denitrification, or comparable technology); or (3) for lots 10,000 square feet or larger, an

Individual Wastewater System ("IWS") that uses an enhanced treatment (such as Sequential Batch Reactor, CBT, or technology with a comparable nutrient removal efficiency) and an absorption field of import material, featuring adequate percolation rate, such that the IWS and absorption field are designed to achieve at least 80% reduction in Total Nitrogen and 90% reduction in Total Phosphorus. Effluent disposal for the WWTP shall be in accordance with applicable laws and will include either: a) a horizontal absorption system with absorption trenches or beds of sufficient import material (meeting the Hawai'i State Department of Health specifications) featuring adequate percolation rate and constructed in a manner to achieve the level of nutrient removal stated above; or b) an irrigation system for disposing of effluent within the Petition Area in accordance with applicable laws and Hawai'i State Department of Health requirements; or c) a combination thereof. Installation is subject to conditions of approval by the Director of the Hawai'i State Department of Health and HAR Chapter 11-62.

ii. The owner of the IWS shall complete and sign an IWS Owner's Certification Form to certify with the Hawai'i State Department of Health that the IWS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR Chapter 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

iii. If any portion of the Petition Area is served by a private WWTP or IWS, Petitioner and/or each individual lot owner(s), shall develop and participate in a Wastewater Treatment System Maintenance Agreement, before issuance of a certificate of occupancy for any lots within the Petition Area, that shall provide for safe and effective operation and maintenance of the treatment units), whether shared or individual. This requirement shall be included in the conditions of sale of any lot and/or parcel in the Petition Area.

14. **Drainage and Stormwater.** Petitioner shall fund, design, and construct any drainage system improvements required to prevent adverse impacts resulting from the development of the Project. Petitioner shall be required to prevent runoff from the Petition Area from adversely affecting state highway facilities and downstream properties. Petitioner shall

submit plans to the DOT and appropriate State and County agencies for review and approval. Plans shall be consistent with Petitioner's agreement with NPS.

15. **Wastewater Facilities.** Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the County of Hawai'i and State Department of Health, and consistent with Petitioner's agreement with NPS. The large lots will have individual WWTPs. The affordable units and smaller lots will be serviced by a WWTP built by Petitioner.

16. **Solid Waste Management Plan.** Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter 342G. Petitioner's solid waste management plan shall be approved by the County of Hawai'i and State Department of Health. The plan shall include provisions for reuse of construction debris generated in the construction of the overall Project. During construction, the Petitioner will recycle green waste, wood waste, cardboard, metals and glass to the extent practical.

17. **Civil Defense.** Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i, Department of Defense, Office of Civil Defense, and the County Department of Environmental Management and the State Department of Health.

18. **Established Access Rights Protected.** Petitioner shall preserve any established access to undeveloped lands 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.

19. **Air Quality Monitoring.** Petitioner will participate in an air quality monitoring program if required by State Department of Health.

20. **Best Management Practices.** Petitioner shall implement applicable BMPs applicable to each proposed land use to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with State Department of Health guidelines.

21. **Energy Conservation Measures.** Petitioner and its successors shall implement energy conservation and sustainable design measures to promote energy conservation, and

environmental stewardship in the Project such as, for instance, the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the U.S. Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai'i, Energy Star, Green Communities, into the design and construction of the Project and the structures within the Petition Area. Petitioner shall provide information to lot purchasers regarding energy conservation and sustainable design measures and encourage lot purchasers to design houses that meet at least the minimum requirements of one of the aforementioned programs.

22. **Prohibition on Interference with Farming Operations.** To the extent that the Petition Area is contiguous or adjacent to lands in the State land use Agricultural District, any action that would interfere with or restrain farming operations on those lands is prohibited; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices.

23. **Notification of Right to Farm Act.** Petitioner shall notify all prospective developers or purchasers of all or any portion of the Petition Area or any interest in the Petition Area, and shall require its purchasers to provide subsequent notification to lessees or tenants that farming operations and practices on adjacent or contiguous land in the State land use Agricultural District are protected under HRS chapter 165, the Hawaii Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of all or any portion of the Petition Area or any interest in the Petition Area.

24. **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, at any time prior to completion of development of the Petition Area.

25. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

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

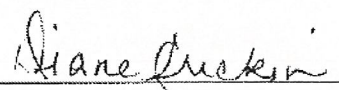
28. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

ADOPTION OF ORDER

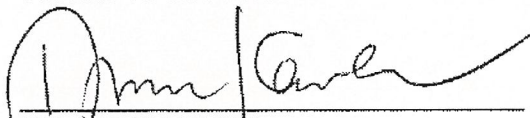
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 16th day of October, 2008. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Makena, Maui, Hawai'i, this 16th day of October, 2008,
per motion on September 18,, 2008.


APPROVED AS TO FORM

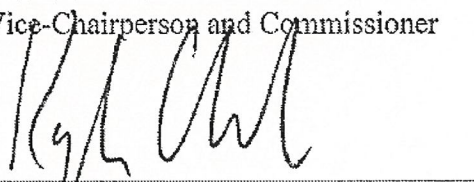

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII


DUANE KANUHA
Chairperson and Commissioner

ABSENT
RANSOM PILTZ
Vice-Chairperson and Commissioner


VLADIMIR PAUL DEVENS
Vice-Chairperson and Commissioner


KYLE CHOCK
Commissioner

ABSENT
THOMAS CONTRADES
Commissioner

Lisa M. Judge

LISA M. JUDGE
Commissioner

[Signature]
NORMAND LEZY
Commissioner

NICHOLAS W. TEVES, JR.
Commissioner

ABSENT
REUBEN S.F. WONG
Commissioner

Filed and effective on: October 21, 2008

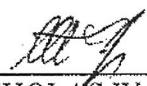
Certified by:

[Signature]

ORLANDO DAVIDSON
Executive Officer

LISA M. JUDGE
Commissioner

NORMAND LEZY
Commissioner

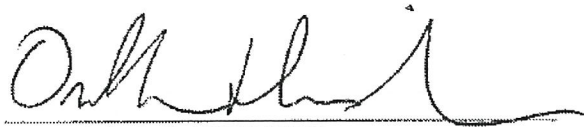


NICHOLAS W. TEVES, JR.
Commissioner

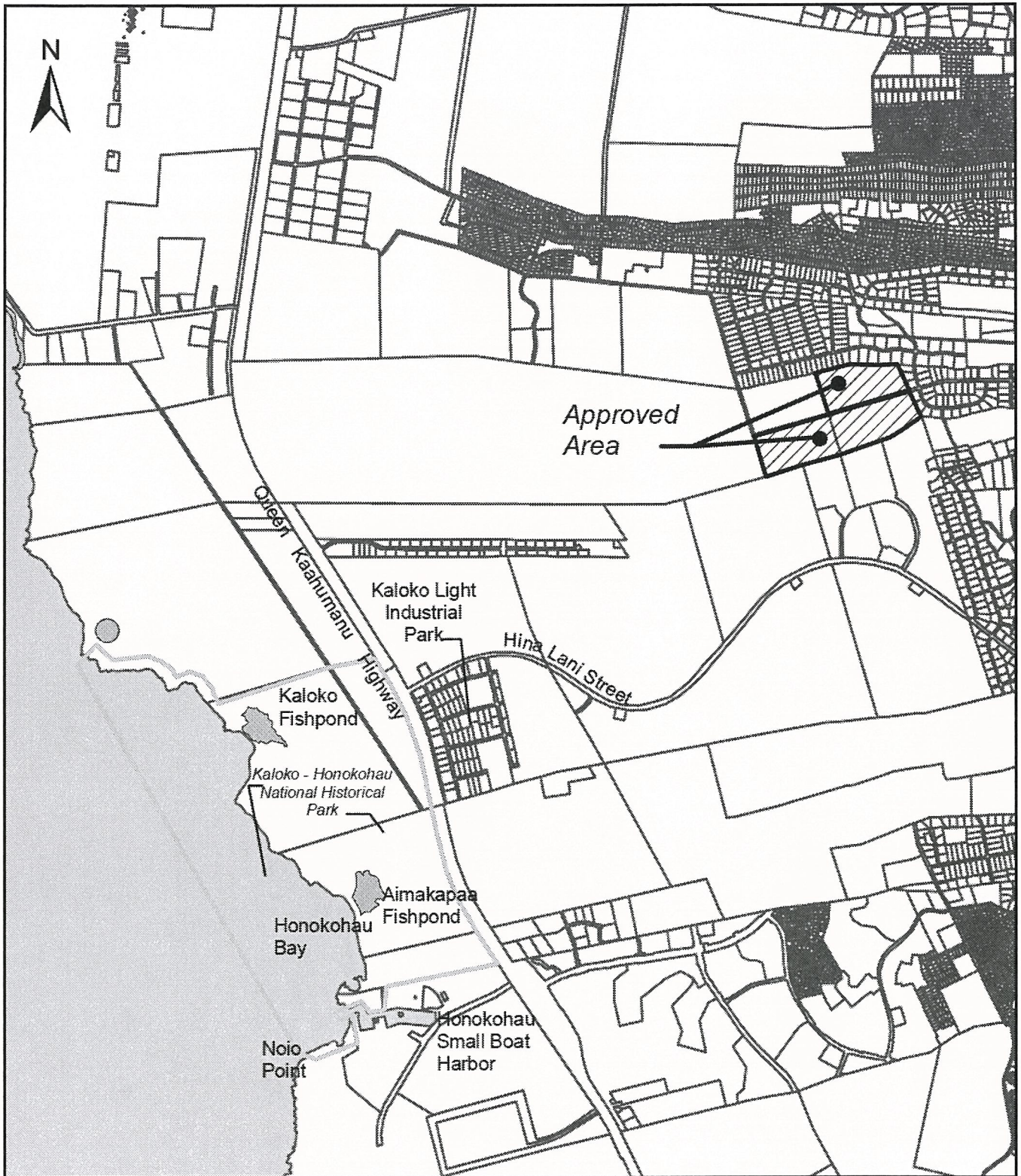
ABSENT
REUBEN S.F. WONG
Commissioner

Filed and effective on: October 21, 2008

Certified by:



ORLANDO DAVIDSON
Executive Officer



A06-770 THE SHOPOFF GROUP, L.P.

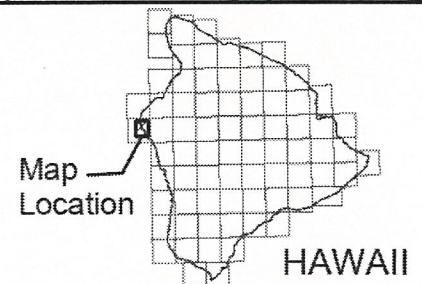
LOCATION MAP

Tax Map Key: 7-3-07: 38, 39 & 7-3-09: 07

Ooma, North Kona, Hawaii

Scale: 1" = 2,000 ft.

EXHIBIT "A"





BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

In the matter of the Petition of

THE SHOPOFF GROUP, L.P.

To Amend the Agricultural Land Use
District Boundaries into the Urban Land Use
District for Approximately 129.99 Acres in
North Kona District, Island of Hawai'i, Tax
Map Key Nos. (3) 7-3-007:038, 039, and (3)
7-3009:007

DOCKET NO. A06-770

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER FOR A STATE LAND
USE DISTRICT BOUNDARY AMENDMENT; and EXHIBIT "A", was served upon
the following by either hand delivery or depositing the same in the U. S. Postal Service
by regular or certified mail as noted:

DEL. ABBEY MAYER, Director
 Office of Planning
 P. O. Box 2359
 Honolulu, Hawai'i 96804-2359

BRYAN C. YEE, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, Hawai'i 96813

Attorney for State Office of Planning

CERT. BENJAMIN A. KUDO, Esq.
Imanaka Kudo & Fujimoto LLP
745 Fort Street, 17th Floor
Honolulu, Hawai'i 96793-1086

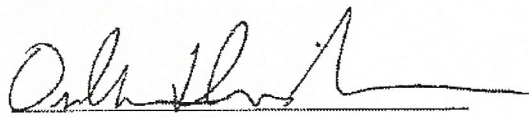
Attorney for Petitioner
The Shopoff Group, L. P.

CHRISTOPHER YUEN, Director
County of Hawai'i
Aupuni Center
Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

GERALD TAKASE, Esq.
Department of the Corporation Counsel
Hilo Lagoon Center
101 Pauahi Street, Suite 325
Hilo, Hawai'i 96720

Attorney for County of Hawai'i
DEPARTMENT OF PLANNING

Dated: Honolulu, Hawai'i, October 21, 2008.



ORLANDO DAVIDSON
Executive Officer



Post Office Box 1101
Kamuela, Hawaii 96743
Phone (808) 880-1455
Fax (808) 880-1456
gmooers@hawaii.rr.com

November 6, 2013

Mr. Daniel E. Orodener
Executive Officer
State of Hawai'i Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

RE: 2013 Annual Report
Kula Nei Project
Docket No. A06-770

2013 NOV 12 A 7:55
LAND USE COMMISSION
STATE OF HAWAII

Dear Mr. Orodener:

This annual report is being submitted to the State of Hawai'i Land Use Commission (hereinafter, the "Commission"), the State Office of Planning, and the County of Hawai'i Planning Department by Central Pacific Bank (hereinafter, the "Petitioner" and the "Owner") pursuant to Condition 25 of the Decision and Order for State Land Use Boundary Amendment filed October 21, 2008, in Docket No. A06-770 (hereinafter, the "Decision and Order"). Central Pacific Bank acquired the subject properties late in 2010 from the previous owners TSG Kula Nei, L.P. and Springbrook Investments, L.P. Please address all correspondence regarding this project to Mr. Mark Harner, Senior Vice President & Senior Special Assets Officer, Central Pacific Bank at P.O. Box 3590, Honolulu, Hawaii 96811-3590.

This annual report addresses the petition area identified as "Kula Nei", (hereinafter, the "Project"). The petition area is comprised of approximately 129.99 acres, specifically identified as Tax Map Key Nos. (3) 7-3-007:038, 039 and (3) 7-3-009:007 (hereinafter, the "Property" or "Petition Area").

Project Overview

The Property is located at O'oma in the North Kona District, Island of Hawai'i. The Property is planned for 270 residential dwelling units, consisting of approximately 216 to 220 single-family homesites, as well as affordable housing units that are needed to conform to County affordable housing requirements. Proposed Project improvements include a 4.4-acre private community park, a wastewater treatment plant to serve the affordable housing area and residential lots immediately surrounding the affordable housing area, individual wastewater systems to serve the remaining residential lots, an offsite drinking water well, storage reservoirs, water transmission lines, an internal

roadway circulation system and offsite roadway connections. The Project includes construction of Holoholo Street, a key mid-level connector in the North Kona region, through the Petition Area.

The Property was acquired by the previous owners in 2005 and 2006. The Owners initiated land planning studies and investigations for the Property in 2006, including preparation of an Environmental Impact Statement (EIS). The EIS was accepted by the Commission in October of 2007. The property was reclassified by the Commission from the Agricultural district to the Urban District pursuant to the Decision and Order filed on October 21, 2008. Ownership of the subject properties was transferred to the current Owners in 2010. The next step in the entitlement process is to process zone change application in the County of Hawai'i to change the zoning from 5 acre minimum agricultural lots to Project District zoning. The current owners are evaluating the timing of this effort based on current economic conditions.

Status of Compliance with Conditions

The conditions enumerated in the Decision and Order are reproduced below in boldface font, followed by a description of the status and progress of compliance with each condition shown in italicized font.

1. Order to Show Cause. The Commission on its own motion, or at the request of any party or interested person, shall issue an order to show cause and require the Petitioner to appear before the Commission to explain why the Petition Area, or any part thereof, should not revert to its original classification or more appropriate classification for any of the following:

A. Failure to accomplish development of the Petition Area as represented to the Commission or to secure a bond for the completion thereof within 10 years from the date of the Commission's decision and order. For purposes of this decision and order, "development" means completion of backbone infrastructure as defined in finding of fact 55; or

B. Failure to accomplish substantial progress in developing the Petition Area as represented to the Commission by the commencement of construction of the Project in 2011, if necessary county approvals have been obtained or in any event no later than five years from issuance of the decision and order; or

C. Failure to perform a condition of approval, or a representation or commitment made on the part of the Petitioner.

The Petitioner acknowledges this condition.

2. Water Resource Allocation. Petitioner shall fund and construct drinking water source, storage and transmission facilities and improvements as required to accommodate development of the Petition Area, to the satisfaction of the County of Hawai'i and appropriate State agencies.

The Petitioner intends to comply with this condition.

3. **Water Conservation Measures.** Petitioner shall implement water conservation measures as may be required by the applicable provisions of the Hawai'i County Code, including, but not limited to, low-flow water fixtures, and shall also implement BMPs, such as the use of indigenous and drought tolerant plants and turf and incorporate such measures in the Project's landscape planting. Petitioner shall recommend the use of native and require the use of drought tolerant plants in the Petition Area in the Conditions, Covenants and Restrictions (CC&Rs) associated with the Project or in deed restrictions for each lot in the Project. Petitioner shall also recommend that homeowners consider some form of water reuse or rainwater harvesting system for irrigation purposes.

The Petitioner intends to comply with this condition.

4. **Transportation.** Based on an analysis of traffic-related impacts, Petitioner shall fund, design, and/or construct necessary local and regional roadway improvements related to the impact from the Project in accordance with the recommended mitigation measures and schedules accepted by the DOT and the county.

The Petitioner intends to comply with this condition.

5. **Holoholo Street.** Petitioner shall construct that portion of Holoholo Street within the Petition Area. The Petitioner shall reach an agreement with the County of Hawai'i to cause the construction of the north-south road (Holoholo Street) from Ka'iminani Drive to Hina Lani Street prior to receipt of Final Subdivision Approval for the Project. The obligation to construct any portion of the roadway may be bonded as part of Final Subdivision Approval.

The Petitioner intends to comply with this condition. The Petitioner has met with representatives of the County of Hawai'i and several landowners contiguous to the extension of Holoholo Street and Kealakaa Street to coordinate planning and design efforts for Holoholo and Kealakaa Streets. Pursuant to the above referenced meetings, the County has contracted with PBR Hawaii and Associates, Inc. (PBR) to prepare preliminary design plans and mapping to facilitate the subdivision of roadway lots for both Holoholo and Kealakaa Streets, including the segment of Holoholo Street that is within the Petition Area. PBR has drafted a Memorandum of Agreement for the parties that specifies commitments from the various landowners to construct this roadway extension.

6. **Street Lights.** Petitioner shall use shielded or low sodium street lights within the Project to avoid impacts to flight birds and other populations.

The Petitioner intends to comply with this condition as part of the development of the Petition Area.

7. **Affordable Housing.** Petitioner shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County. The affordable units shall be constructed and offered for sale prior to the sale of more than fifty per cent of the market lots.

The Petitioner intends to comply with this condition.

8. **Previously Unidentified Burials and Archaeological/Historic Sites.** Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop. The finds shall be protected from additional disturbances, and SHPD shall be contacted immediately. Work shall not resume until the issuance of an archaeological clearance from SHPD that mitigative measures have been implemented to its satisfaction.

The Petitioner intends to comply with this condition.

9. **Archaeological Survey.** Petitioner shall comply with the conditions recommended and approved by SHPD, prior to issuance of a permit for grubbing and grading. Petitioner shall confirm in writing to the Commission that SHPD has found Petitioner's preservation mitigation commitments, if any, to be acceptable and has determined that any required historic preservation measures have been successfully implemented.

The Petitioner intends to comply with this condition.

10. **Homestead Road.** Homestead Road shall be kept as a pedestrian trail open to the public, with public parking available at several locations to access it.

The Petitioner intends to comply with this condition.

11. **Lava Tube Cave Preservation.** Petitioner shall preserve the areas recommended for preservation and comply with the list of mitigation measures recommended by Dr. White in Appendix F of the EIS, section 4.0, page 12.

The Petitioner intends to comply with this condition.

12. **Subgrade Cavities.** If subgrade cavities are collapsed and a space large enough to be explored and surveyed is encountered where biology can exist, the space shall be inspected by a karst expert who shall recommend what mitigation measures, if any, should be implemented. ~~Petitioner shall comply with such mitigation measures.~~

The Petitioner intends to comply with this condition.

13. **NPS Agreement.** Petitioner shall comply with the agreement entered into between Petitioner and NPS regarding stormwater runoff and wastewater as follows:

A. **Storm and Surface Water Runoff**

i. Prior to the occupancy of any residential unit within the Petition Area, Petitioner shall engineer, construct (or require to be constructed) and maintain storm and surface-water runoff best management practices ("BMPs") designed to prevent violation of State water quality standards as a result of stormwater discharges originating from the Petition Area. To the extent practicable and

consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the KalokoHonokohau National Historical Park (hereinafter, "National Park") or entering the water table. Petitioner shall submit designs for storm and surface water runoff BMPs to the National Park Service for consultation, review, and approval prior to construction. Said approval by the National Park Service shall not be unreasonably withheld. The National Park Service shall complete a review of the design for storm and surface water runoff BMPs within forty-five (45) calendar days of receiving the plan. If no response from the National Park Service is received within forty-five (45) calendar days of the submittal date, the plans will be considered approved by the National Park Service. Petitioner and/or its successors or assigns shall obtain all required permits and construct required improvements for storm water discharges related to the Project, on and from the Petition Area.

ii. No drainage injection well shall be constructed as an element of a storm and surface water runoff containment system in the Petition Area unless, prior to the start of any construction, applicable requirements of HAR Chapter 11-23 are satisfied and the Hawai'i State Department of Health issues an UIC (Underground Injection Control) permit,

iii. All drainage injection wells established in the Petition Area shall be operated and maintained in full compliance with Hawai'i State Department of Health's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and HRS Chapters 342D and 342E. Relevant HAR include but, are not limited to:

- a. Chapter 11-20, "Rules Relating to Potable Water Systems";
- b. Chapter 11-23, "Underground Injection Control";
- c. Chapter 11-54, "Water Quality Standards";
- d. Chapter 11-55, "Water Pollution Control"; and
- e. Chapter 11-62, "Wastewater Systems";

iv. Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of the HRS and HAR as they relate to (but are not limited to): Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.

v. Petitioner shall seek to participate with the County of Hawai'i in its pilot storm drain program for roadways within the Kaloko-Honokohau region (i.e., County Ordinance No. 02-114 condition F).

vi. Petitioner, successors and/or Home Owners Association in the Petition Area shall ensure that all drainage injection wells or subsurface drainage structures be designed with a debris catch basin to allow the detention and

periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin's volume should be designed using current industry and engineering standards. The debris catch basin shall be periodically inspected and cleaned accordingly.

vii. To the extent practicable and consistent with applicable laws the Petitioner shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable advanced storm water BMPs, specifically engineered to treat the first flush runoff volume from roadways, and from exposed parking lots designed for more than 10 vehicles within the Petition Area to remove pollutants. Additionally, Petitioner shall consult with the National Park Service to design and install storm water BMPs for treating the first flush runoff volume to remove suspended solids and oils and greases from storm runoff from Holoholo Street and parking lots designed for more than 50 vehicles.

viii. Petitioner shall provide signage for all drainage injection wells in the Petition Area with warnings such as the following: DUMP NO WASTES. DUMPING IS ILLEGAL AND MAY BE REPORTED TO 974-4000, ext. 64258 GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT. Signage shall be stand up signs or riveted placards, or be painted on a paved surface next to the drainage well's inlet. Signage shall be situated so that it will not obscure scenic views, contribute to visual blight, or obstruct an accessible route.

B. Pollution Prevention

i. Before constructing any portion of the Petition Area, Petitioner shall develop, in consultation with the National Park Service, a Home Owner's Pollution Prevention Plan that 1) addresses environmental stewardship and the non-point sources of water pollution that can be generated in residential areas, and 2) provides BMPs for pollution prevention. The Home Owner's Pollution Prevention Plan shall include, but not be limited to: water conservation, lot and landscape runoff, erosion control, use of fertilizers, use of pesticides, environmentally safe automobile maintenance, and management of household chemicals. The Plan shall include information on the National Park and the nationally significant cultural and natural resources within the National Park.

C. Wastewater

i. Petitioner and/or its successors and assigns shall refrain from obtaining a certificate of occupancy for a residential lot within the Petition Area until such time as the respective residential lot to be occupied is connected to one of the following: (1) a public wastewater treatment plant ("WWTP"); (2) a private WWTP and effluent disposal system serving the Petition Area (or portion thereof) designed to remove at least 80% Total Nitrogen and at least 90% Total Phosphorus (aerobic nitrification processes combined with anoxic/anaerobic process and/or intermittent sand filters/anaerobic sand filters to perform denitrification, or comparable technology); or (3) for lots 10,000 square feet or larger, an Individual

Wastewater System ("IWS") that uses an enhanced treatment (such as Sequential Batch Reactor, CBT, or technology with a comparable nutrient removal efficiency) and an absorption field of import material, featuring adequate percolation rate, such that the IWS and absorption field are designed to achieve at least 80% reduction in Total Nitrogen and 90% reduction in Total Phosphorus. Effluent disposal for the WWTP shall be in accordance with applicable laws and will include either: a) a horizontal absorption system with absorption trenches or beds of sufficient import material (meeting the Hawai'i State Department of Health specifications) featuring adequate percolation rate and constructed in a manner to achieve the level of nutrient removal stated above; or b) an irrigation system for disposing of effluent within the Petition Area in accordance with applicable laws and Hawai'i State Department of Health requirements; or c) a combination thereof. Installation is subject to conditions of approval by the Director of the Hawai'i State Department of Health and HAR Chapter 11-62.

ii. The owner of the IWS shall complete and sign an IWS Owner's Certification Form to certify with the Hawai'i State Department of Health that the IWS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR Chapter 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

iii. If any portion of the Petition Area is served by a private WWTP or IWS, Petitioner and/or each individual lot owner(s), shall develop and participate in a Wastewater Treatment System Maintenance Agreement, before issuance of a certificate of occupancy for any lots within the Petition Area, that shall provide for safe and effective operation and maintenance of the treatment units), whether shared or individual. This requirement shall be included in the conditions of sale of any lot and/or parcel in the Petition Area.

The Petitioner intends to comply with this condition.

14. Drainage and Stormwater. Petitioner shall fund, design, and construct any drainage system improvements required to prevent adverse impacts resulting from the development of the Project. Petitioner shall be required to prevent runoff from the Petition Area from adversely affecting state highway facilities and downstream properties. Petitioner shall submit plans to the DOT and appropriate State and County agencies for review and approval. Plans shall be consistent with Petitioner's agreement with NPS.

The Petitioner intends to comply with this condition in conjunction with the development of the Project.

15. Wastewater Facilities. Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the County of Hawai'i and State Department of Health, and consistent with Petitioner's agreement with NPS. The large lots will have individual WWTPs. The affordable units and smaller lots will be serviced by a WWTP built by Petitioner.

The Petitioner intends to comply with this condition in conjunction with the development of the Project.

16. Solid Waste Management Plan. Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter 342G. Petitioner's solid waste management plan shall be approved by the County of Hawai'i and State Department of Health. The plan shall include provisions for reuse of construction debris generated in the construction of the overall Project. During construction, the Petitioner will recycle green waste, wood waste, cardboard, metals and glass to the extent practical.

The Petitioner intends to comply with this condition prior to commencing construction of the Project.

17. Civil Defense. Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i, Department of Defense, Office of Civil Defense, and the County Department of Environmental Management and the State Department of Health.

The Petitioner intends to comply with this condition.

18. Established Access Rights Protected. Petitioner shall preserve any established access to undeveloped lands 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.

The Petitioner intends to comply with this condition.

19. Air Quality Monitoring. Petitioner will participate in an air quality monitoring program if required by State Department of Health.

The Petitioner intends to comply with this condition.

20. Best Management Practices. Petitioner shall implement applicable BMPs applicable to each proposed land use to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with State Department of Health guidelines.

The Petitioner intends to comply with this condition in conjunction with the development of the Project.

21. Energy Conservation Measures. Petitioner and its successors shall implement energy conservation and sustainable design measures to promote energy conservation, and environmental stewardship in the Project, for instance the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the U.S. Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai'i, Energy Star, Green Communities, into the design and construction of the Project and the structures within the Petition Area. Petitioner shall provide information to lot

purchasers regarding energy conservation and sustainable design measures and encourage lot purchasers to design houses that meet at least the minimum requirements of one of the aforementioned programs.

The Petitioner intends to comply with this condition.

22. **Prohibition on Interference with Farming Operations.** To the extent that the Petition Area is contiguous or adjacent to lands in the State land use Agricultural District, any action that would interfere with or restrain farming operations on those lands is prohibited; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices.

The Petitioner intends to comply with this condition.

23. **Notification of Right to Farm Act.** Petitioner shall notify all prospective developers or purchasers of all or any portion of the Petition Area or any interest in the Petition Area, and shall require its purchasers to provide subsequent notification to lessees or tenants that farming operations and practices on adjacent or contiguous land in the State land use Agricultural District are protected under HRS chapter 165, the Hawaii Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of all or any portion of the Petition Area or any interest in the Petition Area.

The Petitioner intends to comply with this condition.

24. **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, at any time prior to completion of development of the Petition Area.

The Petitioner intends to comply with this condition.

25. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

The submission of this annual report fulfills the requirements of the condition for the 2013 reporting year. The Petitioner intends to comply with this condition by submitting annual reports in the future.

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

Condition is acknowledged by the Petitioner.

27. **Notice of Imposition of Conditions.** Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner

shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

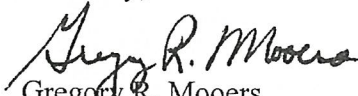
A Notice of Imposition of Conditions by the Land Use Commission was recorded with the Land Court System on October 28, 2008 and a copy of the recorded statement was filed with the Commission by the Petitioner on October 28, 2008.

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

A Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban was recorded with the Bureau of Conveyances on December 22, 2008.

If you should have any questions or require additional information or clarification regarding this annual report, please feel free to contact me at (808) 880-1455 or via email at gmooers@hawaii.rr.com. I am an agent for the owner.

Sincerely,



Gregory R. Mooers
President

GRM:jy

Copy: Hawaii County Planning Department

LAND USE COMMISSION

MEETING MINUTES

January 24, 2018 – 9:30 a.m.

Natural Energy Laboratory Hawai'i Authority (NELHA)
73-987 Makako Bay Drive Kailua Kona, Hawai'i 96740-2637
Hale `Iako Training Room #119

COMMISSIONERS PRESENT: Arnold Wong
Nancy Cabral
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Lee Ohigashi
Dawn Chang

COMMISSIONERS EXCUSED: Edmund Aczon
Linda Estes

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney
General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief
Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Wong called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Chair Wong asked if there were any corrections or additions to the December 6-7, 2017 meeting minutes. There were none. Commissioner Cabral moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (7 ayes-0 nays- 2 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.
 - JAN 25- Video conference- A15-798 Waikapū Properties LLC- Closing arguments
 - FEB 21- Video conference- Adoption of Order for A15-798 Waikapū Town (Maui)
 - MAY 9- on Maui for A07-773 Emmanuel Lutheran Church of Maui -201H Project and A04-751 Pulelehua- Motion to Amend Conditions
 - MAY 23 – Kona business- Waikoloa Heights etc.
 - MAY 24 – Oahu IAL

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Wong stated that the next agenda item was a hearing and action on A06-770 Shopoff Group, L.P. (Hawai'i).

HEARING AND ACTION

A06-770 THE SHOPOFF GROUP, L. P. (HAWAI'I)

Consideration of whether to issue Order to Show Cause based on correspondence from Petitioner's successor in interest and related matters, if any.

APPEARANCES

Petitioner not present

Daryn Arai, Deputy Director, County of Hawaii Planning Department (County)

Amy Self Esq., Deputy Corporation Counsel, represented County

LUC Meeting Minutes *(Please refer to LUC transcript for more details on this matter)*

January 24, 2018

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning
Rodney Funakoshi, State Office of Planning
Lorene Maki, State Office of Planning

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

None

Chair Wong stated that the Petitioner had submitted a request for a continuance on the Commission's considering whether to issue an Order to Show Cause based on correspondence from Petitioner's successor in interest and related matters.

Chair Wong stated that he would grant the continuance and that the Commission would hear this matter at its May 23, 2018 meeting.

There were no questions or comments.

Chair Wong declared a recess at 09:37 a.m. and reconvened the meeting at 09:40 a.m. and moved on to the next agenda item.

STATUS REPORT AND ACTION (IF NECESSARY)

A00-730 LANIHAU PROPERTIES LLC (HAWAII)

Chair Wong stated that the this was a meeting to receive a status report and take any appropriate action on Docket No. **A00-730 LANIHAU PROPERTIES LLC (HAWAII)**- A Petition To Amend the Conservation Land Use District Boundary into the Urban Land Use District for Approximately 336.984 Acres at Honokohau, North Kona, Hawaii, Tax Map Key Nos.: 7-4-08: portion of 13 and 7-4-08: 30

APPEARANCES

Dr. Jefferey Zimpfer, Ph.D., Environmental Protection Specialist, National Park Service (NPS)

Rhonda Loh, Acting Superintendent, NPS
Riley Smith, represented Petitioner Lanihau Properties, LLC (LP)
Benjamin Kudo, Esq., represented Kaiser Hospital (KH)
Terry Muldoon, Executive Director, KH
Daryn Arai, Deputy Director, County of Hawaii Planning Department (County)
Amy Self Esq., Deputy Corporation Counsel, represented County
Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, OP
Lorene Maki, OP

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

Commissioner Scheuer disclosed that he was a consultant for NPS and stated that he would recuse himself from the proceedings for agenda items V and VI to avoid any conflict of interest and exited the meeting at 9:43 a.m. (6 Commissioners remain)

There were no objections to Commissioner Scheuer's recusal

Chair Wong called for Intervenor NPS to described the nature of its complaint against KH.

Intervenor NPS's Presentation

Dr. Zimpfer described NPS's initial concerns regarding KH's wastewater treatment process and how it was incompatible with the specifications prescribed by the LUC's decision and order. Dr. Zimpfer also stated that he had been in recent communications with Mr. Kudo, after Mr. Kudo was designated to represent KH in this matter, to determine how better monitoring and reporting protocols could be implemented to address and correct the non-compliant wastewater issue. Dr. Zimpfer commented that he could report on progress to resolve the situation at the LUC meeting in May.

Commissioners Mahi, Cabral and Chang requested clarification on Dr. Zimpfer's testimony. Ms. Loh responded to Commissioner Chang's questions regarding monitoring systems used by NPS and deferred to KH to describe its system.

There were no further questions for Dr. Zimpfer or Ms. Loh.
Chair Wong called on KH to make its presentation.

KH

Mr. Kudo provided background information and history of the KH facility to the Commission and described how the larger scale of KH's water use and wastewater discharge had posed challenges to meeting the specifications called for in the original decision and order.

Mr. Kudo proposed that between January and May that KH continue to work with NPS to resolve the problems with proper monitoring and testing to achieve the desired results required by the decision and order condition.

Chair Wong acknowledged Mr. Kudo's proposal and sought responses from the Parties.

Ms. Self stated that County supported the proposal.

Ms. Apuna stated that OP had no questions and supported the proposal.

NPS stated that it welcomed working with KH.

Mr. Kudo requested that this matter be granted a continuance till May to allow for a resolution to the complaint.

Commissioners Chang, Ohigashi, and Cabral requested clarification from KH and NPS on specifics of the proposed agreement to work together on resolving the wastewater issues and how testing/monitoring for the Petition Area would be conducted.

Mr. Smith, Lanihau Properties, was recognized by Chair Wong and provided additional information regarding other plans for waste water treatment and facilities that were in place or being developed for the area; and what his company's role in the development was.

Commissioners Chang, Ohigashi, Okuda, and Cabral requested clarification on Mr. Smith's testimony,

There were no further questions, comments or discussion.

Chair Wong stated that he would grant the continuance till the May 23, 2018 LUC meeting.

Chair Wong declared at recess at 10:29 a.m. and reconvened the meeting at 10:42 a.m.

Chair Wong moved on to the next agenda item.

STATUS REPORT AND ACTION (IF NECESSARY)

A10-788 HHFDC & Forest City- Kamakana Villages at Keahuolū (HAWAII)

Chair Wong stated that this was a meeting to receive a status report and take any appropriate action on Docket No. **A10-788 HHFDC & Forest City (HAWAII)- A** Petition To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands to situate at Keahuolū, North Kona; consisting of approximately 271.837 acres, Tax Map Key No. (3) 7-4-021: 020(por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027

APPEARANCES

Dr. Jefferey Zimpfer, Ph.D., Environmental Protection Specialist, National Park Service (NPS)

Rhonda Loh, Acting Superintendent, NPS

Stan Fujimoto, Project Manager, Hawaii Housing Finance & Development Corporation ("HHFDC")

Craig Hirai, Executive Director, HHFDC

Elizabeth Char, Development Officer, represented Michael Development (MD)

Dr. Sheryl Nojima, Ph.D. PE, consultant for MD

Daryn Arai, Deputy Director, County of Hawaii Planning Department (County)

Amy Self Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, OP

Lorene Maki, OP

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

Commissioner Cabral disclosed that she had obtained a financial loan from HHFDC about 25-30 years ago.

Commissioner Okuda disclosed that he had legally represented Mr. Hirai's family for approximately 30 years.

Both Commissioners Cabral and Okuda stated that their past disclosed relationships would not impact their ability to remain fair and impartial in the proceedings. There were no objections to their continued participation.

Chair Wong called for NPS to describe the nature of its complaint against HHFDC.

Intervenor NPS's Presentation

Dr. Zimpfer stated that though NPS had not intervened in the A10-788 docket, it did have concerns regarding storm water filtration controls and lack of best management practices (BMPs) being in place to control pollutants related to development in the Petition Area.

MD Presentation

Ms. Char described her company's role in developing parts of the Petition Area and deferred to her engineering consultant, Dr. Nojima, to respond to questions about pollution controls and environment protection plans being used for the Petition Area.

Dr. Nojima described the various controls, features and protocols that were in place or being planned for the Petition Area.

Commissioners Okuda and Chang requested clarification on Dr. Nojima's testimony. Ms. Char described how Michael Development had assumed control of the development project and stated that her company was open to meeting with NPS to address and resolve any problems with pollution controls.

There were no further questions or comments.

Chair Wong called for HHFDC to make its presentation.

HHFDC

Mr. Fujimoto described HHFDC's efforts to work with various entities to develop its Petition Area; and provided the background and history involved with replacing the original developer, Forest City.

Commissioner Ohigashi stated how he preferred that Petitioner take a more active role in resolving issues to avoid having to appear before the Commission.

Mr. Hirai stated that his organization was open to working with NPS to develop protocols and practices that would resolve NPS's concerns. Commissioner Cabral stated her concerns that more protection and efforts to upgrade pollution controls needed to be made to meet the growth boom occurring in the area.

County and OP had no comments.

Chair Wong stated that the Commission would seek an update from HHFDC and NPS on how discussions were going in May.

The Commission went into recess at 11:13 a.m. and reconvened at 11:57 a.m.

Commissioner Scheuer rejoined the meeting (7 Commissioners present).

ADMINISTRATIVE RULES AGENDA ITEM VII

Chair Wong called on Mr. Orodener to describe the proposed rule amendments and action being considered by the LUC Commission staff. Mr. Orodener described the administrative process involved in having the rule amendments presented at public hearings throughout the islands; and what the various amendments were. Discussion and questioning ensued to gain clarifications on Mr. Orodener's presentation.

Commissioner Cabral moved and Commissioner Scheuer seconded that LUC staff be authorized to pursue seeking Administrative Rule changes. Chair Wong had Mr. Orodener poll the Commission. The Commission unanimously approved the motion. (7 ayes-0 nays- 2 excused).

Chair Wong stated that the Commission would recess and reconvene for a video conference on January 25, 2017. The Commission went into recess at 12:21 p.m.

LAND USE COMMISSION
MEETING MINUTES
January 25, 2018, 10:00 a.m.

The Meeting was held at the following Video Conference Centers simultaneously:
O`ahu- Kalanimoku Building, 1151 Punchbowl St., Room #132, Honolulu, Hawai`i, 96813
Kaua`i – Lihu`e State Office Bldg., 3060 `Eiwa Street, Basement, Lihu`e, Hawai`i, 96766
Maui- State of Hawaii Department of Transportation District Office, 650 Palapala Dr., Kahului, Hawai`i, 96732
Hawai`i- Hilo State Office Bldg., 75 Aupuni Street, Hilo, Hawai`i, 96720

COMMISSIONERS PRESENT: Gary Okuda(on Oahu)
Aaron Mahi (on Oahu)
Dawn Chang (on Oahu)
Arnold Wong (on Oahu)
Jonathan Scheuer (on Oahu)
Nancy Cabral (on Hawai`i)
Lee Ohigashi (on Maui)
Linda Estes (on Kaua`i)

COMMISSIONERS EXCUSED Edmund Aczon

LUC STAFF PRESENT: Daniel Orodener, Executive Officer (on Maui)
Diane Erickson, Deputy Attorney General (on Maui)
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus (on Maui)

CALL TO ORDER

Chair Wong called the meeting to order at 10:10 a.m. and requested Mr. Orodenker to describe the purpose of the meeting and what procedures would be followed for this docket.

Mr. Orodenker provided his understanding of what procedures the Commission would follow during the meeting to allow the Commission to review and adopt the form of the order in this docket by February 21, 2018.

Commissioners Chang and Scheuer requested clarification on Mr. Orodenker's presentation.

Chair Wong confirmed that Commissioners Ohigashi, Estes, Okuda and Chang had reviewed the materials and transcripts of the December 6-7, 2017 meeting and were prepared to participate in the proceedings.

Chair Wong assigned Commissioner Ohigashi to serve as presiding Chair for the Maui based video-conference. Commissioner Ohigashi accepted the presiding Chair assignment and began the Maui-based videoconference proceedings.

HEARING AND ACTION

A15-798 Waikapū Properties LLC, et al, (Maui) ("WP")

Presiding Chair OHIGASHI stated that this was a hearing and action meeting on Docket No. A15-798 to consider a Petition To Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of 92.394 acres and 57.454 acres, and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of 236.326 acres, 53.775 acres, and 45.054 acres

APPEARANCES (All are on Maui except for OP)

James Geiger, Esq., WP's Representatives

Michael Atherton, WP

Clayton Yoshida, Deputy Director, Maui County Planning Department (County)

Kurt Wollenhaupt, Planner, County

Michael Hopper, Esq., Deputy Corporation Counsel (County)

Dawn Takeuchi-Apuna, Esq., Deputy Attorney General, representing the State Office of Planning (OP-on Oahu)

Lorene Maki, Planner (OP- on Oahu)

Commissioner Ohigashi updated the record; and asked the Parties to identify themselves.

Mr. Geiger thanked the Commission and stated that he had circulated a supplemental proposed Findings of Fact, Conclusions of Law, and Decision and Order via email on January 24, 2018 to the Parties.

Presiding Chair Ohigashi confirmed with OP and County that they had received the supplemental proposed Findings of Fact, Conclusions of Law, and Decision and Order sent by Mr. Geiger via email on January 24, 2018.

Ms. Apuna stated that OP had received the email, but had not had a chance to give it a thorough review; and would not stipulate to it.

Mr. Hopper stated that County had received and reviewed the proposed D & O; and that it did incorporate County's comments; and County would stipulate to it.

Presiding Chair Ohigashi asked if the Commissioners had any questions.

Commissioner Chang asked what the LUC's deadline was for considering the docket. Mr. Derrickson replied that the Commission had till May to make its decision.

Commissioner Cabral stated that the red-line highlights made it relatively easy to review and suggested that the Commission take the time to review the supplemental D&O and then act on it.

Commissioner Chang pondered whether a delay to review the D&O was necessary.

Chair Wong moved for an Executive Session. Commissioner Cabral seconded the motion.

By a voice vote, the Commission unanimously voted to enter Executive Session (8-0-1 excused) at 10:34 a.m. and reconvened at 10:46 a.m.

Commissioner Ohigashi updated the record and called for Public Witnesses.

Public Witnesses

None

Closing Arguments

Presiding Chair Ohigashi called for the Parties to make their closing arguments.

Petitioner

Mr. Geiger argued how Petition had met all the criteria required for a district boundary amendment at the State and County levels; and deserved to be granted approval.

Commissioner Okuda requested clarification on whether Mr. Geiger had any objection to several potential changes that might be included in the final decision and order. Commissioner Okuda reviewed the list of items that he wanted include in the final D&O with Mr. Geiger and confirmed that the changes were acceptable.

Commissioner Okuda commented that automatic termination of conditions without LUC oversight were a concern for him.

There were no further questions of comments from the Commissioners.

County

Mr. Hopper stated that County was in support of the Petition with conditions and recommended that the Commission adopt the Petition.

OP

Ms. Apuna described the comments that OP had previously made at the December 7, 2017 meeting in support of the Petition with OP's recommended conditions; and what factors prevented OP from stipulating to the decision and order.

Formal Deliberations

Presiding Chair Ohigashi confirmed that all Commissioners were ready to deliberate. All Commissioners in attendance confirmed that they were ready to deliberate.

Commissioner Mahi moved to approve the Petition and Commissioner Okuda seconded the motion. Commissioner Okuda provided his perception of what Commissioner Mahi's motion entailed and described how the motion included the clarifications that Mr. Geiger had provided in his responses to Commissioner Okuda's questions; and added that motion also included that LUC staff was authorized to prepare the final decision and order. Commissioner Mahi acknowledged that Commissioner Okuda's summary of his motion was accurate.

Chair Wong stated that he was in favor of the motion but did not appreciate the late submittal by Mr. Geiger since it was untimely.

Commissioner Scheuer stated that he was in favor of the motion and thanked Petitioner for its efforts; and shared his concerns about the testimony of Petitioner's Expert Witness on Water

Commissioner Chang applauded Petitioner's efforts and complimented the work done on the cultural impact analysis submitted for the Commission to review. Commissioner Chang also stated her confidence in LUC staff in determining what type of conditions could automatically be terminated without requiring additional appearances by Petitioner before the Commission.

Commissioner Okuda stated that he agreed with Commissioner Chang's assessment that LUC staff could determine what conditions could automatically be terminated; and that his concerns about automatic termination would be alleviated by LUC staff being able to make those determinations.

Presiding Chair Ohigashi stated that he appreciated being able to vote favorably on a project on his home island; and called for Mr. Orodener to poll the Commission.

The motion was unanimously approved (8 ayes-0 nays- 1 excused).

There being no further business to address, Presiding Chair Ohigashi adjourned the meeting at 11:26 a.m.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT CORPORATION,)	AMENDED FINDINGS OF
a Hawai'i corporation)	FACT, CONCLUSIONS OF
)	LAW, AND DECISION AND
To Amend the Agricultural Land Use)	ORDER
District Boundary into the Urban)	
Land Use District for Approximately)	
503.886 Acres of Land at Waikele)	
and Ho'ae'ae, 'Ewa, O'ahu, City and)	
County of Honolulu, Hawai'i, Tax)	
Map Key No. 9-4-02: 1, portion of)	
52, 70, and 71)	
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AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
OCT 1 8 38 AM '96

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A92-683
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HALEKUA DEVELOPMENT CORPORATION,)	AMENDED FINDINGS OF
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52, 70, and 71)	
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AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

Halekua Development Corporation, a Hawai'i corporation ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on August 14, 1992, pursuant to chapter 205, Hawai'i Revised Statutes ("HRS"), and chapter 15-15, Hawai'i Administrative Rules ("HAR"), to amend the State land use district boundary by reclassifying approximately 504.865 acres of land situated at Waikele and Ho'ae'ae, 'Ewa, O'ahu, City and County of Honolulu, Hawai'i, identified as Tax Map Key No. 9-4-02: portion of 1 and portion of 52 ("Property" or "Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District.

The Land Use Commission of the State of Hawai'i ("Commission"), having reviewed and examined the testimony, evidence, and argument of the parties presented during the hearings; the Stipulated Proposed Findings of Fact, Conclusions

of Law, and Decision and Order of Petitioner and the Office of State Planning ("OSP"); and the City and County of Honolulu Planning Department's ("Planning Department") response to the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order, issued its Findings of Fact, Conclusions of Law, and Decision and Order granting the reclassification of the Property from the State Land Use Agricultural District to the State Land Use Urban District on December 9, 1993 ("original Findings of Fact").

Petitioner filed a Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order on June 25, 1996; an Amendment to Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order on July 2, 1996; and a Second Amendment to Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order on September 4, 1996 (collectively referred to as "Motion to Amend"). The Commission, having reviewed and examined the testimony, evidence, and argument of the parties presented during the hearing on the Motion to Amend, hereby makes the following amended findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On August 14, 1992, Petitioner filed a Petition for Land Use District Boundary Amendment ("Petition").

2. Petitioner filed an Addendum to its Petition on November 10, 1992, clarifying Petitioner's interest in the Property.

3. A prehearing conference on the Petition was held on November 17, 1992, at which time the parties exchanged lists of exhibits and witnesses.

4. The Commission held hearings on the Petition on December 3 and 4, 1992, and March 31, 1993, pursuant to a public notice published on October 22, 1992, in the Honolulu Star-Bulletin.

5. On November 9, 1992, the Commission received a letter from Senator Randy Iwase. On November 30, 1992, the Commission received a letter from the Department of the Navy. Both of these letters were admitted into evidence by the Commission without objection.

6. On December 3, 1992, the Commission heard public testimony in support of the Petition from the following: Mr. C.O. "Andy" Anderson; Mr. Cal Kawamoto, Chairman of the Waipahu Neighborhood Board; and Mr. Allan McAngus, President of the Village Park Athletic Association. Written testimony in support of the Petition from Ms. Annette Yamaguchi was also admitted into evidence by the Commission without objection.

7. On June 16, 1993, the matter was presented for decision-making before the Commission. At that time the Commission admitted into evidence, with no objections from the parties, a letter from Senator Randy Iwase dated June 9, 1993, advising the Commission of the passage of Senate Bill 5, S.D.1, H.D.2, and approved by the Governor as Act 149 on May 21, 1993. Upon its own motion, the Commission continued consideration of

the Petition to further analyze the statutory provisions of Act 149, SLH 1993.

8. On June 29, 1993, upon its own motion, the Commission again continued consideration of the Petition.

9. On July 16, 1993, Petitioner filed a Motion to Reopen Hearing, which was granted by the Commission on July 16, 1993, and by a written Order Granting Motion to Reopen Hearing filed on July 23, 1993. On July 26, 1993, the Commission issued its "Order Re: Submission of Exhibits and Identification of Witnesses" for this docket. The Commission thereupon held a reopened hearing on September 9, 1993, pursuant to a public notice published on August 6, 1993, in the Honolulu Star-Bulletin.

10. At the September 9, 1993, hearing, the Commission heard additional public testimony in support of the Petition from the following: Thomas Kagimoto, President of the Royal Kunia Community Association; Fritz McKenzie, chairperson of the Central O'ahu Task Force which was formed pursuant to City Council Resolution #90-448 CD-1; and Jerry Souza.

11. On August 1, 1995, Petitioner filed a Motion to Change Ownership Interest in the Petition Area ("Motion to Change Ownership Interest"). On August 25, 1995, the Commission granted Petitioner's Motion to Change Ownership Interest and Petitioner's oral request to correct the metes and bounds description of the Petition Area. On September 6, 1995, the Commission issued its Order Granting Motion to Correct Metes and Bounds Description of the Petition Area. The Petition Area was hereinafter to be

comprised of approximately 503.886 acres. On September 19, 1995, the Commission issued its Order Granting Motion to Change Ownership Interest in the Petition Area.

DESCRIPTION OF THE PROPERTY

12. The Property is located at Waikele and Ho'ae'ae, 'Ewa, O'ahu, and is currently identified as Tax Map Key No. 9-4-02: 1, portion of 52, 70, and 71. The Property is located approximately 1.2 miles north of the Kunia Interchange of Interstate Route H-1. The Property is bounded on the south by the Royal Kunia Phase I residential subdivision; on the west by Kunia Road; on the east by Waikele Stream; and on the north by overhead electrical transmission lines. At the northwest corner of the Property is an approximately 150-acre area proposed for an agricultural park by Petitioner as part of the Royal Kunia Phase II development.

13. The Property and the proposed agricultural park area were originally owned in fee simple by Caroline J. Robinson Limited Partnership, a Hawai'i limited partnership; Bishop Trust Company, Limited, a Hawai'i corporation, Trustee; Chinn Ho, Herman G.P. Lemke and Mildred Teresa Centeio, Trustees; Waikele Lands, Ltd., a Hawai'i corporation, and American Trust Co. of Hawai'i, Inc., a Hawai'i corporation, Trustee (collectively referred to herein as "Robinson Estate"). Petitioner had executed an agreement to purchase the Property and the proposed agricultural park area from the Robinson Estate in fee simple.

14. By way of Limited Warranty Deeds recorded with the Bureau of Conveyances on September 12, 1995, 347.036 acres of the

Property were conveyed from the Robinson Estate to Petitioner. By way of Warranty Deeds recorded with the Bureau of Conveyances on April 16, 1996, 137.016 acres of this Property were conveyed from Petitioner to HRT, Ltd., and related entities in fee simple.

15. The site is fallow and is no longer being utilized for sugarcane production by Oahu Sugar Company ("OSC").

16. The Property slopes downwards from the northwest to the southeast at a gradient of 2 to 6 percent. The ground elevations range from approximately 450 feet to 575 feet mean sea level. Two drainageways traverse the middle section of the Property.

17. The annual median rainfall is approximately 34" (State gage no. 740.1). The months of May to September are usually drier than October to April. Temperatures are approximately 1 degree fahrenheit higher than Wahiawa (based on a general observation that temperatures in Hawai'i decrease approximately 3.2 degrees fahrenheit per 1,000 feet in elevation). The average annual maximum temperature is approximately 79 degrees fahrenheit and the average annual minimum temperature is approximately 64 degrees fahrenheit. Predominant wind direction and the higher wind speeds are from the northeast to east direction. The average wind speed is 11.5 miles per hour.

18. Red to reddish brown residual soils are generally found on the Property. The surface soils are underlain by rocks, generally near depths of approximately 10 feet. Boulders and cobbles were encountered at lesser depths.

19. The U.S. Department of Agriculture, Soil Conservation Service ("SCS"), classifies the soils as Lahaina silty clay (LaA, LaB) and Moloka'i silty clay loam (MuD, MuB). The predominant soil types, LaA and LaB, comprise approximately 84 percent of the Property. The Lahaina and Moloka'i soils have similar characteristics--they are moderately permeable, have slight to moderate erosion hazards, and are underlain by bedrock at depths greater than five feet.

20. The soils on the Property, as indicated by the Agriculture Lands of Importance to the State of Hawai'i ("ALISH"), Land Study Bureau ("LSB"), and SCS classification systems, consist of:

ALISH:	Prime (95 percent of the Property)
LSB:	Overall productivity ratings of "A" (94 percent of the Property) and "B" (remainder of the Property); and
SCS:	I or II (90 percent of the Property); III or IV (10 percent of the Property)

21. The Federal Emergency Management Agency's Flood Insurance Rate Map, Panel 150001-0000, dated September 28, 1990, indicates that the Property is located in Zone D (areas in which flood hazards are undetermined).

22. The seismic risk classification for the Property and the entire island of O'ahu is Zone 1 (Uniform Building Code). Zone 1 indicates that the island is subject to minor earthquake damage.

PROPOSAL FOR RECLASSIFICATION

23. Petitioner has proposed to develop the Property as a project called Royal Kunia Phase II. Royal Kunia Phase II is envisioned as a planned community which will complement Royal Kunia Phase I and the existing Village Park residential subdivision located south of Royal Kunia Phase I. Petitioner has a Master Plan which encompasses both Royal Kunia Phase I and Royal Kunia Phase II. The Royal Kunia Phase II development will include approximately 2,000 single-family and multi-family residences, 123 acres of light industrial uses, a public park, and a school site ("Project"). The 150-acre agricultural park is also part of the development. The land for the agricultural park is not proposed for reclassification and is to remain in the Agricultural District.

24. Petitioner's land use plan of the proposed Project was originally anticipated to be comprised of the following land use components:

PROPERTY:

<u>Land Use</u>	<u>Acres</u>	<u>Units</u>
Single-Family	124.0	800
Low-Density Apartments	74.0	1,200
Golf Course	160.0	
Light Industrial	123.0	
School	6.0	
Public Park	10.0	
Circulation	8.0	
<u>TOTAL AREA TO BE DEVELOPED</u>	505.0	2,000
<u>AGRICULTURAL PARK:</u>	150.0	
<u>TOTAL PHASE II DEVELOPMENT AREA:</u>	655.0	

25. Petitioner's revised land use plan is as follows:

PROPERTY:

<u>Land Use</u>	<u>Acres</u>	<u>Units</u>
Single-Family	290.8	1,250
Low-Density Apartments	70.3	750
Light Industrial	123.7	
School	8.0	
Public Park	11.1	
<u>TOTAL AREA TO BE DEVELOPED</u>	503.9	2,000
<u>AGRICULTURAL PARK:</u>	151.1	

TOTAL PHASE II DEVELOPMENT AREA: 655.0

26. The Village Park, Royal Kunia Phase I, and Royal Kunia Phase II subdivisions are considered together by Petitioner as an integrated community for purposes of planning and the provision of amenities, such as the proposed recreation center for use by the entire community consisting of all three subdivisions.

27. A variety of homes will be offered to people of different income levels and to families of various sizes. The original Project was to consist of townhomes, single-family dwellings, and golf course frontage lots. The Project, as originally proposed, was anticipated to consist of 800 single-family units, which would average 6.5 units per residential-acre. The low-density apartment area consisted of 1,200 units and would average 16.2 units per acre. These 1,200 units would consist of a variety of 1, 2, and 3-bedroom townhome units offered for sale both as market units and as affordable units.

28. The single-family market units were to be priced between \$270,000-\$350,000 at 1992 prices. Higher priced market units were anticipated to be between \$325,000-\$400,000. Multi-family market units were anticipated to be sold in the \$250,000-\$300,000 price range.

29. Under the revised plan, the Project will consist of 1,250 single-family units on varying lot sizes but with a minimum lot size of 5,000 square feet. It is anticipated that these units will be priced between \$290,000-\$350,000 at 1996 prices. The low-density apartment areas will consist of 750 units, with 600 of these units being designated for affordable housing. At least 200 of these units will be provided for households earning 80 percent or less of median income. The revised plan will decrease the overall density for the Project by approximately 40 percent, from 10.1 units per acre to about 6.1 units per acre.

30. Petitioner had originally agreed to develop 60 percent of the Project's housing units as affordable housing for residents of the State of Hawai'i, in accordance with the Affordable Housing Guidelines adopted by the State Housing Finance and Development Corporation ("HFDC"), effective July 1, 1992, as periodically amended.

31. The City and County of Honolulu is requiring Petitioner to provide a minimum of 30 percent of the units in the revised plan for the Project for sale or rent to households that do not exceed 120 percent of O'ahu's median income. At least 10 percent of the total units proposed for the Project must be for households earning 80 percent or less of the area median income.

HFDC has agreed that the County's affordable housing requirements are generally consistent with the HFDC Affordable Housing Guidelines and that this requirement is acceptable to HFDC.

32. All of the affordable units for the Project will be developed within the Property, and will consist of affordable rental units as well as for-sale units.

33. The affordable units will be developed concurrently with the market units.

34. A total of 123 acres is proposed to be developed as a "business park." The industrial area is expected to serve the needs of a wide range of "light industries" and businesses.

35. An 11.1-acre public park is proposed for the Project. The park site will be dedicated to the City and County of Honolulu, Department of Parks and Recreation, to meet the requirements of the Park Dedication Ordinance.

36. A 6-acre school site was originally proposed for the Project. The revised plan for the Project contains a larger school site of 8 acres, in accordance with the Department of Education's ("DOE") request. This school site, along with the existing Kalei'opu'u Elementary School and playground in the Village Park subdivision, and a proposed school site in Royal Kunia Phase I, will serve the projected elementary student enrollment expected in the future.

37. Petitioner has reserved 150 acres at the northern boundary of the Property for use as a State operated agricultural park. Petitioner is proposing that the 150 acres be conveyed to the State of Hawai'i and subdivided into a number of agricultural

lots to be farmed by individual farmers. Petitioner will provide utility improvements up to the park, while the State will provide improvements within the park. Homes for farmers are to be built in cluster housing on a portion of the park acreage.

38. Petitioner and the Department of Agriculture of the State of Hawai'i ("DOA") have entered into a Memorandum of Understanding, dated March 30, 1993, in which Petitioner agrees to convey 150 acres of land within the Royal Kunia Phase II development to the State of Hawai'i for the purpose of establishing a State agricultural park. In accordance with the terms of the Memorandum of Understanding, the parties have been negotiating the terms of a more detailed Development Agreement. The DOA has accepted the final negotiated terms and conditions for the Development Agreement. The parties have agreed to an extension of time for executing the Development Agreement so that the DOA may conduct an environmental assessment of the site, in accordance with requirements by the Office of the Attorney General.

39. The DOA has expressed its support of Petitioner's Project, and its willingness to accept and develop the 150-acre agricultural park site.

40. Petitioner has agreed with the DOA that in the event that Petitioner's proposed reclassification of the Property is approved, Petitioner will convey free and clear title to the 150 acres for the agricultural park within six months after receiving the necessary land use approvals from the State of

Hawai'i and the City and County of Honolulu, or by December 31, 1997, whichever event shall occur sooner.

41. Petitioner will design and construct off-site infrastructure improvements for the agricultural park including off-site roadways, potable and irrigation water lines, and sewer lines and other utility connections, up to the property boundary of the agricultural park at no cost to the DOA.

42. The Project was originally intended to be developed in two 3-year period increments. The first increment was to begin in 1994 and be completed in 1996. In the first increment, Petitioner intended to do the planning, engineering, and construction of all the major off-site improvements for the Property. It was anticipated that a portion of the affordable multi-family units and a portion of the single-family units as well as all of the market multi-family units would be completed within the first increment. A portion of the industrial park would also be developed. During the second 3-year period increment, starting in 1997 and ending in 1999, the remaining affordable multi-family units and single-family units would be developed. The remainder of the industrial park and the golf course were also to be completed.

43. It is anticipated that under the revised plan, the Project will be developed over a 12-year period. The affordable multi-family units will be developed proportionately along with the market single-family units.

44. The components of the Project are projected to be absorbed at varying rates. Residential absorption of 500 units

per year was originally expected, which would have resulted in the absorption of the residential portion of the Project within four years. Under the revised plan, it is anticipated that the Project will reach capture rates of 12 to 18 percent of the regional market and will be fully absorbed within 12 years. The original industrial absorption was projected to be 18 acres per year starting from 1995 and 15 acres per year through 2002 thereafter, or a total of eight years to absorb the entire development. It is now anticipated that the major access roadway for the industrial park will be completed during 1997 and that construction of the internal roadways and utilities for the industrial subdivision will commence within one year subsequent to completion of the major roadway. It is estimated that 15 acres of the industrial park will be absorbed per year, varying depending upon market conditions and other factors.

45. The infrastructure for the Project, including off-site water, sewer, and drainage system is being developed with the Royal Kunia Phase I infrastructure, which has already been financed and is currently under construction. The majority of the infrastructure for Royal Kunia Phase I has been designed to accommodate future development in the Project.

46. Total construction costs for the infrastructure and on-site improvements were originally estimated to be approximately \$110,000,000. In addition, the residential unit costs were estimated to be approximately \$185,000,000, for a total Project cost of \$295,000,000 based on 1992 dollars. The updated infrastructure costs under the revised plan for the

Project are estimated to be \$129,600,000 and updated residential unit costs are estimated at \$205,000,000, for a total revised estimated Project cost of \$334,600,000.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

47. Petitioner's Balance Sheet, dated June 30, 1992, evidenced that Petitioner had the financial capability to undertake the Project. Petitioner had total assets of \$92,491,247.84 and liabilities and stockholder's equity of \$92,491,247.84. Petitioner's updated Balance Sheet, dated February 28, 1996, indicates that Petitioner has total assets of \$62,711,119, total liabilities of \$10,956,162, and total stockholder's equity of \$51,754,957.

48. At the time of the original hearings on the Petition, Petitioner's lead lender had expressed that construction financing could be arranged for the Project.

49. At the time of the original hearings on the Petition, the Project, including the 60 percent affordable housing component that was anticipated at that time, was financially feasible.

50. Herbert Horita, the President and sole stockholder of Halekua Development Corporation, Petitioner herein, has 30 years of development experience in Hawai'i, involving the development of approximately 11,300 units, including the development of the Village Park and Royal Kunia Phase I subdivisions.

51. Petitioner through its President, Herbert Horita, represented in the original hearings on the Petition that he intends to develop the Project on his own and in its entirety. Petitioner subsequently obtained Commission approval to allow HRT, Ltd., to purchase and develop the 123-acre industrial park and approximately 9 acres of apartment designated land within the Property.

STATE AND COUNTY PLANS AND PROGRAMS

52. The Property is located within the State Land Use Agricultural District, as reflected on Land Use District Boundary Map O-5 ("Schofield Barracks").

53. Pursuant to the 1991 Development Plan Amendment Annual Review, Petitioner obtained approval for 1,000 residential units to be situated on 57 acres designated for Low-Density Apartments and 35 acres designated for Single-Family Dwellings. Petitioner also obtained approval of 123 acres for industrial uses, 10 acres for a public park, 6 acres for a public school site, and 160 acres designated for preservation.

54. Petitioner sought a Development Plan Amendment in the 1993 annual review process of the City and County of Honolulu for an additional 1,000 residential units. This approval was obtained in October 1994.

55. The Property was originally zoned Ag-1 Restricted Agriculture. Petitioner sought rezoning covering 1,000 residential units and the industrial area into R-5 Residential, A-1 Low Density Apartment, and I-1 Industrial zoning classifications. This rezoning was approved in March 1995.

56. The Planning Department is opposed to Petitioner's Project for the Property.

57. The Property was not included in the urban recommendations in OSP's Final State Land Use District Boundary Review report for O'ahu because of the agricultural resource value of these lands. Furthermore, Petitioner did not propose the Property for consideration in the Five-Year Boundary Review.

58. A case-by-case review has resulted in OSP's conditional support of this Petition, because of the opportunity provided by Petitioner to preserve in perpetuity 150 acres of prime agricultural land as an agricultural park.

NEED FOR THE PROPOSED DEVELOPMENT

59. A report entitled "Market Assessment for Royal Kunia Phase II" was prepared by John Zapotocky in June 1992, which addressed the market analyses for the residential, industrial, and golf course developments ("Zapotocky study"). An updated market study entitled "Market Study of the Proposed Royal Kunia Phase II Master Plan Revision" was prepared by the Hallstrom Group in May 1996 to address the market analysis under the revised plan for the Project.

60. Based on the Zapotocky study, the Commission found that the shortage of residential housing throughout the State of Hawai'i in general and on O'ahu in particular, had been a growing problem for over a decade. The supply of new housing units had not kept pace with the demand for a number of reasons. State and City agencies had developed estimates of unit shortfalls ranging

from 20,000 to 40,000 units, while private studies suggested that the existing shortfall might be as high as 50,000 units.

61. Based on the Zapotocky study, the Commission found that the resident population of O'ahu increased from 630,528 to 762,565 from 1970 to 1980, an increase of 20 percent. From April 1980 to April 1990, the resident population of O'ahu increased from 762,565 to 836,231, or 9.7 percent. The official State forecast of population for the island of O'ahu through the year 2010 projected a resident population of 999,500 persons. The housing stock would have to increase to accommodate the increase in population.

62. Based on the Zapotocky study, the Commission found that the number of persons housed in each unit determines the number of units required per given population. The household size in the United States, State of Hawai'i, and City and County of Honolulu had been declining for at least the past 50 years. Within the State, household size had declined from 4.46 persons in 1940 to 3.15 persons in 1980 to 3.01 persons in 1990. This trend was expected to continue in the State of Hawai'i driven primarily by demographic trends.

63. Based on the Zapotocky study, the Commission found that the O'ahu vacancy rates as measured by Postal Vacancy Surveys, Federal Home Loan Bank Surveys, and State Health Department monitoring indicated that vacancies in the 1989 to 1990 timeframe were at historic lows (below 2 percent) and well below the 5 percent considered adequate to provide homeowners and renters with mobility.

64. Based on the Zapotocky study, the Commission found that the total demand for residential units on O'ahu was expected to exceed 378,800 by the year 2010. Based on the existing inventory as of the end of 1990, there would be a total demand by the year 2010 of 106,400 units. Thus, average annual demand was projected to be 5,300 units per year. Assuming that 84,600 units (90 percent of the 94,000 additional units approved in the City and County Development Plans and by the Commission) were developed by 2010, a shortfall of 21,800 units or an average of 1,100 units per year was projected.

65. Based on the Zapotocky study, the Commission found that given the overall shortfall of over 20,000 units by the year 2010, the Project could meet approximately 10 percent of this overall shortfall. On an annual basis, the 500-unit per year production target could eliminate up to 50 percent of the estimated unit shortfall for the years in which the Project was producing units. Given the above scenario, the absorption of 500 units per year within the Project was anticipated.

66. Based on the Zapotocky study, the Commission found that a greater shortfall was estimated if the need for affordable units was considered. A total of 63,000 affordable units would be needed by 2010, with an existing potential supply of 33,800 units. Thus, a shortfall of 28,200 units would require that a supply of 48,600 additional units be approved if 60 percent of those units were committed to be affordable units.

67. Based on the Zapotocky study, the Commission found that given the shortage of affordable housing on O'ahu and the

experience of the Mililani Mauka and Waikele developments, the affordable units of the Project could be absorbed as fast as they could be developed for the foreseeable future.

68. Based on the Hallstrom study, the Commission finds that up to 54,000 new housing units would be required in the Central O'ahu/'Ewa/Kapolei region by the year 2010. Approximately 75 percent of this demand would be for units having a current price of \$350,000 or less.

69. Based on the Hallstrom study, the Commission finds that the average lot sizes for homes in this region have dropped in 12 of the last 16 years, stabilizing recently at about 4,600 square feet. About 82 percent of the homes built since 1978 are on lots averaging 5,000 square feet or less. The trend toward smaller lots continues in almost every community in an effort to cut cost and maximize profit.

70. Based on the Hallstrom study, the Commission finds that although lot sizes have decreased over time, the living areas of single-family residences have constantly increased. The study concluded that the current market fails to provide potential purchasers with a meaningful diversity of choice and is dominated by product that features similar sized units on similar sized lots. The study indicates that this limited diversity could pose major market acceptance problems over the long term.

71. Based on the Hallstrom study, the Commission finds that a significant number of potential homebuyers prefer larger lot sizes for single-family homes and lessened densities for all residential product types. This is substantiated in the study by

the finding that projects offering larger lot sizes experience absorption rates of 15 to 40 percent faster than otherwise competitive inventory on smaller parcels.

72. Based on the Hallstrom study, the Commission concludes that the lessened densities and larger lot sizes that are proposed in the revised master plan for the Project will provide a product type which is highly sought after and generally under-supplied in the regional marketplace.

73. Based on the Hallstrom study, the Commission concludes that the revised plan for the Project will provide buyers with additional space for future home expansion, enhanced privacy, and room for more at-home activities. The single-family homes will be designed with expandable floor plans which will allow homeowners to make incremental expansions/upgrades when money is available, and will further increase the value of the residence upon resale. It is anticipated that the inventory will appeal to the primary homebuyer group which has historically been attracted to the Royal Kunia project.

74. Based on the Hallstrom study, the Commission finds that the demand for new golf courses on O'ahu has declined dramatically in recent years due to poor capital investment and over-supply factors. The conversion of the golf course acreage into single-family use will allow for lessened intensity and density throughout the Project.

75. Based on the Hallstrom study, the Commission finds that some 26,362 additional units will need to be developed in Central O'ahu by the year 2020, or an average of 1,054 new units

finished annually. Seventy-five percent of the market demand will fall in the category of homes having a current sales price of up to \$350,000. It is anticipated that most of the Project's units will fall within this average price range, with approximately 30 percent of the units falling into the affordable price range.

76. Based on the Hallstrom study, the Commission finds that while the average living area of finished homes increased by 31 percent from 1984 through 1994, the finished lot sizes have decreased by 2.92 percent. Since the onset of the recession in 1991, 93 percent of the homes sited on lots larger than 5,500 square feet have been successfully sold, while only 72 percent of those on smaller lots have been absorbed. The revised plan for the Project would offer larger lots at similar prices relative to the original Project, and would result in allowing the Project to achieve higher absorption rates in today's market.

77. Based on the Hallstrom study, the Commission estimates that 82 percent of the housing inventory would have average lot sizes of 5,000 square feet or less, while only 7 percent would offer sizes of 6,000 square feet or larger.

78. Based on the Hallstrom study, the Commission concludes that the revised plan for Project should be able to achieve a stabilized capture rate of 12 to 14 percent, with the single-family component under the revised plan reaching capture rates of up to 18 percent, in line with the leading developments in the area. This will result in speeding absorption of the product by 2 to 5 years over current estimates.

79. Based on the Zapotocky study, the Commission found that future demand for new industrial land was projected to come primarily from the growth in industrial jobs. Through the year 2010, it was estimated that there would be a demand for a total of 898 acres of industrial land. Assuming a flexibility factor of 25 percent to assure that industrial land use needs are not unduly restricted by artificial restraints, the islandwide demand for industrial land by the year 2010 was anticipated to be 1,123 acres.

80. Based on the Zapotocky study, the Commission found that in addition to job generated demand for industrial land, the conversion of existing industrial lands to other uses was expected to result in a demand for an additional 322 acres by the year 2010.

81. Based on the Zapotocky study, the Commission found that based on projected demand and existing and projected supply of industrial lands, the shortage of industrial land in Central O'ahu was estimated to be 133 acres by the year 2010. If, however, it was assumed that additional demand in the Primary Urban Center ("PUC") would have to be accommodated outside of the PUC, then this figure was likely to grow.

82. The area to remain in agriculture as an agricultural park has good agronomic conditions. Most of the site is comprised of good soils, and the area receives considerable sunshine. There will be an eventual water requirement of approximately 1 million gallons per day ("mgd") to irrigate crops. Further, the site is a short trucking distance

to the large Honolulu market for domestic sales and farm purchases, and to the airport and harbor for shipments to overseas markets.

83. There is a demand for State agricultural park leases on O'ahu. The DOA maintains a list of parties interested in agricultural park leases which contains approximately 500 expressions of interest, representing approximately 350 individuals.

84. It is anticipated that the State of Hawai'i will lease the agricultural park to the Hawai'i Farm Bureau, who will manage it and sublease over 20 small lots to farmers.

ECONOMIC IMPACTS

85. A report entitled "Proposed Royal Kunia Phase II: Impact on State and County Revenues and Expenditures" was prepared by Decision Analysts Hawaii, Inc., in July 1992 ("DAH's original report"). An updated report was prepared in May 1996 for the revised plan for the Project ("DAH's updated report").

86. Based on DAH's original report, the Commission estimated that during the construction of the Project, construction employment and total construction payroll would average approximately 430 jobs and \$19.4 million per year, respectively. However, these figures would fluctuate greatly from one year to the next, depending upon the phase of construction.

87. Based on DAH's original report, the Commission found that the direct on-site employment at Project build-out would be approximately 1,450 jobs, most of which would be

generated by light-industry activities within the industrial area. Additional employment would be provided by the golf course, school, and grounds and home maintenance. The agricultural park would support approximately 30 farm related jobs. Total payroll for all of these jobs would be approximately \$36.2 million per year.

88. Based on DAH's original report, the Commission found that State and County revenues which would be derived from the Project were expected to be significant and sufficient to allow government to afford the capital improvements and services required to accommodate the Project. The estimates of government revenues which would be derived from residents and commercial activities in the Project include taxes (property, excise, income, and other taxes), user charges and fees, earnings, and all other sources of revenues. The revenues were expected to be sufficient to: (1) finance park, fire-station, and school improvements; (2) provide the same level of per-unit services as is provided currently to island residents; and (3) serve additional community needs with the remaining net revenues.

89. Based on DAH'S original report, the Commission found that rollback taxes to the County resulting from withdrawal of the land from agriculture would be approximately \$500,000. At the Project's completion, County revenues derived from the Project were projected to be \$6.2 million per year, while expenditures to support the Project were expected to be \$4.7 million (including debt service on park and fire-station improvements), thereby resulting in net County revenues of

approximately \$1.5 million per year. This compares to approximately \$3,000 per year derived from property taxes on the Property when used for agriculture.

90. Based on DAH's original report, the Commission found that for the State, excise tax revenues generated by construction activity were estimated to be \$30.5 million, a sum which exceeds the \$10 million projected expenditure by the State for required improvements (primarily school improvements). Upon completion of the Project, State revenues derived therefrom were projected to be approximately \$17.2 million per year, with the largest revenues being derived from (1) excise taxes of \$5.3 million per year related to consumption expenditures of residents and sales of on-site businesses, and (2) personal and corporate income taxes of \$8.5 million per year paid by residents of the Project and on-site businesses. The remaining \$3.4 million per year in State revenues was derived from a variety of sources related to population. Expenditures required to support the Project were estimated to be approximately \$12.1 million per year (including debt service on school improvements). Therefore, the State was estimated to receive a net income of approximately \$5.1 million per year. Currently, the State derives negligible tax revenues from activities on the Property.

91. Based on DAH's updated report, the Commission finds that at full development, City revenues under the revised plan for the Project are expected to reach \$6.6 million per year, with \$3.9 million of this being derived from property taxes. The

remaining \$2.7 million per year are derived from a variety of sources related to population.

92. Based on DAH's updated report, the Commission finds that most of the capital improvements will be provided or financed by Petitioner. These items include land for park improvements, interior roads, the widening of Kunia Road, water development and distribution systems, drainage, collector and sewer trunk systems, and pro rata contributions for wastewater treatment facilities.

93. Based on DAH's updated report, the Commission concludes that at full development, total annual expenditures by the City will amount to about \$5.1 million per year. Net revenues to the City are estimated to be approximately \$1.5 million per year.

94. Based on DAH's updated report, the Commission finds that construction activity under the revised plan for the Project would generate a total of \$43.2 million in excise, personal income, and corporate income tax revenues. At full development, the increase in State tax revenues is expected to be \$27.7 million per year.

95. Based on DAH's updated report, the Commission finds that at full development, total annual expenditures by the State will amount to about \$19.9 million per year. The major capital improvement required to support the proposed Project will be school improvements, which are estimated to be \$11.8 million.

96. Based on DAH's updated report, the Commission concludes that net revenues under the revised plan for the

Project will be approximately \$7.8 million per year once full development is achieved.

SOCIAL IMPACTS

97. In March 1989, Earthplan prepared a social impact assessment for the Project. A second report was prepared by Earthplan in June 1992, which updated the information presented in the 1989 report.

98. The Property is part of the Waipahu Neighborhood Board area ("Waipahu Area") which extends from the H-2 Freeway to Kunia Road, and runs mauka - makai from Kupehau Road (south of Kunia Village) and Mililani Cemetery Road.

99. On the average, the Waipahu Area grew 4.2 percent a year; this rate is higher than the 2.6 percent average annual growth rate for Central O'ahu. Approximately 19,300 persons live in the communities mauka of the H-1 Freeway. Approximately 32,000 people live in Waipahu Town and other areas makai of the freeway.

100. The original Project was estimated to house approximately 6,060 persons, based on a household size of 3.03 persons. The original Project's population represented a 5 percent increase over the 1990 Central O'ahu population of 130,526 persons. Under the revised plan, the Project is estimated to house approximately 6,250 persons, based on a household size of 2.5 persons per multi-family unit and 3.5 persons per single-family unit.

101. The Waipahu Area, particularly Waipahu Town, is generally lower on the economic scale in the islandwide

community. Waipahu had proportionally more families below poverty level, less people in managerial/professional occupations, more immigrants, and lower educational levels. The residents mauka of the H-1 Freeway tend to have higher incomes, better-paying jobs, and a lower unemployment rate.

102. The Project is consistent with the community's desire for increased diversity in the community. The Project will bring in a population which will likely reflect the social and economic characteristics of the overall island.

103. Village Park is estimated to house a population of 5,500 persons. When fully developed, Royal Kunia Phase I could house approximately 7,500 people. The original Project's estimated 6,060 residents would bring the total population of the three developments to approximately 19,060 persons. Under the revised plan, the Project's estimated residents would bring the total population to approximately 19,250 persons.

104. The Project will increase the community's need for public services, as well as provide justification for more services and facilities. Both phases of Royal Kunia include public facilities to meet the needs of the additional population.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

105. A report entitled "Royal Kunia Phase II: Impact on Agriculture" was prepared by Decision Analysts Hawaii, Inc., in July 1992.

106. The agricultural value of the Property is high. The Property has all of the natural attributes necessary for the

successful cultivation of agricultural commodities. It has fertile soils, low incidences of cloud cover, high levels of insolation, and access to inexpensive irrigation water.

107. Since the late 1960s, approximately 177,000 acres have been or will be released from sugar and pineapple cultivation.

108. Of the 177,000 acres released from sugar and pineapple, approximately 33,000 acres have been or are scheduled to be put to other uses, such as macadamia nut cultivation, urban uses, and some golf courses. Therefore, over 140,000 acres will be available for diversified agriculture.

109. Approximately 5,000 acres of land are presently being used in diversified agriculture to supply the Hawai'i market.

110. OSC has gradually ceased operations. It was anticipated that this would result in the release of 10,500 acres from sugar cultivation and the release of 350 workers.

111. The 150-acre State agricultural park will contribute to the growth of diversified agriculture on O'ahu by increasing the supply of high quality and well-located agricultural land that is available to small farmers. Furthermore, the land will be offered at attractive lease rents.

112. The DOA supports Petitioner's proposal because it represents a unique opportunity for the State to acquire and have developed at minimal cost a usable-sized tract of prime agricultural land for diversified crop production made available

to small farmers in 5 to 10-acre subdivided agricultural park lots under long-term leases at affordable rents.

113. The Hawai'i Farm Bureau Federation supports Petitioner's proposed reclassification of land with the understanding the Royal Kunia Phase II development includes the development of the agricultural park.

Flora

114. A botanical survey of the Property was conducted by Char and Associates in November 1988. A walk-through method was used in the survey. Almost the entire Property was covered with sugarcane (Saccharum officinarum). The Property was devoid of noteworthy botanical features.

115. A total of 59 species of vascular plants were found on the Property. Of these, 57 (97 percent) were exotic weeds or deliberately introduced plants and two (3 percent) were native or presumed-native plants. None of the species found on the Property were officially listed as endangered or threatened, nor were any species proposed or candidates for such status.

116. There is little of botanical significance on the Property, as most of the area has been extensively cultivated in sugarcane for many years. The Project is not expected to have a significant impact on the total island populations of the species involved.

Fauna

117. An Avifaunal and Feral Mammal Survey was conducted on the Property by Phillip L. Bruner, Assistant Professor of Biology, BYU-H, in November 1988.

118. No endemic birds were recorded during the survey. No indigenous resident species were recorded. A total of 45 Pacific Golden Plover (Pluvialis fulva) were recorded during the survey. Most were seen along the roads which run in all directions through the Property and in a recently cleared sugarcane field just outside the west boundary. No other migratory birds were recorded.

119. A total of 15 species of exotic birds were recorded. The most abundant species was the Zebra Dove (Geopelia striata), followed closely by the Japanese White-eye (Zosterops japonicus).

120. With respect to feral mammals, Mongoose (Herpestes auropunctatus) were commonly observed during the field survey. Feral cats were also observed. No rats or mice were observed, but a trapping program would likely show that their numbers are similar to that one would find elsewhere in sugarcane fields on O'ahu.

121. Overall, the conversion of the Property from a sugarcane monoculture to a more diversified habitat of trees and grass should have a positive effect on the populations of most bird species present on the Property.

Archaeological/Historical Resources

122. An archaeological reconnaissance survey of the Property was conducted in November 1988 by Joseph Kennedy of Archaeological Consultants of Hawai'i.

123. At the time of the survey, the entire Property was covered in sugarcane. The Property contains no remaining

above-ground archaeological features and offers little opportunity for subsurface recovery. The data that support this conclusion include survey results, lack of indicator data of past use from the literature and map sources, and an environmental setting that does not lend itself to permanent habitation. There appears to be no need for additional archaeological work on the Property.

124. Because no evidence of past utilization in the form of structural or midden remains were found, and because there have been no archaeological or historical sites previously recorded on the Property, there should be no adverse impacts caused by the Project.

125. Should any archaeological or historic remains be uncovered during construction, Petitioner will stop further construction in the area and will immediately notify the State Historic Preservation Division, Department of Land and Natural Resources.

Groundwater Resources

126. A report entitled "Environmental Impact of Fertilizer, Herbicide and Pesticide Use on the Proposed Royal Kunia Phase II Golf Course" was prepared by Charles L. Murdoch, Ph.D., and Richard E. Green, Ph.D., in November 1988 for the original Project.

127. The original Petition analyzed the effects of the proposed golf course upon groundwater resources in the area and found that a properly developed and managed golf course would not

present a threat to the quality of either groundwater or surface drainage waters in the Petition Area.

128. The recharge of groundwater on the Petition Area is minimal due to the relatively low rainfall in the area. In addition, the organic matter in the soils on the Petition Area tends to retard movement of most chemicals.

Scenic Resources

129. The lower portion of Kunia Road is distinctly non-agricultural due to the H-1 Freeway, the Village Park development, and the Royal Kunia Phase I development. It has a lowrise residential character, landscaped with ornamental plants, and suburban type intersections and roadways connecting to Kunia Road. This character may be representative of the Project, which will replace most of the agricultural (sugarcane) crops currently occupying the Property. While it will create a distinct visual difference, there are no significant public views or visual features that will be impacted.

130. Measures which will serve to mitigate visual impacts include: maintenance of a substantial landscaped setback along Kunia Road; incorporation of bodies of open space and street tree plantings within the development; and low height limits on industrial buildings adjacent to Kunia Road, with additional screening provided with solid walls in conjunction with approved thematic landscape plantings.

ENVIRONMENTAL QUALITY

Noise

131. Existing sources of noise along the Property include vehicular traffic along the cane haul road and Kunia Road.

132. In addition to the existing sources of noise, potential sources of noise generated by the Royal Kunia Phase II development include increased vehicular traffic along Kunia Road, and noise generated by industrial uses, agricultural park, and recreational areas.

133. Most of the Kunia Road frontage will be for industrial development and the agricultural park, which will be a buffer between the noise generated by traffic on Kunia Road and the residential areas. Where the residential development adjoins Kunia Road, appropriate setbacks and landscaping will be introduced to buffer the noise.

134. There is a potential for noise generated in the industrial areas to impact the adjacent areas planned for residential use. Petitioner has represented that uses in the industrial area will be used primarily for "light industries," such as research and development and communications and technology. Restrictive covenants, including restrictions on noise, will be drafted and incorporated by Petitioner into any conveyance or lease agreement to ensure a compatible relationship between the industrial uses and the other components of the Project. Petitioner has represented that it will follow all City and County and State laws relating to noise, including without

limitation all City ordinances relating to the separation of industrial and residential districts.

135. An 11-acre public park that is proposed for the Project may generate noise and impact the residential areas. The noise generated from this facility should be minimal.

Air Quality

136. A report entitled "Air Quality Study for the Proposed Royal Kunia Phase II Project (Revised)" dated May 13, 1992, was prepared by B.D. Neal and Associates. A revised report entitled "Air Quality Study for the Proposed Royal Kunia Phase II Project, (Increments 2 and 3)" dated January 1996, was prepared by B.D. Neal and Associates based on the revised plan for the Project.

137. The present air quality of the Property is relatively good and has probably improved recently with the discontinuation of sugarcane growing in the area. Air quality data from nearby monitoring stations operated by the State indicate that both State and National air quality standards are currently being met, although it is likely carbon monoxide concentrations may occasionally exceed the more stringent State standards near traffic-congested areas.

138. The major potential short-term air quality impact for the Project will occur from the emission of fugitive dust during construction. The impact upon air quality during construction will be mitigated by the implementation of a dust control plan to ensure compliance with State regulations. Fugitive dust emissions will be controlled by watering of active

work areas, using wind screens, keeping adjacent paved roads clean, and by covering of open-bodied trucks. Other dust control measures will include limiting the area that can be disturbed at any given time and/or mulching. Paving and landscaping of the Property early in the construction schedule will also reduce dust emissions. Exhaust emissions will be mitigated by moving construction equipment and workers to and from the Property during off-peak traffic hours, whenever practicable.

139. Vehicles coming to and from the Project will use Kunia Road and the Project collector roads. To assess the impact of emissions from these vehicles, an air quality modeling study was undertaken to estimate current ambient concentrations of carbon monoxide along Kunia Road and to predict future levels both with and without the Project. Present carbon monoxide concentrations are estimated to be well within National ambient air quality standards but may occasionally exceed the State standards during adverse conditions near Kunia Road/Kupuna Loop intersections. In the year 2005 without the Project, concentrations are predicted to decrease at the Kupuna Loop intersections to levels meeting the State standards even with the additional traffic associated with Royal Kunia Phase I development and other growth in the area. This is due to the effects of older, more-polluting vehicles leaving the State's roadways during the next several years. With the Project, worst-case concentration levels will continue to occasionally exceed the State standards in small "hot spot" areas near Kunia Road/Kupuna Loop (south) intersection while the National

standards will be met, but the highest concentrations in the Property will likely be lower than present worst-case values.

140. Traffic-related impacts upon air quality may be mitigated by improving roadways and reducing traffic. Aside from improving roadways, air pollution impacts from vehicular emissions could be additionally mitigated by reducing traffic through the promotion of bus service and car pooling and/or by adjusting local school and business hours to begin and end during off-peak times. Petitioner has represented that it will encourage the use of the park and ride facility located at Royal Kunia Phase I.

141. Any long-term impacts on air quality due to indirect emissions from supplying the Project with electricity and from the disposal of waste materials generated by the Project will likely be small based on the relatively small magnitudes of both the estimated demands and the indirect emissions.

142. Air quality impacts from possible emissions from the activities within the agricultural park will be in the form of dust or pesticide usage. These emissions will be mitigated by the wind pattern in the area which will tend to carry the emissions away from the residential areas of the Project.

Dust and Erosion

143. An Engineering Study for Royal Kunia Phase II was prepared by ParEn, Inc., in August 1992.

144. The entire Property will be graded. Expected impacts from grading include: dust from grading operations and exposed soil subject to wind and rainfall erosion.

145. Dust generation and soil erosion will be minimized by compliance with the City and County of Honolulu's grading ordinance, Chapter 23, Grading, Soil Erosion and Sediment Control, Revised Ordinances of Honolulu, 1978, as amended. Erosion control measures will be implemented as outlined in the City and County of Honolulu Soil Erosion Standards and Guidelines, November 1975.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highways and Roadway Facilities

146. A Traffic Impact Analysis Report was prepared by Julian Ng, Inc., in April 1992 ("original traffic study"). An updated report entitled "Traffic Impact Report Royal Kunia Phase II, Increment 3" was prepared by Julian Ng, Inc., in January 1996, based on the revised plan for the Project ("revised traffic study") and additional information from traffic consultant, Julian Ng, was provided by way of letters dated June 7, 1996, and August 27, 1996.

147. The Project is located adjacent to Kunia Road approximately 1.2 miles north of Kunia Interchange of Interstate Route H-1. Between the interchange and the development, there are two intersections on Kunia Road for access to the existing Village Park Subdivision and one existing intersection on Kunia Road for access to Royal Kunia Phase I. Further to the south, Kunia Road intersects Farrington Highway and connects directly to the realigned Fort Weaver Road. It also partially intersects Honowai Street and Waipahu Street. This network serves the

Project with interconnections to Waipahu and 'Ewa. To the north, Kunia Road provides direct access to Schofield Barracks, Wheeler Field, Wahiawa, and the North Shore.

148. In 1990, Kunia Road north of Village Park, adjacent to the Project, served an average daily traffic ("ADT") of 8,100 vehicles. Existing peak hour highway conditions on Kunia Road were described by Level of Service ("LOS") D.

149. Based upon evidence from the original traffic study, the Commission found that if the Project were not developed, the ADT on Kunia Road was projected to increase from 8,100 vehicles per day ("VPD") in 1990 to 12,600 VPD in 2005. Peak hour conditions in the year 2005 were projected to be LOS B for a four-lane Kunia Road; if Kunia Road were to remain a two-lane highway, peak hour conditions would be described by LOS E.

150. The revised traffic study included a regression analysis of the 24-hour traffic counts taken by the State Highway Division in 1985-1987, 1989, and 1992-1994. There was an average annual growth rate of 5.87 percent. Utilizing this rate, the 9,600 VPD count in 1994 increased to 18,900 VPD in 2005 without the proposed Project.

151. Access to the Project is proposed through a new intersection with Kunia Road and an internal roadway connecting to Royal Kunia Phase I and Village Park. The proposed collector will connect to Kunia Road in a T-intersection and will be signalized. The new intersection will be located approximately

1.4 miles north of the existing Kunia Interchange of Interstate Route H-1.

152. Based upon evidence from the original traffic study, the Commission found that the Project was estimated to generate a peak hourly volume of 3,020 vehicle trips. Many of these trips, however, were expected to remain within the Village Park/Royal Kunia area because of the mix of activities provided, resulting in a net impact to Kunia Road of approximately 2,010 vehicles per hour.

153. As part of the off-site roadway improvements to support Royal Kunia Phase I, Petitioner has represented that it will widen Kunia Road from two to four lanes between the Kupuna Loop south intersection and the Phase I Collector, install a new traffic signal at the intersection of Kunia Road and the Phase I Collector when warranted, and provide separate median left turn lanes at the intersections. At its approach to Kunia Road, the Phase I Collector will have two left turn lanes and a separate right turn lane, similar to the existing south Kupuna Loop approach.

154. The addition of a third lane in each direction on Kunia Road between the north Kupuna Loop intersection and Kunia Interchange will serve to accommodate the additional traffic generated by the Project with minimal impact to the traffic conditions on Kunia Road.

155. Based upon evidence from the original traffic study, the Commission found that the impact to traffic conditions on Kunia Road to the north of the Project, where peak hour

volumes were projected to increase by as much as 20 percent, would be minimal, and LOS would not be affected by the Project. Updated figures indicate a faster rate of growth of non-Project traffic, which results in reducing the Project's proportionate impact to the projected traffic volumes.

156. At the intersection of the Phase II Collector and Kunia Road, proper signalization will serve to accommodate the traffic generated by the Project. Adequate capacity will be available, with LOS B and LOS C describing peak hour conditions.

157. The timing of the signalized intersections on Kunia Road to the south of the Project, including the intersection for Royal Kunia Phase I, will also serve to accommodate the additional traffic generated by the Project, with good peak hour LOS.

158. Using the population estimates from the Department of Planning of the City and County of Honolulu for the year 2005, the Project will house less than 3 percent of the future residents in the Central O'ahu and 'Ewa regions. In the year 2010, this percentage drops to less than 2-1/2 percent. The Project will increase traffic demand by the same percentages mentioned above if the traffic characteristics of future residents remain the same as those of the existing residents. The Project's impact upon traffic is expected to be less, however, because future developments in 'Ewa and Central O'ahu will provide job sites away from the central core of Honolulu, and therefore many residents will not be traveling toward the central core.

159. Measures such as ride-sharing or increased mass transit service, coordinated with a transportation management association or with employers, and utilizing the park-and-ride site in Royal Kunia Phase I, could improve transportation options for future employees, residents, and visitors at Royal Kunia.

160. The Department of Public Works, City and County of Honolulu, comments that all proposed roads should be designed to City standards. All dedicated roadways that will be accessible to pedestrian traffic should be designed to accommodate persons with disabilities. Existing streets used as ingress and egress to the Project may also need upgrading to accommodate the demands of the Project.

161. The State Department of Transportation ("DOT") comments that Petitioner should be required to provide the following:

- A. All of the other improvements needed (which will not be provided by the Village Park and Royal Kunia, Phase I projects) to make Kunia Road a 4-lane highway with auxiliary lanes for both left and right turning movements (between Kunia Interchange and the northernmost boundary of Royal Kunia, Phase II) and a third northbound lane between Kunia Interchange and the north Kupuna Loop intersection.
- B. A report that analyzes the impact of the proposed Phase II project's traffic on the Kunia Interchange and evaluate alternatives that will mitigate the impacts.
- C. Plans for construction work within the State highway right-of-way must be submitted to DOT, Highways Division for review and approval.

DOT also states that all required improvements must be provided at no cost to the State and shall comply with all applicable State design standards.

162. Act 149, 1993 Session Laws of Hawai'i (formerly Senate Bill No. 5), amends section 226-17, HRS, and sets forth a requirement that planning efforts for a Statewide transportation system accommodate and be consistent with planned growth objectives throughout the State, and also sets forth the policy of the State to coordinate intergovernmental land use and transportation planning activities to ensure the timely delivery of supporting transportation infrastructure in order to accommodate planned growth objectives.

163. The planned growth objectives for the island of O'ahu, pursuant to the projected increase in population, designates the 'Ewa area as a location of a secondary urban center and the Central O'ahu area for additional residential development to support the increasing population.

164. Although the Property is located within the Central O'ahu Development Plan area, from a transportation perspective, the Property is more relevant to the 'Ewa Development Plan area. Any traffic generated from the Property will be joining traffic that is generated in the 'Ewa area as opposed to the Central O'ahu area. From a traffic perspective, the Project is consistent with the planned growth objectives of directed growth in the 'Ewa area.

165. In the effort to coordinate transportation and land use planning activities, Petitioner has participated and

continues to participate in a regional transportation plan for the 'Ewa area, namely, the 'Ewa Region Highway Transportation Master Plan. Although the Property is in the Central O'ahu Development Plan area, Petitioner is participating in a transportation plan for the 'Ewa region because the transportation services related to the Project will be affected by and will affect the traffic in the 'Ewa region.

166. The 'Ewa Region Highway Master Plan Working Group ("Working Group") consists of major developers in the 'Ewa region who funded a study and who worked with the planning and transportation agencies of the State of Hawai'i and City and County of Honolulu in preparing the 'Ewa Region Highway Transportation Master Plan.

167. The original 'Ewa Region Highway Transportation Master Plan estimated the level of development in the region for the years 1997 and 2005, including Royal Kunia Phase I and Phase II, and projected traffic volumes for such development. The traffic improvements necessary to support such development were identified and recommended in the Plan for the years 1997 and 2005.

168. The recommendations in the original 'Ewa Region Highway Transportation Master Plan for the year 1997 had been conceptually approved by the DOT, and the Working Group was asked to implement the Plan. The DOT supported the participation of Petitioner in the 'Ewa Region Highway Master Plan. The original year 2005 plan was under review with the State.

169. The original 'Ewa Region Highway Transportation Master Plan included recommendations which directly affected the Project including: a second off-ramp lane from the H-1 Freeway to Kunia Road, mauka bound, and the widening of Kunia Road from two to four lanes, mauka of the Kunia Interchange. Royal Kunia Phase I includes the widening of Kunia Road fronting the Project down to the Kunia Interchange, and includes a second right-turn lane from the H-1 Freeway off-ramp onto Kunia Road.

170. Currently, the Working Group is participating in a study being conducted by the City and County of Honolulu for a proposed "North-South" Road which would run parallel to and between Fort Weaver Road and Fort Barrette Road, and which would connect to the H-1 Freeway at a new interchange. The City expects to release an initial draft of the plan in the near future. The City's plan would identify roadway improvements as well as serve as a basis for cost sharing among the developers.

171. The industrial park and the agricultural park within the Royal Kunia Phase II development will provide jobs and serve to help decentralize jobs from the central Honolulu area and ease the growth of job-related traffic demands on the traffic corridors into and out of central Honolulu.

172. Petitioner is an active member of the Leeward Oahu Transportation Management Association ("LOTMA"). The objective of LOTMA is to take a leadership role in the transportation needs of the Leeward O'ahu region and to be proactive in finding solutions to transportation problems and providing needed services and programs related to transportation.

173. In the effort to coordinate private and public sector transportation and land use planning activities, LOTMA works closely with the State of Hawai'i and City and County of Honolulu transportation departments, and the transit authority in implementing its programs.

174. Petitioner has taken steps towards implementing LOTMA's goals and objectives by, among other things, distributing to homeowners LOTMA's literature providing information on ride sharing, bus services and carpooling, providing park and ride facilities, providing child care facilities, and educating the residents with respect to LOTMA's programs and objectives.

175. The DOT is currently working on plans to improve the highway system from the juncture of the H-1 and H-2 Freeways to downtown Honolulu to provide temporary relief for commuters originating from Leeward and Central O'ahu and traveling into downtown Honolulu.

Water Service

176. The existing Village Park Subdivision and a portion of Royal Kunia Phase I are currently serviced by Kunia Well II. Source and storage facilities are located approximately 0.8 miles above Village Park along Kunia Road. This site includes a 1.5 mg "440" reservoir, a 1.0 mg "440" reservoir, and two deep wells. An activated carbon water treatment system at this site has been installed for contaminant removal by Petitioner and has been dedicated to the Board of Water Supply.

177. The development of the Project will require an average flow of 1.56 mgd. The flow requirement was computed

according to the Board of Water Supply, City and County of Honolulu, Water System Standards, Volume 1, 1985, as amended.

178. A Water Master Plan and Interim Water Master Plan were approved by the City and County of Honolulu, Board of Water Supply, on November 29, 1989 and November 5, 1990, respectively. A revised Water Master Plan was approved by the Board of Water Supply in October 1992. A subsequent revised Water Master Plan for the revised plan was submitted in May 1996 and is pending approval.

179. The following improvements will be installed with the development of the Project:

1. One deep well to be located at the Kunia Wells II site;
2. One booster pump to be located at the Kunia Wells II site;
3. Two Granular Activated Carbon contactor units to be located at the Kunia Wells II site; and
4. One permanent concrete reservoir (2 million gallons).

180. Agricultural park irrigation will require an average flow of 700,000 gal/day.

181. A possible alternate source of non-potable water is the Waiahole Ditch. There is a possibility that there will be excess water available from Waiahole Ditch, which may be able to provide an additional source of non-potable water for the agricultural park.

Wastewater Disposal

182. Wastewater from the Project will be collected by a network of pipes and will flow through Royal Kunia Phase I via a 24" trunk line and will terminate at the existing Waipahu Sewage Pump Station on Depot Road. From there, the wastewater will be pumped to the Honouliuli Sewer Treatment Plant.

183. Average daily wastewater flow generated by the development of the Property will be approximately 1.8 mgd. The flow requirement was computed according the City and County of Honolulu, Design Standards of the Division of Wastewater Management, Volume 1, February 1984, as amended.

A revised sewer master plan was approved by the Department of Wastewater Management in November 1993. A subsequent revised sewer master plan based on the revised plan for the Project was submitted in May 1996 and is pending approval.

Drainage

184. Approximately 55 percent of the storm runoff generated by the Project will be carried by various drainage facilities running through Royal Kunia Phase I and the existing Village Park Subdivision. The runoff will then flow into existing drainage facilities that are maintained by the City and County of Honolulu.

Approximately 43 percent of the storm runoff generated by the new development will be detained and diverted into detention basins. The runoff will then flow over land and by pipe to additional detention basins. The detention basins will

serve to temporarily detain runoff and reduce the peak flows to conditions prior to development. Approximately 2 percent of the storm runoff generated by the new development will discharge down a gully and into Waikele Stream. Development of the Property is not expected to have any noticeable impact upon the configuration of Waikele Stream. Flow levels and water quality of Waikele Stream are not expected to be altered or changed to any noticeable or measurable degree.

185. A Drainage Master Plan was been submitted to and approved by the City and County of Honolulu, Department of Public Works, on January 16, 1991. A revised drainage master plan was approved on September 25, 1995. A subsequent revised drainage master plan based on the revised plan for the Project will be submitted to the Department of Public Works shortly. Storm runoff will be handled by on-site improvements that will be designed in accordance with current City and County Drainage Design Standards.

Solid Waste Disposal

186. The City and County of Honolulu provides refuse collection service for the existing Village Park Subdivision and Royal Kunia Subdivision Phase I. Within the 'Ewa area, the City and County operates the Waipahu Incinerator.

187. After the Project is fully developed, it will generate approximately 32 tons of light industrial, institutional, and residential solid waste per day.

188. Refuse collection will be provided by both government and private work forces. The City and County of

Honolulu will service single-family dwellings, while private collectors will service commercial and business establishments. Apartment units can be served by either the City and County or private collectors.

Schools

189. State DOE officials estimated that the original Project would generate a total of 732 students. Approximately 448 students would attend grades kindergarten through six. The Project would generate an estimated 132 students in the intermediate school grades of seven and eight. Approximately 152 students would be generated in the high school category. Under the revised plan, the Project is estimated to generate a total of 820 students.

190. Existing schools which will be impacted by this increase in enrollment include Kalei'opu'u Elementary School in Village Park; Waipahu Intermediate School, which is approximately in the middle of Waipahu Town and makai of Farrington Highway; and Waipahu High School, located at the eastern end of Waipahu Town and makai of the main highway. In addition, Royal Kunia Phase I has reserved a school site.

191. The Project will impact the public education facilities by adding more students to the area. The intermediate and high schools in this district are already operating near or at capacity. Additional facilities will be needed to accommodate any major population increase anticipated in Waipahu, whether it is generated by Royal Kunia Phase I, Waikele, or the Project.

192. Kalei'opu'u Elementary School is projected to reach its design enrollment by 1995 due to the development of Royal Kunia Phase I.

193. An elementary school site within Royal Kunia Phase I is planned, and the Project has also reserved an elementary school site. Petitioner has agreed to provide an 8-acre elementary school site within the Project.

Parks

194. Village Park currently has the Ho'ae'ae Park within its boundaries. Royal Kunia Phase I includes 10.3 acres for a public park and 12.1 acres for a private recreation area, as well as two golf courses.

195. The Project includes approximately 11 acres intended for park dedication. The 11-acre dedication meets the acreage requirements of the Park Dedication Ordinance. Additional public funds will be needed to improve and maintain the park site.

196. During the governmental approval process, Petitioner has represented that it will communicate with the Department of Parks and Recreation to establish the exact location, size, and configuration of the park site.

Health Care

197. Kahi Mohala, a psychiatric treatment facility, and St. Francis Medical Center - West are located near the Property. The latter facility is a general community hospital which contains 136 acute care beds and has 130 resident physicians. The hospital offers X-ray, laboratory, obstetrics, and emergency

services. St. Francis received State and City and County approvals to increase the land area and further develop the center according to its five-year master plan. The master plan calls for a research and wellness/conference facilities, office building, day care, and skilled nursing and support facilities.

198. Near the Pearlridge Shopping Center, the Pali Momi Medical Center houses 116 beds, an ambulatory services center, and a medical office building. In Moanalua, the Kaiser Foundation Health Plan has a central hospital. Kaiser subscribers in the Waipahu area can also use services at the Punawai Clinic.

199. The Waipahu Fire Station will respond to emergencies at the Property, and backup will be provided by the City ambulance at 'Aiea.

200. The existing health care facilities in the vicinity will be adequate to serve the residents of the Project.

Police and Fire Protection

201. The Pearl City Police Station on Waimano Home Road currently serves Waipahu, 'Ewa, and Wai'anae, the latter of which has a substation. The Project is in the Waipahu District, Beat 328. The Beat has one officer per watch and assistance can be provided by the other six officers assigned to the district. Recently an additional Beat was added due to the population increase in the area.

202. The Project will add approximately 6,250 residents to this area. As with any other development, an increase in the population and density will increase the demand for police

services. Further, additional population will increase traffic, raising the potential for traffic-related accidents.

203. Waipahu community leaders have been requesting a police substation in the Waipahu area. To meet the needs of this growing community, the Police Department has been planning a number of changes in conjunction with the development of 'Ewa. In addition to new facilities and additional staff, the possibility of establishing a new district which includes 'Ewa and Wai'anae is being studied. If this occurs, then the district covered by the Pearl City Police Station will be smaller and police protection services may be more efficiently delivered.

204. The Project will increase the demand for fire protection services by adding approximately 6,250 people to the area. Plans for adding or expanding Waipahu facilities may need to be expedited if the existing facilities cannot accommodate the needs of the growing population.

205. Fire protection would be provided by the Waipahu and Pearl City Fire Stations. The Waipahu Fire Station has an engine and a ladder company, and 12 people staff these companies in one 24-hour shift. The Pearl City Fire Station has an engine company and 6 fire fighters available in a 24-hour shift. In addition, backup protection would be provided by the Waiau, 'Aiea, and Moanalua Fire Stations, and possibly from the recently opened Kapolei Fire Station.

Electric and Telephone Service

206. The Hawaiian Electric Company ("HECO") Ho'ae'ae substation which services the Village Park subdivision is not

adequate to provide service to Royal Kunia Phases I and II. New electrical facilities will therefore be installed within Phases I and II. Additional telephone facilities will also be installed within Royal Kunia Phase I and extended to Phase II.

207. A new HECO substation (Kunia Makai Substation) with one transformer and a new 12 KV distribution feeder system originating from the new substation was installed with the development of Royal Kunia Phase I. Additional improvements to service the Project include a new substation, a single overhead steel pole to extend two 46-kilovolt (kV) circuits, and a new 12-kV distribution circuit system from the new substation to the Project site.

208. Hawaiian Telephone Company completed construction of a new substation within Royal Kunia Phase I which will provide enough service to accommodate both Royal Kunia Phase I and Phase II.

Civil Defense

209. The State Department of Defense, Office of the Director of Civil Defense, comments that emergency warning systems must be planned for the safety of communities, just as parks, schools, fire hydrants, utilities, and sidewalks. The Civil Defense agency proposes that three new 115 decibel ("DB") solar powered outdoor warning sirens be located within the Project. The proposed 115 DB sirens require a 100-foot radius buffer zone in which there are no residential buildings.

210. The O'ahu Civil Defense Agency of the City and County of Honolulu states that full consideration must be given

to adequate public warning, evacuation, and sheltering of planned residential and commercial developments. The O'ahu Civil Defense Agency estimates that six 115 decibel civil defense sirens should be installed as part of the Project's infrastructure.

COMMITMENT OF STATE FUNDS AND RESOURCES

211. State and County revenues which will be derived from the Project are expected to be significant, and sufficient to allow government to afford the capital improvements and services required to accommodate the Project.

CONFORMANCE TO URBAN DISTRICT STANDARDS

212. The proposed reclassification conforms to the standards applicable for determining the boundaries for the Urban District as set forth in section 205-17, HRS, and section 15-15-18, HAR.

213. The Property is in proximity to several employment centers, including Pearl Harbor/Airport, Waipahu, the secondary urban center of 'Ewa, and Schofield/Wahiawa. The Property is also adjacent to Royal Kunia Phase I and its associated commercial and industrial area and golf and recreational areas. In addition, the proposed industrial area within the Project will generate new employment opportunities.

214. The Project is economically feasible, as demonstrated by Petitioner's finances and market assessment.

215. The Project is in proximity to facilities and services that serve Royal Kunia Phase I, Village Park, and Waipahu Town. These facilities can be expanded to adequately service the Project.

216. The Project will contribute towards mitigating the chronic housing shortage problem by providing up to 2,000 affordable and market residential units.

217. The Property is suitable for urban development. Its topography is relatively flat and non-stony; it is not prone to flooding or other natural hazards, and the soils are stable.

218. The Project is contiguous with Royal Kunia Phase I which in turn connects to Village Park. Supportive services will be provided primarily through the expansion of existing services to neighboring communities. Any new governmental supportive services will be offset by the tax revenues generated by the Project.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES
OF THE HAWAI'I STATE PLAN; RELATIONSHIP WITH APPLICABLE
PRIORITY GUIDELINES AND FUNCTIONAL PLANS

219. The urban designation of the Property is in general conformance with the Hawai'i State Plan and the overall theme, goals, objectives and priority guidelines for the future long-range development of the State.

220. In conformance with HRS section 226-5(b)(1), (b)(3), and (b)(7), the Project responds to both Statewide and local policies which rely upon O'ahu and in particular the 'Ewa and Central Districts, to accommodate a substantial amount of increase in population in Hawai'i. The Project will provide a significant amount of the affordable housing needed to support such growth policies and objectives. A substantial percentage of the residential units will be provided for moderate income groups, thereby providing an opportunity for a larger segment of

Hawai'i's people to pursue their social and economic aspirations through homeownership.

221. In conformance with HRS section 226-104(a)(3), adequate support facilities are available or shall be provided through the development of the Project. Other public expenditures for services and infrastructure will be offset by an increase in the tax revenues generated through general excise, property, and other forms of taxation.

222. In conformance with HRS section 226-6(a)(1) and (b)(3), the Project will include 123 acres of land for industrial activities generating an employment of approximately 1,450 people. A variety of business activities are envisioned, including the availability of various industrial lot sizes to accommodate the small businesses, as well as the larger and expanding businesses.

223. In conformance with HRS section 226-7(a)(2), 226-103(d)(1), (d)(7), and (d)(8), the proposed 150-acre State agricultural park will contribute to the growth of diversified agriculture on O'ahu by increasing the supply of high quality and well-located agricultural land that is available to small farmers.

224. In conformance with HRS sections 226-13(b)(7) and 226-104(b)(1), the Project borders Royal Kunia Phase I and the existing Village Park and is therefore in close proximity to public services and facilities. Petitioner will provide the necessary support facilities to include sewer, water, drainage,

and roadways. Anticipated tax revenues generated by the Project will exceed the cost for other public facilities and services.

225. In conformance with HRS section 226-11(b)(4), no critical resources will be irretrievably damaged by the Project. There are no native or endangered species, habitats, archaeological sites, or other environmentally sensitive areas within the Property.

226. In conformance with HRS section 226-15(b)(1), the Project will be developed with a modern wastewater disposal system and will be a component to an overall sewer system for the region. The implementation of Royal Kunia's wastewater facilities is being coordinated with the Division of Wastewater Management, which is in the process of expanding the existing Waipahu Sewage Pump Station and Honouliuli Wastewater Treatment Plant.

227. In conformance with HRS section 226-16(b)(1), sufficient water is available to support the Project.

228. In conformance with HRS section 226-17(a)(2), (b)(2), and (b)(12), the planning and design efforts of Petitioner will be coordinated with appropriate Federal, State, and County agencies regarding the achievement of statewide transportation objectives. On-site transportation systems to include roadway design and widening, timed signalization of intersections, bus shelters, parking, and other physical elements, shall be designed to ensure efficient traffic management. Petitioner has initiated and participated in measures to mitigate regional traffic impacts and has promoted

the coordination of land use and transportation planning activities through participation in the 'Ewa Highway Transportation Master Plan Working Group and in LOTMA.

229. In conformance with HRS section 226-18(b)(4), extension of electric and telephone facilities will be planned to coincide with the Project's development. Such facilities will be extended from existing adjacent community facilities. On-site facilities for the utility systems will have a minimal impact on the environment. Noise, aesthetic considerations, safety hazards, and loading impact will be within normally applied guidelines.

230. In conformance with HRS sections 226-19(b)(1), (b)(2), (b)(3), (b)(5), and 226-104(b)(1), the Project will contain 2,000 residential units. A substantial percentage of the residential units will be provided for moderate income groups. The Project will provide a broad range of unit types and unit prices which will appeal to a range of homebuyers and a wide range of family sizes.

231. In conformance with the objectives and policies of the State Agriculture Functional Plan, the 150-acre State agricultural park will contribute to the growth of diversified agriculture on O'ahu by increasing the supply of high quality and well-located agricultural land that is available to small farmers.

232. In conformance with the objectives and policies of the State Health Functional Plan, health and medical care facilities are located in the immediate region and are expected

to accommodate the additional population of the Project. Environmental matters of the State Health Plan have been addressed relating to air quality, noise impacts, and the adequacy of public facilities and services. Where adverse impacts have been identified, appropriate mitigative measures have been proposed by Petitioner.

233. In conformance with the objectives and policies of the State Housing Functional Plan, the Project will contribute significantly to the State's housing inventory in offering a broad range of unit types at various sizes and costs.

234. In conformance with the objectives and policies of the State Historic Preservation Functional Plan, no significant archaeological or historical sites exist in the area.

235. In conformance with the objectives and policies of the State Recreation Functional Plan, the Project includes an 11-acre public park.

236. In conformance with the objectives and policies of the State Transportation Functional Plan, necessary roadway modifications will be made and mitigative measures such as a park and ride program will be encouraged by Petitioner.

237. In conformance with the objectives and policies of the State Energy Functional Plan, energy conservation methods will be investigated for use in the Project, and buildings, where possible, will be designed to take advantage of natural ventilation.

238. In conformance with the objectives and policies of the State Water Resources Functional Plan, Petitioner will

coordinate with the State Department of Land and Natural Resources and the Board of Water Supply in addressing the Project's water needs. The proposed water system development for the Project is not expected to be of any significant impact. Water quality impacts in the area are expected to be minimal.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

239. The Project complies with and supports the objectives of the Hawai'i Coastal Zone Management Program.

240. In compliance with recreational resources objectives, the proposed 11-acre park together with other recreational amenities in Royal Kunia Phase I, will serve the recreational needs of the residents.

241. In compliance with historic resources objectives, no archaeological or historically significant resources are known to exist on the Property.

242. In compliance with scenic and open space resources objectives, development along Kunia Road will have a substantial landscaped setback area to ensure visual compatibility between the current agricultural character and the Project. Street tree plantings and other landscape amenities will have substantial mitigative effects in minimizing the overall impact of the Project when viewing in a mauka direction.

243. In compliance with coastal ecosystem objectives, development of the Property is not expected to have any notable impact upon the configuration of Waikele Stream, and flow levels and water quality of the stream are not expected to be altered or changed to any measurable degree.

244. In compliance with economic uses objectives, the Project, especially the industrial area, will stimulate the regional, County, and State economies.

245. In compliance with coastal hazards objectives, the Project is not subject to inundation by coastal storm waves or tsunamis due to its inland location. A revised drainage master plan based on the revised plan for the Project will be submitted to the Department of Public Works.

RULING ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS, and the Hawai'i Land Use Commission Rules under chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 503.886 acres of land located at Waikele and Ho'ae'ae, 'Ewa, O'ahu, City and County of Honolulu, Hawai'i, identified as Tax Map Key No. 9-4-02: 1, portion of 52,

70, and 71, from the State Land Use Agricultural District to the State Land Use Urban District, subject to the conditions hereinafter stated in the Order, is reasonable, conforms to the standards for establishing the urban district boundaries, is non-violative of section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS.

ORDER

IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. A92-683 by Petitioner Halekua Development Corporation, a Hawai'i corporation, consisting of approximately 503.886 acres of land located at Waikele and Ho'ae'ae, 'Ewa, O'ahu, City and County of Honolulu, Hawai'i, identified as Tax Map Key No.: 9-4-02: 1, portion of 52, 70 and 71, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Agricultural District into the State Land Use Urban District, and that the State land use district boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for low to moderate income residents of the State of Hawai'i to the satisfaction of the City and County of Honolulu. The location and distribution of the affordable housing and other provisions for affordable housing shall be under such terms as are mutually agreeable to the Petitioner and the City and County of Honolulu.

2. Petitioner shall fund, design, and construct the local and regional transportation improvements necessitated by

the proposed development, on a pro rata basis, and as determined and approved by the State Department of Transportation and the City and County of Honolulu, Department of Transportation Services, including without limitation the dedication of any rights-of-way to the State or County. Petitioner shall also be required to provide the following:

- A. All of the other improvements needed (which will not be provided by the Village Park and Royal Kunia, Phase I projects) to make Kunia Road a 4-lane highway with auxiliary lanes for both left and right turning movements (between Kunia Interchange and the northernmost boundary of Royal Kunia, Phase II) and a third northbound lane between Kunia Interchange and the north Kupuna Loop intersection.
- B. A report that analyzes the impact of the proposed Phase II project's traffic on the Kunia Interchange and evaluate alternatives that will mitigate the impacts.
- C. Plans for construction work within the State highway right-of-way must be submitted to DOT, Highways Division for review and approval.

Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to the Petitioner applying for county zoning.

3. Petitioner, at no cost to the State, shall appoint a permanent transportation manager whose function is the formulation, use, and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems. In the alternative, Petitioner may participate in a regional program for transportation management with other developers and/or landowners. This program shall address the transportation opportunities that would

optimize the use of existing and proposed transportation systems. Either option will continue to be in effect unless otherwise directed by the State Department of Transportation. The program for either option shall be reviewed and approved by the State Department of Transportation prior to implementation. The transportation manager or Petitioner shall conduct a yearly evaluation of the program's effectiveness and shall make a written report of its evaluation available to the State Department of Transportation for program review and modification, if necessary.

4. Petitioner shall monitor the traffic attributable to the proposed Project at on-site and off-site locations and shall undertake subsequent mitigative measures that may be deemed to be required by Petitioner, the State Department of Transportation, or the City and County of Honolulu. The mitigative measures shall be coordinated with and approved by the State Department of Transportation and the City and County of Honolulu.

5. Petitioner shall cooperate with the State Department of Health and the City and County of Honolulu Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawai'i Revised Statutes, in accordance with a schedule satisfactory to the Department of Health and the City and County of Honolulu.

6. Petitioner shall contribute to the development, funding, and/or construction of school facilities on a pro rata

basis as a result of the development on the Property, as determined by and to the satisfaction of the Department of Education (DOE). Agreement by DOE on the level of funding and participation shall be obtained prior to Petitioner applying for county zoning.

7. Petitioner shall coordinate with the Honolulu Board of Water Supply and the Department of Land and Natural Resources to obtain the required water for the project. In the event that water is not available from existing sources due to insufficient supply, Petitioner shall fund and develop the necessary water source, storage, and transmission systems and facilities.

8. Petitioner shall participate, on a pro rata basis, in the funding for construction and installation of appropriate civil defense measures as determined by State and City civil defense agencies.

9. Petitioner shall erect a chain link fence along the eastern boundary of the Property that is common with the Waikele Branch of Naval Magazine, Lualualei.

10. Petitioner shall clear and maintain the land situated within 20 feet of the eastern boundary of the Property, free of trees and vegetation taller than eight inches high.

11. Petitioner shall coordinate with the State Department of Health and the City and County of Honolulu to establish appropriate systems to contain spills and prevent materials, such as petroleum products, chemicals, solvents or other pollutants from leaching into the storm drainage system and adversely affecting the groundwater and coastal waters.

12. Petitioner shall participate in the funding and construction of adequate wastewater treatment, transmission and disposal facilities, on a pro rata basis, as determined by the State Department of Health and the City and County Department of Public Works.

13. Petitioner shall implement effective soil erosion and dust control measures both during and after construction to the satisfaction of the State Department of Health.

14. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

15. Petitioner shall provide notification to all owners and occupants of the Property of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawai'i Right-to-Farm Act, Chapter 165, Hawai'i Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

16. Petitioner shall provide drainage improvements for the subject project and shall coordinate off-site improvements with adjoining landowners and developers, and/or other Federal, State, and City agencies.

17. Should any archaeological resources such as artifacts, shell, bone or charcoal deposits, human burials, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property, Petitioner shall immediately stop work on the

impacted area and contact the Historic Preservation Division of the State of Hawai'i Department of Land and Natural Resources.

18. Petitioner shall obtain Development Plan approvals from the City and County of Honolulu within five (5) years from the date of this Order.

19. Petitioner shall convey the agricultural park to the State of Hawai'i, and provide off-site infrastructure to the agricultural park, pursuant to the terms of the Memorandum of Understanding dated March 30, 1993 entered into by Petitioner and the Department of Agriculture.

20. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Petitioner's or its successor's failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

21. In reliance upon Petitioner's representation that it will develop the Project on his own and in its entirety, the Petitioner shall obtain the prior approval from the Land Use Commission before it can sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property or Project covered by the approved Petition.

Petitioner shall request the prior approval from the Land Use Commission to alter the ownership interest in the Property or Project by filing a motion to request approval to alter ownership interest and supporting affidavits that will provide relevant information, including without limitation

(1) the name(s) and address(es) of the prospective owner(s) or real party(ies) in interest; (2) the reason for the alteration of ownership interest; (3) any information related to any proposed change in the representations made by Petitioner to the Commission and in its Petition filed pursuant to section 15-15-50, Hawai'i Administrative Rules, including without limitation any information pertaining to the financial capabilities of the prospective owner(s) to proceed with the Project as set forth in section 15-15-50(8); and, (4) a written acknowledgement and affirmation of the prospective owner(s) that the prospective owner(s) shall comply with all of the conditions in this Order.

22. Petitioner shall promptly provide without any prior notice, annual reports to the Land Use Commission, the Office of Planning, and the City and County of Honolulu Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed. The annual reports shall summarize: (1) Petitioner's progress in complying with the conditions imposed; and (2) changes to the Project as represented to the Land Use Commission. The annual report shall also include a written statement from each state and county agency affected by these conditions that Petitioner's representations in the annual report related to the respective state or county agency being affected is true and accurate.

23. The Land Commission may fully or partially release these conditions as to all or any portions of the Property upon

timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has been satisfied, in whole or in part. The Office of Planning will certify for itself and all state departments and agencies, and the City and County of Honolulu Planning Department will certify for itself and all county departments and agencies. Any other party to the boundary amendment proceeding may be asked to indicate whether they concur in the certification of satisfaction.

24. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (1) record with the Bureau of Conveyances a statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property; and (2) shall file a copy of such recorded statement with the Commission.

25. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

Done at Honolulu, Hawaii, this 1st day of October 1996,
per motion on September 12, 1996.

LAND USE COMMISSION
STATE OF HAWAII

By (absent)
TRUDY K. SENDA
Chairperson and Commissioner

By Rupert K. Chun
RUPERT K. CHUN
Vice Chairperson and Commissioner

By Lawrence N.C. Ing
LAWRENCE N.C. ING
Commissioner

By M. Casey Jarman
M. CASEY JARMAN
Commissioner

By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

By Lloyd F. Kawakami
LLOYD F. KAWAKAMI
Commissioner

By M. Kelai
MERLE A. K. KELAI
Commissioner

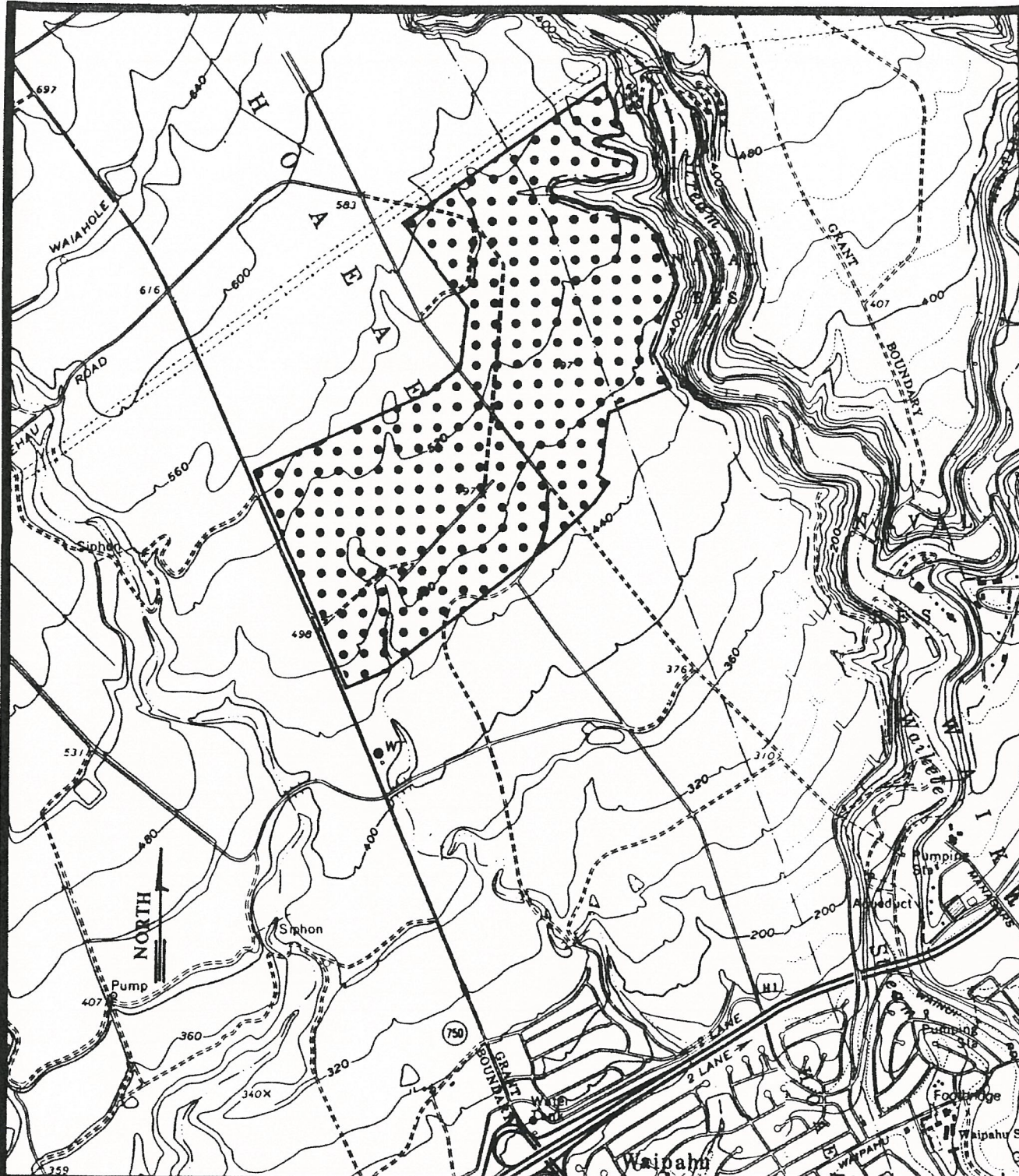
Filed and effective on
October 1, 1996

Certified by:

Edward L. ...
Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By Joann N. Mattson
JOANN N. MATTSON
Commissioner



DOCKET NO. A92 - 683 / HALEKUA DEVELOPMENT CORPORATION, a Hawai'i Corporation

LOCATION MAP

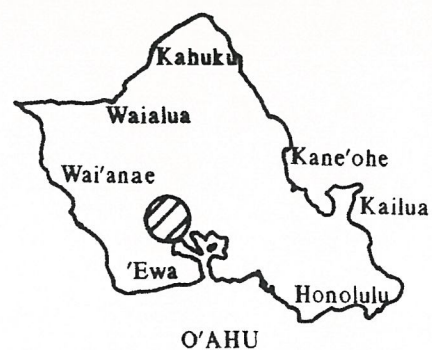
TAX MAP KEY: 9-4-02: 1, por. 52, 70, & 71

WAIKELE-HO'AE'AE, 'EWA, O'AHU, HAWAII



APPROVED AREA

SCALE: 1" = 2,000 ft. ±



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT CORPORATION,)	CERTIFICATE OF SERVICE
a Hawai'i corporation)	
)	
To Amend the Agricultural Land Use)	
District Boundary into the Urban)	
Land Use District for Approximately)	
503.886 Acres of Land at Waikele)	
and Ho'ae'ae, 'Ewa, O'ahu, City and)	
County of Honolulu, Hawai'i, Tax)	
Map Key No. 9-4-02: 1, portion of)	
52, 70, and 71)	
)	

CERTIFICATE OF SERVICE

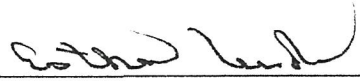
I hereby certify that a copy of the Amended Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. RICK EGGED, Director
 Office of Planning
 P. O. Box 3540
 Honolulu, Hawaii 96811-3540

CERT. CHERYL SOON, Chief Planning Officer
 Planning Department
 City and County of Honolulu
 650 South King Street
 Honolulu, Hawaii 96813

CERT. JAN N. SULLIVAN, ESQ., Attorney for Petitioner
 Takeyama & Sullivan
 1100 Alakea Street, Suite 3110
 Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 1st day of October 1996.



ESTHER UEDA
Executive Officer