

BEFORE THE LAND USE COMMISSION

LAND USE COMMISSION
STATE OF HAWAII

OF THE STATE OF HAWAII

2003 FEB 26 P 2: 00

In the Matter of the Petition of	)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT	)	ORDER GRANTING OFFICE OF
CORPORATION, a Hawai'i	)	PLANNING'S MOTION FOR AN
corporation	)	ORDER TO SHOW CAUSE TO
	)	RESCIND THE DECISION AND
To Amend the Agricultural Land	)	ORDER DATED ON OCTOBER 1, 1996
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)	
_____)	

ORDER GRANTING OFFICE OF PLANNING'S MOTION FOR AN ORDER TO SHOW
CAUSE TO RESCIND THE DECISION AND ORDER DATED ON OCTOBER 1, 1996

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ORDER GRANTING OFFICE OF PLANNING'S MOTION FOR AN ORDER TO SHOW
CAUSE TO RESCIND THE DECISION AND ORDER DATED ON OCTOBER 1, 1996

On October 15, 2002, the Office of Planning ("OP") filed a Motion For An Order To Show Cause To Rescind The Decision And Order Dated On October 1, 1996 ("Motion"), pursuant to sections 15-15-70 and 15-15-93, Hawaii Administrative Rules ("HAR"). OP requested that the Land Use Commission ("Commission") hold an order to show cause hearing and rescind the Amended Findings of Fact, Conclusions of Law, and Decision and Order ("Amended Decision and Order") dated October 1, 1996, to revert the entire 503.886-acre Petition Area to its former designation within the State Land Use Agricultural District. OP stated that since the issuance of the first Findings of Fact, Conclusions of Law, and Decision and Order in this docket, Petitioner Halekua

Development Corporation ("Halekua") has failed to secure financing for the proposed project and to convey the 150-acre agricultural park to the State of Hawai'i as required by Condition Number 19 of the Amended Decision and Order. OP also stated that despite Halekua's sale of a portion of the Petition Area, Halekua did not use the funds to obtain and transfer the agricultural park.

On October 23, 2002, HRT, Ltd. ("HRT"), filed a Memorandum In Opposition Of Office Of Planning's Motion For An Order To Show Cause To Rescind The Decision And Order Dated October 1, 1996.¹

On October 29, 2002, Halekua filed a Memorandum In Opposition To Office Of Planning's Motion For An Order To Show Cause To Rescind The Decision And Order Dated October 1, 1996.

On January 8, 2003, Halekua filed a Supplemental Memorandum In Opposition To Office Of Planning's Motion For An Order To Show Cause To Rescind The Decision And Order Dated October 1, 1996.

The Commission considered the Motion at its meeting on January 9, 2003, in Honolulu, Hawai'i. John W. K. Chang, Esq., and Abe Mitsuda appeared on behalf of OP. Also present were Jonathan S. Durrett, Esq., and Herbert K. Horita on behalf of Halekua; Reuben S. F. Wong, Esq., on behalf of HRT; Stephen K. C. Mau, Esq., on behalf of Robinson Estate; Richard K. Mirikitani, Esq., on behalf of Castle & Cooke; and

¹ HRT owns a portion of the Petition Area.

Randall Hara and Mike Watkins on behalf of the City and County of Honolulu
Department of Planning and Permitting.

At the meeting, Halekua stated that it opposed the Motion. Halekua noted that it had worked out an arrangement with the Department of Education to relinquish Halekua's interest in a lot to a developer who would work with the existing lienholders to develop a school on the site. Halekua also noted that a firm closing date had been established with its new lender to obtain financing for the project. HRT stated that it had no objection to the matter being set for hearing, but it had concerns regarding the merits and substance of the Motion. HRT further requested that it be allowed to intervene as an interested party if the Commission were to set this matter for hearing. During the discussion, it was noted that Halekua previously appeared before this Commission and represented that it was pursuing various funding sources but had yet to secure financing for the project. Following discussion, the Commission noted that there was a sufficient amount of information presented so as to cause the majority of the Commission members to form a belief that there has been a failure by Halekua to comply with Condition Number 19 of the Amended Decision and Order.

Thereafter, a motion was made and seconded to grant OP's Motion and set this matter for a show cause hearing in the latter part of April 2003 as it pertains to the entire approximately 503.886-acre Petition Area, and further to grant HRT intervenor status upon filing a timely application therefor. Following discussion by the

Commissioners, a vote was taken on this motion. There being a vote tally of 5 ayes, 0 nays, and 4 absent, the motion carried.

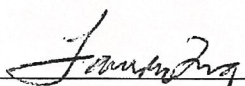
ORDER

Having duly considered the Motion, the written and oral arguments, and a motion having been made at a meeting conducted on January 9, 2003, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by sections 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS that OP's Motion be GRANTED and that this matter be set for a show cause hearing in the latter part of April 2003 as it pertains to the entire approximately 503.886-acre Petition Area, and further that HRT will be granted intervenor status upon filing a timely application therefor.

ADOPTION OF ORDER

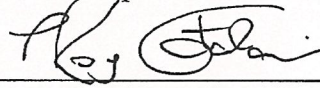
The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 20th day of February 2003. The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

LAND USE COMMISSION
STATE OF HAWAII

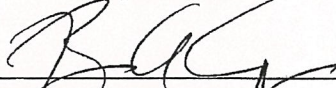
By 
LAWRENCE H.C. ING
Chairperson and Commissioner

By ABSENT


STANLEY H. ROEHRIG
Vice Chairperson and Commissioner

By 

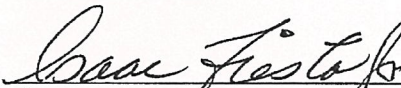
P. ROY CATALANI
Vice Chairperson and Commissioner

By 

BRUCE A. COPPA
Commissioner

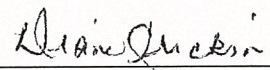
By 

PRAVIN DESAI
Commissioner

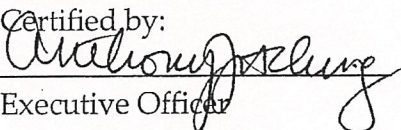
By 

ISAAC FIESTA, JR.
Commissioner

APPROVED AS TO FORM

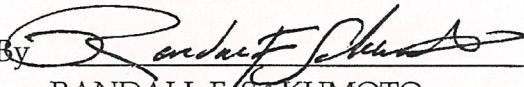

Deputy Attorney General

Filed and effective on
February 26, 2003

Certified by:

Executive Officer

By ABSENT

STEVEN LEE MONTGOMERY
Commissioner

By 

RANDALL F. SAKUMOTO
Commissioner

By ABSENT

PETER YUKIMURA
Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Office Of Planning's Motion For An Order To Show Cause To Rescind The Decision And Order Dated On October 1, 1996 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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

CERT. JONATHAN S. DURRETT, ESQ.
 Stubenberg & Durrett
 1001 Bishop Street, 808 Pauahi Tower
 Honolulu, Hawaii 96813

CERT. DAVID ARAKAWA, ESQ.
 Corporation Counsel
 City & County of Honolulu
 530 South King Street
 Honolulu, Hawaii 96813

CERT. ERIC CRISPIN, ACTING DIRECTOR
Department of Planning and Permitting
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CERT. RUEBEN WONG, ESQ.
Central Pacific Plaza, Suite 2288
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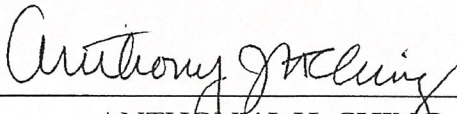
CERT. RICHARD MIRIKITANI, ESQ.
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Agricultural Resource Management Division
Department of Agriculture
P. O. Box 22159
Honolulu, Hawaii 96823-2159

CERT. JOHN CHANG, Esq.
Deputy Attorney General
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 26th day of February, 2003.



ANTHONY J. H. CHING
Executive Officer



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5th Floor
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808.523.5866
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December 15, 2016

LAND USE COMMISSION
STATE OF HAWAII

2016 DEC 19 P 1:33

Mr. Daniel E. Orodener, Executive Officer
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

**SUBJECT: Royal Kunia Phase II
Compliance with Conditions of Amended Decision and Order
(Docket No. A92-683, October 1, 1996)
Status Reports through December 2016**

Dear Mr. Orodener:

On behalf of Halekua-Kunia, LLC, we hereby submit this Status Report on the Applicant's Compliance with Conditions of Amended Decision and Order (Docket No. A92-683, October 1, 1996).

We are continuing to make progress on the conditions since the previous status submittal on December 17, 2015. Halekua-Kunia, LLC, reaffirms its commitment and obligation to comply with and satisfy each of the outstanding conditions set forth in the Amended Decision and Order (Docket No. A92-683, October 1, 1996).

Thank you for reviewing the enclosed report. If you have questions or require further information, please contact me at 351-4200.

Sincerely,
GROUP 70 INTERNATIONAL, INC., dba G70

Jeffrey H. Overton, AICP, LEED AP
Principal Planner

Attachments:
December 2016 Status Report - State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996)

cc: Canpartners IV Royal Kunia Property LLC

Exhibit 51c

**Status Report on Royal Kunia Phase II Development Compliance with Conditions
State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996)
Submitted by Halekua-Kunia LLC (HK), December 2016**

Type of Condition	Description of Requirements	Compliance Status as of December 2016	Action Plan for Achieving Full Compliance
1. Affordable Housing	Halekua Development Corporation (HDC) 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 (City). Details as to the location, distribution and other provisions for affordable housing shall be as mutually agreed between HDC and City. [The basic affordable housing program requirement is to provide: (a) 10% of the project housing units affordable to households with incomes not exceeding 80% of the City's median income, and (b) an additional 20% of the project's housing units affordable to families with incomes between 81% and 120% of the City's median income.]	Future compliance. Discussions were initiated, but further action was deferred while the property was in bankruptcy.	HK met with DPP representatives in 2009 prior to submittal to DPP of a PD-H application for the project, to initiate the process of establishing a binding agreement for the provision of the required affordable housing. The framework for this agreement is reflected in the PD-H application which was approved in July 2009 (2009/PDH-1), and the full agreement will be executed prior to applying for any building permits. It will comply with the provisions stipulated in both this UA and the UA attached to Ordinance No. 97-12. The DPP Draft Affordable Housing Agreement was provided as Attachment 1 in the May 2009 UA Project Status submittal. Comments were received from DPP in June 2009 and an updated version of the Agreement was included as Attachment 1 in the June 2010 UA Project Status submittal.
2. Transportation Improvements	HDC shall fund, design, and construct 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 (DOT) and the City and County of Honolulu Department of Transportation Services (DTS), including without limitation the dedication of any rights-of-way to the State or County. HDC 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	Partial completion and future compliance. Construction of a third northbound lane on Kunia Road between Kunia Interchange and the south Kupuna Loop intersection has been completed. Steps toward meeting other portions of this requirement were deferred while the property was in bankruptcy.	HK has held initial meetings with DOT, DTS and DPP TRB representatives and will follow up as needed to mutually determine and reach agreement on: a. Right-of-way acquisition, funding and construction of various roadway and traffic improvements to be provided by HK at project access points and at other on-site and off-site locations. b. Preparation of periodic traffic monitoring reports assessing project-generated impacts on Kunia Interchange. c. HK's participation with other Ewa area developments landowners and developers in fair-share funding of regional transportation improvements. Such an agreement will be executed prior to the submittal to DPP of any applications for the

Status Report on Royal Kunia Phase II Development Compliance with Conditions
State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996)
Submitted by Halekua-Kunia LLC (HK), December 2016

Type of Condition	Description of Requirements	Compliance Status as of December 2016	Action Plan for Achieving Full Compliance
	right-of-way must be submitted to the DOT Highways Division for review and approval.		<p>subdivision of building lots. It will comply with the provisions stipulated in both this UA and the UA attached to Ordinance No. 95-08.</p> <p>Ongoing participation in regional highway and transportation planning, including LOTMA and Ewa Region Highway Transportation Master Plan Working Group.</p> <p>An updated traffic study was completed in May 2008 and submitted in the PD-H Application. The Traffic Impact Assessment Report (TIAR) (WOA, May 2013) was updated and provided to DPP-TRB and DOT. There have not been any comments received from the City on the TIAR. DOT requested that two separate studies be completed (1) Kunia Road (2) Kunia Interchange. HK retained Wilson Okamoto and Associates to update the TIAR. In May 2015 WOA took updated traffic counts which showed conditions have remained consistent with the original analysis. HK will continue to coordinate with WOA until the TIAR is updated.</p> <p>HK has the financial capability and fully intends to fulfill its responsibilities in accordance with the terms of the executed agreement. Meetings continue to be held with DOT-Highways for further coordination on outstanding regional traffic issues for the project. Due to the magnitude of the requested improvement plans, HK is working with the DOT to discuss the timing and approach to cost sharing these improvements. A regional analysis has also been prepared to assist with the analysis of cost sharing responsibilities for the required improvements. Meetings with DOT were held in 2015 to discuss the project. RMTC prepared concept roadway plans based on queuing</p>

Status Report on Royal Kunia Phase II Development Compliance with Conditions
State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996)
Submitted by Halekua-Kunia LLC (HK), December 2016

Type of Condition	Description of Requirements	Compliance Status as of December 2016	Action Plan for Achieving Full Compliance
			analysis, and submitted to DOT for review in 2014. Comments were addressed and plans/responses submitted, with a follow-up meeting with DOT held in mid-2015. At the appropriate time, plans for construction work within the State highway right-of-way will be submitted to the DOT Highways Division for review and approval.
3. Regional Transportation Management Program	HDC 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, HDC 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. The program for either option shall be reviewed and approved by DOT prior to implementation, and will continue to be in effect unless otherwise directed by DOT. HDC shall conduct a yearly evaluation of the program's effectiveness and shall make a written report of its evaluation available to DOT for program review and modification, if necessary.	Prior & future compliance. HDC was an active participant in Ewa Region Highway Transportation Master Plan Working Group and an active member of Leeward Oahu Transportation Management Association. (LOTMA), but this activity was suspended while the property was in bankruptcy.	Participation in both programs will be re-established by HK in the near future. Yearly program evaluation reports will be prepared and filed concurrently with this annual Compliance Status Report. Ongoing participation in regional highway and transportation planning, including LOTMA and Ewa Region Highway Transportation Master Plan Working Group.
4. Traffic Monitoring	HDC 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 required. The mitigative measures shall be coordinated with and approved by DOT and DTS.	Future compliance.	A monitoring program will be drafted and submitted to DOT & DTS for review and approval no later than when home construction is initiated. Approval will be obtained prior to occupancy of any homes in this Project.
5. Integrated Solid Waste Management Act	HDC shall cooperate with the State Department of Health (DOH) and the City and County of Honolulu Department of Public Works [now Department of Environmental Services (DES)] 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 DOH and DES.	Future compliance.	HK will draft and submit a proposed solid waste management program and schedule to DOH and DES for their review and approval at least 90 days prior to the initiation of any residential construction, and will facilitate the review process as required to obtain approval prior to the start of construction. DES Recycling Branch was consulted on May

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			<p>12, 2009 regarding solid waste management and recycling. The discussion served as guidance for the development of a recycling program for the project. A recycling program will be established prior to the completion of construction. HK will continue to coordinate with DES and OSWM as the project moves forward.</p> <p>The May 2009 Memorandum was provided as Attachment 3 in the May 2009 UA Project Status submittal.</p>
6. School Facilities	<p>HDC 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 HDC applying for county zoning.</p> <p>HDC and DOE entered into a letter agreement dated September 26, 1996 that outlined the terms of HDC's contribution to the development of school facilities in satisfaction of this condition. This has been replaced with an updated "School Site Agreement" that was executed by HDC and DOE on March 6, 2007.</p> <p>The terms of the March 6, 2007 School Site Agreement provides for the (a) transfer of all of HDC's interest in the 12-acre elementary school site to RKES in satisfaction of the dedication component of DOE's fair share requirement, and (b) the payment to DOE of a total of \$500,000 in five installments that are due upon the closing of: (1) the 1,000th unit, (2) the 1,250th unit, (3) the 1,500th unit, (4) the 1,750th unit, and (5) the last unit. The amounts due will be escalated over time based on the Consumer Price Index.</p>	<p>Partial completion and future compliance.</p> <p>Per the March 6, 2007 School Site Agreement, the 12-acre school site has been conveyed to RKES.</p>	<p>HK will file a copy of the March 6, 2007 School Site Agreement with DPP concurrently with the submittal of initial subdivision plans.</p> <p>HK will make the required cash contributions in accordance with the schedule of installments outlined in the March 6, 2007 School Site Agreement.</p> <p>HK met with the DOE on January 7, 2015 and will continue to coordinate with them to meet the terms of this condition.</p>
7. Water Requirements	HDC shall coordinate with the Honolulu Board of Water Supply (BWS) and the State Department of Land and Natural Resources (DLNR) to obtain water required for the project. If	Prior and future compliance.	HK will maintain ongoing coordination as necessary to obtain the required project water from the existing BWS system and develop

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	water is not available from existing sources due to insufficient supply, HDC shall fund and develop the necessary water source, storage, and transmission systems and facilities.		additional water resources and/or supply system improvements for dedication to BWS. The initial water master plans are being updated to reflect the new master plan for the community. HK met with BWS in August 2016 to discuss compliance with requirements for the project. HK will continue to coordinate with BWS to meet this condition.
8. Civil Defense Measures	HDC 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.	Partial completion and future compliance. An agreement was reached between HDC and the State and City civil defense agencies prior to the property being placed in bankruptcy on what civil defense measures are needed.	HK will fully fund and install the necessary facilities and equipment in connection with the construction of this project.
9. Chain Link Fence 10. Clearance and Maintenance of Land	HDC shall erect a chain link fence along the eastern boundary of the Property that is common with the Waikele Branch of Naval Magazine, Lualualei. HDC 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.	Future compliance by others.	HDC never acquired the land on which this fence and cleared area would be located, and HK does not plan to add it to this Project. Title is still held by the Robinson Estate, and it is still zoned for agricultural use. Future erection of a fence and maintenance of clear area along this boundary, if still required (it is noted that the high-security Naval Magazine in Waikele Gulch is no longer in operation and ownership is being transferred to a private developer), will be the responsibility of any future developer of these Robinson lands.
11. Pollutants	HDC shall coordinate with the DOT and DES 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.	Future compliance.	HK will meet with DOH and DES prior to initiating project construction to agree upon a plan and program for compliance with this requirement, and will establish pollution control systems and implement such other actions as are called for in the approved plan and program.

Status Report on Royal Kunia Phase II Development Compliance with Conditions
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12. Wastewater Treatment	HDC shall participate on a pro rata basis in the funding and construction of adequate wastewater treatment, transmission and disposal facilities, as determined by the DOH and DES.	Future compliance	HK will meet with DOH and DES prior to initiating project construction to establish an approved program for compliance with this requirement, and will implement this program. The initial wastewater master plans are being updated to reflect the new master plan for the community.
13. Soil Erosion and Dust Control	HDC shall implement effective soil erosion and dust control measures both during and after construction to the satisfaction of the DOH.	Future compliance.	HK will meet with DOH prior to initiating project construction to establish an approved soil erosion and dust control program, and will implement this program.
14. Air Quality Monitoring	HDC shall participate in an air quality monitoring program as specified by the DOH.	Future compliance.	HK will meet with DOH prior to initiating project construction to establish an agreement defining HK's participation in a DOH-specified air quality monitoring program for the area where the project site is located.
15. Agricultural District Pollution	HDC 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 HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.	Future compliance.	HK will provide such notification along with any sales or leases of residential lots or other portions of the property to other parties. It will be the responsibility of these other parties to notify any new occupants of their properties that result from their resale, sub-lease and/or rental.
16. Drainage Improvements	HDC 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.	Partial completion and future compliance.	HDC completed the majority of required off-site drainage improvements for the Royal Kunia Phase II property in connection with the infrastructure construction for Village Park and Royal Kunia Phase I. Prior to the initiation of construction at Royal Kunia Phase II, HK will work with adjoining landowners and developers, and with appropriate Federal, State and City agencies, to coordinate and agree on the type and completion schedule for any future required off-site drainage improvements. The initial drainage master plans are being updated to reflect the new master plan for the community.

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17. Archaeological Resources	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, HDC shall immediately stop work on the impacted area and contact the DLNR Historic Preservation Division.	Partial completion and future compliance.	Archaeological surveys of the Royal Kunia Phase II property indicate the absence of any above-ground archaeological features and no evidence of past use that would have generated potentially significant archaeological or historic sites. HK will work closely with the Historic Preservation Division and comply with all established procedures to protect any archaeological resources that might be encountered during future development and construction on this property.
18. Development Plan Approvals	HDC shall obtain Development Plan approvals from the City and County of Honolulu within five (5) years from the date of this Order.	Fully met.	All required Development Plan approvals have been obtained, and the Royal Kunia Phase II project is in full compliance with the current Central Oahu Sustainable Communities Plan. No further action is required. In 2009, HK obtained Planned Development-Housing (PD-H) approval from DPP. In April 2014, DPP approved a request for three-year time extension for the project. The letter was provided as Attachment 1 in the 2014 submittal. HK met with the City Department of Planning and Permitting in August 2016 to provide an update on the current status of the project. HK anticipates requesting a time extension in 2017.
19. Agricultural Park	HDC 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 (MOU) dated March 30, 1993 entered into by HDC and the Department of Agriculture (DOA). This MOU was replaced on March 2, 2007 with an "Amendment and Restatement of Memorandum of Understanding" (Amended MOU), which includes the following requirements for the provision of off-site infrastructure to the agricultural park: A. HDC shall prepare and reach agreement with DOA no later than December 31, 2007 on a preliminary site plan for	Partial completion and future compliance. Title to the 150 acre agricultural park was transferred to the State of Hawai'i in 2004.	HK met with DOA on May 9, 2007 to begin the process of establishing an agreed-upon plan and program to implement the provisions of the Amended MOU. HK intends to plan, design and construct such infrastructure improvements in full compliance with these provisions. HK and DOA have coordinated on the compliance with MOU conditions, issuing deadline date schedule changes for satisfaction of Condition A, as listed below: -1st Amendment to Amended MOA 2009

Status Report on Royal Kunia Phase II Development Compliance with Conditions
State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996)
Submitted by Halekua-Kunia LLC (HK), December 2016

Type of Condition	Description of Requirements	Compliance Status as of December 2016	Action Plan for Achieving Full Compliance
	<p>the agricultural park that identifies the locations of the roadway and infrastructure connections to be provided to the agricultural park's boundary.</p> <p>B. Following approval of the preliminary site plan, HDC shall design the off-site infrastructure improvements for the agricultural park, including roadway, potable and irrigation water lines, sewer lines, and other utility connections up to the park's boundary at no cost to DOA. These improvements shall be sufficient to service the agricultural uses contemplated by DOA and up to 50 farm employee housing units, if DOA determines that they should be a part of the agricultural park. The design plans shall be submitted to DOA for approval no later than December 31, 2008.</p> <p>C. Following DOA approval of the design plans, HDC shall at its sole cost and expense (1) obtain all necessary government permits and approvals for the off-site infrastructure construction, and (2) substantially complete the construction and installation of this infrastructure no later than January 1, 2011.</p> <p>D. HDC and DOA may mutually agree to extend to a later date any of the above-stated completion dates.</p>		<p>-2nd Amendment to Amended MOU 2011 -3rd Amendment to Amended MOU 2015. DOA has a draft of the 4th Amendment and restatement of the MOU. HK will continue to coordinate with DOA on the details of this agreement.</p> <p>HK submitted the preliminary site plan and design of the off-site infrastructure improvements to DOA for review in October 2016. HK will continue to coordinate with DOA until the plans are approved.</p> <p>DOA has initiated master planning of the agricultural park site and has prepared a draft EIS for the project.</p>
20. Compliance With Representations	HDC shall develop the property in substantial compliance with the representations made to the Land Use Commission (LUC). 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.	Partial completion and future compliance.	<p>As described in the above Action Plan statements for Conditions 1 through 19, HK will continue to fulfill the requirement to develop the HDC-owned portion of Royal Kunia Phase II in substantial compliance with its representations to the LUC. HK understands that failure on its part (or on the part of the other owners of property within the reclassification area) to develop the reclassified lands in substantial compliance with such representations could result in a reversion of part or all of the subject land to its former land use classification, or in a change to different land classification.</p> <p>Pursuant to its discussions with the Office of Planning of the State of Hawaii (OSP), HK reported that the project has been delayed due</p>

Status Report on Royal Kunia Phase II Development Compliance with Conditions
State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996)
Submitted by Halekua-Kunia LLC (HK), December 2016

Type of Condition	Description of Requirements	Compliance Status as of December 2016	Action Plan for Achieving Full Compliance
			to the bankruptcy of the original ownership group and the assumption of ownership by the principal lender Canyon Capital.
21. Transfer of HDC's Interest in the Property	In reliance upon HDC's representation that it will develop the project on his own and in its entirety, HDC shall obtain prior approval from the LUC 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.	Partial completion and future compliance.	HK has obtained the LUC's approval of recent changes in the ownership interest of the HDC-owned portion of Royal Kunia Phase II, and will continue to comply with all requirements of this condition.
22. Annual Reports	HDC shall promptly provide without any prior notice, annual reports to the LUC, OSP and DPP in connection with the status of the project and HDC's progress in complying with the conditions imposed. The annual reports shall summarize: (1) HDC's progress in complying with the conditions imposed; and (2) changes to the project as represented to the LUC. They shall also include a written statement from each State and City and County agency affected by these conditions that HDC's representations in the annual report related to the respective state or county agency being affected are true and accurate.	Partial completion and future compliance.	Provision of the annual reports was suspended while the property was in bankruptcy. A "2007 Status Report" was prepared and submitted to the LUC on April 27, 2007, in compliance with this condition. This "Compliance Status Report" enumerates the requirements of the LUC conditions, the current compliance status, and the action plan for achieving full compliance. Since 2008, HK has submitted annual "Status Reports" to DPP in the form of the April 27, 2007 report, as updated "Compliance Status Report" in the form of this report. Annual Status Reports will be prepared and submitted to LUC and State Office of Planning (OP). HK will prepare and submit the next update of this report no later than December 2017.
23. Release of Conditions	The LUC 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 HDC. 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. OSP will certify for itself and all state departments and agencies, and DPP 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.	Future compliance. No motions for a full or partial release of conditions have been filed to date.	HK intends to apply to the LUC for such releases in the future, as appropriate.

Status Report on Royal Kunia Phase II Development Compliance with Conditions
State of Hawaii Land Use Commission Amended Decision and Order (Docket No. A92-683, October 1, 1996)
Submitted by Halekua-Kunia LLC (HK), December 2016

Type of Condition	Description of Requirements	Compliance Status as of December 2016	Action Plan for Achieving Full Compliance
24. Recording of Statement Re Property Subject to Conditions	Within 7 days of the issuance of the LUC's Decision and Order for the subject reclassification, HDC shall (1) record with the Bureau of Conveyances a statement to the effect that the property is subject to conditions imposed by the LUC in the reclassification of the property; and (2) shall file a copy of such recorded statement with the LUC.	Fully met.	No further action is required.
25. Recording of Conditions	HDC shall record the conditions imposed by the LUC with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.	Fully met.	No further action is required.

LIST OF ACRONYMS

BWS	City and County of Honolulu Board of Water Supply	DPP	City and County of Honolulu Department of Planning and Permitting
DES	City and County of Honolulu Department of Environmental Services	DTS	City and County of Honolulu Department of Transportation Services
DLNR	State of Hawaii Department of Land and Natural Resources	HDC	Halekua Development Corporation
DOA	State of Hawaii Department of Agriculture	HK	Halekua-Kunia LLC
DOE	State of Hawaii Department of Education	LOTMA	Leeward Oahu Transportation Management Association
DOH	State of Hawaii Department of Health	LUC	State of Hawaii Land Use Commission
DOT	State of Hawaii Department of Transportation	MOU	Memorandum of Understanding
		OSP	State of Hawaii Office of Planning



STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION

P.O. Box 2359
Honolulu, Hawaii 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

April 30, 2007

Jonathan S. Durrett, Esq.
Stubenberg & Durrett LLP
Davies Pacific Center
841 Bishop Street, Suite 702
Honolulu, Hawaii 96813

Dear Mr. Durrett:

Subject: Filing of the Annual Report for LUC Docket No. A92-683/Halekua Development Corporation

This is to acknowledge receipt of the annual report for the subject docket received by the Land Use Commission on April 27, 2007. Upon completion of our review of the annual report, we will submit our comments to you, if necessary.

Please note that the annual report submitted to the LUC shall include: 1) an original annual report plus one copy, and 2) an email .pdf version of the annual report to Max Rogers, Staff Planner, at mrrogers@dbedt.hawaii.gov. To initiate this procedure, we request that you send a .pdf copy of this year's annual report to Max Rogers at your earliest convenience.

Thank you for your cooperation in this annual reporting requirement. Please do not hesitate to contact Max Rogers of my staff at 587-3822, should you require clarification or any further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Anthony J. H. Ching".

ANTHONY J. H. CHING
Executive Officer

RECEIVED
APR 27 2007

STATE OF HAWAII
LAND USE COMMISSION

ORIGINAL

STUBENBERG & DURRETT LLP

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Telephone: (808) 526-0892

Attorneys for Halekua-Kunia, LLC

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A92-683
)	
of	)	2007 STATUS REPORT OF HALEKUA-
	)	KUNIA, LLC ON CONDITIONS TO
HALEKUA DEVELOPMENT	)	DECISION AND ORDER OF LAND USE
CORPORATION, a Hawaii corporation	)	COMMISSION; ATTACHMENTS 1-5
)	
To Amend the Agricultural Land Use District)	
Boundary into the Urban Land Use District)	
for Approximately 503.886 Acres of Land)	
Situated at Waikele and Hoaeae, Ewa, Island)	
of Oahu, City and County of Honolulu, State)	
of Hawaii, TMK: 9-4-02:1, Portion of 52, 70)	
and 71)	

2007 STATUS REPORT OF
HALEKUA-KUNIA, LLC
ON CONDITIONS TO DECISION AND ORDER OF LAND USE COMMISSION

Please consider the following as the 2007 status report of HALEKUA-KUNIA, LLC, a Delaware limited liability company, ("*HK*") with respect to HK's compliance with the conditions imposed the Land Use Commission of the State of Hawaii (the "*Commission*") pursuant to the Findings of Fact, Conclusions of Law, and Decision and Order dated December 9, 1993, TMK 9-4-002: por of 1 and 52, Docket No. A92-683 of the Land Use Commission of the State of Hawaii (the "*Original Decision and Order*"), as amended and restated by Amended Findings of Fact, Conclusions of Law and Decision and Order dated October 1, 1996, Docket No. A92-683 of the Land Use Commission of the State of Hawaii (the Original Decision and Order as amended by this document is herein called the "*Amended Decision and Order*"), in connection with the reclassification from Agricultural to Urban of approximately 503.886 acres located at Waikele and Hoaeae, Ewa, Island of Oahu, City and County of Honolulu, State of Hawaii (the "*Royal Kunia Phase 2 Property*").

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Page 1 of 13

I. GENERAL PROGRESS OF THE PROJECT

On October 15, 2002, the Office of Planning, State of Hawaii, filed a Motion for an Order to Show Cause to Rescind the Decision and Order dated October 1, 1996, and on February 26, 2003 the Commission entered an Order Granting the Office of Planning's Motion for an Order to Show Cause to Rescind the Decision and Order on October 1, 1996 (the "*Order to Show Cause*"). The hearing before the Commission on the Order to Show Cause was scheduled for April 25, 2003, but just prior to the commencement of the hearing Halekua Development Corporation ("HDC") filed a bankruptcy petition with U.S. Bankruptcy Court of the District of Hawaii and pursuant to the automatic stay under federal bankruptcy laws the hearing on the Order to Show Cause was suspended indefinitely.

The subject reclassification from Agricultural to Urban applies to a 503.886 acre area. At the time of the reclassification all of the Royal Kunia Phase 2 Property was to be developed by HDC. However, HDC only retained title and the accompanying property rights to approximately 161 acres encompassed by Parcels 2, 3 and 4 (the "*HDC Property*"). Part of the remaining Royal Kunia Phase 2 Property has been acquired by HRT Realty, LLC, formerly HRT, Ltd. ("*HRT*"). By Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd's Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to the Stipulation Filed on December 30, 2003, the HRT lands within the Petition Area were excluded from the Order to Show Cause.

The HDC Property has remained within the jurisdiction of the federal bankruptcy court since that time. However, pursuant to the Bankruptcy Court Order re Sale of Real Property Free and Clear of Liens filed in the Bankruptcy Case (as hereinafter defined) on October 2, 2006 and the Purchase and Sale Agreement entered into pursuant thereto, HDC will be redeeming (reacquiring) the HDC Property from the Chapter 7 trustee appointed in the bankruptcy case ("*Trustee*") pending in the United States Bankruptcy Court for the District of Hawaii entitled In re HDC Development Corporation, Case No. 03-01279 (the "*Bankruptcy Case*"). In connection with the redemption of the HDC Property, HDC, on February 20, 2007, filed its Motion Requesting Land Use Commission Approval Of Transfer Of Ownership Of Property ("*Transfer Motion*") from HDC to HK. On March 16, 2007, the Commission entered an order granting the Transfer Motion ("*Transfer Order*"), as well as an order granting HDC's Oral Motion to Dismiss the Order to Show Cause.

The reacquisition of the HDC Property closed on March 12, 2007, and the HDC Property was transferred to HDC by Limited Warranty Deed filed in the Bureau of Conveyances of the State of Hawaii on March 12, 2007 as Document No. 2007-045261. A copy of the Limited Warranty Deed by which the HDC Property was redeemed is attached hereto as **Attachment 1**. In accordance with the Transfer Order, HDC then transferred the HDC Property to HK, pursuant to Limited Warranty Deed filed in the Bureau of Conveyances of the State of Hawaii on March 12, 2007 as Document No. 2007-045275, a copy of which is attached hereto as **Attachment 2**.

The redemption of the HDC Property was financed by Canpartners Realty Holding Company IV LLC and CMR Mortgage Fund LLC (the "*Lending Group*"), under that certain Credit Agreement dated March 12, 2007 ("*Credit Agreement*"). Pursuant to the Credit Agreement, the Lending Group has made a loan in the principal amount of \$97,900,000.00 ("*Loan*") to HDC to fund the payment of all amounts to be paid pursuant to the terms of the Purchase and Sale Agreement approved in the Bankruptcy Case which payments, among others, enabled HDC to complete the transfer of the School Site as contemplated in the Amended Decision and Order, to proceed with the planning and design of the off-site infrastructure for the state agricultural park, and to move forward with planning and design work for the Royal Kunia Phase

STATUS REPORT

II residential subdivision which will lead to the future satisfaction of other outstanding conditions as set forth in the Amended Decision and Order. In this regard, please be advised that the Lending Group has established a predevelopment reserve in the amount of \$4,230,961.30 under the Loan for the purpose of funding certain planning, design and associated work intended to address and move forward the satisfaction of the conditions under the Amended Decision and Order and the Rezoning Ordinances with the City and County of Honolulu to the point of being able to apply for initial building permits. HK reasonably believes that this predevelopment reserve within the loan account is sufficient for these purposes.

II. STATUS OF COMPLIANCE WITH CONDITIONS

HK hereby reaffirms its commitment and obligation to comply with and satisfy each of the outstanding conditions set forth in the Amended Decision and Order and has recommenced the necessary steps and actions to do the same. The current status of the twenty-five (25) conditions set forth in the Amended Decision and Order and HK's intentions with respect to satisfaction of the same are set forth below.

(1) **Affordable Housing**

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.

Current Status: Future Compliance

HK is required by the Amended Decision and Order to comply with requirements established by the City and County of Honolulu (the "City") for the provision of affordable housing opportunities for low to moderate income residents. The City has required HK to enter into a binding agreement to participate in an affordable housing program whereby (a) 10% of the overall Project unit count will be affordable to households with incomes not exceeding 80% of the City's median income, and (b) an additional 20% of the Project's housing units will be affordable to families with incomes between 81% and 120% of the City's median income.

Steps toward meeting this requirement were in progress but were discontinued when HDC went into bankruptcy. HK is proceeding to renew this process with the City as to the HDC Property. Agreement on the number, location, and cost, etc. of the affordable housing units to be provided is required prior to the submittal of any applications to the City for building permits for the HDC Property.

(2) **Transportation Improvements**

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*

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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.

Current Status: Partial Completion and Future Compliance

HK will comply with Commission requirements to contribute its pro-rata share of local and regional transportation and roadway improvements that are required by remaining undeveloped portions of the Royal Kunia Phase 2 Property, as determined and approved by the State Department of Transportation ("DOT") and City Department of Transportation Services ("DTS").

Some of these requirements - notably, the construction of a third northbound lane on Kunia Road between Kunia Interchange and the north Kupuna Loop intersection - have already been met.

Steps toward meeting other portions of this requirement were in progress but were discontinued when HDC went into bankruptcy. HK, together with the other Royal Kunia Phase 2 Property owners, will re-initiate this process with DOT and DTS and will mutually determine and agree on the remaining improvements that need to be completed and the schedule for their construction prior to the submittal of any applications to the City for subdivision of building lots.

(3) Participation in a Regional Program for Transportation Management

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.

Current Status: Prior and Ongoing Compliance.

HDC was an active participant in the Ewa Region Highway Transportation Master Plan Working Group and an active member of the Leeward Oahu Transportation Management Association ("LOTMA") prior

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to its filing in bankruptcy. Participation in both programs will be re-established by HK.

(4) Traffic Monitoring

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.

Current Status: Future Compliance.

During and upon completion of construction on the HDC Property, HK will monitor the traffic that is attributable to the dwellings constructed on the HDC Property at designated on-site and off-site locations, and will undertake any subsequent mitigative measures that may be deemed to be required by DOT, DTS and/or HK.

(5) Integrated Solid Waste Management Act (Chapter 342G, HRS)

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.

Current Status: Ongoing Compliance.

HK will work with the State Department of Health ("DOH") and City Department of Environmental Services ("DES") to ensure compliance with the program goals and objectives of this Act and will continue to work with DOH and DES to comply with the Act.

(6) School Facilities

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.

Current Status: Partial Completion and Future Compliance

HDC and the State Department of Education ("DOE") previously entered into a letter agreement dated September 26, 1996 that outlined the terms of HDC's contribution to the development of school facilities in satisfaction of this condition. These terms provided for the dedication of 12 acres of land to DOE for a school site (the "land component") to DOE, and a schedule of incremental contributions to DOE totaling \$500,000 (the "monetary component"). HDC obtained final subdivision approval for the subject 12 acre school site (TMK 1-9-4-002: Parcel 79) but was unable at the time to transfer the school site to DOE because DOE would not accept title to the school site due to it being the subject of several liens and encumbrances. Per its letters dated June 21, 2002 and December 19, 2002, DOE advised HDC that as an alternative, the school site could be conveyed to RKES, LLC, a Hawaii limited liability company, and that

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upon the conveyance of the school site to RKES, the land component of the DOE's requirements would be deemed satisfied. On January 7, 2003, an undivided 75.721% interest in the school site was conveyed to RKES by HDC in partial satisfaction of the land component. The remaining undivided 24.279% interest in the school site was held by HRT Realty, LLC, formerly HRT, Ltd. ("**HRT**"). RKES and DOE intend to enter into a separate design build agreement under the terms of which RKES will construct an elementary school on the subject property and upon completion of construction convey the same free and clear to DOE.

Pursuant to the Bankruptcy Court Order re Sale of Real Property Free and Clear of Liens filed in the Bankruptcy Case, and the Purchase and Sale Agreement dated October 2, 2006, HRT transferred its 24.279% interest in the school site to RKES in satisfaction of the land component. Concurrently with the redemption of the HDC Property from the Trustee, the remaining 24.279% undivided interest in the school site was conveyed to RKES in satisfaction of the land component condition of HDC's agreements with DOE. A copy of the Quitclaim Deed filed March 12, 2007 in the Bureau of Conveyances as Document No. 2007-045263 is attached hereto as **Attachment 3**.

HDC, RKES and DOE have executed the School Site Agreement (the "**School Site Agreement**"), a true and correct copy of which is attached hereto as **Attachment 4**, in order to reaffirm HDC's obligations and to reconfirm the agreements contained in the various letter agreements between HDC and DOE.

(7) Water Requirements

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.

Current Status: Partial Completion and Future Compliance.

HK will continue to coordinate with and meet all requirements of the Honolulu Board of Water Supply ("**BWS**") and the State Department of Land and Natural Resources ("**DLNR**") related to obtaining the required water for the Project. If water is not available from existing sources because of insufficient supply, HK will fund and develop the necessary water source, storage and transmission systems and facilities.

(8) Civil Defense Measures

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.

Current Status: Partial Compliance and Future Compliance.

HDC and the State and City civil defense agencies have agreed on what civil defense measures are needed for the subject HDC Property. HK will fully fund and install the necessary facilities and equipment in connection with the construction of its project on the HDC Property.

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(9) Chain Link Fence

Petitioner shall erect a chain link fence along the eastern boundary of the Property that is common with the Waikale Branch of Naval Magazine, Lualualei.

Current Status: Future Compliance by Others.

The Amended Decision and Order requires the construction of a chain link fence on the eastern boundary of the Royal Kunia Phase 2 Property. Title to the land on which this fence would be located is still held by the Robinson Owners, and it is still zoned for agricultural use. While HK will monitor compliance with this condition, actual construction will be the responsibility of the future developer of this portion of the Royal Kunia Phase 2 Property.

(10) Clearance and Maintenance of Land

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.

Current Status: Future Compliance by Others.

The Amended Decision and Order requires the clearance and maintenance of a 20-foot wide land area along the eastern boundary of the Royal Kunia Phase 2 Property. As noted in Condition #9 above, title to this land area is still held by the Robinson Owners, and it is still zoned for agricultural use. While HK will monitor compliance with this condition, actual clearance and maintenance will be the responsibility of the future developer of this portion of the Royal Kunia Phase 2 Property.

(11) Pollutants

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.

Current Status: Future Compliance.

HK will work closely and coordinate with the DOH and DES on the establishment of appropriate systems to contain spills and prevent certain materials and pollutants from leaching in the storm drainage system and adversely affecting the groundwater and coastal waters.

(12) Wastewater Treatment

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.

Current Status: Future Compliance.

HK will participate on a pro rata basis in the funding and construction of adequate wastewater treatment,

transmission and disposal facilities, as determined by the DOT and DES.

(13) Soil Erosion and Dust Control

Petitioner shall implement effective soil erosion and dust control measures both during and after construction to the satisfaction of the State Department of Health.

Current Status: Future Compliance.

HK will closely coordinate with the DOH and implement effective soil erosion and dust control measures both during and after construction.

(14) Air Quality Monitoring

Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

Current Status: Future Compliance.

HK will participate in an appropriate DOH-specified air quality monitoring program for the area where the HDC Property is located.

(15) Agricultural District Pollution

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.

Status: Future Compliance.

HK will notify all future owners of the HDC Property of the potential odor, noise and dust pollution resulting from use of the surrounding Agricultural District lands, and that the Hawaii Right-to-Farm Act (HRS Chapter 165) limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

(16) Drainage Improvements

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.

Current Status: Partial Completion and Future Compliance.

HDC completed the majority of required off-site drainage improvements for the Royal Kunia Phase 2 Property in connection with the infrastructure construction for Village Park and Royal Kunia Phase 1. HK will work with adjoining landowners and developers, and with the appropriate Federal, State and City agencies, to coordinate and agree on the type and completion schedule for any future required off-site

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drainage improvements.

(17) Archaeological Resources

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.

Current Status: Partial Completion and Future Compliance.

Archaeological research and reconnaissance surveys of the Royal Kunia Phase 2 Property indicate the absence of any above-ground archaeological features and no evidence of past use that would have generated potentially significant archaeological or historic sites. HK will work closely with the DLNR Historic Preservation Division and comply with all established procedures to protect any archaeological resources that might be encountered during future development and construction on the HDC Property.

(18) Development Plan Approvals

Petitioner shall obtain Development Plan approvals from the City and County of Honolulu within five (5) years from the date of this Order.

Current Status: Fully Met.

All required Development Plan approvals have been obtained, and the Royal Kunia Phase 2 Project is in full compliance with the current Central Oahu Sustainable Communities Plan ("COSCP").

(19) Agricultural Park

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.

Current Status: Partial Completion and Future Compliance.

Title to the 150 acre Agricultural Park site was transferred by HDC to the State of Hawaii, by and through its Board of Land and Natural Resources for the use of the State Department of Agriculture ("DOA") by Warranty Deed with Reservations dated February 23, 2004, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-040601. HDC has entered into an Amended and Restated Memorandum of Understanding with DOA, a copy of which is attached hereto as **Attachment 5**, which amends and restates the original Memorandum of Understanding dated March 3, 1993 (the "**Original MOU**"), with updated and modified obligations and agreements to (1) acknowledge the conveyance of the 150 acre agricultural park site to the DOA and the acceptance thereof by the DOA in partial satisfaction of the agreements in the Original MOU notwithstanding the delay in actual conveyance of the subject land, (2) modify the agreements between Halekua and the DOA with respect to the timing for design and construction of the off-site infrastructure to the state agricultural park, (3) delete the provisions within the

STATUS REPORT

Original MOU providing for the DOA to initiate and complete its development and commence active use of the state agricultural park within a period of time measured from the date of initial conveyance of the 150 acre parcel comprising the state agricultural park to the DOA, and (4) delete the right of reverter if the state agricultural park was not developed and utilized for those agricultural purposes within 10-years from the date of the initial conveyance of the 150 acre parcel to the DOA, and replacing it with a restrictive use covenant and reversion if the use covenant is breached.

(20) Compliance with Representations

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.

Current Status: Partial Completion and Future Compliance.

HK will continue to fulfill the requirement to develop the HDC Property in substantial compliance with its representations to the Commission. HK understands that failure on its part (or on the part of the other owners of property within the reclassification area) to develop the reclassified lands in substantial compliance with such representations could result in a reversion of the subject land to its former land use classification, or in a change to a more appropriate land classification.

Pursuant to its discussions with the Office of Planning of the State of Hawaii, HK has further agreed that if HK fails to achieve substantial completion of construction of not less than five hundred (500) single-family residential home sites and/or multi-family residential units on the HDC Property by June 30, 2013 as evidenced by the filing of the appropriate Affidavits of Publication of the Notice of Completion for such residential home sites or units in accordance with Section 507-43 of the Hawaii Revised Statutes, that HK shall be required to report back to the Commission as to the reasons for such failure and to provide justification as to why the Commission should not consider modifications to the conditions imposed under the Amended Decision and Order to adjust and account for any substantial change in the potential community impacts resulting from the delay in achieving substantial progress towards completion of the Project as represented to the Commission.

(21) Transfer of HDC's Interest in the Project

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.

Current Status: Partial Completion and Future Compliance.

HK has and will continue to comply with all requirements established in this condition with respect to obtaining prior Commission approval of any subsequent sale, lease, assignment, placement in trust, or other voluntary alteration of its ownership interest in the HDC Property.

(22) Annual Reports

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.

Current Status: Partial Completion and Future Compliance.

This condition requires HK to prepare and submit annual reports to the Commission, State Office of Planning ("OSP"), and City Department of Planning and Permitting ("DPP") on the Project's status and HK's progress in complying with the conditions of the Amended Decision and Order. Such reports were submitted annually up through June 25, 2001. At the request of the Commission at the hearing on February 23, 2007, HK is submitting this report to update the Commission as to what has occurred between February 20, 2007, the date on which HDC filed its 2007 Interim Status Report with the Commission, and the date of this report and to further update the Commission on the status of matters following actual closing of the redemption of the HDC Property from the Trustee. HDC will further resume its submittal of the required annual reports as of June 30, 2008, with the initial report as of June 30, 2008, and will continue on an annual basis thereafter with the assistance and cooperation of the owners of the other lands within the Royal Kunia Phase 2 Property.

(23) Release of Conditions

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.

Current Status: Future Compliance.

As development of the HDC Property progresses, HK intends to apply for a full or partial release of conditions imposed upon the HDC Property by submitting a motion together with appropriate supporting evidence of satisfaction of the condition or conditions for which release or confirmation of satisfaction is being sought. No such motions have been filed to date. Other parties to the Amended Decision and Order may as part of this release of condition process be requested to comment and/or indicate whether they concur in the certification of satisfaction.

(24) Recording of Statement Re Property Subject to Conditions

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.

Current Status: Fully Met.

HDC recorded a statement with the Bureau of Conveyances of the State of Hawaii indicating that the reclassified lands are subject to the conditions imposed by the Commission in the reclassification of the Royal Kunia Phase 2 Property, and has previously filed a copy of this recorded statement with the Commission.

(25) Recording of Conditions

Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

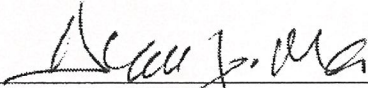
Current Status: Fully Met.

HDC recorded the conditions contained in both the Original and Amended Decision and Order in the Bureau of Conveyances of the State of Hawaii, as evidenced by Declaration of Conditions and Consent recorded on April 14, 1994, in the Bureau of Conveyances of the State of Hawaii as Document No. 94-065022.

Dated: April 27, 2007.

Respectfully submitted,

HALEKUA-KUNIA, LLC, a Delaware limited liability
company

By 
Name: Alan J. Ma
Title: Its Attorney

cc: Department of Planning & Permitting
of the City and County of Honolulu
Office of Planning
Department of Agriculture
Department of Education

ATTACHMENT 1

[Copy of Limited Warranty Deed from Ch. 7 Trustee to HDC]

RECEIVED
APR 27 2007
STATE OF HAWAII
LAND USE COMMISSION



R-968 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 12, 2007 11:00 AM
Doc No(s) 2007-045261



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$0.00

20 10/25 Z9

10 LAND COURT SYSTEM

REGULAR SYSTEM



Return by Mail (X) Pickup () To:
Jonathan S. Durrett, Esq
Stubenberg & Durrett LLP
841 Bishop Street, Suite 702
Honolulu, HI 96813

2577642
TMK: (1) 9-4-002: 071

Total Pages: 18 60

LIMITED WARRANTY DEED

1. DEFINITION OF WORDS FREQUENTLY USED IN THIS DOCUMENT

A. "Limited Warranty Deed". This document is entitled "Limited Warranty Deed". This Limited Warranty Deed is being used to transfer legal ownership of the Property from the Grantor to the Grantee.

B. "Grantor". The word "Grantor" in this Limited Warranty Deed means the party who is transferring the Property to Grantee. The Grantor in this Limited Warranty Deed is James B. Nicholson, as Trustee of the Chapter 7 Estate of Halekua Development Company, a Hawaii corporation, in the Bankruptcy Case.

C. "Grantee". The word "Grantee" in this Limited Warranty Deed means the party to whom the Property is being transferred. The Grantee in this Limited Warranty

1182736

Deed is HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation, as an out-of-possession debtor in the Bankruptcy Case, and whose business and post office address is 2024 North King Street, Honolulu, Hawaii 96819.

D. "Property". The word "Property" in this Limited Warranty Deed means the real property described in Exhibit "A" that is attached to and made a part of this Limited Warranty Deed. The word "Property" also includes the rights and interests that result from the ownership of the Property or are a part of ownership of the real property being conveyed to the Grantee. Certain things affect the Property being transferred. Those things are described in Exhibit "A" attached to this Limited Warranty Deed.

E. "Bankruptcy Code". The words "Bankruptcy Code" in this Limited Warranty Deed mean Title 11 of the United States Code.

F. "Bankruptcy Court". The words "Bankruptcy Case" in this Limited Warranty Deed mean United States Bankruptcy Court for the District of Hawaii.

G. "Bankruptcy Case". The words Bankruptcy Case in this Limited Warranty Deed mean that certain case now pending under Chapter 7 of the Bankruptcy Code in the Bankruptcy Court styled *In re Halekua Development Corporation*, bearing Case No. 03-01279, originally commenced (as a case under Chapter 11 of the Bankruptcy Code) on April 25, 2003 (the "Petition Date").

G. "Sale Order". The words "Sale Order" in this Limited Warranty Deed mean that certain Order Re: Sale of Real Property Free and Clear of Liens respecting the Property entered by the Bankruptcy Court in the Bankruptcy Case on September 25, 2006.

2. CERTAIN PREDICATE AND RELATED MATTERS

A. The transfer by the Grantor to the Grantee effected by this Limited Warranty Deed is made pursuant to the Sale Order.

B. Other property, tangible and intangible, is being transferred by the Grantor to the Grantee by a Bill of Sale concurrently herewith.

C. The transfer of the Property to the Grantee effected by this Limited Warranty Deed is a redemption of the Property by the Grantee from the Estate in the Bankruptcy Case.

3. PURPOSE OF THIS LIMITED WARRANTY DEED.

The Grantor has received money and other valuable consideration from the Grantee and because of this the Grantor now "grants, bargains, sells, and conveys" to the Grantee, in fee simple forever, all of the Grantor's right, title, and interest in the Property. The right, title, and interest referred to in this Limited Warranty Deed are affected by those certain things mentioned in this Limited Warranty Deed and described in Exhibit "A" attached to this Limited Warranty Deed.

By accepting this Limited Warranty Deed, the Grantee agrees to accept the Property as is affected by the following:

A. All real property taxes due and owing through June 30, 2007, and the Grantee shall pay all City and County of Honolulu real property taxes, in addition to the consideration as set forth in the Sale Order.

B. All of the things described in Exhibit "A" attached to this Limited Warranty Deed; and

C. All of the things contained in the sections of this Limited Warranty Deed below entitled "Grantor Makes No Other Promises to Grantee" and entitled "Grantor Makes No Promises Related to Hazardous Waste or Environmental Matters".

4. TENANCY

The Grantee accepts the Property that is being transferred to it "as is", and as a tenant in severalty.

5. GRANTOR'S RIGHT TO SELL THE PROPERTY TO GRANTEE.

The Grantor promises that it is the lawful owner of the Property and that it has the right to sell and transfer its rights in the Property to the Grantee. This transfer has been approved by the Sale Order. The Sale Order is non-appealable and final.

6. WHAT IS BEING GRANTED TO GRANTEE.

A. The Grantor is granting to the Grantee all of the Grantor's legal and equitable estate in the Property under the Bankruptcy Code and as defined the Sale Order. This means that the Grantor is granting to the Grantee all of the Grantor's right, title, and interest in and to the Property.

B. All of the improvements, if any, made to the Property.

C. All of the reversions in the Property, if any. There are no claims of reversionary rights with respect to the Property and to the extent there were revisionary rights on the Petition Date, those rights have been transferred to proceeds of the sale of the Property.

D. All of the remainders, if any. The interest in the Property that is left after all other interests in the Property have been determined is called a "remainder".

E. All of the rents from the Property, if any. This means that the Grantor is granting to the Grantee the right to receive payments made by persons in connection with the use or possession of the Property.

F. All of the profits, if any. The right to take such things as topsoil, fruit, plants, and trees from the Property is called a "profit". However, this does not mean that upon taking title to the Property, the Grantor will have the right to use the topsoil of, or that the Grantor may grow fruits or plant trees or plants on, the Property. The Grantor must, at all times, comply with all applicable laws affecting the Property. These laws will govern what profits, if any, the Grantor may take from the Property.

G. All of the appurtenances, if any. "Appurtenances" are interests such as water rights, easements, and rights-of-way which the Grantor has as the owner of the Property. Appurtenances are automatically transferred with the transfer of legal ownership of property. This means that the appurtenances to the Property will be automatically transferred to the Grantee when title to the Property is transferred to the Grantee's name by this Limited Warranty Deed.

H. All of the easements, if any. This refers to any interest that the Grantor has, as owner of the Property, in other property owned by someone else which benefits the Property. An example of an easement (however, this does not necessarily apply to the Property being conveyed to the Grantee -- it is only being used as an example) would be the right of a land owner to use a driveway located on someone else's land.

7. GRANTOR'S PROMISE TO GRANTEE.

The Grantor promises to the Grantee, for itself and for those who may follow the Grantor, to protect (or defend) the Grantee against all lawful claims or demands made by parties who claim an interest in the Property because of things that the Grantor may have done, except that the Grantor's promise does not apply to any claims about real property taxes, any of the encumbrances to which the Property remains subject as set out in this Limited Warranty Deed, or any of the matters set out in this Limited Warranty Deed.

In other words, the Grantor is giving to the Grantee a guaranty (sometimes called a "warranty") of title to the Property only for the promises that the Grantor has just made in this Limited Warranty Deed and transferred by the Sale Order. This is a "limited warranty of title". The Grantor also gives this guaranty (or warranty) to those persons who may take over the rights and responsibilities transferred to the Grantee by this Limited Warranty Deed.

8. GRANTOR MAKES NO OTHER PROMISES TO GRANTEE.

The Grantor does not promise or make any statements about anything that has to do with the condition of the Property, or of any improvements on or under the Property. By acceptance of this Limited Warranty Deed, the Grantee agrees to accept the Property and improvements "as is". This means, for example, that the Grantor is making no promises, representations or warranties about:

- A. The construction, structural soundness, condition, or state of repair, operating order, safety, or livability of any improvements;
- B. The suitability of any improvements for any particular use;

C. Whether or not the Property or any improvements meet the requirements of any building, health, zoning, land use, subdivision, setback, or other law, ordinance, rule, or regulation that has applied in the past, may now apply, or may hereafter apply to the Property. However, by the Bill of Sale given concurrently herewith and the Sale Order, the Grantor is transferring to the Grantee all rights, permits, and governmental approvals and entitlements relating to the Property, including those issued by the City and County of Honolulu and the State of Hawaii Land Use Commission;

D. Whether or not any easement, right-of-way, or driveway meets the requirements of any building, health, zoning, land use, subdivision, setback, or other law, ordinance, rule, or regulation that has applied in the past, may now apply, or may hereafter apply to the Property;

E. The density, stability, structure, erosion, or other condition of the soil for building or for any other use;

F. Whether any improvements on or under the Property go over the boundary lines of any land which shares a boundary with the Property;

G. Whether any improvements on or under land which shares a boundary with the Property go over the boundary lines of the Property;

H. Any matter concerning the electrical, water, gas, plumbing, or sewer systems (if any);

I. Any staking or survey done by any person for any reason; or

J. The location of the seaward boundary or the area of the Property if the Property borders the ocean.

9. GRANTEE AGREEMENT AND PROMISES TO THE GRANTOR.

The Grantee agrees that the Grantor has not made any promises or statements outside of this Limited Warranty Deed about anything that is mentioned in this Limited Warranty Deed. The Grantee agrees and promises that the Grantee accepts the Property "as is".

The Grantee agrees not to file any lawsuit for damages against the Grantor for any matters concerning the Property, including any problems relating to the matters described in this Limited Warranty Deed, except to as to those matters expressly warranted or promised by the Grantor set forth in this Limited Warranty Deed, and any action or claim under this Limited Warranty Deed shall be filed and adjudicated in the Bankruptcy Case. The Grantee agrees to indemnify (pay) the Grantor for all costs and expenses, including reasonable attorneys' fees, that the Grantor may have to pay if (a) the Grantee break the promises the Grantee is making to the Grantor under this Limited Warranty Deed, and the Grantee makes a claim on matters related to the Property prohibited by this Limited Warranty Deed, or (b) if the Grantee violates any provisions of any agreements concerning the Property and someone brings a claim against the Grantor.

10. GRANTOR MAKES NO PROMISES RELATED TO HAZARDOUS WASTE OR ENVIRONMENTAL MATTERS.

The Grantor is not aware of any hazardous materials which may exist on the Property or any improvements thereon nor is it aware of any violation of any environmental law, ordinance, rule, or regulation with respect to the Property. The Grantor makes no representations or promises regarding whether the Property or any improvements thereon

meet the requirements of hazardous materials or environmental laws, ordinances, rules, or regulations. By acceptance of this Limited Warranty Deed, the Grantee agrees to accept the Property and the improvements "as is" as it pertains to any violation of hazardous materials or environmental laws, ordinances, rules, or regulations. The Grantee agrees not to file any lawsuit for damages against the Grantor if the Property or any improvements thereon fail to meet the requirements of any hazardous materials or environmental laws, ordinances, rules, or regulations. The Grantor has made a Phase I environmental survey of the Property prepared by EnviroServices available to the Grantee.

11. PARTIES COVERED BY THE TERMS "GRANTOR" AND "GRANTEE".

The term "Grantor" as used in this Limited Warranty Deed, or any pronoun used in its place, means and includes the Grantor as Chapter 7 Trustee of the Estate in the Bankruptcy Case and its successors in trust and assigns. In this section, with respect to the Grantor, "successors in trust" means the persons who may in the future take the place of the Grantor.

The term "Grantee" as used in this Limited Warranty Deed, or any pronoun used in its place, means and includes the masculine or feminine; one or more than one; individuals; firms or corporations; and their and each of their respective heirs, personal representatives, successors, successors in trust, and assigns. If two or more parties are the Grantees, all promises and agreements of those parties shall be joint and several.

In this section, with respect to the Grantee, the term "heirs, personal representatives, successors, successors in trust, and assigns" means the party or parties to

whom the Property and/or the rights and obligations under this Limited Warranty Deed are transferred by the Grantee or by operation of law.

All agreements and promises that the Grantee makes to the Grantor in this Limited Warranty Deed are binding on the Grantee and its heirs, personal representatives, successors, successors in trust, and assigns, and run with the land; that is, they apply to all owners and future owners of the Property, and are made in favor of the Grantor and its successors in trust and assigns.

The term "joint and several" means that each party is responsible for full performance of all of the promises and agreements, and not for just a part or share of those promises and agreements.

12. LIMITATION OF LIABILITY.

The Grantor, James B. Nicholson, as Trustee of the Chapter 7 Estate in the Bankruptcy Case, is named above as the "Grantor" and is signing or approving this Limited Warranty Deed in his capacity as such Trustee of the Chapter 7 Estate in the Bankruptcy Case and not in an individual (or personal) capacity. Any liability of the Grantor that may arise as a result of such Trustee signing or approving this Limited Warranty Deed is a liability of the Chapter 7 Estate in the Bankruptcy Case. In other words, the Trustee is not personally liable under this Limited Warranty Deed.

13. PLAIN LANGUAGE; CAPTIONS AND TITLES.

An attempt was made to draft this Limited Warranty Deed in language that would be easy to read and understand. This Limited Warranty Deed uses words that are less

accurate than the words which most courts are used to seeing. This Limited Warranty Deed also does not include additional sentences sometimes used to prevent courts from reading words too narrowly. If any court is ever asked to interpret this Limited Warranty Deed, the Grantor and the Grantee ask that the court keep these facts in mind when interpreting this Limited Warranty Deed. The captions and titles of this Limited Warranty Deed are for convenience only. They may not be used to interpret or to define the terms and provisions of this Limited Warranty Deed.

14. EXECUTION IN COUNTERPARTS.

The parties hereto agree that this Limited Warranty Deed may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

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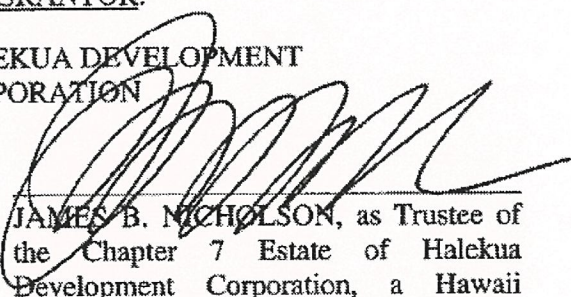
15. ACCEPTANCE AND AGREEMENT.

By signing and accepting this Limited Warranty Deed, the Grantor and the Grantee agree that effective on the date of recording of this Limited Warranty Deed, both have received something of value and both the Grantor and the Grantee agree to everything that has been stated in this Limited Warranty Deed.

THE GRANTOR:

HALEKUA DEVELOPMENT
CORPORATION

By:



JAMES B. NICHOLSON, as Trustee of
the Chapter 7 Estate of Halekua
Development Corporation, a Hawaii
corporation, debtor in Chapter 7 Case
No. 03-01279, *In re Halekua
Development Corporation*, United States
Bankruptcy Court for the District of
Hawaii

THE GRANTEE:

HALEKUA DEVELOPMENT
CORPORATION, a Hawaii corporation

By:

HERBERT K. HORITA
President

15. ACCEPTANCE AND AGREEMENT.

By signing and accepting this Limited Warranty Deed, the Grantor and the Grantee agree that effective on the date of recording of this Limited Warranty Deed, both have received something of value and both the Grantor and the Grantee agree to everything that has been stated in this Limited Warranty Deed.

THE GRANTOR:

HALEKUA DEVELOPMENT
CORPORATION

By: 

JAMES B. NICHOLSON, as Trustee of
the Chapter 7 Estate of Halekua
Development Corporation, a Hawaii
corporation, debtor in Chapter 7 Case
No. 03-01279, *In re Halekua
Development Corporation*, United States
Bankruptcy Court for the District of
Hawaii

THE GRANTEE:

HALEKUA DEVELOPMENT
CORPORATION, a Hawaii corporation

By: 

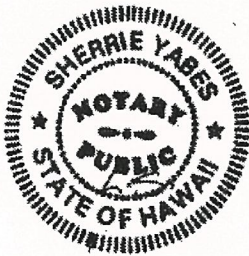
HERBERT K. MORITA
President

)

) SS.

CITY AND COUNTY OF HONOLULU)

On this 2nd day of March, 2007, before me personally appeared JAMES B. NICHOLSON, to me personally known, who being by me duly sworn, did say that he is the duly appointed and acting Bankruptcy Trustee of the Chapter 7 Estate of Halekua Development Corporation, a Hawaii corporation, debtor in Chapter 7 Case No. 03-01279, *In re Halekua Development Corporation*, United States Bankruptcy Court for the District of Hawaii, that the foregoing instrument was signed in behalf of the debtor corporation by his authority as such trustee, and JAMES B. NICHOLSON acknowledged the instrument to be the free act and deed of the corporation.



Sherne Yabes
Sherne Yabes
 Notary Public, State of Hawaii
 My Commission Expires: April 7, 2010

1

) SS.

2

L.S.

Betty J. Keanaaina
BETTY T. KEANAAINA

My Commission Expires: 6-17-2009

Exhibit "A"

ALL OF THAT CERTAIN PARCEL OF LAND SITUATE AT HOAEAE AND WAIKELE, DISTRICT OF EWA, CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, BEING LOT 3, AREA 210.020 ACRES, MORE OR LESS, OF THE "ROYAL KUNIA PHASE II, INCREMENT 1 SUBDIVISION", AS SHOWN ON THE MAP THEREOF FILED IN THE OFFICIAL RECORDS AS FILE PLAN NO. 2171.

SAVING AND EXCEPTING THEREFROM LOT 1, CONTAINING AN AREA OF 36.660 ACRES, MORE OR LESS, CONVEYED TO HRT, LTD., FORMERLY A HAWAII CORPORATION, NOW A MARYLAND CORPORATION, AS MORE FULLY DESCRIBED WARRANTY DEED RECORDED OCTOBER 25, 2001 AS REGULAR SYSTEM DOCUMENT NO. 2001-168369 OF OFFICIAL RECORDS.

SAVING AND EXCEPTING THEREFROM LOT 3, CONTAINING AN AREA OF 12.000 ACRES, MORE OR LESS, CONVEYED TO RKES, LLC, A HAWAII LIMITED LIABILITY COMPANY, AS MORE FULLY DESCRIBED IN WARRANTY DEED RECORDED JANUARY 3, 2003 AS REGULAR SYSTEM DOCUMENT NO. 2003-002585 OF OFFICIAL RECORDS.

BEING ALL OF THE INTEREST ACQUIRED BY THE FOLLOWING:

AS TO THE INTEREST OF HALEKUA DEVELOPMENT CORPORATION, A HAWAII CORPORATION:

(1) LIMITED WARRANTY DEED RECORDED SEPTEMBER 12, 1995 AS REGULAR SYSTEM DOCUMENT NO. 95-117006 OF OFFICIAL RECORDS, FROM CAROLINE J. ROBINSON LIMITED PARTNERSHIP, A HAWAII LIMITED PARTNERSHIP, J. L. P. ROBINSON LIMITED PARTNERSHIP, A HAWAII LIMITED PARTNERSHIP, AND HAWAIIAN TRUST COMPANY, LTD., A HAWAII CORPORATION, AS TRUSTEE UNDER THE WILL AND OF THE ESTATE OF FRANCES MCWAYNE, DECEASED, AS TRUSTEE UNDER THE WILL AND OF THE ESTATE OF IVALANI AMELIA ROBINSON, DECEASED, AND AS TRUSTEE UNDER THAT CERTAIN TRUST AGREEMENT NO. 90-01892

(2) LIMITED WARRANTY DEED RECORDED SEPTEMBER 12, 1995 AS REGULAR SYSTEM DOCUMENT NO. 95-117007 OF OFFICIAL RECORDS, FROM HERMAN G. P. LEMKE, WILLIAM RHETT TABER AND WILLIAM W. PATY, AS TRUSTEES UNDER THE WILL AND OF THE ESTATE OF MARK ALEXANDER ROBINSON, DECEASED, AND AS TRUSTEES UNDER THAT CERTAIN DEED OF TRUST EXECUTED BY MARK ALEXANDER ROBINSON AND MARY KAPUAHAULANI HART ROBINSON, HUSBAND AND WIFE, AS SETTLORS, DATED JULY 30, 1953, RECORDED AS BOOK 2720 PAGE 352 OF OFFICIAL RECORDS

(3) LIMITED WARRANTY DEED RECORDED SEPTEMBER 12, 1995 AS REGULAR SYSTEM DOCUMENT NO. 95-117009 OF OFFICIAL RECORDS, FROM VICTORIA WARD, LIMITED, A HAWAII CORPORATION

(4) LIMITED WARRANTY DEED RECORDED APRIL 16, 1996 AS REGULAR SYSTEM DOCUMENT NO. 96-051980 OF OFFICIAL RECORDS, FROM HRT, LTD., A HAWAII CORPORATION.

AS TO THE INTEREST OF HRT, LTD., FORMERLY A HAWAII CORPORATION, NOW A MARYLAND CORPORATION:

(1) WARRANTY DEED RECORDED JANUARY 21, 2000 AS REGULAR SYSTEM DOCUMENT NO. 2000-009215 OF OFFICIAL RECORDS, FROM HALEKUA DEVELOPMENT CORPORATION, A HAWAII CORPORATION. CONVEYS ALL OF THE GRANTOR'S RIGHT, TITLE AND INTEREST, IN AN UNDIVIDED 11.9% INTEREST IN SAID PREMISES

(2) WARRANTY DEED RECORDED JANUARY 21, 2000 AS REGULAR SYSTEM DOCUMENT NO. 2000-009216 OF OFFICIAL RECORDS, FROM HALEKUA DEVELOPMENT CORPORATION, A HAWAII CORPORATION. CONVEYS ALL OF THE GRANTOR'S RIGHT, TITLE AND INTEREST, IN AN UNDIVIDED 2.380% INTEREST IN SAID PREMISES

(3) WARRANTY DEED RECORDED APRIL 17, 2001 AS REGULAR SYSTEM DOCUMENT NO. 2001-054452 OF OFFICIAL RECORDS, FROM HALEKUA DEVELOPMENT CORPORATION, A HAWAII CORPORATION. CONVEYS ALL OF THE GRANTOR'S RIGHT, TITLE AND INTEREST, IN AN UNDIVIDED 3.33% INTEREST IN SAID PREMISES

(4) WARRANTY DEED RECORDED JULY 30, 2001 AS REGULAR SYSTEM DOCUMENT NO. 2001-117790 OF OFFICIAL RECORDS, FROM HALEKUA DEVELOPMENT CORPORATION, A HAWAII CORPORATION. CONVEYS ALL OF THE GRANTOR'S RIGHT, TITLE AND INTEREST, IN AN UNDIVIDED 2.86% INTEREST IN SAID PREMISES

(5) WARRANTY DEED RECORDED SEPTEMBER 11, 2001 AS REGULAR SYSTEM DOCUMENT NO. 2001-142649 OF OFFICIAL RECORDS, FROM HALEKUA DEVELOPMENT CORPORATION, A HAWAII CORPORATION. CONVEYS ALL OF THE GRANTOR'S RIGHT, TITLE AND INTEREST, IN AN UNDIVIDED 3.809% INTEREST IN SAID PREMISES

Subject to the following:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. A 22 foot (22') roadway setback line along Kunia Road, as shown on or disclosed by the survey dated May 22, 1995, prepared by Roy T. Yama, Registered Professional Land Surveyor, Certificate No. 3847, as set forth or disclosed by the Limited Warranty Deed recorded September 12, 1995 as Regular System Document No. 95-117006 of Official Records.
3. Easement 10 (60 feet wide) for road and utility purposes and Easement 14 (60 feet wide) for road and utility purposes in favor of Oahu Sugar Company, Limited under Unrecorded Lease dated January 1, 1956, as amended by unrecorded Amendments dated May 15, 1967, December 31, 1973 and November 30, 1984, as disclosed in Limited Warranty Deed recorded September 12, 1995 as Regular System Document No. 95-117006 of Official Records.
4. Existing Easement 11 (60' wide) for road purposes, as shown on File Plan No. 2171.
5. Existing Easement 13 (10' wide) for powerline purposes, as shown on File Plan No. 2171.
6. A Grant of Easement for powerline and incidental purposes, in favor of Hawaiian Electric Company, Inc., recorded as Book 3381 Page 336 of Official Records.
7. Easement 1 for flowage purposes as shown on File Plan 2154.
8. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Conditions and Consent recorded April 14, 1994 as Regular System Document No. 94-065022 of Official Records.

The foregoing Declaration was amended by Instrument recorded as Regular System Document No. 99-056493 of Official Records.

9. The terms and provisions contained in the Unilateral Agreement and Declaration for Conditional Zoning recorded March 6, 1995 as Regular System Document No. 95-030454 of Official Records.

10. The terms and provisions contained in the Unilateral Agreement and Declaration for Conditional Zoning recorded April 14, 1997 as Regular System Document No. 97-047601 of Official Records.

ATTACHMENT 2

[Limited Warranty Deed from HDC to HK]

RECEIVED
APR 27 2007
STATE OF HAWAII
LAND USE COMMISSION



R-992 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 12, 2007 11:00 AM
Doc No(s) 2007-045275



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

CTax (30): \$150800.00

20 24/25 Z9

24 LAND COURT SYSTEM

✓ REGULAR SYSTEM



Return by Mail (X) Pickup () To:
Jonathan S. Durrett, Esq.
Stubenberg & Durrett LLP
841 Bishop Street, Suite 702
Honolulu, HI 96813

2577642
TMK: (1) 9-4-002: 071

Total Pages: 16

LIMITED WARRANTY DEED

1. DEFINITION OF WORDS FREQUENTLY USED IN THIS DOCUMENT.

A. "Limited Warranty Deed". This document is entitled "Limited Warranty Deed". This Limited Warranty Deed is being used to transfer legal ownership of the Property from the Grantor to the Grantee.

B. "Grantor". The word "Grantor" in this Limited Warranty Deed means the party who is transferring the Property to Grantee. The Grantor in this Limited Warranty Deed is HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation.

C. "Grantee". The word "Grantee" in this Limited Warranty Deed means the party to whom the Property is being transferred. The Grantee in this Limited Warranty

1182736

Deed is HALEKUA-KUNIA, LLC, a Delaware limited liability company, whose business and post office address is 2024 North King Street, Honolulu, Hawaii 96819.

D. "Property". The word "Property" in this Limited Warranty Deed means the real property described in Exhibit "A" that is attached to and made a part of this Limited Warranty Deed. The word "Property" also includes the rights and interests that result from the ownership of the Property or are a part of ownership of the real property being conveyed to the Grantee. Certain things affect the Property being transferred. Those things are described in Exhibit "A" attached to this Limited Warranty Deed.

2. PURPOSE OF THIS LIMITED WARRANTY DEED.

The Grantor has received money and other valuable consideration from the Grantee and because of this the Grantor now "grants, bargains, sells, and conveys" to the Grantee, in fee simple forever, all of the Grantor's right, title, and interest in the Property. The right, title, and interest referred to in this Limited Warranty Deed are affected by those certain things mentioned in this Limited Warranty Deed and described in Exhibit "A" attached to this Limited Warranty Deed.

By accepting this Limited Warranty Deed, the Grantee agrees to accept the Property as is affected by the following:

- A. All real property taxes due and owing through June 30, 2007;
- B. All of the things described in Exhibit "A" attached to this Limited Warranty Deed; and

C. All of the things contained in the sections of this Limited Warranty Deed below entitled "Grantor Makes No Other Promises to Grantee" and entitled "Grantor Makes No Promises Related to Hazardous Waste or Environmental Matters".

3. TENANCY.

The Grantee accepts the Property that is being transferred to it "as is", and as a tenant in severalty.

4. GRANTOR'S RIGHT TO SELL THE PROPERTY TO GRANTEE.

The Grantor promises that it is the lawful owner of the Property and that it has the right to sell and transfer its rights in the Property to the Grantee.

5. WHAT IS BEING GRANTED TO GRANTEE.

A. The Grantor is granting to the Grantee all of the Grantor's legal and equitable estate in the Property. This means that the Grantor is granting to the Grantee all of the Grantor's right, title, and interest in and to the Property.

B. All of the improvements, if any, made to the Property.

C. All of the reversions in the Property, if any.

D. All of the remainders, if any. The interest in the Property that is left after all other interests in the Property have been determined is called a "remainder".

E. All of the rents from the Property, if any. This means that the Grantor is granting to the Grantee the right to receive payments made by persons in connection with the use or possession of the Property.

F. All of the profits, if any. The right to take such things as topsoil, fruit, plants, and trees from the Property is called a "profit". However, this does not mean that upon taking title to the Property, the Grantor will have the right to use the topsoil of, or that the Grantor may grow fruits or plant trees or plants on, the Property. The Grantor must, at all times, comply with all applicable laws affecting the Property. These laws will govern what profits, if any, the Grantor may take from the Property.

G. All of the appurtenances, if any. "Appurtenances" are interests such as water rights, easements, and rights-of-way which the Grantor has as the owner of the Property. Appurtenances are automatically transferred with the transfer of legal ownership of property. This means that the appurtenances to the Property will be automatically transferred to the Grantee when title to the Property is transferred to the Grantee's name by this Limited Warranty Deed.

H. All of the easements, if any. This refers to any interest that the Grantor has, as owner of the Property, in other property owned by someone else which benefits the Property. An example of an easement (however, this does not necessarily apply to the Property being conveyed to the Grantee -- it is only being used as an example) would be the right of a land owner to use a driveway located on someone else's land.

6. GRANTOR'S PROMISE TO GRANTEE.

The Grantor promises to the Grantee, for itself and for those who may follow the Grantor, to protect (or defend) the Grantee against all lawful claims or demands made by parties who claim an interest in the Property because of things that the Grantor may have

done, except that the Grantor's promise does not apply to any claims about real property taxes, any of the encumbrances to which the Property remains subject as set out in this Limited Warranty Deed, or any of the matters set out in this Limited Warranty Deed.

In other words, the Grantor is giving to the Grantee a guaranty (sometimes called a "warranty") of title to the Property only for the promises that the Grantor has just made in this Limited Warranty Deed. This is a "limited warranty of title". The Grantor also gives this guaranty (or warranty) to those persons who may take over the rights and responsibilities transferred to the Grantee by this Limited Warranty Deed.

7. GRANTOR MAKES NO OTHER PROMISES TO GRANTEE.

The Grantor does not promise or make any statements about anything that has to do with the condition of the Property, or of any improvements on or under the Property. By acceptance of this Limited Warranty Deed, the Grantee agrees to accept the Property and improvements "as is". This means, for example, that the Grantor is making no promises, representations or warranties about:

- A. The construction, structural soundness, condition, or state of repair, operating order, safety, or livability of any improvements;
- B. The suitability of any improvements for any particular use;
- C. Whether or not the Property or any improvements meet the requirements of any building, health, zoning, land use, subdivision, setback, or other law, ordinance, rule, or regulation that has applied in the past, may now apply, or may hereafter apply to the Property. However, by the Bill of Sale given concurrently herewith the Grantor

is transferring to the Grantee all rights, permits, and governmental approvals and entitlements relating to the Property, including those issued by the City and County of Honolulu and the State of Hawaii Land Use Commission;

D. Whether or not any easement, right-of-way, or driveway meets the requirements of any building, health, zoning, land use, subdivision, setback, or other law, ordinance, rule, or regulation that has applied in the past, may now apply, or may hereafter apply to the Property;

E. The density, stability, structure, erosion, or other condition of the soil for building or for any other use;

F. Whether any improvements on or under the Property go over the boundary lines of any land which shares a boundary with the Property;

G. Whether any improvements on or under land which shares a boundary with the Property go over the boundary lines of the Property;

H. Any matter concerning the electrical, water, gas, plumbing, or sewer systems (if any);

I. Any staking or survey done by any person for any reason; or

J. The location of the seaward boundary or the area of the Property if the Property borders the ocean.

8. GRANTEE AGREEMENT AND PROMISES TO THE GRANTOR.

The Grantee agrees that the Grantor has not made any promises or statements outside of this Limited Warranty Deed about anything that is mentioned in this Limited

Warranty Deed. The Grantee agrees and promises that the Grantee accepts the Property "as is".

The Grantee agrees not to file any lawsuit for damages against the Grantor for any matters concerning the Property, including any problems relating to the matters described in this Limited Warranty Deed, except to as to those matters expressly warranted or promised by the Grantor set forth in this Limited Warranty Deed. The Grantee agrees to indemnify (pay) the Grantor for all costs and expenses, including reasonable attorneys' fees, that the Grantor may have to pay if (a) the Grantee break the promises the Grantee is making to the Grantor under this Limited Warranty Deed, and the Grantee makes a claim on matters related to the Property prohibited by this Limited Warranty Deed, or (b) if the Grantee violates any provisions of any agreements concerning the Property and someone brings a claim against the Grantor.

9. GRANTOR MAKES NO PROMISES RELATED TO HAZARDOUS WASTE OR ENVIRONMENTAL MATTERS.

The Grantor is not aware of any hazardous materials which may exist on the Property or any improvements thereon nor is it aware of any violation of any environmental law, ordinance, rule, or regulation with respect to the Property. The Grantor makes no representations or promises regarding whether the Property or any improvements thereon meet the requirements of hazardous materials or environmental laws, ordinances, rules, or regulations. By acceptance of this Limited Warranty Deed, the Grantee agrees to accept the Property and the improvements "as is" as it pertains to any violation of hazardous materials or environmental laws, ordinances, rules, or regulations. The Grantee agrees not to file any

lawsuit for damages against the Grantor if the Property or any improvements thereon fail to meet the requirements of any hazardous materials or environmental laws, ordinances, rules, or regulations. The Grantor has made a Phase I environmental survey of the Property prepared by EnviroServices available to the Grantee.

10. PARTIES COVERED BY THE TERMS "GRANTOR" AND "GRANTEE".

The term "Grantor" as used in this Limited Warranty Deed, or any pronoun used in its place, means and includes the Grantor as its successors and assigns. In this section, with respect to the Grantor, "successors and assigns" means the persons who may in the future take the place of the Grantor.

The term "Grantee" as used in this Limited Warranty Deed, or any pronoun used in its place, means and includes the masculine or feminine; one or more than one; individuals; firms or corporations; and their and each of their respective heirs, personal representatives, successors, successors in trust, and assigns. If two or more parties are the Grantees, all promises and agreements of those parties shall be joint and several.

In this section, with respect to the Grantee, the term "heirs, personal representatives, successors, successors in trust, and assigns" means the party or parties to whom the Property and/or the rights and obligations under this Limited Warranty Deed are transferred by the Grantee or by operation of law.

All agreements and promises that the Grantee makes to the Grantor in this Limited Warranty Deed are binding on the Grantee and its heirs, personal representatives, successors, successors in trust, and assigns, and run with the land; that is, they apply to all

owners and future owners of the Property, and are made in favor of the Grantor and its successors in trust and assigns.

The term "joint and several" means that each party is responsible for full performance of all of the promises and agreements, and not for just a part or share of those promises and agreements.

11. PLAIN LANGUAGE; CAPTIONS AND TITLES.

An attempt was made to draft this Limited Warranty Deed in language that would be easy to read and understand. This Limited Warranty Deed uses words that are less accurate than the words which most courts are used to seeing. This Limited Warranty Deed also does not include additional sentences sometimes used to prevent courts from reading words too narrowly. If any court is ever asked to interpret this Limited Warranty Deed, the Grantor and the Grantee ask that the court keep these facts in mind when interpreting this Limited Warranty Deed. The captions and titles of this Limited Warranty Deed are for convenience only. They may not be used to interpret or to define the terms and provisions of this Limited Warranty Deed.

12. EXECUTION IN COUNTERPARTS.

The parties hereto agree that this Limited Warranty Deed may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate,

unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

13. ACCEPTANCE AND AGREEMENT.

By signing and accepting this Limited Warranty Deed, the Grantor and the Grantee agree that effective on the date of recording of this Limited Warranty Deed, both have received something of value and both the Grantor and the Grantee agree to everything that has been stated in this Limited Warranty Deed.

THE GRANTOR:

HALEKUA DEVELOPMENT
CORPORATION

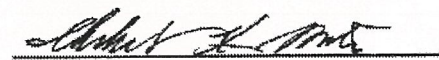
By:


HERBERT K. HORITA
President

THE GRANTEE:

HALEKUA-KUNIA, LLC
a Delaware limited liability company

By:


Name: HERBERT K. HORITA
Title: Member - Manager

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 6th day of March, 2007, before me personally appeared HERBERT K. HORITA, to me personally known, who being by me duly sworn, did say that he is the President of Halekua Development Corporation, a Hawaii corporation, that the foregoing instrument was signed in behalf of the corporation by authority of its board of directors, and HERBERT K. HORITA acknowledged the instrument to be the free act and deed of the corporation.

L.S.

Betty T. Keanaaina
Print Name: BETTY T. KEANAAINA
Notary Public, State of Hawaii

My Commission Expires: 6-17-2009

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Notary Public, State of Hawaii

My Commission Expires: 6-17-2009

EXHIBIT A

All of that certain parcel of land situate at Hoaeae and Waikele, District of Ewa, City and County of Honolulu, State of Hawaii, being described as follows:

Being a portion of Lot 3 of Royal Kunia Phase II Increment 1 Subdivision (File Plan 2171), being also portions of Royal Patent 4490, Land Commission Award 10474, Apana 9 to N. Namaau and Royal Patent 4486, Apana 1, Mahale Award 4 to Luluhiwalani.

Beginning at the most northwesterly corner of this parcel of land, being on the easterly line of Kunia Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "EWA CHURCH" being 4,708.80 feet North and 20,874.67 feet West and thence running by azimuths measured clockwise from True South:

1. 246° 16' 30" 22.00 feet along Royal Kunia Phase II, Increment 1 Subdivision (File Plan 2171);
2. Thence along the same, on a curve to the left having a radius of 40.00 feet, the chord azimuth and distance being: 291° 16' 30" 56.57 feet;
3. 246° 16' 30" 1943.75 feet along the same;
4. Thence along the same, on a curve to the left having a radius of 1360.00 feet, the chord azimuth and distance being: 239° 59' 15" 297.89 feet;
5. 233° 42' 888.15 feet along the same;
6. 142° 16' 1663.48 feet along the same;
7. 232° 16' 589.74 feet along Lot 2 of Royal Kunia Phase II Increment 1 (File Plan 2154);
8. 187° 16' 779.25 feet along the same;
9. 234° 44' 661.78 feet along the same;
10. Thence along the same, on a curve to the right having a radius of 600.00 feet, the chord azimuth and distance being: 289° 20' 978.15 feet;
11. 343° 56' 1592.99 feet along the same;
12. 8° 00' 792.41 feet along Lot 1 of Royal Kunia Subdivision Lot C (File Plan 2310);
13. 32° 00' 80.00 feet along Lot 4 of Royal Kunia Subdivision Increment E (File Plan 2308);
14. 302° 00' 172.00 feet along the same;

15. Thence along the same, on a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being: 347° 00' 28.28 feet;
16. 32° 00' 108.57 feet along the same and continuing along the northwesterly line of 'Anoiki Street;
17. Thence along the northwesterly line of 'Anoiki Street on a curve to the right having a radius of 972.00 feet, the chord azimuth and distance being: 39° 30' 253.74 feet;
18. 47° 00' 760.02 feet along the same;
19. Thence along the same, on a curve to the right having a radius of 972.00 feet, the chord azimuth and distance being: 49° 59' 101.18 feet;
20. 52° 58' 877.02 feet along the same;
21. Thence along the remainder Lot 3 of Royal Kunia Phase II Increment 1 Subdivision (File Plan 2171), on a curve to the left having a radius of 30.00 feet, the chord azimuth and distance being: 187° 58' 42.43 feet;
22. 142° 58' 142.00 feet along the same;
23. Thence along the same, on a curve to the right having a radius of 1028.00, feet the chord azimuth and distance being: 143° 20' 13.16 feet;
24. 143° 42' 457.70 feet along the same;
25. 53° 42' 733.69 feet along the same;
26. 156° 16' 30" 454.93 feet along Lot 1, as said lot is described in the deed to HRT, Ltd. recorded October 25, 2001 as document no. 2001-168369;
27. 66° 16' 30" 697.75 feet along the same;
28. Thence along the same, on curve to the left having a radius of 30.00 feet, the chord azimuth and distance being: 21° 16' 30" 42.43 feet;
29. 66° 16' 30" 56.00 feet along the same;
30. Thence along Lot 2 of Royal Kunia Phase II Increment 1 Subdivision (File Plan 2171), on a curve to the left having a radius of 30.00 feet, the chord azimuth and distance being: 111° 16' 30" 42.43 feet;
31. 66° 16' 30" 810.00 feet along the same;

32. Thence along the same, on a curve to the left having a radius 40.00 feet, the chord azimuth and distance being: 21° 16' 30" 56.57 feet;
33. 66° 16' 30" 22.00 feet along the same;
34. 156° 16' 30" 160.00 feet along the southeasterly line of Kunia Road to the point of beginning and containing an area of 161.360 acres.

Being all of the real property acquired by HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation, by Limited Warranty Deed dated as of March 12, 2007, and recorded as Regular System Document No. Doc 2007-045262

MAR 12, 2007 11:00 AM

SUBJECT, HOWEVER, to the following:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. A 22 foot (22') roadway setback line along Kunia Road, as shown on or disclosed by the Survey dated May 22, 1995, prepared by Roy T. Yama, Registered Professional Land Surveyor, Certificate No. 3847, as set forth or disclosed by the Limited Warranty Deed recorded September 12, 1995 as Regular System Document No. 95-117006 of Official Records.
3. Easement 10 (60 feet wide) for road and utility purposes and Easement 14 (60 feet wide) for road and utility purposes in favor of Oahu Sugar Company, Limited under Unrecorded Lease dated January 1, 1956, as amended by unrecorded Amendments dated May 15, 1967, December 31, 1973 and November 30, 1984, as disclosed in Limited Warranty Deed recorded September 12, 1995 as Regular System Document No. 95-117006 of Official Records.
4. Existing Easement 11 (60' wide) for road purposes, as shown on File Plan No. 2171.
5. Existing Easement 13 (10' wide) for powerline purposes, as shown on File Plan No. 2171.
6. A Grant of Easement for powerline and incidental purposes, in favor of Hawaiian Electric Company, Inc., recorded as Book 3381 Page 336 of Official Records.
7. Easement 1 for flowage purposes as shown on File Plan 2154.
8. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Conditions and Consent recorded April 14, 1994 as Regular System Document No. 94-065022 of Official Records.

The foregoing Declaration was amended by instrument recorded as Regular System Document No. 99-056493 of Official Records.

9. The terms and provisions contained in the Unilateral Agreement and Declaration for Conditional Zoning recorded March 6, 1995 as Regular System Document No. 95-030454 of Official Records.

10. The terms and provisions contained in the Unilateral Agreement and Declaration for Conditional Zoning recorded April 14, 1997 as Regular System Document No. 97-047601 of Official Record.

ATTACHMENT 3

[Quitclaim Deed from HDC to RKS]

RECEIVED
APR 27 2007

STATE
LAND USE COMMISSION



R-970 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 12, 2007 11:00 AM
Doc No(s) 2007-045263



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

CTax (20): \$1248.80

20 12/26 Z9

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL [X] PICK-UP []

Jonathan S. Durrett, Esq.
Stubenberg & Durrett, LLP
Davies Pacific Center
841 Bishop Street, Suite 702
Honolulu, Hawaii 96813.

This Document Contains 5 Pages

Tax Map Key No.: (1) 9-4-002-079-0000

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation, hereinafter called the "Grantor", for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration to Grantor paid by RKES, LLC, a Hawaii limited liability company, whose principal place of business and post office address is 1288 Ala Moana Boulevard, Suite 201, Honolulu, Hawaii 96814, hereinafter called the "Grantee", receipt whereof is hereby acknowledged, does by these presents release, remise and forever quitclaim unto Grantee, as TENANT IN SEVERALTY, its successors and assigns, all of the Grantor's estate, right, title and interest (being an undivided 24.279% interest) in and to that certain property more particularly described in Exhibit A attached hereto and expressly made a part hereof for each and every purpose.

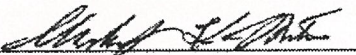
TO HAVE AND TO HOLD the same, as to said real property, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto Grantee, absolutely and in fee simple.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals or corporations, and their and each of their respective heirs, personal representatives, successors or assigns, according to the context thereof.

IN WITNESS WHEREOF, the Grantor has executed these presents this 6th day of March, 2007.

GRANTOR:

HALEKUA DEVELOPMENT CORPORATION,
a Hawaii corporation

By 
Name: Herbert K. Horita
Title: President

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this 6th day of March, 2007, before me appeared HERBERT K. HORITA, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Betty J. Keanaaina
Name: BETTY T. KEANAAINA
Notary Public, State of Hawaii

L.S.

My commission expires: 6-17-2009

EXHIBIT A

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4490, Land Commission Award 10474, Apana 9 to N. Namauu) situate, lying and being at Hoaeae and Waikele, District of Ewa, City and County of Honolulu, State of Hawaii, being Lot 3 of the "Royal Kunia Apartment Subdivision", same being a portion of Lot 3 of "Royal Kunia Phase II, Increment I Subdivision" (File Plan 2171), and thus bounded and described as per Survey dated April 24, 2002, to-wit:

Beginning at southerly corner of this parcel of land, being the most southeasterly corner of Lot 1 as said Lot is described in the Deed to Grantor recorded _____ as Regular System Document No. _____ of official records, and the northwesterly line of 'Anoiki Street, the coordinates of said point of beginning referred to government survey triangulation station "Ewa Church" being 4,247.15 feet north and 18,830.41 feet west and thence running by azimuths measured clockwise from true south:

Doc 2007-045262

MAR 12, 2007 11:00 AM

1. 156° 16' 30" 670.21 feet along the easterly line of said Lot 1;
2. 233° 42' 733.69 feet along the remainder of Lot 3 of Royal Kunia Phase II Increment I Subdivision (File Plan 2171);
3. 323° 42' 457.70 feet along the same;
4. Thence along the same, on a curve to the left having a radius of 1,028.00 feet the chord azimuth and distance being 323° 20' 13.16 feet;
5. 322° 58' 142.00 feet along the same;
6. Thence along the same, on a curve to the right having a radius of 30.00 feet, the chord azimuth and distance being 7° 58' 42.43 feet;
7. 52° 58' 851.96 feet along the northwesterly line of 'Anoiki Street to the point of beginning and containing an area of 12.000 acres, more or less.

Said above described parcel of land having been acquired by Grantor, as to an undivided 24.279% interest, by Quitclaim Deed recorded _____ as Regular System Document No. _____ of official records.

SUBJECT, HOWEVER, to the following:

Doc 2007-045262

MAR 12, 2007 11:00 AM

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. Easement I for flowage purposes as shown on File Plan No. 2154.
3. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the

Declaration of Conditions and Consent, recorded April 14, 1994 as Regular System Document No. 94-065022 of Official Records.

The foregoing Declaration was amended by instrument recorded as Regular System Document No. 99-056493 of Official Records.

4. The terms and provisions contained in the Unilateral Agreement and Declaration for Conditional Zoning recorded March 6, 1995 as Regular System Document No. 95-030454 of Official Records.

5. The terms and provisions contained in the Unilateral Agreement and Declaration for Conditional Zoning recorded April 14, 1997 as Regular System Document No. 97-047601 of Official Records.

ATTACHMENT 4

[Executed School Site Agreement]

RECEIVED
APR 27 2007
STATE OF HAWAII
LAND USE COMMISSION

SCHOOL SITE AGREEMENT

THIS SCHOOL SITE AGREEMENT (the "*Agreement*") is made as of this 6th day of March, 2007, by and among the STATE OF HAWAII, by and through its Department of Education ("*DOE*"), HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation ("*HDC*"), and RKES, LLC, a Hawaii limited liability company ("*RKES*").

RECITALS:

A. Pursuant to Findings of Fact, Conclusions of Law, and Decision and Order dated December 9, 1993, TMK 9-4-002: por of 1 and 52, Docket No. A92-683 of the Land Use Commission of the State of Hawaii (the "*Original Decision and Order*"), and Amended Finding of Fact, Conclusions of Law and Decision and Order dated October 1, 1996, Docket No. 92-683 of the Land Use Commission of the State of Hawaii (the "*Original Decision and Order*" as amended by this documents is herein called the "*Amended Decision and Order*"), the Land Use Commission of the State of Hawaii ("*LUC*") upon the petition of HDC reclassified from Agricultural to Urban approximately 504 acres located at Kunia, City and County of Honolulu, State of Hawaii (the "*Royal Kunia Phase 2 Lands*").

B. Pursuant to Ordinance No. 95-08 (1995) ("A Bill for an Ordinance to Rezone Land Situated at Waipio, Ewa, Oahu, Hawaii Amending Portion of Zoning Map No. 9, Waipio (Crestview), Ordinance No. 86-111"), the City and County of Honolulu (the "*City*") approved the rezoning of Increment 1 of the Royal Kunia Phase 2 Lands (the "*1995 Rezoning Ordinance*") and required the recordation of that certain Unilateral Agreement and Declaration of Conditional Zoning, dated March 6, 1995, recorded in the Bureau as Document No. 95-030454, which imposes certain development conditions on Increment 1 of the Royal Kunia Phase 2 Lands (the "*1995 Unilateral Agreement*").

C. Pursuant to Ordinance No. 97-12 (1997) ("A Bill for an Ordinance to Rezone Land Situated at Waipio, Ewa, Oahu, Hawaii Amending Portion of Zoning Map No. 9, Ordinance No. 86-111"), the City approved the rezoning of Increment 2 of the Royal Kunia Phase 2 Lands (the "*1997 Rezoning Ordinance*"), and required the recordation of that certain Unilateral Agreement and Declaration of Conditional Zoning, dated April 9, 1997, recorded in the Bureau as Document No. 97-047601, which imposes certain development conditions on Increment 1 of the Royal Kunia Phase 2 Lands (the "*1997 Unilateral Agreement*").

D. At the time of the reclassification and the rezoning all of the Royal Kunia Phase 2 Lands were to be developed by HDC. However, since entry of the Amended Decision and Order, the 1995 Rezoning Ordinance and the 1997 Rezoning Ordinance, HDC only holds title and the accompanying development rights to 161 acres of the reclassified lands identified by Tax Map Key No. (1) 9-4-002: 071 (the "*HDC Property*").

E. Pursuant to Condition No. 6 of the Amended Decision and Order, Condition No. 3 of the 1995 Rezoning Ordinance, and Condition No. 4 of the 1997 Rezoning Ordinance, HDC agreed to contribute to the development, funding, and/or construction of school facilities on a pro rata basis as a result of the development on the Royal Kunia Phase 2 Lands, as determined by and to the satisfaction of the Department of Education. As a result of these conditions, HDC and

DOE negotiated a letter agreement dated September 26, 1996, a true and correct copy of which is attached hereto as Exhibit 1, which set forth the agreement between the parties as to the land and monetary contributions which would satisfy DOE requirements for the entirety of the Royal Kunia Phase 2 Lands which included, among other matters, (1) the dedication of approximately 12 acres of real property to DOE for a school site (the "*land dedication component*") and (2) the agreement to make an incremental cash contribution in the total amount of \$500,000 in five (5) installments (the "*cash contribution component*").

F. In 2002 HDC completed the subdivision necessary to create the 12-acre school site, being Lot 3 of the "Royal Kunia Apartment Subdivision", being a portion of Lot 3 of the Royal Kunia Phase II, Increment I subdivision (File Plan 2171), identified by Tax Map Key No. (1) 9-4-002: 079 (the "*School Site*") but DOE was unable to accept title to the School Site at that time due to the fact that the School Site was encumbered by several liens. Pursuant to the letter agreement dated June 21, 2002, a true and correct copy of which is attached hereto as Exhibit 2, DOE agreed that the land dedication component of HDC's fair-share contribution for school facilities could be satisfied by HDC transferring the School Site to RKES on behalf of DOE and that RKES would then assist in clearing in clearing title to, and constructing a school facility on, the School Site. This modified agreement was reconfirmed by DOE in a letter agreement dated December 19, 2002, a true and correct copy of which is attached hereto as Exhibit 3.

G. Pursuant to the letter agreements dated June 21, 2002 and December 19, 2002, HDC did transfer and convey an undivided 75.721% interest in the School Site to RKES by Deed dated January 7, 2003, recorded as Document No. 2003-002585. The remaining undivided 24.279% is held by HRT Ltd., a Hawaii corporation.

H. Pursuant to the agreements reached between HDC and HRT in that certain Bankruptcy Court Order re Sale of Real Property Free and Clear of Liens (the "*Order*") filed in the Bankruptcy Case (as hereinafter defined) and the Purchase and Sale Agreement dated October____, 2006 (the "*Purchase and Sale Agreement*") entered into by HDC pursuant to which HDC will be purchasing the HDC Property from the Chapter 7 trustee appointed in the bankruptcy case ("*Trustee*") pending in the United States Bankruptcy Court for the District of Hawaii entitled In re Halekua Development Corporation, Case No. 03-01279 (the "*Bankruptcy Case*"), HRT will transfer and convey to HDC the undivided 24.279% held by HRT in and to the School Site.

I. The parties hereto now wish to affirm and reconfirm that (1) the transfer of the remaining undivided 24.279% of the School Site currently held by HRT to RKES will satisfy the land dedication component of DOE's fair share requirement under the Amended Decision and Order, (2) RKES shall use the School Site solely for purposes of an elementary school, and (3) the manner and method of payment by HDC of the cash contribution component of DOE's fair share requirement in compliance with the terms set forth in the letter agreements, and (4) if RKES fails to construct an elementary school on the School Site pursuant to its separate agreement with DOE, that the cash contribution component of DOE's fair share requirement shall be increased to compensate DOE for the cost of purchasing the School Site from RKES at a price equal to the costs incurred by RKES to clear title to the School Site, plus any other costs DOE may incur to clear title to the School Site.

NOW, THEREFORE, in consideration of the Recitals set forth above and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged the parties hereto covenant and agree as follows:

1. Transfer of Balance of Ownership Interest in School Site to RKES. Upon the closing of the acquisition of the HDC Property from the Trustee pursuant to the Order and Purchase and Sale Agreement, HDC will transfer and convey the remaining undivided 24.279% interest in to the School Site which is acquired from HRT to RKES. DOE hereby confirms that the transfer of the remaining undivided 24.279% of the School Site to RKES by HDC will satisfy the land dedication component of DOE's fair share requirement under the Amended Decision and Order. Upon confirmation of recordation of the deed transferring the remaining 24.279% interest in the School Site to RKES, DOE will provide HDC with a letter confirming satisfaction of the land dedication portion of the fair-share contribution condition set forth in Condition No. 6 of the Amended Decision and Order, Condition #3 of the 1995 Rezoning Ordinance, and Condition No. 4 of the 1997 Rezoning Ordinance.

2. School Site Free and Clear of Unacceptable Liens and Encumbrances. Pursuant to the closing of the acquisition of the HDC Property from the Trustee pursuant to the Order and Purchase and Sale Agreement, the unacceptable liens and encumbrances affecting the School Site will be removed and upon recordation of the deed from HDC of the remaining 24.279% interest in and to the School pursuant to paragraph 1 above, RKES shall own 100% of the School Site, free and clear of any liens or encumbrances unacceptable to DOE.

3. Schools Site Restricted to Use for Elementary School and Related Facilities. The parties hereto confirm that the transfer of the School Site to RKES shall be subject to the express and continuing restriction that the School Site may be occupied and used solely for purposes of an elementary school and related facilities to be operated by DOE and for no other purpose.

4. Construction of School and Related Facilities by RKES. DOE and RKES have or intend to enter into a separate agreement under the terms of which RKES shall design, develop and construct an elementary school and related facilities on the School Site in accordance with plans approved by DOE and in accordance with the terms of the separate agreement between DOE and RKES.

5. Dedication of School Site to DOE. If RKES designs, develops, and constructs an elementary school in accordance with terms of the separate agreement between DOE and RKES, then RKES shall dedicate and convey to DOE the School Site and all related facilities, improvements and equipment situated thereon, free and clear of monetary liens and encumbrances, at no cost to DOE as to the value of the land comprising the School Site, but subject to the payment by DOE to RKES of the agreed upon amounts as set forth in the separate agreement between DOE and RKES for the design, permitting and construction of the elementary school and related facilities.

6. Cash Contribution Component of Fair-Share Contribution. HDC and DOE reconfirm that HDC shall make an incremental cash contribution to DOE in the total sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) payable in five (5) installments of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) each

and which installments shall be due and payable upon the closing of (i) the 1,000th unit, (ii) the 1,250th unit, (iii) the 1,500th unit, (iv) the 1,750th unit, and (v) the last unit, constructed on the Royal Kunia Phase 2 Lands. An escalation factor shall be applied to the balance of the Cash Contribution that remains to be paid every thirty-six (36) months after the date of this signed agreement. The escalation factor shall be based on the Over-the-Year Percent Change in the Annual Average Honolulu Area Consumer Price Index for All Items for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics of the United States Department of Labor. The Annual Average CPI-U for the year prior to the year the agreement is signed is used as the base year. Cash Contributions will be adjusted by the amount the most recent Annual Average CPI-U has increased or decreased over the base year. Notwithstanding anything to the contrary in this paragraph 6, should any developer within the Royal Kunia Phase 2 Lands (other than HDC) construct and close on any number of units having the effect of causing the total number of closed units within the Royal Kunia Phase 2 Lands exceeding the number of residential units triggering the obligation to pay and remit a cash contribution installment hereunder, HDC shall not be in default for failing to make such installment payment then due, until and unless DOE has provided not less than sixty (60) days prior written notice to HDC that: (a) the applicable unit threshold has been exceeded, and (b) the installment is now due and payable to DOE.

7. Failure of RKES to Construct School Facilities; Failure of DOE and RKES to Enter into Agreement. If RKES fails to construct an elementary school and related facilities on the School Site pursuant to the separate agreement with DOE, or due to RKES and DOE failing to reach agreement on the terms of the separate agreement for the design and construction of the school, then, and in either such event, the cash contribution component, as described above for DOE's fair share requirement applicable to the Royal Kunia Phase 2 Lands, shall be increased to compensate DOE for the cost (if any) of purchasing the School Site from RKES at a price equal to the costs incurred by RKES to clear title to the School Site, plus any other costs DOE may incur to clear title to the School Site.

8. No Adverse Effect on RKES. The parties hereto agree that the terms and conditions contained in this Agreement relating to RKES merely confirm any existing rights and obligations of RKES and do not in any manner increase the obligations of RKES or adversely affect any rights which RKES currently has or holds in connection with the matters stated herein.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

10. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Hawaii.

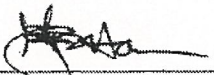
11. Counterparts. This Agreement may be executed in two or more counterparts, and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of DOE, HDC and RKES, although it shall not be necessary that any single counterpart is signed by or on behalf of all parties. All such counterparts shall be deemed to constitute but one and the same instrument. Duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

DOE:

STATE OF HAWAII, by and through its
Department of Education

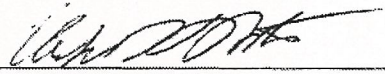
Approved as to Form and Content:

By 
Deputy Attorney General

By 
Name: Patricia Hamamoto
Title: Superintendent

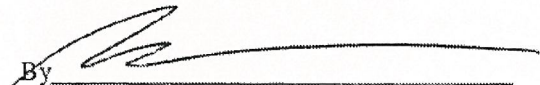
HDC:

HALEKUA DEVELOPMENT CORPORATION
a Hawaii corporation

By 
Name: Herbert K. Horita
Title: President

RKES:

RKES, LLC
a Hawaii limited liability company

By 
Name: Patrick K. Kobayashi
Title: Manager *OK-A 3/06/07*

ATTACHMENT 5

[Amended and Restated Memorandum of Understanding with DOA]

RECEIVED
APR 27 2007

STATE OF HAWAII
LAND USE COMMISSION

**AMENDMENT AND RESTATEMENT
OF
MEMORANDUM OF UNDERSTANDING**

THIS AMENDMENT AND RESTATEMENT OF MEMORANDUM OF UNDERSTANDING (the "*Amended and Restated MOU*") is made this 2nd day of March, 2007, by and between HALEKUA DEVELOPMENT CORPORATION, a Hawaii corporation ("*Halekua*") and the DEPARTMENT OF AGRICULTURE, STATE OF HAWAII ("*DOA*").

RECITALS:

1. Halekua and DOA entered into that certain Memorandum of Understanding (the "*Original MOU*") dated as of March 30, 1993, for the purpose of setting forth the agreements and understanding by and between Halekua and DOA with respect to establishment and integration into the master plan for the Royal Kunia Phase II development by Halekua of a state agricultural park.
2. Under the terms of the Original MOU, Halekua was to arrange for the conveyance of approximately 150 acres of land within Royal Kunia Phase II to DOA for its development of a state agricultural park and to accomplish such conveyance by no later than December 31, 1997.
3. Under the Original MOU, Halekua was to also design and construct off-site infrastructure improvements for the state agricultural park, including roadway, potable and irrigation water lines (exclusive of water commitment), and sewer lines and utility connections up to the boundary of the agricultural park at no cost to DOA. These off-site infrastructure improvements were to be initiated within one (1) year of the conveyance of the agricultural park to DOA and were to be completed within thirty (30) months thereafter.
4. Under the Original MOU the DOA was to assume responsibility for the development of and all other costs associated with the state agricultural park. DOA was to initiate development of the on-site improvements within five (5) years of the conveyance date and to achieve utilization of the conveyed lands for its intended purpose as a state agricultural park within ten (10) years of the conveyance date.
5. Pursuant to the Original MOU if the state agricultural park is not developed and utilized for its intended purpose within such 10-year time frame then and in such event ownership of the subject lands for the agricultural park are to revert to Halekua or its successors in interest, subject to any extension in time which may be mutually agreed to by the parties.
6. As a result of a variety of factors (economic and otherwise) the time frames set forth in the Original MOU for transfer of the agricultural park site to DOA, design and construction of the off-site infrastructure were not met.
7. However, by Warranty Deed with Reversion dated February 23, 2004, recorded on February 27, 2004, in the Bureau of Conveyances of the State of Hawaii as Document No.

2004-040601 the 150 acre parcel within Royal Kunia Phase II on which the state agricultural park is to be developed was conveyed by Halekua to the State of Hawaii.

8. Halekua and DOA now desire to amend and restate the Original MOU to (a) acknowledge the conveyance of the 150 acre agricultural park site to the DOA and the acceptance thereof by the DOA in partial satisfaction of the agreements in the MOU notwithstanding the delay in actual conveyance of the subject land, (b) to restate and modify the agreements between Halekua and the DOA with respect to the timing for design and construction of the off-site infrastructure to the state agricultural park, (c) to delete the provisions within the MOU providing for the DOA to initiate and complete its development and commence active use of the state agricultural park within a period of time measured from the date of initial conveyance of the 150 acre parcel comprising the state agricultural park to the DOA, and (d) to delete the right of reverter if the state agricultural park is not developed and utilized for those purposes within 10-years from the date of the initial conveyance of the 150 acre parcel to the DOA, and replace with a restrictive use covenant and reversion if the use covenant is breached.

NOW, THEREFORE, in consideration of the Recitals set forth above and other consideration the receipt and sufficiency of which is hereby acknowledged, Halekua and DOA do hereby amend and restate Paragraphs A through N of the original MOU in their entirety as follows:

A. Confirmation of Conveyance of 150-Acre Parcel. DOA does hereby acknowledge and confirm that by Warranty Deed with Reversion dated February 23, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-040601 (the "*State Ag Park Deed*"), the agreed upon 150 acres of land within the Royal Kunia Phase II development was conveyed by Halekua to the State of Hawaii, by and through its Board of Land and Natural Resources, for the DOA's use as and to establish a state agriculture park thereon (herein the "*state agricultural park*"). The DOA further confirms that it has accepted the conveyance of the lands comprising the state agricultural park by the State Ag Park Deed as being in full and complete satisfaction of the land conveyance component of its agreements with Halekua notwithstanding the fact that the actual conveyance occurred beyond the original December 31, 1997 deadline date.

B. Use of State Agricultural Park. The state agricultural park is intended to benefit the small diversified farmer and use of the state agricultural park shall be intended for diversified agricultural production, including, without limitation, floriculture, foliage and orchard production. In addition, the DOA shall have right and option (but is not required) to develop and construct up to a maximum of fifty (50) related agricultural farm dwellings or farm employee housing units with the state agricultural park. If any of these agricultural farm dwellings or farm employee housing units are developed by the DOA on the state agricultural park the same shall not at any time be offered for sale by the DOA.

C. Certain Use Prohibitions within State Agricultural Park. Since the state agricultural park will be located adjacent to an urban residential community, commercial livestock and aquaculture production or other activities associated with or related thereto shall be prohibited within the state agricultural park.

D. Halekua to Include State Agricultural Park in Land Plan. Halekua shall incorporate the state agricultural park into its land plan for the Royal Kunia Phase II subdivision and jointly with the DOA shall prepare a preliminary site plan for the state agricultural park reflecting the locations of the roadway and infrastructure connections to be provided to the boundary of the state agricultural park parcel. Halekua and the DOA will diligently and in good faith work together to conclude the planning work necessary to prepare and reach agreement on a preliminary site plan for the state agricultural park no later than December 31, 2007 (or such later date to which Halekua and the DOA shall mutually agree). The DOA shall determine the final layout of the state agricultural park's interior configuration, subject to review and concurrence by Halekua, and shall arrange for and provide funding for construction of the improvements within the interior of the state agricultural park.

E. Halekua to Design and Construct Certain Off-Site Infrastructure to the State Agricultural Park. Halekua shall design and construct off-site infrastructure improvements for the state agricultural park including roadway, potable and irrigation water lines (exclusive of water commitment), and sewer lines and utility connections, up to the property boundary of the state agricultural park at no cost to the DOA. These off-site infrastructure improvements shall be sufficient to service the agricultural uses contemplated by the DOA for the state agricultural park and shall be sufficient to service the maximum of fifty (50) agricultural farm dwellings or farm employee housing units (if the DOA determines that the same shall be a part of the state agricultural park). In connection therewith Halekua and the DOA agree as follows:

a. Following approval of the preliminary site plan in accordance with Paragraph D above, Halekua shall arrange for and cause the preparation of design plans for the off-site infrastructure necessary to provide the agreed upon roadway access, water, sewer and other appropriate utility connections to the boundary of the state agriculture park to service the contemplated improvements on the state agricultural park in accord with the preliminary site plan and submit the same to the DOA for approval no later than December 31, 2008 (or such later date to which Halekua and the DOA shall mutually agree), which approval by the DOA shall not be unreasonably withheld or delayed. It is understood and accepted that HDC shall be entitled to make such changes and modifications to the approved design plans as may be required to address and satisfy any comments made or issues raised by appropriate governmental agencies of the State of Hawaii and/or City and County of Hawaii, with the further consent or approval of DOA, which consent or approval shall not be unreasonably withheld or delayed.

b. After the DOA approves the offsite infrastructure plans, HDC shall, at its sole cost and expense, (i) obtain all necessary governmental permits and approvals for construction of such off-site infrastructure, and (ii) arrange for and substantially complete the construction and installation of the off-site infrastructure to service the state agricultural park no later than January 1, 2011 (or such later date to which Halekua and the DOA shall mutually agree), subject to extension in such substantial completion date for construction industry recognized force majeure events.

F. DOA Responsible for All Other Costs of State Agricultural Park. The DOA shall assume responsibility for the development of and payment of all costs (other than those set forth

in this Agreement as being assumed by Halekua) associated with the state agricultural park and the agricultural farm dwellings and/or farm employee housing units to be developed thereon.

G. Coordinate Developments. Halekua and the DOA shall use their best efforts to work jointly to coordinate the development of their respective portions of the Royal Kunia Phase II project.

H. Hawaii Farm Bureau Federation. The DOA, to the extent permitted by law or regulation, shall involve the Hawaii Farm Bureau Federation in the utilization, operation and management of the state agricultural park with the intent of maximizing the efficiency and success of the diversified farming efforts at the state agricultural park.

I. DOA Support of Land Use Approvals. The DOA shall assist and support Halekua in its efforts to obtain and maintain the necessary land use approvals for the Royal Kunia Phase II project, as well as in Halekua's efforts to obtain the necessary off-site infrastructure permit approvals. Any assistance and support by the DOA shall be limited to the extent permitted by the applicable statutes and rules.

J. Restrictive Use Covenant on State Agricultural Park. The time periods for initiation of development of on-site improvements for the state agricultural park and for the DOA to achieve active utilization of the state agricultural park set forth in Paragraph K of the Original MOU are hereby deleted in their entirety. Instead the state agricultural park shall be subject to a restrictive use covenant providing that the state agricultural park shall only be used as an agricultural park or for the current or similar agricultural purposes, including diversified agriculture. If at any time in the future the DOA ceases to use or abandons the use of the state agricultural park as an agricultural park or for the current or similar agricultural purposes, including diversified agriculture, then, and in such event, the 150 acre parcel comprising the state agricultural park shall be subject to a reversion in favor of certain "Robinson Owners" as more particularly defined in the State Ag Park Deed. It is understood that the fact that any portion of the state agricultural park may lie vacant or fallow shall not constitute the cessation or abandonment of the agricultural use.

K. No Adverse Impact on Lands Adjoining State Agricultural Park. The DOA agrees to use its best efforts to minimize the impact of the state agricultural park on the adjacent lands being developed for residential, industrial and other urban uses.

L. Assistance with Non-Potable Water System. The DOA shall assist Halekua, to the extent allowable by law and subject to the availability of funds, in obtaining and developing a non-potable water system to service irrigation and other non-potable water needs of the Royal Kunia Phase I and Phase II projects, including the state agricultural park.

M. Purpose of Amended and Restated MOU. The parties hereto agree that this Amended and Restated MOU is being executed to evidence their mutual understandings and agreements regarding the conveyance of the 150-acre parcel comprising the state agricultural park to the DOA, the design and development by Halekua of certain off-site infrastructure to service the state agricultural park, and certain use restrictions and limitations applicable to the

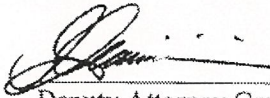
DOA's use of the state agricultural park. This Amended and Restated MOU replaces the Original MOU in its entirety.

N. Amendment. This Amended and Restated MOU may be amended from time to time by an instrument in writing signed by both HDC and the DOA.

IN WITNESS WHEREOF, this Amendment and Restatement of Memorandum of Understanding is made and executed by Halekua and the DOA as of the day and year first above written.

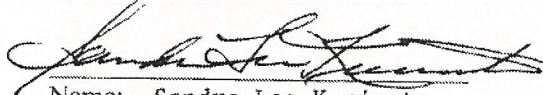
**DEPARTMENT OF AGRICULTURE,
STATE OF HAWAII**

Approved as to Legality and Form:



Deputy Attorney General

Dated: March 2, 2007



Name: Sandra Lee Kunimoto

Title: Chairperson

HALEKUA DEVELOPMENT CORPORATION

By 

Name: Herbert K. Horita

Title: President

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT	)	ORDER GRANTING
CORPORATION, A Hawai'i	)	HALEKUA DEVELOPMENT
Corporation	)	CORPORATION'S ORAL
	)	MOTION TO DISMISS ORDER
To Amend The Agricultural Land	)	TO SHOW CAUSE
Use District Boundary Into The	)	PROCEEDING
Urban Land Use District For)	
Approximately 503.886 Acres Of Land)	
At Waikele And Hō'ae'ae, 'Ewa, O'ahu,)	
City And County Of Honolulu,)	
Hawai'i, Tax Map Key: 9-4-02: 1,)	
Portion Of 52, 70, And 71)	
_____)	

ORDER GRANTING HALEKUA DEVELOPMENT CORPORATION'S ORAL MOTION
TO DISMISS ORDER TO SHOW CAUSE PROCEEDING

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT	)	ORDER GRANTING
CORPORATION, A Hawai'i	)	HALEKUA DEVELOPMENT
Corporation	)	CORPORATION'S ORAL
	)	MOTION TO DISMISS ORDER
To Amend The Agricultural Land)	TO SHOW CAUSE
Use District Boundary Into The)	PROCEEDING
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Approximately 503.886 Acres Of Land)	
At Waikele And Hō'ae'ae, 'Ewa, O'ahu,)	
City And County Of Honolulu,)	
Hawai'i, Tax Map Key: 9-4-02: 1,)	
Portion Of 52, 70, And 71)	
_____)	

ORDER GRANTING HALEKUA DEVELOPMENT CORPORATION'S ORAL MOTION
TO DISMISS ORDER TO SHOW CAUSE PROCEEDING

On February 23, 2007, the Land Use Commission ("Commission") held a meeting on the matter of the Order To Show Cause issued in the above-entitled docket in Honolulu, Hawai'i.¹ Jonathan S. Durrett, Esq., appeared on behalf of Petitioner. Also present were Delwyn H. W. Wong, Esq., on behalf of HRT Realty, LLC; 300 Corporation, and Honolulu Limited (collectively "Intervenors")²; Bryan C. Yee, Esq.,

¹ The Commission commenced the hearing on the Order To Show Cause on April 25, 2003. At the hearing, the Commission was notified that Halekua Development Corporation, a Hawai'i corporation ("Petitioner"), had filed a Voluntary Petition under chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Hawai'i. The Commission subsequently stayed its hearing pending the outcome of the bankruptcy proceedings.

and Abe Mitsuda on behalf of the State Office of Planning; and Mike Watkins on behalf of the City and County of Honolulu Department of Planning and Permitting ("DPP").³ At the meeting, the Commission heard testimony from Jerrold K. Guben, Esq., counsel to James B. Nicholson, the successor Chapter 7 Trustee appointed over Petitioner and Petitioner's estate in Petitioner's bankruptcy proceedings. Thereafter, Petitioner orally moved to dismiss the Commission's Order To Show Cause proceeding ("Oral Motion To Dismiss") pursuant to section 15-15-70, Hawai'i Administrative Rules ("HAR").

In support of its Oral Motion To Dismiss, Petitioner offered Gregory Smith, senior loan officer at CMR Mortgage Fund, LLC, a California limited liability company ("CMR"), as a witness who testified that, among other things, CMR issued a \$100 million loan commitment to Petitioner to allow the development to move forward.⁴ Mr. Smith further testified that the closing date for the loan mandated by the U.S. Bankruptcy Court for the District of Hawai'i is February 28, 2007, a date which neither Petitioner nor CMR could extend. Mr. Smith noted that the loan proceeds would be used to pay off the secured and unsecured creditors that currently encumber the Project

² On February 22, 2007, HRT Realty, LLC, filed a Memorandum In Opposition To The Reclassification Of The Petition Area.

³ On February 22, 2007, the DPP filed a letter opposing any action to rescind the land use classification as contemplated by the Order To Show Cause.

⁴ The Amended And Restated Commitment Letter - \$92,100,000/\$100,000,000 Real Property Secured Term Loan ("Amended And Restated Commitment Letter") dated February 15, 2007, added Canyon Capital Realty Advisors, LLC, a Delaware limited liability company ("Canyon"), as a lender party subject to Canyon determining to proceed as such upon completion of its due diligence. According to Mr. Smith, Canyon subsequently issued its commitment to the loan.

and Property⁵ as well as immediately satisfy several of the conditions of approval imposed by this Commission. Mr. Smith further noted that as a lender, CMR requires that Petitioner bring in an experienced local, third-party project manager to handle the pre-development stage of the Project and who will be required to develop a detailed budget and timeline such that it will advance the Project to the point where an application for subdivision maps can be filed. Mr. Smith disclosed that Petitioner and Stanford Carr Development have entered into a tentative term sheet, which will allow them to move toward a project management agreement. Mr. Smith pointed out that CMR has set aside a reserve of \$3.6 million within the \$100 million loan to fully fund the operations of the project manager over the first year of the Project. Mr. Smith added that the loan contemplates additional funding beyond that one year to cover development expenses to move the Project to the next stage of construction financing. Mr. Smith affirmed that Petitioner has obtained approval from the U.S. Bankruptcy

⁵ As used herein, the term "Project" means the residential development proposed by Petitioner on land to which it retains title and the accompanying property rights (i.e. the "Property"). As used herein, the term "Property" is identified as TMK: 9-4-02: 71 and consists of approximately 161.360 acres of land. Pursuant to Order Granting The Office Of Planning's Amended Motion To Exempt HRT, Ltd.'s Property From The Order To Show Cause Granted On February 26, 2003, Pursuant To The Stipulation Filed On December 30, 2003 dated February 23, 2004, the lands owned by HRT, Ltd. (now known as HRT Realty, LLC), and its sister companies, 300 Corporation and Honolulu Limited, identified as TMK: 9-4-02: 1, 70, and 78 (parcel 78 was created from the subdivision of parcel 71), consisting of approximately 173.676 acres of land, were conditionally exempt from the Order To Show Cause. The Order To Show Cause also includes TMK: 9-4-02: 52. As the recorded fee owners of parcel 52, the Robinson Estate and other owners related to the Robinson Estate were served with the Order To Show Cause through counsel but elected not to intervene in the proceeding. At the time the Order To Show Cause was initiated, parcel 52 consisted of approximately 307.919 acres of land, including approximately 150 acres that were not subject to the Order To Show Cause. The 150 acres were subsequently subdivided out from parcel 52 to create parcel 80, which is referred to herein as the 150-acre agricultural park site.

Court to enter into the loan with CMR. Finally, Mr. Smith noted that because one of the chief underwriting concerns in evaluating the Project was the potential of the Property to be reclassified to its former designation, CMR thought it prudent that this issue be resolved prior to closing.

Upon questioning by the Commission, Petitioner stated that it will provide the Commission with fully executed copies of the Amended And Restated Commitment Letter. Upon further questioning by the Commission, Mr. Smith asserted that the conditions of closing have been previously satisfied, are administrative in nature, or may be fully waived at the lenders' discretion, and therefore the lenders are fully prepared to close the transaction on or before February 28, 2007.

Petitioner then presented its next witness in support of its Oral Motion To Dismiss, Randolph Y. Teruya, the Agricultural Asset Manager of the State Department of Agriculture ("DOA"). Mr. Teruya confirmed that the 150-acre agricultural park site has been transferred to the State Department of Land and Natural Resources for the benefit of the DOA. Mr. Teruya also testified that the DOA has come to an agreement in principle with Petitioner as to Condition Number 19 of the Amended Findings Of Fact, Conclusions Of Law, And Decision And Order ("Amended Decision And Order") dated October 1, 1996, regarding the infrastructure development to the site that includes (i) an acknowledgement of the conveyance of the site to the State of Hawai'i by and through its State Board of Land and Natural Resources for the benefit of the DOA and

the acceptance thereof by the DOA in partial satisfaction of the agreements in the original Memorandum Of Understanding ("MOU") notwithstanding the delay in the actual conveyance of the site; (ii) modification of the agreements between Petitioner and the DOA with respect to the timing for design and construction of the offsite infrastructure to the site; (iii) deletion of the provisions within the original MOU providing for the DOA to initiate and complete its development and commence active use of the site within a period of time measured from the date of initial conveyance of the site to the DOA; and (iv) deletion of the right of reverter if the site is not developed and utilized for those agricultural purposes within 10 years from the date of the initial conveyance of the site to the DOA, and replacing it with a restrictive use covenant requiring agricultural use and reversion if the use covenant is breached. Finally, Mr. Teruya noted that there is a proposed amended MOU between Petitioner and the DOA that is currently being reviewed by the DOA.

Petitioner then presented its final witness, Heidi A. Meeker, a planner with the State Department of Education ("DOE"), Facilities Development Branch. Ms. Meeker testified that although the DOE is still in the process of completing a written agreement pursuant to Condition Number 6 of the Amended Decision And Order, the DOE has correspondence starting in 1996 in which there is an agreement as to what the

contribution would be.⁶ Ms. Meeker added that the agreement is being reviewed by the DOE's deputy attorney general, and that a signed copy of the agreement is expected back within a week.

The other parties present in this proceeding had no objections to Petitioner's Oral Motion To Dismiss.

Following discussion, a motion was made and seconded to grant Petitioner's Oral Motion To Dismiss. There being a vote tally of 6 ayes, 2 absent, and 1 abstention⁷, the motion carried.

ORDER

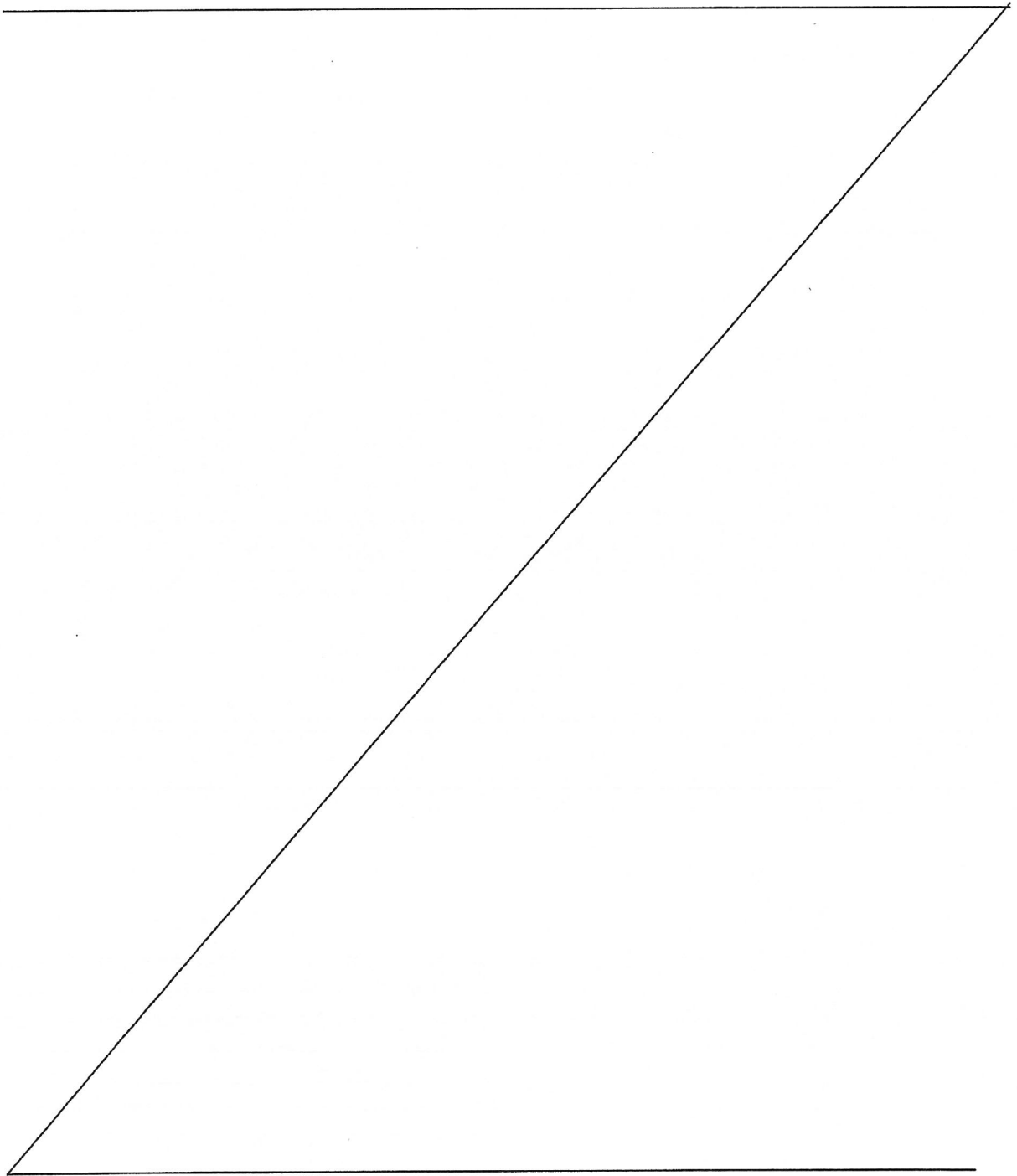
This Commission, having duly considered Petitioner's Oral Motion To Dismiss, the arguments of the parties present in the proceeding, and a motion having been made at a meeting on February 23, 2007, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

⁶ The fair-share contribution agreement is generally reflected in the proposed School Site Agreement attached as Exhibit A to Petitioner's 2007 Interim Status Report Of Halekua Development Corporation On Conditions To Decision And Order Of Land Use Commission filed on February 20, 2007. The agreement requires, in part, that RKES, LLC, a Hawai'i limited liability company, design, develop, and construct an elementary school and related facilities on a 12-acre parcel, identified as TMK: 9-4-02: 79, with dedication and conveyance of the parcel and all related facilities, improvements, and equipment situated thereon to the DOE upon completion of construction. Parcel 79 was created from the subdivision of TMK: 9-4-02: 71.

⁷ Commissioner Reuben S. F. Wong previously represented the Intervenors before this Commission prior to his appointment to the Commission. Consequently, Mr. Wong recused himself from this proceeding and, in fact, was not present at the meeting.

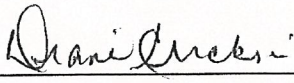
HEREBY ORDERS that Petitioner's Oral Motion To Dismiss be

GRANTED.

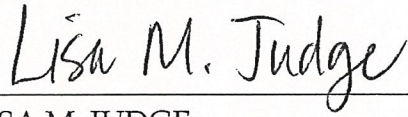


Done at Honolulu, Hawai'i, this 16th day of
March, 2007, per motion on February 23,, 2007.

APPROVED AS TO FORM

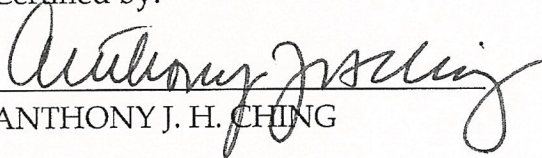

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By 
LISA M. JUDGE
Chairperson

Filed and effective on
MAR 16 2007

Certified by:


ANTHONY J. H. CHING

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT	)	CERTIFICATE OF SERVICE
CORPORATION, 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 Hō'ae'ae, 'Ewa, O'ahu,)	
City And County Of Honolulu,)	
Hawai'i, Tax Map Key: 9-4-02: 1,)	
Portion Of 52, 70, And 71)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Halekua Development Corporation's Oral Motion To Dismiss Order To Show Cause Proceeding 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. LAURA H. THIELEN, Director
 Office of Planning
 P. O. Box 2359
 Honolulu, Hawaii 96804-2359

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

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

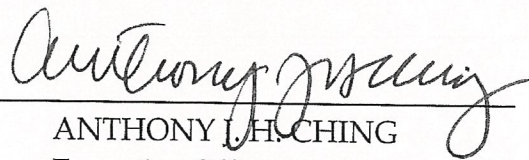
CARRIE OKINAGA, Esq.
Corporation Counsel
City and County of Honolulu
530 South King Street
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CERT. JONATHAN S. DURRETT, Esq.
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Honolu, Hawaii 96813

CERT. REUBEN S. F. WONG, Esq.
DELWYN H. W. WONG, Esq.
1164 Bishop Street, Suite 1006
Honolulu, Hawaii 96813

MAR 16 2007

Dated: Honolulu, Hawaii, _____.



ANTHONY L. H. CHING
Executive Officer

LAND USE COMMISSION
Minutes of Meeting
Conference Room 405
State Office Tower, Leiopapa A Kamehameha
235 South Beretania Street
Honolulu, Hawaii

January 9, 2003

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Lawrence N. C. Ing
Stanley Roehrig
Randall Sakumoto

COMMISSIONERS ABSENT: Peter Yukimura
Pravin Desai
Isaac Fiesta, Jr.
Steven Montgomery

STAFF PRESENT: Diane Erickson, Esq., Deputy Attorney General
Anthony J.H. Ching, Executive Officer
Bert Saruwatari, Staff Planner
Russell Kumabe, Staff Planner
Arlene Shimokawa, Chief Clerk
Holly Hackett, Court Reporter

Presiding Officer Roy Catalani called the meeting to order at 9:31 a.m.

I. ACTION

A. A92-683 HALEKUA DEVELOPMENT CORPORATION (Oahu)

Presiding Officer Catalani announced that this was an action meeting to consider the Office of Planning's Motion for an Order to Show Cause to Rescind the Decision and Order dated on October 1, 1996, which reclassified approximately 503.886 acres of land from the Agricultural District into the Urban District at Waikele and Hoaeae, Ewa, Oahu, for residential, light industrial, school, and park uses.

APPEARANCES

John Chang, Esq., Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Jonathan Durrett, Esq., attorney for Halekua Development Corporation

Herbert K. Horita, Halekua Development Corporation

Reuben Wong, Esq., attorney for HRT, Ltd.

Stephen Mau, Esq., attorney for Robinson Estates

Richard Mirikitani, Esq., attorney for Castle & Cooke

Randall Hara, City and County of Honolulu, Department of Planning and Permitting

Mike Watkins, City and County of Honolulu, Department of Planning and Permitting

Bert Saruwatari, LUC planner, provided the Commission with a map orientation.

Mr. Chang explained that the Office of Planning filed the Motion for an Order to Show Cause because the Petitioner (1) has not acquired the agricultural park site, (2) has no formal extension for agreement to sell and purchase according to the original agreement of the parties, (3) has not worked with the Department of Education for a school site, and (4) has not conveyed a park site. The Office of Planning requested a contested hearing.

Mr. Durrett (1) opposed the Office of Planning's Motion, (2) reported that the Land Use Commission staff has sought to resolve this matter by meeting with all parties, and (3) has attempted to work with DOE regarding the school site and negotiations were completed by the end of last year with a designated developer. Mr. Durrett also reported that since Mr. Horita was recently informed of a possible underwriter for this project, Mr. Horita may be working on a closing date of 60 days from January 17, 2003.

Mr. Mau reported that \$20 million was paid by HRT for its lands in the petition area.

Mr. Wong noted that if LUC proceeds with a contested hearing, HRT would like to intervene as an interested party. Although the LUC had approved of the sale of the petition lands to HRT, Ltd., Halekua had not met their obligations to the Commission despite being given many extensions.

Commissioner Roehrig moved to set this matter for a show cause hearing for the latter part of April to allow Mr. Horita to consummate the details and explain why the land should not revert to the Agricultural District. Commissioner Coppa seconded. The motion was amended to include all parties to be part of this hearing. The Commissioners were polled as follows:

Ayes: Commissioners Roehrig, Coppa, Ing, Sakumoto and Catalani.

The motion passed with 5 ayes and 4 absent.

A 10-minute recess was taken at 10:30 a.m.

The meeting was reconvened at 10:40 a.m.

ACTION

B. A93-689 – PALAUEA BAY PARTNERS (Maui)

Presiding Officer Catalani announced that this was an action to consider WCPT/GW Land Associates, LLC's Motion to Amend Decision and Order of Land Use District Boundary Amendment to amend Condition 10 and to delete Condition 15 of the Findings of Fact, Conclusions of Law, and Decision and Order dated September 20, 1994, which reclassified approximately 669.387 acres of land from the Agricultural District into the Urban District at Paeahu-Keauhou, Makawao, Maui, for residential, commercial, golf course, park, and electrical substation uses.

APPEARANCES

John Chang, Esq., Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Martin Luna, Esq., attorney for Petitioner

Charles Jenks, representative of WCPT/GW

Russell Kumabe, LUC planner, provided the commission with a map orientation. A site visit was done in August 2002.

Commissioner Sakumoto disclosed that one of the partners of his firm McCorriston Miller Mukai MacKinnon is one of the attorneys who represent the petitioner. Although no objections were raised by the petitioner via their counsel, the Office of Planning or Presiding Officer Catalani, Commissioner Sakumoto indicated that he would participate in today's proceeding only because there was a need for a quorum.

Executive Officer Anthony Ching reported that a communication was received from the Maui Department of Planning that it was aware of the petitioner's plans, had no objections to the amendments, and, therefore, was not sending a representative to today's meeting.

The Office of Planning reported that it had reviewed petitioner's motion and had no objection with the amendment and the change that petitioner requests. Upon inquiry from Commissioner Catalani, the Office of Planning stated Petitioner's amended language was satisfactory.

Commissioner Ing moved to grant petitioner's motion to delete Condition No. 15 and to amend Condition No. 10. Commissioner Roehrig seconded the motion. The Commissioners were polled as follows:

Ayes: Commissioners Ing, Roehrig, Coppa, Sakumoto and Catalani.

The motion passed with 5 ayes and 4 absent.

Presiding Officer Catalani announced that the meeting will resume on Friday, January 10, 2003, at 9:30 a.m.

The meeting was adjourned at 10:50 a.m.

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A94-706
)	
KAONOULU RANCH	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
To Amend the Agricultural Land Use	)	AND DECISION AND ORDER
District Boundary into the Urban)	
Land Use District for)	
approximately 88 acres at)	
Kaonoulu, Makawao-Wailuku,)	
Maui, Hawaii; Tax Map Key Nos.)	
2-2-02: por. of 15 and 3-9-01:16)	
_____)	

FILED
JUL 11 1994
HONOLULU
HAWAII
CLERK OF THE COURT

FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND DECISION AND ORDER

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A94-706
KAONOULU RANCH)	
To Amend the Agricultural Land Use	)	FINDINGS OF FACT,
District Boundary into the Urban	)	CONCLUSIONS OF LAW,
Land Use District for	)	AND DECISION AND ORDER
approximately 88 acres at)	
Kaonoulu, Makawao-Wailuku,)	
Maui, Hawaii; Tax Map Key Nos.)	
2-2-02: por. of 15 and 3-9-01:16)	
)	
)	

FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND DECISION AND ORDER

KAONOULU RANCH, a Hawaii limited partnership, ("Petitioner"), filed a Petition for District Boundary Amendment on July 6, 1994, a First Amendment to the Petition on August 4, 1994, and a Second Amendment to the Petition on October 21, 1994, (cumulatively "Petition"), pursuant to chapter 205, Hawaii Revised Statutes, ("HRS"), and chapter 15-15, Hawaii Administrative Rules ("HAR") to amend the Land Use District Boundary to reclassify approximately 88 acres of land at Kaonoulu, Makawao-Wailuku, Maui, Hawaii, specifically identified as Tax Map Key Nos. 2-2-02: portion of 15 and 3-9-01: 16 ("Property" or "Petition Area") from the Agricultural District to the Urban District, to develop a 123 lot commercial and light industrial subdivision ("Project"). The Land Use Commission ("Commission") having examined the testimony and evidence presented during the hearing, having heard the arguments of counsel, and having reviewed Petitioner's Proposed Findings of

Fact, Conclusions of Law, and Decision and Order, the Office of State Planning's Response to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, the County of Maui Planning Departments' Stipulation to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Petition for District Boundary Amendment was filed with the Commission on July 6, 1994. A First Amendment to Petition for Land Use District Boundary Amendment was filed with the Commission on August 4, 1994. A Second Amendment to Petition for Land Use District Boundary Amendment was filed with the Commission on October 21, 1994.

2. The Commission conducted a prehearing conference on October 11, 1994, at the Old Federal Building, 335 Merchant Street, Conference Room 238, Honolulu, Hawaii, with representatives of the Petitioner, and the Office of State Planning ("OSP"), present, and at which time the parties exchanged exhibits and witness lists. The County of Maui Planning Department ("County") was not present.

3. The Commission held a public hearing on November 1, 1994 upon notice published on September 12, 1994 in the Honolulu Advertiser and the Maui News.

4. Entering appearances at the hearing were B. Martin Luna, Esq. and Gilbert Coloma-Agaran, Esq. for Petitioners, Gary

W. Zakian, Esq. and Ann Cua for the County of Maui, and Rick Eichor, Esq. and Lorene Maki for the OSP, State of Hawaii.

5. The County supported the Petition and filed a statement of Position of the Maui County Planning Department on September 9, 1994. The County also filed Testimony of the Maui County Planning Department in support of the Petition with conditions on October 11, 1994.

6. The Office of State Planning supported the Petition and filed a Statement of Position of the Office of State Planning in Support of the Petition with conditions on September 1, 1994. The Office of State Planning also filed Testimony of the Office of State Planning in Support of the Petition with conditions on October 20, 1994.

7. No written or oral public testimony was received.

8. No requests for intervention were filed.

DESCRIPTION OF PROPERTY

9. Petitioner is a Hawaii limited partnership having its principal place of business in Wailuku, Maui, Hawaii. The principals of the Petitioner are members of a family that has held the property for several generations.

10. Fee simple ownership of the Property is vested in the Petitioner.

11. The Property is located in Maui, consists of approximately 88 acres, and is identified for planning and regulatory purposes as a portion of the approximately 6,000 acres owned by Kaonoulu Ranch. The Property is specifically identified

as Tax Map Key Nos. 2-2-02: portion of parcel 15 and 3-9-01: parcel 16.

12. The Property is located in the Kaonoulu ahupua'a, Wailuku and Makawao District, Island of Maui. From the intersection of Piilani Highway and Kulanihakoi Gulch, the Property boundary extends approximately 2,370 feet in a generally northerly direction following the east or mauka edge of the Piilani Highway right-of-way. The boundary of the Property then extends approximately 1,766 feet in an easterly or mauka direction. The boundary of the Property extends approximately 2,050 feet in a southerly direction to Kulanihakoi Gulch. The Property's boundary, along its southern extent, is approximately 1,660 feet following along the north edge of Kulanihakoi Gulch.

13. Portions of the Property are contiguous to existing urban areas and an existing light industrial area already in the State Urban District abuts the Property to the north. The light industrial uses clustered near Piilani Highway include a gasoline filling station, a commercial light-industrial complex, and a cold and self storage facility.

14. On the mauka or eastern side of the Property, there is a commercial nursery as well as broad expanses of vacant dry grassland which extend gradually higher in elevation to the Kula region. Kulanihakoi Gulch and vacant properties border the Property to the south. Lands further south include the Kihei Research and Technology Park and Silversword Golf Course. The Property is bounded on the makai or west side by Piilani Highway.

Further makai lies the Ka Ono Ulu Estates residential subdivision and the Maui Lu Resort.

15. The Property is vacant and is being used for cattle grazing. The Property is generally characterized by kiawe and buffelgrass.

16. The Property soils, under the Detailed Land Classification of the Land Study Bureau rated the Property's overall (master) productivity rating as "E", or very poorly suited for agricultural production. The Agricultural Lands of Importance to the State of Hawaii (ALISH) system, classifies all but a three acre area of the Property as Unclassified. The remaining three acres, located at the southwest corner of the Property, are classified as "Prime."

17. The Property consists of Waiakoa extremely stony silty clay loam, 3 to 25 percent slopes, eroded (WID2) and Alae sandy loam, 3 to 7 percent slopes (AaB).

18. The Property is gently sloping with an average gradient of 4.1 percent, and elevations ranging from approximately 31 feet to 124 feet above sea level.

19. Average rainfall distribution in the Kihei-Makena region varies from under 10 inches per year to 20 inches per year in the higher elevations. Winds average 10 to 15 miles per hour during the afternoons with slightly lighter winds during mornings and nights.

20. The Property is designated as Zone "C", an area of minimal flooding, by the Flood Insurance Rate Map.

PROPOSAL FOR RECLASSIFICATION

21. Petitioner proposes to develop the Property as the Kaonoulu Industrial Park, a 123-lot commercial and light industrial subdivision. Improved lots are proposed to be sold in fee simple or leased on a long-term basis. The size of the lots will range from approximately 14,000 square feet to 54,000 square feet.

22. The preliminary estimate for the cost of constructing the on-site and off-site infrastructure improvements is approximately \$19,929,995.00 in 1994 dollars.

23. Petitioner anticipates that the Project will be available for sales in the fourth quarter of 1996 and that the entire Project can be marketed by the year 2000, assuming the orderly processing of necessary land use approvals and avoidance of undue delays.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

24. Petitioner's balance sheet as of December 31, 1993 reflects the total assets of \$3,884,568.00, which includes the Property, marketable securities and other assets. The balance sheet also indicates liabilities of \$3,884,568.00, which includes a mortgage loan, accounts payable, accrued expenses, and the partners' capital of \$908,952.

25. Petitioner has represented that it intends to either sell the equity in the project to a developer, enter into a joint venture to develop the property, or complete the development itself. Upon a sale of its equity interest to a

developer in the project, Petitioner has represented that it will commit to placing safeguards in the sales documents to assure that conditions for the boundary amendment are carried out.

STATE AND COUNTY PLANS AND PROGRAMS

26. The entire Property is located within the State Land Use Agricultural District as depicted on the State Land Use District Boundary Map, M-8 (Puu O Kali).

27. The proposed request to reclassify approximately 88 acres from the Agricultural District to the Urban District is in keeping with the following General Plan objective and policy:

Objective: To provide an economic climate which will encourage controlled expansion and diversification of the County's economic base.

Policy: Maintain a diversified economic environment compatible with acceptable and consistent employment.

28. The Property is located within the Kihei-Makena Community Plan region. The Property is designated Project District 3 by the existing Kihei-Makena Community Plan Land Use Map. A description of the project district is noted in the community plan as follows:

"(Kihei Mauka) approximately 88 acres. This project district is located mauka of Piilani Highway and north of Kulanihakoi Gulch.

A mixture of single family and multi-family uses are envisioned for this residential project district."

Areas adjacent to the Property are designated as SF (Single-Family), LI (Light Industrial), PD4 (Project District 4), PD5 (Project District 5), OS (Open Space), P (Preservation), and AG (Agriculture).

29. The County of Maui is currently in the process of comprehensively updating each community plan.

The Kihei-Makena Citizen Advisory Committee ("CAC") reviewed the Kihei-Makena Community Plan from May 1992 to December 1992 and formulated a recommendation memorandum to the Maui County Planning Department's Director ("Director"). Petitioner initially had proposed a revision to the description of Project District 3 envisioning a mix of industrial, residential, recreational and public amenities. The CAC recommended approval of this proposal.

30. The Director reviewed the CAC's recommendations and formulated his own recommendations. Based on the number of residential projects developed and proposed for this area, it was concluded that there was a need for additional employment centers, particularly for light industrial uses. The Director proposed amending the Property's existing community plan designation from Project District 3 to Light Industrial.

31. The Maui County Planning Commission ("Planning Commission") reviewed the package of recommendations to the Kihei-Makena Community Plan. The Planning Commission agreed with the Director's recommendation of a Light Industrial designation for the Petition Area. A public hearing was held in September 1993 with the entire set of recommendations being transmitted to the Maui County Council in January 1994. Maui County Council action on the proposed changes to the community plan is pending.

32. The Project would conform with the proposed Light Industrial designation for the Property. Light industrial uses

include warehousing, light assembly, and service and craft-type industrial operations.

33. The Property is not zoned by the County of Maui. The Maui County Planning Department has an application for change of zoning filed by the Petitioner. The application will be scheduled for Planning Commission review only if Urban State Land Use Classification is granted by the Land Use Commission and a Light Industrial designation is granted for the Property by the Maui County Council on the Kihei-Makena Community Plan map.

34. The Maui County Planning Department represented that they will request that the Maui County Council condition any change of zoning with appropriate limitations on commercial uses allowable under the County light industrial zoning ordinance as was done with Kahului Industrial Park.

35. The Property is located outside of the County's Special Management Area ("SMA").

NEED FOR THE PROPOSED DEVELOPMENT

36. Petitioner has represented that the Project will provide new employment opportunities for Maui residents and will serve the needs of the Kihei-Makena region. There is a shortage of commercial and light industrial space for businesses servicing the Kihei-Makena region. Given the growth anticipated for the Kihei region, Petitioner believes that businesses will increasingly prefer to locate in Kihei rather than in Maui's urban core.

37. Petitioner has represented that the Property presents a convenient location for future commercial and light

industrial development, resulting in the reduction of transportation and other costs. The Property is located along Piilani Highway, a two-lane, two-way State arterial highway. From its northern terminus with North/South Kihei Road, Piilani Highway extends to the Wailea-Makena region.

38. The adjacent light industrial park located to the north of the Project is composed of developed rental units marketed as building space. The 88 acre Petition Area would be subdivided and sold as individual parcels, providing businesses with the opportunity to purchase lots in fee simple and to build their own structures.

ECONOMIC IMPACTS

39. On a short-term basis, the Project will support construction and construction related employment. Over the long term, the Project will provide light industrial and commercial employment opportunities for Maui residents.

SOCIAL IMPACTS

40. South Maui's population is expected to expand nearly 30% between 1990 and the year 2000. The current resident population of the Kihei-Makena region is estimated at 15,365. The projected resident population for the years 2000 and 2010 are 19,885 and 24,514, respectively.

IMPACTS UPON RESOURCES OF THE AREA

41. The Project is not expected to have an adverse impact upon surrounding land uses.

42. The Petition Area is currently utilized for cattle grazing. The conversion of three acres of prime land is not

anticipated to have a significant impact on the existing operations of Kaonoulu Ranch or agricultural resources of the State.

43. The project is not expected to significantly impact any rare, threatened, or endangered flora or fauna. Some native plants species, such as pili grass, 'ilima, 'uhaloa and alena, occur on the site but are found commonly in similar communities throughout the State.

44. Petitioner has represented that the Project will not adversely affect adjoining properties and sedimentation hazards to coastal waters and downstream properties will be minimized. However, the Department of Health (DOH) commented that measures should be taken to minimize surface and groundwater contamination from the proposed industrial activities on the project site. According to DOH, the runoff from the project will enter Kulanihakoi Gulch and drain into the coastal waters of Kihei. Currently, water quality standards are exceeded in this water body and cannot be met unless non-point source pollution is controlled. Thus, the potential impacts, particularly cumulative, of urban development in this area on the quantity of stormwater runoff and the pollution of stream and ocean water resources are major concerns.

45. DOH and the Coastal Zone Management Program recommended that conditions be imposed to assure that stormwater runoff from the project site to Kulanihakoi Gulch from a 100-year storm will not exceed the present rate of the undeveloped project site.

46. Recreational facilities in close proximity to the Petition Area include the Silversword Golf Course, Kalama Park, Kalepolepo Park, the Kamaole Beach Parks, and numerous other beach parks along the Kihei coastline. The extent to which employees within the Project will reside in the Kihei-Makena region is not known; any impacts on recreational resources would be more appropriately addressed at the time of application of specific residential projects.

ARCHAEOLOGICAL RESOURCES

47. Petitioner submitted to the Department of Land and Natural Resources ("DLNR") a draft archaeological report by its consultant Xamanek Researches entitled Archaeological Inventory Survey, Data Recovery and Botanical Survey Report, Ka Ono Ulu Light Industrial Park, Kaonoulu Ahupua'a, Wailuku and Makawao Districts, Island of Maui, E.M. Fredericksen, W.M. Fredericksen, and D.L. Fredericksen (1994).

48. Twenty historic sites were identified in the Petition Area. DLNR concurred with the significance assessments and recommended treatments requiring no further archaeological work for nineteen of the twenty identified historic sites (50-10-3727 through -3745). The draft survey report recommended that the petroglyph site be either moved to a more secure location or incorporated into the landscaping. However, DLNR requested that additional information regarding the petroglyph site (50-10-3746) be provided prior to recommendation for final treatment.

49. Petitioner submitted a revised inventory survey report which was accepted by DLNR on September 1, 1994. The revised inventory survey report suggested two alternative preservation strategies for the petroglyph site: curating the petroglyph stone at the Maui Historical Society Bailey House Museum or displaying the stone within the ahupuaa of Kaonoulu, perhaps within the landscaping of the Property. DLNR recommended consideration of the second alternative only if a secure location for the stone can be guaranteed. The DLNR also recommended that to fully determine the effects of the Project on the petroglyph site, a more specific preservation plan for the site should be submitted.

50. On August 30, 1994, Petitioner moved the petroglyph to an existing garden at Kaonoulu Ranch headquarters in Kula, Maui, Hawaii, within the mauka portion of the Kaonoulu ahupua'a for preservation and maintenance. A primary concern in the relocation of the petroglyph was its safety and security. The petroglyph has been placed within a garden cared for by the Rice family and Kaonoulu Ranch employees. At the time the boulder containing the petroglyph was moved, the persons involved with its relocation had no knowledge that a DLNR approved preservation plan was required prior to its relocation.

51. At its new location a blessing was held. "[T]he Rice family, as managing partners of the Petitioner, felt that the boulder should be retained within the same ahupua'a as its original location."

52. Petitioner's consultant, Munekiyo & Arakawa, Inc., submitted an after-the-fact preservation plan to the State Historic Preservation Division for review. DLNR has indicated approval of the after-the-fact preservation plan for the interim preservation measures. However, approval of proposed long term measures is pending review by the DLNR.

53. Petitioner has represented that it will work with the Historic Preservation Division on a long-term preservation plan.

SCENIC AND VISUAL

54. The landscaping plan proposed for the Project will minimize the visual impacts of the proposed development on the Project's relatively long frontage along Piilani Highway. Design controls for setbacks will be imposed within the Project to further foster mitigation of visual impacts. The size and design of the individual lots provide relatively large areas so buildings can be constructed fairly deep in the lot to further minimize the visual impact of the Project from Piilani Highway. Petitioner has represented that site planning, architecture, landscape designs, signage and lighting will be addressed during the zoning process.

55. The 30 foot landscape setback will still allow widening of Piilani Highway without lessening the 30 foot setback along the frontage of the Kaonoulu Industrial Park project.

56. Landscaping materials and the irrigation system for the Project will apply County xeriscape principles and take into account Kihei's environs and water conditions.

ENVIRONMENTAL QUALITY

57. The Project will not significantly impact ambient noise conditions in the vicinity. Potential noise impacts include increased traffic volumes and construction activities. Heavy manufacturing and processing of raw materials will not be allowed in the Project. Mitigation measures include limiting construction activities to daylight working hours, and maximum setbacks.

58. The project will have no significant impacts on air quality. Project-related traffic will generate automotive emissions but are not expected to adversely impact local and regional air quality conditions. Petitioner has represented that dust control measures will be implemented during construction to minimize expected wind-blown emissions.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

59. The Petitioner believes that public services and facilities will be adequate to meet the demands of the Project.

SOLID WASTE DISPOSAL

60. The County's Department of Public Works and Waste Management ("DPWWM") recommended that Petitioner and its contractors implement solid waste reduction, re-use and recycling programs to reduce the amount of solid waste to be disposed of at the County landfill. DPWWM also recommended that alternative means of disposal of grubbed material and rock be utilized other than disposal at the County landfills. Finally, the DPWWM recommends that refuse collection be by a private collector.

61. Petitioner has represented that it will develop a solid waste management plan in coordination with the Solid Waste Division of DPWWM, that the Project will be serviced by a private refuse collection company, and that waste will be disposed of in the Central Maui landfill.

SCHOOLS

62. Educational facilities for the Kihei area include Kihei Elementary School which serves K-5 and Lokelani Intermediate School which serves 6-8. Public school students in grades 9 through 12 attend Baldwin High School in Wailuku. A second Kihei elementary school is proposed to be constructed and operated by 1996 for the Kihei area. Petitioner has represented that the extent to which employees within the Project will reside in the Kihei-Makena region is not known; any impacts on educational resources would be more appropriately addressed at the time of application of specific residential projects.

POLICE, FIRE PROTECTION AND HEALTH CARE FACILITIES

63. Police services are provided by the Kihei Patrol. The Police Department is headquartered at its Wailuku station.

64. Fire protection services are provided by the County's Department of Fire Control at its Kihei Station which is located on South Kihei Road approximately 2.6 miles from the Petition Area.

65. Maui Memorial Hospital, the only major medical facility on the island, services the Kihei-Makena region. Acute, general and emergency care services are provided by the 145-bed

facility. Medical and dental offices are located in the Kihei area to service the region's residents.

66. The Project is not anticipated to affect service capabilities of police, fire and emergency medical operations. The Project will not extend existing service area limits for emergency services.

ELECTRICITY AND TELEPHONE SERVICE

67. Electrical and telephone trunk lines will be extended underground across Piilani Highway to the Petition Area from Kaonoulu Street. The distribution system for these facilities will also be placed underground in accordance with the provisions of the Maui County Code.

HIGHWAYS AND ROADWAYS

68. The Project fronts the Piilani Highway, which is the primary arterial highway in the region. The Project may result in a decline of intersection conditions if mitigation measures are not implemented. Projected regional highway improvements either forecasted or planned and proposed roadway improvements by the Petitioner would mitigate the increase in traffic.

69. Primary access to the Property is proposed from Piilani Highway through a new segment of East Kaonoulu Street, within an 80-foot wide right of way, designed to accommodate five (5) eleven-foot (11') lanes of traffic. The four access roadways into the Project off of East Kaonoulu Street are proposed within a 64 foot right-of-way to accommodate four (4) ten-foot (10')

lanes. All other interior roadways will have a thirty-six (36) feet wide pavement section within a 60 foot right-of-way.

70. The proposed project would change the existing T-intersection of Piilani Highway and Kaonoulu Street to a cross intersection and alter the traffic demand in the vicinity of Kaonoulu Street. Left turn storage lanes and a deceleration lane for right turns would be required to the existing two-lane Piilani Highway to accommodate the proposed industrial subdivision. Improvements to accommodate traffic would also be required on the makai side of the Kaonoulu intersection, such as a conversion of the existing right turn only lane to a right turn and through option lane. This improvement would require striping, signage, and may require the removal and/or relocation of a small traffic island.

71. A road widening strip will also be provided along the westerly boundary of the project for future widening of Piilani Highway. Widening of the highway will not affect the landscaping setback planned for the frontage along Piilani Highway.

72. The DPWWM has indicated that a traffic signal should be installed at the intersection of the proposed subdivision and Piilani Highway to the satisfaction of DPWWM. DPWWM has also indicated that Petitioner should construct at a minimum all traffic road improvements stated in the Traffic Impact Analysis Report dated March 1994 for the year 2010 requirements. This would include the expected need to signalize at least one of the internal intersections within the Kaonoulu

Industrial Park. DPWWM also represented that the Petitioner provide a road widening lot wide enough to accommodate the anticipated road connection of the Kula-Kihei road through the subdivision to its connection with Piilani Highway.

73. A condition of the SMA approval for the Ka Ono Ulu Estates residential subdivision requires that they construct or install the traffic signals at the intersection of Kaonoulu Road and Piilani Highway upon 25% occupancy of that subdivision. The traffic generated by the Kaonoulu Industrial Park project by the year 2000 would also justify signalization at the intersection of the proposed subdivision and Piilani Highway.

74. Petitioner has represented that it will construct all streets within the industrial park to County standards in compliance with the comment by DPWWM that streets include concrete curbs and gutters, six foot sidewalks, and four feet wide planting strips, which improvements would be dedicated to the County upon completion.

75. Completed improvements to South Kihei Road, currently being undertaken, to expand the number of lanes, will help traffic conditions in the area of the Project.

76. Roadways connecting neighboring existing and future developments, and a frontage road system would result in less traffic on Piilani Highway, and would mitigate the need for additional intersections on the Highway.

WATER

77. Petitioner has represented that water for the Project will be provided by the domestic system servicing the

area and that the average daily demand for the Project is estimated to be approximately 429,500 gallons per day based on Department of Water Supply criteria of 6,000 gallons per acre per day.

78. Petitioner also represented that a new 12-inch line is proposed to be installed between Ohukai Road and the Project site. An easement would have to be obtained across land owned by Haleakala Ranch. A new distribution system would be installed within the subdivision streets to meet the required fire and domestic flow demands of the Project. Fire hydrants would be installed at appropriate intervals throughout the project. The existing 36-inch transmission line which extends diagonally across the Petition Area may be relocated within the subdivision street right-of-ways.

79. The County testified that the issue of water availability and required improvements could be reviewed in greater detail during the change of zoning process for the proposed project.

80. Petitioner's pro-rata share water source development and storage assessments are expected to be paid as part of the new County of Maui water meter fees.

81. Petitioner has been meeting with representatives of the Board of Water Supply, County of Maui, to participate in developing new water sources in north Waihee if necessary. On October 24, 1994, the Director of the Board of Water Supply, County of Maui, wrote:

Kaonoulu Ranch ha[s] agreed to assist the Board of Water Supply (BWS) in developing water, if negotiations with C. Brewer Properties, Inc. are not concluded by early 1995 when Brewer's pump installation permit expires. The assistance would be on the property the BWS has a land option position which will allow development of water without condemnation of property.

The Board of Water Supply concludes: "We feel that this assistance will satisfy the demands of the project."

WASTEWATER TREATMENT AND DISPOSAL

82. The Project when completed will generate an average flow of approximately 300,000 gallons per day of wastewater.

83. A new wastewater collection system will be installed within the subdivision streets to be connected by gravity lines to the existing sewer system located makai of Piilani Highway at the intersection of Kaiola and Kenolio Streets. Petitioner is willing to participate with the County and other users in upgrading the wastewater transmission treatment and reclamation facilities on an equitable pro-rata basis if necessary.

84. Petitioner has represented that there is a little over half a million gallon capacity left in the existing Kihei Wastewater Treatment Facility. The County's capacity ordinance for the allocation of commercial use is presently depleted. Petitioner has the option of going to the County Council to request the release of more capacity for commercial use. However, the expansion of the County wastewater facility by another 2 million gallons per day is expected to be completed by

late 1996, and will be adequate to handle the needs of the Kaonoulu Industrial Park. Based on this expansion, the County has represented that they will re-analyze its existing capacity ordinance.

DRAINAGE

85. The Property is designated Zone "C", an area of minimal flooding, by the Flood Insurance Rate Map.

86. Currently, runoff from lands mauka of the Property sheet flows through the Property by means of a natural drainageway. The drainageway discharges into Kulanihakoi Gulch approximately 1,200 feet downstream of the Petition Area.

87. The Project is expected to generate 228.8 cfs of on-site drainage volume, representing a net increase of approximately 168.3 cfs of surface runoff due to the proposed development.

88. The primary concern of the County is that no additional flows are added to Kulanihakoi Gulch to impact downstream properties.

89. Petitioner has represented that various erosion control measures will be in place during development of the Project. The Project will not adversely affect adjoining properties and sedimentation hazards to coastal waters and downstream properties will be minimized.

90. Petitioner has represented two options for on-site drainage improvements, neither of which will increase the runoff into Kulanihakoi Gulch. One option is to send all runoff generated from the individual lots to subsurface systems

constructed in each lot and buried in the parking lot; while runoff from the common areas of the Project, approximately 45 cfs, would be collected into a storm drain system and directed to Kulanihakoi Gulch. The other option is to build a detention basin offsite and mauka of the Project, on other property owned by the Petitioner to retain and release offsite runoff slowly while onsite runoff will flow directly into Kulanihakoi Gulch. The detention basin will be designed in a way that does not release the runoff flowing into Kulanihakoi Gulch from both offsite and the post-development project site beyond the current levels.

91. Petitioner proposes, as an off-site drainage improvement, construction of a concrete-lined diversion ditch along the easterly boundary of the Project site. The diversion ditch would intercept the off-site surface runoff which presently flows through the Project site and divert it around the Project site, where it will be discharged into Kulanihakoi Gulch as it is presently doing.

92. The drainage improvements will mitigate silt and maintenance of the system will be spelled out in the Covenants and Restrictions for the Project.

93. Petitioner has represented that it is willing to discuss its participation in improvements to Kulanihakoi Gulch.

94. The County has represented that it requires all development to contain runoff on site, and that the Petitioner's drainage plan will be subject to County review and will be required to meet all county requirements for drainage.

95. DPWWM commented that Petitioner should provide to DPWWM a copy of the approved water quality report including mitigation measures (acceptable to the Department of Health) which evaluated the quality of the storm water discharging into the ocean receiving waters and which includes a discussion on sediment and nutrient loadings at all drainage outlets.

CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

96. The Project is proposed as an industrial park which would be sold in fee simple to purchasers or leased on a long-term basis. Uses are anticipated to primarily be light industrial and commercial uses oriented to serve the Kihei-Makena community.

97. The Project would provide needed commercial and light industrial business services in the region. The Project will provide additional job opportunities in an area with predominantly resort and service-oriented employment opportunities.

98. The Project is consistent with the current urban designation of the Property in the Kihei-Makena Community Plan, and the Planning Director's and Maui Planning Commission's light industrial urban designation in the recommended update of the Kihei-Makena Community Plan.

99. The Project would have a minimal impact on agriculture in the State.

100. Public services either exist or will be expanded to correspond with the projected needs of the Project.

101. The market analysis and the County recommendation indicates a significant need for the Project.

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

102. The Project supports and is consistent with the applicable objectives, policies and priority guidelines of the Hawaii State Plan and the State Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

103. The Project is consistent with applicable objectives and policies of the Hawaii Coastal Zone Management Program.

104. Although the Property is within the State Coastal Zone Management Area, it is not within the Special Management Area established by the County of Maui pursuant to chapter 205A, HRS.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding not adopted by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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

CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS, and the State Land Use Commission Rules, under chapter 15-15, HAR, this Commission finds upon the clear preponderance of the evidence that the reclassification of approximately 88 acres, which is the subject of this Petition, from the Agricultural District to the Urban District, subject to the conditions stated in the Order below, is reasonable, not violative of section 205-2, HRS and consistent with the Hawaii State Plan as set forth in chapter 226, HRS, and the Coastal Zone Management Program as set forth in chapter 205A, HRS.

ORDER

IT IS HEREBY ORDERED that the Property being the subject of Docket No. A94-706 by Kaonoulu Ranch consisting of approximately 88 acres situated at Kaonoulu, Makawao-Wailuku District, Island of Maui, and being more particularly described as Tax Map Key Nos. 2-2-02: portion of parcel 15 and 3-9-01: parcel 16, shall be and the same is hereby reclassified from the Agricultural District to Urban District, and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the County of Maui.
2. Petitioner shall cooperate with the State Department of Health and the County of Maui Department of Public Works and Waste Management to conform to the program goals and

objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

3. Petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Waste Management.

4. Petitioner shall fund and construct adequate civil defense measures as determined by the State and County Civil Defense agencies.

5. Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall provide traffic signals at the intersection of Piilani Highway and Kaonoulu Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner shall also install a fence and appropriate screening, i.e. landscaping, etc., along the highway right-of-way in coordination with the State Department of Transportation. Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

6. Petitioner shall fund and construct adequate potable and non-potable water source, storage, and transmission

facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

7. Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.

8. Petitioner shall fund the design and construction of its pro-rata share of drainage improvements required as a result of the development of the Property, including oil water separators and other filters as appropriate, and other best management practices as necessary to minimize non-point source pollution into Kulanihakoi Gulch, in coordination with appropriate state and county agencies, such as the following:

a. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, where roofed or unroofed. The concrete floor shall be constructed so as to be able to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.

b. All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any

industrial liquids. Employees shall be instructed to prevent any industrial liquid spills onto the bare ground.

c. Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code.)

9. Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation District. The significance of these finds shall then be determined and approved by the Division, and an acceptable mitigation plan shall be approved by the Division. The Division must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawaii Revised Statutes.

10. A long term preservation plan for the petroglyph stone (Site 50-10-3746) that was removed from the project area shall be reviewed and approved by the State Historic Preservation Division. Long term preservation measures shall be implemented within 60 days after final approval of the preservation plan.

11. Petitioner shall contribute its pro-rata share to a nearshore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

12. Petitioner shall implement effective soil erosion and dust control methods during construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.

13. Petitioner shall create a buffer zone between lands designated as SF (Single-Family) by the County's Kihei-Makena Community Plan and industrial uses on the Property to mitigate impacts between future residential activities and the proposed industrial development.

14. In the event Petitioner sells its interest in the Project, Petitioner shall subject the Property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.

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

16. 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 Property, prior to development of the Property.

17. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

18. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

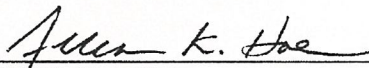
19. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the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


20. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

DOCKET NO. A94-706 - KAONOULU RANCH

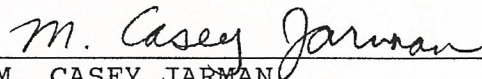
Done at Honolulu, Hawaii, this 10th day of February 1995,
per motion on February 2, 1995.

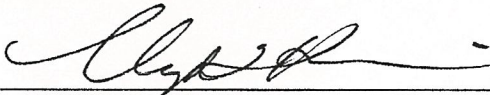
LAND USE COMMISSION
STATE OF HAWAII


By 
ALLEN K. HOE
Chairperson and Commissioner

By 
ALLEN Y. KAJIOKA
Vice Chairperson and Commissioner

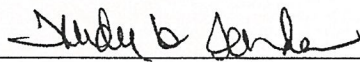
By (absent)
EUSEBIO LAPENIA, JR.
Vice Chairperson and Commissioner

By 
M. CASEY JARMAN
Commissioner

By 
LLOYD F. KAWAKAMI
Commissioner

By 
JOANN N. MATTSON
Commissioner

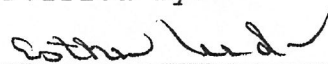
By (absent)
RENTON L. K. NIP
Commissioner

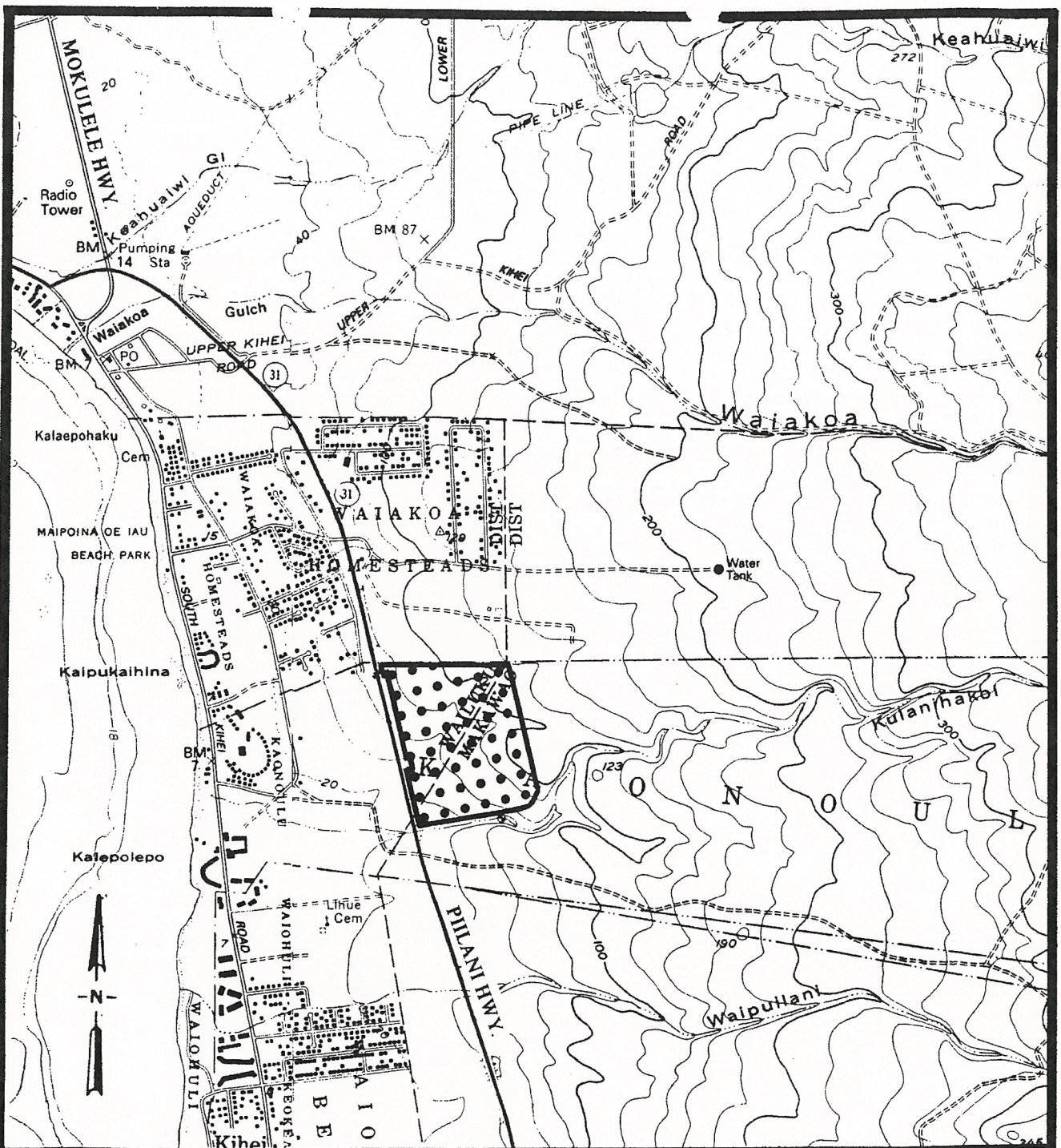
By 
TRUDY K. SENDA
Commissioner

By 
ELTON WADA
Commissioner

Filed and effective on
February 10, 1995

Certified by:


Executive Officer



LOCATION MAP

DOCKET NO. A94-706 / KAONOULU RANCH

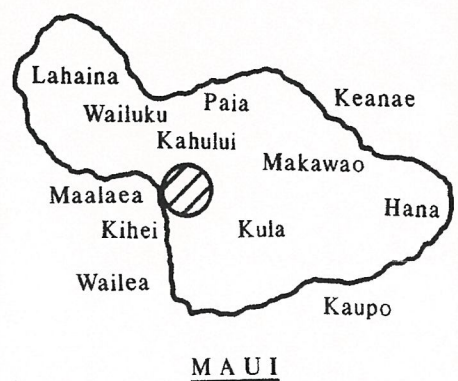
TAX MAP KEY: 2-2-02: por. 15 & 3-9-01: 16

KAONOULU, MAKAWAO-WAILUKU, MAUI



APPROVED AREA

SCALE: 1" = 2,000 ft. ±



MAUI

EXHIBIT "A"

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A94-706
)	
KAONOULU RANCH	)	CERTIFICATE OF SERVICE
)	
To Amend the Agricultural Land Use)	
District Boundary into the Urban)	
Land Use District for)	
approximately 88 acres at)	
Kaonoulu, Makawao-Wailuku,)	
Maui, Hawaii; Tax Map Key Nos.)	
2-2-02: por. of 15 and 3-9-01:16)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

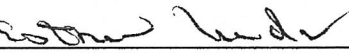
GREGORY G.Y. PAI, PH.D., Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. BRIAN MISKAE, Planning Director
Planning Department, County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. GUY A. HAYWOOD, ESQ.
Corporation Counsel
Office of the Corporation Counsel
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CERT. B. MARTIN LUNA, ESQ., Attorney for Petitioner
Carlsmith Ball Wichman Murray Case & Ichiki
2200 Main Street, Suite 400
Wailuku, Hawaii 96793-1086

DATED: Honolulu, Hawaii, this 10th day of February 1995.



ESTHER UEDA
Executive Officer

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Piilani Promenade North, LLC
60615

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A-94-706
)	
KAONOULU RANCH	)	PIILANI PROMENADE SOUTH, LLC
	)	AND PIILANI PROMENADE NORTH,
To Amend the Agricultural Land Use District	)	LLC'S MOTION TO STAY PHASE II OF
Boundary into the Urban Land Use District	)	THE ORDER TO SHOW CAUSE
for approximately 88 acres at Kaonoulu,	)	PROCEEDING; DECLARATION OF
Makawao-Wailuku, Maui, Hawai'i	)	JONATHAN H. STEINER; EXHIBIT "1";
	)	CERTIFICATE OF SERVICE
)	
)	

LAND USE COMMISSION
STATE OF HAWAII
2013 APR - 8 P 4: 06

Exhibit 52b

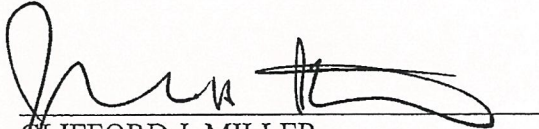
PIILANI PROMENADE SOUTH, LLC AND PIILANI PROMENADE NORTH, LLC'S
MOTION TO STAY PHASE II OF THE ORDER TO SHOW CAUSE PROCEEDING

COME NOW Piilani Promenade South, LLC ("PPS") and Piilani Promenade North, LLC ("PPN") (collectively "Piilani"), by and through its undersigned attorneys, hereby move the Land Use Commission of the State of Hawaii (the "Commission") to stay Phase II of the show cause hearing ordered by the Commission in that certain Order Granting Movants' Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief dated September 10, 2012, until such time as the Commission renders a decision on a Motion to Amend the 1995 D&O, which Piilani intends to file by not later than December 31, 2013.

This Motion is brought pursuant to Hawaii Administrative Rules ("HAR") sections 15-15-1, 70 and 71, and is supported by the attached affidavit of Simon J. Honeybone, and the records and files contained in this docket.

Pursuant to HAR section 15-15-70(c), Piilani hereby requests a hearing on this motion.

Dated: Honolulu, Hawai'i, April 8, 2013.


CLIFFORD J. MILLER
JOEL D. KAM
JONATHAN H. STEINER

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Piilani Promenade South, LLC ("PPS") and Piilani Promenade North, LLC ("PPN") (collectively "Piilani") hereby request that the Commission stay Phase II of the pending Order to Show Cause proceeding, on the basis that Piilani has not proceeded with and will not be proceeding with any development which will violate the 1995 D&O, but instead will file a Motion to Amend the 1995 D&O.

II. BACKGROUND

In 1994 Kaonoulu Ranch (the "Original Petitioner") filed a Petition for District Boundary Amendment to amend the Land Use District Boundary to reclassify approximately 88 acres of land at Kaonoulu, Makawao-Wailuku, Maui, Hawaii, specifically identified at the time by Tax Map Key Nos. 2-2-02: portion of 15 and 3-9-01:16 (the "Petition Area") from the Agricultural District to the Urban District. On February 10, 1995, the Commission issued the 1995 D&O reclassifying the Petition Area to the Urban District subject to certain conditions specified therein.

In or about 2005, the Original Petitioner conveyed the Petition Area to Maui Industrial Partners, LLC ("MIP"). In or about 2009, MIP conveyed part of the Petition Area, specifically approximately 13 acres identified as TMK (2) 3-9-001:169 ("the Honua'ula Parcel") to Honua'ula Partners, LLC. In or about 2010, MIP conveyed the remainder of the Petition Area, specifically the portion of the original Petition Area designated by TMK Nos. (2) 3-9-001:016 and 170-174 (the "Piilani Parcels"), to Piilani. Piilani is not affiliated with Honua'ula, and has separate ownership.

On May 23, 2012, Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahale (collectively, "Intervenors") filed a Motion for a

Hearing, Issuance of Order to Show Cause, and Other Relief (the "Motion for Order to Show Cause"). In the Motion for Order to Show Cause, Intervenor contended, among other things, that the intended use of the Piilani Parcels by Piilani for the development of retail shopping complex violated Conditions 5, 15, and 17 of 1995 D&O. Condition 5 provides:

5. Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall provide traffic signals at the intersection of Pi'ilani Highway and Ka'ono'ulu Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner shall also install a fence and appropriate screening, i.e., landscaping, etc., along the highway right-of-way in coordination with the State Department of Transportation. Petitioner shall provide for a frontage road parallel to Pi'ilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

Condition 15 provides:

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

Condition 17 provides, in relevant part:

17. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein.

On September 10, 2012, the Commission granted Intervenor's Motion for Order to Show Cause, and ordered that a show cause hearing be set as to the entire Petition Area (the "Show Cause Hearing"). On September 11, 2012, the Commission entered a Prehearing Order, wherein it was stated that the Commission would first hold hearings to consider whether Piilani and Honua'ula had violated the 1995 D&O (hereinafter "Phase I"). Thereafter, if a violation was

found, the Commission would then proceed to hold hearings to determine whether reversion or other designation is the appropriate remedy (hereinafter "Phase II").

On November 1, 2, 15 and 16, 2012, the Commission heard evidence and arguments in Phase I of the Order to Show Cause. At a meeting on February 7, 2013, a majority of the members of the Commission orally passed a motion finding that Piilani's and Honua'ula's proposed uses of the Piilani Parcels and the Honua'ula Parcel would violate Conditions 5 and 15 of the 1995 D&O, and that Condition 17 had also been violated. No written order reflecting that oral motion has been entered.

As of the date of this filing, a hearing on Phase II of the Order to Show Cause has not been scheduled, nor have any exhibits, evidence, or arguments been submitted by any party to the Order to Show Cause proceeding in Phase II.

III. STAY OF SHOW CAUSE HEARING

By this motion, Piilani respectfully requests that the Commission stay Phase II of the Show Cause Hearing until such time as the Commission renders a decision on a Motion to Amend the 1995 D&O, which Piilani intends to file by December 31, 2013. A stay of the Show Cause Hearing is appropriate because, based on the Commission's finding that the development of the Piilani Promenade project would violate the 1995 D&O, Piilani will not develop the Piilani Promenade project, but will instead be moving to amend the 1995 D&O to allow for development of the Piilani Parcels in a manner to be set forth in detail in said motion. As such, there will be no construction or development which will violate the 1995 D&O, and proceeding to Phase II would be an inefficient use of the Commission's and parties' resources.

The decision of the Commission that Piilani's proposed development would be in violation of Conditions 5 and 15 of the 1995 D&O presumably was based on Piilani's proposal to construct a retail shopping complex on the Piilani Parcels, the conceptual plans for which do

not include a frontage road. The Commission presumably found that development of this specific project pursuant to Piilani's existing conceptual plans would not be in substantial compliance with the representations made to the Commission by the Original Petitioner (Condition 15), and that the failure to incorporate a frontage road into the conceptual plans constitutes a violation of Condition 5 of the 1995 D&O.

Although mass grading permits were obtained by Piilani prior to the commencement of Phase I, no significant grading or other construction has occurred. Furthermore, Based on the finding by the Commission that the proposed development would violate the 1995 D&O, Piilani has elected not to construct the proposed Piilani Promenade as depicted in its conceptual plan presented to the Commission in Phase I of the Order to Show Cause hearing. Rather, Piilani represents that it will file, pursuant to HAR §§ 15-15-70 and 15-15-94, a Motion for Order Amending the 1995 D&O (hereinafter "the Motion to Amend"). Therein, Piilani will request that the Commission bifurcate this docket to re-designate a new docket covering only the Piilani Parcels, and to release the Piilani Parcels from the conditions of the 1995 D&O, and to impose new, appropriate conditions, allowing Piilani to develop a retail/commercial and/or light industrial project. The details of the conditions which Piilani will seek to amend, and the development upon which the Motion to Amend will be based are in the process of being formulated, and will be set forth in the Motion to Amend, including all impacts from the new proposed project. Unless and until that Motion to Amend is heard, Piilani will not commence any construction activities on the Piilani Parcels without express approval of the Commission.

The Commission has the inherent authority to manage proceedings before it in a just and efficient manner. HAR sec. 15-15-01 provides, in pertinent part:

Purpose. This chapter governs the practice and procedure before the land use commission and shall be construed to secure the just and efficient determination of every proceeding. This chapter shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawaii.

Given that there is and will be no construction activity on the Piilani Parcels, and also given Piilani's commitment to file the Motion to Amend and not to engage in construction on the Piilani Parcels unless and until the Commission grants the Motion to Amend, it would be unjust and inefficient to subject Piilani to Phase II of the Show Cause Hearing and the possibility of reversion of the Piilani Parcels to the Agricultural District. Fortunately, the Commission may easily avoid this result by suspending Phase II of the Show Cause Hearing until such time as the Commission has ruled upon the Motion to Amend. None of the other parties to the Show Cause Hearing, including Intervenors, would suffer any prejudice because Phase II of the Show Cause Hearing could be reset if Piilani should fail to file the Motion to Amend, or if the Commission should deny the Motion to Amend.

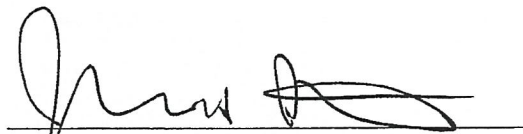
Neither Intervenors nor any other party be prejudiced with regards to the Honua'ula Parcel if Phase II of the Order to Show Cause Proceeding is stayed. In Phase I, Honua'ula's representative stated, on the record, that due to legal challenges and uncertainty in the market, Honua'ula has no present intention or plans to begin construction of the affordable housing project on the Honua'ula Parcel. See Testimony of Charles Jencks, Transcript of November 15, 2012 at 56:10-18, 58:10-16. Honua'ula has not taken any overt actions, such as seeking any permits, which would indicate an intent to begin construction of the affordable housing project on the Honua'ula Parcel. Piilani has no control over what Honua'ula will ultimately seek to do with regards to the determination in Phase II that its affordable housing project is in violation of the 1995 D&O. Piilani intends, when it files its Motion to Amend, to therein also seek to

bifurcate the docket herein, such that a new docket (or sub-docket) that is created would only apply to the Piilani Parcels.¹

IV. CONCLUSION

Based upon the foregoing, Piilani respectfully requests that the Commission grant this Motion.

Dated: Honolulu, Hawai'i, April 8, 2013.



CLIFFORD J. MILLER

JOEL D. KAM

JONATHAN H. STEINER

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC

¹ Alternatively, Piilani would not be opposed to the Commission bifurcating the docket at this time, to separate the Piilani Parcels and the Honua'ula Parcel into separate subdockets, each of which would only apply to each owners' parcel. Piilani and Honua'ula are separate entities, and the development of their parcels are not interdependent. For procedural reasons, it would appear to be more efficient to bifurcate as part of Piilani's Motion to Amend, but if the Commission would prefer to bifurcate at this time, Piilani would not object, and would be willing, if necessary, to file a motion seeking that relief.

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A-94-706
)	
KAONOULU RANCH	)	DECLARATION OF JONATHAN
	)	STEINER
To Amend the Agricultural Land Use District)	
Boundary into the Urban Land Use District)	
for approximately 88 acres at Kaonoulu,)	
Makawao-Wailuku, Maui, Hawai'i)	
)	
)	

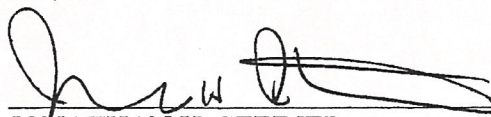
DECLARATION OF JONATHAN H. STEINER

I, JONATHAN H. STEINER, hereby declare that:

1. I am licensed to practice law in all courts of the State of Hawaii.
2. I am an attorney with the law firm of McCorriston Miller Mukai MacKinnon LLP, attorneys for Piilani Promenade South, LLC and Piilani Promenade North, LLC.
3. I have personal knowledge of the matters set forth herein except and unless stated to be upon information and belief.
4. Attached hereto as Exhibit "1" is a true and accurate facsimile copy of Simon J. Honeybone's Affidavit executed in Dallas, Texas. I understand the original is being mailed to my office from Texas, and I intend to file the original with The Land Use Commission upon receipt of the document.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Honolulu, Hawaii, April 8, 2013.


JONATHAN H. STEINER

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A-94-706
)	
KAONOULU RANCH	)	AFFIDAVIT OF SIMON J. HONEYBONE
)	
To Amend the Agricultural Land Use District)	
Boundary into the Urban Land Use District)	
for approximately 88 acres at Kaonoulu,)	
Makawao-Wailuku, Maui, Hawai'i)	
)	
)	
)	
)	

AFFIDAVIT OF SIMON J. HONEYBONE

I, Simon J. Honeybone, being duly sworn on oath, deposes and says:

1. I am the Vice President of Piilani Promenade South, LLC and Piilani Promenade North, LLC ("Piilani"), and am authorized and competent to testify on its behalf.

2. I am familiar with the property owned by Piilani which is the subject of this docket, and have personal knowledge of the facts set forth in the motion to which this affidavit is attached (the "Motion").

3. I make this affidavit pursuant to Haw. Admin. Rules sec. 15-15-39.

4. I have read the Motion and hereby verify that the contents thereof are true and correct to the best of my knowledge and belief.

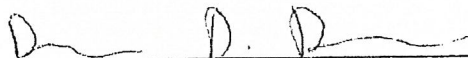
5. Piilani intends to file a motion to amend the 1995 D&O by not later than December 31, 2013, and will not undertake any construction on the parcels subject to the 1995 D&O owned by Piilani unless and until the Commission grants the Motion to Amend or otherwise allows such construction.

6. Capitalized terms used in this Affidavit have the meanings ascribed to such terms in the Motion, unless defined otherwise.

Further Affiant sayeth naught.


SIMON J. HONEYBONE

This Two page Affidavit of SIMON J. HONEYBONE
dated APRIL 3, 2013, was subscribed and
sworn to before me by SIMON J. HONEYBONE
APRIL 8, 2013, in the DALLAS COUNTY Circuit
of the State of Texas.


Name: DOMINIQUE D. DONOVAN
Notary Public, State of Texas



My commission expires:
JUNE 23, 2014

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date, a true and correct copy of the foregoing document was duly served upon the following party via certified mail, return receipt requested and electronic mail, addressed as follows:

TOM PIERCE, ESQ. tom@mauilandlaw.com
P.O. Box 798
Makawao, Hawai'i 96768

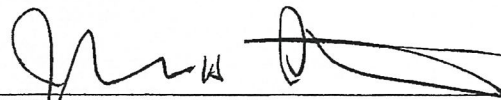
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Dated: Honolulu, Hawai'i, April 8, 2013.


CLIFFORD J. MILLER
JOEL D. KAM
JONATHAN H. STEINER

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of

KAONOULU RANCH To Amend the
Agricultural Land Use District Boundary into
the Urban Land Use District for approximately
88 acres at Kaonoulu, Makawao-Wailuku,
Maui, Hawaii; Tax Map Key Nos. 2-2-02:por.
of 15 and 3-9-01:16

Docket No. A94-706

LAND USE COMMISSION
STATE OF HAWAII
2013 AUG 30 A 8:42

**SEVENTEENTH ANNUAL REPORT OF PIILANI PROMENADE
SOUTH, LLC AND PIILANI PROMENADE NORTH, LLC,
SUCCESSOR PETITIONER TO KAONOULU RANCH (2012)**

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

COMES NOW Piilani Promenade South, LLC ("PPS"), and Piilani Promenade North, LLC ("PPN") (hereinafter collectively the "Successor Petitioner")¹, successor-in-interest to MAUI INDUSTRIAL PARTNERS, LLC ("MIP"), in regards to the real property which is the subject matter of Docket No. A94-706, as referenced above (the "Petition Area"), and pursuant to Condition No. 17 of the Findings of Fact, Conclusions of Law, and Decision and Order issued on February 10, 1995 (the "D&O"), hereby submits its Seventeenth annual report² of compliance

¹ PPS and PPN are Hawaii limited liability companies and the current owners of six of the seven parcels encumbered by the D&O. The parcels owned by Piilani are comprised of the following tax map key parcels: (2) 3-9-001:016 and 170-174, and are referred to collectively hereinafter as the "Piilani Parcels." The seventh parcel encumbered by the D&O is owned by Honua`ula Partners, LLC ("Honua`ula"). Honua`ula owns tax map key parcel (2) 3-9-001:169, referred to hereinafter as the "Honua`ula Parcel." This Annual Report only addresses the Piilani Parcels. Successor Petitioner understands that Honua`ula will file its own separate annual report.

² This Seventeenth Annual Report is submitted to replace what was previously entitled "Sixteenth Annual Report of Piilani Promenade South, LLC and Piilani Promenade North, LLC, Successor Petitioners to Kaonoulu Ranch" that was submitted by Successor Petitioners on October 10, 2012. Successor Petitioners have learned that the files of the Land Use Commission do not contain a copy of any Annual Report for the year 2009, filed by Maui Industrial Partners, LLC, which was the owner of the Petition Area during the year 2009. Rather, in 2010, a report

with the conditions established by said approval, for the year 2012, as follows:

General Progress of the Project

Kaonoulu Ranch (the "Original Petitioner") obtained a Community Plan Amendment and Change in Zoning for the Petition Area. On May 12, 2005, MIP purchased the fee simple interest in the Petition Area from the Original Petitioner, together with all of the interests in the Petition Area and its entitlements.

MIP actively engaged a consulting team to plan the development of the project consistent with the D&O. MIP also involved the County of Maui and the State of Hawaii Department of Transportation ("SDOT") in this effort. Subdivision of the Petition Area was applied for in September 2003, and civil construction plans for the Petition Area submitted to the County of Maui in May 2005 addressing all requirements for preliminary subdivision approval. Final bonded subdivision approval was received by MIP on August 14, 2009, for both a large lot subdivision of the Petition Area and for an additional subdivided lot in the Petition Area required for construction of County of Maui water system improvements for the subdivision. A copy of the subdivision approval letter and associated maps are attached hereto as **Exhibit "A"** for reference. Subsequent to the finalization of the large lot subdivision, PPS and PPN (i.e., the Successor Petitioner), purchased the Piilani Parcels from MIP. Lot 2A was bought by PPN, and Lots C and D were bought by PPS, as indicated on said **Exhibit "A"**

was filed entitled "Fourteenth Annual Report." Successor Petitioners therefore, of even date herewith, have submitted a Fourteenth Annual Report to cover the year 2009. In order to correct the numbering of the subsequent Annual Reports, Successor Petitioners are therefore submitting replacement Annual Reports for 2010 through 2012, with the correct numbering (Fifteenth through Seventeenth). The information contained herein is identical to that previously submitted, and Successor Petitioner represents that the information contained herein has been verified by Charles Jencks, who was the owner's representative of Successor Petitioner during the period covered by this Seventeenth Annual Report.

On April 11, 2012 and April 18, 2012, Maui County issued to Successor Petitioner two grading permits, placing Successor Petitioner in a position to begin construction of on-site and off-site infrastructure for the Piilani Parcels. The infrastructure which Successor Petitioner has committed to construct includes, but is not limited to, bikeways, sidewalks, a 1,000,000 gallon capacity water tank, drainage improvements, wastewater connections, a portion of the Kihei-Upcountry Highway (i.e., East Kaonoulu Street) to be constructed within the Petition Area, signalization along Piilani Highway, an electrical substation site for Maui Electric Company (MECO), and easements for future electricity service in the area. Commencement of this work has been delayed because of the filing of a number of administrative challenges to Successor Petitioner's proposed project, including the issuance of an Order to Show Cause by the Commission.

Piilani formulated a conceptual plan for a retail outlet center to be developed on the Piilani Parcels, which is known and marketed as Piilani Promenade. A copy of Piilani's conceptual plan is attached hereto as **Exhibit "B"**. Because the conceptual plan is conceptual in nature, the precise configuration of the on-site improvements to be constructed and the mix of tenants will depend upon, and be largely determined by, the commercial real estate market after infrastructure for the Piilani Promenade is completed and all necessary building permits and approvals for Piilani Promenade have been obtained. The Piilani Promenade conceptual plan includes space for uses which are classified light industrial and would provide for the sale of goods and services to contractors and also to the general public.

This Seventeenth Annual Report addresses compliance with the conditions of approval in the D&O for the Piilani Parcels.

Report on Compliance with Conditions Imposed by Commission

The following states whether the conditions in the approval have been met:

1. The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the County of Maui.

The Community Plan Amendment was approved on March 20, 1998, and the Change in Zoning application was approved by the Maui County Council and became effective on May 25, 1999.

2. Petitioner shall cooperate with the State Department of Health and the County of Maui Department of Public Works and Waste Management to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

Successor Petitioner intends to cooperate when applicable with the State Department of Health and the Department of Public Works and Environmental Management, formerly a part of the Department of Public Works and Waste Management.

3. Petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Waste Management.

Successor Petitioner intends to contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities and in fact have included those plans within the civil construction plans approved by the County of Maui.

4. Petitioner shall fund and construct adequate civil defense measures as determined by the State and County Civil Defense agencies.

Successor Petitioner intends to fund and construct adequate civil defense measures.

5. Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall provide traffic signals at the intersection of Piilani Highway and Kaonoulu

Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner shall also install a fence and appropriate screening, i.e. landscaping, etc., along the highway right-of-way in coordination with the State Department of Transportation. Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition Area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

Successor Petitioner intends to comply with this condition. Successor Petitioner has received approval of the civil construction plans for the Piilani Promenade project from all of the above-referenced agencies. This approval was granted by the County of Maui in August 2009 after over four (4) years of review and comment by such agencies, and adjustments to the project in response to such comments. Specific compliance with this condition has been achieved as follows:

1. Designs Accepted by the State Department of Transportation and County of Maui. Piilani Highway is a State highway and the future East Kaonoulu Street (a.k.a., the “Kihei-Upcountry Highway”) will also be a State highway. As a consequence, SDOT has reviewed and analyzed the proposed designs for these highway improvements, and accepted those designs as part of the final subdivision approval.
2. Signal Warrant Study. A Traffic Impact Assessment Report (“TIAR”) was prepared for the project which identifies the need for traffic signalization at the intersection of Piilani Highway and East Kaonoulu Street. Traffic signals are included in the approved civil construction plans for the Piilani Promenade project. A requirement for final subdivision approval of the Petition Area was that the TIAR be accepted by SDOT; SDOT has accepted the TIAR.

Subsequently, the TIAR was updated based on Successor Petitioner's conceptual plans for the Piilani Parcels and with input from the SDOT. Successor Petitioner continues to work with SDOT to address all additional comments SDOT may have regarding the updated TIAR.

3. Landscaping and Fencing. The landscape plans for the frontage along Piilani Highway and East Kaonoulu Street have been approved by the Maui County Arborist Committee and SDOT, and address the requirements of this condition.

4. Frontage Road. Condition 5 provides that Successor Petitioner shall provide a frontage road parallel to Piilani Highway and other connector roads within the Petition Area in coordination with other developments in the vicinity of the Petition Area, and subject to review and approval of SDOT and the County of Maui. This part of Condition 5 has been addressed as follows:

A. Parallel Frontage Road. The intersection of Piilani Highway and East Kaonoulu Street will be widened to include frontage lanes parallel to the Petition Area to provide access to the Petition Area. Development of an internal continuous frontage road parallel to Piilani Highway is not possible or necessary for the following reasons:

a. Since the issuance of the D&O, Piilani Highway has been widened from two to four lanes, and will be further widened and improved to include acceleration and deceleration lanes;

b. Successor Petitioner does not own or control the land located to the North or South of the Petition Area, and therefore the frontage road described in Condition 5 in effect would be a "road to nowhere"; and

c. The approved neighboring subdivisions do not require frontage lane access or have any roads to which a frontage

road located on the Piilani Parcels could be connected. Frontage lanes on the Piilani Parcels also would be inconsistent with SDOT's reviews of and comments on the roadway and other traffic system improvements for the Piilani Promenade project, because the above-described acceleration and deceleration lanes and multiple accesses will be constructed from the Piilani Parcels to the Kihei-Upcountry Highway. In addition, the Kihei-Upcountry Highway will bisect the Piilani Parcels and will provide numerous points of North-South access without the need for traffic to access Piilani Highway in order to pass through the Petition Area.

B. Connection to Access Roads Within the Petition Area.

(i) The circulation plan for the petition area includes one access point on the Piilani Highway and the construction of the first increment of the Kihei-Upcountry Highway (East Kaonoulu Street) through the Petition Area. Two intersections located at East Kaonoulu Street will provide access to the Petition Area and to the traffic circulation system serving the light industrial/commercial areas of Piilani Promenade. The location of these intersections is dictated by the boundaries of the subdivided lots comprising the Piilani Parcels and the spacing for the intersections mandated by SDOT.

(ii) Parallel access from the Petition Area north to Ohukai Street (a Maui County road) was obtained by the Original Petitioner by way of an access easement granted by the adjacent landowner (i.e., Haleakala Ranch). This easement, which is described within the final subdivision plan for the Petition Area approved by the County of Maui, establishes the parallel access described in this Condition 5, and is available for use by adjacent landowner Honua`ula. In addition, the Kihei Mauka project area proposed by both Kaonoulu Ranch and Haleakala Ranch is anticipated to include roads running Mauka and North/South from the Petition Area, which in the future will connect to Mokulele Highway along with other East/West connector roads.

3. Coordination with Other Developments. At the time the D&O was issued, properties to the North of the Petition Area were already entitled, subdivided and in some cases developed with no provision for connections to a circulation system or frontage roads within the Piilani Parcels. Land to the South of the Piilani Parcels includes a substantial drainage way, Kulanihakoi Gulch, and is not owned or otherwise controlled by Successor

Petitioner. In addition, no connections to the Piilani Parcels are proposed for the yet-to-be-developed Kihei High School.

4. Review by SDOT and County of Maui. The design for the traffic circulation system within the Petition Area and the standards for the location of East Kaonoulu Street were established through discussions with, and plan review by, SDOT and the County of Maui, and take into consideration the changes to Piilani Highway, the restricted access limitations for Piilani Highway and East Kaonoulu Street, and SDOT's design standards.

6. Petitioner shall fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

Successor Petitioner intends to fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. The approved civil construction plans for the Piilani Promenade project include both potable and non-potable water systems and waste water collection systems within and outside the Piilani Promenade project area. Successor Petitioner has committed to construct and dedicate a 1,000,000 gallon water tank to serve the needs of the Kihei-Makena community. Only a portion of the water tank capacity will be required for the Piilani Promenade project, and as a result, at least 75% of the water tank's capacity will be available to service the North Kihei area and areas south of the Petition Area, including the planned Kihei High School.

7. Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.

Successor Petitioner intends to participate in an air quality monitoring program if required by the Department of Health.

8. Petitioner shall fund the design and construction of its pro-rata share of drainage improvements required as a result of the development of the Property, including oil water separators and other filters as appropriate, and other best management

practices as necessary to minimize non-point source pollution into Kulanihakoi Gulch, in coordination with appropriate state and county agencies, such as the following:

a. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, where roofed or unroofed. The concrete floor shall be constructed so as to be able to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.

The Successor Petitioner intends to comply with this condition.

b. All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be instructed to prevent any industrial liquid spills onto the bare ground.

The Successor Petitioner intends to comply with this condition.

c. Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code.)

The Successor Petitioner intends to comply with this condition.

9. Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation District. The significance of these finds shall then be determined and approved by the Division, and an acceptable mitigation plan shall be approved by the Division. The Division must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawaii Revised Statutes.

The Successor Petitioner intends to comply with this condition.

10. A long term preservation plan for the petroglyph stone (Site 50-10-3746) that was removed from the project area shall be reviewed and approved by the State Historic Preservation Division. Long term preservation measures shall be implemented within 60 days after final approval of the preservation plan.

As stated in the Fifth Annual Report, the Petitioner prepared a long term preservation plan which has been approved by the State Historic Preservation Division, Department of Land and Natural Resources, State of Hawaii, a copy of which was transmitted to the Land Use Commission.

11. Petitioner shall contribute its pro-rata share to a nearshore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

Successor Petitioner intends to contribute its pro-rata share to a nearshore water quality monitoring program as it is determined.

12. Petitioner shall implement effective soil erosion and dust control methods during construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.

Successor Petitioner intends to implement effective soil erosion and dust control methods during construction.

13. Petitioner shall create a buffer zone between lands designated as SF (Single-Family) by the County's Kihei-Makena Community Plan and industrial uses on the Property to mitigate impacts between future residential activities and the proposed industrial development.

As shown on the 1985 Kihei/Makena Community Plan ("KMCP") attached hereto as **Exhibit "C"**, the 1985 KMCP provided for Single Family and Light Industrial uses for the area immediately adjacent to the PPN's part of the Petition Area. The current 1998 KMCP attached hereto as **Exhibit "D"**, provides for Light Industrial (LI) in the area in which the Piilani Parcels are located. The proposed use of the Petition Area is compatible with such Light Industrial designation. The Successor Petitioner understands its obligations to comply with this condition, but because the adjacent parcels are designated Light Industrial, it has determined that the current uses of these adjacent parcels are compatible with the Piilani Promenade project and therefore a buffer is unnecessary.

14. In the event Petitioner sells its interest in the Project, Petitioner shall subject the Property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.

Successor Petitioner intends to comply with the terms and conditions if the Commission's Decision and Order, and understands its obligation to comply with this condition.

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

Successor Petitioner intends to comply with this condition. In the Petition, the Original Petitioner proposed to develop a commercial and light industrial subdivision, and attached to the Petition a conceptual plan for that subdivision. In the material presented to the Commission, and in testimony presented to the Commission, it was represented that the conceptual plan presented only one conceptual alternative in response to the real estate market conditions at that time, and was subject to reassessment and adjustment, based on evolving market conditions. It was specifically disclosed to the Commission that the zoning being sought would allow for -- and that the Petition Area could include -- a retail commercial component, and that the amount of retail commercial uses developed would depend on the market demand at the time the project was to be developed on the Petition Area. The currently proposed use for the Piilani Parcels includes both light industrial and commercial uses as represented to the Commission.

16. 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 Property, prior to development of the Property.

Successor Petitioner intends to comply with this condition.

17. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning

Department in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Successor Petitioner intends to comply with this condition, and submits this annual report in compliance therewith.

18. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

Petitioner has recorded a Notice of Imposition of Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92 Hawaii Administrative Rules.

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

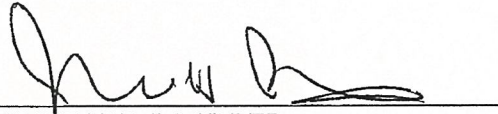
Petitioner has recorded a Document Listing Conditions to Reclassification of Land with the Bureau of Conveyances of the State of Hawaii and has filed a copy of the recorded document with the Commission.

20. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

The Successor Petitioner acknowledges that the Commission may fully or partially release the conditions provided herein.

Except as stated above, the responses in the Sixteenth annual report are still correct and remain unchanged.

Dated: Honolulu, Hawaii, August 28, 2013.

A handwritten signature in black ink, appearing to read 'Clifford J. Miller', is written over a horizontal line.

CLIFFORD J. MILLER

JOEL D. KAM

JONATHAN H. STEINER

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date a true and correct copy of the foregoing document was duly served upon the following parties at their last known address via U.S. Mail and electronic mail:

Daniel Orodenker Daniel.E.Orodenker@dbedt.hawaii.gov
Director
Office of Planning, Land Use Commission
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Bryan C. Yee Bryan.C.Yee@hawaii.gov
Deputy Attorney General
Department of the Attorney General
Commerce & Economic Development Division
425 Queen Street
Honolulu, Hawai'i 96813

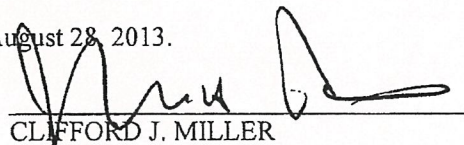
Jesse K. Souki, Director Jesse.K.Souki@dbedt.hawaii.gov
Planning Program Administrator
Office of Planning, Land Use Division
Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawai'i 96813

William Spence, Director William.Spence@co.maui.hi.us
Director, Planning Department
County of Maui
250 S. High Street
Kalana Pakui Building, Suite 200
Wailuku, Hawai'i 96793

Clifford J Miller, Esq. miller@m4law.com
Joel D. Kam, Esq. kam@m4law.com
Jonathan H. Steiner, Esq. steiner@m4law.com
500 Ala Moana Boulevard, 4th Floor
Five Waterfront Plaza
Honolulu, Hawaii 96813

Attorneys for Honua'ula Partners, LLC

DATED: Honolulu, Hawai'i, August 28, 2013.


CLIFFORD J. MILLER
JOEL D. KAM
JONATHAN H. STEINER

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director



RALPH M. NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
DEVELOPMENT SERVICES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

August 14, 2009

Mr. Darren Okimoto, P.E.
WARREN S. UNEMORI ENGINEERING, INC.
2145 Wells Street, Suite 403
Wailuku, Hawaii 96793

SUBJECT: **KAONOULU RANCH (LARGE-LOT) SUBDIVISION NO. 2**
TMK: (2) 3-9-001:016
SUBDIVISION FILE NO. 2.2795

KAONOULU RANCH-WATER TANK SUBDIVISION
TMK: (2) 2-2-002:015
SUBDIVISION FILE NO. 2.2995

Dear Mr. Okimoto:

Final approval for the subject subdivisions have been granted on August 14, 2009, based upon an "Agreement For Subdivision Approval" and "Subdivision Bond" in the following amounts totaling \$22,058,826.00:

Bond No. SU1102685 (Sitework Improvements)	\$1,256,710.00
Bond No. SU1102686 (East Kaonoulu Street Improvements)	2,299,046.00
Bond No. SU1102687 (Pillani Highway Widening Improvements)	1,411,106.00
Bond No. SU1102688 (Access Road and Swales)	1,771,330.00
Bond No. SU1102689 (Sewer System/Revisions)	712,592.00
Bond No. SU1102690 (Storm Drainage System/Revisions)	2,895,052.00
Bond No. SU1102691 (Onsite Water System)	834,700.00
Bond No. SU1102692 (12" Offsite Water/1MG Water Tank)	4,802,784.00
Bond No. SU1102693 (36" Water Main/Water/Misc. Revisions)	2,444,940.00
Bond No. SU1102694 (Electrical)	885,566.00
Bond No. SU1102695 (Traffic Signal Improvements)	643,000.00
Bond No. SU1102696 (Landscape/Irrigation)	1,202,000.00
Bond No. SU1102697 (CRM Walls)	\$ 900,000.00

The approved final plats and copies of the "Agreement For Subdivision Approval" and "Subdivision Bond" are enclosed for your records.

EXHIBIT " A "

Mr. Darren Okimoto, P.E.

SUBJECT: KAONOULU RANCH (LARGE-LOT) SUBDIVISION NO. 2
SUBDIVISION FILE NO. 2.2795
KAONOULU RANCH-WATER TANK SUBDIVISION
SUBDIVISION FILE NO. 2.2995

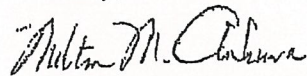
August 14, 2009

Page 2 of 2

The "Agreement For Subdivision Approval" and "Subdivision Bond" stipulates that the Subdivider shall complete the required subdivision improvements on or before July 17, 2010.

If you have any questions regarding this letter, please contact Lesli Otani of our Development Services Administration at 270-7252.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

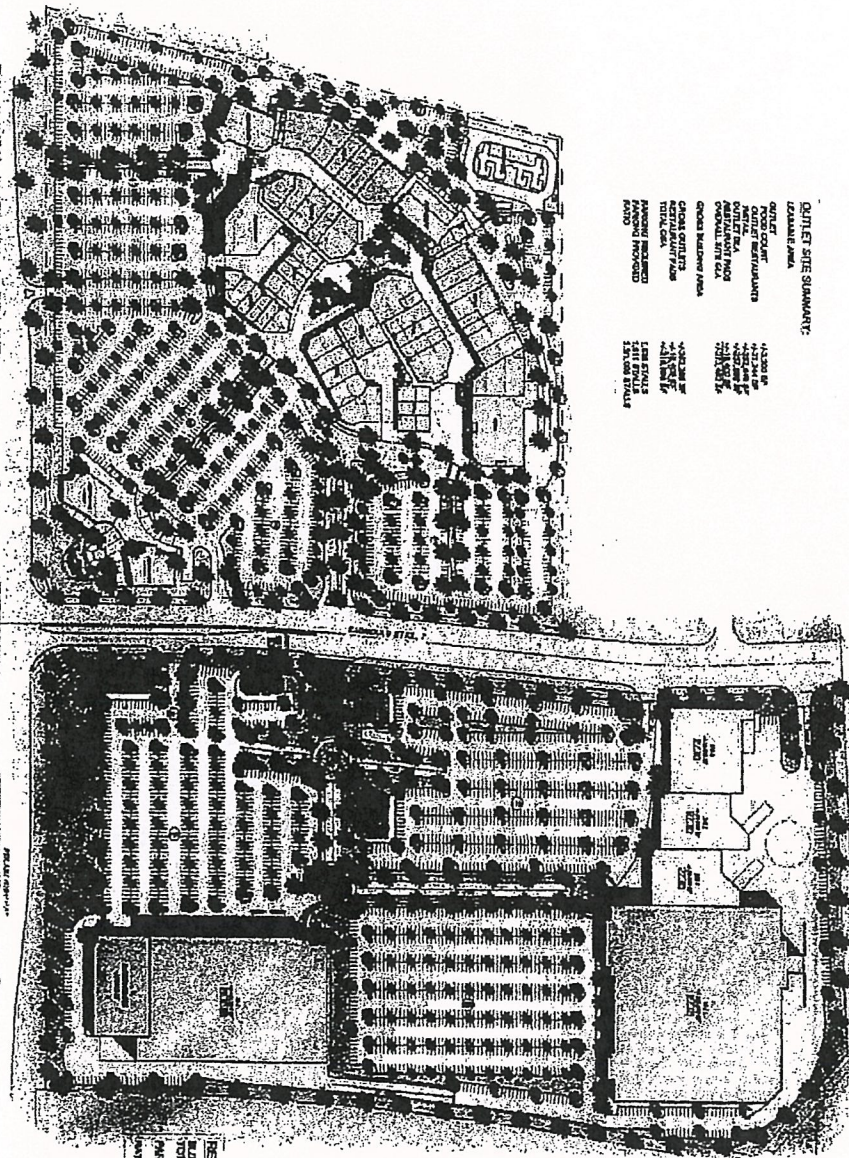
Enclosures: Final Plats
Agreement For Subdivision Approval
Subdivision Bond (Bond Nos. SU1102685 thru SU1102697)

en S:\D\SAISubdivReg2\2795_2995-1.fm

c: Dept. of Finance, Accounts Division w/final plats, agreement, & bonds
Dept. of Finance, Real Property Tax Division w/final plats
Dept. of Finance, Tax Map Division w/final plats
Building Permit Section w/final plats
Engineering Division w/final plats
Dept. of Environmental Management, WWRD w/final plats
Dept. of Planning w/final plats
Dept. of Water Supply, SD 03-90 & 06-106 w/final plats
Police Dept. w/final plats
Dept. of Parks and Recreation w/final plats
State Department of Health w/final plats
DOT, Highways Division w/final plats
Maui Electric Co. w/final plats

SITE PLAN

17802a Skyway Circle, Suite 200
Irvine, California 92614
Mobile 949.251.8535
Facsimile 949.251.9979

[illegible]

RETAIL SITE SUMMARY:	
BUILD AREA:	308,064 SF
TOTAL:	346,070 SF
PARKING PROVIDED:	2,071 STALLS
DATE:	6.26.17, 1,000 SF

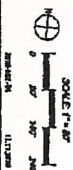


EXHIBIT "B"

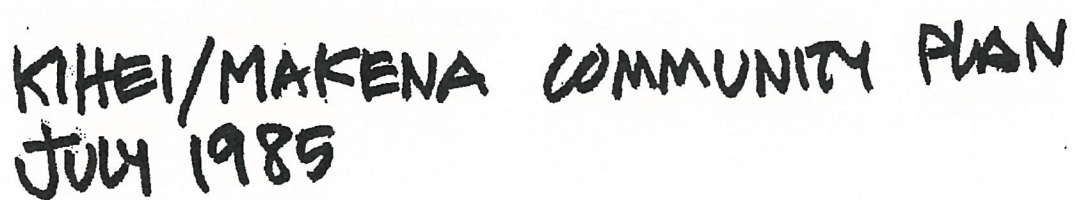


EXHIBIT "C"



EXHIBIT "D"

LAND USE COMMISSION
MEETING MINUTES
August 23, 2012
The Royal Lahaina Resort Maui Ball Room
2780 Keka`a Drive
Lahaina, Maui, Hawai`i, 96761

COMMISSIONERS PRESENT: Chad McDonald
Ernest Matsumura
Lance Inouye
Nicholas Teves, Jr.
Ronald Heller
Sheldon Biga

COMMISSIONERS EXCUSED: Napua Makua
Kyle Chock
Thomas Contrades

STAFF PRESENT: Daniel Orodener, Executive Officer
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Sarah Hirakami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Vice Chair Heller called the meeting to order at 10:38 a.m.

APPROVAL OF MINUTES

Vice Chair Heller asked if there were any corrections or additions to the August 2, 2012 minutes. Commissioner Teves moved to approve the minutes. Commissioner Biga seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The September 6-7, 2012 meeting is tentatively set to be held on Maui for Docket No. A12-795 and other Maui matters.
- The Commission also is planning to attend the HCPO Conference in Honolulu on September 12-14, 2012 and will be having a meeting on September 14, 2012 to address Docket No. A99-728 DHHL and SP09-403 Dept. of Environmental Services-Waimanalo Gulch Sanitary Landfill.
- The first meeting in October will be on October 4-5, 2012, location to be determined.
- Any questions or concerns- please contact LUC staff.

CONTINUED HEARING

A12-795 WEST MAUI LAND COMPANY, INC- KAHOMA RESIDENTIAL LLC (Maui)

Vice Chair Heller announced that this was a continued hearing on Docket No. A12-795 West Maui Land Company, Inc., Kahoma Residential LLC, to consider the reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lahaina, Maui, Hawai'i for a residential subdivision to provide 68 single-family affordable housing units to families earning less than 160% of the median family income of families in Maui County, Hawaii, TMK Nos. (2) 4-5-10:005

APPEARANCES

James Geiger, Esq., represented West Maui Land Inc.

Heidi Bigelow, West Maui Land Inc.

James Giroux, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)

Bryan Yee, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, OP

Michele Lincoln, Intervenor

Routh Bolomet, Intervenor

Michael Lee, assisting Routh Bolomet.

Vice Chair Heller updated the record and explained the procedures to be followed for the proceedings. There were no comments, questions or objections to the procedures. Mr. Geiger stated that he had no questions but was concerned that Petitioner had not received copies of some of the items that were submitted to the Commission. Vice Chair Heller replied that those matters would be addressed when exhibits were offered to the Commission. Mr. Geiger acknowledged Vice Chair Heller's comment. There were no further questions and Vice Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

1. Clare Apana

Ms. Apana submitted written testimony, described her relationship and knowledge about Intervenor Bolomet and summarized the burial rights, cultural impacts, water rights, agriculture and other concerns that she had regarding the Petition Area for the Commission. Ms. Apana also shared experiences that she had while visiting the Petition Area and requested that the Commission consider her testimony during decision-making on the docket.

Mr. Geiger had no questions.

Mr. Yee requested clarification on what cultural and archaeological impact issues Ms. Apana was testifying to and what issues Michael Lee would address. Discussion ensued to determine what Ms. Apana's public testimony specifically addressed and what Mr. Lee's testimony would be. Mr. Yee stated that he was seeking clarification to determine who he should address his questions to regarding archaeological and cultural matters. Ms. Apana stated that she did not know what Mr. Lee would be addressing and described what her testimony consisted of and deferred to Mr. Lee to respond to detailed questions on cultural and archaeological issues regarding the Petition Area. Mr. Yee had no further questions.

Ms. Lincoln had no questions.

Ms. Bolomet requested clarification on what events she and Ms. Apana had experienced together during their site visit to the Petition Area. Ms. Apana provided her recollection of the events that occurred during an earlier visit to the Petition Area and described the activities and

experiences that she, Mr. Lee and Ms. Bolomet had while on site. Discussion occurred and Vice-Chair Heller requested that Ms. Bolomet focus her questioning on the specific issues of the docket. Ms. Bolomet acknowledged Vice Chair Heller's comment and requested clarification on the areas bordering the Petition Area and how various area names applied to different sections. Ms. Apana shared her understanding of what names applied to what areas. There were no further questions for Ms. Apana.

There were no further public witnesses.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Geiger offered Petitioner Rebuttal Exhibits 37 and 38 for the record. There were no objections by the Parties or the Commissioners to Petitioner's exhibits and they were admitted to the record.

County

Mr. Giroux stated that he had no exhibits at the current time and reserved the opportunity to submit exhibits when his witnesses were called.

OP

Mr. Yee offered no exhibits.

Intervenor Lincoln

Ms. Lincoln offered no exhibits.

Intervenor Bolomet

Ms. Bolomet described the difficulties she had in receiving material from Petitioner and stated that she submitted rebuttal testimony to Petitioner's rebuttal of Mr. Lee's submitted testimony. Discussion ensued to clarify what exhibit numbers had been assigned to the material Ms. Bolomet had submitted, and whether or not the exhibits abided by the Commission order requiring exhibit submittals by August 1, 2012. Petitioner and County objected to allowing further submittals by Intervenor Bolomet and OP stated that they were not sure what Intervenor Bolomet had submitted. Further discussion ensued to identify what Intervenor Bolomet had submitted, how it was identified, and whether or not it had been submitted by the imposed deadline. Vice Chair Heller deferred admitting any submittals by

Intervenor Bolomet until they had been properly identified and the Parties assured that they had the proper copies of what had been submitted.

Ms. Bolomet stated that she had requested the Parties supply her with emailed copies of their submittals due to poor mail service in her area and described the efforts she had made to submit her exhibits; and asserted that she had submitted Exhibits 11 and 17 on August 1, 2012. Discussion ensued to determine what exhibits had been submitted and Exhibit 17 was admitted to the record based on the initial examination of the Commission's records.

There was continued discussion on what would be admissible and Vice Chair Heller determined that the proceedings should continue and that exhibit identification problems be resolved and re-addressed later; and requested that Petitioner begin its presentation.

PRESENTATIONS

Petitioner Witnesses

1. Keith Niiya- Traffic Expert

Mr. Niiya updated and corrected/updated his submitted written testimony. Mr. Niiya summarized his report and stated that the proposed project would not have a significant impact on the area and that the proposed traffic improvements were appropriate for the Petition Area and that a TIAR was not required.

Questions for Mr. Niiya

County

Mr. Giroux inquired if any mitigation needs were uncovered by Mr. Niiya's study. Mr. Niiya responded that the proposed project did not create any need for mitigation and described how he had performed this aspect of his study.

OP

Mr. Yee requested clarification of a section of page 4 of Mr. Niiya's report. Mr. Niiya provided additional details to satisfy Mr. Yee's questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on various details of Mr. Niiya's report. Mr. Niiya clarified his findings about area pedestrian/traffic patterns and how community streets evolved or were evolving to locally accommodate area growth and how the proposed project would affect the situation.

Intervenor Bolomet

Ms. Bolomet requested clarification on what considerations were made to determine the scope of the traffic study that had been performed. Mr. Niiya described the criteria, methodology and considerations that had been made to conduct and analyze his study and how its findings applied to the proposed project. Discussion ensued to have Ms. Bolomet refrain from interjecting extraneous comments and arguing her case during her questioning.

Petitioner Rebuttal

Mr. Geiger asked if the ultimate decision regarding the proposed project was that it would have no impact on existing traffic. Mr. Niiya confirmed that his findings indicated no impact to existing traffic.

The Parties had no further questions for Mr. Niiya.

Commissioner Questions

Commissioner Biga requested clarification on whether a portion of the Petition Area would be exposed to future traffic from the Lahaina bypass road. Mr. Niiya described how he envisioned traffic in the area would flow and stated that he did not anticipate significant traffic from the future bypass road.

Commissioner McDonald requested clarification on how the traffic generation figures compared between Mr. Niiya's study and a TIAR performed by the Wilson Okamoto firm. Mr. Niiya stated that both he and the Wilson Okamoto study estimated less than a 100 trips being generated by the proposed project, and that it had been submitted as Petitioner's Exhibit 7.

There were no further questions.

The Commission went into recess at 11:45 a.m. and reconvened at 11:58 a.m.

Vice-Chair Heller stated that he had reviewed Intervenor Bolomet's submittals during the recess and that they did appear to contain Exhibit 11. Mr. Geiger responded that he would need to re-check his documents and records to confirm receipt of Intervenor Bolomet's exhibit. Vice-Chair Heller suggested that Ms. Bolomet could file a Motion to have Exhibit 11 admitted at the next meeting. The Parties concurred that Vice-Chair Heller's proposal was acceptable.

2. Michael Dega- Archaeologist

Mr. Dega stated that he had no corrections to his submitted written testimony and described how his study had been conducted, and what sampling methods he had used to collect his data; and stated that there had been no findings of adverse impact and no significant archaeological findings in the Petition Area.

Mr. Dega also described how and why he filed his report as an Archaeological Assessment instead a survey due to State Historic Preservation Division (SHPD) requirements at the time it was conducted since he had negative archaeological findings in the Petition Area; and confirmed that SHPD had acknowledged and accepted his findings report.

Questions for Mr. Dega

County-

Mr. Giroux requested clarification on what other additional outside resources had been used for the archaeological study. Mr. Dega described the types of resources that he found to be more helpful and reliable in his work, and expressed why he relied more on SHPD records than others; and how no archaeological information regarding the Petition Area had been discovered.

OP

Mr. Yee requested further clarification on how the Petition Area had been studied and whether or not any evidence of burial sites (heiau) or other archaeological findings had been made. Mr. Dega described how he and his team had performed their study and acknowledged that no heiau or archaeological findings had been noticed in the Petition Area.

Mr. Yee asked if Mr. Dega had any comments on Ms. Apana's testimony, both written and oral. Mr. Dega shared his perspective of Ms. Apana's testimony and how his findings contradicted portions of it.

Mr. Yee also asked if Mr. Dega had any comments on Mr. Lee's testimony. Mr. Dega recognized Mr. Lee's work and credentials and commented on how his findings differed from what Mr. Lee claimed to have discovered about the Petition Area.

Intervenor Lincoln

Intervenor Lincoln had no questions.

Intervenor Bolomet

Ms. Bolomet requested clarification on how the references listed in Mr. Dega's report had been used; and posed questions regarding various features that she believed to have archaeological value on the Petition Area. Discussion ensued to clarify how Ms. Bolomet should identify exhibits and references for the record; and focus on questions for the witness. Ms. Bolomet acknowledged Vice-Chair Heller's comments. Mr. Dega requested that Ms. Bolomet identify the location of the heiau that she claimed to exist on a map of the Petition Area. Ms. Bolomet indicated where she believed a heiau existed. Mr. Dega stated that he believed the area where Ms. Bolomet was identifying existed outside the Petition Area and described his findings for various rock formations that he had studied. Further discussion ensued to have Ms. Bolomet focus on asking questions rather than making arguments on the testimony. Ms. Bolomet acknowledged Vice-Chair Heller's comment.

Ms. Bolomet requested clarification on a portion of the Petition Area that she believed to have archaeological value. Mr. Dega described his findings and how the Petition Area had changed over time and how observations of material having archaeological value had been documented by him and his staff. Discussion ensued as Ms. Bolomet contested Mr. Dega's findings. Vice-Chair Heller again reminded Ms. Bolomet not to be argumentative and to ask questions. Ms. Bolomet referred to additional features and questioned why certain features were not reported in the descriptions of the area. Mr. Dega described why the features did not have archaeological value. Ms. Bolomet continued to contest the findings that Mr. Dega had and was again reminded to restrict her comments. Mr. Dega re-stated how he had

documented his findings and how archaeological determinations and criteria applied to his work.

Ms. Bolomet referred to her Exhibit 17 and asked Mr. Dega whether karsts existed in the area she was referring to on the map. Discussion ensued to establish a question and answer format within the proceedings for the record to accurately reflect what was occurring. Vice Chair Heller again requested Ms. Bolomet to follow proceeding protocol and she responded by asking how Mr. Dega's interpretation of the map could supersede the findings of a state hydrologist. Mr. Dega responded that the 1942 map Ms. Bolomet was using had since been updated using better technology and that more recent information had been used to formulate his opinions about the Petition Area.

Ms. Bolomet requested clarification on Exhibit 2- Public Works Maps that Clare Apana had submitted. Discussion ensued to clarify what exhibit Ms. Bolomet was referring to. Mr. Geiger stated that he had not received such an exhibit. Mr. Dega responded that he had not seen the map she was referring to and Vice Chair Heller again requested that Ms. Bolomet use questions to extract information from the witness. Mr. Geiger objected to the additional comments that Ms. Bolomet made regarding Mr. Dega's familiarity with his submitted material and Vice Chair Heller again requested that Ms. Bolomet use appropriate questioning with the witness. Ms. Bolomet responded that she had no further questions.

Rebuttal

Mr. Geiger requested clarification on the difference between igneous and limestone rocks. Mr. Dega described the differences and stated that he had not found evidence of limestone in the Petition Area, only igneous basalt rock.

Mr. Geiger requested clarification on a Phase I-Archaeological Survey Kahoma Flood Control Project Area, Lahaina, Maui dated October 11, 1974 from the Kahonoi Study. Mr. Dega acknowledged that he had seen the document and described his findings for a terraced area in Figure 1, page 2 and stated that it was located upland from the Petition Area.

Mr. Geiger also asked how the area had been used in more recent times. Mr. Dega replied that it had been involved in sugar cane cultivation and described how that

activity had affected his archaeological research efforts and how his excavation samplings in the Petition Area did not uncover any archaeological findings.

County, OP and Ms. Lincoln had no further questions.

Ms. Bolomet requested clarification of page 5, Figure 2 of the Connelly Report. Mr. Dega provided his understanding of what the arrow designations on the illustration meant. Discussion ensued again regarding Ms. Bolomet's questioning of the witness. Vice Chair Heller stated that the Commission would go into recess and advised Ms. Bolomet to utilize the time to better frame her questions for the witness.

The Commission went into recess at 12:53 p.m. and reconvened at 1:32 p.m.

Ms. Bolomet requested clarification of whether Mr. Dega ever had to modify an AIS. Mr. Dega shared his recollection of how many times he had modified an AIS and stated the conditions that would prompt him to take that action. Discussion ensued and Vice Chair Heller again cautioned Ms. Bolomet to refrain from making arguments and comments during the questioning of the witness.

Ms. Bolomet requested clarification on where sedimentary rock could be found in the Petutuib Area. Mr. Dega described where he thought sedimentary rock would be located; and how the terrain had been altered by construction in the area; and how his study's excavations had made adjustments and accommodations for any "fill" land in the search for archaeological material.

Ms. Bolomet requested clarification on how findings were documented and reported by Mr. Dega. Mr. Dega described how various situations required different types of investigation and specialties and how they were documented and reported. Ms. Bolomet asked if Mr. Dega would alter his report if he was shown archaeological findings in the Petition Area. Mr. Dega responded that he would and agreed to meeting with Ms. Bolomet and being shown archaeological features in the Petition Area.

Mr. Geiger commented that Mr. Dega had been asked to identify a terraced site on the 1884 map Exhibit before the break and requested clarification on the matter for the Commission. Mr. Dega identified the terraced area as being above the proposed project area.

Commissioner Questions

Commissioner Biga asked what other projects Mr. Dega had done. Mr. Dega provided his recollection of projects that he had been involved in and the nature of work that he had performed.

There were no further questions for Mr. Dega.

Mr. Geiger stated that he would submit the referenced Connelly report during testimony as Petitioner's Exhibit 39. Vice-Chair Heller acknowledged Mr. Geiger's offer.

3. Charles Biegel- Soil Engineer Expert

Mr. Biegel had no corrections or changes to his written submitted testimony and Mr. Geiger commented that Mr. Biegel's testimony was Petitioner's Exhibit 7 and there were no objections to Mr. Geiger's testimony or appearance as a witness.

Mr. Biegel summarized his finding for the Petition Area and stated that he did not encounter any limestone, lava tubes, groundwater, or underground caverns on the proposed project site and described how he had conducted his soils engineering study.

Questions for Mr. Biegel

County and OP had no questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on different aspects of the terrain and soil coverings of the Petition Area. Mr. Biegel provided his understanding of how the terrain had changed over the years and what the impact of the various soil coverings and their coverage depth were on his study's findings as they related to vertical construction of structures.

Ms. Lincoln asked if an archeologist was present when the soil study excavations occurred in the Petition Area. Mr. Biegel replied that he did not recall. Discussion ensued to encourage Ms. Lincoln to question the witness and not interject comments or argument. Ms. Lincoln acknowledged Vice Chair Heller's request and concluded her questioning.

Intervenor Bolomet

Ms. Bolomet asked if Mr. Biegel was familiar with kiawe trees and whether there was evidence of water in the Petition Area. Mr. Biegel responded that he was a soils engineer and not an expert on kiawe trees and that he would be surprised by a finding of water in the Petition Area; and provided the various details of his findings regarding the soils and their moisture content. Discussion ensued to have Ms. Bolomet pose questions to the witness and she asked a question about having a cultural monitor on site when excavations were performed. Mr. Biegel voiced his understanding of how arrangements were made for him when his services were needed on a project and how arrangements for cultural monitoring had been made by the party hiring him.

Rebuttal

Mr. Geiger requested clarification on what was included in Mr. Biegel's report when "fill" land was involved; and what sand and water discoveries on the proposed project site would involve. Mr. Biegel described how he would report his findings in the circumstances where "fill" land was discovered; how sand was categorized in soil studies; and why he had not discovered water during his excavations.

County, OP, and Ms. Lincoln had no further questions.

Intervenor Bolomet

Ms. Bolomet requested clarification on whether or not maps of underground infrastructure had been provided to him prior to excavation occurring. Discussion ensued on whether the question was appropriate and Vice Chair Heller advised Ms. Bolomet that he would allow her question but that she was expected at this time to confine her questioning to testimony that had been already been provided by the witness on redirect. Mr. Biegel described the preparations that he had to make prior to performing any excavations. and stated that he did not know of any subterranean piping infrastructure.

Commissioner Questions

Commissioner McDonald asked how deep the borings were. Mr. Biegel responded that the borings had a depth of between 6 and 8 feet below grade, and 13.75

feet -17.75 feet below grade. Mr. Geiger commented that Petitioner's Exhibit 7 contained further details about the borings.

There were no further questions for Mr. Biegel.

4. Robert Hobdy- Environmental Expert on Flora/Fauna

There were no objections by the Parties to Mr. Hobdy's submitted testimony and appearance as a witness; and he described his findings of plants, animals and insects in the Petition Area during his survey.

Questions for Mr. Hobdy

County-

Mr. Giroux requested clarification of native plants found in the Petition Area. Mr. Hobdy provided additional information on the native plants that he had found in the proposed project area.

OP-

Mr. Yee requested clarification of what Mr. Hobdy thought about the downshielding of lights in the Petition Area. Mr. Hobdy replied that he concurred with the downshielding recommendation and explained why he thought it was an important feature.

Intervenor Lincoln

Ms. Lincoln requested clarification on factors that might contribute to helping preserve the Blackburn sphinx moth. Mr. Hobdy shared his opinion of what might help the moth and other endangered species survive and prosper; and how the Petition Area could be used as an educational or educational "green tour" feature.

Intervenor Bolomet-

Ms. Bolomet asked whether Mr. Biegel was aware of how Hawaiians traded plants with Westerners. Mr. Hobdy shared his understanding of how various food plants which were non -native to Hawaii were traded and used; and how they seasonally populated the Petition Area. Discussion ensued and

Vice Chair Heller again cautioned Ms. Bolomet to ask questions and avoid being argumentative with the witness. Ms. Bolomet concluded her questioning by asking whether Mr. Hobdy had discovered any algae or seaweed evidence in the Petition Area and he responded that he had not.

Rebuttal

Mr. Geiger requested clarification on the habitats of the Blackburn sphinx moth, the local owl population and 3 plant species. Mr. Hobdy indicated where the moth and owl were known to exist and where 3 species of plants could be found.

Vice Chair Heller stated that the Commission would take a recess and Vice Chair McDonald would preside in his place. The Commission went into recess at 2:38 p.m. and reconvened at 2:53 p.m. (5 Commissioners in attendance- Vice Chair McDonald presiding)

Vice Chair McDonald asked Mr. Geiger how many more witnesses Petitioner had. Mr. Geiger responded that he had Mr. Singleton-Agronomy Expert, Mr. Tanaka- Civil Engineering Expert, and Ms. Bigelow- Developer's Representative remaining; and that the Parties had agreed to allow the written testimony of Leonard Neko Jr., and Anthony Rikki-Gonzalez without cross-examination; and that he would be withdrawing archaeological witness, Mr. Perzinski, since his testimony would be cumulative to Mr. Dega's. There were no comments or objections to Mr. Geiger's comments.

Mr. Giroux requested permission to release his witness, Joanne Ridao, since it did not appear that there was sufficient time for her to appear. Vice Chair McDonald granted this request.

Vice Chair McDonald advised the Parties that unlike Vice Chair Heller, he would only allow a single round of questioning of the witness. There were no comments, questions or objections to Vice Chair McDonalds change of proceedings format.

5. Paul Singleton- Agronomy Expert

Mr. Singleton made several corrections to his submitted written testimony. There were no objections to Mr. Singleton's corrections of his written testimony; or to his appearance as an expert witness.

Mr. Singleton summarized his testimony and described the methodology, objectives, and findings of his study of the Petition Area to determine if it was an economically viable agricultural site; and drew comparisons of the Petition Area to his farming operation.

Questions for Mr. Singleton
County

Mr. Giroux had no questions.

OP

Mr. Yee had no questions.

Intervenor Lincoln

Ms. Lincoln-requested clarification of Mr. Singleton's role in the proceedings and how his findings were determined. Mr. Singleton stated that he had been asked to appear before the Commission to address questions regarding the agricultural economic potential of the Petition Area; and clarified different portions of his testimony for Ms. Lincoln. Discussion ensued and Vice Chair McDonald requested that Ms. Lincoln follow a question and answer format and avoid speaking over the witnesses' reply. Ms. Lincoln acknowledged the request and was satisfied with Mr. Singleton's responses to her questions and concluded her questioning.

Intervenor Bolomet

Ms. Bolomet requested clarification on how Hawaiians might have cultivated the local area. Mr. Singleton provided his understanding of how the Lahaina area had been cultivated by Hawaiians during the pre-contact period, and by the sugar plantation; and stated that he was not aware of any water source in the Petition Area. Mr. Singleton also provided his understanding of various issues that Ms. Bolomet had questions about regarding farming and farming methods and noted the difficulties that would confront profitable farming operations on the Petition Area.

Rebuttal

Mr. Geiger requested clarification on the term "rock land" and whether the Petition Area could be economically viable if used for agriculture. Mr. Singleton shared his perception of the source of the term and how it was used to describe soils, and stated that, in his opinion, the land was not likely to be used for agriculture in current times.

The Commission went into recess at 3:50 p.m. and reconvened at 4:03 p.m.

6. Kirk Tanaka- Civil Engineer

Mr. Tanaka had no changes or updates to his testimony and the Parties had no objections to his appearance as an expert witness.

Mr. Tanaka described the proposed drainage, waste water, and water retention infrastructure planned for the Petition Area and provided details about the design criteria, county requirements, stormwater treatment, and fire and water department considerations that were involved in his study.

County-

Mr. Giroux had no questions.

OP-

Mr. Yee requested clarification on the quality of water, stormwater mitigation, and how the proposed project would deal with County water standards. Mr. Tanaka replied that there were no finalized plans currently in place since the County was still working on rules/standards for the proposed project; but that his plan was to have the Petition Area comply with all the final rules that would be in place when the construction of the proposed project neared completion and the new rules implemented. Mr. Tanaka stated that "best management practices" would be in place during the construction period and that the draft rules had been taken into consideration and that the timetable for completion of the proposed project was still incomplete although progress was expected soon. Mr. Tanaka also described the design criteria used for planning the future infrastructure and determining its specifications.

Mr. Yee also requested clarification of offsite roadway improvements, the type of mitigation measures that would be in place and on potable water availability for the Petition Area. Mr. Tanaka replied that he was not yet aware of what the final rules would be for mitigation measures, and was waiting for a County grading permit; but was aware that new 201 H rules would apply to the proposed project; but did not know of any 201H exemptions that would be allowed for drainage.

Mr. Yee inquired about what mitigation measures would be in place and whether a potable water review or analysis had been done to determine potable water availability for the project. Mr. Tanaka described his understanding of how proposed drainage basins would be maintained and what mitigation measures would be used and replied that he had been in contact with the County water supply department and had been advised that there was sufficient potable water and a water source to allow meters and provide County water for the proposed subdivision. Mr. Tanaka also provided other various specifics of how water supply for the proposed project had been determined and what his conversations with the Department of Water Supply were like.

Intervenor Lincoln-

Ms. Lincoln requested clarification on the retention basin design and how it would be constructed. Mr. Tanaka described his understanding of how the basin would be constructed and how the water, wastewater and sewage needs of the proposed project would be met.

Ms. Lincoln requested clarification on how stormwater runoff would be handled. Mr. Tanaka shared his understanding of how stormwater was currently occurring and how the drainage infrastructure design would function when completed. Ms. Lincoln also requested clarification on an exhibit and discussion occurred to identify what specific exhibit it was. Mr. Geiger stated that he believed it was Petitioner's Exhibit 30, page 35. Ms. Lincoln questioned why it had been included as a Petitioner's Exhibit. Mr. Geiger explained why it had been submitted to support Ms. Bigelow's testimony to come.

Ms. Lincoln asked if land development changed runoff patterns and increased flood risk. Mr. Tanaka replied that the infrastructure design included various features to prevent flooding from occurring and described how the infrastructure would function during storms and would need to be maintained. Ms. Lincoln requested clarification on how the Kahoma dam would withstand a natural disaster. Discussion ensued to determine what dam Ms. Lincoln was referring to and Mr. Geiger stated that he was not aware of a dam being part of the Petition Area. Vice Chair McDonald asked what exhibit contained a photo of the facility. Ms. Lincoln replied that it was on page 64 of her submitted materials. Mr. Tanaka examined the photo and replied that he was not able to identify the structure and was not qualified to answer her question. Discussion continued on how Ms. Lincoln's question was relative. Vice Chair McDonald stated that since the structure abutted the Petition Area and could pose a flood hazard, he felt it was a valid question. Ms. Lincoln replied that she would direct the question to the County instead.

Ms. Lincoln had several questions regarding flood diversion and Mr. Tanaka shared his understanding of how water could be diverted till Ms. Lincoln exhausted her prepared questions.

Intervenor Bolomet

Ms. Bolomet requested clarification Mr. Tanaka's awareness of legal decisions regarding retention basins and on the location of the planned retention basins in the Petition Area. Mr. Tanaka responded that he was not aware of the judicial cases that Ms. Bolomet cited and described where the proposed retention basins would be located and how they were expected to function. Mr. Tanaka also stated that he did not know what the long term effects the retention basins would have on Mr. Lee's "limu" gathering practice and that he was not aware of any law or court ruling regarding the control of heavy metal deposit resulting from runoff. Discussion ensued to have Ms. Bolomet focus her question and Mr. Tanaka confirmed that he did not know of any such requirement.

Ms. Bolomet requested clarification of the considerations made for wastewater and stormwater collection and disposal, and sewage treatment for the proposed project. Mr. Tanaka described the design considerations that were made to develop the systems for these functions and the communication that he

had with various agencies to ensure conformity to Federal, County and State standards. Discussion ensued regarding the capacity of the Lahaina Wastewater Facility and how the County made its capacity determination. Mr. Giroux stated that Ms. Bolomet was making statements about matters which had not been entered into evidence. Ms. Bolomet responded that she was making reference to Robin Knox's submitted written testimony. Vice Chair McDonald requested that Ms. Bolomet to repeat her question and stated that the witness could then respond to whether or not he could answer the question. Mr. Tanaka responded that he was not aware of the "Clean Water Act" citations that Ms. Bolomet was referring to.

Ms. Bolomet stated that she had no more questions.

Rebuttal

Mr. Geiger requested clarification on Mr. Tanaka's response to the capacity of the West Maui domestic water system and referred to Petitioner's Exhibit 11 to have Mr. Tanaka verify various capacities that the County had represented to him. Mr. Yee commented that it was Petitioner's Exhibit 13 and Mr. Geiger acknowledged the correction.

Commissioner Questions

Commissioner Biga requested clarification on whether the Association would have to maintain the basin; and the sewer line approval by the Army Corp of Engineers. Mr. Tanaka provided his understanding of why the Association would assume the responsibility of maintaining the basin and described how the proposed project affected the Army Corp of Engineers structure.

There were no further questions.

Mr. Geiger stated that he still had Ms. Bigelow and Mr. Frampton as his remaining witnesses. Vice Chair McDonald noted that they would be heard at the next meeting.

The Commission went into recess at 5:07 p.m.

LAND USE COMMISSION
MEETING MINUTES
August 24, 2012
The Royal Lahaina Resort Maui Ball Room
2780 Keka`a Drive
Lahaina, Maui, Hawai`i, 96761

COMMISSIONERS PRESENT: Chad McDonald
Ernest Matsumura
Lance Inouye
Nicholas Teves, Jr.
Ronald Heller
Sheldon Biga

COMMISSIONERS EXCUSED: Thomas Contrades
Kyle Chock
Napua Makua

STAFF PRESENT: Daniel Orodener, Executive Officer
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Sarah Hirakami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Vice Chair Heller called the meeting to order at 9:00 a.m.

ACTION

A94-706 Ka`ono`ulu Ranch (Maui)

Vice Chair Heller announced that this was a hearing and action meeting regarding Docket No. A94-706 and Movant Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele's Motion for Hearing,

Issuance of Order to Show Cause and Other Relief (hereafter referred to as Movant's Motion) filed on May 23, 2012.

APPEARANCES

Joel Kam, Esq., represented Honua`ula Partners

Jonathan Steiner, Esq., represented Pi'ilani Promenade North LLC, Pi'ilani Promenade South LLC, and Honua`ula Partners

Jane Lovell, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, County

William Spence, Director, County

Bryan Yee, Esq., represented State Office of Planning (OP)

Jesse Souki, Director, OP

Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele

Irene Bowie, Maui Tomorrow Foundation

Vice Chair Heller updated the record and explained the procedures to be followed for the proceedings. Ms. Lovell requested procedural clarification on whether witness testimony was going to be allowed other than during the public testimony phase. Discussion ensued determine whether the Parties' witnesses would be allowed to testify and if so, during what part of the proceeding it would occur. Vice Chair Heller stated that the witnesses would be restricted to the Motion that was being heard today and clarified the circumstances of what the nature of the docket proceedings were for; and how they would be conducted. There were no further questions, comments or objections to the procedures.

PUBLIC WITNESSES

1. Danny Collier-

Mr. Collier stated that he supported the proposed project and provided his perspective of how Maui needed to support its projected growth with adequate infrastructure and services.

There were no questions for Mr. Collier.

2. Perry Artates- Hawaii Operating Engineers Representative

Mr. Artates stated that he opposed the motion and described how his organization's members and the island economy would benefit from the proposed project.

Commissioner Biga asked what would happen if the proposed project moved forward and how many workers would be needed.- Mr. Artates provided his perspective of how his organization and the associated companies would perform and shared his estimate of how many workers would have employment due to the proposed project.

There were no further questions for Mr. Artates.

3. Mike Foley

Mr. Foley stated that he supported the motion to show cause and read his submitted written testimony that described why the motion should be granted.

Commissioner Biga requested clarification on what opposition to the proposed project was based on. Mr. Foley responded that he felt that the proposed project needed to be better assessed and evaluated with a different set of measures since it had been altered from when it had originally been proposed, and described the issues that he felt needed to be resolved to make a better decision on the Petition Area.

There were no further questions for Mr. Foley.

4. Renee Richardson-

Ms. Richardson submitted several pages of a petition she had circulated and stated that she supported the motion to show cause and described her reasons why.

There were no questions for Ms. Richardson.

5. Patricia Stillwell

Ms. Stillwell stated that she supported the motion and referenced her submitted written testimony during her testimony.

There were no questions for Ms. Stillwell.

6. Mike Moran-

Mr. Moran read Carla Flood's testimony supporting motion

There were no questions for Mr. Moran.

7. Mark Hyde-

Mr. Hyde read Victoria Huffman's (licensed California State Traffic Engineer) testimony regarding traffic in the Petition Area and-supporting the motion.

Commissioner Biga asked if Ms. Huffman was still a highway expert in California. Mr. Hyde responded that she was.

There were no further questions for Mr. Hyde.

8. Mary Starr Little-

Ms. Little stated that she supported the motion and described her reasons for taking that position.

There were no questions for Ms. Little.

9. Tom Blackburn Rodriguez- Piilani Promenade and Honuaula rep.

Mr. Blackburn-Rodriguez stated that he supported the proposed project and submitted approximately 500 postcards with signatures that also supported the proposed project.

There were no questions for Mr. Rodriguez.

10. Ann Cua- Maui County Planner

Ms. Cua submitted written testimony and a portion of a past transcript of the original LUC hearing for the initial district boundary amendment and described her role as the County Planner involved with the Petition Area. Ms. Cua described her experience with the proposed project and why she felt the LUC had not imposed any conditions restricting the Petition Area; and why the proposed project should be allowed since it complied with the Maui County M-1 zoning.

Questions for Ms. Cua

County

Ms. Lovell had no questions.

OP-

Mr. Yee requested clarification of Ms. Cua's recollection of the 1994 LUC meetings on the docket and the considerations that were made which resulted in the final decision and order. Discussion occurred as Ms. Lovell challenged Mr. Yee's line of questioning. Vice Chair Heller acknowledged Ms. Lovell's comment and allowed Mr. Yee's question. Ms. Cua provided her understanding of what the M-1 light industrial use zoning ordinance permitted and described her perception of various "land use" planning terms including "light industrial", "residential" and "commercial" uses. Ms. Cua also described what types of county approvals would and would not be necessary for the proposed project and whether or not opportunities for further community input was possible.

Mr. Yee had no further questions.

Movant

Mr. Pierce requested clarification on Ms. Cua's understanding of HRS Chapter 205 requirements and asked if it was her understanding that there could be a land use condition that was more restrictive than county zoning. Ms. Cua responded that it was possible.

Mr. Pierce had no further questions.

Petitioner- Honua`ula Partners LLC

Mr. Kam requested clarification on Ms. Cua's attendance and participation in the original district boundary amendment proceedings and on her recollection of the understanding that the LUC had when it granted the Petition and the considerations that were made regarding zoning issues and other restrictions for the Petition Area. Discussion ensued to determine what, if any, restrictive conditions were imposed by the decision and order. Ms. Cua stated that there were none imposed and referenced how restrictive conditions had been imposed on another nearby Petition Area (Condition 19- Maui Business Park).

Mr. Kam had no further questions.

Commissioner Questions

Commissioner Biga requested clarification on how far into the future the Community Plan projected. Ms. Cua responded that the Community Plan forecasted 20 years into the future for development in the area and described how land use would be specified in the Community Plan and how the LUC and County differed in assessing land use determinations.

Commissioner McDonald requested clarification on what plan was presented by Petitioner when it went to County zoning in 1998. Ms. Cua replied that a "light industrial subdivision" type of development was presented and that an M-1 industrial zoning designation had been sought; and clarified that it was the same plan as had been presented to the LUC. Ms. Cua also described the zoning considerations that the County made in its decision making and determination of zoning recommendations. Discussion ensued to determine what type of permitting requirements remained for the Petition Area. Ms. Cua provided her understanding that just building, grading and landscaping permits remained to be issued.

Commission Inouye requested clarification on whether Ms. Cua had the opinion that the LUC approval of a district boundary amendment was like the approving of County zoning. Ms. Cua described how the Commission would make a land use determination and how the County would make a zoning determination; and what the B1, B2, and B3 business district zonings respectively included; and how the M-1 zoning designation was consistent with the urban district.

11. William Spence-Planning Director, Maui County

Mr. Spence provided written testimony and described how Maui County zoning evolved to accommodate growth on the island and referred to the Maui comprehensive island plan to describe what the future growth of Maui might look like.

Mr. Pierce requested clarification on how LUC imposed conditions could be more restrictive than County zoning. Mr. Spence stated that an LUC condition could be more restrictive than County zoning and described how

early zoning districts were determined and what factors the County zoning process considered when making zoning determinations. Mr. Spence also described how the Planning Department considered the State Zoning 205 process during its determination and what his understanding was of the County and Land Use Commission roles in the procedure.

There were no further questions for Mr. Spence.

12. Cynthia Groves-

Ms. Groves submitted written testimony and stated her reasons why she supported the motion and what her concerns were about the proposed project.

Ms. Lovell requested clarification on Ms. Groves' reference to Maui County Zoning Ordinance-Chapter 19. Ms. Groves shared her understanding of what the zoning ordinance meant and how it applied to the proposed development's history.

There were no further questions for Ms. Groves.

13. Juan Lay

Mr. Lay shared his reasons for opposing the Motion.

There were no questions for Mr. Lay.

14. Bill Kamai

Mr. Kamai stated that he opposed the motion and expressed his reasons why.

There were no questions for Mr. Kamai.

Vice Chair Heller entertained a motion for an Executive Session.

Commissioner Biga moved and Commissioner McDonald seconded the motion for Executive Session. By a unanimous voice vote (6-0) the Commission voted to enter Executive Session.

The Commission went into Executive Session at 10:37 a.m. and reconvened at 11:15 a.m.

PRESENTATIONS

Petitioner

Mr. Kam and Mr. Steiner stated that they had no witnesses.

Movant

Mr. Pierce stated that the Movants opposed the "abuse of process" and argued why the Order to Show Cause should be granted and provided the details of his argument on behalf of the Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele. Mr. Pierce requested that the Commission set a hearing, issue an order shortening the time for the hearing because of imminent threat of development of the Petition Area; issue an Order to Show Cause why the Petition Area should not revert to its former boundary classification because of the landowners failure to use the Petition Area consistent with the Commission's 1995 Findings of Fact, Conclusions of Law, and Decision and Order; conduct a contested case hearing on the factual and legal issues supporting the reversion of the Petition Area's classification and issue an order compelling the owners of the Petition Area to withdraw all previously filed annual reports that do not correctly represent the status of the Project and file amended annual reports with the Commission, OP and the County of Maui that accurately describe the status of the Petition Area and the Project and why the Movants felt that the current landowners were in violation of Condition Nos. 5 and 15 of the Commission's Decision and Order.

Petitioners

Vice Chair Heller asked if the Petitioners representatives would be presenting separately. Mr. Steiner stated that Mr. Kam would be presenting for Honua`ula and that he would be presenting for the Piilani North and South entities and that he would precede Mr. Kam. There were no objections to Petitioner's proposed presentations.

Petitioner- Piilani Promenade South, LLC and Piilani Promenade North, LLC

Mr. Steiner stated that the landowners opposed the Movant's Motion and argued why the Movants had no standing to file the Motion; had failed to identify any condition of the Decision and Order or representation that had not been complied with and how Conditions 15 and 5 had not been violated. Mr. Steiner also argued how the proposed use of the Petition Area was in substantial compliance with all representations made to the Commission; and that there was no condition imposed to restrict the development to a commercial and light-industrial subdivision; and that the

Commission was made well-aware that the County's M-1 light industrial zoning allowed a variety of uses and chose not to impose a condition prohibiting uses including apartments and retail uses; and that since no development had occurred on that portion of the Petition Area owned by Honua`ula nor any permits issued to commence construction, Honua`ula contends that the Motion was not ripe and should therefore be denied.

Petitioner- Honua`ula Partners

Mr. Kam argued that the Commission should focus on the Conditions of the decision and order and how Petitioner's efforts were in compliance with them, and how the LUC had the authority to have imposed more specific, restrictive conditions if it wanted, but did not.

County

Ms. Lovell stated that Maui County opposed the Movant's Motion and argued how the Movant's allegation that Condition No. 5 of the Decision and Order had been violated was not accurate and how the Movant's had not demonstrated that the required traffic improvements would not be built or that the DOT would not require the developer to construct traffic improvements satisfactory to DOT.

Ms. Lovell also argued how Condition 15 of the Decision and Order did not prohibit the use of the Petition Area for affordable apartment units and commercial shopping center purposes; and how the representations made to the Commission were not inconsistent, and that the County Council did not amend the M-1 zoning ordinance.

Ms. Lovell stated that the Maui Planning Commission recommended a condition that would have limited the commercial uses of the development but elected to impose a condition requiring Petitioner to only "...use its best efforts in attracting traditional light industrial uses and shall consider locating these on the perimeter and focus non-industrial uses on the major traffic corridors."; and did not impose any condition limiting the use of the Petition Area. Ms. Lovell argued that Movants failed to demonstrate that the conditions of the Decision and Order had been violated, and that the Petition Area was not being used in a manner contrary to the Decision and Order and that the more appropriate way to address Movant's concerns was the Declaratory Order provision under Hawaii Administrative Rules subchapter 14.

OP

Mr. Yee stated that OP supported Movant's Motion and recommended that an Order to Show Cause be issued with a subsequent hearing on the matter; and that OP did not take any position as to whether the Petition Area should be reverted to its previous classification at this time.

Mr. Yee described why OP felt that a Motion to Amend filing was a more appropriate action since it would allow the re-examination of impact concerns of the proposed project and why the County's decisions were not being challenged but rather the State's; and referred to HAR 15-15-49 and summarized how it would apply to the proceedings.

Mr. Yee also argued how the absence of a light industrial component to the proposed project made substantial compliance to representations made to the LUC and documented in the original decision and order questionable; and that the current Petitioners failed to comply with the representation that a commercial and light industrial subdivision would be developed on the Petition Area as required by Condition 15; and that the proposed structures were not disclosed during the Commission's original proceedings; and that no attempt had been made to file a Motion to Amend the Decision and Order to reflect the current proposed development as had occurred with other land use changes in other dockets.

Rebuttal

Movant

Mr. Pierce described how the infrastructure promised by the Petitioner for the proposed project would avert public review and Condition 5 of the original decision and order; as well as the proper associated agencies if the motion to show cause were not granted; and that possible needed conditions could not then be included. Mr. Pierce also described how the Movants agreed with portions of OP's presentation and how the original findings of fact had specific references to "light industrial use" which required further review of the new proposed project and public input.

The Commission went into recess at 12:30 p.m. and reconvened at 1:10 p.m.

Petitioner- Piilani Promenade North LLC and Piilani Promenade South LLC

Mr. Steiner argued that Petitioners did not perceive that they had violated the decision and order's conditions and why there was no need to file for an amendment; and how Ms. Cua had described how the other uses of the Petition Area would be "market driven". Mr. Steiner added that what had been represented to the LUC in the original Petition had been accurate and consistent; and that there were no condition violations; and that the Commission should deny the motion.

Intervenor- Honua`ula

Mr. Kam also argued that there had been no violations of the original decision and order and described how the Petitioner had complied with its representations and disputed OP's position regarding the current landowner's need to comply with representations that had been made in the original Petition and Mr. Pierce's statement about post-decision outcomes since County and other State agencies approvals and permits needed to be satisfied to ensure that the conditions imposed by the LUC's decision and order were followed.

County

Ms. Lovell argued how the County and the sitting Commissioners for the original decision and order had interpreted the presented information from the proceedings in similar fashion and determined "substantial compliance" requirements; and why the motion for the order to show cause should be denied.

OP

Mr. Yee argued how the representations made by Petitioner had to be balanced when determining "substantial compliance" and described how the Lanai water case's situation differed from this docket and how the decision and order in the original Petition spoke for itself and why a review and another hearing on the Petition was needed.

Commissioner Questions

Commissioner McDonald asked if an Environmental Assessment had been performed for the development plan for the Petition Area. Mr. Kam shared his understanding of the environmental work that had been done in the Petition Area and nearby projects and stated that he would need to check on whether the Wailea project

encompassed the affordable housing area to answer Commissioner McDonald's question. Mr. Steiner described the Environmental Assessments that he was aware of that had been conducted in the area and stated that he did not have all the details for the area.

Commissioner McDonald asked Mr. Yee if OP was aware of any EA having been done for the Petition Area. Mr. Yee responded that OP was not aware of any EA being performed in the original Petition Area. Ms. Lovell added that she thought that the reason why no EIS was that there had been no trigger and described the factors that she thought existed that made the EIS unnecessary. Discussion ensued to determine whether or not enough consideration had been given to the use of State lands/facilities. Ms. Lovell described how the original Petition Area had been assessed and why it did not trigger the EIS after the assessment; and how Chapter 343 requirements at the time of the Petition approval till the present might apply.

Mr. Kam provided his understanding of how more recent Supreme Court decisions on other LUC dockets and law changes regarding EIS requirements might be related to the questioning about EIS triggers. Mr. Yee added that the time period where the legal requirements changed for EISs was in 2006. Commissioner McDonald had no further questions.

Commissioner Biga requested clarification from Mr. Steiner on why the annual reports had not been consistently filed with the Commission. Mr. Steiner replied that his understanding was that an annual report had been filed in 2011 and in years prior also; and that the current year's report was being withheld pending the results of this proceeding.

Commissioner Biga asked if he should re-direct his question to Mr. Kam, and Mr. Steiner provided additional information on what annual reports had been filed to satisfy Commissioner Biga's question.

Commissioner Inouye asked if Mr. Steiner had a record of the 2005-2009 annual reports. Mr. Steiner responded that he could not give a definitive answer on the annual reports; and that the current landowners did not own the property during that time period. Mr. Steiner described the changes of ownership that occurred since the original Petition had been granted and stated that the current landowners took possession of the Petition Area in September, 2010.

Commissioner Inouye requested clarification on what date the 2012 annual report needed to be submitted by and noted that it should have been submitted by the Petition anniversary date that had occurred earlier in 2012. Mr. Steiner responded that he was not aware of the requirement.

Commissioner Inouye requested clarification on the status of the Movant's appeal before Maui County on this matter. Mr. Steiner responded that the County filed a motion to dismiss the appeal for lack of jurisdiction and that the Motion had been granted and the order submitted by the County was accepted. Commissioner Inouye had no further questions.

Vice Chair Heller requested clarification from Mr. Kam and Mr. Steiner on what was going on in the Petition Area for their respective landowners. Mr. Kam replied that nothing was happening at the current time and there was no established time frame of when development activity for the affordable homes should occur on the Honua'ula portion of the Petition Area. Mr. Steiner stated that his understanding was that grading permits had been issued to the Pi'ilani Promenade entities's remaining portions of the Petition Area and that equipment had been staged on it and that best management practices were in place and activity was ready to start once it was determined to be permissible to do so.

Vice Chair Heller requested clarification on Condition 5 and the frontage road requirement for the Petition Area. Mr. Steiner shared his understanding of how the frontage road would be addressed and applied to the current proposed project.

Commissioner Inouye acknowledged and thanked the Parties for their efforts and described the considerations that he had made regarding Condition 15 while deciding to make a motion to grant the Motion for an Order to Show Cause. Commissioner Biga seconded the motion .

Discussion on the Motion

Commission Biga commented that he felt that there were a lot of questions that needed to be answered and urged the Parties to settle this matter quickly.

Vice Chair Heller described how the decision being made by the Commission specifically was to decide whether or not to grant an Order to Show Cause to take the

next procedural step for a hearing to decide whether or not the Conditions of the Decision and Order were being complied with.

There was no further discussion.

The Commission voted as follows:

Yeas: Commissioners Inouye, Biga, Matsumura, Teves, McDonald and Vice Chair Heller.

Nays: None

The Motion passed 6-0 with 3 excused.

Vice Chair Heller asked if there were any questions or comments for the Commission before it adjourned. Mr. Steiner requested that the Commission move expeditiously on this matter. Vice Chair Heller advised him to contact staff regarding scheduling and assured him that it was the Commission's intention to address and resolve this matter as soon as possible.

There being no further business, the Commission adjourned at 1:45 p.m.