

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII

2018 JUL -5 A 11:16

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, Hawai'i; Tax Map
Key Nos. 2-2-02:por. of 15 and 3-9-01:16

Docket No. A94-706

STATUS REPORT OF PIILANI
PROMENADE SOUTH, LLC AND PIILANI
PROMENADE NORTH, LLC, SUCCESSOR
PETITIONERS TO KAONOULU RANCH;
CERTIFICATE OF SERVICE

STATUS REPORT OF
PIILANI PROMENADE SOUTH, LLC AND
PIILANI PROMENADE NORTH, LLC,
SUCCESSOR PETITIONERS TO KAONOULU RANCH

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 "Piilani")¹, successors-in-interest to KAONOULU RANCH, a Hawai'i limited partnership, 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 a request made telephonically by the State of Hawai'i Land Use Commission (the "Commission") on May 17, 2018, hereby submits this status report.

A. Background Information.

1. Ownership of the Petition Area.

Piilani own six of the seven parcels (the "Piilani Parcels") encumbered by the Findings of Fact, Conclusions of Law, and Decision and Order issued by the Commission on February 10,

¹ PPS and PPN are Delaware 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."

1995 (the “D&O”) in Docket No. A94-706. The Piilani Parcels are identified as tax map key parcels (2) 3-9-001:016 and :170-:174. The seventh parcel encumbered by the D&O is owned by Honua‘ula Partners, LLC (“Honuaula”), which has no affiliation with Piilani. Honuaula owns tax map key parcel (2) 3-9-001:169, referred to hereinafter as the “Honuaula Parcel.” The Honuaula Parcel and the Piilani Parcels are collectively referred to hereinafter as the “Petition Area”.

2. Petition Area.

The Petition Area is located within the State Land Use Urban District, and within the Urban growth boundary identified in the Maui Island Plan. The Project is designed as LI Light Industrial under the Kihei-Makena Community Plan, and is zoned within the M-1 Light Industrial district.

Lands located north of the Petition Area include a commercial complex, which is within the State Land Use Urban District. The complex includes a self-storage facility, a gas station, and an automobile sales lot. Located south of the Petition Area is the Kihei High School, which is within the State Land Use Urban District.

Lands located *mauka* (east) of the Petition Area are very large commercial ranch lands which extend up to Lower Kula, which are within the State Land Use Agricultural District. Lands located *makai* (west) of the Petition Area include the Kaonoulu Estates residential subdivision and the Maui Lu Resort, which are within the State Land Use Urban District.

3. Procedural History.

On May 23, 2012, Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele (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, Intervenors contended, among other things, that the intended use of the

Piilani Parcels by Piilani for the development of a retail project (the "Retail Project") violated Conditions 5, 15, and 17 of D&O.

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 Honuaula had violated the 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 proceeding. At a meeting on February 7, 2013, a majority of the members of the Commission orally passed a motion finding that Piilani's and Honuaula's proposed uses of the Piilani Parcels and the Honuaula Parcel would violate Conditions 5 and 15 of the D&O, and that Condition 17 had also been violated. No written order reflecting that oral motion has been entered.

On April 18, 2013, Piilani filed a Motion to Stay Phase II of the Order to Show Cause Proceeding, wherein Piilani represented that it intended to file a motion to amend the D&O to allow Piilani to develop a project different from that originally presented to the Commission when the D&O was issued. Piilani requested that the Commission stay Phase II to allow the Commission to consider its Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated February 10, 1995 (the "Motion to Amend"). On June 27, 2013, the Commission granted the Motion to Stay Phase II of the Order to Show Cause Proceeding, and ordered that Phase II would be stayed on the condition that Piilani file its Motion to Amend before

December 31, 2013, and that no construction on the Property occur during the stay. Piilani filed its Motion to Amend on December 31, 2013.

Piilani prepared an environmental impact statement (the “EIS”) for a mixed use project incorporating light industrial, business/commercial, and multi-family uses (the “Mixed Use Project”), and submitted the same to the Commission for processing in connection with its review of the Motion to Amend. After two days of public hearings, the Commission denied the acceptance of the final EIS prepared for the Mixed Use Project on July 20, 2017.

B. Development of Original Plan.

Since July 2017, Piilani and Honuaula have been meeting to discuss development of the Petition Area in light of the procedural history and non-acceptance of the EIS. After much discussion, Piilani has decided to forego each of the Retail Project and the Mixed Use Project, and to develop the Petition Area together with Honuaula in substantial compliance with the representations made to the Commission, as required by condition 15 of the D&O (the “Original Plan”).

The Original Plan was to develop a 123-lot commercial and light industrial subdivision within the Petition Area. Piilani and Honuaula have been meeting with their consultants to discuss how to design and implement the Original Plan.

In January 2018, Piilani retained Koa Partners, LLC to lead the approval, design, and development efforts for the Original Plan, and to engage in a dialogue with all stakeholders, including the Intervenor and other interested community members, to discuss the development of the Petition Area as the Original Plan. Through this dialogue, the Intervenor and other members of the public have expressed an interest in seeing other types of uses (other than light industrial)

on the Petition Area. Piilani is continuing to engage with the public to discuss development options for the Petition Area.

To implement the Original Plan, Piilani has already expended over \$2,672,000.00 for materials and construction work. Approximately \$1,900,000.00 of materials are presently located upon the Petition Area, which were purchased with funds that were released from a cash bond deposited with the County of Maui Department of Public Works' Development Services Administration in connection with its approval of Subdivision File Nos. 2.2795 and 2.2995. Over \$700,000.00 has been spent on labor and construction costs to clear the Petition Area, to erect fencing around the perimeter, and for mobilization for the installation of necessary infrastructure. The \$2,672,000.00 does not include costs expended by Piilani for plans, professional services, and permits, which Piilani has also incurred in connection with development of the Petition Area.

In addition, as required by the County of Maui Department of Public Works' Development Services Administration in connection with its approval of Subdivision File Nos. 2.2795 and 2.2995, Piilani deposited \$22,058,826.00 in cash to fund civil infrastructure improvements to support the implementation of the Original Plan. The improvements include:

- Sitework Improvements - \$1,256,710.00
- East Kaonoulu Street Improvements - \$2,299,046.00
- Piilani Highway Widening Improvements - \$1,411,106.00
- Access Road and Swales - \$1,771,330.00
- Sewer System/Revisions - \$712,592.00
- Storm Drainage System/Revisions - \$2,895,052.00
- Onsite Water System - \$834,700.00
- 12" Offsite Water/1MG Water Tank - \$4,802,784.00

- 36" Water Main/Water/Misc. Revisions - \$2,444,940.00
- Electrical - \$885,566.00
- Traffic Signal Improvements - \$643,000.00
- Landscape/Irrigation - \$1,202,000.00
- CRM Walls - \$900,000.00

As aforementioned, approximately \$1,900,000 of the cash bond was released to purchase certain materials. The remaining \$20,150,000.00 continues to be held by the County of Maui as a bond for the performance of certain improvements and infrastructure required by the subdivision approvals.

In total, Piilani has invested approximately \$23,000,000.00 into the Original Plan and development of the Petition Area.

C. Supplement to Annual Report.

This Status Report supplements the Twenty-Second Annual Report which was filed by Piilani on March 12, 2018. In particular, Piilani hereby amends and restates its response to Condition 5, Condition 15, and Condition 17, each in their entirety, as follows:

Condition 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.

Piilani intends to comply with this condition. Petitioner notes that the State Department of Transportation (the "DOT") has indicated to the Commission that a

frontage road parallel to Piilani Highway would not be feasible and could create traffic and safety issues, and that the State DOT would not approve a frontage road.

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.

Piilani intends to comply with this condition.

Petitioner previously presented a retail project to the Commission, and the Commission orally passed a motion finding that the proposed retail project would violate Condition 15. Based on this determination, Petitioner has been in contact with Honua'ula Partners, LLC ("Honua'ula"), the owner of other parcel encumbered by the D&O (tax map key parcel (2) 3-9-001:169), to coordinate a development plan for the Property that substantially complies with the representations made to the Commission.

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.

Piilani has complied, and intends to further comply, with this condition, and submits this status report to supplement the information provided with its annual reports. All annual reports through 2018 have now been filed with the Commission.

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

D. No Violations of the D&O.

As noted in Section A.3 of this Status Report, the Commission orally passed a motion finding that Piilani's and Honuaula's proposed uses of the Piilani Parcels and the Honuaula Parcel would violate Conditions 5 and 15 of the D&O, and that Condition 17 had also been violated. As noted in Section B and Section C of this Status Report, Piilani and Honuaula will be revising their

development plans for the Petition Area so that they substantially comply with the Original Plan; upon doing so, there will be no violation of Conditions 5 and 15 of the D&O. Piilani and Honuaula have submitted Annual Reports to the Commission for all relevant years; therefore, the violation of Condition 17 has been cured, and there is no current violation of Condition 17.

Thank you for allowing us the opportunity to provide an update on this matter.

DATED: Honolulu, Hawai'i, July 5, 2018.



RANDALL F. SAKUMOTO

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

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that, on the date noted below, a true and correct copy of the foregoing document was duly served upon the following parties via U.S. mail, postage prepaid:

Daniel Orodener, Director
Office of Planning, Land Use Commission
Leiopapa A Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Dawn Takeuchi-Apuna, Esq.
Deputy Attorney General
Department of the Attorney General
Commerce & Economic Development Division
425 Queen Street
Honolulu, Hawai'i 96813

Leo R. Asuncion, Jr., Director
Rodney Funakoshi, Planning Program Administrator, Land Use Division
Office of Planning, Land Use Division
Leiopapa A Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawai'i 96813

Michele Chouteau McLean, Director
Director, Planning Department
County of Maui
2200 Main Street
One Main Plaza, Suite 315
Wailuku, Hawai'i 96793

Michael J. Hopper, Esq.
Department of Corporation Counsel
Kalama O Maui Building
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Wailuku, Hawai'i 96793

Tom Pierce, Esq.
P.O. Box 798
Makawao, Hawai'i 96786

Benjamin M. Matsubara, Esq.
Curtis T. Tabata, Esq.
Matsubara Kotake
888 Mililani Street, 8th Floor
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, July 5, 2018.


A handwritten signature in black ink, appearing to read 'Randall F. Sakumoto', is written over a horizontal line.

RANDALL F. SAKUMOTO
Attorney for Piilani Promenade South, LLC
and Piilani Promenade North, LLC



LAND USE COMMISSION
STATE OF HAWAII

2017 JUL 27 A 8:11

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A94-706
)	
KA'ONO'ULU RANCH	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend The Agricultural Land Use	)	DECISION AND ORDER
District Boundary Into The Urban Land	)	DENYING THE ACCEPTANCE
Use District For Approximately 88	)	OF A FINAL ENVIRONMENTAL
Acres Of Land At Ka'ono'ulu,	)	IMPACT STATEMENT; AND
Makawao-Wailuku, Maui, Hawai'i,	)	CERTIFICATE OF SERVICE
Tax Map Key: 3-9-01: 16, 169, And)	
170 Through 174)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
DENYING THE ACCEPTANCE OF A
FINAL ENVIRONMENTAL IMPACT STATEMENT
AND
CERTIFICATE OF SERVICE

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

11/27/17 by

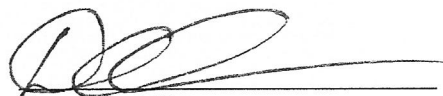

Executive Officer

Exhibit 52f



LAND USE COMMISSION
STATE OF HAWAII

2017 JUL 27 A 8:10

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A94-706
)	
KA'ONO'ULU RANCH)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
To Amend The Agricultural Land Use)	DECISION AND ORDER
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Tax Map Key: 3-9-01: 16, 169, And)	
170 Through 174)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
DENYING THE ACCEPTANCE OF A
FINAL ENVIRONMENTAL IMPACT STATEMENT

The State of Hawai'i Land Use Commission ("Commission"), having examined the proposed Final Environmental Impact Statement ("FEIS") filed by Pi'ilani Promenade North, LLC, and Pi'ilani Promenade South, LLC (collectively "Pi'ilani"), on June 27, 2017, and upon consideration of the matters discussed therein, and having heard from the parties, at its meeting on July 20, 2017, in Kahului, Maui, Hawai'i, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

1. By Order Granting Pi'ilani Promenade South, LLC, and Pi'ilani Promenade North, LLC's, Motion to Stay Phase II of the Order to Show Cause Proceeding dated July 12, 2013, the Commission stayed its proceeding in the above-entitled docket to determine whether the reversion of the Petition Area to its former land use classification or to a more appropriate classification is the appropriate remedy.¹

2. The Commission conditioned the stay on both Pi'ilani and Honua'ula refraining from commencing any construction or development activities on their respective parcels within the Petition Area during the stay.² The Commission further conditioned the stay on Pi'ilani filing a Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order ("Motion for Order Amending the D&O") filed February 10, 1995, to reflect the changes in the development of the Petition Area from the uses originally proposed by Ka'ono'ulu Ranch and

¹ The Commission previously determined under Phase I of the Order to Show Cause proceeding that Pi'ilani and Honua'ula Partners, LLC ("Honua'ula"), violated Condition Numbers 5, 15, and 17 of this Commission's Findings of Fact, Conclusions of Law, and Decision and Order ("D&O") filed February 10, 1995. Ka'ono'ulu Ranch, the original Petitioner and Pi'ilani's and Honua'ula's predecessor, had proposed to develop the Petition Area as the Ka'ono'ulu Industrial Park, consisting of a 123-lot commercial and light industrial subdivision. In 2005, Ka'ono'ulu Ranch sold the Petition Area to Maui Industrial Partners, LLC, who, in turn, sold approximately 13 acres of the Petition Area to Honua'ula and the remaining approximately 75 acres of the Petition Area to Pi'ilani.

² Honua'ula had represented that it will not commence any construction on its parcel while a stay of the Order to Show Cause proceeding was in effect, or unless and until Honua'ula provided this Commission with adequate notice to do otherwise and the Commission grants said request.

requesting, among other things, the bifurcation of this docket to cover its parcels not later than December 31, 2013.

3. On August 14, 2013, Pi'ilani filed an Environmental Impact Statement Preparation Notice ("EISPN") with the Commission to proceed directly to the preparation of an EIS pursuant to Hawai'i Revised Statutes ("HRS") §343-5(e). The EIS is intended to disclose the potential impacts of the proposed action in support of Pi'ilani's Motion for Order Amending the D&O that was filed with this Commission on December 31, 2013.

4. Pi'ilani proposes the development of light industrial, business/commercial, and multi-family uses on approximately 75 acres of land in North Kihei, Maui, Hawai'i ("Project"). The Project will include associated onsite and offsite water, sewer, roads, drainage, and electrical improvements. Amenities will include bicycle and pedestrian pathways and landscaping.

5. The Project is subject to the environmental review process as it proposes to use State land for roadway widening purposes, pursuant to HRS §343-5(a)(1) and Hawai'i Administrative Rules ("HAR") §11-200-6(b)(1)(A).

6. On September 5, 2013, and by a written Order filed September 10, 2013, the Commission (i) agreed to be the accepting authority pursuant to HRS chapter 343; and (ii) determined that the Project may have a significant effect upon the environment to warrant the preparation of an EIS.

7. The State of Hawai'i Office of Environmental Quality Control ("OEQC") published notice of the availability of the EISPN in its September 23, 2013, issue of *The Environmental Notice*, which began a 30-day public comment period that ended on October 23, 2013.

8. Upon receipt of the comments, Pi'ilani prepared a Draft EIS ("DEIS"). The OEQC published notice of the availability of the DEIS in its August 23, 2014, issue of *The Environmental Notice*, which began a 45-day public comment period that ended on October 7, 2014.

9. The following reviewers provided written comments on the DEIS:

Federal

U.S. Department of the Interior, United States Geological Survey

State of Hawai'i

Commission

Department of Accounting and General Services

Office of Planning ("OP")

Department of Education

Department of Health ("DOH"), Environmental Planning Office

DOH, Clean Air Branch

DOH, Clean Water Branch

DOH, Maui District Health Office

DOH, Safe Drinking Water Branch

DOH, Wastewater Branch

Department of Land and Natural Resources ("DLNR"), Land Division

DLNR, Engineering Division

DLNR, Commission on Water Resource Management

DLNR, State Historic Preservation Office

Department of Transportation

County of Maui

Department of Housing and Human Concerns
Department of Parks and Recreation
Department of Planning ("DP")
Department of Public Works
Department of Water Supply

Organizations/Individuals

Kihei Community Association
Maui Chamber of Commerce
Maui Tomorrow Foundation
South Maui Citizens for Responsible Growth
Zandra Amaral Crouse
Paula Baldwin
Kellie Cruz
Daniel Kanahele
Elden Liu
Desiree Lopes
Joan Martin
Dick Mayer
David Reader
Sharon Rose
Millie Septimo
Gylian Solay

10. On June 27, 2017, Pi'ilani filed the proposed FEIS with the Commission.
11. On July 8, 2017, the OEQC published availability of the proposed FEIS in *The Environmental Notice*.
12. On July 14, 2017, OP filed written comments recommending that the Commission accept the FEIS based on its belief that Pi'ilani responded satisfactorily

to OP's concerns, and that the draft FEIS adequately addresses the anticipated Project impacts.

13. On July 17, 2017, the DP filed written comments recommending that the Commission accept the FEIS based on its opinion that the proposed FEIS adequately addresses the content requirements as set forth in HAR §§11-200-18 and 11-200-23.

14. On July 19, 2017, the Commission met at the Maui Arts & Cultural Center, Morgado Meeting Room, in Kahului, Maui, Hawai'i, to consider acceptance of Pi'ilani's proposed FEIS. Randall Sakumoto, Esq., and Lisa Cataldo, Esq., appeared on behalf of Pi'ilani. Also present were Curtis Tabata, Esq., on behalf of Honua'ula; Michael Hopper, Esq., and William Spence on behalf of the DP; and Dawn Takeuchi-Apuna, Esq., and Rodney Funakoshi on behalf of OP.³ At the meeting, the Commission received written and/or oral public testimony from Joan Martin, Mario Cardone, Mike Moran, Linda Berry, Rob Weltman, Charlene Schulenburg, Gary Passon, Mike Foley, Amber Coutsos (read testimony of Pamela Tumpap), Robin Knox, Basil Oshiro, Ronald Vaught, Vernon Kalanikau, Chantal Lonergan, Tom Kook, Michelle Del Rosario, Gene Zarro, Cody Nemet Tuivaiti, Donnie Becker, Jay Krigsman, Robert Aldrich, David

³ Prior to the receipt of public testimony, Commissioner Ohigashi disclosed that he knew Clare Apana, Intervenor Daniel Kanahele, and Albert Perez through his business and social interactions on Maui. There were no objections by the parties to Commissioner Ohigashi's participation in this proceeding.

Hewahewa, Tom Blackburn-Rodriguez,⁴ Kaena Elaban, Ke`eaumoku Kapu, Matt Cerny, Jill Engledow, Allison Miller, K. Hewahewa, Mark Sheehan, Maui County councilmember Kelly King, Hannibal Starbuck, Jon Jon Tabon, Rose Reilly, Heali`i Ka`uhane, Kaponu Makahanaloa-Antonez, Deborah Mader, Albert Perez, Christopher Delaunay, and Henry Rice. Following the completion of public testimony, the Commission recessed the meeting to July 20, 2017.

15. On July 20, 2017, the Commission reconvened the meeting. Intervenor offered four witnesses as part of its presentation on the proposed FEIS: Mark Hyde, David Kanahele, Dick Mayer, and Lucienne De Naie. The DP continued with William Spence as its witness. Dawn Takeuchi-Apuna, counsel for OP, then presented OP's position on the acceptance of Pi'ilani's proposed FEIS. Curtis Tabata, Esq., followed with Honua`ula's position on the matter. Finally, Pi'ilani offered five witnesses as part of its presentation: Jordan Hart, Darren Unemori, Juanita Wolfgramm, Erik Fredericksen, and Tom Holliday.

16. The FEIS does not include a thorough discussion and Pi'ilani presented no testimony to enable the Commission to determine the cumulative impacts of the Project and other developments in the area on the economy, police and fire protection services, schools, solid waste, civil defense, utilities, and medical facilities.

⁴ Mr. Blackburn-Rodriguez provided a large number of postcards in support of the Project to the Commission.

17. The FEIS does not include a thorough discussion and Pi'ilani presented no testimony to enable the Commission to determine the secondary impacts of the Project, particularly in regard to the potential impacts from future developments mauka of Pi'ilani Highway brought about by the construction of the Kīhei Upcountry Highway ("KUH").

18. Pi'ilani's planning consultant, Jordan Hart, confirmed that while the FEIS stated that "The issuance of water meters for the Project by the DWS carries the implicit approval by the DWS of Piilani Promenade's use of the Iao Aquifer System for drinking water," (Volume 1, p. 16) there was no evidentiary basis that he was aware of in the FEIS for that statement.

19. While Appendix L of the FEIS stated that the drinking water source for the Project would come from the 'Iao and Waihe'e Aquifers (Volume 3, Appendix L, p. 3-1), the main body of the FEIS asserted that the water would come from currently unallocated source in the 'Iao Aquifer. Pi'ilani's planning consultant, Jordan Hart, confirmed that there was no way to assess the impact of water withdrawal on a source if the source was not known.

20. The FEIS does not include an analysis and Pi'ilani presented no testimony to enable the Commission to determine the effect of the Project on the Kīhei-Mākena Community Plan.

21. The FEIS is vague because it lacks specificity as to what will actually be developed on the site. Without sufficient information on the Project, it is unclear what impact the Project will have on existing and planned retail developments, including the Kihei Downtown project.

22. Several members of the public whose families have lineal and cultural connection to the land testified that there are cultural resources on the Project site as well as ongoing cultural practices being exercised on the land, including, but not limited to, the use of physical features on the Project site for land navigation and to reference celestial phenomena; the gathering of medicinal plants, such as *ʻuhaloa* (*Waltheria indica*); the observation of weather patterns and avifauna; and religious ceremonies. There was also testimony that the Project would adversely impact these cultural practices. Several of these individuals were not contacted or interviewed for the Cultural Impact Assessment ("CIA") or the Supplemental CIA ("SCIA"). The testimony of these witnesses directly contradicts the findings of the CIA and particularly the SCIA, which concluded that there are no specific valued cultural, historical, or natural resources within the Project site, nor are there any traditional and customary Native Hawaiian rights being exercised within the Project site, and that the exercise of Native Hawaiian rights, or any ethnic group, related to numerous traditional cultural practices, including procurement of marine resources, gathering, access,

cultivation, the use of traditional plans, and the use of trails, will not be adversely impacted by the Project.

23. The FEIS does not include an analysis and Pi'ilani presented no testimony to enable the Commission to determine the traffic impact of the Project in comparison to the 123-lot commercial and light industrial subdivision originally planned for the Petition Area.

24. Pi'ilani's civil engineering consultant, Darren Unemori, confirmed that no cumulative analysis was done of the drainage impacts from the adjacent Honua'ula workforce housing project.

25. Pi'ilani presented no testimony indicating that the FEIS addresses all of the environmental impacts from the development of the entire approximately 88-acre Petition Area in compliance with the Commission's Order to Show Cause proceeding, which covered all 88 acres of the Petition Area. Both Pi'ilani and Honua'ula continue to be bound by the Commission's decision in that matter for the purposes of the HRS chapter 343 environmental review process.

26. After due deliberation at the Commission's meeting on July 20, 2017, a motion was made and seconded to deny the acceptance of Pi'ilani's proposed FEIS as it does not meet the requirements of HRS chapter 343 and HAR chapter 11-200, because (1) the FEIS does not contain a thorough discussion as required by HAR §11-200-17(i) of the cumulative impacts of the Project and other developments in the area on

the economy, police and fire protection services, schools, solid waste, civil defense, utilities, and medical facilities; and (2) the FEIS does not contain a thorough discussion as required by HAR §11-200-17(i) of the secondary impacts of the Project, particularly in regard to the potential impacts from future developments mauka of Pi'ilani Highway brought about by the construction of the KUH, and further to have the Commission authorize the Executive Officer to notify and submit a record of this non-acceptance to Pi'ilani and the OEQC by the July 27, 2017, deadline for Commission action. The motion was thereafter amended and seconded to also have the Commission authorize the Chair of the Commission to sign the Decision and Order in this matter.

During deliberations, the Commission raised additional concerns that the FEIS does not meet the requirements of HRS chapter 343 and HAR chapter 11-200, because (1) the FEIS contains contradictory and unclear information on the source of drinking water for the Project, and therefore no meaningful analysis of the possible impact of this new water use on that source; (2) the FEIS lacks sufficient information of the effect of the Project on the Kīhei-Mākena Community Plan; (3) the FEIS is vague as to what will actually take place on the site and lacks sufficient information on the impact of the Project on existing and planned retail developments, including the Kīhei Downtown project; (4) the FEIS contains inaccurate and incomplete information on cultural, historical, and natural resources and traditional and customary Native

Hawaiian rights being exercised within the Project site to enable the Commission to

render a decision in satisfaction of *Ka Pa`akai O Ka`Aina v. Land Use Com'n, State of Hawai`i*, 94 Hawai`i 31, 7 P.3d 1068 (Hawai`i, 2000); (5) the FEIS lacks sufficient information regarding the traffic impacts from the Project in comparison to the 123-lot commercial and light industrial subdivision originally planned for the Petition Area; and (6) the FEIS fails to address all of the environmental impacts from the development of the entire approximately 88-acre Petition Area in compliance with the Commission's Order to Show Cause proceeding, which covered all 88 acres of the Petition Area.

There being a vote tally of 6 ayes, 0 nays, and 3 excused, the amended motion carried.

RULINGS ON PROPOSED FINDINGS OF FACT

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

CONCLUSIONS OF LAW

1. "'Acceptance' means a formal determination of acceptability that the document required to be filed pursuant to HRS chapter 343 fulfills the definitions and requirements of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement." HAR §11-200-2

2. "[N]either HRS chapter 343 nor the administrative rules of chapter 11-200 indicate the level of detail or specificity that should be included in any given subject. The statute and rules were designed to give latitude to the accepting agency as to the content of each EIS. Thus, what is required in one EIS may not be required in another, based upon the circumstances presented by the particular project. Accordingly, the standard to consider the sufficiency of an EIS under the "rule of reason" is that

an EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives." Price v. Obayashi Hawaii Corp., 81 Hawai'i 171, 183, 914 P.2d 1364, 1376 (1996) quoting Life of the Land v. Ariyoshi, 59 Haw. 156, at 164-65, 577 P.2d at 1121 (1978)

3. HAR §11-200-18 specifies the content requirements for FEISs. An FEIS shall consist of (i) the DEIS revised to incorporate substantive comments received during the consultation and review process; (ii) reproductions of all letters received

containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held; (iii) a list of persons, organizations, and public agencies commenting on the DEIS; (iv) the responses of Pi'ilani to each substantive question, comment, or recommendation received in the review and consultation processes; and (v) the text of the FEIS shall be written in a format which allows the reader to easily distinguish changes made to the text of the DEIS.

4. HAR §11-200-23 specifies the criteria for the acceptability of an FEIS. These criteria include: (i) the procedures for assessment, consultation process, review, and the preparation and submission of the FEIS have all been completed satisfactorily as specified in HAR chapter 11-200; (ii) the content requirements described in HAR chapter 11-200 have been satisfied; and (iii) comments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been incorporated in the FEIS.

5. The proposed FEIS does not meet requirements of HRS chapter 343 and HAR chapter 11-200 in at least the following ways:

- (i) The FEIS fails to include a thorough discussion as required by HAR §11-200-17(i) of the cumulative impacts of the Project and other developments in the area on the economy, police and fire protection services, schools, solid waste, civil defense, utilities, and medical facilities.

- (ii) The FEIS fails to include a thorough discussion of the secondary impacts of the Project, particularly in regard to the potential impacts from future developments mauka of Pi'ilani Highway brought about by the construction of the KUH.
- (iii) The FEIS contains contradictory and unclear information on the source of drinking water for the Project, and therefore no meaningful analysis of the possible impact of this new water use on that source.
- (iv) The FEIS lacks sufficient information of the effect of the Project on the Kihei-Mākena Community Plan.
- (v) The FEIS is vague as to what will actually take place on the site and lacks sufficient information on the impact of the Project on existing and planned retail developments, including the Kihei Downtown project.
- (vi) The FEIS contains inaccurate and incomplete information on cultural, historical, and natural resources and traditional and customary Native Hawaiian rights being exercised within the Project site to enable the Commission to render a decision in satisfaction of *Ka Pa'akai O Ka'Aina v. Land Use Com'n, State of Hawai'i*, 94 Hawai'i 31, 7 P.3d 1068 (Hawai'i, 2000).

- (vii) The FEIS lacks sufficient information regarding the traffic impacts from the Project in comparison to the 123-lot commercial and light industrial subdivision originally planned for the Petition Area.
- (viii) The FEIS fails to address all of the environmental impacts from the development of the entire approximately 88-acre Petition Area in compliance with the Commission's Order to Show Cause proceeding, which covered all 88 acres of the Petition Area.

6. Pursuant to HRS chapter 343 and HAR chapter 11-200, and a motion having been made and seconded and subsequently amended and seconded on July 20, 2017, in Kahului, Maui, Hawai'i, and the amended motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the amended motion, the Commission concludes that Pi'ilani's proposed FEIS does not meet the criteria and procedures governing the acceptance of an FEIS under HAR §11-200-23.

DECISION AND ORDER

IT IS HEREBY ORDERED that the proposed FEIS filed by Pi'ilani in Docket No. A94-706/Ka'ono'ulu Ranch is NOT ACCEPTED pursuant to HRS chapter 343 and HAR chapter 11-200.

This Decision and Order may be appealed to the Environmental Council in accordance with HRS §343-5 and HAR §11-200-24.

ADOPTION OF ORDER

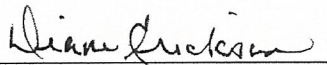
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

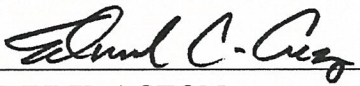
Done at Honolulu, Hawai'i, this 27th day of July, 2017, per motion on July 20, 2017.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII


Deputy Attorney General

By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

7/27/2017

Certified by:


DANIEL ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of

KA'ONO'ULU RANCH

To Amend The Agricultural Land Use
District Boundary Into The Urban Land Use
District For Approximately 88 Acres Of
Land At Ka'ono'ulu, Makawao-Wailuku,
Maui, Hawai'i, Tax Map Key: 3-9-01: 16,
169, And 170 Through 174

DOCKET NO. A94-706

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DENYING THE ACCEPTANCE OF A FINAL ENVIRONMENTAL IMPACT STATEMENT AND CERTIFICATE OF SERVICE was served upon the following by either by hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
LEO ASUNCION, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		
BRYAN YEE, ESQ DAWN TAKEUCHI-APUNA, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
TOM PIERCE, Esq. PO Box 798 Makawao, Hawaii 96768			X
William Spence Director, County of Maui Planning Department 250 S. High St Kalana Pakui Bldg Ste 200 Wailuku, HI 96793		X	
MICHAEL HOPPER, Esq. Deputy Corporation Counsel 200 S. High St. Kalana O Maui Bldg 3rd Flr Wailuku, HI 96793			X
BENJAMIN M. MATSUBARA, #993-0 CURTIS T. TABATA, #5607-0 Matsubara-Kotake 888 Mililani Street, Suite 308 Honolulu, Hawaii 96813			X
RANDALL SAKUMOTO, Esq., McCorriston Miller Mukai MacKinnon LLP Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawai'i 96813			X

Honolulu, Hawai'i, July 27, 2017.



DANIEL ORODENKER
Executive Officer

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

March 12, 2018

Via Hand-Delivery

Mr. Daniel Orodener
Executive Officer
Land Use Commission
Department of Business, Economic
Development and Tourism, State of Hawaii
235 South Beretania Street, Suite 406
Honolulu, Hawai'i 96813

Re: In the Matter of the Petition of Kaonoulu Ranch
Docket No. A-94-706

2018 MAR 12 A 11:13
LAND USE COMMISSION
STATE OF HAWAII

Dear Mr. Orodener:

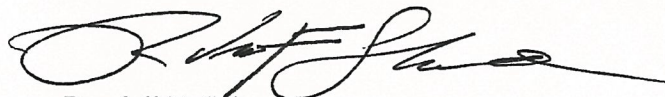
Enclosed herewith are an original and two extra copies of the Twenty-Second Annual Report of Piilani Promenade South, LLC and Piilani Promenade North, LLC, Successor Petitioners to Kaonoulu Ranch, for the year 2017.

Piilani Promenade South, LLC, Piilani Promenade North, LLC respectfully request that the Commission accept the enclosed as the Annual Report for 2017.

In addition, we would appreciate it if you could please file-stamp the enclosed copies and return them to our office in the enclosed stamped, self-addressed envelope. Thank you for your assistance in this matter.

Very truly yours,

MCCORRISTON MILLER MUKAI MacKINNON LLP



Randall F. Sakumoto

RFS:dkc

Enclosures

cc: Leo R. Asuncion, Jr., State Office of Planning (w/enclosure)
William Spence, Director of Planning, County of Maui (w/enclosure)
Dawn Takeuchi-Apuna, Esq. (w/enclosure)
Michael J. Hopper, Esq.
Benjamin M. Matsubara (w/enclosure)
Tom Pierce, Esq. (w/enclosure)

Exhibit 52g

375455.1

P.O. Box 2800 • Honolulu, Hawaii 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813
Telephone: (808) 529-7300 • FAX: (808) 524-8293

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

In the Matter of the Petition of

Docket No. A94-706

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, Hawai'i; Tax Map Key Nos. 2-2-02:por.
of 15 and 3-9-01:16

LAND USE COMMISSION
STATE OF HAWAII
2018 MAR 12 A 11:13

**TWENTY-SECOND ANNUAL REPORT OF
PIILANI PROMENADE SOUTH, LLC AND
PIILANI PROMENADE NORTH, LLC,
SUCCESSOR PETITIONERS TO KAONOULU RANCH (2017)**

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 "Piilani")¹, successors-in-interest to MAUI INDUSTRIAL PARTNERS, LLC, a Delaware limited liability company ("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 by the State of Hawai'i Land Use Commission (the "Commission") on February 10, 1995 (the "D&O"), hereby submits its Twenty-Second Annual Report of compliance with the conditions established by said approval, for the year 2017, as follows:

¹ PPS and PPN are Delaware 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. Piilani understands that Honua'ula will file its own separate annual report.

This Twenty-Second Annual Report addresses compliance with the conditions of approval in the D&O for the Piilani Parcels, or where appropriate, notes that Piilani has requested a modification of said conditions in the pending Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order, filed on December 31, 2013 (the "Motion to Amend").

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 Kihei Makena Community Plan incorporating the required change and designating the subject parcels as Light Industrial was approved on March 20, 1998, and the Change in Zoning application for Light Industrial 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.**

Piilani intends to cooperate when applicable with the State Department of Health and the County of Maui Department of Public Works and Environmental Management, formerly a part of the County of Maui 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.**

Piilani intends to contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, and in fact has 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.**

Piilani intends to 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.**

Piilani intends to comply with this condition. Petitioner notes, however, that the State Department of Transportation has indicated that a frontage road parallel to Piilani Highway would not be feasible and could create traffic and safety issues, and that the State Department of Transportation would not approve a frontage road.

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.**

Piilani intends to fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. Previously approved civil construction plans for the Piilani Promenade project include both potable and non-potable water systems and wastewater collection systems within and outside the Piilani Promenade project area. Piilani has committed to construct and dedicate a 1,000,000-gallon water tank to serve the needs of the Kihei-Makena community.

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

Piilani intends to participate in an air quality monitoring program if required 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.**

Piilani intends to comply with this condition, unless amended by the Commission.

- 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.**

Piilani intends to comply with this condition, unless amended by the Commission.

- 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.)**

Piilani intends to comply with this condition, unless amended by the Commission.

9. **Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be founds, 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.**

Piilani 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 (submitted on February 11, 2000), 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 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.**

Piilani intends to 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.**

Piilani intends to 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.**

Piilani intends to comply with this condition.

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.**

Piilani intends 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.**

Piilani intends to comply with this condition. Petitioner has been in contact with Honua'ula Partners, LLC ("Honua'ula"), the owner of other parcel encumbered by the D&O (tax map key parcel (2) 3-9-001:169). Pending the anticipated completion by Honua'ula of certain processes now before the County of Maui, both Petitioner and Honua'ula intend to provide the Commission with more specific information on the future development of the Property and the Honua'ula Parcel.

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.**

Piilani 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.**

Piilani 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.**

Former Petitioner Kaonoulu Ranch recorded a Notice of Imposition of Conditions with the Bureau of Conveyances of the State of Hawai'i pursuant to Section 15-15-92 Hawai'i 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.**

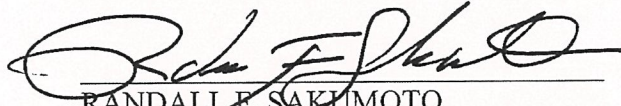
Former Petitioner Kaonoulu Ranch recorded a Document Listing Conditions to Reclassification of Land with the Bureau of Conveyances of the State of Hawai'i, dated April 11, 1995, and has filed a copy of the recorded document with the Commission.

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.**

Piilani acknowledges that the Commission may fully or partially release the conditions provided herein.

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

DATED: Honolulu, Hawai'i, MAR 12 2010.



RANDALL F. SAKUMOTO

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

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that, on the date noted below, a true and correct copy of the foregoing document was duly served upon the following parties via U.S. mail, postage prepaid:

Daniel Orodenker, Director
Office of Planning, Land Use Commission
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Dawn Takeuchi-Apuna, Esq.
Deputy Attorney General
Department of the Attorney General
Commerce & Economic Development Division
425 Queen Street
Honolulu, Hawai'i 96813

Leo R. Asuncion, Jr., Director
Office of Planning, Land Use Division
Leiopapa A Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawai'i 96813

William Spence, Director
Director, Planning Department
County of Maui
2200 Main Street
One Main Plaza, Suite 315
Wailuku, Hawai'i 96793

Michael J. Hopper, Esq.
Department of Corporation Counsel
Kalama O Maui Building
200 S. High Street, Fl. 3
Wailuku, Hawai'i 96793

Tom Pierce, Esq.
P.O. Box 798
Makawao, Hawaii 96786

Benjamin M. Matsubara, Esq.
Curtis T. Tabata, Esq.
Matsubara Kotake
888 Mililani Street, 8th Floor
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, MAR 12 2018.

A handwritten signature in black ink, appearing to read 'Randall F. Sakumoto', written over a horizontal line.

RANDALL F. SAKUMOTO

Attorney 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	)	DOCKET NO. A10-788
)	
Hawai'i Housing Finance and)	
Development Corporation and Forest City)	
Hawai'i Kona, LLC	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
To Amend The Agricultural Land Use	)	DECISION AND ORDER
District Boundary Into The Urban Land)	
Use District For Approximately 271.837)	
Acres Of Land At Keahuolū, North Kona,)	
Island of Hawai'i, Tax Map Key (TMK))	
Nos.: (3) 7-4-021:020 (por.), (3) 7-4-)	
021:024, (3) 7-4-021:025, (3) 7-4-021:026,)	
and (3) 7-4-021:027)	
_____)	

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

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

November 8, 2010 by

A handwritten signature in black ink, appearing to read "Catherine A. [unclear]".
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A10-788
)	
Hawai'i Housing Finance and)	
Development Corporation and Forest City)	
Hawai'i Kona, LLC	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW,
To Amend The Agricultural Land Use	)	DECISION AND ORDER
District Boundary Into The Urban Land)	
Use District For Approximately 271.837)	
Acres Of Land At Keahuolū, North Kona,)	
Island of Hawai'i, Tax Map Key (TMK))	
Nos.: (3) 7-4-021:020 (por.), (3) 7-4-)	
021:024, (3) 7-4-021:025, (3) 7-4-021:026,)	
and (3) 7-4-021:027)	
_____)	

LAND USE COMMISSION
STATE OF HAWAII
2010 NOV -5 A 11:14

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

Co-Petitioners HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawai'i ("HHFDC"), and FOREST CITY HAWAII KONA, LLC, a Hawai'i limited liability company ("Forest City"), (hereinafter collectively referred to as "Petitioner"), filed a Petition for District Boundary Amendment on September 07, 2010, pursuant to Chapter 205, Hawai'i Revised Statutes ("HRS"), Title 15, Subtitle 3, Chapter 15 of the Hawai'i Administrative Rules ("HAR")

and HRS Chapter 201H, to amend the land use district boundary to reclassify approximately 271.837 acres of land, situated at Keahuolū, Island of Hawaiʻi, State of Hawaiʻi, identified by Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027 (the "Petition Area"), from the Agricultural District to the Urban District. The Petition Area, together with approximately 0.226 acres that are already within the Urban District, are intended to be developed as a master planned, mixed-use affordable housing project to be known as Kamakana Villages at Keahuolū ("Project").

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the Proposed Findings Of Fact, Conclusions Of Law, And Decision And Orders and subsequent responses filed by Petitioner herein, hereby makes the following Findings Of Fact, Conclusions Of Law, And Decision And Order:

FINDINGS OF FACT

I. PROCEDURAL MATTERS

1. On July 7, 2010, Petitioner filed a Notice of Intent to File a Land Use District Boundary Amendment Petition ("Notice of Intent") with the Commission pursuant to HAR Section 15-15-97(b), Affidavit attesting to Service, Exhibits A-B, Affidavit attesting to Publication, and Certificate of Service ("COS").

2. On July 7, 2010, the Notice of Intent was published in The Honolulu Star Advertiser and in West Hawai'i Today.

3. On July 7, 2010, copies of the Notice of Intent were mailed to the Director of the State of Hawai'i Office of Planning ("OP"), the County of Hawai'i Planning Department ("Planning Department"), all persons with a property interest in the Petition Area, and all persons on the Commission's mailing lists.

4. On July 26, 2010, Petitioner filed Notice of Hearing, Exhibits A-D, Affidavit attesting to Publication, and COS.

5. On August 30, 2010, a Notice of Hearing was published in The Honolulu Star Advertiser and in West Hawai'i Today.

6. On August 30, 2010, Petitioner filed an Affidavit attesting to Service of Petitioner's Notice of Hearing, Exhibits A-D, Affidavit attesting to Publication, and COS..

7. On September 2, 2010, the County of Hawaii, Office of Housing and Community Development ("OHCD") provided a certification that the Project involves a HRS § 201H-38 housing project (the "Certification").

8. By letter dated September 2, 2010, the Executive Officer of the Commission mailed the Pre-hearing Notice to parties and potential intervenor QLT¹.

¹ Queen Lili'uokalani Trust had previously filed for intervention on the prior Docket No. A10-785 concerning the same project, which was subsequently withdrawn.

9. On September 07, 2010, Petitioner filed a Petition for District Boundary Amendment ("Petition"), Exhibits 1-37, Affidavit attesting to Service of Petition, Affidavit attesting to Mailing of the Notice of Petition Filing, and COS; which included a copy of the Final Environmental Impact Statement prepared for HHFDC, notice of which was published in *The Environmental Notice* on October 8, 2008 (the "Final EIS"), a proposed Decision and Order, the Certification and affidavits that Petitioner had met with interested community groups to discuss the Project, and certification from the county housing agency that the Project involves a HRS, Section 201H-38 housing project.

10. By letter dated September 7, 2010, the Executive Officer of the Commission deemed the Petition a proper filing as of September 7, 2010.

11. On September 13, 2010, Petitioner filed Affidavits of Publication of Notice of Hearing in the Honolulu Star Advertiser and in West Hawai'i Today, and COS.

12. On September 14, 2010, QLT filed a Petition to Intervene.

13. On September 15, 2010, a prehearing conference was held at the Commission's Conference Room No. 405, in Honolulu, Hawai'i, with the Petitioner, OP, the Planning Department and QLT.

14. On September 15, 2010, the Executive Officer of the Commission mailed a letter to parties and potential intervenor QLT, rescinding the September 7, 2010 deemed complete determination as of September 15, 2010. The Notice of Hearing did not comply with requirements of HRS Sections 205-4 and 1-28.5, and HAR Section 15-15-54.

15. On September 21, 2010, Petitioner filed Verifications of Jon Wallenstrom and Karen Seddon, Affidavit attesting to Service of Notice of Hearing, Exhibits A-D, Affidavit attesting to Publication, Exhibit 1, and COS. The Petitioner's Affidavit Attesting to Publication stated that the Notice of Hearing was published in: the Honolulu Star Advertiser (September 21, 2010); West Hawai'i Today (September 21, 2010); Hilo Tribune (September 21, 2010); The Maui News (September 21, 2010); and The Garden Island (September 21, 2010).

16. On September 21, 2010, QLT filed a Petition for Intervention and COS.

17. On September 22, 2010, the Executive Officer of the Commission deemed the Petition a proper filing as of September 21, 2010, and mailed notice to all parties and potential intervenor QLT.

18. On September 22, 2010, the Executive Officer mailed a Notice of Pre-hearing on September 28, 2010, to all parties and potential intervenor QLT.

19. On September 23, 2010, Petitioner filed notarized copies of Verifications of Jon Wallenstrom and Karen Seddon.

20. On September 23, 2010, OP filed a Statement of Partial Support for Queen Lili'uokalani Trust's Petition for Intervention.

21. On September 28, 2010, the County of Hawai'i Planning Department filed a Statement of No Opposition to QLT's Petition for Intervention, and COS.

22. On September 28, 2010, a pre-hearing conference was held at the Commission's Conference Room No. 405, in Honolulu, Hawai'i, with the Petitioner, OP, the Planning Department and potential intervenor QLT.

23. On September 28, 2010, The Commission filed a Pre-hearing Order and served it on the parties and potential intervenor QLT.

24. On October 6, 2010, the County of Hawai'i Planning Department filed a Statement of Position in Support of the Petition and a COS.

25. On October 7, 2010, at its meeting in Kona, Hawai'i, and by written Order filed on October 19, 2010, the Commission granted the Petition To Intervene filed by QLT.

26. On October 11, 2010, QLT filed a List of Exhibits and Witnesses, and COS.

27. On October 11, 2010, QLT filed a Petition for Declaratory Order, Verification and Declaration, Exhibits A-D, and COS.

28. On October 11, 2010, Petitioner filed a First List of Witnesses, First List of Exhibits, Exhibits 38, 40, 42, 43, 45, 46, 48, 49, 50, 52, 54-56, 58, 60, 62, 64-66, 68, 69, 71-73, 75, 77, 78, 80-85, and 87, and COS.

29. On October 11, 2010, OP filed a List of Witnesses and Exhibits, Exhibits 1, 5-7, and COS.

30. On October 11, 2010, the County of Hawai'i Planning Department filed Testimony in Support of the Petition, and COS.

31. On October 12, 2010, Petitioner filed Notice of Hearing filed at Lieutenant Governor's Office; Affidavits of Publication for Hawai'i Tribune Herald, Honolulu Star Advertiser, The Garden Island, The Maui News, and West Hawai'i Today; and COS.

32. On October 13, 2010, the Chief Clerk mailed a letter to QLT advising of the correct docket number for its Petition for Declaratory Order.²

33. On October 14, 2010, QLT filed a Statement of Position in Opposition to Petition, and COS.

34. On October 15, 2010, Petitioner filed a First Amended List of Witnesses and List of Rebuttal Witnesses, and COS; and Petitioners List of Rebuttal Exhibits, Exhibits 88-108, and COS.

35. On October 15, 2010, OP filed a List of Rebuttal Witnesses, and COS.

36. On October 18, 2010, QLT filed an Amended List of Witnesses, Amended List of Exhibits, Exhibits 1-10, 12-25, and 27-34, Exhibits 11, 26, and 35, and COS.

² On October 11, 2010, QLT filed a Petition for Declaratory Order, Exhibits A-D, and COS. As filed by QLT, its Petition for Declaratory Order referenced Docket No. A10-788; the Chief Clerk assigned Docket No. DR10-39 and requested QLT make the change and serve the other parties currently participating in this docket. On October 18, 2010, HHFDC and Forest City filed a Memorandum in Opposition to QLT's Petition for Declaratory Order,. On October 20, 2010, OP filed Office of Planning, State of Hawai'i's Joinder to Respondents [Intervenors] HHFDC and Forest City Hawai'i Kona, LLC's Memorandum in Opposition to Queen Lili'uokalani Trust's Petition for Declaratory Order and COS.

37. On October 18, 2010, Petitioner filed Written Direct Testimony consisting of Exhibits 39, 41, 44, 47, 51, 53, 57, 59, 61, 63, 67, 70, 74, 76, 79, and 86, and COS; and Notification of Appearance of Co-Counsel (Bays Deaver Lung Rose & Holma) for Forest City.

38. On October 18, 2010, OP filed Testimony in Support of Petition with Conditions, First Amended Exhibit List, Exhibits 2, 4, and 8, and COS.

39. On October 20, 2010, OP filed Written Direct Testimony of Edwin H. Sniffen, Exhibit 3, and COS.

40. On October 20, 2010, QLT filed a Motion for Subpoena Duces Tecum, Exhibit A, and COS.

41. On October 21, 2010, the attorney for QLT orally moved to find that the Petition is defective because it is contrary to the intent of the parties involved in the acquisition of the property that comprises the Kamakana Villages Project and the Notice of Intent failed to meet the requirements of the Commission's rule and State law. The Commission heard arguments from the parties solely on the issue of the Notice of Intent. After argument by the parties and questions by the Commission, a motion was made and unanimously passed that to the extent there may have been a failure on the part of the Petitioner to comply with the Commission's rule governing publication of the Notice of Intent to File, there is good cause to waive the rule [HAR, Section §15-15-97(b)], because there was no showing of actual or apparent harm and the intent of the rule and actual practice has been substantially met.

42. On October 21, 2010, Petitioner requested to enter into the record Petitioner's Exhibit 109 titled "La`i`ōpua Community Association Brochure", which was granted by the Commission.

43. On October 22, 2010, Petitioner requested to enter into the record Petitioner's Exhibit 110 titled "Initial Responses to Comments from QLT on TIAR Figure and Tables dated October 22, 2010" which was granted by the Commission.

44. On October 22, 2010, QLT requested to enter into the record Intervenor's Exhibit 36 Titled "Analysis of Petitioner's TIAR- Traffic Spreadsheet and Intersection Maps " which was granted by the Commission.

45. The Commission held evidentiary hearings in this docket on October 21-22, 2010 in Waikoloa, Hawai`i; and on November 4-5, 2010, in Kona, Hawai`i. During the hearings, the Commission received and entered into the record oral and/or written public testimony relating to the Project.

46. On November 3, 2010, Petitioner filed Petitioner's Amended Proposed Findings of Fact, Conclusions of Law, and Decision and Order, for a State Land Use District Boundary Amendment.

47. On November 3, 2010, QLT filed Queen Lili`uokalani Trust's Written Motion Supplementing its Oral Motion Made on October 21, 2010, To Dismiss The Petition, Or In The Alternative, Deem Petition Defective.

48. On November 4, 2010, the Commission denied QLT's oral motion made October 21, 2010, and QLT's written motion supplementing its oral motion.

49. On November 4, 2010 the Commission closed the evidentiary portion of the proceedings and heard oral argument from the parties, and deliberated.

II. DESCRIPTION OF THE SUBJECT PROPERTY

50. The Petition Area consists of approximately 271.837 acres located in Keahuolū, North Kona, and is identified by Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027. Approximately 271.137 acres are owned in fee simple by FHT Kamakana, LLC, a Hawai'i limited liability company, which has provided its written authorization to Petitioner to file the Petition. Approximately 0.7 acres of the Petition Area located within TMK Nos. (3) 7-4-021: 025, 026 and 027, are owned by the County of Hawai'i pursuant to a Quitclaim Deed for Ane Keohokalole Highway. The County of Hawai'i also provided a written authorization to Petitioner to file the Petition

51. Approximately 0.226 acres of land adjacent to the Petition Area and within TMK (3) 7-4-021: 020 are currently within the State Urban District.

52. QLT owns the properties on the south side of Palani Road and on the makai side of the Ane Keohokalole Highway. The lands adjacent to the Petition Area on the south and makai side are within the State Land Use Urban District.

53. The Department of Hawaiian Homelands ("DHHL") owns the properties to the north. The lands adjacent to the Petition Area that are within the State Land Use Agricultural District are owned by DHHL.

54. The Petition Area is vacant and undeveloped, bordered by Palani Road to the south, and the future Ane Keohokalole Highway along the west/makai end and is approximately one mile upslope from Kailua-Kona.

55. The elevation of the Petition Area ranges between 300 to 580 feet above mean sea level.

56. The Petition Area slopes downhill, from east to west. Slopes within the makai portion of the Petition Area range from 5% to 15%. Slopes within the mauka portion of the Petition Area are steeper, with some areas at a slope of greater than 15%.

57. Annual rainfall in the region ranges from 20 to 40 inches per year, with heavier rain in the summer months.

58. The Petition Area is designated as FEMA Flood Zone X (undetermined) by the Federal Insurance Administration's Flood Insurance Study. The Petition Area is not susceptible to flooding. Base flood elevations have not been determined for the Petition Area. There are no perennial streams or natural drainage ways within the Petition Area; however, because of the high permeability of the natural ground, surface waters drain quickly.

59. The Petition Area has satisfactory topography for the proposed use, and is free from the danger of tsunami and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for the Project.

60. The terrain is characterized by lava flows and extremely rocky soil. The soils underlying the Petition Area are classified by the USDA National Resources Conservation Service as `a`ā (rLV) and pahoehoe (rLW) lava flows, Kaimū extremely stony peat (rKED) and Punalu`u extremely rocky peat (rPYD).

61. None of the land within the Petition Area is considered Prime or Unique agricultural land under the State of Hawai`i Department of Agriculture's Agricultural Lands of Importance to the State of Hawai`i ("ALISH") system. Most of the soils within the Petition Area have not been classified under the ALISH system because the soils are not considered important agricultural lands. However, two (2) small areas within the Petition Area are designated as "Other" under the ALISH system.

62. Soil productivity is characterized under the University of Hawai`i Land Study Bureau (LSB) Detailed Land Classification system in a range from A to E. Under the system, A is the most productive soil and E is the least productive soil. The soils within the Petition Area are classified as E.

63. The Petition Area is identified by the County General Plan Land Use Allocation Guide Map ("LUPAG Map") as Urban Expansion, with a small portion in the

southern/mauka corner of the Petition Area, located along Palani Road, designated as Low Density Urban.

64. The Petition Area is within the Kona Urban Area as designated by the Kona Community Development Plan ("Kona CDP").

65. The Petition Area is designated as a Neighborhood Village Transit Oriented Development ("TOD") under the Kona CDP.

66. The Petition Area is currently zoned by the County of Hawai'i as Agricultural A-5a.

III. PROPOSAL FOR RECLASSIFICATION

67. Petitioner seeks to have the Petition Area reclassified from the Agricultural District to the Urban District in order to develop Kamakana Villages at Keahuolū, a master-planned, mixed-use affordable housing project proposed to consist of approximately 2,330 residential units (single-family and multiple-family), of which over 50% or approximately 1,169 will be affordable units, i.e., offered for sale or rent to buyers who earn no more than 140% of the median income in the County of Hawai'i, and up to 197,000 square feet of commercial space (the "Project").

68. The Project qualifies under HRS Chapter 201H, as an affordable housing project because more than half of the proposed 2,330 residential units will be affordable units, i.e., offered for sale or rent to buyers who earn no more than 140% of the median income in the County

of Hawai'i, and therefore may be exempt from State and County land use regulations, and to proceed under the land use entitlements fast tracking procedures provided under HRS Section 201H-38.

69. A County Council HRS Chapter 201H Resolution authorizing exemptions from various land use and zoning standards is needed in order to accommodate the development of the Project.

70. Petitioner proposes to develop up to 661 single-family homes, and 1,669 multiple-family homes, of which approximately 31 and 1,138, respectively, will be affordable units.

71. A broad range of residences (from affordable multi-family rentals to townhouses, apartments, duplexes and detached homes) is planned for the Project. In general, housing types and density will be distributed dependent upon the slope of the land. Higher density homes with larger building footprints will be located within the flatter portions of the Petition Area closest to the Ane Keohokalole Highway, and lower density homes with smaller building footprints are better suited for the steeper slopes in the more mauka portions of the Petition Area.

72. Under 2010 affordable pricing and market, projected target sales prices for market homes range from \$300,000 to \$400,000 for multiple family homes and \$400,000 to \$700,000 for single family homes.

73. Projected target sales prices for affordable homes are based on the County's 2010 affordable housing guidelines for the affordable single and multiple family homes, which range from \$200,000 to \$400,000.

74. It is estimated that as many as 400 of the affordable units will be offered as rental units.

75. Full urban development of the Petition Area is anticipated to occur in six Phases over 17 - 18 years. Petitioner prepared a map showing two increments; Increment 1 (Phase 1, Phase 2 and Phase 3a) consisting of approximately 136.430 acres and proposed to be developed from late 2010/early 2011 through the fall of 2020, and Increment 2 (Phase 3b, Phase 4, Phase 5 and Phase 6), consisting of approximately 135.407 acres, and proposed to be developed from late 2020 through 2028.

76. Petitioner intends to construct up to 1,196 residential units by the fall of 2020, to be contained in Phases 1, 2 and 3b, and up to 1,134 residential units from 2020 to 2028, to be contained in Phases 3b, 4, 5 and 6.

77. Overall residential gross density per Phase will range from 6.5 dwelling units per acre to 13 dwelling units per acre, with an average gross density of approximately 8.6 dwelling units per acre.

78. Three (3) areas within the Petition Area are proposed for mixed-use/commercial/office development, for a total of approximately 197,000 sq. ft. of commercial space. Approximately 41,833 sq. ft. of commercial space is planned for Phase 1; 24,500 sq ft of

commercial space for Phase 2; 32,667 sq ft of commercial space for Phase 3a; and 98,000 sq ft of commercial space for Phase 6, for a total of 197,000 sq ft. of commercial space.

79. The commercial space is proposed to be distributed within three mixed-use areas, two of which will be located along Ane Keohokalole Highway, and one along Palani Road.

80. In addition to the residential and mixed-use development, Petitioner plans to develop three (3) large park areas and numerous small parks and open space areas, two (2) archaeological preserve areas and two (2) sites for school or other civic facilities.

81. Three large park/play field sites are planned for the Project. Two of the three main parks/play fields (Central and North) will be provided in Phase 2, and the South Park will be provided during Phase 5.

82. Two school sites are planned within the Petition Area. Approximately 13 acres will be developed as a State Department of Education (DOE) Elementary school to include the Central play field.

83. Two archaeological preserve areas will be located within the Petition Area. One approximately 2.63 acre preserve area will be developed during Phase 3b and the other, of approximately 6.33 acres, will be developed during Phase 5.

84. Access to the Project will be provided from three intersections on the future Ane Keohokalole Highway and three intersections on Palani Road. Two transit stations are planned to be located adjacent to the Petition Area, along Ane Keohokalole Highway.

IV. PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

85. Forest City's parent company, Forest City Enterprises, Inc., is a publicly traded company and the developer and manager of a diverse portfolio of real estate property located throughout the United States. Forest City Enterprises, Inc. has approximately \$11.9 billion in total assets (as of 7/31/09).

86. Petitioner provided Forest City Enterprises, Inc.'s 2009 Summary Annual Report and Supplemental Package, listing assets as \$11.9 billion and liabilities as \$10.8 billion and shareholders equity of \$1.1 billion as of January 31, 2010.

87. Forest City has obtained a \$25 million loan from HHFDC for the initial Phases of development of Kamakana Villages and has invested Forest City equity. Additional funds are expected to come from Forest City equity, lender financing and the proceeds from the sales at the Project.

88. Other potential sources of funds are application for and placement of operational subsidies within Kamakana Villages, Low-Income Housing Tax Credits and rental subsidies.

89. Subdivided residential and mixed-use lots may be sold in bulk to one or more homebuilders.

90. The estimated cost for the Project, including infrastructure and vertical construction, is \$734,471,953.

91. Infrastructure is estimated to cost \$154,378,803, which includes internal roadways, but not other traffic mitigation improvements.

92. Residential construction is estimated to cost \$525,700,000, and commercial construction is estimated to cost \$54,175,000.

V. NEED FOR THE PROPOSED DEVELOPMENT

93. The resident population of West Hawai'i is forecast to increase by about 60% over the next two decades, reaching some 118,000 persons. In Greater Kailua-Kona, which stretches from Keāhole to Keauhou, the resident population is projected to grow from a current level of just over 23,000 to circa 40,000 persons by 2030.

94. These additional residents will primarily result from the natural growth of existing Big Island families, with secondary contributors being intra-state migration from other islands, and in-migration of mainland and foreign persons.

95. This increase is expected to create demand for some 7,560 to 10,162 new housing units in Greater Kailua-Kona between 2010 through 2030. About 44% of this demand will be for resident/workforce housing units meeting affordable pricing guidelines.

96. Even with the 2,330 residential units proposed for the Project, the projected shortfall for housing by 2030 is approximately 5,858 residential units.

97. The Petition Area has a superior location for the proposed Project in regards to its physical characteristics. The Petition Area has extensive frontage on Palani Road and the

soon-to-be-constructed initial stretch of Ane Keohokalole Highway, which will enable ease of access; regional infrastructure systems are available in the vicinity; and, the makai and mauka panoramas are highly desirable as is the climate.

98. The Petition Area is also favorable from a market perspective. Nearby existing development is complimentary; it is proximate to supporting services, employment and businesses in central Kailua-Kona; and, is in an area the market considers as having urban use potentials.

99. The Project, as a master planned community, will be among the first major self-contained projects in Greater Kailua-Kona oriented towards resident working families.

100. The Petition Area and proposed Project will have the attributes necessary to be highly competitive in all its product sectors, and will capture a reasonable market share during its offering period.

101. Taking into account competing projects, all 2,330 units within the Project could be absorbed by 2028. The affordable-priced component would be absorbed faster than market-prices units.

102. Project residents will generate a demand for more than 110,000 sq. ft. of neighborhood commercial floor space comprised of retail, restaurant, service/support, business/office and medical uses based on regional and statewide spatial demand trends.

103. The 197,000 sq. ft. of commercial space component of the proposed Project can achieve full lease-up and operation within the Project time-frame extending to 2028.

VI. IMPACTS OF THE PROJECT

A. ECONOMIC IMPACTS

104. Development of the Project will generate more than \$734.4 million in capital investment into the Big Island economy.

105. The construction and on-going operations and maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period.

106. After completion the Project will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year.

107. During its almost two decades of build-out, the Project will have a base economic impact on the Big Island of some \$2.5 billion with a stabilized annual benefit of \$250 million; double that Statewide.

108. The County of Hawai'i, could receive some \$62 million in real property tax receipts during the construction period for the Project, and annual collections of \$6.8 million on a stabilized basis thereafter.

109. The equitable "per capita contribution" cost to provide County services to the Project's de facto population will be circa \$9 million per year; not one-third more than the taxes

generated. The "actual" costs of additional services required could be less than these "per capita contribution" estimates.

110. The State will receive an estimated \$256 million in primary receipts from State Income and Gross Excise Taxes during the Project build-out, and a stabilized amount of \$26.2 million annually.

111. The per capita costs to provide State services to the Project residents is projected at \$28.3 million per year, less than 10% more than what is generated within the Project.

112. In 2009 dollars, the rounded aggregate annual tax revenues flowing from the development of the Project during the construction and at full build-out range from \$220,401 to \$6.8 million per year for the County of Hawai'i, stabilizing over time at \$6.8 million annually and totaling \$62.1 million over the development period.

113. In 2009 dollars, the rounded aggregate annual tax revenues flowing from the development of the Project during the construction and at full build-out range from \$1.8 million to \$29.1 million annually for the State of Hawai'i, stabilizing at \$26.2 million per year, and cumulatively at \$279.8 million over the development period.

114. In 2009 dollars, the rounded aggregate annual tax revenues flowing from the development of the Project during the construction and at full build-out range from \$2.1 million to \$35.9 million annually in total to the combined County and State public purse, stabilizing at about \$33 million per year, and cumulatively at \$341.9 million over the development period.

115. The overall yearly net benefit to State and County agencies varies from a \$2.5 million loss to a \$3.6 million gain, with a cumulative profit to the agencies of \$3.4 million.

B. SOCIAL IMPACTS

116. The Project will create improved connectivity within the community and will encourage the use of transportation methods other than automobiles by being located along the Ane Keohokalole Highway transit corridor and adjacent to planned transit stops along Ane Keohokalole Highway.

117. Petitioner will provide a site for a DOE school and will enter into an agreement with the DOE that will provide for this land contribution as well as a construction fee.

118. The Project will have nominal impacts on the socio-economic aspects of the Palani Road/Kealakehe subdivisions and within Greater Kailua-Kona that relate to real property issues. Property values in the study area (Keāhole to Keauhou) are largely driven by external, cyclical economic factors and cumulative mass, not any single new project.

119. The Project will not have a negative socioeconomic impact on the region. There will be minimal direct in-migration as a direct result of the operating components of the Project, and what is created (if any) will be readily met on-site by the proposed workforce/affordable housing product.

C. IMPACTS UPON RESOURCES OF THE AREA

1. AGRICULTURAL RESOURCES

120. The Petition Area has poor soil conditions for agricultural production because the soils are rocky, rainfall is not high and water is not currently available.

121. The Petition Area is characterized by lava flows and extremely rocky soil.

122. None of the land within the Petition Area is considered Prime or Unique under the ALISH system.

123. The University of Hawai'i Land Study Bureau Detailed Land Classification system rates the soils within the Petition Area as E.

124. The development of the Project is not expected to have an adverse impact on agriculture because the Petition Area is not under agricultural production and has not been during any time in recent history due to its poor soils.

2. FLORA AND FAUNA

125. The Botanical Survey determined that no threatened or endangered plant species were located within the Petition Area.

126. Four (4) kinds of vegetation are located within the Petition Area: (i) managed land along Palani Road, dominated by alien species; (ii) Prosopis Woodland, dominated by kiawe and koa haole; (iii) Leucaene Scrub dominated by koa haole in combination with alahe'e and

fountain grass; and (iv) Schinus/Psydrax scrub, dominated by Christmas berry and alahe'e.

Ko'oko'olau, a "species of concern" was observed within the Petition Area.

127. Of the 83 plant species found within the Petition Area, only 17 are native.

128. The Botanical Survey concluded that the development of Kamakana Villages should not negatively impact flora resources within the Petition Area.

129. No endangered or threatened avifaunal or feral mammal species are located within the Petition Area, as determined by the Avifaunal and Feral Mammal Survey and the Biological Survey of Lava Tube Caves conducted during the preparation of the Final EIS.

130. No native water birds, nesting seabirds or migratory shorebirds were observed at the Petition Area, nor was there any evidence of the Hawaiian Hawk or the Hawaiian Short-eared Owl. The only mammals seen were the Small Indian Mongoose and two adult pigs. No Hawaiian Hoary Bats were detected by the ultrasound device employed during a night search in May 2008.

131. No endangered or threatened invertebrate species are located within the Petition Area. The Biological Survey of Lava Tube Caves concluded that there were no cave resources that would be threatened by development within the Petition Area. A total of 14 species of invertebrates were found, only two (2) of which (the Rhagidiid mite and the Native cave moth) are likely to be endemic to Hawai'i.

3. HISTORICAL RESOURCES

132. Development of the Project should not result in adverse impacts to historic resources in the Petition Area. Archaeological sites conforming to the significance criteria established under State and Federal regulations will be preserved in coordination and consultation with the State Historic Preservation Division ("SHPD").

133. An archaeological inventory survey that covered approximately 1,100 acres, and which included the Petition Area, was approved by the SHPD in 1993 and an archaeological mitigation plan was also approved in 1993. Additional archaeological field work was done in 2007 as part of the preparation of the Final EIS.

134. In consultation with SHPD, Haun & Associates prepared an Archaeological Mitigation Plan Update in October 2009. It was a preliminary step designed to determine appropriate archaeological mitigation tasks to be detailed in subsequently prepared plans for data recovery, burial treatment, site preservation, and monitoring.

135. Most recently Petitioner commissioned a 100% surface examination of the Petition Area with surveyors spaced at a maximum of 10.0 meters ("Addendum AIS").

136. The AIS Addendum documented 136 sites as significant for research potential. No further work or preservation is recommended for 22 sites; 28 sites are recommended for preservation; 86 sites are recommended for data recovery.

137. Agricultural features are the most common within the Petition Area.

138. 18 of the 136 sites were also assessed as significant for cultural value to the Hawaiian people based on the presence of burials or ritual architecture.

139. Most of the sites are clustered in the northeast, southeast and southern portions of the Petition Area.

140. Cluster 1 roughly corresponds with the South Archeological Preserve; Cluster 3 roughly corresponds with the North Archeological Preserve, and Cluster 2 is within Phase 6, mauka of D Street.

141. The South Archeological Preserve consists of approximately seven (7) acres, located on a pu'u in the southern/makai corner of the Petition Area, near the intersection of Palani Road and Henry Street.

142. Numerous agricultural features are within the boundaries of the South Archeological Preserve.

143. The North Archeological Preserve, located in the northern/mauka portion of the Petition Area, consists of approximately 2.63 acres.

144. The AIS Addendum has been approved by SHPD.

145. Petitioner will prepare a burial treatment/preservation plan, as well as a data recovery plan.

146. A 1,218 square foot burial buffer easement, designated as Easement A-5, is located along the makai edge of the Petition Area.

147. The burial (SIHP # 26831) is not located within the Petition Area, but lies within the proposed Ane Keohokalole Highway construction corridor, and is surrounded by a 30 foot buffer zone, of which Easement A-5 is a portion.

148. According to a Final Burial Treatment Plan (November 2009) prepared by Cultural Surveys Hawai'i, Inc, a 50 foot wide construction buffer will surround the burial site. Prior to the commencement of construction, the 50 foot buffer will be marked with a 4-foot tall, high visibility plastic mesh fencing, staked at a minimum of every 20 feet. These construction buffers will be recorded on all construction plans.

4. RECREATIONAL RESOURCES

149. Development of the Project will provide more than 25 acres for park space and more than 18 acres in open space.

150. The Project has been designed to encourage the use of on-site pedestrian and bike pathways, which encourage connectivity between the residential and recreational uses within the community.

151. The mixed-use centers will provide recreational opportunities for residents of Kamakana Villages and others in the Kona area.

5. CULTURAL RESOURCES

152. Pursuant to the requirements of the Hawai'i Supreme Court ruling in *Ka Pa'akai O Ka 'Āina v. Land Use Com'n*, 94 Hawai'i 31, 7 P.3d 1068 (2000) the Commission is required to protect the reasonable exercise of native Hawaiian customary and traditional practices *to the extent feasible* when granting a petition for a State Land Use Commission district boundary amendment application. The Commission must make specific findings and conclusions relating to native Hawaiian gathering and fishing rights in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site as follows: (i) the identity and scope of "valued, cultural, historical, or natural resources" in the Petition Area, including the extent to which traditional and customary native Hawaiian rights are exercised in the Petition Area; (ii) the extent to which those resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the proposed action; and (iii) the feasible action, if any, to be taken by the Commission to reasonably protect native Hawaiian rights if they are found to exist.

153. PHRI prepared a Cultural Impact Assessment for the Petition Area in 2007 ("CIA").

154. The CIA concluded that the development of the Petition Area would have no significant impact on Hawaiian cultural resources, beliefs and practices.

155. The CIA recommended that care be taken to preserve the habitat of endemic plants, such as *pilo* (*Capparis sandwichiana*), *alahe'e* (*Canthium odoratum*), *kaula* (*Alphitonia*

ponderosa) and *uhiuhi* (*Mezoneuron kauaiense*). However, not all of those plant species were identified in the Botanical Survey conducted for the Final EIS as being within the Petition Area. Of the four (4) plant species mentioned in the CIA, only *pilo* and *alahe'e* were identified in the Botanical Survey.

156. Petitioner will take steps to preserve the habitat of endemic plants, in addition to preserving access for gathering activities.

157. Over nine (9) acres of land in the Petition Area will be preserved for cultural resources, and native plants that have adapted to the specific climate and rainfall around the Petition Area will be favored in the landscaping selections for the Project.

6. GROUNDWATER RESOURCES

158. Petitioner has represented that the development of Kamakana Villages is not expected to have any significant effect on groundwater resources in the area.

159. During and after development, precipitation will continue to percolate to the underlying groundwater.

160. Materials will be managed to prevent the discharge of pollutants to the ground as required by the National Pollutant Discharge Elimination System ("NPDES") permit.

161. Petitioner will implement best management practices such as the use of storm drainage filtration devices to mitigate pollutants from entering the groundwater.

162. At full build-out, the maximum daily demand for water at the Project will be less than 1.7 million gallons per day ("MGD"), and the average daily demand will be less than 1.12 MGD.

163. HHFDC, in collaboration with the Department of Water Supply ("DWS"), is pursuing the development of the existing, exploratory Keopu Well No. 3957-05 as a production well. Once developed, Well 3957-05 is planned to provide water to Kamakana Villages and other water users in North Kona.

164. Well No. 3957-05 is located above Māmalahoa Highway, on TMK No. (3) 7-5-013: 022, at an elevation of 1,600 feet. It is anticipated to provide 1.5 MGD of water, of which 1.0 MGD are planned to be used within the Project.

165. Development of Well No. 3957-05 will require the following improvements: (1) installation of a 1,050 gallons per minute ("GPM") pump and motor; (2) control building and other site improvements as required by DWS; (3) a 12-inch transmission main to a new upgradient storage tank; (4) an upgradient storage tank with a 1,703-foot spillway and tentatively sized at 0.5 MG; and (5) a 16-inch main from the tank down to Māmalahoa Highway and north along Māmalahoa Highway to DWS' existing 16-inch main at its point of connection to the 1,703-foot tank located on land owned by the Queen Lili'uokalani Trust.

166. Land located near the DWS Moeauoa Tank Site at TMK (3) 7-5-001: 055 has been identified as another source of water for Kamakana Villages. This new well site could provide as much as 1.5 MGD of water, of which 1.0 MGD could be available for the Project.

167. Development of the new well located near the DWS Moeauoa Tank Site will require the following improvements: (1) drilling, casing, and pump testing; (2) installing a pump and motor; (3) control building and other site improvements as required by DWS; (4) a 12-inch transmission main to a new upgradient storage tank; (5) the upgradient storage tank with a 1,703-foot spillway and tentatively sized at 0.5 MG; and (6) a 16-inch main from the tank down to Māmalahoa Highway.

168. In addition to the two wells, two new 1.0 MG reservoirs will be required. The first 1.0 MG reservoir will be installed at the existing Kealakehe High School reservoir site. The second reservoir is planned to be located on property owned by the Department of Hawaiian Homelands (TMK No. (3) 7-4-021: 021), at an elevation of 595 feet.

169. The on-site water system would consist of main water lines that would be connected to the existing water system at Keanalehu Drive and Manawale'a Street and transmission lines in Ane Keohokalole Highway.

170. In order to reach the design potential of the Leadership in Energy and Environmental Design ("LEED") proposed Neighborhood Design ("ND") gold standard, Petitioner has included goals of reducing water consumption for outdoor landscape irrigation by 50% from a calculated mid-summer baseline case.

7. SCENIC RESOURCES

171. Petitioner is committed to protecting the natural beauty of the region and ensuring that the character of the Project is consistent with that of the surrounding communities and the principles set forth in the Kona CDP.

172. Development of the Project will change the existing views from Palani Road and neighboring developments from the current undeveloped, overgrown land to a built environment.

173. As a project designed in close conformance with the Kona CDP, the Project should blend with existing and planned developments.

8. NOISE

174. Noise impacts would occur during construction. These impacts are not considered significant since they would be temporary and construction work would be conducted in compliance with the State Department of Health (DOH) noise regulations in Title 11, Chapter 46, HAR.

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

9. AIR QUALITY

176. The air quality impacts during construction would be related to fugitive dust emissions and exhaust emissions.

177. All construction activities will be conducted in accordance with the fugitive dust measures required under State law.

178. Long-term impacts to air quality could arise from an increase in auto emissions as a result of there being more cars traveling to and from the Project. However, as a compact mixed-use TOD, the Project should have a lower number of per capita vehicle trips and electricity use than standard, large lot, residential-only projects, which should reduce the per-capita additional emission.

179. Mitigation measures during construction will include a dust control plan.

VII. ADEQUACY OF PUBLIC SERVICES AND FACILITIES

1. SCHOOLS

180. The Petition Area is within the Kealakehe school catchment area and is served by three (3) DOE schools: (i) Kealakehe Elementary School, which serves nearly 990 students from kindergarten through grade five; (ii) Kealakehe Intermediate School, which serves approximately 900 students in grades six through eight; and (iii) Kealakehe High School, which serves approximately 1,638 students from Hualālai to Waikoloa Village.

181. Area private schools include Hualālai Academy, the Kona campus of the Hawai'i Montessori School, Makua Lani Christian School and the Kona Christian Academy.

182. Using December 2009 DOE student generation rates, at full build out the Project is anticipated to contribute approximately 594 students.

2. PARKS

183. Major recreation facilities and parks in North Kona include: (i) Kailua Park Complex (also known as Old Airport Park), which has a gym, swimming pool, and fields for active recreation as well as an extensive beach area; (ii) the Hale Hālāwai recreation center, which offers sports and crafts programs; and (iii) Honokōhau Boat Harbor, which provides ocean access and services to boaters.

184. Parks and open space will be provided within the Project.

185. Over 50 acres within the Petition Area are planned to be used as open space, parks and archaeological preserves.

186. A total of approximately 25 acres are planned to be distributed within three (3) large park areas (Central Park, North Park and South Park), and numerous smaller parks. Approximately 18 acres will be open space. Integrated into the open space system is a total of approximately 9 acres for archaeological preserves.

3. HIGHWAY AND ROADWAY FACILITIES

187. The County transportation services near the Petition Area include the intra-Kona and Kona to Hilo bus routes.

188. The intra-Kona route provides regular bus service throughout the Kona region with the route extending from the Fujihara Store in Captain Cook toward Kealahakua and Kona Hospital, to the north along Ali'i Drive and to Keāhole and Kona International Airport.

189. The Kona to Hilo bus route provides service through Kona and into the Hilo area. The route extends from Fujihara Store in Captain Cook to Alii Drive towards Waimea. Service then extends east to Laupāhoehoe and south towards Hilo.

190. The Traffic Management Consultant prepared a study entitled "Traffic Impact Analysis Report for the Proposed Kamakana Villages at Keahuolū" dated August 9, 2010 ("TIAR").

191. The TIAR supersedes the traffic analysis report submitted as Appendix D of the ER.

192. The TIAR analyzed potential Project-related traffic impacts on the roadway system in the vicinity of the Project. The DOT has not accepted the TIAR, but will continue to work with Petitioner to get an acceptable TIAR so that it can identify measures to mitigate impacts to State highway facilities.

193. The Project will have six (6) access points. Three (3) access points will be located along Ane Keohokalole Highway, and three (3) will be along Palani Road.

194. The three (3) principal roadways located near the Petition Area are Queen Ka`ahumanu Highway, Kealakehe Parkway and Palani Road. In addition, the Ane Keohokalole Highway will run along the makai edge of the Petition Area. Queen Ka`ahumanu Highway is a two-way, two- to four-lane, high quality arterial highway between Kailua-Kona and Kawaihae, and is the primary arterial highway along the South Kohala and North Kona coasts. Queen Ka`ahumanu Highway is a four-lane divided highway between Henry Street and Kealakehe Parkway. The State Department of Transportation ("DOT") recently awarded the bid to construct the second phase of the Queen Ka`ahumanu Highway widening from two lanes to four lanes between Kealakehe Parkway and the Kona International Airport Access Road.

195. Kealakehe Parkway is a two- to three-lane, two-way arterial highway between Honokōhau Harbor and Keanalehu Drive. Kealakehe Parkway is signalized at its four-legged intersection with Queen Ka`ahumanu Highway.

196. Palani Road is a two-way, two- to four-lane roadway, between Kuakini Highway and Māmalahoa Highway. Palani Road is signalized at Henry Street, Queen Ka`ahumanu Highway and, recently, at the intersection of Kealaka`a Street and Pālihiolo Street.

197. Ane Keohokalole Highway is a planned two-lane, two-way roadway which extends from the West Hawai`i Civic Center on Kealakehe Parkway to Pūohuluhuli Street. The County will extend Ane Keohokalole Highway from Pūohuluhuli Street to Palani Road.

198. Based on the TIAR traffic counts the intersection of Queen Ka`ahumanu Highway and Kealakehe Parkway, Makala Boulevard, Palani Road and Henry Street all operate at Level of Service ("LOS") C during the existing AM peak hour of traffic. The Palani Road intersections with Kamaka`ehā Avenue, Henry Street and Kealaka`a Street operate at LOS B, C and F respectively.

199. The PM peak hour traffic at those intersections range from C to F. Queen Ka`ahumanu Highway and Kealakehe Parkway is at LOS E, the intersections at Makala Boulevard and Henry Street are at LOS D, and the intersection at Palani Road is at LOS C. The Palani Road intersections with Kamaka`ehā Avenue, Henry Street and Kealakaa Street operate at LOS C, C and F respectively.

200. The DOT recently completed the first phase of the Queen Ka`ahumanu Highway, and the second phase (from Kealakehe Parkway to the Kona International Airport Access Road) is expected to be complete by 2014.

201. The first phase of the Kealakehe Parkway, eventually planned to run through the Kealakehe area between Queen Ka`ahumanu Highway and Palani Road/Māmalahoa Highway, has been completed. However, the future extension of Kealakehe Parkway to Palani/Māmalahoa was not included in the TIAR analysis.

202. The County is in the process of having Phase 1 of the Ane Keohokalole Highway (to run from Pūohulihuli Street to Palani Road) constructed, to be followed by Phase 2, which will run from South Street to Hina Lani Street.

203. Petitioner will construct certain traffic improvements as in conjunction with the development of the Project.

204. Petitioner intends to start the construction of portions of the Project's internal roadways during 2011.

205. Petitioner's proposed traffic mitigation measures and the timing for the construction of those measures are identified on the Incremental Development Plan. However, the exact improvements are subject to Petitioner's agreement with the DOT.

206. As an affordable housing project, under Hawai'i County Code Sec. 25-2-46, Petitioner will not be required to perform area mitigation traffic improvements. Area mitigation is defined as: "improvements which increase the capacity of an arterial or other major road, such as additional lanes, in the general region containing the project, or construction of a new arterial or collector road in the general area containing the project, or improvements to public transportation such as buses or park and ride facilities, sufficient to offset the traffic demand generated by the project."

207. The mitigation measures proposed in the Revised TIAR are not entirely consistent with the traffic improvements listed in the Governor's EIS acceptance memo. However, the mitigation proposed in the Revised TIAR is at least equally as effective as those listed in the Governor's letter. The DOT made that determination and confirmed it in writing.

4. SOLID WASTE DISPOSAL

208. Solid waste from the Project will be disposed of at the County's West Hawai'i Landfill in Pu'uana'hulu. The 2002 Updated Integrated Solid Waste Management Plan for the County estimates that there is 12 million cubic yards of air space at the Pu'uana'hulu Landfill, which is enough to accommodate the waste generated by West Hawai'i for approximately the next 40 years.

209. Petitioner will emphasize waste diversion and recycling as part of a solid waste management plan. Recyclables and wastes would be managed in either a centralized system or by private individuals, and hauled directly to recycling centers, transfer stations, and the landfill. Educational materials and information on recycling programs will also be provided to encourage residents of the Project to minimize and divert solid wastes.

5. WASTEWATER DISPOSAL

210. At full build out, the Project will generate an average flow of wastewater of 673,778 gallons per day ("GPD"), with a peak flow of 2,555,477 GPD.

211. The County has reserved 431,360 gallons per day capacity at the Kealakehe Sewage Treatment Plant ("STP") for the Project, which is sufficient capacity to serve Phases 1 through 4. Increased capacity at the Kealakehe STP would be required to accommodate full development of the Project.

212. The Department of Environmental Management is currently reviewing options to expand and upgrade the Kealakehe STP. Two (2) improvement projects are planned which include: 1) sludge removal (\$8,600,000 has been appropriated for the sludge removal, of which \$600,000 has been allotted for design work); and 2) aeration upgrade (\$8,250,000 has been appropriated for the aeration upgrade, of which \$750,000 has been allotted for design work). These improvement projects will allow the Kealakehe STP to continue to operate at the present capacity and allow for future capacity upgrades necessary to service the later Phases of the Project and other users within the Kealakehe service territory.

213. During the initial Phases of the Project the offsite sewer lines will connect to the existing main at the intersection of Pūohuluhuli Street and Ane Keohokalole Highway. Once capacity in the existing sewer main lines is reached, additional offsite sewer lines will be constructed to the Kealakehe STP.

214. The onsite sewer system will consist of sewer lines within the roadway network, which will connect to the offsite sewer lines. An onsite lift station and force main is planned for Phase 4.

6. DRAINAGE

215. No drainage facilities or defined natural drainage ways exist within the Petition Area. The development of the Project will increase the amount of impermeable surfaces within the Petition Area.

216. In order to prevent an increase in the runoff flow rates and volume, storm water runoff will be collected through swales, ditches, gutters, inlets and/or catch basins, and transported through pipes to dry wells, seepage wells or infiltration areas for disposal. Where practical, infiltration areas, seepage wells and dry wells will be located in open spaces and parking lots.

217. Prior to the occupancy of any residential or commercial unit within the Project, and consistent with applicable laws, Petitioner will implement and maintain storm and surface-water runoff best management practices, subject to any applicable review and approval by the State Department of Health ("DOH"), designed to prevent violations of State water quality standards as a result of storm-water discharges.

218. To the extent practicable and consistent with applicable laws, Petitioner will design and construct (or require to be constructed) storm and surface water runoff systems to treat the first-flush runoff volume to remove floatants and suspended solids to prevent such pollutants from reaching the water table and the ocean.

219. Signs with the following warning language will be posted near all injection wells: HELP PROTECT HAWAII'S ENVIRONMENT. DUMP NO WASTES. (DUMPING IS ILLEGAL AND MAY BE REPORTED TO 974-4000, ext 64258).

7. POLICE AND FIRE PROTECTION

220. The County Police Department's Kona station is located at Kealahou, about 1.5 miles from the Petition Area.

221. Primary fire protection is provided by the County's North Kona fire station located in Kailua-Kona approximately 0.75 miles from the Petition Area.

8. CIVIL DEFENSE

222. The development of the Project will include the installation of one (1) or more outdoor warning siren (minimum size 121 DBC solar powered with omni-directional sound properties) at a central location within the Petition Area.

223. No impacts with regard to civil defense are anticipated.

9. EMERGENCY/MEDICAL SERVICES

224. The primary medical facility for the Kona region is Kona Community Hospital in Kealahou, South Kona, about ten (10) miles from the Petition Area. The Kona Community Hospital has 94 beds, 24-hour emergency services, an intensive care unit, maternity, oncology, and other units.

225. The second closest hospital is the North Hawai'i Community Hospital located in Waimea, approximately 39 miles from the Petition Area. The North Hawai'i Community Hospital is a privately owned non-profit facility with 40 beds, a 24-hour emergency room, and acute care services.

10. ELECTRICITY AND TELEPHONE SERVICES

226. The proposed electric and communications systems for the Project would be developed in accordance with the specifications and standards of Hawai'i Electric Light Company ("HELCO"), Hawaiian Telcom Inc. ("HTCo") and Oceanic Time Warner Cable ("Oceanic").

227. As State Public Utility Commission regulated utilities, HELCO and HTCo are responsible for the development of off-site facilities that meet Island-wide needs, such as power generating plants and power and signal transmission lines, and facilities that serve regional needs of the Kailua-Kona area.

228. HELCO will provide service to the Petition Area through the Palani Substation and electric ductlines to be constructed.

229. HTCo and Oceanic will provide communication services through an existing system and will have ductlines constructed as part of the Ane Keohokalole Highway construction, which will be used to service the Project.

230. Offsite electrical, television and phone ductlines to the Petition Area will be constructed as part of the construction of Ane Keohokalole Highway. Electrical transmission will be installed from Palani Substation to the Petition Area along with necessary upgrades at the Palani Substation.

231. The utility area located within Phase 1, as currently planned, may be utilized for a variety of onsite utility functions such as electrical utility, water storage/transmission, data and communications, or sewer infrastructure.

11. ENERGY CONSERVATION

232. In general, all feasible energy conservation and renewable energy use measures, especially solar energy, will be designed into the Project's sustainability principles.

233. As currently configured, the Project could qualify for a Gold rating under the proposed LEED ND Rating System.

VIII. COMMITMENT OF STATE FUNDS AND RESOURCES

234. With respect to improvements to the Petition Area, the Petitioner or its successors or assigns will fund site work and infrastructure, onsite and offsite, including roadways, a water system, transmission lines and other utilities.

235. Forest City has obtained a \$25 million loan from HHFDC for the initial Phases of development.

236. Forest City may seek additional subsidies, such as Low-Income Housing Tax Credits, from the State.

IX. CONFORMANCE WITH URBAN DISTRICT STANDARDS

237. The Petition Area is presently classified in the State Land Use Agricultural District.

238. The Petition Area is surrounded almost entirely by land in the State Land Use Urban District. Some adjacent property, owned by DHHL, is within the State Land Use Agricultural District.

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

Criterion No. 1. *It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.*

The Petition Area is located in an area generally surrounded by existing and planned residential and commercial development and is approximately 1 mile from Kailua-Kona. It is within the designated path for urban development, close to areas with "city-like" concentrations of people and intended for additional density.

Criterion No. 2. *It shall take into consideration the following specific factors: (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment; (B) Availability of basic services such as schools, parks, wastewater systems, solid waste*

disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and (C) Sufficient reserve area for foreseeable urban growth.

The Petition Area is situated in close proximity to West Hawai'i's commercial, industrial and economic center of Kailua-Kona. Transportation systems, schools, parks, solid waste disposal and police and fire services are located near to the Petition Area. In addition to the residential and civic uses planned for Kamakana Villages, the Project will contain three (3) mixed-use areas, two (2) of which will be located near the future transit stops along the Ane Keohokalole Highway. Additional transportation systems are planned by the County and Petitioner will provide school sites within the Petition Area. The County has designated the Petition Area for urban growth.

Criterion No. 3. *It shall include lands with satisfactory topography, drainage, reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects.*

The topography of the Petition Area is consistent with the state Urban District design standards and is generally free from potential adverse environmental conditions such as floods, tsunami or unstable soil conditions. The Petition Area is no more at risk for seismic hazards than the rest of the County of Hawai'i, and Petitioner will develop the Project to meet the structure standards required under the Uniform Building Code. The Lava Flow Hazard Zone classification for the Petition Area is 3 (on a scale of 1 - 9, with 1 being the highest risk), indicating moderate hazard, based primarily on lava flow history. The Petition Area is located approximately one (1)

mile from the shoreline and is not within the Tsunami Inundation Zone. The Petition Area is in FIRM Zone X (undetermined), which indicates that base flood elevations have not been determined for the area.

Criterion No. 4. *Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, particularly when indicated for future urban use on state or county general plans or county community plans or development plans.*

The Petition Area is contiguous to Urban property on all sides except for the DHHL property being developed as the Villages of La'i'ōpua.

Criterion No. 5. *It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans or county community plans or development plans.*

The Petition Area is designated for Urban Expansion on the County LUPAG Map, with a smaller portion along Palani Road designated as Low Density Urban. The Petition Area has been identified at a TOD Neighborhood Village in the Kona CDP.

Criterion No. 6. *It may include lands which do not conform to the standards in paragraphs (1) to (5): (A) When surrounded by or adjacent to existing urban development; and (B) Only when those lands represent a minor portion of this district.*

The Petition Area represents a small portion of a larger Urban District area.

Criterion No. 7. *It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services.*

The Petition Area is almost entirely surrounded by Urban lands, and is located along the proposed transit route on the Ane Keohokalole Highway. The Petition Area has been designated by the County for future urban growth and development and will not contribute to scattered spot urban development. The location is within existing service areas for public infrastructure and support services.

Criterion No. 8 *It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.*

Slopes within the Petition Area are less than 20%. Most of the makai half of the Petition Area has slopes of less than 5%. Most of the mauka half of the Petition Area has slopes of less than 15%, but there are some areas with a steeper grade, which can be developed for lower-

density residential purposes. In general, housing types and density will be distributed dependent upon the slope of the land.

X. CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN

240. The Project is generally supportive of Part I of the Hawai'i State Plan including its themes, objectives and policies. In particular, the Project will provide a majority of affordable homes as well as market-priced homes.

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

HRS §226-5 - Population.

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

(7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

Developing a residential project that will provide a diversity of housing options, including affordable housing, along with retail and civic spaces, in a location specifically

designated by the County for urban development under the Kona CDP contributes to the government's goal of directing population growth to areas with the greatest economic impact and to provide housing near employment centers.

HRS §226-6 - Economy In General.

(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawai'i's people, . . . particularly on the neighbor islands where employment opportunities may be limited.

(6) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.

(9) Foster greater cooperation and coordination between the government and private sectors in developing Hawai'i's employment and economic growth opportunities.

The construction and on-going operations/maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period.

After completion the Project will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year.

As a HRS Chapter 201H affordable housing project being developed by Forest City in coordination with HHFDC, the Project is an example of cooperation and coordination between government and the private sector.

HRS §226-8 - Objectives and Policies for the Economy - Visitor Industry

- (1) Support and assist in the promotion of Hawai'i's visitor attractions and facilities.*
- (4) Encourage cooperation and coordination between the government and private sectors in developing and maintaining well-designed, adequately serviced visitor industry and related developments which are sensitive to neighboring communities and activities.*

The Project will provide needed affordable housing in reasonable proximity to existing and future job centers, which will enhance the visitor industry by reducing the commute time between work and home for those residents employed in the visitor industry. As a State sponsored project being developed by Forest City, a private developer, the Project exemplifies cooperation and coordination between the government and private sectors.

HRS §226-9 - Objectives and Policies for the Economy - Federal Expenditures

- (2) Promote Hawai'i's supportive role in national defense, in a manner consistent with Hawai'i's social, environmental, and cultural goals by building upon dual-use and defense applications to develop thriving ocean engineering, aerospace research and*

development, and related dual-use technology sectors in Hawai'i's economy;

(4) Increase opportunities for entry and advancement of Hawai'i's people into federal government service;

Increasing the availability of affordable and market priced housing (in contrast to luxury resort homes) will be beneficial for existing federal workers and may encourage the creation of additional opportunities for federal jobs in the region.

HRS §226-10 - Objectives and Policies for the Economy - Potential Growth

(a) Planning for the State's economy with regard to potential growth activities shall be directed towards achievement of the objective of development and expansion of potential growth activities that serve to increase and diversify Hawai'i's economic base.

The Project will help diversify Hawai'i's economic base by providing more housing in a growing area, at a range of prices and configurations.

HRS §226-11 - Physical Environment - Land-Based, Shoreline, and Marine Resources

(1) Exercise an overall conservation ethic in the use of Hawai'i's natural resources.

(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

(7) Provide public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion.

Development of the Petition Area is consistent with sound planning principles for the prudent use of land-based resources. The Petition Area has been carefully surveyed to ensure that no endangered, threatened or candidate species will be impacted by the proposed development.

HRS §226-12 - Physical Environment - Scenic, Natural Beauty and Historic Resources

(1) Promote the preservation and restoration of significant natural and historic resources.

(4) Protect those special areas, structures, and elements that are an integral and functional part of Hawai'i's ethnic and cultural heritage.

Significant archaeological sites will be preserved in preserve areas, which will be protected or incorporated as elements of open space throughout the Project. The Project Concept Plan includes numerous neighborhood parks and archeological preserve areas, as well as open space areas. Urban design controls, to be implemented in a manner consistent with the Kona CDP, will consider the overall visual effects of the proposed Project.

HRS §226-13 - Physical Environment - Land, Air and Water Quality

(7) Encourage urban developments in close proximity to existing services and facilities

The Petition Area, located approximately one (1) mile mauka of Kailua-Kona, is in close proximity to existing services and facilities.

HRS §226-14 - Objectives and Policies for the Facility Systems - In General

(1) Accommodate the needs of Hawai'i's people through coordination of facility systems and capital improvement priorities in consonance with state and county plans.

(2) Encourage flexibility in the design and development of facility systems to promote prudent use of resources and accommodate changing public demands and priorities.

Preliminary planning for the Project's infrastructure systems has resulted in coordinated discussions with State and County agencies and private landowners in the area. Future development of these systems will require ongoing coordination. In addition, to the extent feasible, Petitioner will incorporate green building design principles, including features to conserve energy and water usage, in the development of the Project.

HRS §226-17 - Objectives and Policies for the Facility Systems - Transportation

(2) Coordinate state, county, federal, and private transportation activities and programs toward the achievement of statewide

objectives;

(6) Encourage transportation systems that serve to accommodate present and future development needs of communities;

(10) Encourage the design and development of transportation systems sensitive to the needs of affected communities and the quality of Hawai'i's natural environment;

The Project will provide roadway connections to existing and future developments on adjacent lands, which will help improve regional traffic circulation. As a Neighborhood TOD, the Project will support bus ridership by utilizing the proposed transit stops along Ane Keohokalole Highway. In addition, multimodal transportation will be encouraged at Kamakana Village through the incorporation of bike and pedestrian paths.

HRS §226-19 - Objectives and Policies for Socio-Cultural Advancement - Housing

(1) Greater opportunities for Hawai'i's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawai'i's population.

(2) The orderly development of residential areas sensitive to community needs and other land uses.

(3) The development and provision of affordable rental housing by the State to meet the housing needs of Hawai'i's people.

(1) Effectively accommodate the housing needs of Hawai'i's people.

(2) Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households.

(3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

(6) Facilitate the use of available vacant, developable, and underutilized urban lands for housing.

The development of the Project, to include up to 1,169 affordable housing units, fully supports the State's three (3) objectives related to housing and socio-cultural advancement. The Project will offer a variety of housing opportunities, affordable and market-priced, in a range of densities. The Petition Area's close proximity to Kailua-Kona and North Kona's employment centers will make it attractive to potential home buyers.

HRS §226-20 - Objectives and Policies for Socio-Cultural Advancement - Health

(1) Fulfillment of basic individual health needs of the general public.

(2) Maintenance of sanitary and environmentally healthful conditions in Hawai'i's communities.

As a walkable, TOD community, the Project supports the health-related objectives by encouraging alternative means of transportation. The numerous paths and connectivity within the Project to and from residences, civic spaces and retail areas will encourage walking and bike riding over auto use.

HRS §226-21 - Objectives and Policies for Socio-Cultural Advancement - Education

(2) Ensure the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs.

The Project includes 1 site of approximately 13 acres for a DOE Elementary school. Including school sites within the design of the Project is in alignment with LEED principles for "Neighborhood Schools" which promotes community interaction and engagement by integrating schools into the neighborhood fabric.

HRS §226-23 - Objectives and Policies for Socio-Cultural Advancement - Leisure

(4) Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.

The Project will be developed with parks, open space, archaeological preserves and mixed use centers, all of which will support leisure activities.

HRS §226-25 - Objectives and Policies for Socio-Cultural Advancement - Culture

*Foster increased knowledge and understanding of Hawai'i's ethnic
and cultural heritages and the history of Hawai'i.*

The Petition Area includes significant archaeological and cultural sites that will be preserved.

XI. CONFORMANCE WITH PRIORITY GUIDELINES

242. Development of the Project supports the priority guidelines of the Hawai'i State Plan in the areas of economic development, population growth and land resource management and affordable housing.

HRS §226-103 - Economic Priority Guidelines

*(5) Streamline the building and development permit and review
process, and eliminate or consolidate other burdensome or
duplicative governmental requirements imposed on business,
where public health, safety and welfare would not be adversely
affected.*

In terms of economic development, the State's priorities include stimulating economic growth and business expansion and development to provide needed jobs. The construction and on-going operations/maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period. After completion

the community will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year.

HRS §226-104 Population Growth and Land Resources Priority Guidelines

(4) Encourage major state and federal investments and services to promote economic development and private investment to the neighbor islands, as appropriate.

(5) Explore the possibility of making available urban land, low-interest loans, and housing subsidies to encourage the provision of housing to support selective economic and population growth on the neighbor islands.

(1) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.

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

(6) Seek participation from the private sector for the cost of building infrastructure and utilities, and maintaining open spaces.

The Petition Area is located within the Kona Urban Area ("Kona UA") of the Kona CDP, which has experienced an increase in population over the years. The resident population of West Hawai'i is forecast to increase by about 60% over the next two decades, reaching some 118,000 persons. In Greater Kailua-Kona, which stretches from Keāhole to Keauhou, the resident population is projected to grow from a current level of just over 23,000 to 40,000 persons by 2030. This increase is expected to create demand for some 7,560 to 10,162 new housing units in Greater Kailua-Kona between 2010 through 2030. About 44% of this demand will be for resident/workforce housing units meeting affordable pricing guidelines.

The Project will support the population growth of the area and will provide affordable housing opportunities for workers who service the visitor industry of the area. Adequate support facilities are/will be available from developed and/or to-be-developed areas within, and adjacent to, the Project. The Project will utilize largely marginal or non-essential agricultural lands for the development of market and affordable housing.

HRS §226-106 Affordable Housing

- (1) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.*
- (2) Encourage the use of alternative construction and development methods as a means of reducing production costs.*
- (4) Create incentives for development which would increase home ownership and rental opportunities for Hawai'i's low- and moderate-income households, gap-group households, and*

residents with special needs.

(5) Encourage continued support for government or private housing programs that provide low interest mortgages to Hawai'i's people for the purchase of initial owner- occupied housing.

(6) Encourage public and private sector cooperation in the development of rental housing alternatives.

(7) Encourage improved coordination between various agencies and levels of government to deal with housing policies and regulations.

(8) Give higher priority to the provision of quality housing that is affordable for Hawai'i's residents and less priority to development of housing intended primarily for individuals outside of Hawai'i.

The Petition Area is made up of soils with poor agricultural viability and is considered non-essential agricultural land. Its proximity to Kailua-Kona, the existing center of employment, schools, transportation and other services, makes it a fitting location for development, especially for the provision of housing to low and moderate income County residents. The Project, initiated by HHFDC's July 2007 Request for Proposals, is an example of public and private sector cooperation in the development of affordable housing that will be offered for sale and rent to County residents. In addition, the exemptions provided under HRS Chapter 201H create incentives for the private sector to undertake the development of a master planned, mixed use, mixed income, project.

XII. CONFORMANCE WITH HAWAII STATE FUNCTIONAL PLANS

243. Reclassification of the Petition Area generally conforms to the functional plans in the following program areas: higher education, employment, housing, historic preservation, recreation, and transportation.

State Higher Education Functional Plan

By providing additional market and affordable homes targeted for the primary resident market, the Project may support the Higher Education Functional Plan by making more housing available for faculty and staff at the West Hawai'i College.

State Employment Functional Plan

The Project will contribute to employment by creating jobs in construction, development, sales and professional services during its build out. The construction and on-going operations/maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period. After completion the Project will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year.

State Housing Functional Plan

The State Housing Functional Plan identified a need to develop affordable housing throughout the State, and found that the housing needs of lower income households would not be adequately met in future residential developments. As an HRS Chapter 201H affordable housing

project proposed to add 1,169 affordable housing units to West Hawai'i, the Project will address many of the obstacles identified in the Housing Functional Plan.

State Historic Preservation Functional Plan

Archaeological inventory surveys of the Petition Area have been conducted and accepted by SHPD. A CIA was prepared for the Petition Area. Petitioner will comply with all interim and permanent mitigation and preservation measures recommended and approved by SHPD.

State Recreation Functional Plan

The Project is planned to include approximately 25 acres for park space in addition to the 9+ acres for archaeological preserve areas.

State Transportation Functional Plan

As a TOD development, the Project will encourage the use of future mass transit options to be provided along Ane Keohokalole Highway. The physical layout of the Project is intended to reduce travel demand in two ways. First, by providing a variety of market and affordable housing options close to the centers of employment in West Hawai'i, the development should reduce the number and length of commutes from home to work, school, services, retail and recreational areas. Second, as a TOD project designed to be compact and pedestrian/bike friendly, with retail uses provided on-site, it is expected that Project residents will not need to use their cars as much as residents living within more typical suburban, single-use, residential projects.

XIII. CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT ACT - HRS
CHAPTER 205A - HAR §15-15-50 (C)(17)

244. The objectives of the Coastal Zone Management Program, Chapter 205A, HRS, are as follows:

(b)(1)(A) Provide coastal recreational opportunities accessible to the public.

(b)(2) Protect, preserve and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture

(b)(3)(A) Protect, preserve and, where desirable, restore or improve the quality of coastal scenic and open space resources

(b)(4)(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems

(b)(5)(A) Provide public or private facilities and improvements important to the State's economy in suitable locations

(b)(6)(A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution

(b)(7)(A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards

(b)(8)(A) Stimulate public awareness, education, and participation

in coastal management

(b)(9)(A) Protect beaches for public use and recreation

*(b)(10)(A) Promote the protection, use, and development of marine
and coastal resources to assure their sustainability*

245. The Project is generally supportive of HRS Chapter 205A. In particular, it is consistent with the objectives pertaining to the preservation of natural and historic resources, the provision of public and private facilities important to the economy, the reduction of flooding and erosion hazards and the encouragement of public participation in the management of coastal resources.

246. The Petition Area is not within the Shoreline Management Area delineated by the County of Hawai'i because the Petition Area is more than a mile upslope from the coast; therefore most Coastal Zone Management Program objectives are not applicable.

247. The development of the Project will not have any significant adverse impact on coastal recreational opportunities, coastal scenic and open space resources, or coastal ecosystem and resources.

248. The Petition Area is not subject to coastal hazards. It is in FIRM Flood Zone X (undetermined), and is not in the tsunami inundation zone.

249. Of the archaeological sites identified in the Petition Area, those determined to be significant will be preserved.

250. Although the Project is not expected to impact coastal resources, it has been the subject of considerable public participation. First, through the Final EIS process. Next, through the planning and charette processes that Forest City engaged in with the County and interested members of the public. In addition to numerous meetings with State and County agencies, representatives for Forest City made presentations to the public and various community groups, including conducting two (2) planning charettes in Kona in July and October of 2009.

XIV. CONFORMANCE WITH THE COUNTY GENERAL PLAN - HAR §15-15-50

(C)(18)

251. The General Plan assesses various elements meant to guide long range comprehensive development within the County of Hawai'i.

252. The Project actively supports the relevant goals and policies of the County General Plan.

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

Housing. As a mixed use, mixed-income development the Project increases socio-economic diversity in housing, expands homeownership opportunities for County residents and includes affordable housing in reasonable proximity to employment centers.

Economic Development. The Project will significantly increase affordable housing opportunities in Kailua-Kona. The residential component of the Project includes up to 1,169 affordable housing units. Single and multi-family units will be conveniently located near public

and private services and facilities such as commercial areas, schools, transportation routes and parks.

Energy. To the extent practicable Petitioner will design the Project so that all commercial and institutional facilities qualify under the LEED for New Construction Silver level, and all homes qualify under the LEED for Homes Silver level.

Transportation. Development of the Project to include certain traffic mitigation improvements will help meet the growing transportation needs within the County. As a TOD adjacent to the planned transit stops along Ane Keohokalole Highway, the Project will facilitate the use of public transit.

Historic Sites. The Project will protect, restore and enhance significant historic and cultural resources where feasible. No adverse impacts on traditional and customary Native Hawaiian resources, beliefs and practices are anticipated to occur as a result of the development of the Project. Appropriate mitigation measures will be carried out as recommended by SHPD.

Land Use - Commercial Development. The three neighborhood commercial/mixed-use centers promote the County's policy of providing commercial developments that maximize convenience to users. The mixed-use areas' proximity to the Ane Keohokalole Highway and Palani Road complements the County's overall pattern of transportation and land usage.

Land Use – Multiple Residential & Single Family Residential. The proposed 2,330 homes will be located near existing and proposed transportation corridors and public transit stops along the Ane Keohokalole Highway. The mix of multiple family and single family homes

within a master planned community will help achieve socio-economic diversity in the housing mix.

Land Use - Open Space. Development of the Project includes open space, parks and archaeological preserves, all of which support the County's goals of promoting the social, environmental and economic well being of County residents.

Land Use Pattern Allocation Guide (LUPAG). The Petition Area is designated for Urban Expansion on the LUPAG Map, which allows for a mix of high, medium and low density, along with industrial, industrial-commercial and/or open designations. The Low Density Urban designation allows for residential development with ancillary community and public uses and neighborhood and convenience type commercial uses.

Public Facilities. The Project includes approximately 13 acres for a DOE elementary school. Petitioner's emphasis on sustainability will promote the County's policy of reducing the flow of refuse deposited into landfills.

Recreation. The Project includes over 25 acres for park space, 18 acres in open space and 9 acres for archaeological preserves. These measures will enhance the recreational opportunities available to residents and visitors alike.

XV. CONFORMANCE WITH THE KONA COMMUNITY DEVELOPMENT PLAN

254. The Kona CDP was adopted by the Hawai'i County Council in September 2008 as Ordinance No. 08 131.

255. The Project is consistent with the future growth articulated in the Kona CDP.

256. The Project is consistent with the 8 Guiding Principles of the Kona CDP as follows:

Principle 1 - Protect Kona's Natural Resources and Culture. The Project will provide approximately 48 acres of open space, including community parks and neighborhood parks. Multi-ethnic culture will be preserved and protected through the development of the South and North Archeological Preserve areas.

Principle 2 - Provide Connectivity and Transportation Choices. The Project has been designed to include sidewalks, trails and bike lanes to encourage a variety of transportation options. The Project will include a circulation system of linked landscaped avenues, roadways and walkways that pass from one major open space to another. The Project is located adjacent to two proposed transit stops along Ane Keohokalole Highway.

Principle 3 - Provide Housing Choices. The Project will provide a broad range of housing choices at market and affordable prices for sale and rent. The Project will supply the demand for affordable homes located close to the employment centers in West Hawai'i.

Principle 4 - Provide Recreation Opportunities. Approximately 48 acres of the Petition Area will be used for open space, community parks, and landscaped buffer zones. In addition to three large, centrally located community parks, numerous neighborhood pocket parks are planned. The mixed-use centers will provide additional recreational opportunities.

Principle 5 - Direct Future Growth Patterns Toward Compact Villages, Preserving Kona's Rural, Diverse, and Historical Character. The Project is a designated TOD site and a master-planned community with three mixed-use village areas and a mixture of housing choices. The majority of future growth in the form of compact mixed-use villages will be directed north of Kailua-Kona.

Principle 6 - Provide Infrastructure and Essential Facilities Concurrent with Growth. The Petition Area has been identified in the Kona CDP as an area for future growth in North Kona. Essential services are in place. Infrastructure development, such as construction of the Ane Keohokalole Highway, is underway.

Principle 7 - Encourage a Diverse and Vibrant Economy Emphasizing Agriculture and Sustainable Economies. The Petition Area is zoned A-5a, however, the soils on the Petition Area are poor and have little agricultural viability. Development of the Project will have the effect of increasing housing choices, especially for low and moderate income Island residents, without removing important agricultural lands from production. In addition, development of up to 2,330 residential units at the Petition Area should decrease the pressure to develop other, more viable Agricultural lands in Kona.

Principle 8 - Promote Effective Governance. Petitioner worked with the Kona community and the County in planning and designing the Project. Two planning workshop meetings were held with the Kona community and the proposed Project was subject to public and agency review during the HRS Chapter 343 environmental review process.

257. The Project is consistent with the goals, objectives and policies of the 8 elements of the Kona CDP as follows:

Element 1 - Transportation. The Project is a TOD project that will be built in close proximity to the proposed transit stops along Ane Keohokalole Highway. This, in combination with the internal design of the Project, which is intended to promote pedestrian and other non-auto-reliant means of transportation, is consistent with the goal of building an efficient, safe, and attractive multi-modal transportation system with minimal reliance on the automobile.

Element 2 - Land Use. The Kona CDP, as an expression of public policy, identified the Petition Area for future urban development. The Petition Area is within the Kona UA and within the Keahuolū Village (Neighborhood) TOD identified on the Official Kona Land Use Map (Figure 4-7 of the Kona CDP).

Element 3 - Environmental Resources. One of Forest City's corporate core values is sustainability, which is consistent with developing the built environment in harmony with ecological principles and promoting interaction with nature and a healthy, active lifestyle. To the extent practicable, Petitioner will design the Project so that all commercial and institutional facilities qualify under the LEED for New Construction Silver level, and all homes qualify under the LEED for Homes Silver level.

Element 4 - Cultural Resources. The Project will preserve and protect Native Hawaiian cultural resources by including two archeological preserve areas.

Element 5 - Housing. The Project promotes diversity of housing choices near places of employment and/or daily needs by offering up to 1,169 affordable housing units, and an

additional 1,161 market units, all located very close to existing employment and commercial centers. The neighborhood commercial/mixed-use areas will provide Project residents ready access to goods and services.

Element 6 - Public Facilities, Infrastructure and Services. The Project, as a compact, TOD mixed-use community, will include sustainably built and maintained infrastructure and facilities that will benefit the region, including new wastewater transmission lines and a water supply system to include transmission lines and reservoirs. Internal roadway infrastructure will be designed to support connectivity. Total on-site and off-site infrastructure costs expected to be incurred by Forest City in the development of the Project are approximately \$156,208,803, which include costs for internal roadways, water, sewer, drainage, electric, telephone and cable lines, as well as certain off-site infrastructure.

Element 7 - Energy. Petitioner has demonstrated a commitment to sustainability. In addition to designing the Project with the proposed LEED ND rating system in mind, to the extent practicable, Forest City will implement energy and resource conservation measures into the design and construction of the Project. Landscaping will minimize water use and reduce heat-island impacts, and resident training programs will be provided to optimize energy savings and limit waste, which will lead to the development of a community-wide lifestyle of sustainability.

Element 8 - Economic Development. Development of the Project will increase economic diversification and employment opportunities by providing an estimated 11,131 "worker-years" of employment and \$505 million in total wages and bringing an estimated \$734.4 million in capital investment into West Hawai'i over a 19-year build out period. After completion, the

Project will support some 933 permanent full-time-equivalent jobs (654 directly related to on site activity and 279 indirect positions throughout the County) with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year.

A. KONA COMMUNITY DEVELOPMENT PLAN VILLAGE DESIGN
GUIDELINES

258. The development of the Project is consistent with the intent of the Kona CDP village design guidelines, which is to do the following:

- 1. Promote transit-oriented and pedestrian-oriented development, to increase transit use, to manage traffic congestion.*
- 2. Encourage mixed-use, compact development that is pedestrian in scale and sensitive to environmental characteristics of the land, and facilitates the efficient use of public services.*
- 3. Have residences, shopping, employment, and recreational uses located within close proximity with each other and efficiently organized to provide for the daily needs of the residents.*
- 4. Provide for a range of housing types and affordability within pedestrian-oriented, human-scale neighborhoods.*
- 5. Incorporate natural features, open space, and cultural features.*
- 6. Provide efficient circulation systems for pedestrians, non-motorized vehicles, and motorists that serve to functionally and*

physically integrate the various land use activities.

7. Promote strong neighborhood identity and focus.

Kona CDP, Land Use Policy - LU-2.5.

The Project is one of the few potential TOD locations identified in the Kona CDP. As such, it will help to increase transit use, and manage traffic congestion. As a master-planned compact, walkable, mixed-use community with a full range of uses including housing, retail space, commercial uses, school facilities, archaeological and open space preserve areas, active and passive parks, a trail and bikeway system, support infrastructure and transit stops, the Project conforms to the intent of the village design guidelines.

XVI. ZONING CODE

259. The Petition Area is currently zoned by the County of Hawai'i as Agricultural (A-5a). The Project is not permitted within the A-5a District. Therefore, Petitioner may seek a change of zone to the Project District pursuant to Hawai'i County Code §25-6-40.

260. The intent of the Project District is to provide for "a flexible and creative planning approach rather than specific land use designations for quality developments. It will also allow for flexibility in location of specific uses and mixes of structural alternatives." Hawai'i County Code §25-6-40.

261. As a TOD project, rezoning of the Petition Area to the Project District is consistent with Hawai'i County Code, Chapter 25, the General Plan, and the existing LUPAG

designations of Urban Expansion and Low Density Urban. Development of the Project will not result in a substantial adverse impact upon the surrounding area, community or region.

XVII. INCREMENTAL DISTRICTING

262. Full Urban development of the Petition Area cannot substantially be completed within 10 years after the date of the Commission's approval.

263. Development of the Petition Area is planned to occur in six Phases and span approximately 18 years. Petitioner submitted an Incremental Development Plan, which provides a proposed timeline for development.

264. The Incremental Development Plan provides that Phase 1 – 3a, referred to as Increment 1, will be developed by the fall of 2020, and that Phases 3b – 6, referred to as Increment 2, will be complete by the end of 2028.

265. Increment 1 is planned to contain approximately 1,196 residential units, of which 681 are planned to be affordable homes, and 99,000 square feet of neighborhood commercial space.

266. Increment 2 is planned to contain to contain approximately 1,134 residential units, of which 488 are planned as affordable homes, and 98,000 square feet of retail space.

267. The Development Agreement between HHFDC and Forest City requires Forest City to complete all affordable units no later than 2023, subject to a 5 year extension.

268. As a Chapter 201H affordable housing project, under HRS §201H-38, the Project is entitled to be "exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon."

269. The development schedule presented in the Incremental Development Plan can be substantially completed.

RULINGS ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapters 201H and 205, and the Commission Rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS Section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 271.837 acres of land, situated at Keahuolū, North Kona District, island of Hawai'i, State of Hawai'i, Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027, shown

approximately on Exhibit "A" attached hereto and incorporated by reference herein, from the State Land Use Agricultural District to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS Section 205-2, and is consistent with the policies and criteria established pursuant to HRS Sections 201H-38, 205-16, 205-17 and 205A-2.

2. Pursuant to HAR §15-15-78 (a)(1), the Commission has the authority to reclassify the entire Petition Area. Pursuant to HAR §15-15-78 (a)(1), the Commission has the authority to reclassify the entire Petition Area.

3. Although full development of the Petition Area cannot be reasonably completed within ten years after the date of the Commission's decision in this matter, reclassification of the entire Petition Area, i.e., Increment 1 and Increment 2, is reasonable, not violative of HRS Section 205-2 and is consistent with the policies and criteria established pursuant to HRS Sections 201H-38, 205-16, 205-17 and 205A-2.

4. Article XII, Section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by *ahupua'a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public*

Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Petitioner will enter into an agreement with the DOE which will satisfy the Petitioner's fair share contribution obligation regarding the Project's impacts on educational resources of the area.

20. Petitioner will enter into an agreement with the DOT which will satisfy the Petitioner's fair share contribution obligation regarding mitigation of the traffic impacts of the Project.

21. HRS Section 205-16, provides that "no amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai'i State Plan."

DECISION AND ORDER

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

IT IS HEREBY ORDERED that the Subject Property, consisting of approximately 271.837 acres of land, situated at Keahuolū, North Kona District, island of Hawai'i, State of Hawai'i, Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

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

1. **Affordable Housing.** Petitioner shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County of Hawai'i's Office of Housing and Community Development and the certification of the Project as an HRS §201H-38 housing project. The location, distribution, and production schedule of the affordable units shall be under such terms as may be mutually agreeable between the Petitioner and the County.
2. **Parks.** Petitioner shall design and construct a minimum of 25 acres of parks and shall include at least ten playground facilities.
3. **School Site and Construction Component Agreement.** Petitioners shall enter into an agreement with the State Department of Education to provide land for a school site and a cash contribution to the construction component of a school impact fee prior to submission of any applications for subdivision for the residential lots or plan approval for the multiple family and/or commercial units within the Project.
4. **Water Resource Allocation.** Petitioners shall fund and construct drinking water source, storage, and transmission facilities and improvements as required to accommodate development of the Petition Area, to the satisfaction of the County of Hawai'i, Department of Water Supply and appropriate State agencies. To the extent practicable and available, the Petitioner shall utilize non-potable water for landscaping.

5. **Water Conservation Measures.** Petitioners shall implement water conservation measures and Best Management Practices (BMPs), such as the use of indigenous and drought-tolerant plants and turf and incorporate such measures in the Project's landscape design. Petitioner shall design for and utilize for all irrigation purposes reclaimed water from the Kealakehe Wastewater Treatment Plant when that source is delivered to the Project boundary.

6. **Transportation.** Petitioners shall mitigate all project generated traffic impacts as recommended and/or required by the Traffic Impact Analysis Report (TIAR) prepared for the project that has been reviewed and accepted/approved by the State Department of Transportation (DOT) and the County of Hawai'i. No final subdivision approvals shall be issued until the Petitioner has executed an agreement with DOT and Hawai'i County committing to the implementation of all necessary measures to mitigate the direct impacts of the project on the surrounding roadway system as well as to the level of funding and participation for Petitioner's pro rata share of regional transportation improvements.

7. **Street Lights.** Petitioners shall use fully-shielded, low sodium street lights within the Project to avoid impacts to avifauna and other populations. Shielding shall conform to the County's standards for street lights to prevent light diffusion upward into the night sky.

8. **Archaeological and Historic Preservation.** Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), prior to issuance of any permit for grubbing and grading. Petitioner shall confirm in writing to the Land Use Commission that the SHPD has found Petitioner's preservation mitigation

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

9. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Hawai'i Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

10. **Established Access Rights Protected.** Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

11. **Lava Tube Cave Preservation.** Petitioner shall preserve any lava tube caves or subgrade cavities not previously identified in studies referred to herein, if required to be preserved by SHPD or the Hawai'i Island Burial Council as part of an approved burial treatment plan.

12. **Water Wells.** As recommended in the Final EIS, Petitioner shall install monitors for each source well, and reactivate the Komo Well as a monitoring well. Petitioner will also develop the Kamakana Well to provide monitoring. In providing potable water for the Project,

Petitioner shall comply with all applicable laws and regulations to assess the potential impacts and identify the appropriate mitigation measures for such water source.

13. **Storm and Surface Water Runoff Quality.** Prior to the occupancy of any residential unit within the Petition Area and as recommended in the Final EIS, Petitioner shall engineer, construct (or require to be constructed) and/or implement (or require to be implemented) and maintain storm and surface-water runoff BMPs, subject to any applicable review and approval of the State of Hawai'i Department of Health (DOH), designed to minimize pollution and to prevent violations of State water quality standards as a result of storm-water discharges originating from the Petition Area.

To the extent practicable and consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the water table or coastal waters.

To the extent practicable and consistent with applicable laws, Petitioner shall implement landscaped areas, such as grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable BMPs engineered to treat the first flush runoff volume including the removal of suspended solids and oils and greases from all streets and parking lots, and debris catch basins to allow the detention and periodic removal of rubbish and sediments deposited by runoff using current industry and engineering standards.

Not less than 45 days before submitting an application for subdivision approval for residential lots, Petitioner shall submit a copy of its designs for storm and surface water runoff BMPs to the National Park Service for consultation.

As recommended in the Final EIS, Petitioner shall create and provide a pollution prevention plan for residential and commercial facilities, and provide copies to property purchasers. To reduce the amount of pollutants from entering the groundwater, Petitioner shall provide educational materials and programs to residents, establish community association covenants and implement BMPs. Educational materials and programs, and community association covenants would include, but not be limited to, the landscape management and vehicular maintenance controls recommended in the final EIS.

14. **Drainage.** Petitioner shall fund, design and construct any drainage system improvements required to prevent adverse impact resulting from the development of the Project. Petitioner shall be required to prevent runoff from the Petition Area from adversely affecting State highway facilities and downstream properties. Petitioner shall submit plans to the DOT and appropriate State and County agencies for review and approval.

15. **Wastewater Facilities.** Petitioner shall fund, design and construct transmission lines and connect to the County of Hawai'i's Kealahou Sewage Treatment Plant to the satisfaction of the County Department of Environmental Management and the DOH.

16. **Solid Waste Management Plan.** Petitioners shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter

342G, and this plan shall emphasize waste diversion and recycling. Petitioners' solid waste management plan shall be approved by the County of Hawai'i and the DOH.

17. **Civil Defense.** Petitioners shall fund and install one or more outdoor solar-powered warning sirens serving the Petition Area as determined by the State Department of Defense, Office of Civil Defense.

18. **Air Quality Monitoring.** Petitioners shall participate in an air quality monitoring program as required by the DOH.

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

20. **Energy Conservation.** To the extent practicable Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that all commercial and institutional facilities be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for New Construction (LEED-NC), Silver level or higher. Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that, to the extent practicable, all homes be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED-H), Silver level or higher.

21. **LEED-ND.** To the extent practicable Petitioner shall plan, design and construct the Project to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND), Certified or higher.

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

23. **Infrastructure Deadlines.**

- A) Petitioner shall complete construction of all backbone infrastructure for Phases 1 through 3a, as described in Petitioner's Incremental Development Plan, including major roadway improvements and primary water, sewer, drainage, and electrical infrastructure for Phases 1 through 3a no later than ten (10) years from the date of the Commission's decision and order.
- B) Petitioner shall complete construction of all backbone infrastructure for Phases 3b through 6, as described in Petitioner's Incremental Development Plan, including major roadway improvements and primary water, sewer, drainage, and electrical infrastructure for Phases 3b through 6 no later than twenty (20) years from the date of the Commission's decision and order.

24. **Automatic Order to Show Cause.** If Petitioner fails to comply with the deadlines contained in Condition 23 (Infrastructure Deadlines), the Commission shall issue and serve upon the Petitioner an Order to Show Cause as required by law and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification, or be changed to a more appropriate classification.

25. **Compliance with HRS Section 205-3.5, Relating to Agricultural Uses on Adjacent Agricultural Land.** For all land in the Petition Area or any portion thereof that is adjacent to land in the State Agricultural District, Petitioner shall comply with the following:

Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS Section 165-2, HRS; and

Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants or the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS Chapter 165, the Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

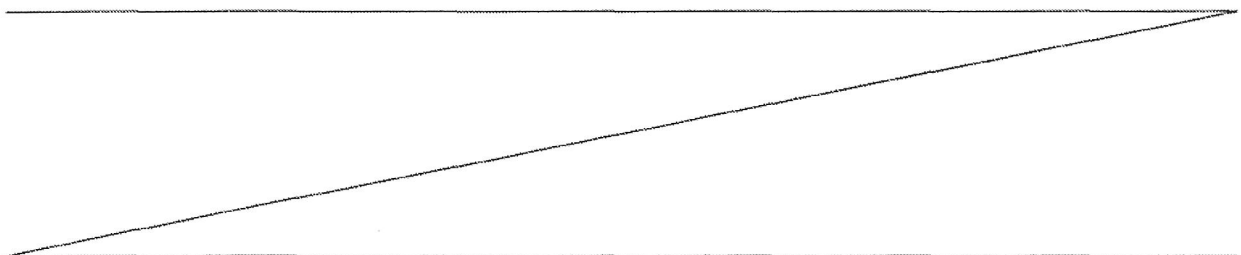
26. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Petition Area, at any time prior to completion of development of the Petition Area.

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

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

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

30. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR §Section15-15-92.



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this fifth day of November, 2010. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

DONE at Kona, Hawai`i, this fifth day of November, 2010, per motions on November 4, 2010.

APPROVED AS TO FORM

LAND USE COMMISSION

STATE OF HAWAII

Heane Inoué

Deputy Attorney General

Vladimir P. Devens

VLADIMIR P. DEVENS

Chairperson and Commissioner

Lisa M. Judge

LISA M. JUDGE

Vice Chair and Commissioner

(voted no)

THOMAS CONTRADES

Vice Chair and Commissioner

(voted no)

NICHOLAS W. TEVES, JR.

Commissioner



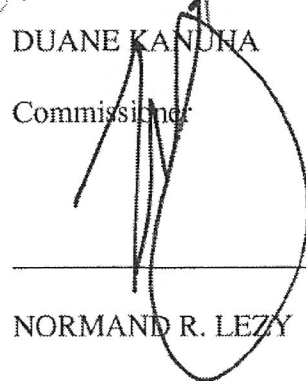
KYLE J.K. CHOCK

Commissioner



DUANE KANUHA

Commissioner



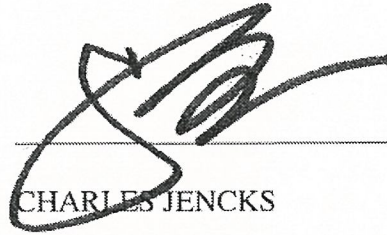
NORMAN R. LEZY

Commissioner



RONALD HELLER

Commissioner


A handwritten signature in black ink, appearing to be 'C. Jencks', written over a horizontal line.

CHARLES JENCKS

Commissioner

Filed and effective on: November 5, 2010

Certified by:

A handwritten signature in black ink, appearing to be 'Orlando Davidson', written over a horizontal line.

ORLANDO DAVIDSON

Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A10-788
Hawai'i Housing Finance and)
Development Corporation and Forest City)
Hawai'i Kona, LLC)
) CERTIFICATE OF SERVICE
To Amend The Agricultural Land Use)
District Boundary Into The Urban Land)
Use District For Approximately 271.837)
Acres Of Land At Keahuolū, North Kona,)
Island of Hawai'i, Tax Map Key (TMK))
Nos.: (3) 7-4-021:020 (por.), (3) 7-4-)
021:024, (3) 7-4-021:025, (3) 7-4-021:026,)
and (3) 7-4-021:027)
_____)

CERTIFICATE OF SERVICE

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

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
ABBEY SETH MAYER, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
CARLSMITH BALL LLP JENNIFER A. BENCK, ESQ. STEVEN S.C. LIM, ESQ. 121 Waiānuenue Avenue Hilo, Hawai'i 96720			X
DIANE K. TAIRA, ESQ. CRAIG Y. IHA, ESQ. Dept. of the Attorney General 425 Queen Street Honolulu, Hawai'i 96813		X	
BOBBY JEAN LEITHEAD-TODD Hawai'i County Planning Department 101 Pauahi Street Hilo, Hawai'i 96720		X	
LINCOLN ASHIDA, ESQ. BRANDON A.K. GONZALEZ, ESQ. Corporation Counsel County of Hawai'i 101 Aupuni Street, Suite 325 Hilo, Hawai'i 96720-4262		X	
STEVEN J. ARNETT Office of Housing and Community Development 50 Wailuku Drive Hilo, Hawai'i 96720-2456		X	
BENJAMIN A. KUDO, ESQ. YUKO FUNAKI, ESQ. Imanaka Kudo & Fujimoto Topa Financial Center 745 Fort Street Mall, 17 th Floor Honolulu, Hawai'i 96813		X	

Honolulu, Hawai'i, November 8, 2010.


 ORLANDO DAVIDSON

Executive Officer