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22:DEV/0113

July 5, 2022

To: Daniel E. Orodener, Executive Officer
Land Use Commission

From: Francis Paul Keeno
Executive Assistant *Francis Paul Keeno*

Subject: Docket No. A89-652 – Annual Report for 2022
Villages of Leiali'i
Lahaina, Maui, Hawaii

2022 JUL -6 P 1:48
LAND USE COMMISSION
STATE OF HAWAII

Pursuant to the Land Use Commission's (LUC) Decision and Order in Docket No. A89-652, transmitted herewith is an original and one copy of our annual report on the status of the Villages of Leiali'i (VOL) development and our progress in complying with conditions imposed by the LUC. See attached **Exhibits A and A-1**. In accordance with the LUC's letter to the Hawaii Housing Finance and Development Corporation (HHFDC) dated October 1, 2007, an electronic pdf version of the annual report is being concurrently emailed to the LUC at LUC@dbedt.hawaii.gov.

Land Use Commission Action

On May 18, 1990, the LUC approved the reclassification of approximately 1,097.765 acres from Agricultural District into Urban District for development of the VOL project, situated at Wahikuli, Lahaina, Island of Maui, State of Hawaii. The area in question is identified as Maui Tax Map Keys: 4-5-021: 009; portion of 003; portion of 004; portion of 005; and 4-5-014: 058.

Project Status

In accordance with Act 350, Session Laws of Hawaii (SLH) 1997, as of July 1, 1998, the Housing Finance and Development Corporation (HFDC) was combined with the Hawaii Housing Authority into one successor agency, the Housing and Community Development Corporation of Hawaii (HCDCH). In accordance with Act 196, SLH 2005, and Act 180, SLH 2006, as of July 1, 2006, HCDCH was split into two successor agencies, the Hawaii Public Housing Authority and HHFDC.

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On December 8, 1993, the State of Hawaii, on behalf of HFDC, filed a condemnation action against Amfac Property Investment, et al, for a gravity line sewer system between VOL and the Lahaina Wastewater Reclamation Facility. A settlement agreement was executed on September 22, 1995; but its terms were never effectuated because development at VOL was suspended due to the ceded lands litigation. A stipulation to dismiss the condemnation action was filed at the Second Circuit Court on May 17, 2013; and HHFDC received the deposit check of \$13,000 for the sewer easement from the Second Circuit Court dated August 12, 2013.

The Department of Land and Natural Resources (DLNR) and HHFDC are the landowners; and HHFDC is the master developer of the VOL project in Lahaina, Maui, Hawaii. HHFDC acquired title to approximately 544 acres of the VOL project from DLNR by Land Patent Grant No. S-15,792, dated November 4, 1994.

On November 4 and 7, 1994, the Office of Hawaiian Affairs (OHA) and Aluli, et al., filed lawsuits against DLNR and HFDC. The lawsuits aimed at: 1) stopping the alienation of lands from the public land trust to private third parties, and 2) ordering a reappraisal of the subject lands.

On July 14, 1995, the plaintiffs consolidated and amended their lawsuits to name only HFDC as a defendant and to limit the remedy to stopping the alienation of public trust lands.

On July 17, 1995, the Attorney General issued a legal opinion affirming the State's right to alienate or dispose of ceded lands, provided that the public land trust was compensated.

On August 10, 1995, the Governor requested that HFDC proceed with the projects which were held in abeyance due to the ceded lands issue. However, a cloud remained on the title due to the unresolved lawsuits.

A trial on the alienation issue was held in November 2001. On December 5, 2002, State Circuit Judge Sabrina McKenna ruled that the State could sell ceded lands.

On January 31, 2008, the Hawaii Supreme Court overturned the trial court's decision and held that the State of Hawaii was barred from selling, exchanging, or transferring ceded lands to any third party.

On April 29, 2008, the Attorney General announced that a Petition for a Writ of Certiorari was filed with the U.S. Supreme Court seeking to overturn the Hawaii Supreme Court decision. On June 4, 2008, the Circuit Court of the State of Hawaii implemented the decision of the Hawaii Supreme Court and entered an injunction order

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barring the State of Hawaii from selling or transferring ceded lands to third parties, "except that the State of Hawaii, and its departments, agencies, agents, officers, and employees may continue its practice of transferring remnants, and issuing licenses, permits, easements and leases concerning ceded lands."

In October 2008, the U.S. Supreme Court decided to hear the State's appeal of the Hawaii Supreme Court decision. Arguments were heard by the U.S. Supreme Court on February 25, 2009. On March 31, 2009, the U.S. Supreme Court unanimously reversed the decision of the Hawaii Supreme Court on the grounds that the U.S. Apology Resolution did not prevent the alienation of ceded lands. The case was then remanded back to the Hawaii Supreme Court for further action.

In or around May 2009, a settlement was reached in the ceded lands litigation for all plaintiffs, except one (Jonathan Osorio). On or around October 28, 2009, the ceded lands litigation by the remaining plaintiff, Osorio, was ordered dismissed by the Hawaii Supreme Court.

On July 13, 2009, the Governor signed SB1677 SD1 HD2 CD1 into law as Act 176, SLH 2009. This Act required a community informational meeting, an appraisal, and two-thirds vote approval of both houses of the legislature, in order for State land to be conveyed to third parties in fee simple. Act 176, SLH 2009 was amended by Act 169, SLH 2011 and is now codified as Section 171-64.7, Hawaii Revised Statutes (HRS).

Village 1A of the VOL consists of 104 single family lots on 24.617 gross acres. The subdivision improvements for Village 1A were completed and accepted from the contractor, Goodfellow Bros., Inc., on December 15, 1993. However, the subdivision improvements were not dedicated because the County of Maui refused the dedication because of the ceded lands litigation. The County of Maui granted final subdivision approval of Village 1A on September 8, 1994. See attached **Exhibit A-2**.

On August 21, 2000, HCDCH filed a motion with the LUC to amend Condition No. 9 of the Decision and Order for this project. The motion sought to amend the affordable housing requirement of 60% of the units to families up to 120% of the HUD median income for the County of Maui to a requirement that would be established by agreement with the County. This matter came up for hearing before the LUC on October 18, 2000 but was continued.

Meanwhile, Act 100, SLH 2001 was enacted, which addressed the affordable housing requirements for the undeveloped lands at VOL. Act 100, SLH 2001 waived the affordable housing requirement of 60% of the units to families up to 120% of the HUD median income for the County of Maui that was imposed by Act 15, SLH 1988. Instead, Act 100, SLH 2001 authorized the affordable housing requirements to be established by agreement between HCDCH and the County of Maui.

On November 23, 2003, the Department of Hawaiian Home Lands (DHHL) expressed an interest in acquiring certain HCDCH lands, including Village 8 of the Villages of Kapolei and Village 1A of the VOL. On May 13, 2004, the HCDCH Board approved the negotiations with DHHL to sell HCDCH's interest in Village 8 of the Villages of Kapolei, Villages 1A and 1B of the VOL, and the undeveloped lands at the Villages of La'i'opua.

On June 17, 2004, the HCDCH Board approved the execution of a transfer agreement to sell the following properties to DHHL at a price of \$33 million in equal annual payments over a 15-year period:

- Village 8 of the Villages of Kapolei.
- Villages 1A (24.617 acres; TMK 4-5-36: 1-111) and 1B (50.858 acres; TMK 4-5-21: 20) of the VOL.
- HCDCH's interest in the undeveloped lands at the Villages of La'i'opua, except Villages 9 and 10.
- Waiahole Valley Agricultural Park Subdivision and Residential Subdivision.

On July 20, 2004, the Hawaiian Homes Commission approved the transfer of the above properties to DHHL. A transfer agreement identifying all terms and conditions of the sale was executed by DHHL, DLNR, and HCDCH on December 30, 2004 (Transfer Agreement). In the Transfer Agreement, DHHL is required to comply with all conditions of the LUC Decision and Order in Docket No. A89-652 and to continue with the annual reporting requirements to the LUC for Villages 1A and 1B of the VOL development. DHHL is also required to comply with all conditions of the LUC Decision and Order in Docket No. A90-660 and to continue with the annual reporting requirements to the LUC for the Villages of La'i'opua development.

In accordance with the Transfer Agreement, Villages 1A and 1B of VOL were conveyed to DHHL by quitclaim deed dated April 8, 2005.

On May 2, 2006, HCDCH and DHHL executed the First Amendment of Transfer Agreement, which essentially modifies the Transfer Agreement as follows:

- Excludes the Waiahole Valley Agricultural Park Subdivision and Residential Subdivision from the sale to DHHL.
- Excludes the non-ceded lands at the Villages of La'i'opua from the sale to DHHL.
- Includes Village 10 at the Villages of La'i'opua in the sale to DHHL.

HHFDC received a copy of DHHL's 2005 Annual Report of Villages 1A and 1B of the Villages of Leiali'i to the LUC dated May 26, 2006. In 2007, DHHL completed the

construction of homes on 104 houselots in Village 1A and had conveyed these homes to their native Hawaiian beneficiaries.

At the request of the Department of Transportation (DOT), on September 16, 2004, the HCDCH Board approved the sale of the following remnant areas to the DOT for Phase 1A of the Lahaina By-Pass Highway:

- Parcel 2 0.159 Acre TMK (2) 4-5-21: por. 003
- Slope Easement 2 0.055 Acre TMK (2) 4-5-21: por. 003
- Slope Easement 3 0.174 Acre TMK (2) 4-5-21: por. 003

Conveyance documents for Parcel 2 and Slope Easement 3 to DOT were recorded at the Bureau of Conveyances on December 8, 2006. Slope Easement 2 was not needed by DOT.

By easement dated September 12, 2006, HHFDC granted easements to Hawaiian Telcom, Inc. and Maui Electric Company, Limited, for telecommunications equipment on approximately 1,125 square feet mauka and adjacent to Village 1A. The easements were granted to allow the utility companies to service the neighborhood of the Villages of Leialii.

In November 2006, the DOT selected Hawaiian Dredging Construction Co. for Phase 1A of the Lahaina By-Pass Highway at a cost of \$48 million. Phase 1A is a two-lane highway connecting Lahainaluna Road to the County's Keawe Street Extension project. Due to the discovery of archaeologically significant agricultural terraces in the alignment of the By-Pass Highway within the Villages of Leialii project by Kahoma Stream, DOT re-aligned the By-Pass Highway within the Villages of Leialii project to curve farther makai into a T-intersection with the County's Keawe Street Extension. This allowed the Villages of Leialii a second access to its mauka lands at a location between its intersections with Keawe Street and Leailii Parkway. An Environmental Assessment for this realignment was completed by DOT in 2009.

On January 11, 2007, the HHFDC Board of Directors approved the conveyance of land and drainage easements to the County of Maui for their Keawe Street Extension project. This project is located at the southerly portion of the Villages of Leialii project and will extend the existing Keawe Street to provide a connection from Honoapiilani Highway to Phase 1A of the Lahaina By-Pass Highway. Because of the realignment of the By-Pass Highway, DOT has undertaken the completion of the Keawe Street Extension project as part of Phase 1A of the By-pass Highway project.

On November 5, 2007, HHFDC procured Belt Collins Hawaii Ltd. to update the master plan and an EIS for the Villages of Leialii project. Two draft land use plans were completed and distributed to government agencies and stakeholders for comments on July 9, 2008. A community meeting on the draft land use plans was held on January 28, 2009 at the Lahaina Civic Center. Approximately 60 people were in attendance and

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24 people provided comments. The revised master plan for the Villages of Leialii was completed in December 2009; and HHFDC issued a Notice to Proceed to commence an Environmental Impact Statement (EIS) for the revised master plan on December 23, 2009. An EIS Preparation Notice was published in The Environmental Notice of the Office of Environmental Quality Control (OEQC Bulletin) on March 8, 2010. A notice of a Draft EIS was published in the OEQC Bulletin on December 23, 2010. Based on comments to the Draft EIS, HHFDC completed a Supplemental Cultural Impact Assessment in April 2012. On October 23, 2012, a notice of the Final EIS was published in the OEQC Bulletin. The Governor accepted the Final EIS on December 7, 2012; and the notice of the Governor's acceptance was published in the OEQC Bulletin on December 23, 2012.

On December 19, 2008, the HHFDC Board of Directors approved the subdivision and the dedication of the rights-of-way over the Villages of Leialii project to the DOT for the re-aligned Phase 1A of the By-Pass Highway as well as for the County's Keawe Street Extension Project. Construction of the By-Pass Highway commenced in December 2008 from the south end of Phase 1A and was completed in 2013.

On August 14, 2009, the Board of Land and Natural Resources (BLNR) approved the set aside of TMK (2) 4-5-021: 004 to the U.S. Fish and Wildlife Service for an off-highway vehicle park, subject to the withdrawal of lands south of Hahakea Gulch for the Villages of Leialii project and a management right of entry to HHFDC over TMK (2) 4-5-021: 004 for lands south of Hahakea Gulch as well as over TMK (2) 4-5-021: 022. In accordance with this BLNR approval, a Management Right of Entry dated September 3, 2009 was issued by DLNR and accepted by HHFDC for the VOL lands mauka of the By-Pass Highway (Mauka Lands), TMK (2) 4-5-021: 004 (por.) and 022 (por.).

On December 22, 2009, HHFDC published a Request for Interest for solar renewable energy projects on approximately 23 acres of the proposed light industrial area at the southern portion of the Villages of Leialii project, TMK (2) 4-5-021: 003 (por.). On January 22, 2010, HHFDC received two proposals; and on March 10, 2010, HHFDC issued a conditional selection letter to HEA Hawaii Solar, LLC (HEA Solar). On August 5, 2010, a right-of-entry was issued to HEA Solar for planning studies at the proposed site. On April 4, 2013, HHFDC sent HEA Solar a letter withdrawing HHFDC's conditional selection of HEA Solar's proposal. The letter was returned undeliverable, so HHFDC emailed a copy to D. Goode, V.P., on April 10, 2013.

On August 16, 2010, HHFDC retained Belt Collins Hawaii Ltd. to update the water master plan and to complete a Phase A Master Plan for the VOL. HHFDC received a final report on May 23, 2011.

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At the request of the County of Maui Department of Water Supply (DWS), the HHFDC Board of Directors approved a 15' waterline easement on the makai (western) portion of the Villages of Leialii project. The waterline easement is at TMK (2) 4-5-021: 021, near the existing Easements A and B of EO No. 2189, TMK (2) 4-5-014: 058. The easement would allow the County's waterline replacement project to service the existing Wahikuli Houselots Subdivision. The waterline replacement project was completed in the summer of 2009. A final Nonexclusive Waterline Easement was executed by HHFDC and submitted to DWS on January 26, 2012, however, DWS has not acted on the Easement.

On October 8, 2010, Kahoma Land LLC published notice of a Finding of No Significant Impact of a Final Environmental Assessment for Proposed Kahoma Access Easements over VOL, in the OEQC Bulletin. On June 16, 2011, HHFDC sent Kahoma Land a draft MOU for access easements over VOL. The access easements would be in exchange for easements for water system improvements over Kahoma Land lands for VOL. On November 14, 2011, HHFDC received Kahoma Lands' comments. On December 9, 2011, BLNR approved access and utility easements over the VOL Mauka Lands, to Kahoma Land.

On October 11, 2012, the HHFDC Board of Directors approved the conveyance of remnant Lots 8 (0.15 acre) and 9 (1.86 acres) of File Plan 2132, TMK (2) 4-5-021: 003 (portion of), to the County of Maui for existing Kahoma Stream Flood Control improvements and the DOT for Phase 1A of the Bypass Highway, pending finalization of the Right-of-Way maps and subdivision of the parcels by DOT.

In 2008, the Maui County Council began creating a Draft Maui Island Plan (MIP) that established new Urban Growth Boundaries (UGB) to direct future growth on Maui. The draft version of the MIP, dated December 2010, included 181 acres and 800 residential units in VOL Phase A in the UGB. On August 2, 2012, the Council General Plan Committee voted to include all of VOL makai of the By-Pass Highway in the MIP. The Council then reversed itself. On October 22, 2012, the Council deleted the project in its entirety. Then, on October 24, 2012, the Council reinstated a section of the makai portion of the project by including 245 acres and 1,200 units. The planning horizon for the MIP is until 2030. The VOL master plan includes between 2,923 and 4,105 residential units in Phases A and B (mauka of the By-Pass Highway). The VOL project lies within the project area that was reclassified by the LUC in 1990. It was recognized by the Maui County in the West Maui Community Plan of 1996. The bill creating a new UGB in the MIP passed on December 21, 2012. The Maui Mayor signed the bill into law on December 28, 2012. In January and February 2020, HHFDC attended community meetings held by the County for amending the West Maui Community Plan (WMCP). On October 13, 2020, the County Planning Commission approved the June 2020 draft of the WMCP for the area of the Villages of Leialii. In the approved WMCP, only the area of Kaiāulu o Kūku'ia up to Wahikuli Road, approximately 50 acres, is

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designated Residential; the balance of the 245-acre area designated Urban under the MIP is designated Agriculture. On December 17, 2021, the Maui County Council approved the WMCP.

On January 10, 2013, the HHFDC Board of Directors approved the set aside of lands from DLNR to HHFDC for the balance of the Villages of Leialii and its offsite water system.

On July 11, 2013, the HHFDC Board of Directors approved DHHL's request to reduce its annual payment of \$2.2 million to HHFDC on the remaining balance of \$13.2 million (out of a total of \$33 million pursuant to the Transfer Agreement) to \$1.7 million per year over 8 years with a final payment of \$1.3 million in year 2021.

On February 28, 2014, HHFDC met with DHHL to discuss options for proceeding with the Villages of Leialii. Follow-up meetings were held on July 11, 2014, August 26, 2014, February 9, 2015, June 12, 2015, and August 28, 2015.

On October 3, 2014, HHFDC met with the Mayor of the County of Maui to discuss options for proceeding at Leialii. A follow-up meeting with the County Department of Public Works was held on October 16, 2014.

On February 20, 2015, HHFDC met with DLNR to discuss options for proceeding at the Villages of Leialii.

On December 17, 2015, HHFDC met with the Maui Council to discuss HHFDC's plans for proceeding at Leialii. On April 26, 2016, HHFDC met with the Managing Director, the Director of Housing and Human Concerns, and the Director of Public Works to discuss options for proceeding at Leialii. On August 31, 2016, HHFDC met with the Mayor to discuss the issuance of a 65-year ground lease at \$1/year to the County of Maui for the vacant parcels adjacent to the Lahaina Civic Center, TMK (2) 4-5-021: 018 & 019, for any purpose permitted by law, including but not limited to public parking, base yard purposes, and expansion of County facilities for the purpose of carrying out the responsibilities of County departments and agencies.

On October 13, 2016, the HHFDC Board of Directors approved the issuance of a ground lease for the vacant Civic Center parcels and dedication of Leialii Parkway and Leialii Parkway entrance to the County of Maui. On November 17, 2016, HHFDC sent an executed ground lease to the County of Maui for the vacant Civic Center parcels for approval and recordation. The ground lease was executed by the County of Maui on February 21, 2018 and recorded at the State of Hawaii Bureau of Conveyances as Document No. A-66330557.

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On December 8, 2016 and March 9, 2017, the HHFDC Board of Directors approved a Memorandum of Understanding (MOU) with DHHL for HHFDC to finance the first \$10 million of the cost to develop the Honokowai Well and related water facilities for a sharing of well capacity for HHFDC and DHHL projects at VOL. On March 31, 2017, the MOU was executed by HHFDC and DHHL. The project consists of two parts: (i) development of the Well and improvements to connect the Well to the DWS system (Honokowai Well), and (ii) improvements at VOL including a pump station at Wahikuli Reservoir, a new reservoir mauka of DHHL's Village 1B, and transmission lines connecting Wahikuli Reservoir with the new reservoir (Wahikuli System). On March 8, 2021, DHHL published notice in the OEQC Bulletin that a Supplemental EIS to the VOL Final EIS is not required for the Wahikuli System. DHHL continues to work on an HRS Chapter 343 Environmental Assessment for the Honokowai Well portion of the project.

On August 4, 2017, HHFDC completed an appraisal of the portion of Leiali'i Parkway between DHHL's Villages 1A and 1B, TMK (2) 4-5-036: 112. On August 24, 2017, HHFDC and DHHL conducted an informational briefing on the proposed dedication of TMK (2) 4-5-036: 112 to the County of Maui. Legislative approval of the dedication of Leiali'i Parkway to the County pursuant to Section 171-64.7, HRS, was obtained in 2018.

On June 14, 2018, the HHFDC Board of Directors approved the issuance of a request for proposals (RFP) for the development, ownership, and operation of a 200-unit family rental project named Keawe Street Apartments. The units would be affordable to families at 60% or below the HUD area median income under a 75-year ground lease from HHFDC at \$1/year. The site is located north of the Keawe Street Extension at VOL. A \$5 million predevelopment/interim loan from the Dwelling Unit Revolving Fund (DURF) would be made for the development of the project. A public access road from the Keawe Street Extension would be subdivided and dedicated to the County. HHFDC issued the RFP on August 29, 2018, held a pre-proposal conference on September 19, 2018, and received proposals on October 31, 2018. On January 10, 2019, the HHFDC Board approved Ikaika Ohana's proposal for the proposed Keawe Street Apartments project. See attached **Exhibit A-3**, project location within the Villages of Leiali'i, and **Exhibit A-4**, draft site plan of the project (7/9/19). The developer held meetings with the community on April 11, 2019, May 8, 2019 and December 12, 2019. The developer also met with the Mayor of the County of Maui and department heads on May 9, 2019.

Act 150, SLH 2018 appropriated up to \$30 million from the Rental Housing Revolving Fund (RHRF) to expedite and complete the construction of the Leiali'i affordable housing project by 2021. Act 98, SLH 2019 appropriated up to \$37 million from the RHRF to expedite and complete the construction of the Leiali'i affordable housing project by 2022. Act 98, SLH 2019 also provided that if the project did not obtain the necessary land use entitlements by April 30, 2020, the funds would be returned to the RHRF.

In fiscal year 2020, HHFDC and Ikaika Ohana obtained Maui County Council approval of the 201H exemptions for the Keawe Street Apartments. The project is now known as Kaiāulu o Kūku'ia. HHFDC and Ikaika Ohana also executed a Residential Workforce Housing Agreement with the County, obtained final subdivision approval of the project site, executed a Memorandum of Understanding with the County for the connection of the project to the County sewer system, executed a Development Agreement for the development, leasehold ownership, and operation of the project, and continued with the planning and design of the project. HHFDC also advanced the water reservation deposit for Kaiāulu o Kūku'ia and executed the Quitclaim Deed dedicating the Keawe Street Extension and a portion of the Bypass Highway over VOL to the State DOT. The Quitclaim Deed was recorded at the State of Hawaii Bureau of Conveyances as Document No. A-74430518.

During fiscal year 2021, the County approved "Kūku'ia Street" as the name of the public road which will provide access to Kaiāulu o Kūku'ia from the Keawe Street Extension. Construction plans for Kaiāulu o Kūku'ia were submitted to the County for building permit review; and HHFDC received State Historic Preservation Division's (SHPD) comments to the HRS Section 6E-8 submittal for Kaiāulu o Kūku'ia. After several meetings with SHPD, DLNR, and the Governor's Office, the parties agreed that Kaiāulu o Kūku'ia would proceed with a new archaeological inventory survey (AIS) as a stand-alone project. Mitigation plans would be prepared for the previously identified historic sites at VOL. For future projects at VOL, SHPD would be consulted to determine HRS Chapter 6E requirements. On May 7, 2021, the developer submitted a draft AIS for Kaiāulu o Kūku'ia.

In April 2021, the Legislature approved HB1311 CD1 which removes the completion deadline for the RHRF Fund financing for Kaiāulu o Kūku'ia. On June 30, 2021, the Governor signed the bill into law as Act 140, SLH 2021.

During fiscal year 2022, on July 7, 2021 and on August 3, 2021, SHPD accepted the draft AIS and the draft archaeological monitoring plan, respectively, for Kaiāulu o Kūku'ia. On November 16, 2021, HHFDC executed the 75-year ground lease for the 28.5-acre Kaiāulu o Kūku'ia project site. On November 18, 2021, the HHFDC Board of Directors approved the 4% low-income-housing-tax-credits (LIHTC), Hula Mae Multi-Family (HMMF) Bonds, and RHRF financing for Kaiāulu o Kūku'ia. On December 15, 2021, HHFDC executed loan documents for a \$5 million DURF interim loan for Kaiāulu o Kūku'ia. On February 22, 2022, Councilmember Tamara Paltin hosted a community meeting on the status of the developer's Kaiāulu o Kūku'ia and Kaiāulu o Kupuohi rental projects in Lahaina. On March 9, 2022, subdivision applications were submitted to the County for Kūku'ia Street providing access, and Fleming Road Extension providing a secondary access to Kaiāulu o Kūku'ia. On April 24, 2022, the County issued preliminary subdivision approval letters for the subdivision applications. On May 12,

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2022, the HHFDC Board approved an increase to the LIHTC and the issuance of HMMF bonds for Kaiāulu o Kūku'ia. On June 9, 2022, the HHFDC Board approved an increase of \$2.5 million to the DURF loan to allow the DURF loan to be repaid and reissued into a grant for the construction of the Fleming Road Extension as a secondary access for Kaiāulu o Kūku'ia. On June 17, 2022, HHFDC issued Notice to Proceed with Construction and on June 24, 2022, the developer closed the construction financing for Kaiāulu o Kūku'ia.

On January 27, 2022, HHFDC virtually met with DHHL to discuss the transfer of HHFDC's remaining undeveloped lands at VOL to DHHL. HHFDC drafted a transfer agreement and on February 22, 2022, HHFDC forwarded the draft to DHHL for review. On May 5, 2022, HHFDC and DHHL received DLNR comments to the draft transfer agreement.

On June 23, 2022, HHFDC received a Quitclaim Deed from DLNR for the cane haul road remnant lot, Tax Map Key: (2) 4-5-021: 013 (Cane Haul Remnant Lot). On June 28, 2022, HHFDC informed DLNR that HHFDC's Deputy Attorney General did not have any comments to the Deed. On June 30, 2022, HHFDC received the Deed for execution.

Land Use Conditions

The following is a progress report on conditions imposed by the LUC for the VOL development:

Condition No. 1:

The survey of the Property to identify structures relating to the sugar cane plantation and the significance of any identified structures shall be evaluated. Findings shall be submitted in report format to the State's Historic Preservation Program. If significant, acceptable mitigation measures for their treatment shall be worked out in consultation with the State Historical Preservation Program and shall be included in a detailed mitigational plan.

In addition, sites 2478, 2479, 2481, 2482 and 2484 shall undergo data recovery. Sites 2480, 2483, 2485, 2488, 1203 and 2486 shall be preserved. A detailed mitigation plan, with preservation and data recovery components shall be submitted to the State Historic Preservation Program for approval prior to the implementation of such plan.

Petitioner shall also cause work to stop immediately and shall contact the State Historic Preservation Office should archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project development.

Status: On October 2, 1997, a final report on the inventory of Pioneer Mill Co.'s sugarcane plantation structures was submitted to the State Historic Preservation Division (SHPD). In October 1997, a HABS and HAER Level 2 recording of the irrigation features in the project site, identified as State Site 50-50-03-4420, Wahikuli Ahupua'a, Lahaina District, Island of Maui, TMK: 4-5-21: 3, 18-20, 22 (SHPD Doc. No. 9709BD12) was completed and a report filed with SHPD. By letters dated November 25, 1997 and December 17, 1998, SHPD accepted the report and its mitigation.

On June 17, 2020, HHFDC sent an HRS Section 6E-8 submittal to SHPD for the Kaiāulu o Kūku'ia affordable rental project site. The submittal was made pursuant to SHPD's voicemail comments, which HHFDC had previously received on December 20, 2019. On September 21, 2020, HHFDC received SHPD's comments to the Section 6E-8 submittal. Subsequently, several meetings were conducted with HHFDC, SHPD, DLNR, and the Governor's Office. On February 11, 2021, it was agreed that Kaiāulu o Kūku'ia would proceed with a new AIS as a stand-alone project. It was also agreed that mitigation plans would be prepared for previously identified historic sites at VOL. Finally, it was agreed that, for future projects at VOL, SHPD would be consulted to determine HRS Chapter 6E requirements. On May 7, 2021, Ikaika Ohana submitted a draft AIS for Kaiāulu o Kūku'ia; on July 7, 2021, SHPD accepted the draft AIS and on August 3, 2021, SHPD accepted the archaeological monitoring plan for Kaiāulu o Kūku'ia.

On April 14, 2021, HHFDC authorized Aina Archaeology to proceed with a preservation plan for the previously identified historic sites at VOL.

Condition No. 2:

Petitioner shall cause all prospective occupants to be informed of (a) possible odor, noise, and dust pollution resulting from surrounding agricultural operations, and (b) the Hawaii Right-to-Farm Act, Chapter 165, HRS which limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

Status: HHFDC and DHHL are in discussions to transfer the remaining undeveloped lands at VOL to DHHL. Under a proposed draft transfer agreement, DHHL will comply with the requirements of the LUC for VOL.

The developer(s) of the Kaiāulu o Kūku'ia affordable rental project will notify all prospective occupants of the project of possible odor, noise, and dust pollution resulting from surrounding agricultural operations and the Hawaii Right-to-Farm Act.

Condition No. 3:

Petitioner shall develop the golf course in compliance with the provisions of the document entitled "Eight (8) Conditions Applicable to New Golf Course Development" dated April 7, 1989.

Status: HHFDC and DHHL are in discussions to transfer the remaining undeveloped lands at VOL to DHHL. Under a proposed draft transfer agreement, DHHL will comply with the requirements of the LUC for VOL. The Kaiāulu o Kūku'ia project is limited to the construction of 200 affordable rental units and related improvements. The project does not include the development of a new golf course. A golf course may be developed within VOL in the future. If a golf course is not developed, HHFDC will take appropriate action with the LUC to address compliance with conditions relating to the golf course.

Condition No. 4:

Petitioner shall submit a revised traffic report that addresses the secondary impacts on County roadways and pedestrian traffic to the Maui Department of Public Works for review and approval prior to submittal of the Project's traffic master plan.

Status: This condition was satisfied in May 1992.

A Traffic Impact Analysis Report (TIAR) for Kaiāulu o Kūku'ia was prepared in September 2019 by Fehr & Peers. The TIAR was included in the 201H Application for the project. The 201H Application (including the TIAR) was distributed to agencies, including the County of Maui, Department of Public Works and the State DOT. On February 7, 2020, the Maui County Council unanimously approved the 201H exemptions for Kaiāulu o Kūku'ia.

Condition No. 5:

Petitioner shall coordinate with the Maui Department of Water Supply, adjoining land owners, and/or other Federal, State or County agencies regarding measures designed to obtain the required water for the Project. Petitioner shall fund on an equitable basis, necessary water sources, storage, transmission facilities, and filtration system development.

Status: On March 31, 2017, HHFDC entered into a Memorandum of Agreement (MOA) with DHHL for the development of the proposed Honokowai Well and related water system improvements for DHHL and HHFDC projects at VOL. The project consists of two parts: (i) development of the well and connection to the

DWS system (Honokowai Well), and (ii) improvements at VOL including a pump station at Wahikuli Reservoir, a new reservoir mauka of DHHL's Village 1B, and transmission lines connecting Wahikuli Reservoir with the new reservoir (Wahikuli System). On March 8, 2021, DHHL published notice in the OEQC bulletin that a Supplemental EIS to the VOL Final EIS is not required for the Wahikuli System. DHHL continues to work on an HRS Chapter 343 Environmental Assessment for the Honokowai Well portion of the project.

Inasmuch as the new Honokowai Well has not yet been completed, HHFDC and Ikaika Ohana coordinated with DWS regarding potable water for Kaiāulu o Kūku'ia. On June 30, 2020, HHFDC advanced \$775,840 for the water reservation deposit for Kaiāulu o Kūku'ia as a 100% affordable project. This was done pursuant to DWS' Hawaii Administrative Rules Section 16-202-09, Rules Relating to Water Meter Reservations, as amended.

Condition No. 6:

Petitioner shall participate pro-rata in the funding, development, and construction of improvements to the Lahaina Wastewater Treatment Plant. Occupancy of the housing units shall be phased with the increased capacity of the treatment plant.

Status: In an agreement dated September 13, 1991, HFDC agreed to participate with the County of Maui in the expansion of the Lahaina Wastewater Treatment Plant. The expansion was completed in 1994 and provided for 1.8 mgd of sewer capacity for the VOL project. However, in accordance with HFDC's agreement with the County, any capacity not used before September 13, 2006 could be used by the County. By letter dated November 10, 2005, the County of Maui refused HCDCH's request for an extension. Therefore HCDCH's sewer capacity agreement with the County for the VOL project lapsed on September 13, 2006.

On April 15, 2020, HHFDC and the County of Maui executed a Memorandum of Understanding to allow the connection of Kaiāulu o Kūku'ia to the County sewer system and to the Lahaina Wastewater Treatment Plant (Sewer MOU). Under the Sewer MOU, if there is further development at VOL, a new private wastewater treatment plant must be developed for VOL and Kaiāulu o Kūku'ia must be disconnected from the County sewer system and connected to the VOL wastewater treatment plant.

Condition No. 7:

Petitioner shall fund and construct all necessary drainage improvements which are within the property. The drainage plans shall be submitted to DOT and the County of Maui, Department of Public Works.

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Status: HHFDC and DHHL are in discussions to transfer the remaining undeveloped lands at VOL to DHHL. Under a proposed draft transfer agreement, DHHL will comply with the requirements of the LUC for VOL.

Kaiāulu o Kūku'ia will be constructed with all necessary drainage improvements. Drainage plans will be submitted to DOT and the County of Maui Department of Public Works.

Condition No. 8:

Petitioner shall make land, with infrastructure up to the lots, available to the State Department of Education (DOE) for the development of school facilities.

Status: HHFDC has coordinated with the DOE regarding Condition No. 8. In a letter to the DOE dated November 13, 2019, the HHFDC noted that the HHFDC has no plans for the development of VOL beyond Kaiāulu o Kūku'ia at this time. As such, an Educational Contribution Agreement (ECA) is not currently being pursued. However, should the HHFDC decide to proceed with further development of VOL, HHFDC will coordinate with the DOE to make land available and/or execute an ECA, as required by Condition No. 8.

Condition No. 9:

Petitioner shall provide housing opportunities for low, low-moderate, and moderate income residents of the State of Hawaii by offering for sale or lease a number of units equal to 60% of the residential units in the Petition Area at prices which families with an income range of up to one hundred twenty percent (120%) of the County of Maui's median income can afford.

Status: In October 2000, the HCDCH requested the State Land Use Commission to amend the condition to allow the County of Maui to establish the affordable housing requirements in consultation with the HCDCH. However, the Commission believed that they did not have the authority to amend the Act 15, SLH 1988 provision and therefore, they deferred decision-making on HCDCH's request.

In the following year, Act 100, SLH 2001 was enacted, which addressed the affordable housing requirements for undeveloped lands at VOL. Act 100, SLH 2001 waived the affordable housing requirement of 60% of the units to families up to 120% of the HUD median income for the County of Maui that was imposed by Act 15, SLH 1988. Instead, Act 100, SLH 2001 authorized the affordable

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housing requirements to be established by agreement between HHFDC and the County of Maui.

Except for up to 3 managers' units, all of the units at the Kaiāulu o Kūku'ia affordable rental project will be affordable to families at 60% or below the HUD area median income.

Condition No. 10:

Petitioner shall coordinate with the County of Maui development of the Project in conjunction with the improvements to County services and facilities such as fire and police protection.

Status: HHFDC and DHHL are in discussions to transfer the remaining undeveloped lands at VOL to DHHL. Under a proposed draft transfer agreement, DHHL will comply with the requirements of the LUC for VOL.

HHFDC and Ikaika Ohana have consulted with County agencies, including the Maui Police Department and the Maui Fire Department (as well as the State Department of Public Safety). Consultation occurred through the HRS Section 201H-38 application process for Kaiāulu o Kuku'ia.

Condition No. 11:

All infrastructure improvements for the Project shall be developed in accordance with County of Maui standards.

Status: To date, all existing infrastructure improvements such as water, sewer, drainage, and roadway systems were constructed in accordance with County of Maui standards.

Future infrastructure improvements such as water, wastewater, drainage, and roadway improvements will be developed and constructed in accordance with County of Maui standards. This is a requirement imposed by HHFDC on Ikaika Ohana for Kaiāulu o Kūku'ia.

Condition No. 12:

Petitioner shall submit to the County of Maui, Department of Public Works all master plans for drainage, water, roadways, utilities, and sewers for review and approval prior to submittal of the individual construction plans of the various villages.

Status: This condition was previously satisfied in 1992.

Condition No. 13:

The State of Hawaii shall maintain responsibility for the preservation area which includes the existing crater and reservoirs.

Status: The area in question, including the existing crater and water reservoir, will be preserved as open space. In late 2012 and August 2019, DLNR de-commissioned Wahikuli and Crater Reservoir, respectively. The preservation area is not located within the project area for Kaiāulu o Kūku'ia.

Condition No. 14:

Petitioners shall fund, design, and construct improvements to the various community/neighborhood parks including but not limited to grading, installation of landscaping and irrigation, construction of retaining walls and safety fences, and installation of service utilities.

Status: The proposed Kaiāulu o Kūku'ia project will include two (2) community centers, a playground, and community gardens for residents' use. On-site organized activities will be provided for residents. One (1) of the community centers will be available for events that may be open to the public and one (1) will be exclusively for residents' use.

Condition No. 15:

Restrictive covenants for the golf course shall include conditions regarding preferential rates and tee times for the resident golfer. Rates shall not exceed 200% of the municipal course rates of the County of Maui and at least 50% of the prime tee times shall be reserved for the resident golfer.

Status: Kaiāulu o Kūku'ia does not include the development of a golf course. A golf course may be developed within VOL in the future. If a golf course is not developed, HHFDC will take appropriate action with the LUC to address compliance with conditions relating to the golf course.

Condition No. 16:

Petitioner shall incorporate noise attenuation measures or devices to reduce noise impacts along Honoapiilani Highway, the By-Pass Highway, and cane haul road.

Status: Kaiāulu o Kūku'ia is not adjacent to the Honoapiilani Highway or the future Lahaina Bypass. With the closing of operations of Pioneer Mill in 1999,

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the cane haul road is no longer used for the hauling of cane and is no longer an active road. Structures at Kaiāulu o Kūku'ia will be set back a minimum of 110 feet from the existing inactive cane haul road.

Condition No. 17:

Petitioner shall incorporate appropriate measures to mitigate impacts from wind, etc., along the existing and proposed highways and cane haul roads.

Status: As previously noted, Kaiāulu o Kūku'ia is not adjacent to the Honoapiilani Highway or the future Lahaina Bypass. Structures will be set back a minimum of 110 feet from the existing inactive cane haul road. Therefore, any wind caused by the Honoapiilani Highway or the future Lahaina Bypass should not have an impact on the structures at Kaiāulu o Kūku'ia.

Condition No. 18:

Petitioner shall not commence the construction of Villages 7 through 11 until the construction of the by-pass road through the Petition Area is substantially underway.

Status: Villages 6 (previously 7) through 14 (previously 11) will not be developed until the construction of the By-Pass Highway is substantially underway. HHFDC may request approval to install non-traffic-generating improvements such as water, sewer reclamation, and drainage improvements, above the By-Pass Highway, as required by the residential development makai of the By-Pass Highway.

The proposed Kaiāulu o Kūku'ia affordable rental housing project is located below (west of) the By-Pass Highway, in compliance with this requirement.

Condition No. 19:

Conditions requiring County agency review, coordination, or approval are subject to the powers of the HFDC as expressed in Act 15, Session Laws of Hawaii, 1988.

Status: As of July 1, 2006, all requests for County approvals, exemptions, waivers, and variances will be processed through the County under Chapter 201H, HRS, pursuant to Act 180, SLH 2006.

Condition No. 20:

Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining reclassification of the Property.

Status: The proposed Kaiāulu o Kūku'ia is in substantial compliance with the representations made to the LUC when obtaining the District Boundary Amendment for VOL. The VOL, as reviewed by the LUC, was intended to carry out the State's overall goal of increasing housing opportunities in West Maui for persons and families of all income levels and called for the development of up to 4,800 single-family and multifamily residential units. Kaiāulu o Kūku'ia will provide 200 affordable, multifamily rental units, which represents just a fraction of the units contemplated for VOL.

Updated conceptual plans for VOL were disclosed in a Final EIS published in 2012. The State DBEDT, to which the LUC is administratively attached, was a consulted party for the EIS. VOL, as described in the 2012 EIS, continues to be planned as a master-planned residential community. It is intended to provide affordable housing for West Maui residents. The total project acreage, number of residential units, and ancillary commercial and public facilities, as described in the 2012 EIS, are substantially similar to the representations made to the LUC. With respect to the Kaiāulu o Kūku'ia project site, Land Use Concept 3 depicts "Multi-Family Residential—18 and 20 du/ac" as the conceptually proposed land use for this alternative.

A golf course was not included in the 2012 EIS because at the time it did not appear to be an economically viable land use. If a golf course is proposed in the future, HHFDC will consult with appropriate agencies to determine if a supplemental EA or EIS is necessary. Should plans for VOL substantially deviate from what was represented to the LUC, HHFDC will take appropriate action with the LUC to address compliance with this condition.

It is noted that access to the project has been modified from what was originally presented to the LUC. This is due to the adjustments that have been made to the Lahaina Bypass alignment. Due to the discovery of archaeologically significant agricultural terraces in the alignment of the By-Pass Highway within VOL near Kahoma Stream, the State DOT realigned the By-Pass Highway to curve farther makai into a T-intersection with the County's Keawe Street Extension. An Environmental Assessment for this realignment was completed by DOT in 2009. Construction of Phase 1A of the By-Pass Highway and the Keawe Street Extension were completed in 2013. The Keawe Street Extension provides a mauka-makai thoroughfare, similar to what was previously proposed as an extension of Kapunakea Street. It is also noted that there is a privately-owned property and a County-owned property between the current terminus of Kapunakea Street and VOL. This prevents a direct connection to Kapunakea Street. Access to Kaiāulu o Kūku'ia will be provided via a new public road off of the Keawe Street Extension. In addition, HHFDC and the developer of Kaiāulu o

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Kūku'ia entered into a Memorandum of Understanding (MOU) dated March 4, 2020. Under this MOU, a non-exclusive access easement for an approximately 35-foot setback along the west edge of the project site would be created. This, together with the Cane Haul Remnant Lot, would allow for a future 60' ROW extension of Kapunakea Street northward, should such extension be necessary for future development at VOL.

Condition No. 21:

Petitioner shall file annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the Project and petitioner's progress in complying with the conditions imposed.

Status: Annual reports regarding the status of this Project will continue to be filed with the County of Maui Planning Department, the State Office of Planning and Sustainable Development, and the State Land Use Commission.

Condition No. 22:

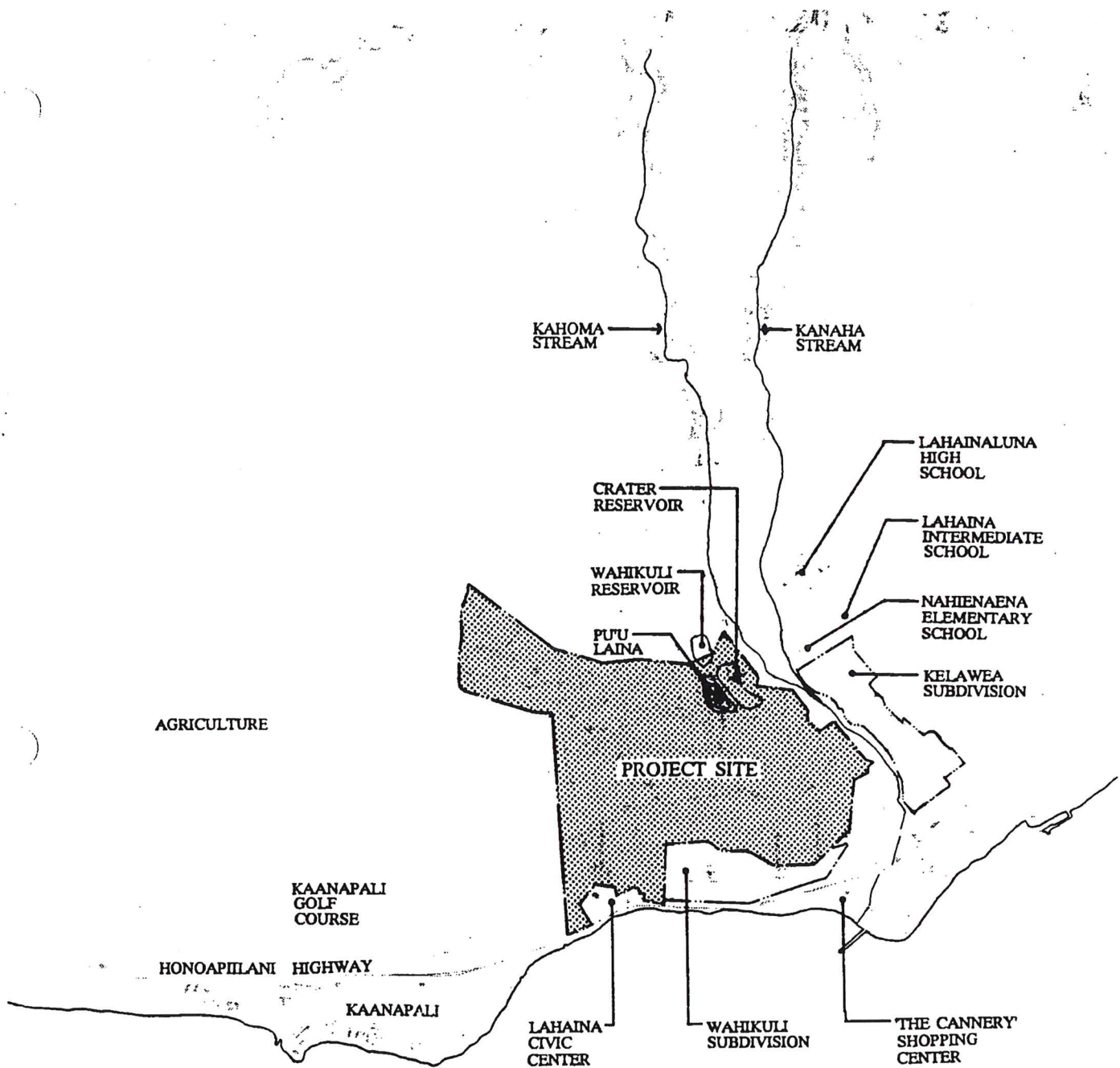
The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

Status: HHFDC acknowledges this condition.

Should there be any questions or comments regarding this matter, please contact Stan S. Fujimoto, Project Manager, at 587-0541.

Attachments

- c: State Office of Planning and Sustainable Development, w/attachments
- County of Maui Department of Planning, w/attachments



source: USGS 1983

Prepared for: **Housing Finance and Development Corporation**
 Prepared by: **FBR HAWAII**

FIGURE 5
REGIONAL LOCATION MAP w/surrounding land uses
LAHAINA MASTER PLANNED PROJECT
 Master Plan





VILLAGES OF LEIALOI

LAHAINA, MAUI

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

EXHIBIT A-1

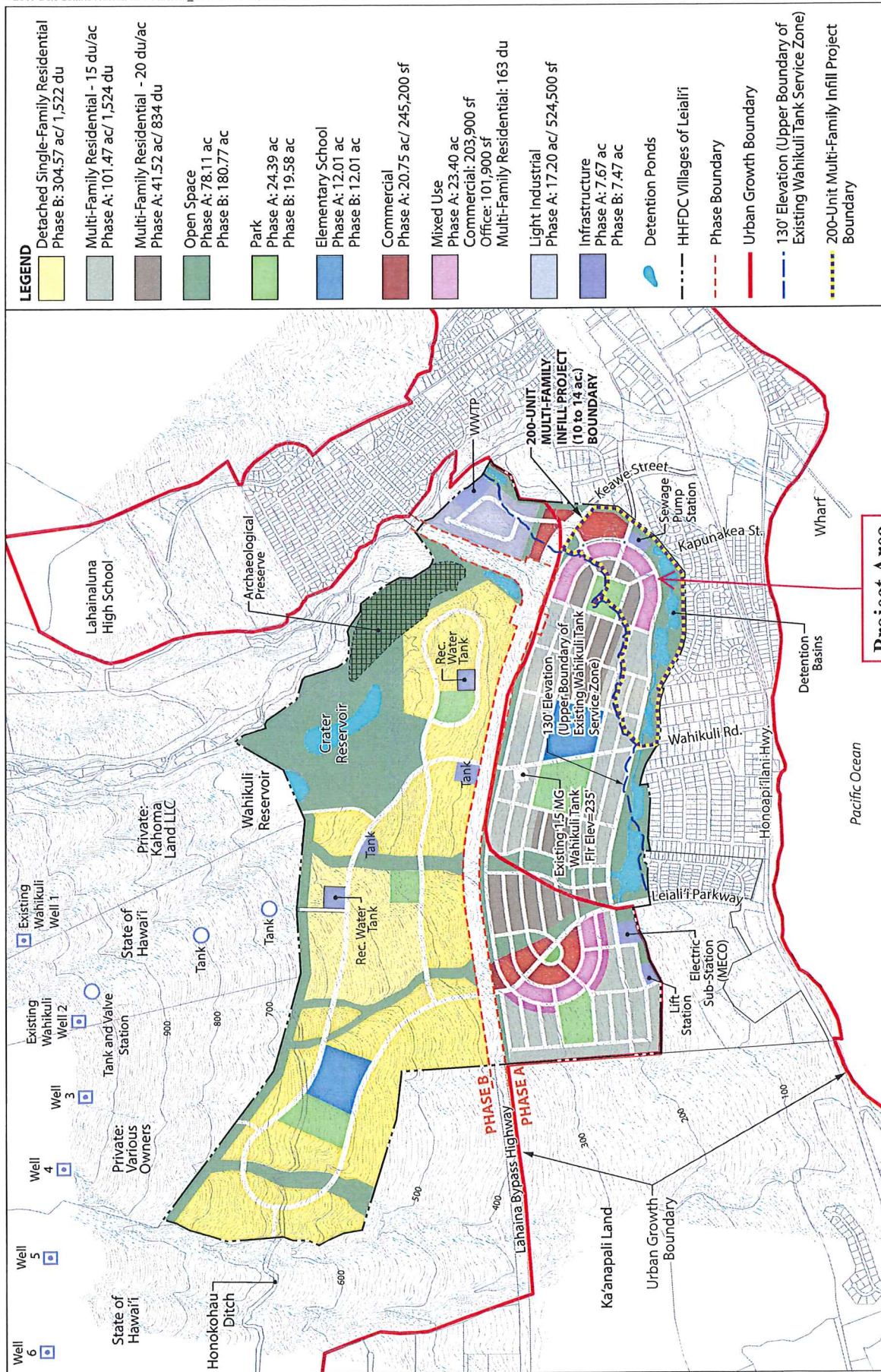
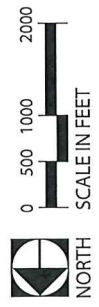
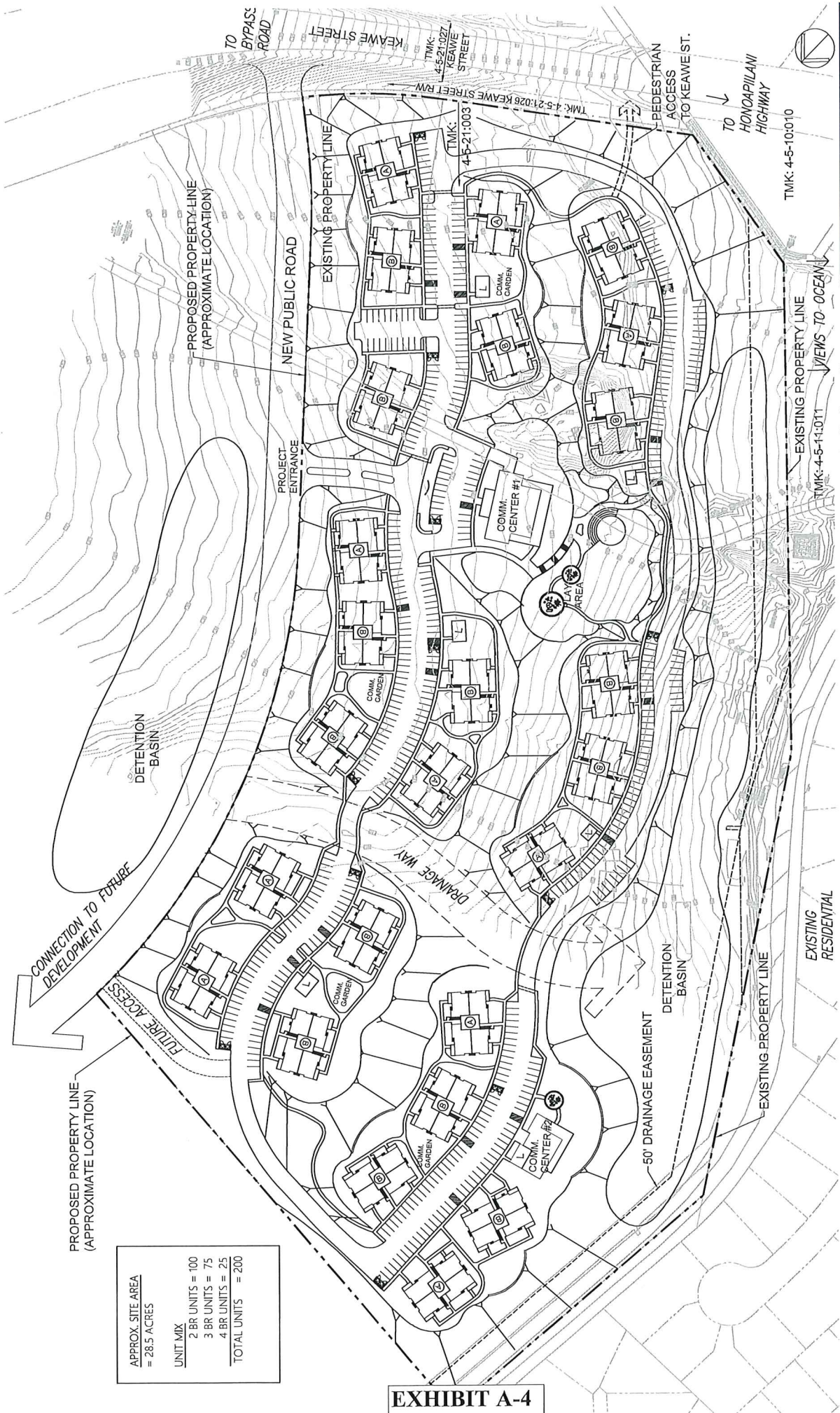


FIGURE 2
LAND USE PLAN CONCEPT TWO
Villages of Leialii
200-Unit Multi-Family Infill Project
January 2017

Note: Lot lines shown are approximate and for illustrative purposes. Imagery is from Google Earth Pro and is approximately matched to lot lines.





| | |
|-------------------|-------|
| APPROX. SITE AREA | |
| = 28.5 ACRES | |
| UNIT MIX | |
| 2 BR UNITS | = 100 |
| 3 BR UNITS | = 75 |
| 4 BR UNITS | = 25 |
| TOTAL UNITS | = 200 |



July 9, 2019

EXHIBIT A-4

Signature: *[Handwritten Signature]*
Email: stacy.t.jones@hawaii.gov

Signature: *[Handwritten Signature]*
Email: amy.r.ting@hawaii.gov

Signature: *[Handwritten Signature]*
Email: dommick@hawaii.gov