

**DOCKET NO. SP23-415**

**DEPARTMENT OF PLANNING**

**AND PERMITTING,**

**CITY AND COUNTY OF**

**HONOLULU**

**Approval of An After-the-Fact State Special Use Permit (SUP) to bring the existing Petition Area that is approximately 23.7 acres within a portion of TMK parcel 9-6-005:011, known as the Waiawa Correctional Facility (WCF) into compliance with respect to State Land Use Law, Chapter 205, Hawaii Revised Statutes (HRS).**

**HEARING ACTION**

**April 26, 2023**



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**Daniel Orodener, Executive Officer**

**Submitted April 21: 2023**

## TABLE OF CONTENTS

<u>Tab No.</u>		<u>Page No.</u>
1.	Explanation of the Proceeding Before the Land Use Commission	3
2.	Procedural Matters	5
3.	History & Background	6
4.	Associated Climate & Agricultural Concerns	11
5.	Continued State DAGS Transitional Plans After LUC Special Permit Approval is Received	13
6.	Need for Request	14
7.	Summary of Comments by Community and Government Agencies	14
8.	Conformance with the Special Use Permit Criteria	15
9.	Planning Commission Recommendation	33
10.	Issues and Recommendations	35

### **LUC Staff Notes:**

**This staff report has been adjusted to accommodate an anticipated filing of a stipulation by the Parties to remand this docket back to the Planning Commission for further consideration to address inadequacies discovered in the Petition after it was filed with the LUC.**

## 1. EXPLANATION OF PROCEEDINGS BEFORE LUC

The proceeding before the Land Use Commission (“LUC”) is to consider the State of Hawai‘i, Department of Accounting and General Services (DAGS),<sup>1</sup> application for an After-the-Fact State Special Use Permit (SUP) to bring the existing Petition Area that is approximately 23.7 acres in size within a portion of TMK parcel 9-6-005:011, known as the Waiawa Correctional Facility (WCF) into compliance with respect to State Land Use Law, Chapter 205, Hawaii Revised Statutes (HRS).

The federal government originally acquired the land in the 1940s, for a military reservation communications center (Waiawa Military Reservation) under the Army Command and Administrative Network. Prior to that, the lands were used for active pineapple and sugarcane cultivation. The State of Hawai‘i, Public Safety Department (“PSD”), converted the former military communications center into a 120-bed minimum security correctional facility after the State acquired the site in 1985 from the federal government.

The Department of Planning and Permitting- City and County of Honolulu (“DPP”), transmitted its report and recommendation for conditional approval of the SUP application for the WCF to the Honolulu Planning Commission for its consideration and approval. In addition to standard conditions of SUP approval, the Director also recommended the Petitioner do the following

- Apply for Planned Review Use approval;
- Consult with the Department of Land and Natural Resources regarding water usage by the WCF;
- Provide an outdoor lighting plan;
- Consult with local kupuna and cultural practitioners regarding traditional and customary native Hawaiian rights in the vicinity of the WCF; and
- Maintain agricultural uses and productivity at the WCF.

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<sup>1</sup> The property owner is the State of Hawai‘i, Department of Public Safety by Governor’s Executive Order No. 3414

The application correspondence also noted that as the Petition exceeds the 15-acre threshold, a favorable decision by the Planning Commission would require a Land Use Commission Special Permit review.

The LUC Special Permit process is unlike that used for district boundary amendments. The official evidentiary record is developed at the county-level before its Planning Commission. If the land area proposed for the Special Permit is over 15 acres approval must also be sought from the Land Use Commission. However, the in-depth review process is conducted by the County Department of Planning and Permitting (“DPP”) and a report with a recommendation is presented to the County Planning Commission. The applicant can and usually does present a case, complete with expert witnesses, to the County Planning Commission. When the County Planning Commission approves a Special Permit, it makes a decision based on the record, sets conditions to be placed on the project, and forwards a recommendation to the LUC. A denial at the County level does not result in the Special Permit being forwarded to the LUC for consideration.

The procedure at the LUC level is NOT a contested case hearing. As such witnesses are not necessarily presented by the applicant. Most importantly, the LUC’s decision must be made based on the record developed at the county-level and any amendments to conditions or additional conditions must be based on that same record. The LUC needs to be careful about allowing the introduction of any new information, whether inadvertently or purposely, into its deliberative process that might require a remand back to the County. If new information is uncovered, or the Commission feels the record is incomplete or there is public testimony on an issue not raised at the County level that the Commission feels needs to be addressed it must remand the matter back to the county for further proceedings rather than take evidence on the matter.

Section 205-6, Hawai‘i Revised Statutes (HRS), and Section 15-15-96(a), Hawai‘i Administrative Rules (HAR), provide the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may approve, approve with modification, or deny the Application. The LUC may impose additional restrictions as may be

necessary or appropriate in granting the approval; so long as the additional restrictions or conditions are based on evidence contained in the record received from the County.

### Guidelines for Special Permits

The guidelines for Special Permits are contained within 15-15-95, HAR, that allows certain “unusual and reasonable” uses within the Agricultural and Rural Districts. These guidelines are to be used in determining whether a proposed use is “unusual and reasonable.”

1. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Commission.
2. The desired use would not adversely affect surrounding property.
3. The use would not unreasonably burden public agencies to provide streets, sewers, water, drainage, schools, fire, and police resources.
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The LUC needs to determine whether granting this application would meet these criteria on the evidentiary record.

## **2. PROCEDURAL MATTERS**

On January 11, 2023, the DPP notified the LUC via email that the Honolulu Planning Commission (the “Planning Commission”, City and County of Honolulu (“Applicant”), would be processing an Application for an After-the-Fact State Special Use Permit (SUP) to bring the existing Petition Area that is approximately 23.7 acres of land within a portion of TMK parcel 9-6-005:011, known as the Waiawa Correctional Facility (WCF) into compliance with respect to State Land Use Law, Chapter 205, Hawaii Revised Statutes (HRS).

The Planning Commission would be filing the application on behalf of the State of Hawai'i Department of Accounting and General Services (DAGS). The property owner is the State of Hawai'i, Department of Public Safety by Governor's Executive Order No. 3414.

Specifically, the Applicant is applying for an after-the-fact State Special Use Permit (SUP) to bring the existing Waiawa Correctional Facility (WCF) into compliance with respect to State Land Use Law, Chapter 205, Hawaii Revised Statutes (HRS). According to the application, there are no plans for an expansion of facilities or intensification of use.

On February 14-15, 2023, the Honolulu Planning Commission and LUC staff discussed the filing dates and appropriate procedures involved with handling the docket records via email and telephone conversations. The Planning Commission advised that it had completed the oral approval of the Decision and Order for the special permit on January 11, 2023, and would be seeking approval of the written Decision and Order at its February 22, 2023 meeting. The minutes of the February 22, 2023 meeting were expected to be approved on March 8, 2023, and the complete record was expected to be forwarded to the LUC for review during the week of March 27, 2023. The tentative LUC meeting date to hear the special permit was scheduled to be April 26, 2023, with the subsequent approval of the order on May 10 or 11, 2023.

On March 29, 2023, the Honolulu Planning Commission delivered the complete record for SP23-415 to the LUC. The LUC deemed the record complete on March 31, 2023.

On April 18, 2023, the LUC received notice of request to withdraw Special Permit application from DAGS Public Works Administrator.

On April 18, 2023, the LUC received a stipulation from the Petitioner, County and OPSD requesting a voluntary remand of the application to repair inadequacies of the Petition.

### **3. HISTORICAL/BACKGROUND SUMMARY**

The WCF site is located within the State Land Use Agricultural District (SLUAD). The WCF is zoned F-1 Military and Federal Preservation District which was consistent with its prior use as a military reservation under federal jurisdiction.

The Petition Area is located in Waiawa, mauka of Waipahu, Central Oahu, approximately 2.5 miles east from the Interstate H-2, Ka Uka Boulevard off-ramp. The Petition Area comprises approximately 23.7 acres of a portion of TMK 9-6-005: 011. The Petition Area is comprised of the guard shack (WCF-G) and its associated administration building (WCF-GA), gatehouse storage shed (WCF-G2), and parking stalls at the entrance. South of the Waiawa Prison Road are the ponds, pumps, disinfection basin, and wastewater treatment plant that serve the WCF. Further mauka, at the center of the WCF are the administration and security buildings, inmate housing, dining halls, chapel, and trades learning shops. A series of four concrete communications structures extends mauka from the facility's center but not in use by the WCF's operations (for location of facilities, see Exhibit 1, Figure 4).

Outside of the Petition Area, but part of the WCF's operations and property, are the agricultural education and farm plot areas and buildings, outdoor courts and recreational area, and forest. These lands comprise the remaining 133.9 acres of the 157.9-acre TMK 9-6-005: 011 parcel.

Additionally, TMK 9-6-005: 012, located approximately 500 feet north of the property or approximately 1,600 feet north of the Petition Area, is used by the correctional facility for agriculture (tree nursery) and a 0.5-million-gallon water tank. Parcel 012 is not included in the Petition Area since the tree nursery is a permissible use in the State Agricultural District. Surrounding the entire WCF is dense vegetation. The WCF is situated on a broad ridge at the foot of the Koolau Range. The topography of the Petition Area is generally sloping from north to south with a mean elevation of approximately 800 feet above mean sea level. The greatest change in elevation is at the mauka end of the Petition Area (approximately 160 feet) occurring between Tents 7 and 8 past the inmate housing up to the last concrete communication structure. Access to the Petition Area is via Waiawa Prison Road which connects to the Interstate H-2 Ka Uka Boulevard off-ramp via the Mililani Cemetery Road.

For its current use, prisons and correctional facilities are not classified as permissible uses within the SLUAD, therefore, a SUP is sought since it is regarded as an unusual but reasonable use in the SLUAD. The proposed SUP Petition Area is approximately 23.7 acres and is within a

portion of TMK parcel 9-6-005: 011. The areas outside of the Petition Area consists of permissible uses within the SLUAD, thus they are not included in the SUP Petition Area

The federal government originally acquired the land in the 1940s, for a military reservation communications center (Waiawa Military Reservation) under the Army Command and Administrative Network. Prior to that, the lands were used for active pineapple and sugarcane cultivation. The State of Hawaii, Public Safety Department (PSD), converted the former military communications center into a 120-bed minimum security correctional facility after the State acquired the site in 1985 from the federal government.

The WCF has 40 existing buildings and structures. All of the structures, except those dedicated to agricultural pursuits and the recreation center (WCF-A1, WCF-AF, WCF-AS, and WCF-R) are included in the Petition Area.

Infrastructure facilities included in the Petition area includes a wastewater treatment plant (WCF-WWTP) and a disinfection basin near the entry gate, that currently services three ponds. Wastewater that is generated at the WCF is delivered to the WWTP, where it then flows by gravity into Pond A for nutrient removal. Water from Pond A is chlorinated in a disinfection basin, where it then flows into Pond B. The water in Pond B is classified as R-2 quality treated effluent. The WCF also contains other infrastructure facilities that are abandoned.

In addition to the concrete communication structures (Buildings V1, V2, V3, and V4), the military also constructed a supporting underground, reinforced concrete tunnel system that once housed five electrical transformers and other electronic equipment. The entrance to the tunnel is hidden by dense vegetation south of WCF-A, and runs up north past buildings WCF-S1 and WCF-CP. The tunnel is currently closed off and there are no plans for PSD to use the tunnel in the future. Further mauka, outside of the proposed Petition Area, is a 0.5-million-gallon water tank. This water tank stores treated water for potable use at the WCF. The water is pumped from the Waiahole Ditch, which crosses the Petition Area. The water tank is currently in use and is proposed to be replaced by a 0.75-million-gallon water tank under the DAGS Job No. 12-27-5657 New Domestic Water System and Related Improvements project.



Since many buildings and structures were constructed by the military in the 1940's, an Architectural Reconnaissance Level Survey (RLS) was prepared by Fung Associates, Inc. in 2019 to inventory and identify any potential historic properties for listing under the State Register of Historic Places and National Register of Historic Places. The RLS was submitted to the State Historic Preservation Division (SHPD) for review under HRS, Chapter 6E-08.

In a letter dated December 11, 2019, the SHPD concurred with the DAGS determination of "no historic properties affected" since no WCF activities affect any existing sites that have been found to retain historic integrity.

Out of the 40 existing buildings and structures, three (3) buildings and four (4) structures were found to be existing remnants of the Waiawa Military Reservation and have retained their historic integrity.

- Buildings WCF-04, WCF-05 and WCF-06: These buildings have retained their integrity of design, workmanship, material, setting, feeling, location, and association, and appear to meet Criterion C as examples of the modern, international building style in Hawaii in the 1950s.

- Buildings V1, V2, V3, and V4: These telecommunication huts have retained their integrity of design, workmanship, material, setting, feeling, location, and association, and appear to meet Criterion A associated at the local level with military history and installation construction in Hawaii.

Chapter 205, HRS, Land Use Commission (LUC) was adopted in 1961 and the LUC "Rules of Practice and Procedures", the predecessor to Hawaii Administrative Rules (HAR), Title 15, Chapter 15, was adopted in 1962. Thus, some of the buildings in the correctional facility were established and operating prior to the adoption of Chapter 205, HRS.

As noted, many of the buildings were built many years ago and through a records check, building permits for their construction were not found.

The WCF is an all-male facility that has on average a combined total of approximately 420 inmates and staff on-site. The facility is designed for a maximum capacity of 334 inmates and 118 staff, for a total of 452 persons on-site. The WCF experiences a fluctuation in its inmate population as they are constantly being transferred in and out of the facility due to the nature of the minimum-security correctional system. The number of staff also fluctuates due to the various shifts and availability of staff to support the correctional facilities on the island. The WCF is in operation 24 hours a day, 7 days a week, and 365 days a year.

At the WCF, the inmates are sectioned into two groups; the KASHBOX population and the general population. The KASHBOX population are those who are participating in the KASHBOX program, which is an intensive substance abuse treatment program for inmates with substance abuse problems. The general population consists of the remainder of inmates. Visitors are only allowed one (1), one-hour visit per weekend on Saturday or Sunday. The maximum number of visitors in a group are three (3) adults. If the visitors consist of documented parents (through proof of birth certificate) of the inmate then they are considered as one (1) visitor, and two (2) additional adult visitors are allowed. Visitors are required to have visitation approval prior to entry. The hours of visitation for the KASHBOX population are from 7:45 AM to 9:45 AM (last entrance at 9: 15 AM), and the hours for the general population are from 11 :30 AM to 1 :30 PM (last entrance at 1 :00 PM).

The objective of the WCF is to provide an environment conducive to the success of inmates re-entering the community after finishing their sentence. Inmates are required to participate in either education or substance abuse treatment programs and are also able to participate in the work programs offered on-site. The WCF has a Community Service workline, but participation is subject to the inmates' sentence and demonstrated behavior. Through the educational programs offered at the WCF, inmates are able to earn their General Education Degree and also work towards an Associate of Arts Degree. Other educational programs offered include adult basic education, life skills, restorative justice, interactive parenting skills, tutor practicum training, communication, keyboarding, test strategies, introduction to information technology, health management, forklift certification, choir, makahiki, and Toastmasters.

The KASHBOX substance abuse treatment program was established at the WCF in 1990. The program utilizes a holistic approach to treat inmates through a change in lifestyle by monitoring and reinforcing changes in attitude, emotions and conduct. The work programs offered include food service, building maintenance, farming, landscaping, automotive, educational tutoring, store assistance, and janitorial worklines.

Food service worklines are responsible for prepping, cooking, and serving every meal at the facility. They also wash the dishes and clean the dining room and kitchen. The building maintenance workline is responsible for the upkeep of all buildings and structures around the facility. This includes any electrical, carpentry, masonry, welding, and plumbing work that is needed. The farming workline works on the eight-acre on-site farm facility (outside of the proposed SUP Petition Area) and upkeeps the hydroponics and aquaponics plants. The farming workline cultivates and harvests approximately 2,000 to 3,000 pounds of produce per week. Some of the produce harvested from the property includes the following: lettuce, eggplant, squash, pineapple, beets, green onions, kale, bok choy, choy sum, taro, tomatoes, mango, lemons, banana, strawberry, beans, mizuna, radish, spinach, sweet potato, bell peppers, corn, and various herbs. According to the SUP application, the harvested produce is used in the facility's meals and shared with the Women's Correctional Facility, the Oahu Community Correctional Center, and the Halawa Correctional Facility.

An additional 16-acre agricultural plot on a separate parcel outside the Petition Area (TMK 9-6-005: 012) is used to grow a variety of trees, including albizia, eucalyptus, mango, mulberry, citrus, guava koa, ironwood, and pine. The pine trees are cultivated for the Department of Land and Natural Resources' (DLNR) Christmas decorations at Honolulu Hale during the holiday season.

The WCF also utilizes aquaponics to grow some of their produce, in addition to the sunfish tilapia used in hydroponics system. These uses are located outside of the Petition Area, north of the Waiawa Prison Road between the entry gate and the main WCF buildings.

#### **4. ASSOCIATED CLIMATE & AGRICULTURAL CONCERNS**

## Climate and Wind Patterns.

As of 2014, the "Climate of Hawaii," Department of Geography, University of Hawaii at Manoa database, indicates that the Petition Area has a mean annual temperature of about 68.0 to 74.4 degrees Fahrenheit. The average annual rainfall is approximately 56 inches and an average annual wind speed of about 6.7 miles per hour.

C. Soil Type and Quality of Agricultural Land

1. U.S. Department of Agriculture (DOA). According to the U.S. DOA, Soil Conservation Service, the predominant soil types within the Petition Area include Helemano silty clay, 30 to 90 percent slopes (HLMG), Leilehua silty clay, 2 to 6 percent slopes (LeB), Manana silty clay loam, 6 to 12 percent slopes (MoC), and Wahiawa silty clay, 3 to 6 percent slopes (WaB). Helemano silty clay soils are well-drained with rapid or very rapid runoff and moderately rapid permeability. Helemano soils are used for pasture, woodland and wildlife. Leilehua silt clay soils are well-drained with slow to medium runoff and moderately rapid permeability. Leilehua soils are used for pineapple and irrigated sugarcane production. Manana silty clay loam soils are well-drained with slow to rapid runoff and moderately rapid permeability. Manana silty clay loam are used for growing irrigated sugarcane and non-irrigated pineapple and pasture. Wahiawa silty clay soils are well-drained with slow to medium runoff and moderately rapid permeability. Wahiawa silty clay are used primarily for the production of irrigated sugarcane and dryland pineapple, and small areas are in pasture.

2. Land Study Bureau (LSB) Classification. The LSB rating system is based on the agricultural productivity of soils throughout the State, accounting for characteristics such as texture, slope, salinity, erodibility, and rainfall. The productivity ratings are used to designate each area as Class A, B, C, D, or E. Class A represents the most productive soils and Class E represents the least productive soils. 9 According to the LSB overall master productivity rating system, much of the western half of the Petition Area is comprised of Class B soils (Exhibit 1, Figure 5). A small portion of land, less than 0.2 acres, near the entrance contains Class A soils. Class C and E soils are also present in small areas of the Petition Area. Much of the main campus area does not contain soils designated by the LSB rating system.

3. Agricultural Lands of Importance to the State of Hawaii {ALISH). The ALISH Map, prepared by the State DOA, classify lands into three categories: 1) Prime Agricultural Land; 2) Unique Agricultural Land; and 3) Other Important Agricultural Land. There are small slivers of land on the western portions of the Petition Area designated as Prime Agricultural Land (Exhibit 1, Figure 6). The majority of the site is not classified as ALISH.

4. Important Agricultural Lands {IAL). Article

XI, Section 3 of the State Constitution sets out the framework for state policies and all subsequent legislation related to IAL. Chapter 205-44.5, HRS identifies a separate process under which public lands, as defined under Chapter 171-2, HRS, are to be identified for IAL designation. The Petition Area, as State-owned and considered public lands under this definition, has not been designated with IAL as the State has not undertaken the IAL designation process.

## **5. CONTINUED STATE DAGS TRANSITIONAL PLANS AFTER LUC SPECIAL PERMIT APPROVAL IS RECEIVED**

### Other Permits and Approvals.

The proposed granting of a SUP for the WCF will attempt to deem it as an unusual and reasonable use in the SLUAD. A Planned Review Use (PRU) application will then be sought to bring the correctional facility's uses into conformity with the City and County of Honolulu's (City) Land Use Ordinance (LUO). According to the LUO, as the land is removed from federal and military use, the development standards of the property shall be the same as the P-2 general preservation district. As shown in Table 21-3, Master Use Table, of the LUO, prisons or correctional facilities are allowed in all zoning districts, include the P-2 general preservation district, with the approval of a PRU.

### Environmental Assessment (EA).

In 1985, the DAGS prepared an EA to convert the former military structures into a 120-bed minimum-security correctional facility. In 1998, a Final EA and Finding of No Significant Impact (FONSI) was completed for three proposed actions: 1) construction of various facilities since 1985 (after-the-fact); 2) interim infrastructure improvement activities; and 3) a proposed 200-bed compound for the KASHBOX drug rehabilitation program. In 2008, a Final EA-FONSI was completed for the addition of two temporary prefabricated program structures for additional operational space. In July 2021, a Final EA-FONSI was completed to satisfy the HRS Chapter 343 requirements for the SUP and PRU applications. The DAGS and the PSD's requirement to obtain both the SUP and PRU include the use of state lands and funds, as described under HAR 11-200.1-8 (1 ), both of which trigger the preparation of an EA as prescribed by HRS Chapter 343. The proposed action in the Final EA-FONSI does not include any proposed new

improvements to the facility. All new buildings constructed since 1998 have received a HRS, Chapter 343, Declaration of Exemption from the preparation of an EA by the PSD since they were considered accessory structures to the existing buildings and structures onsite. The WCF's size and capacity has remained the same.

There are no plans for expansion or site improvements or new structures at this time that would result in an increase to the inmate population. If and when site improvements or new facilities are proposed in the future, construction plans approval, building permits, and/or other approvals may be required at that time. As mentioned earlier, a PRU is still necessary for the WCF to conform to the City and County of Honolulu, LUO.

## **6. NEED FOR REQUEST**

The State of Hawaii, DAGS is applying for an after-the-fact State Special Use Permit (SUP) to bring the existing Waiawa Correctional Facility (WCF) into compliance with respect to State Land Use Law, Chapter 205, Hawaii Revised Statutes (HRS). According to the application, there are no plans for an expansion of facilities or intensification of use.

## **7. SUMMARY OF COMMENTS BY COMMUNITY AND GOVERNMENT AGENCIES**

### Government Agencies

On September 16, 2022, local, state, and federal government agencies were requested to evaluate the application for a SUP on their facilities and services. The agencies contacted and the all written responses received prior to the signing of this report are included in Petitioner's Exhibit 18 -DPP Memo Exhibit 2 dated December 9, 2022. Comments received after the signing of this report were to be transmitted separately to the Planning Commission (PC) or the State LUC for their consideration. Significant comments received are addressed in Section III of this report.

### Community Comments

On February 23, 2021 at its regular meeting, the Pearl City Neighborhood Board (NB 21) voted to approve the submittal of comments in a letter to the DAGS on the Draft EA for the WCF. The comments requested that potential adverse impacts from traffic generated from the

future Koa Ridge and Waiawa Ridge developments on the WCF be disclosed. Since the proposed SUP and PRU were being sought after-the-fact and no new facilities were being provided, the NB 21 recommended that a FONSI be declared. The February 23, 2021, letter is included in Petitioner’s Exhibit 18 -DPP Memo Exhibit 2 dated December 9, 2022.with other public comments.

OPSD

As of April 13, 2023, OPSD has not submitted comments on the permit application. However, due to activity subsequent to the filing with the LUC, it is anticipated that a stipulation agreement by the Parties will be filed.

#### **8. CONFORMANCE WITH THE SPECIAL USE PERMIT CRITERIA**

**After review of the complete record submitted on March 29, 2023, this Special note to Commission was added –**

**A good portion of this staff report was prepared in advance based on preliminary informational material submitted by the Planning Commission. After LUC staff had a chance to review Petitioner’s Exhibit 14, it was discovered in a letter dated October 21, 2022 from consultant SSFM to the City and County of Honolulu DPP- Attn: Mr. Thomas Blair, regarding the pursuit of a Special Use Permit v. District Boundary Amendment that: “From 2009 to the present, the DPP has not provided any guidance to PSD and DAGS suggesting application for a District Boundary Amendment over a SUP, nor was it discussed during the pre-consultation meeting for the SUP and PRU that was held on May 8, 2019.” Consequently, the application’s information is only directed towards obtaining an SUP but could equally have been applied to obtaining a DBA, had one been considered. Highlighted areas note DBA related comments in this section. The issues and recommendations section in the final portion of the staff report will include LUC staff concerns in more detail.**

Laws and Public Policies.

1. Land Use Law, Chapter 205, HRS.

The Petition Area is within the SLUAD. Section 205-6, HRS, allows the county PC to permit certain unusual and reasonable uses within the agricultural and rural districts other than those for which the district is classified. The county PC may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter.

In determining whether a proposed use is deemed "unusual and reasonable," Section 2-45, of the PC Rules, established five guidelines. These guidelines are also found in Title 15-15, of the HAR for the State LUC.

The DPP finds that the proposed SUP, to allow the existing minimum security correctional facility on lands in the SLUAD, generally meet the requirements of Chapter 205, HRS. A description of the SUP's comparison with the five guidelines of Section 2-45, of the PC Rules, are as follows:

Guideline 1 : Such use shall not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

Chapter 205, HRS, seeks to protect agricultural lands and ensure their continued availability for agricultural use. It provides that the SLUAD shall also include lands with a high capacity for agricultural production, grazing, and other agricultural uses. Section 205-2 (a) (3), HRS, states that "In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation." However, Chapter 205, HRS, also recognizes that some lands in the SLUAD may be better suited for non-agricultural uses such as solar energy facilities, and other renewal energy facilities.

The use of the site for military purposes predates the adoption of the State Land Use classification system. While correctional facilities are not listed as a permitted use in the SLUAD, it has occupied the same site, essentially replacing one non-conforming use with another. In that sense, it is not contrary to the objectives sought by the State Land Use Law and



the granting of a SUP for the WCF would formally change its status from a non-conforming use in the SLUAD to a permitted one.

The SUP application argues that granting of a SUP is considered a more appropriate option versus a State Land Use District Boundary Amendment to the Urban District. While non-agricultural, the WCF in this location is unusual but still reasonable given its remoteness and distance away from urban uses. As part of their existing education and wellness programs, involvement in agriculture and aquaponics activities at the WCF is also not contrary to these objectives.

The argument for a State Land Use District Boundary Amendment to the Urban District could be based on the fact that this is a permanent non-agricultural use and though the location is unusual, the urban uses that are being conducted within the Petition Area are appropriate for a permanent urban use without any permit time duration limits being imposed upon it.

LUC staff feels that since the permanence of the facility has been established in this area over the course of years and moving into the future, it's land use should be permanently recognized and properly designated for urban use. A special permit is not the appropriate substitute for the permanent adjustment needed to complete the after-the-fact results that Public Safety is seeking. The LUC is confronted by a dilemma on how to best navigate the Special Permit process and still achieve the best results to serve the State and the people of Hawai'i.

Guideline 2: That the desired use would not adversely affect the surrounding property.

There are no anticipated direct impacts that would affect adjacent properties as there is no proposal to change the intensity or use of the WCF. The WCF is surrounded by forest, the lands of which are owned by one owner, the Bernice Pauahi Bishop Estate.

A district boundary amendment would also not adversely affect the surrounding property as current and future provisions are already in place to respect the isolation of the facility and enable it to continue to function unimpeded. The absence of restoration and remediation plans and a permit term limit in the SUP application strongly indicate that all intentions are that this

will be a permanent facility and the LUC will have to consider how to craft a decision that will constructively use this permit application to assist in obtaining that status.

The trustees of the Estate, Kamehameha Schools, in contemplating their own long-range development plans in the Waiawa area have factored in a wide buffer of separation from the WCF. According to recent proceedings before the LUC, the timetable to complete such development is decades away (LUC Docket No. A87-610).

Occasionally, inmates have attempted to escape but security at the WCF is exceptional and few, if any, actually succeed. Besides, as a minimum security facility, it is not in their interest to attempt escape so near to their release. **While actual urban uses are few and far apart, the presence of the WCF does not pose as a deterrent to their continued urban use.**

Other possible adverse effects:

- i. Construction Noise. There will be no adverse effects from construction noise on surrounding properties as no development or alterations are being proposed. Therefore, a condition of SUP approval to address construction noise is not recommended.
- ii. Operational Noise. There are no proposed changes to the operations of the existing correctional facility, therefore no change to existing operational noise levels is anticipated. Any operational noise from the existing correctional facility is already reduced due to its distance from and the dense surrounding vegetation separating it from existing development. The Petitioner is also required to comply with the DOH noise regulations. Therefore, a condition of SUP approval to address operational noise is not recommended.
- iii. Air Quality. There are no proposed changes to the operations of the existing correctional facility, therefore no change to existing air quality is anticipated. The Petitioner is required to comply with the DOH air quality regulations. Therefore, a condition of SUP approval addressing air quality is not recommended.
- iv. Open Space. The area adjacent to the Petition Area is the remainder of the WCF grounds including open space, agricultural plots and dense forest on rugged terrain. The WCF itself maintains the open space character of the area. Therefore, a condition of SUP approval to address open space is not recommended at this time.

- v. Public Views. Existing buildings are one- to three-story structures. Tall trees and shrubs within the property, but outside of the Petition Area and on the adjacent property screen most of the buildings from public views. Therefore, a condition of SUP approval relating to screening from public views is not recommended at this time.
- vi. Natural, Cultural, and Scenic Resources. Exhibit 3.3 Natural, Cultural, and Scenic Resources in the Central Oahu Sustainable Communities Plan (COSCP) identifies an area directly north of the Petition Area as a 'single and concentrated sites' for cultural resources. Without identifying what resources are there and exactly where it is in proximity to the Petition Area, a condition of SUP approval is not recommended since no expansion or intensification of the WCF is contemplated at this time.

The DBA alternative would similarly be bound by these same restrictions and considerations.

Guideline 3: Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. The existing and continued use of the WCF does not seek to improve or expand upon its existing operations and therefore will not unreasonably burden public agencies to continue to provide roads, sewers, drainage, schools, police, and fire protection. A State Land Use District Boundary Amendment to the Urban District would also not generate any additional infrastructure needs.

Below is further analysis of the impacts of the existing correctional facility on public services:

- i. Roads and Streets. Access to the Petition Area is from the Interstate H-2, Ka Uka Boulevard off-ramp, along Waiawa Prison Road. Waiawa Prison Road is a paved, two-way, 20-foot-wide, 1.8-mile-long road, oriented in the east-west direction with a 15-mph posted speed limit. There are no curbs, gutters, or sidewalks along Waiawa Prison Road. Waiawa Prison Road is designated as a private road. In rare instances, the road is closed for more than a day requiring staff of the correctional facility to remain on-site

overnight. Once, the private road was closed for seven days, requiring the facility to seek emergency assistance. The easements granting access to the Petition Area across the adjacent property along the private, Waiawa Prison Road, are included in the SUP application under Appendix A - Executive Order No. 3414. In an October 17, 2022 response letter, the State of Hawaii DOT recommended that a condition of SUP approval be included that requires an updated Traffic Assessment or Traffic Impact Analysis Report (TIAR) be submitted to the DOT for review and acceptance prior to facility expansion or intensification of use. The DPP believes that with the expansion or intensification of the WCF, a TIAR will be part of a required EA or Environmental Impact Statement for the WCF, therefore, a condition of approval is not needed.

ii. Wastewater. The facilities located in the Petition Area are serviced by a private wastewater treatment system which is under the jurisdiction of the State DOH. Due to the remote location of the WCF, connecting to the City system is not feasible. There is no expansion or intensification of use associated with the proposed SUP; therefore, a condition of SUP approval for wastewater is not recommended at this time.

iii. Water. Potable water for the WCF's domestic use is provided by an on-site water treatment plant system that operates 24-hours a day, five days a week and meets daily domestic and peak potable water demands. Raw water is drawn from the Waiahole Ditch, the sole water source for the WCF. The Waiahole Ditch (aka Waiahole Water System) is owned and operated by the State Agribusiness Development Corporation (ADC). Per the ADC's Annual Report for Fiscal Year 2021, the Waiahole Ditch system produces 22 to 29 million gallons per day (MGD) and delivers between 5 to 7 MGD to system customers. The WCF is permitted 0.15 MGD based on Water Use Permit No. 630 issued on December 28, 2001. A Groundwater Hydrology Assessment was prepared by Tom Nance Water Resource Engineering in June 2019 in support of the SUP and PRU applications. Per the assessment, it is reported that the ADC monitors WCF's monthly water use from the Raw Water Flow Meter at the onsite water treatment plant. Based on data from the Raw Water Flow Meter from January 2016 to April 2019, the WCF uses between 0.044 MGD to 0.076 MGD. As noted in the hydrology assessment,

untreated ditch water is also used by the WCF for irrigation of the 8-acre agricultural area. The untreated ditch water is not metered as the water is delivered from the ditch to a buried 96,000 gallon storage tank and does not pass through the Raw Water Meter Flow. Based on the assessment, it is estimated that the untreated ditch water use is between 0.02 to 0.03 MGD, which would bring the WCF's total water withdrawal from the Waiahole Ditch to a maximum of 0.10 MGD, which is still below the WCF's 0.15 MGD permitted use.

A portion of the site is located within the Zone of Contribution (ZOC) of the U.S. Navy's Waiawa Shaft. According to a Groundwater Hydrology Assessment provided in the SUP application (Appendix F), percolation from the on-site basins and leakages from the treated wastewater systems have the potential to impact the ZOC underlying groundwater, however, the risks were deemed insignificant.

The Honolulu BWS did not respond to the SUP Request for Comment, but in their comment to the project's EA, they confirmed that the BWS has no water system in the vicinity of the Petition Area and that all water services will be provided by a private system.

Although there is no expansion or intensification of use associated with the proposed SUP, the DLNR requests that the Petitioner provide water demands and calculations to the DLNR - Engineering Division so that the project estimates can be included in the State Water Projects Plan Update projects. The State LUC also requested further information on the long-term availability of water, particularly as there are other project proposals that would impact Waiahole Ditch. **Therefore, a recommended condition of an SUP or State Land Use District Boundary Amendment to the Urban District approval for water would include these agency requests.**

iv. Drainage. There are no City drainage systems in the Petition Area. The Petition Area's existing topography is generally sloping from north to south. Surface runoff from the Petition Area flows to undeveloped areas south of the correctional facility and

outside of the property, which is heavily vegetated forest. The Petition Area and surrounding lands are classified as Zone "D" by the Flood Insurance Rate Map, which means the flood potential for the Petition Area and the surrounding area is undetermined. The Petitioner is required to comply with the prevailing soil erosion and stormwater quality standards ("Rules Relating to Water Quality") of the City and County of Honolulu. Compliance with the Rules Relating to Water Quality will be verified at the time that grading or construction plans are submitted to the OPP for review. The OP had previously requested, during the project's EA, that the Petitioner consider the use of green infrastructure, including a rain catchment system, which would reduce the stormwater impacts of the continued operations of the site on the surrounding lands, improve retention and percolation, and potentially reduce the demand for water from Waiahole Ditch. However, as there is no expansion or intensification of use associated with the proposed SUP that would trigger the Petitioner to remedy the issue of runoff leaving the Petition Area, and as the Petitioner is seeking a PRU upon approval of this SUP, a condition of SUP approval for drainage is not recommended at this time. **This would also apply to seeking a DBA.**

v. Solid Waste. West Oahu Aggregate services the correctional facility twice a week to collect an average of 18.9 tons of waste per month. There are no changes to solid waste collection as there is no expansion or intensification of use associated with this proposed SUP. The ENV did not respond to a request for comments. Therefore, a condition of SUP approval regarding solid waste is not recommended at this time. **This would also apply to seeking a DBA.**

vi. Schools. There are no public schools in the vicinity of the Petition Area. The continued use of the Petition Area as a correctional facility is not anticipated to impact existing or proposed school service, therefore, a condition of SUP approval for schools is not recommended at this time. **This would also apply to seeking a DBA.**

vii. Police Protection. The Petition Area is located about two miles to the north in Patrol District 2 - Wahiawa/North Shore, Sector 1, which covers Waipio, Mililani and Mililani

Mauka. The correctional facility staff is trained and equipped to handle most emergency situations. In addition, inmates pose a low risk to the public since WCF is a minimum-security facility. The Petitioner is not seeking additional police services. The HPD did not respond to the SUP request for comment. There is no expansion or intensification of use associated with this proposed SUP; therefore, a condition of SUP approval for police protection is not recommended at this time. **This would also apply to seeking a DBA.**

viii. Fire Protection. The Petition Area located between three fire stations: Fire Station 36 Mililani, Fire Station 41 Mililani Mauka, and Fire Station 42 Waikele. All of the fire stations are approximately seven miles from the Petition Area. According to the application, the site has approximately 300,000 gallons of water for fire protection. The HFD did not respond to the SUP request for comments. For the EA, the HFD provided comments with respect to the provision of access roads and vehicle clearances, water supply, and continued review in the event there are any proposed future improvements. There is no expansion or intensification of use associated with the proposed SUP; therefore, a condition of SUP approval for fire protection is not recommended at this time. **This would also apply to seeking a DBA.**

ix. Medical Services. The correctional facility includes a medical services building, WCF-M, constructed in 1987. Wahiawa General Hospital is approximately nine miles northwest of the Petition Area. Queen's Medical Center West Oahu is approximately 10 miles southwest. There is no expansion or intensification of use associated with the proposed SUP; therefore, a condition of SUP approval for medical services is not recommended at this time. **This would also apply to seeking a DBA.**

Guideline 4: Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The long-term establishment of the site as a military communications facility and barracks preceded the district boundaries and regulations that exist today. However, institutional uses would not be considered typical agricultural or accessory to agricultural uses. Therefore, when the correctional facility replaced the military use, one institutional use was replaced by another. The

establishment of the WCF under the Governor's Executive Order No. 3414 in 1989 necessitated an unusual condition for a minimum security correctional facility to be placed at this site that could not have been contemplated when the district boundaries and regulations were established. The City's long-range land use plan, the COSCP, also formally recognizes this area as an established area for the correctional facility. This would also apply to seeking a DBA and perhaps assist in aligning land use designations in better order.

Guideline 5: That the land upon which the proposed use is sought is unsuited for the uses permitted within the district. Decades of correctional facility and military use have long wrought the land within the Petition Area as no longer suited for agriculture. The proposed boundaries of the Petition Area were carefully drawn to include only the developed lands and exclude as much undeveloped and potentially viable permitted agricultural uses. 2. PC Rule No. 2-46(e) - Establishment of the Proposed Use. Pursuant to PC Rule No. 2-46(e), a condition of SUP approval is to require a reasonable time limit to establish the use. As the proposed use is already established, this condition is not applicable. The degraded agriculture suitability is a recognized condition of the Petition Area and would also be an appropriate reason for seeking a DBA.

The argument of all 5 guidelines associated with compliance with Land Use Law, Chapter 205, HRS, combined with the permanent nature of the facility, are more in line with why a DBA is appropriate for the Petition Area. The Central Oahu Sustainable Communities Plan (COSCP) will need to be modified to accommodate this unique urban use and this establishment of this variance would encircle and allow for future considerations.

2. Hawaii State Plan. The Hawaii State Plan (Hawaii State Planning Act, Chapter 226, HRS, as amended) provides the overall theme, goals, objectives, policies, and priority guidelines for Statewide planning. The continued use of the correctional facility is consistent with the following objectives and policies of the Hawaii State Plan, as represented in the relevant HRS policies and guidelines:



Section 226-26: Objective and policies for socio-cultural advancement - public safety.

(a) Planning for the State's socio-cultural advancement with regard to public safety shall be directed towards achievement of the following objectives:

(1) Assurance of public safety and adequate protection of life and property for all people.

(2) Optimum organizational readiness and capability in all phases of emergency management to maintain the strength, resources, and social and economic well-being of the community in the event of civil disruptions, wars, natural disasters, and other major disturbances.

(3) Promotion of a sense of community responsibility for the welfare and safety of Hawaii's people.

(b) To achieve the public safety objectives, it shall be the policy of this State to:

(1) Ensure that public safety programs are effective and responsive to community needs.

(2) Encourage increased community awareness and participation in public safety programs.

(c) To further achieve the public safety objectives related to criminal justice, it shall be the policy of this State to:

(1) Support criminal justice programs aimed at preventing and curtailing criminal activities.

(2) Develop a coordinated, systematic approach to criminal justice administration among all criminal justice agencies.

(3) Provide a range of correctional resources which may include facilities and alternatives to traditional incarceration in order to address the varied security needs of the community and successfully reintegrate offenders into the community.

The proposed SUP supports the above objectives and policies, particularly Section 226-26 (c)(3) by continuing to permit the use of the existing minimum correctional facility with its variety of work programs, skills training, and the associated KASHBOX substance abuse treatment program to assist in the reintegration of offenders back into the community.

However, a DBA similarly supports the Hawai'i State Plan and would conform and provide for a permanent land use designation change to urban and help facilitate future plans which might be more in line with the needs of the facility and avoid the need for additional amendments that would be associated with a special permit.

4. Oahu General Plan (GP) (January 2022): Resolution 21-023, CD1. The GP consists of comprehensive objectives and policies that outline the City and County of Honolulu's long-range development objectives and policies. The proposed SUP, permitting the continuation of the existing correctional facility, adheres to the following objectives and policies of the adopted GP: Section VIII. Public Safety and Community Resilience

Objective A: To prevent and control crime and maintain public order.

Policy 1: Provide a safe environment for residents and visitors on Oahu.

Policy 2: Provide adequate, safe, and secure criminal Justice facilities.

Policy 5: Support policies and programs that expand access to treatment, rehabilitation, and re-entry programs for adult and juvenile offenders.

Policy 11: Encourage the improvement of rehabilitation programs and facilities for criminals and juvenile offenders. The continued use of the correctional facility provides for and contributes to the City's goals for public safety by providing minimum security correctional facility.

A DBA would also align this facility with the long-term plans of the GP.

5. COSCP (March 2021 ).

a. Community Growth Boundary (CGB). The Petition Area is located outside of the COSCP's CGB. According to Section 2.2.1 of the COSCP, the CGB for Central Oahu gives long-range protection from urbanization for 10,350 acres of prime and unique agricultural lands and for preservation of open space, while providing adequate land for residential, commercial, and industrial uses needed in Central Oahu for the foreseeable future. It is the intent that urban zoning not be approved beyond this boundary.

The Petition Area is located outside of the CGB in an area designated as an agricultural and preservation area on the COSCP's Map A-2: Urban Land Use and Map A-3: Public Facilities Maps (Exhibit 1, Figure 7). These two maps indicate that the WCF is to be outside the CGB. A DBA would need to ensure that the urban zoning exceptions that are needed to align this facility with the long-term plans of the COSCP are secured to provide for the permanent facility.

b. Correctional Facilities. The Petition Area is identified on the COSCP's Map A-2: Urban Land Use Map and Map A-3: Public Facilities Map as a correctional facility. From these two maps in the COSCP, it is clear that the established correctional facility is a recognized use and the property remain as the existing WCF. Section 4.9.1 of the COSCP general policies state that correctional facilities be located on lands planned for industrial and agricultural use. The COSCP does not identify any other guidelines for correctional facilities applicable to the Petition Area. Having the Petition Area located in an agricultural area is consistent with, and promotes, the general policies of the COSCP. The recognized general policies do not prohibit the correctional facilities for industrial and agricultural use; however, the facilities are permanent structures that need to be accommodated. A DBA would need to ensure that the urban zoning exceptions that are needed to align this facility with the long-term plans of the COSCP are secured to provide for the permanent facility.

c. Scenic Resources and Panoramic Views. The WCF does not interfere or block the panoramic views identified on Exhibit 3.3 Natural, Cultural, and Scenic Resources. As it conforms to the COSCP, a condition of SUP approval for scenic resources and panoramic views and is not recommended at this time. A DBA would also conform.

d. Historic and Cultural Resources. A Cultural Impact Assessment (CIA) was prepared in support of the WCF Final EA by Pacific Consulting Services, Inc. (PCSI) in April 2021. As part of the consultation process for the CIA, PCSI sought input from the following organizations via mailed letters or email sent on February 18, 2021; no responses were received at the time of writing of the Final CIA in April 2021. It is likely that a DBA would be similarly affected.

- OHA
- SHPD Archaeology Branch
- The Aha Moku Advisory Committee
- The Ewa-Pualoa Hawaiian Civic Club
- The Historic Hawaii Foundation
- Mililani-Waipio Neighborhood Board
- Pearl City Neighborhood Board

The CIA also documented previous archaeological investigations done within the immediate vicinity of the WCF. To date, no human burials had been identified; a majority of identified historic properties are related to historic period agriculture and military use. Based on the map included in the CIA, four archaeological investigations were previously conducted in which the WCF's Parcel 011 was included in the study area: an Archaeological Reconnaissance and Inventory Survey by Goodman and Nees, 1991; Archaeological Assessment by Cultural Surveys Hawaii, 1997; Archaeological Assessment by Ogg et al., 2003; and Archaeological Testing and Sampling by Cleghorn and Kahahane, 2008. Based on the findings from the previous reports, only one historic property (State Inventory of Historic Places (SIHP) 50-80-09-02272) was found to be within the WCF parcel. Site 02272 consists of extant military structures and buildings, which were identified and documented in the RLS prepared by Fung Associates, Inc. Since no alterations or improvements to these resources are proposed, a recommendation to preserve and protect them is not necessary at this time.

e. Outdoor Lighting (Natural Resource Protection). The COSCP policies and guidelines recommend reducing light pollution's impact on wildlife by fully shielded lighting fixtures using lower wattages where sensible. The COSCP guidelines also encourage projects to:

- Use the minimum outdoor lighting necessary for public safety, security, and community aesthetics consistent with the goals of energy conservation and environmental protection;

- Minimize glare and obtrusive light by limiting outdoor lighting that is misdirected, excessive or unnecessary by fully shielding lighting fixtures so that no light escapes above the horizontal plane and by using lower wattage; and,
- Adopt outdoor night lighting standards for rural areas that reflect the rural character of those areas.

According to the USFWS, some of the endangered and threatened species that may be present in the vicinity of the Petition Area include the Hawaiian hoary bat and Hawaiian seabirds including the Hawaiian petrel, band-rumped storm-petrel, and Newell's shearwater. According to the USFWS, outdoor lighting could result in seabird disorientation, fallout, and injury and mortality.

While the proposed SUP states that there is no proposed expansion or intensification of use, DAGS. Security Lighting project (Project No. 12-27-5682) proposes to add and replace area and flood lights at the facility. New luminaires will also be installed on existing streetlights. Existing streetlights and new area lights are, and will be, downward facing and will not directly emit any light at a vertical angle more than 90 degrees from straight down. Flood lights will be outward facing, but are not intended to be used on a regular basis. These lights will be installed for security purposes to illuminate the perimeters of the facility and will be used during emergencies or as needed. A condition of SUP approval is recommended for the Petitioner to submit an outdoor lighting plan to the OPP.

6. Revised Ordinances of Honolulu, Chapter 21, LUO. The Petition Area is located within the F-1 military and federal preservation district. According to the LUO, the intent of the F-1 military and federal preservation district is to identify areas in military or federal government use and to permit the full range of military or federal government activities. The LUO also states:
  - "(d) Should lands be removed from either the state-designated conservation district or from federal jurisdiction, all uses, structures and development standards shall be as specified for the P-2 general preservation district.

(e) It is also the intent that lands designated urban by the state, but well-suited to the functions of providing visual relief and contrast to the city's built environment or serving as outdoor space for the public's use and enjoyment be zoned P-2 general preservation district. Areas unsuitable for other uses because of topographical considerations related to public health, safety and welfare concerns shall also be placed in this district."

As the land was removed from federal and military use, the development standards of the property shall be the same as the P-2 general preservation district. According to the LUO, "The purpose of the preservation districts is to preserve and manage major open space and recreation lands and lands of scenic and other natural resource value." Pursuant to the Master Use Table, prisons or correctional facilities require a PRU permit in P-2 zoned districts. Therefore, a condition of SUP approval is recommended requiring the Petitioner to submit an application for a PRU within two (2) years from the date that the LUC Decision and Order is adopted. A similar condition could apply for a DBA but would include obtaining a variance to the COSCP and adjustments to the PRU, LUO and other County ordinances.

7. Chapter 205A-21. HRS. Special Management Area {SMA). The Petition Area is located outside of the SMA and approximately four miles from the nearest shoreline at Pearl Harbor; therefore, a SMA Permit is not required.

8. Chapter 205A, HRS. Coastal Zone Management {CZM). All lands of the State, including the area extending seaward of the shoreline to the seaward limits of the State's jurisdiction, are included in the CZM Area.

The proposed SUP (or DBA) is consistent with the CZM objectives and policies pursuant to Section 205A-2, HRS, as follows:

Section 205A-2(b) Objectives.

(2) Historic resources;

(A) 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. The Petition Area is located approximately four miles from the Pearl Harbor shoreline. Of the approximately 40 buildings and structures within the Petition Area, three buildings and four structures are remnants of the Waiawa Military Reservation and have retained their historic integrity. The three buildings are the old barracks buildings (WCF-04, WCF-05, and WCF-06), currently being used as housing for the general prison population. Other historic structures are the concrete communications structures located at the mauka end of the Petition Area. No anticipated adverse impacts to historic resources are anticipated as no development is being proposed.

(3) Scenic and open space resources;

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources. The Petition Area is located approximately four miles from the shoreline. The existing low-rise buildings adequately screened from the surrounding area, coupled with no plan for expansion or intensification of use, maintain the area's scenic and open space resources.

(5) Economic uses;

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

The Petition Area has been used as a correctional facility since 1985. Keeping the facility in its current location would be the most suitable, particularly in regards to finding an alternative site and the potential cost of relocation.

#### Section 205A-2(c) Policies.

(2) Historic resources;

(A) Identify and analyze significant archaeological resources; The Architectural RLS was prepared in 2019 to inventory and identify any potential historic properties for

listing under the State Register of Historic Places and National Register of Historic Places. The RLS was submitted to the SHPD for review under HRS, Chapter 6E-08. Out of the approximately 40 buildings and structures within the Petition Area, three buildings and four structures are remnants of the Waiawa Military Reservation and have retained their historic integrity. The three buildings are the old barracks buildings (WCF-04, -05, and -06), currently being used as housing for the general prison population. Other historic structures are the concrete communications structures located at the mauka end of the Petition Area.

(C) Support state goals for protection, restoration, interpretation, and display of historic resources; The 23.7-acre Petition Area has been used as a correctional facility for over 30 years, and prior to that it was used by the military since World War II. The proposed SUP will support protection under this policy since the SHPD, in a December 11, 2019 letter attached in the Final EA, concurred with the Petitioner's determination that 'no historic properties will be affected' under HRS 6E-08.

No anticipated adverse impacts to archaeological resources are anticipated as no development is being proposed. In their letter, dated September 28, 2022, the State LUC expressed concern that the Petition does not ensure the protection of the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.

The framework for discussion is in a Ka Paakai Analysis that balances the obligations to protect traditional and customary practices against private, as well as competing public interests, regarding;

(a) 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.

(b) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and

(c) The feasible action, if any, to be taken by the agency to reasonably protect native Hawaiian rights if they are found to exist.

A CIA and an Archaeological Assessment were completed and included as part of the Final EAs in 2008 and in 2021, respectively. These reports, and their associated EAs, discuss how the site has been heavily modified since the early 1900s, first through



commercial agriculture in the early 1900s, then the military, and then the use as a correctional facility, which ultimately resulted in a FONSI being rendered for the Final EAs. While a Ka Paakai Analysis was not included in the WCF's proposed SUP application, the consultant for the Petitioner provided the following findings based on the reports prepared in support of the WCF's EA and SUP processes in response to the LUC's comment.

- 1) The identification of valued cultural, historical, or natural resources in the project area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the project area.

Findings:

Based on the RLS and CIA prepared in support of the WCF, the facility contains three buildings and four structures that are eligible for listing in the Hawaii and National Register of Historic Places under Criteria A and C. A State Inventory of Historic Places number request form was prepared for the eligible buildings and structures. In response to the RLS prepared for the WCF's SUP application, the SHPD concurred with DAGS' determination of "no historic properties affected" in a letter dated December 11, 2019. This letter has been included in the WCF SUP Application. As part of the CIA process, PCSI contacted Native Hawaiian Organizations and community organizations to seek input concerning the WCF's application for the SUP and Plan Review Use permits. They include:

- The OHA
- SHPD Archaeology Branch
- The Aha Moku Advisory Committee
- The Ewa-Pualoa Hawaiian Civic Club
- The Historic Hawai'i Foundation
- Mililani-Waipio Neighborhood Board
- Pearl City Neighborhood Board

No responses from these organizations were received during the process. The CIA noted that a previous CIA was prepared in 2003 for the proposed development of 3,600 acres in Waiawa and Waipio, where hunting was a land use noted in vicinity of the WCF. The

report noted that according to several hunters, the best way to access the hunting grounds is from Waiawa Prison Road. Hunters considered it a good access route because it would get them as close as possible to the hunting grounds. One hunter claimed that following the opening of the WCF, access to the hunting grounds became difficult. It was noted that the older hunters expressed concern that too much development closer to the upland valleys may intrude on pig habitat and push the pigs away.

- 2) The extent to which those resources-including traditional and customary Native Hawaiian rights-will be affected or impaired by the proposed action; and

Findings: As previously noted, the extant military structures and buildings have been identified and documented in the RLS. The SHPD concurred with the "no historic properties affected" determination for the proposed SUP. The WCF will not be doing any work to expand its current facility, and no work will be done to significantly alter the existing structures and buildings.

The Waiawa Prison Road is primarily used by the WCF to access the facility; however, it is not a secured road and is accessible by the public. The WCF does not limit or control public access on Waiawa Prison Road and does not propose to change the current access to the road. Thus the public is still able to access surrounding hunting areas through the Waiawa Prison Road.

- 3) The feasible action, if any, to be taken to reasonably protect . Native Hawaiian rights if they are found to exist.

Findings: Besides access to hunting grounds, there were no traditional and customary Native Hawaiian rights identified within the WCF SUP Petition Area. Access to hunting grounds off Waiawa Prison Road will not be altered or affected as a part of the WCF's proposed SUP.

The SHPD was sent a request for comment from the DPP on this proposed SUP. As of the writing of the County's report, a response from the SHPD had not been received. Late comments from the SHPD will be transmitted to the PC if they are received prior to the SUP public hearing. State law already provides guidance on how historic resources are to be protected if they are inadvertently discovered during site work. However, a condition of SUP approval is recommended to contact Native Hawaiian organizations to ascertain what

traditional and customary rights, under the framework of the Ka Paakai Analysis, are being conducted in the area.

Section 205A-2(c) Policies. (3) Scenic and open space resources; (B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline; The Petition Area is located approximately 3.75 miles from the shoreline of Pearl Harbor. The existing uses are limited to Petition Area, which is already developed as a correctional facility. These uses are screened by vegetation and will not adversely impact open space and scenic resources.

IV. CONCLUSIONS OF LAW The proposed SUP addresses the goals of the Hawaii State Plan, and the City's GP and the COSCP, and meets the five guidelines pursuant to Section 2-45 of the PC Rules. There are no anticipated adverse impacts to existing infrastructure systems as a result of the proposed SUP, provided that the Petitioner adheres to the representations made and the recommended conditions of approval.

Section 205A-2(c) Policies.

(3) Scenic and open space resources;

(B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

The Petition Area is located approximately 3.75 miles from the shoreline of Pearl Harbor. The existing uses are limited to Petition Area, which is already developed as a correctional facility. These uses are screened by vegetation and will not adversely impact open space and scenic resources.

The proposed SUP addresses the goals of the Hawaii State Plan, and the City's GP and the COSCP, and meets the five guidelines pursuant to Section 2-45 of the PC Rules. The SUP states that there are no anticipated adverse impacts to existing infrastructure systems

because of the proposed SUP, provided that the Petitioner adheres to the representations made and the recommended conditions of approval.

However, the proposed SUP does not specify a time period that the permit would be effective for and does not permanently resolve the land use designation problem of the Petition Area as a DBA would. The Planning Commission acknowledged the DPP's recommendations and proposed a decision and order that incorporated the conditions suggested by the DPP's Director.

LUC staff addresses this further in the issues and recommendations section of this report.

## **9. PLANNING COMMISSION RECOMMENDATION**

The Director of the Department of Planning and Permitting (DPP) recommends that Special Use Permit (SUP) Application File No. '2022/SUP-3, for the continued use of the Waiawa Correctional Facility on approximately 23.7 acres, Tax Map Key 9-6-005: Portion of 011, as shown on Exhibit 1, Figure 4, be approved, subject to the conditions below:

1. The Petitioner shall submit a metes and bounds description of the Petition Area to the DPP for review and approval within ninety (90) days following an approval by the State Land Use Commission (LUC). The area of the metes and bounds description and survey map shall not exceed the representations made in Exhibit 1, Figure 4 and all uses of the correctional facility, not permitted in the State Land Use Agricultural District, shall fall within the area described by the approved metes and bounds description and map.

2. The Petitioner shall submit to the DPP an application for a Planned Review Use (PRU) approval within two (2) years from the date of the adoption of the State LUC Decision and Order. Prior to the submittal of a PRU application, the Petitioner shall:

a. Submit water demand estimates and calculations to the Department of Land and Natural Resources (DLNR), Engineering Division. The DPP shall be copied on the transmittal to the DLNR.

b. Submit to the DPP, for review and approval, an outdoor lighting plan that conforms to the guidelines contained in the incorporate the recommendations proffered by the United States, Department of the Interior, Fish and Wildlife Service in their comments on this project.

The outdoor lighting plan should clarify the difference between area lights, spotlights, and floodlights and explain which lights need to remain on and which are activated only for security reasons. For street lights and other outdoor lighting that are not required for security purposes, full cutoff light fixtures must be used, restricting the projection of light output ten (10) degrees below the horizontal plane. New or replaced lightening fixtures should not exceed 3,000-degree Kelvin color temperature.

c. Consult with local kupuna and area cultural practitioners to identify the scope of "valued cultural, historical, or natural resources" within the framework of a Ka Paakai analysis. The findings and any determinations shall be submitted to the State LUC and the OPP. Should such resources be found and traditional and customary Native Hawaiian rights be sought, access shall be granted to the extent possible, and reasonably balanced against the security necessary for protecting public health, safety, and welfare of the general prison population, practitioners, and the general public.

3. In the interest of maintaining the agricultural uses and productivity at the WCF, the Petitioner shall continue the farming, aquaponics, silviculture, and plant propagation and nursery operations in a meaningful way so long as the WCF has a presence on this site.

4. On or before December 31 of each year that the SUP is in effect, the Petitioner or its successor, will file an Annual Report to the OPP that demonstrates the Petitioner's compliance with conditions of the SUP.

5. Major modifications to: (1) The approved site plan; (2) Amendments to the conditions of approval; (3) Any increases in acreage of the Petition Area; or (4) Change in approved uses stated herein, will be subject to the review and approval of the Planning Commission (PC). Minor modifications, including minor additions to accessory uses and structures in the approved area, are subject to review and approval by the Director.

6. The Petitioner and/or landowner will notify the Director of:
- a. Any change or transfer of licensee on the Petition Area;
  - b. Any change in uses on the Petition Area;
  - c. Termination of any uses on the Petition Area; and/or
  - d. Transfer in ownership of the Petition Area.

The PC, in consultation with the Director, will determine the disposition of this SUP, and the facilities permitted herein. Central Oahu Sustainable Communities Plan. To avoid and minimize potential impacts to Hawaiian seabirds and the endangered Hawaiian hoary bat, the outdoor lighting plan shall

7. Enforcement of the conditions of the SUP will be pursuant to the Rules of the PC, including the issuance of an order to show cause as to the reason the SUP should not be revoked if the PC has reason to believe that there has been a failure to perform consistent with representations made by the Petitioner or the conditions imposed herein.

## **10. ISSUES AND RECOMMENDATIONS**

Section 205-6, Hawai‘i Revised Statutes (HRS), and Section 15-15-96(a), Hawai‘i Administrative Rules (HAR), provide the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may approve, approve with modification, or deny the Application.

However, any modifications or additional restrictions must be based on the record as developed by the City and County Planning Commission. The LUC may also remand the

Application to the Planning Commission for further proceedings if they determine that consideration of new information, relevant to the application, is warranted.

Staff believes that the missing effective permit time period, the lack of a restoration or remediation plan (if permit is for a temporary purpose), and the overlooked onsite historic preservation plans provide some of the reasons to deny or remand the application. However, LUC staff would like the Commission to be aware that the Parties (State agencies PSD/DAGS) have expended considerable effort in trying to establish a permanent facility and have not received much guidance from the County on how to proceed. Granting the requested remand would allow the Petitioner to re-group and better structure their Petition to obtain a more appropriate land use designation without incurring a one year re-filing period penalty which would delay the Parties efforts unduly.

**Actions the Commission may take:**

- 1. Remand the matter back to the county for further proceedings, enumerating what the county should address. Such as to include establishing an effective period that the permit would be for and developing a more complete record to support its findings and determining that the Quitclaim Deed, which was not in the file, while not significant, be added to further complete the record.**

The requested stipulated remand is the preferred option as it will allow the Parties to further explore how to achieve the proper land use designation and permanently resolve establishing the correctional facility within the County's community and island plans and zoning without incurring a one-year refiling period penalty.

- 2. Deny the SP for any of the reasons contained in 15-15-95 HAR, including that the SP is inconsistent with the policy and purpose of 205 HRS.; or**
- 3. Grant the SP with conditions including: Time limits, preservation and maintenance program for existing historic structures, conditions to ensure that COSCP, PRU and LUO amendments**

**are completed, etc. The Commission may also require that the Applicant file a petition for a DBA within a certain period and complete it within a certain period prior to beginning construction.** (A controlled “short-fused” time period on the life of the permit would allow the LUC leverage to monitor and enforce that the Parties seek a DBA during the life of the permit)

Clarification needed to add evidence to the record:

1. Life of permit- No “lifespan” for the permit was requested and no evidence was submitted to define a certain period of time for the permit to be effective. Since the length of time that the permit asks for has no end date, it is essentially a request for a permanent change of land use and the appropriate intent of the application should focus on seeking to establish a permanent land use designation change to better accommodate the associated prison/correctional facility operations. LUC staff questions whether a special permit application to effect this permanent compliance with Chapter 205, HRS attempt is appropriate.

The absence of any provision to restore the Petition Area land to its former condition after its use as a correctional facility further postures the Petition to be more in line with a permanent land use designation change via a DBA.

If the Commission decides to remand/deny the Special Permit on the basis that it is without any time constraints or post-permit remediation designs, it would need to facilitate resolving a long-standing predicament of a misplaced facility that needs to be included in the County’s current and future plans.

More positively, if the Commission is inclined to bolster the efforts of the Petitioner/County to properly designate the Petition Area in the future after the remand, it could add findings that a DBA is appropriate in conjunction with the pursuit of the proposed two-



year Plan Review Use (PRU) effort described by County's Condition 2 (it would be important to obtain information from the Petitioner on how long it estimates it would take to obtain/process a DBA for the Petition Area for the docket record to establish and help craft the circumstances in the decision and order that the LUC would generate). The Commission could maintain authority by fixing the agreed upon time period to seek and obtain a DBA and monitor the progress via annual reports.

2. The proposed D&O has no specific language to protect and preserve the Petition Area's existing historical resources into the future. One of the concrete on-site structures which are intermixed with agricultural and other uses for the correctional facility, has historical significance (SHIP site 50-80-09- 02272). The Application states that "since no alterations or improvements to the historical resources are proposed, a recommendation to preserve and protect them is not necessary at this time" but no plans or recommendations to preserve and protect these resources are provided.

The LUC might consider suggesting an additional provision to proposed Condition 2- (d) to establish a program to maintain, protect and preserve existing cultural and historical resources as needed.

3. Is the Plan Review Use (PRU) timeline of two (2) years after the D&O adoption date sufficient? In the sections on conformance with the Special Use Permit Criteria Section, evidence is provided that the Hawaii State Plan, Oahu General Plan (GP), Central Oahu Sustainable Communities Plan (COSCP) and Community Growth

Boundary (CGB) guidelines identify and allow for the WCF as a recognized use.

A suggested SUP approval condition could state: “Therefore, a condition of SUP approval is recommended requiring the Petitioner to submit an application for a PRU within two (2) years from the date that the LUC Decision and Order is adopted.” However, as mentioned previously, LUC staff anticipates that the Parties will submit a stipulation requesting a remand of the Petition.

If the Commission is inclined to facilitate the efforts of the Parties if a DBA be later sought, then, (perhaps in conjunction with the two-year Plan Review Use (PRU) effort of County’s proposed Condition 2), it is important to obtain information from the Petitioner and County on how long it would take to obtain/process a DBA for the Petition Area with consideration given for adjustments to the COSCP, PRU and LUO. This information could then help determine the necessary time adjustments needed to accomplish these changes when the Parties assemble their DBA Petition.

4. Evidence to support DBA- The DBA effort and associated urban land use designation change would allow activities that were portrayed as “unusual” in an agriculturally designated area to be more in line with what would regularly occur in an urban designated area. The factors which are used in the County’s decision and order to support the SUP effort should be recognized as also being able to support a DBA.

The permit application argued that granting of a SUP was considered a more appropriate option versus a State Land Use

District Boundary Amendment to the Urban District since, while non-agricultural, the WCF in this location is unusual but reasonable given its remoteness and distance away from urban uses. Also, as part of their existing education and wellness programs, inmate involvement in agriculture and aquaponics activities at the WCF was also not contrary to these objectives.

LUC staff feels that the Commission should emphasize the permanent nature of the WCF and how its isolated location could uniquely justify an urban designation that would more easily enable the various activities associated with the correctional facility.

5. More SUP Evidence that could support a DBA-

- Evidence was provided in the Planning Commission D&O to also support compliance with the Revised Ordinances of Honolulu, Chapter 21, LUO and how “Pursuant to the Master Use Table, prisons or correctional facilities require a PRU permit in P-2 zoned districts” to support the inclusion of the SUP approval condition. Staff feels that the PRU permit requirement could also be appropriate if a DBA was sought.
- Evidence was also provided to confirm that a Ka Paakai Analysis was not included in the WCF’s proposed SUP application (staff report pg. 27/28) and how the SHPD response concurring with the DAGS’ determination of “no historic properties affected” was in a letter dated December 11, 2019. The CIA process was also discussed to describe the Native Hawaiian organizations and community

organizations approached to seek input on the SUP application.

Although a formal Ka Paakai analysis was not performed, LUC staff is satisfied that enough evidence was provided to demonstrate that the alternative cultural/historical studies and investigations of the area performed over its past were comprehensive and historically accurate enough and provide adequate precautions in case of inadvertent discoveries.

6. Time Considerations- With the proposed action that LUC staff is recommending, it is imperative that the Commission determine for the record what the anticipated processing timeline for the COSCP/PRU/Land Use Ordinance (LUO) amendments will be to make the remand fruitful. Staff will need the Commission to establish a timetable of performance for the COSCO/PRU/LUO changes based on questioning the Petitioner/County on how long the proposed changes will take for the time elements to be memorialized in and subsequent Petition. The Commission should specifically question how County would establish the proper “Spot Zoning” considerations to enable the permanent DBA location of the facility in the area to avoid the need to repeatedly address permit renewal issues.
  
7. Protecting area from future development -Only general statements were provided to describe future WCF operations and possible expansion, Staff would appreciate if additional details on how Conditions 5 and 6 of the proposed D&O Special Permit would be met, especially with confirmations of the representations made about future plans for the WCF for the record and how Public Safety/DAGS will ensure the surrounding area will remain in its current undeveloped state.

8. Suggested language for the Commission's Motion

Motion To Remand

If the LUC is inclined to remand the Application, staff recommends that the LUC make sure to include the following language in any motion, to make the record clear and provide staff with specific directions in drafting the LUC's Decision and Order:

Move to Remand the Special Permit application of the State of Hawai'i, Dept. of Accounting and General Services requesting Approval of An After-the-Fact State Special Use Permit (SUP) to bring the existing Petition Area that is approximately 23.7 acres within a portion of TMK parcel 9-6-005:011, known as the Waiawa Correctional Facility (WCF) into compliance with respect to State Land Use Law, Chapter 205, Hawaii Revised Statutes (HRS) to repair inadequacies in the Petition.

The following points should be made during discussion and questioning to support the motion:

- The Permit does not conform to 15-15-95(d) and fails to provide reasons to justify seeking a special use permit instead of a district boundary amendment to obtain a permanent land use designation change.
- The Permit does not conform to 15-15-95(f) and fails to establish a reasonable time limit for the duration of the proposed use as described in the special permit application. Any associated plans for restoration or remediation of the Petition Area at the end of any permit time limit are not included.

- The Petitioner’s Exhibit 4 Appendix K-is missing the Quit Claim Deed (QCD) that the State has for the property. (There is a remaining QCD Condition 5 that runs with the land that would only be binding upon educational titleholders or successors to the State of Hawaii if the property is sold or otherwise transferred to other parties at some time in the future.)
- The Permit does not include preservation and maintenance plans for existing historic structures on the property.
- If necessary, include other omitted items or issues that may have arisen during discussions on the special permit during the hearing.

Add “to allow LUC staff to make non-substantive editorial changes and for the order to be signed by the Chair.”