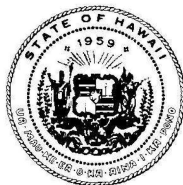


JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



DEAN MINAKAMI  
INTERIM EXECUTIVE DIRECTOR

## STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO:

23:DEV/0072

July 5, 2023



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

From: Delmond J.H. Won, Executive Assistant

A handwritten signature in black ink, appearing to read "Delmond J.H. Won".

Subject: Village 9 and Lots 7 and 9 of File Plan 2128  
Docket No. A90-660 - Annual Report for 2023  
Villages of La'i'opua  
Kealakehe, Hawaii  
Tax Map Key Nos. (3) 7-4-020: 004; 7-4-021: 042 & 043

Pursuant to the Land Use Commission's (LUC) Order in Docket No. A90-660, transmitted herewith is an original and one copy of an annual report on the status of Village 9 and Lots 7 and 9 of File Plan 2128 at the Villages of La'i'opua (VOLA) development and Hawaii Housing Finance and Development Corporation's (HHFDC) progress in complying with conditions imposed by the Commission. In accordance with the LUC's letter to 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](mailto:LUC@dbedt.hawaii.gov).

### Land Use Commission Action

Reclassification of approximately 727 acres from Agricultural District and Conservation District into Urban District, situated at Kealakehe, North Kona, Island and County of Hawaii, State of Hawaii, identified as Hawaii Tax Map Key Nos.: (3) 7-4-008; portion of 017, now known as Tax Map Key Nos.: (3) 7-4-020: 001 to 007, 023, 024, 025; 7-4-021: 001 (por.), 002 to 005, 007, 008, 010 to 013, 014 (por.), 015, 016, 023 (por.), 042, 043; 7-4-022: 001 to 107; 7-4-023: 001 to 128; 7-4-027: 001 to 119. The area in question was approved for the development of VOLA by the LUC on December 18, 1990.

### 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, known as 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.

#### Village 9 – The Villages of La'i'opua

The Department of Land and Natural Resources (DLNR) is the landowner of Village 9. HHFDC or its predecessor agencies (hereinafter referred to as HHFDC) was the master developer of the VOLA project in Kealakehe, Hawaii, until HHFDC sold its development rights to the Department of Hawaiian Home Lands (DHHL) in December 2004 as further described in this annual report. A copy of the VOLA site map is attached to this annual report as **Exhibit A** for reference. HHFDC completed the first two components of backbone infrastructure (roadways and utility systems) and dedicated such infrastructure to the State of Hawaii, Department of Transportation (DOT), and the County of Hawaii (County) during 1997 and 1998. Completed infrastructure was sufficient to service the Kealakehe High School, the Kealakehe golf course property, a commercial site, and six residential villages.

The first phase of Kealakehe High School was completed in July 1997 and the school welcomed its first class of about 400 students on September 2, 1997. The final phase of construction was completed in December 2003.

The golf course property was set aside to the County for Kealakehe Wastewater Reclamation Field and North Kona Golf Course purposes by Governor's Executive Order No. 3665 dated July 18, 1995. No development occurred due to a disagreement between the County and its golf course developer, Kealakehe Associates, Inc. On January 28, 2011, Governor's Executive Order No. 4354 cancelled Governor's Executive Order No. 3665. Governor's Executive Order No. 4355 set aside the property to the County for Kealakehe Wastewater Reclamation Field, North Kona Golf Course and/or Public Park purposes. The County now plans to develop the former golf course property as a regional park.

Pursuant to Act 95, SLH 1996, DLNR transferred the 51-acre Village 3 property to the DHHL by Land Patent Grant No. S-15,900 dated May 12, 1997. DHHL commenced construction in the first calendar quarter of 1998 and completed the development of 225 single-family homes for qualified native Hawaiians in the fall of year 2000.

On September 18, 1998 and July 9, 1999, the HHFDC Board of Directors consented to the transfer of Village 4 from DLNR to DHHL. Pursuant to Village 4 Transfer Agreement dated April 20, 2000, Village 4 was transferred to DHHL by Land Patent Grant No. S-15,939 dated December 1, 2000. Under the Village 4 Transfer Agreement, DHHL

is required to submit annual reports on the status of compliance with the conditions of LUC Docket No. A90-660, directly to the LUC, with a copy to HHFDC.

On October 16, 1998, the HHFDC Board of Directors approved a right of entry to McClean Honokohau Properties (McClean) for the design, construction, and dedication of Road "G" to the County. Road "G" is a 60' wide roadway within VOLA which will connect the DOT's Kealakehe Parkway within VOLA to the McClean property to the north. Construction of Road "G" commenced in August 1999 and was completed in the summer of 2000. On April 16, 2001, the County granted final subdivision approval of Road "G." The Board of Land and Natural Resources (BLNR) approved the dedication of Road "G" to the County on April 12, 2001 and Road "G" was dedicated by Land Patent Grant No. S-15,959 dated March 25, 2004. Road "G" is now named Kamanu Street.

On April 19, 2000, McClean submitted a request to HHFDC for a right of entry for the design, construction, and dedication of Main Street to the County. Main Street is parallel to and located mauka of Road "G" and it would connect McClean's property with Kealakehe Parkway as does Road "G." On April 12, 2001, BLNR approved: (1) the subdivision of Main Street, (2) a right-of-entry for the construction of Main Street, (3) the dedication of Road "G" and Main Street to the County, and (4) the development agreement between HHFDC and McClean. On April 16, 2001, the County granted final subdivision approval for Main Street. On November 14, 2001, the HHFDC Board approved the execution of a development agreement and the Main Street Development Agreement was executed on February 11, 2002. On July 22, 2004, McClean submitted a request to extend the Main Street Development Agreement by three years from February 11, 2006 to February 11, 2009. The request was not presented to the HHFDC Board for approval and Main Street remains unbuilt.

On July 19, 2000 and April 26, 2001, the HHFDC Board of Directors approved the execution of the development agreement and the form of the lease with Hawaii Youth Patrons (HYP) for the development and leasing of approximately 38 acres of Village 6 for a Youth Center, a YMCA, and a neighborhood park (Hawaii Youth Center). On May 25, 2001, BLNR approved the set aside of the land to HHFDC, consented to the development agreement and lease with HYP, and granted a management right-of-entry to HHFDC for the project. A development agreement for the project was executed on August 31, 2001. Under the development agreement, HYP is required to satisfy specified conditions including the raising of sufficient funds for the development of the project by April 26, 2004. The land was set aside to HHFDC by Governor's Executive Order No. 3895 dated January 26, 2002.

In 2003, HYP requested a 1-year extension to its development agreement. On March 18, 2004, the HHFDC Board approved a 90-day extension of the development agreement to July 25, 2004. On July 15, 2004, the HHFDC Board approved the termination of the development agreement with HYP for the Hawaii Youth Center. Since the development agreement with HYP was terminated, BLNR approved the cancellation of the set aside to HHFDC for the Hawaii Youth Center project. The BLNR approval was on August 27, 2004. On September 24, 2004, the Governor executed Executive Order No. 4068, which canceled the set aside to HHFDC for the Hawaii Youth Center project.

On November 15, 2001, the HHFDC Board approved the execution of a transfer agreement with the County and DLNR for the set aside of a portion of Village 8 to the County for a County office building. BLNR approved this matter on December 14, 2001. The County granted final subdivision approval of the subject parcel of land on September 11, 2002. The Village 8 Transfer Agreement was executed on October 3, 2002 and the land was set aside to the County by Executive Order No. 3952 dated October 25, 2002 for West Hawaii Civic Center purposes. Under the Village 8 Transfer Agreement, the County is required to submit annual reports on the status of compliance with the conditions of this LUC Docket No. A90-660, directly to the LUC, with a copy to HHFDC. HHFDC estimates that the West Hawaii Civic Center commenced construction in 2008 and was completed in 2010.

On July 18, 2001, the County submitted a request to HHFDC for approval of a pedestrian and bicycle route over the existing water easement from the Kealakehe High School to the existing Kealakehe Street mauka of the VOLA project. On October 18, 2001, the HHFDC Board approved the easement over land owned by HHFDC and an easement was issued on March 12, 2003. The easement over State land was issued by DLNR on February 20, 2003.

By letter dated June 26, 2004, the County requested an amendment to the existing pedestrian and bicycle easement to include limited vehicular use, primarily to accommodate school traffic between Kealakehe High School and Kealakehe Elementary and Intermediate Schools mauka of the VOLA project. BLNR approved the amendment on July 9, 2004, and the HHFDC Board approved the amendment on July 15, 2004.

On August 21, 2000, HHFDC filed a motion with the LUC to amend Condition No. 1 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 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 VOLA. 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 Hawaii that was imposed by Act 15, SLH 1988. Instead, Act 100, SLH 2001 authorized the affordable housing requirements to be established by agreement between HHFDC and the County.

Development of residential fee simple for-sale housing was placed on hold, pending resolution of the Office of Hawaiian Affairs' (OHA) claim that ceded land cannot be alienated. The OHA claim was adjudicated in a lawsuit filed against HHFDC, regarding the transfer of ceded land for the Villages of Leiali'i on Maui. Trial for the alienation phase was concluded in November 2001. On December 5, 2002, State Circuit Court Judge Sabrina McKenna ruled that the State could sell ceded land. However, her decision was appealed to the Hawaii Supreme Court.

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.

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.

On May 6, 2009, The Honolulu Advertiser reported that the ceded lands litigation had been settled for all plaintiffs, except one (Jonathan Osorio). On October 28, 2009, the Honolulu Advertiser reported that the ceded lands litigation by the remaining plaintiff (Jonathan Osorio) was 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 requires a community informational briefing, an appraisal, and a 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 was amended by Act 169, SLH 2011 and is now codified as Section 171-64.7, Hawaii Revised Statutes (HRS).

On November 23, 2003, DHHL expressed an interest in acquiring certain HHFDC lands including Village 8 of the Villages of Kapolei and Village 1A of the Villages of Leialii. On May 13, 2004, the HHFDC Board approved the negotiations with DHHL to sell HHFDC's interest in Village 8 of the Villages of Kapolei, Villages 1A and 1B of the Villages of Leialii, and the undeveloped lands at the Villages of La'i'opua. On June 17, 2004, the HHFDC 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;
- Phases 1A and 1B of the Villages of Leialii;
- HHFDC's interest in the undeveloped lands at the Villages of La'i'opua, except Villages 9 and 10; and
- 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. On August 27, 2004, BLNR approved the sale of the undeveloped lands at VOLA, except Villages 9 and 10, to DHHL. A transfer agreement identifying all terms and conditions of the sale was executed by DLNR, DHHL and HHFDC on December 30, 2004. In the transfer agreement, DHHL is required to comply with all conditions of the LUC Decision and Order in Docket No. A90-660 and continue with the annual reporting requirements to the LUC for the VOLA project.

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.

On April 26, 2004, the Hawaii Health Systems Corporation (HHSC) requested a medical and elderly/assisted living complex for Villages 9 and 10, to be called the Kona Community Hospital. On January 28, 2005, the HHFDC Board relinquished its development rights to Village 9 to DLNR for the development of a medical facility to be commenced by December 31, 2010. If no development was done, the development rights to Village 9 would revert back to HHFDC. On June 24, 2005, BLNR approved the

conveyance of Village 9 to HHSC for the development of a medical facility. However, development of the medical facility did not commence by December 31, 2010. Therefore, the development rights to Village 9 reverted back to HHFDC. See attached **Exhibits A and B**.

On February 8, 2016, HHFDC executed a Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (FWS) for the set aside of two No Development Areas for the development of Village 9. On February 25, 2016, HHFDC executed an MOU with FWS for plant preserves at Kamakana Villages.

On August 29, 2017, HHFDC received a letter from Mayor Kim of the County of Hawaii requesting for a set aside or ground lease to 15-20 acres of the makai portion of Village 9 for permanent facilities for the homeless and an immediate right-of-entry to approximately 5 acres for an emergency homeless shelter project.

On September 14, 2017, the HHFDC Board approved: (1) BLNR's set aside of Village 9 to HHFDC, (2) a right-of-entry to the County for approximately 5 acres for an emergency homeless shelter, (3) a subdivision, (4) a ground lease to the County for 15 to 20 acres at \$1/year for 65 years for permanent facilities for the homeless, (5) easements for access, and (6) HHFDC's leasehold development of the mauka portion of Village 9 for an affordable multi-family rental project. On October 13, 2017, BLNR approved the set aside and an immediate management right-of-entry of Village 9 to HHFDC. On December 19, 2018, Executive Order No. 4575 set aside Village 9 to HHFDC for affordable housing and related purposes.

On April 2, 2018, HHFDC and the County executed an MOU and on April 5, 2019, HHFDC and the County executed a Revocable Right-of-Entry (ROE) for Village 9. Both documents were executed in accordance with the Governor's Emergency Proclamation to address homelessness. Both documents were executed for the planning, design, construction, and operation of the County's Kukuiola emergency shelter and permanent supportive housing project at Village 9. On April 5, 2019, Amendment #1 to the MOU was executed recognizing any suspension in procurement requirements under the Emergency Proclamation. On February 21, 2020, Amendment #1 to the ROE was executed extending the ROE for 12 months to April 4, 2021.

On November 23, 2019, the County's consultant, PBR Hawaii & Associates, Inc., published a Final Environmental Assessment (EA) and Finding of No Significant Impact for the Proposed Kukuiola and Village 9 Affordable Rental Community (November 2019). See the proposed site plan for Village 9 attached hereto as **Exhibit C**. After subdivision of Village 9, HHFDC plans to issue a ground lease to the County at \$1/year for 65 years for the County's Kukuiola project.

On December 12, 2019, the HHFDC Board of Directors approved a budget of \$4 million from the Dwelling Unit Revolving Fund (DURF) for the planning, design, construction, and dedication of a public access road for the County's Kukuiola and HHFDC's affordable rental project at Village 9. The Governor approved the release of DURF funds on February 14, 2020. On September 18, 2020, Amendments #2 to the MOU and ROE were executed, incorporating the \$4 million in DURF funds and requirements for the County to design, construct, and dedicate the access road to the County.

On November 24, 2020, the County received a letter from the State Historic Preservation Division (SHPD) approving the archaeological inventory survey (AIS) for Village 9. On March 12, 2021, SHPD approved the County's Data Recovery Plan for the County's Kukuiola homeless emergency shelters and permanent supportive housing project at Village 9.

On January 15, 2021, Amendments #3 to the MOU and ROE with the County were executed. The Amendments incorporated HHFDC's approval in concept of the County's grading plan and FWS's comments relating to construction near the makai No Development Area at Village 9.

On October 21, 2021, BLNR approved: (1) withdrawal of the access road from Executive Order No. 4575, (2) set aside of the access road to the County, (3) construction right of entry to the County for the access road and the County's Kukuiola emergency shelter and permanent supportive housing project, and (4) consent to HHFDC's ground lease to the County for the County's emergency shelter and permanent supportive housing project at \$1.00/year for 65 years.

On March 29, 2022, the County approved the grading permit for mass grading at Village 9.

On April 4, 2022, the ROE with the County lapsed. On February 3, 2023, HHFDC and the County executed a new ROE for the planning, design, and construction of the County's emergency shelter and permanent supportive housing on Lots 4-A and 4-B and the planning, design, construction, and dedication by the County of the access road to the County on Lot 4-C. HHFDC's project is on Lot 4-D.

On July 5, 2022, the County approved the final subdivision map for Village 9. See attached Tax Map Key map attached hereto as **Exhibit D**.



Daniel E. Orodener, Executive Officer  
July 5, 2023  
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On September 20, 2022, the Governor approved Executive Order No. 4683 withdrawing the access road from Executive Order No. 4575, and approved Executive Order No. 4684 setting aside Roadway Lot 4-C to the County for roadway purposes.

On September 23, 2022, Amendment #4 to the MOU was executed. Amendment #4 extended the deadline to execute the ground lease and commence construction of the County's permanent supportive housing project by September 14, 2025, unless extended by HHFDC.

On January 26, 2023, the County held groundbreaking ceremonies at Village 9. On February 8, 2023, HHFDC issued Notice to Proceed to the County for mass grading at Village 9.

#### Kamakana Villages

On September 8, 2005, HHFDC requested DLNR for approximately 272 acres of non-ceded lands on Palani Road in Kealakehe, North Kona, Hawaii, TMK (3) 7-4-08: por. 056 (Parcel 56), for affordable housing, subject to HHFDC's relinquishment of its development rights to Village 10 at VOLA to DHHL. Approximately 164 acres of Parcel 56, including Villages 12, 13 and 14, the elementary school, and a park, constituted a part of the VOLA project. On October 14, 2005, BLNR approved HHFDC's request for the non-ceded lands. On October 20, 2005, the HHFDC Board approved the acquisition of the non-ceded lands on Palani Road for affordable housing and approved the relinquishment of HHFDC's development rights to Village 10 to DHHL. The Hawaiian Homes Commission had no objections to HHFDC's request when discussed as an informational item on October 25, 2005. First Amendment of Transfer Agreement dated May 2, 2006 between HHFDC and DHHL for VOLA transferred HHFDC's development rights to Village 10 at VOLA, to DHHL. On July 9, 2007, HHFDC acquired title to 272.063 acres of non-ceded land from DLNR by Land Patent Grant No. S-16,019 and Land Office Deed No. 28,884 for development of affordable housing, subject to a reservation to the State of Hawaii Department of Education for a school site within the premises. The project is now known as HHFDC's Kamakana Villages at Keahuolu master planned community. See attached Exhibit B.

HHFDC completed a master plan. Notices of a Final Environmental Impact Statement (FEIS) and the Governor's acceptance of the FEIS for Kamakana Villages were published in the Office of Environmental Quality Control's (OEQC) bulletin on October 8, 2008 and December 23, 2008, respectively.

After a Request for Proposal (RFP) process, on March 3, 2009, HHFDC executed loan documents for a \$25 million interim loan from its Dwelling Unit Revolving Fund (DURF). On March 31, 2009 HHFDC executed a development agreement (Development

Agreement) for the development of Kamakana Villages with Forest City Hawaii Kona, LLC (Forest City). Under the Development Agreement, Forest City is required to file annual reports to the LUC on the status of compliance with the Conditions of the LUC Docket No. A90-660 for VOLA.

On June 29, 2009, fee simple title to the Kamakana Villages project site was conveyed to escrow, F.H.T. Exchange, Inc., which later conveyed title to a newly formed, single-purpose entity, FHT Kamakana, LLC, by deed dated June 30, 2009.

The Kamakana Villages project includes remnant lots 7 and 9 of File Plan 2128, Tax Map Key Nos. (3) 7-4-021: 043 & 042 (Lots 7 and 9), respectively. See attached **Exhibit E**. Lots 7 and 9 are a part of the VOLA which was reclassified by the LUC in Docket No. A90-660 on December 18, 1990. Lots 7 and 9 are held by escrow, FHT Kamakana, LLC, and HHFDC plans to develop Lots 7 and 9 as a part of Kamakana Villages.

On November 4, 2010, Kamakana Villages was reclassified from Agriculture to Urban by the LUC in Docket No. A10-788. On November 17, 2010, the County Council approved 201H exemptions for Kamakana Villages.

On July 26, 2016 and July 28, 2016, the 85-unit Kamakana Family and the 85-unit Kamakana Senior Affordable Rental Projects at TMK (3) 7-4-021: 049 and TMK (3) 7-4-021: 038, respectively, closed their construction financing. At closing, the fee simple title to the land was re-conveyed back from FHT Kamakana, LLC to HHFDC and HHFDC issued 65-year ground leases at \$1/year for each project. On October 12, 2016, groundbreaking and blessing ceremonies were held and construction of both projects were substantially completed on December 31, 2017.

On September 5, 2017, the Kamakana Villages Development Agreement and the DURF loan were assigned to Alakai Development Kona I LLC<sup>1</sup> (Alakai) to complete and dedicate the Manawalea Street Extension. As a result, Forest City was released from the Development Agreement and the DURF loan. On April 17, 2018, the Kamakana Villages Development Agreement, its entitlements, and related agreements were assigned to SCD Kamakana, LLC (SCD).<sup>2</sup>

On April 11, 2019, the Dedication Deed to the County for Phase 1A of Manawalea Street, TMK (3) 7-4-021: 044, was recorded at the State of Hawaii Bureau of Conveyances as Document No. A-70400612.

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<sup>1</sup> Former employees of Forest City.

<sup>2</sup> A subsidiary of Stanford Carr Development, LLC.

On October 2, 2019, the Dedication Deed to the County for Manawalea Street Extension, TMK (3) 7-4-021: 048, was recorded at the State of Hawaii Bureau of Conveyances as Document No. A-72140747.

During 2019, SCD revised the master plan for Kamakana Villages. Since September 2021, HHFDC and SCD have been in discussions for an amended and restated Development Agreement for Kamakana Villages. On February 9, 2023, the HHFDC Board of Directors approved a revised master plan, an amended and restated development agreement with SCD, conveyance of the property and development of Kamakana Villages in accordance with the amended and restated development agreement, and a \$3 million DURF loan to SCD for pre-development expenses. On March 24, 2023, the Governor approved the release of DURF funds for the DURF loan. On May 12, 2023, HHFDC and SCD executed the amended and restated development agreement and DURF loan documents for Kamakana Villages.

On February 25, 2021, HHFDC received a request to release Alakai from the Development Agreement and the DURF loan for Kamakana Villages. On June 25, 2021, SHPD accepted the Monitoring Report for the Manawalea Street Extension. HHFDC is awaiting SHPD approval of the Data Recovery Report for Kamakana Villages. On January 6, 2022, HHFDC executed the release and on April 29, 2022, the release was recorded at the Bureau of Conveyances as Document No. A-81540800.

### Land Use Conditions

The following is a progress report on conditions imposed by the LUC for Village 9 and Lots 7 and 9 of the VOLA development:

#### Condition No. 1:

Petitioner shall provide housing opportunities for low and moderate income Hawaii residents by offering for sale or rent on a preferential basis a number of residential units equal to sixty (60) percent of the residential units to be developed on the property to residents of the State of Hawaii with incomes up to 120 percent of the median family income for the County of Hawaii as determined by the U.S. Department of Housing and Urban Development (HUD), based on family size and a number of residential units equal to forty (40) percent of the residential units to be developed on the property to residents of the State of Hawaii with incomes greater than 120 percent of the median income for the County of Hawaii.

Status: *On August 21 2000, HHFDC filed a motion with the LUC seeking 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 Hawaii to a requirement that would be established by agreement with the County of Hawaii. 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 undeveloped lands at VOLA. 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 Hawaii that was imposed by Act 15, SLH 1988. Instead, Act 100, SLH 2001 authorized the affordable housing requirements to be established by agreement between HHFDC and the County.*

*Village 9 and Lots 7 and 9 comply with this requirement. Village 9 is a County project consisting of the County's Kukuiola emergency shelter and permanent supportive housing. HHFDC's affordable multi-family rental housing project will be affordable to households at 60% and below the U.S. Department of Housing and Urban Development's area median income (AMI). Remnant Lots 7 and 9 are part of HHFDC's Kamakana Villages at Keahuolu master planned community. More than 50% of the residential units will be affordable to households at 140% or below the AMI, pursuant to 201H exemptions approved by the County Council.*

Condition No. 2:

Petitioner shall design and construct all structures and buildings in compliance with County, State, and Federal codes and standards.

Status: *HHFDC, the County of Hawaii, or SCD will design and construct all structures and buildings to comply with applicable County, State, and Federal codes and standards.*

Condition No. 3:

Petitioner shall submit to the County of Hawaii, Department of Public Works (DPW), all master plans for roadways, water, wastewater, drainage, and utilities for review prior to

submittal of the individual construction plans for the various villages and non-residential uses.

Status: *Master plans for roadways, water, wastewater, drainage, and utilities for Village 9 were submitted to the County of Hawaii, DPW for review and approved on June 16, 2022.*

*Master plans for roadways, water, wastewater, drainage, and utilities at Kamakana Villages developed by HHFDC have been submitted to the County of Hawaii, DPW for review and approval as part of the 201H exemption process. Revised master plans for roadways, water, wastewater, drainage, and utilities at Kamakana Villages developed by SCD will be submitted to the County of Hawaii, DPW for review and approval.*

Condition No. 4:

Petitioner shall coordinate with the State of Hawaii, DLNR, DHHL, and OHA to address the issue of ceded lands.

Status: *In 1994, OHA filed suit on the conveyance of public trust lands to HHFDC for the Villages of Leiali'i ceded lands on Maui. The alienation phase of the trial was completed in November 2001. On December 5, 2002, State Circuit Court Judge Sabrina McKenna ruled that the State could sell ceded lands. Judge McKenna's decision was overturned by the Hawaii Supreme Court. On March 31, 2009, the U.S. Supreme Court overturned the Hawaii Supreme Court's decision. As a result, the Legislature passed SB 1677 SD1 HD1 CD1, which the Governor signed into law as Act 176, SLH 2009. Act 176 is now codified in Section 171-64.7, HRS. In light of Act 176, OHA's lawsuits were settled or dismissed.*

*Village 9 is compliant with Section 171-64.7, HRS, because both the County's Kukuiola and HHFDC's affordable rental projects will be developed in leasehold. A public access road will be developed to provide access to the County's Kukuiola and HHFDC's affordable rental projects. The road was dedicated from DLNR to the County by Governor's Executive Order No. 4684 dated September 20, 2022. Section 171-64.7, HRS does not apply to Lots 7 and 9 because Lots 7 and 9 are remnant lots and/or are held in escrow.*

Condition No. 5:

There shall be no occupancy of any structures on the property until a permanent solution to the smoke, fumes, and other health hazards associated with the Kealakehe landfill is in place.

Status: *The Kealakehe landfill is closed, and a system of berms and gas exhaust measures have been installed pursuant to an approved closure plan.*

Condition No. 6:

Petitioner shall disclose in its deeds to all initial purchasers of residential units on the property the possible odor, air, noise, and dust pollution resulting from the Kealakehe landfill, and from Queen Kaahumanu Highway, Kealakehe Parkway, Palani Road, and any other roadways which are within or adjacent to the site.

Status: *For Village 9, HHFDC has disclosed all LUC Conditions, including this particular Condition, to the County in the MOU with the County dated April 2, 2018. In addition, HHFDC will require its developer of the affordable rental project at Village 9 to disclose this Condition to its tenants. HHFDC will require its master developer of Kamakana Villages to disclose this Condition in its deeds or leases to all initial purchasers or lessees of residential units on Lots 7 and 9.*

Condition No. 7:

In residential areas, Petitioner shall be responsible for implementing sound attenuation measures to reduce vehicular traffic noise levels in the petition area, including along Kealakehe Parkway, Palani Road, and other roadways, to levels acceptable to the State of Hawaii, Department of Health (DOH) and DOT.

Status: *Noise attenuating improvements such as landscaping, earth berms, walls, etc. will be incorporated as required, along existing and proposed highways.*

Condition No. 8:

Petitioner shall participate in an air quality monitoring program as specified by DOH.

Status: *HHFDC will require its developers to participate in applicable air quality monitoring program as specified by DOH.*

Condition No. 9:

Petitioner shall implement effective soil erosion and dust control measures during all phases of the development.

Status: *Dust control measures such as watering and dust screens, and erosion control measures such as retention basins and diversion channels, will be employed as required by law during construction.*

Condition No. 10:

Petitioner shall coordinate with the County of Hawaii, DLNR, other appropriate landowners, and/or other Federal, State, or County agencies regarding measures designed to obtain the required water for the project. Petitioner shall provide the necessary water source, storage, and transmission facilities to service the proposed project.

Status: *HHFDC is working with its development partners and DLNR and the County Department of Water Supply (DWS) to provide necessary water for Village 9 and Lots 7 and 9 in Kamakana Villages.*

Condition No. 11:

Petitioner shall connect the wastewater system for the proposed development on the property to the Kealakehe Wastewater Treatment Plant. Construction of the structures within the property shall not commence until the Petitioner has obtained assurances from the County of Hawaii that capacity at this plant and the effluent disposal system has been reserved for the property; provided that, if the capacity at the Kealakehe Wastewater Treatment Plant and effluent disposal system is not sufficient for the proposed development on the property, Petitioner may utilize other alternatives acceptable to DOH.

Status: *A Wastewater Treatment Facilities Agreement with the County of Hawaii was executed on March 19, 1992, and HHFDC contributed \$5.1 million for assurance of sufficient sewer treatment capacity to service the project. Sewer lines to connect to the County plant were constructed as part of the Phase 2-A backbone infrastructure program. The County has indicated that there is sufficient capacity at the Kealakehe Wastewater Treatment Plant to accommodate the County's Kukuiola and HHFDC's affordable rental community at Village 9.*

*In the sale of VOLA to DHHL, HHFDC reserved capacity at the Kealakehe Wastewater Treatment Plant in the amount of 431,360 gallons per day for Kamakana Villages, including Lots 7 and 9 and the completed 170-unit Kamakana Family and Senior Rental Housing Projects at Manawalea Street. If Kamakana Villages requires more sewer capacity, Kamakana Villages will utilize other alternatives acceptable to DOH.*

Condition No. 12:

Petitioner shall participate in the funding and construction of transportation improvements at project access points as identified and deemed necessary by DOT and in consultation with the County of Hawaii, DPW. Petitioner shall set aside land for a park and ride facility, transit stop facility and other regional traffic improvements as proposed by applicable transportation agencies. Petitioner shall also participate on a fair share basis in the funding and construction of other on-site and off-site transportation improvements necessitated by the proposed development of the property and in designs and schedules coordinated with and accepted by the State of Hawaii, DOT, and in consultation with the County of Hawaii, DPW, provided that the extent of Petitioner's participation shall not exceed its fair share of the increased community impacts in the region, and provided further that in the event the County of Hawaii adopts an impact fee for transportation improvements, the foregoing funding requirement may be modified or deleted to the extent that the cost of any specific traffic improvement is also included in the County of Hawaii's impact fee computation.

Status: *HHFDC will work with DOT and the County of Hawaii-DPW to meet transportation needs. HHFDC constructed the Kealakehe Parkway through the project site with CIP funds. Under the Phase 2-A backbone infrastructure program, HHFDC funded and constructed segments of all County-standard roadways required to service the six villages and the high school site. Kealakehe Parkway was*



*dedicated to DOT and the balance of the existing roadways (Puohulihuli Street and Ane Keohokalole Highway and Keanalehu Drive up to Kealakehe High School) were dedicated to the County during 1997 and 1998. Installation of a traffic signal at the intersection of Kealakehe Parkway and Queen Kaahumanu Highway was completed by DOT in September 1997. Village 9 has one access off of Kealakehe Parkway and one access at Ane Keohokalole Highway.*

*Traffic improvements at Kamakana Villages for Lots 7 and 9 are governed by a Memorandum of Understanding with DOT dated November 20, 2014 and a Memorandum of Agreement with the County dated March 10, 2016. A Traffic Impact Analysis Report for Village 9 was included as a part of the Final EA for Village 9.*

Condition No. 13:

Petitioner shall undertake periodic monitoring of traffic conditions within and adjacent to the property throughout the project's development period with the approval of DOT and in consultation with the County of Hawaii, DPW. Petitioner shall implement highway and other transportation improvements as required by DOT and in consultation with the County of Hawaii, DPW.

Status: *Traffic studies were prepared in conjunction with the Phase 2-A backbone infrastructure program, and will be revised as conditions dictate. All planned transportation improvements have been coordinated with DOT and the County of Hawaii.*

Condition No. 14:

Petitioner shall appoint a transportation manager whose function is the formulation, use, and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems. In the alternative, Petitioner may participate in a regional program for transportation management with other developers and/or landowners. This program shall address the formulation, use, and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems.

Status: *VOLA is in general conformance with the County's regional development (Keahole to Kailua) plan. With the sale of VOLA to*

*DHHL by transfer agreement dated December 30, 2004, as amended, DHHL is the master developer of VOLA.*

Condition No. 15:

Petitioner shall dedicate sufficient frontage to allow for a 300-foot right-of-way along Queen Kaahumanu Highway. Petitioner shall also dedicate sufficient frontage as determined by the State of Hawaii, DOT to allow for a right-of-way at the Kealakehe Parkway interchange of Queen Kaahumanu Highway.

Status: *This condition was met by subdivision of the additional right-of-way in 1993. The property was transferred to DOT by Executive Order No. 3702 dated April 3, 1997.*

Condition No. 16:

Petitioner shall ensure that a buffer area along the boundary of the property be constructed to maintain the visual integrity from Queen Kaahumanu Highway. Petitioner shall further ensure that the proposed community shopping center or any other proposed use abutting Queen Kaahumanu Highway be screened from passing motorists and the Kaloko-Honokohau National Historic Park by landscaping improvements.

Status: *This condition does not apply to Village 9 nor to Lots 7 and 9.*

Condition No. 17:

Petitioner shall preserve 19 historic sites and archaeological data recovery from 60 historic sites, as agreed previously in writing with the Historic Preservation Division, DLNR, in compliance with Chapter 6E, Hawaii Revised Statutes. The applicant shall submit to the State Historic Preservation Division a detailed historic preservation mitigation plan in two parts, a preservation plan portion and an archaeological data recovery plan option. This mitigation plan must be approved by the State Historic Preservation Division, prior to any field work and prior to any construction in the vicinity of historic sites. Also, Petitioner must obtain verification by the state Historic Preservation Division that successful execution of the mitigation plan has been completed prior to any construction in the vicinity of historic sites.

Status: *An Archaeological Inventory Survey Report and subsequent Addendum addressing revisions to the main text was submitted to*

*DLNR, State Historic Preservation Division (DLNR-SHPD) for their review and approval.*

*The Mitigation Program Plan (Phase I): Mitigation Plan for Data Recovery and Interim Site Preservation) was approved by DLNR-SHPD in 1994.*

*A Phased Archaeological Mitigation Program, Kealakehe Planned Community, Phase II: Archaeological Data Recovery, dated June 1994, was completed and submitted to DLNR-SHPD on July 11, 1994.*

*By letter dated May 15, 1996, SHPD indicated that fieldwork for the Phased Archaeological Mitigation Plan: Archaeological Data Recovery (1994) was adequate, however, revisions to the report were needed. This report was not finalized because the Villages of La'i'opua project was placed on hold and later sold to DHHL.*

*An Archaeological Inventory Survey of Kukuiola and Village 9 within the Villages at La'i'opua, ASM Affiliates (June 2019) was completed and included as Appendix C in the Final EA for Village 9 published in the OEQC bulletin on November 23, 2019.*

*On November 24, 2020, the County received a letter from the DLNR-SHPD) approving the archaeological inventory survey (AIS) for Village 9. On March 12, 2021, SHPD approved the Data Recovery Plan for the County's Kukuiola emergency shelter and permanent supportive housing project at Village 9.*

Condition No. 18:

Petitioner shall immediately stop work on the impacted area and contact the DLNR-Historic Preservation Division should any significant archaeological resources such as artifacts, shell, bones or charcoal deposits, human burial, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the property.

Status: *HHFDC will require its developers to comply with Condition No. 18 for the development of Village 9 and Lots 7 and 9.*

Condition No. 19:

Petitioner shall establish plant reserves for the uhiuhi plant (*Caesalpinia kavaiensis*). There shall be one five-acre preserve and one half-acre preserve around each remaining uhiuhi plant. In addition, Petitioner shall formulate a fire contingency plan prior to construction in the project area. The fire contingency plan shall be approved by DLNR, Division of Forestry and Wildlife.

Status: *On February 8, 2016, HHFDC executed an MOU with FWS for the set aside of two No Development Areas for the development of Village 9. On February 25, 2016, HHFDC executed an MOU with the FWS for the development of Kamakana Villages. HHFDC has required the County and the master developer of Kamakana Villages, respectively, to comply with the applicable MOU with FWS.*

Condition No. 20:

Petitioner shall coordinate with the County of Hawaii and DOH to establish appropriate systems to contain spills and prevent materials such as petroleum products, chemicals, solvents or other pollutants from leaching into the storm drainage system and adversely affecting the groundwater and coastal waters.

Status: *HHFDC will require its developers to comply with Condition No. 20 during the development of Village 9 and Lots 7 and 9.*

Condition No. 21:

Petitioner shall develop and maintain on-site facilities to ensure that the nearshore, offshore and deep ocean waters remain in pristine condition. Petitioner shall also participate in a water quality monitoring program with the Natural Energy Laboratory of Hawaii and the Hawaii Ocean Science and Technology Park.

Status: *HHFDC will require its developers to comply with Condition No. 21.*

Condition No. 22:

Petitioner shall prepare a drainage and erosion control plan and shall fund and construct the necessary drainage improvements and maintain ocean water quality to the satisfaction of DOH. Petitioner shall, to the extent necessary as determined by the

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County of Hawaii, coordinate off-site improvements with adjoining landowners and developers, and/or other Federal, State, or City agencies.

Status: *HHFDC will require its developers to comply with Condition No. 22.*

Condition No. 23:

Petitioner shall comply with "The Eight (8) Conditions Applicable to This Golf Course Development," prepared by DOH dated April 1990 (Version), introduced as the Office of State Planning Exhibit No. 5.

Status: *The golf course property was set aside to the County of Hawaii by Governor's Executive Order No. 3665 dated July 18, 1995. No development occurred due to a disagreement between the County and its golf course developer, Kealakehe Associates, Inc. HHFDC was not a party to the County's agreements with the golf course developer. On January 28, 2011, Governor's Executive Order No. 4354 cancelled Governor's Executive Order No. 3665. Governor's Executive Order No. 4355 set aside the property to the County for Kealakehe Wastewater Reclamation Field, North Kona Golf Course and/or Public Park purposes. The County now plans to develop the former golf course property into a regional park.*

Condition No. 24:

Petitioner shall engage the services of a qualified golf course manager to oversee the irrigation of the golf course and application of fertilizers and pesticides to the golf course within the Property and who shall be qualified in the application of fertilizers and pesticides on those areas.

Status: *See Condition No. 23.*

Condition No. 25:

Petitioner shall make available adequate golf tee times at affordable rates for public play by residents of the State of Hawaii.

Status: *See Condition No. 23.*

Condition No. 26:

Petitioner shall fund and install, to the specifications and satisfaction of the State Office of Civil Defense, the necessary number of emergency siren units (including infrastructure within the project area and a siren paging encoder in the Kona Police Department substation.)

Status: *With the sale of VOLA to DHHL by transfer agreement dated December 30, 2004, as amended, DHHL is now the master developer of VOLA.*

Condition No. 27:

Petitioner shall provide at no cost to the State of Hawaii, DOE, the school sites with infrastructure, and facilities as may be required by DOE.

Status: *Roadways and utilities to the Kealakehe High School were constructed as part of Phase 2-A backbone infrastructure. Construction of the high school's first phase was completed in July 1997 and construction of the final phase was completed in December 2003.*

*On February 9, 2023, the HHFDC Board of Directors approved a revised master plan for Kamakana Villages. The revised master plan includes 14.80 acres for a school/civic center to be developed by SCD, the master developer of Kamakana Villages.*

Condition No. 28:

Petitioner shall work with the County of Hawaii to ensure that police, fire, park, and solid waste disposal facilities are in place.

Status: *HHFDC will require its developers to work with the County to comply with Condition No. 28.*

Condition No. 29:

Petitioner shall complete the development on the property in substantial compliance with the representations made before the LUC. Failure to so develop may result in the reversion of the property to its former land use classifications or a change to a more appropriate classification.

Status: *HHFDC will require its developers to comply with Condition No. 29.*

Condition No. 30:

Petitioner shall give notice to LUC of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the property.

Status: *HHFDC will comply with Condition No. 30 for Village 9. HHFDC has required its master developer to comply with Condition No. 30 for Kamakana Villages.*

Condition No. 31:

Petitioner shall provide annual reports to LUC, Office of State Planning, and the County of Hawaii, Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

Status: *HHFDC will comply with Condition No. 31 for Village 9. HHFDC has required its master developer to comply with Condition No. 31 for Kamakana Villages.*

Condition No. 32:

The Commission may fully or partially release these conditions as to all or any portion of the petition area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner. Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has been satisfied, in whole or in part. The Office of State Planning will certify for itself and all State departments and agencies, and the Planning Department will certify for itself and all County departments and agencies.

Status: *HHFDC acknowledges Condition No. 32.*

Condition No. 33:

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

Daniel E. Orodener, Executive Officer  
July 5, 2023  
Page 24

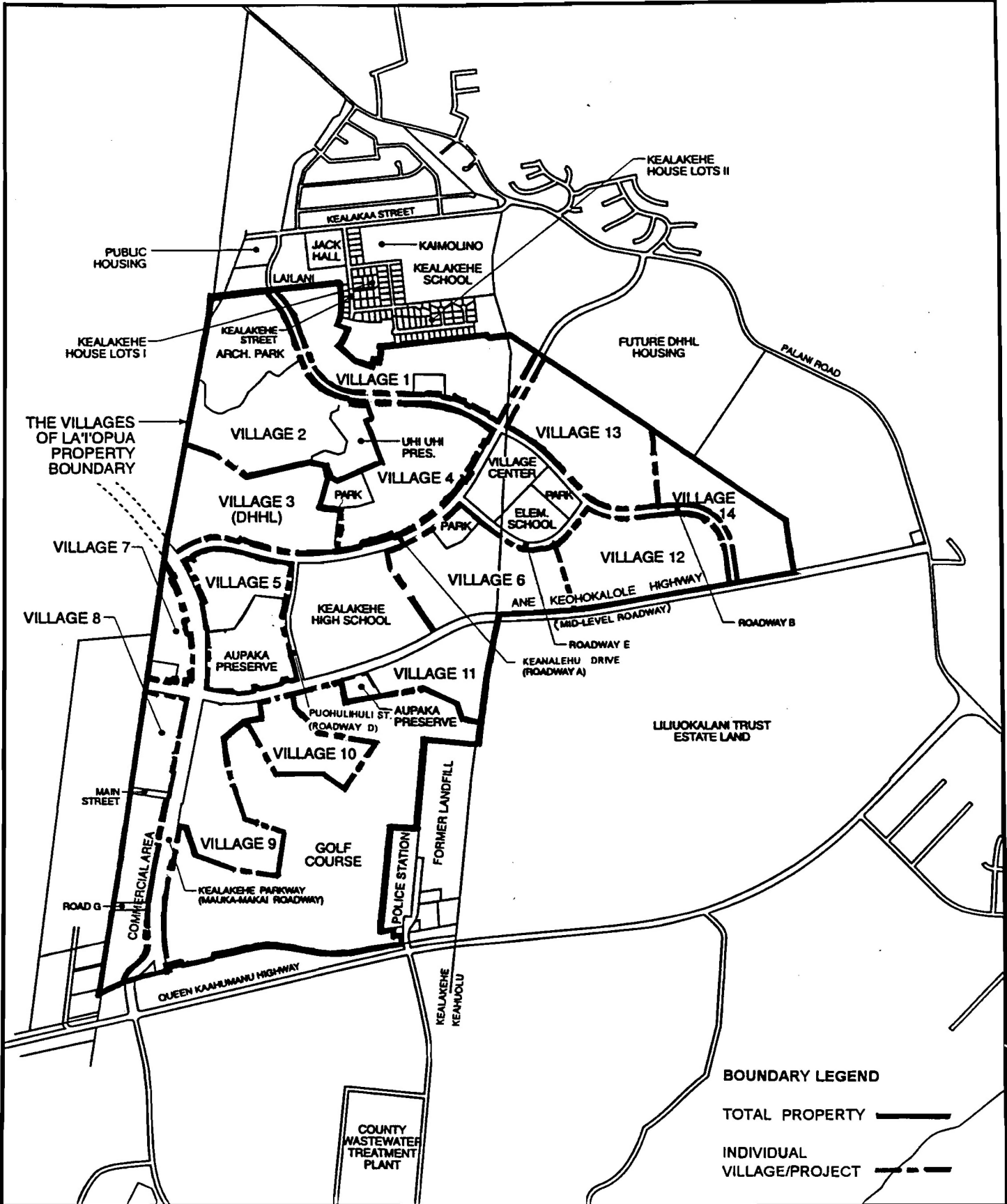
Status: *Act 15 was automatically repealed on April 19, 1993, five years from the effective date of the Act (April 20, 1988) and is no longer in effect.*

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

Attachments: Site Maps

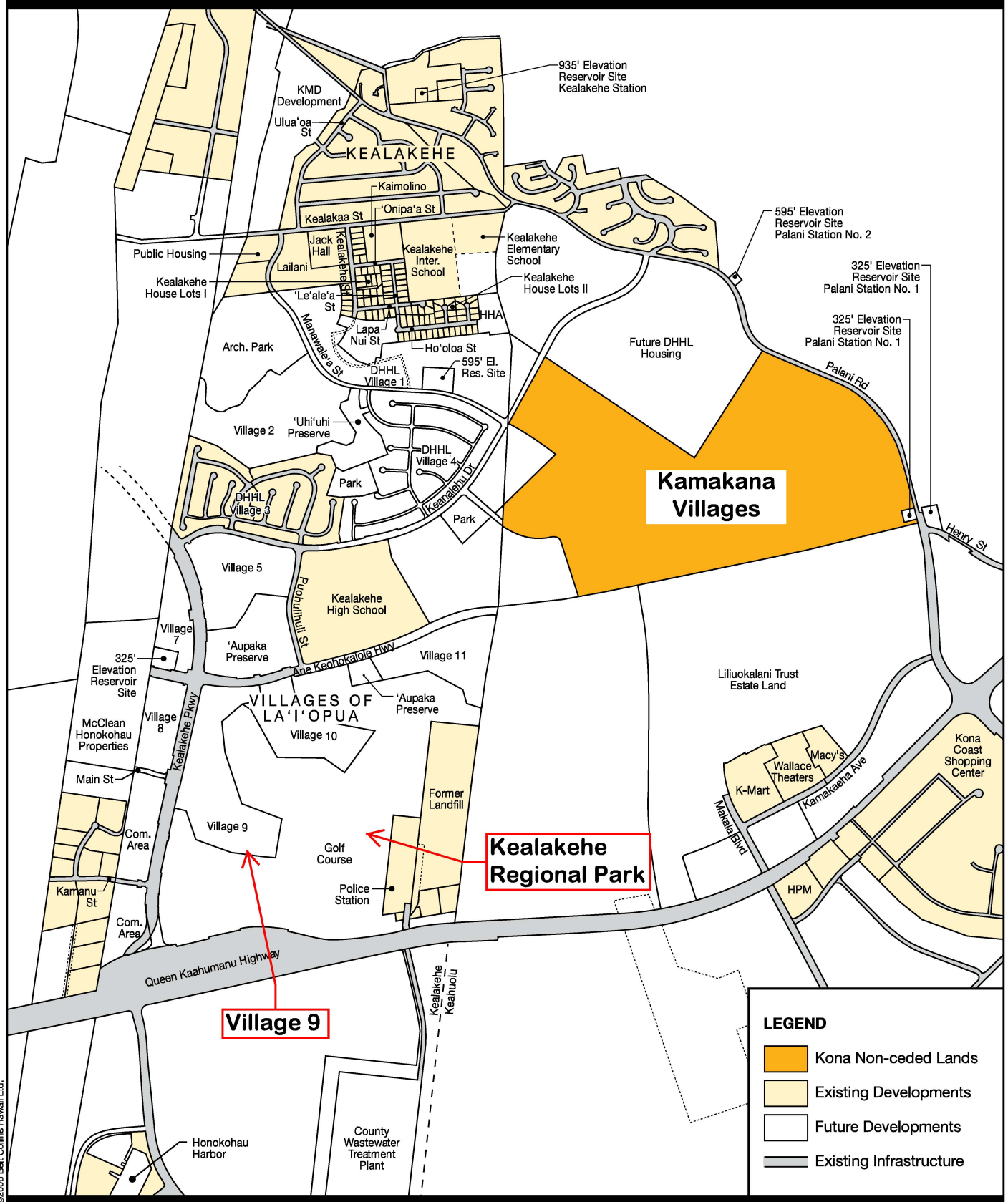
c: Office of Planning and Sustainable Development, w/attachments  
County of Hawaii, Planning Department, w/attachments





**EXHIBIT A**

**PROJECT STATUS**  
Villages of La'opua  
JAN 1998



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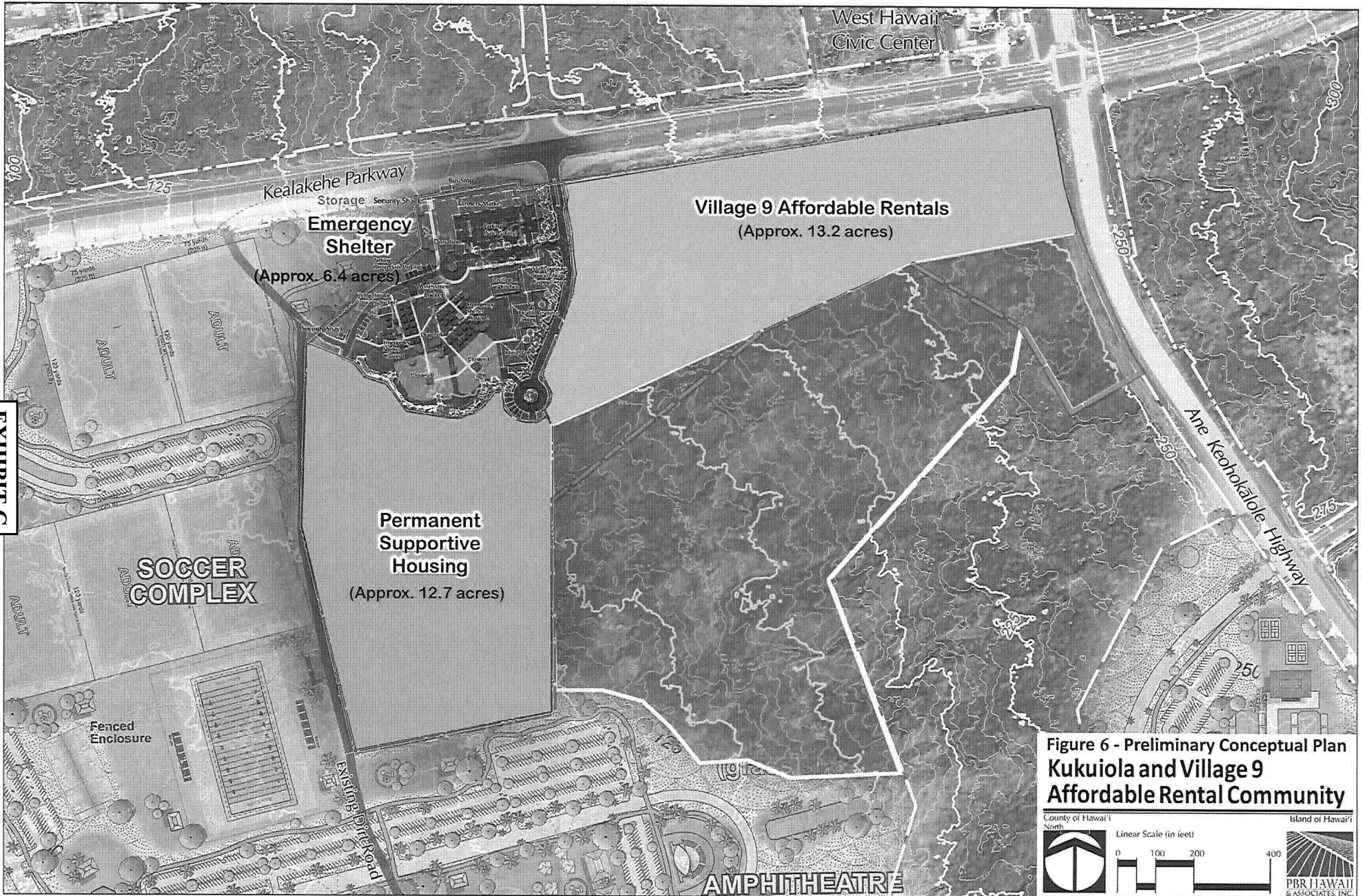


0 600 1200 1800  
SCALE IN FEET

**EXHIBIT B**

**KONA NON-CEDED LAND**  
Hawaii Housing Finance and Development Corporation

**EXHIBIT C**



**Figure 6 - Preliminary Conceptual Plan  
Kukuioia and Village 9  
Affordable Rental Community**

County of Hawai'i North      Island of Hawai'i

Linear Scale (in feet)

0      100      200      400

**PBR HAWAII & ASSOCIATES, INC.**



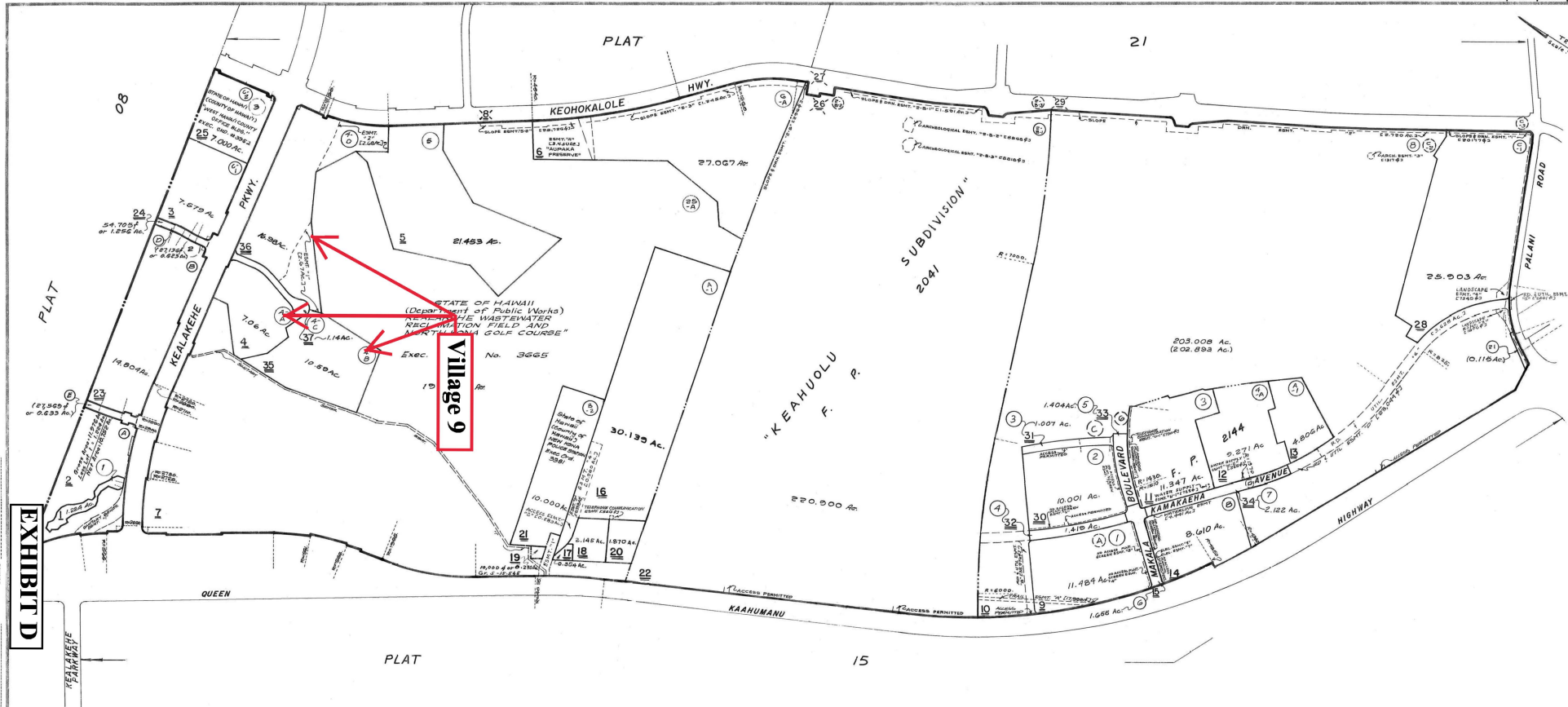


EXHIBIT D

DATE: March 25, 1995 BY: AB/MS

"THE VILLAGES OF LA'I'OPUA - PHASE I", F.P. 2128, KEALAKEHE, NORTH KONA, HAWAII, HAWAII (Formerly por. 7-4-08)

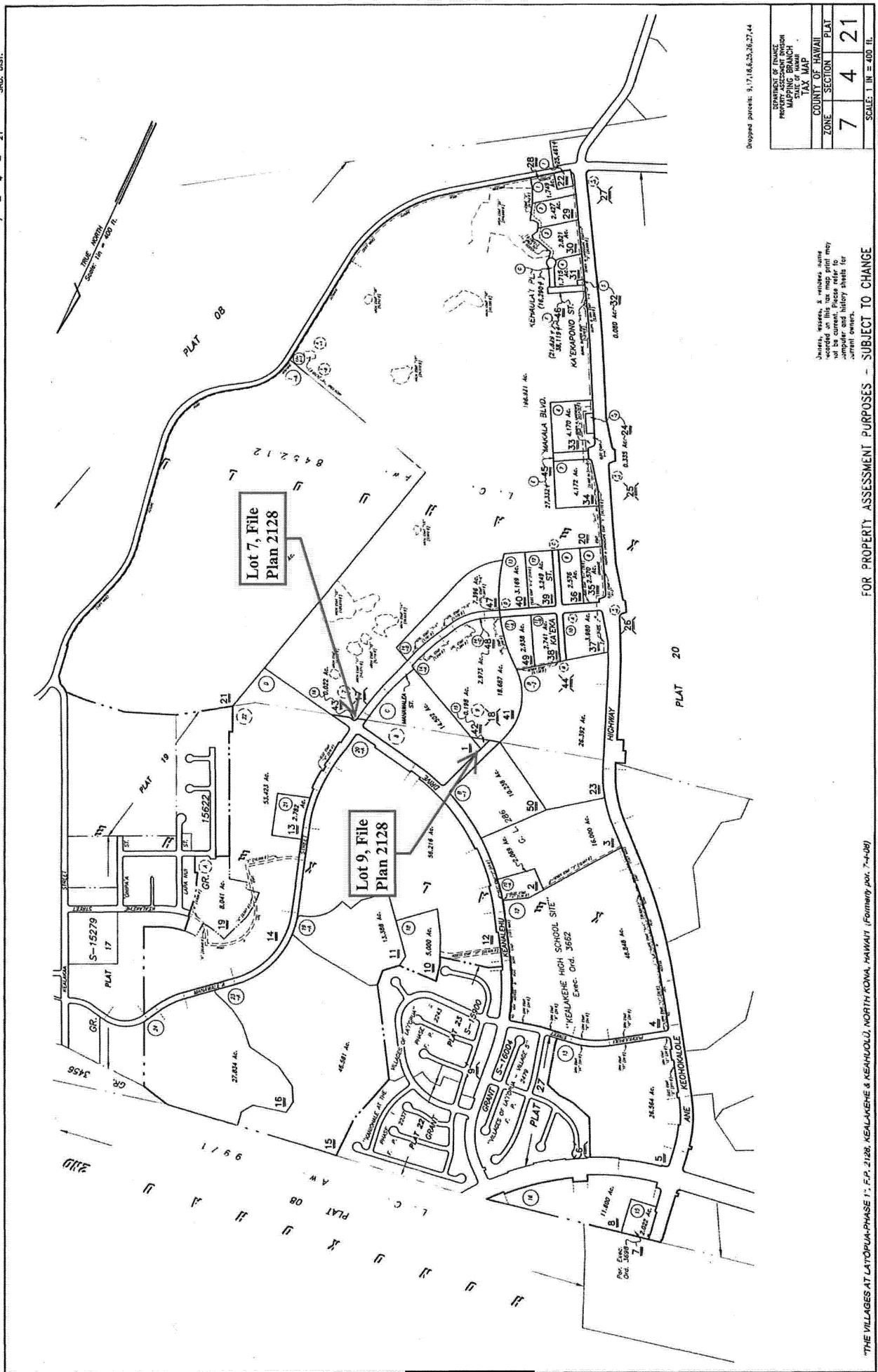
FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

Note: Parcels 1 thru 7 owned by State of Hawaii unless otherwise noted.

Owners, lessees, & vendors name recorded on this tax map print may not be current. Please refer to computer and history sheets for current owners.

Prepped Parcels: 0, 26, 27, 29,

DEPARTMENT OF FINANCE PROPERTY ASSESSMENT DIVISION MAPPING BRANCH STATE OF HAWAII TAX MAP		
COUNTY OF HAWAII		
ZONE	SECTION	PLAT
7	4	20
SCALE: 1 IN = 400 FT.		
PRINTED:		



Dropped parcels: 8,17,18,25,26,27,44

DEPARTMENT OF REVENUE			
PROPERTY ASSESSMENT DIVISION			
MAPPING BRANCH			
TAX MAP			
COUNTY OF HAWAII			
ZONE	SECTION	PLAT	
7	4	21	

Accuracy, integrity, & reliability values recorded on this tax map aerial may not be current. Please refer to computer and history sheets for certain features.

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

"THE VILLAGES AT LATOPIA-PHASE 1", F.P. 2128, KEALAKENE & KEAHOLOU, NORTH KOHA, HAWAII (Formerly par. 7-4-08)

PRINTED:

- 3/25/09
- 9/28/09
- 1/17/10
- 6/25/10
- 6/25/11
- 4/26/12
- 7/11/12
- 7/11/13
- 1/22/14
- 6/19/17
- 6/20/19

**EXHIBIT E**

**Signature:** 

**Email:** stanley.s.fujimoto@hawaii.gov

**Signature:** 

**Email:** randy.n.t.chu@hawaii.gov