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Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS, LLC, and
KALOKO HEIGHTS INVESTORS, LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

Y-O LIMITED PARTNERSHIP

To Amend the Agricultural Land Use District Boundary to the Urban Land Use District for Approximately 408.719 Acres of Land at Kaloko and Kohanaiki, North Kona, Hawaii, Hawaii TMK Nos.: (3) 7-3-09:19, 20 and 57 to 62.

DOCKET NO. A81-525

PETITIONER’S MOTION FOR RECONSIDERATION OF DECISION AND ORDER DENYING MOTION FOR EXTENSION OF TIME TO APPLY FOR REDISTRICTING OF PHASE II; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF RICHARD M. CRUM; EXHIBIT “A”; CERTIFICATE OF SERVICE

PETITIONER’S MOTION FOR RECONSIDERATION OF DECISION AND ORDER DENYING MOTION FOR EXTENSION OF TIME TO APPLY FOR REDISTRICTING OF PHASE II

I. RELIEF OR ORDER SOUGHT

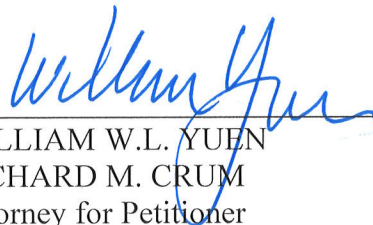
RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company, KALOKO HEIGHTS B1A HOLDINGS, LLC, a Delaware limited liability company, and KALOKO HEIGHTS INVESTORS, LLC, a Delaware limited liability company, Successor Petitioner (“Petitioner”) to Y-O Limited Partnership in the above-captioned docket, by and through its attorneys Dentons US LLP, moves the Land Use Commission of the State of Hawaii (the

“Commission”) to reconsider its Decision and Order issued on August 5, 2023 denying Petitioner’s Motion for an order further amending the Decision and Order issued on January 19, 1983, to allow for an extension of time to apply for the redistricting of Phase II. The extension of time requested was to January 20, 2033, which is ten years from January 20, 2023, the current time for performance under the Commission’s *Order Granting Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II*, issued on December 10, 2012.

II. GROUNDS FOR MOTION

This Motion is made pursuant to Chapter 205, Hawaii Revised Statutes (“HRS”) and §§ 15-15-70, 15-15-78, 15-15-84 and 15-15-94 of Title 15, Chapter 15 of the Hawaii Administrative Rules (“HAR”), the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files herein. Pursuant to HAR § 15-15-70(c), Petitioner requests a hearing on this motion.

DATED: Honolulu, Hawaii, August 11, 2023.



WILLIAM W.L. YUEN
RICHARD M. CRUM
Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS,
LLC, and KALOKO HEIGHTS
INVESTORS, LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII



In the Matter of the Petition of
Y-O LIMITED PARTNERSHIP

DOCKET NO. A81-525

**MEMORANDUM IN SUPPORT OF
MOTION**

To Amend the Agricultural Land Use District Boundary to the Urban Land Use District for Approximately 408.719 Acres of Land at Kaloko and Kohanaiki, North Kona, Hawaii, Hawaii TMK Nos.: (3) 7-3-09:19, 20 and 57 to 62.

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

By Decision and Order filed on August 5, 2023 (the “Order”), the Land Use Commission of the State Hawai`i (“Commission”) denied RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company, KALOKO HEIGHTS B1A HOLDINGS, LLC, a Delaware limited liability company, and KALOKO HEIGHTS INVESTORS, LLC, a Delaware limited liability company, Successor Petitioner’s (“Petitioner”) Motion for Extension of Time to Apply for Redistricting of Phase II (“Motion for Extension”) to January 20, 2033.

By Decision and Order filed on January 19, 1983 (the “1983 Decision and Order”), the Commission had reclassified approximately 213.473 acres of land, now identified as Hawaii TMK (3) 7-3-09: 20, 32 and 57 through 62, at Kaloko and Kohanaiki, North Kona, Hawaii, from the State Land Use Agricultural District to the State Land Use Urban District. This area is Phase I (“Phase I”) of the Kaloko Heights Project (the “Project”). The Commission also granted incremental redistricting of approximately 195.246 acres, now identified as Hawaii TMK (3) 7-3-09: 19, referred to as Phase II (“Phase II”).

The 1983 Decision and Order required Petitioner to submit an application for the reclassification of Phase II after having made substantial completion of the onsite and offsite improvements within Phase I, including partial satisfaction of the conditions to provide affordable housing and dedicate land for public facilities, and full satisfaction of the conditions to construct a road connecting Queen Kaahumanu Highway and Mamalahoa Highway, and to complete water source development. The Commission issued five amendments to the 1983 Decision and Order, extending the deadline for filing an application for the reclassification of Phase II until January 20, 2023.

On April 12, 2023, the Commission conducted its hearing on Petitioner’s Motion for Extension to allow Petitioner an additional ten years to achieve substantial completion of improvements related to Phase I of the Kaloko Heights Project. At the conclusion of the hearing, the Commission voted to deny Petitioner’s Motion. On August 5, 2023, the Commission issued its Order denying Petitioner’s Motion for Extension.

The record reflects that the Commission denied the motion on the basis that:

- A. Petitioner should have been required to conduct a Hawaii Revised Statutes (“HRS”) Chapter 343 assessment for the entire Project due to the decisions to install a wastewater transmission line in county land, despite the reclassification having originally been approved over 40 years ago and the existence of an already accepted assessment in conjunction with the construction of the wastewater transmission line within the Hina Lani Street and Ana Keaholole right of way. Order at Findings by the Commission (“Findings”) ¶ 40, Conclusions of Law (“COL”) at ¶¶ 10–15.
- B. Petitioner should have conducted a new archaeological inventory survey and cultural impact survey of the Phase I lands that have already been classified for Urban uses and rezoned by the County of Hawaii, despite the fact that previous studies of the Phase I lands have been approved by the State Historic Preservation Division (“SHPD”) and no evidence was

presented at the hearing that there has been any exercise of traditional cultural practices in the Phase I lands or in the Phase II lands. Order at Findings ¶¶ 45–47, COL at ¶¶ 16–21.

Petitioner seeks the Commission’s reconsideration of its decision for the following reasons as more fully set forth below:

1. The Commission is not the appropriate agency to determine whether the previously conducted environmental assessment of the sewer line was sufficient. The County of Hawaii Department of Environmental Management (“DEM”) has already determined that the previous environmental assessment satisfied the requirements of HRS Chapter 343.
2. Petitioner was not requesting the Commission to approve the reclassification of Phase II, hence there was no “action” requested that would require the Commission to conduct an analysis mandated under *Ka Pa`akai O Ka`Aina v. Land Use Comm'n, State of Hawai`i*, 94 Haw. 31, 7 P.3d 1068, (2000), as amended (Jan. 18, 2001) (“*Ka Pa`akai*”). Instead, Petitioner was requesting the Commission to approve an extension of time within which Petitioner can seek the approval of such an action.
3. Prior to seeking reclassification of the Phase II lands, Petitioner will re-assess the Project’s compliance with HRS Chapter 343 and related applicable requirements. If necessary, Petitioner will conduct an Environmental Assessment (“EA”), an archaeological inventory survey, a cultural impact assessment, and other necessary studies of the Phase II lands and present such information to the Commission. These actions will allow the Commission to properly consider the reclassification request at that time. Thus, it would be unreasonable and erroneous not to reconsider the Commission’s Order in light of Petitioner’s willingness to comply with the requirements of Chapter 343 as may then be applicable.
4. The Commission should reconsider its decision, and approve the requested extension of time for Petitioner to substantially complete onsite and offsite improvements related to the Phase I lands. The Commission may condition

the extension by requiring Petitioner’s preparation and submittal of required environmental, archaeological, and cultural surveys of the Phase II lands prior to submitting a subsequent petition seeking the reclassification of the Phase II lands.

Upon reconsideration, Petitioner respectfully requests the Commission issue an order granting relief in the form of granting Petitioner’s Motion for Extension.

II. APPLICABLE LAND USE COMMISSION RULES

HAR§ 15-15-84 – RECONSIDERATION OF DECISION

The Commission’s rule regarding reconsideration of a decision is set forth in Hawaii Administrative Rules (“HAR”) § 15-15-84, which provides in relevant part:

- (a) A motion for reconsideration shall be filed with the commission within seven calendar days after issuance of the commission's written decision and order. The motion for reconsideration shall clearly specify that the motion is for reconsideration.
- (b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

Petitioner moves the Commission to reconsider its August 5, 2023 Decision (the “Decision”). Petitioner believes the Commission’s denial of the Motion for Extension is unreasonable, unlawful, arbitrary and capricious, an abuse of discretion or erroneous for the following reasons:

1. Petitioner has demonstrated that it has substantially complied with conditions regarding affordable housing and offsite infrastructure that satisfies all of the offsite infrastructure necessary for providing roads, water and utilities serving the Phase I and Phase II lands (with wastewater facilities to be completed in 2024) and expended substantial funds in satisfying these conditions, such that it would be inequitable and an abuse of discretion to deny an additional extension. Petitioner and its predecessors have expended multi-millions of dollars to provide roads, water, utilities and a soon to be completed wastewater transmission line that will also complete the offsite infrastructure

and improvements necessary to develop the Project and the 100 unit affordable housing project on the Project lands which will be completed by the fall of 2024. This infrastructure has already been of substantial benefit to existing area residents who use the roads, water and utility lines which provide important services to the area. Further, **Petitioner is agreeable to convey an approximately ten (10) acre site within the Phase II lands for the development of an affordable housing project** to Hawaii Island Community Development Corporation (“HICDC”) or a similar entity as a condition of reclassification of the Phase II area and assign 100 water units for the affordable housing.

2. Granting an extension to complete Phase I does not “trigger” the requirement to prepare an EA, and DEM as the governmental agency responsible for accepting construction and dedication of the wastewater transmission line, has deemed the requirements of HRS Chapter 343 (the “HEPA”) satisfied. In the alternative, if an EA must be prepared, the appropriate time for the EA to be prepared is prior to filing the motion or application to approve reclassification of Phase II, not at the time the Motion for Extension is considered.
3. Petitioner will re-assess the Project’s compliance with HRS Chapter 343 and comply with applicable requirements, including, if necessary, prepare an EA, and conduct archaeological inventory survey, a cultural impact assessment, and other necessary studies of the Phase II lands prior to filing the motion or application to confirm reclassification of Phase II, not now when all that is before the Commission is the Motion for Extension. For the Commission to order otherwise would be reversible error.
4. In furtherance of the State of Hawaii’s emergent need for housing in general and affordable housing in particular, reconsideration of the Commission’s Order granting the Motion for Extension would aid Petitioner in meeting its goal of constructing planned affordable housing units in the Project.

III. JUSTIFICATION FOR RECONSIDERATION AND EXTENSION

For the reasons stated below, the Commission should reconsider its decision and grant Petitioner's Motion for Extension.

1. Petitioner's Satisfaction and Ongoing Compliance with Development Conditions

It would be unreasonable and inequitable to deny Petitioner's Motion for Extension given Petitioner's substantial compliance with the development conditions regarding affordable housing and infrastructure. The conditions set forth in the Commission's 1983 Decision and Order were amended by the November 17, 1992, *Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of the Decision and Orders Dated January 20, 1983, June 13, 1990, and December 10, 2012.*

Petitioner has satisfied, in whole or in part, the Commission's conditions, as amended, more fully described below.

a. Condition 1

Petitioner shall provide housing opportunities for low and moderate income residents by offering for sale or rental on a preferential basis, on its own or in cooperation with both the Housing Finance and Development Corporation ("HHFDC") and the County of Hawaii, ten per cent (10%) of the lots and residential units to be developed in the Petition Area, to residents of the State of Hawaii of low and moderate family income as determined by HHFDC and the County of Hawaii Office of Housing and Community Development ("OHCD") from time to time (the "Affordable Housing Requirement"). The affordable housing units shall be offered for sale or rent at prices or rents not exceeding prices or rents ("Affordable Prices") that enable such purchasers and renters to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families, or that provide affordable rental housing opportunities to such families. This affordable housing condition shall be implemented to the satisfaction of OHCD.

The original affordable housing condition provided for satisfaction of the requirement through for sale housing. On November 22, 2016, the Commission amended the affordable housing condition to read as set forth above. Based on this order, on May 11, 2017, Petitioner

donated a 10.755 acre parcel in Phase I to HICDC, the leading provider of affordable rental housing on the Big Island, to develop for affordable rental housing. Petitioner also assigned HICDC 100 water commitments and wastewater treatment capacity in order to facilitate the development of 99 affordable rental units and one manager's unit. HICDC has commenced construction of this project, with an anticipated completion date in late 2024. Petitioner has commenced construction of the wastewater transmission line to enable the HICDC lands, the Project lands and other lands in the vicinity to be connected to the County's Kealakehe wastewater treatment facility, thus allowing the HICDC project to avoid building and operating a package wastewater treatment facility. Once construction of the HICDC project is completed, Petitioner will have satisfied Petitioner's affordable housing requirement for up to 990 units for the Project.

In order to satisfy the requirements of Condition 1 on Phase II, Petitioner has offered to convey an approximately ten (10) acre site within the Phase II lands and assign 100 water units for the development of an affordable housing project with the HICDC or similar entity as a condition of reclassification of the Phase II area.

b. Condition 2

Petitioner shall afford lot purchasers public access from the subject property to Queen Kaahumanu Highway and to Mamalahoa Highway by participating in the construction of a roadway connecting the two highways and running through the subject property, the location and standard of design and construction of such roadway to be approved and accepted by the County of Hawaii. The Petitioner shall be responsible for constructing such portions of the roadway within the subject property. The Petitioner's participation for the portions of the roadway outside the subject property may be by way of loans, loan guaranties, purchase of county obligations or otherwise.

Condition 2 has been satisfied. Hina Lani Street, which separates Phase I and Phase II, and extends from Queen Kaahumanu Highway to Mamalahoa Highway, was constructed and

dedicated to the County. Hina Lani Street has long been open for public use. In addition, the street lighting system and water transmission lines within the Project have been completed and dedicated to the County. Petitioner and its predecessors installed water transmission lines and street lights in Hina Lani Street, and dedicated the completed street, including the channelized intersections at Mamalahoa Highway and at Queen Kaahumanu Highway, as well as an approximately 1.38 acre portion of the Phase II property to the county of Hawaii Department of Water Supply (“DWS”) in 2001. The \$9,000,000 bond that was put up to construct the aforementioned roadway improvements was satisfied in full.

c. Condition 3

Petitioner shall dedicate to appropriate State and County agencies sufficient land for the provision of necessary public facilities.

This condition has been satisfied, and Petitioner will continue to comply with this condition. On July 29, 2001, Petitioner’s predecessor conveyed approximately 1.39 acres of land located in Phase II (currently TMK No. (3) 7-3-09:049) to DWS to be used as a water reservoir site.

Petitioner also dedicated a recently completed 1.0 million gallon water reservoir, located on TMK: (3) 7-4-26:31, together with waterlines from the reservoir site to Hina Lani Street to DWS. Construction of this reservoir cost in excess of \$3,000,000. Petitioner has invested substantial sums in obtaining subdivision approval, grubbing permits, final plan approval, and electrical substation improvements. Petitioner intends to provide additional sites, including public park sites, for dedication to appropriate State and County agencies, and will dedicate the main Project roadways to the County.

DWS has issued Petitioner a water commitment to serve 1,501 units. To date, Petitioner and its predecessors have paid \$9,090,990 to DWS for water commitments and facility charges, and the cost for drilling, casing and outfitting a production well. In addition, Petitioner

completed upgrades and improvements to an existing water tank and pump system located on the water tank site that were dedicated to DWS.

Petitioner is presently constructing the wastewater transmission line from the Project area, including the HICDC lands, to the County's wastewater treatment plant at Kealakehe ("WWTP"). Wastewater from HICDC's affordable housing project and the entire Kaloko Heights Project will be transmitted to the WWTP for treatment. The wastewater transmission line is the final offsite infrastructure improvements necessary for development of the Project.

As outlined above and in the Motion for Extension, Petitioner has either satisfied or continues to comply with the conditions imposed on the development. Given Petitioner's compliance, it would be unreasonable and inequitable for the Commission to deny the Motion for Extension to complete Phase I and to allow for redistricting of Phase II of the development.

2. It is Error for the Commission to Require an Environmental Assessment or Environmental Impact Statement at this Time

The Motion for Extension requested the Commission to grant an extension of time to substantially complete offsite and onsite improvements in Phase I. As with previous extensions approved by the Commission, no specific development within the Phase II lands was requested, and no "action" from the Commission was being sought to confirm the reclassification of the Phase II lands. The Commission denied Petitioner's Motion for Extension in part because Petitioner did not prepare an EA for the entire Project, despite Petitioner's right to develop the Phase I lands being fully vested. Further, Petitioner was not requesting to confirm the reclassification of the Phase II lands to the Urban District in its Motion for Extension.

Denying the Motion for lack of an EA encompassing the entire project is legal error. The motion for extension of a time is not one of the nine “trigger” events to require the preparation of an EA. The Commission should not substitute its judgement for the judgement of the accepting agency responsible for the wastewater transmission line. HEPA at HRS § 343-5 requires an EA to be prepared when an applicant proposes an action that:

- (1) uses state or county lands or funds for projects that an agency has not approved;
- (2) proposes a land use in a conservation district;
- (3) proposes a use in a shoreline area;
- (4) proposes a use within a historic site;
- (5) proposes any use within the Waikiki Special District;
- (6) proposes amendments to existing county general plans affecting agriculture, conservation, or preservation efforts;
- (7) reclassification of conservation land;
- (8) expansion or modification of helicopter facilities; and
- (9) wastewater treatment.

The only HEPA triggers that *could* apply here would be use of state or county land, and wastewater treatment, because Petitioner is constructing a wastewater transmission line in a County of Hawaii right of way to connecting the Project to a wastewater treatment facility. Reclassification of Phase I and Phase II in 1983 was not a HRS Chapter 343 trigger. The Hawaii Supreme Court has held that constructing a wastewater transmission line does not necessarily constitute a use of state or county lands trigger that would require a Chapter 343 analysis. *Nuuanu Valley Association v. City and County of Honolulu*, 119 Hawaii 90, 194 P.3rd 531 (2008). That case held that a development’s connection to a county sewer line does not constitute a use of state or county lands trigger under HRS § 343-5.

The Commission should not require preparation of an EA for Phase II, because DEM (**not** the Commission), the governmental agency responsible for accepting construction and dedication of the wastewater transmission line, has deemed the requirements of HEPA satisfied for the wastewater transmission line. DEM concluded that the EA prepared for the

affordable housing project satisfied the HEPA requirement to prepare an EA for the construction of the wastewater transmission line along the Ane Keohokalole Highway:

The [EA] determined that the construction of the sewer line improvements **will not have an adverse impact on any environmental resources, including but not limited to archaeological/cultural sites**, endangered species or any other ecosystem. Furthermore, **the proposed project would minimize the potential impact to the Kaloko-Honokohau National Historical Park’s groundwater resources** by eliminating the need to construct private wastewater treatment facilities immediately east (mauka) of these resources. Based on the approval of the [EA] and FONSI and the publication of the Notice in the Office of Environmental Quality Control’s July 23, 2019, Environmental Notice, **the proposed project has complied with the requirements of [the HEPA]**.

July 30, 2021 Report from DEM addressed to the Hawaii County Council at 5 (emphasis added) (attached to the Declaration of Richard M. Crum as Exhibit “A”). We note that the wastewater transmission line is being constructed entirely within the existing improved road rights of way that have already been graded, filled and paved.

Since the DEM determination that the EA accepted by HHFDC for the affordable housing project satisfied the HRS Chapter 343 requirements for an EA for construction of the wastewater transmission line occurred prior to the filing of the motion for extension of time, DEM’s determination occurred at the earliest practicable time pursuant to HRS § 343-5(b). The Commission should not require an environmental analysis for its action if another agency previously accepted an EA for the wastewater transmission line, the trigger in question.

Treatment of wastewater at the Kealakehe Wastewater Treatment Plant will *assure* that groundwater in the vicinity of the Project is not adversely affected by the Project. Requiring another EA in light of these findings in the accepted EA will likely not functionally protect the groundwater and community needs any more than Petitioner and its predecessors already have.

Accordingly, the Commission must reconsider its decision with respect to HRS Chapter 343. DEM, **not the Commission**, is the responsible “agency” who approved of the proposed

actions under HRS § 343-5. *See* HRS § 343-2 (“Definitions”). HEPA requires, upon an applicant action (including the use of state or county lands), that “the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required[.]” HRS § 343-5(e). “The final approving agency for the request is not required to be the accepting authority.” *Id.*

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Id. Here, HHFDC was the accepting agency. Haw. Admin. R. (“HAR”) 11-200.1-2 (defining “Accepting authority” as “the agency that initially received and agreed to process the request for an approval, that makes the determination that” an EIS or EA fulfills the requirements for acceptance). The DEM was the “final approving agency” with respect to the EA. *Id.* (defining “Approving agency” as the “agency that issues an approval prior to implementation of an applicant action”).

The Commission may feel that the EA for the affordable housing project did not adequately assess the impacts of all projects served by the wastewater transmission line. Nevertheless, the Commission cannot substitute its opinion for the DEM’s determination of compliance with the HEPA. The Commission is neither the accepting nor the approving agency with respect to the EA, and cannot usurp the authority of HHFDC or DEM provided to them under the HEPA. The Commission’s denial of the Motion for Extension, even in part, based on the lack of an EA, is erroneous.

If the Commission believes a HRS Chapter 343 analysis should be required for the full reclassification of Phase II, the Commission could grant the motion for extension of time and require Petitioner to comply with the then applicable requirements of HRS Chapter 343 prior to filing a motion to confirm reclassification of Phase II. Petitioner would accept such a condition.

3. A Cultural Assessment Cannot Be Required on a Motion for Extension of Time

It is error to require a cultural assessment as a condition to granting the Motion for Extension. To the extent a cultural assessment is required for the Project, such an assessment would be required as a condition to the commencement of Phase II of development, rather than upon granting an extension to complete Phase I. Procedurally, granting the Motion for Extension should not require an analysis of the standards for determining a district boundary amendment, as it is not a substantive finding that requires a cultural assessment.

As addressed in *Ka Pa`akai*, the issue of “maintenance of valued cultural . . . resources” arises procedurally when the Commission reviews a petition for “**reclassification of district boundaries.**” 94 Hawaii 31, 40, 7 P.3d 1068, 1077 (2000) (citing HRS § 205-17); *see also* HAR § 15-15-77 (the Commission shall consider preservation of cultural resources on a **petition to amend district boundaries**). *Ka Pa`akai* requires the Commission, on review of a petition for reclassification of district boundaries, to:

at a minimum—make specific findings and conclusions as to the following: (1) 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; (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [Commission] to reasonably protect native Hawaiian rights if they are found to exist.

94 Hawaii at 47, 7 P.3d at 1084.

Assuming *arguendo* that *Ka Pa`akai* applies, the Commission is not required to make specific findings regarding cultural resources when granting the Motion for Extension. That determination is properly made at such time as Petitioner moves to confirm the reclassification of district boundaries to commence Phase II of the development, and not as to an extension to complete improvements in already entitled lands in Phase I, which is already classified for Urban uses, has received zoning and ministerial approvals.

Because the substance of a petition to reclassify district boundaries is not before the Commission, the Commission should not deny Petitioner's Motion for Extension based on a lack of a cultural assessment. When Petitioner completes Phase I and moves to confirm the reclassified district boundaries in preparation for Phase II, the Commission *at that time* may address the cultural assessment and preservation needs outlined in *Ka Pa`akai*. Petitioner can, if necessary, prepare a cultural assessment at that time. But where no person's substantive rights are affected by Petitioner continuing to develop Phase I under existing approvals, a cultural assessment is not a procedural requirement to the Commission granting the Motion for Extension. It is therefore erroneous for the Commission to deny the Motion for Extension to complete Phase I for want of a cultural assessment.

The Order also cites *Sierra Club v. Office of Planning*, 109 Hawaii 411, 126 P.3d 1098 (2006), to support the conclusion that a HEPA analysis is required for an entire development at the “**reclassification stage**” where the development proposed use of State land. Order at COL ¶ 14 (emphasis added). *Sierra Club* supports Petitioner's position, as that

case was decided on appeal of a petition before the Commission to reclassify, **not** on a petition for extension of time as is before the Commission here. Procedurally, the Commission is denying a time extension for failure to present evidence on substantive questions that are not to be decided until Petitioner moves to confirm reclassification of Phase II.

With respect to the Commission's duties to protect cultural resources arising out of *Ka Pa`akai*, the record shows that as construction of on site improvements within the Phase I lands occurs, Petitioner will have an onsite monitor to assure that as work progresses, documented sites to be preserved are protected. And in the event that new sites, if any are discovered, those sites or artifacts will be documented and/or preserved, as required by law. Moreover, as the County assured the Commission, as work progresses within the Phase I lands, all disturbance of lands not already permitted and cleared by SHPD, will require SHPD review and approval. With these safeguards in place, the Commission's (and the public's) concerns that there may be newly discovered sites have been addressed.

Finally, Petitioner is also willing to conduct (and accept as a condition of approval) a cultural analysis prior to filing a motion to confirm reclassification of Phase II. But procedurally, because the Motion for Extension is for additional time to develop under previously granted permits, no substantive decision requiring a *Ka Pa`akai* analysis is presently before the Commission.

4. The State's Affordable Housing Needs Are Served by Approving the Motion for Extension

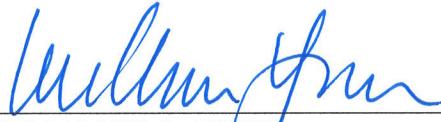
As noted in Section 1 above, once construction of the HICDC project is completed, Petitioner will have satisfied Petitioner's affordable housing requirement for up to **990 units** for the Project. Petitioner had offered to donate a similar site for affordable

housing in Phase II. The Commission's refusal to reconsider its Order denying the Motion for Extension could jeopardize the future development of Phase II and adversely impact delivery of additional affordable housing to Hawaii Island.

VI. CONCLUSION

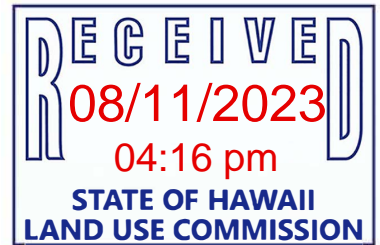
Based on the foregoing, HAR §§ 15-15-70, 15-15-78, 15-15-84 15-15-94, testimony to be provided at the hearing on this Motion, and the records and files in this matter, Petitioner RCFC KALOKO HEIGHTS, LLC, KALOKO HEIGHTS INVESTORS, LLC and KALOKO HEIGHTS B1A HOLDINGS, LLC, respectfully request that the Commission grant this Motion for Reconsideration, and subsequently grant the Motion for Extension and allow for a 10-year extension of time to substantially complete Phase I and to apply for the redistricting of Phase II.

Dated: Honolulu, Hawaii, August 11, 2023.



WILLIAM W. L. YUEN
RICHARD M. CRUM
Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS,
LLC, and KALOKO HEIGHTS
INVESTORS, LLC

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



In the Matter of the Petition of
Y-O LIMITED PARTNERSHIP

To Amend the Agricultural Land Use District
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Kaloko and Kohanaiki, North Kona, Hawaii,
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62.

DOCKET NO. A81-525

**DECLARATION OF RICHARD M.
CRUM**

DECLARATION OF RICHARD M. CRUM

I, RICHARD M. CRUM, hereby declare:

1. I am an attorney at the firm of Dentons US LLP, am duly admitted to practice law in the State of Hawaii and am one of the attorneys for Petitioner, RCFC KALOKO HEIGHTS, LLC, KALOKO HEIGHTS INVESTORS, LLC and KALOKO HEIGHTS B1A HOLDINGS, LLC ("Petitioner") in the above-referenced Docket.

2. I make this Declaration upon my personal knowledge and belief, and I am competent to testify to the matters set forth in the Memorandum described below.

3. Attached as Exhibit "A" is a copy of a July 30, 2021 Report from the County of Hawaii Department of Environmental Management ("DEM") addressed to the Hawaii County Council regarding Petitioner's construction of a sewer line and related improvements to a development at Hawaii Tax Map Keys 7-3-009: 0019, 057, 058, 059, 060, 061, 062, 070 and 071.

4. On November 22, 2022, in Docket No. A81-525, Petitioner filed with the Land Use Commission of the State of Hawaii (the "Commission") Petitioner's Motion for Extension of

Time to Apply for Redistricting of Phase II; Memorandum in Support of Motion; Exhibits A – B
(the “Motion for Extension”).

5. On August 5, 2023, the Commission issued its decision and order on the Motion for Extension, denying the relief sought.

6. On August 11, 2023, Petitioner filed with the Commission the instant Motion for Reconsideration of the August 5, 2023 decision and order on the Motion for Extension.

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

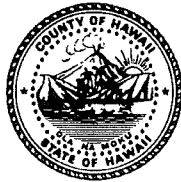
Executed in Honolulu, Hawaii, on August 11, 2023.



RICHARD M. CRUM

Mitchell D. Roth
Mayor

Lee Lord
Managing Director



Ramzi I. Mansour
Director

Brenda Iokepa-Moses
Deputy Director

County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

345 Kekūanāo'a Street, Suite 41 · Hilo, Hawai'i 96720

Ph: (808) 961-8083 · Fax: (808) 961-8086

Email: cohdem@hawaiicounty.gov

July 30, 2021

Maile Medeiros David, Council Chair; and
Members of the Hawai'i County Council
25 Aupuni Street
Hilo, Hawai'i, 96720

A. Introduction

This report has been prepared pursuant to Council Resolution No. 158-21 ("Resolution"), duly adopted on July 7, 2021. The Resolution accepted the RCFC Kaloko Heights, LLC's *Petition to Institute Community Facilities District to Construct Sewer Line Extension and Related Improvements from Kaloko Heights to Existing Sewer Line Terminus in the Vicinity of West Hawai'i Civic Center, Kaloko and Kohanaiki, North Kona, Hawai'i*, in accordance with the requirements of Hawai'i County Code (HCC) Chapter 32. The twelfth provision in the enacting clause of the Resolution further directed the Director of the Department of Environmental Management (DEM) to prepare and submit a Report of Facilities to the Council pursuant to HCC Section 32-21 which requires the Director:

"to study the proposed district and, at or before the time of the hearing (or within sixty days after adoption of the resolution of intention, or such earlier date established by the council, if the hearing is waived pursuant to section 32-24), file a report with the council containing a brief description of the proposed facilities by type which will in their opinion be required to adequately meet the needs of the district, and their estimate of the cost of providing those facilities."

The proposed Community Facilities District (CFD) contemplates the issuance of Special Tax Bonds to fund the design and construction of a sewer line that will be installed in portions of Hina Lani Street and Ane Keohokālole Highway Rights-of-Way (ROW), connecting the Kaloko Heights project area to the existing sewer lines within Ane Keohokālole Highway that connect to the County's Kealakehe Wastewater Treatment Plan (WWTP). Upon completion of the sewer line improvements, the County will own, operate and maintain the system.

The proposed improvements, consisting exclusively of a sewer system, including the incidental restoration of roadway and related improvements, are consistent with HCC Section 32-7(j) which allows wastewater systems or facilities to be financed by a CFD.

EXHIBIT "A"

1. Petitioner

RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company, whose address is 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 (“RCFC”), KALOKO HEIGHTS BIA HOLDINGS, LLC, a Delaware limited liability company, whose address is 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 (“BIA”), and KALOKO HEIGHTS INVESTORS, LLC, a Delaware limited liability company whose address is 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 (“KHI”), all of which together are herein after collectively referred to as “Petitioner” have applied to extend the public sewer system in accordance with Section 21- 26, Hawai‘i County Code, to service planned subdivision projects located on those certain lots identified as Tax Map Key(s) (TMK): 7-3-009: 019, 057, 058, 059, 060, 061, 062, 070 and 071 (“Kaloko Heights, Phases 1 and 2”). Petitioner is the owner of one hundred percent (100%) of the area that will be subject to a special tax within the CFD.

2. Kaloko Heights Project Location and Description

Petitioner is the owner of the Kaloko Heights project areas (Project Area) consisting of a total of approximately 387.355 acres of land situated in Kaloko and Kohanaiki, North Kona. (**Exhibit 1-Map of Project Area**). The property is bisected by Hina Lani Street with approximately 197.190 acres on the north side of Hina Lani Street (Phase 1) and 193.931 acres on the south side of Hina Lani Street (Phase 2).

3. Sewer Line Project Location and Description

In order to provide wastewater service to the Project as well as the Kaloko Heights Affordable Housing Project, Petitioner is proposing to construct a sewer line within portions of Hina Lani Street and Ane Keohokālole Highway rights-of-way (ROW) to connect to the existing sewer line terminus in Ane Keohokālole Highway fronting the West Hawai‘i Civic Center. A map showing the location of the proposed sewer line is included as **Exhibit No. 2**.

This sewer extension was authorized pursuant to Resolution No. 86-19 which was approved by the Hawai‘i County Council on March 28, 2019, in accordance with the requirements of HCC Section 21-26. A copy of Resolution No. 86-19 is included as **Appendix A**.

On June 24, 2021, Petitioner filed a petition with the County of Hawai‘i requesting the establishment of a CFD in accordance with the requirements of Hawai‘i County Code (HCC) Section 32-20 that the County Council, through an appropriate Resolution:

- (1) Describe the term and boundaries of the territory for inclusion in the CFD;
- (2) State the name of the CFD;
- (3) Identify the type of facilities proposed to be finance by the CFD;

- (4) State that a Special Tax sufficient to pay for all facilities, including incidental expenses, will be annually levied within the CFD, including the estimated rate and proposed method of apportionment in sufficient detail to allow each landowner to estimate the maximum annual amount that the landowner will have to pay;
- (5) State that the County intends to issue bonds payable from and secured by the Special Tax; and
- (6) Confirm that a public hearing on the establishment of the District is not required pursuant to HCC Section 32-24 (Waiver of notice and hearing when a petition is filed by owners of 100% of the land).

A copy of the Petition is included as **Appendix B**.

As discussed above, on July 7, 2021, the Hawai'i County Council adopted Resolution No. 158-21 *Declaring the Intention of the County of Hawai'i to Establish a Community Facilities District Designated as Hawai'i County Community Facilities District No. 1-2021 (Kaloko Heights), to Authorize Funding for Prescribed Special Improvements, to Authorize Levy of a Special Tax, and to Authorize Issuance of Bonds Secured by Proceeds of the Special Tax*. A copy of Resolution No. 158-21 is included as **Appendix C**.

B. HCC Chapter 32, Community Facilities Districts

This following Report has been prepared in accordance with the requirements of Resolution No. 158-21 and HCC Chapter 32 related to Community Facilities Districts. The required information pursuant to HCC §32-21 is presented below.

1. Background Information on Kaloko Heights Community Facilities District

The State Land Use Commission reclassified the Project Area from Agricultural to Urban effective January 19, 1983. The order reclassified Phase 1 from Agricultural to Urban and conditionally reclassified Phase 2 to Urban.

The County of Hawai'i approved the rezoning of the Project Area from Agricultural to Single Family Residential 15,000 square feet (RS-15), Single Family Residential 10,000 square feet (RS-10), Single Family Residential 7,500 square feet (RS-7.5), Multiple Family Residential 3,000 square feet (RM-3.0), Neighborhood Commercial 10,000 square feet (CN-10) and Open (O) pursuant to Change of Zone Ordinance No. 83-63 (effective September 19, 1983), as amended by Ordinance No. 86-91 (effective August 19, 1986).

The County General Plan Land Use Pattern Allocation Guide Map designates the area for Low Density Urban and Medium Density Urban uses.

The property is bisected by Hina Lani Street with approximately 197.190 acres on the north side of Hina Lani Street (Phase 1) and 193.931 acres on the south side of Hina Lani Street (Phase 2).

A total of approximately 1,300 single and multiple family residential units are proposed within the Project Area, including 581 units within the Phase 1 development area. The approved Site Plan for Phase 1 is included as **Exhibit No. 3**.

The Kaloko Affordable Housing Project is proposed to be developed by the Hawai‘i Island Community Development Corporation on approximately 10.75 acres of adjoining land identified as TMK: 7-3-009: 032. The affordable housing project is to consist of 100 multi-family residential units, including 99 units that would be available to very low-income households¹ and 1 manager’s unit. This area, along with sufficient water to develop the 100 residential units, has been provided at no cost to HICDC by RCFC Kaloko Heights in order to address the affordable housing requirements included as conditions of approval of the LUC Boundary Amendment and Change of Zone ordinance.

The construction of the sewer improvements will allow the wastewater from the Project Area and the Kaloko Heights Affordable Housing Project to be transmitted to and processed at the County’s Kealakehe WWTP. This will eliminate the need to construct private wastewater treatment facilities serving these projects.

The property owners within the Kaloko Heights Project Area will be responsible to pay for one hundred percent (100%) of the sewer development costs through the CFD special tax assessments. While the Kaloko Affordable Housing Project is proposed to be served by the sewer improvements, the area will not be included in the CFD in order to minimize development costs of the affordable rental project.

The proposed sewer line improvements are outside of the County Special Management Area (SMA) and therefore an SMA Use Permit is not required for the project.

2. Compliance with Hawai‘i Revised Statutes (HRS) Chapter 343

The proposed sewer improvements will be constructed within lands owned by the County of Hawai‘i. Any use of such lands require compliance with Hawai‘i Revised Statutes Chapter 343, Hawai‘i Environmental Policy Act.

On July 10, 2019, the Hawai‘i Housing Finance and Development Corporation approved the Final Environmental Assessment (FEA) and the Findings of No Significant Impact (FONSI) for the proposed Kaloko Heights Affordable Housing Project. This FEA included an assessment of the potential impacts of the construction of the proposed sewer line extension improvements within portions of the Hina Lani Street and Ane Keohokālole Highway right-of-way.

¹ The units are targeted to households with children earning less than 60% of the median income. In addition, at least 5% of the units will be set aside for eligible families experiencing homelessness, at risk of becoming homeless or transitioning out of an emergency shelter or transitional housing program.

The FEA determined that the construction of the sewer line improvements will not have an adverse impact on any environmental resources, including but not limited to archaeological/cultural sites, endangered species or any other ecosystem. Furthermore, the proposed project would minimize the potential impact to the Kaloko-Honokōhau National Historical Park's groundwater resources by eliminating the need to construct private wastewater treatment facilities immediately east (mauka) of these resources. Based on the approval of the FEA and the FONSI and the publication of the Notice in the Office of Environmental Quality Control's July 23, 2019, Environmental Notice, the proposed project has complied with the requirements of Chapter 343.

3. The general character and extent of the proposed improvements

The CFD Project is an all-gravity system within Hina Lani Street and Ane Keohokālole Highway extending from the future Holoholo Street intersection with Hina Lani Street to the existing sewer line within Ane Keohokālole Street that services the County of Hawai'i's West Hawai'i Civic Center. (See **Exhibit No. 2**)

The sewer line improvements consist of approximately 12,115 linear feet of polyvinyl chloride (PVC) sewer pipe, 39 sewer manholes and 11 laterals to adjacent properties.

The sewer improvements have been designed to accommodate the projected wastewater flow from the full buildout of the Kaloko Heights Project, the Kaloko Heights Affordable Housing Project and the adjacent properties based on the existing zoning.

4. Land Acquisition

The proposed sewer line improvements will be constructed entirely within the existing Hina Lani Street and Ane Keohokālole Highway rights-of-way. Therefore, the project will not require the acquisition of any additional land or easements to construct the proposed sewer line improvements.

5. Sewer Line Material

The recommended material for the proposed sewer improvements are in conformance with DEM's standards and shall include, but are not limited to the following:

- 257 Lineal Ft., 8-inch PVC SDR -26 sewer pipe and fittings
- 6,167 Lineal Ft., 10-inch PVC SDR -26 sewer pipe and fittings
- 5,691 Lineal Ft., 12-inch PVC SDR -26 sewer pipe and fittings
- 14 Each, sewer manholes 5. 0' to 9.5' deep
- 7 Each, lined sewer manholes 5. 0' to 9.5' deep
- 2 Each, sewer manholes 9.51' to 15.0' deep
- 5 Each, lined sewer manholes 9.51' to 15.0' deep

- 2 Each, lined sewer manholes 15. 01' to 20.0' deep
- 1 Each, lined shallow drop sewer manholes 5.0' to 9.99' deep
- 7 Each, lined shallow drop sewer manholes 10.0 to 14.99' deep
- 1 Each, lined drop sewer manholes 15.00' to 20.00' deep
- 11 Each, sewer lateral connections.

As part of the Project, the design engineer will coordinate the location of laterals to each property with DEM to optimize connection convenience. The adjacent property owners will be responsible for the improvements on their private property.

The sewer lines will be installed in trenches ranging in depth from 7' to 18'. The roadway will be restored as required by the County of Hawai'i Department of Public Works.. If any landscaping improvements are impacted by the proposed improvements, equivalent replacements will be provided as part of the project.

6. Improvement District Boundary

The boundaries of the proposed CFD consisting of Increments 1 and 2 of the Kaloko Heights Project are shown on **Exhibit 4**, "Proposed Kaloko Heights Sewer Improvement District Boundary."

7. Project Cost

The total project cost, including design, construction, and administrative costs is estimated to total approximately \$11,496,724. A detailed breakdown of the costs is provided below:

Description	Amount
Construction Costs	
Mobilization	\$700,000
Trench Excavation and Tie-In	\$2,370,000
Sewer Pipe (8-12 Inch)	\$3,140,000
Back-Fill	\$1,465,000
Sewer Manholes, Cleanouts and Concrete Jacket	\$684,500
Road Resurfacing, Striping and Related Costs	\$394,020
Construction Subtotal	\$8,753,520
Contingency (20%)	\$1,750,704
<i>Construction Costs Subtotal + Contingency</i>	\$10,504,224
Other Costs	
Design, Inspection and Construction Management	\$822,500
Project Management and Administration	\$170,000
<i>Other Costs Subtotal</i>	\$992,500

Total Sewer Improvement Cost	\$11,496,724

A more detailed summary of the construction costs is included in **Appendix D**, Engineer's Opinion of Probable Cost.

8. Necessary Plans, Data, Detail and Specification

All necessary plans and other data, details and specifications for the improvements and any other matters or details intended to apply thereto are contained in the Sewer Line Improvements approved by the Department of Public Works on August 13, 2020, Department of Water Supply on September 11, 2020, and DEM on November 18, 2020. A set of the approved construction plans and specifications is available upon request.

9. Public Interest

The construction of the sewer improvements will allow the wastewater from the Project Area as well as the Kaloko Heights Affordable Housing Project to be transmitted to and processed at the County's Kealakehe WWTP. This will eliminate the need for the construction of private wastewater treatment facilities serving these projects. Future connections to the sewer line improvements from other properties are also made possible due to the size and capacity of the sewer line improvements, which will have a design flow capacity of approximately 1 million gallons per day (the Kaloko Heights Project Area and Kaloko Heights Affordable Housing Project are estimated to generate approximately average daily flow of 364,000 gallons at full buildout). Furthermore, the proposed sewer line improvements:

- are consistent with the Hawai'i County General Plan's North Kona's Sewer Course of Action to "expand the existing sewer collection system" and the Kona Community Development Plan's (CDP) polices related to public utilities, including Policy PUB-4.4 (encourage hookup to County sewer system to protect nearshore waters), and Action PUB-4.4c (update sewerage master plan to service the entire Kona Urban Area).
- reduce/minimize impacts on the groundwater resources, if any, including the anchialine ponds and nearshore water within the Kaloko-Honokōhau National Historical Park.
- reduce development costs for HICDC's low-income rental project
- provide sewer service delivery capacity to the adjacent properties to sewer system at no cost of construction.

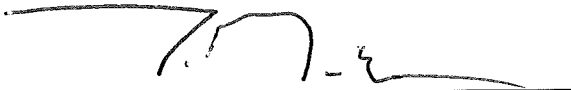
Based on the above, the proposed Hawai'i County Community Facilities District No. 1-2021 (Kaloko Heights) will be in the public interest in accordance with the requirements of HCC Chapter 32.

10. Other Findings

- a. The approved construction plans and related maps and specifications are available upon request. These maps, final details, plans, and specifications shall be used as the basis for the calling of bids and awarding of a contract for the work as provided in this chapter.
- b. The proposed Community Facilities District does not involve the construction and installation of improvements to be taken or supervised by a cooperating Department.
- c. The proposed improvement district does not require the acquisition of any new lands.

C. Conclusion

In accordance with the approval of Council Resolutions No. 86-19 and No. 158-21, it is the finding of this report that the proposed sewer improvements are in the public interest and adequately meet the needs of the district. Based on this finding, I in my capacity as the Director of the Department of Environmental Management recommend that the Council authorize the formation of the Kaloko Heights Sewer Community Facilities District in accordance with HCC Chapter 32.



Ramzi I. Mansour, Director
Department of Environmental Management

- Exhibit 1: Kaloko Heights Location Map
- Exhibit 2: Map of Proposed Sewer Improvements
- Exhibit 3: Revised Phase 1 Site Plan
- Exhibit 4: CFD Phase 1 and Phase II Boundaries

- Appendix A: Resolution No. 86-19: Authorizing the Extension of the Public Sewer from a Planned Subdivision to the Existing Sewer Line terminus in Ane Keohokālole Highway
- Appendix B: Petition to Institute Community Facilities District to Construct Sewer Line Extension and Related Improvements from Kaloko Heights to Existing Sewer Line Terminus in the Vicinity of West Hawai'i Civic Center, Kaloko and Kohanaiki, North Kona, Hawai'i.
- Appendix C: Resolution No. 158-21: Declaring the Intention of the County of Hawai'i to Establish a Community Facilities District Designated as Hawai'i County

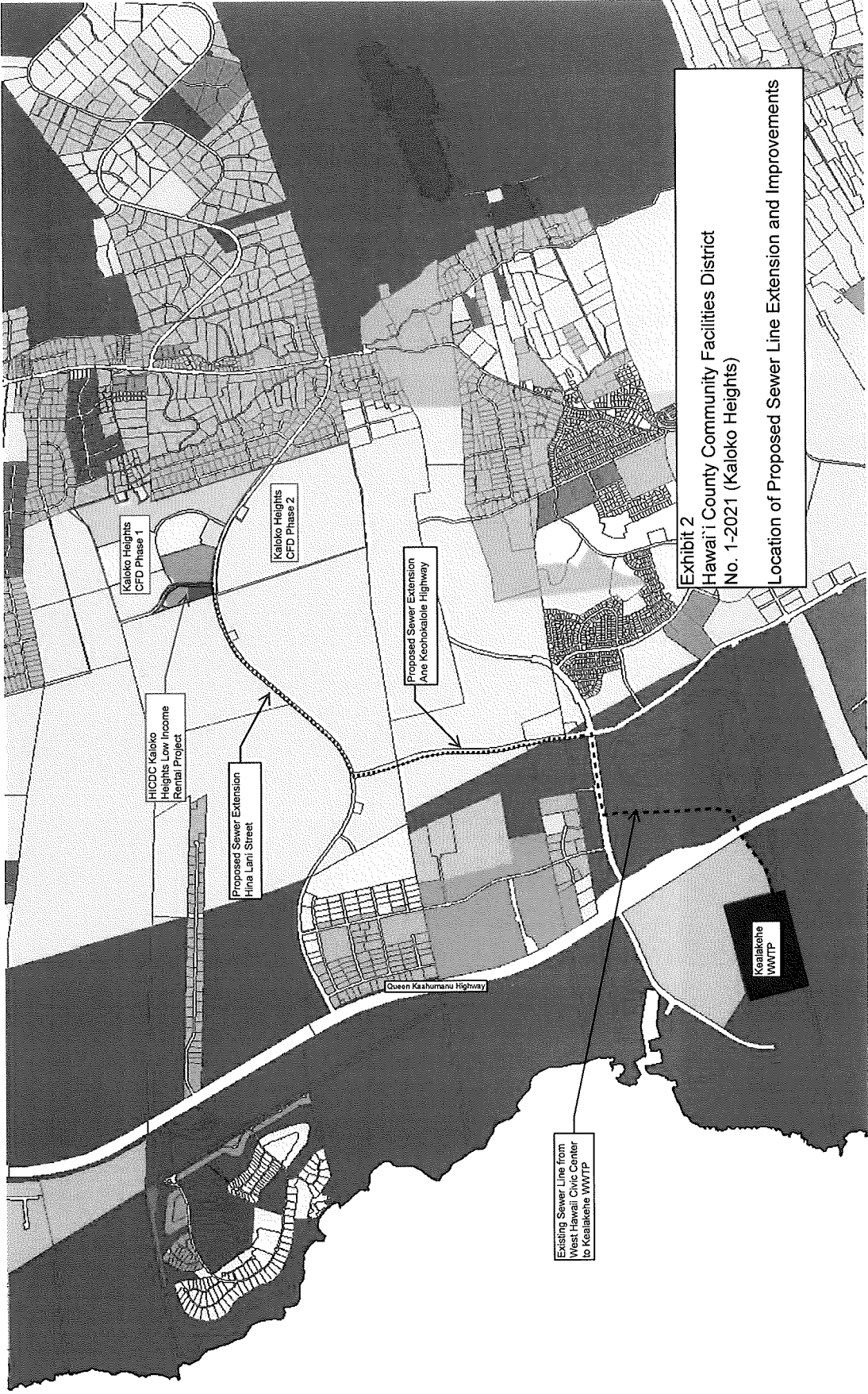
Hawai'i County Community Facilities District No. 1-2021 (Kaloko Heights)
DEM Director's Report of Facilities
July 30, 2021

Community Facilities District No. 1-2021 (Kaloko Heights), to Authorize
Funding for Prescribed Special Improvements, to Authorize Levy a Special Tax,
and to Authorize Issuance of Bonds Secured by Proceeds of the Special Tax

Appendix D: Engineer's Cost Estimate



Exhibit No. 1
 Hawai'i County Community Facilities District
 No. 1-2021 (Kaloko Heights)
 RCFC Kaloko Heights Project Area
 Location Map



Kaloko Heights
CFD Phase 1

Kaloko Heights
CFD Phase 2

Proposed Sewer Extension
Ane Keohokalo Highway

HICDC Kaloko
Heights Low Income
Rental Project

Proposed Sewer Extension
Hina Lani Street

Queen Kaahumanu Highway

Kealahou
WWTP

Existing Sewer Line from
West Hawaii Civic Center
to Kealahou WWTP

Exhibit 2
Hawaii County Community Facilities District
No. 1-2021 (Kaloko Heights)
Location of Proposed Sewer Line Extension and Improvements

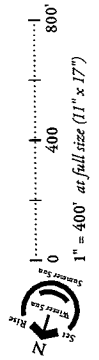
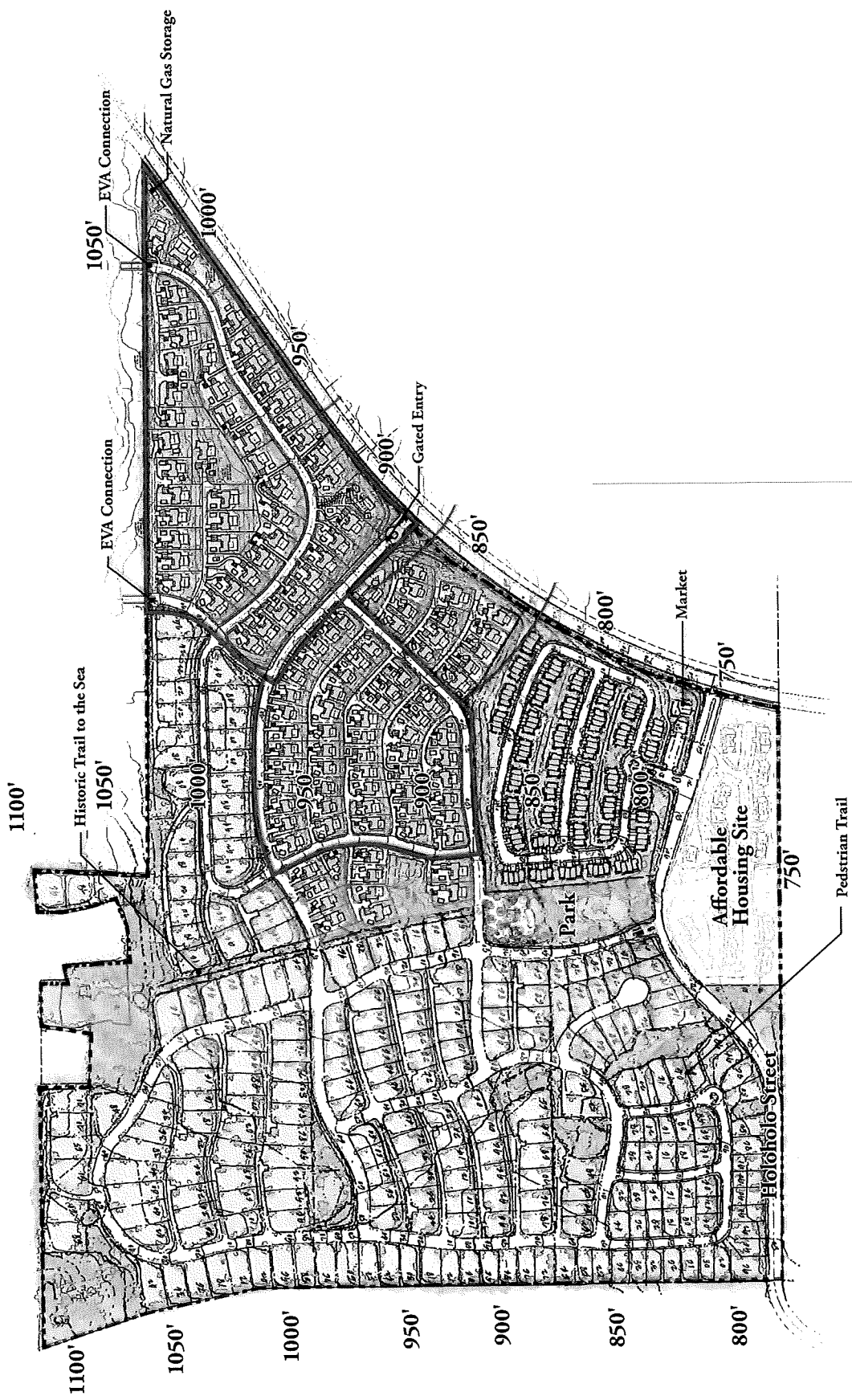


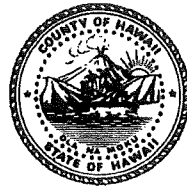
Exhibit 3

County of Hawai'i Community Facilities District No. 1-2021 (Kaloko Heights)
 Kaloko Heights Phase 1 Master Plan

HART HOWERTON
 NEW YORK • SAN FRANCISCO

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COUNTY OF HAWAI'I



STATE OF HAWAI'I

RESOLUTION NO. 86 19

A RESOLUTION AUTHORIZING THE EXTENSION OF THE PUBLIC SEWER FROM A PLANNED SUBDIVISION (PARCELS 7-3-009:019, 057, 058, 060, 061 AND 062) TO THE EXISTING SEWER LINE TERMINUS IN ANE KEOHOKALO LE HIGHWAY.

WHEREAS, applicant RCFC Kaloko Heights, LLC, a Delaware limited liability company ("RCFC Kaloko Heights"), has applied to extend the public sewer system in accordance with Section 21-26, Hawai'i County Code, to service planned subdivision projects located on parcels 7-3-009:057, 058, 059, 060, 061, and 062 ("Kaloko Heights, Phase I"), and on parcel 7-3-009:019 ("Kaloko Heights, Phase II") and to service the Hawai'i Island Community Development Corporation's ("HICDC") low income rental housing project located on parcel 7-3-009:032; and

WHEREAS, the sewer extension will consist of a gravity flow line and related improvements, including laterals provided along the sewer line extension to connect existing lots in the future, beginning at the makai boundary of Kaloko Heights, Phase I, down Hina Lani Street and then along Ane Keohokalole Highway to the existing sewer line terminus in the vicinity of the West Hawai'i Civic Center; and

WHEREAS, RCFC Kaloko Heights will construct the sewer line extension by way of an improvement district pursuant to Chapter 12, Hawai'i County Code, and in the future will be eligible to exercise conditions under section 21-28(a), Hawai'i County Code, pertaining to receipt for 10 years after completion of the sewer line extension one-half of all monies for sewer charges collected by the County from other properties connecting to the sewer line extension, provided the total of such reimbursement shall not exceed the cost incurred by RCFC Kaloko Heights to construct the sewer line extension. Plans to reimburse RCFC Kaloko Heights for construction of the sewer line extension shall require the approval of the County Council by resolution; and

WHEREAS, RCFC Kaloko Heights' Application for Sewer Extension, a map depicting the location of the sewer line extension, and a letter of support for the sewer line extension from HICDC are attached hereto as Exhibits 1, 2 and 3, respectively; and

WHEREAS, the Director of Environmental Management has recommended approval of the sewer line extension in accordance with section 21-26.1(b), Hawai'i County Code; and

WHEREAS, sewer line extensions are beneficial to the community by avoiding less desirable alternative wastewater treatment options, resulting in a cleaner, healthier environment; and

WHEREAS, Section 21-26.1(a), Hawai'i County Code requires that all sewer extensions shall be approved by resolution of the County Council, and Section 21-26.1(b) provides that the

County Council may approve applications for sewer line extensions accompanied by appropriate supporting material; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI'I that the sewer line extension as set forth hereinabove is hereby approved.

BE IT FURTHER RESOLVED that the County Clerk shall transmit copies of this resolution to the Department of Finance, Department of Public Works, Department of Environmental Management, the applicant RCFC Kaloko Heights, LLC, and the Hawai'i Island Community Development Corporation.

Dated at Kona, Hawai'i, this 28th day of March, 2019.

INTRODUCED BY:


 COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL
 County of Hawai'i
 Hilo, Hawai'i

ROLL CALL VOTE

	AYES	NOES	ABS	EX
CHUNG	X			
DAVID	X			
EOFF	X			
KANEALI'I-KLEINFELDER	X			
KIERKIEWICZ	X			
LEE LOY	X			
POINDEXTER			X	
RICHARDS	X			
VILLEGAS	X			
	8	0	1	0

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on March 28, 2019.

ATTEST:

 COUNTY CLERK
 CHAIRPERSON & PRESIDING OFFICER

Reference: C-148/AWEEMC-4
 RESOLUTION NO. 86 19

Exhibit 1

Department of Environmental Management
Wastewater Division, County of Hawai'i
Application For Sewer Extension

Part A. (must be completed)

Project Address: KALOKO & KOHANA'IKI, NORTH KONA, HAWAII Date: August 29, 2018

TMK No.: (3) 7-3-009:057, 058, 059, 060, 061 & 062; (3) 7-3-009:019; (3) 7-3-009:032

Applicant Information:
Name: RCFC KALOKO HEIGHTS, LLC
Address: 555 CALIFORNIA ST, #3450
SAN FRANCISCO, CA 94101
Company: _____
Phone No.: _____

Contractor Information:
Name: TO BE DETERMINED
Address: _____
Company: _____
Phone No.: _____

Check applicable box: Sewer Main Installation (Indicate reason for work and complete Parts B & C.)
 Sewer Lateral Installation (Indicate reason for work and complete Part C)

Reason For Work: TO CONNECT ABOVE PROPERTIES TO COUNTY OF HAWAII SEWER SYSTEM

Part B.

Sewer extensions are subject to Hawai'i County Code, Chapter 21, Division 4, Extensions. The APPLICANT shall be responsible for drafting the resolution and submitting it and supporting materials with the Application for Sewer Extension. Final documents will be submitted to County Council by the Department of Environmental Management.
Select one of the following methods of payment for cost and construction:

(Note: reimbursement refers to payments collected by the County from properties connecting to the extension)

- Section 21-28(a): Applicant constructs and pays.
- Section 21-28(b)(1): County constructs, applicant pays.
- Section 21-28(b)(2): County constructs, applicant and County share cost.

Estimated Start Date MARCH 2020 Estimated Completion Date FEBRUARY 2021

Part C.

I hereby certify that all work requested above will conform to appropriate sections of the Hawai'i County Code.

Owner Signature: [Signature] Date: 8/29/18

Department of Environmental Management, Wastewater Division

Approved by: [Signature] Date: 9/14/18
Wastewater Division Chief

Approved by: [Signature] Date: 9/19/18
Director of Environmental Management

- Note: 1) Approval of the Application for Sewer Extension does **NOT** constitute approval for construction. Approval for construction is provided by an approved Permit to Perform Work on the Public Sewer System pending final approval by the Hawai'i County Council in accordance with Section 21-26.1 of the Hawai'i County Code.
- 2) Filing of Sewer Extension Resolution is not required for sewer lateral installations.

Hawai'i County is an Equal Opportunity Provider and Employer

EXHIBIT 1

Exhibit 2

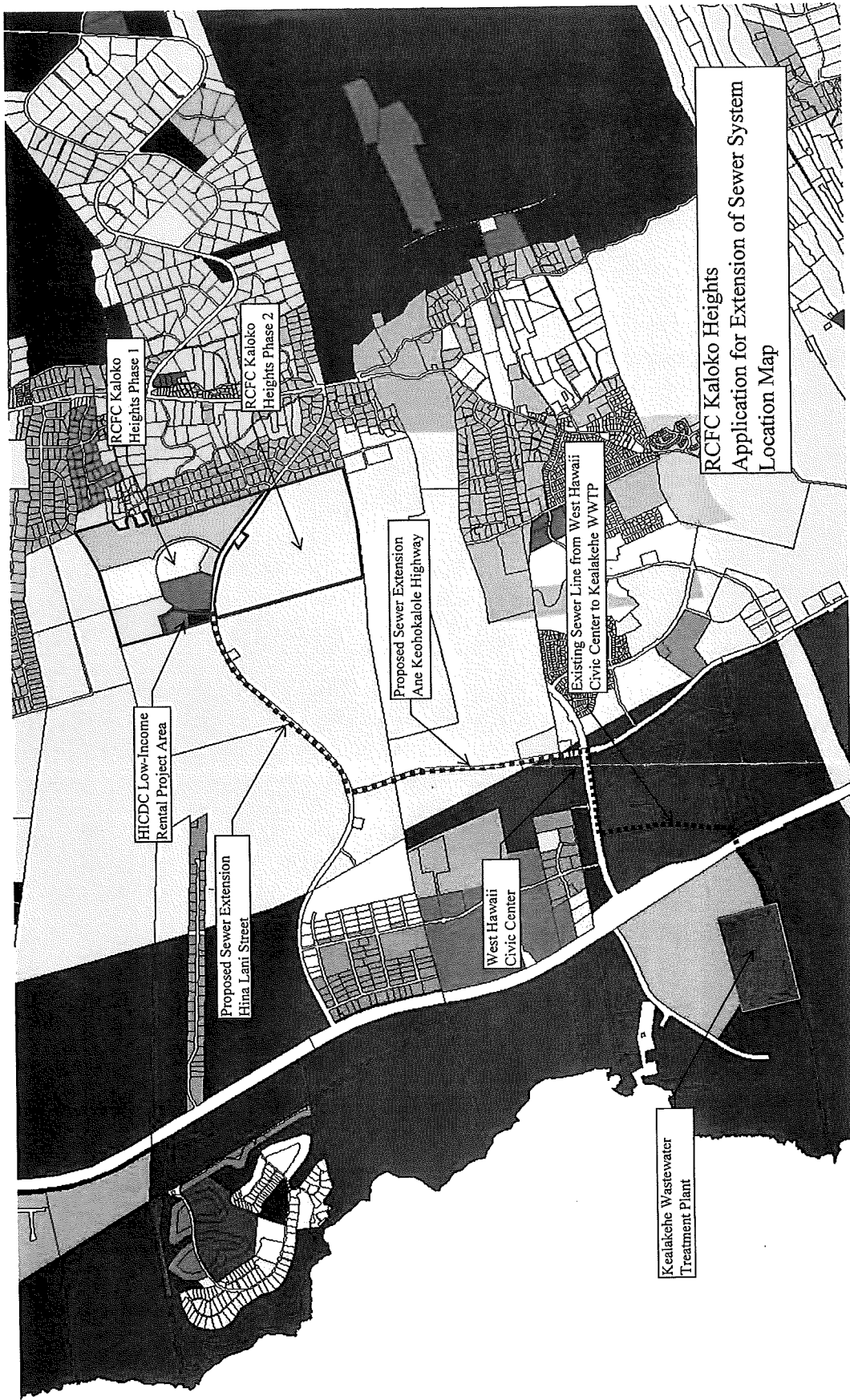


EXHIBIT 2

Exhibit 3

Stephen J. Menezes
Attorney at Law

441 Kipuni Street Hilo, Hawaii 96720
Tel (808)934-8916 Fax (808)934-8916
e-mail: stephenmenezes0@gmail.com

August 31, 2018

Curtis Bailey
Department of Environmental Management
Wastewater Division
345 Kekuaaoa Street, Suite 41
Hilo, Hawaii 96720

Re: Application for Sewer Extension : RCFC Kaloko Heights, LLC

Dear Mr. Bailey:

Your email to Keith Kato dated August 22, 2018 regarding the referenced application for sewer extension was forwarded to me. As Mr. Kato noted in his response to you, Hawaii Island Community Development Corporation ("HICDC") is not the applicant. The applicant is RCFC Kaloko Heights, LLC ("RCFC"). RCFC submitted its initial Application for Extension of Sewer System to the Department of Environmental Management by letter dated August 16, 2018. Please consider this letter as providing information supplementing RCFC's initial letter Application of August 16, 2018.

On behalf of RCFC, I have enclosed DEM's form Application for Sewer Extension, signed by RCFC on August 29, 2018, and a proposed County Council resolution authorizing the sewer extension. The application requests an extension of the public sewer system from lands owned by RCFC described below.

RCFC's project is located on both the north and south sides of Hina Lani Street and encompasses properties identified as TMKs:(3)7-3-009:057, 058, 059, 060, 061 and 062 ("Kaloko Heights, Phase I") and TMK:(3)7-3-009:019 ("Kaloko Heights, Phase II"). RCFC owns the above identified properties, with the exception of parcel TMK:(3)7-3-009-059 which is owned by Kaloko Heights BIA Holdings, LLC ("BIA") and parcel TMK:(3)7-3-009-019 which is owned by Kaloko Heights Investors, LLC ("KHI"). Both BIA and KHI have authorized and support the application for sewer extension.

The project will include single-family, multiple family and commercial uses. It will need to be connected to the County of Hawaii's sewer system by way of a sewer line from the makai boundary of the Phase I lands down Hina Lani Street and then along Ane Keohokalole Highway to the existing sewer line terminus in the vicinity of the West Hawaii Civic Center.

Adjacent to RCFC's project is a 110 unit low income rental housing project being developed by the Hawaii Island Community Development Corporation ("HICDC") on TMK:(3)7-3-009-032. HICDC supports RCFC's application for the extension of the sewer system as evidenced by its enclosed letter of support. The HICDC project lands were conveyed to HICDC by RCFC. The HICDC project received support from the Hawaii County Council in conjunction with the adoption of Resolution No. 31-17 on January 25, 2017. The HICDC project is targeted to be completed and

EXHIBIT 3

Stephen J. Menezes

Attorney at Law

441 Kipuni Street Hilo, Hawaii 96720
Tel (808)934-8916 Fax (808)934-8916
e-mail: stephenmenezes0@gmail.com

Curtis Bailey
Department of Environmental Management
August 31, 2018
Page 2

ready for occupancy no later than July 31, 2021. Funding considerations require that wastewater from HICDC's project be treated at the County's Kealakehe wastewater treatment plant by that date.

A map is enclosed depicting the location of the proposed sewer line extension to connect both RCFC's and HICDC's project to the County of Hawaii's existing sewer line. The proposed sewer line will consist of a gravity flow line and related improvements, including laterals provided along the sewer line extension to connect existing lots in the future.

RCFC is proposing to finance and construct the sewer line extension by way of an improvement district under Chapter 12, HCC. By choosing to construct the extension and bearing the total cost of construction, we believe that RCFC qualifies, under section 21-28(a), HCC, to receive for ten years after completion of the sewer extension one-half of all moneys for sewer charges collected by the County from other properties connecting to the extension. We understand that plans to reimburse RCFC for the construction will require the approval of the County Council by resolution. Our proposed County Council resolution approving the sewer extension contains language to this effect.

We would appreciate your expeditious review of this application and your recommendation for its approval to the County Council, pursuant to section 26-21(b), HCC.

Thank you for your consideration in this matter

Very truly yours,



STEPHEN J. MENEZES

Encls.

xc: Office of the Mayor
Planning Department
Department of Public Works
Mark Meyer, RCFC
Kaloko Heights BIA Holdings, LLC
Kaloko Heights Investors, LLC
Thomas Yeh
William Moore
Keith Kato, HICDC

PETITION TO INSTITUTE COMMUNITY FACILITIES DISTRICT
TO CONSTRUCT SEWER LINE EXTENSION
AND RELATED IMPROVEMENTS FROM KALOKO HEIGHTS
TO EXISTING SEWER LINE TERMINUS IN THE VICINITY OF
WEST HAWAII CIVIC CENTER,
KALOKO AND KOHANAIKI, NORTH KONA, HAWAII

COUNTY COUNCIL OF THE COUNTY OF HAWAII
25 AUPUNI STREET
HILO, HAWAII 96720

WHEREAS, RCFC KALOKO HEIGHTS, LLC, a Delaware limited liability company, whose address is 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 ("RCFC"), **KALOKO HEIGHTS BIA HOLDINGS, LLC**, a Delaware limited liability company, whose address is 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 ("BIA"), and **KALOKO HEIGHTS INVESTORS, LLC**, a Delaware limited liability company whose address is 10100 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90067 ("KHI"), all of which together are hereinafter collectively referred to as the "**PETITIONER**", are developing a project consisting of single family residential, multi-family residential, commercial, and open uses at Kaloko and Kohanaiki, North Kona, Hawaii known as Kaloko Heights (the "Project"); and

WHEREAS, the Project is bisected by Hina Lani Street with approximately 193.24 acres on the north side of Hina Lani Street, designated as Phase 1 ("Phase 1"), and 193.9311 acres on

the south side of Hina Lani Street designated as Phase 2 ("Phase 2"); and

WHEREAS, the Petitioner proposes to construct certain special improvements (the "Special Improvements") consisting of a sewer line extension and related improvements beginning at the west (makai) boundary of the Project, extending makai within Hina Lani Street and then along Ane Keohokalole Highway to the existing sewer line terminus in the vicinity of the West Hawaii Civic Center (the location of which sewer line extension and improvements is depicted on **Exhibit "A"** attached hereto); and

WHEREAS, the Special Improvements will serve the Project and also other properties that may be connected to the Special Improvements in the future, including the Hawaii Island Community Development Corporation for purposes of constructing an affordable housing development on that certain parcel of land located to the west or makai of the Project area, on TMK(3)7-3-009:032; and

WHEREAS, on March 28, 2019, the County Council adopted Resolution No. 86-19 which authorized the construction of the Special Improvements; and

WHEREAS, by Petition dated January 29, 2020 (the "Original Petition"), the Petitioner requested the County's assistance in financing the Special Improvements through the formation of an improvement district and issuance of bonds pursuant to Chapter

12, Hawaii County Code; and

WHEREAS, pursuant to Resolution No. 502-20 adopted on March 11, 2020, the Council accepted the Original Petition and authorized the initiation of proceedings for the formation of an improvement district pursuant to Chapter 12, Hawaii County Code; and

WHEREAS, although Resolution No. 86-19, the Original Petition and Resolution No. 502-20 contemplated that the Special Improvements would be constructed through the establishment of an improvement district and issuance of bonds pursuant to Chapter 12, Hawaii County Code, the Petitioner and the County of Hawaii Department of Finance have jointly determined, upon consultation, that it would be more appropriate to construct the Special Improvements through the establishment of a Community Facilities District and the issuance of bonds pursuant to Chapter 32, Hawaii County Code.

THEREFORE, PETITIONER hereby (i) withdraws the Original Petition and its request thereunder for the County's assistance under Chapter 12, Hawaii County Code, and (ii) submits this Petition to the County Council of the County of Hawaii and requests, in accordance with Section 32-18(a), Hawaii County Code, that the County Council: (a) institute the procedure for the establishment of a Community Facilities District pursuant to the provisions of Chapter 32, Hawaii County Code, by adoption of

a Resolution of Intention pursuant to Section 32-20, Hawaii County Code, and (b) undertake and carry out any and all activities necessary to complete and establish the Community Facilities District at Kaloko and Kohanaiki, North Kona, Hawaii.

In furtherance thereof, **PETITIONER** submits and requests that the Community Facilities District be instituted in accordance with and subject to the following.

I.

OWNERSHIP

PETITIONER is the owner in fee simple of one hundred percent (100%) of the entire area of land proposed to be included within the Community Facilities District located at Kaloko and Kohanaiki, North Kona, Hawaii, identified as TMK(3)7-3-009:019, 057, 058, 059, 060, 061, 062 and 070, and more particularly described in the description attached hereto as **Exhibit "B"**. There are no lessees of such land who, by the express terms of any existing leases, are obligated to pay any special taxes levied on such land under Chapter 32, Hawaii County Code.

II.

ESTABLISHMENT OF COMMUNITY FACILITIES DISTRICT

IS IN THE PUBLIC INTEREST

PETITIONER submits that the establishment of the Community Facilities District is in the public interest within the meaning

of Section 32-18(b), Hawaii County Code.

III.

BOUNDARIES OF THE COMMUNITY FACILITIES DISTRICT

The boundaries of the territory which is proposed for inclusion in the Community Facilities District, located at Kaloko and Kohanaiki, North Kona, Hawaii, are shown on the map entitled "Proposed Kaloko Heights Sewer Community Facilities District Boundaries", attached hereto as **Exhibit "C"**. The attached map shows the entire area of land proposed to be included within the Community Facilities District.

IV.

DESCRIPTION OF IMPROVEMENTS/PLANS AND SPECIFICATIONS

The Special Improvements consist of a sewer line extension and related improvements to connect **PETITIONER'S** Project as well as the Hawaii Island Community Development Corporation's Kaloko Heights Affordable Housing project, extending west within the existing rights-of-way of Hina Lani Street and Ane Keohokalole Highway to the existing sewer line within the Ane Keohokalole Highway fronting the West Hawaii Civic Center.

The sewer line extension will be an all gravity system located within the existing rights-of-way of Hina Lani Street and Ane Keohokalole Highway. The sewer line improvements will consist of approximately 12,115 linear feet of an 8-inch to 12-inch polyvinyl chloride (PVC) sewer pipe, 39 sewer manholes and

11 laterals to properties adjacent to Hina Lani Street and Ane Keohokalole Highway along the project area. The sewer improvements have been designed to accommodate the wastewater needs of **PETITIONER'S** Project, the Kaloko Heights Affordable Housing Project, and the properties adjacent to the sewer line extension based on the existing zoning.

Construction plans and specifications for the sewer line extension and related improvements, prepared by Nancy E. Burns, P.E., LLC, have been reviewed and approved by the County of Hawaii Department of Environmental Management, the Department of Public Works and the Department of Water Supply.

V.

LAND TO BE ACQUIRED

No land or easements need to be acquired for the construction of the sewer line extension and related improvements as all such special improvements will be constructed entirely within the existing rights-of way for Hina Lani Street and Ane Keohokalole Highway.

VI.

ESTIMATED COST OF IMPROVEMENTS

The preliminary estimate of the costs for the formation of the Community Facilities District and the construction of the Special Improvements, including "incidental expenses" (as defined in Section 32-16, Hawaii County Code) incurred to date

and those to be incurred in the future, and the cost of construction of the special improvements, is \$__,000,000.00.

PETITIONER requests that all such fees, costs and incidental expenses advanced or incurred by **PETITIONER** be made part of the cost of the Special Improvements and included in the amount of the proposed bonded indebtedness, pursuant to Section 32-58, Hawaii County Code, and that the actual funds expended by **PETITIONER** for such fees, costs and incidental expenses be reimbursed to **PETITIONER** at such time as funds become available from the proceeds of the sale of the bonds for the Community Facilities District.

VII.

WAIVER OF PUBLIC HEARING

As owner in fee simple of 100% of the entire land area within the proposed Community Facilities District, **PETITIONER** hereby waives the right to a public hearing on the establishment of the Community Facilities District as provided in Section 32-24, Hawaii County Code.

VIII.


REQUEST FOR FURTHER ACTION

WHEREFORE, **PETITIONER** respectfully requests that the County Council accept and grant this Petition, adopt a resolution of intention to establish the Community Facilities District in accordance with Section 32-20, and undertake all things

necessary to institute, establish, and complete the formation of the Community Facilities District located at Kaloko and Kohanaiki, North Kona, Hawaii.

IN WITNESS WHEREOF, PETITIONER has executed this Petition as of the _____ day of _____, 2021.


RCFC KALOKO HEIGHTS, LLC

By: 
Name: **AARON A. GIOVARA**
Its: Authorized Signatory

KALOKO HEIGHTS BIA HOLDINGS, LLC

By: 
Name: **AARON A. GIOVARA**
Its: Authorized Signatory

KALOKO HEIGHTS INVESTORS, LLC

By: 
Name: **AARON A. GIOVARA**
Its: Authorized Signatory

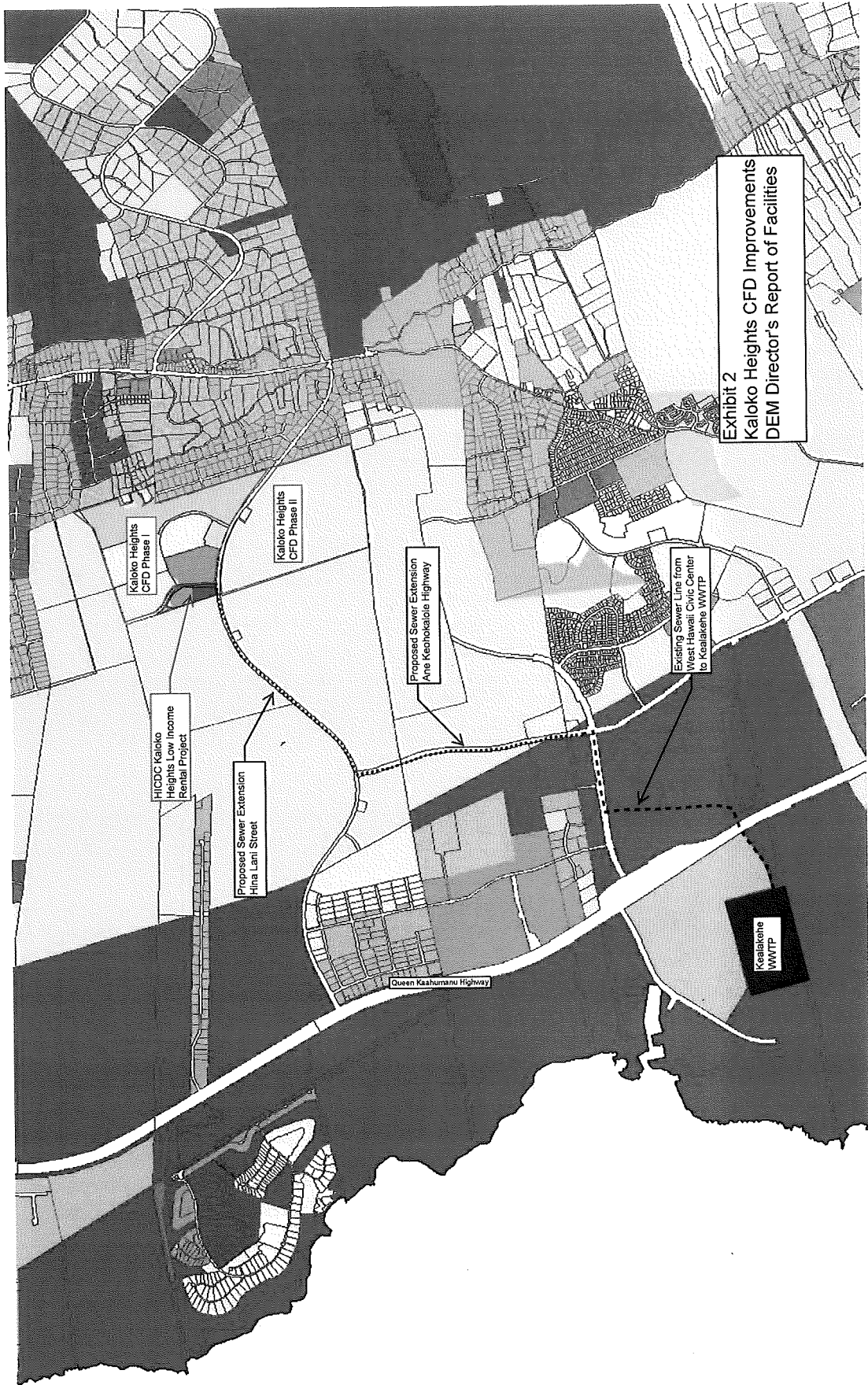


Exhibit 2
Kaloko Heights CFD Improvements
DEM Director's Report of Facilities

KALOKO HEIGHTS AFFORDABLE HOUSING SUBDIVISION

TMK (3) 7-3-009: 070 Lot 1-B

Being a portion of Grant 2942 to Hulikoa

Situate at Kaloko, North Kona, Hawaii, Hawaii

Beginning at the South corner of this parcel of land, being also the Northwest corner of Lot 1-A of Kaloko Heights Affordable Housing Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUAKO" being 13,545.46 feet South and 13,922.20 feet West thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|---|
| 1. | 162° 56' 05" | 430.38 feet | along Lot 7-C-1, along the remainder of Gr. 2942 to Hulikoa; |
| 2. | 252° 56' 05" | 17.10 feet | along Lot R-1 of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa; |
| | | | Thence along same on a curve to the left with a radius of 530.00 feet, the chord azimuth and distance being: |
| 3. | 315° 38' 10" | 309.67 feet | ; |
| 4. | 28° 39' | 222.27 feet | along Lot 1-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa to the point of beginning and containing an area of 0.730 Acres. |

Exhibit B
Kaloko Heights
Petition to Create CFD

KALOKO HEIGHTS AFFORDABLE HOUSING SUBDIVISION

TMK (3) 7-3-009: 057 Lot 2-A

Being a portion of Grant 2942 to Hulikoa

Situate at Kaloko, North Kona, Hawaii, Hawaii

Beginning at the North corner of this parcel of land, being also the Northwest corner of Lot 6 of Kaloko Heights Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUAKO" being 12,084.36 feet South and 13,376.81 feet West thence running by azimuths measured clockwise from true South:

1. 342° 54' 30" 1,355.82 feet along Lot 6 of Kaloko Heights Subdivision, along the remainder of Gr. 2942 to Hulikoa;
2. 334° 19' 46" 56.68 feet along same;
Thence along Lot 3-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa on a curve to the left with a radius of 1,075.00 feet, the chord azimuth and distance being:
3. 64° 40' 04" 152.51 feet ;
4. 60° 36' 268.78 feet along Lot 3-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942;
Thence along the same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
5. 18° 25' 40.29 feet ;
Thence along Lot R-1 of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa on a curve to the left with a radius of 530.00 feet, the chord azimuth and distance being:
6. 137° 19' 343.64 feet ;

- | | | | |
|-----|--------------|-------------|---|
| 7. | 118° 24' | 242.79 feet | along Lot R-1 of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa; |
| | | | Thence along same on a curve to the right with a radius of 470.00 feet, the chord azimuth and distance being: |
| 8. | 140° 40' | 356.18 feet | ; |
| 9. | 162° 56' | 700.90 feet | along Lot R-1 of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa; |
| 10. | 252° 14' 30" | 870.48 feet | along Lot 59, along Gr. 9468 to Mrs. Hottie Kinoulu; |
| 11. | 252° 43' 20" | 11.21 feet | along Lot 57, along Gr. 5912 to John Brooch to the point of beginning and containing an area of 25.994 Acres. |

KALOKO HEIGHTS AFFORDABLE HOUSING SUBDIVISION

TMK (3) 7-3-009: 058 Lot 3-A

Being portions of Grant 2942 to Hulikoa and
Royal Patent 8214, Land Commission Award 7715,
Apana 11 to Lota Kamehameha

Situate at Kaloko, North Kona, Hawaii, Hawaii

Beginning at the Southeast corner of this parcel of land, being also the West corner of Lot 5 of Kaloko Heights Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUAKO" being 14,733.05 feet South and 12,463.69 feet West thence running by azimuths measured clockwise from true South:

Thence along Hina Lani Street, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha on a curve to the left with a radius of 3,040.00 feet, the chord azimuth and distance being:

1. 98° 01' 53" 799.68 feet ;

Thence along Lot R-1 of Kaloko Heights Affordable Housing Subdivision, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:

2. 134° 43' 25" 42.15 feet ;

3. 179° 21' 717.31 feet along Lot R-1 of Kaloko Heights Affordable Housing Subdivision, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha and Gr. 2942 to Hulikoa;

Thence along Lot R-1 of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa on a curve to the left with a radius of 530.00 feet, the chord azimuth and distance being:

4. 167° 47' 30" 212.39 feet ;

Thence along Lot 2-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:

5. 198° 25' 40.29 feet ;

6. 240° 36' 268.78 feet

along Lot 2-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa;

Thence along the same on a curve to the right with a radius of 1,075.00 feet, the chord azimuth and distance being:

7. 244° 40' 04" 152.51 feet ;

8. 334° 19' 46" 3.32 feet

along Lot 6 of Kaloko Heights Subdivision, along the remainder of Gr. 2942 to Hulikoa;

Thence along the same on a curve to the right with a radius of 600.00 feet, the chord azimuth and distance being:

9. 248° 42' 23" 91.58 feet ;

10. 253° 05' 214.11 feet

along Lot 6 of Kaloko Heights Subdivision, along the remainder of Gr. 2942 to Hulikoa;

11. 342° 54' 30" 1065.99 feet

along Lot 4 of Kaloko Heights Subdivision, along the remainder of Gr. 2942 to Hulikoa and R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha;

Thence along Lot 5 of Kaloko Heights Subdivision, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha on a curve to the left with a radius of 70.00 feet, the chord azimuth and distance being:

- | | | | |
|-----|-------------|-------------|---|
| 12. | 31° 16' 22" | 38.06 feet | ; |
| 13. | 15° 30' | 355.73 feet | along Lot 5 of Kaloko Heights Subdivision, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha to the point of beginning and containing an area of 22.952 Acres. |

TMK No. (3) 7-3-009-059 Lot 4

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 2942 to Hulikoa and Royal Patent 8214, Land Commission Award 7715, Apana 1 to Lota Kamehameha) situate, lying and being at Kaloko and Kohanaiki, South Kona, Island of Hawaii, State of Hawaii, being LOT 4 of KALOKO HEIGHTS SUBDIVISION, and thus bounded and described as per survey dated March 14, 2006, to-wit:

Beginning at the southeast corner of this parcel of land, being also the northeast corner of Lot 5 of Kaloko Heights Subdivision, same being a portion of Royal Patent 8214, Land Commission Award 7715, Apana 1 to Lota Kamehameha, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIHEA" being 14,501.46 feet south and 11,702.55 feet west and thence running by azimuths measured clockwise from true South:

1. Along Lot 5 of Kaloko Heights Subdivision, same being a portions of R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 60.00 feet, the chord azimuth and distance being:

72° 42' 82.91 feet;

2. 116° 24' 465.61 feet along Lot 5 Kaloko Heights Subdivision, same

10. Thence along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 600.00 feet, the chord azimuth and distance being:

4° 59' 45" 451.23 feet;

11. 27° 05' 39.86 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap.1 to Lota Kamehameha;

12. 29° 00' 106.08 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha to the point of beginning and containing an area of 22.010 Acres, more or less.

TMK No. (3) 7-3-009-060 Lot 5

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 8214, Land Commission Award 7715, Apana 1 to Lota Kamehameha) situate, lying and being at Kaloko, South Kona, Island of Hawaii, State of Hawaii, being LOT 5 of KALOKO HEIGHTS SUBDIVISION and thus bounded and described as per survey dated March 16, 2006, to wit:

Beginning at the southeast corner of this parcel of land, being also the south corner of Lot 6 of Kaloko Heights Subdivision, same being a portions of Grant 2942 to Hulikoa and Royal Patent 8214, Land Commission Award 7715, Apana 1 to Lota Kamehameha and along the north side of Hina Lani Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIHEA" being 14,928.88 feet south and 11,950.38 feet west and thence running by azimuths measured clockwise from true South:

1. Along the north side of Hina Lani Street, on a curve to the left with a radius of 3040.00 feet, the chord azimuth and distance being:

110° 46' 28" 549.50 feet;

2. 195° 30' 355.73 feet along Lot 3 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
3. Thence along Lot 3 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 70.00 feet, the chord azimuth and distance being:
- 241° 40' 100.99 feet;
4. 287° 50' 43.19 feet along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lot Kamehameha;
5. 227° 10' 55.00 feet along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
6. 296° 24' 465.61 feet along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
7. Thence along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:
- 252° 42' 82.91 feet;
8. 29° 00' 192.91 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;

9. 27° 05' 280.59 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
10. Thence along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
- 71° 31' 10" 28.01 feet to the point of beginning and containing an area of 6.270 Acres, more or less.

TMK No. (3) 7-3-009-061 Lot 6

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 2942 to Hulikoa and Royal Patent 8214, Land Commission Award 7715, Apana 1 to Lota Kamehameha) situate, lying and being at Kaloko and Kohanaiki, South Kona, Island of Hawaii, State of Hawaii, being LOT 6 of KALOKO HEIGHTS SUBDIVISION and thus bounded and described as per survey dated March 14, 2006, to wit:

Beginning at the south corner of this parcel of land, being also the southeast corner of Lot 5 of Kaloko Heights Subdivision, same being a portion of Royal Patent 8214, Land Commission Award 7715, Apana 1 to Lota Kamehameha and along the north side of Hina Lani Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NOANUIHEA" being 14,928.08 feet south and 11,950.38 feet west and thence running by azimuths measured clockwise from true South:

1. Along Lot 5 of Kaloko Heights Subdivision, same being a portion of R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:
- 251° 31' 18" 28.01 feet;
2. 207° 05' 280.59 feet along Lot 5 of Kaloko Heights Subdivision, same being a portion of R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;

3. 209° 00' 298.99 feet along Lot 5 of Kaloko Heights Subdivision, same being a portion of R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha and Lot 3 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
4. 207° 05' 39.86 feet along lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
5. Thence along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 600.00 feet, the chord azimuth and distance being:
- 184° 59' 45" 451.23 feet;
6. 162° 54' 30" 271.54 feet along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
7. Thence along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 600.00 feet, the chord azimuth and distance being:
- 117° 59' 45" 847.23 feet;
8. 73° 05' 466.08 feet along Lots 4 and 3 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
9. Thence along Lot 4 of Kaloko Heights Subdivision, same being portions of Grant 2942

to Hulikoa and R.P. 8214,
L.C.Aw. 7715, Ap. 1 to Lota
Kamehameha, on a curve to the
left with a radius of 660.00
feet, the chord azimuth and
distance being:

	68° 42' 23"	91.58	feet;
10.	154° 19' 46"	60.00	feet along Lot 3 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
11.	162° 54' 30"	1355.82	feet along Lot 2 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
12.	252° 43' 20"	989.70	feet along Grant 5912 to John Broach;
13.	342° 54' 30"	1372.54	feet along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
14.	16° 29'	108.80	feet along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
15.	Thence along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 660.00 feet, the chord azimuth and distance being:		
	314° 41' 45"	624.02	feet;
16.	342° 54' 30"	271.54	feet along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;

17. Thence along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 660.00 feet, the chord azimuth and distance being:
- 4° 59' 45" 496.35 feet;
18. 27° 05' 39.86 feet along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
19. 25° 10' 298.99 feet along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
20. 27° 05' 280.59 feet along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
21. Thence along Lot 7 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:
- 342° 38' 42" 28.01 feet;
22. Thence along the north side of Hina Lani Street, on a curve to the left with a radius of 3040.00 feet, the chord azimuth and distance being:
- 117° 05' 119.22 feet to the point of beginning and containing an area of 35.354 Acres, more or less.

TMK No. (3) 7-3-009-062 Lot 7

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 2942 to Hulikoa and Royal Patent 8214, Land Commission Award 7715, Apana 1 to Lota Kamehameha) situate, lying and being at Kaloko and Kohanaiki, South Kona, Island of Hawaii, State of Hawaii, being LOT 7 of KALOKO HEIGHTS SUBDIVISION, and thus bounded and described as per survey dated March 14, 2006, to-wit:

Beginning at the southeast corner of this parcel of land, being also the southwest corner of Lot 31 of Kona Heavens Unit II (File Plan 1537) and along the north side of Hina Lani Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANOIKEA" being 16,037.48 feet south and 10,423.75 feet west and thence running by azimuths measured clockwise from true South:

1. 128° 01' 35" 1250.00 feet along the north side of Hina Lani Street;
2. Thence along the north side of Hina Lani Street, on a curve to the left with a radius of 3040.00 feet, the chord azimuth and distance being:
 123° 07' 520.36 feet;
3. Thence along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
 162° 38' 42" 28.01 feet;
4. 207° 05' 280.59 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
5. 205° 10' 298.99 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
6. 207° 05' 39.86 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942

to Hulikoa and R.P. 8214,
L.C.Aw. 7715, Ap. 1 to Lota
Kamehameha;

7. Thence along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 660.00 feet, the chords azimuth and distance being:
- | | | | |
|--|--------------|--------|-------|
| | 184° 59' 45" | 496.35 | feet; |
|--|--------------|--------|-------|
8. 162° 54' 30" 271.54 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
9. Thence along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha, on a curve to the left with a radius of 660.00 feet, the chord azimuth and distance being:
- | | | | |
|--|--------------|--------|-------|
| | 134° 41' 45" | 624.02 | feet; |
|--|--------------|--------|-------|
10. 196° 29' 108.80 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
11. 162° 54' 30" 1372.54 feet along Lot 6 of Kaloko Heights Subdivision, same being portions of Grant 2942 to Hulikoa and R.P. 8214, L.C.Aw. 7715, Ap. 1 to Lota Kamehameha;
12. 252° 43' 20" 236.42 feet along Grant 5912 to John Broach to a spike in concrete (fnd);
13. 241° 10' 408.91 feet along Grant 5912 to John Broach to a 1/2" pipe (fnd);
14. 234° 45' 20" 514.16 feet along Grant 5912 to John Broach to 1/2" pipe in concrete (fnd);

15.	343° 02' 28"	1094.77	feet along Grant 2030 to Kaiakoili and Lot B, same being a portion of Grant 2030 to Kaiakoili to a 1/2" pipe in concrete (fnd);
			Boundary follows along the middle of stone wall, same being along Grant 2942 to Hulikoa for the next three (3) courses, the direct azimuth and distance between said middle of stone wall being:
16.	71° 27' 50"	120.74	feet;
17.	73° 45'	25.67	feet;
18.	73° 14'	52.58	feet to a 1/2" pipe in concrete (fnd);
19.	344° 45' 40"	252.51	feet along a portion of Grant 2942 to Hulikoa to a nail in concrete (fnd);
			Boundary follows along the middle of stone wall, same being along Grant 2942 to Hulikoa for the next eight (8) courses, the direct azimuth and distance between said middle of stone wall being:
20.	231° 28' 30"	50.60	feet to a nail on concrete (fnd);
21.	244° 41'	19.06	feet to a nail in concrete (fnd);
22.	250° 32'	25.05	feet to a 1/2" pipe in concrete (fnd);
23.	262° 21' 30"	45.45	feet;
24.	256° 24' 30"	33.01	feet;
25.	255° 05' 30"	29.30	feet;
26.	165° 13' 30"	5.89	feet;
27.	273° 01'	8.80	feet;
28.	343° 02' 28"	191.65	feet along a portion of Grant 2030 to Kaiakoili;

29.	71° 55'	104.49	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a 1/2" pipe in concrete (fnd);
30.	332° 16' 30"	63.04	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a spike in concrete (fnd);
31.	68° 10' 15"	209.40	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a 3/4" pipe in concrete (fnd);
32.	90° 18' 45"	16.00	feet along Lot A, being a portion of Grant 2942 to Hulikoa to 1/2" pipe (fnd);
33.	61° 45' 45"	41.20	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a 3/4" pipe in concrete (fnd);
34.	344° 31' 45"	110.70	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a nail in concrete (fnd);
35.	337° 41' 45"	42.20	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a nail in concrete (fnd);
36.	326° 27' 45"	44.70	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a nail in concrete (fnd);
37.	310° 58' 45"	66.00	feet along Lot A, being a portion of Grant 2942 to Hulikoa;
38.	233° 55' 45"	117.20	feet along Lot A, being a portion of Grant 2942 to Hulikoa;
39.	240° 35' 45"	101.10	feet along Lot A, being a portion of Grant 2942 to Hulikoa;
40.	255° 16' 15"	112.15	feet along Lot A, being a portion of Grant 2942 to Hulikoa to a 1/2" pipe in concrete (fnd);

41.	338° 20' 20"	182.00	feet along Lot 2, being a portion of Grant 2030 to Kaiakoili;
42.	76° 11' 35"	476.60	feet along Lot 21, Anini Street and Lot 22 of Kona Heavens Unit III (File Plan 1837) to a 1/2" pipe (fnd);
43.	342° 56' 05"	2931.57	feet along Lots 22, 23, 24, 25, 26, Roadway Lot, 27, 28 and 29 of Kona Heavens Unit III (File Plan 1837); and Lots 27, 28, 29, Haniha Street, 30 and 31 of Kona Heavens Unit II (File Plan 1537) to the point of beginning and containing an area of 80.114 Acres, more or less.

TMK No. (3) 7-3-009-019 Lot 3-A

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha) situate, lying and being on the westerly side of Nina Lani Street at Kaloko, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 3-A and thus bounded and described as per survey prepared by Ronaldo B. Aurelio, Land Surveyor with Engineering Division, Department of Water Supply, County of Hawaii:

Beginning at the southeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 17,980.76 feet south and 9,827.20 feet west and running by azimuths measured clockwise from true South:

1.	75° 24' 06"	134.50	feet along Royal Patent 7587, Land Commission Award 11216, Apana 36 to Kekaunohi;
2.	67° 03' 45"	54.20	feet along same;
3.	82° 52' 45"	97.50	feet along same;
4.	76° 53' 15"	312.20	feet along same;
5.	79° 26' 45"	85.70	feet along same;
6.	58° 09' 45"	21.30	feet along same;
7.	90° 25' 45"	71.05	feet along same;

8.	79°	12'	25"	43.60	feet along same;
9.	67°	11'	25"	105.60	feet along same;
10.	79°	33'	45"	230.20	feet along same;
11.	69°	35'	45"	96.95	feet along same;
12.	82°	14'	45"	64.50	feet along same;
13.	100°	20'	45"	23.00	feet along same;
14.	76°	01'	05"	120.69	feet along same;
15.	88°	23'	45"	76.80	feet along same;
16.	83°	22'	15"	187.10	feet along same;
17.	85°	16'	35"	930.46	feet along same;
18.	162°	56'	05"	3,858.19	feet along the remainder of Royal Patent 214, Land Commission Award 7715, Apana 11 to Lota Kamehameha;

Thence along the southerly side of Hina Lani Street on a curve to the right with a radius of 2,960.00 feet, the chord azimuth and distance being:

19.	293°	50'	36"	1,958.79	feet;
20.	33°	41'		196.00	feet along Lot 3-B;
21.	303°	41'		315.00	feet along same;
22.	213°	41'		182.75	feet along same;
23.	308°	01'	35"	1,300.37	feet along the southerly side of Hina Lani Street;
24.	342°	56'	05"	1,892.98	feet along Kona Heavens Subdivision, Unit I, File Plan 1423 to the point of beginning and containing an area of 8,447,641 square feet or 193.9311 acres, more or less.

EXHIBIT "B"

TMK (3) 7-3-009-071 Lot R-1

KALOKO HEIGHTS AFFORDABLE HOUSING SUBDIVISION

LOT R-1

Being portions of Grant 2942 to Hulikoa and
Royal Patent 8214, Land Commission Award 7715,
Apana 11 to Lota Kamehameha

Situate at Kaloko, North Kona, Hawaii, Hawaii

Beginning at the Northwest corner of this parcel of land, being also the Northeast corner of Lot 7-C-1 of Kaloko Heights Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUAKO" being 12,374.09 feet South and 14,281.79 feet West thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|---|
| 1. | 252° 14' 30" | 68.52 feet | along Lot 59, along Grant 9468 to Mrs. Hottie Kinoulu; |
| 2. | 342° 43' 25" | 700.90 feet | along Lot 2-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa;

Thence along same on a curve to the left with a radius of 470.00 feet, the chord azimuth and distance being: |
| 3. | 320° 40' | 356.18 feet | ; |
| 4. | 298° 24' | 242.79 feet | along Lot 2-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Hulikoa;

Thence along Lot 2-A and Lot 3-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Huliko on a curve to the right with a radius of 530.00 feet, the chord azimuth and distance being: |
| 5. | 328° 52' 30" | 537.59 feet | ; |
| 6. | 359° 21' | 717.31 feet | along Lot 3-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Huliko and R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha; |

Thence along Lot 3-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:

7. 314° 43' 25" 42.15 feet ;

Thence along the North side of Hina Lani Street, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha on a curve to the left with a radius of 3,040.00 feet, the chord azimuth and distance being:

8. 89° 21' 07" 119.02 feet ;

Thence along Lot 1-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:

9. 223° 47' 24.5" 42.01 feet ;

10. 179° 21' 717.31 feet

along Lot 1-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of R. P. 8214, L. C. Aw. 7715, Ap. 11 to Lota Kamehameha and Gr. 2942 to Huliko;

Thence along Lot 1-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Huliko on a curve to the left with a radius of 470.00 feet, the chord azimuth and distance being:

11. 148° 52' 30" 476.73 feet ;

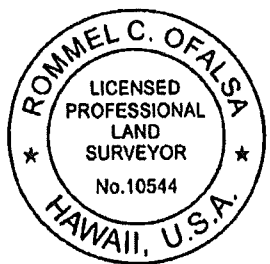
12. 118° 24' 242.79 feet along Lot 1-A of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Huliko;

Thence along Lot 1-A and Lot 1-B of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Huliko on a curve to the right with a radius of 530.00 feet, the chord azimuth and distance being:

13. 135° 30' 40" 311.88 feet ;

14. 72° 56' 05" 17.10 feet along Lot 1-B of Kaloko Heights Affordable Housing Subdivision, along the remainder of Gr. 2942 to Huliko;

15. 162° 56' 05" 794.94 feet along Lot 7-C-1, along the remainder of Gr. 2942 to Huliko to the point of beginning and containing an area of 3.766 Acres.



Description Prepared By:
Rommel C. Ofalsa Exp. 4/30/20
Rommel C. Ofalsa
Licensed Professional Land Surveyor
Certificate No. 10544

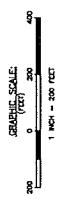
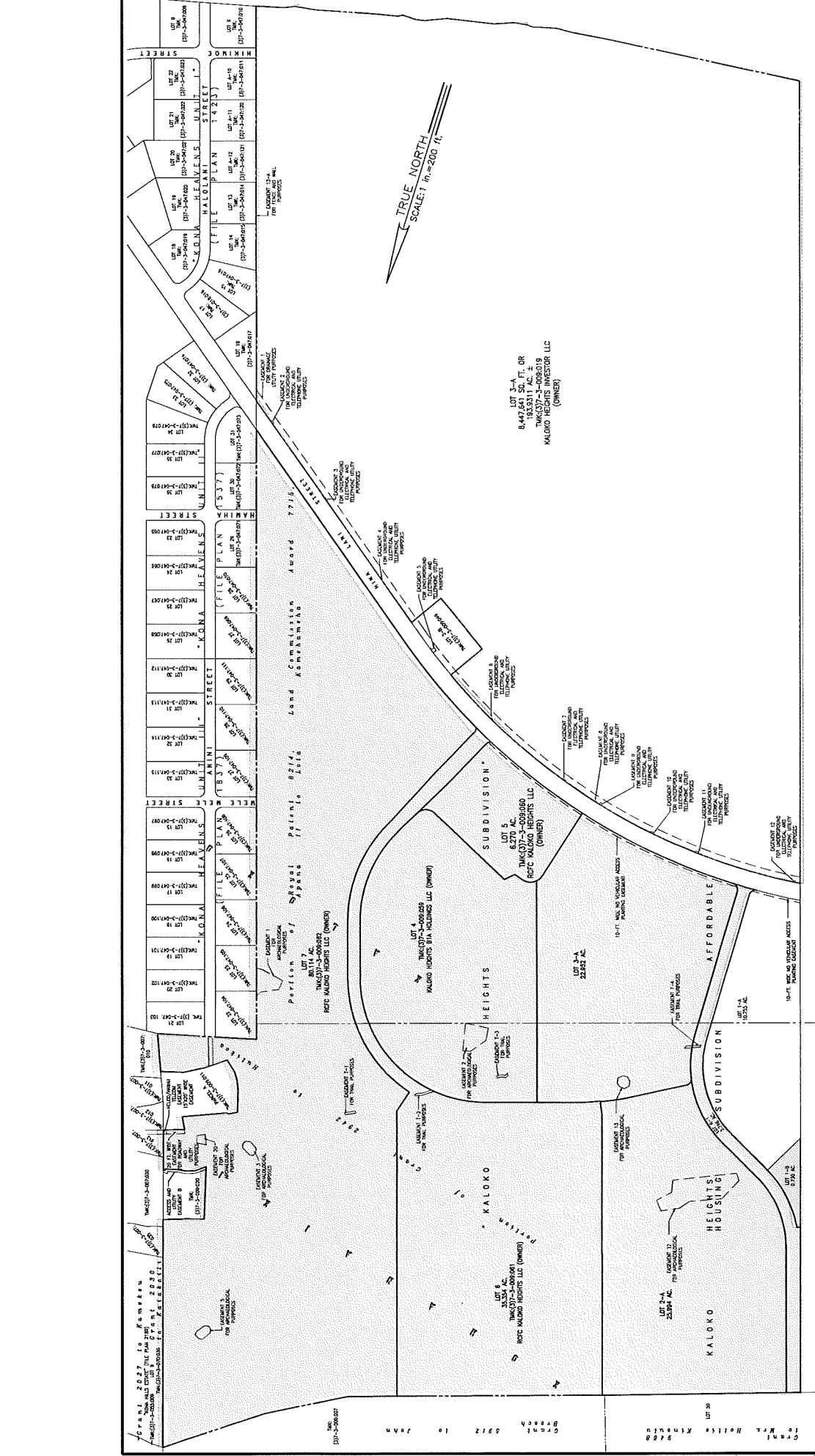
December 6, 2019
TMK: (3) 7-3-009: 032 (portion), 057 (portion), 058
X:\PROJECTS\SURVEY2019\190130_KALOKO_HEIGHTS_HOUSING\DESCRIPTIONS\LOT_R-1_DESC.doc

Exhibit C

Kaloko Heights

Petition to Create CFD

LOT 5-A
8,447 SQ. FT. OR
193,531 AC. ±
TRK(5)7-3-009(5)19
KALOKO HEIGHTS INVESTOR LLC
(OWNER)



- Kaloko Heights CFD Phase I Boundary
- Kaloko Heights CFD Phase II Boundary



COUNTY OF HAWAI‘I



STATE OF HAWAI‘I

RESOLUTION NO. 158 21

DECLARING THE INTENTION OF THE COUNTY OF HAWAI‘I TO ESTABLISH A COMMUNITY FACILITIES DISTRICT, DESIGNATED AS HAWAI‘I COUNTY COMMUNITY FACILITIES DISTRICT NO. 1-2021 (KALOKO HEIGHTS PROJECT), TO AUTHORIZE FUNDING FOR PRESCRIBED SPECIAL IMPROVEMENTS, TO AUTHORIZE LEVY OF A SPECIAL TAX, AND TO AUTHORIZE ISSUANCE OF BONDS SECURED BY PROCEEDS OF THE SPECIAL TAX

WHEREAS, RCFC Kaloko Heights, LLC, a Delaware limited liability company, Kaloko Heights BIA Holdings, LLC, a Delaware limited liability company, and Kaloko Heights Investors, LLC, a Delaware limited liability company (collectively, together with their successors and assigns, the “Petitioner”) are developing a project, known as “Kaloko Heights,” consisting of single family residential, multiple family residential, commercial, and open uses at Kaloko and Kohanaiki, North Kona, Hawai‘i (the “Project”); and

WHEREAS, in connection with the Project, the Petitioner proposes to construct certain special improvements (the “Improvements”) consisting of a sewer line extension and related improvements that will serve the Project and other properties that may be connected to the Improvements in the future, including the Hawai‘i Island Community Development Corporation’s affordable housing development to be constructed in the vicinity of the Improvements; and

WHEREAS, on March 28, 2019, the County Council of the County of Hawai‘i (the “Council”) adopted Resolution No. 86-19 which authorized the construction of the Improvements; and

WHEREAS, by Petition dated January 29, 2020 (the “Original Petition”), the Petitioner requested the County’s assistance in financing the Improvements through the formation of an improvement district and issuance of bonds pursuant to Chapter 12, Hawai‘i County Code; and

WHEREAS, pursuant to Resolution No. 502-20 adopted on March 11, 2020, the Council accepted the Original Petition and authorized the initiation of proceedings for the formation of an improvement district pursuant to Chapter 12, Hawai‘i County Code; and

WHEREAS, although Resolution No. 86-19, the Original Petition and Resolution No. 502-1 contemplated that the Improvements would be constructed through the establishment of an improvement district and issuance of bonds pursuant to Chapter 12, Hawai'i County Code, the Petitioner and the County of Hawai'i Department of Finance have jointly determined, upon consultation, that it would be more appropriate to construct the Improvements through the establishment of a community facilities district and the issuance of bonds pursuant to Chapter 32, Hawai'i County Code.

WHEREAS, in view of such determination, the Petitioner has submitted a new Petition dated June 24, 2021 (the "Petition") whereby it (i) has withdrawn the Original Petition and its request thereunder for the County's assistance under Chapter 12, Hawai'i County Code, and (ii) is requesting, in accordance with Section 32-18(a), Hawai'i County Code, that the Council: (a) institute the procedure for the establishment of a community facilities district pursuant to the provisions of Chapter 32, Hawai'i County Code, by adoption of a Resolution of Intention pursuant to Section 32-20, Hawai'i County Code, and (b) undertake and carry out any and all things necessary to complete and establish the community facilities district at Kaloko and Kohanaiki, North Kona, Hawai'i.

WHEREAS, in response to the Petition, the Council proposes (i) to establish a community facilities district (the "Proposed District") within the County of Hawai'i (the "County") under the terms of Chapter 32 of the Hawai'i County Code ("Chapter 32"), with the boundaries of the Proposed District to be as shown on the Boundary Map, which is attached to the Petition and on file with the Director of Finance of the County, and (ii) to provide for the issuance of one or more series of bonds (the "Special Tax Bonds") pursuant to Article 6 of Chapter 32 (all references hereafter in this resolution to Articles and Sections shall be deemed to be references to the corresponding Article or Section as set forth in Chapter 32 unless indicated otherwise) in an aggregate principal amount not to exceed \$22,000,000 to finance (a) all or a portion of the costs of the special improvements (the "Improvements") described in Exhibit A attached hereto, and (b) all or a portion of certain "incidental expenses," as defined in Section 32-16 and more particularly identified in Exhibit B attached hereto (the "Incidental Expenses"), which Exhibits are, by this reference, incorporated herein and made a part hereof; and

WHEREAS, the Special Tax Bonds shall be secured by the special taxes to be levied upon taxable property in the Proposed District, as herein provided; and

WHEREAS, the Council further intends, except where funds are otherwise available, to provide for the annual levy of a special tax upon the taxable parcels within the Proposed District (the "Special Taxes") in an amount sufficient to pay for the costs of the Improvements and Incidental Expenses, including the debt service on any Special Tax Bonds issued to finance or refinance any Improvements and Incidental Expenses, said Special Taxes to be calculated in accordance with the rate and method of apportionment thereof (the "Rate and Method of Apportionment") set forth in Exhibit C, attached hereto and by this reference incorporated herein and made a part hereof; and

WHEREAS, the Council intends to establish the Proposed District for a term of sixty (60) years, commencing with the fiscal year ending June 30, 2022, subject to the further provisions hereof regarding such term; and

WHEREAS, in connection with the proceedings for an improvement district and improvement district bonds originally contemplated under Chapter 12, the County and the Petitioner entered into a Deposit and Reimbursement Agreement dated May 17, 2019 (the “Original Deposit and Reimbursement Agreement”) pursuant to which the Petitioner (i) initially deposited the sum of \$75,000 with the County for the purpose of paying costs incurred by the County in connection with the then-proposed establishment of an improvement district and issuance of improvement district bonds under Chapter 12, Hawai‘i County Code, and (ii) agreed to replenish such deposit as needed for such purpose upon request of the County; and

WHEREAS, in view of the withdrawal of the Original Petition and submission of the new Petition, the Petitioner proposes to enter into an Amendment to Deposit and Reimbursement Agreement (the “Amendment to Deposit and Reimbursement Agreement”) with the County for the purpose of amending the Original Deposit and Reimbursement Agreement so as to provide for the funding of costs incurred by the County in connection with establishment of the Proposed District and issuance of Special Tax Bonds under Chapter 32; and

WHEREAS, Section 32-20 provides that proceedings for the establishment of a community facilities district pursuant to Chapter 32 shall be instituted by the adoption of a resolution of intention containing the matters set forth in said Section 32-20, as provided hereafter in this resolution; now therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I that.

1. The Council hereby finds and determines that:
 - (a) the Petition satisfies the requirements of Chapter 32 pertaining thereto;
 - (b) the Petition is signed by authorized representatives of the owners in fee simple of all of the land to be included within the Proposed District;
 - (c) there are no lessees of the land to be included within the Proposed District who, by the express terms of any existing leases, are obligated to pay the Special Taxes;
 - (d) appropriate provision has been made under the Original Deposit and Reimbursement Agreement, as amended by the Amendment to Deposit and Reimbursement Agreement, to ensure that sufficient funds have been and will be provided to pay the costs to be incurred by the County in connection with the formation of the Proposed District and issuance of the Special Tax Bonds and, accordingly, no additional deposit of funds by the Petitioner will be required for such purposes; and
 - (e) the establishment of the Proposed District is in the public interest.

2. The Proposed District is to be established under the terms of Chapter 32 and shall be named the Hawai‘i County Community Facilities District No. 1-2021 (Kaloko Heights Project).

3. The Council hereby establishes the initial boundary of the Proposed District as shown on the Boundary Map on file with the Director of Finance of the County.

4. The County intends to issue the Special Tax Bonds, in an aggregate principal amount not to exceed a maximum of \$22,000,000, exclusive of refunding bonds (if any), to finance all or a portion of the costs of the authorized Improvements and Incidental Expenses.

5. The Improvements proposed to be funded, in whole or in part, by proceeds of the Special Tax Bonds and/or the Special Taxes are set forth in Exhibit A. As set forth in Exhibit A, all of the Improvements to be funded will be owned by the County. Subject to compliance with all applicable County policies and requirements and to oversight and supervision by the County Department of Environmental Management, the Petitioner (or its authorized representative) shall be permitted to let and administer the contracts for the construction of the Improvements, and payments for the cost of such Improvements may be paid upon requisition from proceeds of the Special Tax Bonds and/or Special Taxes, all upon such terms as are set forth in a project development agreement to be entered into between the County and the Petitioner.

6. The Incidental Expenses proposed to be incurred and authorized to be paid, in whole or in part, from the proceeds of the Special Tax Bonds and/or the Special Taxes are set forth in Exhibit B.

7. Following establishment of the Proposed District, and except where funds are otherwise available, Special Taxes sufficient to pay for the costs of the Improvements and Incidental Expenses shall be annually levied within the Proposed District in accordance with the provisions of Article 5. The Rate and Method of Apportionment for the Special Taxes shall be as set forth in Exhibit C unless modified in accordance with Chapter 32 prior to establishment of the Proposed District.

8. The Original Deposit and Reimbursement Agreement and the proposed form of Amendment to Deposit and Reimbursement Agreement are attached as Exhibit D hereto. Such form of Amendment to Deposit and Reimbursement Agreement is hereby approved, and the appropriate County officials are hereby authorized to execute and deliver the same in substantially such form, with such changes as the County officials executing the same may approve.

9. Advances of funds or contributions of work in kind from any lawful source, specifically including but not limited to the County or the Petitioner, may be reimbursed from bond proceeds or from special tax revenue or both to the extent of the lesser of the value or cost of the contribution. This resolution is adopted in part for the purpose of establishing compliance with the requirements of Section 1.150-2 of the United States Treasury Regulations.

10. The Petition has been signed and filed by authorized representatives of the owners in fee simple of all of the land in the Proposed District and there are no lessees of such land who, by the express terms of any existing leases, are obligated to pay the Special Taxes. Accordingly, pursuant to Section 32-24, the Council determines that it is unnecessary to conduct a public hearing or give notice of public hearing prior to the adoption of an ordinance of formation for the Proposed District.

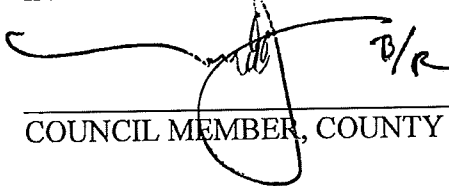
11. The term of the Proposed District shall be sixty (60) years, commencing with the fiscal year ending June 30, 2022; provided that the term of the Proposed District shall expire at such time, but in no event until such time, whether before or after the end of such term, as all bonds and other debt incurred pursuant to Chapter 32 and all incidental expenses related thereto that are payable from the Special Taxes have been fully paid or payment duly provided for.

12. The Council hereby directs the Director of Environmental Management of the County to study the Proposed District, to prepare the report required by Section 32-21 (the "Report") and to file the Report with the County Clerk not later than sixty (60) days after the adoption of this Resolution. The Director of Environmental Management may consult with and rely upon other officials and departments of the County or the State in connection with such study and the Report. If deemed necessary or desirable by the Director of Environmental Management, the study may be conducted and the Report may be prepared, in whole or in part, by an independent consultant under the supervision of such Director. The Report shall include, but not be limited to, an estimate of the cost of providing the Improvements and Incidental Expenses.

13. This Resolution shall take effect immediately upon its adoption.

Dated at Hi Lo, Hawai'i, this 7th day of July, 2021

INTRODUCED BY:

 B/R

 COUNCIL MEMBER, COUNTY OF HAWAII

COUNTY COUNCIL
 County of Hawai'i
 Hilo, Hawai'i

ROLL CALL VOTE

	AYES	NOES	ABS	EX
CHUNG	X			
DAVID	X			
INABA	X			
KĀNEALI'I-KLEINFELDER	X			
KIERKIEWICZ	X			
KIMBALL	X			
LEE LOY	X			
RICHARDS	X			
VILLEGAS	X			
	9	0	0	0

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on July 7, 2021.

ATTEST:


 COUNTY CLERK CHAIRPERSON & PRESIDING OFFICER

Reference: C-311/Waived FC
 RESOLUTION NO. 158 21

EXHIBIT A

DESCRIPTION OF AUTHORIZED IMPROVEMENTS

11/15/2023 10:00 AM

EXHIBIT A

Description of Authorized Improvements

The Improvements to be funded for the Proposed District shall consist of a sewer line extension and related improvements beginning at the west (makai) boundary of the Project, extending makai within Hina Lani Street and then along Ane Keohokālole Highway to the existing sewer line terminus in the vicinity of the West Hawai'i Civic Center. All of the Improvements to be funded will be owned and operated by the County.

EXHIBIT B

DESCRIPTION OF AUTHORIZED INCIDENTAL EXPENSES

EXHIBIT B

DESCRIPTION OF AUTHORIZED INCIDENTAL EXPENSES

A. Initial Incidental Expenses. It is anticipated that the following incidental expenses may be incurred by the County and/or the Petitioner in the proceedings for formation of the Proposed District, implementation of the authorized Improvements and related bond financing and will be payable or reimbursable from proceeds of the Special Tax Bonds or directly from the proceeds of the Special Taxes:

- Engineering, Architectural (Building and Landscape), Geotechnical and Environmental and Related, Miscellaneous Consulting services
- Survey, Staking and Contract Administration services
- Archeological and Cultural Monitoring services
- Permits, Plan Check Fees, Entitlement Processing Fees and Expenses
- Special tax consultant services
- County staff review, oversight and administrative services
- Bond Counsel, Special Tax Counsel and Disclosure Counsel services and other legal services
- Financial advisor services
- Special tax administrator services
- Appraiser/Market absorption consultant services
- Initial bond transfer agent, fiscal agent, registrar and paying agent services, and rebate calculation service set up charge
- Escrow services
- Bond printing
- Official Statement printing and mailing
- Publishing, mailing and posting of notices
- Recording fees
- Underwriter's discount, fees and expenses
- Bond reserve fund
- Capitalized interest
- Governmental notification and filing fees
- Credit enhancement costs
- Real estate acquisition costs
- Rating agency fees
- Other costs of bond issuance or special tax/district administration

B. Recurring Incidental Expenses. The expenses of certain recurring services pertaining to the Proposed District may be included in each annual special tax levy. These may include:

- Trustee, bond transfer agent, registrar and paying agent services
- Rebate calculation services and periodic arbitrage rebate payments

- Special tax administrator services
- Appraisal services
- Other necessary consultant services incidental to the administration of the Proposed District
- Rating agency fees
- Posting, collecting and enforcing payment of the special taxes, including but not limited to foreclosure attorneys' services
- Personnel and administrative services provided by County personnel
- Continuing disclosure services

The enumeration of initial and recurring Incidental Expenses under A and B above is supplemented in its entirety by the items listed in the definition of "Administrative Expenses," set forth in the Rate and Method of Apportionment, and shall not be regarded as exclusive but rather shall be deemed to include any other incidental expenses within the meaning of Chapter 32 which may be incurred from time to time with respect to the Proposed District. Without limiting the generality of the foregoing, all expenditures made from the funds deposited by the Petitioner with the County to defray the County's expenses of the proceedings for the Proposed District, implementation of authorized Improvements and related bond financings, and all amounts paid by the Petitioner to third parties providing services in connection therewith, shall constitute authorized Incidental Expenses reimbursable to the Petitioner from either proceeds of the Special Taxes or proceeds of sale of the Bonds for the Proposed District.

EXHIBIT C
RATE AND METHOD OF APPORTIONMENT

EXHIBIT C

HAWAI'I COUNTY COMMUNITY FACILITIES DISTRICT NO. 1-2021 (KALOKO HEIGHTS PROJECT)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Tax Map Key Parcel in Hawai'i County Community Facilities District No. 1-2021 (Kaloko Heights Project) ("CFD No. 1-2021") shall be levied and collected according to the tax liability determined by the County Council of the County of Hawai'i, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 1-2021, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"**Acre**" or "**Acreage**" means the land area of a TMK Parcel as shown on a Tax Map, or if the land area is not shown on a Tax Map, the land area shown on the applicable Final Plat Map, Development Plan, condominium plan, or other recorded parcel map.

"**Administrative Expenses**" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 1-2021: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules; the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the County of complying with arbitrage rebate requirements; the costs to the County of complying with disclosure requirements associated with applicable federal and state securities laws and of the Code; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the County related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; the County's administration fees and third party expenses; the costs of County staff time and reasonable overhead relating to CFD No. 1-2021; the costs incurred by the County in connection with the termination of the Special Tax in Tax Zone 2; and amounts estimated or advanced by the County for any other administrative purposes of CFD No. 1-2021, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

“Assigned Special Tax” means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.1 below.

“Authorized Improvements” means those facilities that are authorized to be funded by CFD No. 1-2021.

“Backup Special Tax” means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.2 below.

“Bonds” means bonds or other debt pursuant to Article 6 of the Code, whether in one or more series, issued, incurred, or assumed to fund Authorized Improvements.

“Buildable Lot” means an individual lot within a Final Plat Map, for which a Building Permit may be issued without further subdivision of such lot.

“Building Permit” means a single permit or set of permits required to construct a residential or non-residential structure, other than a permit issued for a foundation, parking, landscaping, or other related facility or amenity if a building permit has not yet been issued for the structure served by these facilities or amenities.

“Capitalized Interest” means funds in any capitalized interest account available to pay interest on Bonds.

“CFD Administrator” means the person or firm designated by the County to administer the Special Taxes according to this RMA.

“CFD Formation” means the date on which the Ordinance of Formation became effective.

“Code” means the Community Facilities Districts Code (1994, Ord. No. 94-77, sec. 3), being Chapter 32 of the Hawai‘i County Code 1983 (2009 Edition, as amended).

“County” means the County of Hawai‘i.

“County Council” means the County Council of the County of Hawai‘i.

“Developed Property” means, for each Fiscal Year, all Taxable Property, exclusive of Final Mapped Property and Taxable Property Owner Association Property, for which a Building Permit for new construction was issued prior to March 1 of the preceding Fiscal Year.

“Development Plan” means a site plan or other development plan, which may be updated from time to time, that identifies such information as the type of structure, acreage, and/or square footage that is approved to be developed on Taxable Property within CFD No. 1-2021.

“Expected Land Uses” means the number of Units within each Land Use Class of Residential Property, the Acreage of Other Residential Property, and the Acreage of Non-Residential Property expected within Tax Zone 1, as identified in Attachment 2 of this RMA. Attachment 2 may be updated within 30 days prior to the First Bond Sale and each time there is a Land Use Change thereafter.

“Expected Maximum Special Tax Revenues” means the annual amount of revenue that would be available in Tax Zone 1 if the Maximum Special Tax was levied on the Expected Land Uses. The Expected Maximum Special Tax Revenues at the time of approval of this RMA are shown in Attachment 2, and such amount may be adjusted pursuant to Section C or if TMK Parcels within Tax Zone 1 prepay all or a portion of the Special Tax obligation.

“Final Plat Map” means a final map approved by the County Planning Director pursuant to the Subdivision Control Code (Hawai‘i County Code Chapter 23) that creates individual lots on which Building Permits for new construction may be issued without further subdivision.

“Final Mapped Property” means, for each Fiscal Year, all Taxable Property, exclusive of Developed Property and Taxable Property Owner Association Property, which as of March 1 of the previous Fiscal Year was located within a Final Plat Map. The term Final Mapped Property shall include any parcel map or Final Plat Map, or portion thereof, that creates individual lots that cannot be further subdivided and for which a Building Permit may be issued (but has not actually been issued).

“First Bond Sale” means issuance of the first series of Bonds secured, in whole or in part, by Special Taxes levied and collected from TMK Parcels in Tax Zone 1.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Indenture” means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Land Use Change” means a change to the Expected Land Uses within Tax Zone 1 after CFD Formation, which shall include but not be limited to, approval of Final Plat Maps that reflect a different number of Buildable Lots, issuance of Building Permits that will result in a different number of Units in a particular Land Use Class, or issuance of Building Permits that reflect a different amount of Other Residential Property Acreage or Non-Residential Property Acreage than that shown in the Expected Land Uses, as determined by the CFD Administrator.

“Land Use Class” means any of the classes listed in Table 1 below.

“Land Value” means the appraised value, or the assessed value on the current County Real Property Tax Office tax roll, of a TMK Parcel, whichever is less. The CFD

Administrator shall direct that a Short Form Appraisal be prepared to determine the appraised value.

“Maximum Special Tax” means the greatest amount of Special Tax that can be levied on a TMK Parcel in any Fiscal Year determined in accordance with Section C below.

“Maximum Special Tax Revenues” means, at any point in time, the aggregate revenue that can be generated if the Maximum Special Tax is levied on all TMK Parcels of Taxable Property in Tax Zone 1.

“Non-Residential Property” means, for each Fiscal Year, all TMK Parcels of Developed Property for which a Building Permit was issued by the County after January 1, 2020, and before March 1 of the prior Fiscal Year, permitting the construction of one or more non-residential structures or facilities.

“Other Residential Property” means all TMK Parcels of Developed Property for which a Building Permit was issued by the County for purposes of constructing Units, excluding Single Family Attached Property and Single Family Detached Property.

“Ordinance of Formation” means the ordinance adopted by the County Council to form CFD No. 1-2021.

“Property Owner Association Property” means any property within the boundaries of CFD No. 1-2021 that was owned by a property owner association, including any master or sub-association, as of March 1 of the prior Fiscal Year.

“Proportionately” means (i) for Developed Property in the first step of Section D.1 below, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all TMK Parcels of Developed Property; (ii) for Developed Property in the fourth step of Section D.1 below, that the amount of the increase above the Assigned Special Tax, if necessary, is equal for all TMK Parcels of Developed Property, except that if the Backup Special Tax limits the increase on any TMK Parcel(s), then the amount of the increase shall be equal for the remaining TMK Parcels; (iii) for Final Mapped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all TMK Parcels of Final Mapped Property, separately for Tax Zone 1 and Tax Zone 2; (iv) for Undeveloped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all TMK Parcels of Undeveloped Property, separately for Tax Zone 1 and Tax Zone 2; and (v) for Taxable Property Owner Association Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all TMK Parcels of Taxable Property Owner Association Property, separately for Tax Zone 1 and Tax Zone 2.

“Public Property” means any property within the boundaries of CFD No. 1-2021 that (i) is owned by or irrevocably offered for dedication to the federal government, the State of Hawai‘i, the County, or other public agency, provided however that any property leased by a public agency to a private entity and subject to taxation under Section 32-54 of the

Code shall be classified and taxed in accordance with its use; or (ii) is encumbered by a road, access, public utility easement or other easement or recorded restriction for public use or preservation making impractical its use for any purpose other than that set forth in the easement or recorded restriction.

“Required Coverage” means the percentage by which the Expected Maximum Special Tax Revenues must exceed the sum of annual Bond debt service and annual required Administrative Expenses, as set forth in the Indenture or other formation or Bond document that sets forth the minimum required debt service coverage.

“Residential Floor Area” means all of the Square Footage of living area within the perimeter of a Unit, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be as set forth in the Building Permit(s) issued for such TMK Parcel, or as set forth in other official records maintained by the County’s Building Division or other appropriate means selected by the CFD Administrator. The actual Square Footage shall be rounded up to the next whole square foot. Once such determination has been made for a TMK Parcel, it shall remain fixed in all future Fiscal Years unless an appeal is approved that results in a change in the actual Square Footage.

“Residential Property” means, for each Fiscal Year, a TMK Parcel for which a Building Permit for new construction of one or more Units was issued after January 1, 2020, and before March 1 of the prior Fiscal Year.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Short Form Appraisal” means a limited appraisal of the land value of a TMK Parcel prepared by a qualified appraiser, as determined by the CFD Administrator, using a form similar to Fannie Mae Form 2055, which is also known as an “exterior-only inspection residential appraisal report” designed to contain a limited amount of data about the subject property and to utilize the sales comparable approach as its sole approach to concluding value.

“Single Family Attached Property” means all TMK Parcels of Developed Property for which a Building Permit was issued for construction of a residential structure consisting of two or more Units that share common walls, have separate Tax Map Keys assigned to them, and may be purchased by individual homebuyers (which shall still be the case even if the Units are purchased and subsequently offered for rent by the owner of the Unit), including such residential structures that meet the statutory definition of a condominium.

“Single Family Detached Property” means all TMK Parcels of Developed Property for which a Building Permit was issued for construction of a Unit, on one legal lot, that does not share a common wall with another Unit.

“Single Family Property” means all TMK Parcels of Single Family Attached Property and Single Family Detached Property.

“Special Tax” means a special tax levied in any Fiscal Year to pay the Tax Zone 1 Special Tax Requirement or Tax Zone 2 Special Tax Requirement.

“Square Footage” or **“Sq. Ft.”** means the floor area square footage reflected on the original construction Building Permit, or as set forth in other official records maintained by the County’s Building Division or other appropriate means selected by the CFD Administrator, issued for construction of Residential Property or Non-Residential Property, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a Building Permit for expansion or renovation of such building.

“Taxable Property” means all of the TMK Parcels within the boundaries of CFD No. 1-2021 that are not exempt from the Special Tax pursuant to law or Section F below.

“Taxable Property Owner Association Property” means, for each Fiscal Year, all TMK Parcels of Property Owner Association Property that are not exempt from the Special Tax pursuant to law or Section F below.

“Tax Map” means an official map of the County designating parcels by Tax Map Key.

“Tax Map Key” or **“TMK”** means a unique number that is assigned by the County to identify each lot or parcel or condominium within the County’s boundaries.

“Tax Map Key Parcel” or **“TMK Parcel”** means a lot or parcel shown on a Tax Map with an assigned TMK.

“Tax Zone” means a mutually exclusive geographic area, within which particular Special Tax rates may be levied pursuant to this RMA. Attachment 1 identifies the two Tax Zones in CFD No. 1-2021.

“Tax Zone 1” means the geographic area that was identified at CFD Formation by TMK Parcels 3-7-3-009-057, 3-7-3-009-058, 3-7-3-009-059, 3-7-3-009-060, 3-7-3-009-061, 3-7-3-009-062, 3-7-3-009-070, and 3-7-3-009-071, is designated in Attachment 1 of this RMA as Tax Zone 1, and is commonly referred to as Kaloko Heights Phase 1.

“Tax Zone 1 Special Tax Requirement” means the sum of the amounts necessary in any Fiscal Year to: (i) pay Administrative Expenses up to \$50,000, which amount shall escalate at a rate of two percent (2.0%) per year beginning in Fiscal Year 2022-23; (ii) pay principal and interest on Bonds which are due in the calendar year that begins in such Fiscal Year; (iii) create and/or replenish reserve funds for the Bonds; (iv) cure any delinquencies in the payment of principal or interest on Bonds which have occurred in prior Fiscal Years or (based on existing delinquencies in the payment of Special Taxes) are expected to occur in the Fiscal Year in which the tax will be collected; (v) pay all remaining Administrative Expenses in excess of the amount determined in (i) above; and (vi) pay the costs of Authorized Improvements provided that Special Taxes shall not be collected from Taxable Property Owner Association Property for this purpose. The

amounts referred to in clauses (ii) and (iii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to the Indenture; (ii) proceeds received by the County for CFD No. 1-2021 from the collection of penalties associated with delinquent Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the CFD Administrator.

“Tax Zone 2” means the geographic area that was identified at CFD Formation by TMK Parcel 3-7-3-009-019, is designated in Attachment 1 of this RMA as Tax Zone 2, and is commonly referred to as Kaloko Heights Phase 2.

“Tax Zone 2 Special Tax Requirement” means the amount necessary at any point in time to cure delinquencies in the payment of Special Taxes levied in Tax Zone 1 on Final Mapped Property and Undeveloped Property.

“Trustee” means the trustee or fiscal agent under the Indenture.

“Undeveloped Property” means, for each Fiscal Year, all Taxable Property not classified as Developed Property, Final Mapped Property, or Taxable Property Owner Association Property.

“Unit” means an individual single-family detached or attached home, townhome, condominium, apartment, or other residential dwelling unit, including each separate living area within a half-plex, duplex, triplex, fourplex, or other residential structure.

B. DATA FOR ADMINISTRATION OF THE SPECIAL TAX

Each Fiscal Year, beginning with Fiscal Year 2021-22, all Taxable Property within CFD No. 1-2021 shall be assigned to Tax Zone 1 or Tax Zone 2 and, within each Tax Zone, shall be classified as Developed Property, Final Mapped Property, Undeveloped Property, or Taxable Property Owner Association Property, and shall be subject to Special Taxes in accordance with this RMA as determined pursuant to Sections C and D below. TMK Parcels of Developed Property within Tax Zone 1 shall be further classified as Single Family Detached Property, Single Family Attached Property, Other Residential Property, or Non-Residential Property. TMK Parcels of Single Family Detached Property shall be assigned to Land Use Classes 1 through 7, as listed in Table 1 below based on the Residential Floor Area of the Units on such TMK Parcels, and TMK Parcels of Single Family Attached Property shall be assigned to Land Use Class 8. Also, Other Residential Property shall be assigned to Land Use Class 9, and Non-Residential Property shall be assigned to Land Use Class 10.

The Expected Maximum Special Tax Revenues shown in Attachment 2 were calculated based on the Expected Land Uses at the time of adoption of this RMA and are subject to modification upon the occurrence of Land Use Changes and prepayments, as described

below. At least quarterly after the First Bond Sale, the CFD Administrator shall review all new Building Permits, Final Plat Maps, condominium plans, and any other project information that has changed from the prior quarter. In addition, the CFD Administrator shall, on an ongoing basis, review all Land Use Changes. With each review, the CFD Administrator shall compare the revised land uses to the Expected Land Uses to evaluate the impact on the Expected Maximum Special Tax Revenues. Prior to the First Bond Sale and issuance of any subsequent series of Bonds, and together with the CFD Administrator's review on at least a quarterly basis, the owners of all TMK Parcels for which Building Permits have yet to be issued shall provide the CFD Administrator with a written confirmation of the Expected Land Uses on each TMK Parcel.

C. MAXIMUM SPECIAL TAX

1. Tax Zone 1

a. Developed Property

The Maximum Special Tax that may be levied in any Fiscal Year on each TMK Parcel in Tax Zone 1 classified as Developed Property shall be the greater of (i) the amount derived by application of the Assigned Special Tax or (ii) the amount derived by application of the Backup Special Tax.

1) Assigned Special Tax

The Assigned Special Tax that may be levied in any Fiscal Year for each Land Use Class is shown in Table 1 on the following page.

TABLE 1
TAX ZONE 1
ASSIGNED SPECIAL TAX – DEVELOPED PROPERTY

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax (Fiscal Year 2021-22)*
1	Single Family Detached Property	< 1,601	\$1,663 per Unit
2	Single Family Detached Property	1,601 – 1,800	\$1,913 per Unit
3	Single Family Detached Property	1,801 – 2,000	\$2,163 per Unit
4	Single Family Detached Property	2,001 – 2,200	\$2,537 per Unit
5	Single Family Detached Property	2,201 – 2,400	\$2,869 per Unit
6	Single Family Detached Property	2,401 – 2,600	\$3,119 per Unit
7	Single Family Detached Property	> 2,600	\$3,410 per Unit
8	Single Family Attached Property		\$1,281 per Unit
9	Other Residential Property		\$11,298 per Acre
10	Non-Residential Property		\$11,298 per Acre

* On July 1, 2022, and on each July 1 thereafter, all of the Assigned Special Tax rates shown in Table 1 above shall be increased by an amount equal to two percent (2.0%) of the amount in effect for the prior Fiscal Year.

2) *Backup Special Tax*

Prior to the First Bond Sale, if a Land Use Change occurs that results in a change in Expected Maximum Special Tax Revenues, no action will be needed pursuant to this Section C.1.a.2. Upon identification of the Land Use Change, the CFD Administrator shall update Attachment 2 to reflect the revised Expected Maximum Special Tax Revenues, which shall then be the amount used to size the Bonds being issued.

After the First Bond Sale, if a Land Use Change occurs that results in a change in Expected Maximum Special Tax Revenues, no action will be needed pursuant to this Section C.1.a.2 as long as the Required Coverage will still be achieved. Upon identification of the Land Use Change, the CFD Administrator shall update Attachment 2 to show the revised Expected Maximum Special Tax Revenues.

If the CFD Administrator determines that a Land Use Change would result in a failure to achieve the Required Coverage, the

Backup Special Tax shall be calculated by application of the following steps:

- Step 1:** Determine the Maximum Special Tax Revenues needed to maintain Required Coverage.
- Step 2:** Increase Proportionately the Assigned Special Tax for each Land Use Class within the Expected Land Uses that was not Developed Property in the prior Fiscal Year up to the amounts needed so that the Expected Maximum Special Tax Revenues equal the amount computed in Step 1.
- Step 3:** The Backup Special Tax for each Land Use Class of Expected Land Uses that was not Developed Property in the prior Fiscal Year shall be the amount calculated in Step 2.
- Step 4:** The Backup Special Taxes identified in Step 3 shall increase on July 1 of the next Fiscal Year, and each July 1 thereafter, by an amount equal to two percent (2.0%) of the amount in effect for the prior Fiscal Year.

After determining the Backup Special Tax, the CFD Administrator shall adjust Attachment 2 to reflect the Expected Land Uses and Expected Maximum Special Tax Revenues after the Land Use Change that necessitated the levy of the Backup Special Tax.

The duties imposed on the CFD Administrator to review Land Use Changes, Final Plat Maps, and Building Permits, and to make the calculations set forth above, are intended only to facilitate administration of the Special Tax and to better ensure the sufficiency of tax capacity to pay debt service on Bonds. Such duties are not intended to give any developer, subdivider, or owner of property in CFD No. 1-2021 any right to receive notice of the potential impact of Land Use Changes, but each such developer, subdivider, or owner of property is responsible for understanding that a Backup Special Tax may be levied because of a Land Use Change. Further, each developer, subdivider, or owner of property in CFD No. 1-2021 that is not Developed Property is required to provide information and documentation to, and to coordinate with, the CFD Administrator on at least a quarterly basis to confirm anticipated Land Use Changes and determine Expected Land Uses.

The Backup Special Tax for a TMK Parcel shall not change once a TMK Parcel is classified as Developed Property; provided, however, that the Backup Special Tax on a TMK Parcel of Developed Property shall increase each July 1 by an amount equal to two percent (2.0%) of the amount in effect for the prior Fiscal Year.

3) *Multiple Land Use Classes on a TMK Parcel*

In some instances, a TMK Parcel of Developed Property may contain more than one Land Use Class. The Maximum Special Tax levied on such TMK Parcel shall be the sum of the Maximum Special Tax for all Units of Single Family Property and Acres of Other Residential Property and Non-Residential Property (based on the pro rata share of Square Footage between Other Residential Property and Non-Residential Property, according to the applicable Building Permits, Final Plat Map, parcel map, condominium plan, or other recorded County map) located on that TMK Parcel.

b. *Final Mapped Property, Undeveloped Property, and Taxable Property Owner Association Property*

The Maximum Special Tax for Final Mapped Property, Undeveloped Property, and Taxable Property Owner Association Property in Tax Zone 1 shall be \$11,298 per Acre in Fiscal Year 2021-22, which amount shall increase on July 1, 2022, and each July 1 thereafter by an amount equal to two percent (2.0%) of the amount in effect for the prior Fiscal Year.

2. **Tax Zone 2**

a. *Developed Property*

No Special Tax shall be levied on Developed Property in Tax Zone 2.

b. *Final Mapped Property, Undeveloped Property, and Taxable Property Owner Association Property*

The Maximum Special Tax for Final Mapped Property, Undeveloped Property, and Taxable Property Owner Association Property in Tax Zone 2 shall be \$22,596 per Acre in Fiscal Year 2021-22, which amount shall increase on July 1, 2022, and each July 1 thereafter by an amount equal to two percent (2.0%) of the amount in effect for the prior Fiscal Year.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

1. Tax Zone 1

Each Fiscal Year, beginning with Fiscal Year 2021-22, the CFD Administrator shall determine the Tax Zone 1 Special Tax Requirement for that Fiscal Year and levy the Special Tax on all TMK Parcels of Taxable Property in Tax Zone 1 as follows:

- Step 1:* If needed to satisfy the Tax Zone 1 Special Tax Requirement, but not accounting for Capitalized Interest, the Special Tax shall be levied Proportionately on each TMK Parcel of Developed Property in Tax Zone 1 up to 100% of the applicable Assigned Special Tax.
- Step 2:* If additional monies are needed to satisfy the Tax Zone 1 Special Tax Requirement after Step 1 has been completed, and after applying Capitalized Interest, then the Special Tax shall be levied Proportionately on each TMK Parcel of Final Mapped Property in Tax Zone 1 up to 100% of the Maximum Special Tax for Final Mapped Property in Tax Zone 1.
- Step 3:* If additional monies are needed to satisfy the Tax Zone 1 Special Tax Requirement after the first two steps have been completed, then the Special Tax shall be levied Proportionately on each TMK Parcel of Undeveloped Property in Tax Zone 1 up to 100% of the Maximum Special Tax for Undeveloped Property in Tax Zone 1.
- Step 4:* If additional monies are needed to satisfy the Tax Zone 1 Special Tax Requirement after the first three steps have been completed, then the levy of the Special Tax on each TMK Parcel of Developed Property in Tax Zone 1 whose Maximum Special Tax is determined through the application of the Backup Special Tax shall be increased Proportionately from the Assigned Special Tax up to the Maximum Special Tax for each such TMK Parcel until the amount levied is equal to the Tax Zone 1 Special Tax Requirement.
- Step 5:* If additional monies are needed to satisfy the Tax Zone 1 Special Tax Requirement after the first four steps have been completed, then the Special Tax shall be levied Proportionately on each TMK Parcel of Taxable Property Owner Association Property in Tax Zone 1 up to the Maximum Special Tax for Taxable Property Owner Association Property in Tax Zone 1.

Notwithstanding the above, under no circumstances shall the Special Tax levied in any Fiscal Year on any TMK Parcel of Single Family Property or Other

Residential Property in Tax Zone 1 for which an occupancy permit for private residential use has been issued be increased as a result of delinquency or default by the owner or owners of any other TMK Parcel or TMK Parcels within Tax Zone 1 by more than ten percent (10.0%) above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

2. Tax Zone 2

At the earliest possible date on which the County Real Property Tax Office is able to provide information to the CFD Administrator regarding the collection of Special Taxes within Tax Zone 1, the CFD Administrator shall determine the total aggregate Special Taxes levied on Final Mapped Property and Undeveloped Property within Tax Zone 1 that are delinquent. Within five business days after making such determination, the CFD Administrator shall do the following:

- Step 1:* Calculate the Tax Zone 2 Special Tax Requirement.
- Step 2:* If needed to satisfy the Tax Zone 2 Special Tax Requirement, then the Special Tax shall be levied Proportionately on each TMK Parcel of Final Mapped Property in Tax Zone 2 up to 100% of the Maximum Special Tax for Final Mapped Property in Tax Zone 2.
- Step 3:* If additional monies are needed to satisfy the Tax Zone 2 Special Tax Requirement after the first two steps have been completed, then the Special Tax shall be levied Proportionately on each TMK Parcel of Undeveloped Property in Tax Zone 2 up to 100% of the Maximum Special Tax for Undeveloped Property in Tax Zone 2.
- Step 4:* If additional monies are needed to satisfy the Tax Zone 2 Special Tax Requirement after the first three steps have been completed, then the Special Tax shall be levied Proportionately on each TMK Parcel of Taxable Property Owner Association Property in Tax Zone 2 up to the Maximum Special Tax for Taxable Property Owner Association Property in Tax Zone 2.
- Step 5:* For each TMK Parcel in Tax Zone 2 to be taxed, prepare and send a direct bill via overnight delivery to the record owner of such TMK Parcel based on ownership and address information available from the current County Real Property Tax Office tax roll.

The Special Tax in Tax Zone 2 shall be due and payable within 30 days from the date of delivery of the direct tax bill. If, within 30 days from the date the direct bill was delivered, payment of the Special Tax levied against a TMK Parcel in Tax Zone 2 has not been received by the County or the CFD Administrator, foreclosure proceedings shall commence immediately against such TMK parcel. The Special Tax shall have the same priority and bear the same penalties and

interest after delinquency as do *ad valorem* real property taxes. Notwithstanding the foregoing, the Special Tax may be collected in the same manner and at the same time as ordinary *ad valorem* real property taxes.

E. COLLECTION OF SPECIAL TAX

The Special Taxes in Tax Zone 1 will be collected in the same manner and at the same time as ordinary *ad valorem* real property taxes; provided, however, that prepayments are permitted as set forth in Section G below and provided further that the County may directly bill the Special Taxes and may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent TMK Parcels as permitted by the Code.

F. EXEMPTIONS

No Special Tax shall be levied on up to 60.0 Acres of Property Owner Association Property in Tax Zone 1. Tax-exempt status will be assigned by the CFD Administrator in the chronological order in which property becomes Property Owner Association Property within Tax Zone 1.

Property Owner Association Property that is not exempt from the Special Tax under this section shall be subject to the levy of a Special Tax and shall be taxed Proportionately as part of the fifth step in Section D.1 above, or part of the fourth step in Section D.2 above, up to 100% of the applicable Maximum Special Tax for Taxable Property Owner Association Property. Also, the nonexempt owner of a leasehold or possessory interest in Public Property shall be subject to the levy of a Special Tax pursuant to Section 32-54 of the Code and shall be classified and taxed as Developed Property, Final Mapped Property, Undeveloped Property, or Taxable Property Owner Association Property.

No Special Tax shall be levied in any Fiscal Year on TMK Parcels in Tax Zone 1 that have fully prepaid the Special Tax obligation pursuant to the formula set forth below in Section G.

G. PREPAYMENT OF SPECIAL TAX

The Special Tax obligation of a TMK Parcel in Tax Zone 1 may be prepaid; however, the Special Tax obligation of a TMK Parcel in Tax Zone 2 cannot be prepaid. The following definitions apply to this Section G:

“Construction Fund” means funds or accounts (regardless of their names) identified in the Indenture to hold monies that are available to acquire or construct public facilities eligible under the Code.

“Outstanding Bonds” means all Previously Issued Bonds which remain outstanding, with the following exception: if a Special Tax has been levied against, or already paid by, a TMK Parcel making a prepayment, and a portion of the Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the CFD Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

“Previously Issued Bonds” means all Bonds that have been issued on behalf of CFD No. 1-2021 prior to the date of prepayment.

“Public Facilities Requirements” means either \$13,229,000 in 2021 dollars, which shall increase by the Public Facilities Inflation Index on July 1, 2022, and each July 1 thereafter, or such lower number as (i) determined by the CFD Administrator as sufficient to fund the public facilities to be provided under the authorized bonding program for CFD No. 1-2021, or (ii) shall be determined by the County Council concurrently with a covenant that it will not issue any more Bonds to be supported by Special Taxes levied under this RMA as described in Section D above.

“Public Facilities Inflation Index” means the annual percentage change in the *Honolulu Construction Cost Index: Single Family Residence*, measured as of December of the calendar year which ends in the previous Fiscal Year. In the event this index ceases to be published, the Public Facilities Inflation Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the *Honolulu Construction Cost Index: Single Family Residence*.

“Remaining Facilities Costs” means the Public Facilities Requirements (as defined above), minus public facility costs funded by Previously Issued Bonds (as defined above), developer equity, Special Tax prepayments, and/or any other source of funding.

1. Full Prepayment

The Special Tax obligation may be prepaid and the obligation of a TMK Parcel in Tax Zone 1 to pay the Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such TMK Parcel at the time of prepayment. An owner of a TMK Parcel intending to prepay the Special Tax obligation shall provide the County with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such TMK Parcel; the CFD Administrator may charge a fee for providing this service. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid

Special Taxes. The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
<u>less</u>	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount shall be determined by the CFD Administrator pursuant to the following steps:

- Step 1:* Confirm that no Special Tax delinquencies apply to such TMK Parcel.
- Step 2:* Compute the total Maximum Special Tax that could be levied on the TMK Parcel prepaying the Special Tax in the Fiscal Year in which prepayment would be received by the County, as set forth in Section C above. For TMK Parcels of Developed Property, the Maximum Special Tax equals the greater of the Assigned Special Tax and Backup Special Tax.
- Step 3:* (a) Divide the Maximum Special Tax computed pursuant to Step 2 for such TMK Parcel by the total estimated Maximum Special Tax Revenues that could be levied in that Fiscal Year on property within Tax Zone 1, as set forth in Section C above, excluding any TMK Parcels which have prepaid their Special Tax obligation, and
- (b) Divide the Maximum Special Tax computed pursuant to Step 2 for such TMK Parcel by the Maximum Special Tax Revenues that could be generated at buildout for the entire Tax Zone 1 area as determined by the CFD Administrator based on the Development Plan and other information currently available, excluding any TMK Parcels which have prepaid their Special Tax obligation.
- Step 4:* Multiply the larger quotient computed pursuant to Steps 3(a) or 3(b) by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the "Bond Redemption Amount"*).
- Step 5:* Compute the current Remaining Facilities Costs (if any).
- Step 6:* Multiply the larger quotient computed pursuant to Steps 3(a) or 3(b) by the amount determined pursuant to Step 5 to compute the

amount of Remaining Facilities Costs to be prepaid (*the "Remaining Facilities Amount"*).

- Step 7:** Multiply the Bond Redemption Amount computed pursuant to Step 4 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "Redemption Premium"*).
- Step 8:** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.
- Step 9:** Compute the amount of interest the County reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 10:** Take the amount computed pursuant to Step 8 and subtract the amount computed pursuant to Step 9 (*the "Defeasance Requirement"*).
- Step 11:** Determine the costs to compute the prepayment amount, the costs to invest the prepayment proceeds, the costs to redeem Bonds, the costs to record any notices to evidence the prepayment and the redemption, and any other administrative costs associated with the prepayment (*the "Administrative Fees and Expenses"*).
- Step 12:** If and to the extent so provided in the Indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the "Reserve Fund Credit"*). No Reserve Fund Credit shall be granted if reserve funds are below 100% of the reserve requirement on the calculation date.
- Step 13:** The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 4, 6, 7, 10, and 11, less the amount computed pursuant to Step 12 (*the "Prepayment Amount"*).
- Step 14:** From the Prepayment Amount, the amounts computed pursuant to Steps 4, 7, 10, and 12 shall be deposited into the appropriate fund as established under the Indenture and used to retire Outstanding Bonds or make debt service payments. The amount computed

pursuant to Step 6 shall be deposited into the Construction Fund. The amount computed pursuant to Step 11 shall be retained by the County for CFD No. 1-2021.

The Special Tax Prepayment Amount may be sufficient to redeem other than a \$5,000 increment of Bonds. In such cases, the increment above \$5,000, or integral multiple thereof, will be retained in the appropriate fund established under the Indenture to be used with the next prepayment of Bonds or to make debt service payments as provided in the Indenture.

For any TMK Parcel that is prepaid, the County Council shall cause a suitable notice to be recorded and filed with the Bureau of Conveyances and/or Land Court in compliance with the Code, to indicate the prepayment of Special Taxes and the release of the Special Tax lien on such TMK Parcel, and the obligation of such TMK Parcel to pay the Special Tax shall cease. The CFD Administrator shall mail a copy of the notice to the owner and any known lessee of the property.

Notwithstanding the foregoing, no Special Tax prepayment shall be allowed unless the amount of Assigned Special Tax that may be levied on Taxable Property (excluding Taxable Property Owner Association Property) at buildout of the entire Tax Zone 1 area, as determined by the CFD Administrator based on the Development Plan and other information currently available, both prior to and after the proposed prepayment, is at least 1.1 times the maximum annual debt service on all Outstanding Bonds plus the estimated Administrative Expenses.

2. Partial Prepayment

The Special Tax on a TMK Parcel of Taxable Property in Tax Zone 1 may be partially prepaid. The amount of the prepayment shall be calculated as in Section G.1, except that a partial prepayment shall be calculated by the CFD Administrator according to the following formula:

$$PP = (PF - AE) \times \% + AE.$$

The terms above have the following meaning:

- PP = the partial prepayment
- PF = the Prepayment Amount (full prepayment) for the Special Tax calculated according to Section G.1
- AE = the Administrative Fees and Expenses determined pursuant to Step 11 above
- % = the percentage by which the owner of the TMK Parcel(s) is partially prepaying the Special Tax

The Special Tax partial prepayment amount must be sufficient to redeem at least a \$5,000 increment of Bonds.

The owner of any TMK Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay the Special Tax and the percentage by which the Special Tax shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the Special Tax within thirty (30) days of the request and may charge a fee for providing this service. With respect to any TMK Parcel that is partially prepaid, the CFD Administrator shall (i) distribute the remitted prepayment funds according to Section G.1, and (ii) indicate in the records of CFD No. 1-2021 that there has been a partial prepayment of the Special Tax and that a portion of the Special Tax with respect to such TMK Parcel, equal to the outstanding percentage (1.00 - "%", as defined above) of the Maximum Special Tax, shall continue to be levied on such TMK Parcel pursuant to Section D.1.

Notwithstanding the foregoing, no Special Tax partial prepayment shall be allowed unless the amount of Assigned Special Tax that may be levied on Taxable Property (excluding Taxable Property Owner Association Property) at buildout of the entire Tax Zone 1 area, as determined by the CFD Administrator based on the Development Plan and other information currently available, both prior to and after the proposed partial prepayment, is at least 1.1 times the maximum annual debt service on all Outstanding Bonds plus the estimated Administrative Expenses.

H. INTERPRETATION OF SPECIAL TAX FORMULA

The County reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning the Special Taxes. In addition, interpretation and application of any section of this document shall be left to the County's discretion. Interpretations may be made by the County by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this RMA.

I. TERM OF SPECIAL TAX

1. Tax Zone 1

The Fiscal Year after which no further Special Tax shall be levied or collected in Tax Zone 1 is Fiscal Year 2060-61, except that the Special Tax that was lawfully levied in or before such Fiscal Year and that remains delinquent may be collected in subsequent years.

2. Tax Zone 2

The Special Tax in Tax Zone 2 shall be levied for the period necessary to fully satisfy the Tax Zone 2 Special Tax Requirement, but in no event shall the Special

Tax be levied in Tax Zone 2 after the earlier of (i) June 30, 2021, or (ii) the date on which the CFD Administrator files with the County Council a written notification (which the CFD Administrator shall file as soon as reasonably practicable after the close of a Fiscal Year) that the following events all occurred in the prior Fiscal Year:

- a. **Debt Service Test.** The County Council has resolved or covenanted that it will not issue any additional Bonds for CFD No. 1-2021 except for refunding purposes, provided that the debt service in any Fiscal Year on all outstanding Bonds after such issuance does not exceed the debt service on the Bonds before the refunding; and
- b. **Special Tax Revenue Test – Developed Property.** The aggregate Special Taxes received from Taxable Property in CFD No. 1-2021 from the levy of such Fiscal Year’s Special Tax (as opposed to receipts from prior Fiscal Years and penalties and interest) on TMK Parcels in Tax Zone 1 that were classified as Developed Property for such Fiscal Year were not less than 50% of such Fiscal Year’s Tax Zone 1 Special Tax Requirement; and
- c. **Special Tax Revenue Test – Developed Property Plus Final Mapped Property.** The aggregate Special Taxes received from Taxable Property in CFD No. 1-2021 from the levy of such Fiscal Year’s Special Tax (as opposed to receipts from prior Fiscal Years and penalties and interest) on TMK Parcels in Tax Zone 1 that were classified as Developed Property or as Final Mapped Property for such Fiscal Year were not less than 75% of such Fiscal Year’s Tax Zone 1 Special Tax Requirement; and
- d. **Special Tax Revenue Test – Developed Property Plus Final Mapped Property Plus Undeveloped Property.** The aggregate Special Taxes received from Taxable Property in CFD No. 1-2021 from the levy of such Fiscal Year’s Special Tax (as opposed to receipts from prior Fiscal Years and penalties and interest) on TMK Parcels in Tax Zone 1 that were classified as Developed Property, as Final Mapped Property, or as Undeveloped Property for such Fiscal Year were not less than 100% of such Fiscal Year’s Tax Zone 1 Special Tax Requirement; and
- e. **Value Test.** The “value of real property,” as defined in Section 32-57(c) of the Code, of the Taxable Property in Tax Zone 1 is at least three times the principal amount of Bonds then outstanding; and

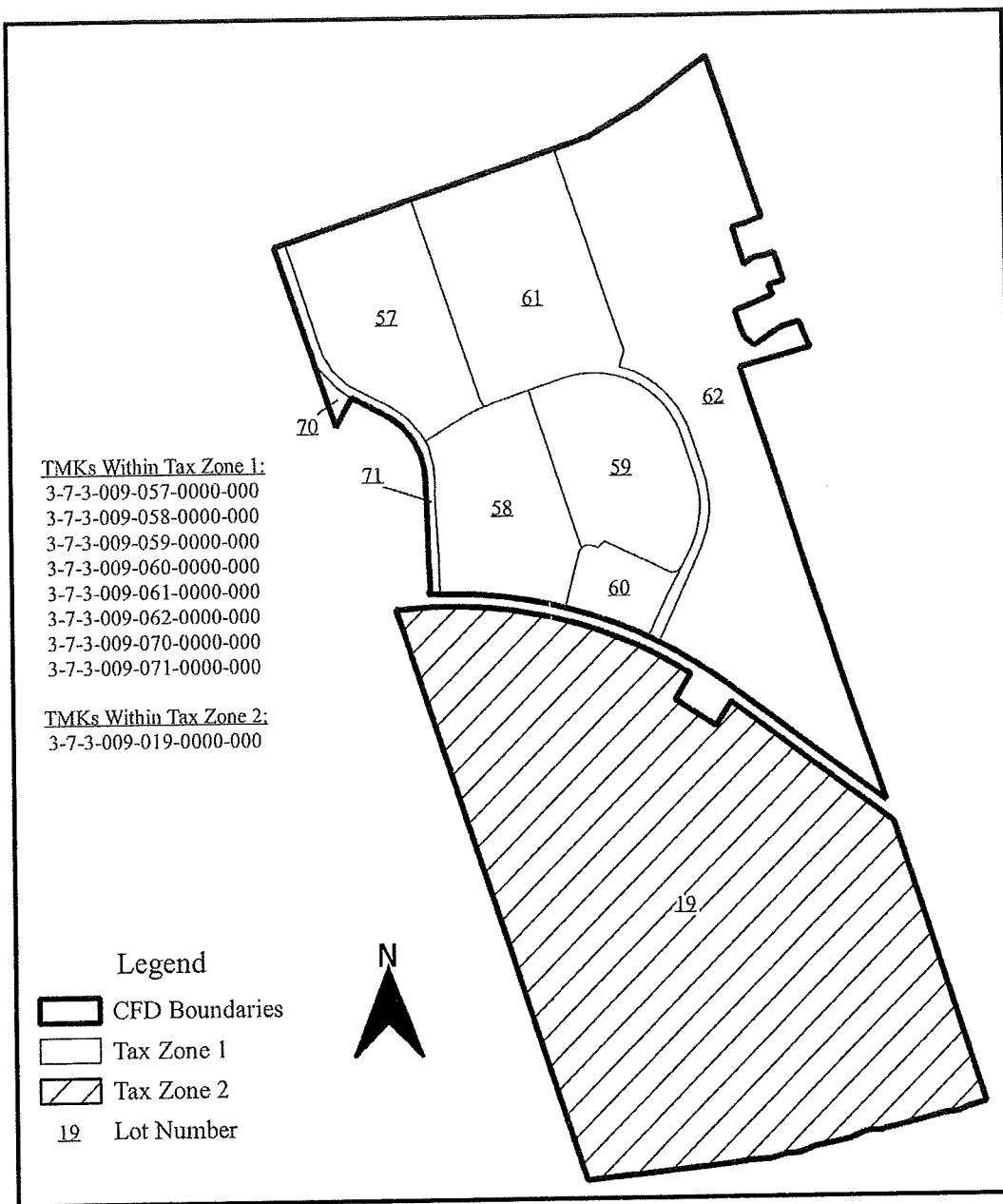
- f. **Value Test – Undeveloped Property.** The aggregate Land Value of the non-delinquent TMK Parcels in Tax Zone 1 that were classified as Undeveloped Property for such Fiscal Year is not less than three times the product of the principal amount of Outstanding Bonds multiplied by a fraction, the numerator of which is the aggregate Special Taxes received from Taxable Property in CFD No. 1-2021 from the levy of such Fiscal Year's Special Tax (as opposed to receipts from prior Fiscal Years and penalties and interest) on TMK Parcels in Tax Zone 1 that were classified as Undeveloped Property for such Fiscal Year, and the denominator of which is such Fiscal Year's Tax Zone 1 Special Tax Requirement.

The satisfaction of the conditions listed above in the CFD Administrator's written notification to the County Council would, for purposes of Section 32-56 of the Code, be deemed a prepayment and permanent satisfaction of the obligation to pay the Special Tax applicable to the TMK Parcels in Tax Zone 2. Accordingly, the County Council shall promptly cause to be prepared and filed with the Bureau of Conveyances and/or Land Court a notice of cancellation of Special Tax for all TMK Parcels in Tax Zone 2, all as provided for in said Section 32-56 of the Code.

ATTACHMENT 1

HAWAII COUNTY
COMMUNITY FACILITIES DISTRICT NO. 1-2021
(KALOKO HEIGHTS PROJECT)

IDENTIFICATION OF TAX ZONES



ATTACHMENT 2

**HAWAI'I COUNTY
COMMUNITY FACILITIES DISTRICT NO. 1-2021
(KALOKO HEIGHTS PROJECT)**

**TAX ZONE 1
EXPECTED LAND USES AND EXPECTED MAXIMUM SPECIAL TAX REVENUES
>> AT CFD FORMATION <<**

<i>Expected Land Uses</i>	<i>Number of Expected Residential Units & Acres of Other Residential / Non-Residential Property</i>	<i>Maximum Special Tax per Unit or Acre for Fiscal Year 2021-22*</i>	<i>Total Expected Maximum Special Tax Revenues * (FY 2021-22*)</i>
Single Family Detached Property			
Residential Floor Area < 1,601 SF	10 Units	\$1,663 per Unit	\$16,630
Residential Floor Area 1,601 - 1,800 SF	57 Units	\$1,913 per Unit	\$109,041
Residential Floor Area 1,801 - 2,000 SF	20 Units	\$2,163 per Unit	\$43,260
Residential Floor Area 2,001 - 2,200 SF	66 Units	\$2,537 per Unit	\$167,442
Residential Floor Area 2,201 - 2,400 SF	77 Units	\$2,869 per Unit	\$220,913
Residential Floor Area 2,401 - 2,600 SF	81 Units	\$3,119 per Unit	\$252,639
Residential Floor Area > 2,600 SF	60 Units	\$3,410 per Unit	\$204,600
<hr/>			
Single Family Attached Property	150 Units	\$1,281 per Unit	\$192,150
<hr/>			
Other Residential Property	0.0 Acres	\$11,298 per Acre	\$0
<hr/>			
Non-Residential Property	0.0 Acres	\$11,298 per Acre	\$0
<hr/>			
Total	521 Units 0.0 Acres		\$1,206,675

* On July 1, 2022, and on each July 1 thereafter, all dollar amounts shown in the table above shall be increased by an amount equal to two percent (2.0%) of the amount in effect for the prior Fiscal Year.

EXHIBIT D

**ORIGINAL DEPOSIT AND REIMBURSEMENT AGREEMENT
and
AMENDMENT TO DEPOSIT AND REIMBURSEMENT AGREEMENT**

EXHIBIT D

COUNTY OF HAWAII

PROPOSED IMPROVEMENT DISTRICT

DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered into this May 17, 2019, by and between the County of Hawaii, a municipal corporation of the State of Hawaii, by and through its Finance Department whose mailing address is 25 Aupuni Street, Hilo, Hawaii 96720 (the "County"), and RCFC Kaloko Heights, LLC, a Delaware limited liability company, whose mailing address is 555 California Street, Suite 3450, San Francisco, California, 94101 (the "Proponent"), which owns the property within the boundaries of a proposed improvement district.

RECITALS

- A. The Proponent owns the real property that is included within the proposed boundaries of a proposed improvement district (the "Proposed District") for the development known as "Kaloko Heights" (the "Development Project"). The Proposed District is proposed to be established pursuant to the provisions of Chapter 12 of the Hawai'i County Code 1983 (2016 Edition, as Amended) (such chapter and code being referred to herein as "Chapter 12" and the "Code," respectively) for financing the acquisition, construction and installation of "special improvements," as defined in Chapter 12 (the "Special Improvements") which the Proponent is required to provide in connection with the Development Project.
- B. The County and the Proponent have entered into a Memorandum of Agreement dated January 15, 2019 (MOA) pursuant to which the parties have agreed to meet certain target dates for the establishment of the Project District for the Development Project together with related goals, pursuant to which the parties contemplated the County's hiring of consultants to facilitate the completion of the Proposed District.
- C. To facilitate the expeditious implementation of the MOA, the Proponent has agreed to advance funds to allow the County to pay all costs and expenses of the County related to proceedings heretofore and hereafter conducted for the establishment of the Proposed District and the issuance of improvement bonds for the Proposed District pursuant to Chapter 12 (the "Proposed Bonds").
- D. The parties hereto wish to enter into an agreement to define the terms and conditions under which the funds will be advanced and subsequently reimbursed.

AGREEMENT

In consideration of the mutual promises herein contained, the parties hereto do hereby agree as follows:

Section 1. Proponent's Deposit: Use of Deposited Funds.

(a) The Proponent agrees to deposit initially the sum of \$75,000 (together with additional deposits hereunder, the "Deposit") with the County to pay one hundred percent (100%) of the reasonable costs and expenses of the County relating to the proceedings for the formation of the Proposed District and the issuance of the Proposed Bonds (collectively, the "County Costs"), including without limitation: (i) the fees and expenses of the County's financial advisor, appraiser, legal counsel (including bond counsel and special tax counsel, if applicable), consulting engineers and other professional consultants and advisors (individually a "Consultant" and collectively the "Consultants"); (ii) publication costs and other out-of-pocket expenses; (iii) a reasonable charge (if applicable) for County staff time and administrative costs expended by the County and attributable to facilitating the expeditious formation of the Proposed District and the issuance of the Proposed Bonds.

(b) The County may draw upon the Deposit to pay the County Costs from time to time. The County shall not be obligated to advance any of its funds for purposes of forming the Proposed District or the issuance and sale of the Proposed Bonds.

EXHIBIT D

(c) In the event that the balance of the Deposit falls below \$20,000, or is otherwise insufficient to pay any County Costs due or coming due, the Proponent shall deposit additional monies with the County in the amount necessary to restore the balance of the Deposit to \$75,000 and/or pay the County Costs due or coming due. The Proponent shall deposit such additional monies within ten (10) calendar days of the receipt of written notification from the County of the need for such additional funds. Without limiting any other right of the County to discontinue proceedings relating to the Proposed District or the Proposed Bonds, it is expressly understood and agreed that the County shall have the right to suspend or terminate all proceedings for the establishment of the Proposed District and/or the issuance of the Proposed Bonds in the event that the Proponent fails to deposit such additional monies with the County within said ten (10) calendar days.

(d) The County shall provide monthly statements to the Proponent showing the amount disbursed from the Deposit and the remaining balance thereof. The monthly statements shall include the recipients of the funds disbursed, the amounts paid to each recipient and include the nature of the work performed. The County agrees to keep such records as are reasonably necessary to show the amount of monies disbursed for payment of County Costs, including summaries of County staff and administrative costs paid from the Deposit funds, if any. The County shall make such records available to the Proponent upon request.

Section 2. Consultants, Compensation, and Method of Payment. The County shall retain the Consultants upon such terms as it deems appropriate in its sole discretion. The County shall have the sole discretion to select the persons or firms to be retained as Consultants, and to evaluate their performance and the reasonableness of their compensation. Compensation shall be paid to each Consultant for work performed as specified in their respective contracts with the County. Upon request, the County shall provide the Proponent with a summary of fees paid to the Consultants on a bi-monthly basis, together with copies of the invoices for which consultant payments have been made.

Section 3. Reimbursement to Proponent. If the Proposed District is established and the Proposed Bonds are issued, the Proponent shall be entitled to be reimbursed for Deposit, without interest, from the proceeds of the Proposed Bonds. In the event that the net proceeds of the Proposed Bonds, after deducting the costs of issuance from the proceeds received by the County, are insufficient to fully fund both (i) reimbursement of the Deposit and (ii) financing of the Special Improvements, the Proponent shall advise the County in writing whether it wishes to receive reimbursement of the Deposit or to waive its entitlement to such reimbursement. In the event that the Proposed Bonds are issued in multiple series, waiver of reimbursement with respect to a given series shall not constitute a waiver of reimbursement from the proceeds of any subsequent series. If the proceedings are abandoned for any reason prior to the sale and issuance of the Proposed Bonds, the obligation of the County to reimburse the Proponent for the Deposit or any portion thereof shall be strictly limited to that portion of the Deposit not yet expended; and the provisions of subsection (c) of Section 5 hereof shall govern the application of such unexpended portion of the Deposit.

Section 4. Ownership of Documents. All plans, specifications, reports, appraisals and other documentation prepared as part of the proceedings to establish the Proposed District and to sell and issue the Proposed Bonds shall become the property of the County, regardless of whether the Proposed District is formed and/or the Proposed Bonds are sold and issued; provided, however, that the Proponent shall be entitled to use the information contained in such documents.

Section 5. No Obligation to form an Improvement District; Abandonment of Proceedings.

(a) The County expressly reserves the right to abandon the proceedings for the establishment of the Proposed District and/or issuance of the Proposed Bonds for any reason at any time prior to the completion thereof. Without limiting the generality of the foregoing, the Proponent expressly acknowledges that the decision of the County to form an improvement district and/or to issue improvement bonds under Chapter 12 is an exercise of the legislative authority of the Council of the County, and that the County may not enter into a contract or obligate the Council to exercise its legislative discretion in a particular manner. This Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the County to approve the formation of the Proposed District or to sell the Proposed Bonds to finance the Project.

(b) Should the Proponent elect to abandon the proceedings, the Proponent shall provide written notification of such election to the County and request the County to terminate all consulting agreements and use reasonable efforts to minimize any and all additional County Costs.

(c) If proceedings to form the Proposed District and/or issue the Proposed Bonds are not completed and are abandoned for any reason at any time, there will be no obligation on the part of the County to reimburse the Proponent for any monies previously advanced pursuant to this Agreement. In such event, the County, however, agrees to return to the Proponent such portion of the remaining balance of the Deposit, without interest, as the County determines to be in excess of the amount necessary to pay any outstanding County Costs which the County is obligated to pay, which determination shall be made as soon as reasonably practicable. If, for any reason, the remaining balance of the Deposit is not sufficient to pay all outstanding County Costs, the Proponent shall deposit such additional amounts as are required to pay all such County Costs.

(d) It is hereby expressly acknowledged and agreed that this Agreement is not a debt or liability of the County, and that the County shall not be obligated to advance any of its funds for purposes of forming the Proposed District or issuing the Proposed Bonds.

Section 6. Authority to Execute Agreement. The County and the Proponent each represents that it has the authority to execute, deliver and perform its obligations under the terms of this Agreement and that the individual(s) signing this Agreement on its behalf have full right and authority to bind said party to this Agreement.

Section 7. Designated Representatives; Notices. The following individuals are hereby designated as representatives for the County and the Proponent, respectively, to act as liaison between the parties:

County:

Director of Finance (or his/her designee)
County of Hawaii
25 Aupuni Street, Suite 2103
Hilo, Hawaii 96720

Proponent:

RCFC Kaloko Heights, LLC
555 California Street, Suite 3450
San Francisco, California 94101

Phillip Russick

Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth above, or at such other address as such party may provide to the other party in writing from time to time. Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether telex, telegram, electronic mail or telecopy upon sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States Mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 8. Jurisdiction and Venue. Each of the County and the Proponent (a) agrees that any suit action or other legal proceeding arising out of or relating to this Agreement shall be brought in state court in the County of Hawaii, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

Section 9. Amendments. ^{EXHIBIT D} This Agreement may be amended by an instrument in writing executed and delivered by the parties hereto.

Section 10. Waivers. No waiver of, or consent with respect to, any provision of this Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 11. Indemnification. The Proponent hereby indemnifies, and agrees that it shall defend and hold harmless, the County and its officials, employees, contractors and agents, from and against any and all actions, claims, damages, losses or expenses of any kind whatsoever arising out of or relating to any acts or omissions on the part of the Proponent or any of its officers, employees, contractors or agents with respect to the Proposed District or the Proposed Bonds.

Section 12. Governing Law. This Agreement has been executed in and shall be governed by the laws of the State of Hawaii.

Section 13. Construction. The parties to this Agreement and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

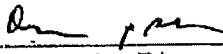
Section 14. Severability. If a provision of this Agreement is found to be void, illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall, nevertheless, remain in full force and effect.

Section 15. Entire Agreement. This Agreement shall constitute the entire Agreement between the parties. Any amounts to or clarification necessary to this Agreement shall be in writing and acknowledged by all parties to the Agreement.

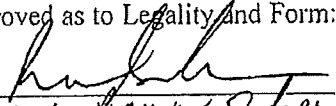
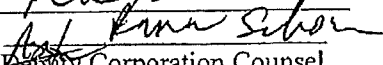
Section 16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall be considered one and the same instrument.

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

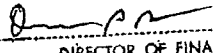
RECOMMEND APPROVAL:


Deanna Sako, Director
Department of Finance

Approved as to Legality and Form:


By 
Deputy Corporation Counsel

Approved as to Availability of Funds
in the amounts and for the purposes
set forth herein.


DIRECTOR OF FINANCE
MAY 17 2018

COUNTY OF HAWAII

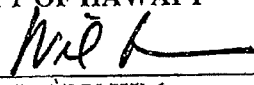
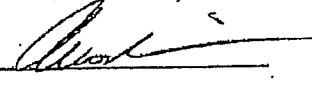
By 
HARRY KIM
Its Mayor

EXHIBIT D

[Proponent]

RCFC KALOKO HEIGHTS, LLC

By: 
Name: Aaron A. Giovara
Its: Authorized Signatory

AMENDMENT TO DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS AMENDMENT TO DEPOSIT AND REIMBURSEMENT AGREEMENT is made and entered into as of this ___ day of _____, 2021, by and between the County of Hawaii, a municipal corporation and political subdivision of the State of Hawaii (the "County"), and RCFC Kaloko Heights, LLC, a Delaware limited liability company (the "Proponent").

RECITALS

- A. The Proponent has heretofore requested the assistance of the County in financing the costs of a public sewer extension project (the "Proposed Sewer Extension") for its Kaloko Heights development under Chapter 12, Hawaii County Code 1983 (2016 Edition, as Amended) ("Chapter 12"). In connection therewith: (i) the County and the Proponent entered into a Deposit and Reimbursement Agreement dated May 17, 2019 (the "Agreement"), pursuant to which the Proponent has agreed to advance funds to allow the County to pay all reasonable costs and expenses of the County relating to the establishment of an improvement district under Chapter 12 (referred to in the Agreement as the "Proposed District") and the issuance of improvement bonds (referred to in the Agreement as the "Proposed Bonds") under Chapter 12 to fund the costs of the Proposed Sewer Extension; and (ii) the Proponent submitted a Petition to the County Council dated January 29, 2020 (the "Original Petition"), requesting that the Council initiate proceedings for the formation of the Proposed District as an improvement district under Chapter 12..
- B. Notwithstanding the original intention of the parties to proceed with the financing under Chapter 12, the County and the Proponent now propose to fund the costs of the Proposed Sewer Extension through the establishment of a community facilities district under Chapter 32, Hawaii County Code 1983 (2016 Edition, as Amended) ("Chapter 32") and the issuance of community facilities district bonds under such Chapter. The Proponent has submitted a new Petition to the County Council dated June 15, 2021, whereby it has withdrawn the Original Petition and request for assistance thereunder and has requested instead that the Council authorize the initiation of proceedings for the formation of a community facilities district and the issuance of community facilities bonds under Chapter 32.
- C. The Proponent has agreed to advance funds for the County's costs and expenses relating to the establishment of the community facilities district and the issuance of community facilities district bonds upon the same terms as are provided under the Agreement with respect to the Proposed District and the Proposed Bonds. The County and the Proponent are entering into this Amendment to Deposit and Reimbursement Agreement for the purpose of modifying the Agreement so as to apply to the proposed establishment of the community facilities district and issuance of community facilities bonds under Chapter 32.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the County and the Proponent, each intending to be legally bound, do hereby agree as follows:

1. Amendments. The definitions of the following terms under the Agreement are hereby amended as set forth below:

“Proposed Bonds” shall mean and refer to the community facilities district bonds proposed to be issued to fund the costs of the Proposed Sewer Extension under Chapter 32.

“Proposed District” shall mean and refer to the community facilities district proposed to be established with respect to the Proposed Sewer Extension under Chapter 32.

2. Ratification and Confirmation of Agreement. Except as expressly modified hereby, the Agreement is hereby ratified and confirmed, and is and shall remain in full force and effect in all respects. It is expressly agreed and intended that the Agreement, as amended hereby, shall apply in all respects to the establishment of the Proposed District and issuance of the Proposed Bonds for the purpose of funding the costs of the Proposed Sewer Extension under Chapter 32.

IN WITNESS WHEREOF, the County and the Proponent have each caused this Amendment to Deposit and Reimbursement Agreement to be executed and delivered as of the day and year first above written.

Recommend Approval:

COUNTY OF HAWAII

Director of Finance

By: EXHIBIT D Mayor

Approved as to Form and Legality:

Corporation Counsel

Approved as to Availability of Funds in the amounts and for the purposes set forth herein.

Director of Finance

RCFC KALOKO HEIGHTS, LLC

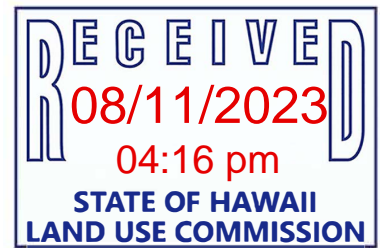
By: _____
Name: _____
Its: _____

Kaloko Heights Affordable Housing Offsite Sewer System Improvements
Engineer's Estimate
7-5-21

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	BID UNIT PRICE	BID PRICE
Sewer System Improvements					
1	Lump Sum for mobilization; demobilization; field investigations; measurements and testing; delivery hauling and removal of heavy equipment; traffic control erosion control, storm water pollution prevention, and cleanup and finishing	LS	1.00	\$ 700,000.00	\$ 700,000.00
2	Sewer System Trench Excavation	CY	33,500.00	\$ 70.00	\$ 2,345,000.00
3	Tie into Existing SMH 1	1	1.00	\$ 25,000.00	\$ 25,000.00
4	8" SDR 26 PVC sewer pipe, in place complete.	LF	257.00	\$ 240.00	\$ 61,680.00
5	10" SDR 26 PVC sewer pipe, in place complete.	LF	6,167.00	\$ 250.00	\$ 1,541,750.00
6	12" SDR 26 PVC sewer pipe, in place complete.	LF	5,691.00	\$ 270.00	\$ 1,536,570.00
7	4" minus aggregate backfill above pipe to below pavement base course, in place complete	CY	26,000.00	\$ 37.50	\$ 975,000.00
8	3/4" Base course pipe bedding and backfill to 12" over pipe and pavement base course, in place complete	CY	6,500.00	\$ 60.00	\$ 390,000.00
9	Controlled low-strength material (CLSM), Class "B" backfill, in place complete	CY	1,000.00	\$ 100.00	\$ 100,000.00
10	Sewer manholes 5.0 to 9.5 feet deep, in place complete	EA	15.00	\$ 10,000.00	\$ 150,000.00
11	Lined sewer manholes 5.0 to 9.5 feet deep, in place complete	EA	7.00	\$ 11,500.00	\$ 80,500.00
12	Sewer manholes 9.51 to 15.0 feet deep, in place complete	EA	2.00	\$ 12,000.00	\$ 24,000.00
13	Lined sewer manholes 9.51 to 15.0 feet deep, in place complete	EA	5.00	\$ 14,000.00	\$ 70,000.00
14	Lined sewer manholes 15.1 to 20.0 feet deep, in place complete	EA	2.00	\$ 16,000.00	\$ 32,000.00
15	Lined shallow drop manholes 5.0 to 9.99 feet deep, in place complete	EA	1.00	\$ 15,000.00	\$ 15,000.00
16	Lined shallow drop manholes 10.0 to 14.99 feet deep, in place complete	EA	7.00	\$ 16,000.00	\$ 112,000.00
17	Lined drop manholes 15.0 to 16.0 feet deep, in place complete	EA	1.00	\$ 35,000.00	\$ 35,000.00
18	Sewer cleanout at stubout, in place complete	EA	11.00	\$ 2,000.00	\$ 22,000.00
19	Reinforced concrete jacket, in place complete	LF	480.00	\$ 300.00	\$ 144,000.00
	SUBTOTAL SEWER				\$ 8,359,500.00

Kaloko Heights Affordable Housing Offsite Sewer System Improvements
Engineer's Estimate
7-5-21

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	BID UNIT PRICE	BID PRICE
Roadway Improvements					
20	Re-pave Hina Lani Street 10 foot shoulder with 1-1/2-inch thick asphaltic concrete wearing surface Mix IV in place, with prime coat, in place complete	SY	6,700.00	\$ 38.00	\$ 254,600.00
21	Re-pave Hina Lani Street/Ane Keohokalole Highway intersections, 3 inch thick asphaltic concrete wearing surface, Mix III in place complete	SY	556.00	\$ 70.00	\$ 38,920.00
22	Striping, 4" white, in place complete	LF	6,200.00	\$ 5.00	\$ 31,000.00
23	Miscellaneous pavement striping including median, Stop Bar, Turn Arrow as required, in place complete	LS	1.00	\$ 12,000.00	\$ 12,000.00
24	Restore gravel shoulder and landscaping along Ane Keohokalole Highway, driveway and walking path pavement restoration, in place complete	LS	1.00	\$ 57,500.00	\$ 57,500.00
SUBTOTAL ROAD AND SHOULDER					\$ 394,020.00
SUBTOTAL					\$ 8,753,520.00
Contingency 20%					\$ 1,750,704.00
TOTAL					\$ 10,504,224.00



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
Y-O LIMITED PARTNERSHIP

DOCKET NO. A81-525

CERTIFICATE OF SERVICE

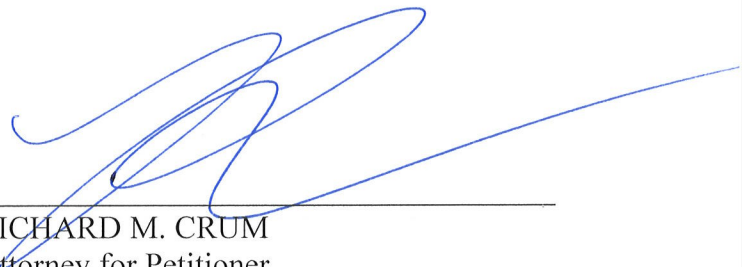
To Amend the Agricultural Land Use District Boundary to the Urban Land Use District for Approximately 408.719 Acres of Land at Kaloko and Kohanaiki, North Kona, Hawaii, Hawaii TMK Nos.: (3) 7-3-09:19, 20 and 57 to 62.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly mailed via U.S. Mail, postage prepaid, or by hand delivery, or by electronic mail to the following:

Katia Balassiano, Planning Program Administrator State of Hawaii, Office of Planning 235 South Beretania Street, 6th Floor Honolulu, HI 96813 Email: katia.balassiano@hawaii.gov	Zendo Kern, Director Planning Department County of Hawaii 101 Pauahi Street, Suite 3 Hilo, HI 96720 Email: planning@hawaiicounty.gov
Alison Kato, Esq. State of Hawai`i Dept. of Attorney General 425 Queen Street Honolulu, HI 96813 Email: alison.s.kato@hawaii.gov	Jean Campbell, Esq. Deputy Corporation Counsel County of Hawaii 101 Aupuni Street, Unit 325 Hilo, HI 96720 Email: corpcounsel@hawaiicounty.gov

Dated: Honolulu, Hawaii, August 11, 2023.



RICHARD M. CRUM
Attorney for Petitioner
RCFC KALOKO HEIGHTS, LLC,
KALOKO HEIGHTS B1A HOLDINGS,
LLC, and KALOKO HEIGHTS
INVESTORS, LLC