

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the matter of the Petition ) DOCKET NO. A04-753  
 )  
 of )  
 )  
 AINA NUI CORPORATION ) FINDINGS OF FACT,  
 A Hawai'i Corporation ) CONCLUSIONS OF LAW, AND  
 ) DECISION AND ORDER  
 To Amend The Agricultural Land Use )  
 District Boundary Into The Urban Land )  
 Use District For Approximately 174.209 )  
 Acres Of Land At 'Ewa, O'ahu, )  
 Hawai'i, Tax Map Keys: 9-1-14: Por. 33 )  
 And 9-1-15: Por. 4 And Por. 20 )  
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AND DECISION AND ORDER

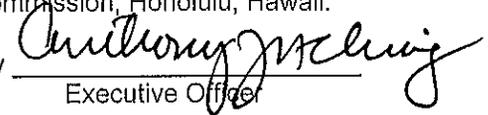
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APR 10 2006

Date

by

Executive Officer



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

AINA NUI CORPORATION, a Hawai'i corporation ("Petitioner")<sup>1</sup>, filed a Petition For Land Use District Boundary Amendment ("Petition") on September 29, 2004, pursuant to section 205-4, Hawai'i Revised Statutes ("HRS"), and chapter 15-15, Hawai'i Administrative Rules ("HAR"), to amend the land use district boundary to reclassify approximately 174.209 acres of land, situated at `Ewa, O`ahu, Hawai'i, identified by Tax Map Keys ("TMK"): 9-1-14: 33 (por.) and 9-1-15: 4 (por.) and 20 (por.) ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District for residential, golf course, and park uses ("Project").

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearing; Petitioner's Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order; the Joinder Of The Department Of Planning And Permitting ("DPP") Urging Adoption Of Petitioner's Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order; the Office of Planning's ("OP") Exceptions To Petitioner Aina Nui Corporation's Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order; and the Stipulated Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order entered into by the parties, hereby makes the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On September 29, 2004, Petitioner filed the Petition. The Petition included an Environmental Impact Statement Preparation Notice, pursuant to sections 343-5(a)(1) and (4), HRS, and sections 11-200-6(b)(1)(A) and (D), HAR.
2. On October 7, 2004, and by a written Order dated December 14, 2004, the Commission agreed to be the accepting authority pursuant to chapter 343, HRS, and determined that the proposed action may have a significant effect on the environment to warrant the preparation of an Environmental Impact Statement ("EIS").

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<sup>1</sup> Petitioner, whose principal place of business is 1001 Kamokila Boulevard, Suite 255, Kapolei, Hawai'i, 96707, is an agent for The Estate of James Campbell ("Campbell Estate").

3. On June 16, 2005, and by a written Order dated August 4, 2005, the Commission accepted Petitioner's Final EIS ("FEIS").
4. On June 17, 2005, the Commission conducted a field trip to the Petition Area.
5. By letter dated August 18, 2005, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of June 16, 2005.
6. On September 8, 2005, the DPP filed its Statement Of Position Of The Department Of Planning And Permitting In Support Of Petition With Conditions.
7. On September 19, 2005, the OP filed its Statement Of Position Of The Office Of Planning In Support Of The Petition.
8. On September 19, 2005, a prehearing conference was held at the Leiopapa A Kamehameha Building (aka the State Office Tower), Room 405, in Honolulu, Hawai`i, with representatives of Petitioner, the OP, and the DPP present. A Prehearing Order was subsequently issued on September 20, 2005.
9. On October 6, 2005, the Commission conducted a hearing on the Petition at the Kakuhihewa Building, Room 111, Conference Room A & B, in Kapolei, Hawai`i, pursuant to the Notice of Hearing published in the *Honolulu Star-Bulletin*, the *West Hawaii Today*, the *Hawaii Tribune-Herald*, the *Maui News*, and *The Garden Island* on September 4, 2005. The Commission did not receive any petition for intervention.

10. On October 6, 2005, the Commission heard public testimony from Jane Ross and Maeda Timson in favor of the Petition and accepted their written testimony into evidence. Also testifying as a public witness in favor of the Petition was Lorraine Martinez. Dr. Michael Keoni Dudley provided public testimony in opposition to the Petition. The hearing was continued to October 7, 2005.

11. On October 19, 2005, the Commission resumed the hearing on the Petition at the Leiopapa A Kamehameha Building, Room 405, in Honolulu, Hawai'i. At the hearing, the Commission heard public testimony from Kenneth Williams and Ralph F. Harris and accepted their written testimony into evidence. The Commission continued the hearing to October 20, 2005.

12. On October 20, 2005, following the completion of the parties' respective cases, the Commission closed the hearing on the Petition.

13. On February 3, 2006, the Commission held an action meeting on the Petition at the Leiopapa A Kamehameha Building, Room 405, in Honolulu, Hawai'i. At the meeting, the Commission deferred action on the Petition to its next meeting on O'ahu.

14. On March 3, 2006, the Commission resumed its action meeting on the Petition at the Leiopapa A Kamehameha Building, Room 405, in Honolulu, Hawai'i.

## DESCRIPTION OF THE PROPERTY

15. The Petition Area consists of approximately 174.209 acres, identified by TMKs: 9-1-14: 33 (por.) and 9-1-15: 4 (por.) and 20 (por.), in `Ewa, O`ahu, Hawai`i.

16. The acreage breakdown of each parcel by their respective portion of the Petition Area is as follows: Parcel 33 - 55.5 acres, Parcel 4 - 98.6 acres, and Parcel 20 - 20.1 acres.

17. The portion of the Petition Area above the Oahu Railway & Land Company Right-of-Way ("OR&L ROW") is owned in fee by Petitioner. The portion of the Petition Area below the OR&L ROW is owned by Petitioner as a tenant-in-common with Campbell Estate, which has authorized Petitioner to act as its agent in the current Petition.

18. The Petition Area is located approximately 20 miles west of downtown Honolulu and is located south of the Wai`anae Mountain Range between the City of Kapolei and the Ko Olina Resort.

19. The most recent uses of the land within the Petition Area include transportation along the OR&L ROW, occupation by the Ewa Plantation Company and the Oahu Sugar Company ("OSCO"), livestock grazing, and a coral pit quarry to the south. Currently, large portions of the Petition Area are vacant and unused, with the exception of the OR&L ROW used by the Hawaiian Railway Society.

Additionally, a Coast Guard Range Light is located at the southernmost tip of the Petition Area.

20. Land uses surrounding the Petition Area include the 372.6-acre urbanized area of the Kapolei West Project to the north, the Ko Olina Resort and golf course to the west, Kalaeloa Barbers Point Harbor and the James Campbell Industrial Park (“Campbell Industrial Park”) to the south, and the City of Kapolei to the east.

21. The H-1 Freeway is located to the north of the Petition Area.

22. Elevation of the Petition Area ranges from 15 feet above mean sea level (“msl”) at the southernmost tip to 65 feet above msl at the northernmost boundary.

23. The Petition Area is relatively flat and slopes gently with a range of 1 percent to 5 percent, with the steepest slope of approximately 25 percent located along a ridgeline that forms its northernmost boundary.

24. The annual rainfall on the Petition Area averages approximately 21 inches.

25. The Petition Area contains the following soil types as determined by the U.S. Department of Agriculture, Soil Conservation Service, now known as the Natural Resource Conservation Service (“NRCS”):

CR Coral Outcrop (136.6 acres or 78 percent).

EmA Ewa silty clay loam, moderately shallow, 0 to 2 percent slopes (10.8 acres or 6 percent).

EmB Ewa silty clay loam, moderately shallow, 2 to 6 percent slopes (3.0 acres or 2 percent).

MnC Mamala stony silty clay loam, 0 to 12 percent slopes (23.7 acres or 14 percent).

26. According to the joint NRCS, University of Hawai`i College of Tropical Agriculture and Human Resources, and the State Department of Agriculture Agricultural Lands of Importance to the State of Hawai`i system, approximately 10 acres (6 percent) of the Petition Area are considered "Prime," while 22 acres (12 percent) are classified as "Other." The remaining approximately 142 acres (82 percent) of the Petition Area are unrated.

27. The University of Hawai`i Land Study Bureau's Overall (Master) Productivity Rating system classifies the soils within the Petition Area as follows:

<u>Soil Type</u>	<u>Acreage</u>
A	0.0 (0 percent)
B	20.0 (11 percent)
C	45.0 (26 percent)
D	0.0 (0 percent)
E	92.0 (53 percent)
Unrated	18.0 (10 percent)

28. Of the total 174.209 acres within the Petition Area, approximately 15 acres are good for growing low elevation crops, approximately 33 acres are suitable for these crops, and the remaining approximately 126 acres are poorly suited for farming, largely because most of the land is coral outcrop.

29. The Flood Insurance Rate Map designates the Petition Area as Zone "D," where there are possible but undetermined flood hazards -- no analysis conducted. The Petition Area is outside of the tsunami inundation zone.

#### PROPOSAL FOR RECLASSIFICATION

30. The 174,209-acre Petition Area is part of the larger Kapolei West development, which includes approximately 372.6 acres urbanized pursuant to LUC Docket A90-655/West Beach Estates. Petitioner intends to develop the Kapolei West development as a residential golf course community with approximately 2,370 low and medium-density residential units.

31. The Conceptual Master Plan for the Project will include approximately 1,170 medium-density homes on approximately 77 acres of land and 11 low-density homes on approximately 9.3 acres of land. Of the 1,181 homes proposed in the Petition Area, approximately 520 homes are intended to be primary residences (44 percent), with the remaining 660 homes (56 percent) intended as secondary residences. The final unit breakdown will be largely dictated by market demand at the time of development.

32. Two public parks are planned for the Petition Area: an approximately 14.3-acre neighborhood park south of the OR&L ROW and a 2.8-acre passive mini-park adjacent to the golf course south of the OR&L ROW.

33. A 15.5-acre middle school site is identified within a residential area adjacent to the proposed Kapolei Parkway, north of the Petition Area, and in the

urban portion of Kapolei West. Petitioner has been in discussions with the State Department of Education (“DOE”) regarding the proposed middle school and intends to comply with the DOE’s fair-share requirements for school facilities, including any fair-share cash contributions. Petitioner’s donation of the middle school site and any required cash contributions will satisfy the DOE’s fair-share requirements for the entire Kapolei West development, including the Project.

34. The City and County of Honolulu (“City and County”) currently requires that 30 percent of all residential units built, apartments or single-family, be within the affordable housing range. Of the total 30 percent affordable housing units required, 20 percent shall be affordable for those households earning more than 80 percent up to and including 120 percent of the City and County’s median income. The remaining 10 percent must be affordable to households up to and including 80 percent of the median income. Petitioner has agreed to comply with the City and County’s affordable housing requirements.

35. Development costs for the Petition Area are estimated to total \$444.0 million, including on and offsite infrastructure, vertical construction, landscaping, and soft costs such as professional services, administration of operating subsidiaries, and marketing. Of the total estimated development costs, residential construction is projected to cost \$291.0 million, and on and offsite infrastructure costs are projected to cost \$98.5 million. The remaining costs are attributed to professional services, operating subsidiaries, and marketing expenditures.

36. The Project is anticipated to commence in 2008. Based on the projected absorption rates, the Petition Area could take an estimated 9 years to build out.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

37. Petitioner submitted the Consolidated Financial Statements and Consolidating Schedules for James Campbell Corporation and Subsidiaries for December 31, 2004 and 2003. As of December 31, 2004, Petitioner reflected total assets of \$55,084,458, total liabilities of \$806,193, and total stockholder's equity of \$54,278,265.

38. Petitioner intends to finance development of the Project from the sale of assets, as well as by utilizing project borrowing and the borrowing capacity of Campbell Estate.

39. Petitioner has the necessary economic ability to carry out the representations and commitments relating to the development of the Project.

STATE AND COUNTY PLANS AND PROGRAMS

40. The Petition Area is currently designated in the State Land Use Agricultural District, as reflected on the Commission's official map, O-6 ('Ewa).

41. The City and County's 'Ewa Development Plan ("'Ewa DP"), adopted in 1997, designates the Petition Area within the Urban Growth Boundary.

42. The Petition Area is zoned AG-1 Restricted Agricultural District and AG-2 General Agricultural District. Petitioner intends to apply for rezoning of the

Kapolei West development (including both the Petition Area and the urbanized area) to P-2 General Preservation, A-1 Low-Density Apartment, A-2 Medium-Density Apartment, R-5 Residential, and BMX-3 Business Mixed Use.

43. The southernmost tip of the Petition Area abutting the Ko Olina Marina (approximately 1.1 acres) lies within the City and County's Special Management Area ("SMA"). The area is planned for residential use, and will require review in accordance with chapter 25, Revised Ordinances of Honolulu ("ROH"), with which Petitioner intends to comply.

#### NEED FOR THE PROPOSED DEVELOPMENT

44. Mikiko Corporation prepared reports entitled "Market Assessment for Residential Uses at the Proposed Kapolei West, Island of Oahu" (dated May 21, 2004) and "Economic and Fiscal Impact Assessment for the Proposed Kapolei West Development, Island of Oahu" (dated October 27, 2004). There is an estimated deficit of nearly 16,300 housing units in 2005, based on the results of the State housing policy study conducted by SMS Research in 2003. The Project will contribute approximately 1 percent to 2.5 percent of unplanned-for housing needs in the 'Ewa DP area in the 2006 to 2020 timeframe.

#### ECONOMIC IMPACTS

45. The Project will create approximately 2,600 direct jobs and 3,196 indirect and induced jobs over the construction period from 2006 to 2020.

46. The Project is anticipated to generate \$1.4 million per year for the City and County and \$3.9 million per year for the State in additional operating revenues by stabilization in 2020.

47. Personal earnings from the Project could amount to \$17 million annually.

48. Personal earnings from operational employment within the Petition Area could amount to \$13 million annually by stabilization in 2020.

#### SOCIAL IMPACTS

49. The Project is estimated to have a net impact of 420 additional full-time equivalent persons on the population of the City and County. Approximately 380 of this total will be new to the State, and will include employees, dependents, and part-time residents.

50. In 2020, the average daily population, including both primary home and secondary home residents, projected for the Petition Area is estimated to be 1,900 persons. This is based on assumptions that the 510 primary resident units would be occupied 95 percent of the time with an average of 3 persons per household, while 640 second home units would be occupied an average of 30 percent of the year by an average of 2.3 persons per unit. In 2020, the average daily population of 1,900 would constitute 1.5 percent of the `Ewa DP area population (projected by the `Ewa DP to be approximately 125,000).

51. The Project is expected to have a mixed effect on social welfare. The range of attitudes and opinions of Kapolei area residents towards the Kapolei West development and other developments have been characterized in a vote to endorse the Kapolei West development by the Makakilo/Kapolei/Honokai Hale Neighborhood Board. Discussion presented during the Board's deliberations indicate a range of opinions from general support of public policy objectives to encourage growth to Kapolei to concerns about the consequences of that growth, such as school overcrowding, traffic congestion, and loss of open space. The Project, as part of the fulfillment of Kapolei as the "Second City," will provide new employment, housing, and recreational opportunities for residents, while investment in schools and civic facilities elsewhere in Kapolei is anticipated to improve the quality of life in the region. Traffic congestion is expected to subside as the regional roadway network is constructed and there is increased job and housing opportunities available in the region.

#### IMPACTS UPON RESOURCES OF THE AREA

##### Agricultural Resources

52. Decision Analysts Hawaii, Inc., prepared a study entitled "Kapolei West Impact on Agriculture for the Petition Area" (dated March 2005). The Project will not adversely impact any existing agricultural operations. Although the Project will result in the loss of agricultural land, it is located in an urban area that is poorly suited for agriculture. Furthermore, the Project will not limit the potential

growth of diversified agriculture on O`ahu due to the large amount of land that has been released from plantation agriculture since the late 1960s.

### Flora and Fauna

53. Char & Associates prepared two botanical surveys for the Petition Area, "Botanical Survey, Kapolei Rezoning, ± 96-Acre Parcel, Kapolei, Ewa District, O`ahu" (dated November 2003) and "Botanical Survey Kapolei West – Parcels A to C, Kapolei, `Ewa District, Oahu" (dated April 2004). The dominant vegetation types within the Petition Area are kiawe forest and buffelgrass/koa haole scrub. Both of these vegetation types are dominated by introduced or alien species, which constitute approximately 90 percent of the vegetation within the Petition Area. The remaining 10 percent consists of native indigenous and endemic species. There are no threatened or endangered species or species of concern in the Petition Area. As a result, the Project is not expected to have a significant negative impact on botanical resources.

54. Mr. Phillip Bruner, Environmental Consultant, reviewed two previous studies conducted in the Kapolei area to evaluate the potential impact of the Project on any threatened and endangered species. Mr. Bruner reviewed a study he conducted in 1989 entitled "Survey of the Avifauna and Feral Mammals at the Proposed Campbell Commercial-Industrial Site, Ewa, Oahu," and a study done by Andrew J. Berger in August 1979 entitled "Birds of West Beach Region Follow-up Report April-May 1979, Ewa, Oahu." No threatened or endangered species were observed during

either survey; however, it was noted that the Hawaiian Owl, or pueo, which is recognized as an endangered species by the State, has been known to forage in the area.

55. Mr. Bruner visited the Petition Area on September 15, 2005, and did not observe any pueo. He found that a fire had recently burned the majority of the Petition Area, and consequently it currently lacks the environmental resources required by foraging or nesting pueo. Based on the previous studies of the area, it is anticipated that the Project will not have an impact on any threatened or endangered species of avifauna and mammals, or their habitat.

#### Archaeological/Historical/Cultural Resources

56. Between 2003 and 2005, Cultural Surveys Hawaii, Inc. ("CSH"), conducted six archeological studies of the Petition Area. A total of 21 sites were identified within the Petition Area. These included three sites associated with commercial sugar cultivation, three sites associated with ranching and/or military activity, 13 Hawaiian sites, a trig station, and the OR&L ROW. Of the 21 sites identified within the Petition Area, seven are recommended for preservation. The reclassification and development of the Petition Area will have no adverse impact on the preservation and maintenance of the sites identified.

57. The State Historic Preservation Division ("SHPD") concurred with CSH's preservation recommendations as evidenced by Petitioner's Exhibit 39a, a letter from Melanie Chinen, Administrator, SHPD, to Hallett Hammatt, Ph.D., CSH. The Project will comply with the SHPD requirements to preserve significant historical

sites requiring further archaeological work or documentation prior to future development.

58. CSH also prepared a study for the Petition Area entitled "A Cultural Impact Assessment of Approximately 595 Acres at Kapolei, Honouliuli Ahupuaa, Ewa District of Honolulu" (dated December 2004), which included an examination of historical documentation, review of archaeological studies, and community consultations and interviews. Twenty-three parties were consulted and two were interviewed. None of those persons consulted or interviewed identified any cultural sites in the Petition Area nor recalled any native Hawaiian traditional and customary practices being exercised. It does not appear that the Project will have any adverse effect on the exercise of native Hawaiian traditional and customary rights that would require protection under Article XII, Section 7, of the Hawai'i State Constitution.

#### Groundwater Resources

59. Mr. John Mink of Mink and Yuen prepared a hydro-geological study entitled "Kapolei West Geology, Hydrology and Water Resources Study" (dated March 2005) for the Petition Area.

60. Within the Petition Area, groundwater occurs in two separate aquifers, the Wai`anae Basalt Aquifer and the caprock limestone aquifer. Groundwater in both the Wai`anae Aquifer (in the vicinity of the Petition Area) and the caprock limestone aquifer do not meet potability standards. The Wai`anae Aquifer is included in the `Ewa-Kunia Aquifer System of the Pearl Harbor Aquifer Sector. The sustainable

yield for the `Ewa-Kunia Aquifer System is approximately 16 million gallons per day ('mgd"). Current allocations total 15.457 mgd (including 0.957 mgd allocated to Petitioner). Of the current allocations, approximately 12.2 mgd are presently being used based on average pumpage over the last five years. The remaining approximately 3.8 mgd of the sustainable yield are unused. The unallocated share is approximately 0.543 mgd. The Board of Water Supply's ("BWS") share of the total allocation is approximately 9.72 mgd, of which it has pumped over the last five years an average of 7.85 mgd, leaving an unused balance of 1.87 mgd. If the available allocation (0.543 mgd) is added to the BWS surplus (1.87 mgd), a total of 2.41 mgd are available from the `Ewa-Kunia Aquifer System.

61. The Ko`olau Basalt Aquifer in the Waipahu-Waiawa Aquifer System also serves the Kapolei-`Ewa Plain region. The sustainable yield for this system is approximately 104 mgd, 82 mgd of which have been allocated. Of the current allocations, approximately 44 mgd are presently being used based on average pumpage over the last five years. The remaining approximately 60 mgd of the sustainable yield are unused. The unallocated share is approximately 22 mgd.

62. The Project has an estimated average potable water demand of approximately 461,600 gallons per day ("gpd").

63. Based on the total unused BWS allocation in the Waipahu-Waiawa Aquifer System and the `Ewa-Kunia Aquifer System and the projected amount

of potable water needed to support the Project, there is enough potable water currently available to sustain development of the Project.

#### Recreational Resources

64. The Project will include approximately 17.1 acres of land for parks, including a neighborhood park and a mini-park. A portion of the West Kapolei golf course is also planned within the Petition Area. Finally, multi-purpose pathways to accommodate pedestrian and bicycle traffic and private recreational centers are proposed.

65. The Project, including the already urbanized area, will include a privately owned golf course which will have public play for a fee equivalent to kama`aina rates charged by other similar golf courses located on the island of O`ahu.

#### Scenic Resources

66. The Project will not obstruct significant panoramic views of the shoreline and urban Honolulu from the H-1 Freeway. The Project will be limited in height to preserve existing views from mauka areas. In addition, the golf course and park spaces will provide open space relief in contrast to the surrounding industrial uses at Kalaeloa Barbers Point Harbor and Campbell Industrial Park.

### ENVIRONMENTAL QUALITY

#### Noise

67. D.L. Adams Associates, Ltd., prepared an acoustical study for the Petition Area entitled "Environmental Noise Assessment Report Kapolei West 100

Acre Petition, Kapolei, Oahu, Hawaii” (dated February 2005). Based on the acoustical study, there will be no significant impact to the Petition Area from aircraft noise or the H-1 Freeway, but aircraft noise from occasional aircraft flyovers may be audible.

68. Temporary noise impacts may occur during construction within the Petition Area and the contractor will be required to obtain a State of Hawai`i Department of Health (“DOH”) construction noise permit

69. The Project is not expected to be a significant source of long-term noise. Any significant source of noise generated from the Project will be mitigated by the use of mufflers, silencers, acoustical enclosures, and noise barrier walls.

#### Air Quality

70. B.D. Neal & Associates prepared an air quality study for the Petition Area entitled “Air Quality Study for the Proposed Kapolei West 100 Acre Petition, Kapolei, Oahu, Hawaii” (dated March 2005). The potential short-term air quality impact of the development of the Petition Area will occur from fugitive dust during construction. Mitigation measures include watering of active work areas, using windscreens, keeping adjacent paved roads clean, and by covering open bodied trucks. Other dust control measures could include limiting the area that can be disturbed at any given time and/or mulching or chemically stabilizing inactive areas that have been worked. Paving and landscaping of construction areas early on will also reduce dust emissions. Exhaust emissions from construction equipment can be mitigated by moving construction equipment and workers to and from the construction site during

off-peak traffic hours. Petitioner intends to implement these measures during the development of the Project as they become necessary.

71. After construction, motor vehicles coming to and from the Project will result in a long-term increase in air pollution emissions in the Petition Area. In the year 2020, carbon monoxide concentrations in the Petition Area were estimated to increase slightly at the intersection of Kapolei Parkway and Kalaeloa Boulevard compared to the without-project cases, while other areas within the Petition Area would remain unchanged. Worst-case scenario concentrations of carbon monoxide should remain within both national and State ambient air quality standards. Due to the small impact, implementing mitigation measures for traffic-related air quality impacts are unnecessary.

72. Due to the proximity of industries located at Campbell Industrial Park, occasional impacts on the Petition Area from emissions emanating from these facilities will probably be unavoidable. Such impacts may occur in conjunction with the coincidental occurrence of industry malfunctions and southerly winds, both of which are relatively infrequent events.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Highway and Roadway Facilities

73. Wilbur Smith Associates prepared a traffic impact assessment report entitled "Kapolei West Traffic Impact Assessment Report, City of Kapolei" (dated June 1, 2005).

74. The existing roads within the vicinity of the Petition Area include: (1) Kalaeloa Boulevard, which is a four-lane divided highway that connects the Campbell Industrial Park area to the H-1 Freeway at the Pālailai Interchange; (2) Kapolei Parkway, which is partially completed and will be extended westward to provide east-west access to and within the Petition Area; and (3) Koio Drive, which is a four-lane roadway within the Ko Olina Resort that has a median divider and connects Ali`inui Drive to Farrington Highway.

75. Principal access to the Petition Area will be from Kapolei Parkway.

76. Regional roadway improvements identified in chapter 33A, ROH, and impacting the Petition Area include the construction of the Kapolei Interchange, the extension of Kapolei Parkway between Kamokila Boulevard and Fort Barrette Road, and the extension of Kapolei Parkway between Kalaeloa Boulevard and Ali`inui Drive.

77. Other improvements for the Kapolei region not identified in chapter 33A, ROH, or the O`ahu Metropolitan Planning Organization Transportation Plan for O`ahu assumed to be in place include the following: (1) provision of a double left-turn lane on the makai-bound and westbound approaches at the Kalaeloa Boulevard intersection with the Kapolei Parkway; (2) widening of Kalaeloa Boulevard to a six-lane roadway; (3) construction of the Hanua Street extension and the additional ramp connections to the H-1 Freeway and Farrington Highway; and (4) installation of a

traffic signal at the Kapolei Parkway intersection with the Hanua Street extension and the incorporation of double left-turn lanes on the westbound approach.

78. In the event the Hanua Street extension is built as a four-lane divided highway or an alternative design identified by the DOT, in either case in accordance with State highway standards, the DOT will have five years to exercise its option to accept dedication of this roadway commencing upon the completion of the Hanua Street extension.

79. The Project would contribute approximately 24 percent of the total traffic generated by the entire Kapolei West development in the morning peak hour. In the afternoon peak hour, the Project would generate 18.5 percent of the total trips. The approximately 372.6 acres of land within the Kapolei West development already designated within the State Land Use Urban District would generate most of the peak hour trips because it includes the regional commercial area and would have a higher proportion of full-time residents.

80. The trip rates for resort-residential units are lower than those for full-time residents. Many of the units owned by part-time residents might be unoccupied for much of the year.

81. The reclassification and development of the Petition Area will result in the following impacts to the H-1 Freeway: (1) in the year 2020 during the morning peak hour, the Project would add an estimated 113 vehicles to the Honolulu-bound H-1 traffic between the Pāiwa and Kunia Interchanges, or approximately a 1.1

percent increase to the estimated 10,200 Honolulu-bound vehicles on that segment; and (2) in the year 2020 during the afternoon peak hour, the Project would add an estimated 115 vehicles to the Wai`anae-bound H-1 Freeway traffic between the Pāiwa and Kunia Interchanges, or approximately a 1.2 percent increase to the estimated 9,700 Wai`anae-bound vehicles on that segment.

82. Petitioner is required to comply with chapter 33A, ROH, related to a traffic impact fee program for `Ewa, and Petitioner will contribute its “fair- share” to future roadway improvements in the `Ewa region as provided in chapter 33A, ROH. Based on the number of residential units proposed, the Project’s fair-share will amount to approximately \$1,469,100.

#### Water Service

83. Engineering Concepts, Inc., prepared a report entitled “Preliminary Engineering Report for the Proposed Kapolei West Development, Kapolei, Oahu, Hawaii” (dated February 2005). The report addressed existing potable and non-potable water conditions, projected water demand, the proposed water system, and impacts and mitigation measures.

84. A dual water system will be used. Potable water for the Petition Area will be supplied by the BWS. The BWS system provides potable water service to the `Ewa/Kapolei region. Wells located in Waipahu are the water source for the system. These wells include the Hō`ae`ae Wells, Kunia Wells 1, and Waipahu Wells.

Transmission of water from the wells to `Ewa/Kapolei is via 30-inch and 36-inch

transmission mains along Farrington Highway. Storage for the area is handled by the Kapolei 215 Reservoir located mauka of the freeway below the Makakilo City development and the 3.0 million gallon ("MG"), 4.0 MG, and 5.0 MG Barbers Point 215 Reservoirs located above the Petition Area in the southeastern corner of the proposed Makaiwa Hills development.

85. The existing potable water system serving the adjacent areas would need to be extended to serve the Project. The distribution line in Ali`inui Drive would be connected to the 16-inch line in Kapolei Parkway near Kalaeloa Boulevard. Additional storage may also be needed. It is expected that an additional reservoir would be placed next to the existing Barbers Point 215 tanks. The proposed offsite and onsite potable water system would be designed with the BWS Water System Standards and is anticipated to be dedicated to the BWS for operation and maintenance.

86. Petitioner will prepare and submit a water master plan to the BWS for its review and approval. Actual water commitments will not be issued until building permit applications are submitted. Under current BWS policy, water use allocations are granted in incremental amounts as subdivision plans are approved or buildings permits are obtained.

87. The BWS is currently in the process of providing non-potable water for the Kapolei area through the use of recycled effluent from the Honouliuli Wastewater Treatment Plant ("HWTP"). A 16-inch R1 water line runs along the OR&L ROW from the HWTP to the City of Kapolei. The non-potable water system within the

City of Kapolei has been converted from a caprock brackish water source to the reclaimed effluent. Plans for construction of a non-potable water line connecting the City of Kapolei system to the existing non-potable tanks above Farrington Highway is currently in the review and approval process. Completion of the line is expected within the next two years. Additional storage would be required as well as extension of the proposed BWS non-potable water mains. At minimum, a 1.0 mgd tank would be required for the Project. Storage requirements could also be met within the golf course in the form of lakes and water features.

88. Non-potable water will be used to irrigate the golf course and park areas. There are two non-potable water sources that could serve the Project. There is the BWS reclaimed wastewater from the HWTP and an allocation to Petitioner of 957,000 gpd from Pump 10, a former OSCO primary pumping station used for irrigation. The Project would require an estimated 334,000 gpd. There is presently sufficient non-potable water available to meet the needs of the Project.

89. Petitioner will incorporate appropriate design and landscaping measures to encourage water conservation and minimize water consumption where possible.

#### Wastewater Disposal

90. Engineering Concepts, Inc., prepared a report entitled "Preliminary Engineering Report for the Proposed Kapolei West Development, Kapolei, Oahu, Hawaii" (dated February 2005). The report addressed existing wastewater

conditions, projected wastewater flows, infrastructure modifications, and impacts and mitigation measures.

91. The Petition Area is currently undeveloped and does not generate wastewater flows. The Project is expected to generate a total average wastewater flow rate of approximately .30 mgd. Wastewater from the Project will be diverted to the HWTP, which is located approximately four miles east of the Petition Area. The HWTP has a capacity of treating up to 38 mgd of wastewater with expansion capability to 51 mgd. Current treatment loads are well below capacity and are more than sufficient to accommodate the additional loads from the Project.

#### Drainage

92. Engineering Concepts, Inc., prepared a report entitled "Preliminary Engineering Report for the Proposed Kapolei West Development, Kapolei, Oahu, Hawaii" (dated February 2005). The report addressed existing drainage conditions, flood hazards, runoff, infrastructure modifications, and impacts and mitigation measures, both on and offsite of the Petition Area.

93. The Petition Area falls within two watersheds. Both watersheds run from the crest of the Wai`anae Mountain range to the ocean. The western watershed discharges through the Ko Olina Resort development, accepting runoff through the existing golf course. The eastern watershed discharges through the West Kalaeloa area adjacent to the Kalaeloa Barbers Point Harbor.

94. A majority of the Petition Area above the OR&L ROW is within the western watershed and discharges runoff into the adjacent Ko Olina golf course. The portion of the Petition Area below the OR&L ROW will drain into the eastern watershed.

95. The Project will alter the character of the Petition Area by replacing existing vegetative cover with pavement, buildings, and landscaped yards typical of a residential development. As a result of the Project, the rate of peak runoff from the Petition Area is expected to increase. Estimated peak runoff for 10 and 50-year storms for the Petition Area is expected to increase by approximately 18 percent after development.

96. Drainage of the Petition Area within the western Ko Olina watershed can be addressed by the existing Ko Olina drainage systems, which were designed to accept runoff from the previously planned Ko Olina Phase 2 development. Kapolei Property Development, an affiliate of Campbell Estate, is currently planning a major drainage channel as part of the West Kalaeloa development makai of the Petition Area. Design of this channel will accommodate peak storm runoff contributions from the mauka developments, including portions of Kapolei West and Makaiwa Hills, in accordance with the storm drainage standards of the City and County. Should the development of the Petition Area precede construction of the drainage channel through West Kalaeloa, Petitioner will incorporate interim detention basins in the phasing of the Kapolei West development. These temporary detention basins would dampen flows

discharged into West Kalaeloa to what the existing drainage can accommodate.

Temporary detention basins will likely be located within the limits of the proposed golf course.

97. The Kapolei West golf course will be the major drainage way through the Kapolei West development area. Runoff discharging from the mauka areas through culverts at Farrington Highway will be collected and directed to the golf course/drainage way. Onsite improvements will collect runoff through underground drainage systems within the Petition Area and direct runoff to the golf course. Several major box or pipe culverts will be required at roadway crossings and at the crossing of the OR&L ROW. Connections to mauka and makai improvements will be coordinated as to locations and inverts. The golf course/drainage way and underground drainage systems will be designed to accommodate peak runoff flows for the onsite as well as offsite improvements in accordance with the City and County's storm drainage standards.

98. Although existing drainage patterns generally route runoff around Kalaeloa Barbers Point Harbor, storm and surface water runoff from the area has already affected the harbor. The drainage systems proposed by Petitioner will need to prevent and/or control further runoff and flooding into the harbor.

99. In addition to State and City and County agencies designated to review and approve drainage plans, any drainage improvements affecting Kalaeloa Barbers Point Harbor shall be submitted to the DOT for review and approval.

## Solid Waste Disposal

100. Engineering Concepts, Inc., prepared a report entitled "Preliminary Engineering Report for the Proposed Kapolei West Development, Kapolei, Oahu, Hawaii" (dated February 2005). The report addressed existing solid waste conditions, projected solid waste generation and characteristics, solid waste collection and service, and impacts and mitigation measures.

101. The Project will generate solid waste during construction and after development. Construction wastes will primarily be made up of vegetation, rocks, and debris resulting from clearing the site prior to construction. Municipal solid waste generated from the entire Kapolei West development area is estimated to be 22 tons/day and will be collected by the City and County.

102. Petitioner will incorporate design strategies and construction technologies into the Project that support the practice of conservation and recycling.

103. The City and County is currently operating a landfill site in Waimanalo Gulch and the H-Power waste energy recovery facility on the leeward side of O`ahu. The City and County is currently exploring alternative means of handling solid waste as an ongoing county-wide concern.

## Schools

104. The DOE has six schools in the Kapolei Public School Complex (four elementary, one intermediate, and one high school). Enrollment in Kapolei schools is close to or exceeding facility capacity, although, with the exception of the high school,

projected enrollment is anticipated to increase very slightly or decrease. The DOE's long-term enrollment projections are based upon anticipated population increases in the Kapolei area, which, as the designated "Second City," includes the planned implementation of developments such as the Project.

105. Four of the schools within the Kapolei Public School Complex are within the service area of the Petition Area and include Barbers Point Elementary School, Kapolei Elementary School, Kapolei Middle School, and Kapolei High School. Residential units planned for the Petition Area would generate approximately 261 students.

106. New facilities currently planned to meet the growing demand in the `Ewa region include an elementary school at the Mehana subdivision within the City of Kapolei, an elementary school at Ko Olina, and a new high school complex within the `Ewa Plains area.

107. There is a significant need for a middle school in the area of the Kapolei West development. A 15.5-acre middle school site has been identified in the 372.6 acres of land within the Kapolei West development already designated within the State Land Use Urban District. Petitioner is currently in discussions with the DOE regarding the proposed middle school. Petitioner intends to comply with the DOE's fair-share requirements for school facilities, including any fair-share cash contributions. Petitioner's donation of the middle school site and any required cash contributions will

satisfy the DOE's fair-share requirements for the entire Kapolei West development, including the Project.

#### Police and Fire Protection

108. The City and County Police Department provides police protection services to the Petition Area.

109. The Petition Area is located within District 8 for coverage from the Kapolei Police Station. District 8 services the communities of `Ewa, `Ewa Beach, Westloch, Barbers Point, Kapolei, Makakilo, Campbell Industrial Park, Honokai Hale, Ko Olina, Nānākuli, Mā`ili, Wai`anae, Mākaha, Mākua, and Ka`ena.

110. The Project will increase the demand for police services. It is anticipated that the resources necessary to support these services will be funded out of the increased real property tax revenues generated by the Project.

111. The City and County Fire Department provides fire protection services to the Petition Area.

112. The Petition Area will be serviced by the Makakilo (three miles northeast) and the Kapolei (one mile southeast) Fire Stations.

113. The Project will increase the demand for fire protection services; however, existing facilities are adequate to provide such services to the Petition Area. Design and construction of the water system will meet all the requirements of the BWS. Access roads capable of supporting the Fire Department's fire apparatus will be

designed and built according to its requirements. All roadway and water system designs will be submitted to the Fire Department for review and approval.

#### Emergency/Medical Services

114. Hurricane shelters within the Kapolei region are inadequate to safely accommodate the existing and projected population for the area. Petitioner will fund and construct its fair-share of adequate civil defense measures serving the Petition Area as required by the State of Hawai'i Department of Defense, Office of Civil Defense, and the City and County Civil Defense Agency.

115. Ambulance services located in Kapolei, Waipahu, and Nānākuli would provide emergency medical services to the Petition Area. St. Francis Medical Center-West serves the Leeward coast with a full range of medical and surgical services, including 24-hour emergency care complete with a helipad to facilitate the rapid transport of patients and Express Care services of treatment of minor medical emergencies. Additionally, City and County ambulance services are augmented by the U.S. Army's 68<sup>th</sup> Medical Detachment, Military Assistance to Safety and Traffic program, located at Wheeler Air Force Base.

#### Electricity and Telephone Services

116. Engineering Concepts, Inc., prepared a report entitled "Preliminary Engineering Report for the Proposed Kapolei West Development, Kapolei, Oahu, Hawaii" (dated February 2005). The report addressed existing electrical and

telephone service conditions, required power modifications, and impacts and mitigation measures.

117. The Hawaiian Electric Company (“HECO”) will provide the necessary electrical service to the Petition Area. HECO maintains two parallel 60-foot-wide easements that cross the eastern end of the Kapolei West development in a northeast direction. The easements serve 138 kV overhead transmission lines originating from a HECO substation east of the Petition Area. Campbell Estate and/or its affiliates are currently coordinating alignments for additional HECO power lines through the West Kalaeloa area from the H-POWER plant to the substation at the OR&L ROW. HECO is also in the process of planning and designing a new substation at Ko Olina.

118. It is estimated that power requirements for the Project will be in the 1 to 4 kV range per residential unit with an assumed average of 48 kWh per unit per day. Power to the Petition Area is planned via the existing Kapolei substation and the new Ko Olina substation. Annual power consumption for the Project is estimated at 21 mWh.

119. Petitioner will incorporate energy efficiency design guidelines into the Project to minimize energy consumption.

120. Hawaiian Telcom, Inc., will provide the necessary telephone services to the Petition Area. The existing telecommunication facilities need to be

augmented to support the anticipated demands of the Project. Also, easements may be required to install the necessary electronic equipment and cable facilities.

### **COMMITMENT OF STATE FUNDS AND RESOURCES**

121. Government costs incurred as a result of the Project are not expected to exceed the revenues derived. The State's operating revenues, derived principally from general excise taxes, income taxes, and specific licenses, fees, fines, and other payments, are anticipated to exceed the State's additional operating expenses throughout the Project's development and operating periods. The State's net additional revenues are projected to amount to \$3.9 million per year by stabilization in 2020.

### **CONFORMANCE TO URBAN DISTRICT STANDARDS**

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

- (1) *It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses*

The Petition Area is adjacent to lands characterized by "city-like" concentrations of people, structures, streets, urban level of services, and other related land uses. The Petition Area is located east of the existing resort, residential subdivision, and golf course at the Ko Olina Resort, south of the residential communities of Nānākai Gardens and Honokai Hale, and west of the City and Villages of Kapolei.

- (2) *It shall take into consideration the following specific factors:*
- (A) *Proximity of centers of trading and employment except where development would generate new centers of trading and employment;*
  - (B) *Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and*
  - (C) *Sufficient reserve areas for foreseeable urban growth*

The Petition Area is located near existing and proposed employment centers, which include the City of Kapolei, the Campbell Industrial Park, Kalaeloa Barbers Point, Kapolei Business Park, and Ko Olina Resort. Upon completion, services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, and police and fire protection are or will be available to serve the Petition Area.

- (3) *It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects*

The Petition Area includes lands with satisfactory topography and drainage, which are free from natural hazards such as flooding or tsunami inundation.

- (4) *Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans*

The Petition Area abuts lands within the State Land Use Urban District. Furthermore, the Petition Area is within the City and County's Urban Growth Boundary and has been identified for future urban growth in the 'Ewa DP.

- (5) *It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans*

The Petition Area is an appropriate location for new urban concentration as an infill project between the City of Kapolei and the Ko Olina Resort. The Petition Area is within the Urban Growth Boundary and has been identified for future urban growth in the General Plan and the `Ewa DP.

- (6) *It may include lands which do not conform to the standards in paragraphs (1) to (5):*

(A) *When surrounded by or adjacent to existing urban development; and*

(B) *Only when those lands represent a minor portion of this district*

The Petition Area conforms to the standards in paragraphs (1) through (5) above.

- (7) *It shall not include lands, of which the urbanization will contribute towards scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services;*

The reclassification of the Petition Area will not result in scattered spot urban development as the majority of the area surrounding the Petition Area has already been urbanized.

- (8) *It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.*

The topography of the Petition Area is relatively flat to gently sloping. Slopes range from 1 percent to 5 percent, with the steepest slope of approximately 25 percent located along a ridgeline that forms the northernmost boundary of the Petition Area. The majority of the Petition Area is below 20 percent slope.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI'I STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

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

Section 226-4 State goals

*Section 226-4(1) A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawai'i's present and future generations.*

*Section 226-4(3) Physical, social, and economic well-being, for individuals and families in Hawai'i, that nourishes a sense of community responsibility, of caring, and of participation in community life.*

The development and operation of the Project are expected to significantly impact the economy by increasing employment opportunities, personal income, and net operating revenues to the State and the City and County. The Project is also anticipated to improve the quality of life in the region by addressing the pent-up demand for housing units in an area that has been targeted for growth by the State and the City and County. The Project, as a part of the Kapolei West development, will bridge the resort

second home community and visitor attractions of Ko Olina Resort to the west and the primary residential community of Kapolei to the east.

Section 226-5 Objective and policies for population

*Section 226-5(b)(1) Manage population growth statewide in a manner that provides increased opportunities for Hawai`i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.*

*Section 226-5(b)(3) Promote increased opportunities for Hawai`i's people to pursue their socio-economic aspirations throughout the islands.*

The Petition Area is located in the `Ewa region in West O`ahu, designated by City and County policy as the location of O`ahu's secondary urban center. The `Ewa region will accommodate a major share of O`ahu's future growth, with public investment in infrastructure and public facilities supporting the future development and economic activity being encouraged in the region. The Project will provide approximately 1,181 residential units to support employment centers at Ko Olina, the City of Kapolei, and Campbell Industrial Park. The Project is also expected to increase employment opportunities, and therefore personal income in the form of direct, indirect, and induced jobs during the construction and operation of the Project.

Section 226-6 Objectives and policies for the economy – in general

*Section 226-6(a)(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawai`i's people.*

In addition to development-related jobs during construction, the Project could provide some 260 long-term permanent jobs during operations, contributing to

the personal income of those employed. Direct operational jobs could include a variety of types and levels of work, including opportunities in real estate brokerage, management, sales and marketing, golf course operations, maintenance and engineering, retail, entertainment, and landscaping. Indirect and induced employment opportunities will also be generated by the Project during its construction and operation.

Section 226-13 Objectives and policies for the physical environment – land, air, and water quality

*Section 226-13(b)(7) Encourage urban developments in close proximity to existing services and facilities.*

The Petition Area lies between established communities (Honokai Hale and Nānākai Gardens subdivisions), the Ko Olina Resort and golf course, the expanding City of Kapolei, Kalaeloa Barbers Point Harbor and its related industrial uses, and a major proposed community (Makaiwa Hills). Development of urban uses in the Petition Area would support the economic and population growth in the region and would help to relieve development pressures on rural and urban fringe areas.

Section 226-19 Objectives and policies for socio-cultural advancement – housing

*Section 226-19(b)(3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.*

*Section 226-19(b)(5) Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.*

*Section 226-19(b)(6) Facilitate the use of available vacant, developable, and underutilized urban lands for housing.*

The Petition Area would provide approximately 1,181 residential units in a variety of housing types, densities, and prices, including market-priced single-family homes and town homes that would be available to buyers and residents with a range of incomes. The Petition Area's location in the 'Ewa region ensures that adequate public and community services as well as employment opportunities are accessible to residents. A percentage of the residential development would provide affordable housing opportunities in accordance with City and County guidelines and requirements.

The Petition Area represents approximately 30 percent of the master-planned Kapolei West community. The remaining 70 percent is within the State Land Use Urban District. Development of the Petition Area in conjunction with the adjacent urbanized area would allow Petitioner to improve vacant lands between the Ko Olina golf course and the eastern boundary of the Project, thereby enhancing the overall marketability and buyer appeal of the master-planned Kapolei West community.

Section 226-104 Population growth and land resources priority guidelines

*Section 226-104(b)(1) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.*

*Section 226-104(b)(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.*

The Petition Area is located in the `Ewa region, surrounded by existing residential communities, the Ko Olina Resort and golf course, the City of Kapolei, and the industrial activities associated with Kalaeloa Barbers Point Harbor. The Project supports the City and County's directed growth policies that encourage residential and commercial development in the `Ewa region. The Petition Area has been identified for future urbanization in the `Ewa DP, and is contiguous with existing and proposed urban development. Although the Petition Area contains approximately 15 acres of good agricultural land, due to its position between existing and planned urban development, use of the Petition Area for long-term agriculture production is neither feasible nor essential. As a result of the closure of the plantations, there are ample lands within the State Land Use Agricultural District on O`ahu that may be used for diversified agriculture.

124. The reclassification of the Petition Area conforms to the Housing and Employment Functional Plans.

#### CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

125. The proposed reclassification of the Petition Area generally conforms to the objectives and policies of the Coastal Zone Management Program, chapter 205A, HRS. The majority of the Petition Area is not located along the shoreline or next to any beaches. A portion of the Petition Area fronts the Ko Olina Marina and Kalaeloa Barbers Point Harbor. Drainage facilities within the Petition Area will be adequately planned and constructed in accordance with applicable DOH administrative

rules and City and County ordinances and drainage standards. Wastewater generated from the Petition Area will be appropriately treated at the municipal HWTP.

Significant cultural and historical sites have been identified within the Petition Area.

Petitioner will continue to work with SHPD to further preserve these sites. The development of the Petition Area will alter some makai views from the H-1 Freeway and surrounding residential areas. Unused agricultural lands that appear as undeveloped open space will be replaced with urban uses. Residential buildings will be limited in height and will not obstruct makai views from the H-1 Freeway.

Significant panoramic ocean views and distant vistas of downtown Honolulu will not be obstructed. The Petition Area is not in an identified flood hazard area or tsunami inundation zone. Finally, the development of the Petition Area will not affect the State's implementation of its ocean resources management plan.

#### CONFORMANCE WITH THE CITY AND COUNTY GENERAL PLAN

126. The Petition Area is located within the `Ewa region, which the General Plan identifies for future development. Urbanization of these lands would comply with plans to direct population growth to `Ewa to relieve urban development pressures on rural and urban fringe areas. The Project would provide residential, recreational, and employment opportunities to support the planned growth of the secondary urban center in Kapolei. The Project is not anticipated to adversely impact the environmental quality or historical/cultural/natural resources of the area nor unduly burden governmental agencies to provide public services and facilities

## INCREMENTAL DISTRICTING

127. Petitioner anticipates the development of the Petition Area to commence in 2008 following the receipt of the required land use approvals. Based on projected absorption rates, the Project could take an estimated nine years to build out. Consequently, incremental districting is not necessary.

## RULINGS ON PROPOSED FINDINGS OF FACT

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

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

## CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission Rules under chapter 15-15, HAR, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 174.209 acres of land in the State Land Use Agricultural District at 'Ewa, O'ahu, Hawai'i, and identified as TMKs: 9-1-14: 33 (por.) and 9-1-15: 4 (por.) and 20 (por.), to the State Land Use Urban District, and subject to the conditions stated in the Order

below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

2. Article XII, Section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Hawai'i 425, 450, n.43, 903 P.2d 1246, 1271, n.43, certiorari denied, 517 U.S. 1163, 1165. Ct. 1559, 134 L.Ed.2d 660 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. Ka Pa`akai O Ka `Aina v. Land Use Commission, 94 Hawai'i 31, 3 P.3d 1068 (2001).

4. Seven sites have been identified as having historical or cultural significance and are recommended for preservation. Four of the seven sites are covered by an existing preservation plan and Petitioner will work with the SHPD to formulate a preservation plan for the remaining sites. Adherence to an SHPD accepted preservation

plan ensures that there will be no adverse impact to these sites. In the event any previously unidentified archaeological sites are found, Petitioner will comply with all applicable statutes and rules of the State of Hawai'i Department of Land and Natural Resources.

5. The Petition Area lies back from the coast on the extensive 'Ewa limestone plain. Historical documentation and archaeological studies indicate that this area was probably never permanently inhabited during traditional Hawaiian times. There is no evidence to suggest any native Hawaiian traditional and customary rights are being exercised within the Petition Area.

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

7. There are no threatened and endangered species of flora and fauna or species of concern in the Petition Area.

8. Air quality of the Petition Area will be impacted in the short-term by fugitive dust and exhaust emissions from stationary and mobile equipment during the construction phase of the Project. Petitioner will implement all required measures to mitigate the effects of fugitive dust and exhaust emissions.

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

10. Petitioner will employ a dual water system to conserve the supply of potable water, and non-potable water will be used where appropriate and permitted.

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

12. The reclassification of the Petition Area will urbanize approximately 15 acres of prime agricultural land. However, due to the large amount of agricultural land that has been released from plantation agriculture, it is anticipated that the urbanization of these 15 acres will not adversely impact the potential growth of diversified agriculture on O`ahu.

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

14. The Petition Area is within a designated water management area that is managed by the State Commission on Water Resource Management ("CWRM"). Non-potable water will be obtained from Pump 10 in which Petitioner has an allocation or reclaimed water from the HWTP. Use of non-potable water from Pump 10 for golf

course irrigation will require a modification of the existing water use permit from the CWRM. The Petition Area will obtain potable water from the Waipahu-Waiawa Aquifer System and the `Ewa-Kunia Aquifer System, which have adequate sustainable yields to meet the water demands of the Project.

### DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 174.209 acres of land in the State Land Use Agricultural District at `Ewa O`ahu, Hawai`i, and further identified as TMKs: 9-1-14: 33 (por.) and 9-1-15: 4 (por.) and 20 (por.), and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State land use district boundaries shall be amended accordingly.

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

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

1. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of

Hawai'i to the satisfaction of the City and County. The number, location, and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as determined by the City and County, but the number shall not be less than 30 percent of the total residential units in the Petition Area. This Condition No. 1 shall be satisfied by no later than nine years from the issuance of the first building permit for the first residential unit in the Petition Area.

2. **Public School Facilities.** Petitioner shall contribute to the development, funding, and/or construction of school facilities, on a fair-share basis, as determined by and to the mutual satisfaction of Petitioner and the DOE. Terms of the contribution shall be agreed upon in writing by Petitioner and the DOE prior to obtaining City and County final subdivision approval.

3. **Wastewater Facilities.** Petitioner shall provide wastewater system improvements as required by the DOH and appropriate City and County agencies.

4. **Transportation.** Petitioner shall participate in the implementation of the 'Ewa Highway Master Plan as determined by the DOT, the City and County's Department of Transportation Services, and the DPP.

Petitioner shall set aside land necessary for the future construction of Hanua Street to Malakole as a four-lane highway. In the event the Hanua Street extension is built, as part of Petitioner's fair-share requirements for future regional roadway improvements, Petitioner agrees it shall be built as a four-lane divided highway, or to an alternative design as identified by the DOT, in either case in

accordance with State highway standards, so that the extension of Hanua Street may be dedicated to the State at the option of the DOT with the option for dedication expiring five years after completion of the Hanua Street extension.

Petitioner shall submit a revised Traffic Impact Assessment Report ("TIAR") for review and approval by the DOT and the City and County prior to submittal of a change of zone application with the City and County. The revised TIAR shall include the technical comments that were requested by the DOT in its letter to Petitioner dated May 6, 2005.

**5. Previously Unidentified Burial/Archaeological/Historic Sites.**

Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

**6. Solid Waste Management Plan.** Petitioner shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, chapter 342G, HRS. Petitioner's Solid Waste Management Plan shall be approved by the City and County Department of Environmental Services. The Plan shall address

and encourage awareness of the need to divert the maximum amount of waste material caused by developments away from the City and County's landfills.

7. **Air Quality Monitoring.** Petitioner shall implement soil erosion and dust control measures and participate in an air quality monitoring program as specified by the DOH.

8. **Notification of Potential Nuisances.** Petitioner shall inform all prospective purchasers of properties in the Petition Area of the potential impacts, including, but not limited to, noise, dust, lighting, fumes, soot, smoke, light, heat, vapors, odors, chemicals, vibrations, and other substances and phenomena of every description to be discharged, emitted, or transmitted over and upon the properties or other industrial events associated with commercial marine activities that may be generated by Kalaeloa Barbers Point Harbor which may affect the properties and may be considered a nuisance.

The disclosure shall be made through a Disclosure Document which shall be signed by the prospective purchaser as an affirmative acknowledgement of the potential impacts. A copy of the form of the Disclosure Document shall be provided to the OP for its review and approval prior to commencement of sales. In addition, the disclosure shall be included as a covenant in the deed to purchasers, releasing the State of Hawai'i from all liability for nuisance claims and shall be recorded so as to run with the land.

This condition in no way prohibits, prevents, or restricts Petitioner from modifying the disclosure to include other uses and additional disclosures to prospective purchasers.

- a. Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Petition Area is subject to aircraft overflights and shall provide covenants in the deed to initial purchasers releasing the State of Hawai`i and the United States government from all liability.

9. **Drainage Master Plan.** Petitioner shall prepare and submit a detailed drainage master plan to the DPP and the DOT for review and approval.

10. **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements, including interim detention basins as may be necessary, required as a result of the development of the Petition Area to the satisfaction of appropriate State and City and County agencies. Drainage improvements affecting Kalaeloa Barbers Point Harbor shall be submitted to the DOT for review and approval.

11. **Water Master Plan.** Petitioner shall prepare and submit a water master plan to the BWS for review and approval.

12. **Water Resources Allocation.** Petitioner shall provide adequate potable and non-potable water source storage and transmission facilities and improvements to accommodate the development of the Petition Area as approved by appropriate State and City and County agencies.

13. **Best Management Practices.** Petitioner shall implement Best Management Practices (“BMP”) to protect surface and groundwater resources. The BMP shall be designed to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the DOH guidelines.

14. **Water Conservation Measures.** Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and turf and the use of non-potable water alternatives, and incorporate such measures into the landscape planting.

15. **Hazardous Materials.** Storage and/or disposal of hazardous materials/wastes on the Petition Area shall be in conformance with all applicable DOH and Environmental Protection Agency requirements.

16. **Fire Protection.** Petitioner shall submit all roadway and water system designs for the Project to the City and County Fire Department for review and approval.

17. **Golf Course.** Petitioner shall comply with the principles of the DOH’s “Guidelines Applicable to Golf Courses in Hawai`i,” including, but not limited to, irrigating the golf course with non-potable water.

18. **Civil Defense.** Petitioner shall fund and construct its fair-share of adequate civil defense measures serving the Petition Area as required by the State of

Hawai'i Department of Defense, Office of Civil Defense, and the City and County Civil Defense Agency.

19. **Energy Conservation Measures.** Petitioner shall implement energy conservation measures such as the use of solar energy and solar heating and incorporate such measures into the Project.

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

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

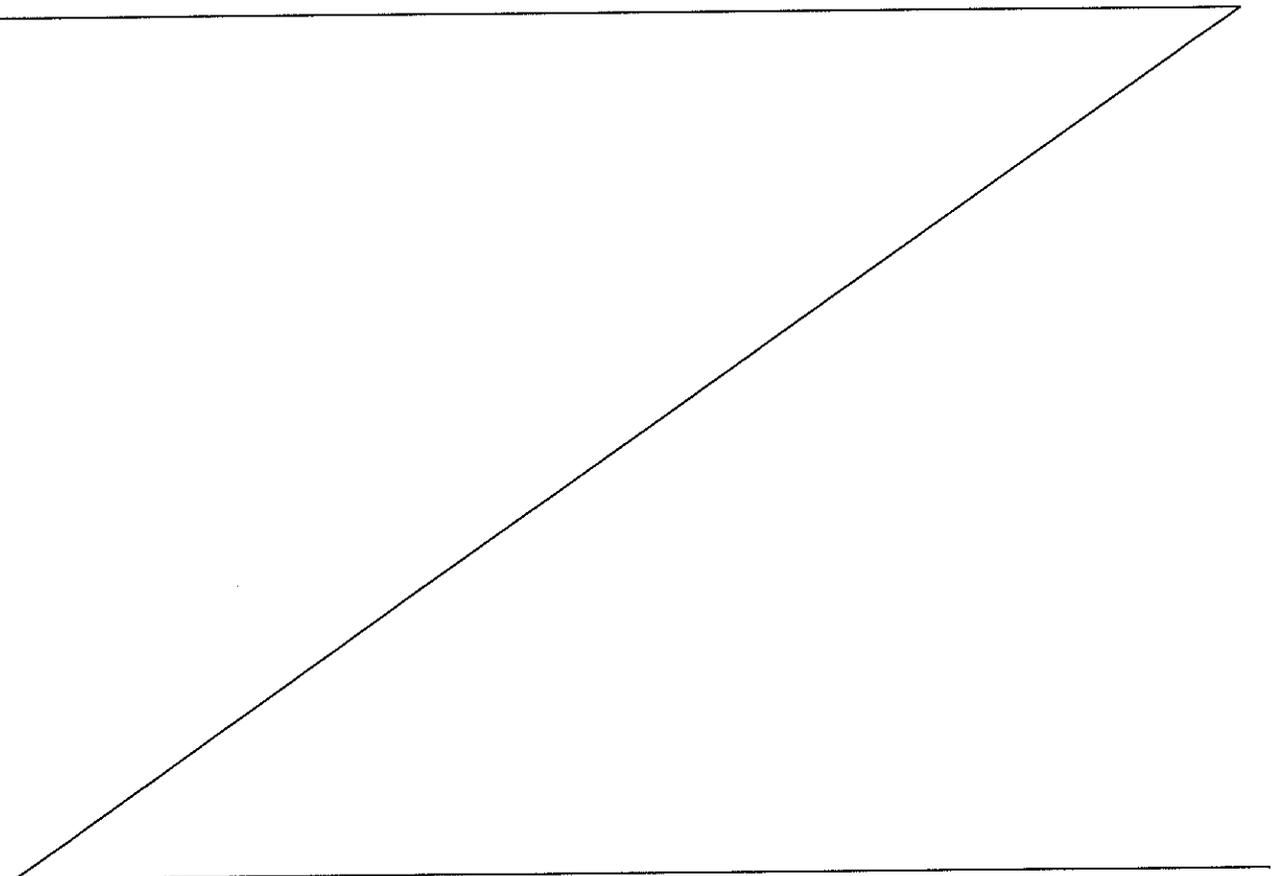
22. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DPP in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

23. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon

timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

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

25. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.





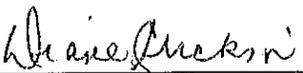
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 6th day of April, 2006, as conforming to the vote taken on Oahu on March 3, 2006. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

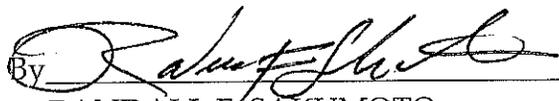
Any person aggrieved by this decision and order may seek judicial review in accordance with the provisions of HRS section 91-4.

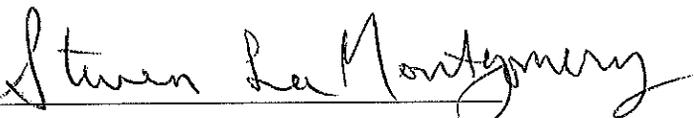
Done at Kahului, Maui, Hawai'i, this 6th day of April, 2006, per motion on March 3, 2006.

APPROVED AS TO FORM

  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

By   
RANDALL F. SAKUMOTO  
Chairperson and Commissioner

By   
STEVEN LEE MONTGOMERY  
Vice-Chairperson and Commissioner

By \_\_\_\_\_  
LISA M. JUDGE  
Vice-Chairperson and Commissioner

By Thomas Contrades  
THOMAS CONTRADES  
Commissioner

By Michael D. Formby  
MICHAEL D. FORMBY  
Commissioner

By Kyong-Su Im  
KYONG-SU IM  
Commissioner

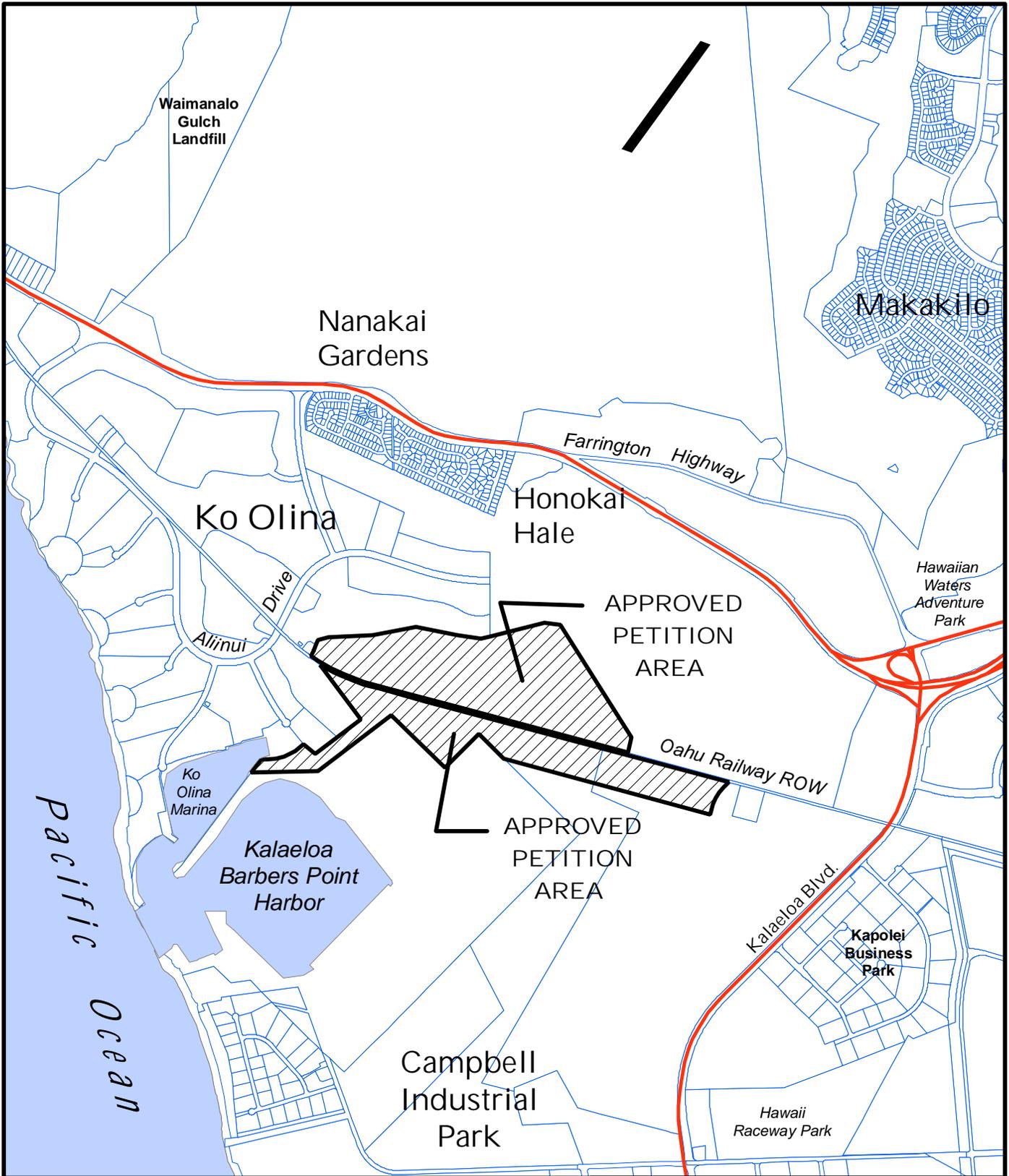
By Duane Kanuha  
DUANE KANUHA  
Commissioner

Filed and effective on  
APR 10 2008

Certified by:

Anthony J. H. Ching  
ANTHONY J. H. CHING

By \_\_\_\_\_  
RANSOM PILTZ  
Commissioner



A04-753 AINA NUI CORPORATION,  
a Hawai'i Corporation

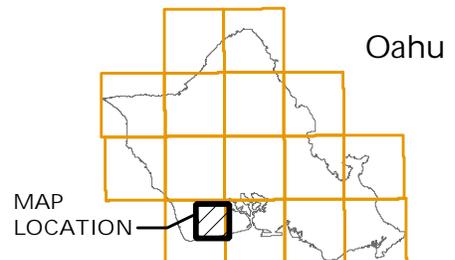
LOCATION MAP

Tax Map Keys: 9-1-14: 33 (por.) and 9-1-15: 4 (por.) and 20 (por.)

Ewa, O'ahu, Hawai'i

Scale: 1" = 2,000 feet

EXHIBIT "A"

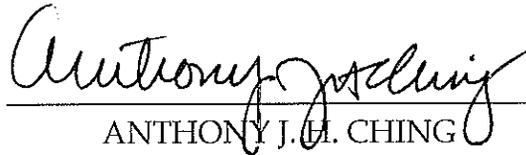




CARRIE OKINAGA, Esq.  
Corporation Counsel  
City and County of Honolulu  
530 South King Street  
Honolulu, HI 96813

CERT. BENJAMIN A. KUDO, Esq.  
WESLEY M. FUJIMOTO  
NAOMI U. KUWAYE  
745 Fort Street, 17<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Dated: Honolulu, Hawaii, APR 10 2006.

  
\_\_\_\_\_  
ANTHONY J. H. CHING  
Executive Officer