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QUEEN LILI'UOKALANI TRUST,

a non-profit public benefit organization

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION and
FOREST CITY HAWAII KONA, LLC

To Amend the Agricultural Land Use District
Boundaries into the Urban Land Use District
for certain lands situated at Keahuolu, North
Kona; consisting of approximately 271.837
acres, Tax Map Key Nos. (3) 7-4-021:020
(por.), (3) 7-4-021:024, (3) 7-4-021:025,
(3) 7-4-021:026, (3) 7-4-021:027

DOCKET NO. A10-788

QUEEN LILI'UOKALANI TRUST'S PETITION FOR DECLARATORY ORDER

VERIFICATION

DECLARATION OF YUKO FUNAKI

EXHIBITS "A" – "D"

AND

CERTIFICATE OF SERVICE

LAND USE COMMISSION
STATE OF HAWAII
2010 OCT 11 P 3:42

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QUEEN LILI'UOKALANI TRUST'S
PETITION FOR DECLARATORY ORDER

**QUEEN LILI'UOKALANI TRUST'S
PETITION FOR DECLARATORY ORDER**

COMES NOW, Queen Lili'uokalani Trust ("QLT"), a non-profit public benefit organization, whose principal place of business is 1100 Alakea Street, Suite 1100, Honolulu, Hawaii 96813, by and through its attorneys, Imanaka Kudo & Fujimoto, LLLC, and hereby files this petition for declaratory order requesting that the State of Hawaii Land Use Commission ("**Commission**") determine and/or clarify the following two issues:

- (1) Whether a petition for a district boundary amendment can be deemed a proper filing, and therefore invoke the jurisdiction and authority of the Commission to process it under Hawaii Revised Statutes ("**HRS**") § 201H-38, HRS Chapter 205, and Hawaii Administrative Rules ("**HAR**") §§ 15-15-50 and 15-15-97, when the petitioner's property interest in the petition area is in question; and
- (2) Whether a public body and body corporate and politic of the State of Hawaii (i.e., an agency of the State of Hawaii), upon petitioning the Commission for a

land use district boundary amendment under HRS § 201H-38 and HAR § 15-15-97, is required to give statewide and county-wide public notice of its intent to file the petition under HRS § 1-28.5 and HAR § 15-15-97(b)(2).

The instant petition is filed pursuant to HAR §§ 15-15-98 and 15-15-99. QLT respectfully requests a hearing on this petition for a declaratory order to permit the fair and expeditious disposition of the matters contained in this petition.

I. FACTS

In the late 1980s, as part of Governor John Waihee's comprehensive housing initiative, the State of Hawaii ("**State**") planned to develop large, master-planned communities on the islands of Oahu, Hawaii, Maui, and Kauai. *See* "Presentation on the Kealakehe Planned Community," by Joseph K. Conant, Executive Director, Housing Finance and Development Corporation¹ at the Senate Housing Committee, dated February 28, 1989 (Exhibit "A") ("**HFDC Senate Presentation**") at 1. In the County of Hawaii, Kealakehe was identified as the site for such a community. *Id.* At the Senate Housing Committee meeting, HFDC presented its intentions regarding its acquisition of QLT lands for the Kealakehe Planned Community as follows:

Another issue some of you might be aware of, is the proposed acquisition of Queen Lili'uokalani Trust lands by the State to support the development of residential and public facility uses. The State is negotiating for the sale of approximately 450 acres of Trust land which is located makai of Palani Road near the Queen Lili'uokalani Village. We believe this proposed acquisition could be a win-win situation for all. The State may be able to provide more affordable housing for local residents and possibly lands for a West Hawaii University Campus (if the University of Hawaii Board of Regents should decide on that site) and a long awaited sports complex. The State's acquisition of the Queen

¹ HFDC was the predecessor state agency to the Hawaii Housing Finance and Development Corporation ("**HHFDC**").

Lili'uokalani Trust lands would be contingent on obtaining approvals and necessary appropriations.

This proposed land acquisition represents a creative solution to accommodate the multitude of needs of the residents of the West Hawaii community.

Id. at 7-8 (Emphasis added).

On February 28, 1989, HFDC, QLT, and the State of Hawaii Department of Land and Natural Resources (“**DLNR**”) signed a Memorandum of Understanding that “establish[ed] an understanding between Queen Liliuokalani Trust and the State of Hawaii regarding the acquisition and use of approximately 450 acres or more of Queen Liliuokalani Trust Lands” (“**MOU**”) (Exhibit “**B**”). The MOU was entered into based on the State Office of State Planning acknowledgement that there was:

... need to maximize existing infrastructure and the prudent use of future infrastructure moneys and has indicated certain needs of this expanding community, such as the need for a sewage treatment plant, [public] regional sports complex and West Hawaii College campus.

MOU § II. (Emphasis added).

The “*Conceptual Development Plan 3*” attached to the MOU as Exhibit “I”, indicates the clear intent and understanding among HFDC, QLT, and DLNR, that the land subject to this proceeding (where Kamakana Villages is proposed to be developed), was to be used for “West Hawaii Campus - University of Hawaii” and a “Sports Complex” consisting of “a tennis center, Olympic pool, Gymnasium, Football stadium and track, Baseball/softball complex, and Football/soccer fields.” Exhibit “I” to the MOU.

The HFDC, QLT and DLNR also acknowledged that the State’s purchase of QLT’s land was subject to “1989 state legislature’s C.I.P. appropriation to fund [the purchase],” “[a]pproval of this agreement by the boards of the [DLNR] and the [HFDC].” MOU § V(D). The MOU also indicated the HFDC, QLT and DLNR’s clear intent and understanding that “[t]he State will be

responsible for all infrastructure requirements in terms of the improvement of the Palani Highway necessitated by the State's development of the [450-acre property]." MOU § IV(D).

On April 22, 1992, QLT and the State, by and through its Board of Land and Natural Resources, entered into a Purchase Agreement for the State to acquire approximately the 450 acres of QLT land for the development of HHFDC's Kealahou Affordable Housing Development. "Purchase Agreement" dated April 22, 1992 ("**Purchase Agreement**") (Exhibit "C"). Today, QLT remains the owner of land surrounding the Petition Area, including the abutting property on the makai side of the proposed Ane Keohokalole Highway ("**AKH**") and the southeastern side of Palani Road, and property situated mauka of the Mamalahou Highway.

After a period of 15 years or more, in 2007 and 2008, QLT received from HHFDC, an Environmental Impact Statement ("**EIS**") Preparation Notice, Draft EIS, and Final EIS for a development project entitled "Keahuolu Affordable Housing Project" ("**Keahuolu EIS**"). The Keahuolu EIS analyzed the impact of three potential conceptual development plans contemplated by HHFDC for the Petition Area.

On March 31, 2009, HHFDC entered into a development agreement with Forest City Hawaii Kona, LLC ("**Forest City**"), which granted Forest City "(i) the sole and exclusive right to develop, sell, manage, rent and operate the Project or any portion thereof on the [Petition Area]; and (ii) the first right and option to purchase, ground lease or otherwise acquire any and all finished development sites, building lots or pad within the Project, subject to and in accordance with the terms and conditions of the Development Agreement." "Memorandum of Development Agreement," dated March 31, 2009, at 1, submitted to the Commission by Petitioners as Petitioners Exhibit No. 8.

On June 26, 2009, HHFDC, Forest City, First Hawaii Title Corporation and F.H.T. Exchange, Inc. entered into an agreement regarding conveyance and escrow affecting the Petition Area. See “Memorandum of Agreement Regarding Conveyance and Escrow,” dated June 26, 2009, submitted to the Commission by Petitioners as Petitioners Exhibit No. 9.

On June 30, 2009, F.H.T. Exchange Inc. quitclaimed the Petition Area to F.H.T. Kamakana, LLC (“**FHT Kamakana**”). See “Quitclaim Deed with Reservation of Rights (Kamakana Villages at Keahuolu 272 Acres),” dated June 30, 2009, submitted to the Commission by Petitioners as Petitioners Exhibit No. 7.

On January 21, 2010, the HHFDC, with its co-petitioner Forest City (collectively, “**Petitioners**”) filed with the Commission their NOTICE OF INTENT TO FILE A LAND USE DISTRICT BOUNDARY AMENDMENT PETITION; AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO SERVICE; EXHIBITS A-B; AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO PUBLICATION; and CERTIFICATE OF SERVICE (“**First Notice of Intent**”). The First Notice of Intent stated that the district boundary amendment, which was filed under HRS §§ 201H-38 and 205-4, and HAR § 15-15-97(b), was for a development project entitled “Kamakana Villages” (“**Kamakana Villages Project**”).

On January 28, 2010, Petitioners filed with the Commission an AFFIDAVIT OF PUBLICATION (HONOLULU ADVERTISER); AFFIDAVIT OF PUBLICATION (WEST HAWAII TODAY); and CERTIFICATE OF SERVICE, attesting to the publication of Petitioners First Notice of Intent in the *Honolulu Advertiser* and *West Hawaii Today* on January 21, 2010.

On March 16, 2010, Petitioners filed with the Commission their AFFIDAVIT OF MAILING PETITIONER’S NOTICE OF HEARING; EXHIBITS “A-C”; and CERTIFICATE OF SERVICE. The Notice of Hearing, which was attached thereto as Exhibit “A” (“**First Notice of Hearing**”) gave notice

of the Commission hearing to be held on April 21 and 22, 2010, to consider Petitioners' petition to reclassify the Petition Area, to allow for the development of Kamakana Villages, a master-planned, mixed-use affordable housing project to be developed pursuant to HRS Chapter 201H.

On March 22, 2010, Petitioners filed with the Commission their PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT; VERIFICATION; PETITIONER'S EXHIBITS 1-34; and CERTIFICATE OF SERVICE ("**First Petition**"). On the same day, Petitioners filed with the Commission their NOTIFICATION OF PETITION FILING. Petitioners Exhibit "26" of the First Petition included a chart entitled "HRS § 201H-38 Exemptions, Kamakana Villages at Keahuolu, TMK (3) 7-4-021: 020," which listed the exemptions from the Hawaii County Code and relevant development rules Petitioners intended to request at the county level ("**Requested Exemption List**").

On March 22, 2010, the Commission deemed the First Petition a proper filing and accepted it for processing. Letter from Orlando Davidson, Executive Officer, State of Hawaii Land Use Commission, to Jennifer A. Benck, Esq., Carlsmith Ball LLP, attorney for Forest City, dated March 23, 2010.

On March 31, 2010, QLT filed its PETITION FOR INTERVENTION; EXHIBITS "A" - "C"; DECLARATION OF YUKO FUNAKI; and CERTIFICATE OF SERVICE to the First Petition ("**QLT's First Petition for Intervention**").

On, April 1, 2010, Petitioners filed with the Commission their MOTION TO WITHDRAW ITS PETITION WITHOUT PREJUDICE; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF JENNIFER A. BENCK; EXHIBITS A - C; and CERTIFICATE OF SERVICE ("**Memorandum in Support of Withdrawal**"). Petitioners sought to withdraw their First Petition and refile as soon as they addressed the "serious and substantive" concerns raised by the Office of Planning regarding their

archaeological inventory survey. Memorandum in Support of Withdrawal at 2-3; OFFICE OF PLANNING'S MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO WITHDRAW ITS PETITION WITHOUT PREJUDICE; CERTIFICATE OF SERVICE at 2, filed on April 6, 2010. The motion was granted by the Commission on April 26, 2010.

On July 7, 2010, Petitioners refiled with the Commission their NOTICE OF INTENT TO FILE A LAND USE DISTRICT BOUNDARY AMENDMENT PETITION; AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO SERVICE; EXHIBITS A - B; AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO PUBLICATION; and CERTIFICATE OF SERVICE ("**Second Notice of Intent**").

On July 26, 2010, Petitioners filed with the Commission an AFFIDAVIT OF PUBLICATION (HONOLULU STAR-ADVERTISER); AFFIDAVIT OF PUBLICATION (WEST HAWAII TODAY) and CERTIFICATE OF SERVICE (collectively, "**Affidavits of Second Notice of Intent**"). The Affidavits of Second Notice of Intent attested to the publication of Petitioners' Second Notice of Intent in the *Honolulu Star-Advertiser* and *West Hawaii Today* on July 7, 2010.

On August 30, 2010, Petitioners filed with the Commission an AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO SERVICE OF PETITIONER'S NOTICE OF HEARING; EXHIBITS A-D; AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO PUBLICATION; and CERTIFICATE OF SERVICE. The Notice of Hearing, which was attached to the filing as EXHIBIT A ("**Second Notice of Hearing**"), gave notice of the Commission hearing to be held on October 6 and 7, 2010.

That same day, QLT received from Petitioners a chart entitled "Summary of Area/Regional Traffic Mitigation & Fair Share Allocation," which was amended as of September 1, 2010 (Exhibit "D") ("**Kamakana Traffic Improvement Contribution Chart**").

On September 7, 2010, Petitioners filed with the Commission their PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT; PETITIONER'S EXHIBITS 1 - 37; AFFIDAVIT OF JENNIFER

A. BENCK ATTESTING TO SERVICE OF PETITION; AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO MAILING OF THE NOTIFICATION OF PETITION FILING; and CERTIFICATE OF SERVICE (“**Second Petition**”). That same day, the Commission deemed the Second Petition a proper filing and accepted it for processing. See Letter from Orlando Davidson, Executive Officer, State of Hawaii Land Use Commission, to Jennifer A. Benck, Esq., Carlsmith Ball LLP, attorney for Forest City, dated September 7, 2010.

On September 13, 2010, Petitioners filed with the Commission an AFFIDAVIT OF PUBLICATION (HONOLULU STAR-ADVERTISER); AFFIDAVIT OF PUBLICATION (WEST HAWAII TODAY); and CERTIFICATE OF SERVICE (collectively, “**Affidavits of Second Notice of Hearing**”). The affidavits attested to the publication of Petitioners’ Second Notice of Hearing in the *Honolulu Star-Advertiser* and *West Hawaii Today* on August 30, 2010.

On September 14, 2010, QLT filed with the Commission its PETITION FOR INTERVENTION (“**QLT’s Second Petition for Intervention**”); EXHIBITS “A” - “C”; DECLARATION OF YUKO FUNAKI; and CERTIFICATE OF SERVICE for the Second Petition.

On September 15, 2010, the Commission, upon review of the Affidavits of Notice of Hearing Publication, found that the Notice of Hearing had failed to comply with the requirements of HRS §§ 205-4 and 1-28.5, and HAR § 15-15-51, and rescinded its determination that the Second Petition was ready for processing. See Letter from Orlando Davidson, Executive Officer, State of Hawaii Land Use Commission, to Jennifer A. Benck, Esq., Carlsmith Ball LLP, attorney for Forest City, dated September 15, 2010 (“**Commission Letter Rescinding Acceptance**”).

On September 17, 2010, QLT sent a letter to Steven Lim, Esq., attorney for Forest City, and Craig Iha, Esq., attorney for HHFDC, informing them of QLT’s intent to file a petition for

declaratory order with the Commission regarding the validity of Petitioners' project as an HRS Chapter 201H affordable housing project.

On September 21, 2010, Petitioners, for the third time, filed with the Commission the following: AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO SERVICE OF NOTICE OF HEARING; EXHIBITS A-D; AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO PUBLICATION OF NOTICE OF HEARING; EXHIBIT 1; and CERTIFICATE OF SERVICE. Jennifer A. Benck's attestation of the third publication of the Notice of Hearing attested to the re-publication of Petitioners' Notice of Hearing in the *Honolulu Star-Advertiser*, *West Hawaii Today*, *Hawaii Tribune-Herald*, *The Maui News*, and *The Garden Island*, on September 21, 2010 ("**Third Notice of Hearing**").

On September 22, 2010, the Commission issued a letter which deemed the Second Petition a proper filing and accepted it for processing as of September 21, 2010. *See* Letter from Orlando Davidson, Executive Officer, State of Hawaii Land Use Commission, to Jennifer A. Benck, Esq., Carlsmith Ball LLP, attorney for Forest City, dated September 22, 2010.

At a hearing held on October 7, 2010, the Commission orally granted QLT's Petition for Intervention on the condition that QLT file its declaratory order on October 11, 2010. QLT files this Petition for Declaratory Order in satisfaction of this condition.

II. RELEVANT LAW

Under HRS § 205-7, the Commission has authority to adopt rules "relating to matters within its jurisdiction...." The latest version of such rules was adopted by the Commission on November 4, 1999, and is organized under HAR Ch. 15-15, as rules that "govern[] the practice and procedure before the land use commission[.]" HAR § 15-15-01.

HAR § 15-15-97 sets forth the procedures to which the Commission and parties must adhere in processing district boundary amendment petitions for government-sponsored housing projects under HRS § 201H-38.²

Under HAR § 15-15-97(b)(2), a petitioner filing for a district boundary amendment for a government-sponsored housing project under HRS § 201H-38 is required to “[p]ublish the notice of intent [to file the petition] at least once in a newspaper of general circulation in the State as well as in a county newspaper in which the subject property is situated”, “[n]ot less than sixty days prior to the filing of a petition[.]”

HAR § 15-15-97(e) requires petitioners filing a HRS § 201H-38 petition (“**201H-petition**”) to file the petition in conformance with subchapters 5 and 6 (HAR §§ 15-15-34 through 15-15-50), except that the 201H-petition is required to include certain documents not required under subchapters 5 and 6 for non-201H petitions.

Section 201H petitions that fail to comply with the requirements set forth in HAR §§ 15-15-97(b) and (e) “shall be deemed defective and the date of filing of the petition shall be as of the date the defect is cured.” HAR § 15-15-97(f).

Under HAR § 15-15-50(c)(5) (which is included in HAR Subchapter 6), a petition for a district boundary amendment is required to provide “[t]he petitioner’s property interest in the subject property” as follows:

- (A) A true copy of the deed, lease, option agreement, development agreement, or other document conveying to the petitioner a property interest in the subject property;

² The text of HAR § 15-15-97 refers to HRS § 201G-118. However, the state legislature repealed HRS Chapter 201G in 2006, upon dividing the Housing and Community Development Corporation of Hawaii (HCDCH) into the HHFDC and the Hawai’i Public Housing Authority. A new chapter, HRS Chapter 201H, was established for the HHFDC, and HRS § 201G-118 was replaced by HRS § 201H-38. *See* 2006 Haw. Sess. L. Act 180, § 2.

- (B) If the petitioner is not the owner, in fee simple of the subject property, written authorization of the fee owner to file the petition;

...

HAR § 15-15-50(c)(5).

HAR § 15-15-97(h) requires the notice of the hearing to be published to the extent provided by law. Under HRS § 205-4(c), the public notice of the hearing must be given “at least once in the county in which the land sought to be redistricted is situated as well as once statewide at least thirty days in advance of the hearing.” *See also*, HAR § 15-15-51(c).

In addition, with regard to publication of notices by government agencies, HRS § 1-28.5 applies, as set forth in pertinent part below:

Publication of notice. (a) Notwithstanding any other statute, law, charter provision, ordinance, or rule to the contrary, whenever a government agency is required to give public notice or to publish notice, the notice shall be given only as follows:

(1) For statewide publication:

(A) In a daily or weekly publication of statewide circulation; or

(B) By publication in separate daily or weekly publications whose combined circulation is statewide; and

(2) For county-wide publication, by publication in a daily or weekly publication in the affected county.

Additional supplemental notice may also be given through Hawaii FYI, the State's interactive computer system.

...

- (e) For purposes of this section, “government agency” means each department, board, commission, or officer of the State or any of its political subdivisions.

HRS § 1-28.5.

III. DISCUSSION 1: SECOND PETITION IS INCOMPLETE, DUE TO LACK OF A VALID AUTHORIZATION TO USE THE PETITION AREA IN THE MATTER PROPOSED BY PETITIONERS

A. SPECIFIC STATUTORY PROVISION, RULE, OR ORDER IN QUESTION, TOGETHER WITH A STATEMENT OF THE CONTROVERSY OR UNCERTAINTY INVOLVED

QLT files this petition for declaratory order requesting that the Commission determine whether a petition for a district boundary amendment can be deemed properly filed and ready for processing under HRS § 201H-38, HRS Chapter 205, and HAR §§ 15-15-50 and 15-15-97, when the petitioner and/or fee owner's property interest to the Petition Area is in question.

Specifically, QLT requests that the Commission: (1) find that the Second Petition is not properly filed under HRS § 201H-38 and HAR §§ 15-15-50 and 15-15-97, since HHFDC, and consequently, FHT Kamakana, did not and does not have the authority to use the Petition Area for Forest City's Kamakana Villages Project; or in the alternative, (2) remand the issue to HHFDC to reexamine the matter to ensure that its use of the Petition Area and the money appropriated by the State Legislature for the purchase thereof, is consistent with the representations made by the HFDC to QLT, the public, and the State Legislature upon the State's purchase thereof, and the clear intent of the parties involved.

B. QLT'S INTEREST IN THE SUBJECT MATTER, INCLUDING THE REASONS FOR ITS SUBMISSION OF THIS PETITION FOR DECLARATORY ORDER

QLT has interest in the subject matter, as a former landowner that conveyed the Petition Area to the State in reliance on (1) representations made by HFDC to QLT, the public, and the State Legislature regarding the intended use of the property, and (2) certain conditions set forth in the MOU and Purchase Agreement, and as owner of property surrounding the Petition Area, in ensuring that Petitioners follow and comply with the parties' original intent and conditions agreed upon when the conveyance was made.

C. QLT'S POSITION OR CONTENTION

Petitioners' land use plan for the Kamakana Villages Project deviates significantly from the representations made by the HFDC to QLT, the public, and the State Legislature regarding the intended use of the property as the Kealakehe Affordable Housing Project, for which:

(i) QLT sold the property to the State; and (ii) the State Legislature awarded Capital Improvement Plan (“C.I.P.”) appropriations to obtain the property from QLT.

In addition, representations made by the Petitioners, e.g., the Kamakana Traffic Mitigation Chart and Requested Exemption List, indicate Petitioners’ intent to violate the conditions set forth in the MOU and Purchase Agreement, which *inter alia*, requires the State to be “responsible for all infrastructure requirements in terms of the improvement of the Palani Highway necessitated by the State’s development of [the Petition Area],” MOU § IV(D) (emphasis added), and “grant to [QLT] perpetual easements for utility purposes, including but not limited to, water, sewer, electrical, storm drainage, and other similar uses, through, over, and across [the Petition Area][,]” Purchase Agreement § 7.

QLT contends that the significant change in the use of the Petition Area and Petitioners’ intent to disregard certain conditions set forth in the MOU and Purchase Agreement amounts to a breach thereof, and accordingly, the conveyance of the 450 acres from QLT to the State is invalidated. As such, HHFDC, and consequently FHT Kamakana is not a legitimate fee owner of the Petition Area. Therefore, Petitioners Exhibit No. 11 entitled “Fee Owner’s Letter of Authorization” is invalid, and the Petition is therefore incomplete.

Moreover, the State Legislature, in 1989, appropriated 8.5 million dollars for the acquisition of the 450 acres from QLT by eminent domain or threat of eminent domain, in conjunction with the Kealakehe Affordable Housing Project, for the purposes providing West Hawaii with a regional sports-recreational complex, campus site for higher education, residential use, and sites for infrastructure. Had it not been for this purpose and use of land, the State Legislature may not have appropriated the 8.5 million dollars.

D. QLT’S MEMORANDUM OF AUTHORITIES, CONTAINING A FULL DISCUSSION OF REASONS AND LEGAL AUTHORITIES IN SUPPORT OF ITS POSITION OR CONTENTION

1. The MOU and Purchase Agreement is Invalid Due to HHFDC’s Breach Thereof.

Hawaii courts have long held that “[i]n the construction of all agreements, the only proper rule is to seek for the intention of the parties,” *Lathrop v. Wood*, 1 Haw. 71 (1852), and that the “intention of the parties to a contract is paramount to the manner chosen to effect it[.]” *In re Taxes, Aiea Dairy, Ltd.*, 46 Haw. 292, 298, 380 P.2d 156, 160 (1963), *see also Brown v. KFC National Management Co.*, 82 Hawai’i 226, 240, 921 P.2d 146, 160 (1996) (“[i]n construing a contract, a court’s principal objective is to ascertain and effectuate the intention of the parties as manifested by the contract in its entirety.”).

At the time of purchase of the 450 acres of QLT property, the intention of the parties was that the Petition Area was going to be used for “lands for a West Hawaii University Campus...and a long awaited sports complex.” HFDC Senate Presentation at 7. (Emphasis added). The MOU confirmed such representation, that the 450 acres to be sold by QLT to the State was to be used for the development of a Regional Sports Complex and recreational areas, consisting of a tennis center, Olympic pool, gymnasium, football stadium and track, baseball/softball complex, football/soccer fields, a West Hawaii Campus – University of Hawaii, and residential. See Exhibit “I” attached to the MOU. (Emphasis added). In addition, the State assured that it will be “responsible for all infrastructure requirements in terms of the improvement of the Palani Highway necessitated by the State’s development of [the Petition Area].” MOU § IV(D). To date, neither Petitioners nor the State has provided evidence that this requirement will be met.

The conditions included in the MOU and Purchase Agreement were based on the original intent of the parties as contemplated for the Kealakehe Affordable Housing Project. But for

HFDC's representation and the mutual assent among the parties in regard to the use of the property for the Kealakehe Affordable Housing Project, QLT would not have signed the Purchase Agreement. The C.I.P. appropriation was made by the State Legislature based on the representation made by HFDC at the Senate Committee for the Kealakehe Affordable Housing Project.

The Kamakana Villages Project deviates significantly from what was proposed to QLT, the public, and the State Legislature in purchasing the 450 acres and in obtaining the necessary C.I.P. appropriations for it. It does not include a regional sports complex. It does not include a University Complex. The Petition Area is not where the HFDC, QLT, and DLNR intended to have the affordable housing component,³ and Petitioners do not propose an affordable housing percentage of 60%, as originally intended. In addition, the Kamakana Traffic Improvement Contribution Chart revealed Petitioners' intent to breach MOU § IV(D), which requires them to be "responsible for all infrastructure requirements in terms of the improvement of the Palani Highway necessitated by the State's development of [the Petition Area]." (Emphasis added.) No evidence has been submitted by the Petitioners that this requirement will be met.

The Kamakana Villages Project land use plan and the representations made by Petitioners are clearly and significantly contrary to the intent of the parties who signed the MOU and the Purchase Agreement, and thus, amount to a breach thereof. As such, HHFDC, and consequently FHT Kamakana, does not have the authority to use the Petition Area for Forest City's Kamakana Villages Project. Accordingly, Petitioners Exhibit No. 11 entitled "Fee Owner's Letter of

³ That certain portion of the 450 acres intended by the HFDC, QLT and DLNR to be developed as affordable housing is currently being developed as La'i Ōpua.

Authorization” signed by FHT Kamakana is invalid, and therefore, the Petition cannot be deemed complete.

2. QLT Was Not Aware of HHFDC’s Intent to Breach Until Reviewing the First Petition and Kamakana Traffic Improvement Contribution Chart, and Did Not Waive Its Right Under the MOU and Purchase Agreement.

QLT became truly aware of Petitioners’ intent to breach the MOU and Purchase Agreement upon reviewing the First Petition (including the Requested Exemption List) filed on March 22, 2010, in conjunction with the Kamakana Traffic Improvement Contribution Chart, dated September 1, 2010 and received by QLT the next day.

The Keahuolu EIS issued by the HHFDC in 2008 included three different land use scenarios, and at the time of drafting, HHFDC was in the process of calling for prospective developers to formulate a development plan. Moreover, based on the history of development projects for the property, i.e., the Kealakehe Affordable Housing Project, QLT was not sure whether HHFDC’s plans would reach fruition. It was upon its review of the First Petition, the representations made by Petitioners, and the Kamakana Traffic Improvement Contribution Chart, which indicated Petitioners’ intent avoid taking full responsibility for “infrastructure requirements in terms of the improvement of the Palani Highway necessitated by the State’s development of [the Petition Area],” that QLT became fully aware of Petitioners’ intent to breach the MOU and Purchase Agreement.

Moreover, even if QLT was deemed to have notice of Petitioners’ intent to breach the MOU and Purchase Agreement upon the receipt of the Keahuolu EIS, its omission to act upon the possible future breach does not amount to QLT waiving its right under the MOU and Purchase Agreement. Under Purchase Agreement § 13(h), omission of a party to take action on the account of a default that persists or is repeated shall not be interpreted as an implied waiver. Furthermore, in the case at hand, Petitioners’ breach of the MOU and Purchase Agreement is still

speculative, depending on how this Commission acts on the Petition. As such, QLT's omission to act upon Petitioners' possible future breach of the MOU and Purchase Agreement shall not be considered a waiver of its right to act upon it.

IV. DISCUSSION 2: SECOND PETITION IS NOT COMPLETE, DUE TO LACK OF PROPER NOTICE OF INTENT TO FILE PETITION

A. SPECIFIC STATUTORY PROVISION, RULE, OR ORDER IN QUESTION, TOGETHER WITH A STATEMENT OF THE CONTROVERSY OR UNCERTAINTY INVOLVED

There are two official public notices required to be given under the law and Commission rules, in furtherance of a 201H-Petition. The first notice is the notice of intent. The second notice is the notice of hearing. This Commission found the Second Notice of Hearing for this docket defective on the basis that it was not published on both a statewide and county-wide basis.

QLT requests that the Commission determine whether HHFDC, a public body and body corporate and politic of the State of Hawaii, that is subject to HRS § 1-28.5 is required to publish its Notice of Intent on a statewide and county-wide basis, upon filing of its district boundary amendment petition (with co-petitioner Forest City) under HRS § 201H-38 and HAR § 15-15-97. This would amount to the same publication requirement imposed by the Commission for Notice of Hearings.

B. QLT'S INTEREST IN THE SUBJECT MATTER, INCLUDING THE REASONS FOR ITS SUBMISSION OF THIS PETITION FOR DECLARATORY ORDER

QLT, as a party to this proceeding, has interest in ensuring that the Petitioners' Second Petition is not defective, and that there will be no future rescissions and remands based on procedural missteps.

QLT, as an abutting landowner, and also as a former landowner who sold the Petition Area to the State under certain conditions, has interest in this Second Petition that is clearly

distinguishable from that of the general public. Consequently, QLT has been attempting to, and will be participating in the district boundary amendment process. Due to various reasons, the Petitioners' boundary amendment proceeding has been set back a couple of times, and as a result, QLT, along with the other parties and the Commission, was required to take extra time, effort, and expense in reviewing two petition documents, two Archaeological Inventory Surveys, and three Traffic Impact Analyses Reports. QLT has also been required to submit two petitions for intervention. Should this proceeding go forward and finish, only to be remanded or overturned based on the Second Petition being defective, QLT, along with the Commission and other parties involved, will be prejudiced.

Therefore, QLT requests that the Commission make a determination now, before the hearing commences, as to whether Petitioners' Second Notice of Intent was published in conformity with the relevant State laws and Commission rules.

C. QLT'S POSITION OR CONTENTION

QLT contends that under HRS § 1-28.5, HAR § 15-15-97(b)(2), and the reasoning upon which the Commission rescinded its acceptance of the Second Petition, HHFDC (with its co-petitioner Forest City) was required to give public notice of its intent to file the Second Petition in a statewide and county-wide medium. As the Petition fails to satisfy HAR § 15-15-97(b), it is incomplete under HAR § 15-15-97(f).

D. QLT'S MEMORANDUM OF AUTHORITIES, CONTAINING A FULL DISCUSSION OF REASONS AND LEGAL AUTHORITIES IN SUPPORT OF ITS POSITION OR CONTENTION

Under HAR § 15-15-97(b)(2), petitioners requesting a district boundary amendment pursuant to HRS § 201H-38 are required to "[p]ublish the notice of intent [to file the petition] at least once in a newspaper of general circulation in the State as well as in a county newspaper in which the subject property is situated." (Emphasis added). This language differs from that of

HRS § 205-4(c) and HAR § 15-15-51(c), under which notices of hearing are required to be publicly given “at least once in the county in which the land sought to be redistricted is situated as well as once statewide[.]” (Emphasis added.) However, when one considers the crucial role HAR § 15-15-97(b)(2) plays in 201H district boundary amendment proceedings, and the text and legislative history and intent behind HRS §§ 205-4, 1-28.5, HAR §§ 15-15-51 and 15-15-97, along with the reasoning upon which the Commission rescinded its acceptance of the Second Petition, it would be absurd to deem that the publication requirement under HAR § 15-15-97(b)(2) for the notice of intent to file a petition is different from that of a notice of a hearing.

Indeed, when construing a statute or administrative rule, the decision maker’s foremost obligation “‘is to ascertain and give effect to the intention of the legislature’ which ‘is to be obtained primarily from the language contained in the statute itself.’” *Franks v. City and County of Honolulu*, 74 Haw. 328, 334, 843 P.2d 668, 671 (1993), *Allstate Ins. Co. v. Ponce*, 105 Hawai‘i. 445, 454, 99 P.3d 96, 105 (2004). However, it is also true that statutory language must be read “in the context of the entire statute and construe[d]...in a manner *consistent with its purpose*,” *Franks*, 74 Haw. at 335, 843 P.2d at 671 (emphasis added), and “[d]eparture from literal construction is justified when such construction would produce absurd and unjust result and the literal construction in the particular action is clearly inconsistent with purpose and policies of the act.” *Tangen v. State Ethics Commission*, 57 Haw. 87, 93, 550 P.2d 1275, 1279 (1976), *Save Hawaiiiloa Ridge Ass’n v. Land Use Commission*, 57 Haw. 84, 549 P.2d 737 (1976). The same general principles that apply to statutory interpretation also apply to interpretation of administrative rules. *Allstate*, 105 Hawai‘i at 454, 99 P.3d at 105.

- 1. The Public Notice Requirement for a Petitioner’s Intent to File a Petition Is a Rule Specifically Set for the Expedited 201H Process, Which Plays a Role Similar to the Notice of Hearing in Regular Non-201H Proceedings.**

HAR § 15-15-97(b)(2), which requires a 201H petitioner to file its notice of intent to file its petition is a rule specifically set for the 201H district boundary amendment process. There is no such requirement for a regular Chapter 205 boundary amendment proceeding.

The 201H district boundary amendment proceeding is an extremely expedited process: a petitioner is expected to have met with interested persons before even filing its petition; the prehearing meeting among the Commission and participating parties is held even before the petitions for intervention are heard; the actual hearing starts within weeks of the petition being deemed complete; and the Commission has only forty-five days to render its decision after the petition is accepted for processing.

In such extreme circumstances, the notice of intent to file a petition, which informs the public of the upcoming petition and the rights of interested persons to intervene at least sixty days in advance, plays an essential role of giving interested persons time to contact the petitioner or the Commission for information, determine if they may be affected by the petition, and if so, consider and prepare for participation in the proceeding. Due to the extremely expedited nature of the proceeding, the limited amount of time given to the public after the issuance of the notice of hearing would be inadequate to conduct the above. In this sense, the notice of intent to file a 201H-petition plays a similar crucial role as the notice of hearing plays in a regular non-201H proceeding, and it would be absurd to think that publication of the notice of intent to file may be done in a more limited manner than the notice of hearing.

2. HAR § 15-15-97(b)(2) Should Have Been Amended Following the 1998 Amendment to HRS § 205-4, as the Legislative Intent Behind the HRS § 205-4 Amendment Indicated that Publication of Notices in a Non-Statewide and Non-County-wide Newspaper Does Not Suffice as Giving the Public Adequate Notice.

HAR § 15-15-97 was promulgated in 1987 as the Commission's rules for processing petitions for housing projects under HRS § 359G-4.1 (repealed), which is a predecessor statute to

HRS § 201H-38.⁴ Except for occasional updates mainly to revise the title to reflect the change in the governing statute, most of the text in HAR § 15-15-97 has been unchanged since its promulgation, including the notice of intent requirement under HAR § 15-15-97(b)(2).

Back in 1987, HRS § 205-4(c) required notices of hearing to be published “at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State[.]” (Emphasis added.) Likewise, HAR § 15-15-51(c) in 1987 required notices of hearing to be published “at least once in a newspaper of general circulation in the State and as well as in a county newspaper in which the subject property is situated[.]” However, in 1998, the State Legislature, with an intent “to provide more consistent and better alternatives to government agencies in giving public notice,” amended the publication requirement for notices of hearings in HRS § 205-4(c) from “once in a newspaper of general circulation in the State” to “once statewide,” along with amendments to similar text in over one hundred citations throughout the HRS that provided for “public notice” by government agencies. 1998 Haw. Sess. L. Act 2, § 60 at 36. In 1999, the corresponding text in HAR § 15-15-51(c) was amended accordingly, however, the text in HAR § 15-15-97(b)(2) was left behind, forgotten.

Considering the importance of giving the public notice of a petitioner’s intent to file a 201H-petition, in conjunction with the State Legislature’s finding that publication in a “newspaper of general circulation” is insufficient as public notice, it would be absurd to conclude that publication of a petitioner’s intent to file a 201H-petition in one non-statewide and one non-county-wide newspaper would suffice as “public notice.”

⁴ See *infra*, note 2.

3. Publication of Notices “in the County in Which the Land Sought to Be Redistricted Is Situated” Is Deemed to Be Publication “County-wide”.

Moreover, even if the publication of the Notice of Intent in the *Honolulu Star-Advertiser* is deemed to satisfy the “state” requirement under HAR § 15-15-97(b), publication of the notice in *West Hawaii Today* alone does not satisfy the “county” requirement under the rule.

HAR § 15-15-97(b), HRS § 205-4(c) and HAR § 15-15-51(c) use similar language in regard to the county portion; i.e., “once...in a county newspaper in which the subject property is situated[.]” HAR § 15-15-97(b), and “once in the county in which the land sought to be redistricted is situated[.]” HRS § 205-4(c) and HAR § 15-15-51(c). None of them use the actual term “county-wide.” Nonetheless, the “county” portion of HRS § 205-4(c) and HAR § 15-15-51(c) is interpreted as “county-wide.”

As stated previously, on September 15, 2010, the Commission rescinded its determination that the Second Petition was ready for processing, because it concluded that the Notice of Hearing, which was published in just *Honolulu Star-Advertiser* and *West Hawaii Today* did not satisfy the public notice requirements under HRS §§ 205-4 and 1-28.5, and HAR § 15-15-51. Commission Letter Rescinding Acceptance. The Commission agreed with the State of Hawai‘i Procurement Office’s opinion that publication in *West Hawaii Today* did not satisfy the county requirement, because “*West Hawaii Today* is not a paper of countywide circulation.” (Emphasis added.) *Id.*

As such, HHFDC’s (and Forest City’s) Notice of Intent that was only published in *Honolulu Star-Advertiser* and *West Hawaii Today* fails to satisfy the “county” requirement under HAR § 15-15-97(b).

4. HHFDC's Notice of Intent to File, Which Was Not Published Both Statewide and County-Wide Fails to Be a Valid "Public Notice" Under HRS § 1-28.5.

Furthermore, public notices given by HHFDC must be in compliance with HRS § 1-28.5, the statute that governs public notices given by state agencies.

HRS § 1-28.5 was enacted in 1998, under the same act by which HRS § 205-4 was amended. 1998 Haw. Sess. L. Act 2, § 2 at 3. HRS § 1-28.5 requires publication of notices by government agencies to be given both statewide "[i]n a daily or weekly publication of statewide circulation" or "[b]y publication in separate daily or weekly publications whose combined circulation is statewide" and county-wide "by publication in a daily or weekly publication in the affected county." In 1999, the State Legislature added language to the original 1998 text to ensure that there are no exceptions to this requirement, and to clarify that public notices given by government agencies must be given in both state and county-wide publications.⁵

HHFDC is "State of Hawaii's premier housing finance and development agency."⁶ As a "public body and body corporate and politic of the State of Hawaii," Second Petition at 1, it is clearly a "government agency" that is subject to the public notice requirement under HRS § 1-

⁵ HRS § 1-28.5 (1998) was amended in 1999 as follows:

Publication of notice. (a) Notwithstanding any other statute, law, charter, provision, ordinance, or rule to the contrary, whenever a government agency is required to give public notice or to publish notice, the notice shall be given only as follows:

(1) For statewide publication:

(A) In a daily or weekly publication of statewide circulation; or

(B) By publication in separate daily or weekly publications whose combined circulation is statewide; and

(2) For county-wide publication, by publication in a daily or weekly publication in the affected county.

...

e) For the purposes of this section, "government agency" means each department, board, commission, or officer of the State or any of its political subdivisions.

1999 Haw. Sess. L. Act 160 § 22 at 521.

⁶ Hawaii Housing Finance & Development Corporation, <http://hawaii.gov/dbedt/hhfdc> (last visited October 8, 2010).

28.5. Therefore, all public notices given by HHFDC, without exception, must be published statewide and county-wide in a manner set forth in HRS § 1-28.5. As provided in the Commission Letter Rescinding Acceptance, *Honolulu Star-Advertiser* is not “a paper of statewide circulation” and *West Hawaii Today* is not “a paper of countywide circulation.” Thus, publication in these two newspapers do not satisfy the public notice requirement under HRS § 1-28.5. Therefore, HHFDC’s publication of its Second Notice of Intent, which was not published both statewide and county-wide fails to be a valid “public notice.”

5. QLT’s Request Is Not Moot, and Even If It Is, the Commission Is Not Precluded from Determining This Issue as It Falls Under the Public Interest Exception for the Mootness Doctrine.

Petitioners may argue that QLT’s request is moot at this point, since the public was already given notice regarding their Second Petition through their Third Notice of Hearing, which was published in accordance with HRS §§ 205-4 and 1-28.5, and HAR § 15-15-51(c). However, this argument fails.

First, it ignores the purpose of having HAR § 15-15-97(b)(2). If publication of a notice of hearing was enough to inform the public of a 201H-petition filing, HAR § 15-15-97(b)(2) would not have been promulgated in addition to the notice of hearing requirement in the first place. Moreover, the public interest exception to the mootness doctrine would apply in this case. Hawaii courts have held that matters will not be considered moot “when the question involved affects the public interest and an authoritative determination is desirable for the guidance of public officials,” and when “it is likely in the nature of things that similar questions arising in the future would likewise become moot before a needed authoritative determination[.]” *Kaho ‘ohanohano v. State*, 114 Hawai‘i 302, 162 P.3d 696 (2007), *Right to Know Comm. v. City Council, City and County of Honolulu*, 117 Hawai‘i 1, 9, 175 P.3d 111, 119 (Hawai‘i App., 2007). When analyzing the public interest exception, the courts look to “(1) the public or private

nature of the question presented, (2) the desirability of an authoritative determination for future guidance of public officers, and (3) the likelihood of future recurrence of the question”, *Doe v. Doe*, 116 Hawai‘i 323, 327, 172 P.3d 1067, 1071 (2007). QLT’s current inquiry satisfies all three criteria: (1) public notice pertaining to filing of an expedited district boundary amendment of agricultural land for an affordable housing project is of great public importance; (2) clarification of the public notice requirement under HAR § 15-15-97(b)(2), in conjunction with HRS § 1-28.5 is a necessary guidance to future district boundary amendment petitioners and the Commission staff; and (3) the likelihood of recurrence of the question is high, since there will be district boundary petitions filed under HAR § 15-15-97 in the future. As such, even if, for argument sake, QLT’s request is deemed moot, the issue falls under the public interest exception and the Commission will not be precluded from making its determination.

V. CONCLUSION

For the aforementioned reasons, QLT respectfully requests that the Commission to determine and:

- (1) (a) Find that the Second Petition is defective under HRS § 201H-38, HRS Chapter 205, and HAR §§ 15-15-50 and 15-15-97, as it lacks a valid authorization to reclassify the subject lands by the landowner. HHFDC and FHT Kamakana lacks the authority to use the Petition Area for Forest City’s Kamakana Villages Project; or in the alternative, (b) Remand the issue to HHFDC to reexamine the matter to ensure that its use of the Petition Area and the money appropriated by the State Legislature for the purchase thereof, is consistent with the representations made by the HFDC to QLT, the public, and the State Legislature upon the State’s purchase thereof, and the clear intent of the parties involved; and

- (2) Find that the Second Petition is not properly filed under HRS § 201H-38 and 15-15-97, as it failed give an adequate public notice of Petitioners intent to file the Petition pursuant to HAR § 15-15-97(b)(2). HHFDC, a state agency (with its co-petitioner Forest City) was required to give public notice of intent in both statewide and county-wide publications under HRS § 1-28.5, HAR § 15-15-97(b)(2).

DATED: Honolulu, Hawai'i, October 11, 2010.

Of Counsel:
IMANAKA KUDO & FUJIMOTO
A Limited Liability Law Company

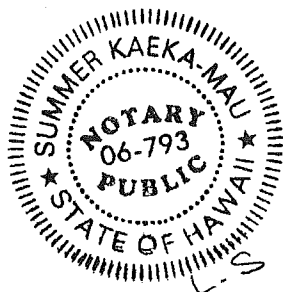



BENJAMIN A. KUDO
YUKO FUNAKI

Attorneys for Intervenor
QUEEN LILI'UOKALANI TRUST

STATE OF HAWAII)
)
) SS.
CITY AND COUNTY OF HONOLULU)

By LeeAnn G.P. Crabbe
LEEANN CRABBE
Its Vice President




 Print Name: Summer Kaeka-Mau
 Notary Public in and for said State
 My commission expires: 12-31-2010

NOTARY CERTIFICATE (Hawaii Administrative Rules § 5-11-8)


Document Identification or Description: Queen Lili'uokalani
Trust's Petition for Declaratory order

Document Date: October 11, 2010

No. of Pages: 37 Jurisdiction: 1st Circuit
(in which notarial act is performed)

Summer Kaeka-Mau 10/11/2010
Signature of Notary Date of Certificate

Summer Kaeka-Mau (Official Stamp or Seal)
Printed Name of Notary



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION and
FOREST CITY HAWAII KONA, LLC

To Amend the Agricultural Land Use District
Boundaries into the Urban Land Use District
for certain lands situated at Keahuolu, North
Kona; consisting of approximately 271.837
acres, Tax Map Key Nos. (3) 7-4-021:020
(por.), (3) 7-4-021:024, (3) 7-4-021:025,
(3) 7-4-021:026, (3) 7-4-021:027

DOCKET NO. A10-788

DECLARATION OF YUKO FUNAKI

DECLARATION OF YUKO FUNAKI

I, YUKO FUNAKI, declare:

1. I am an attorney licensed to practice law before the state and federal courts of Hawaii, and am counsel for Petitioner QUEEN LILI'UOKALANI TRUST ("QLT").
2. I am familiar with the facts and circumstances surrounding the above-captioned matter and am authorized to make this Declaration having personal knowledge of the matters set forth herein except where specifically stated otherwise.
3. Attached hereto as Exhibit "A" is a true and correct copy of the "Presentation on the Kealakehe Planned Community," by Joseph K. Conant, Executive Director, Housing Finance and Development Corporation, dated February 28, 1989.
4. Attached hereto as Exhibit "B" is a true and correct copy of the "Memorandum of Understanding," dated February 28, 1989, between QLT and the State of Hawaii Department of Land and Natural Resources and the Housing Finance and Development Corporation.

5. Attached hereto as Exhibit "C" is a true and correct copy of the "Purchase Agreement," dated April 22, 1992, between the Trustees of The Liliuokalani Trust and the State of Hawaii through its Board of Land and Natural Resources.

6. Attached hereto as Exhibit "D" is a true and correct copy of the "Summary of Area/Regional Traffic Mitigation & Fair Share Allocation," by Hawaii Housing Development Corporation and Forest City Hawaii Kona, LLC, dated September 1, 2010.

I declare under penalty of law that the foregoing is true and correct. Executed on October 11, 2010.



YUKO FUNAKI

JOHN WAIHEE
GOVERNOR



JOSEPH K. CONANT
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT
HOUSING FINANCE AND DEVELOPMENT CORPORATION

P. O. BOX 29360
HONOLULU, HAWAII 96820-1760

IN REPLY REFER

TO:

89:DEV/891B

March 15, 1989

Dear Attendee:

Thank you for taking the time to attend the Public Informational Meeting held on February 28, 1989 at the King Kamehameha Hotel as conducted by the Senate's Housing Committee.

For your information, enclosed is the material presented by the Housing Finance and Development Corporation. Your genuine interests and concerns for the future of West Hawaii are very much appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph K. Conant", written over a circular stamp.

JOSEPH K. CONANT
Executive Director

Enclosure

Exhibit "A"

Presentation on
the Kealakehe Planned Community
by
Joseph K. Conant, Executive Director
Housing Finance and Development Corporation

Informational Meeting: Tuesday, February 28, 1989; 7:00 p.m.
King Kamehameha Hotel

Background

As part of Governor John Waihee's comprehensive housing initiative, the State will serve as a catalyst in the development of thousands of needed housing units throughout the State of Hawaii. To accomplish this, the State, in cooperation with private entities and other governmental agencies, plans to develop large, master planned communities on each of the major islands of Oahu, Hawaii, Maui and Kauai.

In the County of Hawaii, the Housing Finance and Development Corporation and the County Office of Housing and Community Development, have identified Kealakehe as the site for such a community.

The HFDC originally looked at four sites in the West Hawaii region. They are Lalamilo, Waikoloa, Kalaoa and Kealakehe. (Use map to identify areas.) The Kealakehe site was selected

for a number of reasons including its proximity to Kailua-Kona and the natural and logical expansion from the existing urban area of Kailua and the existing Kealakehe community makai of Palani Road. Other reasons are the logical expansion of infrastructure; the parcel is owned by the State and major portions are presently designated for urban use. Additionally, the conceptual uses proposed for the area presents an excellent opportunity to create a regional hub.

The Kealakehe parcel contains approximately 1,540 acres and extends from the existing Kealakehe subdivision to the ocean. About 840 acres are mauka of the Queen Kaahumanu Highway, and the remaining 700 acres are makai of the highway.

Conceptual Master Plan (Use map to show conceptual layout)

Based on a recently completed feasibility study for Kealakehe, we are considering the development of a planned community comprised of a mixture of land uses with the largest component being the development of affordable residential units. Public facilities and other support uses may include a community center, schools, church/daycare centers, parks and open space, a municipal golf course, harbor expansion, commercial areas and a sewage treatment plant.

Envisioned as a significant component of the master planned community, is a possible resort/commercial complex and harbor/waterfront type of development on the makai parcel.

Preliminary Feasibility

Based upon the land use concept that I just outlined, (refer to map layouts) our consultants determined that infrastructure costs (costs to develop roadways and a utility, sewage, water and drainage systems) are in excess of \$70 million.

Given the substantial overall development and infrastructure cost, we estimate that delivery of a typical home in the Kealakehe Planned Community would cost over \$110,000 to develop (in 1988 dollars). We have also estimated that average sales prices in the Kealakehe Planned Community should start from about \$75,000 so that lower income families in the County of Hawaii would be able to purchase them. That means a per unit subsidy of about \$36,000 would be required, or a total subsidy of approximately \$70 million! Another way of putting this is that it is money which must be left in the project for recovery in the future. This cannot be accomplished with the current limited Homes Revolving Fund resources which must revolve for use in the development of

affordable housing throughout the State.

Alternatives

The HFDC has looked at a number of alternatives to generate the necessary subsidy to make the Kealakehe Planned Community more feasible.

1. Proposed sale of a portion of the makai parcel at its "highest and best" use.

(Use maps to show conceptual layout)

If we are to sell a portion of the makai parcel at its "highest and best" use, it becomes necessary to relocate some of the public facilities originally proposed for the makai parcel. For example, the reclamation area/municipal golf course, sports complex, etc. Consequently, we have and are continuing to explore suitable alternatives to the possible siting of the various public facilities being considered for relocation.

The planned marina expansion will certainly enhance the value of the surrounding land. The HFDC could take advantage of this increase in value, and sell the surrounding acreage for complementary uses such as

commercial and resort. The proceeds from the sale of the land would then be used to subsidize the affordable residential component of the Kealakehe Planned Community.

2. Lease the makai parcel at its "highest and best" use.

There has been discussion that the State should lease the makai lands instead of outright selling it. We do not believe that this is a viable alternative because of the requirement to obtain funds up front for the development of major infrastructure for the Kealakehe Planned Community.

Under a lease concept, a lease premium would be paid up front with an income stream (lease rent) paid over the term of the lease. The lease premium and scheduled lease rent payments may not be sufficient to cover the subsidy which is needed up front, and therefore, we would still be faced with the need to find other sources of subsidies for the overall development.

Additionally, while we have not yet tested the market, we are not certain if a lease concept is marketable or will be able to generate subsidies in an adequate amount and within the time schedule required for the Kealakehe Planned Community.

3. Legislative appropriation.

A legislative appropriation of approximately \$70 million would also provide the necessary subsidy to make the project feasible without having to sell the makai lands. This would enable the State to preserve the makai lands or put the lands to its "highest and best" use, for example, commercial and/or other uses which would complement an expanded marina.

4. Combination sale and legislative appropriation.

This represents a compromise position between the previously discussed alternatives. Perhaps a portion of the land surrounding the harbor (at its "highest and best" use) could be sold (in fee or in leasehold) with the remainder of funds coming from the legislature.

Additionally, we have been advised by representatives from the Office of State Planning that there are other oceanfront lands that are better suited for consideration and use as a passive park for the West Hawaii Community. For example, Mahaiula or Makalawena.

5. No Kealakehe Planned Community.

Without a substantial infusion of funds, a community of the magnitude of Kealakehe cannot be developed. The State could possibly develop only an additional 100 acres which would simply be an extension of the existing Kealakehe subdivision. However, if we pursue such a significantly reduced scope, the housing needs, particularly those of lower income families, in the West Hawaii community will not be fully realized.

 Queen Lili'uokalani Trust Lands

(Use map to show conceptual layout of proposed uses.)

Another issue some of you might be aware of, is the proposed acquisition of Queen Lili'uokalani Trust lands by the State to support the development of residential and public facility uses. The State is negotiating for the sale of approximately-450 acres of Trust land which is located makai of Palani Road near the Queen Lili'uokalani Village. We believe this proposed acquisition could be a win-win situation for all. The State may be able to provide more affordable housing for local residents and possibly lands for a West Hawaii University Campus (if the University of Hawaii Board of Regents should decide on that site) and a long awaited sports complex.

The State's acquisition of the Queen Lili'uokalani Trust lands would be contingent on obtaining approvals and necessary appropriations.

This proposed land acquisition represents a creative solution to accommodate the multitude of needs of the residents of the West Hawaii community.

Conclusion

The circumstances which have caused the HFDC to consider various alternatives to make the Kealakehe Planned Community a viable development are directly related to and supportive of the delivery of affordable housing for the West Hawaii community. There is no hidden agenda.

The HFDC is in the business to develop housing and we have been given the flexibility to consider and implement other land use activities providing these activities directly support the production of affordable housing for the people of the State of Hawaii.

I am very optimistic that we -- the HFDC, the State and County leadership, the surrounding landowners and the residents of West Hawaii, can pull together to make the Kealakehe Planned

Community become a reality.

The necessity for large subsidies to make the project feasible is a major hurdle which must be resolved. However, whether through the sale of the makai lands or an appropriation from the State Legislature, or any other means, I'm sure that we will be able to work together to find a solution to expand affordable housing opportunities for our island residents.

MEMORANDUM OF UNDERSTANDING

PURPOSE: TO ESTABLISH AN UNDERSTANDING BETWEEN QUEEN LILIUOKALANI TRUST AND THE STATE OF HAWAII REGARDING THE ACQUISITION AND USE OF APPROXIMATELY 450 ACRES OR MORE OF QUEEN LILIUOKALANI TRUST LANDS LOCATED ADJACENT TO KEALAKEHE, KAILUA-KONA, HAWAII, ALONG THE PALANI HIGHWAY, MAUKA OF THE QUEEN KAAHUMANU HIGHWAY, MAKAI OF THE PALANI HIGHWAY IDENTIFIED AS TMK. NO. 3-7-4-08: PORTION OF PARCEL 12 AS SHOWN ON THE MAP ATTACHED HERETO AS EXHIBIT "I"

- I. The State Office of State Planning and the Hawaii County Department of Planning have conducted regional general plan, land use and infrastructure studies of West Hawaii.
- II. The State Office of State Planning has indicated in their draft West Hawaii Regional Plan dated June 17, 1988, that the North Kailua-Kona area should be master planned for the future urban expansion of Kailua Village. The State Office of State Planning acknowledges the need to maximize existing infrastructure and the prudent use of future infrastructure moneys and has indicated certain needs of this expanding community, such as the need for a sewage treatment plant, regional sports complex and West Hawaii College campus.
- III. The Hawaii County Department of Planning in 1986 embarked on their 10-year update/ review of the Hawaii County General Plan and has designated the area north of Kailua Village to the Keahole Airport for urban expansion. In 1988, the county initiated a 16,000 acre regional plan which covers the area between Kailua Village to the Keahole Airport. The County also recognizes the need for certain state, county and public facilities to be located in this area, including their police sub-station and sewage treatment plant. The County has also made a commitment to relocate the present Kealakehe landfill/transfer station to prepare the Kealakehe site for future urban expansion.
- IV. The Department of Land and Natural Resources, Housing Finance and Development Corporation and Queen Liliuokalani Trust agree to the following to promote planned development of the Kealakehe-Keahuolu properties.

02/27/89

- A. The State will not seek to condemn or purchase any additional Queen Liliuokalani Trust lands located at Keahuolu, Kailua-Kona, Hawaii except for the parcels proximately marked as parcels "A", "B" and "C" on Exhibit "I" attached hereto and except for the parcels necessary for infrastructure development.
 - B. The total acreage to be purchased by the State under threat of condemnation under this agreement shall be approximately 450 acres.
 - C. The State will purchase parcels proximately marked "A", "B" and "C" on Exhibit "I" prior to July 1, 1992. The State will be permitted to purchase the 450 acres in increments of not less than 50 acres. Prior to July 1, 1992 or the state's purchase of all 450 acres, the State will be permitted to process and Queen Liliuokalani Trust will support all necessary governmental approvals to develop the 450 acres.
 - D. The State will be responsible for all infrastructure requirements in terms of the improvement of the Palani Highway necessitated by the State's development of parcels proximately marked "A", "B" and "C" on Exhibit "I".
 - E. The purchase price per acre shall be as follows:
 - 1. \$18,000 per acre from the date of this Agreement to July 1, 1990.
 - 2. \$18,250 per acre from July 2, 1990 to July 1, 1991.
 - 3. \$18,500 per acre from July 2, 1991 to July 1, 1992.
- V. This agreement is subject to:
- A. 1989 state legislature's C.I.P. appropriation to fund this purchase of Queen Liliuokalani Trust's 450 acres.
 - B. 1989 state legislature's \$70 million C.I.P. appropriation to subsidize infrastructure costs of the Housing Finance and Development Corporation's Kealakehe housing project or the Housing Finance and Development Corporation's continued unrestricted powers to sell portions of Kealakehe to subsidize the infrastructure costs of the Housing Finance and Development Corporation's Kealakehe housing project.
 - C. The Housing Finance and Development Corporation's acquisition and development of the Housing Finance and Development Corporation's Kealakehe housing project.
 - D. Approval of this agreement by the boards of the Department of Land and Natural Resources and the Housing Finance and Development Corporation.

E. Release of funds by the Governor.

VI. This agreement represents the complete agreement between the parties.

DATED: 2/28/89, Honolulu, Hawaii.

Approved As To Form:

Bert T. Kobayashi, Jr.
BERT T. KOBAYASHI, JR.

APPROVED BY

FIRST HAWAIIAN BANK FOR
THE LILIUOKALANI TRUST

By Philip Ching
PHILIP CHING

Approved As To Form:

John M. Wong
Deputy Attorney General

APPROVED BY

STATE OF HAWAII
DEPARTMENT OF LAND
AND NATURAL RESOURCES

By William Raty
WILLIAM RATY

Approved As To Form:

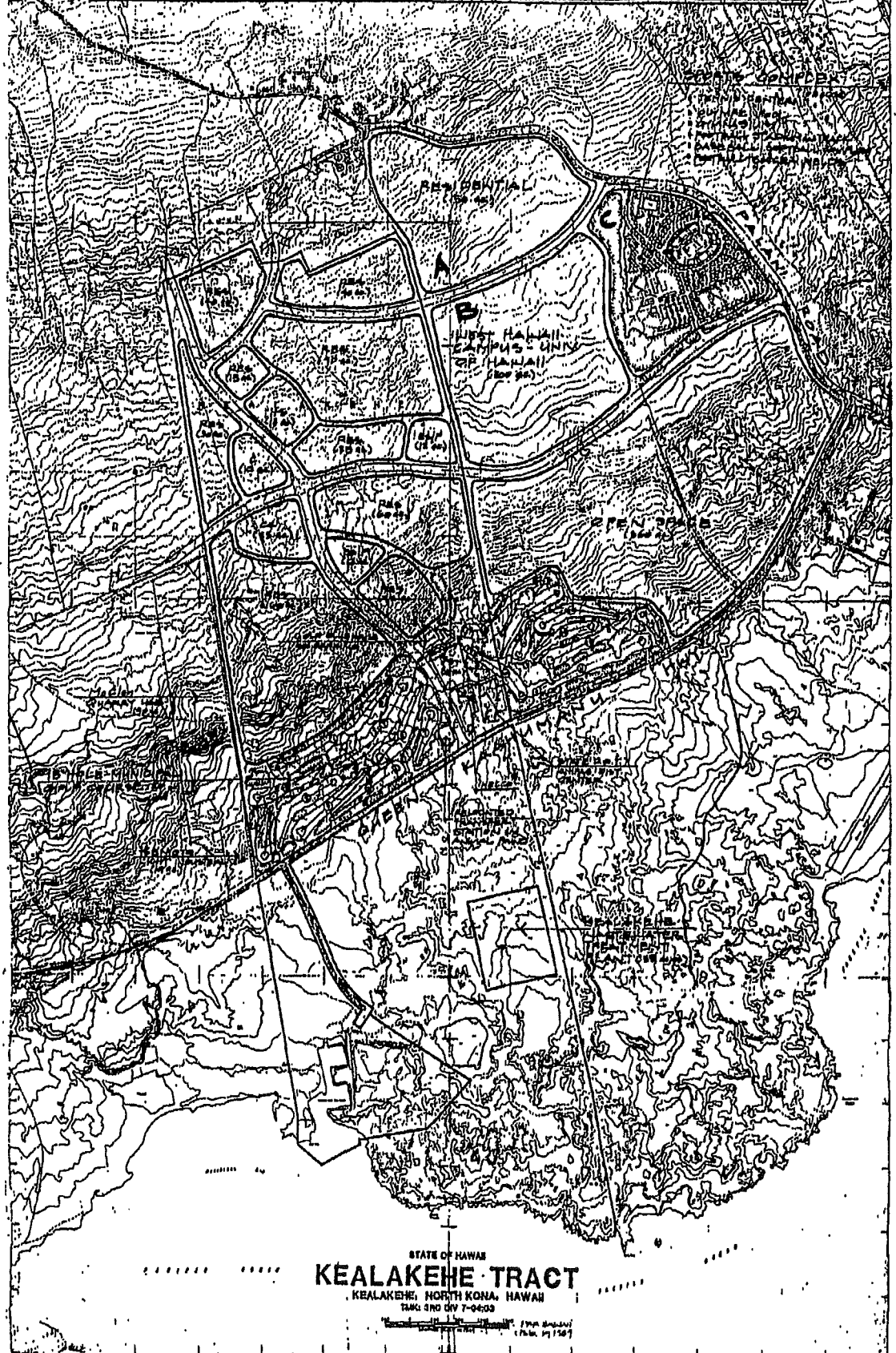
Joseph K. Conant
General Counsel 02/27/89.

APPROVED BY

HOUSING FINANCE AND
DEVELOPMENT CORPORATION

By Joseph K. Conant
JOSEPH K. CONANT

EXHIBIT I
CONCEPTUAL DEVELOPMENT PLAN 3



PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is entered into this 22ND day of APRIL, 1992, by the Trustees of THE LILIUOKALANI TRUST ("Seller"), and THE STATE OF HAWAII, by and through its Board of Land and Natural Resources ("Buyer"). Buyer and Seller are hereinafter individually or collectively referred to as a "Party" or the "Parties."

R E C I T A L S:

A. Seller is the owner of that certain real property in Keahuolu, North Kona, County of Hawaii, State of Hawaii, comprised of approximately four hundred fifty (450) acres, all more particularly described in metes and bounds in EXHIBIT A, attached hereto and incorporated herein, hereinafter the "Property."

B. Seller desires to convey to Buyer, and Buyer desires to receive from Seller, the "Property" for the development of a portion of the Kealakehe affordable housing development by the State of Hawaii Housing Finance and Development Corporation.

A G R E E M E N T

THEREFORE, subject to the satisfaction of all the terms and conditions contained in this Agreement, Seller and Buyer agree as follows:

1. Agreement to Purchase and Sell: Subject to the satisfaction of all the terms and conditions in this Agreement, Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller.

2. Purchase Price: The purchase price for the Property shall be as follows:

(a) EIGHTEEN THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$18,250.00) per acre if the Buyer and the Seller close this transaction, as evidenced by the recordation of the trustee's limited warranty deed at the Bureau of Conveyances, between July 2, 1990 and July 1, 1991.

(b) EIGHTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$18,500.00) per acre if the Buyer and the Seller close this transaction, as evidenced by the recordation of the trustee's limited warranty deed at the Bureau of Conveyances, between July 2, 1991 and July 1, 1992.

(c) On or before 8:00 a.m., Hawaii Standard Time, one (1) business day prior to the Closing Date (as defined below), Buyer shall deposit the Purchase Price and its share of the Closing costs by cashier's check drawn on a Hawaii financial institution to the account or accounts designated by the Seller.

3. Title. Title to the Property shall be conveyed to Buyer on the Closing Date by a trustee's limited warranty deed ("Deed") in the form attached hereto and incorporated herein as Exhibit B. Buyer agrees to take title to the Property subject to all covenants, conditions, restrictions, reservations, rights, rights-of-way, easements, liens, encumbrances, title exceptions and other matters shown of record affecting title to the Property as shown in a preliminary title report ("Title Report") to be delivered by Seller to Buyer within ten (10) days from the date of this Agreement. The matters and exceptions described in the previous sentence shall be referred to as "Permitted Exceptions."

4. Closing.

(a) Closing Date. As used herein, the term "Closing Date" means the date the Deed is recorded and the term "Closing" shall refer to the recordation of the Deed and all other actions required to close the sale of the Property from Seller to Buyer. In no event shall the Closing Date occur later than July 2, 1992.

If, by July 2, 1992, the Closing has not occurred, this Agreement shall be cancelled and of no further force and effect and both parties shall be released from all further obligations under this Agreement, except for Buyer's obligations to reimburse Seller for certain costs as provided herein.

(b) Taxes. All taxes applicable to the Property shall be prorated between Seller and Buyer as of the Closing Date. If the Property has not yet been separately assessed as one or more tax parcels, then the real property taxes shall be allocated to the Property in the proportion that the square footage of the Property bears to the total square footage of all tax parcels of which the Property is a part.

(c) Closing Costs. The costs of Closing shall be borne as follows:

(i) Seller shall pay for the conveyance taxes, the cost of the Title Report, its own notary fees and one-half (1/2) of the recordation fees;

(ii) Buyer shall pay for one-half (1/2) of the recordation fees and its own notary fees; and

(iii) Seller and Buyer shall apportion all other costs in a manner customary for real estate transactions of this nature in Honolulu, Hawaii.

5. Subdivision of Property.

Pursuant to the Buyer's offer for the Property, dated February 26, 1990, which was accepted by the Seller by letter dated March 19, 1990, the survey, stake out and application to subdivide Seller's adjacent lands so that the property is a separate lot shall be the obligation of and be at the expense of the Buyer. However, at the request of Buyer, Seller will accommodate Buyer by preparing and processing subdivision approval for the Property on behalf of Buyer. Seller shall use reasonable best efforts to cause the Property to be subdivided into a separate legally conveyable lot prior to July 2, 1992. Any conditions directly required by the County of Hawaii's ("County") subdivision approval creating the property as a separate lot shall not in any way reduce the Purchase Price of the Property. The Buyer shall be responsible for those aspects of the County's subdivision's conditions which are on or directly adjacent to and exclusively related to the separate lot created for the Buyer's acquisition. However, Buyer shall not be responsible for any costs attributable to requirements, improvements, or approvals relating to Seller's remaining adjacent lands including the EIS for Seller's own development plans.

The Buyer's reimbursement of Seller's actual subdivision costs shall in no case exceed EIGHTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$18,500).

6. Condition of Property "As Is".

(a) Buyer acknowledges that it will be familiar with the Property and will have made such independent investigations as Buyer deems necessary or appropriate concerning Buyer's proposed use, sale, development or suitability for development of the Property.

BUYER IS ACQUIRING THE SUBJECT PROPERTY "AS IS," in its present state and condition, without representation by Seller or its representatives as to any matter. No patent or latent condition affecting the Property shall affect Buyer's obligations hereunder, nor shall any such condition give rise to any right of damage or rescission against Seller. Except as expressly stated elsewhere in this Agreement, Seller makes no representation or warranty concerning the Property including, to the best of Seller's knowledge, the existence of any hazardous materials.

7. Utility Easements. In consideration of the terms and conditions in this Agreement, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Buyer shall grant to Seller perpetual easements for utility purposes, including but not limited to, water, sewer, electrical, storm drainage, and other similar uses, through, over, and across the Property; provided that the location and dimensions of the easements shall be agreed to by the Board of Land and Natural Resources and its counsel, and shall be aligned so as to minimize any disruption or negative impact to the Property; provided further that Seller shall bear all reasonable administrative costs related to the conveyance of title of said easements, including, surveying, recordation, and attorneys' fees. Thereafter, the location and dimensions of the easements may be changed from time to time by mutual agreement of the Board of Land and Natural Resources and its counsel and the Seller, provided, however, that relocation costs shall be borne by the party proposing relocation. Paragraph 7 shall be included in its entirety in the Deed.

8. Notices. Any notice to be given hereunder to either Party or to Escrow Agent shall be in writing and shall be given either by personal delivery or by depositing such notice in the United States mail, certified, with return receipt requested, postage prepaid and addressed as follows:

SELLER:

Liliuokalani Trust
First Hawaiian Bank,
Trust Division
P.O. Box 3200
Honolulu, Hawaii 96847
Attention: Mr. Philip Ching,
Executive Vice President

With a Copy to:

Watanabe, Ing, & Kawashima
Hawaii Tower, 5th Floor
745 Fort Street
Honolulu, Hawaii 96813
Attention: Benjamin A. Kudo, Esq.

BUYER:

State of Hawaii by its Board of
Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Attention: Mr. William W. Paty,
Chairman

With Copy to:

Either Party may, by written notice to the other, designate a different address which shall be substituted for the ones specified above. If any notice or other document shall be sent by certified mail as set forth above, it shall be deemed to have been effectively served or delivered two (2) business days following the deposit of such notice in the United States mail in the manner set forth above.

9. Attorneys' Fees. Should either Party institute any action or proceeding to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing Party shall be entitled to recover its costs and expenses and reasonable attorneys fees for services rendered to the prevailing Party in such action or proceeding. The term "prevailing Party" as used in this paragraph shall include, without limitation, any Party who is made a defendant in litigation in which damages or other relief, or both, may be sought against such Party and a final judgment or dismissal or decree is entered in such litigation in favor of such Party defendant.

10. Remedies. Each of the covenants of Seller and Buyer under this Agreement is a material consideration for this Agreement, the breach of which shall be deemed a default hereunder (all of which are hereinafter individually or collectively referred to as "Default"). Such default shall be deemed to have "Occurred" if Seller or Buyer has not effected a cure within thirty (30) calendar days of a written notice specifying the breach from the other Party. Each party shall be entitled to any and all remedies available under law or equity, including, but not limited to, damages, specific performance and injunctive relief.

11. Condemnation. If all or any portion of the Property, or any interest therein, is taken prior to Closing as a result of condemnation (including the filing of any notice of intended condemnation or proceedings in the nature of eminent domain), this Agreement and the Escrow shall, at Seller's election, which election shall be evidenced by written notification to Buyer, be deemed terminated and the entire award from the condemning authority shall be the sole property of Seller. Buyer hereby irrevocably assigns to Seller all of its right, title and interest in and to any and all such awards. Within five (5) business days from the date of such notice, this Agreement shall be deemed cancelled and of no further force and effect and both parties shall be released from all further obligations under this Agreement, except for Buyer's obligation to reimburse Seller for certain costs pursuant to Section 5 above.

12. Force Majeure. Any prevention, delay or stoppage in the performance of the Parties' obligations as provided for in this Agreement resulting from acts of God, war, inability to obtain labor or materials or reasonable substitutes, governmental regulations or controls, inclement weather or other similar matters or causes beyond the reasonable control of Seller or Buyer shall extend the time in which this Agreement requires certain acts to be performed for a period or periods equal to any such prevention, delay or stoppage.

13. Miscellaneous.

(a) No Modifications.

No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by both Buyer and Seller.

(b) Construction of Agreement.

The agreements contained herein shall not be construed in favor of or against either Party, but shall be construed as if both Parties prepared this Agreement.

(c) Headings.

The paragraph headings herein are used only for the purpose of convenience and shall not be deemed to limit the subject of the paragraphs of this Agreement or to be considered in their construction.

(d) Governing Law.

The Laws of the State of Hawaii shall govern this Agreement.

(e) Time of the Essence. Time is of the essence of each and every provision of this Agreement.

(f) Assignments/Successors and Assigns. Seller may assign its rights and interests under this Agreement. Buyer shall not voluntarily or by operation of law assign or transfer any right, interest or obligation hereunder without Seller's express written consent, which shall not be unreasonably withheld. Each and all of the covenants and conditions of this Agreement shall inure to the benefit and shall be binding upon the successors of Buyer and Seller. As used in this subparagraph, "successors" shall refer to the successors to all or substantially all of the assets of a Party and to a Party's successors by merger or consolidation.

(g) Further Assurances. Each of the parties shall execute and deliver all additional papers, documents and other assurances, and shall do all acts and things reasonably necessary in connection with the performance of their obligations hereunder to carry out the intent of this Agreement.

(h) No Waiver. No waiver by Buyer or Seller of a breach of any of the terms, covenants, or conditions of this Agreement by the other shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition contained herein. No waiver of any default by Buyer or Seller hereunder shall be implied from any omission by the other to take any action on account of such default if such default persists or is repeated and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by either Party to or of any act by the other requiring the first Party's consent or approval shall not be deemed to waive or render unnecessary the consenting Party's consent or approval to or of any subsequent similar acts by the other party.

(i) Severability. If any portion of this Agreement shall become illegal, null, void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

(j) Gender and Number. This Agreement (Unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.

(k) Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining and solely limited to the purchase of the Property by Buyer and all prior and contemporaneous offers, counteroffers, acceptances, agreements, representations, negotiations and understandings of the Parties, oral or written, regarding the purchase of the Property by Buyer are hereby superseded and merged herein. The preceding sentence shall not affect the validity of any instrument executed by the Parties in the form of the exhibits attached to this Agreement nor any agreements or understandings between the Parties pertaining to other aspects of the Property, including, but not limited to, that certain letter agreement dated February 27, 1989 and that certain Memorandum of Understanding dated February 28, 1990 between the Parties.

(1) Time References. Any reference in this Agreement to time for performance of obligations or to elapsed time shall mean consecutive calendar days, months, or years, as applicable, unless otherwise explicitly indicated herein.

(m) Incorporation of Exhibits. All exhibits attached hereto and referred to herein are incorporated into the Agreement as though fully set forth herein.

(n) No Joint Venture. It is hereby acknowledged by Buyer and Seller that the relationship between them created hereby is not intended to be and shall not in any way be construed to be that of a partnership, joint venture, or principal and agent.

Buyer and Seller have executed this Agreement as of the day and year first written above.

LILIUOKALANI TRUST ("Seller")

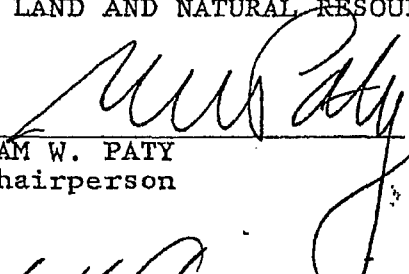
By David M. Peters
DAVID M. PETERS
Its Trustee

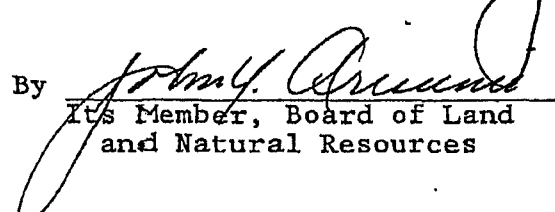
By Charles A. Kekumano
MSR. CHARLES A. KEKUMANO
Its Trustee

FIRST HAWAIIAN BANK
Its Trustee

By Philip Ching
PHILIP CHING,
Its Executive Vice President

STATE OF HAWAII
By and Through its
BOARD OF LAND AND NATURAL RESOURCES

By 
WILLIAM W. PATY
Its Chairperson

By 
Its Member, Board of Land
and Natural Resources

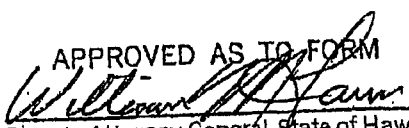
APPROVED AS TO FORM

Deputy Attorney General, State of Hawaii

Exhibit A -- Property Description
Exhibit B -- Trustee's Limited Warranty Deed

4494B
Purchase Agreement Between Liliuokalani Trust and the State of
Hawaii

EXHIBIT A

Description of Lot 1

Being all of Lot 1 of the Keahuolu Subdivision, area 450.005 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 2041.

Situated on the northeasterly side of Queen Kaahumanu Highway and on the northwesterly side of Palani Road at Keahuolu, North Kona, Island of Hawaii, Hawaii.

Parcel "A"

Being a portion of Royal Patent 6851,
Land Commission Award 8452, Apana 12 to A. Keohokalole

Situated at Keahuolu, North Kona, Island of Hawaii, Hawaii

Beginning at the South corner of this parcel of land, on the Northwest side of Palani Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KEAHUOLU" being 8.44 feet North and 12,791.97 feet East, thence running by azimuths measured clockwise from True South:

1. Along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
108° 00' 41" 44.85 feet;
2. 154° 23' 1,132.89 feet along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole;
3. Thence along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole, on a curve to the left with a radius of 4,040.00 feet, the chord azimuth and distance being:
149° 38' 30" 687.92 feet;
4. 144° 54' 1,268.47 feet along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole;
5. Thence along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole, on a curve to the right with a radius of 3,960.00 feet, the chord azimuth and distance being:
151° 35' 921.74 feet;
6. 158° 18' 1,698.93 feet along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole;
7. 255° 15' 1,688.50 feet along the Government Land of Kealakehe;

EXHIBIT A

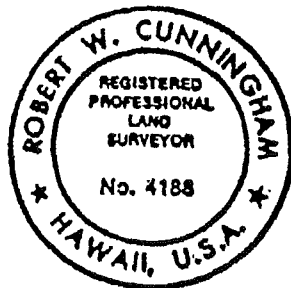
8. 254° 08' 1,725.00 feet along the Government Land of Kealakehe;
9. 236° 38' 778.00 feet along the Government Land of Kealakehe;
10. 248° 38' 495.00 feet along the Government Land of Kealakehe;
11. 263° 08' 416.00 feet along the Government Land of Kealakehe;
12. 267° 38' 181.31 feet along the Government Land of Kealakehe;
13. Thence along the Southwesterly side of Kealakaa Street, on a curve to the left with a radius of 192.11 feet, the chord azimuth and distance being:
294° 40' 37" 130.40 feet;
14. Thence along the Southwesterly side of Kealakaa Street, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
317° 31' 34" 40.68 feet;
15. Thence along the Westerly side of Palani Road, on a curve to the left with a radius of 714.50 feet, the chord azimuth and distance being:
356° 08' 47" 101.39 feet;
16. 352° 04' 40" 159.83 feet along the Westerly side of Palani Road;
17. Thence along the Westerly side of Palani Road, on a curve to the right with a radius of 935.40 feet, the chord azimuth and distance being:
5° 36' 40" 437.79 feet;
18. 19° 08' 40" 350.20 feet along the Westerly side of Palani Road;
19. Thence along the Westerly side of Palani Road, on a curve to the left with a radius of 975.40 feet, the chord azimuth and distance being:
5° 08' 30" 472.03 feet;
20. 351° 08' 20" 1,010.01 feet along the Westerly side of Palani Road;
21. Thence along the Westerly side of Palani Road, on a curve to the right with a radius of 696.80 feet, the chord azimuth and distance being:
23° 57' 50" 755.44 feet;

22. 56° 47' 20" 219.49 feet along the Westerly side of Palani Road;
23. Thence along the Westerly side of Palani Road, on a curve to the left with a radius of 593.70 feet, the chord azimuth and distance being:
32° 02' 20" 497.12 feet;
24. 7° 17' 20" 1,125.32 feet along the Westerly side of Palani Road;
25. Thence along the Northwestery side of Palani Road, on a curve to the right with a radius of 1,412.70 feet, the chord azimuth and distance being:
30° 41' 50" 1,122.48 feet;
26. 54° 06' 20" 1,059.35 feet along the Northwestery side of Palani Road;
27. 144° 06' 20" 160.00 feet along Reservoir Site, along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole;
28. 54° 06' 20" 160.00 feet along Reservoir Site, along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole;
29. 324° 06' 20" 156.41 feet along Reservoir Site, along the remainder of R.P. 6851, L.C. Aw. 8452, Apana 12 to A. Keohokalole to the point of beginning and containing an Area of 449.997 Acres, more or less.

Description compiled and calculated from available data.

680 Ala Moana Blvd., Suite 200
Honolulu, Hawaii 96813

February 13, 1990



BELT COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

Parcel B

All that certain parcel of land, being a portion of Lot D, being also a portion of R.P. 6851, L.C. Av. 8452, Ap. 12 to A. Keohokalole, Certificate of Boundaries No. 45, situate at Keahuolu, North Kona, Island, County and State of Hawaii, and being more particularly described as follows:

Beginning at the southeast corner of this parcel of land on the west side of Palani Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KEAHUOLU" being 6,202.72 feet North and 15,303.00 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|--------------|--------|--|
| 1. | 82° 04' 40" | 12.67 | feet along a portion of Lot D-1; |
| 2. | 172° 04' 40" | 302.96 | feet along same; |
| 3. | 143° 00' | 80.73 | feet along same; |
| | | | Thence along a curve to the left with a radius of 192.11 feet, the chord azimuth and distance being: |
| 4. | 280° 53' 26" | 40.52 | feet along the south side of Kealakaa Street |
| | | | Thence along a curve to the right with a radius of 30.00 feet. The chord azimuth and distance being: |
| 5. | 317° 31' 31" | 40.68 | feet along same; |
| | | | Thence along a curve to the left with a radius of 714.50 feet, the chord azimuth and distance being: |
| 6. | 356° 08' 47" | 101.39 | feet along the west side of Palani Road; |
| 7. | 352° 04' 40" | 159.83 | feet along same; |
| | | | Thence along a curve to the right with a radius of 935.40 feet, the chord azimuth and distance being: |
| 8. | 354° 06' | 66.02 | feet along the west side of Palani Road to the point of beginning and containing an area of 6,767 square feet or 0.155 acre. |

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LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail ()	Pickup () To:

TRUSTEE'S LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

The TRUSTEES OF THE LILIUOKALANI TRUST, hereinafter called the "Grantor," in consideration of the sum of _____ Dollars (\$ _____ .00) and other good and valuable consideration to the Grantor paid by THE STATE OF HAWAII, by and through its Board of Land and Natural Resources, whose principal place of business and post office address is P. O. Box 621, 1151 Punchbowl Street, Room 220, Honolulu, Hawaii 96809, hereinafter "Grantee," the receipt of which is acknowledged, does hereby grant and convey unto the Grantee Four Hundred Fifty and _____ acres, more or less, the property described in Exhibit "A" attached hereto and incorporated herein by reference at \$18,500.00 per acre.

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto the Grantee forever.

"B"
EXHIBIT _____

And the Grantor, as Trustee aforesaid and not individually, hereby covenants with the Grantee that the Grantor is the owner in fee simple of the property described in Exhibit "A," and has good right to sell and convey the same; that the same are free and clear of all encumbrances made or suffered by the Grantor, and that the Grantor, as Trustee, will warrant and defend the same unto the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantee, as trustee, except as aforesaid.

The State of Hawaii shall grant to the Liliuokalani Trust perpetual easements for utility purposes, including but not limited to, water, sewer, electrical, storm drainage, and other similar uses, through, over, and across the property; provided that the location and dimensions of the easements shall be agreed to by the Board of Land and Natural Resources and its counsel, and shall be aligned so as to minimize any disruption or negative impact to the property; provided further that the Liliuokalani Trust shall bear all reasonable administrative costs related to the conveyance of title of said easements, including surveying, recordation, and attorneys' fees. Thereafter, the location and dimensions of the easements may be changed from time to time by mutual agreement of the Board of Land and Natural Resources and its counsel and the Liliuokalani Trust, provided, however, that relocation costs shall be borne by the party proposing relocation.

This conveyance and the covenants of the Grantor shall be jointly and severally binding upon the person or persons identified above as "Grantor" and the Grantor's successors, in trust and assigns, and shall run in favor of and inure to the benefit of the person or persons identified above as "Grantee" and the Grantee's successors and assigns. The use herein of the singular in reference to a party shall include the plural and the use of a pronoun of any gender shall include all genders. The term "person" shall mean and include an individual, partnership, association or corporation, as the context may require.

IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed this _____ day of _____, 19____.

THE TRUSTEES OF THE
LILIUOKALANI TRUST

By _____
DAVID M. PETERS
Its Trustee

By _____
CHARLES A. KEKUMANO
Its Trustee

FIRST HAWAIIAN BANK, a Hawaii
corporation
Its Trustee

By _____
PHILIP CHING,
Its Executive Vice President

"GRANTOR"

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On this _____ day of _____, 19____, before
me personally appeared DAVID M. PETERS and CHARLES A. KEKUMANO,
two of the trustees of the Liliuokalani Trust, to me known to be
the person(s) described in and who executed the foregoing
instrument, and acknowledged that they executed the same as their
free act and deed as Co-Trustee(s) as aforesaid.

AND on this _____ day of _____, 19____
before me appeared PHILIP CHING, to me personally known, who,
being by me duly sworn, did say that he is the Executive Vice
President of FIRST HAWAIIAN BANK, which is one of the Trustees of
the LILIUOKALANI TRUST; that the seal affixed to the foregoing
instrument is the corporate seal of said corporation; that said
instrument was signed and sealed on behalf of said corporation by
authority of its Board of Directors, and said corporation by
authority of its Board of Directors, and said Officer
acknowledged said instrument to be the free act and deed of said
corporation as Co-Trustee as aforesaid.

Notary Public, State of Hawaii
My commission expires:

4534B

EXHIBIT A

Description of Lot 1

Being all of Lot 1 of the Keahuolu Subdivision, area 450.005 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 2041.

Situated on the northeasterly side of Queen Kaahumanu Highway and on the northwesterly side of Palani Road at Keahuolu, North Kona, Island of Hawaii, Hawaii.

SUMMARY OF AREA/REGIONAL TRAFFIC MITIGATION & FAIR SHARE ALLOCATION

Facility (Jurisdiction)	Type	Approach	Proposed Improvements (Year of Implementation With Project/Year of Implementation Without Project)	Reasonable Est. For Improvement	Kamakana Fair Share % (Max of AM/PM at intersection)	Kamakana Fair Share \$ Allocation		
Queen Kaahumanu Highway (State)	Area	N/A	Widen Queen Kaahumanu Highway from two lanes to four lanes from Kealakehe Parkway to Kona International Airport Access Road. (2014/2014)	\$ 76,200,000	State	\$ -		
Ane Keohokalole Highway (County)	Area	NB/SB	Extend Ane Keohokalole Highway from Puohuliuli Street to Palani Road (2014/2014).	\$ 20,300,000	County	\$ -		
		NB/SB	Provide left-turn lanes at Makala Boulevard Extension (2014/2014).	\$ 50,000	County			
		NB/SB	Provide left-turn lanes at Manawalea Street Extension (2014/2014).	\$ 50,000	County			
		NB/SB	Extend the two-lane Ane Keohokalole Highway to Hina Lani Street (2019/2019).	\$ 10,500,000	County			
Palani Rd and Ane Keohokalole Hwy/Henry	Area	SB	Construct a left-turn lane, a through lane, and a shared through/right-turn lane on Ane Keohokalole Highway (2014/2014). Widen Ane Keohokalole Highway to provide an exclusive right-turn lane (2029)	Incl in Ane K \$ 350,000	22.10%	\$ 442,000		
		EB	Widen mauka bound Palani Road to provide exclusive left-turn and right-turn lanes at Ane Keohokalole Highway/Henry Street (2014/2014)	Incl in Ane K				
		All	Modify the traffic signal phasing to provide protected-permissive left-turn phases on all approaches to the intersection (2014/2014). Widen makai bound Palani Road to provide an additional through-only lane (2024/2029).	Incl in Ane K \$ 750,000				
		WB	Widen makai bound Palani Road to provide an additional left-turn lane (2019/2029).	\$ 400,000				
			Widen Henry Street to provide a separate left-turn lane (2019/2029).	\$ 200,000				
		NB	Widen Henry Street to provide a separate right-turn lane (2019/2029+).	\$ 300,000				
		SB	Widen Queen Kaahumanu Highway to provide an additional left-turn lane (2024/2024).	\$ 250,000				
Hina Lani Street and Queen Kaahumanu Hwy (State)	Area	EB	Widen/restripe mauka bound Hina Lani Street to provide two lanes between Queen Kaahumanu Highway and Kanalani Street (2024/2024).	\$ 50,000	12.30%	\$ 98,400		
		WB	Widen Hina Lani Street to provide an additional left-turn lane (2029/2029).	\$ 500,000				
		WB	Widen Kealakehe Parkway to provide a left-turn lane (2019/2019).	\$ 400,000			8.90%	\$ 362,230
		EB	Widen Kealakehe Parkway to provide exclusive left-turn and right-turn lanes (2019/2019).	\$ 700,000				
All	Modify the traffic signal phasing to provide protected-left-turn phases on all approaches (2019/2019).	\$ 50,000						
Kealakehe Pkwy and Queen Kaahumanu Hwy (State)	Area	WB	Widen Kealakehe Parkway to provide an additional left-turn lane (2024/2029+).	\$ 550,000	14.10%	\$ 489,270		
		SB	Widen Queen Kaahumanu Highway to provide an additional left-turn lane (2024/2029+).	\$ 800,000				
		EB	Widen the east leg of Kealakehe Parkway from one lane to two lanes from Queen Kaahumanu Highway (2024/2029+).	\$ 600,000				
		SB	Convert the exclusive right-turn lane on Queen Kaahumanu Highway to a shared through/right-turn lane (2029/2029).	\$ 70,000				
		SB	Convert the right lane on the south leg of Queen Kaahumanu Highway from a right-turn acceleration lane to a merging lane (2029/2029).	\$ 50,000				
		NB	Widen Queen Kaahumanu to provide an additional through lane (2029/2029).	\$ 800,000				
		NB	Convert the right lane on the north leg of Queen Kaahumanu Highway from a right-turn acceleration lane to a merging lane (2029/2029).	\$ 50,000				
		EB	Widen Makala Boulevard to provide two exclusive left-turn lanes, a through-only lane and a shared through/right-turn lane (2014/2014).	\$ 700,000				
		EB	Restripe shared left-turn/through/right-turn lane on Makala Boulevard to a shared through/right-turn lane (2014/2014)	\$ 50,000				
		All	Modify the traffic signal phasing to provide an eight-phase operation with protected left-turn phases on all approaches (2014/2014).	\$ 50,000				
Makala Blvd and Queen Kaahumanu Hwy (State)	Area	EB	Widen Makala Boulevard to provide an exclusive right-turn lane (2019/2024).	\$ 400,000	8.80%	\$ 105,600		
		WB	Widen Makala Boulevard to provide a left-turn lane, a through-only lane, and a shared through/right-turn lane (2019).	\$ 400,000				
		WB	Widen Makala Boulevard to provide a left-turn lane, two through-only lanes, and a right-turn lane (2019/2024).	\$ 400,000				
		SB	Restripe Queen Kaahumanu Highway to provide an additional left-turn lane (2019/2024).	\$ 100,000				
		NB	Convert the exclusive right-turn lane on Queen Kaahumanu Highway to a shared through/right-turn lane (2024/2024).	\$ 70,000				
		NB	Convert the right lane on the north leg of Queen Kaahumanu Highway from a right-turn acceleration lane to a merging lane (2024/2024).	\$ 50,000				
		SB	Widen the Queen Kaahumanu Highway approach to provide three through lanes (2024/2024).	\$ 1,200,000				
		SB	Convert the right lane on the south leg of Queen Kaahumanu Highway from a right-turn acceleration lane to a merging lane (2024/2024).	\$ 50,000				
		EB	Widen Palani Road to provide an exclusive right-turn lane (2019/2024).	\$ 300,000			7.60%	\$ 182,400
		WB	Widen Palani Road to provide an additional left-turn lane and an exclusive right-turn lane (2019/2024).	\$ 800,000				
Palani Road and Queen Kaahumanu Hwy (State)	Area		Widen the Queen Kaahumanu Highway approach to provide three through lanes (2019/2019).	\$ 1,200,000	8.80%	\$ 4,400		
		SB	Convert the existing right lane on the south leg of Queen Kaahumanu Highway from a right-turn acceleration lane to a merging lane (2019/2019).	\$ 50,000				
			Convert the right-turn lane on Queen Kaahumanu Highway to a shared through/right-turn lane to provide three through lanes (2024/2029).	\$ 70,000			\$ 6,160	
		NB	Convert the existing right lane on the north leg of Queen Kaahumanu Highway from a right-turn acceleration lane to a merging lane (2024/2029).	\$ 50,000				
		WB	Widen Henry Street to provide an additional left-turn lane. Restripe the shared through/left-turn lane to a through-only lane. (2019/2019).	\$ 400,000			7.60%	\$ 182,400
			Widen Henry Street to provide an additional left-turn lane. (2019/2019).	\$ 400,000				
		EB	Widen Henry Street to provide a right-turn lane (2019/2029).	\$ 300,000				
All	Modify the traffic signal phasing to provide an eight-phase operation with protected left-turn phases on all approaches (2019/2019).	\$ 50,000						
Henry Street and Queen Kaahumanu Highway (State)	Area	SB	Widen the Queen Kaahumanu Highway approach to provide three through lanes (2024/2029).	\$ 1,200,000	9.80%	\$ 112,700		
		SB	Convert the existing right lane on the south leg of Queen Kaahumanu Highway from a right-turn acceleration lane to a merging lane (2024/2029).	\$ 50,000				
		SB	Extend the exclusive right-turn lane to a total of 600 feet in length (2019/2019).	\$ 400,000				
Mamalahoa Highway and Hina Lani Street (State)	Area	SB	Convert the exclusive right-turn lane on southbound Mamalahoa Highway to a shared through/right-turn lane (2024/2029+).	\$ 50,000	9.80%	\$ 112,700		
			Widen south leg of Mamalahoa Highway to provide a merging lane from two lanes to one lane in the southbound direction (2024/2029+).	\$ 700,000				

Manawalea Street and Ane Keohokalole Highway (County)	Area	N/A	Extend Makala Boulevard to Ane Keohokalole Highway opposite Manawalea Street (2019/2019). QLT Property	QLT Project		
	Local	NB	Widen Ane Keohokalole Highway to provide a right-turn lane or widen Ane Keohokalole Highway to provide an additional through lane (2024).	\$ 400,000	43.40%	\$ 173,600
		WB	Provide exclusive left-turn lanes and shared through/right-turn lanes (2019).	\$ 300,000		\$ 130,200
		All	Signalize the intersection, when warranted (2019/2024).	\$ 350,000		\$ 151,900
Makala Boulevard and Ane Keohokalole Highway (County)	Local	EB WB	Construct Makala Blvd with left-turn and shared through/right-turn lanes (2019).	\$ 300,000		\$ 159,000
		SB	Restripe northbound left turn lane on Ane Keohokalole Hwy to a median shelter lane (2019)	\$ 50,000	53.00%	\$ 26,500
	Area	WB EB	Construct Makala Blvd with left-turn and shared through/right-turn lanes (2024). QLT Project	QLT Project		
		N/A	Extend Makala Boulevard to Ane Keohokalole Highway (2024). QLT Property	QLT Project		
	Local	All	Signalize the intersection, when warranted (2024).	\$ 350,000	53.00%	\$ 185,500
Ane Keohokalole Hwy and Kealahke Pkwy (State)	Area					
		All	Signalize the intersection, when warranted (2014/2014).	\$ 800,000	27.20%	\$ 217,600
South Street and Ane Keohokalole Highway (County)	Local					
		WB	Construct South Street with stop-controls and restricted to right-turn-in and right-turn-out movements only (2029).	\$ 250,000	36.70%	\$ 91,750
Palani Road and School Street (County)	Local	SB	Construct School Street with separate left-turn and right-turn lanes (2029).	\$ 400,000		
		WB	Widen makai bound Palani Road to provide an additional through lane and a right-turn lane at School Street (2029).	\$ 550,000	23.00%	\$ 448,500
		EB	Widen Palani Road to provide an exclusive left-turn lane at School Street (2029).	\$ 300,000		
		N/A	Signalize the intersection of School Street and Palani Road when warranted (2029).	\$ 700,000		
Palani Road and D Street (County)	Local	SB	Construct D Street at Palani Road with stop-controls and restricted to right-turn-in and right-turn-out movements only (2029).	\$ 400,000		
		WB	Widen Palani Road to provide an additional through lane and a right-turn deceleration lane to D Street (2029).	\$ 1,000,000	9.40%	\$ 131,600
		WB	Widen Palani Road to provide a right-turn acceleration lane from D Street (2029).			
Palani Road and C Street (County)	Local	SB	Construct C Street at Palani Road with stop-controls and restricted to right-turn-in and right-turn-out movements only (2029).	\$ 400,000		
		WB	Widen Palani Road to provide an additional through lane and a right-turn deceleration lane to C Street (2029).	\$ 1,000,000	11.90%	\$ 166,600
		WB	Widen Palani Road to provide a right-turn acceleration lane from C Street (2029).			
Kealahke Parkway and Kamanu Street (State)	Area	EB	Widen east leg of Kealahke Parkway to provide a median left-turn lane (2014/2019).	\$ 400,000		
		SB	Restripe Kamanu Street to provide separate left-turn and right-turn lanes (2019/2024).	\$ 50,000		
		EB	Widen Kealahke Parkway to provide an additional through lane (2024/2029+).	\$ 650,000	17.70%	\$ 389,400
		WB	Widen Kealahke Parkway to provide a channelized exclusive right-turn lane (2024/2029+).	\$ 400,000		
		All	Signalize when warranted (2029/2029)	\$ 700,000		
Kealahke Parkway and Keanalehu Street (State)	Area	NB	Extend Kealahke Parkway to provide access to Lanihau Partners Mauka Lands (2019).	Lanihau Project	14.80%	
		EB	Extend Keanalehu Street to provide access to Lanihau Partners Mauka Lands (2019).	Lanihau Project		
Palani Road and Kamakaeha Avenue (County)	Area	EB	Widen/restripe Palani Road to provide two through lanes (2014/2014).	Incl. in Ane K		
		EB	Widen Palani Road to provide an exclusive left-turn lane and a median shelter lane (2014/2014).	Incl. in Ane K	21.60%	\$ 151,200
		WB	Restripe the right-turn lane on Palani Road to a shared through/right-turn lane (2029/2029+).	Incl. in Ane K		
		All	Signalize intersection when warranted (2029+/2029+).	\$ 750,000		
		All	Signalize intersection (2010/2010).	Completed		
Palani Road and Kealahke Street/Pahilo Street (County)	Area	NB/SB	Provide exclusive left-turn lanes in both directions (2010/2010).	Completed		
		SB	Provide an exclusive right-turn lane (2010/2010).	Completed	11.20%	\$ 89,600
		SB	Convert exclusive right-turn lane into a shared through/right-turn lane (2024/2029).	\$ 100,000		
		SB	Widen south leg of Palani Road to provide a merging lane from two lanes to one lane in the southbound direction (2024/2029).	\$ 700,000		
Palani Road and Uluaoa Street (County)	Area	All	Signalize the intersection when warranted (2014/2014).			
		EB	Restripe Uluaoa Street to provide separate left-turn and right-turn lanes (2024)	\$ 700,000	14.30%	\$ 100,100
Manawalea Street and Keanalehu Street (County)	Local	NB/SB	Extend Manawalea Street to Keanalehu Street (2014)	\$ 4,000,000	67.40%	\$ 2,696,000
		NB	Provide exclusive left-turn lane and through lane on Manawalea Street (2014).	\$ 300,000		\$ 23,700
		SB	Restripe Manawalea Street to provide a channelized right-turn lane and a through lane (2014).	\$ 300,000	7.90%	\$ 23,700
		All	Install all-way stop controls at the intersection (2014).	\$ 200,000		\$ 15,800
Fair Share \$ Allocation Totals				Kamakana Fair Share \$ Allocation - Total		\$ 7,276,610
				Kamakana Fair Share \$ Allocation - Local		\$ 4,424,350
				Kamakana Fair Share \$ Allocation - Area		\$ 2,852,260
				Kamakana Fair Share \$ Allocation Area (DOT HWY)		\$ 2,069,360

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION and
FOREST CITY HAWAII KONA, LLC

To Amend the Agricultural Land Use District
Boundaries into the Urban Land Use District
for certain lands situated at Keahuolu, North
Kona; consisting of approximately 271.837
acres, Tax Map Key Nos. (3) 7-4-021:020
(por.), (3) 7-4-021:024, (3) 7-4-021:025,
(3) 7-4-021:026, (3) 7-4-021:027

DOCKET NO. A10-788

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **QUEEN LILI‘UOKALANI TRUST’S PETITION
FOR DECLARATORY ORDER; VERIFICATION; DECLARATION OF YUKO
FUNAKI; EXHIBITS “A” – “D”; and CERTIFICATE OF SERVICE** was duly served by
certified mail or by hand delivery to each of the following persons on the 11th day of October,
2010 addressed as follows:

State of Hawaii
Department of Business, Economic Development and Tourism
OFFICE OF PLANNING
Attn: Mr. Abbey Seth Mayer
P.O. Box 2359
Honolulu, Hawaii 96804

CERTIFIED MAIL

State of Hawaii
Department of Business, Economic Development and Tourism
OFFICE OF PLANNING
Land Use Division
Attn: Ms. Mary Alice Evans
P.O. Box 2359
Honolulu, Hawaii 96804

CERTIFIED MAIL

State of Hawaii
DEPARTMENT OF THE ATTORNEY GENERAL
Attn: Mark Bennett, Esq.
Bryan C. Yee, Esq.
Hale Auhau, Third Floor
425 Queen Street
Honolulu, Hawaii 96813

CERTIFIED MAIL

County of Hawaii
PLANNING DEPARTMENT
Attn: Ms. Bobby Jean Leithead-Todd
Ms. Phyllis Fujimoto
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

CERTIFIED MAIL

County of Hawaii
OFFICE OF THE CORPORATION COUNSEL
Attn: Lincoln Ashida, Esq.
Gerald Takase, Esq.
Brandon A.K. Gonzalez, Esq.
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

CERTIFIED MAIL

County of Hawaii
PLANNING COMMISSION
c/o Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

CERTIFIED MAIL

CARLSMITH BALL LLP
Attn: Steven S.C. Lim, Esq.
Attorney for Petitioner Forest City Hawaii Kona, LLC
121 Waianuenue Avenue
Hilo, Hawaii 96720

CERTIFIED MAIL

CARLSMITH BALL LLP
Attn: Jennifer A. Benck, Esq.
Attorney for Petitioner Forest City Hawaii Kona, LLC
ASB Tower
1001 Bishop Street, Suite 2200
Honolulu, Hawaii 96813

CERTIFIED MAIL

State of Hawaii
DEPARTMENT OF THE ATTORNEY GENERAL
Attn: Diane K. Taira, Esq.
Craig Y. Iha, Esq.
Attorneys for Petitioner Hawaii Housing Finance
and Development Corporation
425 Queen Street
Honolulu, Hawaii 96813

CERTIFIED MAIL

FHT KAMAKANA, LLC
Attn: Mr. Lester G.L. Wong
201 Merchant Street
Honolulu, Hawaii 96813

CERTIFIED MAIL

State of Hawaii
DEPARTMENT OF EDUCATION
Attn: Ms. Kathryn Matayoshi
1390 Miller Street
Honolulu, Hawaii 96813

CERTIFIED MAIL

County of Hawaii
OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT
Attn: Mr. Steven J. Arnett
50 Wailuku Drive
Hilo, Hawaii 96720-2456

CERTIFIED MAIL

HAWAIIAN TELCOM, INC.
1177 Bishop Street
Honolulu, Hawaii 96813

CERTIFIED MAIL

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Attn: Ms. Laura Thielen, Chairperson
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

CERTIFIED MAIL

THE QUEEN LILI'UOKALANI TRUST
Attn: Ms. LeeAnn Crabbe
Ms. Michele Otake
1100 Alakea Street, Suite 1100
Honolulu, Hawaii 96813

HAND DELIVERY

DATED: Honolulu, Hawai'i, October 11, 2010.

Of Counsel:

IMANAKA KUDO & FUJIMOTO
A Limited Liability Law Company



BENJAMIN A. KUDO

YUKO FUNAKI

Attorneys for Intervenor

QUEEN LILI'UOKALANI TRUST