



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A99-728(c)
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF	)	ORDER AMENDING
HAWAII, STATE OF HAWAII	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
	)	DECISION AND ORDER
To Amend the Agricultural Land Use)	
District Boundary into the Urban Land Use)	
District of Approximately 1,300 Acres of)	
Land at Honouliuli, `Ewa, O`ahu, Hawai`i,)	
TMK Nos.: (1) 9-1-016:008, (1) 9-1-017:071,)	
086; and (1) 9-1-018: 003, 005.)	

LAND USE COMMISSION
STATE OF HAWAII
2013 JAN 14 A 9:26

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

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State Land Use Commission, Honolulu, Hawai`i

_____ 1/14/13 _____ by


Daniel Orodener, Executive Officer



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INTRODUCTION

The STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS ("DHHL" or "Petitioner"), filed a Motion for Order Amending The Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 8, 1999 ("Motion to Amend"), on March 23, 2012 pursuant to §15-15-70 and §15-15-94, Hawai`i Administrative Rules ("HAR"), to: (1) recognize DHHL as the fee owner of approximately 67.184 acres of land at Kapolei, `Ewa, O`ahu, Hawai`i, identified as Tax Map Key No. (1) 9-1-016: 142 ("Property"), which was a part of the approximately 1,300 acres of land (then identified in part as a portion of Parcel 109) reclassified in the Findings Of Fact, Conclusions Of Law, And Decision And Order

dated September 8, 1999 ("1999 Decision and Order"); (2) re-designate a new docket for the Property, separate and apart from the remaining 785 acres reclassified under Docket No. A99-728; (3) releasing the Property from the conditions of the 1999 Decision and Order; and (4) the issuance of a new findings of fact, conclusions of law, and decision and order for the Property.

The Land Use Commission of the State of Hawai'i ("Commission"), having reviewed DHHL's Motion to Amend, responses and other submissions filed by the City and County of Honolulu, State of Hawai'i Office of Planning, Haseko (EWA), Inc., subsequent pleadings thereto, affidavits, testimony, arguments, and evidence presented at the May 3, 2012, July 5 2012, and September 14, 2012 hearings, makes the following findings of fact, conclusions of law, and decision and order:

I. BACKGROUND

1. In July 1998, the Governor accepted the Final Environmental Impact Statement ("EIS") for the Housing and Community Development Corporation of Hawai'i ("HCDCH")¹ East Kapolei Master Plan Development Project, a 1,300 acre master planned residential community at Ewa, O'ahu, Hawai'i ("1998 FEIS"). The East Kapolei Master Plan included the Property.

2. On March 5, 1999, HCDCH filed a Petition for Land Use District Boundary Amendment ("1999 Petition") in Docket No. A99-728 to reclassify approximately 1,300 acres of land owned by the State of Hawai'i, located in Kapolei, O'ahu, City and County of Honolulu, Hawai'i, identified as Tax Map Key Nos. (1) 9-1-016: 8, 108, 109; (1) 9-1-017: 071, 0861 and (1) 9-1-018: 003, 005, ("Petition Area") from the State Land Use Agricultural District to the State

¹ HCDCH was the predecessor agency to the Hawai'i Housing Finance and Development Corporation, a public body and a body corporate and politic of the State of Hawai'i.

Land Use Urban District for a master planned community referred to as the East Kapolei Master Plan Development Project (“East Kapolei”). The 1999 Petition was designated as Docket No. A99-728.

3. HCDCH intended to be the master developer of East Kapolei. As the master developer, HCDCH committed to providing the backbone infrastructure, including major roadways and expansion of the electrical and communications systems, a sports complex, water and wastewater system master plans, and development of open space recreation areas. HCDCH proposed to sell large lot parcels to individual developers for construction of proposed land uses.

4. Components of East Kapolei included the following:

<u>Use</u>	<u>Units</u>	<u>Acreage</u>
Single-Family Residential	4,300-5,800	722
Multi-Family Residential	2,100-2,600	211
Commercial		18
Parks		
Neighborhood (6)		21
District (1)		15
Sports Complex		64
Schools		
Elementary (3)		36
Intermediate (1)		20
Major Roads		74
Other Open Space/Public Facilities		<u>119</u>
TOTAL		1,300

5. On September 8, 1999, the Commission issued the 1999 Decision and Order.

6. By Deed dated November 8, 2002, recorded at the Bureau of Conveyances as Document No. 2860229 on November 13, 2002, the State of Hawai`i conveyed approximately 500 acres of the Petition Area to the University of Hawai`i.

7. In September 2005, the Department of Land and Natural Resources, State of Hawai`i (“DLNR”) conveyed 159.365 acres of the Petition Area to DHHL (“East Kapolei I” and

"East Kapolei Commercial"). The Board of Land and Natural Resources also approved the conveyance of an additional 318 acres of the Petition Area to DHHL ("East Kapolei II").

8. On March 9, 2007, the University of Hawai'i filed its Motion to Amend the 1999 Decision and Order to, *inter alia*, modify certain conditions in the 1999 Decision and Order to be specific only to the 500 acres conveyed to the University of Hawai'i. The University of Hawai'i's Motion to Amend was based substantially on the conveyance of the 500 acres for the development of the newly envisioned UH West O'ahu campus, thus significantly changing the concept of East Kapolei as described in the 1999 Decision and Order. Specifically, the University of Hawai'i's project includes the relocation of the UH West O'ahu campus from a formerly proposed location mauka of the H-1 Freeway adjacent to Makakiko to makai of the H-1 Freeway, residential uses, mixed uses, student housing or campus expansion, an elementary school site, roads, detention basins, and electrical substations. As described in the 1999 Decision and Order, the 500 acres had been proposed to be sold as large lot parcels to private developers to fund the development of the UH West O'ahu campus.

9. On August 13, 2007, a new docket number was issued specifically for the 500 acres owned by the University of Hawai'i, Docket No. A99-728(a), and the Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A99-728(a) was filed by the Commission, substantially amending the conditions in the 1999 Decision and Order to address the significant changes to the concept of East Kapolei as a result of the University of Hawai'i's new UH West O'ahu campus project.

10. On January 12, 2009, The Salvation Army ("TSA") acquired 15 acres in fee simple from the State of Hawai'i for the purpose of constructing and operating a regional community service center to be known as the Kroc Center. The 15 acres acquired by TSA is

located in East Kapolei and was a part of the remaining 800 acres of Petition Area under A99-728.

11. On April 28, 2009, TSA filed a Motion to Amend the 1999 Decision and Order requesting that the Commission: (1) recognize TSA as the successor in interest to the 15 acres, which was a part of the 1,300 acre Petition Area reclassified in the 1999 Decision and Order; (2) re-designate a new docket for the 15 acres, separate and apart from the remaining 785 acres; (3) releasing the 15 acres from the conditions of the 1999 Decision and Order; and (4) the issuance of a new findings of fact, conclusions of law, and decision and order for the 15 acres for the purpose of proceeding with TSA's Kroc Community Center project.

12. The Kroc Community Center project was comprised of approximately 120,000 square feet under roof and an estimated 450 parking stalls and included a theater, worship center, administrative office space, learning center, conference center, commercial kitchen, aquatics center, athletic center and sports fields.

13. On November 13, 2009, the Commission approved TSA's Motion to Amend the 1999 Decision and Order.

14. DHHL has filed its Motion to Amend to achieve consistency between the conditions of the 1999 Decision and Order and the proposed regional commercial center ("Project"). The Project is being developed by Hawai'i DeBartolo, LLC, a Delaware limited liability company whose principal place of business is Tampa, Florida, under a 65-year ground lease from DHHL. Consistency between the conditions of the 1999 Decision and Order and the proposed Project is necessary for DeBartolo to proceed with development. DeBartolo is requiring modification of the LUC conditions of the 1999 Decision and Order and the Proposed Project as a condition of leasing the property from DHHL and proceeding with the Project.

II. PROCEDURAL MATTERS

15. On March 23, 2012, DHHL filed its Motion to Amend requesting that the Commission: (1) recognize DHHL as the fee owner of the Property; (2) re-designate a new docket for the Property, separate and apart from the remaining 785 acres; (3) releasing the Property from the conditions of the 1999 Decision and Order; and (4) the issuance of a new findings of fact, conclusions of law, and decision and order for the Property for the purpose of proceeding with the Project.

16. The Motion to Amend sought the issuance of a new findings of fact, conclusions of law, and decision and order which would include conditions that are based upon the conditions of the 1999 Decision and Order subject to requests to delete or modify those conditions as appropriate to the Project, specifically the deletion of conditions 3 and 8 and modifications to conditions 5, 6, 10-17, 21-23, 25, and 26.

16a. On May 1, 2012, the City and County of Honolulu and Office of Planning filed their respective responses to DHHL's motion.

16b. On May 2, 2012, Haseko (Ewa), Inc. filed its Statement of No Objection to DHHL's motion.

16c. On May 3, 2012, the Commission held a hearing on the Motion to Amend. Entering appearances were Deputy Attorneys General Craig Iha and Matthew Dvonch on behalf of the Department of Hawaiian Home Lands, Albert "Alapaki" Nahale-a, Chairman of the Hawaiian Homes Commission, Deputy Attorneys General Collette Honda and Sandra Ching on behalf of the Hawai'i Housing Finance and Development Corporation, Deputy Corporation Counsel Don Kitaoka on behalf of the City and County of Honolulu, Department of Planning and Permitting, Tim Hata from the Department of Planning and Permitting, and Deputy Attorney

General Bryan Yee on behalf of the Office of Planning. The Commission continued the matter to allow the parties time to resolve any issues related to the motion.

16d. On May 10, 2012, the Office of Planning filed its Supplemental Response to DHHL's motion.

16e. On June 29, 2012, DHHL filed its Supplemental Exhibits in support of its motion, consisting of an updated Market Study for the Project and a Traffic Impact Analysis Report. Copies of the Market Study were previously provided to respective counsel for the City and County Department of Planning and Permitting and the Office of Planning on or about May 1, 2012. Copies of the Traffic Impact Analysis Report were previously provided to respective counsel for the City and County Department of Planning and Permitting on May 30, 2012, and the Office of Planning on May 23, 2012.

17. On July 2, 2012, DHHL filed its Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order.

18. On July 2, 2012, the Department of Planning and Permitting, City and County of Honolulu, filed its position statement regarding Conditions Nos. 9, 16, and 17 of DHHL's July 2, 2012 Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order.

18a. On July 3, 2012, the Office of Planning filed its Response to Department of Hawaiian Home Lands' Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

19. On July 5, 2012, the Commission held a further hearing on the Motion to Amend. Entering appearances were Deputy Attorney General Craig Iha on behalf of the Department of Hawaiian Homelands, Jobie Masagatani, Chairman Designate of the Hawaiian Homes Commission, Deputy Attorney General Diane Taira on behalf of the Hawai'i Housing Finance

and Development Corporation, Deputy Corporation Counsel Don Kitaoka on behalf of the City and County of Honolulu, Department of Planning and Permitting, Tim Hata from the Department of Planning and Permitting, Deputy Attorney General Bryan Yee on behalf of the Office of Planning, Rodney Funakoshi from the Office of Planning, and Yvonne Izu, Esq. on behalf of Haseko (Ewa) Inc. The Commission continued the matter due to lack of quorum for decision making on DHHL's motion.

20. On September 11, 2012, DHHL filed its First Amended Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order ("First Amended Proposed Decision and Order").

21. On September 14, 2012, the Commission held a further hearing on the Motion to Amend. Entering appearances were Deputy Attorneys General Craig Iha and Matthew Dvotch, on behalf of the Department of Hawaiian Homelands, and Jobie Masagatani, Chairman Designate of the Hawaiian Homes Commission; Sandra Ching, Deputy Attorney General, on behalf of the Hawai'i Housing Finance and Development Corporation; Deputy Attorney General Bryan Yee, on behalf of the Office of Planning, and Rodney Funakoshi from the Office of Planning; Deputy Corporation Counsel Don Kitaoka on behalf of the City and County, Department of Planning and Permitting, and Randy Hara from the Department of Planning and Permitting; and David Austin, Esq., on behalf of Haseko (Ewa) Inc.

22. Upon completion of the parties' presentations of their respective cases, Petitioner's Motion to Amend was granted in the following respects:

- a. A motion was made and seconded to accept the Petitioner's Motion to Amend with the following changes as identified below. Following discussion by the Commission, a vote

was taken on this motion. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

b. Amend Condition 9 of the First Amended Proposed Decision and Order to read:

“9. Petitioner, its successors, and assigns shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation and the City and County of Honolulu. Petitioner and/or the State Department of Transportation shall submit the construction plans as they relate to drainage issues for the North-South Road to the City for review and approval.

Petitioner, its successors, and assigns shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to State roadway facilities caused by the proposed Project as set forth in a Memorandum of Agreement (“MOA”) agreed to and executed between the State Department of Transportation (“DOT”) and Petitioner. Petitioner shall obtain acceptance of the Project’s Traffic Impact Analysis Report (“TIAR”) from DOT and consider written comments from the City prior to execution of the MOA. The MOA shall be executed prior to occupancy.

The MOA shall include, but not be limited to, the following terms and conditions: (a) the accepted TIAR shall be incorporated in the MOA by reference; (b) Petitioner’s responsibilities for funding, construction, and implementation of improvements and mitigation; (c) a schedule of agreed to improvements and a schedule of future updates or revisions to the TIAR to be accepted by DOT; (d) development of the Project shall be consistent with the executed TIAR and MOA; and (e) any fees or in-kind contributions that are roughly proportional to any indirect or secondary impacts caused by the proposed Project.”

c. Amend Condition No. 10 of the First Amended Proposed Decision and Order to read:

“10. Petitioner, its successors, and assigns of Petition Area C shall fund and construct adequate civil defense measures as determined by the City and County of Honolulu and State Civil Defense agencies. The civil defense measures shall be operational prior to occupancy of any residences or business.”

d. Amend Condition No. 13d of the First Amended Proposed Decision and Order to read:

“13. Petitioner, its successors, and assigns, agrees to work with the city to implement interim and long-range regional drainage solutions as follows:

d. Petitioner shall also take reasonable measures to minimize non-channelized flows from Petition Area C by construction of berms, detention basins, or other appropriate methods. All flows and drainage patterns that cross the southern boundary of Petition Area C shall remain as conceptually described in the `Ewa Villages Drainage Master Plan. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.”

e. Amend Condition No. 14 of the First Amended Proposed Decision and Order to read:

“14. In the event DHHL is no longer the fee owner of the property, future fee owners and their successors and assigns shall apply for City zoning approval after the State Land Use Commission reclassifies the Project site from Agricultural to the Urban District. Said zone change application shall be accompanied by a conceptual master plan with land use information sufficient to satisfy county zoning and development plan requirements.

f. Amend Condition No. 15 of the First Amended Proposed Decision and Order to read:

“15. In the event DHHL is no longer the fee owner of the property, future fee owners and their successors and assigns shall comply with County zoning requirements. This condition is not intended to delay the construction of public uses or infrastructure to service the Property.”

g. Amend Condition No. 16 of the First Amended Proposed Decision and Order to read:

“16. In the event DHHL is no longer the fee owner of the property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit within Petition Area C, submit an Open Space and Pedestrian/Bikeway Master Plan to the City for its review and approval. Regardless of the fee ownership, Petitioners, its successors and assigns, shall consider all timely comments submitted by the City.”

h. Amend Condition No. 17 of the First Amended Proposed Decision and Order to read:

“17. In the event DHHL is no longer the fee owner of the property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit within Petition Area C, submit a Conceptual Urban Design Plan to the City for its review and approval. The Urban Design Plan shall depict the overall design theme and architectural character of streetscapes, residential neighborhoods and town centers. The Plan shall also include a conceptual landscape plan showing treatment of Project entries, major roadways, and common areas. Regardless of the fee ownership Petitioner, its successors and assigns shall consider all timely comments submitted by the City.”

III. FINDINGS OF FACT

A. Description of the Property

22. The Property is located at the southern end of the area known as East Kapolei in the `Ewa District of the City and County of Honolulu on the island of O`ahu. It is generally situated between the residential areas known as Kapolei Village 8 (to the west) and Varona Village (to the east). It is bounded on the north by the extension of Kapolei Parkway and on the south by Roosevelt Avenue. The western property boundary abuts an unlined drainage channel owned by HHFDC and generally known as the Kapolei Lower Drainage Channel. The eastern property boundary abuts a 75-foot wide utility easement owned by the Hawaiian Electric Company ("HECO") within which 138kv transmission lines supported by 100-foot poles are located.

23. The Property is identified as Tax Map Key No. (1) 9-1-016: 142, and comprises of approximately 67.184 acres of land.

B. Present Use of the Property and Conformity to Urban District Standards

24. The Property was formally planted with sugar cane but has been vacant since the `Ewa Mill closed in the 1970s. However, it contains several man-made features including a borrow pit, an excavated foundation, and a large dirt stockpile. The Property is currently vacant.

25. The Project is consistent with the standards for urban districts pursuant to HAR §15-15-18. The Project will have "city-like" concentrations of people, structures, streets and urban level of services, and the Project is proximately located to centers of trading and

employment, accessible to basic services, has satisfactory topography, reasonably free from adverse environmental effects, and is contiguous with planned urban areas.

C. Petitioner's Property Interest in the Subject Property

26. DHHL is the owner of the fee simple interest in the Property.

D. Description of the Project

27. The Project is intended to contain three distinct but related components: its Anchor Tenants, a Village Square, and a Neighborhood Convenience Center. The conceptual layout of the Project responds to the physical demands of the site. One level of below-grade parking will be oriented in the general location of the borrow pit and will provide approximately 1,826 parking stalls. The Project's remaining 2,671 parking stalls will be located at grade.

28. The Village Square area, located in the central and northern portion of the Property is envisioned as a pedestrian oriented activity center consisting of 10 separate buildings surrounding a plaza area. The conceptual master plan currently envisions hotels and office space situated in mid-rise structures (60 - 120 feet in height) in the Village Square with specialty retail and restaurants on the ground floor. Indoor and outdoor cafes will open out to the pedestrian plaza. As the streetscape within Village Square focuses on pedestrian traffic, only a limited number of parking spaces will be provided.

29. As contemplated in the Conceptual Master Plan, the Neighborhood Convenience Center will be located along the northwestern boundary of the Property. It is intended to include a specialty market, drug store, and convenience shopping and service. The Neighborhood Convenience Center is oriented to the daily shopping needs of the community and is designed to allow customers direct access from the adjacent parking lot to the stores at a minimal distance.

30. As contemplated in the Conceptual Master Plan, vehicles will access the Project from two major entrances: one off of Kapolei Parkway between the Village Square and the Neighborhood Convenience Center, and the other off the proposed access from Kualaka'i Parkway. Additional roadway accesses will link the major parking area between the Anchor Tenants to Roosevelt Avenue. Service and delivery vehicles will utilize Roosevelt Avenue for access to the Project.

1. Total Leasable Area

31. The Conceptual Master Plan contemplates approximately 1,400,000 square feet of leasable area, used for commercial office space, retail, cinema, gym, hotels, restaurants, and other eating facilities, and entertainment facilities.

2. Business-Oriented Hotels

32. As contemplated in the Conceptual Master Plan, the proposed Village Square will include two business travel-oriented hotels, each with approximately 250 rooms. Each of the hotels will be built over specialty retail on the ground floor, at opposite ends of the Village Square, with each fronting its own pedestrian plaza. As the hotels are not intended to be visitor destinations, their amenities will be limited to those services required by the business traveler. The hotels will complement the growing commercial character of Kapolei without competing with the Ko Olina Resort.

3. Office

33. As contemplated in the Conceptual Master Plan, approximately 217,000 square feet of office space, provided in a separate building, is proposed within the Village Center.

4. Entertainment

34. As contemplated in the Conceptual Master Plan, the Project will include several community oriented entertainment centers including a cinema complex, a fitness center, and a bowling alley.

5. Infrastructure

35. As contemplated in the Conceptual Master Plan, the infrastructure provided by the Project will include a wastewater collection system; a water transmission system; storm water drainage; regional roadway connections, new intersections at Kapolei Parkway, Kualaka'i Parkway, and Roosevelt Avenue, and internal roadways, pedestrian routes, and parking lots; and subterranean electrical and telecommunication utilities. These various systems will all be designed to the City's standards for dedication and will be linked to existing regional infrastructure.

36. All regional infrastructure needed to support the Project has already been installed by HHFDC and DHHL as part of the larger East Kapolei development.

E. Development Timetable

37. The Project is intended to break ground in 2012 subject to development approvals, with its first phase opening in 2014. As contemplated in the Conceptual Master Plan, Phase 1 consists of approximately 19.72 acres located along the western portion of the Property. It will include a total of 200,681 sf of building area enclosed in 7 different building structures. Phase 1 is projected to take approximately 15 months from start of site work to opening of the

Center for business. Phase 2 would follow in 2015. The entire development will operate under a 65-year ground lease from DHHL to DeBartolo.²

G. Description of the Property and Surrounding Areas

38. The Property is relatively flat land with a slope of one to two percent. It is sparsely vegetated owing to the presence of the borrow pit, foundation area, and stockpile, and the numerous equipment roads that have been graded across the Property. The Property is located between the Villages of Kapolei and Varona Village. The DHHL East Kapolei property lies north of the Subject Property and Kalaeloa (the former Barbers Point Naval Air Station) lies to the south.

1. Use of the Property Currently and for the Past Two Years

39. The Property has been used for the past two years as a stockpile area, and graded for numerous construction vehicle roads. The Property also includes an area excavated for the formerly-proposed Sports Complex. The Property is currently vacant.

2. Soils

40. The soils on the Property were generally divided between two soil classifications: Honouliuli series (HxA) and Mamala series (MnC). The HxA soils constitute the northern half of the site while the MnC soils constituted the southern half. Honouliuli soils are well-drained soils on coastal plains. They are nearly level. Permeability is moderately slow and the erosion hazard is considered to be slight. The Mamala soils are stony silty clay loam with 0-12 percent slopes and their erosion hazard is slight to moderate.

41. The borrow pit renders the soil classification in its area moot. The borrow pit was excavated by DHHL so that the subsurface coral could be utilized as fill material at the

² Act 187, Session Laws of Hawai'i 2010, allows DHHL to extend the term of the ground lease by an additional 20 years, provided certain conditions are met.

neighboring Village 8 residential project. The existing stockpile contains, at least in part, the topsoil that was removed when the borrow pit was excavated.

3. Agricultural Lands of Importance to the State of Hawai'i

42. The lands generally occupied by the existing borrow pit and stockpile were formerly identified as Prime agricultural land. The remainder of the Property is identified as Other.

4. Productivity Rating

43. The Land Study Bureau classified the Property as Alli and B16j. The A lands generally corresponded to the location of the borrow pit and stockpile, with the B lands on the remainder of the Property.

5. Flood and Drainage Conditions

44. The majority of the Property is classified as Flood Zone X by the Federal Emergency Management Agency's Flood Insurance Rate Map (FIRM). A relatively narrow strip of the Property along its southern boundary is designated as Flood Zone D.

45. The East Kapolei area, including the Property, is impacted by regional storm runoff from a portion of the Kaloi Gulch drainage basin and the Hunehune Gulch drainage basin. The two gulches converge within the 500-acre UH West O'ahu project site. Construction of Kanehili Street and Kualaka'i Parkway resulted in the diversion of flow from Kaloi Gulch to a new channel below Farrington Highway. Flow from Hunehune Gulch and sheet flow from the UHWO property is diverted under Kualaka'i Parkway to detention basins.

46. Storm runoff from the Property that does not flow into and collect in the borrow pit currently flows into the Lower Kapolei Channel along the western boundary and subsequently into the Coral Pit in Kalaeloa.

6. Topography

47. The Property is relatively flat with a slope of less than two percent. There are no natural variations in the topography. The existing borrow pit is approximately 30 feet deep, extending over an area of approximately 13.763 acres. The existing stockpile, extending over an area of about 5.767 acres, is about 12 feet high in some places. The area excavated for the formerly proposed sports stadium is about 8 feet deep and covers an area of approximately 4.417 acres.

H. Assessment of Impacts

1. Environment

48. A Final Environmental Impact Statement for East Kapolei was completed in 1998, which encompasses all of East Kapolei, including the Property. In addition, DHHL commissioned an Environmental Assessment for the Project pursuant to HRS chapter 343. On December 12, 2011, DHHL's governing body, the Hawaiian Homes Commission, accepted the Final Environmental Assessment ("FEA") and issued a Finding of No Significant Impact for the Project ("FONSI"). The FONSI was published by the State Office of Environmental Quality Control on January 23, 2012.

49. All environmental impacts will occur primarily during the construction period from noise, soil erosion, increased construction machinery exhaust emissions, and temporary disruption of traffic. After project development and implementation of appropriate mitigation measures, no significant impacts affecting water quality will occur, surface drainage will be significantly improved, the diversity of plant and animal species will increase, and archaeological resources will not be impacted.

2. Agriculture

50. As agricultural activity on the Property was discontinued approximately 30 years ago and the Property has remained fallow since then, the Project will have no significant adverse impact upon agricultural activity. Reclassification of the Property to the State Urban district in 1998, including the Property, effectively removed it from the inventory of agricultural lands.

3. Recreational

51. Development of the Property as a regional commercial center will have no significant impact on recreational resources in the region. The Property was originally proposed as a regional sports complex in the 1998 East Kapolei FEIS. However, the subsequent relocation of the proposed UH West O'ahu campus to the northern end of the East Kapolei property has diminished the desire for developing a sports complex on the Property. Many of the facilities originally proposed for the Property are now proposed to be included on the West O'ahu campus.

4. Historic and Cultural

52. The Cultural Assessment included in the FEA indicates the possibility that cultural practices occurred on the Property prior to the large-scale cultivation of sugar cane. Sinkholes in the general area were utilized as natural planters for kalo (taro, dry-land variety), temporary shelters, storage features, and sources of water. However, no sinkholes were found onsite during an archaeological inventory survey conducted in 2011 for the Project.

53. Some portions of the Property may have been used by Hawaiians for a variety of activities. For example, the lands may have been planted in 'ulu (breadfruit), liliko'i (passion fruit), niu (coconut), and two types of mai'a (banana). Additionally, birds were trapped for feathers in or near to the Property, including the ae'o (*Himantopus mexicanus knudseni*), i'iwi (*Vestiaria coccinea*), 'apapane (*Himatione sanguine*), and the mamoa (*Drepanis pacifica*).

54. The Cultural Assessment also indicates there may be at least one *ahu* (shrine) in the general area, which was dedicated to agriculture. This *ahu 'aina* was made of stacked waterworn basalt boulders and cobbles, likely collected from a nearby stream bed, that stood up to five feet tall and possibly as wide as it was tall with a circular plan view. On these *ahu*, devotees, would leave offerings to show appreciation for these natural resources and respect for the divine. However, the *ahu 'aina* was destroyed many years ago, sometime during the initial preparation of the land for sugarcane cultivation.

55. No evidence has been found that cultural practices have been ongoing from the pre-Contact era or Historic era to the present, as the majority of the Property has been heavily disturbed by agricultural and construction activities over the past 60 or more years.

56. Two Native Hawaiian cultural resources have been identified as being potentially impacted by the proposed Project: 'uha loa (*Waltheria indica*) for traditional Hawaiian medicine and 'alae (red clay) for coloring salt, medicine, dye, and spiritual purification. An interviewee and his two *lā'au lapa'au* students were the only cultural practitioners to be currently collecting these resources from the area. Although these resources exist in localities outside of the Property, the location is desired for its easy access, abundance of the resources, and the lack of pesticide sprays in its interior. The proposed Project will impact these activities. However, these resources are not endangered and can be found in other locations. 'Uha loa is readily-available commercially and can therefore easily be incorporated into landscaping at the Project.

57. As discussed in the 1998 FEIS, no significant archaeological or cultural resources are associated with the East Kapolei property, including the Property. The presence of any significant archaeological sites on the surface or subsurface of the Property is unlikely due to the disruption caused by continuous cane cultivation for nearly 70 years. According to the

archaeological survey, literature search, and assessment of potential significant sites by the State Historic Preservation Division (SHPD), there are no significant archaeological or cultural resources associated with the Property.

58. If archaeological sites are encountered during the construction of the Project, interpretive cultural displays will incorporate artifacts (to the extent possible), archival photos, artistic renderings, and traditional accounts to educate its patrons of ‘Ewa Plain’s past.

59. The Property borders the historic OR&L Railroad to the north. This historic railway, in operation from 1889 to 1947, was placed in the National Register of Historic Places in 1975. The nearby Hawaiian Railway Society baseyard is listed on the Hawai‘i Register of Historic Places.

60. The FEA indicates that two of the Project’s driveways will cross the railroad right of way (“ROW”). The State Historic Preservation Division maintains that “[a]ny development necessary along the ROW should be carefully designed to minimize impacts and enhance the train passenger’s experience,” and that “[t]he number of crossings should be minimized.” SHPD recommends that any meetings regarding the railroad should include the Hawaiian Railway Society.

61. DHHL and SHPD have agreed to the provision of one driveway onto Roosevelt Avenue to cross the ROW. SHPD has not concurred with a second driveway. DHHL and DeBartolo will continue to discuss the Project’s impacts on the railroad and the final number and location of crossings with SHPD and other stakeholders.

62. Archaeological investigations have shown that much of the area’s cultural resources have been disturbed by sugar plantation activities. Both surface and subsurface studies were conducted, and indicated that no sinkholes are present in the Property.

63. The surface survey yielded no archaeological sites. Rather, the Property exhibited signs of continuous disturbances in the form of construction excavations, bulldozing, and dumping. Further, there are significant modifications to the land in the form of jumps, tracks, roads, and berms, to help facilitate modern off-roading for off-road vehicles (ORV) and all-terrain bicycles, none of which have been authorized by DHHL.

64. Given the lack of any evidence of sinkholes within the Property, no further archaeological work is necessary within this area. However, in the event that limestone bedrock (karst) is encountered during construction activities, DHHL acknowledges that work in this area will halt and a qualified archaeologist will be summoned to the site to monitor excavations in the limestone areas. If any filled and buried sinkholes are encountered during these construction excavations, they will be archaeologically investigated to determine if they contain potentially significant archaeological deposits, including human burials. If at any time during construction potentially significant archaeological remains are encountered, work in the immediate vicinity will halt and the State Historic Preservation Division will be contacted.

5. Scenic

65. No scenic resources are located on the Property. Its distance from the shoreline precludes any views of the shoreline, the horizon, or coastal features along the south shore of O`ahu. The predominant vista associated with the Property is a view of the southern portion of the Waianae mountain range, including Pu`u Makakilo.

66. The visual appearance of the subject property will change from vacant scrub vegetation to a built urban environment. Approximately half of the Property continues to be disturbed by grading and stockpiling activities related to the excavation of the borrow pit and the stockpiling of excavated material. In addition, a large portion of the Property was used for

storage of construction materials and construction vehicle access related to the extension of the Kapolei Parkway by DHHL immediately north of the Property. Given these existing conditions, the visual appearance of the Property will greatly improve with its eventual development.

67. The Project will consist of several structures ranging in height from 25 to 120 feet. The Project will be visible from abutting roadways including Kapolei Parkway, Roosevelt Avenue, and the extension of Kualaka`i Parkway (if implemented by State DOT) that would be aligned along the Project's eastern boundary. It will also be visible from other portions of the East Kapolei development project, Village 8 to the west, and Varona Village to the east. The taller structures on the Property will likely be visible from Farrington Highway, and the entire Project will be visible from the eastbound lanes of the H-1 Freeway.

6. Flora

68. There are two types of vegetation at the Property: 'Managed Land Vegetation' and 'Buffel Guinea Grass Grassland'. Both of these are classified as 'disturbed vegetation'. Managed Land Vegetation is associated with the southern portions of the Property occupied by the borrow pit, the dirt stockpiles, as well as the various dirt roads that crisscross the Property. The native (or possibly native) ma`o (*Abutilon incanum*) was found growing on the stockpiles.

69. Buffel Guinea Grass Grassland includes a heterogeneous assemblage of plant types united by a dominance of Buffel Grass (*Cenchrus ciliaris*) as the ground cover. On the northern portion of the Property, pluchea (*Pluchea carolinensis*) is the dominant shrub. Mixed with it are scattered individuals of koa haole (*Leucaena leucocephala*), kiawe (*Prosopis pallida*), and `opiuma (*Pithecellobium dulce*), all three of which are members of the pea family *Fabaceae* and are characteristic of dry areas of Hawai`i. In addition to the matrix of Buffel Grass, `ilima (*Sida fallax*), `uhaloa (*Waltheria indica*), creeping indigo (*Indigofera spicata*), vergata mimosa

(*Desmanthus pernambucanus*), Australian saltbush (*Atriplex semibaccata*), and several other species are present. The `uhaloa and `ilima are indigenous species, the others are all alien species.

70. The central portion of the Property, occupied by the former stadium excavation, is also covered with non-native vegetation.

71. With respect to the larger East Kapolei area covered by the 1998 FEIS, a 1996 botanical survey found that the vegetation on the property was entirely secondary and determined by its previous history of cultivation (or disturbance) on each individual parcel of land. Eight plant communities were recognized, each community existing as a continuum with one blending into another. Species composition and vegetative cover will differ somewhat during the rainy season.

72. Within the eight plant communities identified in the larger East Kapolei area, 99 different plant species were recorded with two indigenous (`ilima and pa`uohi`iaka), two probably indigenous (`uhaloa and hoary abutilon) and one endemic (ko`oloa`ula, *Abutilon menziesli*). Except for the ko`oloa`ula, all the native species on site are common lowland species in Hawai`i. While a total of 88 individuals of the ko`oloa`ula were found on the East Kapolei property, none were located on the Property at issue in this motion. The ko`oloa`ula is now a federally listed endangered species that was once endemic to Lana`i, Maui, O`ahu, and Hawai`i.

73. A 2004 Habitat Conservation Plan ("HCP") prepared by the State Department of Transportation and approved by the U.S. Fish & Wildlife Service addressed the entire 1,300 acre East Kapolei area, of which the Property is a part. The State DOT assumed sole sponsorship of the HCP and mitigation responsibility. The HCP did not require any mitigation efforts on the

Property or restrict the use of the Property. No action is required of DHHL or its lessee, Hawai'i DeBartolo LLC with respect to the HCP.

74. Development of the Project will replace existing scrub vegetation with a landscaped urban environment including buildings and extensive parking lots. Landscape materials will include lawn areas, ornamental shrubs, and trees. Drought resistant plants will be incorporated into the landscaping palette wherever practicable. The consulting botanist to the FEA concluded "...there are no botanical reasons why development of the parcel cannot take place...all of the proposed development is on very disturbed land."

7. Fauna

75. There is no federally delineated Critical Habitat present on or adjacent to the Property. Thus the development and operation of the Project will not result in impacts to federally designated Critical Habitat.

76. In connection with the FEA, a total of 346 individual birds of 17 species, representing 12 separate families, were recorded during station counts on the Property. All species are alien to the Hawaiian Islands. No other avian species were detected during the survey. No avian species detected during the course of the survey are protected or proposed for protection under either the federal or State of Hawai'i endangered species statutes. Avian diversity and densities were consistent with the highly disturbed nature of the Property, and the Property's location in East Kapolei.

77. Three terrestrial mammalian species were detected on the Property during the course of the survey. Tracks, scat and signs of dog (*Canis f. familiaris*), small Indian mongoose (*Herpestes a. auro punctatus*) and cat (*Felis catus*) were encountered at numerous locations within the Property. Mammalian species currently protected or proposed for protection under

either the federal or State of Hawai'i endangered species programs were not detected during the course of the survey.

78. The findings of the survey are consistent with the results of several other faunal surveys conducted in the 'Ewa Plain over the past several years. Although not detected during the survey, it is probable that two migratory shorebird species use loafing and foraging resources on the Property during the fall and winter months. The two, Pacific Golden-Plover (*Pluvialis fulva*) and Ruddy Turnstone (*Arenaria interpres*) are indigenous migratory shorebird species that nest in the high Arctic during the late spring and summer months, returning to Hawai'i and the Tropical Pacific to spend the fall and winter months each year. There are no known nesting colonies of any of the resident seabird species on O'ahu on, or in close proximity, of the Property.

79. Although no rodents were detected during the survey, it is likely that the four established alien muridae found on O'ahu, roof rat (*Rattus r. rattus*), Norway rat (*Rattus norvegicus*), European house mouse (*Mus musculus domesticus*), and possibly Polynesian rats (*Rattus exulans Hawai'iensis*) use various resources found within the Property on a seasonal basis. All of these introduced rodents are deleterious to native ecosystems and the native faunal species dependent upon them.

80. No Hawaiian hoary bats were detected during the course of the survey. Given the paucity of documented records of this species on O'ahu and the complete lack of suitable roosting vegetation on the Property, the chance that any use resources on the Property is extremely low.

81. The principal potential impact of the Project is the increased threat that birds will be downed after becoming disoriented by lights during the nesting season. The two main areas

of outdoor lighting that could pose a threat to these nocturnally flying seabirds are: 1) during construction if it is deemed expedient or necessary to conduct nighttime construction activities; or 2) following build-out, when the potential use of streetlights or other exterior lighting becomes disorienting during the seabird nesting season. These impacts will be mitigated by DHHL and DeBartolo's shielding of construction lighting and street and exterior lighting.

82. Development of the Project will displace fauna and avifauna temporarily. However, this is not a significant adverse impact as no endangered or threatened species have been identified on the Property. The eventual landscaping of the Property will improve the diversity of avifauna on the property because a greater variety of habitat will be created.

8. Groundwater

83. The Project will not have a significant adverse impact on the region's groundwater resources. The 'Ewa region of O'ahu overlies the southern O'ahu basal aquifer (SOBA), a designated sole source aquifer. The gently sloping topography of the 'Ewa Plain is comprised of terrestrial alluvium which is made up of clay and mud eroded from volcanic rock and is inter-layered with coral limestone deposited during periods when the area was covered with ocean. The geological feature is commonly referred to as 'caprock' and is estimated to be approximately 1,000 feet thick near the shoreline and extends inland under the subject property. Water in the caprock is too saline to be potable.

84. The project will be connected to the City's sanitary wastewater collection and treatment system. Storm water from the Property will drain into the lower channel of the existing East Kapolei drainage channel along the western boundary of the Property, in compliance with the East Kapolei I Drainage Master Plan that was accepted by the City and County of Honolulu in 2006.

I. Availability of Public Services

1. Schools

85. The Project will not include any residential units and will not generate a school population. The Department of Education believes that it is possible that residential projects could be included in the Property in the future.

2. Parks and Recreation

86. As a commercial project, the Project will not add to recreational demand in the region.

3. Police Protection

87. District 8 of the City and County of Honolulu Police Department covers most of the *ʻEwa Development Plan* area and all of the Waiʻanae Coast. A district station opened in Kapolei in 2000. A substation is located in Waiʻanae.

88. District 8 communities had 31 citizens patrol programs involving about 600 members in 2006, and Neighborhood Security Watch programs covering nearly 8,900 members.

89. The Kalaeloa Redevelopment area is patrolled in part by US Navy security. The Honolulu Police Department responds to calls from that area.

90. As a regional commercial center, the Project will have on-site security patrols to assure customers' safety. Also, by developing a site near the Kalaeloa Redevelopment Area and providing a new road access to that area, the Project will improve accessibility and hence security for the region.

4. Fire Protection

91. The Honolulu Fire Department's Battalion 4 covers Waipahu, ʻEwa, and the Waiʻanae Coast. Its headquarters in Kapolei has both an engine and a ladder truck. The station

in 'Ewa Beach has a single engine. These stations are supported by stations in Waipahu, Waikele, Makakilo, Nānākuli, and Wai'anae. In addition, HFD's Fire Station No. 43 is currently being constructed directly across Kapolei Parkway from the Property.

92. The Project will be built to current fire control standards, with access to structures via roadways large enough to meet Fire Department standards.

5. Wastewater Systems

93. The City and County of Honolulu sewerage system serves the Property. A 42-inch diameter City trunk sewer is located along the western side of the 75-foot wide HECO easement on the Property's eastern boundary. The trunk sewer conveys wastewater to the Honouliuli Wastewater Treatment Plant (WWTP) for processing and reuse as RI water.

94. The trunk sewer was designed and constructed to serve developments within the East Kapolei region. Construction was financed by the County, HHFDC, and affiliates of the Estate of James Campbell, with each contributor provided a wastewater flow allocation in the main. Under the Kapolei Interceptor Sewer Allocation and Usage Agreement, HHFDC has a peak flow allocation of 11.346 million gallons per day (MGD), to be further allocated to HHFDC's originally owned lands in the region, including the Property. HHFDC has assigned flow allocation of 2.454 MGD to DHHL for 423.8 acres in East Kapolei, which includes the project area. DHHL has determined that this allocation is sufficient to meet the demands of the Project.

95. An 18-inch diameter stub-out from the trunk sewer into the project site was provided as part of the original construction. The stub-out was installed to serve the sports complex originally planned for the site.

96. The Project has a projected design peak wastewater flow of 0.93 MGD. Based on the Board of Water Supply's estimated potable water meter requirement for the Project, a total of 87 equivalent single-family dwelling units (ESDUs) will be used by the Project. The final ESDU requirement will be based on the installed meter size.

97. The County has indicated that a sewer allocation will be made available to the Project.

98. Connection of the Project to the 42-inch diameter trunk sewer will be through the existing 18-inch diameter stub-out. The 18-inch diameter sewer has adequate capacity and is at an elevation to serve most, if not all the site, by gravity. If pumping of wastewater is necessary, it is likely that the on-site pumping station would be located within the underground parking garage. Such a pumping station would be privately owned and privately maintained by the shopping center tenants.

6. Solid Waste Disposal

99. The County Department of Environmental Services (ENV) Refuse Collection and Disposal Division manages solid waste disposal facilities for the island of O'ahu. There are two County solid waste disposal facilities: the 657,000 tons-per-year H-POWER refuse to energy plant at Campbell Industrial Park, and Waimanalo Gulch Landfill.

100. PVT Land Company operates a privately owned and operated, licensed, solid waste facility for recovery of recyclable materials and disposal of construction and demolition materials. The PVT Landfill accepts wastes on a pre-arranged basis from haulers and contractors registered with them. Waste loads are screened, with recyclable materials removed for sale/reuse and the remaining wastes land filled. The capacity of the PVT Landfill as currently licensed is about 20 years, with expansion areas available.

101. The wastes generated by the Project will be collected on site and managed by the center's operations. Private haulers will be contracted for waste and recyclable material removal from the Project for disposal or reuse/recovery.

7. **Drainage**

102. The Property is bound by the proposed Kapolei Parkway extension to the north, the Kapolei Lower Channel to the west, Renton Road to the south, and the future Keoneula Street to the east.

103. Runoff generated within the Property generally flows in a southeasterly direction into the existing pits and depressions or into the Kapolei Lower Channel. Runoff contained in the sumps percolates or evaporates. Runoff generated in the north/northeast portion of the Property sheet flows offsite into the adjacent property. A berm along the southeast boundary directs runoff to the southern most corner of the Property, which discharges to the Lower Channel through a 24-inch diameter culvert.

104. The 100-year water surface elevation in the Lower Channel at Kapolei Parkway is 52.30 feet above MSL. This elevation is referenced in the *Drainage Master Plan for East Kapolei I Development*, November 2006, prepared by Community Planning and Engineering, and conditionally accepted by the County in a letter dated November 20, 2006 and as established in the *Kapolei Parkway Bridge & 18" Relief Sewer - Kama'aha Avenue* project.

105. The approved *Drainage Master Plan* concludes that the downstream drainage facilities, consisting of the Barbers Point Naval Air Station Coral Pit and the Kapolei Lower Channel, have adequate capacity to accommodate the net increase in storm water runoff from the Project.

106. In accordance with the *Drainage Master Plan*, the Project will drain to the Kapolei Lower Channel. Four piped drain systems generally aligned in the east-west direction are proposed to collect surface runoff and discharge it directly to the Kapolei Lower Channel. The proposed discharge pipes range in size from 72-inches to 24-inches in diameter constructed with outlet headwalls. The estimated total discharge rate from the Project under the 10-year 1-hour rainfall event is about 282 cubic feet per second.

107. The Project will have no adverse impacts to existing neighboring properties. Hydraulic analysis of the planned drain system indicates the anticipated runoff generated from the Project can be discharged to the Lower Channel in compliance with the County Storm Drainage Standards.

108. Off-site runoff will be either diverted away from the Project or routed through the on-site drainage system. The proposed Kapolei Parkway Extension along the mauka boundary will intercept and convey runoff to the Kapolei Lower Channel. Runoff from a portion of the proposed Kualaka`i Parkway/Kapolei Parkway intersection and the DOT's proposed Keaneula Street/Kualaka`i Parkway extension will be routed through the on-site drain system and also discharge to the Lower Channel.

109. The Makakilo Gulch/Kaloi Gulch water shed boundary will be adjusted to include the Kualaka`i Parkway / Kapolei Parkway intersection and the DOT's proposed Keaneula Street/Kualaka`i Parkway extension. The Drainage Master Plan computed a net volume increase of 17.49 acre-feet (ac-ft) in stormwater runoff. The water shed boundary adjustment under the Project will add 8 acres to the Makakilo Gulch water shed resulting in a net volume increase of 18.33 ac-ft.

110. The regional downstream drainage facilities have adequate capacity to accommodate stormwater runoff from the Project as proposed. The Project is consistent with the land use identified in the *Drainage Master Plan*.

111. The Hawai'i Community Development Authority has noted that the Coral Pit is targeted for conveyance from the United States Navy to Hunt Development Group, and that the developer's future plans for the Coral Pit site do not accommodate regional drainage. DHHL will comply with the current Drainage Master Plan. In the event the Coral Pit is unavailable as a downstream drainage facility, the Project will comply with revisions made to the Drainage Master Plan to account for the unavailability of the Coral Pit. The City and County of Honolulu also requires developers to address drainage issues as part of its grading and/or building permit process.

112. The Project will also incorporate best management practices ("BMPs"), including low impact development measures to minimize stormwater runoff. On-site infiltration of storm water runoff will be provided to reduce the quantity of runoff leaving the site, remove pollutants from storm water runoff, and recharge the ground water aquifer. Bio-filtration BMPs will also be used where appropriate to filter storm water runoff before discharging off-site. The specific type of BMP will be selected during the site design process to best suit the application and location.

8. Water

113. HHFDC and DHHL have made regional potable water system improvements for source and storage within East Kapolei that have been dedicated to the BWS. While BWS has no potable water lines in the immediate Project area at present, a 12-inch diameter potable water main has been installed by DHHL as part of the Kapolei Parkway extension fronting the

Property. This main will be part of the BWS 215-foot service zone. Based on the BWS Water System Standards, the Project has an average daily water demand of 201,000 gallons per day. Considering the planned use of non-potable water for the Project, the estimated potable demand is about 20-percent less, or 144,700 gallons per day.

114. Using an estimate of plumbing fixtures within the Project, a 6-inch domestic water meter would be needed. However, since fire flows will also need to be met from the potable water system, a 2-inch by 8-inch FM (Factory Mutual) water meter is proposed for the Project.

115. The off-site fire demand for the project is 4,000 gallons per minute (gpm), considering it as a large shopping center under the BWS Standards. The BWS has confirmed the 4,000 gpm flow can be met with 20 pounds per square inch residual pressure at the closest fire hydrant in accordance with their Standards.

116. The County Board of Water Supply (BWS) has non-potable water lines within the Property. Two lines are located in easements along the eastern side, within the 75-foot wide HECO easement. The BWS lines are a 20-inch diameter R1 line extending from Honouliuli WWTP to Westlock Golf Course, and a 16-inch diameter recycled water main serving the Villages of Kapolei.

117. A 3-inch turbine meter is proposed for installation to supply non-potable water to the Project for irrigation to the Project. The meter would be connected to an existing 12-inch diameter stub-out on the 20-inch diameter R1 water main that was provided to serve the sports complex originally planned for the Property.

118. The BWS indicated that both potable and non-potable water will be available for the Project, with payment of the current water system facilities charges. Due to the storage

system improvements made by DHHL, the Project will need to pay only the portion of the facilities charges associated with resource development and transmission.

119. A well is located on the Diamond Head boundary of the Property. As indicated by the Commission on Water Resource Management (“CWRM”), if the well is not planned to be used, it must be properly abandoned and sealed under permit from CWRM.

9. Transportation

120. A Traffic Evaluation for the Project was initially prepared in June 2011. A Traffic Impact Analysis Report (“TIAR”) was subsequently prepared in April 2012.

121. Adjacent roadway network will accommodate traffic generated by the Project. Some delays that occur along Kapolei Parkway may increase, but the intersections are projected to operate at an acceptable level during the AM and PM commuter peak hours. Construction activities may generate short-term traffic impacts to the motoring public, bicyclists, and pedestrians in the immediate vicinity of the Project construction site. The Property has long frontage to a large open space and has many unobstructed points of entry. As such, mitigation measures will be implemented to minimize the impacts of construction-related traffic. When appropriate, construction personnel or off-duty police will be required to direct and facilitate traffic during construction activities.

122. Kapolei Parkway is a six-lane, divided major arterial roadway under the jurisdiction of the City and County of Honolulu east of Kualaka`i Parkway. Ultimately, Kapolei Parkway will provide significant east-west mobility between Kapolei and `Ewa. The posted speed limit on Kapolei Parkway is 30 miles per hour.

123. Kualaka`i Parkway (formerly North-South Road) is a four-lane, divided major arterial roadway under the jurisdiction of the State Department of Transportation (DOT). While

currently striped for four lanes, it will ultimately be six lanes. Kualaka`i Parkway connects Kapolei Parkway with H-1 Freeway at a diamond interchange. Its intersection with Farrington Highway is a major signalized intersection. Kualaka`i Parkway forms a signalized, tee-intersection at Kapolei Parkway. The speed limit on Kualaka`i Parkway is 35 miles per hour.

124. Roosevelt Avenue is a collector roadway under the jurisdiction of the State DOT providing east-west circulation within Kalaeloa (former Barbers Point Naval Air Station). With Geiger Road, it provides a link between the `Ewa Beach area and the City of Kapolei. Roosevelt Avenue is a rural, two-lane undivided roadway with exclusive left-turn lanes at some intersections. The posted speed limit on Roosevelt Avenue is 35 miles per hour in Property vicinity. The Bus Route 41 serving `Ewa Beach and East Kapolei uses Roosevelt Avenue.

125. Kamaaha Avenue is a four-lane, divided neighborhood collector roadway under the jurisdiction of the City and County of Honolulu that provides access to the Villages of Kapolei development along with Kapolei Middle School. The speed limit on Kamaaha Avenue is 25 miles per hour.

126. Kinoiki Street is a collector roadway under the jurisdiction of the City and County of Honolulu providing access to the East Kapolei I. While currently terminating within East Kapolei I, Kinoiki Street will eventually continue north, connecting with the future east-west collector road. The speed limit on Kinoiki Street is 25 miles per hour.

127. Renton Road is a four-lane, divided collector roadway under the jurisdiction of the City and County of Honolulu (with a short segment extending between the OR&L railroad tracks and Roosevelt Avenue owned by the Hawaiian Railway Society) providing east-west circulation and access within `Ewa. Its western terminus is at a stop-controlled intersection with

Roosevelt Avenue. Between Kapolei Parkway and Roosevelt Avenue, it is a rural undivided two-lane road.

128. Vehicular access to Phase 1 of the Project would be via: (1) Kapolei Parkway at Kinoiki Street, which will have dedicated turn lanes into the site from Kapolei Parkway; and (2) Roosevelt Avenue. The TIAR indicates that the extension of Kualaka`i Parkway is not necessary for the development of Phase 1. The internal vehicular circulation system within the Project is essentially a network of driveways. They will be paved, with curbs, gutters and landscaped medians, and will remain privately owned.

129. As part of Phase 2 of the Project, a fourth leg will be constructed at the intersection of Kapolei Parkway and Kualaka`i Parkway that would access the Property. This will be the Project's new main access, deemphasizing the access at Kinoiki Street. This new leg will terminate at Center's driveway. DHHL and DeBartolo will continue to have discussions with DOT, SHPD, and stakeholders regarding the final location and number of access points to Roosevelt Avenue.

130. Additional right-in/right-out service accesses are also planned to be added in Phase 2. One is planned to be located on Kapolei Parkway midway between Kinoiki Street and Kualaka`i Parkway. The other is planned to be located on Kualaka`i Parkway just south of Kapolei Parkway. While the additional accesses are primarily intended to be service accesses, they would also provide an additional driveway to alleviate pressure on other accesses.

131. According to the TIAR, the current Level of Service for the existing roadway network ranges from A to D during both AM and PM peak hour traffic. The Fort Barrette Road/Roosevelt Avenue/Enterprise Street intersection currently experiences LOS F conditions during the PM peak hour.

132. According to the TIAR, after completion of Phase I in 2013, the Project will increase delays at the Kapolei Parkway/Kinoiki Street and Kapolei Parkway/Kualakai Parkway intersections. The Fort Barrette Road/Roosevelt Avenue/Enterprise Street intersection will operate at LOS F during the PM peak hour, which is the same LOS as currently exists.

133. According to the TIAR, after completion of Phase II in 2015, affected roadways will operate at an acceptable LOS, with the exception of the Fort Barrette Road/Roosevelt Avenue/Enterprise Street intersection, which will operate at LOS F during the PM peak hour, with or without the Project.

134. According to the TIAR, most of the study area intersections will operate acceptably in 2035, with the exception of four intersections that will be operating at or over capacity with or without the Project: Farrington Highway/Kualakai Parkway, Kapolei Parkway/Fort Barrette Road, Fort Barrette Road/Roosevelt Avenue/Enterprise Street, and Kualakai Parkway/Roosevelt Avenue.

135. DOT has requested, among other things, that the TIAR be revised to address concerns including but not limited to: traffic volumes at access driveways, analysis of weekend and seasonal volumes, traffic data from similar shopping centers, recommendations for required improvements, impact from the railroad operations on access driveways, and an analysis of pedestrian and bicycle activity.

136. In addition to the TIAR revisions, DOT made other requests in its letter dated June 18, 2012, including adequate compensation for the local and regional traffic improvements required due to the Project, compensation for access to State roadways as may be required by federal or State law, and a memorandum of understanding based upon the revised and accepted TIAR.

137. DeBartolo, DHHL, DOT, and the City continue to have discussions regarding the TIAR.

138. The proposed Project lies directly under a primary approach and departure route to Kalaeloa Airport for both military helicopters and light civil aircraft, and is subject to repeated aircraft noise events and overflights throughout the day. The Property lies within Kalaeloa Airport's 55-60 DNL noise contours. DOT Airports requires an aviation and noise easement for the Property, and recommends that the commercial components of the Project that may contain noise sensitive uses, areas, or activities, be properly designed and constructed to address the impacts of airport and aircraft activity.

10. Public Utilities

139. Public utilities will be provided to the Project by the Gas Company, HECO, and Sandwich Isles Communications (telephone, cable television, and broadband).

J. Location of the Project in Relation to Adjacent Land Use Districts and Centers of Trading and Employment

140. The Property is located within the State Urban district. The properties abutting its northern and western boundaries are also Urban. The property abutting its eastern boundary is classified as Agricultural. A narrow strip of land between the Property's southern boundary and Roosevelt Avenue is also classified as Agricultural. This strip includes the 50-foot wide OR&L railway corridor and the remaining property situated between the OR&L corridor and Roosevelt Avenue.

141. The Property is situated approximately 2.6 miles east of the town center of Kapolei, and approximately 5 miles west of Waipahu. Other major areas of trading and

employment include Mililani, 10 miles to the northeast, and Pearlridge Center, 10 miles to the east.

K. Economic Impacts of the Proposed Development

142. The Project is a regional shopping center serving Leeward O`ahu and responds to the needs of a growing community. It will be convenient to residents of `Ewa Beach, `Ewa Villages, and the Gentry subdivisions, as well as to the Kapolei area.

1. Employment

143. Construction of Phase 1 will generate about 190 direct person-years of work; construction of Phase 2 will involve approximately 1,470 person-years. The total employment impact of Phase 1 construction is approximately 550 person-years, while the total impact of Phase 2 construction is nearly 4,280 person-years of work.

144. Direct construction jobs include on-site work and work in contractors' yards and offices. The actual number of workers at a job site varies from day to day, depending on the type of work to be done. Indirect jobs are located at suppliers' places of business, while induced jobs are found throughout the island, wherever workers spend their wages.

145. Once completed, the Project will offer permanent jobs in retail, eating and drinking establishments, and hotels. Office space will house a range of businesses. Project management, maintenance and security services will be needed as well. More than 3,900 direct jobs will eventually be located at the Project. More than 2,500 indirect and induced jobs will be created by the Project as well. The total projected, annual wage base resulting from direct, indirect, and induced jobs is more than \$235 million.

2. Potential Impact to Agricultural Production

146. The Project will have little or no adverse impact on agricultural production. The Property is within the State Urban district. Nearby lands have been developed for urban uses as housing and schools. At least a mile or more to the northeast, land reaching to Farrington Highway is now being farmed on short-term lease. That acreage has long been slated for urban development.

L. Need for the Project

147. The Project responds to need from the immediate area and from the larger region for retail, office and hotel facilities. It will contribute to the integration of `Ewa as a region, by helping to make the Kualaka`i Parkway the axis for important public facilities. Kualaka`i Parkway and its H-1 interchange will serve the key educational center for Leeward O`ahu, a regional recreation center, and a regional commercial center. This combination of land uses will help to limit traffic growth on local roadways that are now highly congested.

148. The Project will serve both as a regional commercial center and as a neighborhood retail area for its immediate area. The regional population has been growing at high rates in recent years, and is projected to continue to grow by more than 3% annually through 2030. The East Kapolei area is expected to have more than 30,000 residents by 2030. For the combined area of Kapolei Villages, East Kapolei and `Ewa Villages, annual growth is expected to average over 5% through 2030, reaching a total of 62,136 persons.

149. A current market study commissioned by DHHL has identified both existing and likely future demand for new retail, office, and hotel facilities in `Ewa. The market study found that the retail market for the Project could support a potential of 1.25 million square feet of

commercial space. The market study also projected a demand for up to 566,140 square feet of office space by 2021. The study further estimated a demand for up to 551 rooms by 2026.

M. Conformity to Applicable Goals, Objectives, and Policies of the Hawai'i State Plan, Chapter 226, HRS and Applicable Priority Guidelines and Functional Plan Policies

150. The Project is consistent with the goals of HRS § 226-4 by developing physical environments that are beautiful, clean and unique, and enhance the mental and physical well-being of the residents, and the physical, social, and economic well-being for the people of Hawai'i that nourishes a sense of community responsibility and participation.

151. The Project is consistent with the policies and objectives of HRS § 226-5 by creating an employment center closer to surrounding communities.

152. The Project is consistent with the policies and objectives of HRS § 226-6 by providing a wide diversity of employment opportunities for the `Ewa region.

153. The Project is consistent with the policies and objectives of HRS § 226-8 because it will function as an attraction for the Ko `Olina visitor destination area, and therefore, will have a positive impact upon Ko `Olina.

154. The Project is consistent with the policies and objectives of HRS § 226-10 because, due to the diverse character of the retail activities envisioned at the center, some of the business tenants may be offering products generated by new growth industries in Hawai'i.

155. The Project is consistent with the policies and objectives of HRS § 226-12 because it will not detract from views of the mountains, as there is no existing residential or commercial development in the area makai of the Project. Due to the flat topography, the ocean and horizon are not visible from the Property or the neighboring properties.

156. The Project is consistent with the policies and objectives of HRS § 226-13 because it will be constructed in compliance with all relevant codes and standards. The Project will include a public outreach component in the form of changing exhibits that will educate the public on a variety of contemporary issues, including the environment.

157. The Project is consistent with the policies and objectives of HRS § 226-14 because it will be constructed in careful coordination with the region-serving facility systems, including wastewater treatment, water supply, and storm water drainage.

158. The Project is consistent with the policies and objectives of HRS § 226-15 because it will be constructed in compliance with all applicable provisions related to the disposal of liquid and solid waste.

159. The Project is consistent with the policies and objectives of HRS § 226-16 because it will coordinate its water consumption with resource availability. Based on the estimated plumbing fixture units for the Property, the estimated potable supply demand will be on the order of 680 gpm.

160. The Project is consistent with the policies and objectives of HRS § 226-17 because it will incorporate a multi-modal transportation philosophy that includes private vehicles, pedestrian movement, mass transit, and bikeways. The central Village Square portion of the Project focuses upon pedestrian connections between its various buildings, accentuated with numerous pedestrian plazas. The outer ring of the Project focuses on accessibility to the private vehicle. To meet the needs of the regional community, Hawai'i DeBartolo LLC and DHHL will coordinate with HART to provide an integrated connection with the City's planned rapid transit extension if/when the rail is extended beyond the Kroc Center. The Project will also

incorporate space along the southern boundary of the Property to link the Property to the `Ewa regional bikeway system.

161. The Project is consistent with the policies and objectives of HRS § 226-18 because it will incorporate energy efficient technologies into its design and operations. It will explore direct electrical generation opportunities with HECO. The Project's inclusion of a bikeway connection and future transit station connections support improving fuel efficiency through multi-modal transportation planning.

162. The Project is consistent with the policies and objectives of HRS § 226-19 because revenue from the Project will enable DHHL to further develop homesteads for Native Hawaiians under the Hawaiian Homes Commission Act. Further, as an employment center, the Project is intended to provide jobs for existing residents of the area and to support the new housing opportunities already planned for the `Ewa region.

163. The Project is consistent with the policies and objectives of HRS § 226-23 because it will offer extensive opportunities for social, artistic and cultural advancement, primarily through the showcasing of community group, artistic and cultural endeavors, in much the same manner as the Center Stage at Ala Moana.

164. The Project is consistent with the policies and objectives of HRS § 226-24 because it will generate revenue for DHHL in furtherance of its mission under the Hawaiian Homes Commission Act, which includes promoting self-sufficiency, community-based development, and maintaining the traditions, culture, and quality of life of native Hawaiians.

165. The Project is consistent with the policies and objectives of HRS § 226-25 in that it will include a permanent exhibit documenting the cultural history of the area.

166. The Project is consistent with the policies and objectives of HRS § 226-27 because it will provide significant revenue to DHHL for the purpose of performing the State's obligations under the Hawaiian Homes Commission Act and the Hawai'i State Constitution.

167. The Project conforms with HRS § 226-102 because it will generate over 4,800 person-years of work during construction, and 6,400 direct, indirect, and induced jobs during operation. The total projected, annual wage base resulting from direct, indirect, and induced jobs during operation is more than \$235 million.

168. The Project conforms to HRS § 226-106 because it will generate revenue for DHHL to develop affordable housing opportunities for Native Hawaiians under the Hawaiian Homes Commission Act.

169. The Project conforms to Act 181, Session Laws of Hawai'i 2011 in that it is intended to comply with the new sustainability guidelines.

170. The Project also promotes the priority guidelines and principles of sustainability by encouraging balanced, social, community, and environmental priorities. Development of a mixed-use regional center on land previously reclassified to the Urban District for the purpose of a regional sports complex greatly increases the usefulness of the land in addressing the long-term needs of the surrounding community. By providing a wide variety of commercial retail, office, hospitality jobs, the Project contributes to the fulfillment of the vision for Kapolei to function as O'ahu's second city. The mixed-use character of the Project will contribute to the strengthening of the regional economy by diversifying the employment base. Utilizing design themes to honor the host culture establishes the foundation for the implementation of programs and functions to perpetuate cultural awareness. Given the presence of the existing borrow pit and overall quality of the existing land, the Project represents a significant improvement to the character of the

Property and will provide a long-term benefit to the economic and social well being of future generations.

171. Petitioner represented that the project developer will analyze potential sustainability measures and implement a sustainability plan for the Project to be approved by the Petitioner.

172. The Project supports the State Employment Functional Plan by providing new employment opportunities for the entire `Ewa region.

173. The Project supports the State Housing Functional Plan by providing revenue for DHHL to carry out its mission of providing Native Hawaiians homesteads under the Hawaiian Homes Commission Act.

174. The Project supports the State Historic Preservation Functional Plan in that it will comply with all applicable rules pertaining to historic preservation.

175. The Project supports the State Recreational Functional Plan by allowing tenants to offer recreational amenities, such as bowling alleys or fitness centers, as well as incorporating extensive bikeways and pedestrian walkways that will encourage pedestrian movement (a passive recreational activity).

176. The Project supports the State Tourism Functional Plan by being a regional commercial center for use by residents and visitors that will complement the Ko `Olina visitor destination area.

177. The Project supports the State Transportation Functional Plan by providing a driveway connection to DOT's planned Kualaka`i Parkway extension from Kapolei Parkway south to Roosevelt Avenue. This access will benefit both the Project and the surrounding region because it will enable freeway traffic to directly access the Property.

178. The Project supports the State Energy Functional Plan by utilizing advanced best management practices (BMP) for green building to incorporate sustainable principles from conceptual design through the end of construction. These BMPs address aspects of site, water efficiency and reuse, energy consumption, day-lighting, recycling and construction waste management, materials (local, recycled), fixtures, indoor environmental quality, low-emitting materials, and natural resources.

N. An Assessment of the Conformity of the Project to Objectives and Policies of the Coastal Zone Management Program, Chapter 205A, HRS

179. The Project complies with all applicable objectives of the Coastal Zone Management Program as follows:

180. No historic, prehistoric or cultural resources have been identified on the Property. However, to ensure that potential subsurface resources are not disturbed during construction, subsurface archaeological testing has been conducted throughout undisturbed areas on the Property.

181. The Project will not have a significant adverse impact on the coastal ecosystem. According to the drainage master plan for the East Kapolei I development, drainage from the Kaloi and Hunehune gulches will be directed to a piped drainage system and then to detention basins.

182. The Property is classified as Urban land and is situated in the center of Kapolei's residential community. A regional mixed use center will greatly benefit the surrounding community, both in terms of new employment opportunities and in terms of reducing traffic congestion on the H-1 by helping to reverse traffic flow.

183. The Property is situated about 1.7 miles from the coastline, well outside of the identified tsunami inundation zone and the effects of storm waves. There are no streams in the vicinity of the Property. The buildings and pavements within the Project will create hardstand areas that are not subject to erosion. Landscaped areas will have ground cover and will be maintained to mitigate erosion from storm water runoff. The Property is not subject to subsidence. Finally, the Project is not anticipated to generate air or noise pollution.

O. Conformity to Applicable County General Plans, Development or Community Plans, Zoning Designations and Policies, and Proposed Amendments

184. The Property is located in the State's Urban District. The City's 1997 `Ewa Development Plan designated the Property for high density residential and assigned the Property to the first development phase (1997-2005). The Property is designated "neighborhood/community commercial" in the City's proposed revised `Ewa Development Plan. The Property is zoned Ag-1 (Agriculture) by the City and County of Honolulu, but is subject to DHHL's zoning classifications pursuant to the Hawaiian Homes Commission Act. It is not situated within the SMA.

1. O`ahu General Plan

185. The Project conforms to the O`ahu General Plan as follows:

186. Although the Project currently provides no residential components, it is located within the area identified in the `Ewa DP as the `Ewa urban-fringe area.

187. The Project will be a regional mixed-use center in East Kapolei that will provide new opportunities for local commercial retail growth. New restaurants and specialty markets within the Project will directly support local farms in the provision of agricultural products. As a regional mixed use center, the Project will also include office, commercial and hotel uses.

188. The Property has remained vacant since the demise of the O`ahu Sugar Company and has been used for the extraction of coral fill and the stockpiling of top soil. Development of the Project will return the Property to economic usefulness. The Project does not impact any identified view plane or vista.

189. The Project will be located at the intersection of two principal arterial roadways in the `Ewa district, which will enable local residents to access the regional mixed use center. The new employment opportunities provided by the Project will, in turn, help to improve traffic flow and reverse the traditional pattern of commuting to Honolulu for work.

190. The Project will incorporate energy-efficient architectural design.

191. All necessary infrastructure is in place to support the Project. A regional mixed use center in East Kapolei will bring new jobs to a large residential community, which will, in turn, help to reduce traffic congestion and commuting times, and improve quality of life for area residents.

192. The Project will also provide valued commercial and retail services to the surrounding community. The Project will enhance the viability of the abutting OR&L historic railway line by increasing the potential for new riders and visitors to the Hawaiian Railway Society's planned museum.

193. The safety and security provided by the tenants of the Project will provide a safe environment and destination for residents and visitors alike.

194. The Project will contain adequate space for cultural exhibitions and performances.

2. `Ewa Development Plan

195. The Project relates to the 1997 `Ewa Development Plan as follows:

196. As the result of initiatives by the University of Hawai`i, the Hawai`i Community Development Authority (HCDA) and DHHL, the existing and planned development of East Kapolei and Kalaeloa has departed from the vision of the `Ewa DP. The `Ewa DP envisioned the University's West O`ahu campus on the hillside mauka of the H-1 freeway, but it is now being constructed on a portion of the East Kapolei property that was reclassified as Urban District in 1999.

197. The original plan for Property to be developed as a Regional Sports Complex were dropped because of the relocation of the UH West O`ahu campus to East Kapolei. Instead, DHHL determined that the best use of the Property would be a regional mixed use center. Shortly after the adoption of the `Ewa DP, the HCDA initiated a process that eventually replaced the Local Reuse Master Plan anticipated in the `Ewa DP with the Kalaeloa Master Plan that altered the anticipated development pattern at Kalaeloa.

198. These three changes will likely transform the East Kapolei/Kalaeloa area to a more dynamic employment center than what was originally envisioned in the `Ewa DP. These changes collectively support the DP's vision for the `Ewa region to become a secondary urban center on O`ahu.

199. The Project, together with the light industrial and mixed use development proposed at Kalaeloa, will likely extend the employment center of Kapolei City further east than envisioned in the `Ewa DP. However, this evolution in the land use pattern is not anticipated to result in significant adverse impacts. Rather, the integration of a mixed use regional center into East Kapolei will improve regional traffic flow and pedestrian travel patterns.

200. The `Ewa DP calls for retention of visual landmarks and significant vistas, including:

- distant vistas of the shoreline from the H-1 Freeway above the `Ewa Plain;
- views of the ocean from Farrington Highway between Kahe Point and the boundary of the Waianae Development Plan Area;
- views of the Wai`anae Range from H-1 Freeway between Kunia Road and Kaloi Gulch and from Kunia Road;
- views of na pu`u at Kapolei, Palailai, and Makakilo;
- mauka and makai views; and
- views of central Honolulu and Diamond Head.

This Project is consistent with the relevant sections of the plan, as it retains mauka views from the Property.

201. The OR&L historic rail line is not presently visible from Kapolei Parkway, the nearest public roadway adjacent to the Property, due to the presence of numerous stockpiles of dirt and overgrown vegetation on the Property and to its distance nearly a half mile from Kapolei Parkway. While development of the Property will result in the placement of numerous structures between Kapolei Parkway and the historic rail line, there will be no substantive change to existing conditions: the rail line will continue to be blocked from view and generally too far away to be seen. As viewed from the rail line, the Project will present an aesthetically pleasing architectural vista. Views of the Wai`anae mountain range will likely be blocked by some buildings within the Project.

202. The only direct physical impact upon the rail line from the Project will be the need to cross the railroad tracks to link the Project to Roosevelt Avenue. These crossings will

not adversely affect the operations of the railway as they will be gated in accordance with requisite railway crossing safety standards.

203. The Project will have no impact upon the OR&L's base yard operations because the Project does not require the extension of Kualaka'i Parkway beyond its eastern entrance.

204. The Project will have no direct physical impact upon its three closest existing residential neighbors; Varona Village to the east, Village 8 to the west, and Kanehili to the north. The Project is separated from Village 8 by the Kapolei Lower Drainage Channel which is approximately three hundred feet wide. Varona Village lies approximately 800 feet east of the Project's eastern property boundary. The new residential community of Kanehili lies on the north side of Kapolei Parkway about 600 feet north of the Property.

205. There will be no pedestrian or vehicular connection between Village 8 and the Project. Village 8 is bordered on its eastern boundary by a six-foot high continuous wall and there are no pedestrian accesses or roadways between the houses that form the eastern end of the Property within the wall.

206. Renton Road currently provides pedestrian access to the Property from Varona Village. Renton Road is gated at just west of the village preventing vehicular access. No access from this unpaved portion of Renton Road to the Property is proposed.

207. The intersection of Kanehili Street and Kapolei Parkway will serve as a principal access route to the Project. Therefore, the residents of the Project will enjoy direct vehicular and pedestrian access to the Project.

208. Future residential communities are planned within Kalaeloa. The properties directly south of the Property (across Roosevelt Avenue) are slated for Light Industrial and

Moderate Density Mixed Use development. The Kalaeloa Master Plan defines the latter as storefront uses on the ground floor with residential uses on upper floors (2nd, 3rd and 4th floors). Impacts to surrounding residential communities will be generally limited to short-term construction-related impacts discussed elsewhere in this environmental assessment.

209. The City's proposed transit corridor is presently planned to terminate at the Kroc Center, approximately a half-mile north east of the Property.

3. Relationship to the City Land Use Ordinance ("LUO")

210. DHHL intends the Project to substantially comply with the zoning standards for Business Mixed Use (BMX-3 and BMX-4) as presented in the LUO. Internal roadways will be paved, with curbs, gutters and medians, and landscaping will be implemented in general compliance with LUO standards.

a. Proposed Density

211. The Project is expected to utilize the entire 67-acre Property. As presented in the Project's Conceptual Master Plan, Phase 1 will comprise approximately 200,681 square feet and Phase 2 will comprise approximately 1,145,221 sf. The maximum allowable density (Floor Area Ratio: FAR) is 2.5 for BMX-3 and 4.0 for BMX-4. The anticipated density for the BMX-3 portion of the development is 0.40 (FAR) with a likely maximum density of 2.7 FAR for the BMX-4 area.

b. Building Area (Lot Coverage)

212. As presented in the Project's Conceptual Master Plan, building coverage of the Property will be approximately 32.5 percent, resulting in the remainder of the Property (67.5 percent) being retained in open space. Within the open space, approximately 88 percent will consist of impervious surface with approximately 12 percent consisting of landscaped area.

c. Building Height

213. The maximum building height for the Project will be 120 feet.

d. Yard Setbacks

214. Front yard setbacks for BMX-3 and BMX-4 are 5 feet for uses other than dwellings. There are no side or rear yard setback requirements for uses other than dwellings in BMX-3 and BMX-4.

4. Consistency With the 2001 Pearl Harbor Historical Trail Master Plan

215. The planned Pearl Harbor Historic Trail (PHHT) extends from the East Loch of Pearl Harbor to Nanakuli along the makai side of the OR&L historic railway Right-of-Way. In the vicinity of the Property, the OR&L easement abuts the Property's southern boundary. The Project complies with the Master Plan as follows:

216. The Project is consistent with Goal #1 of the PHHT as it will be an important community activity center for the entire `Ewa district and its proximity to the trail will facilitate access by pedestrians and bikers.

217. The Project is consistent with Goal #2 of the PHHT as crossings over the OR&L rail line will facilitate additional pedestrian access to the trail. The proposed driveways crossing the railroad tracks will be gated and signalized to ensure that train operations are not disrupted. The crossings will be designed in a manner that does not undermine or conflict with the historic character of the railroad.

218. The Project is consistent with Goal #3 of the PHHT by providing a significant activity center along the trail route.

219. The Project is consistent with Goal #4 of the PHHT in that it will comply with the requisite 50-foot building setback and thereby preserve the green corridor along the PHHT.

Crossing of the ORL tracks will be several hundred feet further west of the railroad base yard and also provides an additional crossing at about the southwest corner of the southern Property boundary.

P. Hawaiian Customary and Traditional Rights Under Article XII, Section 7 of the Hawai'i State Constitution

220. DHHL is aware of and sensitive to the existence and practice of native Hawaiian customary and traditional rights that are protected by Article XII, Section 7 of the Hawai'i State Constitution. Based on research into the history of the area, there are no known traditional gathering activities or cultural practices affecting the Property that will be significantly impacted by the Project. Two resources located on the Property, 'uhu loa (*Waltheria indica*), used for traditional Hawaiian medicine, and 'alae (red clay), used for coloring salt, medicine, dye, and spiritual purification, are not endangered and can be gathered by cultural practitioners in other locations. 'Uha loa is readily-available commercially and therefore can easily be incorporated into landscaping at the Project.

IV. RULINGS ON PROPOSED FINDINGS OF FACT

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

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

V. CONCLUSIONS OF LAW

1. Pursuant to HRS section 205 and the Commission Rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS section 205-17, the Commission finds upon the clear preponderance of the evidence that the Release of the Property from the conditions of the 1999 Decision and Order and other relief sought by DHHL, subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the state Land Use Urban District, is reasonable, not violative of HRS section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 205-16, 205-17, and 205A-2.

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

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

4. There is no evidence to suggest that any native Hawaiian traditional and customary rights are currently being exercised within the Property that will be significantly impacted by the Project.

5. In the event any previously unidentified archaeological sites are found, Petitioner will comply with all applicable statutes and rules of SHPD.

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

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

8. The Property is not classified as Important Agricultural Land under Part III of HRS chapter 205.

9. Release of the Property from the conditions of the 1999 Decision and Order and other relief sought by DHHL will not have an adverse impact on agricultural resources in the region or in the State.

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

11. The Project will not adversely impact the State's water resources.

VI. DECISION AND ORDER

IT IS HEREBY ORDERED that:

A. Designation of New Docket Number, Designation of DHHL as Petitioner, and Release of Property

A new docket number is created, DOCKET NO. A99-728(c), that solely applies to the approximately 67.184 acres of land at Kapolei, `Ewa, O`ahu, Hawai`i, identified as Tax Map Key No. (1) 9-1-016: portion of 108, as more specifically described in Exhibit A, attached hereto. DHHL is hereby designated the Petitioner in Docket No. A99-728(c).

The Property is referred to in Docket No. A99-728(c) as "Petition Area C." Petition Area C is released from the conditions set forth in the Findings Of Fact, Conclusions Of Law, And Decision And Order dated September 8, 1999 in Docket No. A99-728. The remaining, approximately 715 acres of land within the Petition Area at Kapolei, `Ewa, O`ahu, Hawai`i, and not part of Docket Nos. A99-728(a) or A99-728(b), continue to be subject to the conditions in the 1999 Decision and Order, as amended.

Petition Area C retains its classification to the State Land Use Urban District.

B. Conditions Applicable to Property

Petition Area C is subject to the following conditions under Docket No. A99-728(c):

1. If applicable, Petitioner, its successors, and assigns shall provide affordable housing opportunities for residents of the State of Hawai`i in accordance with applicable affordable housing requirements of the City and County of Honolulu. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner, its successors, and assigns, and the City and County of Honolulu.

2. Petitioner, its successors, and assigns shall coordinate and/or participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed Project. Water transmission facilities and improvements shall be coordinated and approved by appropriate State and County agencies.

3. If residential use is established in Petition Area C, Petitioner, its successors, and assigns shall comply with Hawai'i Revised Statutes section 302A-1601 *et seq.*, to the extent applicable to the Petitioner.

4. Petitioner, its successors, and assigns shall coordinate and/or fund and construct adequate wastewater transmission and disposal facilities, as determined by the City and County of Honolulu and the State Department of Health, to include the planning design, construction, and scheduling of the proposed Kapolei Interceptor Sewer.

5. Petitioner, its successors, and assigns shall grant to the State of Hawai'i an avigation (right of flight) and noise easement in a form prescribed by the State Department of Transportation and approved by the Hawaiian Homes Commission, on any portion of the Property subject to noise levels exceeding 55 Ldn.

6. If applicable, Petitioner, its successors, and assigns shall not construct residential components within areas exposed to noise levels of 60 Ldn or greater.

7. Petitioner, its successors and assigns shall be responsible for implementing sound attenuation measures to bring noise levels from sporting events, vehicular and air traffic in and within the Property down to levels acceptable to the State Department of Health.

8. [reserved]

9. Petitioner, its successors, and assigns shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation and the City and County of Honolulu. Petitioner and/or the State Department of Transportation shall submit the construction plans as they relate to drainage issues for the North-South Road to the City for review and approval.

Petitioner, its successors, and assigns shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to State roadway facilities caused by the proposed Project as set forth in a Memorandum of Agreement ("MOA") agreed to and executed between the State Department of Transportation ("DOT") and Petitioner. Petitioner shall obtain acceptance of the Project's Traffic Impact Analysis Report ("TIAR") from DOT and consider written comments from the City prior to execution of the MOA. The MOA shall be executed prior to occupancy.

The MOA shall include, but not be limited to, the following terms and conditions: (a) the accepted TIAR shall be incorporated in the MOA by reference; (b) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (c) a schedule of agreed to improvements and a schedule of future updates or revisions to the TIAR to be accepted by DOT; (d) development of the Project shall be consistent with the executed TIAR and MOA; and (e) any fees or in-kind contributions that are roughly proportional to any indirect or secondary impacts caused by the proposed Project.

10. Petitioner, its successors, and assigns of Petition Area C shall fund and construct adequate civil defense measures as determined by the City and County of Honolulu and State Civil Defense agencies. The civil defense measures shall be operational prior to occupancy of any residences or business.

11. Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, Petitioner, its successors, and assigns of Petition Area C shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

12. Petitioner, its successors, and assigns shall coordinate the design and construction of drainage improvements on Petition Area C required as a result of the development of Petition Area C to the satisfaction of Federal, State, and City and County agencies with the goal of executing an agreement on the interim and ultimate regional drainage plan as soon as possible. Petitioner, its successors, and assigns shall participate in the planning and coordination of offsite improvements with all landowners and developers in the Kalo'i drainage basin, the intervenor, and other Federal, State and City and County agencies.

13. Petitioner, its successors, and assigns, agrees to work with the city to implement interim and long-range regional drainage solutions as follows:

- a. Petitioner shall submit a drainage master plan for the Petition Area C to the City for its review and approval prior to any subdivision approvals other than for minor matters, such as easements.
- b. Drainage solutions for Petition Area C shall be compatible with the `Ewa Villages Drainage Master Plan and drainage designs for other developments in the Kalo'i Gulch drainage basin.
- c. Drainage improvements for Petition Area C shall be consistent with the policies and principles in the `Ewa Development Plan.
- d. Petitioner shall also take reasonable measures to minimize non-channelized flows from Petition Area C by construction of berms, detention basins, or other appropriate methods. All flows and drainage patterns that cross the southern boundary of Petition Area C shall remain as conceptually described in the `Ewa Villages Drainage Master Plan. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.

e. Should Petitioner sell various residential or commercial components prior to the completion of the construction of the master infrastructure, any such sale shall be conditioned upon the completion of the appropriate master infrastructure improvements for that portion of the residential or commercial component.

14. In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall apply for City zoning approval after the State Land Use Commission reclassifies the Project site from Agricultural to the Urban District. Said zone change application shall be accompanied by a conceptual master plan with land use information sufficient to satisfy county zoning and development plan requirements.

15. In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall comply with County zoning requirements. This condition is not intended to delay the construction of public uses or infrastructure to service the Property.

16. In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit within Petition Area C, submit an Open Space and Pedestrian/Bikeway Master Plan to the City for its review and approval. Regardless of the fee ownership, Petitioners, its successors and assigns, shall consider all timely comments submitted by the City.

17. In the event DHHL is no longer the fee owner of the Property, future fee owners and their successors and assigns shall, prior to issuance of any building permit, subdivision or grading permit within Petition Area C, submit a Conceptual Urban Design Plan to the City for its review and approval. The Urban Design Plan shall depict the overall design theme and architectural character of streetscapes, residential neighborhoods and town centers. The Plan shall also include a conceptual landscape plan showing treatment of Project entries, major roadways, and common areas. Regardless of the fee ownership Petitioner, its successors and assigns shall consider all timely comments submitted by the City.

18. Petitioner, its successors, and assigns, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting. To the extent feasible, Petitioner shall implement best management practices for onsite stormwater capture, treatment, and reuse into the Petition Area's site design and landscaping to reduce stormwater runoff and control stormwater quality and mitigate nonpoint sources of pollution.

19. Petitioner, its successors, and assigns shall facilitate an air quality monitoring program as specified by the State Department of Health. Petitioner, its successors, and assigns shall notify all prospective buyers of property, and buyers of individual lots or homes of the potential odor, noise and dust pollution resulting from surrounding agricultural and other uses, said notification to include a reference to potential odors emanating from the Honouliuli Wastewater Treatment Plant.

20. If applicable, Petitioner shall fund an approved Habitat Conservation Plan to facilitate the propagation of the *Abutilon mensiesii* in accordance with Department of Land and Natural Resources and U.S. Fish and Wildlife requirements.

21. Vertical residential and commercial components of the project will not be developed and site work for those areas shall not be undertaken until master drainage and infrastructure improvements for those components are completed.

22. Petitioner or landowners shall develop Petition Area C in substantial compliance with the representations made to the Commission, as reflected in these Findings of Fact, Conclusions of Law, and Decision and Order. Failure to do so may result in reversion of the Petition Area to its former classification, or a change to a more appropriate classification.

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

24. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the State Office of Planning, and the City and County of Honolulu Department of Planning and Permitting in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

25. The Commission may fully or partially release the conditions provided herein as to all or any portion of Petition Area C upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

26. Within 7 days of the issuance of the Commission's Order Amending Findings of Fact, Conclusions of Law, and Decision and Order, Petitioner shall (a) record with the Bureau of Conveyances a statement that Petition Area C is subject to conditions imposed herein by the Land Use Commission, and (b) shall file a copy of such recorded statement with the Commission.

27. Petitioner or landowners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

28. O'ahu Railway & Land Company ("OR&L") Right-of-Way. Petitioner, its successors, and assigns shall work with the State Department of Transportation ("DOT") and State Historic Preservation Division ("SHPD") to formulate an agreement on the number and location of accesses and improvements required for vehicular access to the Project across the OR&L tracks and right-of-way from Roosevelt Avenue. The access agreement shall be finalized prior to DOT's approval for access to Roosevelt Avenue.

ADOPTION OF ORDER

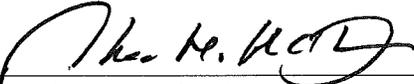
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 14th day of January, 2013. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu Hawai'i, this 14th day of January, 2013, per motion on September 14, 2012.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII


Deputy Attorney General

By 
CHAD MCDONALD
Acting Chairperson and Commissioner

Filed and effective on: 1/14/13

Certified by:


DAN ORODENKER
Executive Officer

EXHIBIT "A"

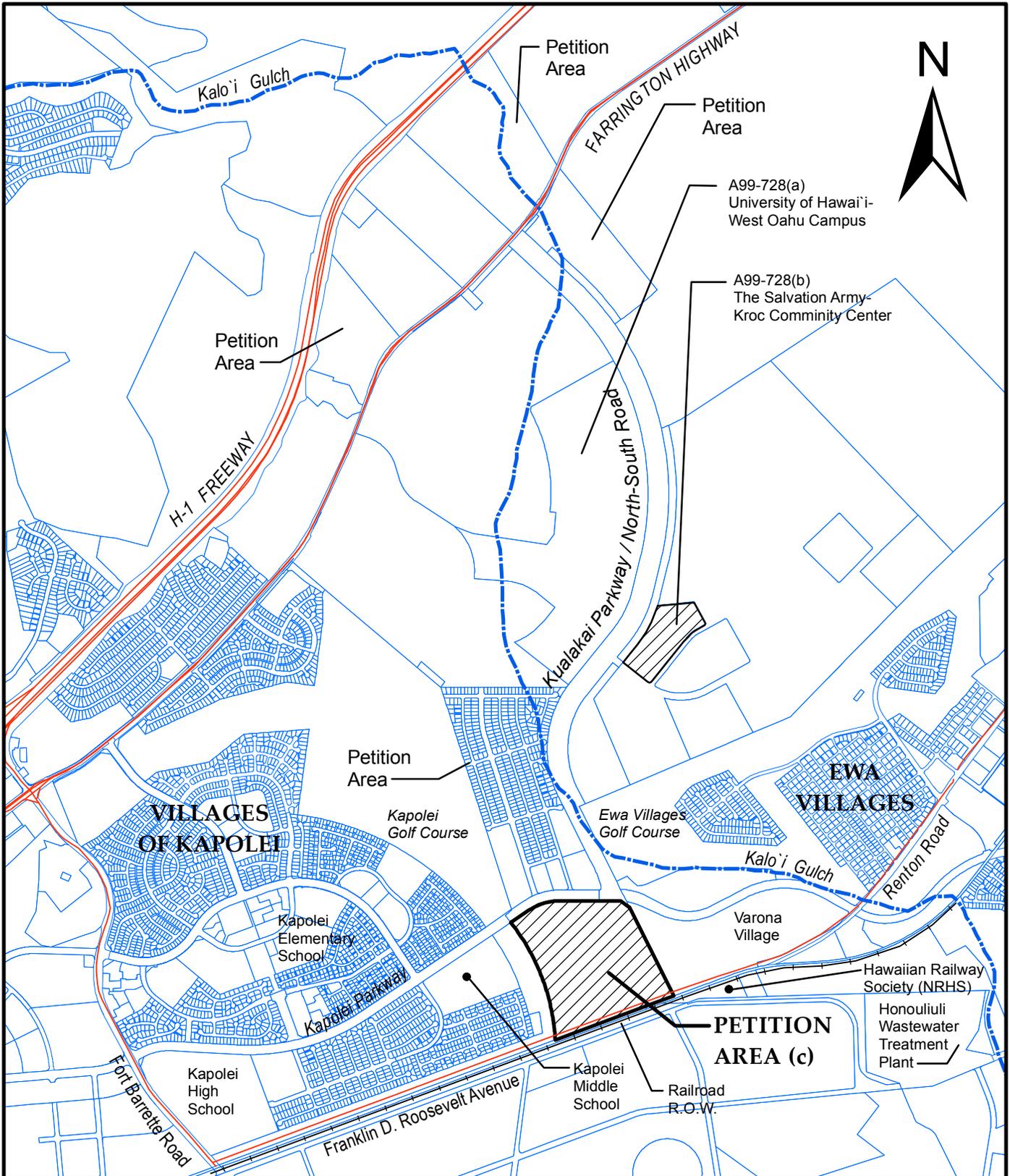
All of that certain parcel of land situate Honouliuli, District of `Ewa, City and County of Honolulu, State of Hawai`i, described as follows:

LOT 17255, area 67.270 acres, more or less, as shown on Map 1320, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai`i with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased.

-Note:- Above Lot 17255 was amended by Land Court Order No. 178852, filed May 7, 2009; which changed the boundary and as a result of the amendment, the area of said Lot 17255 changed from 67.270 acres to 67.184 acres, as shown on Map 1459.

Together with access to Farrington Highway, a public road, over Lots 17254 and Easment 4770, as shown on Map 712, as set forth by Land Court Order No. 168168. filed October 27, 2006, and Lot 17853, as shown on Map 1375, as set forth by Land Court Order No. 178852, filed April 22, 2009.

Being land(s) described in Transfer Certificate of Title No. 830,719 issued to DEPARTMENT OF HAWAIIAN HOME LANDS, by its HAWAIIAN HOMES COMMISSION, STATE OF HAWAII.



**A99-728(c) DEPARTMENT OF HAWAIIAN HOME LANDS
(Formerly Part of A99-728 Housing and Community
Development Corporation of Hawai'i, State of Hawai'i)**

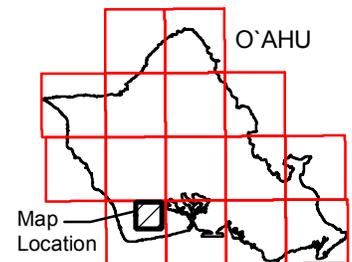
LOCATION MAP

Tax Map Key: 9-1-016: 142

Kapolei, 'Ewa, O'ahu, Hawai'i

Scale: 1" = 2,000 feet

EXHIBIT "A"





BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2013 JAN 14 A 9:27
LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A99-728(c)
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF	)	ORDER AMENDING
	)	FINDINGS OF FACT,
HAWAII, STATE OF HAWAII	)	CONCLUSIONS OF LAW, AND
	)	DECISION AND ORDER
To Amend the Agricultural Land Use)	
District Boundary into the Urban Land Use)	
District of Approximately 1,300 Acres of)	
Land at Honouliuli, `Ewa, O`ahu, Hawai`i,)	
TMK Nos.: (1) 9-1-016:008, (1) 9-1-017:071,)	
086; and (1) 9-1-018: 003, 005.)	
)	

ORDER AMENDING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

Certified Mail: DIANE K. TAIRA, Esq.
CRAIG Y. IHA, Esq.
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Attorney for Petitioners, DHHL

Hand Delivery STATE OF HAWAII, HAWAII HOUSING FINANCE
AND DEVELOPMENT CORPORATION
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STATE OFFICE OF PLANNING
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Attorney for Intervener – Haseko (`Ewa) Inc.

DATED: _____ 1/14/13 _____, Honolulu, Hawai`i.



Daniel Orodener, Executive Officer