



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

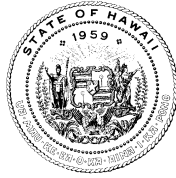
In The Matter Of The Petition Of )  
 )  
TROPIC LAND LLC, A HAWAII )  
LIMITED LIABILITY COMPANY )  
 )  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban Land )  
Use District For Approximately 96 Acres )  
Of Land At Lualualei, Wai`anae , O`ahu, )  
Hawaii, Tax Map Key: 8-7-09: Por. 2 )  
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DOCKET NO. A09-782

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

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LAND USE COMMISSION  
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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER

TROPIC LAND LLC, a Hawai`i limited liability company (“Petitioner”), filed a Petition For Land Use District Boundary Amendment (“Petition”) on March 18, 2009, pursuant to chapter 205, Hawai`i Revised Statutes (“HRS”), and chapter 15-15, Hawai`i Administrative Rules (“HAR”), to amend the State Land Use District boundary to reclassify approximately 96 acres of land at Lualualei, Wai`anae, O`ahu, Hawai`i, and identified as Tax Map Key (“TMK”): 8-7-09: por. 2 (“Petition Area”), from the State Land Use Agricultural District to the State Land Use Urban District for the proposed Nānākuli Community Baseyard (“Project”).

The State of Hawai`i (“State”) Land Use Commission (“Commission”), having heard and examined the testimony, evidence, and arguments of counsel presented during the hearings, the proposed Findings Of Fact, Conclusions Of Law And Decision And Order filed by Petitioner, the State Office of Planning (“OP”), and the Concerned Elders of Wai`anae (“Intervenor”), and the exceptions and comments filed thereto, hereby makes the following Findings Of Fact, Conclusions Of Law, And Decision And Order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On March 18, 2009, Petitioner filed the Petition in this docket.
2. On April 16, 2009, and by a written Order filed on May 6, 2009, the Commission determined that: (i) the Commission is the appropriate accepting authority pursuant to chapter 343, HRS, and (ii) the Project may have significant effect on the environment to warrant the preparation of an Environmental Impact Statement (“EIS”).
3. On April 20, 2009, Intervenor filed a Notice Of Intent To File Petition To Intervene.
4. On May 20, 2010, and by a written Order filed on May 27, 2010, the Commission accepted the Final EIS for the Project. By letter dated May 24, 2010, the Executive Officer of the Commission deemed the Petition a proper filing as of May 20, 2010.

5. On June 17, 2010, Intervenor filed Petition To Intervene.
6. On June 21, 2010, Intervenor filed Motion To Waive Commission Rule.
7. On June 21, 2010, OP filed a Position Statement conditionally supporting the Petition.
8. On June 21, 2010, the City and County of Honolulu ("City") Department of Planning and Permitting ("DPP") filed a Statement Of Position in which the DPP took no position on the Petition.
9. On July 1, 2010, and by written Orders filed on July 15, 2010, the Commission granted Intervenor's Petition To Intervene and Motion To Waive Commission Rule.
10. On July 13, 2010, the Commission held a prehearing conference on the Petition, which was attended by all parties. The Commission issued a Prehearing Order on July 14, 2010.
11. On August 18, 2010, the Commission conducted a site visit to the Petition Area and surrounding area.
12. On September 9 and 10 and December 2 and 3, 2010, and January 6 and 7 and February 2, 2011, the Commission conducted hearings on the Petition pursuant to a public notice published on June 1, 2010, in the *Honolulu Star-Bulletin*, *Hawai`i Tribune-Herald*, *West Hawai`i Today*, *The Maui News*, and *The Garden Island*.

13. Patricia Patterson; Donna Malinowsky; Faith Arakawa; James Manaku, Sr.; Pono Kealoha; Lilette Subedi; Jolyn Ballenti; Pake Salmon-Mahelona; Paulette Kaonohi Kaleikini; Lucy Gay; Edward Hanohano; David Hoppe-Cruz; Angela Hoppe-Cruz; Candace Fujikane; Georgette Meyers; Mapuana Tector; Rocky Naeole; Ali`i Tampos; Patty Teruya; Kimo Keli`i; Shelley Muneoka; Darlene Rodrigues; and Kamuela Kamaka testified as public witnesses on September 9, 2010, and Michael Kumukauoha Lee and Candace Fujikane testified as public witness witnesses on February 2, 2011.

14. On February 2, 2011, the Commission closed the evidentiary hearing on the Petition.

15. On April 8, 2011, the Commission met in Honolulu, Hawai`i, to consider the Petition. At the meeting, the Commission heard oral arguments from the parties. Thereafter, a motion was made and seconded to deny the Petition. The motion received two affirmative votes and four nay votes, and therefore failed. There was no other motion made. The Commission, without objection from any of the parties, subsequently deferred further deliberation on the matter to its next scheduled meeting.

16. On April 21, 2011, the Commission met in Honolulu, Hawai`i, to resume consideration of the Petition. A motion was made and seconded to approve the Petition. The motion received five affirmative votes and three nay votes, and therefore failed.

## DESCRIPTION OF PETITION AREA

17. The Petition Area is located at Lualualei, Wai`anae, O`ahu, Hawai`i, and consists of an approximately 96-acre portion of Lot 205-A, area 236.154 acres, more or less as shown on Map 62, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai`i with Land Court Application No. 130 ("Lot 205-A"). The Petition Area is situated on the northwestern portion of Lot 205-A.

18. Petitioner is the owner in fee simple of the Petition Area. By Deed dated November 21, 2005, and filed as Document No. 3371920, Petitioner purchased Petitioner's Property from Kabushiki Kaisha Oban ("Oban").

19. Petitioner also owns Lot 1, area 21.138 acres, as shown on Map 1 filed with Land Court Consolidation No. 174, identified as TMK: 8-7-10: 6, and Lot 204, area 2.755 acres, as shown on Map 39, filed with Land Court Application No. 130, identified as TMK: 8-7-10: 10. Lot 205-A has an appurtenant easement over both Lot 1 and over Lot 205-B-1, area 4.949 acres, and Lot 205-B-2, area 0.583 acres, as shown on Map 95, filed with Land Court Application No. 130, which lots constitute a portion of the Lualualei Naval Access Road ("LNAR"), for access to Hakimo Road, a public road. Lot 205-A, Lot 1, and Lot 204 are collectively referred to as "Petitioner's Property."

20. The Petition Area is bordered by LNAR along its northwestern boundary, Joint Base Pearl Harbor Hickam ("JBPHH") Lualualei Annex, a United States ("U. S.") Navy ("Navy") ordnance storage facility and communications facility, along

the northeastern boundary, and the remainder of Lot 205-A along the southeastern boundary. The Petition Area is not contiguous to other lands in the State Land Use Urban District.

21. Generally, the Petition Area slopes in a southwesterly direction towards LNAR. Elevations of the Petition Area range generally between approximately 70 feet above mean sea level (“msl”) to approximately 200 feet above msl. The remainder of Lot 205-A takes on a more abrupt slope towards the peak of Pu`u Heleakala Ridge, the elevation of which peak is approximately 1,900 feet above msl.

22. There is the potential for rocks to fall from the pali behind the Petition Area. Petitioner has proposed to incorporate a swale or channel to be used as a rockfall buffer. No formal rockfall hazard and slope stability analysis has been performed to quantify the hazard and evaluate the efficacy of the buffer.

23. The climate of the Petition Area is generally mild. Temperatures in the Wai`anae area are generally moderate with an average daily range of approximately 70.3° Fahrenheit (“F”) in January to 76.7° F in October. The Petition Area is located in the driest part of the island of O`ahu, receiving no more than an average of 25 inches of rain per year. Two-thirds of the total annual rainfall occur between November and April. Prevailing winds are northeast tradewinds. There is a marked seasonal difference in the velocity and persistence of such tradewinds. Tradewinds tend to decline in the fall and winter months but are brisk in spring and early summer months.

24. The Petition Area is currently undeveloped. The Petition Area remains subject to an existing Unilateral Agreement related to the development of a golf course by the previous owner, Oban.

25. The U. S. Federal Emergency Management Agency's flood insurance rate maps designate the entire Petition Area in Zone D, which indicates an area of undetermined but possible flood hazards. Although the Petition Area is in an area with low rainfall, there are occasional storm events that lead to periodic and flash flooding.

#### PROPOSAL FOR RECLASSIFICATION

26. Petitioner proposes to develop the Project as an industrial park for light industrial uses. The industrial park would be offered for sale on a condominium basis and would consist of approximately 41 condominium units averaging approximately two acres each. Some of the units would be further divided into smaller units.

27. Petitioner proposes to apply to the City to have the Petition Area rezoned to the I-1 light industrial zoning district. Permitted uses would include any use permitted in the I-1 light industrial zoning district.

28. The Project is proposed to have access from LNAR. There would also be a secondary access from LNAR for fire and emergency purposes only. The 30-foot-wide existing tree-lined setback along LNAR would remain in place as a landscape



buffer. A triangular piece of land in the northwest corner of the Petition Area, approximately 2.4 acres in size, would remain undeveloped as a portion of the buffer. Also, portions of a 100-foot-wide strip of land along the mauka boundary of the Petition Area would be improved as an unlined swale or channel to be used for a drainage detention basin, possible rock fall hazard mitigation, and as a firebreak.

29. Petitioner proposes to set aside space within the Project for a business incubator center. A target industry for the business incubator center would be developing digital media businesses. This concept would include an industrial building containing approximately 25,000 square feet of floor area, which would include a sound studio and video production facility. The incubator concept would enable entrepreneurs to rent space on an affordable basis to start new businesses.

30. Petitioner proposes to commence construction of the Project after all necessary permits and approvals have been issued. The permitting and entitlement processing, including preparation of plans, is expected to take approximately two to three years. Construction would be completed in several phases with construction of infrastructure and unit sales to occur over the balance of the ten-year period. Many individual unit owners would also be expected to complete construction of individual unit improvements within the ten-year period. Petitioner proposes completing processing of permits from DPP in late 2012, and starting construction of infrastructure

improvements shortly thereafter. Petitioner proposes to complete construction within a ten-year period.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE  
THE PROPOSED DEVELOPMENT

31. Costs to develop the Project are preliminary and would be better defined during the detailed site engineering phase. The cost to develop offsite and onsite infrastructure and mass grading is expected to exceed at least \$29 million in direct construction costs and between \$5 million to \$7 million in soft costs.

32. Individual unit building and improvement costs for the units are expected to total approximately \$30 million. Thus, the total cost to develop the Project is estimated to exceed \$60 million in direct construction costs and soft costs when unit buyers' improvements are included.

33. The estimated total cost of the Project does not include any costs associated with improving and maintaining LNAR to City or State codes and standards as required by the Navy as a condition to Petitioner obtaining a long-term easement for the use of LNAR to serve the Project. It also does not include the improvements to Farrington Highway as a result of the Project.

34. Petitioner's balance sheet showed that Petitioner had approximately \$3.38 million in assets, approximately \$2.4 million in liabilities, and members' equity of approximately \$980,000 as of December 31, 2008. Petitioner proposes to finance the Project using a combination of bank loans and equity.

Petitioner's equity represents cash contributions of the members to purchase the Petition Area and to fund predevelopment expenses. It is unclear whether Petitioner's equity is available to secure debt financing for development of the Project if the additional costs associated with the upgrading and maintenance of LNAR and the improvements to Farrington Highway are considered.

#### STATE AND CITY LAND USE PLANS AND PROGRAMS

35. The Petition Area is currently designated in the State Land Use Agricultural District, as reflected on the Commission's official map, O-5 (Schofield Barracks).

36. The Wai`anae Sustainable Communities Plan 2000 ("Wai`anae SCP") Land Use Map establishes a boundary for agricultural lands. The agricultural lands generally lie between the coastal "Rural Community" areas and the steep lands of the "Preservation" areas. The intent is to preserve active farms and agricultural lands that contribute to the open space and rural character of Wai`anae as well as to provide areas for the potential expansion of agricultural activity. Although the Wai`anae SCP Land Use Map designates the Petition Area for golf course use, the surrounding lands are designated Agriculture. The Petition Area is presently outside of the Rural Community Boundary for the Wai`anae SCP area. The Rural Community Boundary is intended to contain urban development and prevent the encroachment of residential

and commercial development into agricultural areas. As such, the Project proposed for the Petition Area does not conform to the current Wai`anae SCP.

37. DPP is currently conducting its mandatory five-year review of the Wai`anae SCP. In late 2008, DPP circulated, as a part of this process, a Public Review Draft of the proposed amended Wai`anae SCP. In October 2010, DPP issued a Final Revised Draft of the proposed amended Wai`anae SCP. The Final Revised Draft recommended an amendment to the Wai`anae SCP Land Use Map designating the Petition Area for light industrial use, and including the Petition Area within the Community Growth Boundary as part of the Rural Community Area. The City Planning Commission conducted a public hearing on the Final Revised Draft of the proposed amended Wai`anae SCP in February 2011. The Wai`anae SCP must be approved by the City Council. It is unclear when the City Council will act on the Wai`anae SCP.

38. The Petition Area is zoned P-2 Preservation.

39. The Petition Area is not within the City's Special Management Area.

#### NEED FOR THE PROPOSED DEVELOPMENT

40. Hastings, Conboy, Braig & Associates, Ltd., prepared a Market Analysis and Employment Forecast as of March 2008 and an Economic/Fiscal Impact Analysis of the Project effective February 1, 2010. The Market Analysis and

Employment Forecast analyzed the market demand for industrial space and included an employment forecast for the Wai`anae SCP area. As of March 31, 2008, the total supply of existing industrial space on the island of O`ahu was estimated to be approximately 36.4 million square feet of floor area with an overall vacancy rate of approximately 3 percent. An additional supply of approximately 750,000 square feet of industrial floor area space would be the estimated requirement to effectuate a normal, equilibrium vacancy rate of 5 percent.

41. Existing industrial development on O`ahu is concentrated within the Primary Urban Center, `Ewa, and Central O`ahu Development Plan (“DP”)/SCP areas, leaving the combined inventory of industrial space within the remaining five SCP areas less than one million square feet, or only 2.7 percent of the islandwide total. A steady and moderate population growth for the Wai`anae SCP area, but a contrasting no-growth/declining scenario for the future for job opportunities in Wai`anae is forecasted. DPP’s population forecast for Wai`anae increases from 44,656 in 2005 to 52,285 in 2030, while the employment forecast for Wai`anae declines from 7,253 in 2005 to 7,126 in 2030. Although the Wai`anae SCP area accounts for almost 5 percent of the total population on the island of O`ahu, Wai`anae has less than 1.5 percent of O`ahu’s jobs. For industrial sector jobs, Wai`anae accounts for 1 percent of O`ahu’s total.

42. There are 79 acres of industrial zoned land in the Wai`anae SCP area. Of this 79 acres, the Pineridge Farms recycling center occupies 25 acres and much

of the remaining industrial zoned land is owned by the State Department of Hawaiian Home Lands, the City, or the YMCA, leaving little available industrial zoned land available for sale or lease to small Wai`anae businesses.

43. The Market Analysis utilized a capture rate of 1.5 to 2 percent of O`ahu's industrial sector job growth. The rationale behind the use of modified industrial sector job forecasts for the Wai`anae DP area is based on an expectation that a significant level of relocation demand could potentially be attracted to the subject market area. Given that 15 of the 21 businesses that have already expressed interest in acquiring or leasing one or more units in the Project reported current addresses in Wai`anae, it is unclear whether this expectation is realistic. An industrial employment capture rate of 1.5 percent results in a forecasted industrial sector employment increase for the Wai`anae area of approximately 50 percent, from 1,109 jobs in 2005 to 1,682 jobs in 2030, while an appropriate mid-range capture rate of 1.7 percent results in a forecasted industrial employment increase to 1,906 jobs in 2030. A 2 percent capture rate results in a forecast that approximately doubles the amount of industrial sector jobs to 2,242 in 2030.

44. At the low end based on a 1.5 percent capture rate of new industrial jobs to be created on O`ahu, the land use demand is forecasted to be sufficient to absorb approximately 45 to 55 net acres of additional industrial land within the Wai`anae SCP area between 2010 and 2020. At the mid-range forecast, based on a 1.7 percent capture

rate, the industrial land use demand is forecasted to be sufficient to absorb approximately 65 to 80 net acres of additional industrial land between 2010 and 2020. At the high end forecast, based on a 2 percent capture rate, the industrial land use demand is forecasted to be sufficient to absorb approximately 100 to 115 net acres between 2010 and 2020. Petitioner proposes to introduce approximately 70 net acres of new industrial land on to the market during the 2010-2020 time period.

45. If DPP's Socio-Economic Projections industrial sector job forecast for Wai`anae, which indicates an anticipated downward trend marked by a dramatic decline in projected construction employment, proves to be accurate, there would be no compelling requirement or need for any new industrial development, including the Project, within the Wai`anae market area.

#### SOCIO-ECONOMIC IMPACTS

46. Construction of the Project would generate approximately 100 to 125 person years of employment. Offsite job requirements would range from 20 to 25 person years, for a total of 120 to 150 person years. Following completion of construction, the Project would generate between 560 to 840 full-time direct jobs, and a total of 840 to 1,260 total full-time jobs would be attributable to the Project when indirect jobs and induced employment effects are taken into account.

47. The potential impact on State government revenues from general excise and personal income taxes over the ten-year period corresponding to the Project's

construction of infrastructure improvements is forecasted at \$1,565,000. The potential long-term annual impact on additional State government revenues is estimated at \$1,820,000 per year. The Project is estimated to result in a net increase of 160 additional residents to the State. The potential long-term annual impact on additional State government expenditures is estimated at \$1,024,000 per year.

48. The potential impact on City government revenues from general excise taxes and permit fees over the ten-year period corresponding to the Project's construction of infrastructure improvements is forecasted at \$305,000. The potential long-term annual impact on additional City government revenues from real property taxes is estimated at \$1,240,000 per year. The potential long-term annual impact on additional City government expenditures is estimated at \$320,000 per year.

## IMPACT ON RESOURCES OF THE AREA

### Agricultural Resources

49. John J. McHugh, Jr., Ph.D., prepared an Agricultural Feasibility Report for the Project dated May 2, 2008.

50. The U. S. Department of Agriculture, Natural Resources Conservation Service ("USDA, NRCS"), classifies the soils of the Petition Area as the following types: Lualualei extremely stony clay (LPE), Lualualei clay (LuB), Pulehu very stony clay loam (PvC), and Lualualei clay (LuA). The USDA, NRCS's, Land Capability Grouping rates the above soil types according to eight levels, ranging from



the highest classification level I to the lowest level VIII. The following is a description of each soil type:

a. Lualualei extremely stony clay (LPE) soils are characterized by slopes of 3 to 35 percent and have very severe limitations, rendering them unsuitable for cultivation because of their unfavorable texture as well as their extreme stoniness and rockiness. Over half the Petition Area contains LPE soil rated VIIs, the second most undesirable category for cultivation.

b. Lualualei clay (LuA) soils are characterized by slopes of 0 to 2 percent, and Lualualei clay (LuB) soils are characterized by slopes of 2 to 6 percent. If not irrigated, these soils have extreme limitations that make them generally unsuited to cultivation. Most of the remainder of the Petition Area contains LuA and LuB soils that are rated VIs if not irrigated. If irrigated, the capability classification improves to IIIs for soil classified as LuA and IIIe for soil classified as LuB. Class III soils can have severe limitations that reduce the choice of crop plants. Subclass IIIs soils are challenged because of stoniness and/or unfavorable texture, resulting in poor water holding capacity, while Subclass IIIe soils are subject to severe erosion if cultivated and not protected.

c. Pulehu very stony clay loam (PvC) consists of stony, shallow soils with unfavorable texture. The remainder of the Petition Area contains PvC soils that have a capability classification of IVs, indicating very severe limitations that can reduce

the choice of crop plants and require careful management. PvC soils have low water holding capacity with severe shrink/swell characteristics, and their capability classification is not improved with irrigation.

d. The LPE, LuA, and LuB soils are vertisoils that are considered highly fertile and rich in nutrients, despite their stoniness and/or unfavorable texture.

51. The University of Hawai`i Land Study Bureau's *Detailed Land Classification for the Island of O`ahu* classifies approximately 80 percent of the lands of the Petition Areas as "E" in productivity rating. Soils rated "A" represent the highest class of productivity and soils rated E represent the lowest. The "E" rated soils of the Petition Area are considered as having little or no suitability for soil based agricultural production. Approximately 40 acres of the Petition Area are rated "B" under irrigated conditions.

52. The State Department of Agriculture's ("DOA") Agricultural Lands of Importance to the State of Hawai`i ("ALISH") classification system classifies approximately 40 acres of the Petition Area as "Prime Agricultural Land," and the remainder of the Petition Area as "Other Agricultural Land." When treated and managed, including using water management and modern farming methods, Prime Agricultural Land has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically. Land other than Prime or Unique Agricultural Land may also be of statewide or local importance for the production of

food, feed, fiber, and forage crops. Lands classified as Other Agricultural Land may be important to agriculture but may exhibit properties such as seasonal wetness, erosion, slope, flooding, or drought that exclude them from the Prime or Unique Agricultural Land classifications.

53. Despite the overall condition of the soils and the topography of the Petition Area, Tadashi Araki and his late brother Kazuto Araki leased approximately 59 acres of the Petition Area adjacent to the JBPHH Lualuelei Annex from the McCandless Estate for farming. The Arakis grew truck crops, including corn, watermelon, round onion, bell pepper, cucumber, and tomato for approximately 30 years from the early 1950s to the late 1970s or early 1980s.

54. The Arakis abandoned their farm when their rent was raised. Ryoei and Nancy Higa succeeded the Arakis , and farmed the same portion of the Petition Area as the Arakis had. In 1987, Sanjiro Nakade acquired the Petition Area. Mr. Nakade subsequently evicted the Higas from their farm, and obtained the necessary permits and governmental approvals to develop the Petition Area as a golf course.

55. Gary Maunakea-Forth, the co-founder and managing director of Ma`o Organic Farm in Lualualei, has been managing an organic farm in a different part of Lualualei with similar as well as more productive soil types for approximately 15 years. Mr. Maunakea-Forth expressed a desire to operate an organic farm on the

Petition Area, starting with orchard crops, contending that it is possible to successfully farm the soils present in the Petition Area.

56. There are several truck farms, nurseries, and hog farms in Lualualei Valley, along Hakimo Road, and in proximity to the Petition Area.

57. The DOA raised concerns about the potential impact of the Project upon existing agricultural operations within the Nānākuli and Lualualei Valleys.

58. The West O`ahu Farm Bureau expressed concerns about the potential impact of the Project upon the farming character and agricultural uses in the community, the potential harm to crops from any contaminants generated by the Project, and the risk these pollutants may pose to farmers' food safety audits. One of the main threats to the viability of diversified agriculture is urban encroachment by incompatible land uses.

#### Flora and Fauna

59. Rana Productions, Ltd. (nka Rana Biological Consulting, Inc.), and AECOS Consultants prepared a report dated June 30, 2008, based on their respective avifaunal/feral mammal and flora surveys of the Petition Area.

60. No native land birds, water birds, sea birds, and migratory birds were observed on the Petition Area. Dogs, mongooses, and cats, all of which were introduced, were observed on the Petition Area. It is also likely that rats occur in the area. No avian species currently listed as an endangered or threatened species by the

U. S. Fish and Wildlife Service (“USFWS”) on the Petition Area, or proposed as a candidate for listing as an endangered or threatened species, and no critical habitat for any such species under either Federal or State Endangered Species Laws was detected.

Kiawe forests and exotic grasses were the dominant plant species on the Petition Area. Seven indigenous plant species were observed in small quantities scattered about the Petition Area. No plant species classified as an endangered or threatened species by the USFWS nor any plant species proposed as a candidate for listing as an endangered or threatened species were detected on the Petition Area.

#### Archaeological, Historical, and Cultural Resources

61. In *Ka Pa`akai O Ka`Aina v. Land Use Commission*, 94 Haw. 31, 7 P. 3d 1068 (2000), the Hawai`i Supreme Court held that Article XII, Section 7, of the Hawai`i Constitution obligates the Commission to protect the reasonable exercise of Native Hawaiian customary and traditional practices to the extent feasible when granting a petition for a district boundary amendment. The Court established the following three prong test:

In order to fulfill its duty to preserve and protect customary and traditional Native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must - *at a minimum* - make specific findings and conclusions as to the following: (1) the identity and scope of “valued cultural, historical, or natural resources” in the petition area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources-including traditional and customary Native Hawaiian rights-will be affected or impaired by the proposed action; and (3)

the feasible action, if any, to be taken by the LUC to reasonably protect Native Hawaiian rights if they are found to exist.

62. Dr. Hallett H. Hammatt of Cultural Surveys Hawai'i ("Cultural Surveys") conducted an archaeological inventory survey of Petitioner's Property in 1991 in connection with the development of a golf course proposed by the prior owner. It was revised in 1993. Eight archaeological sites were identified on Petitioner's Property, four of which are in the Petition Area. Seven historic sites were determined to be no longer significant.

63. One site, Site No. 50-80-08-4366, represented a prehistoric, recurring habitation site approximately 2,000 feet mauka of the Petition Area, as the only site to be preserved. The State Department of Land and Natural Resources, Historic Preservation Division ("SHPD"), concurred with Cultural Surveys' conclusion that no further archaeological inventory work or preservation action is necessary as the Project would have "no effect" on historic sites. SHPD recommended that this site be resurveyed by a qualified archaeologist to provide an accurate GPS point for its identification, and that orange construction fencing be used to mark a 50-foot barrier around the site. Petitioner has complied with these recommendations.

64. The SHPD accepted the archaeological inventory survey and its conclusions. An archaeological preservation plan is still needed for Site No. 50-80-08-4366.

65. JLK Management, LLC, and Mother Earth Foundation prepared a Cultural Impact Assessment of the Petition Area dated July 10, 2009. No evidence of past or current traditional or customary use of the Petition Area for religious or cultural practices, gathering, or access to areas used for gathering or religious or cultural practices was found. No evidence of Native Hawaiian burial sites within the Petition Area was found.

66. The Wai`anae Coast in general, and the ahupua`a of Lualualei in particular, is significant in Native Hawaiian culture as the birthplace of the demigod Maui. Although there are no physical landmarks associated with Maui on the Petition Area, Pu`u Heleakala above the Petition Area is associated with the mo`olelo of Maui. Other landmarks associated with the mo`olelo of Maui include the Maui rock, which is located several miles west of the Petition Area along Farrington Highway, and Hina's cave, which is located over a mile from the Petition Area on the other side of Pu`u Heleakala.

67. Kahu Kamaki Kanahale, a Native Hawaiian cultural practitioner and kumu hula who was raised in the vicinity of the Petition Area, was consulted as a kupuna in the preparation of the Cultural Impact Analysis. Kahu Kanahale testified that no one uses the Petition Area for Native Hawaiian traditional or customary practices, cultural purposes, gathering, or for access to other area. He stated that the Petition Area is not physically associated with the mo`olelo of Maui. The concept of the

Maui silhouette is not based in Hawaiian culture, because Hawaiians did not believe gods took physical form such as a ridge line. Kahu Kanahele concluded that development of the Project would have no adverse impact on oral traditions of Maui, nor would its development undermine Native Hawaiian cultural practices in Lualualei.

68. Intervenor's witnesses testified on the importance of respecting and preserving the cultural landscape and cultural history of Lualualei Valley. Intervenor believes that the Project will undermine the wāhi pana and Native Hawaiian cultural continuity of Lualualei, because cultural history and the cultural significance of the landscape cannot be limited to property lines or the oral history of any one group of practitioners.

69. There is a divergence of opinion based on the record as it relates to the impact of the Project on cultural resources.

#### Groundwater Resources

70. Two separate, independent aquifers underlie the Petition Area and the surrounding lands: one consisting of limestone in the valley and the other composed of basalt underlying the valley fill and talus slopes. The limestone stratum extends throughout the valley below the approximately 100-foot elevation contour, while the basalt constitutes the basement of the entire Wai`anae District and is exposed as slopes and ridges above the level valley floor. The source of groundwater in the



limestone is recharged from rainfall and from mountain runoff reaching the valley. The source in the basalt is rainfall on talus slopes and ridges exposed to bedrock.

71. Petitioner represented that it had no intent to use the existing unused wells on the Petition Area in the future that were drilled by the previous owner, but Petitioner could not commit to complying with the requirements of the Commission on Water Resource Management to properly seal abandoned wells prior to any further development of the Petition Area to prevent potential contamination of the underlying groundwater resources.

#### Recreational Resources

72. Development of the Project would have no effect on recreational resources in the area. The Petition Area is not presently used for any recreational purpose. Because the Project will not have a residential component, no recreational facilities are planned.

#### Visual Resources

73. Development of the Project would have a minimal effect on existing mauka views from Farrington Highway, including views of any Maui silhouette. Most of the Petition Area is not visible from Farrington Highway due to its topography. Where the Petition Area is visible, existing mauka views would be changed from fallow vacant land to urban uses.

74. Petitioner proposes to maintain a landscape buffer within the Petition Area along LNAR. There would also be a landscape buffer between Ulehawa Stream and the northern tip of the Petition Area.

## ENVIRONMENTAL QUALITY

### Noise

75. The dominant noise source during Project construction would be earth moving and other construction equipment. Petitioner would be required to obtain a construction noise permit from the State Department of Health (“DOH”). The DOH may require the contractor to incorporate noise mitigation measures into the construction plan and may also require noise monitoring.

76. Following completion of construction, vehicular traffic volumes would increase due to the Project. Moderate noise increases generated by Project-related traffic are predicted to occur along LNAR. This moderate increase in noise level is not considered significant.

### Air Quality

77. Ambient air quality of the Petition Area and the surrounding area is anticipated to be adversely affected from fugitive dust during the construction phase. An effective dust control plan, which would include watering of active work areas and the use of windscreens in sensitive areas, would need to be implemented to ensure compliance with DOH regulations. Following construction, motor vehicles entering,

exiting, and transiting the Petition Area would result in a long-term increase in air pollution emissions on the Petition Area but would not necessarily require mitigation measures.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Highway and Roadway Facilities

78. The Traffic Management Consultant prepared a Traffic Impact Analysis Report (“TIAR”) for the Project dated January 29, 2010.

79. The Petition Area borders LNAR. Access to and from the Petition Area is presently obtained using LNAR and Hakimo Road, with the latter road currently being the only legal access to the Petition Area. Hakimo Road is a public two-lane, two-way unimproved roadway that provides access from Farrington Highway to a portion of Lualualei Valley. It serves an urban residential neighborhood along the coast and a mixed agricultural and low-density rural residential area further mauka. Hakimo Road does not meet City roadway standards and would be unsuitable for the volume and type of vehicles and equipment associated with the Project.

80. LNAR is a two-lane, two-way road owned by the Navy which provides access from Farrington Highway to the JBPHH Lualualei Annex. The posted speed limit on this road varies between 25 miles per hour (“mph”) and 45 mph. The TIAR assumes that primary access to the Project would be through the use of LNAR, and not Hakimo Road.

81. Farrington Highway, which is the primary access along the Wai`anae Coast, is a four-lane highway oriented in the north-south direction. Farrington Highway is signalized at the intersection with LNAR. There is no exclusive left-turn lane in the southbound direction on Farrington Highway at the LNAR intersection.

82. The AM peak hour of traffic on Farrington Highway varies between 5:00 AM and 7:00 AM. The AM peak hour selected for the analysis—5:45 AM to 6:45 AM—was based on the observed AM peak hour of traffic on LNAR. During this period, Farrington Highway carries approximately 2,800 vehicles per hour (“vph”) total in both directions. LNAR carried a total of 430 vph at the Farrington Highway intersection during the AM peak hour of traffic. At the Petition Area, the traffic volume on LNAR is approximately 120 vph.

83. The intersection of Farrington Highway and LNAR operates at an overall Level of Service (“LOS”) “D” with a volume-to-capacity (“v/c”) ratio of 1.12 during the AM peak hour. Southbound Farrington Highway operates at LOS “E.” The left-turn movement from LNAR onto Farrington Highway operates at LOS “F.”

84. The PM peak hour of traffic is defined as 3:15 PM to 4:15 PM when Farrington Highway carries approximately 3,500 vph total in both directions. LNAR carries a total of over 500 vph during the PM peak hour. At the Petition Area, traffic volume on LNAR is approximately 100 vph.

85. During the PM peak hour, the shared through/left-turn lane on southbound Farrington Highway at LNAR operates as a de facto left-turn lane. The intersection of Farrington Highway and LNAR operates at an overall LOS "C" with a v/c ratio of 0.94. The left-turn movement from LNAR onto Farrington Highway operates at LOS "D."

86. Background Growth in Traffic. The O`ahu Transportation Regional Plan 2030 ("ORTP") was prepared for the O`ahu Metropolitan Planning Organization in April 2006 and amended in May 2007. The Year 2030 socio-economic forecasts indicated an approximately 0.5 percent annual increase in population and employment on the Wai`anae Coast. Based on the ORTP socio-economic forecast, an annual growth of 0.55 percent was applied uniformly to the existing peak hour traffic to estimate the Year 2020 peak hour traffic demands without the Project.

87. Year 2020 AM Peak Hour Traffic Analysis Without Project. During the AM peak hour without the Project, traffic demands at the intersection of Farrington Highway and LNAR are expected to exceed the carrying capacity of the existing intersection, operating at an overall LOS "F" with a v/c ratio of 1.23. The southbound approach of Farrington Highway and the left-turn movement from LNAR are expected to operate at LOS "F."

88. Year 2020 PM Peak Hour Traffic Analysis Without Project. The PM Peak hour demand without the Project is expected to exceed the existing carrying

capacity of the intersection of Farrington Highway and LNAR, operating at LOS “D” with a v/c ratio of 1.01. Southbound Farrington Highway and the left-turn movement from LNAR are expected to operate at LOS “D.”

89. Year 2020 AM Peak Hour Traffic Analysis With Project. AM peak hour traffic demands in 2020 are expected to exceed the carrying capacity of the existing southbound Farrington Highway, the Farrington Highway – LNAR intersection, and left turn movement from LNAR onto Farrington Highway southbound. All of these movements are expected to operate at LOS “F” with the Project.

90. Year 2020 PM Peak Hour Traffic Analysis With Project. During the PM peak hour, the Farrington Highway - LNAR intersection would operate at LOS “F” with the Project. PM southbound Farrington Highway traffic and left-turn movement from LNAR onto Farrington Highway southbound are also expected to operate at LOS “F” with the Project.

91. Because the Year 2020 AM and PM Peak Hour Traffic Analyses With Project were made without the benefit of knowing the actual types of tenants that would be in the Project, which would affect the number and type of vehicles (e.g., heavy trucks vs. passenger cars), the potential traffic impact of the Project is unknown.

92. The traffic improvements proposed to mitigate impacts at the Farrington Highway – LNAR intersection are directly related to the Project and are not

regional in nature. Therefore, any improvements would need to be completed at no cost to the State.

93. The Navy and the City Department of Transportation Services have also indicated that they will not be responsible for the costs of the Project-generated traffic improvements.

94. The proposed traffic mitigation measures related to Farrington Highway may impact the nationally-listed historic railroad makai of the highway, which could trigger a Section 6E-10 historic preservation consultation requiring SHPD approval. This may impact plans for Project-related transportation improvements.

95. The State Department of Transportation (“DOT”) reviewed the TIAR. Additional information is needed in the TIAR, including the addition of other intersections in the analysis and the clarification and justification of some of the assumptions, before there is agreement on the mitigation measures and the TIAR can be accepted by the DOT.

96. Petitioner has an easement to use approximately one-third of the length of LNAR between JBPHH Lualualei Annex and Farrington Highway. When Petitioner started planning the Project in 2007, the Navy had negotiated an agreement with the City for it to maintain LNAR as a public road. In 2008, the City decided not to maintain LNAR and it became necessary for Petitioner to obtain access over the remainder of LNAR from the Navy. By letter dated July 20, 2010, the Navy offered

Petitioner a five-year license to use the remainder of LNAR. By letter dated July 26, 2010, the Navy also offered to grant a long-term easement to use the remainder of LNAR to an association to be organized by Petitioner and the adjoining property owners who are presently licensed by the Navy to use the road. The association would be required to maintain the road. Petitioner accepted both the offer of a license and the offer of a long-term easement by letters both dated December 17, 2010. Petitioner is currently discussing the form of a long-term easement agreement with the Navy.

97. The five-year license agreement is a stand alone agreement to authorize Petitioner's current use of the LNAR in connection with open storage purposes (approximately ten vehicles per day once each day). The agreement is not a precursor to the issuance of a formal long-term access easement. Petitioner would be responsible for paying the Navy's administrative expenses associated with issuance of the license agreement.

98. For the long-term agreement, Naval Facilities Engineering Command, Hawai'i, proposed a framework for the longer-term easement that includes the following requirements and conditions:

1. All landowners having legal access to LNAR must belong to the proposed limited liability corporation;
2. Maintenance of sufficient liability insurance to protect the Government during the term and use of LNAR. The Government will be named as an additional insured and specific amounts are to be determined to sufficiently protect the Government;
3. Indemnification of the Government;



4. LNAR must be upgraded and maintained to County or State codes and standards by the easement grantee throughout the easement term;
5. The Government will retain access rights to LNAR at no cost;
6. The Government has the right to approve any transfer or assignments of the easement rights to individuals or other business forms that may have an interest in LNAR;
7. The parties requesting road access must pay the cost of issuing and recording the easement and pay fair market value for the interest acquired;
8. The Government must be informed of all future development plans, as there are concerns of possible development issues on private property served by the road that may encroach upon the continuing military mission of JBPHH Lualualei Annex; and
9. The initial easement will be for a ten-year term.

99. There are several issues that have yet to be resolved before an easement is granted. Petitioner has not yet met all of the conditions, and is not in agreement with the Navy on all of the conditions.

100. Although Petitioner has had discussions with several of the landowners who own adjoining lands and to whom the Navy has granted licenses to use LNAR, Petitioner has not come to any kind of agreement with them regarding the sharing of costs to maintain LNAR. In addition, the proposed limited liability corporation required by the Navy as part of its conditions for a formal long-term easement has not yet been formed.

101. The Commission finds that a long-term easement greater than the Navy's offer of an initial easement term of ten years is warranted to provide the necessary access to adequately serve the Project.

102. At this time, there is no executed long-term easement agreement in the record for Petitioner to use LNAR to access the Petition Area. It is uncertain how long it will take for Petitioner to meet the various requirements of the Navy and execute a long-term access agreement for use of LNAR.

103. If Petitioner is unable to use LNAR for legal access to the Petition Area, the assumptions, findings, and proposed mitigation measures in the TIAR would no longer be valid. More importantly, the viability of the Project would be in doubt as Petitioner would not have the necessary access to the Project.

#### Water Service

104. Hida, Okamoto & Associates, Inc., prepared a Preliminary Engineering Report for the Project dated January 2010. The report addressed water service in terms of the existing conditions, the anticipated demand, the proposed water system, and impacts and mitigation measures.

105. The Project's average daily demand for drinking water is estimated to be 22,550 gallons per day ("GPD") and maximum daily demand is estimated to be 45,100 GPD. Water demand for fire protection is estimated to be 4,000 gallons per minute over a three-hour duration. The Board of Water Supply's ("BWS") Pu'u-O'Hulu

reservoir would serve the Petition Area. Petitioner would coordinate with BWS to develop the necessary offsite improvements to the BWS system to serve the Petition Area.

106. Petitioner proposes to develop a dual water system with a new water line bringing drinking water from the BWS system, and a separate non-drinking water system that would utilize treated effluent from the Project's onsite wastewater treatment plant for irrigation purposes.

107. Petitioner would be responsible for ensuring that the drinking and non-drinking water systems are designed and operated to prevent cross-connections and backflow conditions. The developer or owner of the Project would be required to develop a dual water system management plan detailing the quality of the non-drinking water, and would be responsible for the operation and monitoring of the drinking and non-drinking water systems to maintain the separation and prevent cross-connections between the two systems.

108. Petitioner proposes to dedicate the new water line serving the Petition Area to the BWS. The BWS requires that the line be placed in the public right-of-way.

109. Petitioner would require an easement from the Navy for the portion of the water line that would be constructed under Pa`akea Road and LNAR.

## Wastewater Disposal

110. Hida, Okamoto & Associates, Inc., prepared a Preliminary Engineering Report for the Project dated January 2010. The report addressed wastewater disposal in terms of existing conditions, projected wastewater flows, proposed wastewater infrastructure, wastewater collection and treatment, effluent disposal, and impacts and mitigation measures.

111. Following full buildout, the Project would generate an estimated average of 22,550 GPD of domestic wastewater. Petitioner proposes to install a private wastewater treatment facility to treat wastewater generated by the Project, which would be recycled as R-1 water to provide irrigation water for Project landscaping. Following buildout, treated effluent from the Project would provide 100 percent of the estimated irrigation water requirement for the Project.

112. The effluent disposal system for the onsite wastewater treatment plant would need to be located on lands in the Pass Zone Area since the Project is located in a Critical Wastewater Disposal Area. The onsite wastewater treatment plant cannot be used to treat industrial wastewater. All wastewater plans would need to conform to applicable provisions of the DOH's Administrative Rules, chapter 11-62, "Wastewater Systems."

## Drainage

113. Hida, Okamoto & Associates, Inc., prepared a Preliminary Engineering Report for the Project dated January 2010. The report addressed drainage in terms of the watershed hydrology, drainage criteria/standards, existing conditions, modifications after development, impacts and mitigation measures, stormwater quality, and ofsite improvements.

114. The stream channel of Ulehawa Stream, an intermittent stream, crosses the northwest corner of the Petition Area and courses west of LNAR to the coast, approximately two miles downstream.

115. Stormwater runoff from offsite areas is conveyed through the Petition Area under LNAR through four existing culverts, eventually draining into Ulehawa Stream. DPP rules relating to stormwater drainage require that any increase in stormwater runoff from a ten-year, one-hour storm event due to new development be captured onsite and not affect downstream property. Development of the Petition Area would result in an increased runoff peak flow estimate of approximately 312 cubic feet per second from a 50-year, one-hour storm event. Although Petitioner expects this increase to be offset by increased capture and detention of runoff from mauka lands above the Petition Area, Petitioner proposes to capture any increase in stormwater runoff onsite.

116. Petitioner proposes to discharge stormwater runoff into a Navy drainage culvert under LNAR, and will need to get permission from the Navy to ensure compliance with the Navy's Stormwater Permit from DOH. Petitioner has not requested permission to connect to the Navy's culvert underlying the LNAR to date. Current easement rights over the portion of the LNAR fronting the Petition Area is for ingress and egress only and does not include the use of the Navy's drainage culvert.

117. Stormwater associated with industrial activities, as defined in Title 40, Code of Federal Regulations ("40 CFR"), Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi), requires a National Pollutant Discharge Elimination System permit for discharges of wastewater into State surface waters. Petitioner and/or tenants would need to consult with DOH as to whether additional permits would be required of tenants.

#### Solid Waste Disposal

118. Hida, Okamoto & Associates, Inc., prepared a Preliminary Engineering Report for the Project dated January 2010. The report addressed solid waste disposal in terms of existing conditions, projected solid waste generation and characteristics, modifications after development, and impacts and mitigation measures.

119. Disposal of construction waste due to clearing and grubbing of the Petition Area would be a short-term impact. Following full buildout, the Project would generate approximately 820 lbs. of solid waste per day. Refuse generated by the Project

would be collected by a private refuse collection company and would be taken to the municipal solid waste landfill at Waimānalo Gulch. Petitioner's Declaration of Covenants, Conditions and Restrictions or Declaration of Condominium Property Regime for the Project would require the Owner's Association to implement recycling and reuse of green waste.

#### Emergency Medical Services

120. Emergency medical services to the Petition Area would be provided from the Nānākuli Fire Station. Back-up EMS would be provided from the Wai`anae Fire Station located approximately eight miles away. The primary health care facility on the Wai`anae Coast is the Wai`anae Comprehensive Health Center in Mā`ili. This facility provides 24-hour emergency services.

#### Civil Defense

121. The Petition Area does not currently have outdoor siren warning coverage. Petitioner would be required to install one 121 DBC solar-powered siren to provide outdoor siren warning coverage in the Petition Area in a location to be determined when the State Civil Defense has reviewed the final plans for the Project.

#### Police and Fire Protection

122. The Petition Area falls within the service area of District 8 that stretches from `Ewa Beach to Kaena Point. The District 8 headquarters is located in

Kapolei. There is a police substation in Wai`anae that serves as a base for personnel patrolling the Wai`anae Coast.

123. The closest fire station to the Petition Area is located approximately 3.4 miles in Nānākuli Valley. The Nānākuli Station houses an engine unit and a tanker unit as well as an emergency medical services unit. Back-up fire services would be provided from the Wai`anae Fire Station located approximately eight miles away.

#### Electrical Power and Telecommunications Services

124. Hida, Okamoto & Associates, Inc., prepared a Preliminary Engineering Report for the Project dated January 2010. The report addressed electric and telephone services in terms of existing conditions, modifications after development, and impacts and mitigation measures.

125. Hawaiian Electric Co., Inc., Hawaiian Telecom, and Oceanic Time Warner would provide necessary electrical, telephone, and telecommunications services to the Petition Area, using an existing pole and wire line along LNAR. Within the Petition Area, utility lines would be placed underground to mitigate visual impacts.

#### COMMITMENT OF STATE FUNDS AND RESOURCES

126. Petitioner and DOT disagree on the division of costs for traffic improvements to the Farrington Highway – LNAR intersection. Petitioner proposes to pay its fair share to the cost of implementing traffic improvements and mitigation measures to alleviate the impact of the Project on State highway facilities but is



unwilling to pay for all of the recommended improvements to the Farrington Highway – LNAR intersection at no cost to the State as requested by DOT. Petitioner’s proposal would require a commitment of State funds and resources that is not warranted because the need for such traffic improvements is due entirely to the Project and is not regional in nature.

#### ENERGY CONSERVATION AND SUSTAINABLE DEVELOPMENT

127. Petitioner does not believe that imposing a Leadership in Energy and Environmental Design (“LEED”) requirement for the Project is warranted. LEED Silver certification would add additional costs to the construction, and the type of buildings contemplated for the Project would not necessarily qualify for certain LEED rating points.

#### CONFORMANCE WITH STANDARDS FOR DETERMINING URBAN DISTRICT BOUNDARIES

128. The reclassification of the Petition Area does not generally conform to the following standards applicable to establishing the boundaries of the State Land Use Urban District set forth in section 15-15-18, HAR:

- 15-15-18(1) It shall include lands characterized by “city-like” concentrations of people, structures, streets, urban level of services and other related land uses.

The Petition Area is located in a mixed agricultural and low-density rural residential area. There are several truck farms, nurseries, and hog farms in Lualualei Valley, along Hakimo Road, and in proximity to the Petition Area.

- 15-15-18(3) It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects.

The Petition Area is susceptible to flooding conditions, including periodic and flash flooding events. The primary feature of the soils on the Petition Area is their shrink/swell characteristics that contribute to their overall instability. Special precautions need to be taken when any construction occurs on these soil types.

- 15-15-18(4) Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans.

The Petition Area is not contiguous to other lands in the State Land Use Urban District and under the Wai`anae SCP currently in effect, the Petition Area is designated for golf course use and is outside of the Rural Community Boundary for the Wai`anae SCP area.

- 15-15-18(5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans.

The Petition Area is designated for golf course use in the current Wai`anae SCP and is outside of the Rural Community Boundary for the Wai`anae SCP area.

- 15-15-18(7) It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services.

The Petition Area is in proximity to a number of truck farms, nurseries, and hog farms in Lualualei Valley. The Petition Area is not contiguous to other lands

within the State Land Use Urban District. Petitioner and DOT disagree on the division of costs for traffic improvements to the Farrington Highway – LNAR intersection.

Petitioner proposes to pay its fair share to the cost of implementing traffic improvements and mitigation measures to alleviate the impact of the Project on State highway facilities but is unwilling to pay for all of the recommended improvements to the Farrington Highway – LNAR intersection at no cost to the State as requested by DOT. Petitioner’s proposal would necessitate an unreasonable investment in public infrastructure because the need for such traffic improvements is due entirely to the Project and is not regional in nature.

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

Hawai`i State Plan

129. The reclassification of the Petition Area does not generally conform to the following applicable goals, objectives, policies, and guidelines of the Hawai`i State Plan:

Section 226-7 Objectives and policies for the economy – agriculture.

*Objectives:* (a)(2) *Growth and development of diversified agriculture throughout the State.*

(a)(3) *An agriculture industry that continues to constitute a dynamic and essential component of Hawai`i’s strategic, economic, and social well-being.*

*Policies:*

*(b)(1) Establish a clear direction of Hawai`i's agriculture through stakeholder commitment and advocacy.*

*(b)(2) Encourage agriculture by making best use of natural resources.*

*(b)(5) Foster increased public awareness and understanding of the contributions and benefits of agriculture as a major sector of Hawai`i's economy.*

*(b)(12) Expand Hawai`i's agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises.*

Despite the overall condition of its soils and topography, the Petition Area was farmed for several decades, providing various truck crops to the Honolulu market. Agricultural activity on the Petition Area ceased only when it was sold to be developed as a golf course.

Gary Maunakea-Forth, the co-founder and managing director of Ma`o Organic Farm in Lualualei, has expressed a desire to operate an organic farm on the Petition Area, starting with orchard crops, contending that it is possible to successfully farm the soils present on the Petition Area.

There are several truck farms, nurseries, and hog farms in Lualualei Valley, along Hakimo Road, and in proximity to the Petition Area.

The DOA raised concerns about the potential impact of the Project upon existing agricultural operations within the Nānākuli and Lualualei Valleys.

The West O`ahu Farm Bureau expressed concerns about the potential impact of the Project upon the farming character and agricultural uses in the community, the potential harm to crops from any contaminants generated by the Project, and the risk these pollutants may pose to farmers' food safety audits.

Section 226-11 Objectives and policies for the physical environment – land-based, shoreline, and marine resources.

*Objective:* (a)(1) Prudent use of Hawai`i's land-based, shoreline, and marine resources.

*Policy:* (b)(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

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

*Objective:* (a)(1) Maintenance and pursuit of improved quality of Hawai`i's land, air, and water resources.

*Policy:* (b)(5) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.

Although the Petition Area is in an area with low rainfall, there are occasional storm events that lead to periodic and flash flooding. The primary feature of the soils on the Petition Area is their shrink/swell characteristics that contribute to their overall instability. Special precautions need to be taken when any construction occurs on these soil types.

Section 226-14 Objective and policies for facility systems – in general.

- Policies:*
- (b)(1) Accommodate the needs of Hawai`i's people through coordination of facility systems and capital improvement priorities in consonance with state and county plans.*
  - (b)(3) Ensure that required facility systems can be supported within resource capacities and at reasonable cost to the user.*

Section 226-17 Objectives and policies for facility systems – transportation.

*Objective:*

- (a)(1) An integrated multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe, and convenient movement of people and goods.*

- Policies:*
- (b)(3) Encourage a reasonable distribution of financial responsibilities for transportation among participating governmental and private parties.*
  - (b)(6) Encourage transportation systems that serve to accommodate present and future development needs of communities.*
  - (b)(12) Coordinate intergovernmental land use and transportation planning activities to ensure the timely delivery of supporting transportation infrastructure in order to accommodate planned growth objectives.*

Petitioner and DOT disagree on the division of costs for traffic

improvements to the Farrington Highway – LNAR intersection. Petitioner proposes to pay its fair share to the cost of implementing traffic improvements and mitigation measures to alleviate the impact of the Project on State highway facilities but is unwilling to pay for all of the recommended improvements to the Farrington Highway – LNAR intersection at no cost to the State as requested by DOT. Petitioner's proposal

would necessitate a commitment of State funds and resources that is not warranted because the need for such traffic improvements is due entirely to the Project and is not regional in nature.

At this time, there is no executed long-term easement agreement in the record for Petitioner to use LNAR to access the Petition Area. It is uncertain how long it will take for Petitioner to meet the various requirements of the Navy and execute a long-term access agreement for use of LNAR. If Petitioner is unable to use LNAR to legally access the Petition Area, the assumptions, findings, and proposed mitigation measures in the TIAR would no longer be valid. More importantly, the viability of the Project would be in doubt as Petitioner would not have the necessary access to the Project.

Section 226-103 Economic priority guidelines.

*Priority Guideline: (d)(7) Encourage the development and expansion of agricultural and aquacultural activities which offer long-term economic growth potential and employment opportunities.*

Gary Maunakea-Forth, the co-founder and managing director of Ma`o Organic Farm in Lualualei, has expressed a desire to operate an organic farm on the Petition Area, starting with orchard crops, contending that it is possible to successfully farm the soils present on the Petition Area. There are already several truck farms, nurseries, and hog farms in Lualualei Valley, along Hakimo Road, and in proximity to the Petition Area.

Section 226-104 Population growth and land resources priority guidelines.

*Priority Guidelines:*

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

*(b)(6) Seek participation from the private sector for the cost of building infrastructure and utilities, and maintaining open spaces.*

*(b)(11) Identify all areas where priority should be given to preserving rural character and lifestyle.*

The Petition Area is located in a mixed agricultural and low-density rural residential area. There are several truck farms, nurseries, and hog farms in Lualualei Valley, along Hakimo Road, and in proximity to the Petition Area. The General Plan includes a policy statement that calls for the character of rural areas to be maintained. The current Wai`anae SCP does not allow industrial uses in any area designated for agricultural use, including the Petition Area. It directs such development to the lands within the SCP's Rural Community Boundary, which encompasses the existing community areas along Farrington Highway but not upper valley areas.

Petitioner and DOT disagree on the division of costs for traffic improvements to the Farrington Highway – LNAR intersection. Petitioner proposes to pay its fair share to the cost of implementing traffic improvements and mitigation measures to alleviate the impact of the Project on State highway facilities but is



unwilling to pay for all of the recommended improvements to the Farrington Highway – LNAR intersection at no cost to the State as requested by DOT. Petitioner’s proposal would necessitate a commitment of State funds and resources that is not warranted because the need for such traffic improvements is due entirely to the Project and is not regional in nature.

State Functional Plans

130. The reclassification of the Petition Area does not generally conform to the functional plans in the following program areas: agricultural and transportation.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

131. The reclassification of the Petition Area does not generally conform to the applicable policies and objectives of the Coastal Zone Management Program as defined in chapter 205A, HRS.

CONFORMANCE WITH THE CITY GENERAL PLAN AND WAI`ANAЕ SCP

132. The reclassification of the Petition Area does not generally conform with the policy statement of the General Plan to maintain the character of rural areas. The reclassification of the Petition Area also does not generally conform to the current Wai`anae SCP Land Use Map, which designates the Petition Area for golf course use. The Petition Area is also presently outside of the Rural Community Boundary for the Wai`anae SCP area.

## RULING ON PROPOSED FINDINGS OF FACT

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

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

## CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission rules under chapter 15-15-, HAR, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, this Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 96 acres of land at Lualualei, Wai`anae, O`ahu, Hawai`i, and identified as TMK: 8-7-09: por. 2, from the State Land Use Agricultural District to the State Land Use Urban District for the Project does not conform to the standards for establishing the Urban District boundaries, is not reasonable, is violative of section 205-2, HRS, and is inconsistent with the policies and criteria established pursuant to sections 205-16 and 205-17, HRS.

2. Article XII, section 7, of the Hawai`i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights: The State

reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua`a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

3. 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.

4. 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.

5. Section 205-17, HRS, requires the Commission, in its review of any petition for reclassification of district boundaries, to specifically consider, among other things: (1) the extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawai`i State Plan and relates to the applicable priority guidelines of the Hawai`i State Plan and the adopted functional plans; (2) the extent to which the proposed reclassification conforms to the applicable district standards; (3) the impact of the proposed reclassification on the following areas of State

concern: (i) preservation or maintenance of important natural systems or habitats; (ii) maintenance of valued cultural, historical, or natural resources; (iii) maintenance of other natural resources relevant to Hawai`i's economy, including agricultural resources; and (iv) commitment of State funds and resources; (4) the County general plan and all community, development, or community development plans adopted pursuant to the County general plan, as they relate to the land that is the subject of the reclassification petition; and (5) the representations and commitments made by the petitioner in securing a boundary change.

6. Pursuant to section 205-1, HRS, and chapter 15-15, HAR, six affirmative votes are necessary for any boundary amendment.

7. Pursuant to section 15-15-13(b), HAR, if the Commission's actions on a petition for boundary amendment fails to obtain six affirmative votes, findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the Commission.

#### DECISION AND ORDER

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the Petition is DENIED, and that the Petition Area being the subject of Docket A09-782 filed by Petitioner, consisting of approximately 96 acres of land at Lualualei, Wai`anae, O`ahu, Hawai`i, and identified as TMK: 8-7-09: por. 2, shall hereby remain in the State Land Use Agricultural District.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.


Done at Honolulu, Hawai'i, this 16th, day of May, 2011, per motion on May 13, 2011.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII

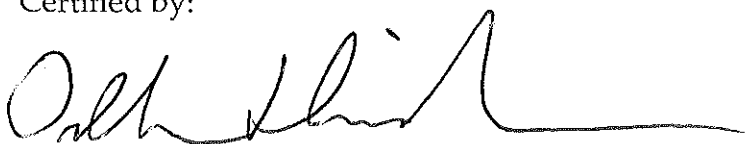
  
Deputy Attorney General

By   
VLADIMIR DEVENS  
Chairperson and Commissioner

Filed and effective on:

5/16/2011

Certified by:

  
ORLANDO DAVIDSON  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII  
2011 MAY 16 P 12:57

In The Matter Of The Petition Of	)	DOCKET NO. A09-782
	)	
TROPIC LAND LLC, A HAWAII	)	CERTIFICATE OF SERVICE
LIMITED LIABILITY COMPANY	)	
	)	
To Amend The Agricultural Land Use	)	
District Boundary Into The Urban Land	)	
Use District For Approximately 96	)	
Acres Of Land At Lualualei, Wai`anae,	)	
O`ahu, Hawai`i, Tax Map Key: 8-7-09:	)	
Por. 2	)	
_____	)	

**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:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawaii 96813	X		
WILLIAM YUEN, ESQ. CHING, YUEN, MORIKAWA 1001 Bishop Street, Suite 2700 Honolulu, Hawaii 96817			X

HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
-------------------	-----------------	-------------------

BRYAN YEE, ESQ.  
Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, Hawaii 96813

X

DAVID TANOUE, DIRECTOR  
Department of Planning and Permitting  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

X

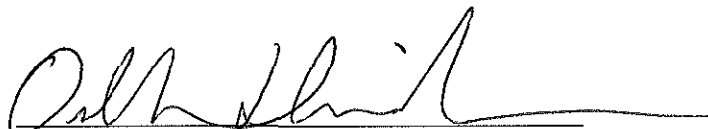
CARRIE OKINAGA, ESQ.  
Corporation Counsel  
DAWN TAKEUCHI-APUNA, ESQ.  
Deputy Corporation Counsel  
City & County of Honolulu  
530 South King Street, Room 110  
Honolulu, Hawaii 96813

X

CONCERNED ELDERS OF WAI'ANAE  
c/o: Martha Townsend, Esq.  
KAHEA: The Hawaiian Environmental  
Alliance  
P.O. Box 37368  
Honolulu, Hawaii 96837-8220

X

Honolulu, Hawai'i, May 16, 2011.



ORLANDO DAVIDSON  
Executive Officer