

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

DOCKET NO. A10-788

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

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

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER FOR
A STATE LAND USE DISTRICT
BOUNDARY AMENDMENT; EXHIBIT
"A";

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A
STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

Co-Petitioners HAWAII HOUSING FINANCE AND DEVELOPMENT

CORPORATION, a public body and body corporate and politic of the State of Hawaii
("HHFDC"), and FOREST CITY HAWAII KONA, LLC, a Hawaii limited liability company
("Forest City"), (Forest City and HHFDC are hereinafter collectively referred to as
"Petitioner"), filed a Petition for District Boundary Amendment on September 07, 2010,
pursuant to Chapter 205, Hawaii Revised Statutes ("HRS"), Title 15, Subtitle 3, Chapter 15 of
the Hawaii Administrative Rules ("HAR") and HRS Chapter 201H, to amend the land use
district boundary to reclassify approximately 271.837 acres of land, situated at Keahuolu, Island
of Hawaii, State of Hawaii, identified by Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-

021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027 (the "**Petition Area**"), from the Agricultural District to the Urban District. The Petition Area, together with approximately 0.226 acres that are already within the Urban District, are intended to be developed as a master planned, mixed-use affordable housing project to be known as Kamakana Villages at Keahuolu ("**Project**").

The Land Use Commission of the State of Hawaii ("**Commission**"), having examined the testimony, evidence and arguments of counsel presented during the hearings hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

FINDINGS OF FACT

I. PROCEDURAL MATTERS

1. On July 7, 2010 Petitioner filed a Notice of Intent to File a Land Use District Boundary Amendment Petition ("**Notice of Intent**") with the Commission pursuant to HAR § 15-15-97(b).

2. The Notice of Intent was published in The Honolulu Star Bulletin, a newspaper of general circulation, and in West Hawaii Today, a county newspaper, on July 7, 2010.

3. Copies of the Notice of Intent were mailed to the Director of the State of Hawaii Office of Planning ("**OP**"), the County of Hawaii Planning Department ("**Planning Department**"), all persons with a property interest in the Petition Area, and all persons on the chief clerk's mailing lists on July 7, 2010.

4. On August 30, 2010, a Notice of Hearing was published in The Honolulu Star Bulletin, a newspaper of general circulation, and in West Hawaii Today, a county newspaper.

5. On August 30, 2010, Petitioner filed an Affidavit of Mailing Petitioner's Notice of Hearing.

6. On September 2, 2010, the County of Hawaii, Office of Housing and Community Development ("**OHCD**") provided a certification that the Project involves a HRS § 201H-38 housing project (the "**Certification**").

7. On September 07, 2010, Petitioner filed a Petition for District Boundary Amendment ("**Petition**"), which included a copy of the Final Environmental Impact Statement prepared for HHFDC, notice of which was published in *The Environmental Notice* on October 8, 2008 (the "**Final EIS**"), a proposed Decision and Order, the Certification and affidavits that Petitioner had met with interested community groups to discuss the Project.

8. By letter dated ____, 2010, the Executive Officer of the Commission deemed the Petition a proper filing as of ____, 2010.

9. On _____ 2010, Liliokulani Trust ("**QLT**") filed an Application to Intervene.

10. On September 15, 2010, the Commission conducted a prehearing meeting with the Petitioner, OP, the Planning Department and QLT.

11. On _____, 2010, OP filed The Position Statement of the Office of Planning in Support of the Petition, List of Witnesses, List of Exhibits, and OP's Exhibit Nos. _____, which included OP's Testimony in Support of the Petition.

12. On _____, 2010, the Planning Department filed The Position Statement of the County of Hawaii in Support of the Petition, List of Witnesses, List of Exhibits, and the County's Exhibit Nos. _____, which included the County's Testimony in Support of the Petition.

13. On _____, 2010, Petitioner filed Petitioner's List of Witnesses, List of Exhibits, Exhibits ____ through ____.

14. On _____, 2010, Petitioner filed its Memorandum in Response to QLT's Application for Intervention.

15. On September _____, 2010, the Commission held a meeting in Honolulu and granted intervenor status to QLT.

16. On October 6 - 7 2010, the Commission held evidentiary hearing in this docket at the Waikoloa Beach Marriott Hotel in Waikoloa, Hawaii.

17. On _____, 2010, the Petitioner filed Petitioner's Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order, entered into by Petitioner, OP, the Planning Department and QLT.

18. On _____, 2010 the Commission closed the evidentiary portion of the proceedings.

II. DESCRIPTION OF THE SUBJECT PROPERTY

19. The Petition Area consists of approximately 271.837 acres located in Keahuolu, North Kona, and is identified by Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027. [Pet. Ex. 6]

20. The Petition Area is vacant and undeveloped, bordered by Palani Road to the south, and the future Ane Keohokalole Highway along the west/makai end and is approximately one mile upslope from Kailua-Kona. [Pet. Ex. 3]

21. Approximately 0.226 acres of land adjacent to the Petition Area and within TMK (3) 7-4-021: 020 is currently within the Urban District. [Pet. Ex. 22]

22. The elevation of the Petition Area ranges between 300 to 580 feet above mean sea level. [Pet. Ex.. 3, p. 4-4]

23. The Petition Area slopes downhill, from east to west. Slopes within the makai portion of the Petition Area range from 5% to 15%. Slopes within the mauka portion of the Petition Area are steeper, with some areas at a slope of greater than 15%. [Pet. Ex.. 3, p. 4-4]

24. Annual rainfall in the region ranges from 20 to 40 inches per year, with heavier rain in the summer months. [Pet. Ex.. 3, p. 4-4]

25. The Subject Property is designated as FEMA Flood Zone X (undetermined) by the Federal Insurance Administration's Flood Insurance Study. The Petition Area is not susceptible to flooding. Base flood elevations have not been determined for the Petition Area. There are no perennial streams or natural drainage ways within the Petition Area; however, because of the high permeability of the natural ground, surface waters drain quickly. [Pet. Ex. 3, p. 1-9]

26. The Petition Area has satisfactory topography for the proposed use, and is free from the danger of tsunami and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for the Project. [Pet. Ex. 3, p. 4-7 - 4-12]

27. The terrain is characterized by lava flows and extremely rocky soil. The soils underlying the Petition Area are classified by the USDA National Resources Conservation Service as a'a (rLV) and pahoehoe (rLW) lava flows, Kaimu extremely stony peak (rKED) and Punaluu extremely rocky peat (rPYD). [Pet. Ex. 3, p. 4-8]

28. None of the land within the Petition Area is considered Prime or Unique agricultural land under the State of Hawaii Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii ("ALISH") system. Most of soils within the Petition Area have not been classified under the ALISH system because the soils are not considered important agricultural lands. However, two (2) small areas within the Subject Property are designated as "Other" under the ALISH system. [Pet. Ex. 3, p. 4-9]

29. The soil productivity under the University of Hawaii Land Study Bureau Detailed Land Classification A to E rating system is poor. Under the system, A is the most productive soil and E is the least productive soil. The soils on the Petition Area are classified as E. [Pet. Ex. 3, p. 4-9]

30. QLT owns the properties on the south side of Palani Road and on the makai side of the Ane Keohokalole Highway. The Department of Hawaiian Homelands ("**DHHL**") owns the properties to the north.

31. The lands adjacent to the Petition Area on the south and makai side are within the State Land Use Urban District. [Pet. Ex. 3, p. 1-6]

32. The lands adjacent to the Petition Area that are within the State Land Use Agricultural District are owned by DHHL.

33. The Petition Area is identified by the County General Plan Land Use Allocation Guide Map ("**LUPAG Map**") as Urban Expansion, with a small portion in the southern/mauka corner of the Subject Property, located along Palani Road, designated as Low Density Urban. [Pet. Ex. 3, p. 1-7]

34. The Petition Area is within the Kona Urban Area as designated by the Kona Community Development Plan ("**Kona CDP**"). [Pet. Ex. 3, p. 2-3]

35. The Petition Area is designated as a Neighborhood Village Transit Oriented Development ("**TOD**") under the Kona CDP. [Pet. Ex. 3, p. 2-4; Pet. Ex. 36]

36. The Petition Area is currently zoned by the County of Hawaii as Agricultural A-5a. [Pet. Ex. 3, p. 1-8]

37. Approximately .7 acres of the Petition Area located within TMK Nos. (3) 7-4-021: 025, 026 and 027, are owned by the County of Hawaii pursuant to a Quitclaim Deed. [Pet. Ex. 12]

38. Petitioner is authorized by the County to reclassify the County-owned property pursuant to an executed Fee Owner's Letter of Authorization. [Pet. Ex. 13]

39. Approximately 271.137 acres of the Petition Area are owned in fee by FHT Kamakana, LLC. [Pet. Ex. 7]

40. Petitioner is authorized by FHT Kamakana, LLC to reclassify the Petition Area pursuant to an executed Fee Owner's Letter of Authorization. [Pet. Ex. 11]

III. PROPOSAL FOR RECLASSIFICATION

41. Petitioner seeks to have the Petition Area reclassified from the Agricultural District to the Urban District in order to develop Kamakana Villages at Keahuolu, a master-planned, mixed-use affordable housing project proposed to consist of approximately 2,330 residential units (single-family and multiple-family), of which over 50% or approximately 1,169 will be affordable units, i.e., offered for sale or rent to buyers who earn no more than 140% of the median income in the County of Hawaii, and up to 197,000 square feet of commercial space (the "**Project**"). [Pet. Ex. 1, 3, 20, 27]

42. Because more than half of the proposed 2,330 residential units will be affordable units, i.e., offered for sale or rent to buyers who earn no more than 140% of the median income in the County of Hawaii, the Project qualifies under HRS Chapter 201H as an affordable housing project and is entitled to be exempt from State and County land use regulations, and to proceed under the land use entitlements fast tracking procedures provided under HRS § 201H-38. [Pet. Ex. 20]

43. A County Council HRS 201H Resolution authorizing exemptions from various land use and zoning standards is needed in order to accommodate the development of the Project. [Pet. Ex. 20]

44. Petitioner proposes to develop up to 661 single-family homes, and 1,669 multiple-family homes, of which approximately 31 and 1,138, respectively, will be affordable units. [Pet. Ex. 27]

45. A broad range of residences (from affordable multi-family rentals to townhouses, apartments, duplexes and detached homes) is planned for the Project. In general, housing types and density will be distributed dependent upon the slope of the land. Higher density homes with larger building footprints will be located within the flatter portions of the Petition Area closest to the Ane Keohokalole Highway, and lower density homes with smaller building footprints are better suited for the steeper slopes in the more mauka portions of the Petition Area. [Pet. Ex. 1, Fig. 1a, 1b]

46. Under 2010 affordable pricing and market, projected target sales prices for market homes range from \$300,000 to \$400,000 for multiple family homes and \$400,000 to \$700,000 for single family homes.

47. Projected target sales prices for affordable homes are based on the County's 2010 affordable housing guidelines for the affordable single and multiple family homes, which range from \$200,000 to \$400,000.

48. It is estimated that as many as 400 of the affordable units will be offered as rental units. [Pet. Ex. 3, App. E, p.2]

49. Full urban development of the Petition Area is anticipated to occur in six Phases over 17 - 18 years. Petitioner prepared a map showing two increments; Increment 1 (Phase 1, Phase 2 and Phase 3a) consisting of approximately 136.430 acres and proposed to be developed from late 2010/early 2011 through the fall of 2020, and Increment 2 (Phase 3b, Phase 4, Phase 5 and Phase 6), consisting of approximately 135.407 acres, and proposed to be developed from late 2020 through 2028. [Pet. Ex. 27]

50. Petitioner intends to construct up to 1,196 residential units by the fall of 2020, to be contained in Phases 1, 2 and 3b, and up to 1,134 residential units from 2020 to 2028, to be contained in Phases 3b, 4, 5 and 6. [Pet. Ex. 27]

51. Overall residential gross density per Phase will range from 6.5 dwelling units per acre to 13 dwelling units per acre, with an average gross density of approximately 8.6 dwelling units per acre. [Pet. Ex. 1, Fig. 1a, 1b]

52. Three (3) areas within the Project are proposed for mixed-use/commercial/office development, for a total of approximately 197,000 sq. ft. of commercial space. [Pet. Ex. 27]

53. The commercial space is proposed to be distributed within three mixed-use areas, two of which will be located along Ane Keohokalole Highway, and one along Palani Road. [Pet. Ex. 1, Fig. 1a, 1b]

54. Approximately 41,833 sq. ft. of commercial space is planned for Phase 1; 24,500 sq ft of commercial space for Phase 2; 32,667 sq ft of commercial space for Phase 3a; and 98,000 sq ft of commercial space for Phase 6, for a total of 197,000 sq ft. of commercial space. [Pet. Ex. 27]

55. In addition to the residential and mixed-use development, Petitioner plans to develop 3 large park areas and numerous small parks and open space areas, 2 archaeological preserve areas and 2 sites for school or other civic facilities. [Pet. Ex. 1]

56. Three large park/play field sites are planned for the Project. Two of the three main parks/play fields (Central and North) will be provided in Phase 2, and the South Park will be provided during Phase 5. [Pet. Ex. 27]

57. Two school sites are planned within the Project. Approximately 13 acres will be developed as a DOE Elementary school to include the Central play field. [Pet. Ex. 1; Pet. Ex. 27]

58. Two archaeological preserve areas will be located within the Project. One approximately 2.63 acre preserve area will be developed during Phase 3b and the other, of approximately 6.33 acres, will be developed during Phase 5. [Pet. Ex. 1; Pet. Ex. 27]

59. Two transit stations are planned to be located adjacent to the Petition Area, along Ane Keohokalole Highway. [Pet. Ex. 1, Fig. 1a]

60. Access to the Project will be provided from three intersections on the future Ane Keohokalole Highway and three intersections on Palani Road. [Pet. Ex. 1, Fig. 1a]

IV. PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

61. Forest City's parent company, Forest City Enterprises, Inc., is a publicly traded company and the developer and manager of a diverse portfolio of premier real estate property located throughout the United States. Forest City Enterprises, Inc. has approximately \$11.9 billion in total assets (as of 7/31/09). [Pet. Ex. 34; Pet. Ex. 35]

62. Petitioner provided Forest City Enterprises, Inc.'s 2009 Summary Annual Report and Supplemental Package, listing assets as \$11.9 billion and liabilities as \$10.8 billion and shareholders equity of \$1.1 billion as of January 31, 2010. [Pet. Ex. 34; Pet. Ex. 35]

63. Forest City has obtained a \$25 million loan from HHFDC for the initial Phases of development of Kamakana Villages and has invested Forest City equity. Additional funds are expected to come from Forest City equity, lender financing and the proceeds from the sales at the Project.

64. Other potential sources of funds are application for and placement of operational subsidies within Kamakana Villages, Low-Income Housing Tax Credits and rental subsidies.

65. Subdivided residential and mixed-use lots may be sold in bulk to one or more homebuilders.

66. The estimated cost for the Project, including infrastructure and vertical construction, is \$734,471,953. [Pet. Ex. 3, p. 2-22]

67. Infrastructure is estimated to cost \$154,378,803, which includes internal roadways, but not other traffic mitigation improvements. [Pet. Ex. 3, p. 2-22 - 2-25]

68. Residential construction is estimated to cost \$525,700,000, and commercial construction is estimated to cost \$54,175,000. [Pet. Ex. 3, p. 2-22 - 2-25]

V. NEED FOR THE PROPOSED DEVELOPMENT

69. The resident population of West Hawaii is forecast to increase by about 60% over the next two decades, reaching some 118,000 persons. In Greater Kailua-Kona, which stretches from Keahole to Keauhou, the resident population is projected to grow from a current level of just over 23,000 to circa 40,000 persons by 2030. [Pet. Ex. 3, App. H. p. 6]

70. These additional residents will primarily result from the natural growth of existing Big Island families, with secondary contributors being intra-state migration from other islands, and in-migration of mainland and foreign persons. [Pet. Ex. 3, App. H. p. 6]

71. This increase is expected to create demand for some 7,560 to 10,162 new housing units in Greater Kailua-Kona between 2010 through 2030. About 44% of this demand will be for resident/workforce housing units meeting affordable pricing guidelines. [Pet. Ex. 3, App. H. p. 6]

72. Even with the 2,330 residential units proposed for the Project, the projected shortfall for housing by 2030 is approximately 5,858 residential units. [Pet. Ex. 3, App. H. p. 33]

73. The Petition Area has a superior location for the proposed development in regards to its physical characteristics. The site has extensive frontage on Palani Road and the soon-to-be-constructed initial stretch of Ane Keohokalole Highway, which will enable ease of access; regional infrastructure systems are available in the vicinity; and, the makai and mauka panoramas are highly desirable as is the climate. [Pet. Ex. 3, App. H. p. 8]

74. The Petition Area is also favorable from a market perspective. Nearby existing development is complimentary; it is proximate to supporting services, employment and businesses in central Kailua-Kona; and, is in an area the market considers as having urban use potentials. [Pet. Ex. 3, App. H. p. 8]

75. The Project, as a master planned community, will be among the first major self-contained projects in Greater Kailua-Kona oriented towards resident working families. In place of the piece-meal subdivision and limited amenity smaller developments which have traditionally provided most of the affordable and low-market priced housing stock in the area, [Pet. Ex. 3, App. H. p. 8]

76. The Petition Area and proposed project will have the attributes necessary to be highly competitive in all its product sectors, and will capture a reasonable market share during its offering period. [Pet. Ex. 3, App. H. p. 8]

77. Taking into account competing projects, all 2,330 units within the Project could be absorbed by 2028. The affordable-priced component would be absorbed faster than market-prices units. [Pet. Ex. 3, App. H. p. 9]

78. Project residents will generate a demand for more than 110,000 sq. ft. of neighborhood commercial floor space comprised of retail, restaurant, service/support, business/office and medical uses based on regional and statewide spatial demand trends. [Pet. Ex. 3, App. H, p. 9]

79. The 197,000 sq. ft. of commercial space component of the subject master plan can achieve full lease-up and operation within the project time-frame extending to 2028. [Pet. Ex. 3, App. H, p. 10]

VI. IMPACTS OF THE PROJECT

A. ECONOMIC IMPACTS

80. Development of the Project will generate more than \$734.4 million in capital investment into the Big Island economy. [Pet. Ex. 3, App. H, p. 10]

81. The construction and on-going operations/maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide

an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period. [Pet. Ex. 3, App. H, p. 10]

82. After completion the community will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year. [Pet. Ex. 3, App. H, p. 10]

83. During its almost two decades of build-out, the project will have a base economic impact on the Big Island of some \$2.5 billion with a stabilized annual benefit of \$250 million; double that Statewide. [Pet. Ex. 3, App. H, p. 11]

84. The County of Hawaii, could receive some \$62 million in real property tax receipts during the construction period for the Project, and annual collections of \$6.8 million on a stabilized basis thereafter. [Pet. Ex. 3, App. H, p. 12]

85. The equitable "per capita contribution" cost to provide County services to the Project's de facto population will be circa \$9 million per year; not one-third more than the taxes generated. The "actual" costs of additional services required could be less than these "per capita contribution" estimates. [Pet. Ex. 3, App. H, p. 12]

86. The State will receive an estimated \$256 million in primary receipts from State Income and Gross Excise Taxes during the Project build-out, and a stabilized amount of \$26.2 million annually. [Pet. Ex. 3, App. H, p. 12]

87. The per capita costs to provide State services to the Project residents is projected at \$28.3 million per year, less than 10% more than what is generated within the Project. [Pet. Ex. 3, App. H, p. 12]

88. In 2009 dollars, the rounded aggregate annual tax revenues flowing from the development of the Project during the construction and at full build-out range from \$220,401 to \$6.8 million per year for the County of Hawaii, stabilizing over time at \$6.8 million annually and totaling \$62.1 million over the development period. [Pet. Ex. 3, App. H, p. 62]

89. In 2009 dollars, the rounded aggregate annual tax revenues flowing from the development of the Project during the construction and at full build-out range from \$1.8 million to \$29.1 million annually for the State of Hawaii, stabilizing at \$26.2 million per year, and cumulatively at \$279.8 million over the development period. [Pet. Ex. 3, App. H, p. 63]

90. In 2009 dollars, the rounded aggregate annual tax revenues flowing from the development of the Project during the construction and at full build-out range from \$2.1 million to \$35.9 million annually in total to the combined County and State public purse, stabilizing at about \$33 million per year, and cumulatively at \$341.9 million over the development period. [Pet. Ex. 3, App. H, p. 63]

91. The overall yearly net benefit to State and County agencies varies from a \$2.5 million loss to a \$3.6 million gain, with a cumulative profit to the agencies of \$3.4 million. [Pet. Ex. 3, App. H, p. 63]

B. SOCIAL IMPACTS

92. The Project will create improved connectivity within the community and will encourage the use of transportation methods other than automobiles by being located along the Ane Keohokalole Highway transit corridor and adjacent to planned transit stops along Ane Keohokalole Highway.

93. Petitioner will provide a site for a DOE school and will enter into an agreement with the DOE that will provide for this land contribution as well as a construction fee.

94. The Project will have nominal impacts on the socio-economic aspects of the Palani Road/Kealakehe subdivisions and within Greater Kailua-Kona that relate to real property issues. Property values in the study area are largely driven by external, cyclical economic factors and cumulative mass, not any single new project. [Pet. Ex. 3, App. H, p. 12]

95. The Project will not have a negative socioeconomic impact on the region. There will be minimal direct in-migration as a direct result of the operating components of the community, and what is created (if any) will be readily met on-site by the proposed workforce/affordable housing product. [Pet. Ex. 3, App. H, p. 12]

C. IMPACTS UPON RESOURCES OF THE AREA**1. AGRICULTURAL RESOURCES**

96. The Petition Area has poor soil conditions for agricultural production because the soils are rocky, rainfall is not high and water is not currently available. [Pet. Ex. 3, p.4-5]

97. The Petition Area is characterized by lava flows and extremely rocky soil. [Pet. Ex. 3, p.4-5]

98. None of the land within the Petition Area is considered Prime or Unique under the ALISH system. [Pet. Ex. 3, p.4-6]

99. The University of Hawaii Land Study Bureau Detailed Land Classification system rates the soils within the Petition Area as E. [Pet. Ex. 3, p.4-6]

100. The development of Kamakana Villages is not expected to have an adverse impact on agriculture because the Petition Area is not under agricultural production and has not been during any time in recent history due to its poor soils. [Pet. Ex. 3, p.4-5]

2. FLORA AND FAUNA

101. The Botanical Survey determined that no threatened or endangered plant species were located within the Petition Area. [Pet. Ex. 31; Pet. Ex. 2, App. B]

102. Four (4) kinds of vegetation are located within the Petition Area: (i) managed land along Palani Road, dominated by alien species; (ii) Prosopis Woodland, dominated by kiawe and koa haole; (iii) Leucaene Scrub dominated by koa haole in combination with alahe'e and fountain grass; and (iv) Schinus/Psydrax scrub, dominated by Christmas berry and alehe'e. Ko'oko'olau, a "species of concern" was observed within the Project area. [Pet. Ex. 31; Pet. Ex. 2, App. B]

103. Of the 83 plant species found within the Petition Area, only 17 are native. [Pet. Ex. 31; Pet. Ex. 2, App. B]

104. The Botanical Survey concluded that the development of Kamakana Villages should not negatively impact flora resources within the Petition Area. [Pet. Ex. 31; Pet. Ex. 2, App. B]

105. No endangered or threatened avifaunal or feral mammal species are located within the Petition Area, as determined by the Avifaunal and Feral Mammal Survey and the Biological Survey of Lava Tube Caves conducted during the preparation of the Final EIS. [Pet. Ex. 2, App. C, H]

106. No native water birds, nesting seabirds or migratory shorebirds were observed at the Petition Area, nor was there any evidence of the Hawaiian Hawk or the Hawaiian Short-eared Owl. The only mammals seen were the Small Indian Mongoose and two adult pigs. No Hawaiian Hoary Bats were detected by the ultrasound device employed during a night search in May 2008. [Pet. Ex. 2, App. C]

107. No endangered or threatened invertebrate species are located within the Petition Area. The Biological Survey of Lava Tube Caves concluded that there were no cave resources that would be threatened by development within the Petition Area. A total of 14 species of invertebrates were found, only two (2) of which (the Rhagidiid mite and the Native cave moth) are likely to be endemic to Hawaii. [Pet. Ex. 2, App. H]

3. HISTORICAL RESOURCES

108. Development of the Project should not result in adverse impacts to historic resources in the area. Archaeological sites conforming to the significance criteria established under State and Federal regulations will be preserved in coordination and consultation with the State Historic Preservation Division ("**SHPD**").

109. An archaeological inventory survey that covered approximately 1,100 acres, and which included the Petition Area, was approved by the SHPD in 1993 and an archaeological mitigation plan was also approved in 1993. Additional archaeological field work was done in 2007 as part of the preparation of the Final EIS. [Pet. Ex. 2, App. D]

110. In consultation with SHPD, Haun & Associates prepared an Archaeological Mitigation Plan Update in October 2009. It was a preliminary step designed to determine appropriate archaeological mitigation tasks to be detailed in subsequently prepared plans for data recovery, burial treatment, site preservation, and monitoring. [Pet. Ex. 3, App. B]

111. Most recently Petitioner commissioned a 100% surface examination of the Petition Area with surveyors spaced at a maximum of 10.0 meters ("**Addendum AIS**"). [Pet. Ex. 32, p. 4]

112. The AIS Addendum documented 136 sites as significant for research potential. No further work or preservation is recommended for 22 sites; 28 sites are recommended for preservation; 86 sites are recommended for data recovery. [Pet. Ex. 32, p.353 - 357]

113. Agricultural features are the most common within the Petition Area. [Pet. Ex. 32, p. 331]

114. 18 of the 136 sites were also assessed as significant for cultural value to the Hawaii people based on the presence of burials or ritual architecture. [Pet. Ex. 32, p. i]

115. Most of the sites are clustered in the northeast, southeast and southern portions of the Petition Area. [Pet. Ex. 32, p. 350]

116. Cluster 1 roughly corresponds with the South Archeological Preserve; Cluster 3 roughly corresponds with the North Archeological Preserve, and Cluster 2 is within Phase 6, mauka of D Street. [Pet. Ex. 1, Fig. 1.c; Pet. Ex. 32, p. 351]

117. The South Archeological Preserve consists of approximately seven (7) acres, located on a pu'u in the southern/makai corner of the Petition Area, near the intersection of Palani Road and Henry Street. [Pet. Ex. 32, p. 358]

118. Numerous agricultural features are within the boundaries of the South Archeological Preserve. [Pet. Ex. 33]

119. The North Archeological Preserve, located in the northern/mauka portion of the Petition Area, consists of approximately 2.63 acres. [Pet. Ex. 32, p. 358]

120. The AIS Addendum has been approved by SHPD. [Pet. Ex. 33]

121. Petitioner will prepare a burial treatment/preservation plan, as well as a data recovery plan. [Pet. Ex. 33]

122. A 1,218 square foot burial buffer easement, designated as Easement A-5, is located along the makai edge of the Petition Area. [Pet. Ex. 4]

123. The burial (SIHP # 26831) is not located within the Petition Area, but lies within the proposed Ane Keohokalole Highway construction corridor, and surrounded by a 30 foot buffer zone, of which Easement A-5 is a portion. [Pet. Ex. 4]

124. According to a Final Burial Treatment Plan (November 2009) prepared by Cultural Surveys Hawaii, Inc, a 50 foot wide construction buffer will surround the burial site. Prior to the commencement of construction, the 50 foot buffer will be marked with a 4-foot tall, high visibility plastic mesh fencing, staked at a minimum of every 20 feet. These construction buffers will be recorded on all construction plans.

4. RECREATIONAL RESOURCES

125. Development will provide more than 25 acres for park space and more than 18 acres in open space. [Pet. Ex. 1]

126. Kamakana Villages has been designed to encourage the use of on-site pedestrian and bike pathways, which encourage connectivity between the residential and recreational uses within the community.

127. The mixed-use centers will provide recreational opportunities for residents of Kamakana Villages and others in the Kona area.

5. CULTURAL RESOURCES

128. Pursuant to the requirements of the Hawaii Supreme Court ruling in *Ka Pa'akai O Ka 'Aina v. Land Use Com'n*, 94 Hawai'i 31, 7 P.3d 1068 (2000) the Commission is required to protect the reasonable exercise of Native Hawaiian customary and traditional practices *to the extent feasible* when granting a petition for a State Land Use Commission district boundary amendment application. The Commission must make specific findings and conclusions relating to native Hawaiian gathering and fishing rights in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site as follows: (i) 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; (ii) the extent to which those resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the proposed action; and (iii) the feasible action, if any, to be taken by the Commission to reasonably protect native Hawaiian rights if they are found to exist.

129. PHRI prepared a Cultural Impact Assessment for the Petition Area in 2007 ("CIA"). [Pet. Ex. 2, App. D]

130. The CIA concluded that the development of Kamakana Villages would have no significant impact on Hawaiian cultural resources, beliefs and practices. [Pet. Ex. 2, App. D]

131. The CIA recommended that care be taken to preserve the habitat of endemic plants, such as *pilo* (*Capparis sandwichiana*), *alahe'e* (*Canthium odoratum*), *kauila* (*Alphitonia ponderosa*) and *uhiuhi* (*Mezoneuron kauaiense*). However, not all of those plant species were identified in the Botanical Survey conducted for the Final EIS as being within the Petition Area. Of the four (4) plant species mentioned in the CIA, only *pilo* and *alahe'e* were identified in the Botanical Survey. [Pet. Ex. 2, App. D]

132. Petitioner will take steps to preserve the habitat of endemic plants, in addition to preserving access for gathering activities. [Pet. Ex. 3, p. 6-6]

133. Over nine (9) acres of land will be preserved for cultural resources, and native plants that have adapted to the specific climate and rainfall around the Petition Area will be favored in the landscaping selections for Kamakana Villages. [Pet. Ex. 1, Fig 3b]

6. GROUNDWATER RESOURCES

134. The development of Kamakana Villages is not expected to have any significant effect on groundwater resources in the area. [Pet. Ex. 3, p. 6-3]

135. During and after development, precipitation will continue to percolate to the underlying groundwater. [Pet. Ex. 3, p. 6-3]

136. Materials will be managed to prevent the discharge of pollutants to the ground as required by the National Pollutant Discharge Elimination System ("NPDES") permit. [Pet. Ex. 3, p. 6-3]

137. Petitioner will implement best management practices such as the use of storm drainage filtration devices to mitigate pollutants from entering the groundwater. [Pet. Ex. 3, p. 6-3]

138. At full build-out, the maximum daily demand for water at the Project will be less than 1.7 million gallons per day ("**MGD**"), and the average daily demand will be less than 1.12 MGD. [Pet. Ex. 3, App. C, p. 7]

139. HHFDC, in collaboration with the Department of Water Supply ("**DWS**"), is pursuing the development of the existing, exploratory Keopu Well No. 3957-05 as a production well. Once developed, Well 3957-05 is planned to provide water to Kamakana Villages and other water users in North Kona. [Pet. Ex. 3, App. C, p. 7]

140. Well No. 3957-05 is located above Mamalahoa Highway, on TMK No. (3) 7-5-013: 022, at an elevation of 1,600 feet. It is anticipated to provide 1.5 MGD of water, of which 1.0 MGD are planned to be used within the Project. [Pet. Ex. 3, App. C, p. 6]

141. Development of Well No. 3957-05 will require the following improvements: (1) installation of a 1,050 gallons per minute ("**GPM**") pump and motor; (2) control building and other site improvements as required by DWS; (3) a 12-inch transmission main to a new upgradient storage tank; (4) an upgradient storage tank with a 1,703-foot spillway and tentatively sized at 0.5 MG; and (5) a 16-inch main from the tank down to Mamalahoa Highway and north along Mamalahoa Highway to DWS' existing 16-inch main at its point of connection to the 1,703-foot tank located on land owned by the Queen Liliuokalani Trust. [Pet. Ex. 3, App. C, p. 8]

142. Land located near the DWS Moeauoa Tank Site at TMK (3) 7-5-001: 055 has been identified as another source of water for Kamakana Villages. This new well site could provide as much as 1.5 MGD of water, of which 1.0 MGD could be available for the Project. [Pet. Ex. 3, App. C, p. 8]

143. Development of the new well located near the DWS Moeauoa Tank Site will require the following improvements: (1) drilling, casing, and pump testing; (2) installing a pump and motor; (3) control building and other site improvements as required by DWS; (4) a 12-inch transmission main to a new upgradient storage tank; (5) the upgradient storage tank with a 1,703-foot spillway and tentatively sized at 0.5 MG; and (6) a 16-inch main from the tank down to Mamalahoa Highway. [Pet. Ex. 3, App. C, p. 8]

144. In addition to the two wells, two new 1.0 MG reservoirs will be required. The first 1.0 MG reservoir will be installed at the existing Kealakehe High School reservoir site. The second reservoir is planned to be located on property owned by the Department of Hawaiian Homelands (TMK No. (3) 7-4-021: 021), at an elevation of 595 feet. [Pet. Ex. 3, App. C, p. 9]

145. The on-site water system would consist of main water lines that would be connected to the existing water system at Keanalehu Drive and Manawale'a Street and transmission lines in Ane Keohokalole Highway. [Pet. Ex. 3, App. C, p. 10]

146. In order to reach the design potential of the Leadership in Energy and Environmental Design ("LEED") proposed Neighborhood Design ("ND") gold standard,

Petitioner has included goals of reducing water consumption for outdoor landscape irrigation by 50% from a calculated mid-summer baseline case.

7. SCENIC RESOURCES

147. Petitioner is committed to protecting the natural beauty of the region and ensuring that the character of the Project is consistent with that of the surrounding communities and the principles set forth in the Kona CDP. [Pet. Ex. 1]

148. Development of Kamakana Villages will change the existing views from Palani Road and neighboring developments from the current undeveloped, overgrown land to a built environment. [Pet. Ex. 3, p. 6-7]

149. As a project designed in close conformance with the Kona CDP, Kamakana Villages should blend nicely with existing and planned developments. [Pet. Ex. 3, p. 6-7]

8. NOISE

150. Noise impacts would occur during construction. These impacts are not considered significant since they would be temporary and construction work would be conducted in compliance with the State DOT noise regulations in Title 11, Chapter 46, HAR. [Pet. Ex. 3, p. 6-4]

151. No significant noise impacts are expected during the operational phase of the Project. Ambient noise may increase slightly due to additional vehicular traffic. [Pet. Ex. 3, p. 6-4]

9. AIR QUALITY

152. The air quality impacts during construction would be related to fugitive dust emissions and exhaust emissions. [Pet. Ex. 3, p. 6-3]

153. All construction activities will be conducted in accordance with the fugitive dust measures required under State law. [Pet. Ex. 3, p. 6-3]

154. Long-term impacts to air quality could arise from an increase in auto emissions as a result of there being more cars traveling to and from Kamakana Villages. However, as a compact mixed-use TOD, Kamakana Villages should have a lower number of per capita vehicle trips and electricity use than standard, large lot, residential-only projects, which should reduce the per-capita additional emission.

155. Mitigation measures during construction will include a dust control plan. [Pet. Ex. 3, p. 6-4]

VII. ADEQUACY OF PUBLIC SERVICES AND FACILITIES

1. SCHOOLS

156. Kamakana Villages is within the Kealakehe school catchment area and is served by three (3) DOE schools: (i) Kealakehe Elementary School, which serves nearly 990 students from kindergarten through grade five; (ii) Kealakehe Intermediate School, which serves approximately 900 students in grades six through eight; and (iii) Kealakehe High School, which serves approximately 1,638 students from Hualalai to Waikoloa Village. [Pet. Ex. 3, p. 5-3]

157. Area private schools include Hualalai Academy, the Kona campus of the Hawaii Montessori School, Makua Lani Christian School and the Kona Christian Academy. [Pet. Ex. 3, p. 5-3]

158. Using December 2009 DOE student generation rates, at full build out Kamakana Villages is anticipated to contribute approximately 594 students.

2. PARKS

159. Major recreation facilities and parks in North Kona include: (i) Kailua Park Complex (also known as Old Airport Park), which has a gym, swimming pool, and fields for active recreation as well as an extensive beach area; (ii) the Hale Halawai recreation center, which offers sports and crafts programs; and (iii) Honokohau Boat Harbor, which provides ocean access and services to boaters. [Pet. Ex. 3, p. 5-4]

160. Parks and open space will be provided within the Project. [Pet. Ex. 1, Fig. 3a]

161. Over 50 acres within the Petition Area are planned to be used as open space, parks and archaeological preserves. [Pet. Ex. 27]

162. A total of approximately 25 acres are planned to be distributed within three (3) large park areas (Central Park, North Park and South Park), and numerous smaller parks. Approximately 18 acres will be open space. Integrated into the open space system is a total of approximately 9 acres for archaeological preserves. [Pet. Ex. 27]

3. HIGHWAY AND ROADWAY FACILITIES

163. The County transportation services near the Petition Area include the intra-Kona and Kona to Hilo bus routes. [Pet. Ex. 3, p. 4-28]

164. The intra-Kona route provides regular bus service throughout the Kona region with the route extending from the Fujihara Store in Captain Cook toward Kealakekua and Kona Hospital, to the north along Alii Drive and to Keahole and Kona International Airport. [Pet. Ex. 3, p. 4-28]

165. The Kona to Hilo bus route provides service through Kona and into the Hilo area. The route extends from Fujihara Store in Captain Cook to Alii Drive towards Waimea. Service then extends east to Laupaheohoe and south towards Hilo. [Pet. Ex. 3, p. 4-28]

166. The Traffic Management Consultant prepared a study entitled "Traffic Impact Analysis Report for the Proposed Kamakana Villages at Keahuolu" dated August 9, 2010 ("**TIAR**"). [Pet. Ex. 28]

167. The TIAR supersedes the traffic analysis report submitted as Appendix D of the ER.

168. The TIAR analyzed potential Project-related traffic impacts on the roadway system in the vicinity of the Project. [Pet. Ex. 28]

169. The Project has 6 access points. Three access points will be located along Ane Keohokalole Highway, and 3 will be along Palani Road. [Pet. Ex. 28, p. 4]

170. The three principal roadways located near the Petition Area are Queen Kaahumanu Highway, Kealakehe Parkway and Palani Road. In addition, the Ane Keohokalole Highway will run along the makai edge of the Petition Area. [Pet. Ex. 28, p. 9]

171. Queen Kaahumanu Highway is a two-way, two- to four-lane, high quality arterial highway between Kailua-Kona and Kawaihae, and is the primary arterial highway along the South Kohala and North Kona coasts. Queen Kaahumanu Highway is a four-lane divided highway between Henry Street and Kealakehe Parkway. The State Department of Transportation ("**DOT**") recently awarded the bid to construct the second phase of the Queen Kaahumanu Highway widening from two lanes to four lanes between Kealakehe Parkway and the Kona International Airport Access Road. [Pet. Ex. 28, p. 9]

172. Kealakehe Parkway is a two- to three-lane, two-way arterial highway between Honokohau Harbor and Keanalehu Drive. Kealakehe Parkway is signalized at its four-legged intersection with Queen Kaahumanu Highway. [Pet. Ex. 28, p. 9]

173. Palani Road is a two-way, two- to four-lane roadway, between Kuakini Highway and Mamalahoa Highway. Palani Road is signalized at Henry Street, Queen Kaahumanu Highway and, recently, at the intersection of Kealakaa Street and Palihilo Street. [Pet. Ex. 28, p. 10]

174. Ane Keohokalole Highway is a planned two-lane, two-way roadway which extends from the West Hawaii Civic Center on Kealakehe Parkway to Puohuluhuli Street. The

County will extend Ane Keohokalole Highway from Puohulihuli Street to Palani Road. [Pet. Ex. 28, p. 10]

175. Based on the TIAR traffic counts the intersection of Queen Kaahumanu Highway and Kealakehe Parkway, Makala Boulevard, Palani Road and Henry Street all operate at Level of Service ("LOS") C during the existing AM peak hour of traffic. The Palani Road intersections with Kamakaeha Avenue, Henry Street and Kealakaa Street operate at LOS B, C and F respectively. [Pet. Ex. 28, p. 11]

176. The PM peak hour traffic at those intersections range from C to F. Queen Kaahumanu Highway and Kealakehe Parkway is at LOS E, the intersections at Makala Boulevard and Henry Street are at LOS D, and the intersection at Palani Road is at LOS C. The Palani Road intersections with Kamakaeha Avenue, Henry Street and Kealakaa Street operate at LOS C, C and F respectively. [Pet. Ex. 28, p. 14]

177. The DOT recently completed the first phase of the Queen Kaahumanu Highway, and the second phase (from Kealakehe Parkway to the Kona International Airport Access Road) is expected to be complete by 2014. [Pet. Ex. 28, p. 15]

178. The first phase of the Kealakehe Parkway, eventually planned to run through the Kealakehe area between Queen Kaahumanu Highway and Palani Road/Mamalahoa Highway, has been completed. However, the future extension of Kealakehe Parkway to Palani/Mamalahoa was not included in the TIAR analysis. [Pet. Ex. 28, p. 17]

179. The County is in the process of having Phase 1 of the Ane Keohokalole Highway (to run from Puohulihuli Street to Palani Road) constructed, to be followed by Phase 2, which will run from South Street to Hina Lani Street. [Pet. Ex. 28, p. 15]

180. Petitioner will construct certain traffic improvements as in conjunction with the development of the Project.

181. Petitioner intends to start the construction of portions of the Project's internal roadways during 2011. [Pet. Ex. 27]

182. Petitioner's proposed traffic mitigation measures and the timing for the construction of those measures are identified on the Incremental Development Plan. However, the exact improvements are subject to Petitioner's agreement with the DOT. [Pet. Ex. 27]

183. As an affordable housing project, under Hawaii County Code Sec. 25-2-46, Petitioner will not be required to perform area mitigation traffic improvements. Area mitigation is defined as: "improvements which increase the capacity of an arterial or other major road, such as additional lanes, in the general region containing the project, or construction of a new arterial or collector road in the general area containing the project, or improvements to public transportation such as buses or park and ride facilities, sufficient to offset the traffic demand generated by the project." [Pet. Ex. 28, p. 2]

4. SOLID WASTE DISPOSAL

184. Solid waste from the Project will be disposed of at the County's West Hawai'i Landfill in Puuanahulu. The 2002 Updated Integrated Solid Waste Management Plan for the Petitioner's First Proposed Findings of Fact, Conclusions of Law, Decision and Order LUC Docket A10-788

County estimates that there is 12 million cubic yards of air space at the Puuanahulu Landfill, which is enough to accommodate the waste generated by West Hawaii for approximately the next 40 years. [Pet. Ex. 3, p. 5-16]

185. Petitioner will emphasize waste diversion and recycling as part of a solid waste management plan. Recyclables and wastes would be managed in either a centralized system or by private individuals, and hauled directly to recycling centers, transfer stations, and the landfill. Educational materials and information on recycling programs will also be provided to encourage residents to minimize and divert solid wastes. [Pet. Ex. 3, p. 5-16]

5. WASTEWATER DISPOSAL

186. At full build out, Kamakana Villages will generate an average flow of 673,778 gallons per day ("**GPD**"), with a peak flow of 2,555,477 GPD. [Pet. Ex. 3, App. C, p. 11]

187. The County has reserved 431,360 gallons per day capacity at the Kealakehe Sewage Treatment Plant ("**STP**") for the Project, which is sufficient capacity to serve Phases 1 through 4. Increased capacity at the Kealakehe STP would be required to accommodate full development of the Project. [Pet. Ex. 3, App. C, p. 11]

188. The Department of Environmental Management is currently reviewing options to expand and upgrade the Kealakehe STP. Two (2) improvement projects are planned which include: 1) sludge removal (\$8,600,000 has been appropriated for the sludge removal, of which \$600,000 has been allotted for design work); and 2) aeration upgrade (\$8,250,000 has

been appropriated for the aeration upgrade, of which \$750,000 has been allotted for design work). These improvement projects will allow the Kealakehe STP to continue to operate at the present capacity and allow for future capacity upgrades necessary to service the later Phases of the Project and other users within the Kealakehe service territory. [Pet. Ex. 3, App. C, p. 11]

189. During the initial Phases of the Project the offsite sewer lines will connect to the existing main at the intersection of Puohulihuli Street and Ane Keohokalole Highway. Once capacity in the existing sewer main lines is reached, additional offsite sewer lines will be constructed to the Kealakehe STP. [Pet. Ex. 3, App. C, p. 14]

190. The onsite sewer system will consist of sewer lines within the roadway network, which will connect to the offsite sewer lines. An onsite lift station and force main is planned for Phase 4. [Pet. Ex. 27]

6. DRAINAGE

191. No drainage facilities or defined natural drainage ways exist within the Petition Area. The development of the Project will increase the amount of impermeable surfaces within the Petition Area. [Pet. Ex. 3, App. C, p. 2]

192. In order to prevent an increase in the runoff flow rates and volume, storm water runoff will be collected through swales, ditches, gutters, inlets and/or catch basins, and transported through pipes to dry wells, seepage wells or infiltration areas for disposal. Where practical, infiltration areas, seepage wells and dry wells will be located in open spaces and parking lots. [Pet. Ex. 3, App. C, p. 7]

193. Prior to the occupancy of any residential or commercial unit within Kamakana Villages, and consistent with applicable laws, Petitioner will implement and maintain storm and surface-water runoff best management practices, subject to any applicable review and approval by the State Department of Health ("DOH"), designed to prevent violations of State water quality standards as a result of storm-water discharges. [Pet. Ex. 3, App. C, p. 6]

194. To the extent practicable and consistent with applicable laws, Petitioner will design and construct (or require to be constructed) storm and surface water runoff systems to treat the first-flush runoff volume to remove floatants and suspended solids to prevent such pollutants from reaching the water table and the ocean.

195. Signs with the following warning language will be posted near all injection wells: HELP PROTECT HAWAII'S ENVIRONMENT. DUMP NO WASTES. (DUMPING IS ILLEGAL AND MAY BE REPORTED TO 974-4000, ext 64258).

7. POLICE AND FIRE PROTECTION

196. The County Police Department's Kona station is located at Kealakehe, about 1.5 miles from the Petition Area. [Pet. Ex. 3, p. 5-1]

197. Primary fire protection is provided by the County's North Kona fire station located in Kailua-Kona approximately 0.75 miles from the Petition Area. [Pet. Ex. 3, p. 5-1]

8. CIVIL DEFENSE

198. The development of the Project will include the installation of one (1) or more outdoor warning siren (minimum size 121 DBC solar powered with omni-directional sound properties) at a central location within the Petition Area. [Pet. Ex. 3, p. 5-2]

199. No impacts with regard to civil defense are anticipated. [Pet. Ex. 3, p. 5-2]

9. EMERGENCY/MEDICAL SERVICES

200. The primary medical facility for the Kona region is Kona Community Hospital in Kealahou, South Kona, about ten (10) miles from the Petition Area. The Kona Community Hospital has 94 beds, 24-hour emergency services, an intensive care unit, maternity, oncology, and other units. [Pet. Ex. 3, p. 5-2]

201. The second closest hospital is the North Hawaii Community Hospital located in Waimea, approximately 39 miles from the Petition Area. The North Hawaii Community Hospital is a privately owned non-profit facility with 40 beds, a 24-hour emergency room, and acute care services. [Pet. Ex. 3, p. 5-2]

10. ELECTRICITY AND TELEPHONE SERVICES

202. The proposed electric and communications systems would be developed in accordance with the specifications and standards of Hawaii Electric Light Company ("HELCO"), Hawaiian Telcom Inc. ("HTCo") and Oceanic Time Warner Cable ("Oceanic"). [Pet. Ex. 3, App. C, p. 15]

203. As State Public Utility Commission regulated utilities, HELCO and HTCO are responsible for the development of off-site facilities that meet Island-wide needs, such as power generating plants and power and signal transmission lines, and facilities that serve regional needs of the Kailua-Kona area. [Pet. Ex. 3, App. C, p. 15]

204. HELCO will provide service through the Palani Substation and electric ductlines to the Petition Area will be constructed. [Pet. Ex. 3, App. C, p. 15]

205. HTCO and Oceanic will provide communication services through an existing system and will have ductlines constructed as part of the Ane Keohokalole Highway construction, which will be used to service the Project. [Pet. Ex. 3, App. C, p. 15]

206. Offsite electrical, television and phone ductlines to the project site will be constructed as part of the construction of Ane Keohokalole Highway. Electrical transmission will be installed from Palani Substation to the project site along with necessary upgrades at the Palani Substation.[Pet. Ex. 3, App. C, p. 16]

207. The utility area located within Phase 1, as currently planned, may be utilized for a variety of onsite utility functions such as electrical utility, water storage/transmission, data and communications, or sewer infrastructure.

11. ENERGY CONSERVATION

208. In general, all feasible energy conservation and renewable energy use measures, especially solar energy, will be designed into the Project's sustainability principles. [Pet. Ex. 29]

209. As currently configured, Kamakana Villages could qualify for a Gold rating under the proposed LEED ND Rating System. [Pet. Ex. 29]

VIII. COMMITMENT OF STATE FUNDS AND RESOURCES

210. With respect to improvements to the Petition Area, the Petitioner or its successors or assigns will fund site work and infrastructure, onsite and offsite, including roadways, a water system, transmission lines and other utilities.

211. Forest City has obtained a \$25 million loan from HHFDC for the initial Phases of development.

212. Forest City may seek additional subsidies, such as Low-Income Housing Tax Credits, from the State.

IX. CONFORMANCE WITH URBAN DISTRICT STANDARDS

213. The Petition Area is presently classified in the State Land Use Agricultural District. [Pet. Ex. 3, p. 1-6]

214. The Petition Area is surrounded almost entire by land in the State Land Use Urban District. Some adjacent property, owned by DHHL, is within the State Land Use Agricultural District. [Pet. Ex. 3, p. 1-6]

215. The proposed reclassification of the Petition Area is in general conformance to HAR section 15-15-18 standards for determining "U" Urban District boundaries as follows:
[Pet. Ex. 3, Sec. 3.1]

Criterion No. 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 an area generally surrounded by existing and planned residential and commercial development and is approximately 1 mile from Kailua-Kona. It is within the designated path for urban development, close to areas with "city-like" concentrations of people and intended for additional density.

Criterion No. 2. *It shall take into consideration the following specific factors: (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment; (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and (C) Sufficient reserve area for foreseeable urban growth.*

The Petition Area is situated in close proximity to West Hawaii's commercial, industrial and economic center of Kailua-Kona. Transportation systems, schools, parks, solid waste disposal and police and fire services are located near to the Petition Area. In addition to the residential and civic uses planned for Kamakana Villages, the project will contain 3 mixed-use areas, 2 of which will be located near the future transit stops along the Ane Keohokalole Highway. Additional transportation systems are planned by the County and Petitioner will provide school sites within the Petition Area. The County has designated the Petition Area for urban growth.

Criterion No. 3. *It shall include lands with satisfactory topography, drainage, reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects.*

The topography of the Petition Area is consistent with the state Urban District design standards and is generally free from potential adverse environmental conditions such as floods, tsunami or unstable soil conditions. The Petition Area is no more at risk for seismic hazards than the rest of the County of Hawaii, and Petitioner will develop Kamakana Villages to meet the structure standards required under the Uniform Building Code. The Lava Flow Hazard Zone classification for the Petition Area is 3 (on a scale of 1 - 9, with 1 being the highest risk), indicating moderate hazard, based primarily on lava flow history. The Petition Area is located approximately one (1) mile from the shoreline and is not within the Tsunami Inundation Zone. The Petition Area is in FIRM Zone X (undetermined), which indicates that base flood elevations have not been determined for the area. [Pet. Ex. 3, p. 4-10 - 4-12]

Criterion No. 4. *Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, particularly when indicated for future urban use on state or county general plans or county community plans or development plans.*

The Petition Area is contiguous to Urban property on all sides except for the DHHL property being developed as the Villages of La'I'opua. [Pet. Ex. 3, p. 1-6]

Criterion No. 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 or county community plans or development plans.*

The Petition Area is designated for Urban Expansion on the County LUPAG Map, with a smaller portion along Palani Road designated as Low Density Urban. The Petition Area has been identified at a TOD Neighborhood Village in the Kona CDP. [Pet. Ex. 3, p. 1-6, 1-7, 2-3, 2-4; Pet. Ex. 36]

Criterion No. 6. *It may include lands which do not conform to the standards in paragraphs (1) to (5): (A) When surrounded by or adjacent to existing urban development; and (B) Only when those lands represent a minor portion of this district.*

The Petition Area represents a small portion of a larger Urban District area.

Criterion No. 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 almost entirely surrounded by Urban lands, and is located along the proposed transit route on the Ane Keohokalole Highway. The Petition Area has been designated by the County for future urban growth and development and will not contribute to scattered spot urban development. The location is within existing service areas for public infrastructure and support services.

Criterion No. 8 *It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.*

Slopes within the Petition Area are less than 20%. Most of the makai half of the Petition Area has slopes of less than 5%. Most of the mauka half of the Petition Area has slopes of less than 15%, but there are some areas with a more steep grade, which can be developed for lower-density residential purposes. In general, housing types and density will be distributed dependent upon the slope of the land. [Pet. Ex.. 3, p. 4-4; Pet. Ex. 1, Fig. 1a, 1b]

X. CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN

216. The Project is generally supportive of Part I of the Hawaii State Plan including its themes, objectives and policies. In particular, the Project will provide a majority of affordable homes as well as market-priced homes.

217. The proposed reclassification of the Petition Area actively supports or is in general conformance with the following goals, objectives, policies and priority guidelines of the Hawaii State Plan: [Pet. Ex. 3, Sec. 3.2]

HRS § 226-5 - Population.

(1) Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.

(7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

Developing a residential project that will provide a diversity of housing options, including affordable housing, along with retail and civic spaces, in a location specifically designated by the County for urban development under the Kona CDP contributes to the government's goal of directing population growth to areas with the greatest economic impact and to provide housing near employment centers.

HRS § 226-6 - Economy In General.

(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people, . . . particularly on the neighbor islands where employment opportunities may be limited.

(6) Strive to achieve a level of construction activity responsive to,

*and consistent with, state growth objectives.
 (9) Foster greater cooperation and coordination between the government and private sectors in developing Hawaii's employment and economic growth opportunities.*

The construction and on-going operations/maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period. [Pet. Ex. 3, App. H, p. 10]

After completion the community will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year. [Pet. Ex. 3, App. H, p. 10]

As a 201H affordable housing project being developed by Forest City in coordination with HHFDC, the Project is an example of cooperation and coordination between government and the private sector. [Pet. Ex. 8]

HRS § 226-8 - Objectives and Policies for the Economy - Visitor Industry

*(1) Support and assist in the promotion of Hawaii's visitor attractions and facilities.
 (4) Encourage cooperation and coordination between the government and private sectors in developing and maintaining well-designed, adequately serviced visitor industry and related developments which are sensitive to neighboring communities and activities.*

The Project will provide needed affordable housing in reasonable proximity to existing and future job centers, which will enhance the visitor industry by reducing the commute time between work and home for those residents employed in the visitor industry. As a State

sponsored project being developed by a Forest City, a private developer, the Project exemplifies cooperation and coordination between the government and private sectors. [Pet. Ex. 8]

HRS § 226-9 - Objectives and Policies for the Economy - Federal Expenditures

- (2) Promote Hawaii's supportive role in national defense, in a manner consistent with Hawaii's social, environmental, and cultural goals by building upon dual-use and defense applications to develop thriving ocean engineering, aerospace research and development, and related dual-use technology sectors in Hawaii's economy;*
- (4) Increase opportunities for entry and advancement of Hawaii's people into federal government service;*

Increasing the availability of affordable and market priced housing (in contrast to luxury resort homes) will be beneficial for existing federal workers and may encourage the creation of additional opportunities for federal jobs in the region.

HRS § 226-10 - Objectives and Policies for the Economy - Potential Growth

- (a) Planning for the State's economy with regard to potential growth activities shall be directed towards achievement of the objective of development and expansion of potential growth activities that serve to increase and diversify Hawaii's economic base.*

The Project will help diversify Hawaii's economic base by providing more housing in a growing area, at a range of prices and configurations.

HRS § 226-11 - Physical Environment - Land-Based, Shoreline, and Marine Resources

- (1) Exercise an overall conservation ethic in the use of Hawaii's natural resources.*
- (3) Take into account the physical attributes of areas when planning and designing activities and facilities.*
- (7) Provide public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion.*

Development of the Petition Area is consistent with sound planning principles for the prudent use of land-based resources. The Petition Area has been carefully surveyed to ensure that no endangered, threatened or candidate species will be impacted by the proposed development. [Pet. Ex. 2, 3]

HRS § 226-12 - Physical Environment - Scenic, Natural Beauty and Historic Resources

(1) Promote the preservation and restoration of significant natural and historic resources.

(4) Protect those special areas, structures, and elements that are an integral and functional part of Hawaii's ethnic and cultural heritage.

Significant archaeological sites will be preserved in preserve areas, which will be protected or incorporated as elements of open space throughout the Project. The Project Concept Plan includes numerous neighborhood parks and archeological preserve areas, as well as open space areas. Urban design controls, to be implemented in a manner consistent with the Kona CDP, will consider the overall visual effects of the proposed development. [Pet. Ex. 1]

HRS § 226-13 - Physical Environment - Land, Air and Water Quality

(7) Encourage urban developments in close proximity to existing services and facilities

The Petition Area, located approximately one (1) mile mauka of Kailua-Kona, is in close proximity to existing services and facilities.

HRS § 226-14 - Objectives and Policies for the Facility Systems - In General

(1) Accommodate the needs of Hawaii's people through coordination of facility systems and capital improvement priorities in consonance with state and county plans.

(2) Encourage flexibility in the design and development of facility systems to promote prudent use of resources and accommodate changing public demands and priorities.

Preliminary planning for Kamakana Village's infrastructure systems has resulted in coordination discussions with State and County agencies and private landowners in the area. Future development of these systems will require ongoing coordination. In addition, to the extent feasible, Petitioner will incorporate green building design principles, including features to conserve energy and water usage, in the development of Kamakana Villages.

HRS § 226-17 - Objectives and Policies for the Facility Systems - Transportation

- (2) Coordinate state, county, federal, and private transportation activities and programs toward the achievement of statewide objectives;*
- (6) Encourage transportation systems that serve to accommodate present and future development needs of communities;*
- (10) Encourage the design and development of transportation systems sensitive to the needs of affected communities and the quality of Hawaii's natural environment;*

The Project will provide roadway connections to existing and future developments on adjacent lands, which will help improve regional traffic circulation. [Pet. Ex. 1, Sec. 5] As a Neighborhood TOD, the Project will support bus ridership by utilizing the proposed transit stops along Ane Keohokalole Highway. In addition, multimodal transportation will be encouraged at Kamakana Village through the incorporation of bike and pedestrian paths. [Pet. Ex. 1, Sec. 5]

HRS § 226-19 - Objectives and Policies for Socio-Cultural Advancement - Housing

- (1) Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawaii's population.*
- (2) The orderly development of residential areas sensitive to community needs and other land uses.*

(3) The development and provision of affordable rental housing by the State to meet the housing needs of Hawaii's people.

(1) Effectively accommodate the housing needs of Hawaii's people.

(2) Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households.

(3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

(6) Facilitate the use of available vacant, developable, and underutilized urban lands for housing.

The development of the Project, to include up to 1,169 affordable housing units, fully supports the State's three (3) objectives related to housing and socio-cultural advancement. The Project will offer a variety of housing opportunities, affordable and market-priced, in a range of densities. The Petition Area's close proximity to Kailua-Kona and North Kona's employment centers will make it attractive to potential home buyers. [Pet. Ex. 3, App. H]

HRS § 226-20 - Objectives and Policies for Socio-Cultural Advancement - Health

(1) Fulfillment of basic individual health needs of the general public.

(2) Maintenance of sanitary and environmentally healthful conditions in Hawaii's communities.

As a walkable, TOD community, the Project supports the health-related objectives by encouraging alternative means of transportation. The numerous paths and connectivity within the community to and from residences, civic spaces and retail areas will encourage walking and bike riding over auto use. [Pet. Ex. 1, Sec. 5; Pet. Ex. 3, p. 2-7]

HRS § 226-21 - Objectives and Policies for Socio-Cultural Advancement - Education

(2) Ensure the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs.

The Project includes 1 site of approximately 13 acres for a DOE Elementary school. Including school sites within the design of Kamakana Villages is in alignment with LEED principles for "Neighborhood Schools" which promotes community interaction and engagement by integrating schools into the neighborhood fabric. [Pet. Ex.1, 27, 29]

HRS § 226-23 - Objectives and Policies for Socio-Cultural Advancement - Leisure

(4) Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.

The Project will be developed with parks, open space, archaeological preserves and mixed use centers, all of which will support leisure activities. [Pet. Ex. 1]

HRS § 226-25 - Objectives and Policies for Socio-Cultural Advancement - Culture

Foster increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii.

The Petition Area includes significant archaeological and cultural sites that will be preserved. [Pet. Ex. 2, App. D; Pet. Ex. 32, 33]

XI. CONFORMANCE WITH PRIORITY GUIDELINES

218. Development of the Project supports the priority guidelines of the Hawaii State Plan in the areas of economic development, population growth and land resource management and affordable housing. [Pet. Ex. 3, p. 3-16 - 3-19]

HRS § 226-103 - Economic Priority Guidelines

(5) Streamline the building and development permit and review process, and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business,

where public health, safety and welfare would not be adversely affected.

In terms of economic development, the State's priorities include stimulating economic growth and business expansion and development to provide needed jobs. The construction and on-going operations/maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period. [Pet. Ex. 3, App. H, p. 10] After completion the community will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year. [Pet. Ex. 3, App. H, p. 10]

HRS § 226-104 Population Growth and Land Resources Priority Guidelines

(4) Encourage major state and federal investments and services to promote economic development and private investment to the neighbor islands, as appropriate.

(5) Explore the possibility of making available urban land, low-interest loans, and housing subsidies to encourage the provision of housing to support selective economic and population growth on the neighbor islands.

(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.

(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

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

The Petition Area is located within the Kona Urban Area ("**Kona UA**") of the Kona CDP, which has experienced an increase in population over the years. The resident population of West

Hawaii is forecast to increase by about 60% over the next two decades, reaching some 118,000 persons. In Greater Kailua-Kona, which stretches from Keahole to Keauhou, the resident population is projected to grow from a current level of just over 23,000 to circa 40,000 persons by 2030. [Pet. Ex. 3, App. H. p. 6] 71. This increase is expected to create demand for some 7,560 to 10,162 new housing units in Greater Kailua-Kona between 2010 through 2030. About 44% of this demand will be for resident/workforce housing units meeting affordable pricing guidelines. [Pet. Ex. 3, App. H. p. 6]

The Project will support the population growth of the area and will provide affordable housing opportunities for workers who service the visitor industry of the area. Adequate support facilities are/will be available from developed and/or to-be-developed areas within, and adjacent to, the Project. The Project will utilize largely marginal or non-essential agricultural lands for the development of market and affordable housing.

HRS § 226-106 Affordable Housing

- (1) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.*
- (2) Encourage the use of alternative construction and development methods as a means of reducing production costs.*
- (4) Create incentives for development which would increase home ownership and rental opportunities for Hawaii's low- and moderate-income households, gap-group households, and residents with special needs.*
- (5) Encourage continued support for government or private housing programs that provide low interest mortgages to Hawaii's people for the purchase of initial owner-occupied housing.*
- (6) Encourage public and private sector cooperation in the development of rental housing alternatives.*
- (7) Encourage improved coordination between various agencies and levels of government to deal with housing policies and regulations.*
- (8) Give higher priority to the provision of quality housing that is*

affordable for Hawaii's residents and less priority to development of housing intended primarily for individuals outside of Hawaii.

The Petition Area is made up of soils with poor agricultural viability and is considered non-essential agricultural land. Its proximity to Kailua-Kona, the existing center of employment, schools, transportation and other services, makes it a fitting location for development, especially for the provision of housing to low and moderate income County residents. The Project, initiated by HHFDC's July 2007 Request for Proposals, is an example of public and private sector cooperation in the development of affordable housing that will be offered for sale and rent to County residents. In addition, the exemptions provided under HRS § 201H create incentives for the private sector to undertake the development of a master planned, mixed use, mixed income, project.

XII. CONFORMANCE WITH HAWAII STATE FUNCTIONAL PLANS

219. Reclassification of the Petition Area generally conforms to the functional plans in the following program areas: higher education, employment, housing, historic preservation, recreation, and transportation. [Pet. Ex. 3, Sec. 3.3]

State Higher Education Functional Plan

By providing additional market and affordable homes targeted for the primary resident market, Kamakana Villages may support the Higher Education Functional Plan by making more housing available for faculty and staff at the West Hawaii College.

State Employment Functional Plan

The Project will contribute to employment by creating jobs in construction, development, sales and professional services during its build out. The construction and on-going

operations/maintenance of the single family homes, multi-family units, commercial village businesses, and community facilities will provide an estimated 11,131 "worker-years" of employment and \$505 million in total wages over a 19-year build-out period. [Pet. Ex. 3, App. H, p. 10] After completion the community will support some 933 permanent full-time-equivalent jobs with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year. [Pet. Ex. 3, App. H, p. 10]

State Housing Functional Plan

The State Housing Functional Plan identified a need to develop affordable housing throughout the State, and found that the housing needs of lower income households would not be adequately met in future residential developments. As a 201H affordable housing project proposed to add 1,169 affordable housing units to West Hawaii, the Project will address many of the obstacles identified in the Housing Functional Plan.

State Historic Preservation Functional Plan

Archaeological inventory surveys of the Petition Area have been conducted and accepted by SHPD. A CIA was prepared for the Petition Area. Petitioner will comply with all interim and permanent mitigation and preservation measures recommended and approved by SHPD.

State Recreation Functional Plan

Kamakana Villages is planned to include approximately 25 acres for park space in addition to the 9+ acres for archaeological preserve areas.

State Transportation Functional Plan

As a TOD development, the Project will encourage the use of future mass transit options to be provided along Ane Keohokalole Highway. The physical layout of Kamakana Villages is intended to reduce travel demand in 2 ways. First, by providing a variety of market and affordable housing options close to the centers of employment in West Hawaii, the development should reduce the number and length of commutes from home to work, school, services, retail and recreational areas. Second, as a TOD project designed to be compact and pedestrian/bike friendly, with retail uses provided on-site, it is expected that Project residents will not need to use their cars as much as residents living within more typical suburban, single-use, residential projects. [Pet. Ex. 36]

XIII. CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT ACT - HRS CHAPTER 205A - HAR § 15-15-50 (C)(17)

220. The objectives of the Coastal Zone Management Program, Chapter 205A, HRS, are as follows:

- (b)(1)(A) Provide coastal recreational opportunities accessible to the public.*
- (b)(2) Protect, preserve and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture*
- (b)(3)(A) Protect, preserve and, where desirable, restore or improve the quality of coastal scenic and open space resources*
- (b)(4)(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems*
- (b)(5)(A) Provide public or private facilities and improvements important to the State's economy in suitable locations*
- (b)(6)(A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution*
- (b)(7)(A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards*

(b)(8)(A) Stimulate public awareness, education, and participation in coastal management

(b)(9)(A) Protect beaches for public use and recreation

(b)(10)(A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability

221. The Project is generally supportive of HRS Chapter 205A. In particular, it is consistent with the objectives pertaining to the preservation of natural and historic resources, the provision of public and private facilities important to the economy, the reduction of flooding and erosion hazards and the encouragement of public participation in the management of coastal resources. [Pet. Ex. 3, Sec. 3.4]

222. The Petition Area is not within the Shoreline Management Area delineated by the County of Hawaii because the Petition Area is more than a mile upslope from the coast; therefore most Coastal Zone Management Program objectives are not applicable. [Pet. Ex. 3, p. 1-9]

223. The development of the Project will not have any significant adverse impact on coastal recreational opportunities, coastal scenic and open space resources, or coastal ecosystem and resources. [Pet. Ex. 3, p. 3-26]

224. The Petition Area is not subject to coastal hazards. It is in FIRM Flood Zone X (undetermined), and is not in the tsunami inundation zone. [Pet. Ex. 3, p. 3-26]

225. Of the archaeological sites identified in the Petition Area, those determined to be significant will be preserved. [Pet. Ex. 32]

226. Although the Project is not expected to impact coastal resources, it has been the subject of considerable public participation. First, through the Final EIS process. Next, through the planning and charette processes that Forest City engaged in with the County and interested members of the public. In addition to numerous meetings with State and County agencies, representatives for Forest City made presentations to the public and various community groups, including conducting two (2) planning charettes in Kona in July and October of 2009. [Pet. Ex. 18, 19]

XIV. CONFORMANCE WITH THE COUNTY GENERAL PLAN - HAR § 15-15-50 (C)(18)

227. The General Plan assesses various elements meant to guide long range comprehensive development within the County of Hawaii.

228. The Project actively supports the relevant goals and policies of the County General Plan. [Pet. Ex. 36]

229. The Project is consistent with applicable portions of the County General Plan as follows: [Pet. Ex. 3, Sec. 3.6; Pet. Ex. 36]

Housing. As a mixed use, mixed-income development the Project increases socio-economic diversity in housing, expands homeownership opportunities for County residents and includes affordable housing in reasonable proximity to employment centers.

Economic Development. The Project will significantly increase affordable housing opportunities in Kailua-Kona. The residential component of Kamakana Villages includes up to 1,169 affordable housing units. Single and multi-family units will be conveniently located near
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public and private services and facilities such as commercial areas, schools, transportation routes and parks.

Energy. To the extent practicable Petitioner will design the Project so that all commercial and institutional facilities qualify under the LEED for New Construction Silver level, and all homes qualify under the LEED for Homes Silver level.

Transportation. Development of the Project to include certain traffic mitigation improvements will help meet the growing transportation needs within the County. As a TOD adjacent to the planned transit stops along Ane Keohokalole Highway, the Project will facilitate the use of public transit. [Pet. Ex. 36]

Historic Sites. The Project will protect, restore and enhance significant historic and cultural resources where feasible. No adverse impacts on traditional and customary Native Hawaiian resources, beliefs and practices are anticipated to occur as a result of the development of the Project. Appropriate mitigation measures will be carried out as recommended by SHPD.

Land Use - Commercial Development. The three neighborhood commercial/mixed-use centers promote the County's policy of providing commercial developments that maximize convenience to users. The mixed-use areas' proximity to the Ane Keohokalole Highway and Palani Road complements the County's overall pattern of transportation and land usage.

Land Use – Multiple Residential & Single Family Residential. The proposed 2,330 homes will be located near existing and proposed transportation corridors and public transit stops along the Ane Keohokalole Highway. The mix of multiple family and single family homes

within a master planned community will help achieve socio-economic diversity in the housing mix.

Land Use - Open Space. Development of the Project includes open space, parks and archaeological preserves, all of which support the County's goals of promoting the social, environmental and economic well being of County residents.

Land Use Pattern Allocation Guide. The Petition Area is designated for Urban Expansion on the LUPAG Map, which allows for a mix of high, medium and low density, along with industrial, industrial-commercial and/or open designations. The Low Density Urban designation allows for residential development with ancillary community and public uses and neighborhood and convenience type commercial uses.

Public Facilities. The Project includes approximately 13 acres for a DOE elementary school. Petitioner's emphasis on sustainability will promote the County's policy of reducing the flow of refuse deposited into landfills. [Pet. Ex. 27]

Recreation. The Project includes over 25 acres for park space, 18 acres in open space and 9 acres for archaeological preserves. These measures will enhance the recreational opportunities available to residents and visitors alike. [Pet. Ex. 27]

XV. CONFORMANCE WITH THE KONA COMMUNITY DEVELOPMENT PLAN

230. The Kona CDP was adopted by the Hawaii County Council in September 2008 as Ordinance No. 08 131.

231. Kamakana Villages is consistent with the future growth articulated in the Kona CDP. [Pet. Ex. 36]

232. Kamakana Villages is consistent with the 8 Guiding Principles of the Kona CDP as follows: [Pet. Ex. 3, Sec. 3.11; Pet. Ex. 36]

Principle 1 - Protect Kona's Natural Resources and Culture. The Project will provide approximately 48 acres of open space, including community parks and neighborhood parks. Multi-ethnic culture will be preserved and protected through the development of the South and North Archeological Preserve areas.

Principle 2 - Provide Connectivity and Transportation Choices. The Project has been designed to include sidewalks, trails and bike lanes to encourage a variety of transportation options. The Project will include a circulation system of linked landscaped avenues, roadways and walkways that pass from one major open space to another. The Project is located adjacent to two proposed transit stops along Ane Keohokalole Highway.

Principle 3 - Provide Housing Choices. The Project will provide a broad range of housing choices at market and affordable prices for sale and rent. The Project will supply the demand for affordable homes located close to the employment centers in West Hawaii.

Principle 4 - Provide Recreation Opportunities. Approximately 48 acres of the Petition Area will be used for open space, community parks, and landscaped buffer zones. In addition to 3 large, centrally located community parks, numerous neighborhood pocket parks are planned. The mixed-use centers will provide additional recreational opportunities.

Principle 5 - Direct Future Growth Patterns Toward Compact Villages, Preserving Kona's Rural, Diverse, and Historical Character. Kamakana Villages is a designated TOD site and a master-planned community with three mixed-use village areas and a mixture of housing choices. The majority of future growth in the form of compact mixed-use villages will be directed north of Kailua-Kona.

Principle 6 - Provide Infrastructure and Essential Facilities Concurrent with Growth. The Petition Area has been identified in the Kona CDP as an area for future growth in North Kona. Essential services are in place. Infrastructure development, such as construction of the Ane Keohokalole Highway, is underway. [Pet. Ex. 12]

Principle 7 - Encourage a Diverse and Vibrant Economy Emphasizing Agriculture and Sustainable Economies. The Petition Area is zoned A-5a, however, the soils on the Petition Area are poor and have little agricultural viability. Development of the Project will have the effect of increasing housing choices, especially for low and moderate income Island residents, without removing important agricultural lands from production. In addition, development of up to 2,330 residential units at the Petition Area should decrease the pressure to develop other, more viable Agricultural lands in Kona.

Principle 8 - Promote Effective Governance. Petitioner worked with the Kona community and the County in planning and designing the Project. Two planning workshop meetings were held with the Kona community and the proposed development was subject to public and agency review during the HRS Chapter 343 environmental review process. [Pet. Ex. 18, 19]

233. The Project is consistent with the goals, objectives and policies of the 8 elements of the Kona CDP as follows:

Element 1 - Transportation. Kamakana Villages is a TOD project that will be built in close proximity to the proposed transit stops along Ane Keohokalole Highway. This, in combination with the internal design of Kamakana Villages, which is intended to promote pedestrian and other non-auto reliant means of transportation, is consistent with the goal of building an efficient, safe, and attractive multi-modal transportation system with minimal reliance on the automobile.

Element 2 - Land Use. The Kona CDP, as an expression of public policy, identified the Petition Area for future urban development. The Petition Area is within the Kona UA and within the Keahuolu Village (Neighborhood) TOD identified on the Official Kona Land Use Map (Figure 4-7 of the Kona CDP). [Pet. Ex. 36]

Element 3 - Environmental Resources. One of Forest City's corporate core values is sustainability, which is consistent with developing the built environment in harmony with ecological principles and promoting interaction with nature and a healthy, active lifestyle. To the extent practicable, Petitioner will design the Project so that all commercial and institutional facilities qualify under the LEED for New Construction Silver level, and all homes qualify under the LEED for Homes Silver level.

Element 4 - Cultural Resources. The Project will preserve and protect Native Hawaiian cultural resources by including 2 archeological preserve areas.

Element 5 - Housing. The Project promotes diversity of housing choices near places of employment and/or daily needs by offering up to 1,169 affordable housing units, and an additional 1,161 market units, all located very close to existing employment and commercial centers. The neighborhood commercial/mixed-use areas will provide Project residents ready access to goods and services.

Element 6 - Public Facilities, Infrastructure and Services. The Project, as a compact, TOD mixed-use community, will include sustainably built and maintained infrastructure and facilities that will benefit the region, including new wastewater transmission lines and a water supply system to include transmission lines and reservoirs. Internal roadway infrastructure will be designed to support connectivity. Total on-site and off-site infrastructure costs expected to be incurred by Forest City in the development of the Project are approximately \$156,208,803, which include costs for internal roadways, water, sewer, drainage, electric, telephone and cable lines, as well as certain off-site infrastructure.

Element 7 - Energy. Petitioner has demonstrated a commitment to sustainability. In addition to designing the Project with the proposed LEED ND rating system in mind, to the extent practicable Forest City will implement energy and resource conservation measures into the design and construction of the Project. Landscaping will minimize water use and reduce heat-island impacts, and resident training programs will be provided to optimize energy savings and limit waste, which will lead to the development of a community-wide lifestyle of sustainability.

Element 8 - Economic Development. Development of the Project will increase economic diversification and employment opportunities by providing an estimated 11,131 "worker-years"

of employment and \$505 million in total wages and bringing an estimated \$734.4 million in capital investment into West Hawaii over a 19-year build out period. After completion, the Project will support some 933 permanent full-time-equivalent jobs (654 directly related to on site activity and 279 indirect positions throughout the County) with an annual payroll of about \$35 million, and host an estimated \$143 million in economic activity per year.

A. KONA COMMUNITY DEVELOPMENT PLAN VILLAGE DESIGN GUIDELINES

234. The development of Kamakana Villages is consistent with the intent of the village design guidelines, which is to do the following:

- 1. Promote transit-oriented and pedestrian-oriented development, to increase transit use, to manage traffic congestion.*
- 2. Encourage mixed-use, compact development that is pedestrian in scale and sensitive to environmental characteristics of the land, and facilitates the efficient use of public services.*
- 3. Have residences, shopping, employment, and recreational uses located within close proximity with each other and efficiently organized to provide for the daily needs of the residents.*
- 4. Provide for a range of housing types and affordability within pedestrian-oriented, human-scale neighborhoods.*
- 5. Incorporate natural features, open space, and cultural features.*
- 6. Provide efficient circulation systems for pedestrians, non-motorized vehicles, and motorists that serve to functionally and physically integrate the various land use activities.*
- 7. Promote strong neighborhood identity and focus.*

Kona CDP, Land Use Policy - LU-2.5.

Kamakana Villages is one of the few potential TOD locations identified in the Kona CDP. As such, it will help to increase transit use, and manage traffic congestion. As a master-planned compact, walkable, mixed-use community with a full range of uses including housing, retail space, commercial uses, school facilities, archaeological and open space preserve areas,

active and passive parks, a trail and bikeway system, support infrastructure and transit stops, Kamakana Villages conforms to the intent of the village design guidelines. [Pet. Ex. 36]

XVI. ZONING CODE

235. The Petition Area is currently zoned by the County of Hawaii as Agricultural (A-5a). The proposed development is not permitted within the A-5a District. Therefore, Petitioner may seek a change of zone to the Project District pursuant to Hawaii County Code § 25-6-40. [Pet. Ex. 3, p. 3-49]

236. The intent of the Project District is to provide for "a flexible and creative planning approach rather than specific land use designations for quality developments. It will also allow for flexibility in location of specific uses and mixes of structural alternatives." Hawaii County Code § 25-6-40. [Pet. Ex. 3, p. 3-49]

237. As a TOD project, rezoning of the Petition Area to the Project District is consistent with Hawaii County Code, Chapter 25, the General Plan, and the existing LUPAG designations of Urban Expansion and Low Density Urban. Development of Kamakana Villages will not result in a substantial adverse impact upon the surrounding area, community or region. [Pet. Ex. 3, p. 3-49]

XVII. INCREMENTAL DISTRICTING

238. Full Urban development of the Petition Area cannot substantially be completed within 10 years after the date of the Commission's approval. [Pet. Ex. 27]

239. Development of the Petition Area is planned to occur in six Phases and span approximately 18 years. Petitioner submitted an Incremental Development Plan, which provides a proposed timeline for development. [Pet. Ex. 27]

240. The Incremental Development Plan provides that Phase 1 – 3a, referred to as Increment 1, will be developed by the fall of 2020, and that Phases 3b – 6, referred to as Increment 2, will be complete by the end of 2028. [Pet. Ex. 27]

241. Increment 1 is planned to contain approximately 1,196 residential units, of which 681 are planned to be affordable homes, and 99,000 square feet of neighborhood commercial space. [Pet. Ex. 27]

242. Increment 2 is planned to contain to contain approximately 1,134 residential units, of which 488 are planned as affordable homes, and 98,000 square feet of retail space. [Pet. Ex. 27]

243. The Development Agreement between HHFDC and Forest City requires Forest City to complete all affordable units no later than 2023, subject to a 5 year extension.

244. As a 201H affordable housing project, under HRS § 201H-38, Kamakana Villages is entitled to be "exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon."

245. The development schedule presented in the Incremental Development Plan can be substantially completed.

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

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapters 201H and 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 reclassification of the Subject Property, consisting of approximately 271.837 acres of land in the state Land Use Agricultural District in the North Kona District, Island of Hawaii, Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027, to the state Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the state Land Use Urban District, is reasonable, not violative of HRS section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 201H-38, 205-16, 205-17 and 205A-2.

2. Pursuant to HAR § 15-15-78 (a)(1), the Commission has the authority to reclassify the entire Petition Area.

3. Although full development of the Petition Area cannot be reasonably completed within ten years after the date of the Commission's decision in this matter, reclassification of the entire Petition Area, i.e., Increment 1 and Increment 2, is reasonable, not violative of HRS section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 201H-38, 205-16, 205-17 and 205A-2.

4. Article XII, section 7, of the Hawaii State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawaii 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 Hawaii v. Hawaii County Planning Commission*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

5. 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 Hawaii 31, 7 P.3d 1068 (2000).

6. There is no evidence to suggest that any native Hawaiian traditional and customary rights are currently being exercised within the Petition Area.

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

8. Article XI, Section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i 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.

9. There are no floral or faunal species that are threatened, endangered, or of concern under State or federal law in the Petition Area.

10. Air quality of the Petition Area will be impacted in the short-term by fugitive dust and exhaust emissions from stationary and mobile equipment during construction of the Project. Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions.

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

12. 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.

13. The reclassification of the Petition Area will urbanize land that is not suitable for agricultural uses. The Petition Area's soil classifications and low annual rainfall make it unsuitable for intensive agricultural use.

14. The Petition Area is not classified as Important Agricultural Land under the ALISH rating system or Part III of HRS chapter 205

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

16. The proposed drainage system will not increase offsite runoff, nor cause an adverse impact to adjacent and downstream properties.

17. The design of the Project will minimize adverse visual impacts of the Project.

18. The West Hawai'i Landfill has adequate capacity to support the needs of the Project, based on the assumption that when the existing landfill's capacity is reached the County will at that time have another landfill or some other method of handling the municipal solid waste.

19. Petitioner will enter into an agreement with the DOE which will satisfy the Petitioner's fair share contribution obligation regarding the Project's impacts on educational resources of the area.

20. Petitioner will enter into an agreement with the DOT which will satisfy the Petitioner's fair share contribution obligation regarding mitigation of the traffic impacts of the Project.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Subject Property, consisting of approximately 271.837 acres in the state Land Use Agricultural District in the North Kona District, Island of Hawaii, Tax Map Key Nos. (3) 7-4-021:020 (por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is reclassified to the state Land Use Urban District, and the state Land Use District boundaries shall be amended accordingly.

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

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

1. **School Site and Construction Component Agreement.** Petitioners shall enter into an agreement with the State Department of Education to provide land for a school site and a cash contribution to the construction component of a school impact fee by prior to submission of

any applications for subdivision for the residential lots or plan approval for the multiple family and/or commercial units within the Project.

2. **Water Resource Allocation.** Petitioners shall fund and construct drinking water source, storage, and transmission facilities and improvements as required to accommodate development of the Petition Area, to the satisfaction of the County of Hawaii, Department of Water Supply and appropriate State agencies. To the extent practicable and available, the Petitioner shall utilize non-potable water for landscaping.

3. **Water Conservation Measures.** Petitioners shall implement water conservation measures and Best Management Practices (BMPs), such as the use of indigenous and drought-tolerant plants and turf and incorporate such measures in the Project's landscape planting.

4. **Transportation.** Petitioners shall mitigate all project generated traffic impacts as recommended and/or required by the Traffic Impact Analysis Report (TIAR) prepared for the project that has been reviewed and accepted by the State Department of Transportation (DOT). Petitioner shall not submit applications for subdivision of the residential lots or plan approval for the multiple family and/or commercial units within the Project until the Petitioner has executed an agreement with DOT committing to the implementation of all necessary measures to mitigate the direct impacts of the project on the surrounding roadway system as well as to the level of funding and participation for Petitioner's pro rata share of regional transportation improvements.

5. **Street Lights.** Petitioners shall use fully-shielded, low sodium street lights within the Project to avoid impacts to avifauna and other populations. Shielding shall conform to the County's standards for street lights to prevent light diffusion upward into the night sky.

6. **Affordable Housing.** Petitioners shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County of Hawaii's Office of Housing and Community Development and the certification of the Project as an HRS §201H-38 housing project. The location, distribution, and production schedule of the affordable units shall be under such terms as may be mutually agreeable between the Petitioners and the County.

7. **Archaeological and Historic Preservation.** Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), prior to issuance of any permit for grubbing and grading. Petitioner shall confirm in writing to the Land Use Commission that the SHPD has found Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented.

8. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Hawaii Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are
Petitioner's First Proposed Findings of Fact, Conclusions of Law, Decision and Order LUC Docket A10-788

discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

9. **Established Access Rights Protected.** Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

10. **Lava Tube Cave Preservation.** Petitioners shall preserve any lava tube caves or subgrade cavities not previously identified in studies referred to herein, if required to be preserved by SHPD or the Hawaii Island Burial Council as part of an approved burial treatment plan.

11. **Water Wells.** As recommended in the Final EIS, Petitioner shall install monitors for each source well, and reactivate the Komo Well as a monitoring well. Petitioner will also develop the Kamakana Well to provide monitoring. In providing potable water for the Project, Petitioner shall comply with all applicable laws and regulations to assess the potential impacts and identify the appropriate mitigation measures for such water source.

12. **Storm and Surface Water Runoff Quality.** Prior to the occupancy of any residential unit within the Petition Area and as recommended in the Final EIS, Petitioner shall engineer, construct (or require to be constructed) and/or implement (or require to be implemented) and maintain storm and surface-water runoff BMPs, subject to any applicable review and approval of the State of Hawaii Department of Health (DOH), designed to minimize

pollution and to prevent violations of State water quality standards as a result of storm-water discharges originating from the Petition Area.

To the extent practicable and consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the water table or coastal waters.

To the extent practicable and consistent with applicable laws, Petitioner shall implement landscaped areas, such as grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable BMPs engineered to treat the first flush runoff volume including the removal of suspended solids and oils and greases from all streets and parking lots, and debris catch basins to allow the detention and periodic removal of rubbish and sediments deposited by runoff using current industry and engineering standards.

Not less than 45 days before submitting an application for subdivision approval for residential lots, Petitioner shall submit a copy of its designs for storm and surface water runoff BMPs to the National Park Service for consultation.

As recommended in the Final EIS, Petitioner shall create and provide a pollution prevention plan for residential and commercial facilities, and provide copies to property purchasers. To reduce the amount of pollutants from entering the groundwater, Petitioner shall provide educational materials and programs to residents, establish community association covenants and implement BMPs. Educational materials and programs, and community

association covenants would include, but not be limited to, the landscape management and vehicular maintenance controls recommended in the final EIS.

13. **Drainage.** Petitioners shall fund, design and construct any drainage system improvements required to prevent adverse impact resulting from the development of the Project. Petitioners shall be required to prevent runoff from the Petition Area from adversely affecting State highway facilities and downstream properties. Petitioners shall submit plans to the DOT and appropriate State and County agencies for review and approval.

14. **Wastewater Facilities.** Petitioners shall fund, design and construct transmission lines and connect to the County of Hawaii's Kealakehe Sewage Treatment Plant to the satisfaction of the County Department of Environmental Management and the DOH.

15. **Solid Waste Management Plan.** Petitioners shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS §342G. Petitioners' solid waste management plan shall be approved by the County of Hawaii and the DOH.

16. **Civil Defense.** Petitioners shall fund and install one or more outdoor solar-powered warning sirens serving the Petition Area as determined by the State Department of Defense, Office of Civil Defense.

17. **Air Quality Monitoring.** Petitioners shall participate in an air quality monitoring program as required by the DOH.

18. **Best Management Practices.** Petitioners shall implement applicable BMPs for each proposed land use to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the DOH guidelines.

19. **Energy Conservation.** To the extent practicable Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that all commercial and institutional facilities be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for New Construction (LEED-NC), Silver level or higher. Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that, to the extent practicable, all homes be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED-H), Silver level or higher.

20. **LEED-ND.** To the extent practicable Petitioner shall plan, design and construct the Project to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND), Certified or higher.

21. **Infrastructure Deadlines.**

a) Petitioner shall complete construction of all backbone infrastructure for Phases 1 through 3a, as described in Petitioner's Incremental Development Plan, including major roadway improvements and primary water, sewer, drainage, and electrical infrastructure for Phases 1 through 3a no later than ten (10) years from the date of the Commission's Decision and Order.

b) Petitioner shall complete construction of all backbone infrastructure for Phases 3b through 6, as described in Petitioner's Incremental Development Plan, including major roadway improvements and primary water, sewer, drainage, and electrical infrastructure for Phases 3b through 6 no later than twenty (20) years from the date of the Commission's Decision and Order.

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

23. **Automatic Order to Show Cause.** If Petitioner fails to comply with the deadlines contained in Condition 21, the Commission may issue and serve upon the Petitioner an Order to Show Cause and the Petitioner shall appear before the Commission to explain why the Petition area should not revert to its previous Agricultural classification or be changed to a more appropriate classification.

24. **Notice of Change of Ownership.** Petitioner shall notify the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership of the Petition Area any time prior to the visible commencement of construction of the Project.

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

26. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon provision of adequate assurance of satisfaction of the conditions by Petitioner or its successors or assigns.

27. **Notice of Imposition of Conditions.** Within 7 days of the issuance of the Commission's Decision and Order reclassifying the Petition Area to the Urban District, Petitioner shall record with the Bureau a notice of imposition of conditions imposed by the Commission and file a copy of such recorded notice with the Commission.

28. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau pursuant to HAR § 15-15-92.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this _____ day of _____, 2010. This ORDER and its ADOPTION shall take effect upon the date that this ORDER is certified and filed by this Commission.

DONE at _____, Hawaii, this _____ day of _____, 2010, per motion on _____, 2010.

<p>APPROVED AS TO FORM</p> <hr/> <p>Deputy Attorney General</p>	<p>LAND USE COMMISSION STATE OF HAWAII</p> <hr/> <p>VLADIMIR P. DEVENS Chairperson and Commissioner</p>
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LISA M. JUDGE
Vice Chair and Commissioner

NICHOLAS W. TEVES, JR.
Vice Chair

THOMAS CONTRADES
Vice Chair and Commissioner

KYLE J.K. CHOCK
Commissioner

DUANE KANUHA
Commissioner

NORMAND R. LEZY
Commissioner

RONALD I. HELLER
Commissioner

CHARLES JENCKS
Commissioner

Filed and effective on: _____

Certified by:

ORLANDO DAVIDSON
Executive Officer

EXHIBIT "A"

(Description of Petition Area)

4834-5536-4871.2.062918-00001