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Kioni Dudley
Appearing pro se for the
Friends of Makakilo

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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|---|---|--------------------------------------|
| In the Matter of the PETITION of |) | DOCKET NO. A06-771 |
| |) | |
| D.R. HORTON-SCHULER HOMES, LLC., a |) | INTERVENOR FRIENDS OF MAKAKILO'S |
| Delaware limited liability company, d.b.a. D.R. |) | FINDINGS OF FACT, CONCLUSIONS OF LAW |
| HORTON SCHULER DIVISION |) | AND DECISION AND ORDER |
| |) | |
| To Amend the Agricultural Land Use District |) | |
| Boundaries into the Urban Land Use District |) | |
| for Approximately 1,525.516 Acres in Ewa |) | |
| District, Island of Oahu, Tax Map Key Nos. |) | |
| (1)9-1-017:004(por.). 059, and 072;(1) 9-1- |) | |
| 018:-001 and 004 |) | |
| _____ |) | |

INTERVENOR FRIENDS OF MAKAKILO'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER

Comes now the FRIENDS OF MAKAKILO ("FoM") by and through its President, KIONI DUDLEY, hereby submits its FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER in the above captioned case.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. D.R. HORTON-SCHULER HOMES, LLC., a Delaware limited liability company, d.b.a. D.R. HORTON SCHULER DIVISION ("Petitioner"), filed a petition on January 24, 2007 pursuant

to Chapter 205, Hawaii Revised Statutes, as amended (“HRS”), and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended (“Commission Rules”) to amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 1,525.516 Acres in Ewa District, Island of Oahu, Tax Map Key Nos. (1)9-1-017:004(por.). 059, and 072;(1) 9-1-018:-001 and 004, which was amended on September 19, 2008, to develop a mixed-use, transit-ready urban community that included 11, 750 homes and related commercial development.

2. On December 3, 2008, the Friends of Makakilo (“FoM”) filed its petition to intervene in the above-titled case, which was granted on January 8, 2009.
3. On August 5, 2009, FoM filed a Motion to deny the Petition; or in the Alternative to Declare the Petition Deficient, Allowing the Petitioner to cure the Defects, Including Amending the EIS with the Date of Filing Changed to the Date the Commission Determines that the Defects Are Cured.
4. On September 30, 2009, the Commission determined that the Petition was defective or deficient.
5. On May 18, 2011, Petitioner filed its Second Amended Petition to cure the deficiency of its First Amended Petition.
6. On June 20, 2011, the Sierra Club filed its Notice of Intent to File Petition to Intervene.
7. On July 25, 2011, Senator Hee and the Sierra Club filed their petitions for intervention pursuant to HAR § 15-15-52(d). That same day, Petitioner filed its Third Amended Petition that excluded from the Petition Area approximately 28,328 acres of land that were or scheduled to be conveyed to the State of Hawaii for Kualaka`i Parkway.

8. On September 9, 2011, the Commission granted Sierra Club's petition to intervene and granted Senator Hee's petition to intervene solely in his individual capacity.
9. The Commission held hearings on the Third Amended Petition on January 5, 19, and 20, 2012, and on March 1, 2, 15, and 16, 2012.

DESCRIPTION OF THE PROPERTY

See Petitioner's Third Amended Petition.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

See Petitioner's Third Amended Petition.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

1. The Petitioner estimates that the development of the Ho'opili project will cost approximately \$4.6 billion (in Year 2007 dollars), spent over the project timeline of 2009 – 2030. (FEIS at p. 65.)
2. Petitioner has not submitted current financial information to the LUC.
3. D.R. Horton's 2011 Annual Report is available online. The 2011 Annual Report shows that the company does not have sufficient cash reserves or an adequate financial strategy to complete the proposed development. (See www05.drhorton.com/website/corp/2011_Annual_Report.pdf.)
4. At this time, FoM will not comment further as to the Financial Capability of the Petitioner to undertake the proposed development. However, FoM does stand ready

to work with Petitioner D.R. Horton to find a buyer who will keep the property in local food production or to find tax breaks from the state should the state assume the property or to find other alternatives that make it advantageous to the Petitioner to keep the property in local food cultivation.

STATE AND COUNTY STATUTES, ORDINANCES, PLANS, STUDIES AND PROGRAMS

1. The Constitution of the State of Hawaii

Article XI, Section 3 Agricultural Lands

2. Ewa Development Plan

3. Ewa Long Range Master Plan (Estate of James Campbell)

4. Hawaii State Plan

5. State Agriculture Functional Plan

6. State Water Resource Protection Plan

7. Oahu General Plan

8. A Development Study for the Honouliuli Lands (Estate of James Campbell)

9. Hawaii Revised Statutes

Chapter 205 Land Use Commission

The Petition Area consists primarily of irreplaceable, prime agricultural land that significantly contributes to Hawaii's economic viability and self-sufficiency. HRS § 205-16 provides that no amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai'i State Plan.

Chapter 226 Hawaii State Planning Act

§ 226-7 Objectives and policies for the economy—agriculture. The reclassification of the Petition Area does not generally conform to the following applicable goals, objectives, policies and guidelines of the Hawaii State Plan.

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

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

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

(b)(9) Enhance agricultural growth by providing public incentives and initiatives.

(b)(10) Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs.

(b)(11) Increase the attractiveness and opportunities for an agricultural education and livelihood.

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

(b)(13) Promote economically competitive activities that increase Hawaii's agricultural self-sufficiency.

§ 226-103 Economic priority guidelines, in relevant part:

(d)(7) Encourage the development and expansion of agricultural and aquaculture activities which offer long-term economic growth potential and employment opportunities.

AGRICULTURAL LANDS AND RESOURCES

1. "Ho'opili lands under consideration for conversion to housing are among the most sustainably productive for annual vegetable crops in the world."(FOM James Brewbaker Exhibit 33, p. 1; H. Valenzuela, 3/1/12, 213:25-214:2)

2. “The agricultural lands in that area are among the most productive and valuable lands in the State because of their proximity to market and ideal growing conditions, which include about 20% higher solar radiation than in similar areas on the North Shore; lower humidity and greater temperatures and ideal soil conditions that are flat and level so there’s little erosion.” (H. Valenzuela, 3/1/12, 161:14-22; L. Sollenberger, 3/1/12, 214:9-23, 236:1-13)
 3. These environmental conditions result in higher yields and in faster, earlier harvest so crops get to market earlier and allow faster turnaround, which means the next crop can be started immediately after harvesting, as compared to wetter areas where a farmer must wait several weeks before planting again. (Valenzuela, 3/1/12, 161:23-162:4)
 4. Most places in the world, because of their winters, have only one growing season a year. Hawaii can grow year round, but some areas are limited in number of harvests because of rain. On a per-crop, per-day basis, yields of crops like sweet corn are at least 55% higher in Ho’opili than on the North Shore.(James Brewbaker FOM Exhibit 33)
 5. “Few places in the tropics can assure consumers a higher quality vegetable product than the Ho’opili property. High levels of vitamins such as A and C are assured; minimal levels of diseases like mildews and blights is assured; minimal competition with weeds and use of pesticides is assured; and for many crops, the levels of insect damage are minimalized. (James Brewbaker Exhibit 33, p. 2)
- One of the advantages of growing a crop in a dry area is the low humidity.”

6. When pineapple, coffee and other export crops are excluded, there are 4,800 acres of land on Oahu currently producing food for local people. Ho`opili accounts for 1,497 of those acres. This 32% of Oahu's active farm acreage. (C. Fujikane, 1/19/12, 190:4-193:7)
7. In 2007, Ho`opili land produced more than 40% of Oahu's fresh broccoli, beans, romaine lettuce, and zucchini, and more than 70% of Oahu's fresh corn, cantaloupe, pumpkin, and honeydew, along with smaller percentages of a number of other crops. (DOA Statistics 2007)
8. While some specialty crops can economically be grown on the Neighbor Islands, most neighbor island farmers find the transportation to market too expensive to be competitive. This expense is expected to rise as the cost of oil rises.(Linda Cox 3/1/12 134:11-25)
9. The Ho`opili agricultural lands are close to markets, and have the additional economic advantage of having established needed infrastructure to get product to market. That includes the transportation and receiving facilities and dispersion facilities to get produce out to consumers. (L. Cox, 3/1/12, 135:2-9)
10. Agricultural lands on Oahu are not interchangeable. Each has not only unique growing conditions, but also unique soil types. "Close to 90 % of the Petition area land is composed of high activity clays, which are characterized by very high nutrient retention capacity and high fertility. " (J. Deenik, 3/16/12, 74:5-9) Fifty percent of the soils come from two groupings: Molosoils and Vertisols. Of the 12 soil types on the planet, these two fall at the very top in terms of fertility in agricultural productivity. (Deenik 3/16/12 75:10-16)

11. "It takes a long time to build high quality soil. These soils on the `Ewa Plain are hundreds of thousands of years old. (J. Deenik, 3/16/12 78:13-14)
12. Removing top soil and replacing it with coral to facilitate urban development will dramatically transform about a thousand acres of our most productive farmland, irreversibly in a human time scale. It cannot be undone, and it will take the soil tens of thousands of years to recover. (J. Deenik, 3/16/12 78:22-79:2)
13. In Horton's "Urban Agricultural Initiative," areas designated as civic farms or commercial farms are mostly gulches and other un-farmable areas, exactly the places we would never pay rent or taxes on.... You'd have to rappel down to your crops. (Martinez 3/1/12 200:19-201:10; 202:9)
14. The special 84 acres of steward farms are a multitude of regular 5,000 square foot lots with 1,200 square foot houses on them. The farms are the backyards and side yards, except that instead of planting shrubs, these owners will plant edible landscapes, if they choose to, no guarantees.(Mike Jones 11/18/11 203-204.) The "professionally managed farm services" that were to "support the farming operations" turn out to be landscape gardeners one might hire to care for the yard (Van Meter 10/21/11 21:23-22:2)
15. There is a growing consciousness statewide of the need to protect Hawaii's agricultural lands due to increasing demands and markets for locally grown produce, and widespread concerns about food security and sustainability. (C Hee 3/15/12 35:24-5; 36:1-5)

16. Linda Cox testified that five years ago, no one in her class wanted to be a farmer. Today 30 to 45 percent are dedicated to going into agriculture if they could only get land. (Linda Cox 3/1/12 132:8-15)
17. In the Fall semester, 2012, Ma'ō Farms will initiate an agriculture program of studies at the new UH West Oahu Campus, across North South Rd. from Ho'opili. It will eventually accept 75 students a year. (Maunakea-Forth 3/1/12 45:8-46:17)
18. There is currently a shortage of available land for small and medium-size farms due to high lease rents, short leases, lack of water delivery infrastructure, etc. (G. Maunakea-Forth 3.1.12, 44: 1, 10-14; L. Cox, 3/1/12, 132:8-18)
19. A study by PingSun Leung and Matthew Loke, titled "Economic Impacts of Increasing Hawaii's Food Self-Sufficiency," which is Sierra Club Exhibit # 52B found that by increasing agricultural production by 10%, farmers would get \$94 million more at the farm gate. Taking into account the multiplier effect, this \$94 million would generate an estimated economy-wide impact of \$188 million sales, \$47 million in earnings, \$6 million in tax revenues, and more than 2,300 jobs. (Sierra Club Exhibit 52B p.6; Linda Cox 146:6-17)
20. Governor Waihee noted that "the statutorily mandated process of identifying 'Important Agricultural Lands' on Oahu has only just been initiated, and could result in reclassification of the land that is subject to the instant petition. "(J. Waihee 3/15/12 12:19-25; 13:1-6)
21. It is important to keep agricultural options open because the crops we might need in the future are unknown. "If you irreversibly foreclose those options by paving over and

building on prime agricultural land, then it may prove to be very costly in the future” (P. Brewbaker, 3/16/12, 28:5-8) especially when the option to develop at higher density is available to us. (P. Brewbaker, 3/19/12, 43:17-20)

22. Governor Cayetano testified, “I was told that there are about 4500 acres of prime agriculture land, with water, left on this island. So when I found out that this Project would take about 30 percent of that 4500 acres, it didn't seem right to me, for agriculture, small farm agriculture. And that's why I oppose it.” (Cayetano 3/15/12 31:5-15)

NEED FOR GROWTH AND DEVELOPMENT

1. The City and County’s long-range projection is that demand for homes in Central Oahu and Ewa will average 1,800 per year, reaching 46,800 homes needed by 2035. (R. Stanfield, DPP Exhibit 10B, p 1)
2. The latest draft of the Ewa Development Plan states that in the Ewa area there are 34,805 homes already approved by the LUC, fully zoned, fully entitled and ready to be built. (EDP May 2011, p 2-11)
3. Another 12,000 homes in Wai`awa by Gentry and 3,500 in Royal Kunia/Launani Valley/Waikele are also fully entitled and waiting to be built. (DPP Annual Report on Status of Land Use on Oahu in 2010)
4. The 34,805 fully entitled homes in ‘Ewa and the 15,500 fully entitled homes in Central equals 50,305 homes. This is 3,505 fully zoned and fully entitled un-built homes than the City and County says are needed.

5. Projections out to 2035 indicate that there is no need for the additional 11,750 homes planned for the Ho`opili project. If Ho`opili is built there will be a glut in the housing market. (R. Stanfield, Exhibit 10B p.1)
6. While Petitioner claims that the Ho`opili project will provide much-needed affordable housing, Only 30% of the Ho`opili housing is slated to be “affordable” housing. The balance, 70% of the housing in the Ho`opili project, will be priced at market value.
www.hoopilioahu.com/thoughtfulplanning
7. The Oahu General Plan 2002, encourages development of the urban core: Policy 5 reads “Provide for more compact development and intensive use of urban lands where compatible with the physical and social character of existing communities. (Oahu General Plan 2002, Section VII “Physical Development and Urban Design,” p. 31.)

TRAFFIC CONSIDERATIONS

1. The transportation infrastructure in the Ewa region is not adequate to meet existing needs let alone those that will be caused by the 50,305 new homes already approved for building upstream of the H1/H2 merge. This 50,305 does not include either Ho`opili or Koa Ridge.
2. Petitioner relies on a 2006 Traffic Impact Analysis Report (TIAR) and its traffic study, submitted as part of the FEIS, using Department of Transportation numbers from 2006. The Petitioner did prepare an updated TIAR dated April 2011, however the same 2006 data was again used. As a result Petitioner is asking the LUC to rely on information that is over 5 years old and outdated. (K. Niiya, 10/21/11; 145:6-25, 146:1-16) The State

Department of Transportation has requested another updated TIAR with addition information, including a new planning horizon and new assumptions to consider what is expected to happen after the development's first ten years. (B. Kudo, 61:18-25; 62: 1-5.)

3. The 2006 TIAR and the April 2011 TIAR use the same, or similar, models. Neither provide the critical information needed to determine the traffic impacts of the Ho`opili development. However, both show that the proposed development will substantially increase traffic congestion. (P. Prevedouros, 3/21/12; 78:24-25, 79:1-4)
4. Professor Prevedouros testified that the report is technically competent in some respects, but overall as a decision-making document it is unacceptable. One reason is that the April 2011 TIAR lacks any future scenario for a full build-out of the development and only reports one third of the traffic impact. (P. Prevedouros, 3/21/12; 68:17-15, 69:1-2) The report is also limited to impacts within a one mile radius around the development, and predicts that when it is 33 percent built, it will generate 4,000 trips in the peak hour. (P. Prevedouros, 3/21/12; 70:8-17) Prevedouros noted that a typical final TIAR will have at least one scenario that reveals the probable impact of a full build-out. This one should also address the Middle Street merge because of its pervasive impacts in the whole network. "You cannot possibly generate 4,000 trips and narrow your analysis in one mile corridor around the project. It is not acceptable" (P. Prevedouros, 3/2/12 70:8-17)
5. Petitioner's TIAR used "Level of Service" ("LOS") calculations on Fort Weaver Road. (K. Niiya, 10/21/11; 146:22-25, 147:1) These standards range from A to F, A meaning traffic is free flowing, F traffic is at standstill. (K. Niiya, 10/21/11; 147:2-8, 148:1-13) D levels is acceptable for an LOS at peak hour. (K. Niiya, 10/21/11; 147:9-20) In 2006 five out of the

twelve rated intersections on Fort Weaver road were rated unacceptable for the morning commute, three rated F and two rated E. (K. Niiya, 10/21/11; 149:13-25) In the afternoon commute, five intersections were also rated unacceptable, four at F and one at E. (Niiya 10/21/11 150:1-19) Neither Petitioner nor the State has offered any evidence that the proposed development will make improvements that are capable of alleviating the current Levels of Service (“LOS”) E and F on Fort Weaver road. [K. Niiya, 10/21/11; 184:18-25, 185:1-25, 186:1-25, 187:1-25, 188:1-3]

7. The morning rush problem in the six blocks of Ft. Weaver Rd. between Farrington Hwy and the H1 Freeway has never been addressed. Farrington is one of only two exits from the project on the East (Honolulu) side. For the Ho’opili residents exiting there, access to the freeway requires turning up the on-ramp and merging into Fort Weaver Road. This traffic will merge into Fort Weaver traffic at the same time that Fort Weaver traffic is narrowing from three lanes to get into the two lanes that lead to the freeway. (K. Niiya 135:11-141:8)
9. In addition Petitioner’s traffic engineer used a modeling tool called “Highway Capacity Software”, which is not a valid model to use in this case. (P. Prevedouros, 3/21/12; 80:19-20) Federal guidelines recommend the usage of such models only for isolated locations and for sketch level analysis. (P. Prevedouros, 3/21/12; 80:21-23) This project is not in an isolated location; there are up to 12 interchanges. (P. Prevedouros, 3/21/12; 80:24-25) This is a planning level analysis for a large development, not a sketch analysis, thus making the “Highway Capacity Software” an unacceptable tool. (P. Prevedouros, 3/21/12; 80:25, 81:1-2)

10. Table 4.13 of the Ho'opili FEIS shows a free flow of traffic (LOS A) on the H1 freeway at Makakilo Drive in the morning commute for 2007. It shows the freeway at Pa'iwa St. with LOS E, the worst traffic Hawaii has experienced short of gridlock. The same table shows traffic in 2030, *with* the project, and *with* rail. Makakilo Drive has gone from LOS A to LOS E. (Makakilo Drive is about three miles upstream of the Ho'opili project.) The same table shows *all* other intersections studied have deteriorated to LOS F -- stalled traffic, total gridlock.

11. The map in FoM Exhibit 3 shows that Ho'opili is situated so that all of its traffic is will pour onto the freeway and onto Ft. Weaver Road *in front of* all of the drivers from Makakilo, Kapolei, and the Wai'anae Coast, and in front of all the drivers from 'Ewa and 'Ewa Beach.

12. The Texas Transportation Institute model shows the cost of delay in traffic per person. A 30 minute delay costs each person \$1,824.90 per year. (FoM Exhibit R-5) The current traffic delay for a Makakilo resident today is roughly 30 minutes each way, costing him or her \$3,649 a year. When the freeway commute reaches LOS F, and the cost of gasoline is even higher, the expense for each family will be far greater. At full build-out commuters could expect an increase of 20 to 30 minutes to pass through the H/1-H/2 merge, which, even without increase in gasoline costs, would add as much as an hour to the commute and bring the financial burden to \$7,298 per year per person. (P. Prevedouros 72:2-17)

13. The human impacts of sitting in traffic include loss of time with family, stress that takes its toll on the person and on his or her family, time lost from watching the kids in sports, lack

of time for participation in community, loss of time for leisure, loss of the sense of living in paradise, cost for employers for tired workers, effect on latch key kids, cost of extra gasoline. (FoM Exhibit 15)

14. Petitioner's 2006 traffic study is limited to Ft. Weaver road and did not consider the effect of additional traffic on the entire commute between the proposed development and downtown Honolulu. (K. Niiya, 10/21/11; 151:3-13) The study completely neglects the H-1/H-2 merge downstream from the development.
15. "The Project will generate a lot of traffic that will go through that merge. And this merge is not even mentioned anywhere. And it's never been analyzed. In my opinion as a reviewer this is a fatal flaw." (P. Prevedouros Transcript 3/2/12 68:17-70:2 70:4)
16. To solve the problem of the stalled traffic on the freeway, the Petitioner's "modification is adding lanes [in the miles between the project and the merge]. Now, the freeway has multiple choke points. At the H-1/H-2 merge, it's a three-lane choke point. It doesn't matter how many lanes you add upstream. If you have 10 lanes upstream and then they come down to three lanes down here, it doesn't take a civil engineer to tell you that you haven't solved the problem. It's a choker." (P. Prevedouros 77:1-23)
17. "In many respects this TIAR includes invalid models –not strictly invalid but invalidly used is the context. This is a major congested freeway corridor. And it's been analyzed with very, very basic equation models. In fact, from a professional standpoint set by the Federal Highway Administration prohibits these models for use for anything else than sketch analysis." (P. Prevedouros, 3/21/12; 69:8-15)

As a result Petitioner is asking the LUC to rely on information that is over 5 years old and outdated. (K. Niiya, 10/21/11; 145:6-25, 146:1-16)

18. The Petitioner has been less than forthcoming with correct, up-to-date facts about the traffic: The City and County of Honolulu has taken a consistent position in these LUC hearings in support of the project. The State Department of Transportation under the Lingle administration took a hard line in opposition to the project. This led to the supposition among some parties that the petitioner was avoiding, and would avoid, full and transparent consideration of the traffic problems at the state level, with the expectation that they would find a more “understanding” review at the City level. (Transcript 3/2/12 64:24-66:25)
19. It is significant that Brennon Morioka, former Director of the State Department of Transportation, sent written testimony to the Land Use Commission which said, "Even with all assumed mitigation measures the H-1 Freeway will quickly degrade to LOS F due to the direct impacts of the Ho'opili Project under the most likely projections." "Even under a best case scenario, which includes an optimistic rail transit option, the H-1 Freeway would operate at LOS E with the Ho'opili Project." "At LOS F there is gridlock on the freeway. Because traffic is close to a standstill at LOS F, any additional cars do not necessarily slow traffic further, but instead tends to increase the duration of the peak hour period." (Niiya Transcript 10/21/11 162:12-25)
20. During the Morioka's tenure, the DOT's position was that “there is currently no reasonable proposal under consideration within the Petitioner's TIAR to be implemented that will resolve this significant regional concern. (Niiya-Cerullo Transcript 10/21/11

163:19-25) "Knowing that we would not accept Petitioner's proposed TIAR and any modification thereof, the Department of Transportation has no proposed condition to be placed into the decision and order." (Niiya-Cerullo Transcript 10/21/12 165:11-19)

21. The Rail system, even if developed, will not alleviate traffic congestion and, in actuality will make traffic congestion worse. (A. Moore, 3/2/12 14:19-15:3) In addition, the Farmland Protection Policy Act, 7 USC 4202(b) requires that if a transit project using federal funds is routed through prime or unique farmland, its impact must be assessed by applying the Farmland Conversion Impact Rating. If the Rating exceeds a regulatory threshold of 160 points, alternative routes must be evaluated. The route of the City's proposed Rail project takes it through the agricultural land that Ho`opili wants to urbanize. Although the rating done by Parsons Brinkerhoff under contract with the City scored 120, five independent parties scored the impact rating at an average of 226 (FoM Exhibits P, Q, and R), a score which would require that alternative routes be studied. In addition the Rail project is planned to stop three and one half miles short of connecting the proposed Ho`opili development with new jobs in the "second city" of Kapolei, the Campbell Industrial Park, and the resort area further west, thus further invalidating the Petitioner's claim that Ho`opili is part of the "second city."
22. The Adequate Facilities Requirement in the Ewa Development Plan states: "Zoning and other development approvals for new developments *should be approved only if* the responsible City and State agencies indicate that adequate public facilities and utilities will be available *at the time of occupancy.*" The Ewa Development Plan ties the "Adequate Facilities Requirement" to the "General Policy, Transportation System Functions," which

states in significant part, “The transportation system should...provide adequate capacity for major peak-hour commuting to work in the Primary Urban Center.” Adequate capacity for peak hour is recognized as LOS D nationwide. Given even the current LOS on the freeway during rush hour, approval of this project would clearly be contrary to the ‘Ewa Development Plan.

WATER RESOURCES

1. The State Water Code requires the integration of water in land use planning. (W. Tam 8:21-23; T. Giambelluca, 105:2-7; 107: 3-21) Land use affects the supply of water by affecting the flows of water through the system to the groundwater into the streams. Land use also affects the demand for water. (T. Giambelluca, 107:3-6)
2. In October 2011, Dr. Tom Giambelluca completed and published the new *Rainfall Atlas of Hawaii*. (3/1/12, T. Giambelluca 100: 14-17) The Atlas shows there is a downward trend in Hawaii’s rainfall and an increase in the frequency of droughts. (T. Giambelluca, 103: 16-25; 104:8-9; 104: 15-19) Climate change and the decline in overall rainfall impacts Hawaii’s aquifers. (W. Tam, 19:12-14)
3. The projected decrease in natural water resources requires a great degree of caution when making decisions that commit to certain water uses or to providing water. (T. Giambelluca, 106: 16-24) The Water Code requires counties to prepare water use and development plans in an effort to integrate water and land use. (W. Tam, 15:11-15) The City and County of Honolulu has not started work on the Central Oahu water plan. (W. Tam, 16:19-20.) The State Department of Agriculture has not yet completed its

Agriculture and Water Use and Development Plan as required by the State Water Code to address water supply for agricultural uses. (B. Usugawa, 98:1-11)

5. Central Oahu, and, in particular, the Pearl Harbor aquifer is the key source for Oahu's water and is generally considered one of the finest natural aquifers in the world. (W. Tam, 16:13-16) The proposed development would draw water from the Pearl Harbor aquifer. The Waipahu/Waiawa aquifer system is a sector of the Pearl Harbor aquifer. (B. Usugawa, 91:14-19) The Water Commission is currently working with USGS and the Board of Water Supply to study the groundwater recharge and sustainable yield of the Pearl Harbor aquifer. (W. Tam, 12:14-25; 13:1-6; 14:18-22) Even under current Board of Water supply estimates, the Pearl Harbor aquifer is expected to reach its pumpage limit in 15 years.
6. The sustainable yield is a rough estimate given the current infrastructural patterns that could be safely extracted to maintain a certain head level. (W. Tam 13:1-6) Petitioner's FEIS asserts that there is sufficient water for the proposed development by comparing the current estimated sustainable yield with the current pumpage. However an analysis that looks only at the current sustainable yield compared with the current pumpage to conclude how many millions of gallons of water per day are available is overly simplistic. (W. Tam, 40: 9-15)
7. The total potable water supply requirement for the proposed development at full build-out is 3.9 million gallons a day. (T. Nance, 113:15-18) The water master plan for the proposed development is still conceptual and has not been approved by the Board of Water Supply. (B. Usugawa, 93: 14-19) Water master plans for developments that have

been approved or are currently under review would more than double the potable water demand and would exceed current capacity for the Ewa water system. (B. Usugawa, 95:12-25: 96:13-18)

8. Petitioner has not made an adequate showing regarding the availability of water resources to meet the proposed development's demands, particularly in light of the development's long timeframe. When the proposed development is ready to draw water, water identified from current sources may not be available. (T. Nance, 122: 12-25) An analysis of available water resources requires consideration of water needs and water allocation based on competing uses, looking 50-100 years in the future. (W. Tam 40:16-21)
9. In considering the allocation of water resources, the LUC must consider the goals and policies of the State Plan. Because the Petition area land is prime agricultural land, the LUC gives particular weight to the goals of policies of the State Plan regarding agriculture. The State has a goal of increasing diversified agriculture and a policy of encouraging agriculture by making the best use of natural resources.
10. Aside from high quality soil, water is a critical natural resource for the growth and development of diversified agriculture. The proposed development would decrease the amount of water available for agricultural use. The quantity of water consumed by the proposed development would accelerate the depletion of naturally available water sources.

The predicted future scarcity in water resources weighs in favor of keeping land in agriculture. Agriculture allows for greater flexibility with regard to water requirements.

(T. Giambelluca, 109: 9-17)

11. In contrast, developments require significant, dedicated water resources. (T. Giambelluca, 109: 9-17; 109: 18-24) “Farmers are able to adapt to changing water availability. They can plant different crops. They can use less of the land. They can plant more sparsely and they can adapt to that. Whereas, once you put houses in place and you have a certain number of people there, you can't really renege on that promise to provide water.” (W. Tam, 20:13-15) “Once you change from ag/urban, for example, it’s an intensity and inelastic demand. It’s not like agriculture, which can come and go.” (W. Tam, 56:14-24; 57:1-4)

CONTRIBUTION OF AGRICULTURE TO THE JOB MARKET

1. There is an increased interest in jobs in the agricultural industry. (L. Cox, 3/1/12, 132:14-151; G. Maunakea-Forth, 3/1/12, 50:5-20, 51:14-19.) In the past several years, there has been a significantly increasing demand for locally produced food. (P. Apo, 3/1/12, 249:7-25; G. Maunakea-Forth, 3/1/12, 50:5-20, 51:14-19; Cox, 132: 7-15.)
2. Local food production has several benefits for the local economy, such as job creation in the agricultural industry and agricultural tourism. (L. Cox, 3/1/12, 133:18-25; Sierra Club Exhibit 52B.)
3. The increased interest in jobs in the agricultural industry and an economic demand for locally grown products show that agricultural economic development is a viable option to create economic opportunity and support the local economy. (G. Maunakea-Forth,

3/1/12, 50:5-20, 51:14-19.) If agricultural production is increased by 10 percent, the money generated would total \$180 million, generate 6 million in taxes, create about 2,300 jobs. (Sierra Club Exhibit 52B.)

4. Producing food on Oahu has an important economic benefit because Oahu has the state's largest population. (L. Cox, 3/1/12, 134:11-23.) The Ho`opili land is advantageous because it is close to local markets. (L. Cox, 135:3-9, T. VanMeter, 10/21/11, 65:22-25, 66:1-8.) Over the long term, agriculture will contribute more to the State's overall economy than development. (L. Cox, 3/1/12, 156:23-25; 157:1-15.)
5. There a number of non-market benefits associated with local food production such as better nutrition, value of supporting local producers, agricultural vistas, and open spaces. (L. Cox, 3/1/12, 126:23-25, 127:21-23; 129:11-21; 133:18-25; 134:1-6; Sierra Club Exhibit 48B.))
6. Petitioner's witness, Ann Bouslog, prepared an Economic and Fiscal Impact Assessment. (FEIS, App. J.) At the November 17, 2011 hearing, Ms. Bouslog testified that the proposed development will not provide any significant employment opportunities. (A. Bouslog, 11/17/11, 163:4-9, 187:11-13; 187:16-18.) The proposed development would only create 680 net direct new jobs. (A. Bouslog, 11/17/11, 187:7-25). The jobs associated with the proposed development are temporary or indirect jobs that the proposed development could support, but will not create. (A. Bouslog, 11/17/11, 161:14-15, 11/17/11, 186:10-16.)
7. Petitioner's expert used a partial model to look at the employment opportunities and economic development associated with the proposed development. (L. Cox, 3/1/12,

130:20-21, 131: 1-9.) Using a partial model is not appropriate in this instance because it should only be used when you are looking at an isolated incidence that does not concern an entire general system. (L. Cox 3/1/12, 130:21-24.)

8. Petitioner's market analysis failed to analyze linkages with other communities and account for how the gain of a job in the proposed development could equal the loss of a job elsewhere. (L. Cox, 3/1/12, 131:1-5.) Petitioner's expert failed to adequately consider jobs lost with the proposed development or to analyze jobs created through the agricultural initiatives in the proposed project. (A. Bouslog, 11/17/11, 185:10-25, 186:1-9; see FEIS at p. 66 ("At least 80 agricultural-related jobs and \$1.7 million per payroll will be ultimately be lost from the Petition Area."))
9. Petitioner's market assessment is also inadequate because it makes predictions based solely on historical data. (L. Cox, 3/1/12, 130:14-19.) Given the changes in our economic and environmental climate, relying solely on historical data is problematic. (L. Cox, 3/1/12, 130:14-19.) Redevelopment in the primary urban core, in and around Honolulu, will facilitate economic development and opportunities, while providing the same number of construction jobs. (P. Brewbaker, 3/16/12, 29:16-25, 30:1-18.) In contrast to jobs in the agricultural industry, construction jobs are temporary jobs. (L. Cox, 3/1/12, 152:18-22.)

RECREATIONAL AND SCENIC RESOURCES

1. The visitor industry is Hawaii's number one industry. It relies on scenic vistas, tropical greenery, beaches and open space to attract tourists. Urban sprawl and traffic congestion works against marketing the Ko`olina area as a visitor destination choice.
2. "The Ho`opili project will permanently change the in-the-country Ko`olina experience. Instead of traveling through miles of open, green space before arriving at Ko`olina, tourists will find unbroken urbanization from the airport to the resort. Worse yet, views to the sea and views of Pearl Harbor will be locked by a 10-foot wall, which will eventually become red dirt stained, with scattered patches of covered graffiti, a visual blight." (P. Apo, 3/1/12, 243:21 – 244:20)
3. "[T]his project will close out the last of the green spaces that's left from Kapolei to Waipahu. And ... you'll have a Southern California viewplane." (P. Apo, 3/1/12, 253:25 – 254:4)

ARCHEOLOGICAL, HISTORICAL AND CULTURAL CONSIDERATIONS

The Friends of Makakilo expressly adopts, and incorporates herein, the proposed findings of fact and conclusions of law, and decision and order filed by Intervenor Sierra Club on April 13, 2012.

CONCLUSIONS OF LAW

1. Article XI, Section 3 of the Hawaii 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".

2. Hawai'i Administrative Rule ("HAR") § 15-15-77 provides that "the commission shall not approve an amendment of a land use district boundary unless the commission finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, not violative of section 205-2, HRS, and consistent with the policies and criteria established pursuant to Sections 205-16, 205-17 and 205 A-2 HRS."

3. HRS § 205-16 provides that "no amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai'i state plan."

4. The Hawaii State Plan, as codified in HRS § 226-7, objectives and policies for the economy- agriculture, provides in relevant part:

(a) Planning for the State's economy with regard to agriculture shall be directed toward achievement of the following objectives

(2) Growth and development of diversified agriculture throughout the state.

(3) An agriculture industry that continues to constitute a dynamic and essential component of Hawaii's strategic, economic, and social well-being.

(b) To achieve the agricultural objectives, it shall be the policy of this state to:

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

(9) Enhance agricultural growth by providing public incentives and encouraging private initiatives

- (10) Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs.
- (11) Increase the attractiveness and opportunities for an agricultural education and livelihood
- (12) Expand Hawaii's agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises.
- (13) Promote economically competitive activities that increase Hawaii's agricultural self-sufficiency.

5. The Petitioner has failed to meet its burden by clear and convincing evidence that the housing project it proposes to construct on prime agricultural land outweighs existing state policy requiring the protection and preservation of agricultural lands.

6. The Petition is not consistent with the policies and criteria established pursuant to HRS § 205-16 and does not conform to the Hawaii State Plan or Article XI, Section 3 of the State Constitution. Reclassification would reduce the availability of agriculturally suitable lands with adequate water to accommodate present and future needs and also undermine, rather than enhance, the State's efforts to increase agricultural self sufficiency and promote the expansion of diversified agriculture.

7. The criteria for reclassification of lands in agricultural production set forth in HAR 15-15-77(6) states that agricultural lands in production two years prior to the filing of a petition "shall not" be reclassified unless the development is needed for urban growth or if

reclassification will not impair agricultural production in the state. It is clear that this project is not needed for urban growth and the loss of these productive and unique lands would greatly impair agricultural production on Oahu and in the State of Hawaii.

8. Article XI, Section 1 of the Hawaii State Constitution requires the State to conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall 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. Because the Petition Area furthers the self-sufficiency of the State through the production of highly valuable crops it is the State's duty and obligation to conserve and protect the Petition Area from urban development.

10. The City and County of Honolulu's Ewa Development Plan and urban boundary determinations are not binding on the commission. It is the commission's duty to make decisions based on a statewide perspective in accordance with the Constitution and laws of the State of Hawaii. The mere fact that the proposed development may be within the urban or master development plans of the City and County of Honolulu does not satisfy the legal criteria to enable the Land Use Commission to ignore applicable constitutional and statutory provisions of the State of Hawaii which are supreme.

11. The City and County of Honolulu currently is engaged in the process of identifying "Important Agricultural Lands" to be protected and preserved. The Important Agricultural Lands Bill HB 1640 was passed in 2005 and signed into law as Act 183 by then Governor Lingle to fulfill the longstanding constitutional mandate to protect important

agricultural lands. In March 2012, with full recognition that the Petition land had been designated for urbanization in the city's own 'Ewa Development Plan, the Council nevertheless unanimously passed Resolution 12-23 with wording will include the Petition lands among those it will consider for Important Agricultural Lands designation.

DECISION AND ORDER

Based on the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District is not in the best interests of the people of Hawaii or the State, and THEREFORE IT IS HEREBY ORDERED that the petition is denied.

Dated: Honolulu, Hawaii _____, 2012

Draft Findings of Fact, Conclusions of Law, Decision and Order

Submitted by Kioni Dudley, President, Friends of Makakilo