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FIRST CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SAVE SHARKS COVE ALLIANCE,
MĀLAMA PŪPŪKEA-WAIMEA,
HAWAII'S THOUSAND FRIENDS,
LARRY McELHENY, JOHN THIELST,
AND CORA SANCHEZ,

Plaintiffs,

v.

CITY AND COUNTY OF HONOLULU;
CITY COUNCIL OF THE CITY AND
COUNTY OF HONOLULU;
DEPARTMENT OF PLANNING AND
PERMITTING OF THE CITY AND
COUNTY OF HONOLULU;
HANAPOHAKU LLC; DOES 1-10,

Defendants.

Civil No. 19-1-0057-01 JHA
(Declaratory and Injunctive Relief)

**FIRST AMENDED COMPLAINT;
EXHIBITS "A"-"B"; SUMMONS**

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

FIRST AMENDED COMPLAINT

Plaintiffs Save Sharks Cove Alliance, Hawai‘i’s Thousand Friends, Mālama Pūpūkea-Waimea, Larry McElheny, John Thielst, and Cora Sanchez (“**Plaintiffs**”) allege as follows:

INTRODUCTION

1. On November 14, 2018, despite three years of community opposition, a history of over \$200,000 in assessed fines, continuing violations of the law, and the failure to demonstrate compliance with the high standards of the state and county laws that protect Hawai‘i’s precious coastal resources, Defendant Hanapohaku LLC (“**Developer**”) was granted a fast-track approval by Defendant City Council of the City and County of Honolulu (“**City Council**”), based on the flawed recommendation of Defendant Honolulu Department of Planning and Permitting of the City and County of Honolulu (“**DPP**”), to build an \$18 million, 34,500-square-foot commercial tourist-oriented development with a cluster of six food trucks (the “**Proposed Development**”) on a 2.7-acre parcel directly across from Sharks Cove, a marine protected area on the North Shore of O‘ahu.

2. Sharks Cove is a heavily-visited part of the Pūpūkea Marine Life Conservation District (“**MLCD**”). The adjacent Pūpūkea Beach Park (the “**Park**”), also part of the MLCD, provides critical beach, ocean, and tide pool access for Plaintiffs, local residents, and visitors alike. The natural, cultural, and recreational resources of Sharks Cove and the Park are threatened by this Proposed Development, which: (a) includes numerous one- and two-story retail and office buildings and a 126-space parking lot; (b) is projected to generate at least 926 new daily vehicle trips (337,990 trips per year) to Kamehameha Highway, which is already over-congested; (c) will create new sewage flow of up to 10,900 gallons per day (708,501 gallons per

year); (d) will lead to increased pollution of the nearby “Class AA” marine waters; and (e) will attract 2,400 food truck customers a day (876,000 customers per year).

3. In 2018, Hawai‘i welcomed over ten million visitors to the islands. Of the approximately six million tourists who visited O‘ahu, an estimated 51% visited the North Shore, which is over 8,300 visitors a day -- or over 3 million tourists a year. All must traverse Kamehameha Highway, the only route connecting the North Shore community to the rest of O‘ahu. The Proposed Development will result in an 11% increase in visitors, and congestion, to the Sharks Cove area.

4. After purchasing the three adjacent lots next to the Pūpūkea Foodland along Kamehameha Highway in 2014, the Developer commenced unpermitted development, subsequently found to be illegal. Since then, the Developer has continued to pursue activities in violation of environmental and public safety laws, failed to comply with numerous permit conditions, and evaded public accountability.

5. The Parcels (defined below) are zoned under the Land Use Ordinance, Revised Ordinances of Honolulu (“**ROH**”) Ch. 21, as “B-1 Neighborhood Business.” “The intent of the B-1 neighborhood business district is to provide relatively small areas which serve the daily retail and other business needs of the surrounding population.” ROH § 21-3.110.

6. This specific limited commercial zoning is subject to additional development restrictions because the Parcels are located within the Special Management Area (“**SMA**”) pursuant to the municipal law enacted in 1978 under the authority of the State Coastal Zone Management Act (“**CZMA**”), Hawai‘i Revised Statutes (“**HRS**”) Chapter 205A. The SMA policy is “to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Special controls on development within an area along the shoreline are

necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to ensure that adequate public access is provided to public owned or used beaches, recreation areas, and natural reserves, by dedication or other means.” ROH § 25-1.2. All projects within the SMA require an SMA permit prior to development. *See* ROH Chapter 25; *see also, e.g., Hawai‘i’s Thousand Friends v. City & County of Honolulu*, 75 Haw. 237, 246, 858 P.2d 726, 731 (1993).

7. To date, the City, its City Council, and its DPP (collectively, “City”) have not adequately enforced the state and local laws, including the SMA permitting and monitoring requirements, HRS Chapter 205A, and ROH Chapter 25, against the current and Proposed Development to ensure present and future compliance with the statutory mandate.

8. On August 2, 2017, DPP granted the Developer an “After-the-Fact SMA (Minor) Permit.” An SMA Minor Permit is “an action by the agency authorizing development, the valuation of which is not in excess of \$500,000.00 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.” ROH § 25-1.3; *see also* ROH § 25-3.3(e)(2).

9. The SMA Minor Permit issued by the DPP allowed the Developer to start new, and partially retain existing, retail establishments and five food trucks on the site, and required site improvements, including grading, paved parking, management of outdoor seating, wastewater management, storm water retention, and various other improvements. The purported value for the improvements stated by developer was \$368,641, allegedly below the threshold value of \$500,000 for an SMA Major Permit. *See* ROH § 25-1.3.

10. Due to DPP’s and the Developer’s undervaluation of the activities in the application and the likely significant adverse effects on the environment, Plaintiff Mālama

Pūpūkea-Waimea (“MPW”) filed an administrative appeal on September 27, 2017 to contest this After-The-Fact SMA Minor Permit. The appeal is still unresolved, because DPP has failed to assign a hearing officer to the matter for over sixteen months.

11. The Developer’s continuing failure to comply with the conditions of the existing SMA After-the-Fact Minor Permit, including storm water runoff controls, trash and spill controls, asphalt paving requirements, and fencing along Pāhoe Road, violate the permit, Chapter 205A, and ROH Chapter 25.

12. In 2017 and 2018, while MPW’s contested case hearing request on the After-the-Fact SMA Minor Permit was pending, DPP agreed to accept from the Developer a mere fraction of the fines assessed, under an opaque, decades-old policy. For the over \$200,000 in assessed penalties for illegal operations on the property, DPP accepted a fine amount “adjusted to 10 percent of the actual fines accrued.” By so doing, DPP undermined and enfeebled the City’s oversight process and enforcement tools, and perpetuated a bad practice that encourages illegal development on O‘ahu.

13. In October 2018, DPP recommended that the City Council approve an SMA Major Permit for the Proposed Development, despite the history of persistent problems, flawed procedures, and an inadequate Final Environmental Impact Statement (“FEIS”) that: (a) failed to properly analyze the Proposed Development’s impacts on traffic, pedestrian safety, marine water quality, beach access, recreation, litter, and the Pāhoe Road neighbors; (b) failed to analyze the cumulative impacts from the current traffic, wastewater, and runoff from the neighboring commercial property; and (c) failed to respond to substantial community concerns such as added congestion to Pūpūkea Road.

14. In October and November 2018, at the Developer's request, the City Council fast-tracked approval of the SMA Major Permit over a period of three weeks, with the absolute minimum allowable public notice.

15. In 2017 and 2018, the Developer, its members and members' families, and its planning consultant Group 70 International, Inc. ("G70"), made over \$31,000 in campaign contributions to eight of the nine City Council members who fast-tracked the SMA Major Permit.

16. City Council Chair Ernie Martin received over \$14,000 in campaign contributions from the Developer and G70. His term ended in December 2018.

17. In the City's rush to approve the Project, the City Council failed to act as an independent, careful, and impartial decision-maker when reviewing the proposed SMA Major Permit. Thus, the City deprived Plaintiffs of due process of law and violated the Constitution, state statutes, and local ordinances that ensure protection of public trust resources in the coastal zone and the community.

18. The Plaintiffs, having exhausted their administrative remedies, and with deep concern about the irreversible adverse impacts of the Proposed Development (especially given the Developer's history of illegal development, lack of public accountability, and political favor), file this action as a last resort to protect the public trust, the natural and public resources of Sharks Cove, the Pūpūkea Marine Life Conservation District, Pūpūkea Beach Park, and the neighboring residential communities, including the Pāhoe and Pūpūkea Road neighborhoods.

19. This action seeks declaratory and injunctive relief, attorneys' fees and costs, and civil penalties to redress violations of Constitutional, state, and local laws that protect the environment.

20. Ultimately, Plaintiffs seek declaratory and injunctive relief to ensure: (a) the Developer's -- and the City's -- full, transparent, and accountable compliance with state and county laws; (b) representations regarding lack of any significant adverse impact are accurate and enforced; and (c) that if either the Developer or the City fail to ensure that there is a lack of significant adverse impact, or fail to provide full, transparent, and accountable compliance to the public, the Plaintiffs and the North Shore community will have immediate recourse.

PARTIES

21. Plaintiff Save Sharks Cove Alliance (“SSCA”) is an unincorporated alliance of groups and individuals organized to protect the Sharks Cove area, including the Park, MLCD, the adjacent shoreline, and nearby residential neighborhoods. SSCA is dedicated to protecting and preserving the sensitive and fragile marine environment and shoreline, with a particular focus on saving Sharks Cove from degradation and destruction in perpetuity.

22. Plaintiff Hawai‘i’s Thousand Friends (“HTF”) is a domestic nonprofit corporation whose purpose is to monitor and evaluate environmental, land, and water use proposals. HTF is dedicated to ensuring that growth is reasonable and responsible; that appropriate planning, management, and water and land use decisions are made that protect the environment, human health, and cultural and natural resources; and that decisions are made and proposals are implemented in conformity with the law.

23. Plaintiff Mālama Pūpūkea-Waimea (“MPW”) is a domestic nonprofit corporation dedicated to the protection and preservation of the unique and fragile natural, cultural, social, and historic resources at and in the vicinity of Sharks Cove. MPW’s mission is “working to replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea ahupua‘a for present and future generations through active community stewardship, education,

and partnerships.” MPW formed in 2005 as a voluntary stewardship organization, in response to a failed proposal by a prior owner to build a commercial shopping center on the parcels that are now the subject of the present dispute with the new Developer.

24. Plaintiff Larry McElheny is a 40-year resident of Pūpūkea. As a long-time resident, community activist, and frequent user of North Shore ocean resources, McElheny has a particular concern and interest in protecting the Park, MLCD, the adjoining shoreline and ocean, surfing sites, nearby residential neighborhoods, and coastal and environmental resources. As a grandfather of six keiki who regularly use Sharks Cove for recreation, McElheny seeks to ensure full and safe access to the Sharks Cove tide pools where families explore, learn and enjoy a variety of recreational opportunities.

25. Plaintiff John Thielst is a 32-year North Shore resident who has owned, since 2013, property on Pāhoe Road, adjacent to the Proposed Development. As a neighbor, long-time resident, diver, and snorkeler, Thielst has a particular concern and interest in protecting the Park, MLCD, the adjoining shoreline and ocean, surfing sites, residential neighborhoods, and coastal and environmental resources.

26. Plaintiff Cora Sanchez is a 30-year North Shore resident and active participant in community efforts to preserve and protect its natural resources. As a long-time resident, community activist, and frequent user of North Shore ocean resources, Sanchez has a particular concern and interest in protecting the Park, MLCD, the adjoining shoreline and ocean, surfing sites, residential neighborhoods, and coastal and environmental resources.

27. Defendant City and County of Honolulu is a municipal corporation duly organized and existing under the Constitution, laws of the State of Hawai‘i, the Revised Charter of the City and County of Honolulu, and the Revised Ordinances of Honolulu.

28. Defendants Honolulu City Council and DPP are “agencies” of the City and County of Honolulu for the purposes of HRS § 205A-6 (as noted above, together, Defendants City and County of Honolulu, Honolulu City Council, and DPP are collectively referred to as the “City”). The director of the DPP has the responsibility to administer and enforce the City’s Special Management Area permit system. *See* ROH § 25-2.1(a).

29. Defendant Hanapohaku LLC (“**Hanapohaku**” or the “**Developer**”) is a domestic limited liability company with the registered trade names The North Shore Dispensary, The Hot House, Sharks Grove, Sharks Cove Villages, and Sharks Cove Village. Hanapohaku is the owner of three parcels located at: (1) 59- 517 Kamehameha Highway, Hale‘iwa, Hawai‘i 96712, TMK No. 5-9-011:068 (“**Parcel 68**”); (2) 59-706 Kamehameha Highway, Hale‘iwa, Hawai‘i 96712, TMK No. 5-9-011:069 (“**Parcel 69**”); and (3) 59-053 Pāhoe Road, Hale‘iwa, Hawai‘i 96712, TMK No. 5-9-011:070 (“**Parcel 70**”) (together, the “**Parcels**”).

30. Non-party Maurice & Joanna Sullivan Family Foundation (“**Foodland**”) is a nonprofit foundation that owns the property, identified as Tax Map Key 5-9-011:016, adjacent to the Proposed Development (“**Foodland Property**”). The Foodland Property is associated with the Proposed Development because of a joint development agreement established in 1996 between the prior owners of the Parcels and the Foodland Property and because, as of July 2018, Foodland became a co-applicant with the Developer on the SMA Major Permit.

31. Does 1-10 are persons or entities sued herein under fictitious names because their true names and/or responsibilities are presently unknown to Plaintiffs, except that they are connected in some manner with the named Defendants and/or are responsible for all or a portion of the conduct alleged herein. Plaintiffs are unable at this time to ascertain the identity of

the Doe Defendants. Plaintiffs have made diligent and good faith efforts to ascertain the identity, actions, and liability of said unidentified Defendants, including but not limited to, a review and search of documents and information presently available to them. Plaintiffs will identify said Defendants when they are discovered.

JURISDICTION AND VENUE

32. This Court has jurisdiction under HRS §§ 603-21.5 and -23, HRS § 632-1, HRS § 205A-6(c) and -33 (SMA jurisdiction, injunctive relief), and Haw. Const. art. XI, §§ 1, 9.

33. Venue is proper in this Court under HRS § 603-36(5).

FACTS

A. Sharks Cove and the Pūpūkea Marine Life Conservation District

34. The coastal and marine area surrounding and adjacent to the Sharks Cove portion of the Pūpūkea Marine Life Conservation District on O‘ahu’s North Shore is a spectacular, unique, and much-loved natural, biological, cultural, and recreational resource used for beach-going, surfing, diving, swimming, paddling, marine education, and traditional practices.

35. The deeper waters of Sharks Cove are well-known worldwide as a premier diving and snorkeling destination, with unique lava, limestone, and coral formations, including underwater caves, tide pools, diverse marine life such as coral, turtles, monk seals, dolphins, and whales. In the winter, large waves and crashing surf attract hordes of beachgoers seeking to watch the amazing force of Hawai‘i’s ocean at Sharks Cove. During the winter months, Sharks Cove is mostly un-swimmable, with the exception of the area known as the “**Tide Pools**” -- located directly across Kamehameha Highway from the Proposed Development. The Tide Pools are a large shallow flat reef where people, particularly families with children, find recreational

refuge in the calm, swimmable waters that also serve as a rich nursery for marine life. The Tide Pools are heavily influenced by visible and palpable streams of cooler underground freshwater inflows from mauka of Kamehameha Highway, including from the area of the Proposed Development. In the summer, Sharks Cove and the Tide Pools are usually calm, warm, and inviting, offering an unparalleled recreational, cultural, and spiritual experience for a constant flow of residents and visitors enjoying the area.

36. The areas known as Sharks Cove, Three Tables, and Waimea Bay are part of the State Pūpūkea Marine Life Conservation District, a 100-acre marine reserve that is only one of three such designated highest-level marine protected areas on O‘ahu, under the jurisdiction of the State Department of Land and Natural Resources. The waters of the MLCD are designated as “Class AA” waters, the highest level of state marine water quality.

37. The MLCD is protected under the Coastal Zone Management Act (“CZMA”), HRS Chapter 205A, and within the SMA, ROH Chapter 25, as well as by specific regulations for the MLCD, Hawai‘i Administrative Rules (“HAR”) § 13-34.

38. The ability and capacity of the MLCD and its protected marine life to accommodate additional visitors, more intense recreational usage, marine pollution, and litter was not properly studied or disclosed by Developer or adequately considered by City Defendants who have constitutional, statutory, and public trust responsibilities.

B. Pūpūkea Beach Park

39. The shoreline area of Sharks Cove and the Pūpūkea MLCD is bordered by the popular Pūpūkea Beach Park, which is under the jurisdiction of the City and County of Honolulu and designated as within the Special Management Area. Beginning in 2011, at the urging of the community, the City funded and issued a Master Plan for the Park in 2015 but the

City has not implemented any aspect of that Master Plan. Consequently, Park maintenance is woefully under-resourced, and its infrastructure is over-used, often relying on community-led initiatives for maintenance, outreach, and renovations, making it particularly vulnerable to the additional burdens and impacts imposed by the current and proposed developments that will bring 876,000 new visitors to the area each year.

40. The Park currently has only 28 parking spaces and, due to the constricted roadside parking along Kamehameha Highway in either direction, and on nearby side streets, the parking lot is consistently in high demand and very often full of vehicles and pedestrians overflowing onto the highway.

41. The portion of the Park below Kamehameha Highway and makai of the paved parking area is a mostly-level, grassy, sandy, rocky, open area used by beachgoers, scuba- and free-divers, swimmers, snorkelers, paddlers, wildlife observers including whale watchers, ocean/wave viewers, and for native plant restoration, education and outreach, and cultural practices, among other recreational activities. The natural areas of the Park and its paved areas (which are primarily used for parking and as a recreational equipment unloading and staging area, with public bathrooms and an outdoor shower), are integral to public coastal access.

42. The Park is protected under the Coastal Zone Management Act (“CZMA”), HRS Chapter 205A, and within the SMA, ROH Chapter 25.

43. The ability and capacity of the Park to accommodate additional visitors, recreational usage, marine pollution, and litter were not properly studied or disclosed by Developer or adequately considered by the City, which has constitutional, statutory, and public trust responsibilities.

C. The Pāhoe Road Neighborhood

44. Pāhoe Road is a private road bordering on Parcel 70 of the Proposed Development. Approximately eight residential lots are owned by residents of Pāhoe Road, which is the sole means of ingress and egress from and to their properties from and to Kamehameha Highway.

45. Starting in 2014, when Hanapohaku purchased the three Parcels and began leasing space for the operation of nine or more food trucks, the Pāhoe Road neighbors became upset by the increase in traffic, noise, disturbances, littering, trespass into their yards, lack of privacy, effect on property values, and unsanitary practices of the Developer's tenants. The Pāhoe Road neighbors shouldered the expense of retaining private counsel to write a warning letter to Hanapohaku on April 20, 2016.

46. The letter to the Developer stated that Parcels 68 and 69 have no right to any vehicle access to Pāhoe Road and demanded that "Hanapohaku immediately close all vehicular access points" from these parcels to Pāhoe Road. The letter also stated that Parcel 70, as a 1/10th owner of Pāhoe Road, had only qualified access rights to Pāhoe Road, and that Hanapohaku was "exceeding its rights and substantially interfering with the rights of the Neighbors."

47. The Pāhoe Road Neighbors' attorney further notified Hanapohaku that its proposed plan to prohibit commercial invitees' use of Pāhoe Road while allowing deliveries to the Parcels would continue to interfere with the Neighbors' rights, including blocking and delaying access to their homes, interfering with privacy and safety, creating noise and pollution, and diminishing use and enjoyment. The letter "reiterate[d] the demand that Hanapohaku

immediately cease interfering with the Neighbors' ability to use and enjoy their properties, including Pāhoe Road."

48. Due to the lack of responsiveness of the Developer, the Pāhoe Road Neighbors undertook self-help measures more than a year ago and set out orange cones and a homemade sign on their private road to discourage vehicles seeking ingress to the Parcels from driving up, turning around on, parking on, and otherwise blocking Pāhoe Road. This interim measure has been only partially successful at reducing wayward vehicles and pedestrians and this improvement is due only to the extraordinary measures of abatement taken by the Neighbors themselves. It is not a long-term solution to the trespassing and nuisance problems created by the current and Proposed Development.

49. In response to the letter and the Neighbors' repeated concerns over the Developer's -- and its tenants' and customers' -- use of Pāhoe Road and the spillover impacts of the current and future development, the Developer made two major illusory promises to the Neighbors.

50. First, the Developer promised to install a six-foot-high chain-link fence on Lot 70 along Pāhoe Road to prevent vehicular and pedestrian access (which DPP made a condition of the After-the-Fact SMA Minor Permit, governing current operations). In its response to comments by Pāhoe Road Neighbor and Plaintiff John Thielst on the Draft Environmental Impact Statement ("**Draft EIS**"), the Developer explicitly stated: "The Final EIS shows a fence with *no ingress* to or from Pāhoe Road." (Emphasis added.)

51. Second, the Developer promised to not allow any commercial use of Pāhoe Road by the current operations under the After-the-Fact SMA Minor Permit and the future

Proposed Development. In the same response, the Developer stated: “There will be *no pedestrian or vehicular access* to or from the privately owned Pāhoe Road.” (Emphasis added.)

52. However, the Developer has not fulfilled these commitments and not complied with the clear condition to the After-the-Fact SMA Minor Permit, issued seventeen months ago, that requires: “A new six-foot-high chain-link fence will be installed along a portion of the north (Kahuku) boundary of the site along Pāhoe Road in accordance with Exhibit B. With the installation of the fence, Parcel 070 will *no longer have vehicular access* along Pāhoe Road.” (Emphasis added.) To date, the Developer has placed only temporary, small, moveable, wooden planters along the frontage of Lot 70 and Pāhoe Road, violating the Developer’s promises and the SMA conditions.

53. Furthermore, buried in its Final Environmental Impact Statement (“FEIS”) comments to other concerned community members, the Developer revealed a lack of candor to the Pāhoe Road Neighbors and mentioned an access gate for the first time, stating “[t]here will be no *regular* access to the project site from Pāhoe Road, and the owners will commit to this condition. A *gate* on the property boundary with Pāhoe Road *will allow for* emergency access to/from the property, and *periodic maintenance access*.” (Emphasis added.) Nowhere else in the plans, FEIS, or comments does the Developer properly explain to the Neighbors this inconsistent promise and disclosure regarding the “new gate” access on Pāhoe Road.

54. The issue of the traffic congestion on Pāhoe Road is not just a private concern and nuisance to the residents of that road but is a concern to everyone who uses Kamehameha Highway. When wayward tourists inevitably turn into Pāhoe Road, back up, and turn around in the narrow road multiple times a day, it causes traffic congestion and safety

hazards not only for Pāhoe Road residents, but also for all drivers and pedestrians passing the corner of Pāhoe Road and Kamehameha Highway.

55. Long-time Pāhoe Road Neighbor John Thielst joined this lawsuit as a Plaintiff, and joined the other Plaintiffs, to ensure that the interests of his residential neighborhood, the private Pāhoe Road, and the adjacent Park and MLCD are protected from the illegal and adverse spillover impacts of the current and Proposed Development.

D. Pūpūkea Road Neighborhood

56. The Pūpūkea Road Neighborhood is comprised of approximately 500 “country” zoned lots for which two-lane Pūpūkea Road, adjacent to Foodland, is the only ingress and egress.

57. Foodland, which operates a 21,650-square-foot food and sundry store, receives all of its truck deliveries through one narrow alleyway behind the store along Pūpūkea Road. Every day, large semi-tractor-trailer and delivery trucks block Pūpūkea Road while they back up into the narrow below-ground lane behind the store, often interfering with, and creating a hazard to, the residential, schoolbus, and handi-van traffic that use Pūpūkea Road. This creates a special danger due to the blind downhill curve adjacent to the loading lane. The Pūpūkea Road Neighborhood will be adversely impacted by the Proposed Development due to the increased traffic congestion along Pūpūkea Road and Kamehameha Highway that will worsen the impacts of this truck delivery hazard, which was not properly analyzed in the Draft EIS or FEIS, and was not mitigated in the SMA conditions.

58. The Pūpūkea Road Neighborhood will also be adversely impacted by the Proposed Development because the plan makes a significant reconfiguration of the ingress and egress to the Foodland parking lot, reducing what is currently three driveways on that TMK No.

(1) 5-9-011:016 *to only one*, the single driveway along Pūpūkea Road, and forcing other cars entering and exiting Foodland through the Developer's new driveway on the adjoining lot. This major change to traffic flow will likely increase, not decrease, traffic congestion around and inside the Foodland parking lot, and at the sole Pūpūkea Road ingress that is also the exact location of the heavy truck deliveries (adjacent to the blind curve) resulting in disruption to the access of Pūpūkea Road Neighbors to their homes and neighborhood, all of which was not properly disclosed in the FEIS and not properly reviewed in the SMA process.

59. Long-time Pūpūkea Road resident Larry McElheny joined this lawsuit as a Plaintiff, and joined the other Plaintiffs, to ensure that the interests of his residential neighborhood, Pūpūkea Road, and the adjacent Park and MLCD are protected from the illegal and adverse spillover impacts of the current and Proposed Development.

E. Kamehameha Highway

60. Kamehameha Highway, which fronts the current and Proposed Development, is a narrow two-lane highway that is the sole artery from Wahiawā to Kāne'ohe along the North Shore and Windward O'ahu. For the approximately fifteen-mile-long stretch from Hale'iwa to Kahuku, this rural highway has no stop signs or stop lights other than at Pūpūkea Road, which was installed after Foodland's expansion in 1995.

61. Along the North Shore, Kamehameha Highway is notorious for traffic congestion, particularly at highly-visited beaches such as Laniākea, Chun's Reef, Pipeline/Ehukai Beach Park and Sunset Beach. There are frequent bottlenecks, pedestrian hazards, and traffic accidents due to the high volume of visitor traffic and pedestrians mixed with residential traffic. Residents along Kamehameha Highway from Laniākea to Sunset Beach often report that they feel like "hostages in their own homes" due to the unsafe and disruptive traffic

conditions, which now occur daily because of the three million visitors to O‘ahu who go “circle island” year-round. Visitor traffic is no longer distinctly seasonal.

62. Portions of Kamehameha Highway, such as at Laniākea, Rock Piles, Sunset Beach, and Ka‘a‘awa are subject to shoreline erosion, severe sand loss, and overtopping of the Highway during high surf periods, which will occur with increasing frequency and severity due to sea level rise linked to climate change. According to the Hawaii Sea Level Rise Vulnerability and Adaptation Report (State of Hawai‘i, December 2017), “[o]ver the next 30 to 70 years, properties located on or near Oahu’s shorelines will increasingly be flooded, eroded, or completely lost to the sea. Portions of coastal roads will also become flooded, eroded, and even impassible or irreparable jeopardizing access to and from many communities. Beaches, like the Seven Mile Miracle on the North Shore will increasingly be eroded and permanently lost if hard structures such as roads and seawalls impede their landward migration.” The City failed to properly analyze, in the EIS and in the SMA review process, the effect of allowing a major new commercial development along Kamehameha Highway, which is already often extremely congested and increasingly threatened by sea level rise, in light of these increased risks.

63. The Proposed Development will increase the traffic congestion and hazardous pedestrian crossings along this area of the North Shore by attracting more than 337,990 new vehicle trips a year to this area and creating a new bottleneck between Pūpūkea Road and Pāhoehoe Road. The increases in traffic congestion and pedestrian hazards (acknowledged by Developer’s Traffic study to be as high as 48 people illegally crossing the highway during the Saturday mid-day peak *hour* alone) will not be mitigated by the proposed altered driveway routing, which eliminates two driveways to Foodland and forces all

Kamehameha Highway traffic to ingress and egress the four parcels through one single central driveway in the Proposed Development and one entrance on Pūpūkea Road.

64. These hazards will also not be mitigated by the Developer's illusory promise of a new crosswalk across Kamehameha Highway at Pāhoe Road, which itself may generate more congestion in the area. During the permitting process and in the FEIS, the Developer made numerous commitments that it would mitigate pedestrian hazards by ensuring that the State Department of Transportation would install a crosswalk for pedestrians crossing from the Development to and from the Park and MLCD. However, later in the FEIS, the Developer balked on its commitment, stating that "[a] crosswalk on Kamehameha Highway just south of Pāhoe Road is *recommended*. Installation of high visibility crosswalk markings, *perhaps* with rectangular rapid flashing beacons (RRFBs) *will be decided* in consultation with, and approval from, HDOT." (Emphasis added.) The State Department of Transportation ("DOT") has not approved the proposed crosswalk, which would terminate on a steep downslope on the makai side beach of the narrow highway, and it is unlikely to ever be approved. The DOT has never approved a similar crosswalk requested by the community due to the hazardous pedestrian crossings at Laniakea Beach. Furthermore, the Developer failed to disclose or analyze the likely increase in pedestrian and beach access hazards under a no-crosswalk scenario.

65. Long-time North Shore resident Cora Sanchez joined this lawsuit as a Plaintiff, and joined the other Plaintiffs, to ensure that the interests of their use and enjoyment of the North Shore and safe access on Kamehameha Highway is protected from the illegal and adverse spillover impacts of the current and Proposed Development.

F. Developer's Unpermitted Use of the Parcels Beginning in 2014

66. On or about June 26, 2014, the Developer purchased the three contiguous Parcels, constituting 2.7 acres, which are located along Kamehameha Highway across from the Park and MLCD, and between Pāhoe Road and Pūpūkea Road.

67. Soon after purchasing the Parcels, the Developer undertook extensive unpermitted development including: (a) adding nine stationary food trucks, (b) constructing decks enclosing the trucks, (c) constructing a deck for an existing structure, (d) installing plumbing improvements and electrical and water connections, (e) erecting fences, tents, signs, and lights, (f) playing loud music, and (g) grubbing and grading the site -- all without proper building, SMA, or other required permits.

68. The rash and haphazard development resulted in an increase in traffic along Kamehameha Highway, Pāhoe Road, and an increase in pedestrian hazards from illegal crossings of the highway. The development further generated litter, and resulted in resource over-use, pollution, and other adverse effects on the neighbors' and community's access to, and use and enjoyment of, the Park, MLCD, and public and private roadways.

69. Despite numerous complaints from the community, the Developer made no real effort to reduce the impact of its activities until the community took on the heavy burden to document, investigate, complain, request meetings, and take legal action to ensure governmental enforcement of the laws protecting the environment.

G. The City's Admittedly Illegal Three SMA Minor Permit Approvals in 2015 and 2016

70. In 2015, the Developer applied for three separate SMA Minor Permits, intentionally segmenting the development into three proposals in order to conceal the true impact

of the project and avoid the additional public review associated with a SMA Major Permit application.

71. Among other things, the Developer misleadingly underestimated the valuation of the allegedly separate developments at just under \$500,000 each (\$498,000, \$445,000, and \$484,000 for Parcels 68, 69, and 70, respectively).

72. Over a ten-month period, between March 2015 and January 2016, the City wrongfully issued three separate SMA Minor Permits for Parcels 68, 69, and 70.

73. On March 9, 2016, Plaintiff MPW timely appealed the City's issuance of the three SMA Minor Permits in the matter styled *In the Matter of the Petition for Contested Case Hearing of Malama Pupukea-Waimea*, DPP No. 2016/GEN-4.

74. On April 6, 2016, at a North Shore Neighborhood Board Meeting held at Waimea Valley, with over 150 community members in attendance, the Developer's principal, Andrew Yani, repeatedly apologized to the community and promised to withdraw all three SMA Minor Permits.

75. On May 2, 2016, in response to the Developer's request, the City revoked the three SMA Minor Permits. The City further ordered that all development on the Parcels be "removed" and that the area be "restored to pre-approval condition." (Emphasis added.) However, the City did not take meaningful enforcement action to ensure restoration of the parcel to pre-approval condition.¹

¹ In reviewing the City's actions on the SMA Minor and SMA Major Permits, a court need not presume the validity of agency action and instead can "make its own independent findings regarding the salient facts of the . . . case." See *Hawai'i's Thousand Friends v. City & County of Honolulu*, 75 Haw. 237, 248, 858 P.2d 726, 732 (1993).

76. Instead, after the City finally assigned a hearings officer to MPW's appeal, the City attempted to have the appeal dismissed as "moot."

77. The contested case was finally resolved by stipulation among all parties on January 7, 2019. *See* Ex. A (Stipulated Findings of Fact, Conclusions of Law, and Decision and Order, *In the Matter of the Petition for Contested Case Hearing of Malama Pupukea-Waimea*, DPP No. 2016/GEN-4 (the "**Stipulation**"). In the Stipulation, the City and Developer admitted that: (a) Plaintiff MPW had standing to bring the appeal; (b) "In issuing its decisions on the three SMA Minor Permits, the Planning Director failed to conduct a thorough review of the valuation and cumulative impacts of the applications and, therefore, failed to make determinations consistent with the purposes of HRS § 205A and ROH Chapter 25;" (c) that the three SMA Minor Permits were "erroneously approved;" and (d) that "the Planning Director's decisions to issue the three SMA Minor Permits violated HRS § 205A and ROH Chapter 25."

78. Plaintiffs incorporate by reference all of the allegations of fact, legal claims, findings, and conclusions made in the Stipulation.

H. The Contested Second, After-the-Fact, SMA Minor Approval

79. The Developer neglected to remove the development activities or restore the Parcels to pre-approval condition, and the City failed to enforce its own May 2, 2016 directive.

80. Instead, on May 23, 2017, after months of submitting several failed, incomplete, or rejected applications to DPP for SMA Minor permits, the Developer reapplied for a single "after-the-fact" SMA Minor Permit (the "**After-the-Fact SMA Minor Permit**"), to allow the Developer to retain all of its existing retail establishments and the cluster of food trucks, and to allow even further development.

81. In its May 23, 2017 permit application, the Developer again misleadingly underestimated the valuation of the project at \$368,641 in order to avoid the public scrutiny and environmental review associated with the SMA Major permit process for projects valued at \$500,000 or more.

82. On August 2, 2017, the City approved the Developer's application, based on the determination that the project "has a stated valuation of less than \$500,000, and will have no significant effect on SMA resources."

83. The City failed to conduct a thorough review of the valuation and environmental impact of the application and wrongfully issued the After-the-Fact SMA Minor Permit.

84. On September 22, 2017, MPW timely appealed the City's issuance of this After-the-Fact SMA Minor Permit and sought relief in the form of: (1) an order vacating the After-the-Fact SMA Minor Permit; (2) an order requiring Hanapohaku to pay all accumulated fines; and (3) an order instructing Hanapohaku to submit an SMA Major Permit application for the existing development and proposed new activities. *See* Ex. B (appeal of the After-the-Fact SMA Minor Permit) (the "**Appeal**").

85. Plaintiffs incorporate by reference all of the allegations of fact and legal claims made in the Appeal.

86. In the sixteen months since the Appeal was filed, MPW made numerous requests to the City to assign a hearings officer.

87. The City failed to assign a hearings officer, and to date, the City has *still* not assigned the case to a hearings officer.

88. Despite the fact that MPW's appeals of the three SMA Minor Permit approvals and the subsequent After-the-Fact SMA Minor Permit approval were *still pending and unresolved*, on July 20, 2018, the City accepted the Developer's application for an SMA Major Permit (the "**SMA Major Permit**").

89. The City's glacial pace in dealing with MPW's appeals lies in stark contrast with the City's fast-tracking of the Developer's applications for after-the-fact approvals and more development. By failing to timely address MPW's appeals, and by unfairly prioritizing the Developer's interests over MPW's and the community's, the City deprived Plaintiffs of due process and the constitutional right to a clean and healthful environment.

90. The City should have rejected the Developer's application as incomplete under ROH § 25-5.2 based on the facts alleged in this First Amended Complaint.

91. In handling MPW's contested case for the second, After-the-Fact SMA Minor Permit, the City treated Plaintiffs unequally and unfairly by refusing to take any action whatsoever, while rushing the acceptance and approval of the Developer's SMA Major Permit.

92. Plaintiff MPW joined this lawsuit as a Plaintiff, and joined the other Plaintiffs, because of the City's mishandling of the contested cases, which denied MPW due process and underscores the importance of ensuring that a Court intervene to require the Defendants to follow the laws that protect the interests of the residential Pāhoe Road neighborhood, Pūpūkea Road neighborhood, the adjacent Park, and MLCD from the illegal and adverse spillover impacts of the current and Proposed Development.

I. Improper Resolution of Over \$200,000 in Assessed Fines Against Developer

93. In the course of its illegal operations since purchasing the property in 2014, the Developer appears to have racked up over \$200,000 in assessed fines imposed by DPP.

94. The City's records do not give the public a transparent accounting of fines assessed against developers, including Hanapohaku. Periodic disclosures by the Developer to the community regarding the fines have been disjointed, misleading, and confusing. However, based on numerous inquiries, Plaintiffs have learned that the Developer did not fully pay the assessed fines and City did not refer any fines to the Corporation Counsel for prosecution.

95. Plaintiffs have been unable to determine with accuracy the current or any final resolution of the track record of fines, assessment, and payments actually made by the Developer. When the community inquired about the status of the fines at the September 25, 2018 public hearing on the SMA Major Permit, the Developer's representatives gave contradictory and vague answers.

96. DPP has enforcement discretion, but that discretion cannot be arbitrary or capricious or abused.

97. DPP has abused its discretion in administering the civil fine program in this case.

98. On information and belief, despite the wide range of enforcement tools available to DPP, in this case, DPP chose to follow a decades-old unwritten developer-friendly practice of accepting a mere fraction of the fines assessed.

99. On information and belief, DPP adjusted the fines accrued to only ten percent of the over \$200,000 in assessed fines for the illegal operations on the property.

100. On information and belief, the Developer has paid less than \$20,000 in actual fines -- equivalent to one month's rent from five food trucks and the retail stores -- insignificant in terms of the value of its overall commercial operations and value of the development plans.

101. The DPP's practice of settling fines for such abysmally low amounts, its failure to utilize the full range of enforcement tools authorized by law to bring developers into compliance for long-standing and numerous violations, and its unwritten fine settlement policy violates the constitutional right to a clean and healthful environment and the City's public trust responsibilities.

102. In addition, DPP did not require that all of the fines be resolved prior to DPP's acceptance of the SMA Minor and Major Permit applications. For DPP to accept a permit application from a developer with "unclean hands" and a track record of significant violations and accumulated fines imposed by the City is a violation of the public trust and a deprivation of the due process rights of the public.

103. Plaintiff HTF joined this lawsuit as a Plaintiff, and joined the other Plaintiffs, to ensure that DPP's policies and practices regarding fines imposed on developers is brought into the public light and reformed to ensure that the penalty decisions are made in conformity with the Constitutional right to a clean and healthful environment and the public trust and that decisions are made and proposals are implemented in conformity with the law.

J. Illegal Food Truck Operations

104. Since 2014, the Developer has continuously operated, used, and/or leased space to itself and others for various office and retail establishments, including numerous food trucks on the Parcels.

105. Immediately after the Developer purchased the Parcels, a cluster of eight to ten food trucks appeared, *en masse*, at the site, without permits.

106. Since then, the food trucks have been the subject of numerous complaints regarding violations of State Department of Health ("DOH") rules, including poor sanitation and

food-borne illnesses, and City Building Code provisions including illegal signage and clutter. For example, in October 2017, DOH officials levied a \$5000 fine on the operators of a food truck on the Developer's site, ordering the truck to close immediately for selling food without the proper permits and because the food truck owner "allegedly tore down the department's 'closed' sign and continued to operate anyway."

107. The operations of the existing five food trucks appear to violate several provisions of HAR Title 11 Chapter 50 (Food Safety Code). The food trucks are quasi-permanent and stationary, located in assigned places, and do not ever, or very rarely, leave the Parcels. The food trucks do not "return regularly [to a servicing area] for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food." HAR 11-50-2.

108. Only after Plaintiffs filed their initial Complaint in this case on January 11, 2019, did the Developer and its tenants, on January 30, 2019, attempt for the first time to move all the trucks off of the property, apparently to demonstrate compliance with DOH rules. According to community observers, though the movement was a major day-long undertaking with the food trucks encountering numerous obstacles in leaving the property, several of the trucks did not return to a food servicing area and instead spent the day parked on nearby public park land before returning to the property.

109. In apparent violation of HAR 11-50- 60(k), water is not made available for the food trucks from: "(1) A supply of containers of commercially bottled drinking water; (2) One or more closed portable water containers; (3) an enclosed vehicular water tank; or (4) An on-premises water storage tank." Instead, in at least some instances, the food trucks have reportedly used garden hoses to replenish water for food service operations.

110. In addition, on information and belief, the food trucks do not remove sewage and other liquid wastes at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created, in violation of HAR 11-50-63. In fact, in response to citizen complaints, in August 2017, the DOH found that the Developer's tenants had dumped grease, rancid oil, and wastewater into "the landlord's" 500-gallon wastewater pit later covered with pallets in the bushes, where the DOH inspector also noticed "human feces and toilet paper in the area." These poor sanitation practices appear to be continuing despite the past DOH inspections.

111. On information and belief, the food trucks do not keep accurate and complete records that indicate their "return regularly (to a servicing area)."

112. The food trucks are illegally using a "commissary" or "kitchen" in a former dentist office that was permitted by the DOH for only limited usage and purposes, but is reportedly utilized for dumping of grease and wastewater by several food trucks.

113. Despite these numerous violations of State Food Safety Code, the City has allowed the Developer to operate a cluster of food trucks with a blind eye, has inspected only after numerous citizen complaints, and then approved the Developer's SMA Major Permit application that includes six food trucks despite the Developer's inability to prove compliance with State and County laws, including DOH food safety rules.

114. Save Sharks Cove Alliance joined this lawsuit as a Plaintiff, and joined the other Plaintiffs, to ensure that their interests in the use and enjoyment of the residential neighborhood, the Pāhoe Road and Pūpūkea Road neighborhoods, and the adjacent Park and MLCD are protected from the illegal and adverse spillover impacts of the current operations and the future cluster of food trucks on the current and Proposed Development.

K. Water Pollution

115. Developer's current operations of retail stores and a cluster of food trucks creates two kinds of water pollution that adversely affect the Park and MLCD, recreational users, and marine life: (a) subsurface flows of polluted groundwater and (b) surface water pollution from storm water runoff. The Proposed Development will dramatically increase both kinds of polluting activities, with increased storm water runoff contaminated by traffic, litter, and six food trucks in operation, and by dramatically increased sewage on site (with a leach field designed to handle an estimated 10,900 gallons per day or 708,501 gallons per year versus 400 gallons per day currently from the existing aerobic treatment system), which will result in (treated but nonetheless) contaminated water seeping into the groundwater, subsurface ocean water, and, within a distance of only about 200 feet, into the surface waters of the Class AA ocean waters of the MLCD.

(a) Subsurface Flows of Polluted Groundwater into the Ocean

116. Subsurface water pollution is currently occurring from the site into the ocean through seepage into the pervious soil under the Parcels through a hydrological connection to the ocean. The porous subsurface carries contaminated freshwater down-gradient (at a 5% slope), "flowing" under Kamehameha Highway and then into the Park and MLCD. According to the FEIS, "[t]he pattern of increasing salinity and decreasing nutrient concentrations with distance from shore result from *concentrated input of groundwater* to the ocean at or near the shoreline throughout the region across Kamehameha Highway from the proposed site." FEIS at 3-22 (emphasis added). "The total groundwater flow along the 560-foot shoreline makai of the project area is estimated at 790,000 gallons per day." *Id.* Users of the MLCD frequently encounter the numerous cold freshwater inflows along the coastline, exactly where the polluted

groundwater from the Project now flows and would increasingly flow carrying contaminants from the Parcels into the ocean. These freshwater flows into the MLCD are so large that they often create visible floating streaks in the ocean when Sharks Cove is calm.

117. There is also a hydrological connection whereby ocean water comes mauka under the highway with the tides where it can become contaminated underneath the project site. The Developer's study of salinity from monitoring wells indicated that "ocean saltwater underlies the site at [a] depth" of around 50 feet, with "*strong tidal response* at both well sites, with amplitudes on the order of *one third to one half* of the ocean's tidal amplitude." FEIS at 3-13 (emphasis added).

118. Thus, any groundwater contamination from the site will go directly into the ocean, either through freshwater subsurface flows down-gradient or by the influence of the tidally-influenced ocean water that flows back and forth with the tide at relatively shallow depths under the site.

119. The EIS indicated that water quality contamination is already occurring under the site. The Developer attributes the current polluted condition to "inputs by human activities in the directly upgradient area," *see* FEIS at 3-11, and the Developer's own expert points to the extensive outdoor commercial activities and food trucks clustered on site for the past four years: The Nance study found that "higher nitrogen levels in the downgradient well (B-7), may reflect input from *present use of the site*." FEIS at 3-13 and 3-14 (emphasis added). The marine study also acknowledged the current contamination: "it is apparent that the concentration of NO₃ in groundwater entering the ocean at Sharks Cove is as high as approximately double that which is present in upslope groundwater. This result indicates that there is [sic] added

subsidies of NO₃ to groundwater from external sources between the monitoring wells and the ocean.” FEIS, App’x C at 7.

120. In addition to the contaminating activities that already pollute freshwater and ocean water under the site, the Proposed Development will attract customers and tenants who will generate a substantial level of daily effluent on site. Even if approved by DOH and even if treated at required secondary treatment levels, the Developer’s proposed wastewater treatment system is not permitted to discharge effluent into the waters of the United States, which it will likely do through the above-described subsurface freshwater and ocean water connections to the Class AA waters of the MLCD, only 200 feet makai. Moreover, the Developer has no plan to disinfect the effluent, meaning any effluent that does seep into the Class AA waters of the MLCD will have very high bacterial counts and possibly other pathogens. *See* FEIS at 3-45.

121. This contamination from the current operations on the site appears to already be showing up at the shoreline of the MLCD. The marine study for the Developer “shows that existing water quality exceeds the standards for NO₃ and NH₄⁺ along transects 1 and 2 within 100 meters from shore.” FEIS at 3-23. “Total nitrogen within two feet of the shoreline along Transect 2 also *exceeded the water quality standards*: chlorophyll a within 1 foot of the shore also *exceeded the HAR standard at both Transect 1 and 2.*” FEIS at 3-23 (emphasis added). The FEIS acknowledges that the Project will likely increase contamination of Total Nitrogen by 4.3% and Total Phosphorus by 7% compared to existing conditions (which are already elevated due to Developer’s activities over the past four years). FEIS at 3-25. Given that state water quality standards are already being exceeded, even based on this one day of sampling by the Developer’s consultant, the alarm bells should have gone off for DPP and the

City Council regarding risks to water quality in the MLCD during the SMA review process. However, there is no record that the City showed any concern for this major water quality issue despite the requirements of HRS Chapter 205A to ensure no adverse effects to water quality and marine resources.

122. The FEIS upon which the City relied in granting the SMA permit also failed to provide information about the nutrient or other contaminant load increase compared to *pre-2015 commercial activities*, which would be the appropriate baseline for analysis. Without a proper baseline for comparison, the Developer concludes simply that the elevated levels of Total Nitrogen and Total Phosphorus “does not represent a significant change in the composition of groundwater released along this shoreline.” FEIS at 3-25. However, even the data in the FEIS indicate measurable current and future contamination from the Project into Class AA marine waters and violations of the State Water Pollution Act, HRS Chapter 342D, including as a discharge without a proper National Pollutant Discharge Elimination System (“NPDES”) permit.

123. The Developer’s contention that “rapid mixing” and “dilution” would render the impact insignificant does not bear any legal weight when the contamination is entering Class AA water of an MLCD.

(b) Surface Flows of Polluted Storm Water from the Site into the Ocean

124. The second way in which polluted water from the site will adversely affect the MLCD is through surface flows of polluted storm water runoff from the site into the ocean. This water quality impact is already occurring through discharge of storm water runoff from the property’s driveway and makai border, along the culvert of Kamehameha Highway, to the DOT’s storm water drain, under the Highway through a 24” pipe, to an outlet near Pūpūkea Fire

Station. The storm water then runs into a short open culvert that drains into the sand of the Park and the Class AA waters of the MLCD.

125. As the FEIS states, “[c]urrently, there are no existing on-site drainage facilities and no defined natural drainageways. Due to the lack of a storm water collection system, storm runoff in the area generally flows across the properties and *continues offsite*. The nearest drain inlet is located south of the project site along Kamehameha Highway.” FEIS at 3-44 (emphasis added). Observations of the site during rainfall events indicate that contaminated storm water frequently flows from the Parcels into the storm drain and then into the Park and the Class AA waters of the MLCD. Severe rainfall events that may cause increased run off from the site appear to more likely with erratic weather patterns in Hawai‘i amplified by climate change.

126. The contaminants of concern likely include nutrients and contaminants from food waste, human and animal fecal matter, cleansers, grease, oils, pesticides, insecticides, heavy metals, and other chemicals related to the operations on the property. None of these pollutants may be discharged into the ocean without a permit and treatment under the State Water Pollution Act. Discharge of pollutants from the site directed through a channelized area to a storm drain connected to a culvert that flows out a ditch that enters the ocean is an illegal point source discharge.

127. The EIS’s marine study contained numerous errors or omissions indicating that Developer did not adequately test for or disclose water quality impacts from the current and future development. The marine study sampled the water in the Sharks Cove area only on one day, May 17, 2017, typically an average to low rainfall month; the study does not indicate the precipitation records for this day or the prior days/week, not does it indicate the time of day of the samples or the tide conditions; the location of the transects does not align with the location in

the MLCD most likely to be impacted by subsurface or surface pollution from the site; the study completely neglected to sample for bacteria even though the State Water Quality Standard for marine waters is commonly known and testing for enterococcus is standard protocol; and the study did not test the area near the storm water drainage ditch.

128. In contrast, water quality testing by a professional laboratory of a sample of the storm water flow from the drainage culvert that contains waste water flowing from Developer's site on January 30, 2019 indicated *extreme exceedences* of State Water Quality Standards. Total Nitrogen was 3670 µg/L, approximately 15 times higher than the state standard which, according to the FEIS, is between 180 µg/L and 250 µg/L. See FEIS, App'x C. Phosphorus was 1040 µg/L, approximately 17 times higher than the state standard of 30 µg/L to 60 µg/L. See *id.*

129. The test results indicate that several other state water quality standards -- for Ammonia, Nitrate+Nitrite, and Total Kjeldahl Nitrogen -- were also exceeded during this rainfall event. Periodic observations of the drainage ditch during rainfall events also indicate other prohibited pollutants prohibited such as scum, grease, and materials that create a smelly sludge in the sand of the Park below the drainage ditch only a few feet away from the Class AA waters of the MLCD.

130. These test results reflect the high levels of current pollution coming from the Developer's site, indicate the flawed methodology of the FEIS, and also represent violations of State Water Quality Standards by the Developer.

131. Plaintiffs seek declaratory and injunctive relief to prevent Developer's current contamination of the marine waters of the MLCD, to ensure that any permits from the City have appropriate conditions requiring no discharge of pollutants into the MLCD, to set up a

water quality monitoring and transparent reporting system, and to require the Developer to apply to the DOH for an NDPES Permit.

L. Flawed EIS for the SMA Major Permit

132. In November 2017, as part of the process for seeking an SMA Major Permit for the Proposed Development, the Developer released a “non-Chapter 343” Draft EIS through the *OEQC Notice* for public comment.

133. The Developer released the Draft EIS pursuant to ROH Chapter 25, which sets out an environmental review process prepared in compliance with the environmental quality commission’s rules and regulations and according to the procedures set forth in HRS Chapter 343 and its rules.

134. Plaintiffs provided extensive comments on the Draft EIS. The Developer provided inadequate responses to those comments. Key provisions of the Draft EIS, including the traffic study, the water quality study, and the marine study, grossly underestimated the adverse impacts of the Proposed Development. No proper study was conducted on the impacts of the Proposed Development on the Park or recreational access to coastal resources. These numerous flaws rendered the FEIS inadequate as a matter of law and require a new EIS and SMA review process.

135. Furthermore, although the Draft EIS acknowledged that the Proposed Development needed to be conducted under the joint development agreement with Foodland, it entirely omitted the key fact that Foodland would be a joint applicant with the Developer for the SMA Major Permit. The Developer informed the public that Foodland was a joint applicant only in July 2018 *after* the FEIS was complete. This is a fatal flaw in the entire EIS and requires a new EIS and SMA review process.

136. The Draft EIS did not survey, discuss, or analyze the direct or indirect impacts of the extensive commercial operations, parking, leach field, surface runoff, pedestrian activities, and light and heavy truck operations from or on the adjacent Foodland Property. As a result, the Draft EIS and FEIS failed to include, and the DPP failed to consider, the direct, indirect, and cumulative impacts of operations on and modifications to the Foodland Property's activities and parking lot, together with the Developer's Parcels.

137. For example, the FEIS indicated that two access driveways to the Foodland Property from Kamehameha Highway would be eliminated, forcing all commercial traffic onto either Pūpūkea Road, which is heavily used by residents and by large delivery trucks for Foodland, or through the center of the Developer's new commercial development.

138. The Draft EIS and FEIS insufficiently addressed, and the City therefore insufficiently considered, the impact of that significant modification upon internal parking lot, roadway, and highway traffic flow. Kamehameha Highway, which is the sole artery connecting coastal communities from Hale'iwa to Kahalu'u, already experiences excess volume and significant delays at the Foodland/Pūpūkea Road intersection. Thus, even arguably "minor" modifications to the Foodland Property's parking lot could have an outsized impact upon an already-overburdened highway and the connecting residential Pūpūkea and Pāhoe roads.

139. The FEIS was also defective because it failed to respond adequately and in good faith to the extensive critical public comments. The responses on the community's major concerns about impacts to coastal and neighborhood resources were consistently, and disappointingly, unresponsive, incomplete, or misleading.

N. The Improper SMA Major Permit Approval

140. DPP accepted the Developer's SMA Major Permit application and held a public meeting on September 25, 2018. *See* ROH § 25-5.3 (The agency . . . shall hold a public hearing on the application for a special management area use permit at a date set no less than 21 nor more than 60 calendar days after the date on which the application is accepted).

141. Pursuant to ROH § 25-3.3(d), DPP was required to review the proposal based on the following criteria:

(a) The valuation or fair market value of the development; and

(b) The potential effects and the significance of each effect according to the significance criteria established by Section 25-4.1.

142. Under the ROH, "[n]o development shall be approved unless the council has first found that:"

(a) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options;

(b) The development is consistent with the objectives and policies set forth in Section 25 3.1 and area guidelines contained in HRS Section 205A 26;

(c) The development is consistent with the county general plan, development plans and zoning. Such a finding of consistency does not preclude concurrent processing where a development plan amendment or zone change may also be required.

ROH § 25-3.2(b).

143. In applying for its SMA Major Permit, the Developer represented that the Proposed Development would not appreciably increase traffic and would not cause harmful runoff/leaching into the near shore waters, or cause adverse impacts to public access to

recreational resources. Those representations, among others, lacked evidentiary support and were an insufficient basis upon which to approve the Proposed Development.

144. DPP underestimated the substantial, adverse environmental or ecological effects of the Proposed Development and took at face value the Developer's assertions and promises regarding water quality, marine, and traffic studies in the inadequate FEIS. Further, proper studies were not conducted on the potential cumulative impacts of the Proposed Development, nor were impacts on the Park, recreational access to coastal resources, or the significant modification upon internal parking lot, roadway, and highway traffic flow adequately considered.

145. DPP transmitted its findings and recommendations to the City Council within 20 working days of the close of the public hearing, on October 23, 2018.

146. According to ROH § 25-5.5, "[t]he council shall grant, grant with conditions, or deny any application for a special management area use permit within 60 calendar days after receipt of the agency's findings and recommendations thereon."

147. The City held a Zoning and Housing Committee Hearing on November 7, 2018 and held a full Council Hearing on November 14, 2018, approximately 30 days after receipt of DPP's recommendations.

148. In reviewing SMA permit applications, the City Council must follow the same ROH § 25-3.2 guidelines as those imposed upon the DPP in their review for recommendation, including:

All development in the special management area shall be subject to reasonable terms and conditions set by the council to ensure that:

(1) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas and natural reserves is provided to the extent consistent with sound conservation principles;

(2) Adequate and properly located public recreation areas and wildlife preserves are reserved;

(3) Provisions are made for solid and liquid waste treatment, disposition and management which will minimize adverse effects upon special management area resources; and

(4) Alterations to existing land forms and vegetation; except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation or failure in the event of earthquake.”

The council shall seek to minimize, where reasonable:

. . . (2) Any development which would reduce the size of any beach or other area usable for public recreation;

(3) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach;

(4) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and

(5) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.

149. The Council underestimated the substantial, adverse environmental or ecological effects of the Proposed Development and did not adequately review the Developer's assertions and promises and DPP's flawed recommendations, regarding water quality, marine, and traffic studies in the inadequate FEIS. The Council did not set reasonable terms and conditions to ensure solid and liquid waste treatment, disposition, and management would minimize adverse effects upon special management area resources; nor adequate conditions to ensure that alterations to existing land forms and vegetation construction of structures would cause minimum adverse effect to water resources and scenic and recreational amenities and

minimum danger of floods, landslides, erosion, or siltation. Further, the Council did not adequately seek to minimize restrictions on public access or adverse effects on water quality.

150. The Council's approval of the SMA Major Permit was improperly granted because of the City did not fulfill its affirmative burden to find no adverse impacts.

O. O'ahu General Plan and NSSCP

151. HRS § 205A-26(2)(C) provides in relevant part that a SMA permit shall not be approved unless the authority finds that "the development is consistent with the county general plan and zoning."

152. The O'ahu General Plan was adopted (as amended) on October 3, 2002. As in the other counties, on O'ahu the General Plan is a document setting forth the City's broad policies for long-range development, with the Sustainable Communities plans serving as detailed schemes for implementing and accomplishing the development objectives and policies of the General Plan within the several parts of the City and County.

153. The North Shore Sustainable Communities Plan ("NSSCP") was adopted in 2011 and was the product of years of community meetings, planning, input, and participation, including that of some of the individual Plaintiffs, that resulted in a guiding document for the region. This NSSCP plan has the force and effect of law insofar as it was enacted through City ordinance and as HRS Chapter 205A requires that a development within the SMA must be consistent with the General Plan.

154. The NSSCP details the goals for the region to include "remain(ing) 'country,' with wide open space, vistas, and rural communities" as "an essential haven and respite from the urbanized areas of O'ahu." According to the NSSCP, all proposed

developments are evaluated for their fulfillment of the vision for North Shore enunciated in the NSSCP and how closely they meet the policies and guidelines selected to implement that vision.

155. The General Plan and its implementing Sustainable Communities Plans supersede zoning rules. These plans are not merely aspirational and are more akin to zoning when they are more specific regarding planning goals in the region.

156. On the three pages in the NSSCP where the Proposed Development parcel is mentioned, the overall concepts and vision of the NSSCP are articulated in greater detail. The Parcels are zoned B-1 Neighborhood Business District and the NSSCP specifically and uniquely designates these commercial Parcels, and the adjacent Foodland Property, as a “Rural Community Commercial Center.” Under the NSSCP, the “Rural Community Commercial Center” is required to “*primarily serve*” residents and to meet numerous design and building restrictions intended to serve that purpose.

157. According to the NSSCP, the Rural Community Commercial Center is intended to:

- “meet the needs of the *surrounding residential communities*” (emphasis added)
- “Ensure that commercial buildings reflect the rural character and are *compatible with adjacent residential areas*.” (emphasis added)
- “Emphasize commercial and civic establishments that *serve the immediate residential community*.” (emphasis added)
- “limit country stores *primarily* to retail uses that provide *services to the surrounding community*” (emphasis added).

158. The SMA Minor and Major conditions imposed on the Proposed Development by the City are inadequate to avoid or sufficiently mitigate adverse impacts from the development or to ensure compliance with the NSSCP and its intent to primarily serve local residents and the surrounding community.

159. In its recommendation to approve the SMA Major Permit, DPP failed to ensure compliance with the intent and letter of the NSSCP by accepting, without critical review, the Developer's promises regarding future business operations that serve local residents. The recent past has proven that the Developer has seen fit to displace local businesses that serve residents (i.e. dentist and realtor) in preference to retail stores and food trucks that cater to tourists. The "mix of tenants" condition recommended by DPP and adopted by the City (Resolution 18-245, CD1 FD1, Condition "E") is vague and unenforceable, without any limitation to ensure that the businesses primarily serve the local community instead of tourists. Conditioning future permit issuance or any change of use on the right "tenant-mix" may be impossible to enforce, puts the undue burden of vigilance on the community, and will not accomplish the objectives set out in the NSSCP.

160. The conditions imposed on the Proposed Development by the City regarding additional environmental review or permit modification in the event the site is used for "visitor destination services" (Resolution 18-245, CD1 FD1, Condition "I") are also wholly inadequate to ensure compliance with the NSSCP and to protect the Plaintiffs and the community from the near certainty that this Proposed Development will become a "tourist trap" that despoils the natural beauty of the area and generates more unsafe and disruptive traffic congestion and other public nuisances along Kamehameha Highway.

161. Given the past history of violations at this site, it is highly unlikely that the Developer will self-report a violation of this or other conditions. Given the past history of lack of enforcement by DPP except in response to community complaints, it is also highly unlikely that DPP will conduct site inspections to check on potential violations of this and other

conditions or will impose, and extract, meaningful fines for violations or refer overdue fines for prosecution.

162. Therefore, these conditions – while well-intentioned – unfairly put the entire burden of monitoring, investigating, reporting, and follow upon the community at risk. This is unfair, unrealistic, and violates the spirit and letter of the SMA laws and the NSSCP.

163. In approving the SMA Major Permit, the City's approval failed to properly evaluate the impact of the Proposed Development on the SMA resources in light of the objectives, policies and guidelines of the CZMA and the rules and regulations issued thereunder, imposed inadequate conditions, and thus violated the O'ahu General Plan as implemented by the NSSCP.

P. Fast-Tracker Approval and Biased City Council Review

164. Under ROH § 25-5.5, the City Council had sixty days to review and evaluate the impacts from the proposed development and recommendations by DPP for an SMA Major Permit Application, a period that can be extended.

165. At the Developer's request, and with the explicit intercession of outgoing Council Chair Ernie Martin, the City fast-tracked the review and approval of the Proposed Development within a record three-week time span. On October 23, 2018, the Council received DPP's recommendations and proposed Resolution 18-245. On October 29, 2018, Council Chair Ernie Martin introduced Resolution 18-245 to approve the SMA Major Permit.

166. On November 7, 2018, the resolution with CD1, was heard by the Zoning and Planning Committee. Despite the fact that Council Chair Ernie Martin does not serve on the Zoning and Planning Committee, he abruptly appeared at the hearing, exerted control over the proceedings, and visibly influenced the Committee's decision-making. At the conclusion of the

hearing, Committee Chair Pine stated: “Well I’m going to go by *your* recommendation, it’s *your* district.”

167. Council Chair Ernie Martin responded: “So given that this probably gonna be one of my last recommendations for my district but I would ask for the members a favorable consideration.”

168. Committee Chair Pine then stated: “Thank you very much Chair, with that said, we will recommend that resolution 18-245 be amended the hand-carried CD1 to include the technical amendments that was mentioned by the department leader, DPP.”

169. On November 14, 2018, the City Council, chaired by Ernie Martin, approved Resolution 18-245, CDI, FD1, granting the SMA Major Permit Application.

170. Other than two softball questions asked by Chair Martin to DPP and a question by Chair Pine about Foodland, during neither the Committee nor the full Council hearing did any other Councilmembers ask any questions or exhibit any interest in the underlying factual or legal issues regarding the Proposed Development, the community’s concerns, the flawed EIS, the compliance with the SMA law, or the inadequate conditions.

171. Over the two years preceding the City Council’s approval, the Developer, its planning consultant G70, and family members – all of whom live in urban Honolulu and none of whom live in District 2, the district of Council Chair Martin (where the Proposed Project is located) -- had orchestrated a series of meetings and campaign contributions totaling over \$31,450.

172. On information and belief, those contributions were designed to influence the City’s decision on the Proposed Development.

173. The timing, extent, and targeting of the contributions to Council Chair Martin (\$14,150), former Council Vice-Chair Anderson (\$6,000), Council Vice-Chair and Zoning and Housing Chair Pine (\$5,250), and the failure of Councilmembers (except Councilmember Brandon Elefante) to publicly acknowledge on the record the campaign contributions from the Developer deprived Plaintiffs of a fair, neutral, and independent decision-maker and thereby denied them due process of law.

174. Plaintiffs allege the following eleven counts regarding the Defendants' violations of the State of Hawai'i Constitution, statutes, and administrative rules; City and County of Honolulu ordinances and rules; and Hawai'i common law.

COUNT I - Against the City
(Failure To Exercise Public Trust Responsibilities To Protect Fresh and Marine Water Resources, the Park, and the MLCD in Violation of the Hawai'i Constitution, Article XI - Section 1, Article XI - Section 7, and Common Law Public Trust Doctrine)

175. Plaintiffs re-allege all prior paragraphs.

176. The Hawai'i Constitution, Article XI, Section 1 (Conservation and Development of Resources), states: "For the benefit of present and future generations, the State and its political subdivisions shall 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. All public natural resources are held in trust by the State for the benefit of the people."

177. Under the Hawai'i Constitution, Article XI, Section 7 (Water Resources), "[t]he State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people."

178. As a political subdivision of the State, the City has an affirmative duty to future generations under the public trust doctrine grounded in the Constitution and Hawai‘i law to protect the public trust resources of Sharks Cove including: (a) freshwater resources including groundwater under the Parcels flowing into the Sharks Cove area; (b) marine waters including the Class AA waters of the MLCD; (c) the natural beauty and recreational resources of Pūpūkea Beach Park including safe public access; and (d) the natural beauty, marine life, and recreational resources of Pūpūkea Marine Life Conservation District, including safe public access.

179. The City’s discretion in issuing approvals, such as SMA Minor and Major Permits, is circumscribed by its public trust responsibilities. An agency must meet its public trust responsibilities by “considering, protecting, and advancing public rights in the resource at *every stage* of the planning and decision-making process,” and by making decisions “*with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state.*” *Kelly v. 1250 Oceanside Partners*, 111 Hawai‘i 205, 231, 140 P.3d 985, 1011 (2006) (citing *In re Water Use Permit Applications*, 94 Hawai‘i 97, 143, 9 P.3d 409, 456 (2000)) (emphasis in original).

180. To determine whether the authority fulfilled its public trust obligations, and to provide a court sufficient basis for judicial review, the agency had duties “independent of the permit requirements,” and must conduct a public trust review that provides a clear record indicating findings of fact and conclusions of law to demonstrate it fulfilled its public trust responsibilities. *Kauai Springs, Inc. v. Planning Comm’n of Cy. of Kaua‘i*, 133 Hawai‘i 141, 177, 324 P.3d 951, 982, 987 (2014) (citations omitted).

181. Under the public trust doctrine, “the agency must apply a presumption in favor of public use, access, enjoyment, and resource protection,” and “[t]he agency is duty-

bound to place the burden on the applicant to justify the proposed water use in light of the trust purposes.” *Id.* at 173, 324 P.3d at 983 (citation omitted). When private commercial uses of public trust resources are proposed, the applicant is “obligated to demonstrate affirmatively that the proposed use will not affect a protected use.” *Id.* (citing *In re Wai ‘ola O Moloka ‘i*, 103 Hawai‘i 401, 442, 83 P.3d 664, 705 (2003) (emphasis in original) (internal alterations omitted). Further, “a lack of information from the applicant is exactly the reason an agency is empowered to deny a proposed use of a public trust resource.” *Id.* at 174, 324 P.3d at 984.

182. The City’s public trust responsibilities include “insur[ing] that all applicable requirements and regulatory processes relating to [. . . the development] are satisfactorily complied with *prior to* taking action on the subject permits.” *Id.* at 177, 324 P.3d at 987 (emphasis added).

183. The public trust doctrine provides that “[i]f the impact is found to be reasonable and beneficial, then in light of the cumulative impact of existing and proposed diversions on trust purposes, the applicant must implement reasonable measures to mitigate this impact.” *Id.* at 173, 324 P.3d at 983 (citation omitted). And the agency must ensure “that the prescribed measures are actually being implemented after a thorough assessment of the possible adverse impacts the development would have on the State’s natural resources.” *Id.* at 180, 324 P.3d at 990 (citation omitted). “The plain language of Article XI, Section 1 further requires a balancing between the requirements of conservation and protection of public natural resources, on the one hand, and the development and utilization of these resources on the other in a manner consistent with their conservation.” *In re Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai‘i 379, 400, 431 P.3d 752, 773 (2018).

184. The City failed to fulfill its public trust responsibilities to protect: (a) the fresh groundwater under the Parcels that flows under Kamehameha Highway through the lands of the Park into the MLCD, (b) the marine waters of the MLCD from the polluted storm water runoff that comes from the Parcels, drains along and under Kamehameha Highway into a ditch, and then flows near the Fire Station into the Park and MLCD, and (c) the lands of the Park and marine waters of the MLCD from over-use, congestion, litter, and erosion by visitors attracted to the current and Proposed Development.

185. Plaintiffs are therefore entitled to a declaratory order and temporary, preliminary, and permanent injunctive relief that:

(a) voids and nullifies the After-the-Fact SMA Minor Permit and the SMA Major Permit;

(b) requires the City to re-do the permitting and EIS processes for the After-the-Fact SMA Minor Permit and the SMA Major Permit;

(c) imposes conditions in the After-the-Fact SMA Minor Permit and the SMA Major Permit for disclosure, monitoring, and mitigation requirements that prevent and abate current and future: (i) fresh and marine water pollution from the Developer's and Foodland's site through subsurface and stormwater flow, (ii) adverse impacts on fresh and marine water resources in the Sharks Cove area, and (iii) pollution, traffic, litter, and other adverse spillover impacts on the natural beauty, resources of, and access to the Park and MLCD.

COUNT II - Against All Defendants
(Right to a Clean and Healthful Environment in Violation of Hawai'i Constitution, Article XI, Section 9)

186. Plaintiffs re-allege all prior paragraphs.

187. Article XI Section 9 of the Hawai'i Constitution (Environmental Rights) states: "Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or

private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.”

188. The Hawai‘i Supreme Court has held that this right is a substantive constitutional right and that Section 9 is self-executing. *County of Hawai‘i v. Ala Loop Homeowners*, 123 Hawai‘i 391, 417, 235 P.3d 1103, 1129 (2010).

189. The right to a clean and healthful environment is both substantive and procedural. It grants a “legitimate entitlement” to benefits “as defined by state law.” *In re Application of Maui Elec. Co., Ltd.*, 141 Hawai‘i 249, 264, 408 P.3d 1, 16 (2017). Section 9 right also constitutes a property interest that is protected by the due process right to a hearing, which under certain circumstances, would be satisfied by a contested case hearing. *Id.*

190. Based on the violations contained in the other Counts of this First Amended Complaint, Plaintiffs are entitled to declaratory and injunctive relief that Defendants’ actions have violated the Plaintiffs’ constitutional right to a clean and healthful environment.

COUNT III - Against City
(Failure To Follow the North Shore Sustainable Communities Plan
in Violation of HRS Chapter 205A and ROH Chapter 25)

191. Plaintiffs re-allege all prior paragraphs.

192. HRS § 205A-26(2)(C) provides that a SMA permit shall not be approved unless the authority finds that “the development is consistent with the county general plan and zoning.”

193. The O‘ahu General Plan was adopted (as amended) on October 3, 2002.

194. As part of the General Plan, regional Community Development Plans (called Sustainable Communities Plans on O‘ahu) are intended to provide a relatively detailed scheme for implementing the objectives and policies of the General Plan relative to the region.

195. The NSSCP was adopted as Ordinance 11-3, Bill 61 (2010) CD2, in 2011.

196. The Hawai‘i Supreme Court had held that “the county general plan does have the force and effect of law insofar as the statute requires that a development within the SMA must be consistent with the general plan.” *GATRI v. Blane*, 88 Hawai‘i 108, 114, 962 P.2d 367, 373 (1998). The Court also held that a community plan “adopted after extensive public input and enacted into law” is part of the General Plan. *Id.* at 115, 962 P.2d at 374.

197. The NSSCP thus has the force and effect of law insofar as it was enacted through City ordinance and because HRS § 205A requires that a development within the SMA must be consistent with the General Plan.

198. The General Plan and its implementing community/regional development plans supersede zoning rules. These plans are not merely aspirational, are more akin to zoning, and are legally binding when they are more specific regarding planning goals in the region. *See, e.g., Missler v. Bd. Appeals. Cty. of Haw.*, 140 Hawai‘i 13, at *9-10, 396 P.3d 1151 (2017).

199. The City’s approval of the SMA Major Permit failed to properly evaluate the impact of the Proposed Development on the SMA resources in light of the objectives, policies and guidelines of HRS Chapter 205A and ROH Chapter 25, and thus violated the O‘ahu General Plan as implemented by the NSSCP. The SMA Minor and Major conditions imposed on the Proposed Development by City are inadequate to avoid or sufficiently mitigate adverse impact from the development or to ensure compliance with the NSSCP and its intent to primarily serve local residents and the surrounding communities.

200. Plaintiffs are entitled to an order declaring that the Proposed Development is not consistent with the NSSCP and that the SMA Permits are null and void.

201. Plaintiffs are entitled to a temporary, preliminary, and permanent order enjoining DPP from allowing the Developer to proceed with the current and Proposed Development and requiring a new SMA Major application and process for any development that ensures consistency with the NSSCP.

COUNT IV - Against DPP
(Improper Issuance of After-the-Fact SMA Minor Permit, and Failing to Enforce the Minor Permit Conditions, in Violation of HRS Ch. 205A & ROH Ch. 25)

202. Plaintiffs re-allege all prior paragraphs.

203. HRS § 205A-2, *et. seq.*, requires all “agencies” of the State to consider the objectives, policies, and guidelines of the Coastal Zone Management Act, HRS Chapter 205A, and the rules and regulations issued thereunder and to enforce them with respect to any development within or affecting the SMA.

204. HRS § 205A-4 requires that all agencies give full consideration to the “ecological, cultural, historic, esthetic, recreational, scenic, and open space values” before and/or when taking or allowing actions that impact resources within the SMA.

205. HRS § 205A-4 also provides that the objectives and policies of HRS Chapter 205A and “any guidelines enacted by the legislature shall be binding upon actions by all agencies” affecting resources within SMA, within the scope of their authority.

206. HRS § 205A-6 provides, *inter alia*, that any person may commence a civil action alleging that any agency has failed to perform any act or duty required to be performed under Chapter 205A or, in exercising any duty required to be performed under Chapter 205A, has not complied with the Chapter's provisions.

207. DPP is the City agency which, under HRS Chapter 205A and ROH Chapter 25, has been delegated the responsibility of enforcing the CZMA and the ordinances,

rules and regulations promulgated thereunder, including processing and issuing SMA permits within this County.

208. As detailed below, DPP has failed to properly perform its duties and obligations under the CZMA and ROH 25 with respect to the After-the-Fact SMA Minor Permit issued by DPP on August 2, 2017.

209. DPP failed to properly independently consider or assess the effects and impacts of the current Development on the SMA resources in light of the objectives, policies and guidelines of HRS Chapter 205A and the rules and regulations issued thereunder when it processed and approved the After-the-Fact SMA Minor Permit.

210. Even if the After-the-Fact SMA Minor Permit was properly issued, DPP has failed to meaningfully enforce the conditions and terms thereof, as well as the CZMA, once it was issued.

211. In over seventeen months since the issuance of the SMA Minor Permit, said failures referred to in the prior paragraphs include, but are not limited to:

- (a) Failing to grant MPW a contested case on its timely filed appeal despite repeated timely requests and failing to grant a hearing thereon;
- (b) Failing to independently and critically assess and calculate the actual value of the Proposed Development, and all phases thereof, to accurately conclude that said value exceeded the threshold of \$500,000 for requiring an SMA Major permit;
- (c) Not taking a hard look at the Developer's vague and inaccurate representations, and failing to require it to carry the burden of proof to show that the Development was not having and would not have a significant adverse impact on the SMA and the bordering coastal resources and MLCD, considering cumulative impacts, including but not limited to:
 - Creating underground seepage, drainage and incursion of sewage into the MLCD from its proposed leach field under all operating conditions;

- Improper use of the “commissary” located in the “old dentist office” by food trucks not authorized to dispose of wastewater or grease under the DOH permit;
- Creating significant additional traffic congestion on the already-overburdened Kamehameha Highway and neighboring Pūpūkea and Pāhoehoe Roads;
- Adversely affecting public access to and use of Pūpūkea Beach Park and the surrounding coastal resources by way of its customers’ use of the limited public parking spaces intended exclusively for park use;
- Creating pedestrian and other safety issues on Kamehameha Highway by way of its customers’ dashing across the highway to and from Pūpūkea Beach Park parking lot to the numerous food trucks on its property;
- Creating drainage and non-point source pollution from its own heavily-used food truck and other operations and its parking area, including a reported feral cat population, overflowing dumpsters and haphazard handling of waste and garbage, with the result that silt, and other fouling runoff has been entering and continues to enter the protected coastal and MLCD areas directly offshore through the storm drain system running under Kamehameha Highway; the feral-cats-related risk of toxoplasmosis contamination of important habitat for the critically-endangered Hawaiian Monk Seal within and surrounding the MLCD, which is federally designated critical habitat for the Monk Seal;
- Creating an increase in the unpermitted public use of the adjoining private road and direct undesirable impacts on the bordering residential area, including people relieving themselves along the roadway and in neighbors’ yards;
- Failing to construct the promised six-foot-chain-link fence along Pāhoehoe Road as represented in the SMA application and to the neighbors;
- Failing to assure or require that the Developer was in compliance with all other State and City laws, rules and regulations prior to issuing the SMA Minor permit, including those of the State Department of Health regarding food trucks;
- Failing to review and ensure compliance with conditions such as the required trash management and spill management plans. Based on information and belief, the community is not aware of that these plans

have been submitted or implemented, and the site still appears to have trash strewn about the ground;

- Failing to ensure that food trucks regularly leave the site for mobility and serving needs;
- Failing to ensure that six-foot high trash enclosure paved and screened, as required by the LUO;
- Failing to ensure storm water mitigation for current operations as required including adequate bio-swales for the most current rainfall projections;
- Failing to ensure paved parking and access as required in an attempt to avoid the required approximately \$250,000 in capital investment costs;
- Failing to ensure that landscaping plan was implemented;
- Failing to install the appropriate directional signage to limit customer confusion, spillover parking on private roads or public Highway or the Park;
- Festooning the front of the property with a series of garish “sale” signs, a clutter of merchandise along Kamehameha Highway, and strings of temporary lights in an effort to attract tourists to the site;
- Despite repeated complaints from neighbors and community associations, failing to monitor the Developer’s operations and the actual conditions existing at the site to realize that the Developer was consistently and flagrantly violating the terms and conditions of said Permit, as well as other laws, rules and regulations, and to take appropriate action;
- Failing to consider and give appropriate weight to the Developer’s longstanding and ongoing violations of law which were then, and are still, having a significant adverse impact within the SMA and the bordering coastal resources.

212. As a result of the acts and omissions of DPP, Plaintiffs are entitled to an order declaring the After-the-Fact SMA Minor Permit to be void and invalid. Moreover, based upon violations from prior SMA and current non-compliance, the City’s decision that all development on the Parcels be “*removed*” and that the area be “*restored to pre-approval condition*” should be enforced.

COUNT V - Against DPP
(Unlawful Enforcement Fine Policy and Practice in Violation of Constitution, Art. I, Section 5, Art. XI, Sec. 9, Public Trust Doctrine, and HRS 205A and ROH Ch 25)

213. Plaintiffs re-allege all prior paragraphs.

214. The Hawai‘i Constitution Article I Section 5, states that: “No person shall be deprived of life, liberty or property *without due process of law*, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.” (Emphasis added).

215. This constitutional provision seeks to protect individuals from arbitrary governmental deprivation of property and liberty rights. The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest. *See, e.g., Sandy Beach Def. Fund v. City Council of City & Cy. of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989) (citations omitted).

216. DPP violated the Plaintiffs’ constitutional due process rights, the constitutional right to a clean and healthful environment, Chapter 205A, and ROH 25 by following a secret, unwritten policy of accepting “ten cents on the dollar” after assessing fines for violations of City and County laws by developers, including this Developer.

217. In addition, DPP violated HRS 205A and ROH 25 because it did not require that all of the fines were resolved prior to DPP’s acceptance of the SMA Minor and Major Permit applications. For DPP to accept a permit application from a developer with “unclean hands” and a track record of significant accumulated fines imposed by the City is a

deprivation of the Plaintiffs' due process rights of the public and a violation of the City's public trust responsibilities.

218. DPP's long-time secret practice of settling fines for abysmally low amounts, its failure to utilize the full range of enforcement tools authorized by law to bring developers into compliance for long-standing and numerous violations, and its unwritten fine settlement policy is arbitrary and capricious, violates the constitutional rights to due process, to a clean and healthful environment, and violates the City's public trust responsibilities.

219. Plaintiffs are entitled to a declaratory order and a preliminary and permanent order enjoining DPP from settling fines in such an arbitrary and capricious manner, from accepting SMA applications where fines are unresolved, and requiring a substantial re-negotiation of the over \$200,000 in fines assessed against the Developer in this case.

**COUNT VI - Against the City
(Approving the SMA Major Permit without Ensuring Compliance with Food Safety Code
in Violation of ROH 25, HRS § 321-11(18) & HAR Title 11 Ch. 50)**

220. Plaintiffs reallege all prior paragraphs.

221. To accept and process the SMA Minor and Major Permits, the City must ensure that the Developer is in compliance with all State and County laws.

222. The City either knew or should have known that the food trucks currently on the Parcels do not comply with several provisions of HRS § 321-11(18) and HAR Title 11, Chapter 50 (Food Safety Code) and should have required transparent and full proof of compliance and future monitoring as part of the SMA process.

223. The food trucks do not "return regularly" to a servicing area/operating base location for "such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food" as required under HAR § 11-50-2.

Most are adjoined to permanent structures. In addition, barriers in the form of concrete blocks, signage, parking structures, fencing, tables, utility lines, and dumpsters prevent the food trucks from “return[ing] regularly.”

224. Water is not made available for the food trucks from a supply of containers of commercially bottled drinking water, one or more closed portable water containers, an enclosed vehicular water tank, or an on-premises water storage tank, as required under HAR § 11-50-63(k). Past practice on site has included utilizing garden hoses to service the mobile food establishments, in clear violation of the rule.

225. The food trucks do not remove sewage and other liquid wastes at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created as required by HAR § 11-50-63(e).

226. Multiple food trucks appear to be impermissibly disposing of wastewater in a former dentist office structure that was permitted by the Department of Health for only limited usage and purposes as a “commissary.”

227. As a result of the violations, Plaintiffs are entitled to declaratory and temporary, preliminary, and permanent injunctive relief declaring the SMA Minor Permit and the Major Permit null and void until the Developer completely and transparently demonstrates full compliance with the laws, rules, and regulations governing mobile food establishments.

COUNT VII- Against City
(Improper Acceptance of Inadequate EIS in Violation of ROH Ch 25 & HAR Title 11, Ch. 200)

228. Plaintiffs re-allege all prior paragraphs.

229. Plaintiffs also incorporate herein by reference all of their comments, and other community and agency comments, submitted on the Environmental Impact Statement Preparation Notice (“EISPN”) and the Draft EIS.

230. For SMA Major Permits, ROH Chapter 25 requires applicants to submit an environmental review document that follows the “rules and regulations implementing HRS Chapter 343,” ROH § 25-1.3, and “the procedural steps set forth in HRS Chapter 343.” ROH §§ 25-3.3(c)(1), 25-4.2. An EIS prepared under ROH 25 is referred to as a “Non-343 EIS.” The regulations promulgated under HRS Chapter 343 are found in HAR Title 11 Chapter 200.

231. In accepting the FEIS for the Proposed Development, the City erred by not requiring a document that conformed to HRS Chapter 343 regulations, as required by ROH § 25-1.3, § 25-3.3(c)(1), and ROH § 25-4.2.

232. The numerous procedural errors in the FEIS included:

(a) Failing to identify Foodland as a co-applicant on the Draft EIS (November 2017) or the FEIS (July 2018), in violation of HAR § 11-200-2, which defines the “Applicant” as “any person who, pursuant to statute, ordinance, or rule, officially *requests approval* from an agency for a proposed action” (emphasis added), thus misleading the public as to the true joint nature of the SMA Major Permit application (which was submitted to the City in July 2018) and the appropriate scope of the EIS, as well as underplaying the joint effects (such as traffic congestion, litter, and storm water runoff) and the cumulative impacts analysis.

(b) Failing to properly “*fully declare* the environmental implications of the proposed action and . . . discuss *all relevant and feasible consequences* of the action. In order that the public can be *fully informed* and that the agency can make a sound decision based upon the *full range of responsible opinion* on environmental effects, a statement shall include *responsible opposing views, if any, on significant environmental issues* raised by the proposal.” HAR § 11-200-16 (Draft EIS Content Requirements) (emphasis added). Key sections of the Draft EIS, including the traffic study, the water quality study, and the marine study, grossly underestimated the adverse impacts of the Proposed Development. No proper study was conducted on the impacts of the Proposed Development on the Park, the Master Plan, or recreational access to coastal resources including the MLCD. The EIS also failed to include “responsible opposing views” of the community that had long been raising concerns on

these issues and lacked analysis of the impacts on the Pāhoehoe Road neighborhood, Pūpūkea Road neighborhood, and users of Kamehameha Highway. These numerous flaws render the FEIS inadequate as a matter of law.

(c) Failing to properly evaluate the “secondary or indirect” “impacts or effects” related to the Proposed Development, defined in HAR § 11-200-2 (Definitions) as: “effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include *growth inducing effects* and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” (Emphasis added); *see also* HAR § 11-200-17(i) (“secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment”). An example of the failure to properly evaluate secondary or indirect impacts or effects is the gross omission in the EIS of the impacts on the infrastructure and sustainable capacity of the Park and MLCD from the increased number of vehicles, customers, and pedestrians that will use the public trust resources and coastal zone resources, including coastal access and the limited number of legal parking spaces, directly across Kamehameha Highway from the Proposed Development.

(d) Failing to properly evaluate the “cumulative impact” related to the Proposed Development, defined in HAR § 11-200-2 (Definitions) as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” An example of the failure to properly evaluate cumulative impact is the major omission in the EIS of analysis of the current and future impacts of commercial operations, particularly parking, litter, and traffic flow, at Foodland, whose parcel was purportedly within the scope of the EIS but who was not revealed to be a co-applicant on the proposed SMA Major Permit until July 2018, after the FEIS was completed, long after the close of the public comment period.

(e) Failing to adequately describe the current environmental setting and thus misleadingly characterizing the no-action alternative as assuming post-2014 acquisition operations on the property, in violation of HAR § 11-200-17(g), which provides that the Draft EIS “shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, *as it exists before commencement of the action*, from both a local and regional perspective.” (Emphasis added.). Given that the current operations were originally commenced without proper permits, causing DPP to order removal of illegal structures, and then were continuing only under a legally contested SMA Minor Permit (challenged in large part due to

the significant environmental impacts of those continuing operations), the no-action alternative should have looked at the baseline prior to Hanapohaku's commercial exploitation of the property. For example, DPP noted in their Findings of Fact that "as a result of existing uses and previous grubbing and grading, approximately one-third of the surfaces on the makai edge of the Hanapohaku-owned parcels are compacted." Along with illegal grubbing and grading, other existing and prior illegal uses have changed the baseline for accurate assessments of environmental impact, and that any future assessments be based upon pre-2015 baseline estimates. Therefore, the EIS should have studied the cumulative impact of the activities supposedly authorized by the After-the-Fact Minor Permit, taken together with the Proposed Development under the SMA Major Permit.

(f) Failing to properly adequately describe and analyze realistic alternatives to the Proposed Development as required by HAR § 11-200-17(f) (Draft EIS Alternatives), which requires, "[t]he draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks." In the Draft EIS, the only proposed alternatives were an illusory alternative of the same development but delayed in time. Then in the FEIS, applicant made up another "straw" alternative that not-so-cleverly proposed an even larger development, which, though a sham, nonetheless evaded public comments as it was not disclosed in the Draft EIS. The Draft EIS did not include the obvious alternative, for example, of a commercial development *without the problematic cluster of six food trucks*, a concern raised by many commenters.

(g) Failing to properly disclose the conflicts of the Proposed Development with the North Shore Sustainable Communities Plan (NSSCP), which requires development on these Parcels to primarily serve local residents, in violation of HAR § 11-200-17(h), which requires, "[t]he draft EIS shall include a statement of the relationship of the proposed action to land use plans, policies, and controls for the affected area. Discussion of how the proposed action may conform *or conflict* with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. *Where a conflict or inconsistency exists, the statement shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation.*" (Emphasis added.) Many comments on the Draft EIS pointed out that the Proposed Development was inconsistent with the NSSCP.

(h) The failure to properly disclose the “irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included.” HAR § 11-200-17(k). And “all probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy.” HAR § 11-200-17(l).

(i) Failure to adequately detail proposed mitigation of adverse impacts such as the illusory crosswalk on Kamehameha Highway. “Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, should be *specific reference to the timing of each step proposed to be taken in the mitigation process*, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken.” HAR § 11-200-17(m) (emphasis added).

(j) Failing to properly “take into account all critiques and responses,” as required by HAR 11-200-14, which provides, “the preparing party shall prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. Furthermore, “[a]n EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.” *Id.*; see also HAR § 11-200-18 (“The final EIS shall consist of: (1) The draft EIS revised to incorporate substantive comments received during the consultation and review processes”).

(k) Failing to respond adequately to public comment on the Draft EIS. The City failed to apply the proper standard to reviewing the “acceptability” of the FEIS and the “higher standard of response” required in a FEIS for reviewing the applicant’s response to public comments, that is, whether “[c]omments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been incorporated in the statement.” HAR § 11-200-23(b)(3). HAR § 11-200-22 specifies that:

The proposing agency or applicant shall respond in writing to the comments received or postmarked during the forty-five-day review period and incorporate the comments and responses in the final EIS. The response to comments shall include:

(1) Point-by-point discussion of the validity, significance, and relevance of comments; and

(2) Discussion as to how each comment was evaluated and considered in planning the proposed action.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final EIS shall indicate verbatim changes that have been made to the text of the draft EIS. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections, etc.). In particular, the issues raised when the applicant's or proposing agency's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

The Developer's responses to public comments, particularly to those from the Plaintiffs, were wholly inadequate, dismissive, and "greenwashed" impacts to coastal and neighborhood resources. The responses were consistently, and disappointingly, unresponsive, incomplete, and evasive, which is the kind of "self-serving recitation of benefits and a rationalization of the proposed action" that violates the EIS regulations. The applicant's obligation to respond fully to public comments is central to the EIS process and cannot be taken lightly.²

(l) G70's inadequate responses were not directly only to the Plaintiffs, but also to the City's own agencies. For example, the City Department of Design and Construction (DDC) pointed out that the reconfiguration of the driveways and the inadequate traffic counts under-estimated the impact on the Pūpūkea Fire Station, which is across from Foodland. DDC's January 9, 2018 comment letter states:

² On February 16, 2017, the State Office of Environmental Quality Control (OEQC) issued a "non-acceptance" letter for an FEIS to G70's Jeff Overton, the same planning consultant who prepared the EIS in this case, finding that the response to public comment in the Hawai'i Dairy Farms FEIS was inadequate: "The OEQC notes that the examples cited indicate a pattern where the applicant's response to specific concerns raised in the EISPN comment letter did not satisfactorily address the commenter's concerns. The result was that the commenter resubmitted the concerns as points for consideration in the Draft EIS, upon which the applicant had an obligation to respond to the concerns in a point-by-point manner, and does not appear to have done so."

On February 21, 2017, Jeff Overton wrote a letter to OEQC withdrawing the Hawai'i Dairy Farm EIS. On May 4, 2017, Judge Ronald Valenciano found that the Dairy and G70 had not followed the Chapter 343 EIS process properly, and the Court issued declaratory and injunctive relief that voided all prior approvals until the process was properly followed. See *Kawailoa Development LLP v. Hawai'i Dairy Farms and State Dep't of Health*, Civ. No. 14-1-0141 JRV, in the Circuit Court of the Fifth Circuit, State of Hawai'i.

“This is not correct. It appears that given the size and location of the new driveway that traffic conditions will worsen and make it more difficult exiting and entering the station when these new businesses are in service.” FEIS at 6-102. G70’s response was that the Fire Department had previously submitted a letter stating no concerns and simply repeated descriptive and self-serving statements about the traffic “improvements.” *Id.* at 6-104. Moreover, the City Department of Transportation Services (DTS) comments on the Draft EIS stated “[s]ome of our previous comments for the EISPN were not addressed in the D[raft] EIS,” including “a discussion of the existing safety and traffic operational issues from entering and exiting the loading area in back of Foodland off Pupukea Road,” and asked for measures to mitigate these issues. *Id.* at 6-113. In response, G70 replied only that the information on the Foodland deliveries “had been moved” into another section of the FEIS and “[d]eliveries *should* be scheduled during off-peak times in the early afternoon to minimize delays to vehicles traveling on Pupukea Road.” *Id.* at 6-115 (emphasis added).

233. These fatal flaws, among others, in the entire EIS process and in the Final EIS, failed to sufficiently explain the environmental consequences of the Proposed Development and should have led the City to reject the EIS and require a revised EIS and new SMA process.

234. As a result of DPP’s reliance on the flawed EIS and failure to adequately review the FEIS, Plaintiffs are entitled to an order declaring the EIS inadequate and the SMA Major Permit to be void and invalid.

235. Plaintiffs are further entitled to temporary, preliminary, and permanent injunctive relief enjoining the City from accepting any permit application for, or processing, or issuing any further SMA approvals to Developer until such time as it has prepared an adequate EIS in compliance with ROH Chapter 25 and HAR Title 11-200.

**COUNT VIII – Against DPP and the City Council
(Failing To Provide Fair and Impartial Review at the Administrative Level in Violation of
Hawai‘i Constitution Article I Section 5, Due Process)**

236. Plaintiffs re-allege all prior paragraphs.

237. The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental

deprivation of a significant property interest. *Sandy Beach Def. Fund v. City Council of City & Cy. of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989) (citations omitted).

238. When deciding whether to issue an SMA Major permit, the City Council is acting in a quasi-judicial capacity. *See id.* at 387-88, 778 P.2d at 266. When an agency or authority performs a judicial function, external political pressure can violate a parties' right to procedural due process, thereby invalidating the decision, since the due process right is at stake when outside political influence is exerted on a decision-maker. *See Kilakila 'O Haleakala v. Bd. of Land*, 138 Hawai'i 383, 400, 382 P.3d 195, 212 (2016).

239. Whereas a contested case may not be required for the SMA Major Permit in the instant case, the approving authority is nevertheless mandated to ensure that the process that is used complies with the basic components of due process (or the equivalent thereof) including an unbiased decision-maker because the approval process of the Council serves a quasi-judicial function. *See Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai'i 376, 388-90, 363 P.3d 224, 236-38 (2015).

240. DPP and the City Council deprived the Plaintiffs of due process by fast-tracking the permitting and approval of the Proposed Development at the behest of the Developer because of political opportunism. Furthermore, the Developer exerted political influence on the key decision-makers in the form of campaign contributions by the Developer and G70 without disclosure by all but one of the Council members involved, offending Plaintiffs' due process right to an impartial decision-maker and resulting in a deeply flawed process that renders the SMA Major Permit null and void.

241. As a result of the acts and omissions of DPP and the City Council failing to provide Plaintiffs fair and impartial review, Plaintiffs are entitled to a declaratory order and temporary, preliminary, and permanent relief that voids and nullifies the SMA Major Permit.

**COUNT IX - Against DPP and City Council
(Improperly Recommending Issuance and Improperly Issuing, the SMA Major in
Violation of HRS Ch. 205A and ROH Ch. 25)**

242. Plaintiffs re-allege all prior paragraphs.

243. DPP and the City Council have committed the same above-alleged failures and violations of the CZMA in processing, recommending, and issuing the SMA Major Permit to the Developer for its Proposed Development. The burden was on the City and Applicant to find no adverse impact. Plaintiffs have the burden to show only that the Proposed Development *may have an impact*.

244. In addition, the City further violated the CZMA by:

- a. Failing to analyze and consider, and to require the Developer to discuss, analyze and assess, the existing conditions and the additional cumulative impacts of its proposed joint venture with Foodland to connect with and combine the adjoining Foodland property into its Proposed Development, including problematic conditions already generated and existing by reason of Foodland's operations. Said conditions and impacts include but are not limited to:
 - i. Already existing customer and delivery traffic congestion and safety issues on Pūpūkea Road,
 - ii. Increased delivery traffic, congestion and safety issues on Pūpūkea Road,
 - iii. Already existing traffic congestion on Kamehameha Highway at and around its intersection with Pūpūkea Road,
 - iv. Modified and increased traffic flow and congestion on Kamehameha Highway at and around its intersection with Pūpūkea Road,
 - v. Already existing non-point pollution, surface runoff, sewage and garbage generation issues potentially impacting the MLCD,

vi. Increased non-point pollution, surface runoff issues and garbage generation issues potentially impacting the MLCD, and other similar cumulative impacts created or increased by the combined operations.

b. Allowing the Developer to only discuss, analyze, and assess the adverse traffic impacts and to ignore those which it has already illegally created by way of:

i. Its initial unpermitted development and use of the property,

ii. Its activities under the initial now-invalidated three rescinded SMA Minor Permits, and

iii. Its current activities that are not even in compliance with the improperly- issued After-the-Fact SMA Minor Permit.

245. DPP failed to recommend, and the City failed to require, any community-based remedies pertaining to monitoring and enforcement, outside the vague and unenforceable measures recommended at the time the Developer seeks future development permits. DPP never took action regarding noncompliance, nor did DPP seek to terminate any uses or halt operations despite noncompliance. Due to a pattern and practice of inadequate enforcement, the community cannot rely on DPP and its proposed inverse-permitting and weak enforcement regime that disregards the current impacts of unpermitted and illegal development and rewards bad actors.

246. Although mentioned in passing, the potential impacts from “visitor destination services” (i.e. bus bays, tour vans, parking operations) was not disclosed or evaluated. This activity (some of which has also been previously conducted without permit by the Developer in the past) would also place the burden for monitoring and enforcement on the community.

247. The City’s fast-track process in favor of Developer deprived Plaintiffs of a fair, neutral, and independent decision-maker and thereby denied them due process.

248. As a result of the acts and omissions of DPP and the City Council, Plaintiffs are entitled to a declaratory and injunctive order declaring the SMA Major Permit to be void and invalid.

**COUNT X – Against City and Developer
(Water Pollution in Violation of HRS Chapter 205A, ROH Chapter 25,
HRS Chapter 342D, HAR Title 11-54, and HAR Title 11-55)**

249. Plaintiffs re-allege all prior paragraphs.

250. The Developer's current and future activities on the site are causing and will continue to cause water pollution of the MLCD through contaminated subsurface groundwater flows and through storm water runoff, in violation of the State Water Pollution Act, HRS 342D, HAR § 11-54 (Water Quality Standards), and HAR § 11-55 (Water Pollution Control). The City failed to consider these issues in issuing the Minor and Major SMA Permits, in violation of Chapter 205A and ROH Chapter 25.

A. HRS 342D & HAR 11-54: Water Quality Standards

251. The Developer's current subsurface discharges from the site violate State Water Quality Standards by discharging pollutants such as Nitrogen and Phosphorus into the Class AA waters of the MLCD through subsurface flows of freshwater and ocean water. These illegal discharges will continue or increase under the Proposed Development.

252. The Developer's current surface water flow of storm water violates State Water Quality Standards by discharging pollutants including Nitrogen and Phosphorus into the Class AA waters of the MLCD through the storm drain, culvert, and ditch that drain into the Park and MLCD. These illegal discharges will continue or increase under the Proposed Development.

253. These sources of pollution from the Developer violate the State Water Quality anti-degradation rules. HAR § 11-54-1.1(c).

254. Class AA Waters are required to be maintained in “their natural pristine state as nearly as possible with an absolute minimum of pollution,” and “[n]o zones of mixing shall be permitted in this [AA] class” in waters less than 18 meters deep. HAR § 11-54-3(c)(1).

255. Marine pools, coves, and “reef flats and reef communities” are also specifically protected as Class I areas under State Water Quality Standards. HAR § 11-54-7(e); *see also* § 11-54-7(e)(2)(A)(iv) (listing Sharks Cove, Pupukea among “water areas to be protected”).

256. State law also prohibits violation of recreational water quality standards for marine waters “to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities.” HAR § 11-54-8.

B. HRS Chapter 342D & HAR Title 11-55: Water Pollution Control

257. The Developer is currently violating the State Water Pollution Control laws, HRS Chapter 342D and HAR Title 11-54, by discharging pollutants into state marine waters without a proper NPDES permit from the DOH. The Developer’s future activities on the site will continue to violate State Water Pollution Control Laws.

258. Under HAR § 11-55-01, “discharge of a pollutant” means “*any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. Id. (excerpted from 40 CFR 122.2) (emphasis added).* “Point source” means “any discernible, confined, and discrete conveyance, including but

not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, . . . from which pollutants are or may be discharged.” *Id.*

259. The surface runoff that is collected on the Developer’s Parcels and then channeled along Kamehameha Highway to the storm drain and then under the Highway to the Beach and MLCD is a “discharge of a pollutant” from a “point source,” which is illegal without a proper NPDES permit.

260. In addition, the subsurface contamination from the current and future operations on the Developer’s Parcels that has a hydrological connection to the ocean is and will be a second “point source discharge” that requires an NPDES permit.

261. In *Hawaii Wildlife Fund v. County of Maui*, 24 F. Supp. 3d 980 (D. Haw. 2014) the United States District Court for the District of Hawaii found the Maui County sewage injection wells required an NPDES permit because of the hydrologic connection to the coastal waters that led to elevated levels of nitrogen and phosphorous (the same known and measured contaminants in this case): “groundwater is a conduit through which pollutants are reaching navigable-in-fact water.” *Id.* at 994; *see also id.* at 996 (“It is the migration of the pollutant into navigable-in-fact water that brings groundwater under the Clean Water Act.”).

262. The Developer’s studies of groundwater and ocean water, and recent testing of the drainage ditch, shows pollution from the site exceeds state water quality standards. The significant effects of the discharges by the Developer need not be proven by Plaintiffs to require an NPDES permit because the law “creates a strict liability scheme that categorically prohibits any discharge of a pollutant from a point source without a permit.” *Id.* at 1004 (citation and internal alterations omitted). Therefore, Defendants are in violation of the State

Water Pollution Act, HRS Chapter 342D, for failing to have proper NPDES permits for the storm water and subsurface discharges.

263. Plaintiffs have a right to enforce the State Water Pollution Act's NPDES requirements based on Constitution, Article XI, Section 9 and case law allowing citizen enforcement of state environmental laws. Defendants are subject to penalties under HRS § 342D-30.

C. HRS Chapter 205A & ROH Chapter 25: The City's Failure To Consider Water Pollution in the SMA Process

264. In granting the Minor and Major SMAs without considering these water quality impacts and violations, the City failed to ensure that the current and future development would not adversely affect water quality of protected resources. Under ROH § 25-3.2(b), "[n]o development shall be approved unless the council has first found that: (1) The development *will not* have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or compelling public interest." (Emphasis added.).

265. As explained above, the Developer's own FEIS indicated current and future water quality impacts from the development on the site. In addition, numerous flaws in the EIS studies, particularly the marine study, under-estimated the actual potential impacts of the development.

266. Plaintiffs seek declaratory and injunctive relief to prevent current contamination from the site of the marine waters of the MLCD, to ensure that any SMA permits from the City have appropriate conditions requiring no discharge of pollutants into the MLCD, adequate conditions for monitoring and reporting, and to require the Developer to apply to the DOH for an NPDES Permit before the City accepts any SMA reapplication.

**COUNT XI - Against Hanapohaku
(Public Nuisance)**

267. Plaintiffs re-allege all prior paragraphs.

268. Developer Hanapokahu has engaged in unlawful acts or omissions that have endangered the lives, safety, health, property, or comfort of the public, by, for example, operating and/or leasing space to food trucks that violate health and safety laws, by undertaking unpermitted development, and by creating adverse impacts on the MLCD, Park, public resources, and surrounding roadways, Kamehameha Highway, Pāhoa Road, Pūpūkea Road, and nearby neighborhoods.

269. The Developer's acts or omissions have unlawfully hurt, inconvenienced, damaged, annoyed, and disturbed Plaintiffs in the enjoyment of their legal rights.

270. As a result of the Developer's acts or omissions that have created a public nuisance, Plaintiffs are entitled to declaratory relief and a preliminary and permanent order enjoining the Developer from creating a public nuisance including unpermitted development, water pollution, over-usage of the Park and MLCD, displaying signage and merchandise outside along the frontage of the Parcels, playing loud music and showing outdoor movies, allowing packaging and litter to spillover to nearby areas, attracting more vehicles and visitors to the area, and from operating and/or leasing space to food trucks on the Parcels.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. An order declaring that: (1) the City failed to exercise its Public Trust responsibilities to protect fresh and marine water resources, the Park, and the MLCD in violation of the Hawai'i Constitution, Article XI Section 1, Article XI Section 7, and the common law Public Trust Doctrine; (2) the City and the Developer violated Plaintiffs' right to a clean and

healthful environment in violation of the Hawai‘i Constitution, Article XI Section 9; (3) the City failed to follow the North Shore Sustainable Communities Plan in violation of HRS 205A and ROH Ch 25; (4) DPP improperly issued the After-the-Fact SMA Minor Permit, and failed to enforce the Minor Permit conditions, in violation of HRS Ch. 205A & ROH Ch. 25; (5) DPP failed to provide meaningful enforcement through imposition of fines for violations of state and county laws, thereby denying Plaintiffs due process in violation of HRS 205A and ROH Ch. 25; (6) the City approved the SMA Major Permit without ensuring the Developer was in compliance with State food safety laws, in violation of HRS § 321-11(18) & HAR Title 11 Ch. 50 and HRS 205A & ROH Ch. 25; (7) the City improperly accepted and approved the inadequate EIS under ROH Ch. 25 & HAR Title 11, Ch. 200; (8) DPP and the City violated Article I Section 5 of the Hawai‘i Constitution by failing to provide fair and impartial review; (9) DPP improperly recommended issuance of, and the City Council improperly issued, the SMA Major Permit in violation of HRS Ch. 205A and ROH Ch. 25; (10) the Developer violated Water Pollution Control Act HRS 342D, and HAR 11-55 and the City violated HRS 205A ROH 25; and (11) the Developer has created a public nuisance;

B. Temporary, preliminary, and permanent injunctive relief against Developer and the City: (1) voiding the SMA Minor, the Major Permit, and the EIS, (2) enjoining all current and future post-2015 commercial development on the Parcels, including operating and/or leasing space to food trucks and other new commercial activities, (3) mitigating past and current impacts on public trust resources including the Park and MLCD, (4) mitigating current and past impacts on the Pāhoehoe Road and Pūpūkea Road neighborhoods, and (5) requiring immediate compliance with all state and county law and permit conditions, based on Counts I through XI above;

C. For an order directing the Developer on behalf of itself and its successors-in-interest to take affirmative action and monitoring necessary to ensure current and on-going compliance: (1) with the applicable environmental and permit standards; (2) actions necessary to ensure compliance with the committed Level of Service (LOS) for traffic based on periodic traffic assessments; (3) such other affirmative action determined appropriate by the Court to maintain current and future compliance with the applicable laws and ordinances; and (4) transparent, strict, and specific enforcement provisions;

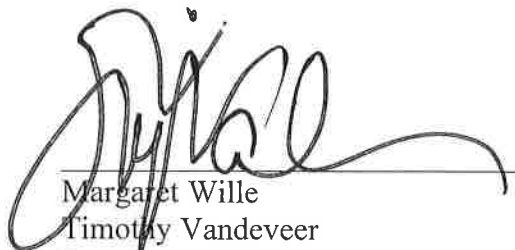
D. For an Order requiring the Developer, on behalf of itself and its successors-in-interest, to submit of an annual public report to demonstrate its compliance with the law, with a copy to be mailed to the DPP and to the attorneys of record, or as otherwise directed by the attorneys of record in this case for a ten-year period from the date of final judgment;

E. For an order awarding Plaintiffs their attorneys' fees and costs incurred;

F. Civil penalties under HRS § 205A-32; and

G. For such other and further relief as this Court deems just and proper.

Dated: Honolulu, Hawai'i, February 27, 2019.



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DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of the Petition for Contested
Case Hearing of

MĀLAMA PŪPŪKEA-WAIMEA;

Of Special Management Area ("SMA")
Minor Permit Approvals for HANAPOHAKU
LLC, Located at: (1) 59-712 Kamehameha
Highway and 59-712A Kamehameha
Highway, Hale'iwa, Hawai'i 96712, TMK
No. 5-9-011:068 (2015/SMA61) (supersedes
2015/SMA-8); (2) 59-716 Kamehameha
Highway, Hale'iwa, Hawai'i 96712, TMK
No. 5-9-11:069 (215/SMA47); and (3) 59-063
Pahoe Road, Hale'iwa, Hawai'i 96712, TMK
No. 5-9-011:070 (2015/SMA-24).

Civil No. 2016/GEN-4

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

Hearing:

Date: November 13, 2018
Time: 9:00 a.m.
Hearings Officer: Clark Hirota

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

Petitioner Mālama Pūpūkea-Waimea ("Petitioner" or "MPW"), Respondent Planning
Director ("Planning Director") of the Department of Planning and Permitting ("DPP"), and
Intervenor Hanapohaku LLC ("Developer") hereby stipulate as follows:

I. FINDINGS OF FACT

1. Petitioner is a volunteer-based North Shore 501(c)(3) non-profit organization formed in 2005 to replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea ahupua‘a for present and future generations through active community stewardship, education, and partnerships.

2. MPW members steward and monitor the health of the Pūpūkea Beach Park and the Pūpūkea Marine Life Conservation District (“MLCD”). MPW and its members have provided thousands of volunteer hours as well as over half a million dollars (in grants, donations, and in-kind services) for improvements, oversight, educational programs and outreach, beach, shoreline, and park clean ups, biological and human use monitoring, in water fish counts, limu identification studies, water quality testing, invasive species removal and coastal restoration.

3. MPW has many board, staff, advisory board, and volunteer members who are residents of the Pūpūkea/Sunset Beach community and who are frequent users of the Sharks Cove area, including Pūpūkea Beach Park and Pūpūkea MLCD, for recreation, research, ecological, and educational purposes.

4. Developer purchased the following parcels on June 26, 2014: (1) 59-712 Kamehameha Highway and 59-712A Kamehameha Highway, Hale‘iwa, Hawai‘i 96712, TMK No. 5-9-011:068 (“Parcel 68”); (2) 59-716 Kamehameha Highway, Hale‘iwa, Hawai‘i 96712, TMK No. 5-9-011:069 (“Parcel 69”); and (3) 59-063 Pahoe Road, Hale‘iwa, Hawai‘i 96712, TMK No. 5-9-011:070 (“Parcel 70”).

5. Parcels 68, 69, and 70 are located across the two-lane Kamehameha Highway from Pūpūkea Beach Park and the Pūpūkea MLCD, and lie mostly within the Special Management Area (“SMA”).

6. The aerial photo below provides a true and accurate depiction of Parcels 68, 69, and 70 from left to right, as of March 9, 2016, the date the photo was taken.



7. Beginning in late 2014 or early 2015, Developer undertook unpermitted development on Parcels 68, 69, and 70. The unpermitted development included but was not necessarily limited to food trucks, which are alleged to be stationary, decks enclosing the allegedly stationary food trucks, a wooden deck addition to an existing structure, plumbing improvements, and electrical and water connections.

8. MPW alleged the development increased traffic and pedestrian congestion, unsafe and unsanitary conditions, and created litter, parking, erosion, resource over-use, potential pollution. MPW also alleged the development resulted in restroom over-usage at Pupukea

Beach Park and adverse impacts to the SMA and Petitioner's and the community's access to and use of the Pūpūkea Beach Park and the Pūpūkea MLCD.

9. On February 26, 2015, Developer applied for an SMA Minor Permit ("2015/SMA-8") to: (1) construct a one-story retail building (820 square feet) behind the existing real estate office building; (2) add a deck to the existing real estate office building (240 square feet); (3) convert an existing dental clinic building (596 square feet) into an eating and drinking establishment with a deck for outdoor dining (240 square feet); (4) convert an existing carport into a covered dining area (356 square feet) with two outdoor dining areas (front and back); and (5) site improvements, which include 14 parking stalls, one loading stall and landscaping on Parcel 68. The Developer estimated the total valuation for the development at \$498,000.

10. On March 19, 2015, the Planning Director approved SMA Minor Permit 2015/SMA-8.

11. On May 11, 2015, Developer applied for a second SMA Minor Permit ("2015/SMA-24") to construct: (1) two detached one-story retail buildings with covered patios (540 square feet and 120 square feet of covered patio); (2) a detached restroom building (419 square feet); (3) site improvements, including 10 additional parking stalls; (4) one separate loading area; and (5) landscape screening along Kamehameha Highway and Pahoe Road at Parcel 70. The Developer estimated the total valuation for the development at \$484,000.

12. On June 9, 2015, Planning Director approved SMA Minor Permit 2015/SMA-24. The permit approval did not refer to the SMA Minor permit for Parcel 68.

13. On September 28, 2015, Developer applied for a third SMA Minor Permit ("2015/SMA-47") to: (1) remove the unpermitted improvements located in the front half of property; (2) build three one-story buildings and a surface parking lot in the rear of property; (3)

construct two retail buildings (820 square feet each); (4) construct a parking lot with 16 stalls, and one loading stall on Parcel 69. The Developer estimated the total valuation for the development at \$445,000.

14. On November 5, 2015, the Planning Director approved SMA Minor Permit 2015/SMA-47.

15. On November 13, 2015, Developer submitted revised plans for SMA Minor Permit 2015/SMA-8. The estimated total valuation for the development was unchanged at \$498,000.

16. On January 13, 2016, Planning Director approved SMA Minor Permit 2015/SMA-61, which superseded 2015/SMA-8. The permit approval did not contain any findings regarding potential cumulative impacts, or indicate that such impacts had been considered. By at least January 5, 2016, DPP should have been aware that Developer was operating the “Sharks Cove Commercial Development” as one unified project across all three parcels.

17. On March 9, 2016, MPW submitted a petition for a consolidated contested case hearing on its appeal from the Planning Director’s decisions to issue the SMA Minor Permits for the project (the “Petition”).

II. CONCLUSIONS OF LAW

1. The Petition was timely filed.
2. Petitioner has standing.
3. The purpose of the State of Hawai‘i Special Management Area law is “to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii.” Haw. Rev. Stat. (“HRS”) § 205A-21.

4. The purpose of the Revised Ordinances of Honolulu (“ROH”) Chapter 25 is “to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to ensure that adequate public access is provided to public owned or used beaches, recreation areas, and natural reserves[.]” ROH Chapter 25-1.2.

5. “Development” in the Special Management Area without an SMA permit is unlawful. HRS § 205A-26.

6. The “Sharks Cove Commercial Development” is a “Development.”

7. An SMA Minor Permit may be lawfully issued by the Planning Director only when “the valuation . . . is not in excess of \$500,000, and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.” HRS § 205A-22.

8. The Planning Director and DPP staff have an affirmative duty to conduct a thorough review of permit applications and to make determinations consistent with the purposes of HRS § 205A and ROH Chapter 25.

9. No SMA permit, including an SMA minor permit, may be issued unless it is first found that:

(a) The development will not have any substantial adverse environmental or ecological effect, HRS § 205A-26(2)(A); and

(b) The development is consistent with the objectives, policies and guidelines of Chapter 205A, HRS § 205A-26(2)(B).

10. The Planning Director may not issue an SMA Minor Permit for a development unless it meets all of the tests set out above and the valuation of the development is not in excess of \$500,000.00.

11. In issuing its decisions on the three SMA Minor Permits, the Planning Director failed to conduct a thorough review of the valuation and cumulative impacts of the applications and, therefore, failed to make determinations consistent with the purposes of HRS § 205A and ROH Chapter 25.

III. **DECISION & ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that: The Petition is GRANTED insofar as it seeks a decision that:

A. The Planning Director erroneously approved the three SMA Minor Permits for the “Sharks Cove Commercial Development,” on Parcels 68, 69, and 70 because the requirements for an SMA minor permit were not met; and

B. The Planning Director’s decisions to issue the three SMA Minor Permits violated HRS § 205A and ROH Chapter 25.

DATED: Honolulu, Hawai‘i January 7, 2019.


BRAD T. SAFFO, ESQ.
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ACTING DIRECTOR, DEPARTMENT OF
PLANNING and PERMITTING

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MĀLAMA PŪPŪKEA-WAIMEA



TERRENCE M. LEE, ESQ.
Attorney for Intervenor
HANAPOHAKU, LLC

APPROVED & SO ORDERED:



HEARING OFFICER

*In the Matter of the Petition for Contested Case Hearing of MĀLAMA PŪPŪKEA-WAIMEA;
Of Special Management Area ("SMA") Minor Permit Approvals for HANAPOHAKU LLC,
Located at: (1) 59-712 Kamehameha Highway and 59-712A Kamehameha Highway, Hale 'iwa,
Hawai'i 96712, TMK No. 5-9-011:068 (2015/SMA61) (supersedes 2015/SMA-8); (2) 59-716
Kamehameha Highway, Hale 'iwa, Hawai'i 96712, TMK No. 5-9-11:069 (215/SMA47); and (3)
59-063 Pahoe Road, Hale 'iwa, Hawai'i 96712, TMK No. 5-9-011:070 (2015/SMA-24), Civil No.
2016/GEN-4, STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION AND ORDER*

MĀLAMA PŪPŪKEA-WAIMEA
501(c)(3) non-profit organization
P.O. Box 188
Hale'iwa, Hawai'i 96712
Telephone: (808)388-3825
E-mail: SaveSharksCove@gmail.com



BEFORE CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PLANNING AND PERMITTING
STATE OF HAWAI'I

In the Matter of the Petition
for Contested Case Hearing of

MĀLAMA PŪPŪKEA-WAIMEA

of Special Management Area
("SMA") Minor Permit Approval
for HANAPOHAKU LLC (2017/SMA-
21), Located at: (1) 59-712
Kamehameha Highway, Hale'iwa,
Hawai'i 96712, TMK No. 5-9-
011:068; (2) 59-706 Kamehameha
Highway, Hale'iwa, Hawai'i
96712, TMK No. 5-9-011:069; and
(3) 59-053 Pahoe Road,
Hale'iwa, Hawai'i 96712, TMK
No. 5-9-011:070

Docket No.:

PETITION FOR A CONTESTED CASE
HEARING ON APPEAL FROM THE
DECISION OF THE PLANNING
DIRECTOR, CITY AND COUNTY OF
HONOLULU, DEPARTMENT OF
PLANNING AND PERMITTING TO
ISSUE SPECIAL MANAGEMENT AREA
MINOR PERMIT 2017/SMA-21 FOR
THE HANAPOHAKU LLC "SHARK'S
COVE DEVELOPMENT"; CERTIFICATE
OF SERVICE

PETITION FOR A CONTESTED CASE HEARING ON APPEAL FROM THE
DECISION OF THE PLANNING DIRECTOR, CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF PLANNING AND PERMITTING TO ISSUE SPECIAL
MANAGEMENT AREA MINOR PERMIT 2017/SMA-21
FOR THE HANAPOHAKU LLC "SHARK'S COVE DEVELOPMENT"

I. INTRODUCTION

1. Petitioner Mālama Pūpūkea-Waimea ("Petitioner" or "MPW") submits this petition, pursuant to section 12-2 of the Department of Planning and Permitting ("DPP") Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area ("Part 2 Rules"), for a contested case hearing on its appeal from the Planning Director's decision to issue Special Management Area ("SMA") Minor Permit 2017/SMA-21 for "Shark's Cove Development."

2. On August 2, 2017, the Planning Director issued SMA Minor Permit to Applicant G70 Jeff Overton, as agent for Landowner and Developer Hanapohaku LLC ("Developer") for a commercial development DPP identified as "Shark's Cove Development," (see 2017/SMA-21 (attached as Exhibit "A")), located on three contiguous parcels owned by the same Developer at: (1) 59-712 Kamehameha Highway, Hale'iwa, Hawai'i 96712, TMK No. 5-9-011:068 ("Parcel 68"), (2) 59-706 Kamehameha Highway, Hale'iwa, Hawai'i 96712, TMK No. 5-9-011:069 ("Parcel 69"); and (3) 59-053 Pahoe Road, Hale'iwa, Hawai'i 96712, TMK No. 5-9-011:070 ("Parcel 70").

3. For the reasons stated below, the Planning Director's decision to issue the SMA Minor Permit violates Hawai'i Revised Statutes ("HRS") Chapter 205A and Chapter 25, Revised Ordinances of Honolulu ("ROH"), and therefore is null and void.

4. Petitioner seeks an order vacating the SMA Minor Permit, requiring Developer to pay all accumulated fines, and instructing Developer to submit an application for an SMA Use Permit ("Major") that demonstrates full compliance with County, State, and Federal laws prior to the Planning Director's approval.

II. LEGAL PROTECTIONS IN THE SPECIAL MANAGEMENT AREA

5. The purpose of the State of Hawai'i Special Management Area law is "to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii." HRS § 205A-21.

6. The purpose of ROH Chapter 25 is "to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to ensure that adequate public access is provided to public owned or used beaches, recreation areas, and natural reserves" ROH Chapter 25-1.2.

7. "Development" in the Special Management Area without an SMA permit is unlawful. HRS § 205A-26. Developer does not contest that the "Shark's Cove Development" is development.

8. An SMA Minor Permit may be lawfully issued by the Planning Director only when "the valuation . . . is not in excess of \$500,000, and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects." HRS § 205A-22.

9. DPP's review of Developer's inadequate application, valuations, revisions, modifications, and failure to correct misleading and inaccurate information violates HRS Chapter 205A and ROH Chapter 25.

10. DPP has an affirmative duty to thoroughly review permit applications and to make determinations consistent with the purposes of HRS Chapter 205A and ROH Chapter 25. In issuing its decision on the SMA Minor Permit, DPP failed to uphold these duties and specifically failed to conduct an independent valuation and take into account potential cumulative impacts; therefore the determinations were based on erroneous findings of material fact or were otherwise arbitrary and capricious.

III. PETITIONER

11. Petitioner Mālama Pūpūkea-Waimea is a 501(c)(3) non-profit organization registered to do business in the State of Hawai'i. Petitioner's mailing address is P.O. Box 188, Hale'iwa,

Hawai'i 96712. Petitioner's phone number is (808)388-3825, and email is SaveSharksCove@gmail.com. Petitioner is a volunteer-based North Shore non-profit, formed in 2005, to "replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea ahupua'a for present and future generations through active community stewardship, education, and partnerships." More information about Petitioner is available at www.pupukeawaimea.org.

12. For the past twelve years, Petitioner, through its volunteer members, has maintained a weekly presence at the Pūpūkea Beach Park and the Pūpūkea Marine Life Conservation District ("MLCD"), which are across the two-lane Kamehameha Highway from and virtually adjacent to the properties that are the subject of the challenged SMA Minor Permit.

13. MPW members have stewarded and monitored the health of the Pūpūkea Beach Park, MLCD, and Special Management Area. Members have worked tirelessly to increase the knowledge of and support for the ecological values, rules, and user impacts among the community, youth, visitors, and users. MPW and its members have provided thousands of volunteer hours as well as over half a million dollars (in grants, donations, and in-kind services) for improvements, oversight, educational programs and outreach, beach, shoreline, and park clean ups, biological and human use monitoring, in water fish counts, limu identification studies,

water quality testing, invasive species removal and coastal restoration. MPW also documents and reports rule violations to the State Department of Land and Natural Resources ("DLNR") Division of Conservation and Resources Enforcement ("DOCARE") through our Makai Watch volunteers. MPW is a certified member of the DLNR-DOCARE Makai Watch program.

14. MPW has many board, staff, advisory board, and volunteer members who are residents of the Pūpūkea/Sunset Beach community and who are frequent users of the Shark's Cove area, including Pūpūkea Beach Park and Pūpūkea MLCD, for recreation, research, ecological, and educational purposes, including specifically its board members who are long-time residents of the area, Denise Antolini, Roberts (Bob) Leinau, John Cutting, Jim Parsons, and Laura Parsons, as well as staff members Maxx Elizabeth Phillips and Jenny Yagodich, and advisory board member Palakiko Yagodich, whose family uses the area for traditional and cultural practices.

15. Petitioner MPW and its members are specifically, personally, and adversely affected by the "Shark's Cove Development" and its adverse impacts on the Special Management Area and therefore MPW has legal standing to bring this petition.

16. In addition, Petitioner also has standing because it suffered procedural injury when DPP erroneously treated the "Shark's Cove Development" as requiring only an SMA Minor Permit,

thereby improperly avoiding a formal public hearing and proper environmental review of the substantial adverse impacts and potential mitigation.

17. Moreover, the DPP's lack of compliance with required substantive and procedural due process for the "Shark's Cove Development" has improperly shifted the burden of proof from the Developer to the community to assess and mitigate the environmental and cumulative impacts of this development in the Special Management Area. This procedural injury and improper placement of the burden on the community violates the spirit and letter of the laws protecting Hawai'i's precious shoreline resources including HRS 205A, ROH Ch. 25, the public trust doctrine, and the precautionary principle.

IV. BACKGROUND

18. Developer purchased Parcels 68, 69, and 70 on June 26, 2014.

19. Beginning in late 2014 or early 2015, Developer undertook unpermitted development including, but not limited to, adding nine stationary food trucks, constructing at least two unpermitted decks enclosing stationary food trucks, an unpermitted wooden deck addition to an existing structure, unpermitted plumbing improvements, unpermitted electrical and water connections, unpermitted fences, and unpermitted grubbing and grading.

20. This development was done with no building permits and no SMA permits, and resulted in numerous violations.

21. This development has increased traffic and pedestrian congestion, unsafe and unsanitary conditions, and created litter, parking, erosion, resource over-use, potential pollution, and restroom over-usage problems in the Special Management Area, adversely affecting Petitioner's and the community's access to and use of the Pūpūkea Beach Park and the Pūpūkea MLCD. Only after community vigilance, monitoring, and complaints to regulatory agencies and elected officials did Developer make any effort to reduce the impact of its activities. However, these significant problems persist.

22. This development has, for example, increased litter found in the Pūpūkea Beach Park and the Pūpūkea MLCD as a result of spillover litter from eateries at the "Shark's Cove Development." Members have been finding more and more rubbish in the Special Management Area from various food trucks and have observed patrons walking over with food debris and leaving it on ground. In 2014, prior to increased commercial operations at the "Shark's Cove Development," Petitioners removed 763 pounds of trash from the Pūpūkea Beach Park and the Pūpūkea MLCD. In 2015, after Developer's increased commercial operations, Petitioners removed approximately 1,500 pounds of trash. The amount of trash removed in 2016 increased to 1,617 pounds. As

of September 18, 2017, despite efforts by Developer to contain its tenants' and their customers' trash, Petitioner removed 1,686 pounds of trash (annualized, roughly 2,200 pounds/year) from Pūpūkea Beach Park and the Pūpūkea MLCD.

23. Between February 2015 and November 2015, Developer intentionally segmented the "Shark's Cove Development" by submitting three separate SMA Minor Permit applications for one unified development, thereby depriving DPP's Planning Director and staff of complete and accurate information.

24. Between March 2015 and January 2016, the Planning Director issued three similar SMA Minor Permits to the same Applicant Gregory A. Quinn, as agent for the same Landowner and Developer Hanapohaku LLC for a single unified commercial development—the "Project" DPP identified, at the time, as "Sharks Cove Commercial Development," see Jan 5, 2016 Director's review meeting (attached as Exhibit "B"), located on three contiguous parcels owned by the same Developer at: (1) 59-712 Kamehameha Highway and 59-712A Kamehameha Highway, Hale'iwa, Hawai'i 96712, TMK No. 5-9-011:068 ("Parcel 68"), see 2015/SMA-61 (attached as Exhibit "C"), superseding 2015/SMA-8 (attached as Exhibit "D"); (2) 59-716 Kamehameha Highway, Hale'iwa, Hawai'i 96712, TMK No. 5-9-011:069 ("Parcel 69"), see 2015/SMA-47 (attached as Exhibit "E"); and (3) 59-063 Pahoe Road,

Hale'iwa, Hawai'i 96712, TMK No. 5-9-011:070 ("Parcel 70"), see 2015/SMA-24 (attached as Exhibit "F").¹

25. The inadequate applications, revisions, modifications, and failure to correct misleading and inaccurate information led to the illegal segmentation of the permitting process violating HRS § 205A and ROH Chapter 25.

26. On March 9, 2016, MPW filed a petition for a consolidated contested case hearing on appeal from the decisions of the Planning Director, City and County of Honolulu, Department of Planning and Permitting to issue three Special Management Area Minor permits for the Hanapohaku LLC "Sharks Cove Commercial Development." See Case No. 2016/GEN-4. This contested case and Developer's Petition To Intervene are still pending.

27. On April 6, 2016, over one hundred community members attended the North Shore Neighborhood Board Special Meeting for the Hanapohaku LLC "Sharks Cove Commercial Development" at Waimea Valley. At this meeting, Developer, represented by co-owner Andrew D. Yani, repeatedly apologized and promised to withdraw all three SMA Minor permits.

28. On May 2, 2016, in response to Developer's request to withdraw the three SMA minor permits, DPP revoked all three

¹ Some of these addresses appear to have changed. See Paragraph 2, supra.

permits (2015/SMA-24, 2015/SMA-47, and 2015/SMA-61), ordering that all development authorized by these approvals be removed, that the area be "restored to its pre-approval condition," and "[a]ny outstanding violations associated with those approvals must be resolved (i.e., grading, etc.)." See DPP May 2, 2016 letter (attached as Exhibit "G").

29. On May 31, 2016, Developer applied for another SMA Minor Permit 2016/SMA-36 for modifications of and additions to the commercial structures on Parcel 68, including converting the dentist's office and prefabricated container buildings into a commercial kitchen and correcting of existing violations. See 2016/SMA-36 Application File (attached as Exhibit "H").

30. Developer's May 23, 2016 valuation for SMA Minor Permit 2016/SMA-36 states that the cost of converting the dentist's office into a "commercial kitchen" would total \$49,005 (commercial kitchen interior, \$26,505 and commercial kitchen addition, \$22,500). In addition, Developer states the cost of a related container commissary building as \$25,000. See 2016/SMA-36 Application File (Exhibit "H") (J.Uno & Assoc. Inc. cost analysis at p. [3].)

31. On July 13, 2016, DPP rejected SMA Minor Permit 2016/SMA-36, stating that the appropriate remedy for the outstanding violations and future development was to obtain a Major SMA Use permit, which would require an Environmental

Assessment. See 2016/SMA-36 Application File (Exhibit "H"), see also August 29, 2016, letter from DPP to Senator Riviere (attached as Exhibit "I").

32. Despite DPP's rejection of 2016/SMA-36, Developer proceeded to illegally construct the "commercial kitchen" and made a number of other unpermitted site improvements. See 2017/SMA-21 (Exhibit "A") at 3-4.

33. On January 23, 2017, DPP issued a Notice of Violation ("NOV") to Developer for "[m]ultiple violations in Special Management Area without a Special Management Area (SMA) permit. Structures including food trucks, shipping containers, loading trucks, septic tanks, wooden decks and stairs, tents, eating areas with tables and benches, signs and sheds, temporary toilets, fences, walls, parking areas and all other structures which have not been permitted must be removed. Grading has been undertaken without the required permit. Commercial activities which lack a SMA permit must cease . . . correct all of the violations cited above and restore the site to the original conditions allowed by approved permits." See 2016/NOV-12-137 (attached as Exhibit "J") (emphasis added).

34. In response, Developer took no action to cure the violations in the NOV.

35. On February 27, 2017, DPP issued a Notice of Order ("NOO") to Developer for "multiple violations in Special

Management Area (SMA) without an SMA Use Permit." DPP ordered Developer to pay a fine of \$2,000.00 by March 30, 2017 and to correct violations by March 14, 2017, after which a \$500.00 daily fine would be assessed until the corrections were completed. See 2017/N00-062 (attached as Exhibit "K").

36. Developer did not comply with the NOO and continued unpermitted development and commercial activities on the site.

37. On April 19, 2017, while the MPW contested case was stayed by agreement, Developer applied for yet another SMA Minor Permit 2017/SMA-14 "to allow (retain) [sic ?] existing commercial activities including food trucks, after-the-fact grading and grubbing, construction of a parking lot, installation of an individual wastewater system, and the establishment of outdoor, covered eating and drinking areas." See 2017/SMA-14 Application File (attached as Exhibit "L") at 1.

38. On May 16, 2017, DPP rejected SMA Minor Permit 2017/SMA-14 as incomplete, finding "that application materials did not demonstrate that the Project is eligible for a minor SMA Permit" in part because the value of the food trucks was not included. "If the food trucks leave the site each day, the application should specify that, and the value of the trucks will not need to be added to the total Project valuation. If, on the other hand, the food trucks will regularly remain in place for days at a time or cannot move at all, the value of the

trucks must be included in the Project valuation. In site visits last year, we were led to believe that the trucks do not move on a daily basis, and in fact rarely move at all. If this is the case, the application should clearly say so. If the new proposal involves daily movement of the trucks, the application should indicate where they will be parked every evening." See 2017/SMA-14 Application File (Exhibit "L") (emphasis added) at 1-2.

39. On May 23, 2017, Developer re-applied for an "after-the-fact SMA Minor Permit to allow new[,] and partially retain existing[,] retail and eating establishments on the site, and to authorize site improvements" such as: clearing; grading; fill; landscaping; gravel cover; parking lot/sidewalk; ATU wastewater system; chain link fence; trash enclosure; water lines; and electrical lines. Developer estimated the total valuation for the development at \$351,908. See 2017/SMA-21 (Exhibit "A") at 4.

40. Despite DPP's unambiguous directive of May 16, 2017, the valuation made no mention of the existing unpermitted food trucks that regularly remain in place for days at a time; and did not mention the already in-place complete commercial kitchen. See 2017/SMA-21 Application File (Exhibit "M"). DPP approved a plan submitted by Developer that included five food trucks, the value of which should have been included in the cost valuation

because, according to DPP, "their use . . . is considered 'development' for the purposes of Chapter 25, ROH." 2017/SMA-21 (Exhibit "A") at 6.

41. Not only is the Developer's valuation (dated May 22, 2017) for SMA permit 2017/SMA-21 incomplete, but it is also inadequate and misleading. The valuation inexplicably reduces the cost of multiple items already installed on site. For example, on April 16, 2017, Item 1, "Temp. Erosion Control Measures, In Place Complete" was valued at \$9,500.00. See 2017/SMA-14 Application File (Exhibit "L"). However, on May 22, 2017, Item 1, "Temp. Erosion Control Measures, In Place Complete" was reduced by sixty-one percent without explanation to \$3,696.00. See 2017/SMA-21 Application File (attached as Exhibit "M").

42. On August 2, 2017, the Planning Director approved SMA Minor Permit 2017/SMA-21 based on her determination that the Project "has a stated valuation of less than \$500,000, and will have no significant effect on SMA resources." See 2017/SMA-21 (Exhibit "A") at 1. There is no indication that DPP conducted a thorough and independent review of the "stated valuation."

43. The permit approval also violated HRS Chapter 205A-26(2)(a) and ROH Chapter 25-3.2(b)(1) because it not contain any findings regarding existing or potential cumulative impacts, or indicate that such impacts had been considered. For example,

although DPP acknowledged that the "Project generates traffic congestion," and "creates problems with vehicular and pedestrian safety," DPP did not analyze these existing direct impacts, let alone indirect, potential, and cumulative impacts. See 2017/SMA-21 (Exhibit "A") at 4. To the contrary, DPP improperly punted any analysis of traffic impacts to later stages of the permitting process, see 2017/SMA-21 (Exhibit "A") at 7, notwithstanding that **traffic impacts are environmental impacts** that must be considered at the SMA stage.

44. In another indication of its underestimation of the impacts, DPP acknowledges Developer's estimate that "each food truck serves an average of 300 to 400 customers per day." See 2017/SMA-21 (Exhibit "A") at 6. This means that the total estimated number of customers to the site is 2,000/day, or 60,000/month, or 720,000/year. The impacts of attracting this large number of customers to the site are nowhere analyzed by DPP.

45. DPP also failed to conduct an adequate analysis of "compliance with the Unilateral Agreement (UA) executed pursuant to the provisions of the original zone change of this site to the B-1 Neighborhood Business District (Ordinance No. 78-76)." 2017/SMA-21 (Exhibit A) at 7. DPP mentions only one of several aspects of the UA and ignored the Kamehameha Highway improvements required under the UA to address traffic impacts.

The permit approval does not contain any mention of the required road improvements nor any analysis of traffic impacts and congestion resulting from the "Shark's Cove Development." See 2017/SMA-21 (Exhibit "A") at 2.

46. DPP also failed to mention or address the outstanding fines assessed against Developer for illegal development in the SMA as described in DPP's own NOV and NOO. Given the history of this developer violating DPP's orders, payment in full of the fines, now approaching \$100,000, should have been a condition of the SMA Minor Permit. See NOV and NOO (Exhibits "J" and "K").

V. THE PLANNING DIRECTOR'S DECISION TO APPROVE THE SMA MINOR PERMIT FOR THE "SHARK'S COVE DEVELOPMENT" VIOLATED HRS § 205A AND ROH CHAPTER 25.

47. The Planning Director erroneously approved the SMA Minor Permit for the "Shark's Cove Development" located on the North Shore of O'ahu on Parcels 68, 69, and 70 because the requirements for an SMA Minor Permit were not met.

48. No SMA permit, including an SMA Minor Permit, may be issued unless it is first found that:

(a) The development will not have any substantial adverse environmental or ecological effect, HRS § 205A-26(2) (A); and

(b) The development is consistent with the objectives, policies and guidelines of Chapter 205A, HRS § 205A-26(2) (B).

49. The Planning Director may not issue an SMA Minor Permit for a development unless it meets all of the tests set out above and the valuation of the development is not in excess of \$500,000.00.

50. The Planning Director's decision to issue SMA Minor Permit 2017/SMA-21 to "allow new and partially retain existing retail and eating establishments on the site, and to authorize site improvements including grading, paved parking, outdoor seating, wastewater management, storm water retention, and various other improvements" violated the Part 2 Rules and HRS § 91-14, and a petition for a contested case hearing regarding the decision of the Planning Director to issue the SMA Minor Permit is proper under section 12-11(a) of the Part 2 Rules. See 2017/SMA-21 (Exhibit "A").

51. The Planning Director's decision was arbitrary and capricious, and contrary to law, because she neglected to: (1) consider all available material facts, (2) properly investigate the valuation of the Project, (3) analyze obvious direct, indirect, potential and cumulative impacts prior to approval, (4) analyze the conditions of the existing Unilateral Agreement, (5) require the payment of fines directly related to the subject matter of the SMA Minor Permit, and (6) require an SMA Use Permit, in violation of HRS § 205A and ROH Chapter 25.

52. The Part 2 Rules provide for an appeal of the decision of the Planning Director to issue SMA minor permits in section 12-2(a):

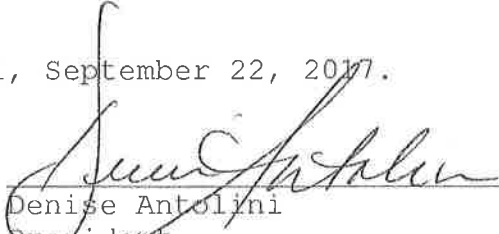
Any person who is specifically, personally, and adversely affected by an action of the director may request a hearing to appeal any part or requirement of the action, Chapter § 12-2(a).

53. This appeal is timely filed within thirty (30) calendar days after notice of SMA Minor Permit 2017/SMA-21 was published in the Office of Environmental Quality Control Notice on August 23, 2017. See [http://oeqc2.doh.hawaii.gov/The Environmental Notice/2017-08-23-TEN.pdf](http://oeqc2.doh.hawaii.gov/The%20Environmental%20Notice/2017-08-23-TEN.pdf), at 11.

54. The SMA Minor Permit is invalid and void. The Developer should be required to correct all pending violations, pay all accumulated fines, and apply for an SMA Use Permit.

55. Petitioner reserves the right to amend this Petition to set out in more detail the reasons why the Planning Director's decision to issue the SMA Minor Permit must be reversed or vacated.

DATED: Honolulu, Hawai'i, September 22, 2017.


Denise Antolini
President
MĀLAMA PŪPŪKEA-WAIMEA

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

2017/SMA-21(ASK)

MINOR PERMIT:	SPECIAL MANAGEMENT AREA (SMA)
File Number:	2017/SMA-21
Project:	Hanapohaku "Shark's Cove" Development: Including grading, parking, outdoor seating, accessory structures, and other improvements.
Valuation:	(\$368,641)
Landowner:	Hanapohaku, LLC
Applicant/Agent:	G70 (Jeff Overton)
Location:	59-706 and 59-712 Kamehameha Highway, and 59-53 Pahoe Road – Pupukea
Tax Map Keys:	5-9-011: 068, 069, and 070
Zoning:	B-1 Neighborhood Business District
Received:	May 24 and June 16, 2017

We have reviewed the Project to allow new and partially retain existing retail and eating establishments on the site, and to authorize site improvements including grading, paved parking, outdoor seating, wastewater management, storm water retention, and various other improvements. The Project is within the SMA established by Chapter 25, Revised Ordinances of Honolulu (ROH), has a stated valuation of less than \$500,000, and will have no significant effect on SMA resources. Therefore, a Minor SMA Permit is hereby **APPROVED**, subject to the following conditions:

1. Development shall be in general conformance with the plan labeled as Exhibit B, which is now the approved plan for the Project, and has been made a part of the file. Any expansion or modification, including the placement of "temporary" structures, including vehicles and/or trailers, tents, and storage sheds shall require a separate evaluation under the provisions of Chapter 25, ROH by the Acting Director of the Department of Planning and Permitting (DPP).
2. If the actual valuation of the proposed work ultimately exceeds \$500,000, or the Project is found to cause substantial adverse environmental or ecological effects, taking into account cumulative impacts, then the Project shall be returned to the DPP for further review under Chapter 25, ROH.

Exhibit A

3. Within 30 days of the date of this permit, the Applicant shall apply for:
 - a. Grading permit(s) to correct outstanding grading violations;
 - b. Building permits, as necessary, to correct outstanding building violations; and
 - c. A Conditional Use Permit (CUP) for joint development of the three parcels.
4. Prior to the issuance of building permits, the Applicant shall submit for review and approval of the DPP:
 - a. A trash management plan to address solid waste on the site; and
 - b. A spill management plan to avoid spills of liquid waste on the site, including but not limited to gray water, petroleum products, and food liquids.
5. To minimize potential impacts of the commercial activity on the surrounding area, all activities on the site shall be limited to hours of operation between 7:00 a.m. and 9:00 p.m.
6. Artificial light from exterior light fixtures, including, but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly or indirectly illuminates or is directed to project beyond property boundaries, toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b), Hawaii Revised Statutes.
7. The Applicant shall take special care when trimming or clearing woody plants taller than 15 feet in order to minimize possible impacts to potential breeding of the hoary bats. Furthermore, between June 1 and September 15, woody plants greater than 15 feet tall shall not be disturbed.
8. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock, or coral alignments, pavings, or walls) are encountered, the Applicant shall stop work and contact the State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until the SHPD is able to assess the impact and make recommendations for mitigative action.
9. All construction and grading activities shall be limited to daylight hours.
10. The Director of the DPP may modify the conditions of this approval by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved Project have significantly changed so as to warrant a modification to the conditions of approval. In the event of the noncompliance with any of the conditions set forth herein, the Director of the DPP may terminate all uses approved under this permit or halt their operations until all conditions are met or may declare this permit null and void or seek civil enforcement.

11. This application has only been reviewed and approved pursuant to the provisions of Chapter 25, ROH (Special Management Area), and its approval shall not constitute compliance with the requirements of other governmental agencies. These are subject to separate review and approval. The Applicant shall be responsible for ensuring that the final plans for the Project approved under this permit comply with all applicable provisions and requirements of other government agencies, including compliance with the provisions of the Land Use Ordinance (LUO).

Background: The current proposal may be an interim use. The Applicant has prepared an Environmental Impact Statement Preparation Notice (EISP) entitled, "Pupukea Rural Community Commercial Center," which was published in the April 23, 2017 issue of *The Environmental Review*. The proposal explored in the EISP is a separate "brick and mortar project." The analysis and review for the Project as described in this permit is a separate development proposal and has been reviewed on its own merits, without regard to the future proposals.

Although the Applicant has corrected some of the violations, others remain outstanding and continue to accrue fines. Correction and enforcement will be pursued by our enforcement mechanisms. The Applicant is seeking this permit, in part, to address some of these violations.

Site and Surrounding Uses: The 2.74-acre site is located along the mauka (east) side of Kamehameha Highway, between Pahoe Road and the existing Foodland grocery store and across from Pupukea Beach Park. The site consists of three lots of record, which are identified by separate tax map key parcel numbers (Parcels 068, 069, and 070). Vehicular access to Parcels 068 and 069 is currently provided from Kamehameha Highway. Vehicular access to Parcel 070 is provided from Pahoe Road. Surrounding areas to the north (Kahuku) and south (Haleiwa) along either side of the highway are in the R-5 Residential District and are developed with single-family dwellings. The area to the east (mauka) is in the Country District, and is also developed with single-family dwellings.

The site slopes gradually from the rear (mauka) to the front (makai). Storm water runoff sheet-flows from the mauka portion of the site toward Kamehameha Highway at an average slope of 5 percent, entering the storm drain within the State-owned right-of-way. The existing and proposed drainage patterns are shown on Exhibits C and D.

Existing Condition: The site contains a real estate office and carport, two retail establishments (North Shore Surf Shop and Seamajds Retail Boutique), and a commercial kitchen in a former dentist office structure. There are also eight food trucks on the site which operate daily, one of which is a trailer selling shave ice. The Applicant has stated that seven of the eight food trucks are mobile. The establishment labeled as Truck C on Exhibit B is not currently mobile. The food trucks generally operate in the same designated area every day. The areas immediately around several of the food trucks include picnic tables, shade coverings, and seats.

In addition to the above improvements, between the years 2014 to 2016, the Applicant performed the following unauthorized activities:

- Grubbed and graded a 53,000-square-foot area toward the rear of the site, and covered about 37,000 square feet with a layer of recycled crushed concrete (see Exhibit B);
- Grubbed and graded 8,200 square feet in the lower area of the site and covered it with a layer of gravel;
- Installed an aerobic treatment unit (ATU) wastewater and disposal system on Parcel 068; and
- Stockpiled and later removed soils from the excavated area of the ATU wastewater system covering about 3,360 square feet (see Exhibits A and B).

Community Input: The DPP received numerous e-mails in support of and opposition to the proposal. On May 17, 2017, the Applicant made a presentation at a meeting of the Sunset Beach Community Association. The Applicant reported that between 50 to 60 individuals attended and provided a summary of written and verbal comments offered at the meeting. The comments received by the Applicant and Agent are summarized here:

- The Project generates traffic congestion.
- The Project generates noise.
- The Project generates excessive lighting and glare on adjacent properties.
- There is a need for a greater setback for structures on the property.
- The Project should comply with regulations (i.e. the fire code, sanitation requirements for treatment and disposal of wastewater.)
- The Project provides jobs.
- The Project serves both visitors and locals.
- The location of the food establishments is convenient.
- The current scale is preferable to the redevelopment proposal.
- The Project creates problems with vehicular and pedestrian safety.

[Note: The DPP must review the permit based on the criteria specified in the objectives, policies, and guidelines in Section 25-3, ROH. Therefore, not all of the community concerns can be addressed under this SMA Minor Permit.]

Proposal and Analysis: The Applicant seeks an after-the-fact SMA Minor Permit to allow new and partially retain existing retail and eating establishments on the site, and to authorize site improvements, as shown on Exhibit B. The valuation of the after-the-fact site work and the proposed new development, including clearing, grading, fill, landscaping, gravel cover, parking lot/sidewalk, ATU wastewater system, chain link fence, trash enclosure, water lines, and electrical lines is estimated at \$351,908. The specific elements of the proposal are described and analyzed below:

- Storm Water Management: The proposed drainage improvements include a stone/gravel drainage collection trench and rain garden areas dispersed throughout the site. According to the Applicant, the proposed improvements will control storm water runoff, capture suspended sediment in runoff, and minimize the off-site release of runoff flows and eroded soils.

An engineering evaluation, dated May 22, 2017, determined that storm water flows off-site will be reduced with the proposed development. This will be reviewed during the grading permit phase. The Applicant will be required to obtain grading permits for all earthwork, which insures that best management practices (BMP) as well as the City's new water quality rules, effective August 16, 2017, are implemented (if not filed prior to that date). Correction of the unpermitted grading is necessary and should be done as expediently as possible. Therefore, as a condition of approval, the Applicant is required to apply for the necessary grading permits within 30 days of the date of this approval. A separate condition related to storm water runoff is not needed at this time.

- Revegetation and Restoration: A 16,500-square-foot area in the south east (mauka) portion of the site, a portion of which formerly contained stockpiled soil from installation of the ATU, will be revegetated using a hydro-mulch seeding program. According to the Applicant, the revegetation will be designed to reduce storm water runoff, soil erosion, and sediment loss from the previously-disturbed area. The Applicant states that best management practices (BMPs), including temporary ground cover and filter sock installation to trap suspended sediments in runoff, will be employed during this restoration activity. BMPs will be required for all areas covered by the grading permits, therefore a separate condition requiring BMPs is unnecessary.

In addition, with the first building permit, required landscaping must be provided and will include landscaping for the front yard. This will assist with BMPs for managing storm water, and to discourage unauthorized parking.

- Paved Parking and Access: A paved parking area will be created in compliance with parking requirements of the LUO, Chapter 21, ROH. The Applicant's current proposal includes an asphalt parking lot covering approximately 18,500 square feet with a total of 44 parking spaces. The parking lot will be landscaped in accordance with LUO Sec 21-4.70(b) to include a minimum of eight two-inch caliper canopy trees.

The plans submitted with the SMA Minor Permit application are not of sufficient detail to determine compliance with the parking requirements of the LUO. This will be verified during the building permit application review based on more detailed plans. If more than 44 spaces are required, the Applicant will have to provide those spaces on site. There will be no modification of the parking requirements without modification to uses or floor area. Furthermore, the food trucks and the outdoor dining areas will be assessed as eating establishments for purposes of parking calculations. The provision of a parking lot that meets LUO requirements on site is likely to reduce unauthorized parking

along Kamehameha Highway and at the beachpark across the highway and will ensure that public access to coastal resources will not be diminished by the development.

A new six-foot-high chain-link fence will be installed along a portion of the north (Kahuku) boundary of the site along Pahoe Road in accordance with Exhibit B. With the installation of the fence, Parcel 070 will no longer have vehicular access along Pahoe Road. There is currently no official access to Parcel 070 from Kamehameha Highway. Therefore, a CUP for the joint development of the three parcels is necessary and is required as a condition of approval.

- Food Trucks: The Applicant proposes to reduce the total number of food trucks from eight to five. The three food trucks to be removed include the two food trucks adjacent to the Seamajds and North Shore Surf Shop and the shave ice trailer. Also, Food Truck C, which is currently not mobile, will be replaced with a mobile food truck (see Exhibit B). Each food truck is required to maintain a food safety certification with the State Department of Health. According to the Applicant, each food truck is required to maintain their designated seating areas (i.e., picnic tables and seating). The Applicant estimates that each food truck serves an average of 300 to 400 customers per day. Five paved parking spaces will be provided for each food truck.

The food trucks are mobile, but because they will be present at the site each day and will be conducting commercial activities on the site, their use as eating and drinking establishments is considered "development" for purposes of Chapter 25, ROH. However, the trucks themselves are mobile and will regularly leave the site. Therefore, estimates of the value of the food trucks were not included in the valuation of the Project. The site plan provided with the building permit application will have to show that the food trucks can be moved and that their movement will not be obstructed by required parking spaces, poles, benches, fences, landscaping, or other structures.

- Trash Bins and Enclosures: The existing six portable trash dumpsters will remain in a trash enclosure located in the mauka (east) area of the site to manage solid waste generated from the retail and food truck operations (see Exhibit B). According to the Applicant, a private disposal service removes accumulated wastes from the trash dumpsters once a week. The trash enclosure will be six feet high and built to screen these dumpsters, as required by the LUO. The building permit plans will have to show that there is a paved path to the dumpster. The Applicant states that the trash containers will be of sufficient size to contain all waste, the containers will be kept clean, and any overflow will be cleaned up immediately. To ensure solid waste and/or debris from the site do not impact coastal resources, the Applicant is required to generate a trash management plan for review and approval by the DPP prior to the issuance of building permits. At a minimum, the trash management plan should include the design and location of trash bins throughout the site, how and when those trash bins are collected and placed in the dumpsters, and the frequency of collection by the private disposal service.

- Sanitation: Four portable toilets are located in the mauka area of the site which will be revegetated. There will be no wastewater disposal on-site from the food trucks. Liquid waste generated by each food truck will be contained within the vehicle and removed during off-site servicing, or via on-site collection by a wastewater pumping contractor. Food trucks will provide the name of the commercial entity who pumps their wastewater and frequency thereof to the landowner. Each food truck will be located on an asphalt pavement parking pad (10 feet x 24 feet), the design of which will include storm water management, gray water spill management, and petroleum leak management BMPs. The Applicant is required to generate a spill management plan for the review and approval of the DPP prior to the issuance of building permits. The spill management plan should include the frequency of wastewater pumping for each food truck, any maintenance for the portable toilets, and the details of the storm water management, gray water spill management, and petroleum leak management BMPs that will be enacted around the food truck parking areas. The DPP may consult with the Department of Facility Maintenance, Department of Environmental Services, and the DOH prior to approval of the management plan.
- Signage: A new directional sign is proposed to clearly identify the entrance to the site from Kamehameha Highway. The sign is intended to encourage on-site parking and discourage accidental commercial use of the privately-owned Pahoe Road. Signage and traffic management are not criteria specified in the objectives, policies, and guidelines of the SMA, so no condition of approval related to signage is required at this time. However, the traffic impacts associated with the improvements will be reviewed during the building permit. Furthermore, the sign will have to comply with the signage standards for the B-1 Neighborhood Business District and will require a sign permit.
- Unilateral Agreement: The development at this site is subject to compliance with the Unilateral Agreement (UA) executed pursuant to the provisions of the original zone change of this site to the B-1 Neighborhood Business District (Ordinance No. 78-76). The UA included design provisions to insure that the design is "country like" in style, emphasizing the wooden low-rise Haleiwa character. Compliance with this provision and others, will be reviewed during building permit processing to insure compliance.
- Lighting: The federally-endangered Hawaiian Hoary Bat may be present and Hawaiian seabirds may transit through the area of the Project. Outdoor lighting can be a problem for Hawaiian seabirds because unshielded light at night can disorient them. To minimize potential adverse impacts, lighting should be designed with sensors and shields, and must be directed downward. The standard condition of approval to prevent any light that directly illuminates or is directed beyond property boundaries toward the shoreline and ocean waters is imposed as a condition of approval.

As a standard condition to minimize impacts to the Hawaiian Hoary Bat, applicants are typically required to restrict tree trimming activities. Conditions of approval include the requirement that woody plants greater than 15 feet should not be disturbed, removed, or

trimmed during the bat birthing and pup rearing season (June 1 through September 15). Site clearing should be timed to avoid disturbance to the Hawaiian hoary bats, and construction activities should be limited to daytime only. This is required as a condition of approval.

- Archaeology: On June 16, 2017, the Applicant submitted additional information, including an archaeological assessment. The assessment reported that the area has been disturbed by modern activity and no surface archaeological remains were found during the pedestrian survey of the parcels. Also, the subsurface testing did not yield any evidence of subsurface archaeological features or deposits. However, since historic sites, artifacts, and burials can exist within previously developed areas, a standard archaeological stop-work condition requiring notification of the SHPD is imposed as a condition of approval.

Environmental Review, Chapter 343, Hawaii Revised Statutes (HRS) and Chapter 25, ROH:

The proposal is not subject to an assessment under Chapter 343, HRS, the State Environmental Impact Law. Furthermore, development that qualifies for an SMA Minor Permit does not require an assessment under Chapter 25, ROH. As proposed, the Project has been evaluated and found to qualify for a Special Management Area Minor Permit because the valuation does not exceed \$500,000 and the impacts will not have a significant impact on coastal resources. If the construction cost exceeds \$500,000, or the Project is found to cause substantial adverse environmental or ecological effects, taking into account cumulative impacts, this SMA Minor Permit shall become void and the Project must be further evaluated for compliance with Chapter 25.

We find the Project has a stated valuation of less than \$500,000 and, subject to certain conditions of approval, will have no significant effect on SMA resources. Therefore, the development on the site will meet the objectives of the Coastal Zoning Management Program found in Chapter 205A-2, HRS, and the SMA Ordinance, found in Chapter 25-3.1.

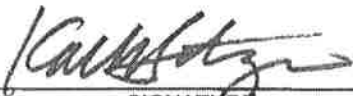
Any person who is specifically, personally, and adversely affected by the Acting Director's action (in this case) and wants to appeal any part or requirement of the action may submit a written request for a contested case hearing to the DPP within 30 calendar days from the date of mailing, personal service, or publication of the action of the Acting Director of the DPP. Contested case hearings shall be conducted pursuant to Chapter 12 of the DPP Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area. Essentially, these Rules require that a petitioner show that the Acting Director of the DPP based her action on an erroneous finding of a material fact, and/or that the Acting Director otherwise acted in an arbitrary or capricious manner, or there are extenuating circumstances. The filing fee for the contested case hearing is \$400 (payable to the City and County of Honolulu).

We have enclosed a receipt for the application fee. Should you have any questions, please contact Ardis Shaw-Kim of our staff at 768-8021.

Enclosures: Receipt Nos. 113510 and 113511
Exhibits A through D

cc: Office of Planning (Shichao-Li)

THIS COPY, WHEN SIGNED BELOW, IS NOTIFICATION OF THE ACTION TAKEN.

	Acting Director	August 2, 2017
SIGNATURE	TITLE	DATE

This approval does not constitute approval of any other required permits, such as building or sign permits.

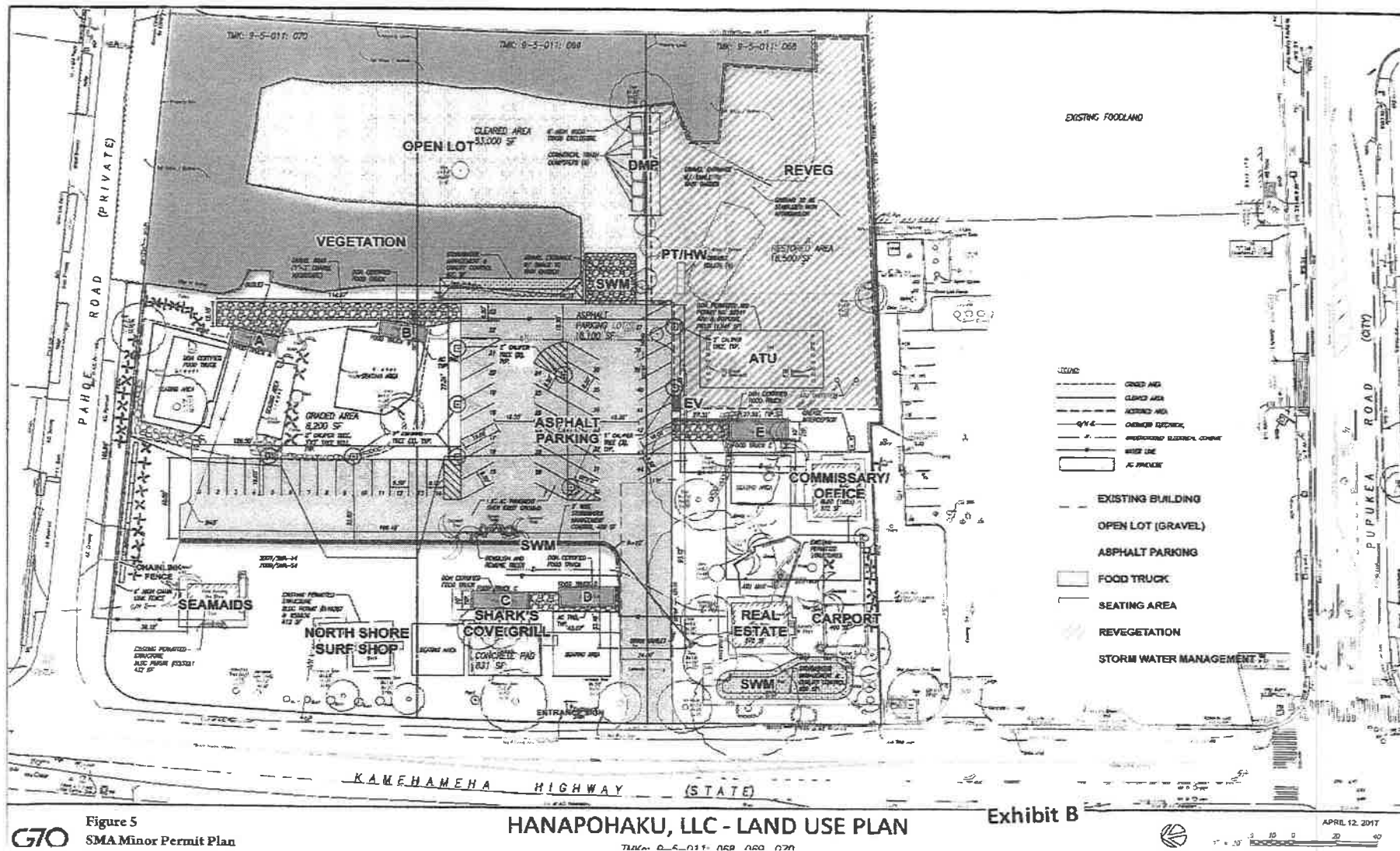


Figure 5
SMA Minor Permit Plan

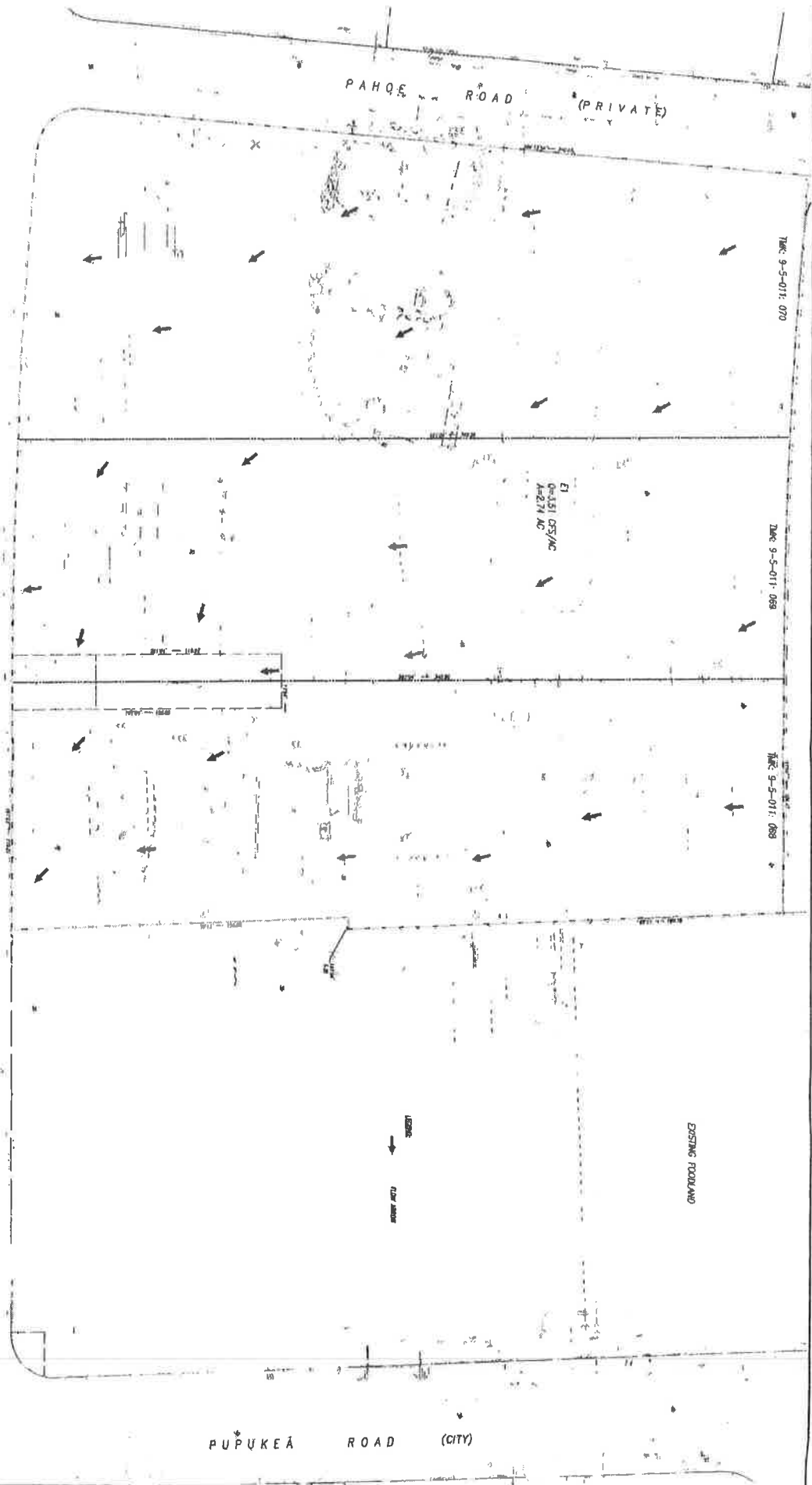
HANAPOHAKU, LLC - LAND USE PLAN

Exhibit B

KAMEHAMEHA HIGHWAY (STATE)

Tracts 9-5-011-068, 069, 070

Exhibit C



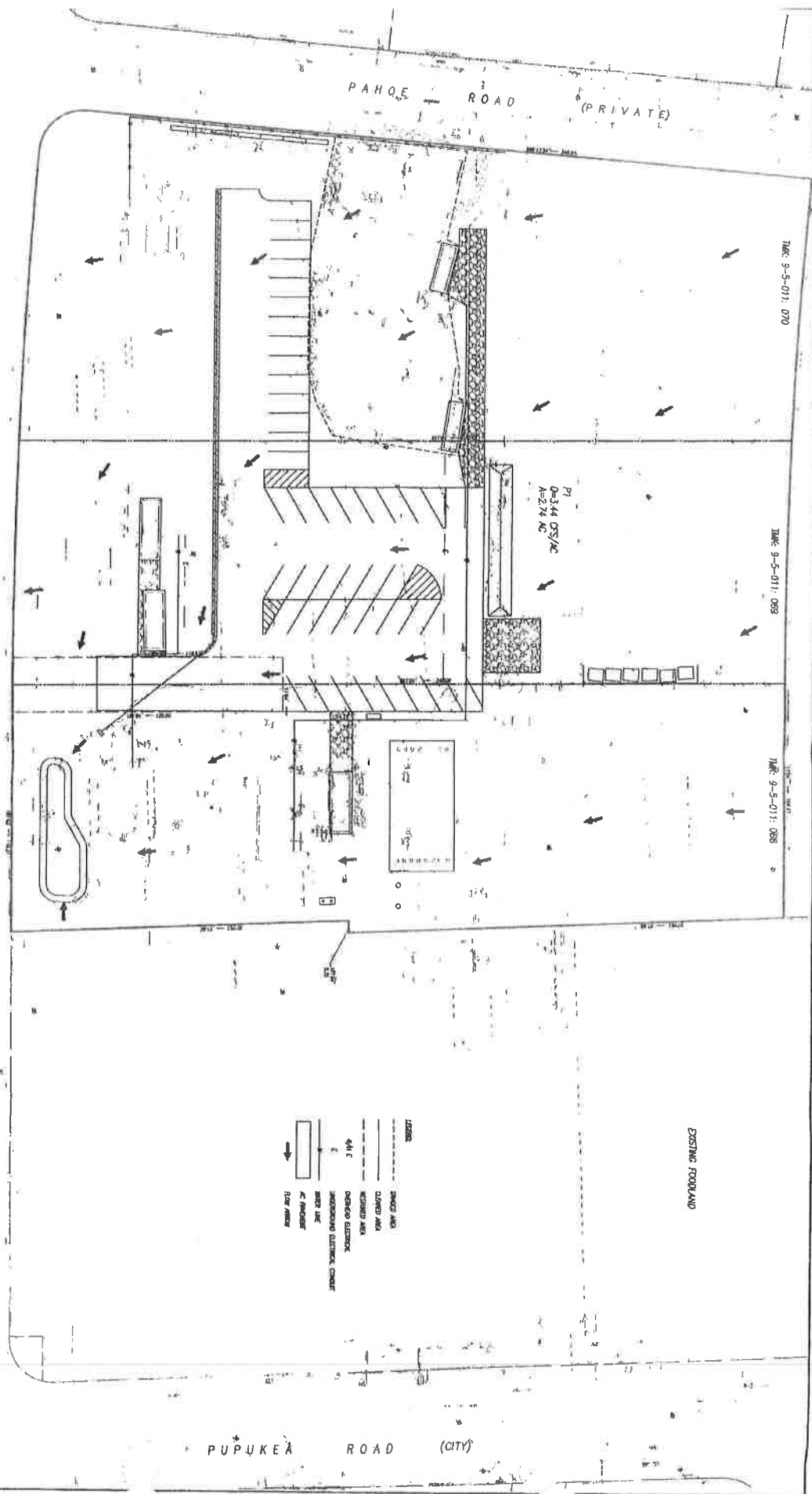
UIC

KAMEHAMEHA HIGHWAY (STATE)

TMK: 9-5-011: 068, 069, 070

Exhibit D

1" = 20'



DEPARTMENT OF PLANNING & PERMITTING
DIRECTOR'S REVIEW MEETING

Date: January 5, 2016
Time: 1:30 p.m., 7th Floor CR

Division: LUPD

Contact: Ardis

Name of Project: Shark Cove Commercial Development

Location: 3 lots next to Pupukea Foodland, across Sharks Cove See attached.

2015/SMA-24 (NI)

Project:	Various Commercial Developments
Valuation:	around 490,000 for each lot
Applicant/Agent:	Gregory A. Quinn, Architect
Tax Map Keys:	5-9-11: 68, 69, and 70
Zoning:	B-1 Neighborhood Business District

Request: Minor SMPs for modification/addition to retail businesses including site work, additional retail, new waste water treatment, parking and landscaping.

Back ground: There was an old SMP application for Shark Cove Shopping Center that was withdrawn. The property was subdivided into 3 lots. The new owners are leasing land to different enterpreners for various commercial endeavors primary food trucks. SMP minor permits were issued for each of the three lots in early 2015. Two of the site plans have changed and two new SMP (revisions) minor applications have been submitted. There are a number of pending violations.

Purpose of D Review? FYI

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



file

GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

2015/SMA-61(GT)

MINOR PERMIT:	SPECIAL MANAGEMENT AREA (SMA)
File Number:	2015/SMA-61 (<i>SUPERSEDES 2015/SMA-8</i>)
Project:	59-712 Kamehameha – Office and Retail Buildings and Parking Lot
Valuation:	(\$498,000)
Landowners:	Hanapohaku, LLC
Applicant/Agent:	Gregory A. Quinn, Architect
Location:	59-712 and 59-712A Kamehameha Highway - Haleiwa
Tax Map Key:	5-9-11: 68
Zoning:	B-1 Neighborhood Business District
Date Received:	November 13, 2015

We have reviewed the SMA Permit (Minor) application (received November 13, 2015, December 21, 2015 and January 4, 2016), requesting to construct a new retail building, conversion of existing structures to an eating and drinking establishment with outdoor dining, and site improvements at the above site (Exhibits A-1 to A-6), and find that it lies within the Special Management Area (SMA) established in Revised Ordinances of Honolulu (ROH) Chapter 25. We further find that the proposed development has a stated valuation of less than \$500,000 and will have no significant effect on the SMA. Therefore, a minor permit is hereby **APPROVED**, subject to the conditions listed below.

1. Development shall be in general conformance with application documents (labeled as Exhibits A-1 to A-6), which are now the approved plans for the project, and have been made a part of the file. Any modification to the project and/or approved plans shall be subject to the prior review of and approval by the Director of the Department of Planning and Permitting (DPP). Minor modifications shall be processed in accordance with ROH Chapter 25. Major modifications shall require a new SMA Permit (Minor).
2. If the actual valuation of the proposed work ultimately exceeds \$500,000, then the project shall be returned to the Department of Planning and Permitting for further review under ROH Chapter 25.
3. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock, or coral alignments, pavings, or walls) are encountered, the Applicant shall stop work and contact the State

Exhibit C

Department of Land and Natural Resources, State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until the SHPD is able to assess the impact and make recommendations for mitigative activity.

4. This application has only been reviewed and approved pursuant to the provisions of ROH Chapter 25 (Special Management Area), and its approval shall not constitute compliance with the requirements of other governmental agencies. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the project approved under this permit comply with all applicable provisions and requirements of other government agencies, including compliance with the provisions of the Land Use Ordinance (LUO).
5. This SMA Permit shall supersede the previous approved SMA Permit No. 2015/SMA-8.
6. The Director may modify the conditions of this approval by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved project have significantly changed so as to warrant a modification to the conditions of approval.
7. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may declare this permit null and void or seek civil enforcement.

The project site is located along Kamehameha Highway across from Pupukea Beach Park and adjacent to Foodland on the south. The Applicant is seeking approval to: (1) construct a one-story retail building (820 square feet) behind the existing real estate office building; (2) add a deck to the existing real estate office building (240 square feet); (3) convert an existing dental clinic building (596 square feet) into an eating and drinking establishment with a deck for outdoor dining (240 square feet); (4) convert an existing carport into a covered dining area (356 square feet) with two outdoor dining areas (front and back); and (5) site improvements, which include 19 parking stalls, one loading stall and landscaping. The proposed one-story retail building will be of wood construction with concrete slab on-grade and shed roof. The proposed wood decks will have post and pier foundations.

On March 19, 2015, SMA Permit No. 2015/SMA-8 was approved for new retail building, conversion of existing structures to an eating and drinking establishment with outdoor dining, and site improvements, as noted above. On November 13, 2015, the Applicant submitted revised plans to relocate the new retail building approximately 40 feet further mauka on the property and next to the extended driveway along the north side of the property; revise the new parking lot from three separate single-loaded parking lots into one 19-stall double-loaded parking lot located on the mauka side of the new retail building and increase the number of parking from 14 to 19 stalls.

2015/SMA-61
January 13, 2016
Page 3

Given the particular circumstances and conditions of this case, the proposed improvements should not have any substantial adverse land use impacts for the surrounding neighborhood. The proposed valuation of the development is less than \$500,000 and will have no significant effect on the SMA.

Any person who is specifically, personally, and adversely affected by the Director's action (in this case) and wants to appeal any part or requirement of the action may submit a written request for a contested case hearing to the DPP within 30 calendar days from the date of mailing, personal service, or publication of the action of the Director of the DPP. Contested case hearings shall be conducted pursuant to Chapter 12 of the DPP Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area. Essentially, these Rules require that a petitioner show that the Director of the Department of Planning and Permitting based his action on an erroneous finding of a material fact, and/or that the Director otherwise acted in an arbitrary or capricious manner, or there are extenuating circumstances. The filing fee for the contested case hearing is \$400 (payable to the City & County of Honolulu).

We have enclosed receipts for the application fees. Please contact Gerald Toyomura of our staff at 768-8056 if you have any questions.

Enclosure: Receipt Nos. 105906 and 105907
Exhibits A-1 to A-6

cc: Office of Planning (Shichao Li)

Doc 1311656

THIS COPY, WHEN SIGNED BELOW, IS NOTIFICATION OF THE ACTION TAKEN.

Arthur X. Ching FOR Director January 13, 2016
SIGNATURE TITLE DATE

This approval does not constitute approval of any other required permits, such as building or sign permits.

file

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 708-0041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

2015/SMA-8(GT)

MINOR PERMIT:	SPECIAL MANAGEMENT AREA (SMA)
File Number:	2015/SMA-8
Project:	59-712 Kamehameha – New retail building, conversion of existing structures to an eating and drinking establishment with outdoor dining, and site improvements.
Valuation:	(\$498,000)
Landowners:	Hanapohaku, LLC
Applicant/Agent:	Gregory A. Quinn, Architect
Location:	59-712 and 59-712A Kamehameha Highway - Haleiwa
Tax Map Key:	5-9-11: 68
Zoning:	B-1 Neighborhood Business District
Date Received:	February 26, 2015 and March 17, 2015

We have reviewed the SMA Permit (Minor) application (received February 26, 2015 and March 17, 2015), requesting to construct a new retail building, conversion of existing structures to an eating and drinking establishment with outdoor dining, and site improvements at the above site (Exhibits A-1 through A-6), and find that it lies within the Special Management Area (SMA) established in Revised Ordinances of Honolulu (ROH) Chapter 25. We further find that the proposed development has a stated valuation of less than \$500,000 and will have no significant effect on the SMA. Therefore, a minor permit is hereby **APPROVED**, subject to the conditions listed below.

1. Development shall be in general conformance with application documents (labeled as Exhibits A-1 through A-6), which are now the approved plans for the project, and have been made a part of the file. Any modification to the project and/or approved plans shall be subject to the prior review of and approval by the Director of the Department of Planning and Permitting (DPP). Minor modifications shall be processed in accordance with ROH Chapter 25. Major modifications shall require a new SMA Permit (Minor).
2. If the actual valuation of the proposed work ultimately exceeds \$500,000, then the project shall be returned to the Department of Planning and Permitting for further review under ROH Chapter 25.

Exhibit D

3. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock, or coral alignments, pavings, or walls) are encountered, the Applicant shall stop work and contact the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until the SHPD is able to assess the impact and make recommendations for mitigative activity.
4. This application has only been reviewed and approved pursuant to the provisions of ROH Chapter 25 (Special Management Area), and its approval shall not constitute compliance with the requirements of other governmental agencies. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the project approved under this permit comply with all applicable provisions and requirements of other government agencies, including compliance with the provisions of the Land Use Ordinance (LUO).
5. The Director may modify the conditions of this approval by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved project have significantly changed so as to warrant a modification to the conditions of approval.
6. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may declare this permit null and void or seek civil enforcement.

The project site is located along Kamehameha Highway across from Pupukea Beach Park and adjacent to Foodland on the south. The Applicant is seeking approval to: (1) construct a one-story retail building (820 square feet) behind the existing real estate office building; (2) add a deck to the existing real estate office building (240 square feet); (3) convert an existing dental clinic building (596 square feet) into an eating and drinking establishment with a deck for outdoor dining (240 square feet); (4) convert an existing carport into a covered dining area (356 square feet) with two outdoor dining areas (front and back); and (5) site improvements, which include 14 parking stalls, one loading stall and landscaping. The proposed one-story retail building will be of wood construction with concrete slab on-grade and shed roof. The proposed wood decks will have post and pier foundations. We have determined that the project should not have any substantial adverse environmental or ecological effect on the SMA.

Any person who is specifically, personally, and adversely affected by the Director's action (in this case) and wants to appeal any part or requirement of the action may submit a written request for a contested case hearing to the DPP within 30 calendar days from the date of mailing, personal service, or publication of the action of the Director of the DPP. Contested case hearings shall be conducted pursuant to Chapter 12 of the DPP Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area. Essentially, these Rules require that a petitioner show that the Director of the Department of Planning and Permitting based his action on an erroneous finding of a material fact, and/or that the Director otherwise acted in an arbitrary or capricious manner, or there are extenuating circumstances. The filing fee for the contested case hearing is \$400 (payable to the City & County of Honolulu).

2015/SMA-8
March 19, 2015
Page 3

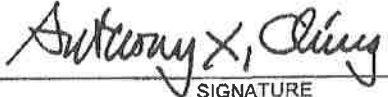
We have enclosed a receipt for the application fee. Please contact Gerald Toyomura of our staff at 768-8056 if you have any questions.

Enclosure: Receipt No. 101576
Exhibits A-1 to A-6

cc: State of Hawaii
Office of Planning (Shichao Li)

Doc 1227045

THIS COPY, WHEN SIGNED BELOW, IS NOTIFICATION OF THE ACTION TAKEN.

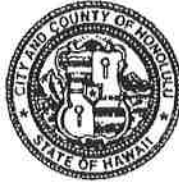
	<i>FOR</i>	Director	March 19, 2015
SIGNATURE		TITLE	DATE

This approval does not constitute approval of any other required permits, such as building or sign permits.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

2015/SMA-47(JY)

MINOR PERMIT:	SPECIAL MANAGEMENT AREA (SMA)
File Number:	2015/SMA-47
Project: (Valuation):	59-716 Kamehameha (Community Events and Retail Buildings) (\$445,000)
Owner	Hanapohaku, LLC.
Applicant/Agent:	Gregory A. Quinn
Location:	59-716 Kamehameha Highway - Pupukea
Tax Map Key:	5-9-11: 69
Zoning:	B-1 Neighborhood Business District
Date Received:	September 28, 2015

We have reviewed your proposal to construct community events and retail buildings, and find that it lies within the Special Management Area (SMA) established in Chapter 25, Revised Ordinances of Honolulu (ROH). We find that the proposed development has a stated valuation of less than \$500,000 and will have no significant effect on the SMA. Therefore, an SMA Permit is hereby **APPROVED**, subject to the following conditions:

1. Development site shall be in general conformance with the application documents (received on September 28, 2015), and as shown on plans and drawings attached hereto, which are now the approved plans for the project on file with the Department of Planning and Permitting (DPP). There shall be no modification to the approved plans for the project without prior review of and approval by the Director of the DPP. Major modifications shall require a new SMA (Minor) Permit.
2. If the actual valuation of the proposed work ultimately exceeds \$500,000, then the project shall be returned to DPP for further review under Chapter 25, ROH.
3. This application has only been reviewed and approved pursuant to the provisions of ROH Chapter 25, and its approval shall not constitute compliance with the requirements of other governmental agencies. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the project approved under this permit comply with all applicable provisions and requirements of other government agencies, including compliance with the provisions of the Land Use Ordinance.

Exhibit E

4. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock, or coral alignments, pavings, or walls) are encountered, the Applicant shall stop work and contact the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until SHPD is able to assess the impact and make recommendations for mitigative action.
5. The Director of the DPP may modify the conditions of this approval by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved project have significantly changed so as to warrant a modification to the conditions of approval. In the event of the noncompliance with any of the conditions set forth herein, the Director of the DPP may terminate all uses approved under this permit or halt their operation until all conditions are met or may declare this permit null and void or seek civil enforcement.

The project is located along Kamehameha Highway across from Pupukea Beach Park. There are currently unpermitted improvements, i.e., concrete slabs and miscellaneous small structures. Our records show that this site was part of a large shopping/community center, but was not developed.

The lot gradually slopes down towards the highway. It is in Flood Zone D, areas where flood hazards are undermined, but possible. Some site work will be required in order to construct the three structures and parking lot. Approximately half of the property will be cleared and landscaped with no other proposed structures.

The Applicant proposes to remove the unpermitted improvements located in the front half. Three one-story buildings and a surface parking lot will be constructed in the rear. There is an existing shared driveway access to the community event pavilion (1,320 square feet), two retail buildings (820 square feet each), parking lot with 16 stalls, and one loading stall. The pavilion (halaui) will be open on all sides with wood posts and Dutch gable roof. It will be used for outdoor dining. The retail buildings will each have a covered front porch and will be of wood construction with wood siding and shed roof with asphalt shingles.

Any person who is specifically, personally and adversely affected by the Director's action (in this case) and wants to appeal any part or requirement of the action may submit a written request for contested case hearing to the DPP within thirty (30) calendar days from the date of mailing, personal service, or publication of the action of the Director. Contested case hearings shall be conducted pursuant to Chapter 12 of the DPP Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area. Essentially, these Rules require that a petitioner show that the Director based his action on an erroneous finding of a material fact, and/or that the Director otherwise acted in an arbitrary or capricious manner, or there are extenuating circumstances. The filing fee for a contested case hearing is \$400 (payable to the City and County of Honolulu).

2015/SMA-47
November 5, 2015
Page 3

A copy of this approval should accompany your application(s) for construction permits.

Should you have any questions, please contact Joette Yago of our Urban Design Branch at 768-8034 or via email at jyago@honolulu.gov.

Enclosures: Receipt No. 104649 & 104650
Exhibits A thru D

cc: Office of Planning (Shichao Li)

Doc 1296371

THIS COPY, WHEN SIGNED BELOW, IS NOTIFICATION OF THE ACTION TAKEN.

	<i>FOR</i> Director	November 5, 2015
SIGNATURE	TITLE	DATE

This approval does not constitute approval of any other required permits, such as building or sign permits.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

2015/SMA-24 (NI)

MINOR PERMIT:	SPECIAL MANAGEMENT AREA (SMA)
File Number:	2015/SMA-24
Project:	59-063 Pahoe Road – two new detached one-story retail buildings with covered patios, a new detached restroom building, landscape screening, paved parking lot expansion, and new loading area.
Valuation:	(\$484,000)
Landowners:	Hanapohaku, LLC
Applicant/Agent:	Gregory A. Quinn, Architect
Location:	59-063 Pahoe Road - Haleiwa
Tax Map Key:	5-9-11: 70
Zoning:	B-1 Neighborhood Business District
Date Received:	May 11, 2015

We have reviewed the SMA Permit (Minor) application (received May 11, 2015), for expansion of retail operations including one-story retail buildings with covered patios, a detached restroom building, landscape screening, paved parking lot expansion, and a loading area at the above site (Exhibits A-1 through A-5). The Department of Planning and Permitting (DPP) finds that the above mentioned property is within the Special Management Area (SMA) established in Revised Ordinances of Honolulu (ROH) Chapter 25. We further find that the proposed development has a stated valuation of less than \$500,000 and will have no significant effect on the SMA. Therefore, a minor permit is hereby **APPROVED**, subject to the conditions listed below.

1. Development shall be in general conformance with application documents (labeled as Exhibits A-1 through A-5), which are now the approved plans for the project, and have been made a part of the file. Any modification to the project and/or approved plans shall be subject to the prior review of and approval by the Director of the Department of Planning and Permitting (DPP). Minor modifications shall be processed in accordance with ROH Chapter 25. Major modifications shall require a new SMA Permit (Minor).
2. If the actual valuation of the proposed work ultimately exceeds \$500,000, then the project shall be returned to the Department of Planning and Permitting for further review under ROH Chapter 25.

Exhibit F

3. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock, or coral alignments, pavings, or walls) are encountered, the Applicant shall stop work and contact the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until the SHPD is able to assess the impact and make recommendations for mitigative activity.
4. This application has only been reviewed and approved pursuant to the provisions of ROH Chapter 25 (Special Management Area), and its approval shall not constitute compliance with the requirements of other governmental agencies. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the project approved under this permit comply with all applicable provisions and requirements of other government agencies, including compliance with the provisions of the Land Use Ordinance (LUO).
5. The Director may modify the conditions of this approval by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved project have significantly changed so as to warrant a modification to the conditions of approval.
6. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may declare this permit null and void or seek civil enforcement.
7. Artificial light from exterior light fixtures, including, but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly or indirectly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b), Hawaii Revised Statutes.

The project site is located at the corner of Kamehameha Highway and Pahoe Road, across from Pupukea Beach Park. Existing retail businesses on the property include the North Shore Surf Shop and Seamaid's Sportswear Boutique. As indicated in Exhibits A-1 through A-5, the Applicant proposes the following improvements:

- (1) Construct two detached one-story retail buildings with covered patios (540 square feet and 120 square feet of covered patio);
- (2) A detached restroom building (419 square feet);
- (3) Site improvements, including 10 additional parking stalls;
- (4) One separate loading area; and
- (5) Landscape screening along Kamehameha Highway and Pahoe Road.

Ten new parking stalls are being proposed in addition to the six existing parking stalls. As indicated by Exhibit A-2, a total of 16 parking stalls will be available. A new separate loading area with a 20 foot-wide driveway access off of Pahoe Road will be developed at the facing toward the property identified as TMK: 5-9-11: 22 and shall remain separate from the parking lot

expansion. The new parking and loading areas will be screened and paved with an all-weather surface in compliance with LUO Sections 21-4.70 and 21-6.130.

As indicated by Exhibit A-2, the new restroom and two new retail buildings will be located adjacent to the proposed parking lot expansion. Heights of proposed and existing buildings are indicated by Exhibits A-3 to A-5. The two new retail buildings shall be of a "country" style wooden frame construction with a shed roof, emphasizing the wooden low-rise Haleiwa character, consistent with the Unilateral Agreement (UA) executed pursuant to the provisions of the zone change Ordinance 78-76.

Wastewater generated on the property is currently disposed of in an individual waste water treatment (WWT) system. These facilities are regulated by the State Department of Health (DOH). If needed, building permit application for the improvements will be sent to the State DOH for review for compliance with WWT.

As proposed, the project is not anticipated to result in substantial adverse environmental or ecological effect to coastal resources. Further development for the site will be evaluated pursuant to SMA requirements to determine the potential for cumulative impacts the need for additional permit requirements.

Background:

1. On July 25, 1978 the property owner executed a Unilateral Agreement (UA) in consideration of a pending zone change for the property from R-6 Residential District to B-1 Neighborhood Business District. The zone change (File number 77/Z-25) was approved by Ordinance 78-76, incorporating the unilateral agreement and conditions for development.
2. The UA had three commitments: (1) insurance that the design is "country-like" in style, emphasizing the wooden low-rise Haleiwa character; (2) installation of improvements on Pahoe Road and the intersection of Pahoe Road and Kamehameha Highway; and (3) the contribution of a pro-rata share of the cost of improving Kamehameha Highway.
3. On June 27, 2001, a Special Management Permit (SMP) minor, 2001/SMA-14 was approved to allow a trailer with a covered walkway to be used as a retail establishment (Seamaid's Sportswear), an off-street parking area.
4. On October 20, 2009, an SMP minor, 2009/SMA-54, for improvements to the existing buildings, relocation of the parking area and landscaping was approved. This SMP was modified on April 9, 2010, by correspondence file No. 2010/ELOG-578 to include a fence and gate for the Seamaid's Boutique retail establishment.

In addition to the UA, the North Shore Sustainable Communities Plan (SCP) establishes a policy for maintaining the rural character of the area, including community commercial centers.

2015/SMA-24
June 9, 2015
Page 4

Accordingly, the Applicant will be required to submit development plans consistent with these provisions. Because this is required by the UA, a separate SMP condition is not needed.

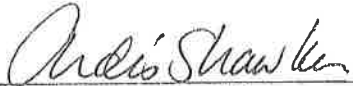
Any person who is specifically, personally, and adversely affected by the Director's action (in this case) and wants to appeal any part or requirement of the action may submit a written request for a contested case hearing to the DPP within 30 calendar days from the date of mailing, personal service, or publication of the action of the Director of the DPP. Contested case hearings shall be conducted pursuant to Chapter 12 of the DPP Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area. Essentially, these Rules require that a petitioner show that the Director of the Department of Planning and Permitting based his action on an erroneous finding of a material fact, and/or that the Director otherwise acted in an arbitrary or capricious manner, or there are extenuating circumstances. The filing fee for the contested case hearing is \$400 (payable to the City & County of Honolulu).

We have enclosed a receipt for the application fee. Please contact Nicholas Ing of our staff at 768-8056 if you have any questions.

Enclosures: Receipt Nos. 102743 & 102735
Exhibits A-1 to A-5

cc: Office of Planning (Shichao-Li)

THIS COPY, WHEN SIGNED BELOW, IS NOTIFICATION OF THE ACTION TAKEN.

		June 9, 2015
SIGNATURE	TITLE	DATE

This approval does not constitute approval of any other required permits, such as building or sign permits.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

2016/ELOG-923 (ASK)
2015/SMA-24
2015/SMA-47
2015/SMA-61

May 2, 2016

Mr. Gregory Quinn
45-427 Keikikane Loop
Kaneohe, Hawaii 96744

Dear Mr. Quinn:

SUBJECT: Revocation of Minor Special Management Area (SMA) Use Permits
and Withdrawal of Application for Revised Minor SMA Use Permit
Hanapohaku, LLC
59-706 and 712 Kamehameha Highway
and 69-063 Pahoe Road - Pupukea
Tax Map Key 5-9-11: 68, 69, and 70

This responds to your request received April 13, 2016, to "cancel" the Minor SMA Use Permits issued to Hanapohaku, LLC for the above properties and to withdraw a pending application seeking a site plan modification for Parcel 70.

In accordance with the provisions of SMA ordinance, Section 25-9.7 Revised Ordinances of Honolulu, an SMP may be revoked by the Department of Planning and Permitting at the request of the permittee.

Therefore, by this letter, the permits identified by File Numbers 2015/SMA-24, 2015/SMA-47 and 2015/SMA-61, are hereby revoked. Consequently, all improvements which were authorized by these approvals must be removed, and the area restored to its pre-approval condition. Any outstanding violations associated with those approvals must also be resolved (i.e., grading, etc.). As requested, we are also closing the application received on March 3, 2016 (File No. 2016/ELOG-511) for a Minor SMP for the Tax Map Key 5-9-11: 70.

Should you have any questions, please contact Ardis Shaw-Kim of our staff at (808) 768-8021.

Very truly yours,

A handwritten signature in dark ink, appearing to read "George I. Atta".
George I. Atta, FAICP
Director

cc: Hanapohaku, LLC
/Malama Pupukea-Waimea

Exhibit G

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU



DOCUMENT INDEX

FILE NO. 2016/SMA-36
PROJECT: Hanalei Commercial

INDEX NO.

- 1 Application
- 2 Receipt / Response
- 3 _____
- 4 _____
- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____
- 11 _____
- 12 _____
- 13 _____
- 14 _____
- 15 _____
- 16 Exhibit H

2

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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Fin
X

KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

2016/SMA-36(ASK)

July 13, 2016

Mr. Gregory Quinn
45-427 Keikikane Loop
Kaneohe, Hawaii 96744

Dear Mr. Quinn:

SUBJECT: Minor Special Management Area (SMA) Permit No. 2015/SMA-36
59-712 Kamehameha Highway – Haleiwa
Tax Map Key (TMK): 5-9-11: 68

The Department of Planning and Permitting (DPP) has reviewed the above-named application, received May 31, 2016, and determined that, at this time, it cannot be processed as a minor SMA Permit for reasons stated below:

1. Based on the application materials, the Project is part of and a precursor to the redevelopment of the overall Project site, which is comprised of three lots (TMKs 5-9-11: 68, 69, and 70). While the application materials discuss only the proposed development on Parcel 68, it is not clear how the proposed improvements and activities will function independently from the other two lots. We are unable to determine, based on the information you provided, that the proposed development on Parcel 68 is independent of Parcels 69 and 70.

Previously, the Applicant obtained three separate minor SMA approvals for the three lots, but later requested that the DPP rescind the approvals. Due to this history, any application for a minor SMA Permit for any of the three lots will have to clearly show how the proposed development is distinct and separate from the developments on the other sites or show that the combined lot project costs less than \$500,000. Additionally, it is important to show that uses on all three sites are authorized and have the appropriate SMA and zoning approvals. For purposes of the SMA Ordinance, Chapter 25, Revised Ordinances of Honolulu (ROH), the uses and structures on all three lots must be clarified and shown to be independent before we can move forward with a minor SMA Permit for only one.

2. The application does not demonstrate that the Project is eligible for a minor SMA Permit as defined in Chapter 25-1.3, ROH, which states:

"Special management area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of \$500,000.00 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects." (Emphasis added.)

Mr. Gregory Quinn
July 13, 2016
Page 2

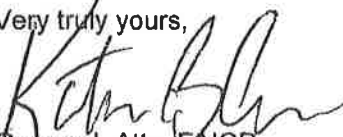
Essentially, the minor SMA Permit application must demonstrate that there will not be any substantial adverse environmental or ecological impacts associated with the Project. If there are any such effects, the Project cannot be reviewed under the minor SMA Permit, because it requires a Major SMA Use Permit, even if the Project valuation is less than \$500,000. Therefore, the permit application must address impacts to the coastal zone resources identified in the Hawaii Revised Statutes Chapter 205A and Chapter 25, ROH. This information was not included in your application.

Additionally, the proposed work on the three sites, if they are to operate as a unified Project, cannot be segmented and evaluated under multiple minor SMA Permits because we must evaluate the potential *cumulative* impacts of the Project as a whole. Therefore, unless the three sites will be designed to operate independently in the long run, the proposed development and Project valuation must be considered for the three sites together.

The improvements suggested by the Applicant, his attorney, and consultant at the meeting with the DPP on June 15, 2016 can help address the current Notices of Violation. We understand your continued interest in developing the lots independently of one another in the short term; however, the plan submitted on May 31, 2016 cannot be approved for reasons stated above. We understand that the owners have initiated planning for long range redevelopment of the property and will eventually seek a Major SMA Use Permit to implement this future plan. As such, we recommend that the Applicant pursue the Major SMA Use Permit process in order to adequately evaluate the potential coastal zone impacts of the development on the site.

Should you have any questions, please contact Ardis Shaw-Kim of our staff at 768-8021.

Very truly yours,

FOR 
George I. Atta, FAICP
Director

Enclosure: Receipt 107942
Check No. 2492

cc: Hanapohaku

OFFICIAL RECEIPT
DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

107942

Honolulu, Hawaii, June 7, 2016

Received from

Gregory Anthony Quinn, Architect

Two hundred and no/100 DOLLARS

For 2016/SMA-36 app rev fee

Tax Map Key 5-9-011:068

\$ 200.⁰⁰

[Signature]
DEPARTMENT OF PLANNING AND PERMITTING

BoH-V# 2491

GREGORY ANTHONY QUINN, ARCHITECT
45-427 KEIKIKANE LOOP
KANELOE, HI 96744

2492

59-102/1213
11

DATE

5/31/16

CHECK AMOUNT

PAY TO THE
ORDER OF

CITY & COUNTY OF HONOLULU

\$ 400.⁰⁰

FOUR HUNDRED & no/100

DOLLARS

Bank of Hawaii

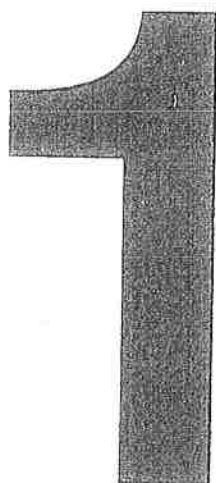
P.O. Box 2000, Honolulu, HI 96840
boh.com

FOR

PERMIT APPLICATION FEE - 59-011:068
SMA MINOR

[Signature]

⑈002492⑈ ⑆121701028⑆ 0098⑈311777⑈



Gregory A. Quinn

ARCHITECT

2016/2209-1358

'16 MAY 31 P 3:29

LETTER OF TRANSMITTAL

May 31, 2016

Director, Department of Planning and Permitting
City and County of Honolulu
650 So. King Street
Honolulu, Hawaii 96813

Re: '59-712 Kamehameha Highway
TMK: 5-9-011:068
59-712 Kamehameha Highway
Haleiwa, Hawaii 96712

Items Delivered:

One master Application for a Minor SMA permit
Two checks for minor SMA Permit fees - application review fee (\$200) and permit fee (\$400)
Two full size and two 11x17 copies of plans for proposed development
Two copies of a professionally prepared cost estimate for the work shown on the enclosed plans

[Type here]

45-427 Keikikane Loop
Kaneohe, Hawaii 96744

Ph. 236-3408
Fax 235-4289

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PLANNING & PERMITTING
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

LAND USE PERMITS DIVISION MASTER APPLICATION FORM

Additional data, drawings/plans, and fee requirements are listed on a separate sheet titled "Instructions for Filing." **PLEASE ASK FOR THESE INSTRUCTIONS.**

All specified materials described in the "Instructions for Filing" and required fees must accompany this form; incomplete applications will delay processing. You are encouraged to consult with Zoning Division staff in completing the application. Please call the appropriate phone number given in the "Instructions for Filing."

Please print legibly or type the required information.

SUBMITTED FEE: \$ \$600

PERMIT/APPROVAL REQUESTED (Check one or more as appropriate):

Cluster: ☐ Agricultural ☐ Country ☐ Housing Conditional Use Permit: ☐ Minor ☐ Major ☐ Existing Use: _____ (Indicate Type of Use) Environmental Document: ☐ Environmental Impact Statement ☐ Environmental Assessment ☐ Supplemental ☐ Minor Shoreline Structure	☐ Modify Approved Permit: _____ (Indicate Reference File No.) ☐ Plan Review Use Planned Development: ☐ Housing ☐ Commercial (WSD Only) ☐ Resort (WSD Only) ☐ Shoreline Setback Variance Special District Permit: ☐ Minor ☐ Major _____ (Indicate District) ☐ Downtown Height >350 Feet	Special Management Area Use Permit: ☒ Minor ☐ Major ☐ Temporary Use Approval ☐ Variance from LUO Section(s): _____ ☐ Waiver from LUO Section(s): _____ ☐ Zoning Adjustment, LUO Section(s): _____ ☐ HRS Section 201H-38 Project
--	---	--

TAX MAP KEY(S): 5-9-011:068

LOT AREA: 36,601 sf

ZONING DISTRICT(S): B-1

STATE LAND USE DISTRICT: Urban

STREET ADDRESS/LOCATION OF PROPERTY: 59-712 Kamehameha Hwy
Haleiwa, Hawaii 96712

RECORDED FEE OWNER:

Name (& title, if any): Hanapohaku, LLC

Mailing Address: 561 Ahina Street
Honolulu, Hawaii 96816

Phone Number: 808-8889954

Signature: _____

PRESENT USE(S) OF PROPERTY/BUILDING:
Real estate office and Dental Office

PROJECT NAME (if any): _____

APPLICANT:

Name: Gregory A. Quinn, Architect

Mailing Address: 45-427 Keikikane Loop
Kaneohe, Hawaii 96744

Phone Number: 808-620-8021

Signature: _____

AUTHORIZED AGENT/CONTACT PERSON:

Name: Gregory A. Quinn, Architect

Mailing Address: 45-427 Keikikane Loop
Kaneohe, Hawaii 96744

Phone Number: 808-620-8021

E-mail: kiaaina@aol.com

Signature: _____

REQUEST/PROPOSAL (Briefly describe the nature of the request, proposed activity or project):

The property contains two buildings with interior floor area and an existing carport. A deck has been constructed in the front of the existing real estate office without a permit and has been issued a Notice of Violation. This minor permit is to allow a building permit approval for that work. Also included in this application is improvements to an existing building converting a dentist's office to an eating and drinking establishment with outdoor seating and three prefab container buildings to house kitchen uses to support off site food truck operations. This is an interim development while a major SMA permit is being planned.

POSSE JOB NO. 2016/SMA-36

REV. 2/20/2010

Gregory A. Quinn

ARCHITECT

May 31, 2016

'16 MAY 31 2:29

Director, Department of Planning and
Permitting
City and county of Honolulu
650 So. King Street
Honolulu, Hawaii 96813

Re: 59-712 Kamehameha Highway
TMK: 5-9-011:068
59-712 Kamehameha Highway
Haleiwa, Hawaii 96712

Written Narrative

Parcel History:

A development was proposed which resulted in a Unilateral Agreement under which certain development concerns regarding traffic and design were addressed.

The previous owner had applied for and was granted an SMA permit for relocating a dwelling and converting it to an office in 1984 (84/SMA-65). Building permit number 207976 was issued for the work.

Permit number 505722 was issued to upgrade the electrical service to an existing building.

The parcel is a recently created parcel established in a consolidation and subdivision process in 2009 (2009/SUB-100). Prior to this action the property address was the same as it is now (59-712 Kamehameha Hwy) and the previous Tax Map Key was 5-9-011:034. Two additional addresses have been added for the buildings both proposed and existing (the restaurant building has changed from 59-712-A to 59-714 Kamehameha Hwy). The building proposed under the previously approved SMA permit was given address of 59-716 Kamehameha Hwy)

The owners applied for and obtained a minor SMA permit for a similar list of improvements (2015/SMA-08) then revised that plan for a subsequent permit (2015/SMA-061). Those permits were associated with similar improvements on the two adjacent parcels between this lot and Pahoe Road. It was viewed by the community to be a sequential development exceeding the limits of development allowed under a minor SMA permit and a request was filed for a contested case hearing. The owner's asked to rescind the minor SMA permits issued for the three lots. The community asked that a major SMA application be made to address cumulative impacts of traffic and environmental issues. That process has begun and the owners are negotiating a contract with another planning firm at this time.

[Type here]
45-427 Keikikane Loop
Kaneohe, Hawaii 96744

Ph. 236-3408
Fax 235-4289

Project Description:

The proposed development is an interim solution to correct a violation issued for improvement to a structure originally included in an SMA permit issued in 1984 (84/SMA-65). The work is a twelve by twenty foot wood deck with a guardrail raised above ground accessed by a wood stair. Plans have been submitted to DPP by eplans in November 2014 (A2014-12-0081) to address the violation for building the deck prior to obtaining a building permit.

Also included in this application is an addition to an existing building converting it from a dentist's office to an eating and drinking establishment with kitchen facilities. The building permit for this restaurant alteration/addition was applied for in August of 2015 (A2015-08-0156). The restaurant use is a necessary preliminary improvement to maintain the economic viability of the property while the owners receive input from the community giving direction for development in future Major SMA Application process. It is very important to these owners to allow adequate community opinion as to what future development should be.

Also proposed is a parking lot with four parking stalls in the front to accommodate the real estate office and another parking lot with eight parking stalls in the rear to accommodate the restaurant. The restaurant will also have facilities to serve as a commissary for offsite food truck operations. The plans show additional structures to service the food truck community of the North Shore in the way of two pre-fab container storage buildings one of which will be refrigerated. A paved trash enclosure will be provided to service the uses on site.

A WaiponoPure wastewater system has already been installed. It will service the two buildings one tank serves the real estate office and two tanks will serve the restaurant. The system was designed to accommodate the proposed restaurant.

Landscaping will be provided throughout the occupied areas. The rear of the property will remain as undeveloped existing vegetation.



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Department of Planning and Permitting (DPP)

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[Permitting](#) [Searching](#) [DPP Home](#) [Sign In](#)

Building Permit Search

Application Number	Building Permit No.	Issue Date	TMK	Status	Description
2014/IBP12168		mmm dd, yyyy	59011068	POSSE BP subjob created	[TMK: 59011068] Hawaii Realty Professionals - Building Permit
2014/IBP12594		mmm dd, yyyy	59011068	POSSE BP subjob created	[TMK: 59011068] Hawaii Realty Professionals - Sign Permit
2015/IBP08173		mmm dd, yyyy	59011068	POSSE BP subjob created	[TMK: 59011068] 59-712 A Kamehameha Hwy / 59-712 A Kamehameha - Alteration to existing office, change of use from dental office to food establishment - Building Permit
2015/IBP12340		mmm dd, yyyy	59011068	POSSE BP subjob created	[TMK: 59011068] 59-716 KAMEHAMEHA / 59-716 Kamehameha Hwy - Building Permit
A2014-12-0081		mmm dd, yyyy	59011068	Plans review in progress	[TMK: 59011068] Hawaii Realty Professionals - New deck addition to existing Office Building.
A2015-08-0156		mmm dd, yyyy	59011068	Plans review in progress	[TMK: 59011068] (B/44) 59-712 & 59-712/A Kamehameha - Alteration/Addition to convert ex carport to outdoor dining area; change of use from dental office to eating/dining establishment including alterations and a new outdoor deck dining addition
A2015-11-0531		mmm dd, yyyy	59011068	Job Cancelled	[TMK: 59011068] [2/6] 59-716 KAM HWY - NEW RETA BUILDING.

[Submit](#) [Save as Excel](#) [Search Again](#) [Cancel](#)

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email: info@hawaii.gov
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Screen ID# 113859



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Tax Map Key

Permit Type	Permit No.	Description	Status	Created Date	Issue Date
Land Permit Applications	7772-25		Created	Dec 13, 2010	mmmm dd, yyyy
Notice of Violation	2014/NOV-10-229	8V 59-712 Kamehameha Hwy. (Link:59011068) Illegal work done - unpermitted deck was built and dredging work to put in a water and sewer line well. Please investigate	Draft NOV Reviewed	Oct 29, 2014	mmmm dd, yyyy
Special Management Area - Minor SMP	2015/SMA-61	SMA (Minor) Permit Application - 59-712 Kamehameha Hwy - Revised Parking Layout	Approval letter mailed	Dec 22, 2015	mmmm dd, yyyy
Special Management Area - Minor SMP	2015/SMA-8	Check 2419 (\$100.00) Check No. 2399 (\$400.00) and No. 2398 (\$200.00) SMA Permit (Minor) Application - Proposed Restaurant - Haleiwa Check No. 2226 (\$400.00) and No. 2227 (\$200.00)	Approval letter mailed	Feb 27, 2015	mmmm dd, yyyy
Cancel					

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Tax Map Key

Permit Type	Permit No.	Description	Status	Created Date	Issue Date
Land Permit Applications	7712-25		Created	Dec 13, 2013	mm/dd/yyyy
Land Permit Applications	84/SMA-65	RELOCATION OF DWELLING TO CONVERTED OFFICE BLDG	Approved	Aug 9, 1984	Aug 9, 1984
Land Permit Applications	84/ZBA-127	USE REGULATIONS	WITHDRAWN	Aug 20, 1984	Jan 10, 1985

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Tax Map Key

Details	Print	Full Screen	Help	Close
TMK:	5-9-011:034	POID:	1954	
Historical TMK Sequence:	99	Tax Pin:	1954	
Area (sq ft):	11250			
Area (acres):	0.258			
Lot Number:				
Ohana:	(None)			

PARCEL INFO

Type	Description
Lot Restriction	None
Slide Area	None
Street Setback	NONE

FACILITIES

Facility Code	Year Built	No. of Floors	Total Floor Area
01 - Single-Family Dwelling	1955	0	
01 - Single-Family Dwelling	1955	0	

TMK SEPARATIONS

Activity Code	Census Tract	Census Block
01 - HOUSEHOLD DWELLING	10100	201

Address List:

59-712 - A KAM HWY
59-712 KAM HWY

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Building Permit (pre 1999)

Building Permit 207956
Application Number: A1984-09-0239
Description: JOHN DUBIEL-AL,EL,PL

Issued Date: May 22, 1985
Status: Completed
Job Location: 59-712/A KAM HWY

Relocation Suffix:

Created Date: May 22, 1985
Completed Date: Jul 18, 1986

Tax Map Key



Display Format
207956 NOT CURRENT *** TAX 5-9-01 1,034-SQ [11,250 sq ft] 0.258 ac. POID= 1954-59-712 KAM HWY Holokua 96-712-01/01/1000 to 06/16/2011
TAXPIN = 1954

Details

Project Name: JOHN DUBIEL
Owner Name: JOHN DUBIEL
Plan Maker: P.M. TROEGER
Contractor: JEFFREY JOHNSON
Electrical Contractor: BEHLING INC.
Plumbing Contractor: DEBBIE'S ANGELS (20260)

Accepted Value: 3500
Occupancy Group Category: B-2 OFFICE
Occupancy Group: 12 - Office Building
Structure Code: 11 - OFFICE, 1 TO 3 STORIES
Construction Type Actual: VN
Construction Type Min: VN
Number Of Stories: 1
Total Floor Area: 0
Ownership Type: Private

Residential Units / Hotel Rooms (Code: A=Add; D=Delete)

Hotel Room Code:

Number of Rooms:

Residential Units Code:

Number of Units:

Inspections (RC=Received; CP=Completed; NA=Not Applicable)

	Code	Date
Building Code Inspection:	CP	Jul 18, 1986
Electrical Code Inspection:	CP	Mar 19, 1986
Plumbing Code Inspection:	CP	May 20, 1986

Type of Work

☐ New Building ☐ Repair ☒ Plumbing Work
☐ Foundation Only ☐ Demolition ☐ Other Work
☐ Shell Only ☐ Fence
☐ Addition ☐ Retaining Wall
☒ Alteration ☒ Electrical Work

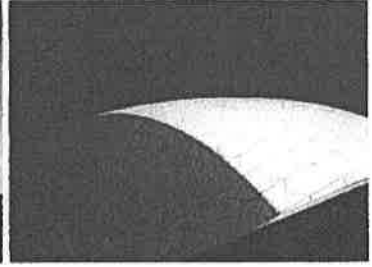
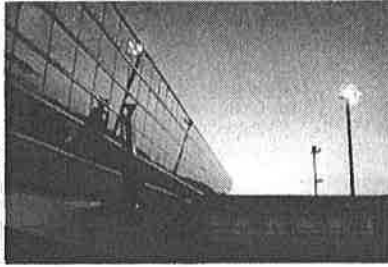
☐ Sidewalk ☐ Curb ☐ Driveway

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email: info@hcnoluludpp.org



■ CONSTRUCTION COST CONSULTANTS



PROJECT NAME:	HANAPOHAKU MINOR SMA PERMIT STUDY
LOCATION:	59-712 KAM HWY HALEIWA, OAHU, HAWAII
TMK:	5-9-011:068
DATE:	5/23/2016
PROJECT NO:	15-042
PREPARED FOR:	GREGORY QUINN
SUBMITTAL:	PERMIT STUDY

C O S T A N A L Y S I S

	PROJECT:	HANAPOHAKU MINOR SMA PERMIT STUDY	ESTIMATE NO.:	
	LOCATION:	59-712 KAM HWY HALEIWA, OAHU, HAWAII	PROJECT NO.:	15-042
	ARCHITECT:	GREGORY QUINN	SUBMITTAL:	PERMIT STUDY
	QUANTITIES BY:	T. UNO	PRICES BY:	J. UNO
			DATE:	5/23/2016
			CHECKED BY:	
			DATE CHECKED:	
DESCRIPTION		QTY	UNIT	TOTAL
				UNIT COST TOTAL

PROJECT SUMMARY

PROJECT ASSUMPTIONS AND CONDITIONS

The quantity takeoffs and resulting cost estimate were made including, but not limited to, the following assumptions:

- 1.) Kitchen equipment by others.
- 2.) Lead wall lining at existing dental office to be abated.
- 3.) Existing waste line to cesspool.
- 4.) Existing overhead electrical service sufficient. Assume 200A to restaurant building.

<u>1. CIVIL/ SITEWORK</u>	1560	SY	\$90.61	\$141,353
<u>2. EXISTING REAL ESTATE OFFICE</u>	580	SF	\$39.48	\$22,896
<u>3. EATING & DRINKING ESTABLISHMENT RENOVATION</u>	587	SF	\$413.85	\$242,930
SUBTOTAL, PROJECT				\$407,178
GENERAL CONDITIONS,	10%			\$40,718
PRIME CONTRACTORS MARK UP,	5%			\$22,395
BONDS & INSURANCE,	1.5%			\$7,054
G.E. TAX,	4.712%			\$22,493
TOTAL ESTIMATED COST,				\$499,838
ROUNDED,	1	LS		\$500,000

C O S T A N A L Y S I S



PROJECT: HANAPOHAKU MINOR SMA PERMIT STUDY

ESTIMATE NO.:

LOCATION: 59-712 KAM HWY HALEIWA, OAHU, HAWAII PROJECT NO.: 15-042

DATE: 5/23/2016

ARCHITECT: GREGORY QUINN

SUBMITTAL: PERMIT STUDY

CHECKED BY:

QUANTITIES BY: T. UNO

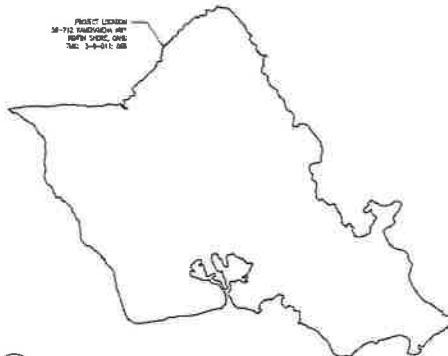
PRICES BY: J. UNO

DATE CHECKED:

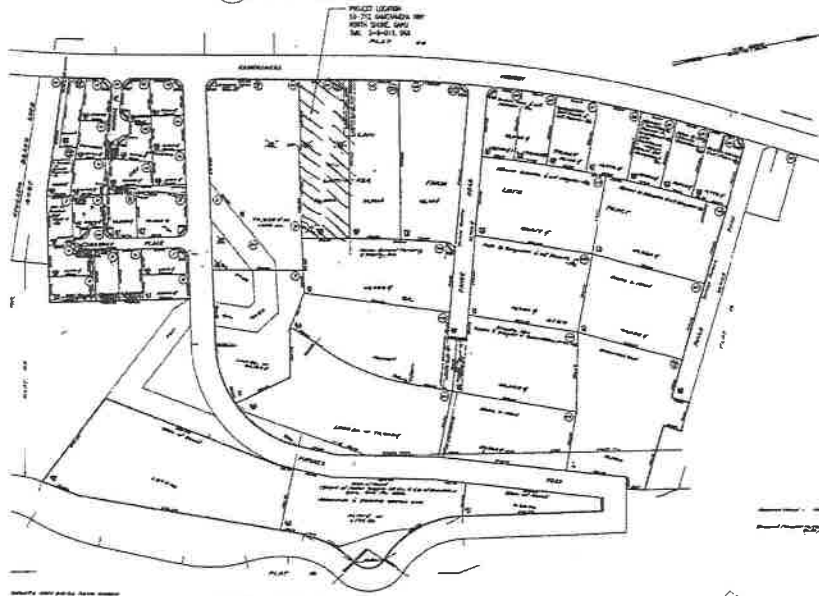
DESCRIPTION	QTY	UNIT	T O T A L	
			UNIT COST	TOTAL
1. CIVIL/SITEWORK				
Clear & Grub	1233	sy	\$7.00	\$8,631
Parking Lot Paving, Incl. Base Course	790	sy	\$60.85	\$48,072
Parking Lot Striping	12	stalls	\$50.00	\$600
<u>Site Utilities</u>				
New 2" Copper Water Line	190	lf	\$45.00	\$8,550
Backflow Preventer	1	ea	\$3,000.00	\$3,000
Water Line Connection	1	ea	\$2,500.00	\$2,500
Walpono Pure Advanced Treatment Unit	1	ea	\$60,000.00	\$60,000
Grease Interceptor	1	ls	\$10,000.00	\$10,000
SUBTOTAL, CIVIL/SITEWORK	1560	SY	\$90.61	\$141,353
2. EXISTING REAL ESTATE OFFICE				
Concrete Stair Landing	1	cy	\$675.00	\$675
Wood Deck, Railing & Stairs	246	sf	\$55.00	\$13,530
Renovate Restroom	1	ls	\$6,000.00	\$6,000
Paint Exterior	961	sf	\$2.80	\$2,691
SUBTOTAL, REAL ESTATE OFFICE	580	SF	\$39.48	\$22,896
3. EATING & DRINKING ESTABLISHMENT RENOVATION				
<u>Demolition</u>				
Demolish & Remove Dental Office Interior	587	sf	\$8.00	\$4,696
Demolish & Abate Lead-Lined Walls	120	sf	\$20.00	\$2,400
Demolish & Remove Existing Exterior Stair & Landing	49	sf	\$15.00	\$735
<u>Renovation</u>				
Concrete Stair Landings	1	cy	\$675.00	\$675
Wood Deck, Railing & Stairs	1310	sf	\$55.00	\$72,050
Paint Exterior	1030	sf	\$2.80	\$2,884
Commercial Kitchen Interior, Finishes only	279	sf	\$95.00	\$26,505
Dining Room Interior	213	sf	\$45.00	\$9,585
Restroom Interior	80	sf	\$80.00	\$6,400
Commercial Kitchen Addition	150	sf	\$150.00	\$22,500
Concrete Slab On Grade For Storage Buildings	330	sf	\$15.00	\$4,950
Container Commissary Building	1	ea	\$25,000.00	\$25,000
Container Storage Building, Dry Storage	1	ea	\$5,625.00	\$5,625
Container Storage Building, Cold Storage	1	ea	\$16,250.00	\$16,250
Mechanical, Plumbing	7	fixtures	\$4,000.00	\$28,000
Electrical	587	sf	\$25.00	\$14,675
SUBTOTAL, EATING & DRINKING ESTABLISHMENT	587	SF	\$413.85	\$242,930

PROJECT LOCATION
59-712 KAMEHAMEHA HWY
NORTH SHORE, OAHU
TAC 5-9-011.008

NORTH



2 LOCATION MAP
001 SCALE : NOT TO SCALE



1 VICINITY MAP
001 SCALE : NOT TO SCALE

SHEET INDEX - ARCHITECTURAL

SHEET NO.	PAGE NO.	DESCRIPTION
001	1	TITLE, SHEET INDEX, VICINITY MAP LOCATION MAP, PROJECT DATA TABLE
A-101	2	SITE PLAN
A-102	3	BUILDING FLOOR PLANS,
A-103	4	BUILDING FLOOR PLANS,
A-201	4	BUILDING EXTERIOR ELEVATIONS

LUO PROJECT DATA:

PROJECT NAME: HANALEI MALE POINT
ADDITIONAL DENOMINATOR TO EXISTING BUILDING
CONVERT EXISTING OFFICE TO RESTAURANT
RETAIL/RETAIL/RETAIL/RETAIL
PARKING AND LANDSCAPING
EXISTING USES: 8-1 RECREATION BUSINESS
OFFICE, SOCIAL OFFICE
PROPOSED USES: OFFICE, DINING AND DRINKING ESTABLISHMENT, OUTDOOR DINING FOR FOOD TRUCK USE

TAX LOT SIZE: 5-9-011.008
DEVELOP: 59-712, 59-714 & 59-716 KAMEHAMEHA HWY
TAX FLOOR AREA: 1.4 37,590 SF
NEW TOTAL FLOOR AREA: 4,578 SF

DESCRIPTION	FLOOR AREA	NEED PARKING	PROPOSED PARKING
5-9-011.008			
REAL ESTATE OFFICE - 59-712 KAMEHAMEHA HWY			
EXISTING LUG USE: REAL ESTATE OFFICE			
PROPOSED LUG USE: REAL ESTATE OFFICE			
CHIEF RESIDENT FLOOR AREA	548 SF	585/400-1.43	1.3 STALLS
PROPOSED BULK AREA (LANDSCAPING - NOT COUNTED FOR PARKING)	240 SF		
CHIEF CARPORT - CONNECT TO CONCRETE OUTDOOR SEATING	256 SF	256/400-0.65	0.8 STALLS
RESTAURANT - 59-714 KAMEHAMEHA HWY			
EXISTING LUG USE: SOCIAL OFFICE			
PROPOSED LUG USE: DINING AND DRINKING ESTABLISHMENT	240 SF	240/400-1.49	
ADDITIONAL OUTDOOR FLOOR AREA:	2,392 SF	2,392/400-5.975	
PROPOSED LUG USE: OUTDOOR DINING			7.6 STALLS
CONCRETE/RETENED - 59-716 KAMEHAMEHA HWY (INCLUDES COLD AND HOT STORAGE)			
PROPOSED LUG USE: DINING AND DRINKING ESTABLISHMENT	640 SF	640/400-1.6	1.8 STALLS
GROUND TOTAL	4,578 SF	4,578/400-11.6	11.6 AND STALLS 12 AND STALLS

LOADING REQUIREMENTS - ONE EXISTING STALL FOR LESS THAN 10,000 SF WARE USE
LOADING PROVIDED - ONE 12'x24' LOADING STALL

per Gregory Quinn Architects

PROPOSED JOINT DEVELOPED MINOR SMA PERMIT FOR:

59-712 KAMEHAMEHA HWY

Gregory A. Quinn
ARCHITECT
1545 KAMEHAMEHA HWY
DANIELA, HAWAII 96712
TEL 808-835-1000
FAX 808-835-1001



DATE: 5-9-011.008

REVISIONS

1	
2	
3	
4	

PROPOSED MINOR SMA DEVELOPMENT FOR:

MINOR SMA-HANAPOHAKU

PRELIMINARY DESIGN

DATE: 5-9-011.008

FILE: 59-712, 59-714 & 59-716 KAMEHAMEHA HWY

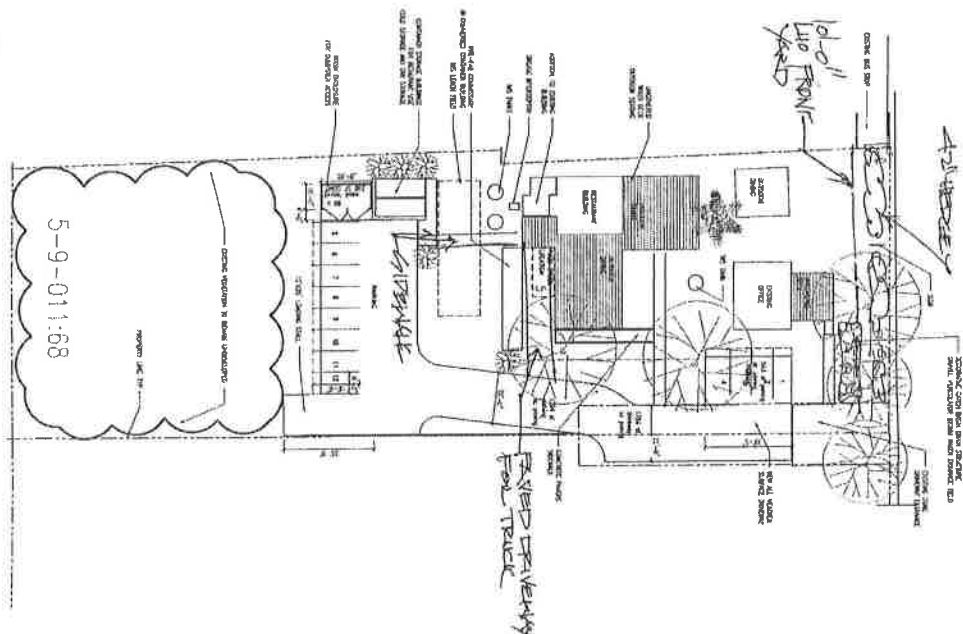
PROJECT: 59-712, 59-714 & 59-716 KAMEHAMEHA HWY

DESIGNING FIRM: GREGORY A. QUINN ARCHITECTS

SHEET NUMBER:

001

PAGE: 1 OF 1

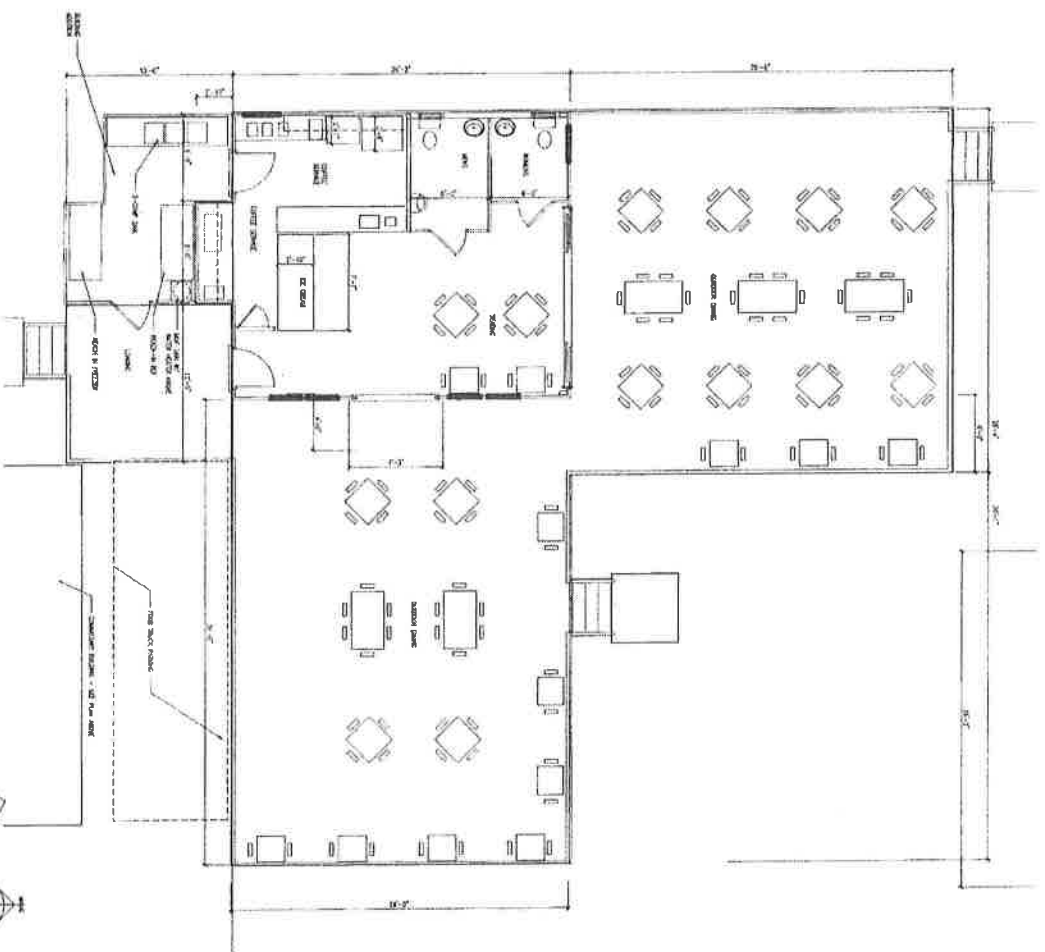
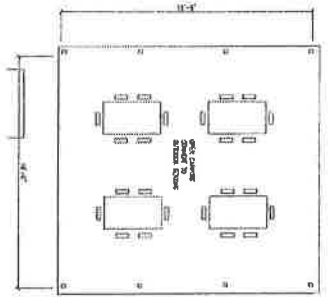
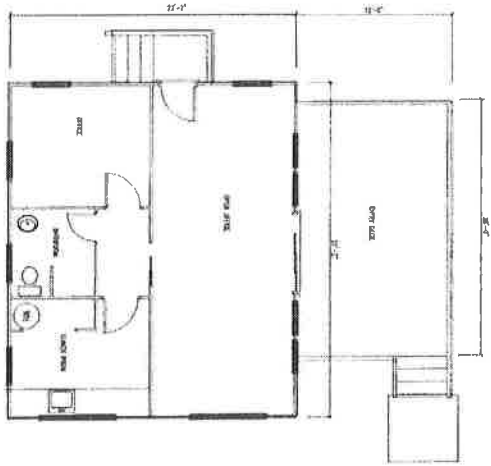


NR: 4-9-011:065

...of the ...
...the ...
...the ...



PUE 620-8021
 Fax 620-6439



3 FLOOR PLAN
30'-0" MAXIMUM W/ - EXISTING AND EXISTING SPACE IN ROOM
SCALE: 1/4" = 1'-0"

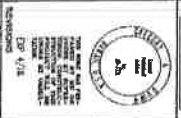
4 FLOOR PLAN
30'-0" MAXIMUM W/ - EXISTING AND EXISTING SPACE IN ROOM
SCALE: 1/4" = 1'-0"

1 FLOOR PLAN
30'-0" MAXIMUM W/ - EXISTING AND EXISTING SPACE IN ROOM
SCALE: 1/4" = 1'-0"



A-102

PROPOSED MINOR SMA DEVELOPMENT FOR
MINOR SMA-HANAPOHAKU
50-712 HANALEI AVE. 1ST FLOOR
HALEIWA, HAWAII 96712
TWC 5-9-011.000

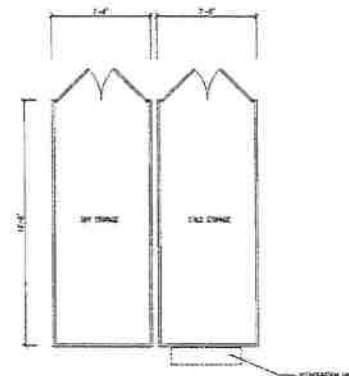


Gregory A. Quinn
ARCHITECT
45-427 Kalahele Ave.
Kalahele, Hawaii 96741
PH: 808-8511
FAX: 808-4228

2
A103

FLOOR PLAN
SCALE: 1/4" = 1'-0"

SH-716 KAHANAHUA WPT - PRE-416 DPT TERRACE - EXISTING SHIPPING CONTAINER



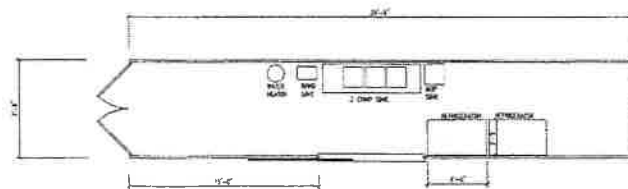
SCALE: 1/4" = 1'-0"



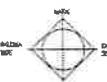
1
A103

FLOOR PLAN
SCALE: 1/4" = 1'-0"

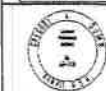
SH-716 KAHANAHUA WPT - PRE-416 DPT TERRACE - EXISTING SHIPPING CONTAINER



SCALE: 1/4" = 1'-0"



Gregory A. Quinn
ARCHITECT
45-437 Kaula Road, Suite 101
Honolulu, Hawaii 96817
PH: 832-5522
FX: 832-5522



THIS PLAN WAS
DESIGNED BY ME OR
UNDER MY CLOSE
SUPERVISION AND
I AM A LICENSED
ARCHITECT IN THE
STATE OF HAWAII
NO. 10101

DP 4/18

REVISIONS

1	
2	
3	
4	

PROPOSED MINOR SMA DEVELOPMENT PLAN
MINOR SMA-HANAPOHAKU

PRELIMINARY DESIGN
DATE: MAY 10, 2014
DRAWN: [Signature]
CHECKED: [Signature]
DATE: 5-9-2014

DATE: MAY 10, 2014
DRAWN: [Signature]

DATE: MAY 10, 2014
DRAWN: [Signature]

DATE: MAY 10, 2014
DRAWN: [Signature]

DATE: MAY 10, 2014
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DATE: MAY 10, 2014
DRAWN: [Signature]



DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-8041
DEPT. WEB SITE: www.honolulu.gov/dpp • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

2016/ELOG-110(ASK)
2016/ELOG-214

August 29, 2016

The Honorable Gil Riviere, Senator
The Senate
State Capitol
415 South Beretania Street, Room 217
Honolulu, Hawaii 96813

Dear Senator Riviere:

Subject: Sharks Cove Commercial Development Update
59-712 Kamehameha Highway (Parcel 68)
59-706 Kamehameha Highway (Parcel 69)
59-063 Pahoe Road (Parcel 70) – Pupukea
Tax Map Keys 5-9-11: 68, 69, and 70

Thank you for your letters of January 11 and 26, 2016, regarding development on three lots located at the addresses listed above. This letter is to provide an update on the status of the past and pending permitting activity considered by the Department of Planning and Permitting (DPP) for the sites. We apologize for the delay in our reply. Please be assured we have been consistently working toward a resolution for these sites and hope to find an acceptable solution as we move forward.

On May 2, 2016, the DPP revoked three Minor Special Management Area (SMA) permits that had been issued at separate times for development on the three properties. Subsequently, on May 31, 2016, we received a Minor SMA application (No. 2016/SMA-36) for modifications of and additions to the commercial structures located on Parcel 68. The application indicated the owner planned to prepare a Major SMA Use permit application for redevelopment of all three of the properties together, but sought a Minor SMA permit in the interim.

Based on the history of the site and the available information, the DPP did not accept this Minor SMA permit application for processing and returned it to the Applicant. The notice, dated July 13, 2016, informed the Applicant that the appropriate remedy for the outstanding violations and future development is to obtain a Major SMA Use permit, which also requires an Environmental Assessment. Further, we notified the Applicant that pending violations cannot be

Exhibit I

The Honorable Gil Riviere, Senator
August 29, 2016
Page 2

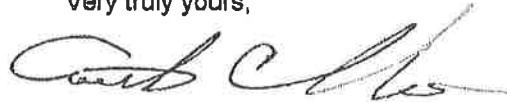
corrected through Minor SMA permits, but must be sought through other means, such as removal of all unauthorized structures and uses or approval of a Major SMA Use Permit by the City Council.

On March 9, 2016, we received a request for a contested case hearing related to the Minor SMA permits, which were subsequently revoked. Even though the Minor SMA permits granted to the Applicant are null and void, the requestor of the contested case has not withdrawn its petition, so the contested case will be scheduled when the DPP secures a hearing officer to preside over the case.

DPP's enforcement actions will proceed and the owner may continue with the permitting steps needed to implement the development plans for the properties. Many of the concerns of the community, including those related to project segmentation and cumulative impacts, will be addressed during the Environmental Assessment and Major SMA Use permit processing should an application be submitted to DPP. Further, preliminary traffic studies will be a necessary component of the Environmental Assessment, and a public hearing will be held by both the DPP and the City Council during the processing of the Major SMA Use permit.

We hope this helps answer your questions. Please do not hesitate to contact me at 768-8000 should you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "George I. Atta", written in a cursive style.

George I. Atta, FAICP
Director



DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
850 SOUTH KING STREET * HONOLULU, HAWAII 96813
Fax: (808) 768-4400

Notice of Violation

Violation No.: 2016/NOV-12-137 (SV)

Date: January 23, 2017

Owner(s)

HANAPOHAKU LLC., Andrew Yanl
526 Ahina Street
Honolulu, HI 96816

Contractor(s)

Tenant/Violator

Architect/Plan Maker

Lessee

Agent

Engineer

TMK: 5-9-011:068 59-712 KAM HWY Haleiwa 96712
5-9-011:069 59-706 KAM HWY HALEIWA 96712
5-9-011:070 59-53 PAHOE RD Haleiwa 96712

Specific Address of Violation: 59-712 Kam Hwy; 59-706 Kam Hwy; 59-053 Pahoe Rd

I have inspected the above-described premises and have found the following violations of City and County of Honolulu's laws and regulations governing same:

Codes and/or Ordinance(s)
and Section(s)

Violation(s)

ROH 1990, as amended, Chapter 25
Section 25-6.1

Multiple violations in Special Management Area without a Special Management Area (SMA) permit. Structures including food trucks, shipping containers, loading trucks, septic tanks, wooden decks and stairs, tents, eating areas with tables and benches, signs and sheds, temporary toilets, fences, walls, parking areas and all other structures which have not been permitted must be removed. Grading has been undertaken without the required permit. Commercial activities which lack a SMA permit must cease

Please correct all of the violations cited above and restore the site to the original conditions allowed by approved permits within the time specified below.

STOP WORK! You are hereby ordered to stop illegal work immediately.

Please call the undersigned after the corrections have been made.

IMMEDIATE REFERRAL: Recurring Violation

You are reminded that if no action is taken within the specified time:

1. A Notice of Order will be issued by the Department of Planning and Permitting imposing CIVIL FINES for the specified violations; and/or
2. This matter may be referred to the Prosecuting Attorney and/or Corporation Counsel for appropriate action.

Special
Instructions:

Inspector:

Steve Cheung

Phone: 768-8114

for the Director Department of Planning and Permitting

Exhibit J

JobId: 69063320

ExternalId: 059063320-001

Initial Print Date: Monday January 23, 2017 12:36 pm

Page 1 of 1

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
850 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-8041
DEPT. WEB SITE: www.honolulu.gov/dpp • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 2710 0000 8740 1060

NOTICE OF ORDER

NO.: 2017/NOO-062

DATE: February 2, 2017

TO: Owner/Contractor/Lessee/Tenant: _____

Owner: Hanapohaku, LLC

Attn: Andrew Yani

526 Ahina Street

Honolulu, Hawaii 96816

Address of Violation: 59-712 Kamehameha Highway - Haleiwa

59-706 Kamehameha Highway - Haleiwa

59-053 Pahoe Road - Haleiwa

Tax Map Key: 5-9-011: 068 (POID 491033)

5-9-011: 069 (POID 491032)

5-9-011: 070 (POID 491031)

Description: There are multiple violations in Special Management Area (SMA) without an SMA Use Permit. Structures include food trucks, shipping containers, loading trucks, septic tanks, wooden decks and stairs, tents, eating areas with tables and benches, signs and sheds, temporary toilets, fences, walls, parking areas, and all other unpermitted structures. Grading work was undertaken without the required permit. Commercial activities lack an SMA Use Permit.

The Department of Planning and Permitting (DPP) inspected the above-described structure(s) and/or premises and found a violation of one or more ordinances of the City and County of Honolulu. As a result, Notice of Violation (NOV) 2016/NOV-12-137 was issued on January 23, 2017 (copy attached). As of the date of this order, the violation described in the NOV has not been corrected. Because this is a recurring violation, accordingly, pursuant to the authority granted by the Revised Ordinances of Honolulu, you are hereby ordered to:

1. Pay a fine of \$2,000 by March 30, 2017.

Exhibit K

2. Correct the violation by March 14, 2017. If corrective action has not been completed by this date, a daily fine of \$500 will be assessed until the correction is completed. You are responsible for contacting the inspector, Steve Cheung at (808) 768-8114, to verify the corrective action.

Checks (with the Notice of Order number noted on it) are payable to the City and County of Honolulu, and should be mailed or delivered to the Department of Planning and Permitting, 650 South King Street, 8th Floor, Honolulu, Hawaii 96813.

If the fine is not paid by the due date, this matter may be referred to the Department of the Corporation Counsel for civil remedy and/or the Prosecuting Attorney's Office for criminal prosecution. When this order becomes final, all unpaid civil fines imposed by this order shall be added to the taxes, fees, and charges specified in Section 20-3-4 of the Department of Planning and Permitting's Rules Relating to Administration of Codes. Such taxes, fees, and charges include, but are not limited to, driver's license and vehicle registration fees, fees for permits issued under the City Land Use Ordinance (e.g., sign permits, conditional use permits, and variances) and fees for building, demolition, grading, grubbing, stockpiling, trenching, and excavation permits.

If the order is issued to more than one person, each person shall be jointly and severally liable for the full amount of any fine imposed by the order.

This order shall become final thirty (30) days after mailing. Before such time, any person affected by this order may file an administrative appeal of any provision in this order. Appeals shall include all appropriate remedies and may address the addition of unpaid fines to taxes, fees, or charges collected by the City. The failure to appeal this order within the specified time may result in a waiver of the right of appeal. An appeal does not suspend any provision of the order, including the imposition of the civil fines. Copies of the appeal rules are available at the DPP and Office of the City Clerk.

Should you have any questions regarding this order, please contact our Code Compliance Branch at (808) 768-8110.



Kathy K. Sokugawa
Acting Director

KKS:ff

Attachment

[1426822]

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU



DOCUMENT INDEX

FILE NO. 2017/SMA-14

PROJECT: Hanapohaku Food Trucks ETC.

INDEX NO.

- 1 Application and receipt
- 2 Cost Estimate
- 3 Stormwater Infrastructure Maps
- 4 DPP Response
- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____
- 11 _____
- 12 _____
- 13 _____
- 14 _____
- 15 _____
- 16 Exhibit L

4

FILE

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

2017/SMA-14(ASK)

NOTICE OF INCOMPLETE APPLICATION

File No.: 2017/SMA-14
Applicant: Hanapohaku LLC
Agent: G70
Location: 59-706 and 59-712 Kamehameha Highway and
59-53 Pahoe Road – Pupukea
Tax Map Keys: 5-9-011: 068, 069 and 070
Received: April 19, 2017
Request: Special Management Area (SMA) Minor Permit to allow (retain) existing commercial activities including food trucks, after-the-fact grading and grubbing, construction of a parking lot, installation of an individual wastewater system, and the establishment of outdoor, covered eating and drinking areas.

The application cannot be accepted because it is incomplete. The application materials did not demonstrate that the Project is eligible for a minor SMA Permit as defined in Chapter 25-1.3, Revised Ordinances of Honolulu (ROH), which states:

"Special management area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of \$500,000.00, and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

The following list specifies the information needed for a complete application.

1. Based on the application materials, the estimated cost is appears to be below \$500,000, at about \$346,875. However, it appears the value of the food trucks was not included. If the food trucks leave the site each day, the application should specify that, and the value of the trucks will not need to be added to the total Project valuation. If, on the other hand, the food trucks will regularly remain in place for days at a time or cannot move at all, the value of the trucks must be included in the Project valuation. In site visits last year, we were led to believe that the trucks do not move on a daily basis, and in fact

rarely move at all. If this is the case, the application should clearly say so. If the new proposal involves daily movement of the trucks, the application should indicate where they will be parked every evening.

2. Figure 4, the Existing Use Plan, specifies which structures were "pre-existing" in 2014. This plan should also label when the authorized structures received SMA and/or building permit approval. The description of the proposed action on page 5 limits the discussion to development actions completed during the period of 2014 to 2016. This should be expanded to include all development on the site that is not authorized or nonconforming. We note the Shark's Cove Grill was not listed as having been authorized, and based on site inspections, it does not appear to be moveable. If that is the case, it should be explicitly added to the SMA Minor Permit request. Further, the application should specify any existing structures that will require after-the-fact building permit approvals, and whether significant improvements are likely to be required to meeting building code requirements.
3. Page 7 of the application indicates that "Food Truck E" is the only food truck serviced by the on-site commissary. If other food trucks or eating establishments located off-site are associated with this commissary, the application should explain this activity. The application should also indicate the location of the commissaries that service the other food trucks.
4. Page 8 of the application indicates that several food trucks include canopy tents or umbrellas to provide shaded seating areas of approximately 400 to 500 square feet each, and that "Food Truck C" has an 831-square-foot concrete pad. Based on the scaled image labeled "Figure 5," our rough estimate, suggests the total "seating area" is closer to 9,920 square feet, or about 1,984 square feet per food truck. The application should clarify this.
5. Pages 7 and 8 of the application discuss stormwater, indicating that new stormwater management controls will be installed to manage rainfall runoff from the cleared areas of the property and the new asphalt parking area. The application does not indicate whether stormwater runoff from the site will increase, the direction of the flow, and what effects stormwater increases might have. The application must describe the current system, its location, and collection basin, point of discharge, and how it will differ from the proposed system. The application should also confirm whether the stormwater controls are sized to accommodate this particular build-out or whether they will be designed to accommodate a future, larger development.
6. Page 12 of the Application states that liquid waste from the food trucks will be contained and disposed of off-site. Are these liquids removed from the food trucks on the site? If so, what precautions will be taken to prevent or contain leaks?
7. The plans should show the required parking lot landscaping.

8. In site visits last year, DPP staff noted eight food trucks on the site. The "Land Use Plan" in the application shows five. The application should indicate how many food trucks are on the site today and specify whether the proposal involves a reduction in the observed uses on the site.
9. The application should describe whether the Project is consistent with the North Shore Sustainable Communities Plan (NSSCP) relating to policies and guidelines for the Rural Community Commercial Center (RCCC). The NSSCP defines an RCCC as a "*small cluster of commercial and service businesses located on major thoroughfares that provide a range of goods and services to meet the needs of the surrounding residential communities. Located along highways and major thoroughfares, these centers also attract visitors and residents from outside the immediate community.*" These could be grocery stores, sundries, restaurants and other services such as health related and service-oriented shops catering to residents and visitors to the region.

The application may be resubmitted when it is complete, as outlined above. Enclosed, we are returning your check (No. 42564) for the \$400 processing fee and your receipt (No. 112680) for the application review fee. Should you have any questions, please call Ardis Shaw-Kim of our staff at 768-8021.


For Kathy K. Sokugawa
Acting Director

Date: May 16, 2017

Enclosures: Check No. 42564
Receipt No. 112680

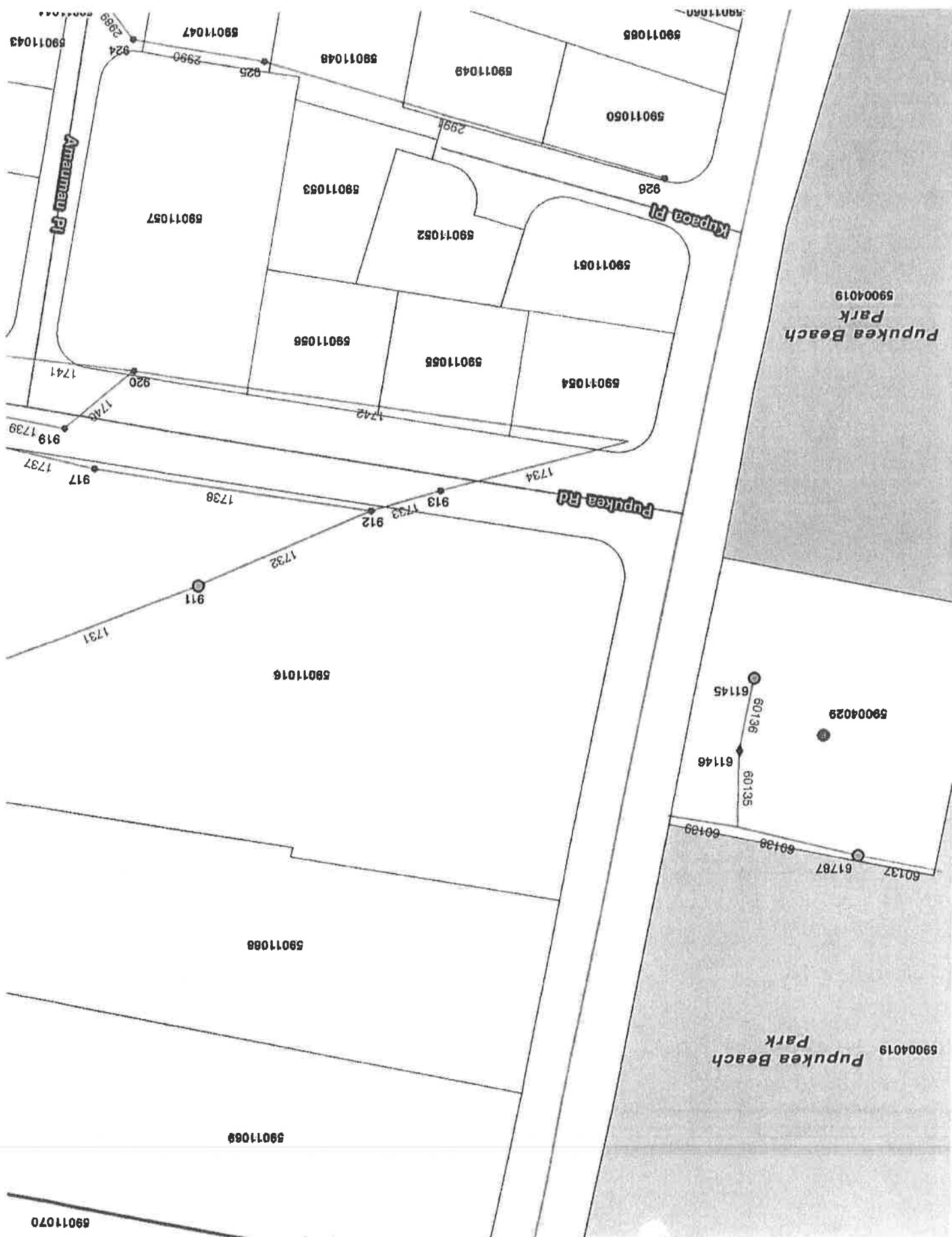
3

Shaw-Kim, Ardis

From: Nolan, John
Sent: Monday, May 15, 2017 12:59 PM
To: Shaw-Kim, Ardis



John Nolan
Stormwater GIS Editor - Engineering Support Tech III
Department of Planning & Permitting
City & County of Honolulu
650 S King Street - 8th Floor



2

CONTRACTOR'S ESTIMATE FOR ENGINEER



SJ Construction Consulting, LLC

PO Box 37238, Honolulu, HI 96837

www.sjcivil.com; sj@sjcivil.com

Contact: Scott Jennings

Phone: 808-271-5150

Quote To: Mr. Steven Doo, P.E.
G70
925 Bethel Street, 5th Floor
Honolulu, HI 96813
Phone: 808-523-5866

Date: April 16 2017
Job Name: Hanapohaku, LLC - Interim Use Plan
Date of Plans: Plans provided 3/30/17
Estimate No.: 2017-02

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
SITE IMPROVEMENTS					
1	Temp. Erosion Control Measures, In Place Complete	1.00	LS	9,500.00	9,500.00
2	Site Clearing	1.22	AC	20,000.00	24,334.00
3	Remove Soil Stockpile	35.00	CY	62.00	2,170.00
4	Fill & Excavation	607.00	CY	40.00	24,280.00
5	Site Grading	8,200.00	SF	1.25	10,250.00
6	Entry Sign (2' x 6' on two posts)	1.00	EA	2,589.98	2,589.98
7	Coarse Aggregate Paths to Food Trucks	5.00	EA	1,311.34	6,556.70
8	6' TALL CHAIN LINK FENCE	200.00	LF	37.00	7,400.00
9	Landscaping/Grassing	1.00	LS	12,500.00	12,500.00
10	Aggregate Base Course, In Place Complete	195.00	CY	120.00	23,400.00
11	Conc. Sidewalk/Slab, 4" Thick, In Place Complete	831.00	SF	27.00	22,437.00
12	Asphalt Pads under Trucks (5 ea @ 10' x 27.5')	153.00	SY	56.19	8,597.07
13	Asphalt Pavement, In Place Complete	2,011.00	SY	29.00	58,319.00
14	Pavement Striping	1,000.00	LF	4.50	4,500.00
	SUBTOTAL				\$216,833.75
SEWERAGE SYSTEM					
15	IWS system, In Place Complete	1.00	LS	70,000.00	70,000.00
	SUBTOTAL				\$70,000.00
DRAINAGE SYSTEM					
16	Gravel Entrance	603.00	SF	3.90	2,351.70
17	6" Percolation Trench BMP w/6" Drain Line	260.00	LF	47.00	12,220.00
18	Drain Outlet, In Place Complete	1.00	EA	3,000.00	3,000.00
19	Stormwater Basin	1,220.00	SF	3.95	4,819.00
	SUBTOTAL				\$20,039.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
WATER SYSTEM					
20	2" Water Line	426.00	LF	35.00	14,910.00
SUBTOTAL					\$14,910.00
ELECTRICAL SYSTEM					
21	Electrical duct & conductor	413.00	LF	16.00	6,608.00
SUBTOTAL					\$6,608.00
GRAND TOTAL					\$330,742.45

Cseppagapp

16,133

NOTES:

Assumptions:

1. No rock excavation.
2. No groundwater.
3. Bid item 4 - assume no import. Assume all offhaul.
4. Bid item 10 - this was assumed to be under the asphalt.
5. Bid item 15 - as-builts were used to estimate the cost of the existing IWS system.
6. Bid items 20 & 21 - utility quantities were each reduced by 100 lineal feet to account for reduction in number of food trucks.

Exclusions:

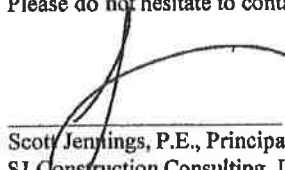
1. Driveway on makai side is existing (not to be built or offhauled).
2. Bond.

Conditions/Comments:

1. Unit prices have been made to positively affect the contractor and should not be relied upon for true unit costs (they have been "unbalanced" to optimize cash flow).

This proposal good for thirty (30) days.

Please do not hesitate to contact me should you have any questions about this proposal.


 Scott Jennings, P.E., Principal
 SJ Construction Consulting, LLC
 808-271-5150
 sj@sjcivil.com

ESTIMATE: 2017-02 - HANAPOHAKU, LLC

1

HANAPOHAKU LLC
TMK (1) 5-9-011:068, 069, 070

Special Management Area Minor Permit Application

This Special Management Area Minor Permit application includes the contents required by the City and County of Honolulu Department of Planning and Permitting, pursuant to ROH Chapter 25.

Contents / Application Checklist		Page
1.	DPP Master Application	1
2.	Application Fees	2
3.	Special Management Area Minor Application	
	Introduction	3
	Written Description of Project	4
	Conformance to SMA Guidelines	10
4.	Exhibits	
	Figures 1-3: Location Map, TMK Parcel Map, SMA Boundary	13, 14, 15
	Figure 4: Existing Use Plan	16
	Figure 5: SMA Minor Permit Plan	17
	Figure 6: SMA Minor Permit Plan (Colored and Labeled)	18
	Figure 7: Entrance Sign	19
5.	Cost Estimate	

April 19, 2017

**CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PLANNING & PERMITTING**
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

LAND USE PERMITS DIVISION MASTER APPLICATION FORM

Additional data, drawings/plans, and fee requirements are listed on a separate sheet titled "Instructions for Filing." **PLEASE ASK FOR THESE INSTRUCTIONS.**

All specified materials described in the "Instructions for Filing" and required fees must accompany this form. Incomplete applications will delay processing. You are encouraged to consult with Zoning Division staff in completing the application. Please call the appropriate phone number given in the "Instructions for Filing."

Please print legibly or type the required information.

SUBMITTED FEE: \$600

PERMIT/APPROVAL REQUESTED (Check one or more as appropriate):

Cluster: ☐ Agricultural ☐ Country ☐ Housing Conditional Use Permit: ☐ Minor ☐ Major ☐ Existing Use: _____ (Indicate Type of Use) Environmental Document: ☐ Environmental Impact Statement ☐ Environmental Assessment ☐ Supplemental ☐ Minor Shoreline Structure	☐ Modify Approved Permit: _____ (Indicate Reference File No.) ☐ Plan Review Use Planned Development: ☐ Housing ☐ Commercial (WSD Only) ☐ Resort (WSD Only) ☐ Shoreline Setback Variance Special District Permit: ☐ Minor ☐ Major _____ (Indicate District) ☐ Downtown Height >350 Feet	Special Management Area Use Permit: ☒ Minor ☐ Major ☐ Temporary Use Approval ☐ Variance from LUO Section(s): _____ ☐ Waiver from LUO Section(s): _____ ☐ Zoning Adjustment, LUO Section(s): _____ ☐ HRS Section 201H-38 Project
---	--	---

TAX MAP KEY(S): (1) 5-9-011:068, 069, 070

LOT AREA: 2.72 acres

ZONING DISTRICT(S): B-1 Neighborhood Business

STATE LAND USE DISTRICT: Urban

STREET ADDRESS/LOCATION OF PROPERTY: _____

RECORDED FEE OWNER:

Name (& title, if any) Hanapohaku LLC

Mailing Address 59-716 Kamehameha Highway
Haleiwa, HI 96712

Phone Number 808-779-5733

Signature *[Signature]*

PRESENT USE(S) OF PROPERTY/BUILDING:

Commercial property with a real estate office, associated carport, former dentist office, surf shop, food trucks

PROJECT NAME (if any): _____

APPLICANT:

Name Hanapohaku LLC (Andrew Yan)

Mailing Address 59-716 Kamehameha Highway
Haleiwa, HI 96712

Phone Number 808-779-5733

Signature *[Signature]*

AUTHORIZED AGENT/CONTACT PERSON:

Name G70 (Jeff Overton)

Mailing Address 925 Bethel Street, 5th Floor
Honolulu, HI 96813

Phone Number 808-523-5866

E-mail pupukea@g70.design

Signature *[Signature]*

REQUEST/PROPOSAL (Briefly describe the nature of the request, proposed activity or project): Hanapohaku LLC is pursuing a Special

Management Area Minor Permit to address past actions which were completed on the property without proper review under the SMA ordinance (Revised Ordinances of Honolulu, Chapter 25). These items include vegetation clearing, soils disturbance and restoration, and substantial trash removal prior to Hanapohaku's ownership. Operations include food trucks, seating areas, tents and umbrellas, portable toilets and a hand wash station, and portable trash dumpsters. Waterlines and electrical conduits are also included in the plan. This permit also includes a new asphalt parking lot, new chain link fence (200 ft), and stormwater controls that Hanapohaku is proposing to implement to support commercial activities on the property.

POSSE JOB NO. _____

REV. 3/28/2016

Summary of Fees Paid

Special Management Area Minor Permit Application

Application	\$400
-------------	-------

Processing	\$200
------------	-------

HANAPOHAKU LLC

Special Management Area Minor Permit Application

1.0 INTRODUCTION

1.1

PROJECT INFORMATION SUMMARY

Applicant:

Hanapohaku LLC
59-716 Kamehameha Highway
Hale'iwa, HI 96712
Contact: Andrew Yani
Phone: (808) 779-5733

Approving Agency:

City and County of Honolulu
Department of Planning and Permitting
630 South Beretania Street
Honolulu, Hawai'i, 96843
Contact: Land Use Permits Division
Phone: (808) 768-8000

Name of Action:

Hanapohaku LLC

Planning/Environmental Consultant: G70

925 Bethel Street, 5th Floor
Honolulu, Hawai'i 96813
Contact: Jeff Overton, AICP LEED AP
Phone: (808) 523-5866

Location:

Pūpūkea, Hale'iwa, Island of O'ahu, Hawai'i (*Figure 1*)

Tax Map Keys (TMK):

(1) 5-9-011:068, 069, 070 (*Figure 2*)

Landowners:

Hanapohaku LLC

Land Area:

2.72 acres

State Land Use District:

Urban District

City and County of Honolulu:

Zoning (Land Use Ordinance): Neighborhood Business District (B-1)

North Shore Sustainable

Communities Plan: Rural Community Commercial Center

Special Management Area (SMA): Entire project area within SMA (*Figure 3*)

Flood Management Zone:

Zone X – Outside of the 500 Year Flood Plain

HANAPOHAKU LLC

Special Management Area Minor Permit Application

SMA Minor Permits and Building Permits were subsequently approved (2001-2002) for the surf shop and retail store built on Parcels 69 and 70.

- North Shore Surf Shop
Built in 2002 - 574 SF (SMA Minor Permit, Building Permit #523321)
- Seamaids Retail Boutique
Built in 2001 - 432 SF (SMA Minor Permit, Building Permit #519387, #655836)

State Dept. of Health approval was granted (2016) for the installation of the ATU wastewater treatment and disposal unit. The ATU facility is discussed as part of the proposed action. Each of the seven food trucks operating onsite have State Dept. of Health certification, as discussed in the proposed action.

Description of Proposed Action

The owners are applying for a Special Management Area (SMA) Minor Permit to address past development actions which were completed on this property without proper review under the SMA ordinance ROH 25. In addition, the SMA Minor Permit will include the new elements required to support commercial activities on the subject property, as identified in Figure 5 – SMA Minor Permit Plan.

Development actions on this property completed during the period 2014 to 2016 which require after-the-fact SMA permitting, include the following items listed and described below,

1. Vegetation Clearing, Soils Disturbance & Restoration

Several actions on the site relate to vegetation clearing and soils disturbance, trash removal, along with actions for planned restoration of non-active site areas. The subject areas on the property are shown in Figure 5.

- Vegetation Clearing & Surface Stabilization
Non-native brush and invasive vegetation (e.g. Haole Koa, California Grass) has been cleared from this property, over an area of approximately 53,000 SF. Initial clearing was completed to remove previously dumped trash and debris dating back over three decades. Roughly 37,000 SF of this area received a layer of recycled crushed concrete to improve vehicle access/parking with minimal soil disturbance.
- Graded Area for Debris Removal
Approximately 8,200 SF of the property was cleared and graded for debris removal and site leveling. This area has been stabilized with gravel ground cover and is being used as a seating area for operation of Food Truck G.

2. Development of New Support Facilities

To support the commercial operations on the property, two development activities will be undertaken, as described below and shown in Figure 5.

Asphalt Parking Lot (New)

To support the code requirements for commercial uses on the property, an all-weather parking surface is required. The total existing retail commercial floor area (2,088 SF) will require five (5) parking spaces and the parking area will include two (2) accessible parking spaces. Each of the DOH certified mobile food trucks will be provided with five (5) parking spaces per food truck. For the five food trucks and retail spaces, there will be a total of 44 parking spaces provided. An additional two (2) parking spaces will be for an electrical vehicle charging station. The asphalt parking lot area will be approximately 18,500 SF.

- Stormwater Management Controls (New)

To manage the rainfall runoff from the cleared area of the property and the new asphalt parking area, there will be new storm water management features installed. Three locations will include stone/gravel drainage collection trenches and rain gardens totaling approximately 1,320 SF. These control features will provide effective control of storm runoff flows, capture suspended sediment in runoff, and minimizing the offsite release of runoff flows and eroded soils.

- Chain Link Fence (New)

A new 6 ft tall chain link fence will be installed along 200 ft of the property boundary with Pāhoehoe Road. This new fence will restrict patrons from access to/from Pāhoehoe Road and the property.

- Sign (New)

A new directional sign will be installed at the driveway entrance to encourage on-site parking.

3. DOH Certified Mobile Food Truck Operations & Support Elements

To support the commercial operations on the property, several activities will be undertaken, as shown in Figures 5 and 6.

- DOH Certified Mobile Food Trucks (A-E)

As shown in Figures 4 and 5, there will be five mobile food truck operations on this commercial zoned property, as two of the seven food trucks will be removed. Each food truck maintains its own certification with the State Department of Health. (Food Truck E, Elephant Truck, is the only food truck which is attached to the onsite Commissary II). Each food truck has designated use areas with picnic tables and seating. The activity associated with the five food trucks averages 300-400 customers per day. Five paved parking spaces will be provided for each food truck (consistent with the parking standard proposed in a City resolution for Food Trucks in the Hale'iwa Special District). There will be no wastewater disposal onsite. Food trucks will identify

HANAPOHAKU LLC

Special Management Area Minor Permit Application

LUO Development Standards

The project will adhere to the Development Standards for the B-1 Neighborhood Business district zoning as defined by the LUO. The Development Standards for B-1 Zoning include the following:

Minimum lot area (square feet)		5,000
Minimum lot width and depth (feet)		50
Yards (feet)	Front	10
	Side and rear	0
Maximum building area (percent of zoning lot)		50
Maximum building height (feet)		40

Cost Estimate

A contractor's estimate for the development improvements was prepared under this permit request. SJ Construction Consulting, LLC prepared a market value pricing summary for after-the-fact site work and new development, including: clearing, grading, fill; landscaping, gravel cover, parking lot/sidewalk, IWS system, chain link fence, water line and electrical line.

The total estimated cost for these improvements was calculated at \$330,742.45

Additional costs for the introduction of other new facilities on the property, include: three seating area tents (\$6,000), four portable toilets (\$2,400), six portable trash dumpsters (\$3,900) and electric vehicle charging station (\$3,833). Total cost for these additional support facilities is \$16,133.

HANAPOHAKU LLC

Special Management Area Minor Permit Application

Discussion: No substantial adverse environmental or ecological impacts have been observed as a result of the existing cleared and graded areas, two office buildings, and carport, which have been in place for the past several years. The action will stabilize the cleared area with soils, install additional landscaping and hydromulch groundcover to the graded areas, and install stormwater management controls. These added measures to the property will improve the quality and quantity of runoff on-site, further reducing potential effects to coastal resources and water quality.

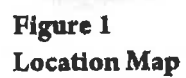
The operation of the food trucks results in increased activity on the subject commercial zoned properties, with an average of 300-400 customers each day. The increased activities are managed carefully to avoid creating adverse environmental or ecological effects. The food trucks are certified by the State DOH. Liquid waste produced by the food trucks is contained and properly disposed off-site. Potential leaks from petroleum and other liquid waste from the food trucks are also managed on-site to prevent soil contamination. Solid waste associated with the food trucks is managed within the on-site trash containers and dumpsters, which are serviced regularly. Patrons of the food trucks are managed within defined seating areas. Portable restrooms and hand wash stations are provided onsite, which are serviced at least twice weekly. Vehicular access is through a central driveway to avoid disturbance to the neighbors, managed onsite with an all-weather asphalt parking area. Drainage and storm runoff is onsite through best management practices and properly designed stormwater controls. Open ground areas of the site which were previously disturbed are being restored with hydromulch to stabilize soils, minimize soil erosion and runoff containing suspended sediment. The overall level of activity and operations on the site, including the managed food truck operations, does not generate adverse cumulative environmental effects.

(3) The Authority Shall Seek to Minimize, Where Reasonable:

- *Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;*
- *Any development which would reduce the size of any beach or other area usable for public recreation;*
- *Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach;*
- *Any development which would substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast; and*
- *Any development which would adversely affect water quality, existing areas of open water free of visible structure, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.*

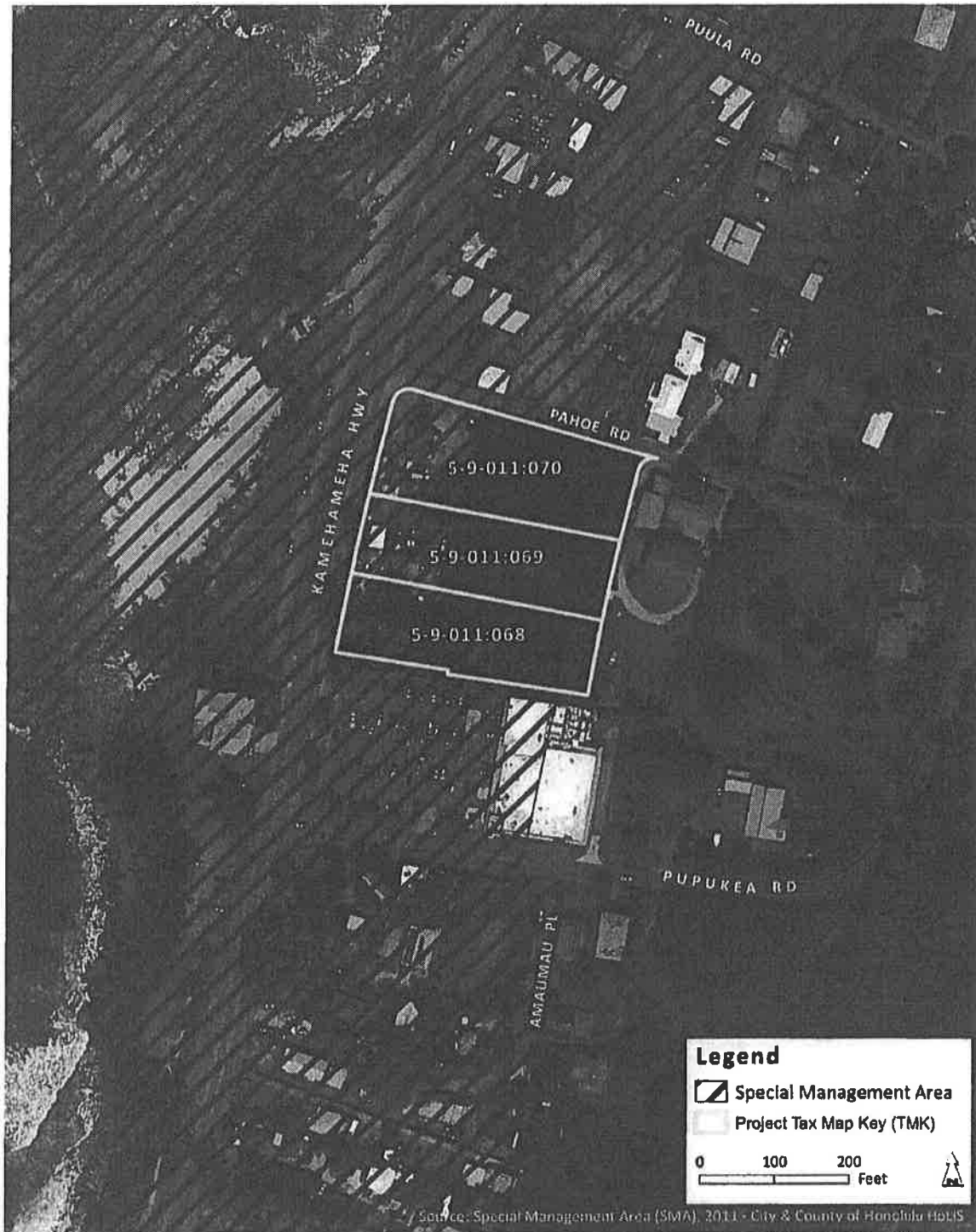
Discussion: The existing buildings which have been in place since 1955, have not interfered with or detracted from the line of sight toward the sea from Kamehameha Highway, nor have they posed

Special Management Area Minor Permit Application



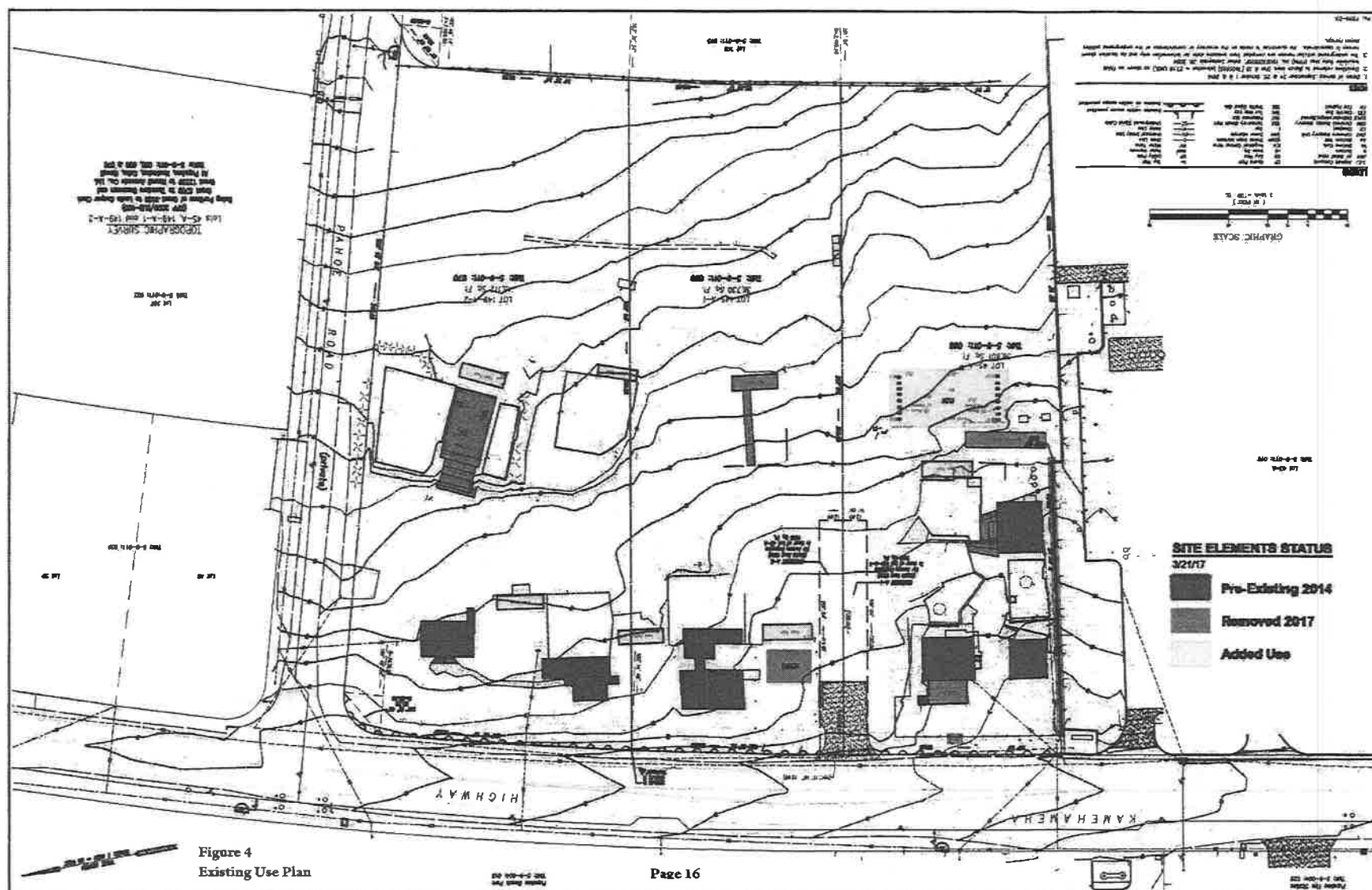
HANAPOHAKU LLC

Special Management Area Minor Permit Application



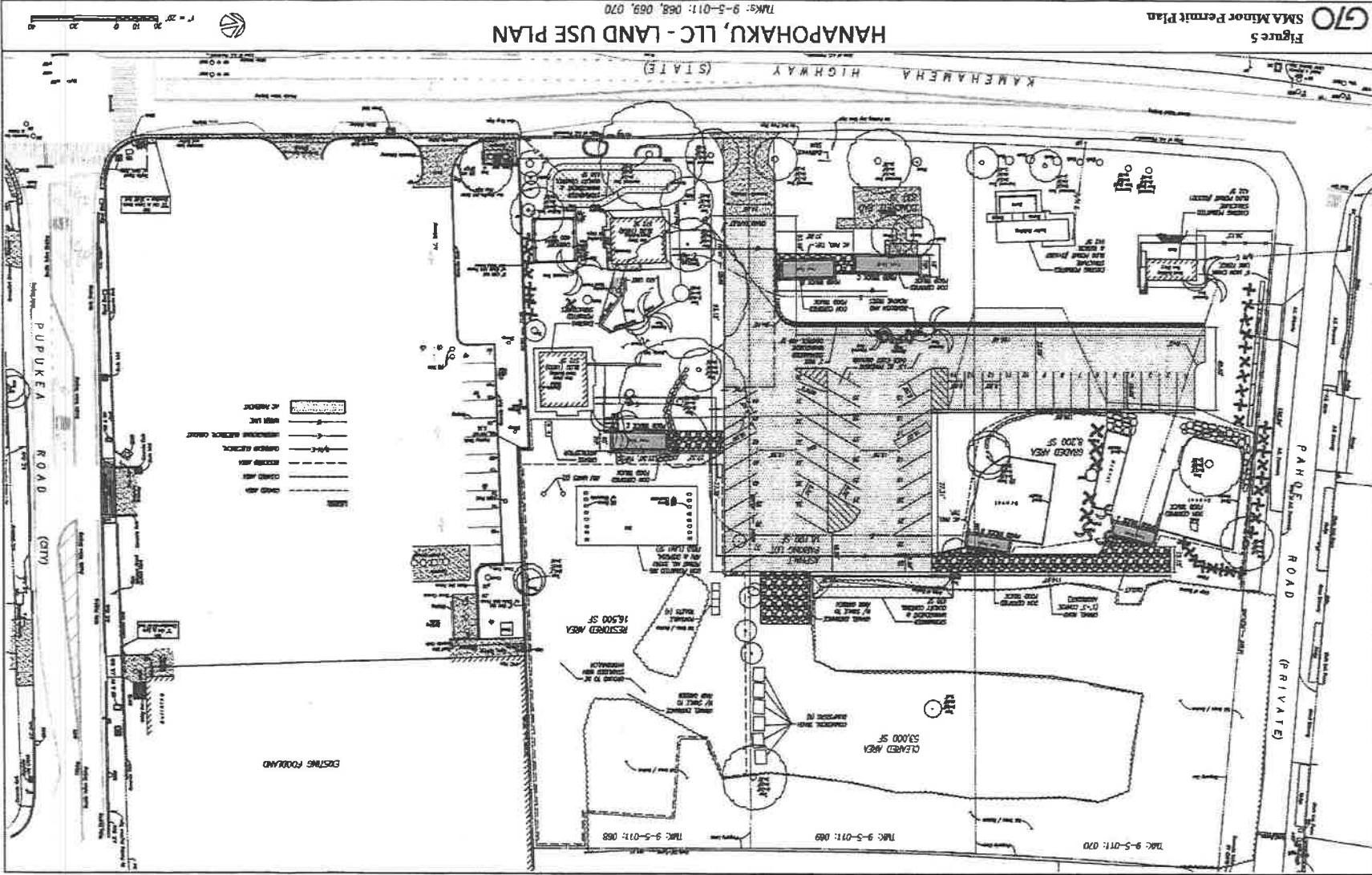
Source: City and County of Honolulu GIS Data

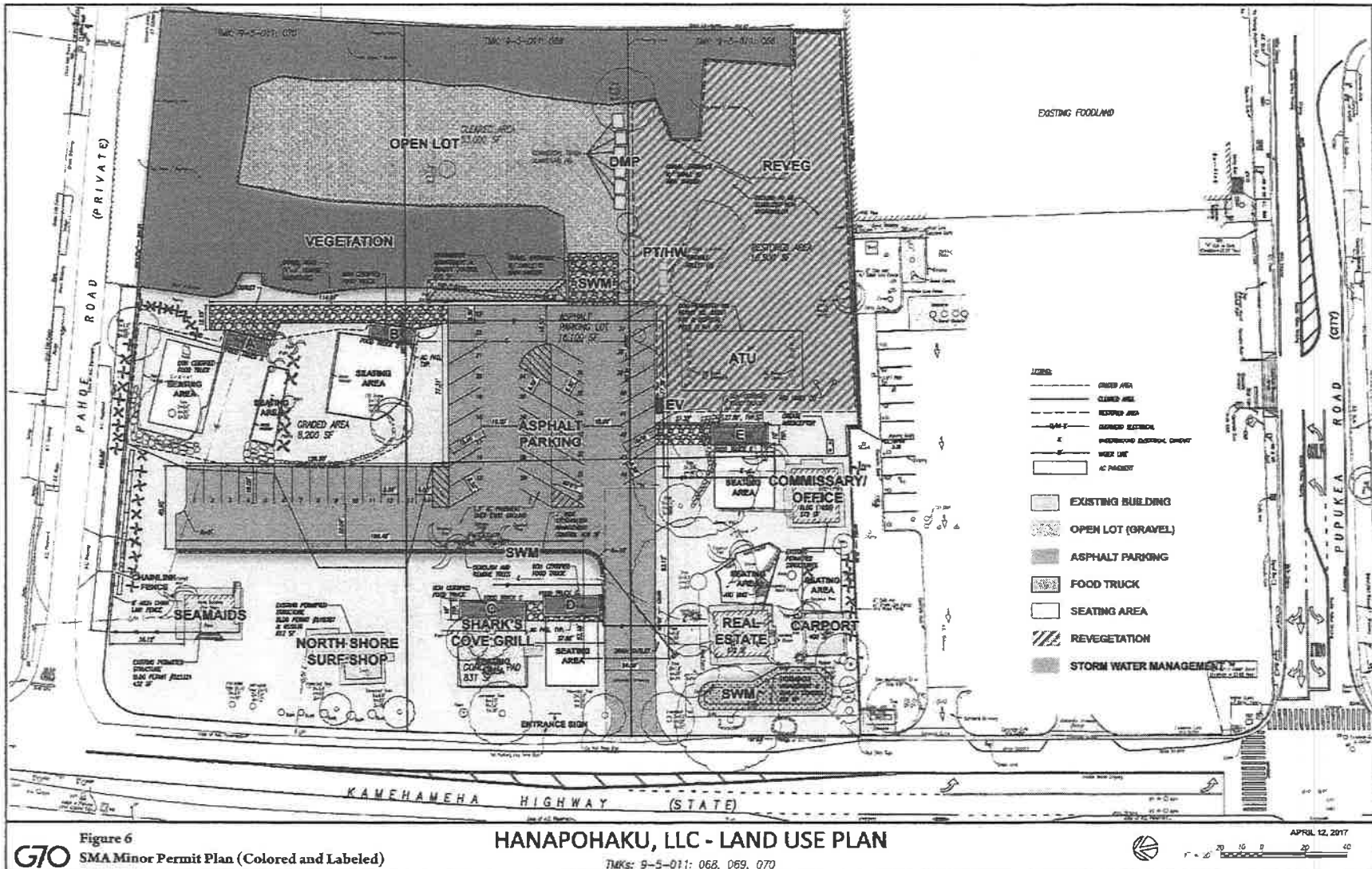
Figure 3
City and County of Honolulu Special Management Area



HANAPOHAKU, LLC - LAND USE PLAN

TAKS: 9-5-011: 068, 069, 070





McCully's Corner
north shore . oahu

G70

McCully's Corner

Figure 7
Entrance Sign

0' 1/2" 1" 2'

A1
SIGNAGE AT ENTRY
04 04 2017

CONTRACTOR'S ESTIMATE FOR ENGINEER



SJ Construction Consulting, LLC

PO Box 37238, Honolulu, HI 96837

www.sjcivil.com; sj@sjcivil.com

Contact: Scott Jennings

Phone: 808-271-5150

Quote To:

Mr. Steven Doo, P.E.
G70
925 Bethel Street, 5th Floor
Honolulu, HI 96813
808-523-5866

Phone:

Date:

April 16 2017

Job Name:

Hanapohaku, LLC - Interim Use Plan

Date of Plans:

Plans provided 3/30/17

Estimate No.:

2017-02

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
SITE IMPROVEMENTS					
1	Temp. Erosion Control Measures, In Place Complete	1.00	LS	9,500.00	9,500.00
2	Site Clearing	1.22	AC	20,000.00	24,334.00
3	Remove Soil Stockpile	35.00	CY	62.00	2,170.00
4	Fill & Excavation	607.00	CY	40.00	24,280.00
5	Site Grading	8,200.00	SF	1.25	10,250.00
6	Entry Sign (2' x 6' on two posts)	1.00	EA	2,589.98	2,589.98
7	Coarse Aggregate Paths to Food Trucks	5.00	EA	1,311.34	6,556.70
8	6' TALL CHAIN LINK FENCE	200.00	LF	37.00	7,400.00
9	Landscaping/Grassing	1.00	LS	12,500.00	12,500.00
10	Aggregate Base Course, In Place Complete	195.00	CY	120.00	23,400.00
11	Conc. Sidewalk/Slab, 4" Thick, In Place Complete	831.00	SF	27.00	22,437.00
12	Asphalt Pads under Trucks (5 ea @ 10' x 27.5')	153.00	SY	56.19	8,597.07
13	Asphalt Pavement, In Place Complete	2,011.00	SY	29.00	58,319.00
14	Pavement Striping	1,000.00	LF	4.50	4,500.00
	SUBTOTAL				\$216,833.75
SEWERAGE SYSTEM					
15	IWS system, In Place Complete	1.00	LS	70,000.00	70,000.00
	SUBTOTAL				\$70,000.00
DRAINAGE SYSTEM					
16	Gravel Entrance	603.00	SF	3.90	2,351.70
17	6" Percolation Trench BMP w/6" Drain Line	260.00	LF	47.00	12,220.00
18	Drain Outlet, In Place Complete	1.00	EA	3,000.00	3,000.00
19	Stormwater Basin	1,220.00	SF	3.95	4,819.00
	SUBTOTAL				\$20,039.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	WATER SYSTEM				
20	2" Water Line	426.00	LF	35.00	14,910.00
	SUBTOTAL				\$14,910.00
	ELECTRICAL SYSTEM				
21	Electrical duct & conductor	413.00	LF	16.00	6,608.00
	SUBTOTAL				\$6,608.00
GRAND TOTAL					\$330,742.45

NOTES:

Assumptions:

1. No rock excavation.
2. No groundwater.
3. Bid item 4 - assume no import. Assume all offhaul.
4. Bid item 10 - this was assumed to be under the asphalt.
5. Bid item 15 - as-builts were used to estimate the cost of the existing IWS system.
6. Bid items 20 & 21 - utility quantities were each reduced by 100 lineal feet to account for reduction in number of food trucks.

Exclusions:

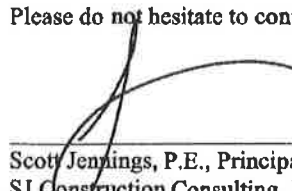
1. Driveway on makai side is existing (not to be built or offhauled).
2. Bond.

Conditions/Comments:

1. Unit prices have been made to positively affect the contractor and should not be relied upon for true unit costs (they have been "unbalanced" to optimize cash flow).

This proposal good for thirty (30) days.

Please do not hesitate to contact me should you have any questions about this proposal.


 Scott Jennings, P.E., Principal
 SJ Construction Consulting, LLC
 808-271-5150
 sj@sjcivil.com

ESTIMATE: 2017-02 - HANAPOHAKU, LLC

OFFICIAL RECEIPT
DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

112680

Date: May 16, 2017

Received From: Group 70 International, Inc.

Two hundred and no/100 DOLLARS

For: 2017/SMA-14 app rev fee

Tax Map Key: 5-9-011: 068, 069 and 070

\$ 200.00

BoH Waterfront Plaza - ✓ #42566 6-4-17 DEPARTMENT OF PLANNING AND PERMITTING

HANAPOHAKU LLC
TMK (1) 5-9-011:068, 069, 070

Special Management Area Minor Permit Application

This Special Management Area Minor Permit application includes the contents required by the City and County of Honolulu Department of Planning and Permitting, pursuant to ROH Chapter 25.

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	Eligibility for Special Management Area Minor Permit	13
	Conformance to City and County of Honolulu Special Management Area Guidelines	18
4.	Exhibits	
	Figures 1-3: Location Map, TMK Parcel Map, SMA Boundary	21, 22, 23
	Figure 4: Existing Use Plan	24
	Figure 5: SMA Minor Permit Plan	25
	Figure 6: Entrance Sign	26
5.	Cost Estimate	
6.	Grading & Drainage Statement	

May 23, 2017

Exhibit M

**CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PLANNING & PERMITTING**
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

LAND USE PERMITS DIVISION MASTER APPLICATION FORM

Additional data, drawings/plans, and fee requirements are listed on a separate sheet titled "Instructions for Filing." **PLEASE ASK FOR THESE INSTRUCTIONS.**

All specified materials described in the "Instructions for Filing" and required fees must accompany this form; incomplete applications will delay processing. You are encouraged to consult with Zoning Division staff in completing the application. Please call the appropriate phone number given in the "Instructions for Filing."

Please print legibly or type the required information.

SUBMITTED FEE: \$ \$600

PERMIT/APPROVAL REQUESTED (Check one or more as appropriate):

Cluster: ☐ Agricultural ☐ Country ☐ Housing Conditional Use Permit: ☐ Minor ☐ Major ☐ Existing Use: _____ (Indicate Type of Use) Environmental Document: ☐ Environmental Impact Statement ☐ Environmental Assessment ☐ Supplemental ☐ Minor Shoreline Structure	☐ Modify Approved Permit: _____ (Indicate Reference File No.) ☐ Plan Review Use Planned Development: ☐ Housing ☐ Commercial (WSD Only) ☐ Resort (WSD Only) ☐ Shoreline Setback Variance Special District Permit: ☐ Minor ☐ Major _____ (Indicate District) ☐ Downtown Height >350 Feet	Special Management Area Use Permit: ☒ Minor ☐ Major ☐ Temporary Use Approval ☐ Variance from LUO Section(s): _____ ☐ Waiver from LUO Section(s): _____ ☐ Zoning Adjustment, LUO Section(s): _____ ☐ HRS Section 201H-38 Project
---	---	--

TAX MAP KEY(S): (1) 5-9-011:068, 069, 070

LOT AREA: 2.72 acres

ZONING DISTRICT(S): B-1 Neighborhood Business

STATE LAND USE DISTRICT: Urban

STREET ADDRESS/LOCATION OF PROPERTY: _____

RECORDED FEE OWNER:

Name (& title, if any) Hanapohaku LLC

Mailing Address 59-716 Kamehameha Highway
Haleiwa, HI 96712

Phone Number 808-779-5733

Signature [Signature]

PRESENT USE(S) OF PROPERTY/BUILDING:

Commercial property with a real estate office, associated
carport, former dentist office, surf shop, food trucks

PROJECT NAME (if any): _____

APPLICANT:

Name Hanapohaku LLC (Andrew Yani)

Mailing Address 59-716 Kamehameha Highway
Haleiwa, HI 96712

Phone Number 808-779-5733

Signature [Signature]

AUTHORIZED AGENT/CONTACT PERSON:

Name G70 (Jeff Overton)

Mailing Address 925 Bethel Street, 5th Floor
Honolulu, HI 96813

Phone Number 808-523-5866

E-mail pupukea@g70.design

Signature [Signature]

REQUEST/PROPOSAL (Briefly describe the nature of the request, proposed activity or project): Hanapohaku LLC is pursuing a Special

Management Area Minor Permit to address past actions which were completed on the property without proper review
under the SMA ordinance (Revised Ordinances of Honolulu, Chapter 25). These items include vegetation clearing, soils disturbance
and restoration, and substantial trash removal prior to Hanapohaku's ownership. Operations include food trucks, seating areas, tents
and umbrellas, portable toilets and a hand wash station, and portable trash dumpsters. Waterlines and electrical conduits are also
included in the plan. This permit also includes a new asphalt parking lot, new chain link fence (200 ft), and stormwater controls that
Hanapohaku is proposing to implement to support commercial activities on the property.

POSSE JOB NO. _____

REV. 2/28/2016

Summary of Fees Paid

Special Management Area Minor Permit Application

Application	\$400
-------------	-------

Processing	\$200
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HANAPOHAKU LLC

Special Management Area Minor Permit Application

1.0 INTRODUCTION

1.1

PROJECT INFORMATION SUMMARY

Applicant:

Hanapohaku LLC
59-716 Kamehameha Highway
Hale'iwa, HI 96712
Contact: Andrew Yani
Phone: (808) 779-5733

Approving Agency:

City and County of Honolulu
Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawai'i, 96813
Contact: Land Use Permits Division
Phone: (808) 768-8000

Name of Action:

Hanapohaku LLC

Planning/Environmental Consultant:

G70
925 Bethel Street, 5th Floor
Honolulu, Hawai'i 96813
Contact: Jeff Overton, AICP LEED AP
Phone: (808) 523-5866

Location:

Pūpūkea, Hale'iwa, O'ahu, Hawai'i (*Fig 1*)

Tax Map Keys (TMK):

(1) S-9-011: 068, 069, 070 (*Figure 2*)

Landowners:

Hanapohaku LLC

Land Area:

2.72 acres

State Land Use District:

Urban District

City and County of Honolulu:

Zoning (Land Use Ordinance):

Neighborhood Business District (B-1)

North Shore Sustainable

Communities Plan:

Rural Community Commercial Center

Special Management Area (SMA):

Entire project area within SMA (*Figure 3*)

Flood Management Zone:

Zone X – Outside of the 500 Year Flood Plain

2.0 WRITTEN DESCRIPTION OF THE PROJECT

Existing Conditions

The project site is located on three parcels designated as TMK (1) 5-9-011:068, 069, and 070. The site is bounded by Kamehameha Highway to the west, Pāhoehoe Road and single family residences to the north and east, and the Foodland Pūpūkea grocery store to the south.

The 2.74-acre site is owned in fee by Hanapohaku LLC, and is currently developed with an existing real estate office and associated carport, a former dentist office, a surf shop and boutique retail. Currently, there are eight mobile food establishments ("food trucks") on the property which operate daily, including a shaved ice trailer. Figure 4 identifies the elements of the existing conditions on this property. The exhibit designates those elements which existed prior to the current ownership, elements which have been added to the property (2014-2016). Figure 4 also highlights elements that were removed in response to City violation notices.

Existing Facilities Permits and Approvals

There are three structures on the property which were constructed in the 1950's prior to the establishment of the Shoreline Management ordinance.

- Real Estate Office
Built in 1955 - 572 SF (exempt from SMA, legal conforming)
- Real Estate Office Carport
Built in 1955 - 400 SF (exempt from SMA, legal conforming)
- Dentist Office
Built in 1956 - 572 SF (exempt from SMA, legal conforming)
Partial Conversion to Commercial Kitchen (2016) DOH Certified (serves Food Truck E)

On July 25, 1978, the property owner (previous) executed a Unilateral Agreement in consideration of a pending zone change for the property from R-6 Residential District to B-1 Neighborhood Business District. The zone change (File number 77/Z-25) was approved by Ordinance 78-76, incorporating the Unilateral Agreement and conditions for development. Three of the commitments included in the Unilateral Agreement included: 1) insurance that the design is "country-like" in style, emphasizing the wooden low-rise Hale'iwa character; 2) installation of improvements on Pāhoehoe Road and the intersection of Pāhoehoe Road and Kamehameha Highway; and 3) the contribution of a pro-rata share of the cost of improving Kamehameha Highway. (Note: The existing permanent structures are consistent with the Country style character. Access to the site does not involve Pāhoehoe Road. The Unilateral Agreement highway improvements at Pāhoehoe Road are not relevant to the property use.)

HANAPOHAKU LLC

Special Management Area Minor Permit Application

SMA Minor Permits and Building Permits were subsequently approved (2001-2002) for the surf shop and retail store built on Parcels 69 and 70.

- North Shore Surf Shop
Built in 2002 - 574 SF (SMA Minor Permit, Building Permit #523321)
- Seamaids Retail Boutique
Built in 2001 - 432 SF (SMA Minor Permit, Building Permit #519387, #655836)

SMA Permit 2001/SMA-14

SMA Permit 2009/SMA-54

The Shark's Cove Grill food truck began operations on the property in 2001, and has operated continuously to the present. The main element is a non-mobile food truck. Along the makai side of the food truck is a wood frame false building front, with painted plywood panels and trim. There are accessory structures associated with this facility, including a wood framed covered lanai with concrete pad to provide a service counter. This food establishment also has a wood fence surrounding an open air storage area in the rear. There is no Building Permit for this establishment and its accessory structures, and no SMA Minor Permit was granted for these structures. The owners do not intend to seek non-conforming status for these structures, will not seek after-the-fact building permits.

State Dept. of Health approval was granted (2016) for the installation of an aerobic treatment unit (ATU) wastewater treatment and disposal unit. The ATU system replaced a pre-existing wastewater system, which services the original buildings on the property built in the late 1950's. The ATU system is discussed as part of the proposed action.

Each of the food trucks operating on the site have State Dept. of Health certification, pursuant to (Sec. 11-50-85 to 91, Hawaii Administrative Rules (HAR)). Each food truck is associated with an approved food establishment. Except for the Shark's Cover Grill, each food truck is moved in accordance with the rules governing mobile food establishments. Two excerpts from the rules are provided below:

Sec. 11-50-86 HAR. (a) Mobile food establishments shall operate out of an approved food establishment, and shall return to the approved food establishment for cleaning and servicing.

Sec. 11-50-91 HAR. (b) All mobile food establishments shall be capable of moving from their vending site at any time. They shall be moved from their vending site to the approved food establishment for cleaning and servicing.

Plans for the continued operation of food trucks on the property, in compliance with Sec 11-50-85 to 91, HAR, is discussed in the proposed action.

Description of Proposed Action

The owners are applying for a Special Management Area (SMA) Minor Permit to address past development actions which were completed on this property without proper review under the SMA ordinance ROH 25. In addition, the SMA Minor Permit will include the new elements required to support commercial activities on the subject property, as identified in Figure 5 – SMA Minor Permit Plan.

Development actions on this property completed during the period 2014 to 2016 which require after-the-fact SMA permitting, include the following items listed and described below.

1. Vegetation Clearing, Soils Disturbance & Restoration

Several actions on the site relate to vegetation clearing and soils disturbance, trash removal, along with actions for planned restoration of non-active site areas. The subject areas on the property are shown in Figure 5.

- Vegetation Clearing & Surface Stabilization

Non-native brush and invasive vegetation (e.g. Haole Koa, California Grass) has been cleared from this property, over an area of approximately 53,000 SF. Initial clearing was completed to remove previously dumped trash and debris dating back over three decades. Roughly 37,000 SF of this area received a layer of recycled crushed concrete to improve vehicle access/parking with minimal soil disturbance.

- Graded Area for Debris Removal

Approximately 8,200 SF of the property was cleared and graded for debris removal and site leveling. This area has been stabilized with gravel ground cover and is being used as a seating area for operation of Food Truck G.

- DOH Approved ATU & Disposal Field

An individual wastewater system was installed in January 2016 with review and approval by the State Dept. of Health, including an Aerobic Treatment Unit (ATU) and subsurface disposal leaching field. The ATU wastewater system has an 800 gal septic tank and 320 gal grease interceptor. The disposal system dimensions are 58 ft x 28 ft. The system receives wastewater from the real estate office and the former dentist office, which includes an office, restroom, and the commercial kitchen. No other source of wastewater is disposed in this system.

- Soil Stockpile from ATU Installation

Soils removed in the installation of the ATU wastewater system were stockpiled at a location in the mauka portion of the property. The stockpiled soils affect an area of approximately 30 ft long and 12 ft wide, with an estimated volume of 65 CY. The soils were relocated from the site to a private agricultural property. The stockpile location will be part of the restoration area, as described below.

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- Restoration Area - Ground Cover & Soils Stabilization

Hydromulch seeding program will be undertaken to restore ground cover vegetation over approximately 16,500 SF of the property. This measure will reduce rainfall runoff, soil erosion and sediment loss from the disturbed area of the property. Best Management Practices BMPs will be implemented, including temporary ground cover and filter sock installation to trap suspended sediments in runoff.

- Best Management Practices

Temporary Best Management Practices (BMPs) during site construction will include the following:

- Temporary stabilized construction entrance – This BMP serves to reduce sediment transport from vehicles entering and exiting the site during construction.
- Drain inlet/Catch basin protection – These BMP measures prevent sediment from running off into storm drains from the construction site, and instead allows on-site sediment to settle.
- Silt fences/compost filter socks – This BMP consists of a mesh sleeve that contains compost, and is used to filtrate stormwater runoff on-site.

Long-Term BMPs installed at the site will include the following measures, and described further below:

- Asphalt pavement
- Landscaping/grassing/planting
- Vegetated swales/rain gardens/infiltration basins

2. Development of New Support Facilities

To support the commercial operations on the property, two development activities will be undertaken, as described below and shown in Figure 5.

Asphalt Parking Lot (New)

To support the code requirements for commercial uses on the property, an all-weather parking surface is required. The total existing retail commercial floor area (2,088 SF) will require five (5) parking spaces and the parking area will include two (2) accessible parking spaces. Each of the DOH certified mobile food trucks will be provided with five (5) parking spaces per food truck. For the five food trucks and retail spaces, there will be a total of 44 parking spaces provided. An additional two (2) parking spaces will be for an electrical vehicle charging station. The asphalt parking lot area will be approximately 18,500 SF. The parking lot will be landscaped in accordance with LUO Sec 21-4.70 (b) to include a minimum of eight (8) 2-in caliper canopy trees.

- Outdoor Trash Enclosure (New)

In accordance with LUO Sec 21-4.70 (d) the outdoor trash storage area including the portable garbage dumpsters will be screened. A new 6 ft. tall wood structure wall will be built to enclose three sides of the trash storage area. The enclosure will be painted to blend with the surrounding area.

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- Stormwater Management Controls (New)

To manage the rainfall runoff from the cleared area of the property and the new asphalt parking area, there will be new storm water management features installed. Three locations will include stone/gravel drainage collection trenches and rain gardens totaling approximately 1,320 SF. These control features will provide effective control of storm runoff flows, capture suspended sediment in runoff, and minimizing the offsite release of runoff flows and eroded soils.

The existing topographic condition allows storm runoff to sheet flow from the northeast side (mauka) towards the highway at an average slope of 5 percent, and enters the State DOT drainage system at Kamehameha Highway. The proposed earthwork will be minimized to maintain the existing flow patterns. Storm runoff will flow overland across undisturbed vegetation, asphalt concrete pavement, infiltration ditches, and grass swales toward a rain garden feature, and eventually the State drainage system. The addition of infiltration trenches, grass swales and rain gardens will improve storm water quality best management practices (BMPs), which address Low Impact Development regulations. The site with improvements will yield a lower design flow per acre by increasing the path of storm runoff by use of these BMPs.

Refer to the attached Grading & Drainage Statement (May 22, 2017) prepared by G70 Civil Engineering for details on drainage flow calculations.

- Chain Link Fence (New)

A new 6 FT tall chain link fence will be installed along 200 ft of the property boundary with Pāhoeh Road. This new fence will restrict patrons from access to/from Pāhoeh Road and the property.

- Sign (New)

A new directional sign will be installed at the driveway entrance to encourage on-site parking.

3. DOH Certified Mobile Food Truck Operations & Support Elements

To support the commercial operations on the property, several activities will be undertaken, as shown in Figure 5.

- DOH Certified Mobile Food Establishments ("Food Trucks") (A-E)

As shown in Figures 4 and 5, the plan calls for five (5) mobile food establishments ("food truck") operating on this commercial zoned property. Three of the eight (8) existing food trucks will be removed, including two food trucks adjacent to the Seamajds and North Shore Surf Shop, and the associated shaved ice trailer. Food Truck C will be replaced with a mobile food establishment which meets State Department of Health rules. Each food truck must and will maintain their own certification with the State Department of Health. Each food truck has designated use areas with picnic tables and seating. The activity associated with the five food trucks averages 300-400 customers per day. Five paved parking spaces (10 ft x 24 ft) will be provided for each food truck (consistent with the parking standard proposed in a City resolution for Food Trucks in the Hale'iwa

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Special District). Each food truck site will be provided with a gravel surface access drive which connects to the all-weather parking area and driveway.

- **Food Truck Liquid Wastewater Management, Spill Containment & Parking Pad**

There will be no wastewater disposal onsite from the food trucks. Liquid wastes generated by each food truck are contained within the food truck. This wastewater is removed during off-site servicing, or via on-site collection by a pumping contractor. Food trucks will identify the commercial entity who pumps their wastewater and frequency thereof. Each food truck asphalt pavement parking pad (10 ft x 24 ft), including stormwater management, gray water spill management, and petroleum leak management BMPs. Extra precautions are taken with the installation and management BMPs of the spill collection zone for each food truck parking pad.

Pollutant Source	Appropriate Site-Specific BMP to be Implemented
General waste/litter	Waste containers will be provided of sufficient size and number to contain domestic wastes. Regularly scheduled clean up and disposal of waste in designated waste container; any overflow shall be cleaned up immediately. General waste/litter shall be removed and properly disposed of offsite at a permitted facility on a weekly basis or sooner, as necessary. Prior to offsite removal, debris shall be stored in covered dumpsters and with sediment and pollution control. Any items that could leach will be stored in covered dumpsters. Any items that could cause sediment will be confined with a compost filter sock.
Materials associated with the operation and maintenance of equipment (e.g. oil, fuel, and hydraulic leakage)	There will be no discharging of fuels, oils, and other pollutants used in the vehicle and equipment operation and maintenance. An effective means of eliminating the discharge of spilled or leaked chemicals, including fuel, from the area where operation and maintenance activities will take place shall be provided, such as: checking all vehicles at the beginning of each work day for leaks; vehicle inspections and fueling shall be in the designated fueling areas; ensuring adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids; using drip pans and absorbents under or around leaky vehicles and equipment; installing compost filter socks around vehicle staging area, disposing of or recycling oil and oily wastes in accordance with federal, state and local requirements; cleaning up spills or contaminated surfaces immediately, using dry clean up measures where possible; storing chemicals in water-tight containers; eliminating the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and, no cleaning of surfaces by hosing down the area.
Sanitary Waste	Portable toilets will be positioned so that they are secured and will not be tipped or knocked over. The portable toilets will be maintained and sanitary waste will be disposed of on a weekly basis. Disposal will be done by an approved DOH pumper at DOH approved disposal sites.

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- Approved Food Establishment (AFE) assigned to Each Food Truck.

Per the State DOH rules, *Sec. 11-50-86 HAR. (a) Mobile food establishments shall operate out of an approved food establishment, and shall return to the approved food establishment for cleaning and servicing.*

The Approved Food Establishment (AFE) assigned to each of the five (5) food trucks operating on the property are listed below:

- A. Food Truck A (North Shore Shrimp Truck)
AFE: Jerry's Pizza, 67-292 Goodale Avenue, Waialua, HI 96791
- B. Food Truck B (The Spot)
AFE: Ke Nui Kitchen, 59-864 Kamehameha Hwy, Haleiwa, HI 96712
- C. Food Truck C* (Shark's Cove Grill) (* as a legal mobile food establishment)
AFE: Ke Nui Kitchen, 59-864 Kamehameha Hwy, Haleiwa, HI 96712
- D. Food Truck D (North Shore Taco Truck)
AFE: North Shore Tacos LLC, 54-296 Kamehameha HWY, Hauula HI 96717
- E. Food Truck E (Elephant Truck)
AFE: Attached to the onsite Commissary II, owned by Hanapohaku LLC.

- Concrete Pad, Seating Areas, Fixed Tents and Umbrella Furniture

Built around 2002, an 831 SF concrete pad was installed to provide seating area for Food Truck C. An aluminum tube framed tent was installed to shade the seating area. Several food trucks include canopy tents or umbrellas to provide shaded seating areas, ranging in areas from approximately 1,000 to 2,000 SF, including circulation aisles. Umbrellas for picnic tables are classified as furniture which are regularly taken down, and are not fixed improvement elements. Seating areas for each food truck are shown in Figure 5, with a summary of areas provided in the table below.

<u>Food Truck</u>	<u>Approximate Seating Area (SF)</u>
Food Truck A	1,995
Food Truck B	1,340
Food Truck C	1,495
Food Truck D	885
Food Truck E	2,620
Approximate Total Area (SF)	8,635

- Portable Toilets and Hand Washing Units

The existing four portable toilets located on the property will be relocated to a more central position with gravel base for improved customer access and maintenance efficiency. A hand washing station will be added adjacent to the portables, with sufficient capacity to accommodate 500 persons per day. The portable toilets and hand washing units are serviced at least twice each week by the vendor, Paradise Lua.

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- **Portable Trash Dumpsters**

The existing six (6) portable trash dumpsters will remain located in the rear area of the property to manage municipal solid waste from the tenant retail users and food truck operations. A private carting service removes accumulated waste from the trash dumpsters once each week. An outdoor trash enclosure will be built to screen these dumpsters, as described previously.

- **Potable Water and Electrical Power**

The plan includes an existing potable water line and electrical power conduit. Each of the five (5) food truck pads will be provided with daily soft connection points for potable water (via hose) and electrical power outlet (via extension cord). Per DOH rules for mobile food establishments, no permanent connections are allowed from the food truck to permanent on-site potable water lines and electrical power conduit.

4. Site Management Measures for Safety and to Minimize Nuisance Effects

To support the commercial operations on the property, several activities will be undertaken, to minimize nuisance disturbance and improve safety.

- **Compliance with City and County of Honolulu Noise Ordinance (ROH Sec 41-31.1)**

No machine or device shall be used where the sound is audible at a distance of 30 feet from the device. Live music and outdoor videos will not be played at the property.

- **Normal Operating Hours, Restricted Access and Security**

Normal operating hours will be 7:00 AM to 9:00 PM. During closed hours, security service will patrol the property to prevent unauthorized entry to the property.

- **Discourage Illegal Parking Along Kamehameha Highway**

The owners and tenants will continue to discourage illegal parking along the mauka shoulder of Kamehameha Highway fronting the property. Orange rubber cones have been placed along the highway shoulder. The State DOT recently installed an additional "no parking" sign on the mauka shoulder close to Pāhoeh Road.

LUO Development Standards

The project will adhere to the Development Standards for the B-1 Neighborhood Business district zoning as defined by the LUO. Development Standards for B-1 Zoning include:

Minimum lot area (square feet)		5,000
Minimum lot width and depth (feet)		50
Yards (feet)	Front	10
	Side and rear	0
Maximum building area (% zoning lot)		50
Maximum building height (feet)		40

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Cost Estimate

SJ Construction Consulting, LLC prepared a market value pricing summary for after-the-fact site work and new development, including: clearing, grading, fill; landscaping, gravel cover, parking lot/sidewalk, IWS system, chain link fence, trash enclosure, water lines and electrical lines. The total estimated cost for improvements is calculated at \$351,908.24.

Additional costs for the introduction of other new facilities on the property, include: three seating area tents (\$6,000), four portable toilets (\$2,400), six portable trash dumpsters (\$3,900) and electric vehicle charging station (\$3,833). Total cost for these additional support facilities is \$16,133.

Based on the professional contractor's estimate prepared by SJ Construction Consulting, LLC, the total market value of after-the-fact site work and new development is less than \$500,000. Pursuant to Chapter 25-1.3 Revised Ordinances of Honolulu (ROH), the Project is eligible for the SMA Minor Permit based on the Project valuation of less than \$500,000.

3.0 ELIGIBILITY FOR SPECIAL MANGEMENT AREA MINOR PERMIT

The following summary presents an evaluation of the Project's eligibility for SMA Minor Permit, addressing the Project valuation, its potential environmental effects with planned mitigation measures, and the consideration of the potential cumulative effects.

Chapter 25-1.3 Revised Ordinances of Honolulu (ROH) defines the requirements for eligibility of a Project for a Special Management Area (SMA) Minor Permit, which states:

"Special Management Area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of \$500,000, and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

Project Valuation is Less Than \$500,000. As presented in Chapter 2, the professional contractor's estimate prepared by SJ Construction Consulting, LLC determined that the total market value of the Project's after-the-fact site work and new development is less than \$500,000. Pursuant to Chapter 25-1.3 Revised Ordinances of Honolulu (ROH), the Project is eligible for an SMA Minor Permit based on its valuation under \$500,000.

Environmental or ecological effect, taking into account potential cumulative effects. The following summary presents an evaluation of the Project's eligibility for SMA Minor Permit, addressing its potential environmental effects with planned mitigation measures, and the consideration of the potential cumulative effects.

This summary further emphasizes an evaluation of the Project's potential effects to coastal zone SMA resources, addressing the categories listed below.

- A. General Plan and Development Plan (land use designations; zoning; & unique features.)
- B. Project site in relation to publicly owned or used beaches, parks and recreation areas; rare, threatened, or endangered species and their habitats; wildlife and wildlife preserves; wetlands, lagoons, tidal lands and submerged lands; fisheries and fishing grounds; other coastal/natural resources.
- C. Relation to historic, cultural, and archaeological resources.
- D. Coastal views from surrounding public viewpoints and from the nearest coastal highway across the site to the ocean or to coastal landform.
- E. Quality of receiving waters and ground water (including potable water) resources. Describe effects on the groundwater recharge cycle within the groundwater control area, show existing and proposed well locations with pumping estimates. Describe effects on receiving waters--streams and ocean waters.

Title 11, Chapter 200 Hawaii Administrative Rules (HAR) defines Cumulative Impact.

"Cumulative Impact" means the impact on the environment which results from the incremental impact action when added to the impact of past, present and reasonably foreseeable future action, regardless of what agency or person which undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Discussion: The Project is eligible for a Special Management Area Minor Permit based on the information provided in the foregoing application Chapters 1 & 2, and the following summary evaluation of potential environmental effects and mitigation, including consideration of the Project's potential to generate cumulative effects.

In consideration of cumulative effects, there is no knowledge of development projects in the past, present or reasonably foreseeable future at sites adjacent to the property or nearby. Across the highway at Sharks Cove in the Pupukea Beach Park, the County Play Court Rehabilitation project was completed in spring 2017, and the County Restroom Rehabilitation is nearing completion (summer 2017). There are no known future projects coming up on the adjacent lands or on areas nearby.

This summary assessment of potential environmental impacts includes information on environmental conditions and resources at the property. Environmental resource information was obtained through current on-site studies (2016-2017). In addition, applicable SMA resource information was obtained from an Environmental Assessment prepared for a prior proposal for this property (Belt Collins Associates; September 2004).

- **Soils:** The soils on the property are classified as Waialua Silty Clay (3 to 8% slopes), which are well drained. The Project has affected soils through vegetation clearing and limited grading (8,200 SF). Soils have been protected through the placement of recycled crushed concrete in circulation areas, which has reduced soils erosion and loss due to wind and storm runoff. Further, the Project will use hydromulch to restore ground cover and protect soils across a 16,500 SF area. BMPs will protect soils from erosion during the construction of planned improvements. There will be limited short term effects to soils, mitigated by stabilization and introduced ground cover. The Project will have minimal long term effects to soils onsite, and no cumulative effects to soils.
- **Topography:** The topography of the property ranges from 46 to 50 feet at the mauka boundary, to approximately 16 to 20 feet along the makai boundary. The Project will have minimal short term and long term effects to topography, and there will no cumulative effects.
- **Flora/Vegetation:** The natural vegetation found on the property includes haole koa thickets, guinea grass, Christmas berry and ivy gourd. The project will restore or stabilize the vegetation clearing in the mauka section of the property with hydromulch across 16,500 SF. The remaining area consists of landscaped grounds, open lot areas stabilized with crushed recycled concrete, a new parking lot, and screening planting added along Pahoe Road. Of note, the large ironwood trees along the highway frontage, over a dozen pre-existing canopy trees, and several dozen palm trees will be retained in the

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Project use area. The Project will have limited short term effects to vegetation during construction. There will be beneficial long term effects through substantial revegetation areas, natural area/buffer vegetation retention, and the introduction of new landscape plantings across the property. No cumulative effects to vegetation are anticipated.

- **Fauna/Wildlife:** Feral mammals such as rats, mice, cats and dogs occur on the property. Avifauna on the property include approximately 12 species of introduced birds. No habitat for endangered or threatened species is found on this land. The Project will have limited short term effects such as temporary disruption of non-native fauna during construction. The Project will restore vegetation areas affected during previous clearing and limited grading. The retention of many trees and natural vegetation areas will maintain faunal habitat on the site, primarily for introduced bird species. There will be beneficial long term effects to fauna by substantial revegetation areas, natural area/buffer vegetation retention, and the introduction of new landscape plantings across the site.

The Pupukeya Marine Life Conservation District is located roughly 500 ft distant. Marine life will not be affected in the MLCDD due to on site measures to manage drainage, runoff and water quality (see Chapter 2 and below). No cumulative effects to terrestrial fauna and marine life are anticipated.

- **Ground Water:** Depth to groundwater in the sedimentary caprock aquifer is approximately 40 ft. Due to its proximity to the shoreline the water quality is moderately saline. There is no drinking water source at or downgradient of the property. The Project is supplied with potable water through the BWS to the real estate office and commissary II, with total demand of less than 800 gpd. Activities on the site will not create adverse effects to groundwater. The DOH-approved ATU system produces very high quality effluent, and represents a major environmental improvement over the old cesspool system built in the 1950's which previously served the property. Stormwater management controls and BMPs will be introduced to protect water quality at the property, including the open lot, and parking areas for vehicles and food trucks. There are no short-term or long-term adverse effects to groundwater quality anticipated, and no cumulative impacts.

- **Drainage and Surface Water:** There is no existing natural stream or man-made drainage way crossing the land or adjacent to the property. Drainage from the property is currently via overland flows across the site, with infiltration into the ground in open space and landscaped areas during typical rainfall events. Stormwater management controls and BMPs will be introduced to protect surface water quality at the property, including the open lot, and parking areas for vehicles and food trucks. Details of the stormwater management system are described in Chapter 2. The storm water controls will greatly improve the current management of rainfall runoff and surface water quality at this property, with beneficial environmental effects. There will be many measures implemented by the Project under County Grading Permit conditions which will strictly limit the short-term construction period erosion. The installation of on-site stormwater control measures will ensure that there will be no long-term adverse effects to surface water quality, and no resulting cumulative impacts to surface water quality.

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- Historic, Archaeological and Cultural Resources: There have been several archaeological investigations conducted for this property including Pacific Legacy (2004) and Keala Pono Archaeology (2017). The findings from these studies, including subsurface testing, confirmed that the project area is not anticipated to contain archaeological resources of significance. Cultural practices and resources at this location are not affected. There will be no short-term construction phase impacts or long-term adverse effects to archaeological and cultural resources, and no cumulative impacts are anticipated.
- Coastal Views: The project will not have an adverse effect on significant coastal views, which are views in the makai direction from the park and highway. The Project is located on the mauka side of Kamehameha Highway. There will be no short-term impacts or long-term adverse effects to coastal views, and no cumulative impacts are anticipated.
- North Shore Sustainable Communities Plan: Approved in 2011, the North Shore Community, North Shore Neighborhood Board No. 27, City Planners and the Honolulu City Council all decided to designate the roughly 4.5 ac area between Pupukea Road and Pahoe Road as a "Rural Community Commercial Center". The following list highlights key aspects of the SCP guidance, with a discussion that demonstrates Plan consistency.
 - *Goods & services to meet the needs of surrounding communities*
 - *Attract visitor and residents from outside the immediate community*
 - *Grocery stores, sundries, restaurants, other services/shops catering to residents/visitors*
 - *Smaller in scale typically found "Country Town" – Haleiwa is designated a Country Town*
 - *Buildings one- and two-stories in height*
 - *Clustered commercial uses vs spreading along Highway*
 - *Reflect the rural character and compatible with adjoining area*
 - *Safe and convenient transportation and access*
 - *Emphasis on Pedestrian and bicycle friendly – crosswalks, pathways, bike racks*
 - *Locate parking behind buildings and landscaping*

Discussion: The Project will continue to provide goods and services to meet the needs of the surrounding community, including: surf boards, surfing gear, apparel, real estate services, food commissary, and five food trucks. The food trucks provide a needed variety of food choices at affordable pricing for residents and area visitors. The Project is small in scale with four one-story buildings. The Project uses are clustered to avoid spreading along the highway, and reflect the rural character of the adjoining area. A single driveway access provides safe and convenient access, and no connection to Pahoe Road to respect the neighbors. People can easily access the property as pedestrians and via bicycle, with a crosswalk nearby at the intersection of Pupukea Road. Parking is located behind buildings, and landscaping is provided in the parking area and along neighboring roadway.

Project Actions/Effects Not Applicable to SMA & Coastal Zone Resource Consideration

The Project uses and activities have effects on the site and area in categories that are not evaluated in the SMA Minor permit review, since they are not applicable to coastal zone resource considerations. These include categories such as: climate, natural hazards, roadways and traffic, acoustics/noise, air quality, hazardous substances, public services, demographic and economic conditions, non-coastal views and aesthetics, and the use of electrical power and communications.

Of these concerns, the greatest concern voiced by neighbors and the community is the vehicle traffic and circulation associated with the Project. It is recognized that Kamehameha Highway is a busy thoroughfare which becomes congested due to activities in the vicinity of the Pupukea Foodland and the Sharks Cove area. As stated previously in Chapters 1 and 2 of this application, the vehicles entering and leaving the Project site will be accommodated with the existing driveway. There will be no vehicle access via Pahoe Road. The parking area and overflow lot will accommodate the current peak use periods particularly with the reduction in the number of food trucks. Parking along the highway frontage is discouraged with the No Parking signs and tall orange cones placed along the highway. The addition of an entry sign will help orient drivers to the Project entrance. Measures are planned to also help orient pedestrians at the Project to cross at the existing highway crosswalk at Pupukea Road, and to discourage mid-block crossing.

Conclusion of the Evaluation of Environmental Effects and Potential Cumulative Impacts

The foregoing evaluation documents that the actions associated with the Project are not anticipated to generate substantial adverse environmental or ecological effects. The potential for adverse effects to coastal resources of the Special Management Area will be minimized and mitigated through the implementation of on-site mitigation measures.

This analysis further considered the potential for the Project to generate cumulative effects as an incremental impact action which, in combination with other known off-site actions, could collectively create significant effects over time. There are no planned future projects in the adjacent or nearby area. With consideration of on-site measures to minimize and mitigate potential impacts, there were no findings of potential cumulative effects to coastal resources in the Special Management Area.

4.0 CONFORMANCE TO CITY AND COUNTY OF HONOLULU SPECIAL MANGEMENT AREA GUIDELINES

(1) *All Development in the Special Management Area shall be subject to reasonable terms and conditions set by the council in order to ensure:*

- *Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;*
- *Adequate and properly located public recreation areas and wildlife preserves are reserved;*
- *Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and*
- *Alternations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation or failure in the event of earthquake.*

Discussion: The boundary of the project site is located approximately 150-200 feet southeast of the public access at Pūpūkea Beach Park. The existing built structures on the site have not posed adverse effects on public access to beaches, recreation areas, or natural reserves, or caused detrimental effects to water resources and scenic and recreational amenities. The proposed uses will not adversely affect access to existing public shoreline or recreation areas. No wildlife preserves or public areas are anticipated to be affected by the action, which includes grading and landscape vegetation installations, as well as added asphalt parking areas and associated stormwater management controls. Surface runoff may increase due to the added asphalt parking lot. The proposed stormwater management controls will be installed to mitigate stormwater runoff impacts. Views from Kamehameha Highway will remain in their current state, with some seating areas relocated away from the area adjacent to the highway.

(2) *No development shall be approved unless the council has first found that:*

- *The development will not have any substantial, adverse environmental or ecological effect except such adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or compelling public interests. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;*
- *The development is consistent with the objectives and policies set forth in Section 25-3.2 and area guidelines contained in Section 205A-26, Hawai'i Revised Statutes; and;*
- *The development is consistent with the County General Plan, Development Plans, Zoning and subdivision codes and other applicable ordinances.*

Discussion: No substantial adverse environmental or ecological impacts have been observed as a result of the existing cleared and graded areas, two office buildings, and carport, which have been in place for the past several years. The action will stabilize the cleared area with soils, install additional landscaping and hydromulch groundcover to the graded areas, and install stormwater management controls. These

added measures to the property will improve the quality and quantity of runoff on-site, further reducing potential effects to coastal resources and water quality.

The operation of the food trucks results in increased activity on the subject commercial zoned properties, with an average of 300-400 customers each day. The increased activities are managed carefully to avoid creating adverse environmental or ecological effects. The food trucks are certified by the State DOH. Liquid waste produced by the food trucks is contained and properly disposed off-site. Potential leaks from petroleum and other liquid waste from the food trucks are also managed on-site to prevent soil contamination. Solid waste associated with the food trucks is managed within the on-site trash containers and dumpsters, which are serviced regularly. Patrons of the food trucks are managed within defined seating areas. Portable restrooms and hand wash stations are provided onsite, which are serviced at least twice weekly. Vehicular access is through a central driveway to avoid disturbance to the neighbors, managed onsite with an all-weather asphalt parking area. Drainage and storm runoff is onsite through best management practices and properly designed stormwater controls. Open ground areas of the site which were previously disturbed are being restored with hydromulch to stabilize soils, minimize soil erosion and runoff containing suspended sediment. The overall level of activity and operations on the site, including the managed food truck operations, does not generate adverse cumulative environmental effects.

(3) The Authority Shall Seek to Minimize, Where Reasonable:

- *Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;*
- *Any development which would reduce the size of any beach or other area usable for public recreation;*
- *Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach;*
- *Any development which would substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast; and*
- *Any development which would adversely affect water quality, existing areas of open water free of visible structure, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.*

Discussion: The existing buildings which have been in place since 1955, have not interfered with or detracted from the line of sight toward the sea from Kamehameha Highway, nor have they posed adverse impacts to water quality near the site. There will be no adverse impact to public access, public beaches, or recreation areas as a result of the proposed activities. The proposed stormwater management controls will improve stormwater quality and quantity of runoff on-site.

The operation of the food trucks results in increased activity on the subject commercial zoned properties, with an average of 300-400 customers each day. The increased activities are managed carefully to avoid creating adverse environmental or ecological effects. Liquid waste produced by the DOH-certified food trucks is contained and properly disposed off-site. Potential leaks from petroleum

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and other liquid waste from the food trucks are also managed on-site to prevent soil contamination. Solid waste associated with the food trucks is managed within the on-site trash containers and dumpsters, which are serviced regularly. Patrons of the food trucks are managed within defined seating areas. Portable restrooms and hand wash stations are provided onsite, which are serviced at least twice weekly. Vehicular access is through a central driveway to avoid disturbance to the neighbors, managed onsite with an all-weather asphalt parking area. Drainage and storm runoff is onsite through best management practices and properly designed stormwater controls. Open ground areas of the site which were previously disturbed are being restored with hydromulch to stabilize soils, minimize soil erosion and runoff containing suspended sediment. The overall level of activity and operations on the site, including the managed food truck operations, does not generate adverse effects to water quality, fishing areas, wildlife habitats, or agricultural uses of land.

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Special Management Area Minor Permit Application

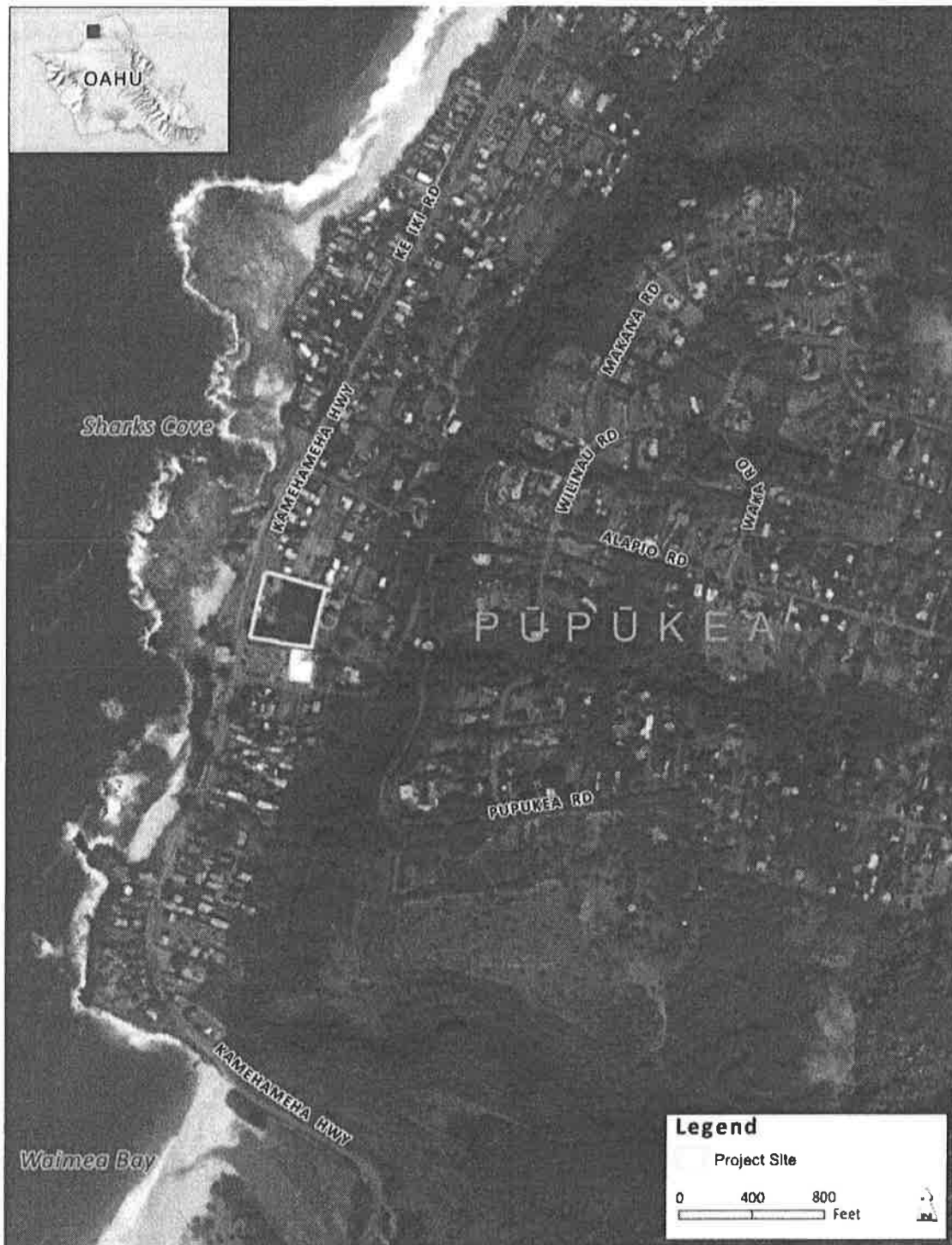
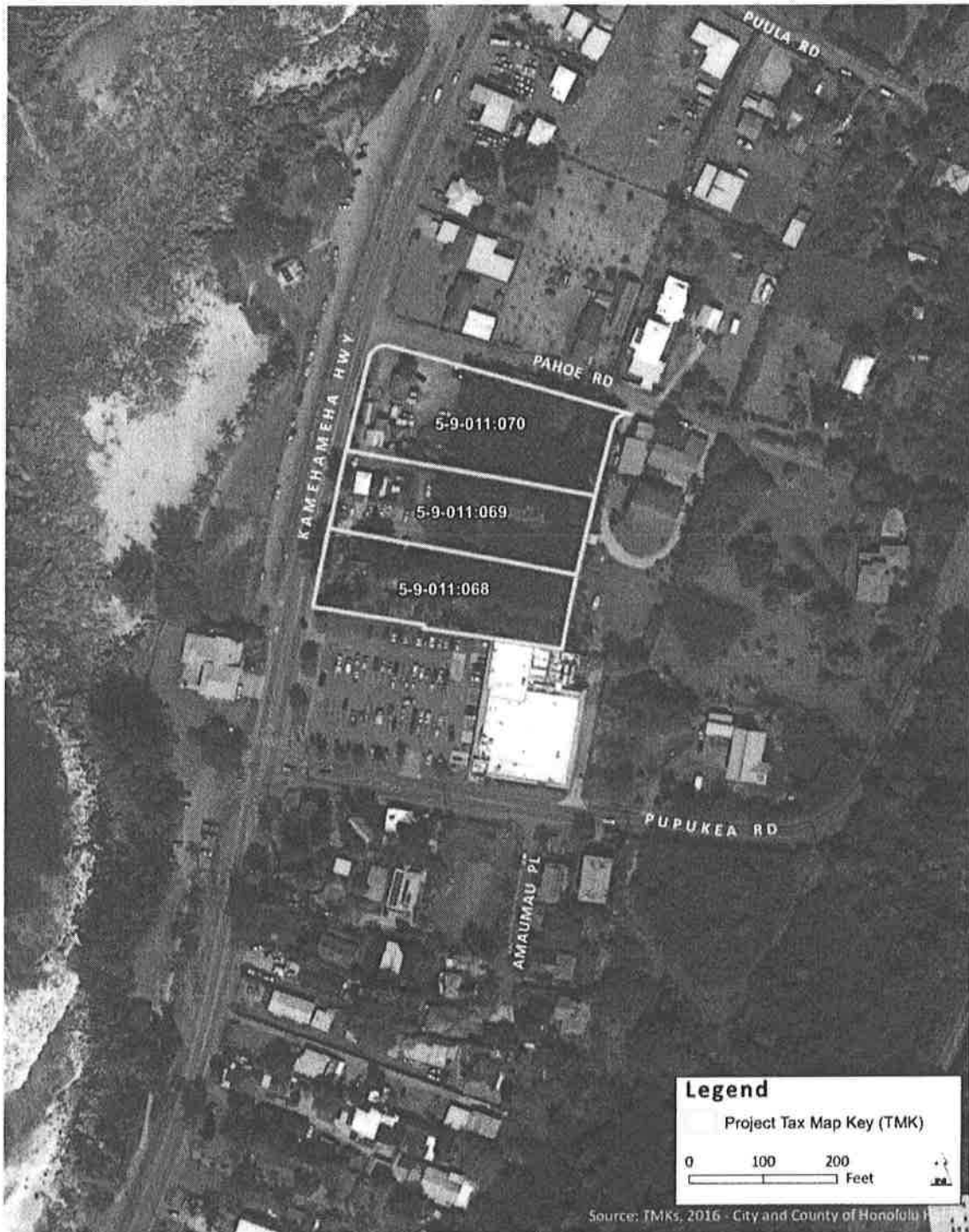


Figure 1
Location Map

HANAPOHOKU LLC

Special Management Area Minor Permit Application

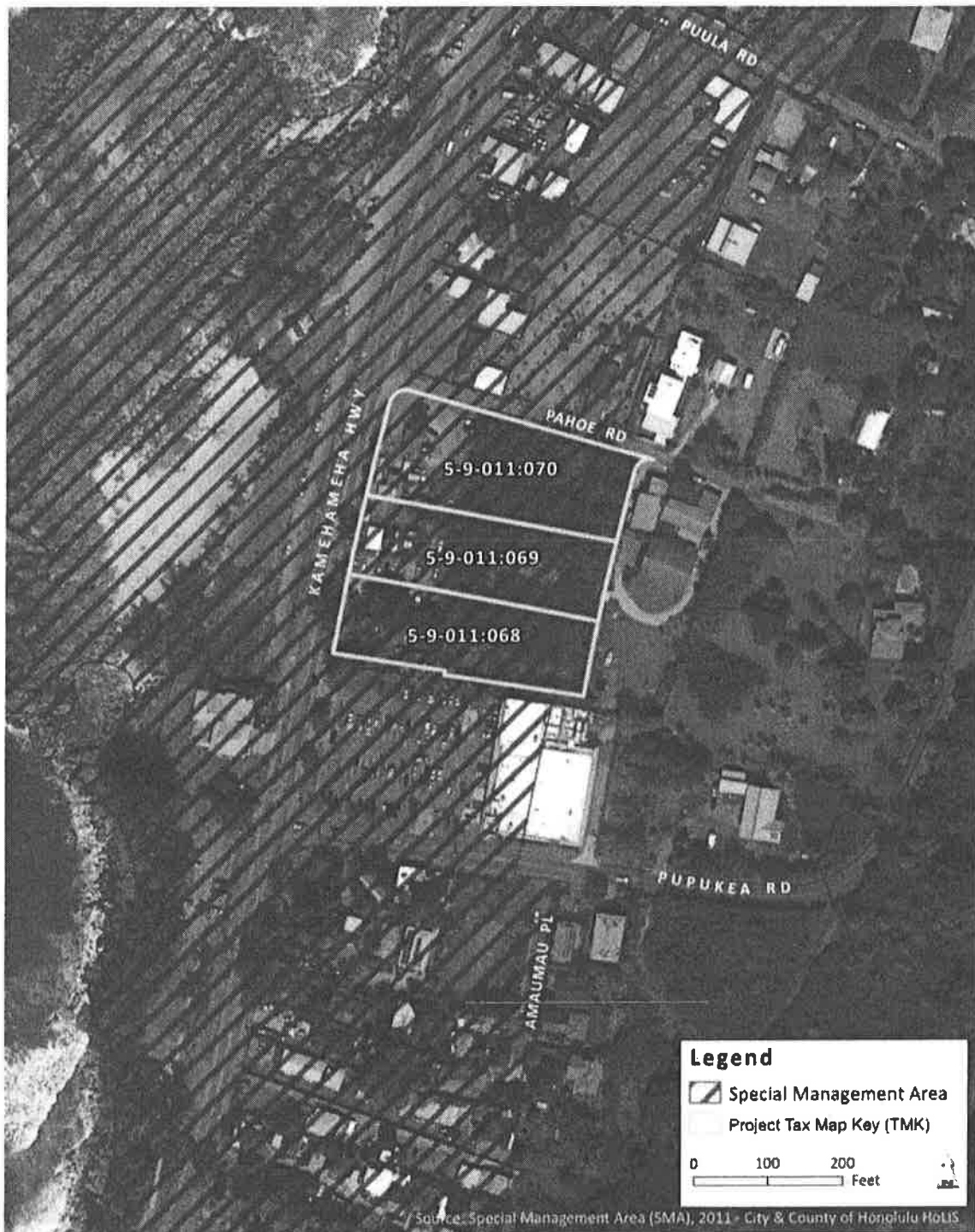


Source: GIS Data, State of Hawai'i

Figure 2
City and County of Honolulu, TMK Parcel Map of Project Area

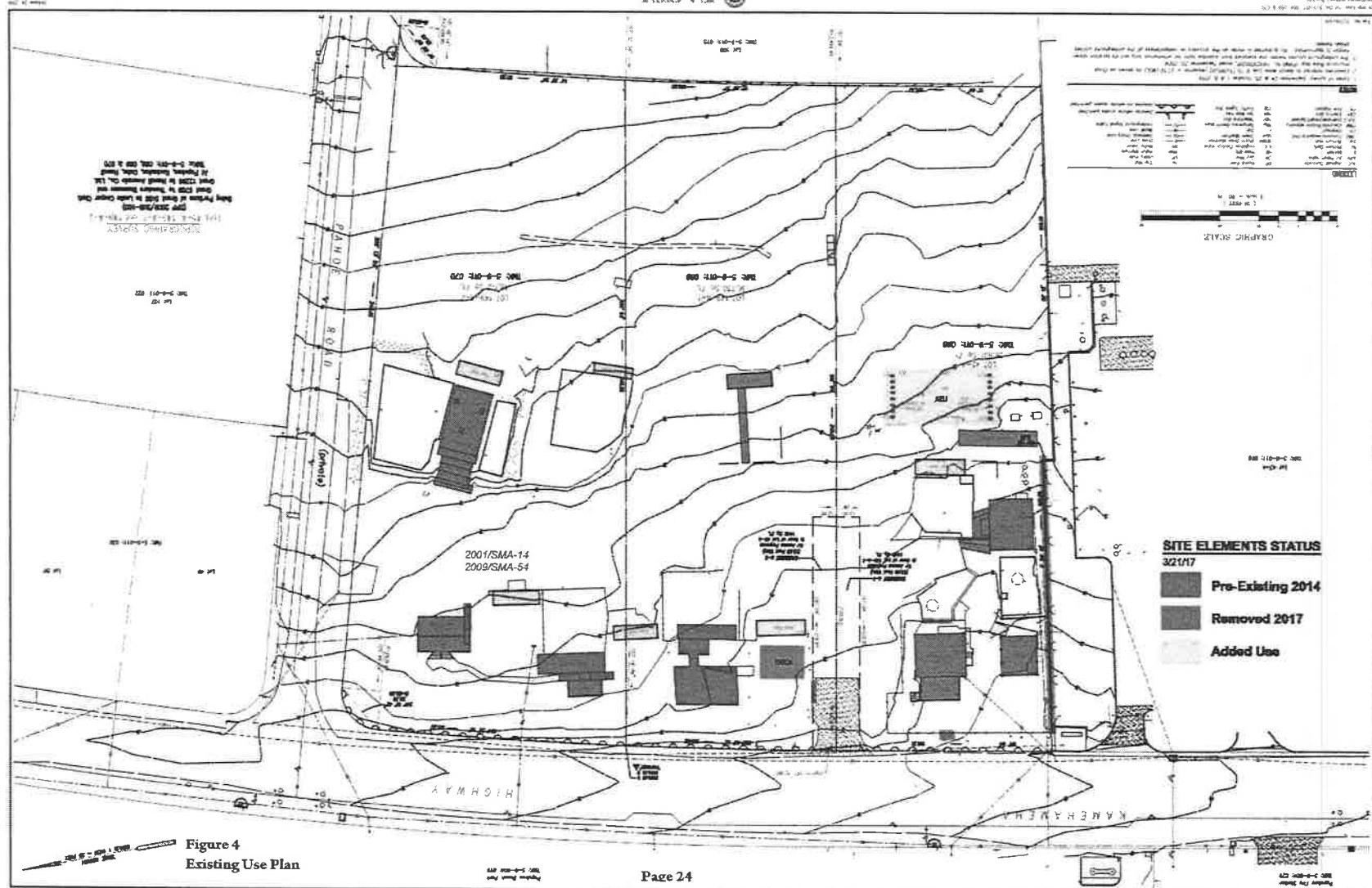
HANAPOHAKU LLC

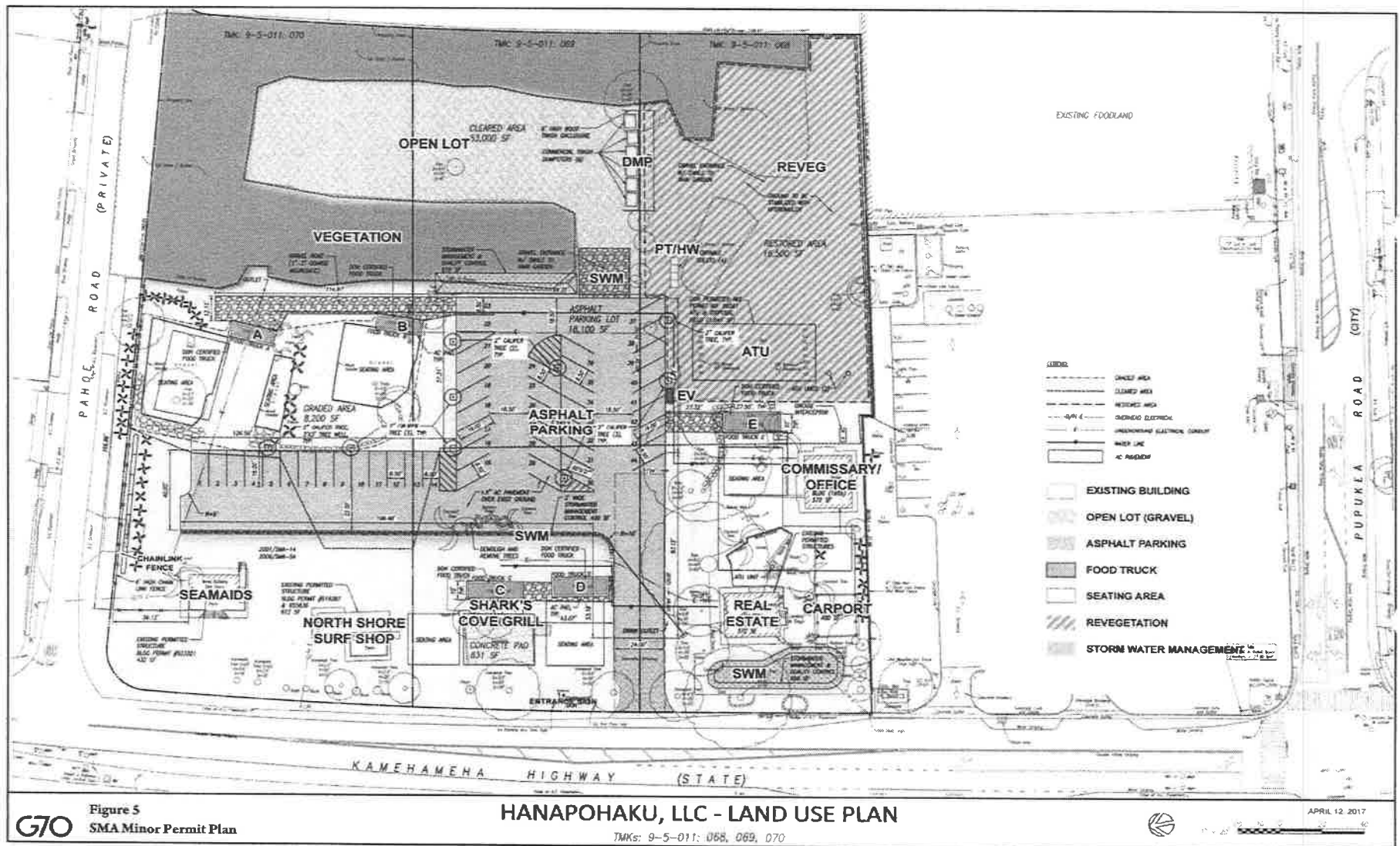
Special Management Area Minor Permit Application

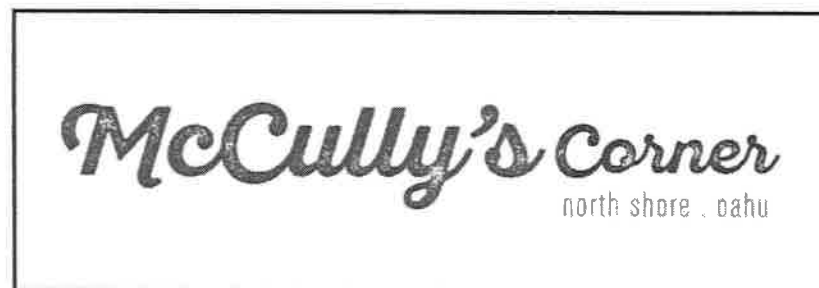


Source: City and County of Honolulu GIS Data

Figure 3
City and County of Honolulu Special Management Area







G70

McCully's Corner

Figure 6
Entrance Sign



A1
SIGNAGE AT ENTRY

04 04 2017

PRODUCTION OF EXISTING COMMERCIAL ZONING SIGNAGE

CONTRACTOR'S ESTIMATE FOR ENGINEER



SJ Construction Consulting, LLC

PO Box 37238, Honolulu, HI 96837

www.sjcivil.com; sj@sjcivil.com

Contact: Scott Jennings

Phone: 808-271-5150

Quote To:

Mr. Steven Doo, P.E.
G70
925 Bethel Street, 5th Floor
Honolulu, HI 96813
808-523-5866

Date:

April 16 2017

Job Name:

Hanapohaku, LLC - Interim Use Plan

Date of Plans:

Plans provided 3/30/17

Estimate No.:

2017-02A

Phone:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
SITE IMPROVEMENTS					
1	Temp. Erosion Control Measures, In Place Complete	1.00	LS	3,696.00	3,696.00
2	Site Clearing	1.22	AC	15,708.75	19,112.84
3	Remove Soil Stockpile	35.00	CY	61.65	2,157.75
4	Fill & Excavation	607.00	CY	36.50	22,155.50
5	Site Grading	8,200.00	SF	1.20	9,840.00
6	Entry Sign (2' x 6' on two posts)	1.00	EA	2,583.50	2,583.50
7	Coarse Aggregate Paths to Food Trucks	5.00	EA	1,308.05	6,540.25
8	6' Tall Chain Link Fence	200.00	LF	35.65	7,130.00
9	6-foot High Wood Trash Enclosure	1.00	LS	7,777.90	7,777.90
10	Landscaping/Grassing	1.00	LS	14,849.35	14,849.35
11	Canopy Trees (2" caliper w/3' x 3' tree well)	10.00	EA	1,484.95	14,849.50
12	Aggregate Base Course, In Place Complete	195.00	CY	115.95	22,610.25
13	Conc. Sidewalk/Slab, 4" Thick, In Place Complete	831.00	SF	26.50	22,021.50
14	Asphalt Pads under Trucks (5 ea @ 10' x 27.5')	153.00	SY	56.05	8,575.65
15	Asphalt Pavement, In Place Complete	2,011.00	SY	34.45	69,278.95
16	Pavement Striping	1,000.00	LF	5.35	5,350.00
	SUBTOTAL				\$238,528.94
SEWERAGE SYSTEM					
17	IWS system, In Place Complete	1.00	LS	70,195.25	70,195.25
	SUBTOTAL				\$70,195.25
DRAINAGE SYSTEM					
18	Gravel Entrance	603.00	SF	3.90	2,351.70
19	6" Percolation Trench BMP w/6" Drain Line	260.00	LF	46.55	12,103.00
20	Drain Outlet, In Place Complete	1.00	EA	2,850.90	2,850.90

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
21	Stormwater Basin	1,220.00	SF	3.90	4,758.00
	SUBTOTAL				\$19,711.90
	WATER SYSTEM				
22	2" Water Line	426.00	LF	34.60	14,739.60
	SUBTOTAL				\$14,739.60
	ELECTRICAL SYSTEM				
23	Electrical duct & conductor	413.00	LF	15.45	6,380.85
	SUBTOTAL				\$6,380.85
GRAND TOTAL					\$351,908.24

NOTES:

Assumptions:

1. No rock excavation.
2. No groundwater.
3. Bid item 4 - assume no import. Assume all offhaul.
4. Bid item 12 - this was assumed to be under the asphalt.
5. Bid item 17 - as-builts were used to estimate the cost of the existing IWS system.
6. Bid items 22 & 23 - utility quantities were each reduced by 100 lineal feet to account for reduction in number of food trucks.

Exclusions:

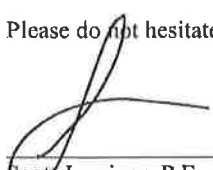
1. Driveway on makai side is existing (not to be built or offhauled).
2. Bond.

Conditions/Comments:

None at this time.

This proposal good for thirty (30) days.

Please do not hesitate to contact me should you have any questions about this proposal.


 Scott Jennings, P.E., Principal
 SJ Construction Consulting, LLC
 808-271-5150
 sj@sjcivil.com

GRADING & DRAINAGE STATEMENT

**Hanapohaku, LLC
DPP File No: 2017/SMA-14
Tax Map Keys: (1) 9-5-011:068, 069 & 070**

PREPARED BY

**Group 70 International, Inc.
dba G70
925 Bethel Street, 5th Floor
Honolulu, Hawaii 96813**

May 22, 2017

The proposed Hanapohaku, LLC, identified as TMKs: 9-5-011:068, 069 & 070 and located in Pupukea, Haleiwa, Oahu. The site is bounded by Kamehameha Highway to the west, Pahoe Road and single family residences to the north and east, and Pupukea Foodland to the south.

The existing site has three (3) existing buildings and mobile food trucks situated along the Kamehameha Highway side of the property. The mauka portion of site is mostly undeveloped with vegetation. The existing topographic condition allows storm runoff to sheet flow from the northeast side (mauka) towards the highway at an average slope of 5-percent (5%) and enters the Hawaii Department of Transportations, Highways Division's (HDOT) drainage system.

The proposed grading for Hanapohaku, LLC will be minimized by maintaining the existing flow patterns. Storm runoff from the project site will flow overland across undisturbed vegetation, asphalt concrete pavement, infiltration ditches, and grass swales towards a rain garden and HDOT's drainage system. The addition of infiltration trenches, grass swales, and rain gardens will provide storm water quality best management practices (BMPs), which address Low Impact Development regulations. The developed site will yield a lower design flow per acre by increasing the path of storm runoff by use of these BMPs.

The existing and developed hydrologic conditions for the proposed Hanapohaku, LLC, as described below, are based upon the Rational Method, and in accordance with the City and County of Honolulu's Rules Relating to Storm Drainage Standards (January 2000), as amended:

Q	=	Runoff in cubic feet per second (CFS)
C	=	Runoff Coefficient
I	=	Rainfall Intensity, inches/hour
A	=	Drainage Area, acres

Existing Condition:

Runoff Coefficient, C: Table 2, page 22
Business Areas, C = 0.65

Time of Concentration, Tc: Plate 3, page 25
490' @ 5.00% grass surface = 20 minutes

1-Hour Rainfall Intensity, i: Plate 1, page 23
i(10) = 3.00 inches/hour for Tm(10)

Correction Factor, CF: Plate 4, page 25
Using Tc = 20 minutes, CF = 1.80

Rainfall Intensity, I:
I(10) = (3.00 inches/hour)(1.80) = 5.40 inches/hour

Design Flow per Acre, Q/acre
Q(10) = C x I(10) = (0.65)(5.40) = 3.51 CFS/acre

Proposed Condition:

Runoff Coefficient, C: Table 2, page 22
Business Areas, C = 0.85

Time of Concentration, Tc: Plate 3, page 25
200' @ 5.00% grass surface = 14 minutes
140' @ 5.00% paved surface = 6 minutes
75' @ 2.00% drain line = 6 minutes
25' @ 2.00% grass surface = 9 minutes

35 minutes

1-Hour Rainfall Intensity, i : Plate 1, page 23
 $i(10) = 3.00$ inches/hour for $T_m(10)$

Correction Factor, CF: Plate 4, page 25
Using $T_c = 35$ minutes, $CF = 1.35$

Rainfall Intensity, i :
 $i(10) = (3.00 \text{ inches/hour})(1.35) = 4.05$ inches/hour

Design Flow per Acre, Q/acre
 $Q(10) = C \times i(10) = (0.85)(4.05) = 3.44$ CFS/acre

The drainage report computes the design flow per acre for developed conditions to be 3.44 CFS/acre, which indicates that the developed flows from the proposed project will not exceed the original design flows of 3.51 CFS/acre.

In conclusion, the proposed grading and drainage for Hanapohaku, LLC, as indicated on the Land Use Plan plans prepared by G70, will not result in any increase in design flows from the project to the HDOT drainage system. Therefore, the proposed development of Hanapohaku, LLC will not create any adverse drainage impacts to the surrounding properties.

GROUP 70 INTERNATIONAL, INC.
dba G70



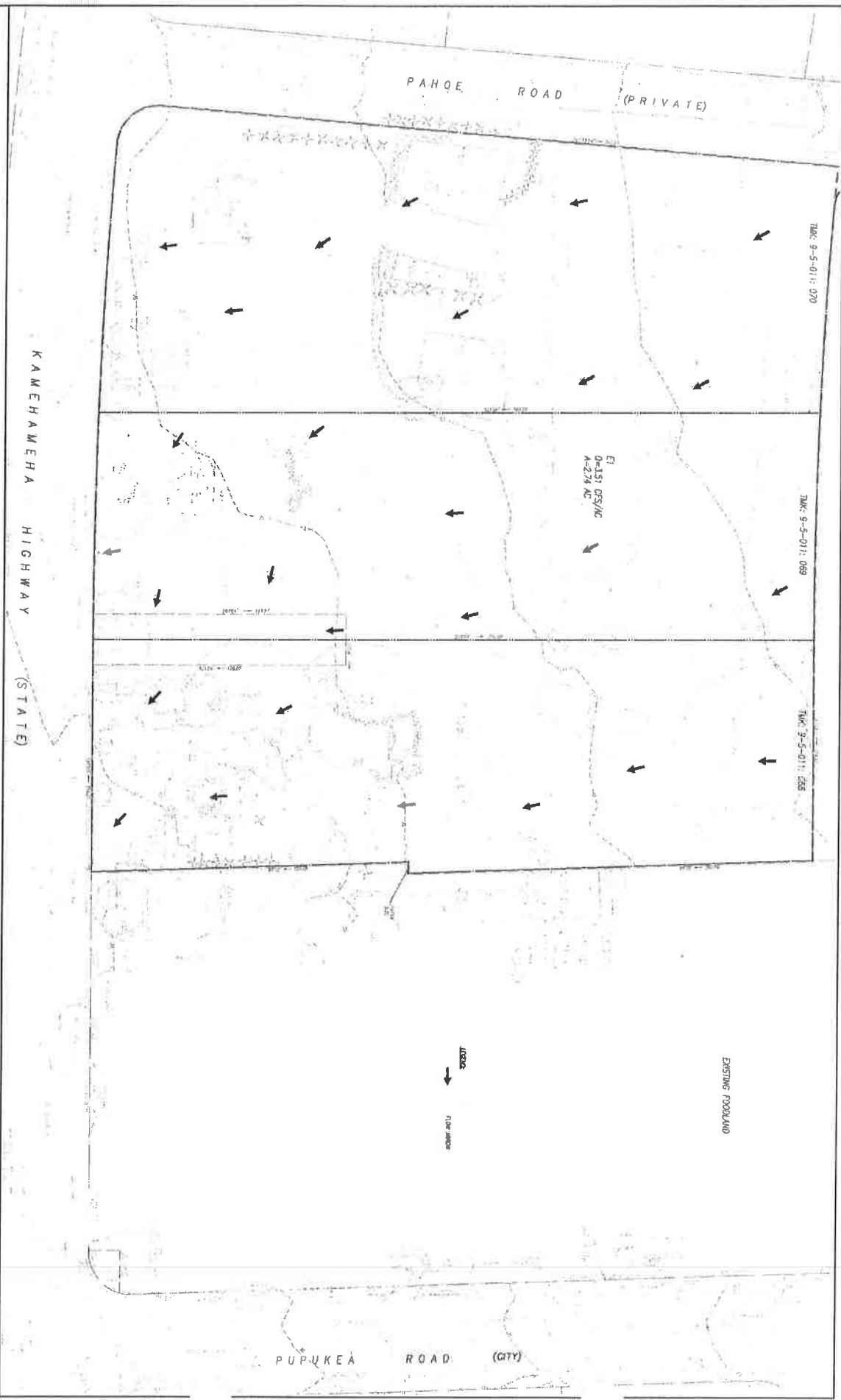
A handwritten signature in black ink, appearing to read "Paul T. Matsuda", written over a horizontal line.

Paul T. Matsuda, PE, LEED AP
Exp. 4/30/18

G70

HANAPOHAKU, LLC - EXISTING DRAINAGE PLAN

TAKS: 9-5-011: 068, 069, 070



G70

HANAPOHAKU, LLC - PROPOSED DRAINAGE PLAN

TAKS: 9-5-011: 068, 069, 070



KAMEHAMEHA HIGHWAY (STATE)

PAHOE ROAD (PRIVATE)

PUPUKEA ROAD (CITY)

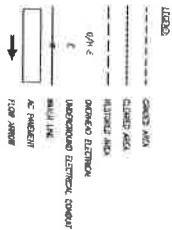
TAKS: 9-5-011: 070

TAKS: 9-5-011: 069

TAKS: 9-5-011: 068

PT
Q=3.44 CFS/AC
K=2.74 AC

EXISTING FOOTLAND



CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing document was duly served by hand delivery upon the party listed below, and a courtesy copy was emailed to the Applicant at Jeff@G70.design.

Ms. Kathy K. Sokugawa
Director, Planning & Permitting
City & County of Honolulu
Frank F. Fasi Municipal Building
650 South King Street, 7th Floor
Honolulu, HI 96812
By email to: ksokugawa@honolulu.gov

DATED: Honolulu, Hawai'i, September 22, 2017.


Denise Antolini
President
MĀLAMA PŪPŪKEA-WAIMEA

MARGARET WILLE & ASSOCIATES LLLC

MARGARET DUNHAM WILLE 8522

TIMOTHY VANDEVEER 11005

P.O. Box 6398

Kamuela, Hawai'i 96743

Telephone: (808) 854-6931

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margaretwille@mac.com

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DENTONS US LLP

PAMELA W. BUNN 6460

ERIKA L. AMATORE 8580

1001 Bishop Street, Suite 1800

Honolulu, Hawai'i 96813-3689

Telephone: (808) 524-1800

Facsimile: (808) 524-4591

pam.bunn@dentons.com

erika.amatore@dentons.com

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SAVE SHARKS COVE ALLIANCE,
MĀLAMA PŪPŪKEA-WAIMEA,
HAWAII'S THOUSAND FRIENDS,
LARRY McELHENY, JOHN THIELST,
AND CORA SANCHEZ,

Plaintiffs,

v.

CITY AND COUNTY OF HONOLULU;
CITY COUNCIL OF THE CITY AND
COUNTY OF HONOLULU;
DEPARTMENT OF PLANNING AND
PERMITTING OF THE CITY AND
COUNTY OF HONOLULU;
HANAPOHAKU LLC; DOES 1-10,

Defendants.

Civil No. 19-1-0057-01 JHA
(Declaratory and Injunctive Relief)

SUMMONS

SUMMONS

STATE OF HAWAI'I

TO THE ABOVE-NAMED DEFENDANTS CITY AND COUNTY OF HONOLULU; CITY COUNCIL OF THE CITY AND COUNTY OF HONOLULU; DEPARTMENT OF PLANNING AND PERMITTING OF THE CITY AND COUNTY OF HONOLULU; HANAPOHAKU LLC

You are hereby summoned and required to file with the court and serve upon MARGARET WILLE AND ASSOCIATES, attorneys for Plaintiffs SAVE SHARKS COVE ALLIANCE, HAWAI'I'S THOUSAND FRIENDS, MĀLAMA PŪPŪKEA-WAIMEA, LARRY McELHENY, JOHN THIELST, and CORA SANCHEZ, an answer to the *First Amended Complaint* which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default ^{first et} will be taken against you for the relief demanded in the amended complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

FEB 27 2019

DATED: Honolulu, Hawai'i, _____.

N. MIYATA



CLERK OF THE ABOVE-ENTITLED COURT

Save Sharks Cove Alliance, et al. vs. City and County of Honolulu, et al.; Circuit Court of the First Circuit, Civil No. _____; **SUMMONS**