

January 6, 2021

FOR ACTION

I. REQUEST

Direct the Executive Director to conduct community and stakeholder meetings on the proposed Heeia Community Development District Plan and Administrative Rules and hold Public Hearings for adopting the Heeia Community Development District Plan and Administrative Rules.

II. BACKGROUND

On July 8, 2011, Act 210 was signed into law creating the Heeia Community Development District (Heeia CDD). The HCDA was designated as the local redevelopment authority of the district to facilitate culturally appropriate agriculture, education, and natural-resource restoration and management of the Heeia wetlands.

Pursuant to Hawaii Revised Statutes ("HRS") Chapter 206E-5, *Designation of community development districts, community development plans*, the Authority shall develop a community development plan for the designated district. The plan shall include but not be limited to, community development guidance policies, district-wide improvement program and community development rules.

At its meeting of June 7, 2017, the Authority approved the expenditure of funds to retain a consultant to develop a plan and administrative rules for the Heeia CDD. On September 12, 2017, a consultant contract was executed between the HCDA and Townscape, Inc. to prepare the Heeia CDD Plan and Rules.

III. DISCUSSION

HCDA staff along with project consultant Townscape, Inc. has prepared a Draft Heeia CDD Plan. The Draft Heeia CDD Plan is based on background research of Heeia and the Heeia ahupuaa; analysis of site resources and constraints; and consultations with stakeholders, community members, and government agencies including the Heeia CDD Task Force Members and Kaneohe, Kahaluu and Kailua Neighborhood Boards.

On November 20, 2019, the HCDA held its Authority meeting at the Windward Community College Hale Ao Conference Room to provide an update of the proposed Draft Heeia CDD Plan and Rules. Key concepts of the Draft Heeia CDD Plan and Rules were presented at the meeting. While there were questions raised and clarification provided, the response to the Heeia Draft Plan was generally positive.

The Draft Heeia CDD Plan is consistent with development guidance policies of HRS Chapter 206E-203, Heeia Community Development District, Policies to Guide

Development. A copy of the Draft Heeia CDD Plan and Administrative Rules is provided as Exhibit A.

IV. RECOMMENDATION

Staff recommends that the Authority direct the Executive Director to conduct community and stakeholder meetings on the proposed Heeia CDD Plan and Administrative Rules and hold Public Hearings for adopting the Heeia CDD Plan and Administrative Rules.

Prepared By: Susan Tamura _____

Reviewed By: Deepak Neupane, P.E., AIA, Executive Director DN

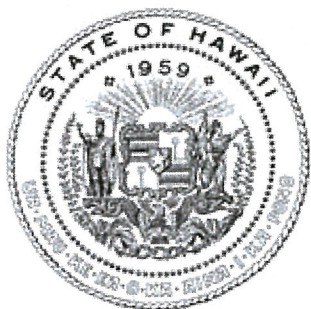
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He'eia Community Development District Plan

Hawai'i Community Development Authority



Preliminary Draft for Review and Comment: December 2020

Exhibit A



Mana‘o Ho‘okō (intent):

Recognizing the value of ahupua‘a management principles, promote and cultivate ‘aina momona (abundance) for the lands of He‘eia for present and future generations through culturally appropriate agriculture, education, and natural resources restoration and management.

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The He'eia Community Development District Master Plan

1.0 Overview

1.1 Introduction

The He'eia Community Development District, hereafter referred to the He'eia CDD or District, was established in 2011 by the Hawaii State Legislature pursuant to Hawaii Revised Statute Chapter 206E-202. The He'eia CDD is located on the windward side of the island of O'ahu in the He'eia ahupua'a in the district of Ko'olaupoko. The He'eia CDD is historically identified as the He'eia wetlands.



In He'eia, streams from the Ha'ikū and 'Ioleka'a Valleys created an abundant marshland called Hoi. Early historical accounts indicate that the Hoi was a much desired area due to its rich fertile soil and access to water. He'eia's expansive taro lands provided a sustainable food source for the community.

Historically, taro remained the dominant crop in He'eia until the 1870s followed by rice, sugar cane, pineapple and then back to taro between the 1920s through the 1940s. The He'eia wetlands eventually transitioned into grazing for livestock, resulting in the extensive overgrowth of California grass and other non-native plants.

In the early 1990s, plans to convert the He'eia wetlands into an exclusive residential community with a marina and golf course was met with strong community opposition and was eventually blocked. In an effort to preserve the He'eia wetlands, a land exchange between Hawaii Community Development Authority ("HCDA") and landowner Estate of Bernice Pauahi Bishop was executed in 1991 that transferred approximately 406 acres of land in He'eia to the Authority.

At its meeting of July 1, 2009, the HCDA Board authorized the Executive Director to enter into a long-term lease with Kāko'o 'Ōiwi, a community-based non-profit corporation. Kāko'o 'Ōiwi's primary mission, through its Mahuahua 'Ai o Hoi (He'eia Wetland Restoration Strategic Plan), is to restore the He'eia wetlands into a working agricultural and cultural district. The HCDA and Kāko'o 'Ōiwi entered into a 38-year lease, effective January 1, 2010. Upon execution of the lease, Kāko'o 'Ōiwi along with its partners has worked toward restoring the wetlands by converting fallow land into productive lo'i and agricultural gardens, planting fruit-bearing trees, renovating historic roads and kuaona, as well as removed invasive species such as the mangrove area. In addition, construction of poi mill and community area capable of creating value added food products for resale will be completed in 2021.

On July 8, 2011, the Hawaii State Legislature established the He'eia CDD. The HCDA was designated the local redevelopment authority of the district to facilitate culturally appropriate agriculture, education, and natural resource restoration and management of the He'eia wetlands. The He'eia CDD is identified as Tax Map Key Parcels: 1-4-6-16:001 and 1-4-6-16:002 (owned by the HCDA) and 1-4-6-16:004, 011, 012, and 017 (owned by various owners of kuleana parcels)

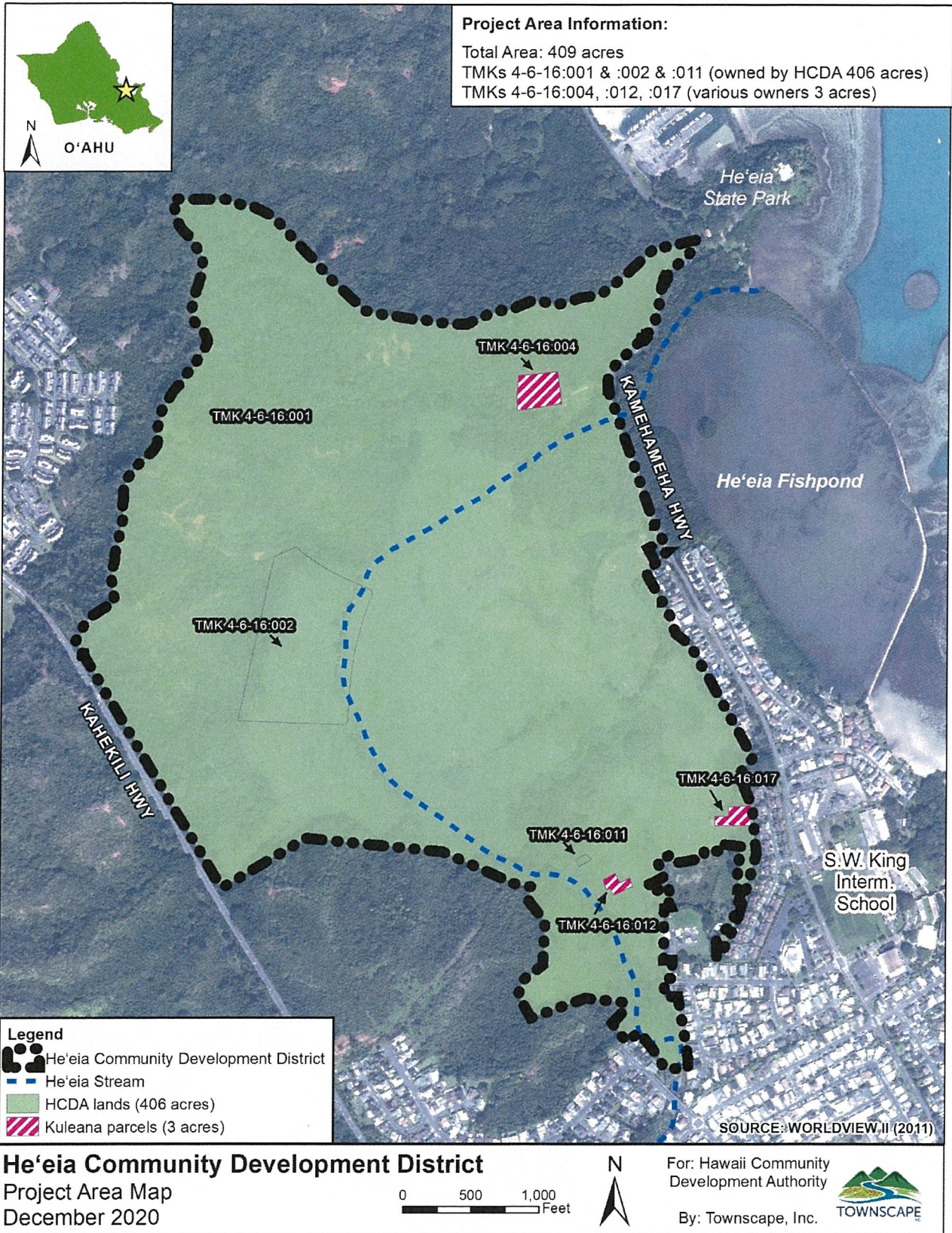


Figure 1: He'eia CDD Boundary

1.2 Purpose and Legislative Intent

The purpose of the He'eia CDD Master Plan is to fulfill the provisions of HRS Chapter 206E which requires that a master plan be developed following the establishment of the He'eia CDD. This He'eia CDD Plan shall guide the restoration, development and the management of the District. The He'eia CDD Plan establishes the vision and goals for the District; characterizes past and existing conditions of the District; establishes land uses for the District; and proposes strategies for achieving the District's vision and goals.

Development guidance policies were established by the State Legislature to govern the HCDA's planning activities for the He'eia CDD. These policies are found in HRS 206E-203 and include the following:

1. Development shall be in accordance with the He'eia master plan, except as it conflicts with the Hawaii state constitution and the Hawaii Revised Statutes;
2. With the approval of the governor, and in accordance with law, the authority, upon the concurrence of a majority of its voting members, may modify and make changes to the He'eia master plan to respond to changing conditions; provided that prior to amending the He'eia master plan, the authority shall conduct a public meeting pursuant to chapter 92 to inform the public of the proposed changes and receive public input;
3. The authority shall provide, to the extent feasible, maximum opportunity for the restoration and implementation of sustainable, culturally appropriate, biologically responsible, or agriculturally beneficial enterprises;
4. The authority may engage in planning, design, and construction activities within and outside the district; provided that activities outside the district shall relate to infrastructural development, area-wide drainage improvements and sediment transport mitigation, roadway realignments and improvements, and other activities the authority deems necessary to carry out redevelopment of the district and implement this part. Studies or coordinating activities may be undertaken by the authority in conjunction with the county and appropriate federal and state agencies and may address infrastructural systems, natural-resource systems, and other activities;
5. Planning, replanning, rehabilitation, development, redevelopment, and other preparations for the restoration of cultural practices, education, natural resources, and agriculture related activities shall be pursued;
6. Hawaiian archaeological, historic, and cultural sites shall be preserved and protected to the extent feasible while allowing for continued use of

the property for cultural activities, education, agricultural and economic pursuits, and natural-resource restoration;

7. Endangered species of flora and fauna shall be preserved and protected to the extent feasible;
8. Land use and redevelopment activities within the district shall be coordinated with and, to the extent possible, complement existing county and state policies, plans, and programs affecting the district;
9. Public facilities within the district shall be planned, located, and developed to support the redevelopment policies established by this part for the district, the master plan approved by the governor, and rules adopted pursuant to this chapter; and
10. Special management area permit administration for the district shall continue to be under the authority of the city and county of Honolulu.

1.3 Project Background

Pursuant to HRS Chapter 206E-5(b), the HCDA along with Project consultant Townscape, Inc., embarked on a comprehensive community-based planning program to develop the He'eia CDD Plan and Administrative Rules ("Plan and Rules"). Development of the He'eia CDD Plan and Rules included background research and data collection; consultations with stakeholders, agencies and community members; as well as the evaluation and analysis of data and consultations. Background research and data collection included extensive research of literature to understand cultural, physical and environmental elements of the District.

Consultations included informal talk-story sessions, as well as formal community and stakeholder meetings. Participants included kūpuna, kama'āina, residents and landowners of He'eia, stakeholders and area farmers, non-profit organizations, government agencies, as well as experts in the fields of hydrology, flood control, and water quality. Approximately 140 individuals participated in consultations. Presentations were also made to the Kāne'ohe, Kailua, and Kahalu'u Neighborhood Boards.

2.0 Context:

2.1 Regional Setting

The He'eia CDD is located in the He'eia ahupua'a of the Ko'olaupoko region of O'ahu. The He'eia CDD is bounded by Kamehameha Highway on the east, the Crown Terrace subdivision on the south, Kahekili Highway to the west, and a private landowner and the City and County of Honolulu on the north. He'eia Fishpond and the He'eia State Park are located east of the He'eia CDD on the makai side of Kamehameha Highway.



2.2 Historic and Cultural Background

Early historical accounts of He'eia indicate that the ahupua'a of He'eia was very productive in terms of marine and terrestrial food resources. Resources for food included the fishponds along Kāne'ohe Bay and lo'i producing a significant amount of taro.

Historical accounts also relay major battles of conquest over the island of O'ahu during the late 1700s. He'eia's productive agricultural lands derived from the large fishponds and lo'i terraces, supported the armies of prominent royalty such as Kahekili (King of Maui) and Kahahana (King of O'ahu). Kahekili prevailed in the battle for O'ahu, with most of his chiefs and followers staying at Kāne'ohe and He'eia. King Kamehameha followed a decade later, conquering the Island of O'ahu. He kept the ahupua'a of Kāne'ohe as his personal property with He'eia also retained as Kamehameha lands. (AIS 2014:12)

He'eia remained under direct control of the Kamehameha dynasty until the Māhele. In 1848, as part of the Māhele, Abner Paki received the ahupua'a of He'eia as his personal property. He had been the konohiki (land agent/overseer) of He'eia from around 1830. The Catholic Mission also received large tracks of land within He'eia, that were a gift to the Mission by Kamehameha III.

The Kuleana Act of 1850 allowed for private ownership of land by 'commoners', people and families who were actually living and working on the land to produce food. There were 28 Kuleana award within and in close proximity to the District. Taro remained the dominant crop within the District until the 1870s. During this period, a decrease in the native Hawaiian population occurred at He'eia with an influx of Chinese immigrants who obtained leases to cultivate rice and then sugar into the 20th century. In 1878, the He'eia Sugar Plantation built the He'eia Sugar Mill and by 1880, the He'eia Rice Plantation was established and a rice mill was built within the District. By the 1890s, the cultivation of pineapple began in He'eia which replaced sugar and became the main industry in the area between 1910 to 1925.

Taro made a come-back in He'eia between 1920 and the 1940s which also coincided with declines in rice production. Much of the former lo'i was returned to taro production. Between the 1930s and 1940s, World War II brought U.S. military presence to He'eia and a Naval Reservation and He'eia Radio station was established along the coast where the existing Samuel Wilder King Intermediate School is located. In the 1950s, Kāne'ohe transitioned into a suburban community during a residential shortage on the island of O'ahu. From the 1960s through the 1980s, the wetlands were primarily used for pasture or became uncultivated land.

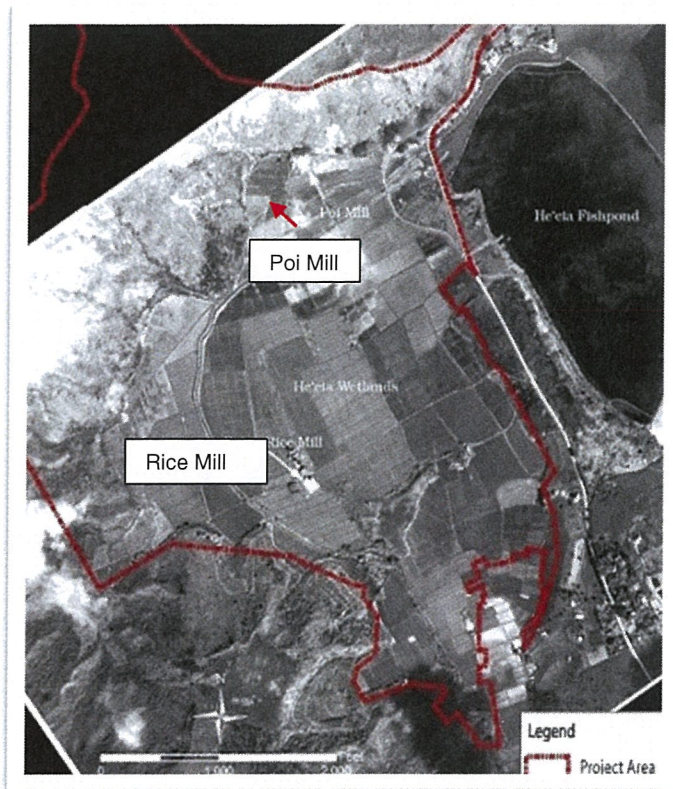
In July 2010, upon execution of the lease with HCDA, Kāko'o 'Ōiwi along with its partners has worked toward restoring the wetlands, eliminating invasive species, establishing an agricultural program and develop cultural and education programs that will become a valued and contributing part of the Kāne'ohe community.

Kūpuna Reflections of He'eia. Although the expansive lo'i terraces that once characterized the landscape of He'eia, are no longer visible today, old timers and lineal descendants of He'eia remember how it was before.

A kūpuna of He'eia who grew up in the District in the 1930s and 1940s and whose ancestors were in He'eia for more than two centuries described the landscape of He'eia as a rural place where people worked the land and common practices consisted of taro cultivation, cattle ranching, and raising livestock.

Taro was central to life in He'eia and poi, along with rice, was the main food staple. Breakfast often consisted of taro with cream and sugar.





Aerial view of He'eia CDD circa 1928 showing poi mill and lo'i

"Everything was lo'i, pastures, and farms. There used to be all taro right up to the highway (Kamehameha) and up to the backside of Sears. All the way up was all taro. I don't remember all the twenty different types, but I remember the purple taro. This place was full of lo'i. Taro was abundant."

"We never had pa'i'ai. When we didn't have enough poi, we'd mix it with flour."

There were four poi mills in the area in addition to her family's poi mill near King Intermediate School. The mills were situated at: Ha'ikū Road, Kāne'ohe, Waiāhole, and in the He'eia CDD. Her cousin opened a poi shop and though the building was not large, it produced 'barrels and barrels' of poi that sold at \$2 for 5 lbs. Despite the abundance and importance of poi, the kūpuna described making poi as hard work.

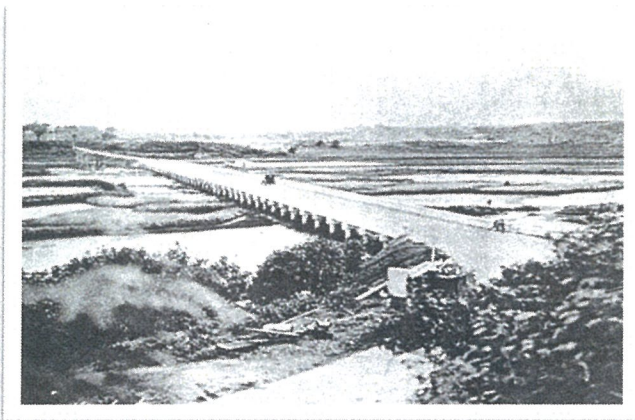
Wai (water) was also central to life in He'eia, not only for taro cultivation but it was an important habitat for many organisms including fish and crustaceans that supplemented the diet of local residents. The stream began where the Ha'ikū Stream meets 'Ioleka'a Stream. The kūpuna shared fond memories of the streams of He'eia:

"There were streams everywhere. In Ha'ikū, almost every house had a lo'i, a pig farm, and the stream would help. There were so many streams but building the roads took up many of the streams. We used to drink the water up at Ha'ikū Valley. Now, cannot. We used to walk all along the side [of the He'eia Stream] and catch crayfish with the midrib of the coconut leaves. There were also 'o'opu in the streams."

According to the kūpuna, Meheanu takes care of He'eia Stream whom she also described as the guardian of the He'eia Fishpond at Kāne'ohe Bay. *"There's a time when she comes, and she comes in different forms,"* she said, stressing the importance of keeping the stream open and flowing into the ocean.



Mangroves planted for flood mitigation-circa 1926



He'eia Bridge

beautiful white sand beach," she said.

The He'eia bridge is also mentioned by kūpuna in their memories of He'eia. The bridge was built adjacent to He'eia Fishpond, an important place that children of He'eia visited frequently. *"Before the bridge, there was a road that went down to the fishpond and the fishpond belonged to Bishop Estate,"* a kūpuna remembered. *"We used to go there every day to catch crab. The whitest crabs. That place had a*

Despite the many changes that time has brought to the District, taro has remained an important element in the identity and memories of its people. Kūpuna and lineal descendants of He'eia, described the landscape of He'eia as a place where people worked the land and common practices consisted of taro cultivation, cattle ranching, and raising livestock. *"Everything was lo'i, pastures, and farms; his place was full of lo'i,"* a kūpuna recalled. According to the kūpuna, He'eia was also made up of close-knit families where people grew up like brothers and sisters. *"It was beautiful, it was open and free."*

2.3 He'eia Ahupua'a and Watershed

Ahupua'a. Traditionally, the ahupua'a was an island-wide land subdivision system that supported self-sustaining communities with the sharing of natural resources. Ahupua'a generally comprised an area starting at the top of a mountain ridge down to the outer edge of the reef in the ocean and contained a fresh-water stream that supported an upland forested area and lowland lo'i.

Streams flowed through the ahupua'a from the mountains to the sea, and it was diverted to grow taro in expansive lo'i terraces. The ahupua'a's primary purpose was food production to support each respective community. Food produced in the ahupua'a supported the maka'ainana (commoner resident) who tended the land as well as the konohiki who oversaw the land.

The He'eia ahupua'a is one of eleven ahupua'a that comprise the moku (district) of Ko'olaupoko. The He'eia ahupua'a is approximately 4,200 acres in size and extends from the ridges of the Ko'olau mountains above the Ha'ikū and 'Ioleka'a valleys, to the northwestern portion of Mōkapu Peninsula on Moku o Lo'e (Coconut Island).

Historic accounts and documentation of the 1800s indicate that lands within the He'eia ahupua'a were extremely productive. (AIS CSH 2014, p. 13). Frequent rainfall, ample streams, broad valley bottoms, and flatlands between the mountains and the sea, provided ideal conditions for agriculture and aquaculture in He'eia. The richness of the region was attributed to a functioning water system that flowed throughout the ahupua'a from the valleys of Ha'ikū and 'Ioleka'a, through the wetlands of He'eia, to Kāne'ohe Bay. Because of its high productivity, the lands of He'eia ahupua'a were considered very valuable.



Watershed. A watershed is defined as a drainage basin that catches, collects and stores water that travels toward the ocean via rivers, streams or through subterranean springs or seepages. The He'eia watershed is approximately 3.5 square miles in size and extends from the peaks of the Ko'olau mountains, including the valleys of Ha'ikū and He'eia, to Kāne'ohe Bay.

The He'eia CDD is centrally located within the He'eia ahupua'a and watershed. Given its significant location, the restoration, maintenance and future uses of the He'eia wetlands are key elements needed to maintain the overall health of the He'eia ahupua'a and watershed.

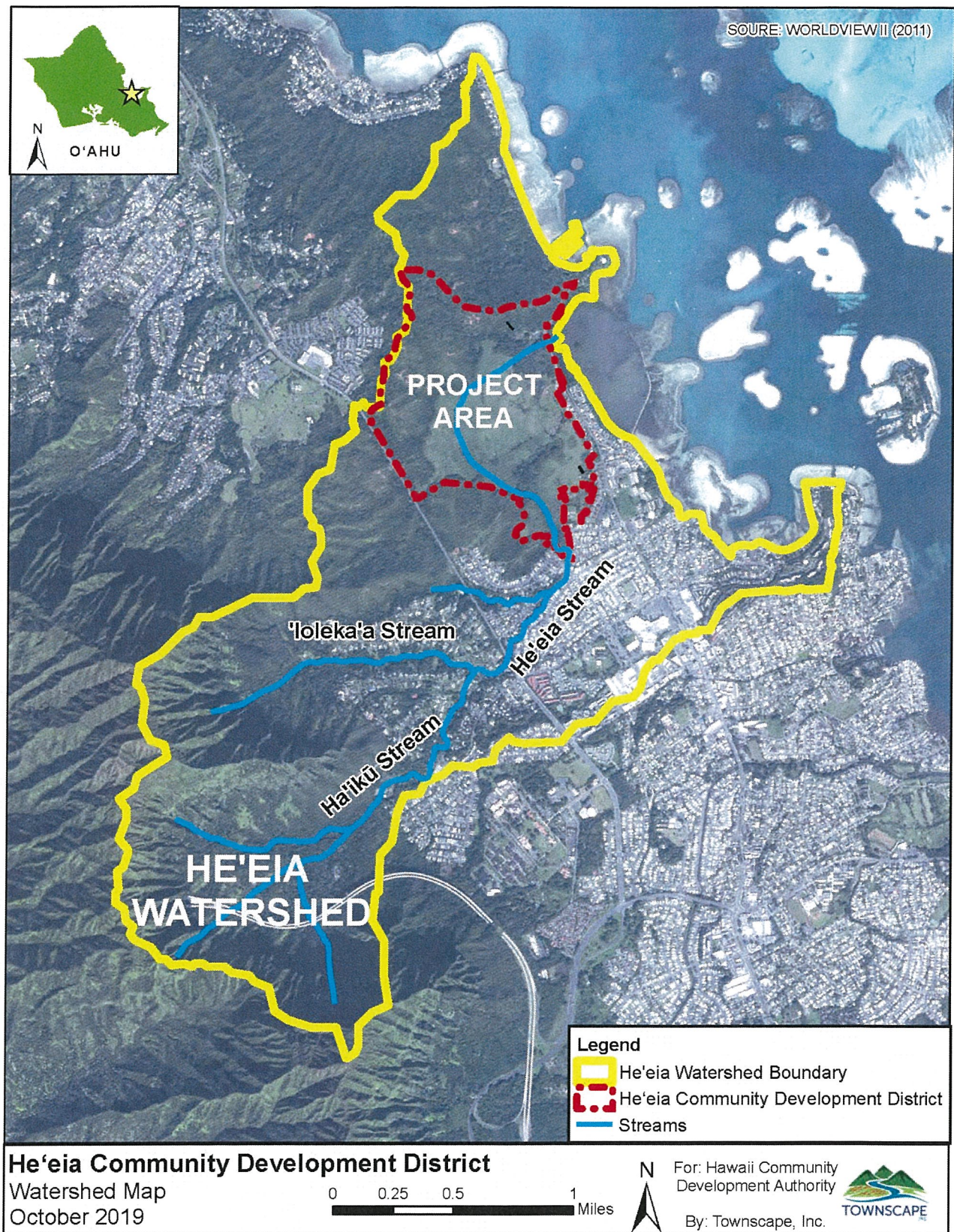


Figure 2: Watershed Map

2.4 Land Ownership

Approximately 406 acres of land within the He'eia CDD is owned by the HCDA. In addition to HCDA, there are three privately-owned parcels of land within the District, totaling approximately 3 acres. The privately-owned parcels are identified as 'kuleana' parcels.

Kuleana Lands. The Kuleana Act of 1850, initiated by King Kamehameha III, created Hawaii's first system of private land ownership. Through the Kuleana Act, King Kamehameha III created a process that allowed the Kanaka Maoli tenants to claim and obtain fee simple title to the land where their family homes were built and where they grew their food.

As a result of the Kuleana Act, 93 kuleana or land commission awards ("LCA"), totaling 203 acres of land, were granted for property in He'eia. There were 28 LCA within and in close proximity to the He'eia CDD. LCA claims within the He'eia CDD indicate that the land at the time of the Kuleana Act was used primarily for lo'i cultivation and residences. (AIS CSH 2014 p.13).

Kuleana rights included the following:

- Reasonable access to the land-locked kuleana from major thoroughfares;
- Agricultural uses, such as taro cultivation;
- Traditional gathering rights in and around the ahupua'a;
- A house lot not larger than 1/4 acre;
- Sufficient water for drinking and irrigation from nearby streams, including traditionally established waterways such as 'auwai; and
- Fishing rights in the kunalu (the coastal region extending from beach to reef).

In addition to the HCDA, several major landowners own significant amounts of land in the area adjacent to the He'eia CDD. Major landowners include:

- Kamehameha Schools
- The State of Hawai'i
- The City and County of Honolulu
- The Federal Government of the United States of America

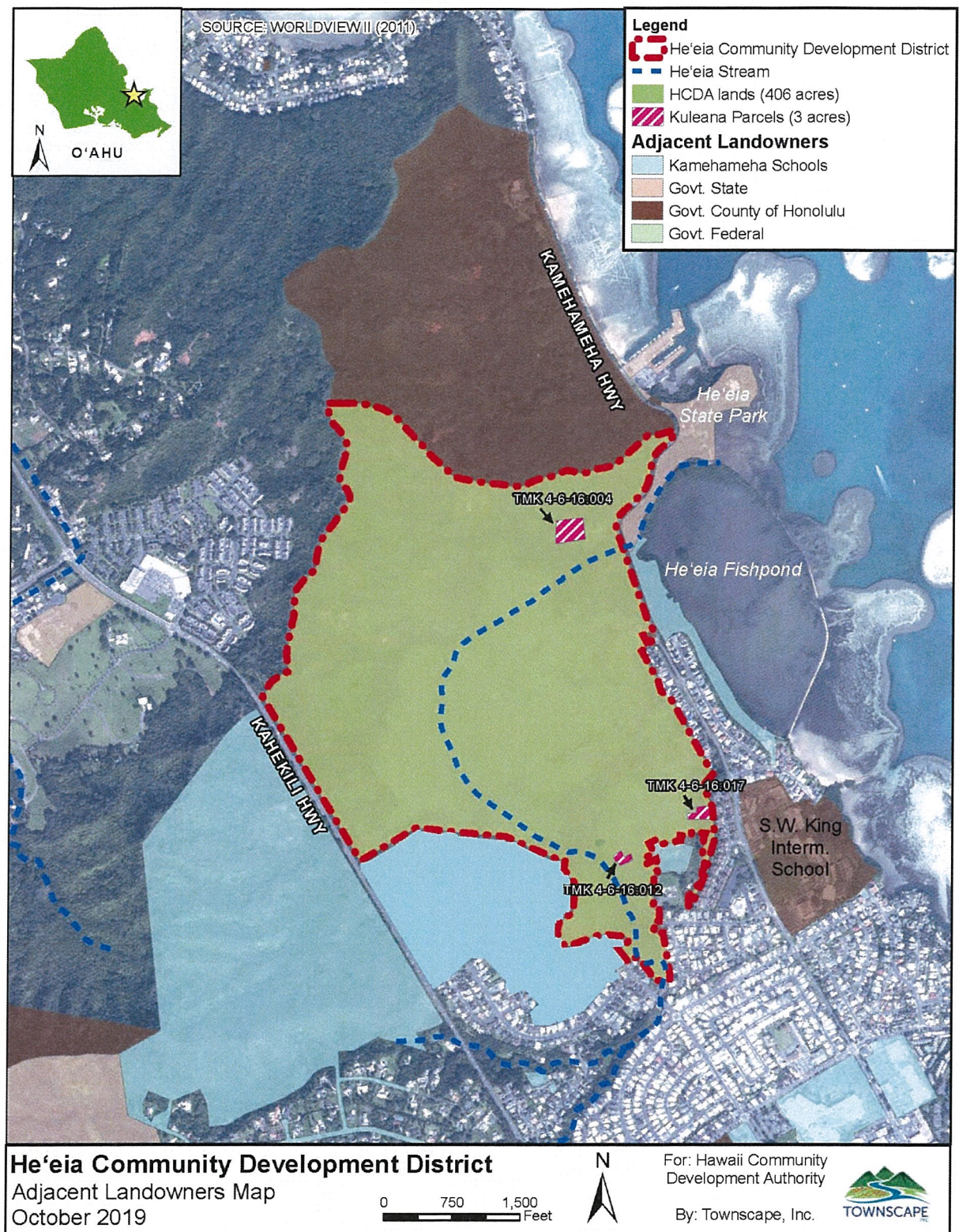


Figure 3. Landownership Map

2.5 Population and Socio-Economic Profile

The U.S. Census designated area of He'eia encompasses approximately 3.1 square miles and includes Ha'ikū Valley and He'eia Kea. Per U.S. Census data of 2017, He'eia's population was 4,811. The median age in He'eia was 50.6 years old with more than half (56%) of its population are between 18 to 64 years of age. The average family size was 3.3. Approximately 97.5% of He'eia population graduated from high school and about 43.4% of residents obtained a bachelor's degree or higher. The median household income was approximately \$123,750 which exceeded the State's median household income of (\$74,923). Approximately 1.7 % of the He'eia population was below the poverty line. There were approximately 1,581 housing units with an occupancy rate of 98%. Of the 1,581 housing units, 91% were owner occupied and 97% were single unit structures. The median value of the owner-occupied housing units was \$843,500.

2.6 Regional Plans, Regulations and Policies:

The He'eia CDD shall comply with the following applicable regional plans, regulations and policies:

2.6.1 State Land Use District

Approximately 272 acres of the He'eia CDD is located within the State's Land Use District's Urban District and the remaining portion of the District is in the Conservation District. See Figure 4. The portion of the District in the Conservation District is classified as "General". Property within the He'eia CDD are subject to all applicable State Land Use District regulations.

2.6.2 Special Management Area ("SMA")

The wetland area of the District is located within the boundaries of the SMA. Pursuant to HRS Chapter 206E-203, the administration of SMA permits for the District is under the jurisdiction of the City and County of Honolulu.

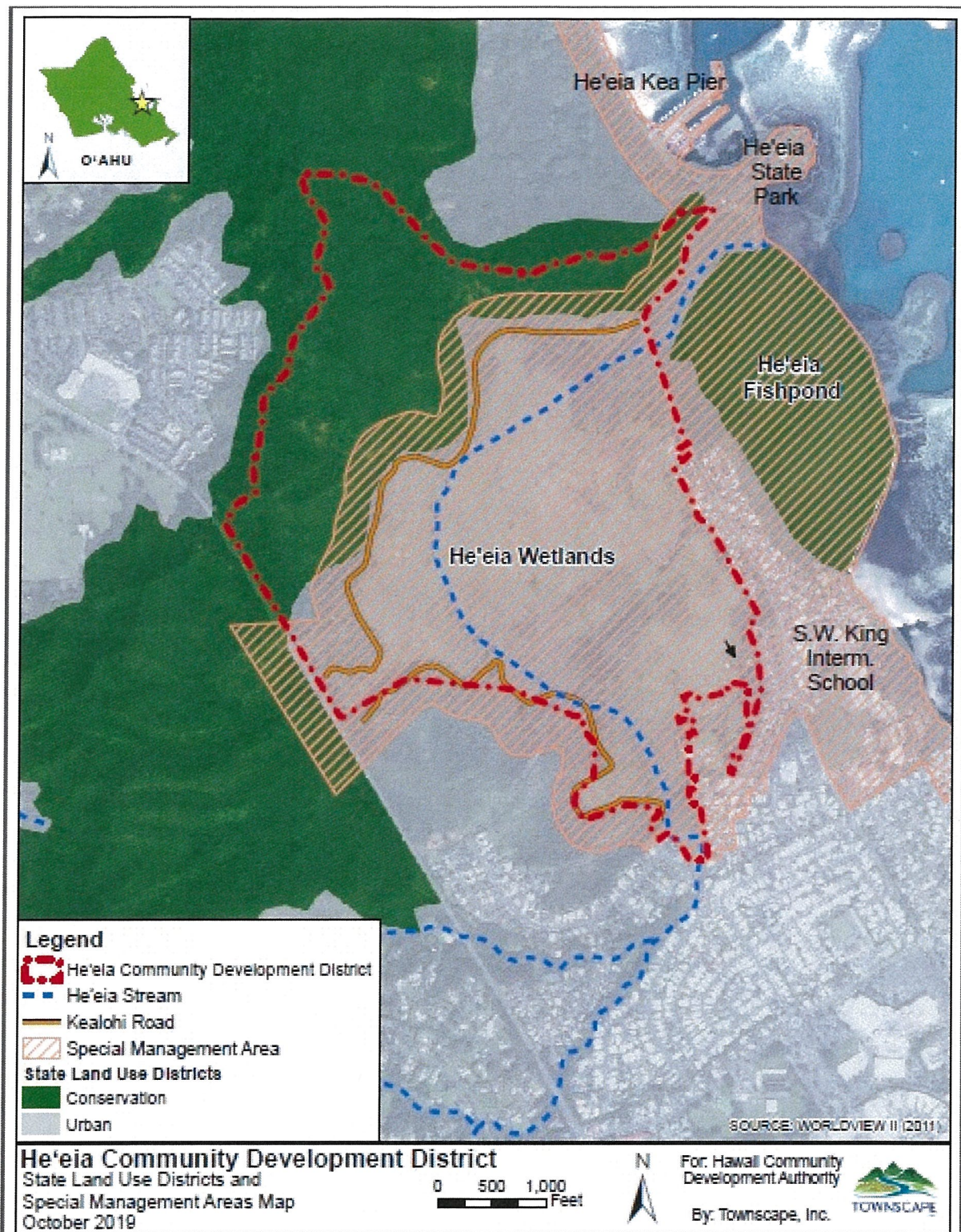


Figure 4: State Land Use District and SMA Boundary Map

2.6.3 Ko'olau Poko Sustainable Communities Plan ("KPSCP")

The KPSCP is a long-range plan to guide public policy, investment, and decision-making in Ko'olaupoko by 2035. The KPSCP is consistent with the City and County of Honolulu's General Plan and envisions that by the year 2035, "Ko'olaupoko's natural, cultural, historic, agricultural, and aqua-cultural/fishpond resources are protected and enhanced." Key elements of the KPSCP include:

- Significant scenic views of ridges, upper valley slopes, shoreline areas from major public parks highways, coastal waters and hiking trails are protected;
- Access to shoreline areas and mountainous regions are improved and provided for all to use and enjoy;
- Cultural and historical resources are preserved through the protection of visual landmarks and significant views, protected access rights relating to traditional cultural practices, and the protection of significant historic, cultural, and archaeological features; and
- Ko'olau Poko contains productive and potentially productive agricultural lands that are preserved by adopted protective regulatory policies and implemented incentives and programs that promote active agricultural use of these lands.

The He'eia CDD Plan supports and is consistent with the overall vision of the KPSCP by supporting agricultural use, preserving cultural and historical resources where applicable, and protecting scenic views of ridges, upper valley slopes and shoreline areas.

2.6.4 Ko'olau Poko Watershed Management Plan ("KPWMP")

The KPWMP is a 20-year plan that seeks to formulate an environmentally holistic, community-based, and economically viable water management plan that will provide a balance between (1) the protection, preservation and management of O'ahu's watersheds; and (2) sustainable ground water and surface water use and development to serve present users and future generations. To achieve this goal, the KPWMP proposes five objectives which include:

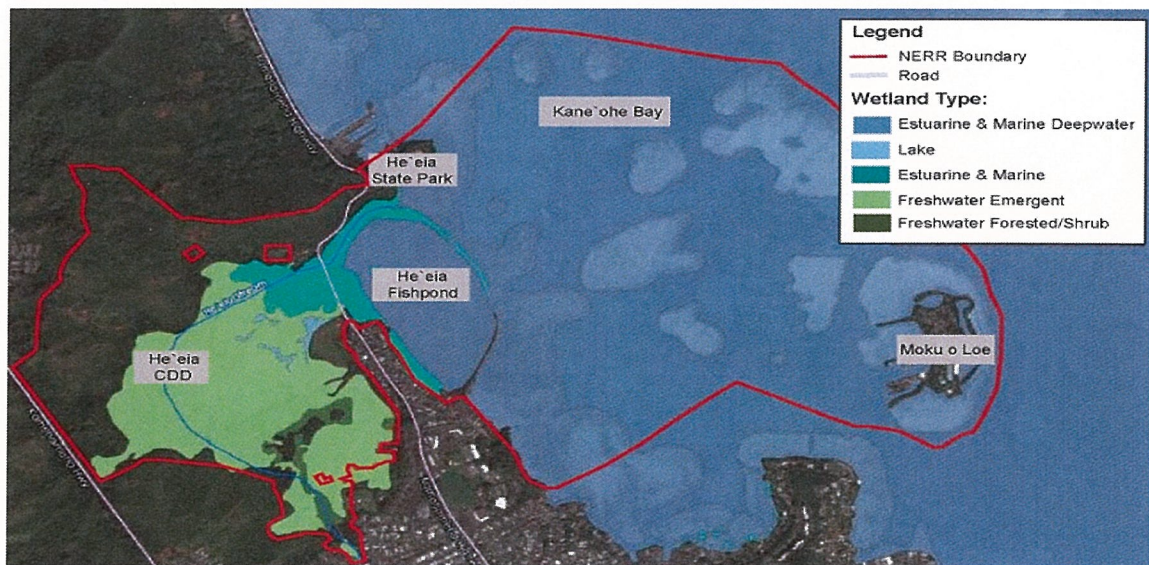
- Promote sustainable watersheds;
- Protect and enhance water quality and quantity;
- Protect Native Hawaiian rights and traditional and customary practices;
- Facilitate public participation, education, and project implementation; and
- Meet future water demands at reasonable costs.

The KPWMP proposes more specific actions for He'eia which include: (1) a He'eia Stream Restoration Project and (2) a projected, expanded supply of non-potable water demand for Ko'olau Pooka from 11.434 million gallons per day (mg.) in 2000 to 14.271 mgs, in 2030. The increase in water demand is expected to account for possible future taro production in He'eia which could be met by an increase in the use of both stream water and ground water for agricultural irrigation.

The He'eia CDD Plan is consistent with the goals and objectives of the KPWMP. The He'eia CDD Plan supports agricultural use and taro production in He'eia which may increase water demand for non-potable water for agricultural purposes in Ko'olau Poko by 2030, as projected in the KPWMP. The He'eia CDD Plan also proposes the restoration of He'eia Stream, a key resource for anticipated agricultural activities within the District.

2.6.5 He'eia National Estuarine Research Reserve ("NERR")

The He'eia CDD is part of the He'eia NERR which is the nation's 29th NERR, administered by the Hawaii Institute of Marine Biology, as designated by the State of Hawaii.



He'eia NERR Boundary Area

The He'eia NERR seeks to practice and promote stewardship of coasts and estuaries through innovative research, education, and training using a place-based system of protected areas. The He'eia NERR consists of approximately 1,385 acres of land and includes He'eia State Park, He'eia Fishpond, the He'eia CDD, Moku o Lo'e Island, and the large expanse of waters and reefs of Kane'ohe Bay. The goals and priorities of the He'eia NERR are as follows:

- Ensure a stable environment for research through long-term protection of NERR System resources;
- Address coastal management issues identified as significant through coordinated estuarine research within the system;
- Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;
- Promote federal, state, public, and private use of one or more reserves within the system when such entities conduct estuarine research; and
- Conduct and coordinate estuarine research within the system, gathering and making available information necessary for improved understanding and management of estuarine areas.

Priority areas of the He'eia NERR include: invasive species, loss of habitat, erosion and sedimentation, nonpoint source pollution, urbanization and human activities in the area, water quality issues, agricultural development, and climate change impacts on the area.



3.0 Physical Environment

3.1 Topography and Geology

The He'eia CDD generally consists of low-lying wetlands with portions of higher regions that extend to approximately 440 feet. Geologically, the district of Ko'olau Poko is part of the Ko'olau volcano, one of two extinct volcanos that make up the Island of O'ahu. The geologic composition of the District consists of:

- Ko'olau Basalt (45.6%),
- Older Alluvium (37.4%),
- Alluvium (13.2%),
- Honolulu Volcanics (3.1%),
- Beach Deposit (0.5%) (Izuka et al., 1993; Stearns and Vaksivick, 1935).

3.2 Soils

Majority of the wetland area consists of Hanalei silty clay (HnA), Lolekaa silty clay (LoB), and Marsh (MZ). The majority of the Kealohi road corridor lies above Alaeloa silty clay (AeE), and Marsh. A portion of the road corridor also lies directly alongside Waikane silty clay (WpE).

The He'eia CDD has had extensive fill deposited in the twentieth century and has partially been under taro cultivation but remains mostly in overgrown wetland. See Figure 5.

Soil types of the He'eia CDD

Soil Type	Characteristic
Alaeloa Series (ALF)	Consists of well-drained soils in upland areas. Alaeloa silty clay at 40% to 70% slopes has rapid runoff and severe
Marsh (MZ)	Occur in wet, flooded areas covered dominantly with grasses and bulrushes.
Waikane Series	Well-drained soils on alluvial fans and terraces on O'ahu.
Hanalei Series (HnA)	Found on stream bottoms and flood plains with moderate permeability.
Loleka'a Series (LoB)	Well-drained soils on fans and terraces on the windward side of O'ahu.

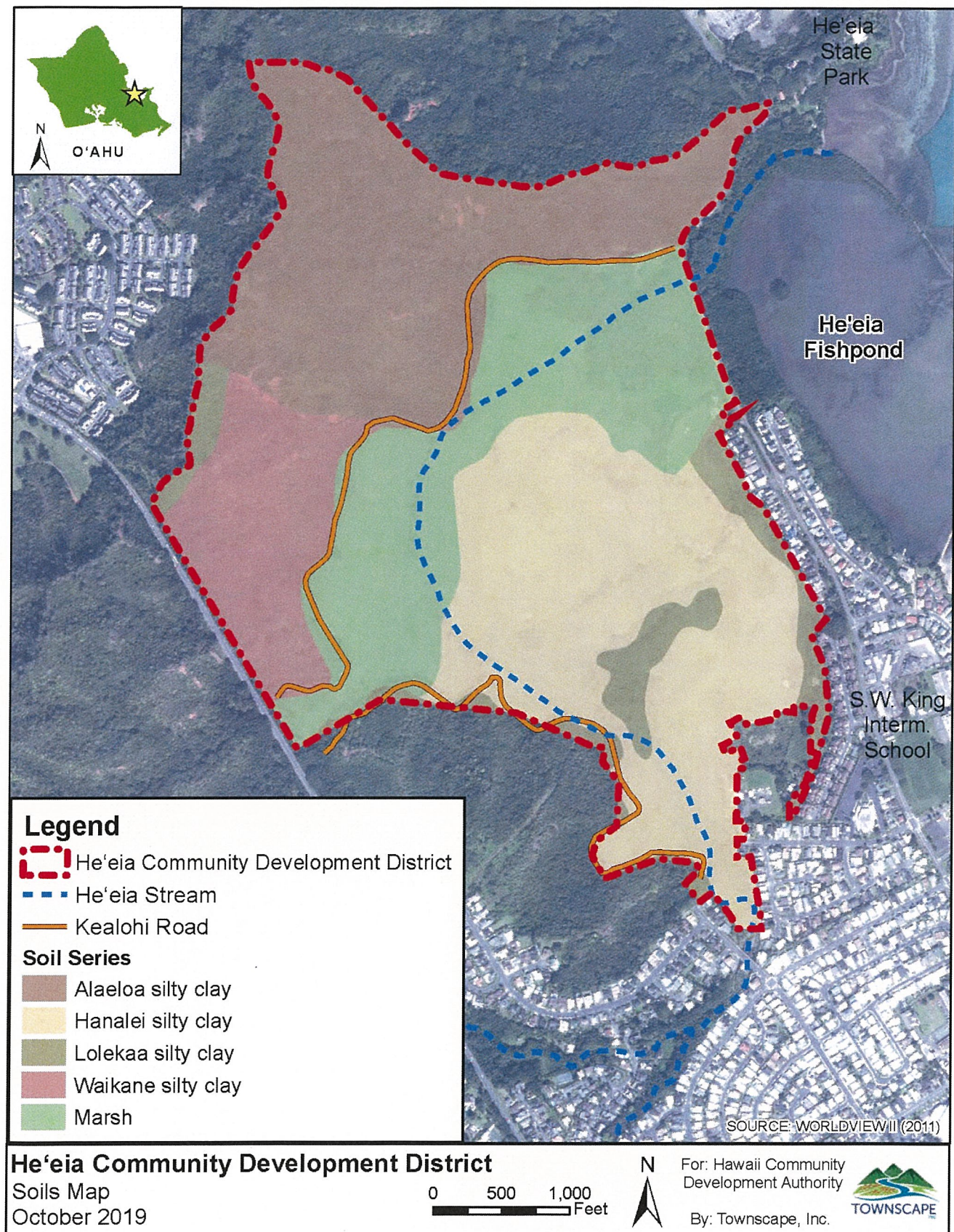


Figure 5 Soils Map

3.3 Vegetation

Vegetation in the He'eia CDD predominantly consists of alien plant species with little-to-no native species. See Figure 6. The wetland area consists primarily of California grass as well as wetland plant species such as sedge (*Fimbristylis littoralis*), Job's tears (*Coix lachrymal-jobi*), arrowhead (*Sagittaria sagittaeifolia*), and kamole (*Ludwigia octovalis*). The dense growth of California grass and other alien grasses in the He'eia wetland area is believed to have significant negative impact on native water-bird habitat (Calvin Kim and Associates 1990, Townscape 2011b).

The upland area consists of trees such as the java plum (*Syzygium cumini*) and shrub species such as cat's claw (*Caesalpinia decapetala*), Cuba jute (*Sida rhombifolia*), koa haole (*Leucaena leucocephala*), and guava (*Psidium guajava*).

Invasive mangroves have also been established on the north side of the District along He'eia stream. Kāko'o Ōiwi in conjunction with NOAA is currently implementing an invasive species removal project which will improve and restore portions of the wetlands and stream corridor to support ecological and wetland resilience in light of extreme weather events and flooding. The Project also includes native species replanting and traditional management practices.

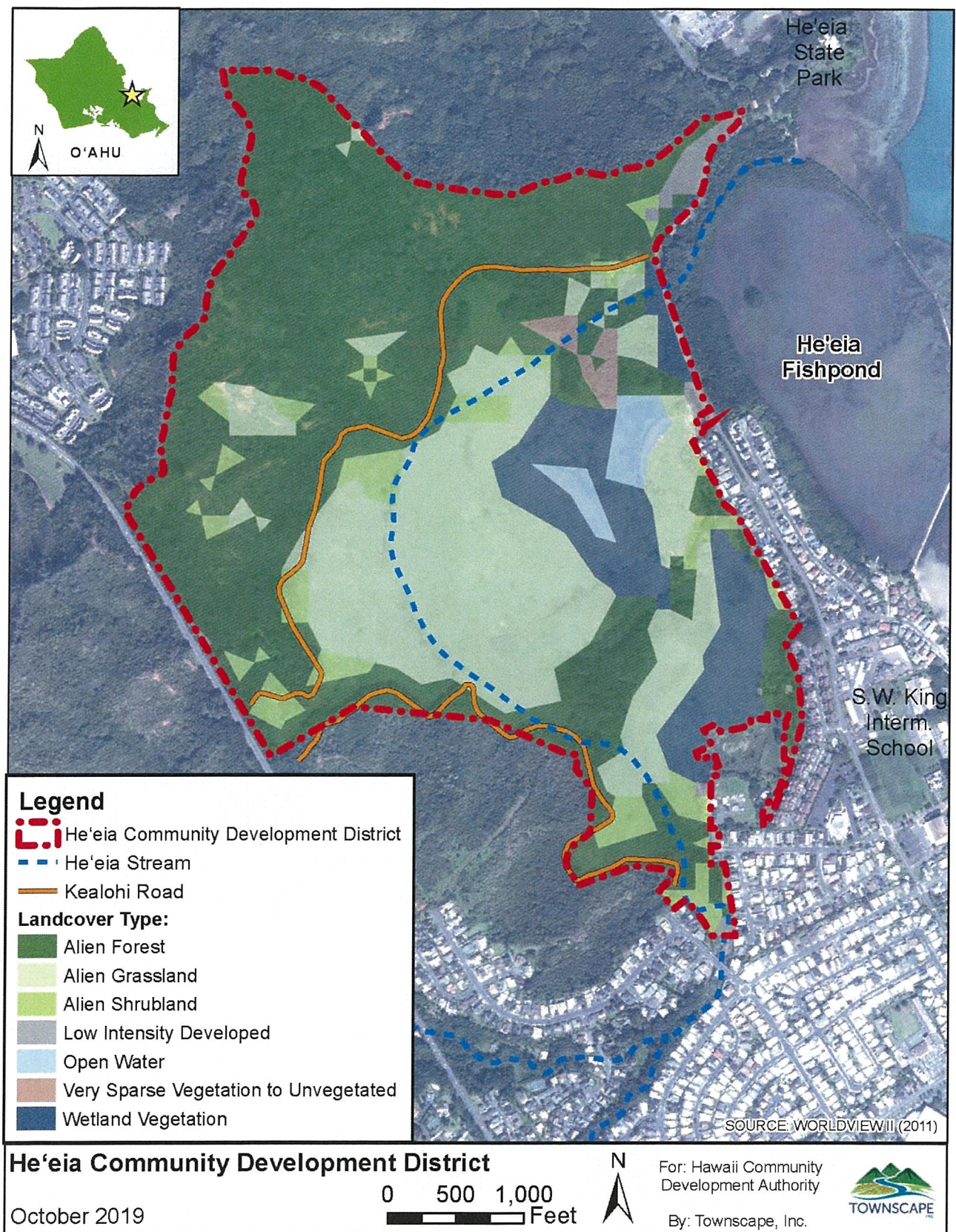


Figure 6: Vegetation

3.4 Hydrology

Precipitation is the source of virtually all freshwater in the He'eia watershed, but its distribution is highly variable. Rainfall on land is taken up by plants, some water infiltrates the soil and moves vertically downward to the water table to become ground water (re-charge), some of it evaporates back into the atmosphere (evapotranspiration) and the rest flows over land as runoff, enters streams and other water features, and ultimately discharges into the ocean. Ground water moves both vertically and laterally within the ground-water system and some water may seep through the surface into streams, springs, and wetlands. Therefore, surface and ground water are highly interdependent on the supply and quality of the other.

Wetlands are surface water areas that are regularly wet or flooded throughout most of the year. Wetlands provide habitat for fish, birds, and other wildlife and provide natural places with recreational opportunities. Wetlands also serve two major hydrological functions: (1) intercepting runoff and lessen the impact of flooding; and (2) absorbing sediment and pollutants in runoff. Therefore, wetlands play an important role in flood control and improving water quality and are important attributes of a watershed.

3.4.1 Surface Water. Surface water in the He'eia CDD is found in He'eia Stream and its tributaries, ponds, stream diversions, and springs that feed the He'eia Wetland. Fresh water in He'eia comes entirely from precipitation along the Ko'olau Mountain Range averaging about 84 inches per year (Streamstats 2012).

3.4.2 Streams. He'eia Stream is the primary stream that flows through the District. Its water comes from rainfall, runoff, and ground water seepage. Approximately 87% of the average annual streamflow comes from groundwater and the remainder from runoff (Ghazal 2017). Stream water extends 7.1 miles from the upper reaches of the Ko'olau Mountains to the end of the stream mouth at Kāne'ohe Bay (Parham et al. 2008). He'eia stream begins where the Ha'ikū Stream and 'Ioleka'a Stream merge. Several smaller tributaries and contribute to the total flow of He'eia Stream which fan out to the wetland areas of the District and then to He'eia Fishpond. Approximately 1.3 miles of the stream is within the He'eia CDD. He'eia Stream and its tributaries feed most of the water in the He'eia Wetland, draining an area of 4.44 square miles. The stream's average continuous main streamflow is 6,851 cubic meters per day with an average gradient of 11%. (Wilson, 2004-dissertation).

3.4.3 Ground water. In Hawai'i, rainfall fill dike compartments within its mountains' rock layers and as compartments fill up, water surfaces as springs or seepages. Groundwater recharge is generally greatest in the upper regions of the Ko'olau Mountains with annual recharge rates

exceeding 3.81 meters per day (Shade and Nichols, 1996). Ha'ikū Valley, which drains an area of about 1.57 square miles, receives recharge of 0.00492 meter per day. Ground water seepage into streams may take months or even decades from the original rainfall event. The He'eia CDD is within the Ko'olau Poko Aquifer System of the Windward Aquifer Sector.

- 3.4.4 Flooding. The majority of the He'eia CDD is within the Special Flood Hazard Area, also known as 100-year flood zone. See Figure 7. Moderate flood events in He'eia occur several times annually (Koonce, 2012). Flood peaks can be achieved within hours following the onset of precipitation. Similarly, the return to base flow can occur within a matter of hours.
- 3.4.5 Water Quality. Water quality in the He'eia watershed is considered "impacted". Water quality is generally better in the upper regions of the watershed compared to the lower regions. Pollutants and nutrients are carried down to Kāne'ohe Bay and create phytoplankton blooms that threaten the health of the coral reefs (DeCarlo et al. 2007, Drupp et al. 2011, Guidry et al. 2013). Since 2012, He'eia has been a priority watershed under the DOH's Clean Water Branch (CWB) Polluted Runoff Control Program (PRCP) to reduce sediment and nutrients in the watershed.

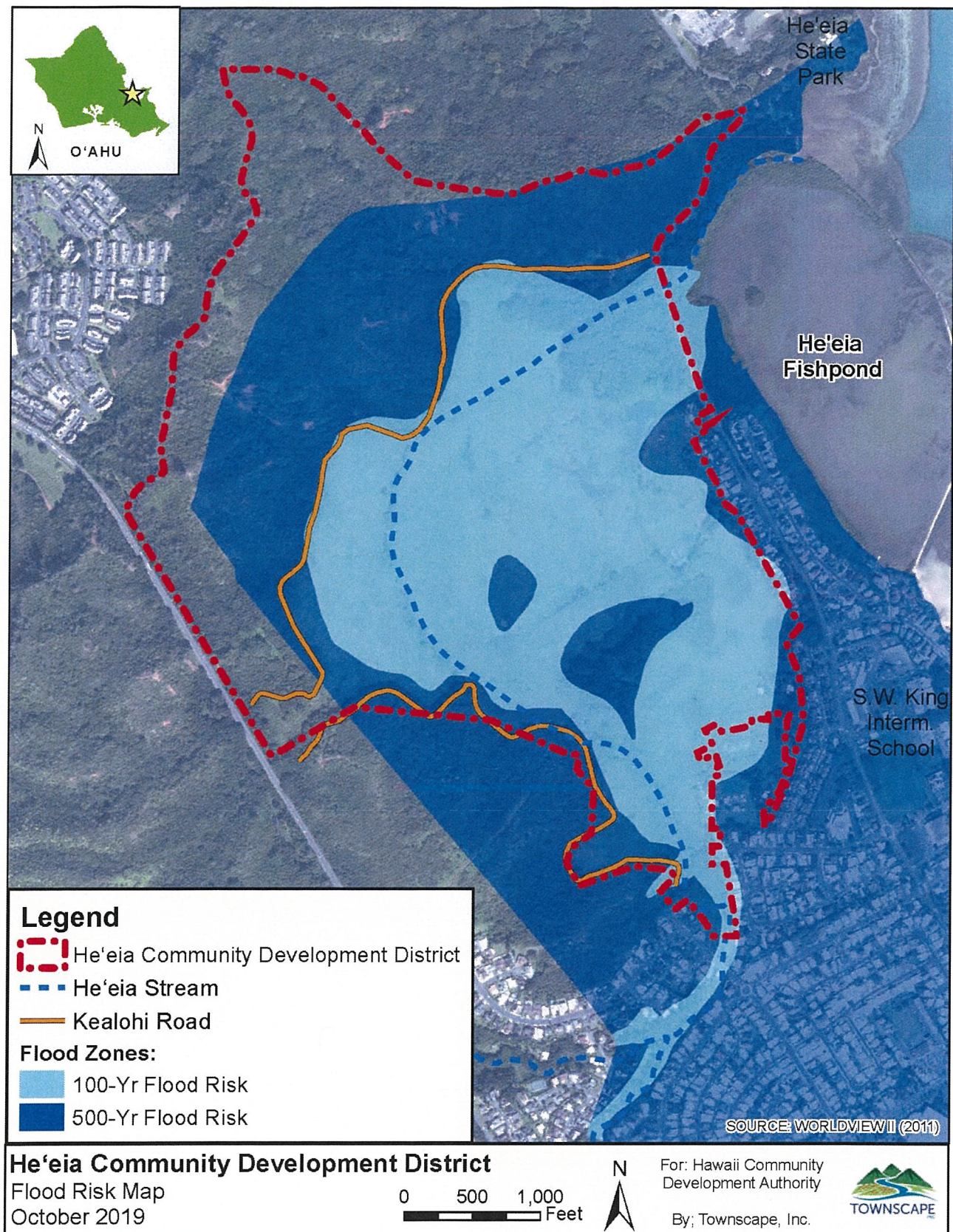


Figure: 7 Flood Map

3.5 Protected Species and Habitat

The habitat of the He'eia CDD can be broadly categorized as wetlands and upland area. The wetland area is known to occasionally provide feeding and loafing habitat for four endemic and endangered water birds.

The wetland habitat at He'eia is known to occasionally provide feeding and loafing habitat for four endemic and endangered water birds described below.

- 'Alae 'Ula or Hawaiian gallinule
The 'alae 'ula is an endangered chicken-sized water bird endemic to Hawai'i. The 'alae 'ula is dependent on freshwater wetland habitats with dense emergent vegetation for nesting. Its population decline was due to habitat loss, hunting and predation by introduced animals. Traditionally, the 'alae 'ula was hunted for food and was known to be the keeper of fire in Hawaiian mo'olelo.
- Koloa or Hawaiian Duck
The Koloa is a non-migratory bird, endemic to Hawai'i. The koloa is listed as an endangered species by the International Union for Conservation of Nature's Red List of Threatened Species. Its population is in decline due to hybridization with the mallards, loss of lowland wetland habitats, and also to predators such as cats, pigs, dogs, and mongoose.
- 'Alae Kea or Hawaiian Coot
This endemic bird is found in freshwater lakes, marshes, coastal saline lagoons, and water storage areas. The bird was listed on the Federal list of endangered species in 1970 and also in the State's list of endangered species. Population declines are due to habitat loss and the introduction of predators, such as the mongoose.
- Ae'o or Hawaiian Stilt
This endemic bird has slender long-legs and thin beak. Generally found in wetlands and near the ocean, they may also occur in large groups on ponds, marshes, and mudflats. The ae'o was a popular game bird until hunting water birds was banned in 1939. Population estimates for the ae'o varied between 1,100 and 1,783 between 1997 and 2007. Native predators of the ae'o include the pueo (Hawaiian owl) and black-crowned night heron.



'Alae 'Ula



Koloa



'Alae Kea



Ae'o

- Hawaiian Hoary bat.
The endangered Hawaiian hoary bat is also thought to roost in the mangroves at He'eia. Migratory shorebirds, such as the Pacific golden plover, are also found in He'eia (Helber Hastert & Fee 2007). It is anticipated that native bird populations will re-establish at He'eia with the restoration of its wetlands.

3.6 Climate Change

Changes in global climate is expected to adversely impact Hawai'i in the long-term. The impacts include sea level rise, an overall reduction in rainfall, increasing temperatures, and an increase in storm frequency and intensity, leading to more flooding events. An overall reduction in annual rainfall would lead to a decline in the sustainability of groundwater sources (Burnett and Wada, 2014). Increasing temperatures will also drive evapo-transpiration or water loss from plants and other surfaces. In addition, increasing water demands from urban development and population growth, will further impact water supply in Hawai'i in the future (Engott et al., 2015).

At He'eia, these scenarios translate into a potential reduction in overall rainfall, surface water, groundwater, and stream flow. Mitigative efforts to minimize the impacts of climate change are important, such as: (1) removing invasive vegetation which consume and transpire more water than native plants; and (2) prioritize the restoration of native plants.

Sea Level Rise (SLR). Global climate change is expected to result in sea level rise in the future that will impact the coastal areas of Hawai'i. Future impacts include (Bjerkie et al. (2012) :

- Rising groundwater levels
- Formation of new wetlands and expansion of existing wetlands
- Changes in surface drainage and soil saturation
- Increase in sporadic flooding events that will intensify seasonally when high tide events coincide with rainfall events
- Saltwater intrusion will impact root zone of plants
- Infrastructure damage in low-lying areas

Figure 8 shows four sea level rise scenarios at He'eia: 0.5 feet, 1.1 feet, 2 feet, and 3.2 feet). These projections were based on the anticipated rate of increase in sea levels to 3.2 feet by the year 2100 (IPCC 2014). Figure 8 suggests that marine inundation at He'eia at a rise in sea level of 0.5 feet and of 1 foot are similar with a rise in sea level near the south west region of the He'eia CDD. However, anticipated SLR of 1.1 feet and 3.2 feet will be observed along the northern portion of the property along Kamehameha Highway. A SLR of 2 feet around the year 2070, is expected to inundate the He'eia CDD along the mouth

of He'eia Stream near Kamehameha Highway and cover the highway. These findings are significant for long-range infrastructure planning for the He'eia CDD that are typically constructed along or under roadways.

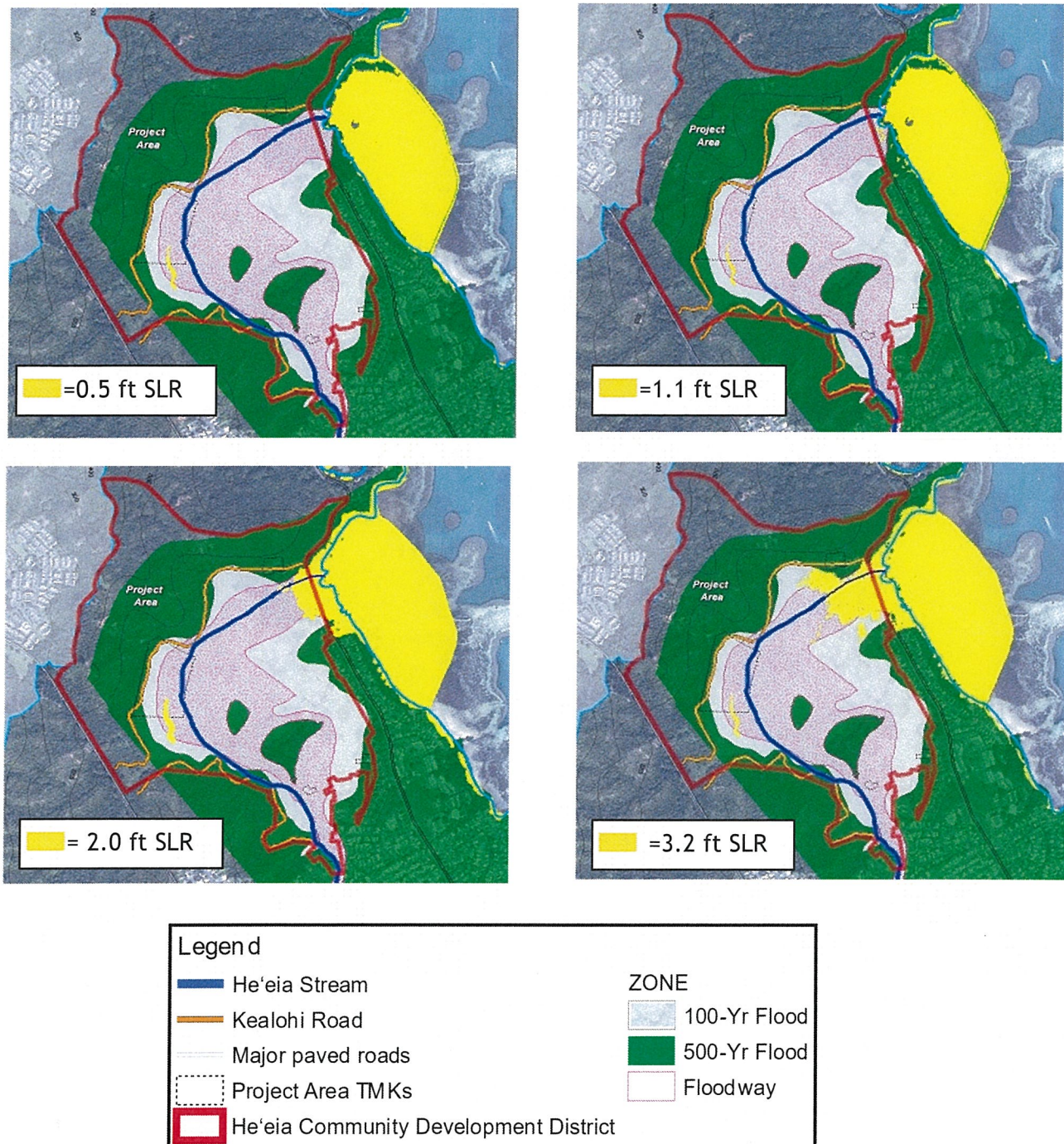


Figure 8: Projected Marine Inundation

3.7 Archaeological and Historic Sites

Pursuant the HAR § 13-284-6, an Archaeological Inventory Survey (“AIS”) was prepared for the He‘eia CDD in 2017. As a result of fieldwork efforts and on-site inspections of the project area, archaeological sites were identified relating to pre-Contact traditional Hawaiian habitation, areas of agriculture and burial potential, post-Contact plantation-era agriculture and historic ranching animal husbandry enclosures. Seventeen historical properties were identified and evaluated for significance. Of the seventeen sites, four sites were deemed to ‘have yielded, or is likely to yield information important for research on prehistory or history’ and ‘have an important value to the Native Hawaiian people or to another ethnic group of the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral history accounts – these associations being important to the group’s history and cultural identity.’ The four sites will be preserved in place as recommended by the AIS. See Figure 9.

Historic Properties at the He‘eia Community Development District

Site #	Historic Site	Description
1	SIHP # 50-80-10-7522 Basalt Quarry	Likely for road grading and historic development in the area.
2	SIHP # 50-80-10-7523 Possible ‘Ōkolehao distillery	Possibly an ‘ōkolehao (ti root liquor) distillery.
3	SIHP # 50-80-10-7530 Basalt terrace complex	A traditional terrace complex likely for agriculture.
4	SIHP # 50-80-10-7535 Concrete platforms	This site consists of two concrete platforms believed to be a portion of the former rice mill foundation.

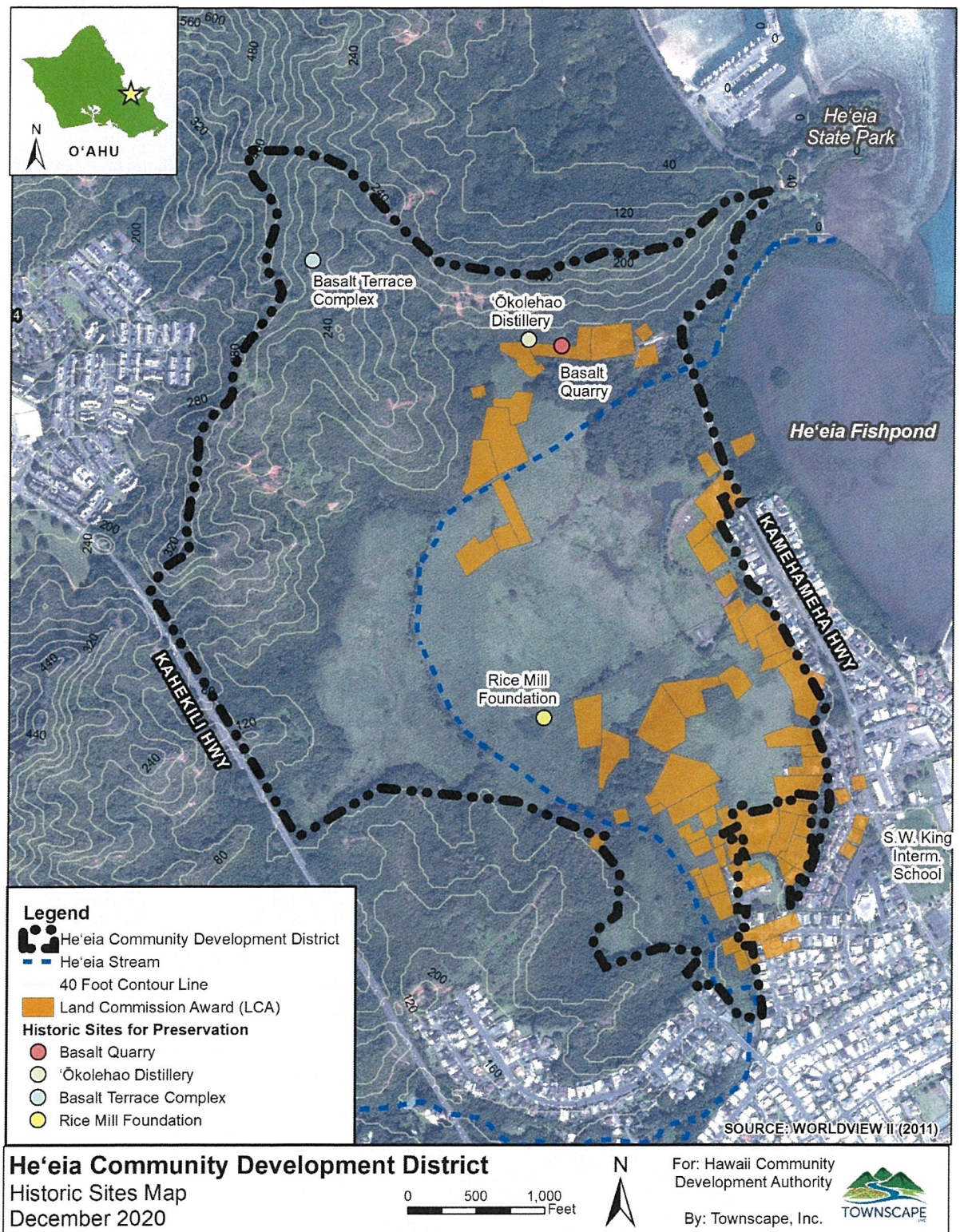


Figure 9: Historic Sites Map



E ola hou ke kalo; ho'i hou ka 'āina lē'ia
The taro lives; abundance returns to the land

4.0 He'eia Master Plan Principles:

The He'eia Master Plan Principles were developed to fulfill the guiding principles established in HRS Chapter 206E-203.

4.1. Restore the wetlands to support sustainable farming and food production, while protecting and supporting native species habitats.

- Protect water sources, including He'eia Stream, historic 'auwai, springs and groundwater. Re-establish and restore traditional water systems, where applicable.
- Remove invasive species, including flora and fauna. Replace invasive plants with kalo, native ornamentals, medicinal and other culturally-significant plants. Support programs to eradicate wild pigs and other invasive fauna.
- Support all aspects of farming by providing infrastructure, agricultural support facilities and access.
- Protect the

4.2 Protect the health of the He'eia ahupua'a, acknowledging that the He'eia CDD is a key component of the He'eia ahupua'a.

- Utilize land management system based on traditional practices, kūpuna knowledge and modern science in restoring the wetlands.
- Utilize lo'i and its roadway system, detention ponds and fish ponds to mitigate flood pulse, sediment control and ground water infiltration.
- Utilize lo'i and fishponds as salt water intrusion barriers.

- Encourage research and educational opportunities for wetland and ecosystem restoration.

4.3 Perpetuate Hawaiian culture to enrich the He‘eia District and the broader Ko‘olaupoko.

- Promote the development of educational and cultural facilities in the District.
- Encourage the sharing of mana‘o by community members, cultural practitioners, residents of He‘eia and respective experts and authorities.
- Respect the wisdom of kūpuna and lineal descendants while encouraging the next generation to carry on the rich heritage of He‘eia.
- Restore and create a cultural connection between the District and the broader He‘eia community.
- Acknowledge and support the kuleana parcels within the District.

4.4 Preserve significant archaeological, historic and cultural sites, to the extent practical.

- Preserve in place all significant archaeological, historical and cultural sites, to the extent practical.
- Restore and reclaim historic sites, to the extent practical.
- Consult with lineal descendants, cultural practitioners and the State Historic Preservation Division on issues pertaining to significant archaeological, historical and cultural sites.

4.5 Promote economic and environmental sustainability.

4.5.1. Economic Sustainability

- Support opportunities for enterprise that are consistent with the District’s mana‘o ho‘okō (intent).
- Support a venue for produce and products grown within the District.
- Provide support facilities including, poi mill, agricultural processing centers, commercial kitchens, and community areas.
- Explore opportunities that promote economic sustainability that are consistent with the District’s mana‘o ho‘okō (intent).

4.5.2. Environmental Sustainability

- Utilize green building, alternative energy, and zero waste strategies where applicable.
- Account for climate change and sea level rise.
- Pursue grants, funding, educational and research opportunities that promote environmental sustainability.

5.0 Land Use Plan and Guidelines

5.1 Land Use Plan

The Land Use Plan has been developed to create an agricultural, cultural and educational district which reflects the development guidance policies enacted by the State Legislature along with community input and mana'o from kupuna and lineal descendants.

5.1.1 Wao Ho'olā

Wao Ho'olā is the upland or ā'ina Makua area of the District and is envisioned as the *area of restoration and respite*. Non-native vegetation will be replaced with native and culturally significant vegetation. Wao Ho'olā provides an opportunity for dry-land agriculture as well as facilities that promote respite and healing. Significant historic sites including a granite quarry and terrace will be preserved in place.

The Wao Ho'olā zone extends from Kamehameha Highway on the northeastern boundary of the He'eia CDD, to Kahekili Highway on the southwestern boundary of the District. Wao Ho'olā is generally located outside the 100-year flood zone and is higher in elevation than other regions of the He'eia CDD, with peak elevations of up to 440 feet. The topography is steep in some areas with swales that could potentially flood during heavy rain events.

The Wao Ho'olā zone is generally located within the State Land Use District Conservation "General" zone. Conservation-zoned lands are comprised primarily of forest and water reserve zones, lands subject to flooding and soil erosion, and areas necessary for protecting watersheds and water sources, scenic and historic areas, parks, wilderness, open space, recreational areas, habitats of endemic plants, fish and wildlife, and all submerged lands seaward of the shoreline. The Conservation District is administrated by the State Board of Land and Natural Resources and uses are governed by rules promulgated by the State Department of Land and Natural Resources ("DLNR").

5.1.2 Wao Kahua

The Wao Kahua zone is envisioned as the *area of strong foundation to establish educational, cultural and agricultural support facilities*. Due to its higher elevation, facilities can be built to fulfill the agricultural, cultural and

educational goals of the District. The Wao Kahua zone is envisioned to support a wide range of uses including: dryland agriculture, cultural practices, education and research, restoration and resource management. Majority of the educational and cultural facilities of the District will be located along Kealohi Road. It is envisioned that infrastructure will be provided along Kealohi Road to support the cultural and educational facilities.

The Wao Kahua zone is generally located within the State Land Use District Urban zone. Two of the three kuleana parcels are located within the Wao Kahua zone.

5.1.3 Wao Loko i'a Kalo

The Wao Loko i'a Kalo zone is the wetland area of the District and is envisioned as the *area of mahi'ai (cultivate food) and 'āina momona (land that is abundant, food producing)*; it is the most vital component of the District. The Wao Loko i'a Kalo zone is the area of wetland and stream restoration, kalo and dryland cultivation, development of Loko i'a (fish and detention ponds), the practice of Hawaiian culture, education and arts, along with support structures and facilities for agricultural activities.

Wao Loko i'a Kalo consists of approximately 176 acres and accounts for approximately 43 percent of the District. The Wao Loko i'a Kalo region is a wetland, inundated by fresh water from He'eia Stream, springs, man-made 'auwai, and salt water from Kāne'ohe Bay. Majority of the wetland is characterized as estuarine wetlands with a portion of palustrine wetlands.

The wetland area, is regulated and protected by county, state, and federal laws and programs, including: the City and County of Honolulu - Coastal Zone Management Act; DLNR's Commission on Water Resources Management; Department of Health, Water Quality Certification Process (Clean Water Act, Section 401); and U.S. Army Corps' of Engineers (Clean Water Act, Section 404); and construction of structures, deposition of material or alteration to any navigable waters of the United States (Rivers and Harbors Act, Section 10).

There is one kuleana parcel located within the Wao Loko i'a Kalo zone.

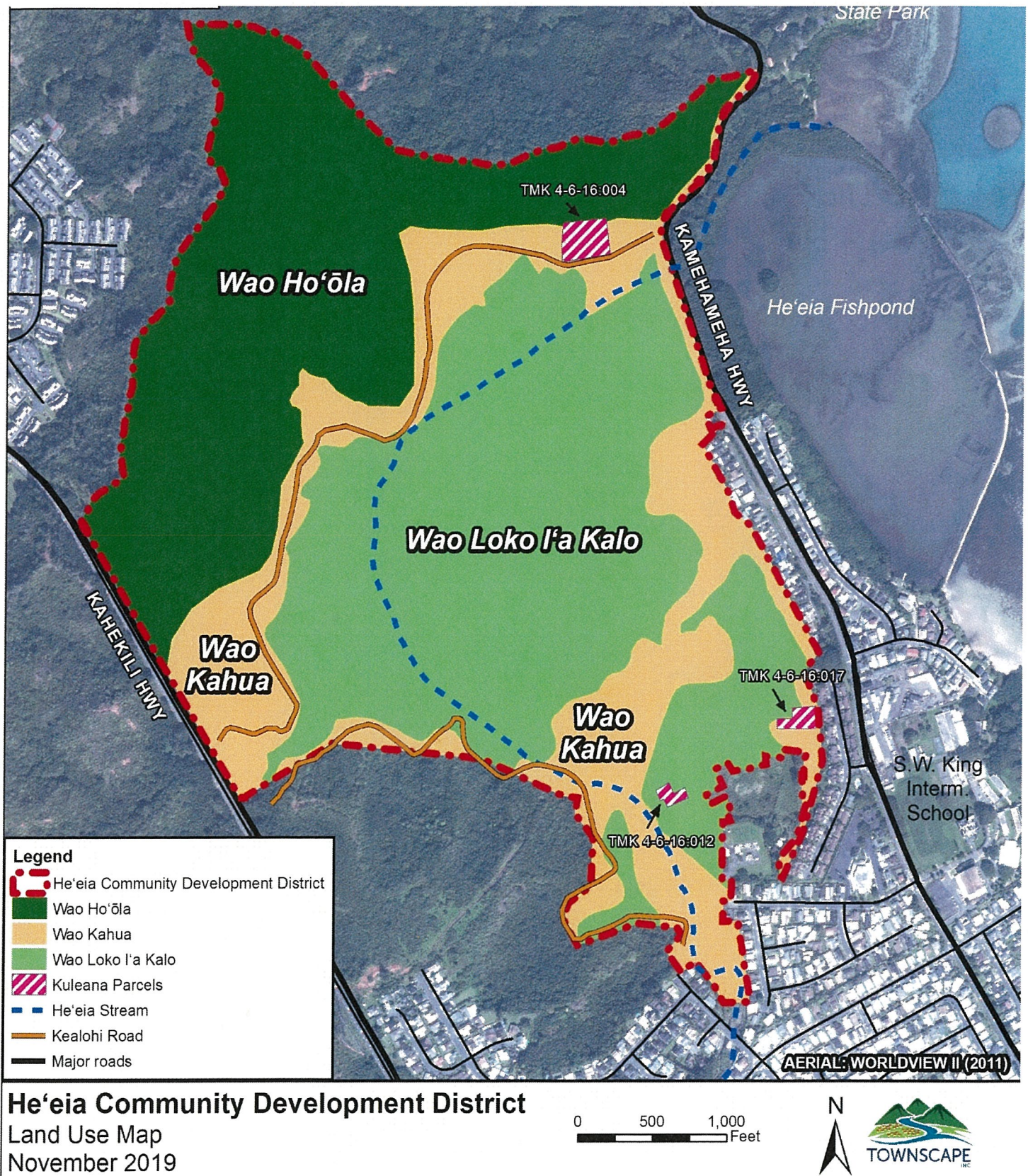


Figure 10: Land Use Plan

6.0 Infrastructure Systems

The proposed infrastructure systems for the District are intended to assist in the transformation of the wetlands into an agricultural, cultural and educational district. For the most part, there is no infrastructure within the He'eia CDD to support the planned uses proposed in the He'eia Master Plan. Infrastructure will need to be installed and developed to meet the projected demand of the future uses.

All applicable utilities will be designed in accordance with appropriate City and County, environmental and utility company standards as well as established engineering principles.

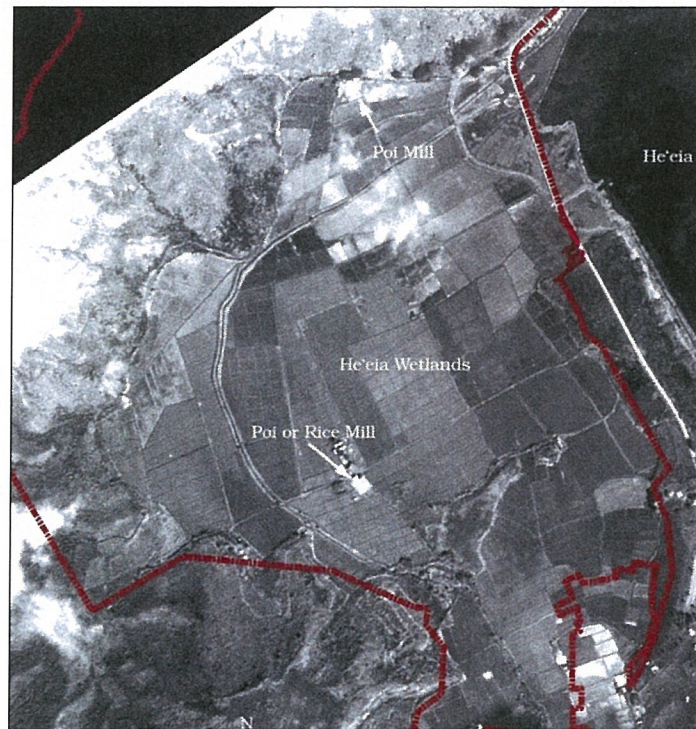
The estimated cost of infrastructure for the District is \$4 million.

6.1 Alanui (Roadway) Plan

Layout of the Alanui Plan is generally based on the 1928 aerial photo of the Hoi. As with the 1928 Roadway Plan, Kealohi Road will provide access to the planned facilities, agricultural uses and kuleana parcels within the Hoi. Minor farm roads within the Wao Loko i'a Kalo zone will primarily support agricultural activities. It is anticipated that these minor farm roads will be flexible depending on the layout of the lo'i.

In addition to facilitating circulation and access, the alanui is designed to mitigate flood pulse and sediment control.

Primary access into the District is from Kamehameha Highway at Kealohi Road and from the existing entrance just west of the pump station. Secondary access is proposed in the mauka area along Kahekili Highway.



1928 Aerial Photo of Alanui

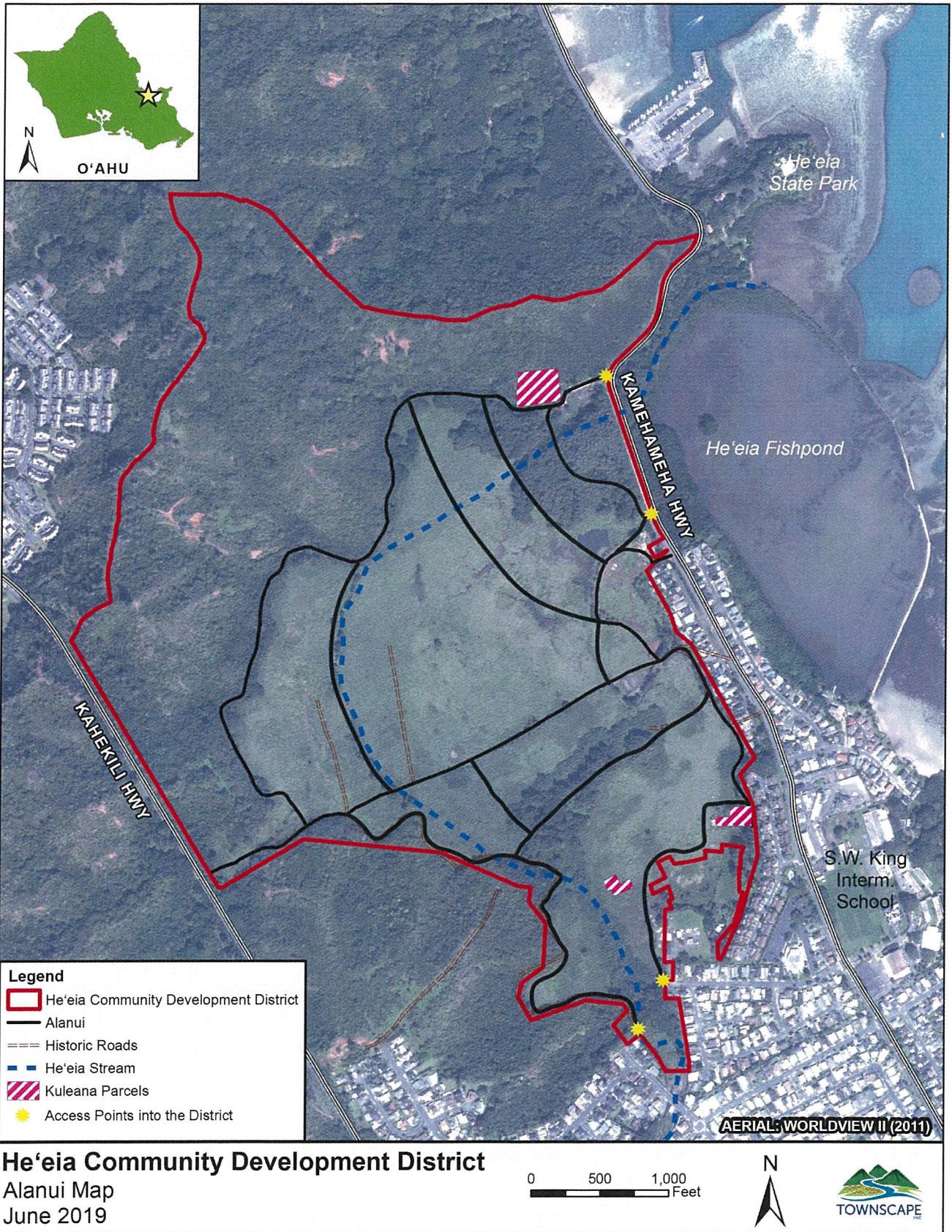


Figure 11 Alanui (Roadway) Plan

6.2 Water Supply

Existing potable water service to the area is supplied by the Honolulu Board of Water Supply (BWS). Three water mains are located within the Kamehameha Highway right-of-way. An 8-inch, 16-inch, and 30-inch water main, as shown in Attachment 3. The 16-inch and 30-inch mains also appear to be located within the He'eia wetlands boundary along Kealohi Road. It appears that the 8-inch main would provide water service to He'eia wetlands. The source reservoir of this main is the Kapunahala 272' Reservoir.

A conceptual plan of the proposed water infrastructure is shown in Figure 12. The actual alignments and distribution of water shall be determined during the project design phase. Generally, the BWS issues a single water meter for a given tax map key, therefore the conceptual water plan assumes this constraint. To provide service to all infrastructure, the proposed waterline will need to cross the wetlands and He'eia Stream.

Fire protection shall be provided to facilities in accordance to the State Fire Code and the latest BWS standards. The BWS 2002 Water System Standards (WSS) requires a minimum fire flow of 1000 gpm for 30 minutes and a maximum fire hydrant spacing of 700-feet for agricultural lands. The proposed water infrastructure shall be adequately sized for both fire protection and domestic water usage. The meter configuration shall be coordinated with the BWS at the time of design.

Domestic consumption for agriculture land, per the BWS WSS, is 4000 gal/acre. However, based on the type of agriculture, this amount of water consumption may not apply. Therefore, consumption requirements shall be validated with the BWS.

Design requirements for the new waterlines and appurtenances shall be in accordance with BWS WSS, Plumbing Code and any other applicable Federal, State, and County codes or requirements.

6.3 Sewer and Septic System

An existing City & County of Honolulu 8-inch gravity sewer main is located within an easement along Kamehameha Highway. This gravity main flows to the Alii Bluffs Sewer Pump Station (SPS). The wastewater is then pumped via a force main and eventually terminates at the Kailua Regional Wastewater Treatment Plant (WWTP). The adequacy of the sewer system shall be verified during the design phase.

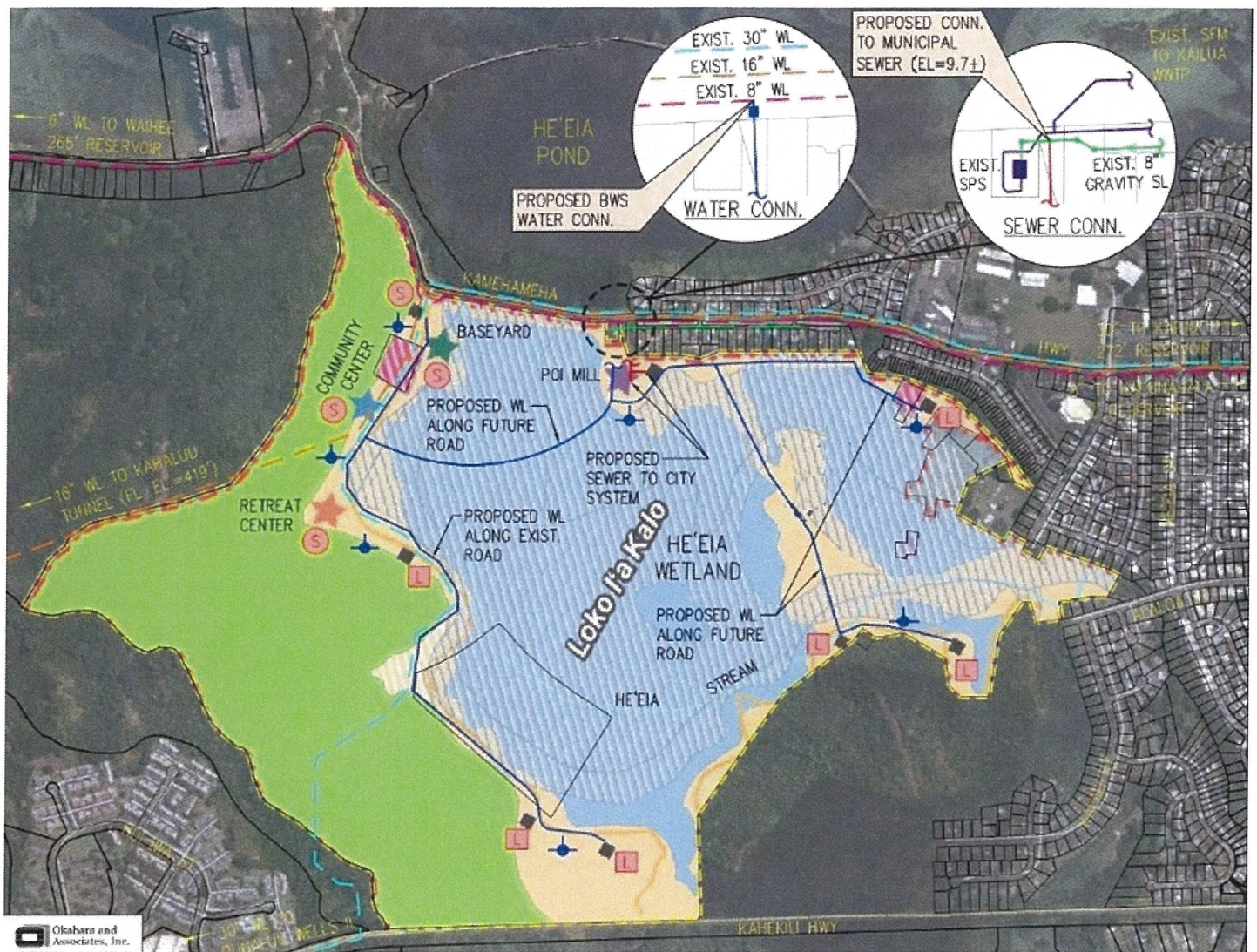
Facilities within the vicinity of Kamehameha Highway, including the Poi Mill, shall be connected to the municipal wastewater system. All other facilities shall manage wastewater using onsite with an individual wastewater system (IWS). The selection of an appropriate IWS shall be determined during design based on the demand and type of wastewater generation.

Potential IWS systems include composting toilets, septic systems, and gray water systems. It is anticipated that septic systems, such as septic tanks and leach fields, are feasible. The groundwater table shall be investigated during design and elevation determined to verify any required vertical separation is feasible. Proposed structures floor elevations shall be determined during design, however a preliminary it is anticipated that the finish floor elevations will be between elevation 10-ft and 20-ft. Therefore, septic systems appear feasible. Gray water systems may also be feasible but shall be evaluated during design. The close proximity to the wetlands shall be considered for whichever system is provided.

Design requirements for the wastewater and gray water systems shall comply with the City and County of Honolulu Wastewater System Design Standards, Department of Health requirements, and any other Federal, State, and County requirements.

6.4 Electrical System and Telecommunications

Currently, there is nominal electricity available in the He'eia CDD. With the implementation of the He'eia Master Plan, electrical and telecommunications needs will be assessed, installed and developed to meet the projected demand as agricultural, cultural and educational facilities are developed. Where possible, passive solar systems should be incorporated into the design of the respective facilities.



LEGEND:

- | | |
|---------------------------------|--------------------------------|
| — Exist. Sewer Force Main (SFM) | (S) Proposed Composting Toilet |
| — Exist. Sewer Gravity Main | — Proposed Fire Hydrant |
| — Exist. 8"/6" Water Main | (L) Septic System |
| — Exist. 16" Water Main | |
| — Exist. 30" Water Main | |
| — Proposed Sewer Line | |
| — Proposed Waterline | |

Figure 12: Water and Sewer & Septic Plan

7.0 Implementation

The He'eia CDD Plan is a long-range plan that fulfills the Mana'o Ho'okō of *recognizing the value of ahupua'a management principles, promote and cultivate 'aina momona (abundance) for the lands of He'eia for present and future generations through culturally appropriate agriculture, education, and natural resources restoration and management.* In general, implementation of the master plan will be primarily carried out by the lessee, Kāko'o 'Ōiwi. Over the long term, the Authority will have a key role in implementing the He'eia CDD Plan.

He'eia CDD Rules: In conjunction with the adoption of the He'eia CDD Plan, administrative rules will be established to carry out the objectives of HRS Chapter 206E.

The He'eia CDD Rules will contain specific definitions and standards for permitted uses within each land use zone, as well as procedures for reviewing and approving projects. Specifically, the He'eia CDD Rules will include:

- Purpose and applicability
- Definitions and standards for allowable uses
- Land Use Plan
- Procedures for permit approvals

In general, applicable permits for agricultural uses will be administratively approved. Permits for cultural and educational facilities will be approved by the Authority.

Easements: In addition to the He'eia CDD Rules, the Authority should also consider opportunities that will preserve agricultural use and wetland restoration in the District. Tools such as easements

- **Agricultural Easements:** The intent of Agricultural Land Easements is to protect the long-term viability of the nation's food supply by preventing the conversion of productive working lands to non-agricultural uses. For the He'eia CDD, establishing an Agricultural Land Easement may be appropriate for a portion the Wao Loko i'a Kalo zone to ensure and protect agricultural
- **Wetland Reserve Easements:** Likewise, a Wetland Reserve Easements can be implemented to protect the habitat for fish and wildlife, including threatened and endangered species, improve water quality by filtering sediments and chemicals, reduce flooding, recharge groundwater, protect biological diversity and provide opportunities for educational, scientific and limited recreational activities.

Infrastructure: Infrastructure will need to be installed and developed to meet the projected demand of the future facilities and uses. Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements for individual projects and (2) improvements which are necessary to service the District.

Infrastructure for individual projects will be the responsibility of the respective applicant. Infrastructure improvements to service the District will be undertaken by the HCDA or the

master lessee and provided through State Capitol Improvement Project appropriations, funding from HCDA revenues, and/or private funds.

Funding: It is anticipated that most facilities in the District will be initiated and developed by the community and non-profit organizations. All facilities will be approved by the Authority pursuant to the He'eia CDD Administrative Rules and guidelines. Funding for these projects is assumed to be from private sources ,but may also include government support where deemed appropriate.

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TOURISM

Adoption of Chapter 15-2__
Hawaii Administrative Rules

(date)

SUMMARY

Preliminary Draft for Review and Comment

December 2020

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Adoption of Chapter 15-2__
Hawaii Administrative Rules

(date)

SUMMARY

Chapter 2__ of Title 15, Hawaii Administrative
Rules, entitled "Heeia Community Development District
Rules" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 2__

HEEIA COMMUNITY DEVELOPMENT DISTRICT RULES

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SUBCHAPTER 1

PURPOSE AND APPLICABILITY

§15-2__ - Title. (a) This chapter 2__ of the Hawaii administrative rules ("HAR") shall be known, and may be cited, as the Heeia Community Development District ("CDD") rules.

(b) References to "rules" within this chapter are references to the Heeia CDD rules unless indicated otherwise. References to other regulations or provisions relevant to the Hawaii community development authority ("authority or HCDA"), where provided, are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure, or use from other regulations.

(c) The figures, dated _____, attached at the end of this chapter and the Heeia CDD plan, dated _____, are hereby incorporated by reference and made a part of this chapter.

[Eff _____] (Auth: HRS §§206E-5, 206E-7) (Imp: HRS §§206E-5, 206E-7)

§15-2__ - Purpose. The rules carry out the manao hooko (intent) and principles of the Heeia CDD plan by classifying and regulating land uses within the Heeia CDD district consistent with and in furtherance of chapter 206E, Hawaii Revised Statutes ("HRS").

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)

§15-2__ - Applicability. (a) This chapter, together with the Heeia CDD plan, shall govern all real property located within the Heeia CDD. In case of any discrepancy between the provisions of this chapter and the Heeia CDD plan, this chapter shall control.

(b) No building permit shall be approved by the HCDA for any project within the Heeia CDD unless the project conforms to the provisions of the Heeia CDD plan and this chapter.

(c) No public improvement or project within the Heeia CDD shall be initiated or adopted unless it conforms to and implements the Heeia CDD plan and this chapter.

(d) Except as otherwise specifically provided, the provisions of this chapter shall supersede the provisions of the city and county of Honolulu's land use ordinance. The foregoing ordinance is hereby declared to be inconsistent with this chapter, and shall therefore be inapplicable to projects within the Heeia CDD unless otherwise specifically stated.

(e) Except as otherwise specifically stated in this chapter, all other rules, regulations and laws shall continue to remain applicable to the projects and properties within the Heeia CDD, including but not limited to kuleana lands, as defined in §15-2__-8, definitions. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Minimum requirements. The provisions of the rules are minimum requirements for the protection and promotion of public health, safety, and welfare. Satisfaction of the minimum requirements does not mean that a decision-maker cannot impose additional requirements where authorized and appropriate and does not guarantee compliance with other rules, regulations, or laws imposed by other governmental entities. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Rules of interpretation. (a) Provisions of the rules are activated by "shall" when required; "should" when recommended; and "may" when optional.

(b) In addition to text-only contents of the rules, section 15-2__- (rules of interpretation) shall also control related captions, titles, and figures.

(c) Terms not defined in section 15-2__- (definitions of terms) shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and those found elsewhere within the HCDA's administrative rules, these rules shall take precedence.

(d) Where in conflict, numerical metrics shall take precedence over graphic metrics.

(e) Words used in the singular include the plural; words used in the plural include the singular.

(f) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(g) Within the rules, sections are occasionally prefaced with "purpose" or "intent" statements. Each such statement is intended as an official statement of legislative finding or purpose. The "purpose" or "intent" statements are legislatively adopted, together with their accompanying rules text. They are intended as a guide to the administrator and shall be treated in the same manner as other aspects of legislative history. However, they are not binding standards.

(h) In their interpretation and application, the provisions of the rules are considered minimal in nature. Whenever the provisions, standards, or requirements of HAR Chapter 219, HCDA's rules of practice and procedure, are higher or more restrictive, the latter shall control.

(j) Whenever the executive director determines that the meaning or applicability of any requirement of the rules is subject to interpretation generally, or as applied to a specific case, the executive director may issue an official interpretation. The executive director may also forward any interpretation of the meaning or applicability of any provision of the rules directly to the authority for a determination at a public meeting:

(1) The issuance of an interpretation shall

include findings stating the basis for the interpretation. The issuance of an interpretation shall also include a finding documenting the consistency of the interpretation with the Heeia CDD plan;

- (2) All interpretations shall be:
 - (A) Written and shall quote the provisions of the rules being interpreted, and the applicability in the particular or general circumstances that caused the need for interpretations, and the determination; and
 - (B) Distributed to the authority, executive director, and HCDA staff;
- (3) Any interpretation of the rules by the executive director may be appealed to the authority in compliance with section 15-2__ - (appeals); and
- (4) Any provision of the rules that is determined by the executive director to need refinement or revision will be corrected by amending the rules as soon as is practical. Until an amendment can occur, the executive director will maintain a complete record of all interpretations to the rules, indexed by the number of the subchapter, section or subsection that is the subject of the interpretation.

(k) If there is uncertainty about the location of any land use zone boundary shown on the land use plan, the location of the boundary shall be determined by the executive director by using the scale appearing on the land use plan. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Compliance with other regulations. (a) Whenever conflicting requirements are discovered in the application of the rules, they shall be resolved as follows:

- (1) Heeia CDD rules. If a conflict occurs

- between requirements within the rules, the most restrictive shall apply;
- (2) Heeia CDD plan. The provisions of the rules, when in conflict with the Heeia CDD plan, shall take precedence; and
 - (3) Federal regulations. If a conflict occurs between these rules and federal regulations, the federal regulations shall take precedence;
 - (4) Kuleana lands. If a conflict occurs between these rules and Kuleana lands, the rights and regulations for kuleana lands shall take precedence; and
 - (5) Private agreements. The rules apply to all real property located within the Heeia CDD regardless of whether it imposes a greater or lesser restriction on the project or use of structures or land than a private agreement or restriction.
- (b) HAR Chapter 219, HCDA's rules of practice and procedure apply within the Heeia CDD and may be referenced herein. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Severability. These rules shall be liberally construed to protect and preserve the health, safety, and general welfare within the Heeia CDD. Should any provision of the rules be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Definition of terms. This section provides definitions for terms in these rules that are technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this section, then the executive director shall

determine the correct definition through the interpretation provisions of section 15-2__-5 (rules of interpretation).

"Administrative" is a use classification for uses pertaining to the affairs of a business, service, industry, or like activity, including offices, security and staff support uses;

"Agribusiness" is a use classification for accessory uses that provide the means to get an agricultural good to market, including production, marketing, and distribution;

"Agricultural building" means a nonresidential building or structure, built for agricultural or aquacultural purposes, constructed or installed to house farm implements, agricultural or aquacultural feeds or supplies, livestock, poultry, or other agricultural or aquacultural products, used in or necessary for the agricultural or aquacultural operation or for the processing or selling of agricultural and aquacultural products;

"Agricultural kauhale" means a building or structure built for the housing of farm workers;

"Aquaculture" is a use classification for the rearing of aquatic animals or the cultivation of aquatic plants for food;

"Artisan or craft production" is a use classification for the manufacturing and assembling of products primarily by hand, including but not limited to clothing, furniture, jewelry, pottery and other ceramics, art, and craft products;

"Authority" means the Hawaii community development authority established by section 206E-3, HRS;

"Building" means any permanently anchored structure used or intended for supporting or sheltering any use or occupancy;

"Civic" is a use classification which includes uses that foster community interaction and citizen participation in civic activities such as: meeting halls or clubhouse, conference centers, cultural facilities, public safety facilities, and public or government facilities;

"Cultural facilities" is a use classification for facilities of an historic, an educational, or a cultural interest;

"Educational facilities" is a use classification pertaining to instruction or education;

"Elevation" means an exterior wall of a building not along a frontage line;

"Executive director" means the executive director of the HCDA;

"Group assembly" is a use classification for the gathering of people for activities including a music festival, cultural event, exhibition, lecture, concert, celebration, or similar activity which is open to the public or to which members of the public are invited or admitted either for a charge or free of cost;

"Guideline" means a provision that is suggested to further the intent and the Heeia CDD plan and rules, but that is not compulsory;

"Habitable space" means space in a structure for living, sleeping, eating or cooking. Bathrooms, closets, halls, storage areas and utility spaces are not considered habitable spaces;

"Hawaii revised statutes" or "HRS" means the Hawaii Revised Statutes;

"Health and healing centers" is a use classification for facilities that promote native Hawaiian healing, practices and traditions;

"Heeia CDD" means the district, established by Hawaii Revised Statutes section 206E-202, which establishes the Heeia Community Development District and its boundaries;

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges," as originally enacted and amended.

"Land use" means a designation of land with approved uses that can legally operate within the Heeia CDD;

"Land use map" means the official map or maps that are part of the Heeiea CDD rules and delineate the boundaries of individual zones and districts.

"Land use ordinance" or "LUO" means the land use ordinance adopted by Ordinance No. 86-96 of the city and county of Honolulu;

"Livestock" means all animals generally associated with farming, which are raised and kept for food and other agricultural purposes;

"New building" means and includes the construction of a building including structural supports, walls and a roof;

"Nonconforming structure" means a building or structure that was lawfully erected prior to the effective date of the adoption or amendment of this chapter but no longer complies with all the regulations applicable to the Heeiea CDD as a result of adoption or amendment of this chapter or government action associated with eminent domain;

"Nonconforming use" means an activity using land, buildings or structures for purposes which were legally established prior to the effective date of the adoption or amendment of this chapter, but would not be permitted as a new use in any of the neighborhood zones established by this chapter;

"Outdoor recreation" is a use classification for recreational facilities operated for monetary or on a nonprofit basis and which typically include fields, play areas, and activities;

"Project site" means the gross land area of a lot for a proposed project;

"Public building" is a use classification pertaining to buildings owned or developed by public entities or developed on state-owned lands;

"Public project" means any project or activity of any county or state agency conducted to fulfill a governmental function for public benefit and in accordance with public policy;

"Public utility project" means any project or activity of any county or state agency conducted to upgrade or construct utilities, including sanitary

sewer, drain lines, water, gas, electrical, telephone, cable, pedestrian facilities, and roadway systems;

"Special flood hazard area" means a designation by the Federal Emergency Management Agency ("FEMA") that may include the V (velocity) zones and coastal A zones where building construction is forbidden, restricted, or contingent upon raising the building to the base flood elevation;

"Story" means a level within a building that can be used for living, work, storage, or recreation, excluding an attic or raised basement;

"Structure" means anything constructed or erected with a fixed location on the ground, including buildings, walls and signs;

"Utilities and communications" is a use classification for basic amenities such as water, sewerage, electricity, and communications that will support the individual facilities and uses in the Heeia CDD;

"Vocational school" is a use classification pertaining to training in a skill or trade to be pursued as a career;

[Eff] (Auth: HRS §§206E-2, 206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5, 206E-7)

§§15-2__-9 to 15-2__-20 (Reserved).

SUBCHAPTER 2

LAND USE ZONES

§15-2____ Purpose. This subchapter establishes the land use zones within the Heeia CDD and adopts the land use plan for the Heeia CDD as its zoning map. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ Land use plan. The Heeia CDD rules land use plan (hereafter referred to as the "Land Use Plan") is included as Figure 1.2, dated _____, made a part of this chapter. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ Land use zones. (a) The land use plan is divided into three land use zones corresponding to the Heeia CDD plan. (see Figure 1.2 Land use plan, dated _____, made part of this chapter and attached at the end of this chapter). These land use zones and their corresponding use rules and guidelines are as follows:

- (1) Wao ho ola zone. The Wao ho ola zone is located in the upland area of the district and is envisioned as an area of restoration and respite. Wao ho ola provides an opportunity for dry-land agriculture as well as an area for facilities that promote respite and healing.
- (2) Wao kahua zone. The Wao kahua zone is envisioned as the area of strong foundation to establish educational, cultural and agricultural support facilities. The Wao kahua zone will provide a range of uses, including dry land agriculture, cultural practices, education and research, restoration and resource management.

- (3) Wao loko ia kalo zone. The Wao loko ia kalo zone is the wetland area of the District and is envisioned as the area of mahiai (cultivate food) and aina momona (land that is abundant, food producing). The Wao loko ia kalo zone is the area of wetland and stream restoration, taro and dryland cultivation, development of loko ia (fish and detention ponds), the practice of Hawaiian culture and traditions, education and arts. It will also contain support structures and facilities for agricultural activities.

(b) Standards applicable to land use zones. All projects, use, and construction within the land use zones shall conform to the standards set forth in § 15-_____, which allocate land use and building parameters.

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

§15-2__ Allowable Land uses. (a) Buildings in each land use zone shall conform to the allowable land uses specified in Figure 1.3 (allowable land uses), dated _____, made a part of this chapter, and attached at the end of this chapter.

[Eff _____] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

§§15-2__- to 15-2__- (Reserved).

SUBCHAPTER 3

AREA-WIDE STANDARDS

§15-2__ Purpose. (a) This subchapter provides standards that:

- (1) Apply throughout the Heeia CDD; and
- (2) Either supplement or modify other standards provided elsewhere in the rules.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ Applicability. This subchapter applies to all permit applications and use classifications, except where a section provides otherwise.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Agricultural use and structures. (a) The following agricultural buildings and structures that are not used as dwellings or lodging units are exempt from HCDA permit requirements where they are no more than one thousand square feet in size:

- (1) Nonresidential manufactured pre-engineered commercial buildings and structures;
- (2) Single stand-alone recycled ocean shipping or cargo containers that are used as nonresidential buildings and are properly anchored;
- (3) Notwithstanding the one thousand square foot floor area restriction, agricultural shade cloth structures, cold frames, or greenhouses not exceeding twenty thousand square feet in area per structure;
- (4) Aquaculture or aquaponics structures, including above-ground water storage or production tanks, troughs, and raceways with a maximum height of six feet about grade, and in-ground ponds and raceways, and piping

- systems for aeration, carbon dioxide, or fertilizer or crop protection chemical supplies within agriculture or aquacultural production facilities;
- (5) Livestock watering tanks, water piping and plumbing not connected to a source of potable water, or separation by an air gap from such a source;
 - (6) Non-masonry fences not exceeding ten feet in height and masonry fences not exceeding six feet in height;
 - (7) One-story masonry or wood-framed buildings or structures with a structural span of less than twenty-five feet and a total square footage of no more than one thousand square feet, including farm buildings used as:
 - (A) Barns;
 - (B) Greenhouses;
 - (C) Farm production buildings including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment or plant or animal supplies or feed; or
 - (E) Storage or processing buildings for crops, provided that the height of any stored items shall not exceed twelve feet in height;
 - (8) Raised beds containing soil, gravel, cinders or other growing media or substrates with wood, metal or masonry walls or supports with a maximum height of four feet;
 - (9) Horticultural tables or benches no more than four feet in height supporting potted plants or other crops; and
 - (10) Nonresidential indigenous Hawaiian hale that do not exceed five hundred square feet in size, have no kitchen or bathroom, and are used for traditional agricultural activities or education;
- (b) Notwithstanding the one thousand square foot floor area restriction in § 15- __, the following buildings, structures, and appurtenances shall be

exempt from HCDA permit requirements when compliance with relevant construction standards:

- (1) Nonresidential manufactured pre-engineered and county pre-approved commercial buildings and structures consisting of a total square footage greater than one thousand square feet, but no more than eight thousand square feet; and
 - (2) One-story wood-framed or masonry buildings or structures with a structural span of less than twenty-five feet and a total square footage greater than one thousand square feet, but no more than eight thousand square feet constructed in accordance with relevant construction standards, including buildings used as:
 - (A) Barns;
 - (B) Greenhouses;
 - (C) Farm production buildings, including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment, plant or animal supplies, or feed; or
 - (E) Storage or processing buildings for crops; provided that the height of any stored items shall not collectively exceed twelve feet in height.
- c) The exemptions in § 15- __, shall apply; provided that:
- (1) The aggregate floor area of the exempted agricultural buildings shall not exceed:
 - (A) Five thousand square feet for project sites of two acres or less;
 - (B) Eight thousand square feet for project sites greater than two acres, but not more than eight acres; and
 - (C) Eight thousand square feet plus two per cent of the acreage per project site for sites greater than five acres, provided that each exempted agricultural building is compliant with restrictions in § 15- __

- (2) The minimum horizontal separation between each agricultural building, structure, or appurtenance is fifteen feet;
- (3) The agricultural buildings, structures, or appurtenances are constructed or installed on property that is used primarily for agricultural or aquacultural operations and are used for general agricultural or aquaculture;
- (4) No electrical power and no plumbing shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit; and
- (5) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with HRS Chapter 342D.

§15-2 - Building form. (a) The height of any building or structure or portion thereof shall not exceed two stories.

(b) Height limits for attics or raised basements, masts, elevator bulkheads, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances on the roof level shall be limited to the height necessary for their proper functioning. The executive director shall make the final determination on the height necessary for their proper functioning. Attics shall not exceed fourteen feet in height.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2 - Architectural design. (a) (~~add specific requirements~~)

- (b) Lighting:
 - (1) Lighting sources shall be constructed or installed so that light is aimed downwards and does not spill over to abutting properties;
 - (2) Lighting that is visible from adjacent

properties or thoroughfares shall be indirect or incorporate full shield cut-offs; and

- (3) Incandescent exterior lights and high-pressure sodium lights are prohibited.

(c) Signage. All signs shall be in compliance with the applicable rules and regulations administered by the city and county of Honolulu, as provided for in the city and county of Honolulu's land use ordinance, as it may be amended from time to time.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-56 Landscape. Where applicable, all yards within projects shall be landscaped with native or adapted plant species and/or hardscaped with permeable material.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-62 Historical and cultural sites. (a) Purpose. The purpose of this section is to preserve, protect, and restore properties in the Heeia CDD that are determined to be historic and culturally significant.

(b) Applicability. This section applies to all historical or culturally significant properties as identified in the Heeia CDD Plan.

(c) Preservation and consultation. Properties situated in the Heeia CDD that are deemed to be historically or culturally significant shall be preserved and protected in accordance with the implementing regulations of section 106 of the National Historic Preservation Act and chapter 6E, HRS:

- (1) All projects that propose the restoration of historic and cultural sites shall consult with the department of land and natural resources, state historic preservation division ("SHPD"), department of land and

natural resources to allow an opportunity for review of the effect of the proposed project on any historic properties or burial sites, pursuant to section 6E-43, HRS;

- (2) A written letter of concurrence from SHPD or adequate documentation that the applicant has complied with the requirements of chapter 6E-10, HRS, shall be included with the permit application to the authority; and
- (3) All SHPD requirements shall be completed by the applicant prior to submittal of a permit application to the authority.

(d) Uses classifications. A property designated historic or culturally significant may be put to any use permitted in the neighborhood zone in which the property is situated, subject to the requirements of this section. [Eff _____] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-2__-63 Parking. (a) Applicability. This section applies to all new buildings in the Heeia CDD.

(b) There shall be no parking requirement for agricultural uses in all land use zones;

(c) For new buildings in the Heeia CDD, the executive director will review the proposed use and determine its equivalent and applicable off-street parking requirements; and

(d) Permeable surfaces for parking and maneuvering areas are permitted.

§15-2 -66 to 15-2 -78 (Reserved).

SUBCHAPTER 5

PROCEDURES

§15-2__-79 Rules clearance. (a) Applicability.
Any uses, structures, and activities identified by

section 15-2__ below shall be issued a rules clearance from the rules when they are in compliance with applicable standards of subchapter 2 (land use plan) and subchapter 3 (area-wide standards) and, where applicable, those relating to section 15-2__ - (nonconformities);

(b) Qualifying land uses, structures and activities. The following are eligible for issuance of a rules clearance when in compliance with section 15-2__(a) above:

- (1) Fences and walls in compliance with height and location requirements in section 15-2__-55(e) (architectural design);
- (2) Interior alterations or change in use.
- (3) Repairs and maintenance on all structures if the work does not change the approved land use of the site or structure;
- (4) Aquaculture and aquaponic uses;
- (5) Any public utility project.

(c) Action. In accordance with Figure 1.1 (approval requirements matrix), dated, made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all rules clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Facility permit. (a) Applicability. All new buildings shall require a permit unless waived in accordance with section 15-2__ - (agricultural use and structures) or eligible for a rules clearance under section 15-2__ -.

(b) Initiation. An applicant may apply for a facility permit by filing an application with the executive director.

(c) Types. All facility permits shall be subject to the authority review and action pursuant to Figure 1.

(approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter:

(d) Required findings. Approval of an facility permit shall require all the following findings of fact:

- (1) Heeia CDD plan consistency. That the proposal complies with and advances the goals, policies and objectives of the Heeia CDD plan;
- (2) Heeia CDD rules consistency. That the proposal will protect, preserve, or enhance desirable neighborhood characteristics through compliance with the standards and guidelines of the Heeia CDD rules; and
- (3) Compatibility. That the proposal will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.

(e) Conditions. In approving a facility permit, the authority may impose any reasonable conditions to ensure that the approval complies with the findings required above. Any conditions attached to an facility permit shall continue to apply to the proposed use and shall be enforceable as provided in section 15-2__- (violations and enforcement).

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15- Conditional use permit. (a) No inherent right exists to receive a conditional use permit. Every conditional use permit application shall, at a minimum, comply with every requirement contained in these rules. Mere compliance with the generally applicable requirements however may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

(b) Applicability. Uses are as designated in Figure 1.3 (allowable land uses), dated _____,

made a part of this chapter, and attached at the end of this chapter.

(c) Decision-maker. Conditional use permits are subject to authority review and action pursuant to Figure 1.1 (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter.

(d) Findings. Approval of a conditional use permit shall require all the following findings of fact:

- (1) The use is allowed within the applicable zone and complies with all other applicable provisions of the rules;
- (2) The use will conform to the Heeia CDD Plan;
- (3) The design, location, size and operating characteristics of the proposed use are compatible with manao hooko of the district;
- (4) The site is physically suitable for the type and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
- (5) Granting the permit would not be detrimental to the public health, safety, or welfare, or be materially injurious to persons, lots, or to the district.

(e) Conditions. In approving any conditional use permit, the authority may impose such reasonable standards, conditions, or requirements, as it may deem necessary to protect the public welfare and in order to ensure the approval will comply with the findings of this section. Such additional standards, conditions or requirements may include, but need not be limited to:

- (1) Limitations on operations and use.
- (2) Area requirements;
- (3) Standards pertaining to circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, and similar characteristics; or

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Variances. (a) Purpose. This section is intended to provide a mechanism for relief from the strict application of the rules where the strict application will deprive the applicant of privileges because of the subject site's unique and special conditions. Economic or financial hardship alone is not sufficient justification for granting a variance.

(b) Applicability. All requirements of the rules are mandatory unless approval of variance is obtained, except as limited by section 15-2__-(_) (variances).

(c) Variances shall be subject to authority review and action of Figure 1.1 (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter:

(d) Findings. Approval of a variance shall require all the following findings of fact:

- (1) Uniqueness. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular project area; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the rules;
- (2) Self-created hardship. That the practical difficulties or unusual hardship claimed as the basis for a variance has not been created by the applicant;
- (3) Minimal deviation. That the variance, if granted, is the minimum deviation necessary to afford relief; and to this end, the decision-maker may permit a lesser variance than that applied for;
- (4) Character. That the variance, if granted, will not alter the existing character of the area and will not be detrimental to the public welfare and the environment; and

- (5) No adverse impact. The variance would result in project that is not detrimental to or that would adversely impact the district.
- (e) Submittal requirements. Each variance application shall include, at a minimum, the following:
 - (1) A statement of the standard or standards that are the subject of the proposed variance;
 - (2) A textual description of the manner in which the applicant proposes to deviate from such evaluation standard or standards;
 - (3) Plans drawn to scale, showing the nature, location, and dimensions of the structure, area or part thereof that is the subject of the proposed variance;
 - (4) A justification for the proposed variance in light of the requirements set forth above; and
 - (5) Other information as may be required by the decision-maker. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-85 Completeness review. (a) Purpose. The purpose of the completeness review is to determine whether all required information is provided in a permit application. A completeness review shall not constitute a decision as to whether an application complies with the provisions of the rules.

(b) Applicability. This section applies to all applications for permits provided for in the rules.

(c) Application materials. No application may be deemed complete unless all of the information required by forms published by the HCDA is included. The executive director shall ensure that application materials are made available in hardcopy format at the HCDA office and electronically via the internet.

(d) Jurisdiction. All applications shall be reviewed by the executive director for completeness.

At the time of proposed filing, the executive director may reject any application that omits information required by forms published by the HCDA. Once accepted for filing, the executive director's final determination on completeness of an application is appealable to the authority pursuant to section 15-2__- (appeals).

(e) Commencement of time limit for application decision. Whenever the rules establish a time period for processing an application, such time period does not commence until the executive director has issued a certificate of completeness.

(f) Completeness review process:

- (1) The executive director shall provide a written determination on the completeness review within forty-five working days of receipt of the permit application. If a permit is deemed complete, the executive director shall issue a certificate of completeness. If the application is determined not to be complete, the executive director's determination shall specify those parts of the application that are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application;
- (2) If the application requires review by any other local, state, or federal agency or entity, the executive director may require the written comments from such agency or entity prior deeming the application complete and until such time that the executive director receives all such comments, the forty-five day period shall be tolled;
- (3) Upon receipt of any application that has been resubmitted, a new forty-five day period shall begin, during which period the executive director shall determine the completeness of the application;

- (4) If the applicant contests the executive director's determination of an incomplete application, the applicant may appeal the executive director's determination to the authority pursuant to section 15-2__-, (appeals). If the authority does not render a decision on the appeal within thirty working days after submittal of the requisite appeal form and filing fee, the application with the submitted materials shall be deemed complete for the purposes of this section; and
- (5) Nothing in this section precludes an applicant and the executive director from mutually agreeing to an extension of any time limit provided by this section.

(h) Time limits. A certificate of completeness is deemed issued if the executive director fails to act within the time period required for completeness review. In computing time periods of this section, the day upon which the application was submitted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

(i) Information requests. After the executive director issues a certificate of completeness or deemed as complete per section 15-2__- (completeness review), the executive director or authority may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, if such would be required by the decision-maker to render a final determination on the merits. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Automatic approvals. (a) The following permits shall be deemed approved and require no public hearing if a certificate of completeness has been issued and no decision is rendered within the following review periods:

- (1) Rules clearance (sixty calendar days);
- (2) Facility Permit (ninety calendar days); and
- (3) Variance (one hundred eighty calendar days).

(b) Whenever a proposed project requires more than one permit, the longest review period of section 15-22- shall apply for determining the deemed approved date. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Approval period. (a) Rules clearance approvals shall have an effective approval period of one year.

(b) Facility permits and variance approvals shall have an effective approval period of two years, unless extended under these rules.

(c) Prior to expiration and upon submittal of a written request and payment of the applicable filing fee, a facility permit may be extended by the authority for a period of up to one year. The executive director may issue up to two extensions.

(e) In computing the approval period, the day upon which the approval was granted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Appeals. (a) Decisions of the executive director rendered in the administration of the rules are appealable, as provided herein, to the authority (see Figure 1.1) (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter).

(b) An appeal of an executive director decision shall be sustained by the authority only if it finds:

- (1) The executive director's decision was based on an erroneous finding of material fact; or
- (2) The executive director acted in an arbitrary or capricious manner or had manifestly

abused his or her discretion.

(c) All appeals of a decision by the executive director shall be filed and processed in accordance with HAR Chapter 219, HCDA's rules of practice and procedure. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-90 Minor changes. (a) After final approval of a rules clearance, facility permit or variance, the executive director may allow minor amendments to the application without submittal of a new or amended application when the requested amendment(s) does not:

- (1) Introduce different land uses;
- (2) Request larger land area;
- (3) Request greater variance;
- (4) Reduce or eliminate conditions attached to the subject permit approval.

(b) Any other change requests which do not qualify under section 15-) (minor changes) shall require the filing of a new application to be processed in accordance with this subchapter.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-91 Nonconformities. (a) Applicability. This section applies to nonconformities, including their continuation, enlargement, or expansion.

(b) Continuation. A nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all authority statutes or regulations in effect at that time may continue subject to this section.

(c) Violation of rules. The violation of this section shall immediately disallow a nonconformity.

(d) Nonconforming uses:

- (1) Continuance of nonconforming uses. The lawful use of any structure existing as of the effective date of the rules may be continued, although such use does not

conform to the provisions of the rules. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure occur, except those made in conformance with the rules; and

(2) Changes of use:

- (A) Any nonconforming use may be changed to a use conforming with the rules established for the land use zone in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not in the future be changed back to a nonconforming use; and
- (B) A nonconforming use may only be expanded under the provisions of section 15-2__- (nonconformities). continue the nonconformity.

(e) Nonconforming structures:

- (1) Continuance of nonconforming structures. Subject to the provisions of section 15-2__-91(b), any nonconforming structure may be occupied, operated, and maintained in a state of good repair;
- (2) Enlargement, conforming and nonconforming use. A nonconforming structure in which only permitted uses are operated may be enlarged or extended if the enlargement or extension can be made in compliance with all regulations established in subchapter 2 (land use plan) and subchapter 3 (area-wide standards); and
- (3) Exception for repairs pursuant to public order. Nothing in this subsection shall be deemed to prevent the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it to restoration to a safe

condition, provided that such restoration is not otherwise in violation of the various provisions of this subsection prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.

§15-2__-92 Violations and enforcement. All provisions relating to violations of these rules and enforcement of said violations are provided in HCDA's rules of practice and procedure. [Eff]
(Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-2__-93 Fee schedule. There are no fees for rule clearance facility and conditional use permits. Public hearing costs for variance requests shall be the paid for by the applicant.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Adoption of Chapter 15-2__
Hawaii Administrative Rules

(date)

SUMMARY

Preliminary Draft for Review and Comment

December 2020

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Adoption of Chapter 15-2__
Hawaii Administrative Rules

(date)

SUMMARY

Chapter 2__ of Title 15, Hawaii Administrative
Rules, entitled "Heeia Community Development District
Rules" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 2__

HEEIA COMMUNITY DEVELOPMENT DISTRICT RULES

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SUBCHAPTER 1

PURPOSE AND APPLICABILITY

§15-2__ - Title. (a) This chapter 2__ of the Hawaii administrative rules ("HAR") shall be known, and may be cited, as the Heeia Community Development District ("CDD") rules.

(b) References to "rules" within this chapter are references to the Heeia CDD rules unless indicated otherwise. References to other regulations or provisions relevant to the Hawaii community development authority ("authority or HCDA"), where provided, are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure, or use from other regulations.

(c) The figures, dated _____, attached at the end of this chapter and the Heeia CDD plan, dated _____, are hereby incorporated by reference and made a part of this chapter.

[Eff _____] (Auth: HRS §§206E-5, 206E-7) (Imp: HRS §§206E-5, 206E-7)

§15-2__ - Purpose. The rules carry out the manao hooko (intent) and principles of the Heeia CDD plan by classifying and regulating land uses within the Heeia CDD district consistent with and in furtherance of chapter 206E, Hawaii Revised Statutes ("HRS").

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)

§15-2__ - Applicability. (a) This chapter, together with the Heeia CDD plan, shall govern all real property located within the Heeia CDD. In case of any discrepancy between the provisions of this chapter and the Heeia CDD plan, this chapter shall control.

(b) No building permit shall be approved by the HCDA for any project within the Heeia CDD unless the project conforms to the provisions of the Heeia CDD plan and this chapter.

(c) No public improvement or project within the Heeia CDD shall be initiated or adopted unless it conforms to and implements the Heeia CDD plan and this chapter.

(d) Except as otherwise specifically provided, the provisions of this chapter shall supersede the provisions of the city and county of Honolulu's land use ordinance. The foregoing ordinance is hereby declared to be inconsistent with this chapter, and shall therefore be inapplicable to projects within the Heeia CDD unless otherwise specifically stated.

(e) Except as otherwise specifically stated in this chapter, all other rules, regulations and laws shall continue to remain applicable to the projects and properties within the Heeia CDD, including but not limited to kuleana lands, as defined in §15-2__-8, definitions. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Minimum requirements. The provisions of the rules are minimum requirements for the protection and promotion of public health, safety, and welfare. Satisfaction of the minimum requirements does not mean that a decision-maker cannot impose additional requirements where authorized and appropriate and does not guarantee compliance with other rules, regulations, or laws imposed by other governmental entities. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Rules of interpretation. (a) Provisions of the rules are activated by "shall" when required; "should" when recommended; and "may" when optional.

(b) In addition to text-only contents of the rules, section 15-2__- (rules of interpretation) shall also control related captions, titles, and figures.

(c) Terms not defined in section 15-2__- (definitions of terms) shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and those found elsewhere within the HCDA's administrative rules, these rules shall take precedence.

(d) Where in conflict, numerical metrics shall take precedence over graphic metrics.

(e) Words used in the singular include the plural; words used in the plural include the singular.

(f) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(g) Within the rules, sections are occasionally prefaced with "purpose" or "intent" statements. Each such statement is intended as an official statement of legislative finding or purpose. The "purpose" or "intent" statements are legislatively adopted, together with their accompanying rules text. They are intended as a guide to the administrator and shall be treated in the same manner as other aspects of legislative history. However, they are not binding standards.

(h) In their interpretation and application, the provisions of the rules are considered minimal in nature. Whenever the provisions, standards, or requirements of HAR Chapter 219, HCDA's rules of practice and procedure, are higher or more restrictive, the latter shall control.

(j) Whenever the executive director determines that the meaning or applicability of any requirement of the rules is subject to interpretation generally, or as applied to a specific case, the executive director may issue an official interpretation. The executive director may also forward any interpretation of the meaning or applicability of any provision of the rules directly to the authority for a determination at a public meeting:

(1) The issuance of an interpretation shall

include findings stating the basis for the interpretation. The issuance of an interpretation shall also include a finding documenting the consistency of the interpretation with the Heeia CDD plan;

- (2) All interpretations shall be:
 - (A) Written and shall quote the provisions of the rules being interpreted, and the applicability in the particular or general circumstances that caused the need for interpretations, and the determination; and
 - (B) Distributed to the authority, executive director, and HCDA staff;
- (3) Any interpretation of the rules by the executive director may be appealed to the authority in compliance with section 15-2__ - (appeals); and
- (4) Any provision of the rules that is determined by the executive director to need refinement or revision will be corrected by amending the rules as soon as is practical. Until an amendment can occur, the executive director will maintain a complete record of all interpretations to the rules, indexed by the number of the subchapter, section or subsection that is the subject of the interpretation.

(k) If there is uncertainty about the location of any land use zone boundary shown on the land use plan, the location of the boundary shall be determined by the executive director by using the scale appearing on the land use plan. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Compliance with other regulations. (a) Whenever conflicting requirements are discovered in the application of the rules, they shall be resolved as follows:

- (1) Heeia CDD rules. If a conflict occurs

between requirements within the rules, the most restrictive shall apply;

- (2) Heeia CDD plan. The provisions of the rules, when in conflict with the Heeia CDD plan, shall take precedence; and
- (3) Federal regulations. If a conflict occurs between these rules and federal regulations, the federal regulations shall take precedence;
- (4) Kuleana lands. If a conflict occurs between these rules and Kuleana lands, the rights and regulations for kuleana lands shall take precedence; and
- (5) Private agreements. The rules apply to all real property located within the Heeia CDD regardless of whether it imposes a greater or lesser restriction on the project or use of structures or land than a private agreement or restriction.

(b) HAR Chapter 219, HCDA's rules of practice and procedure apply within the Heeia CDD and may be referenced herein. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Severability. These rules shall be liberally construed to protect and preserve the health, safety, and general welfare within the Heeia CDD. Should any provision of the rules be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Definition of terms. This section provides definitions for terms in these rules that are technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this section, then the executive director shall

determine the correct definition through the interpretation provisions of section 15-2__-5 (rules of interpretation).

"Administrative" is a use classification for uses pertaining to the affairs of a business, service, industry, or like activity, including offices, security and staff support uses;

"Agribusiness" is a use classification for accessory uses that provide the means to get an agricultural good to market, including production, marketing, and distribution;

"Agricultural building" means a nonresidential building or structure, built for agricultural or aquacultural purposes, constructed or installed to house farm implements, agricultural or aquacultural feeds or supplies, livestock, poultry, or other agricultural or aquacultural products, used in or necessary for the agricultural or aquacultural operation or for the processing or selling of agricultural and aquacultural products;

"Agricultural kauhale" means a building or structure built for the housing of farm workers;

"Aquaculture" is a use classification for the rearing of aquatic animals or the cultivation of aquatic plants for food;

"Artisan or craft production" is a use classification for the manufacturing and assembling of products primarily by hand, including but not limited to clothing, furniture, jewelry, pottery and other ceramics, art, and craft products;

"Authority" means the Hawaii community development authority established by section 206E-3, HRS;

"Building" means any permanently anchored structure used or intended for supporting or sheltering any use or occupancy;

"Civic" is a use classification which includes uses that foster community interaction and citizen participation in civic activities such as: meeting halls or clubhouse, conference centers, cultural facilities, public safety facilities, and public or government facilities;

"Cultural facilities" is a use classification for facilities of an historic, an educational, or a cultural interest;

"Educational facilities" is a use classification pertaining to instruction or education;

"Elevation" means an exterior wall of a building not along a frontage line;

"Executive director" means the executive director of the HCDA;

"Group assembly" is a use classification for the gathering of people for activities including a music festival, cultural event, exhibition, lecture, concert, celebration, or similar activity which is open to the public or to which members of the public are invited or admitted either for a charge or free of cost;

"Guideline" means a provision that is suggested to further the intent and the Heeiea CDD plan and rules, but that is not compulsory;

"Habitable space" means space in a structure for living, sleeping, eating or cooking. Bathrooms, closets, halls, storage areas and utility spaces are not considered habitable spaces;

"Hawaii revised statutes" or "HRS" means the Hawaii Revised Statutes;

"Health and healing centers" is a use classification for facilities that promote native Hawaiian healing, practices and traditions;

"Heeiea CDD" means the district, established by Hawaii Revised Statutes section 206E-202, which establishes the Heeiea Community Development District and its boundaries;

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges," as originally enacted and amended.

"Land use" means a designation of land with approved uses that can legally operate within the Heeiea CDD;

"Land use map" means the official map or maps that are part of the Heeiea CDD rules and delineate the boundaries of individual zones and districts.

"Land use ordinance" or "LUO" means the land use ordinance adopted by Ordinance No. 86-96 of the city and county of Honolulu;

"Livestock" means all animals generally associated with farming, which are raised and kept for food and other agricultural purposes;

"New building" means and includes the construction of a building including structural supports, walls and a roof;

"Nonconforming structure" means a building or structure that was lawfully erected prior to the effective date of the adoption or amendment of this chapter but no longer complies with all the regulations applicable to the Heeiea CDD as a result of adoption or amendment of this chapter or government action associated with eminent domain;

"Nonconforming use" means an activity using land, buildings or structures for purposes which were legally established prior to the effective date of the adoption or amendment of this chapter, but would not be permitted as a new use in any of the neighborhood zones established by this chapter;

"Outdoor recreation" is a use classification for recreational facilities operated for monetary or on a nonprofit basis and which typically include fields, play areas, and activities;

"Project site" means the gross land area of a lot for a proposed project;

"Public building" is a use classification pertaining to buildings owned or developed by public entities or developed on state-owned lands;

"Public project" means any project or activity of any county or state agency conducted to fulfill a governmental function for public benefit and in accordance with public policy;

"Public utility project" means any project or activity of any county or state agency conducted to upgrade or construct utilities, including sanitary

sewer, drain lines, water, gas, electrical, telephone, cable, pedestrian facilities, and roadway systems;

"Special flood hazard area" means a designation by the Federal Emergency Management Agency ("FEMA") that may include the V (velocity) zones and coastal A zones where building construction is forbidden, restricted, or contingent upon raising the building to the base flood elevation;

"Story" means a level within a building that can be used for living, work, storage, or recreation, excluding an attic or raised basement;

"Structure" means anything constructed or erected with a fixed location on the ground, including buildings, walls and signs;

"Utilities and communications" is a use classification for basic amenities such as water, sewerage, electricity, and communications that will support the individual facilities and uses in the Heeia CDD;

"Vocational school" is a use classification pertaining to training in a skill or trade to be pursued as a career;

[Eff] (Auth: HRS §§206E-2, 206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5, 206E-7)

§§15-2__-9 to 15-2__-20 (Reserved).

SUBCHAPTER 2

LAND USE ZONES

§15-2____ Purpose. This subchapter establishes the land use zones within the Heeia CDD and adopts the land use plan for the Heeia CDD as its zoning map. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ Land use plan. The Heeia CDD rules land use plan (hereafter referred to as the "Land Use Plan") is included as Figure 1.2, dated _____, made a part of this chapter. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ Land use zones. (a) The land use plan is divided into three land use zones corresponding to the Heeia CDD plan. (see Figure 1.2 Land use plan, dated _____, made part of this chapter and attached at the ed of this chapter). These land use zones and their corresponding use rules and guidelines are as follows:

- (1) Wao ho ola zone. The Wao ho ola zone is located in the upland area of the district and is envisioned as an area of restoration and respite. Wao ho ola provides an opportunity for dry-land agriculture as well as an area for facilities that promote respite and healing.
- (2) Wao kahua zone. The Wao kahua zone is envisioned as the area of strong foundation to establish educational, cultural and agricultural support facilities. The Wao kahua zone will provide a range of uses, including dry land agriculture, cultural practices, education and research, restoration and resource management.

- (3) Wao loko ia kalo zone. The Wao loko ia kalo zone is the wetland area of the District and is envisioned as the area of mahiai (cultivate food) and aina momona (land that is abundant, food producing). The Wao loko ia kalo zone is the area of wetland and stream restoration, taro and dryland cultivation, development of loko ia (fish and detention ponds), the practice of Hawaiian culture and traditions, education and arts. It will also contain support structures and facilities for agricultural activities.

(b) Standards applicable to land use zones. All projects, use, and construction within the land use zones shall conform to the standards set forth in § 15-_____, which allocate land use and building parameters.

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

§15-2__ Allowable Land uses. (a) Buildings in each land use zone shall conform to the allowable land uses specified in Figure 1.3 (allowable land uses), dated _____, made a part of this chapter, and attached at the end of this chapter.

[Eff _____] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

§§15-2__- to 15-2__- (Reserved).

SUBCHAPTER 3

AREA-WIDE STANDARDS

§15-2__ Purpose. (a) This subchapter provides standards that:

- (1) Apply throughout the Heeia CDD; and
- (2) Either supplement or modify other standards provided elsewhere in the rules.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ Applicability. This subchapter applies to all permit applications and use classifications, except where a section provides otherwise.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Agricultural use and structures. (a) The following agricultural buildings and structures that are not used as dwellings or lodging units are exempt from HCDA permit requirements where they are no more than one thousand square feet in size:

- (1) Nonresidential manufactured pre-engineered commercial buildings and structures;
- (2) Single stand-alone recycled ocean shipping or cargo containers that are used as nonresidential buildings and are properly anchored;
- (3) Notwithstanding the one thousand square foot floor area restriction, agricultural shade cloth structures, cold frames, or greenhouses not exceeding twenty thousand square feet in area per structure;
- (4) Aquaculture or aquaponics structures, including above-ground water storage or production tanks, troughs, and raceways with a maximum height of six feet about grade, and in-ground ponds and raceways, and piping

- systems for aeration, carbon dioxide, or fertilizer or crop protection chemical supplies within agriculture or aquacultural production facilities;
- (5) Livestock watering tanks, water piping and plumbing not connected to a source of potable water, or separation by an air gap from such a source;
 - (6) Non-masonry fences not exceeding ten feet in height and masonry fences not exceeding six feet in height;
 - (7) One-story masonry or wood-framed buildings or structures with a structural span of less than twenty-five feet and a total square footage of no more than one thousand square feet, including farm buildings used as:
 - (A) Barns;
 - (B) Greenhouses;
 - (C) Farm production buildings including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment or plant or animal supplies or feed; or
 - (E) Storage or processing buildings for crops, provided that the height of any stored items shall not exceed twelve feet in height;
 - (8) Raised beds containing soil, gravel, cinders or other growing media or substrates with wood, metal or masonry walls or supports with a maximum height of four feet;
 - (9) Horticultural tables or benches no more than four feet in height supporting potted plants or other crops; and
 - (10) Nonresidential indigenous Hawaiian hale that do not exceed five hundred square feet in size, have no kitchen or bathroom, and are used for traditional agricultural activities or education;
- (b) Notwithstanding the one thousand square foot floor area restriction in § 15- ___, the following buildings, structures, and appurtenances shall be

exempt from HCDA permit requirements when compliance with relevant construction standards:

- (1) Nonresidential manufactured pre-engineered and county pre-approved commercial buildings and structures consisting of a total square footage greater than one thousand square feet, but no more than eight thousand square feet; and
 - (2) One-story wood-framed or masonry buildings or structures with a structural span of less than twenty-five feet and a total square footage greater than one thousand square feet, but no more than eight thousand square feet constructed in accordance with relevant construction standards, including buildings used as:
 - (A) Barns;
 - (B) Greenhouses;
 - (C) Farm production buildings, including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment, plant or animal supplies, or feed; or
 - (E) Storage or processing buildings for crops; provided that the height of any stored items shall not collectively exceed twelve feet in height.
- c) The exemptions in § 15- __, shall apply; provided that:
- (1) The aggregate floor area of the exempted agricultural buildings shall not exceed:
 - (A) Five thousand square feet for project sites of two acres or less;
 - (B) Eight thousand square feet for project sites greater than two acres, but not more than eight acres; and
 - (C) Eight thousand square feet plus two per cent of the acreage per project site for sites greater than five acres, provided that each exempted agricultural building is compliant with restrictions in § 15- __

- (2) The minimum horizontal separation between each agricultural building, structure, or appurtenance is fifteen feet;
- (3) The agricultural buildings, structures, or appurtenances are constructed or installed on property that is used primarily for agricultural or aquacultural operations and are used for general agricultural or aquaculture;
- (4) No electrical power and no plumbing shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit; and
- (5) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with HRS Chapter 342D.

§15-2 - Building form. (a) The height of any building or structure or portion thereof shall not exceed two stories.

(b) Height limits for attics or raised basements, masts, elevator bulkheads, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances on the roof level shall be limited to the height necessary for their proper functioning. The executive director shall make the final determination on the height necessary for their proper functioning. Attics shall not exceed fourteen feet in height.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2 - Architectural design. (a) (~~add specific requirements~~)

- (b) Lighting:
 - (1) Lighting sources shall be constructed or installed so that light is aimed downwards and does not spill over to abutting properties;
 - (2) Lighting that is visible from adjacent

properties or thoroughfares shall be indirect or incorporate full shield cut-offs; and

- (3) Incandescent exterior lights and high-pressure sodium lights are prohibited.

(c) Signage. All signs shall be in compliance with the applicable rules and regulations administered by the city and county of Honolulu, as provided for in the city and county of Honolulu's land use ordinance, as it may be amended from time to time.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-56 Landscape. Where applicable, all yards within projects shall be landscaped with native or adapted plant species and/or hardscaped with permeable material.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-62 Historical and cultural sites. (a) Purpose. The purpose of this section is to preserve, protect, and restore properties in the Heeia CDD that are determined to be historic and culturally significant.

(b) Applicability. This section applies to all historical or culturally significant properties as identified in the Heeia CDD Plan.

(c) Preservation and consultation. Properties situated in the Heeia CDD that are deemed to be historically or culturally significant shall be preserved and protected in accordance with the implementing regulations of section 106 of the National Historic Preservation Act and chapter 6E, HRS:

- (1) All projects that propose the restoration of historic and cultural sites shall consult with the department of land and natural resources, state historic preservation division ("SHPD"), department of land and

natural resources to allow an opportunity for review of the effect of the proposed project on any historic properties or burial sites, pursuant to section 6E-43, HRS;

- (2) A written letter of concurrence from SHPD or adequate documentation that the applicant has complied with the requirements of chapter 6E-10, HRS, shall be included with the permit application to the authority; and
- (3) All SHPD requirements shall be completed by the applicant prior to submittal of a permit application to the authority.

(d) Uses classifications. A property designated historic or culturally significant may be put to any use permitted in the neighborhood zone in which the property is situated, subject to the requirements of this section. [Eff _____] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-2__-63 Parking. (a) Applicability. This section applies to all new buildings in the Heeia CDD.

(b) There shall be no parking requirement for agricultural uses in all land use zones;

(c) For new buildings in the Heeia CDD, the executive director will review the proposed use and determine its equivalent and applicable off-street parking requirements; and

(d) Permeable surfaces for parking and maneuvering areas are permitted.

§15-2 -66 to 15-2 -78 (Reserved).

SUBCHAPTER 5

PROCEDURES

§15-2__-79 Rules clearance. (a) Applicability.
Any uses, structures, and activities identified by

section 15-2__ below shall be issued a rules clearance from the rules when they are in compliance with applicable standards of subchapter 2 (land use plan) and subchapter 3 (area-wide standards) and, where applicable, those relating to section 15-2__- (nonconformities);

(b) Qualifying land uses, structures and activities. The following are eligible for issuance of a rules clearance when in compliance with section 15-2__(a) above:

- (1) Fences and walls in compliance with height and location requirements in section 15-2__-55(e) (architectural design);
- (2) Interior alterations or change in use.
- (3) Repairs and maintenance on all structures if the work does not change the approved land use of the site or structure;
- (4) Aquaculture and aquaponic uses;
- (5) Any public utility project.

(c) Action. In accordance with Figure 1.1 (approval requirements matrix), dated, made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all rules clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Facility permit. (a) Applicability. All new buildings shall require a permit unless waived in accordance with section 15-2__- (agricultural use and structures) or eligible for a rules clearance under section 15-2__-.

(b) Initiation. An applicant may apply for a facility permit by filing an application with the executive director.

(c) Types. All facility permits shall be subject to the authority review and action pursuant to Figure 1.

(approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter:

(d) Required findings. Approval of an facility permit shall require all the following findings of fact:

- (1) Heeia CDD plan consistency. That the proposal complies with and advances the goals, policies and objectives of the Heeia CDD plan;
- (2) Heeia CDD rules consistency. That the proposal will protect, preserve, or enhance desirable neighborhood characteristics through compliance with the standards and guidelines of the Heeia CDD rules; and
- (3) Compatibility. That the proposal will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.

(e) Conditions. In approving a facility permit, the authority may impose any reasonable conditions to ensure that the approval complies with the findings required above. Any conditions attached to an facility permit shall continue to apply to the proposed use and shall be enforceable as provided in section 15-2__- (violations and enforcement).

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15- Conditional use permit. (a) No inherent right exists to receive a conditional use permit. Every conditional use permit application shall, at a minimum, comply with every requirement contained in these rules. Mere compliance with the generally applicable requirements however may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

(b) Applicability. Uses are as designated in Figure 1.3 (allowable land uses), dated _____,

made a part of this chapter, and attached at the end of this chapter.

(c) Decision-maker. Conditional use permits are subject to authority review and action pursuant to Figure 1.1 (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter.

(d) Findings. Approval of a conditional use permit shall require all the following findings of fact:

- (1) The use is allowed within the applicable zone and complies with all other applicable provisions of the rules;
- (2) The use will conform to the Heeia CDD Plan;
- (3) The design, location, size and operating characteristics of the proposed use are compatible with manao hooko of the district;
- (4) The site is physically suitable for the type and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
- (5) Granting the permit would not be detrimental to the public health, safety, or welfare, or be materially injurious to persons, lots, or to the district.

(e) Conditions. In approving any conditional use permit, the authority may impose such reasonable standards, conditions, or requirements, as it may deem necessary to protect the public welfare and in order to ensure the approval will comply with the findings of this section. Such additional standards, conditions or requirements may include, but need not be limited to:

- (1) Limitations on operations and use.
- (2) Area requirements;
- (3) Standards pertaining to circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, and similar characteristics; or

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Variances. (a) Purpose. This section is intended to provide a mechanism for relief from the strict application of the rules where the strict application will deprive the applicant of privileges because of the subject site's unique and special conditions. Economic or financial hardship alone is not sufficient justification for granting a variance.

(b) Applicability. All requirements of the rules are mandatory unless approval of variance is obtained, except as limited by section 15-2__-() (variances).

(c) Variances shall be subject to authority review and action of Figure 1.1 (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter:

(d) Findings. Approval of a variance shall require all the following findings of fact:

- (1) Uniqueness. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular project area; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the rules;
- (2) Self-created hardship. That the practical difficulties or unusual hardship claimed as the basis for a variance has not been created by the applicant;
- (3) Minimal deviation. That the variance, if granted, is the minimum deviation necessary to afford relief; and to this end, the decision-maker may permit a lesser variance than that applied for;
- (4) Character. That the variance, if granted, will not alter the existing character of the area and will not be detrimental to the public welfare and the environment; and

- (5) No adverse impact. The variance would result in project that is not detrimental to or that would adversely impact the district.
- (e) Submittal requirements. Each variance application shall include, at a minimum, the following:
 - (1) A statement of the standard or standards that are the subject of the proposed variance;
 - (2) A textual description of the manner in which the applicant proposes to deviate from such evaluation standard or standards;
 - (3) Plans drawn to scale, showing the nature, location, and dimensions of the structure, area or part thereof that is the subject of the proposed variance;
 - (4) A justification for the proposed variance in light of the requirements set forth above; and
 - (5) Other information as may be required by the decision-maker. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-85 Completeness review. (a) Purpose. The purpose of the completeness review is to determine whether all required information is provided in a permit application. A completeness review shall not constitute a decision as to whether an application complies with the provisions of the rules.

(b) Applicability. This section applies to all applications for permits provided for in the rules.

(c) Application materials. No application may be deemed complete unless all of the information required by forms published by the HCDA is included. The executive director shall ensure that application materials are made available in hardcopy format at the HCDA office and electronically via the internet.

(d) Jurisdiction. All applications shall be reviewed by the executive director for completeness.

At the time of proposed filing, the executive director may reject any application that omits information required by forms published by the HCDA. Once accepted for filing, the executive director's final determination on completeness of an application is appealable to the authority pursuant to section 15-2__- (appeals).

(e) Commencement of time limit for application decision. Whenever the rules establish a time period for processing an application, such time period does not commence until the executive director has issued a certificate of completeness.

(f) Completeness review process:

(1) The executive director shall provide a written determination on the completeness review within forty-five working days of receipt of the permit application. If a permit is deemed complete, the executive director shall issue a certificate of completeness. If the application is determined not to be complete, the executive director's determination shall specify those parts of the application that are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application;

(2) If the application requires review by any other local, state, or federal agency or entity, the executive director may require the written comments from such agency or entity prior deeming the application complete and until such time that the executive director receives all such comments, the forty-five day period shall be tolled;

(3) Upon receipt of any application that has been resubmitted, a new forty-five day period shall begin, during which period the executive director shall determine the completeness of the application;

- (4) If the applicant contests the executive director's determination of an incomplete application, the applicant may appeal the executive director's determination to the authority pursuant to section 15-2__-, (appeals). If the authority does not render a decision on the appeal within thirty working days after submittal of the requisite appeal form and filing fee, the application with the submitted materials shall be deemed complete for the purposes of this section; and
- (5) Nothing in this section precludes an applicant and the executive director from mutually agreeing to an extension of any time limit provided by this section.

(h) Time limits. A certificate of completeness is deemed issued if the executive director fails to act within the time period required for completeness review. In computing time periods of this section, the day upon which the application was submitted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

(i) Information requests. After the executive director issues a certificate of completeness or deemed as complete per section 15-2__- (completeness review), the executive director or authority may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, if such would be required by the decision-maker to render a final determination on the merits. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Automatic approvals. (a) The following permits shall be deemed approved and require no public hearing if a certificate of completeness has been issued and no decision is rendered within the following review periods:

- (1) Rules clearance (sixty calendar days);
 - (2) Facility Permit (ninety calendar days); and
 - (3) Variance (one hundred eighty calendar days).
- (b) Whenever a proposed project requires more than one permit, the longest review period of section 15-22- shall apply for determining the deemed approved date. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Approval period. (a) Rules clearance approvals shall have an effective approval period of one year.

(b) Facility permits and variance approvals shall have an effective approval period of two years, unless extended under these rules.

(c) Prior to expiration and upon submittal of a written request and payment of the applicable filing fee, a facility permit may be extended by the authority for a period of up to one year. The executive director may issue up to two extensions.

(e) In computing the approval period, the day upon which the approval was granted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Appeals. (a) Decisions of the executive director rendered in the administration of the rules are appealable, as provided herein, to the authority (see Figure 1.1) (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter).

(b) An appeal of an executive director decision shall be sustained by the authority only if it finds:

- (1) The executive director's decision was based on an erroneous finding of material fact; or
- (2) The executive director acted in an arbitrary or capricious manner or had manifestly

abused his or her discretion.

(c) All appeals of a decision by the executive director shall be filed and processed in accordance with HAR Chapter 219, HCDA's rules of practice and procedure. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-90 Minor changes. (a) After final approval of a rules clearance, facility permit or variance, the executive director may allow minor amendments to the application without submittal of a new or amended application when the requested amendment(s) does not:

- (1) Introduce different land uses;
- (2) Request larger land area;
- (3) Request greater variance;
- (4) Reduce or eliminate conditions attached to the subject permit approval.

(b) Any other change requests which do not qualify under section 15-) (minor changes) shall require the filing of a new application to be processed in accordance with this subchapter.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-91 Nonconformities. (a) Applicability. This section applies to nonconformities, including their continuation, enlargement, or expansion.

(b) Continuation. A nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all authority statutes or regulations in effect at that time may continue subject to this section.

(c) Violation of rules. The violation of this section shall immediately disallow a nonconformity.

(d) Nonconforming uses:

- (1) Continuance of nonconforming uses. The lawful use of any structure existing as of the effective date of the rules may be continued, although such use does not

conform to the provisions of the rules. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure occur, except those made in conformance with the rules; and

(2) Changes of use:

(A) Any nonconforming use may be changed to a use conforming with the rules established for the land use zone in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not in the future be changed back to a nonconforming use; and

(B) A nonconforming use may only be expanded under the provisions of section 15-2__- (nonconformities). continue the nonconformity.

(e) Nonconforming structures:

(1) Continuance of nonconforming structures.

Subject to the provisions of section 15-2__-91(b), any nonconforming structure may be occupied, operated, and maintained in a state of good repair;

(2) Enlargement, conforming and nonconforming use. A nonconforming structure in which only permitted uses are operated may be enlarged or extended if the enlargement or extension can be made in compliance with all regulations established in subchapter 2 (land use plan) and subchapter 3 (area-wide standards); and

(3) Exception for repairs pursuant to public order. Nothing in this subsection shall be deemed to prevent the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it to restoration to a safe

condition, provided that such restoration is not otherwise in violation of the various provisions of this subsection prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.

§15-2__-92 Violations and enforcement. All provisions relating to violations of these rules and enforcement of said violations are provided in HCDA's rules of practice and procedure. [Eff]
(Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-2__-93 Fee schedule. There are no fees for rule clearance facility and conditional use permits. Public hearing costs for variance requests shall be the paid for by the applicant.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Adoption of Chapter 15-2__
Hawaii Administrative Rules

(date)

SUMMARY

Preliminary Draft for Review and Comment

December 2020

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Adoption of Chapter 15-2__
Hawaii Administrative Rules

(date)

SUMMARY

Chapter 2__ of Title 15, Hawaii Administrative
Rules, entitled "Heeia Community Development District
Rules" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 2__

HEEIA COMMUNITY DEVELOPMENT DISTRICT RULES

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SUBCHAPTER 1

PURPOSE AND APPLICABILITY

§15-2__ - Title. (a) This chapter 2__ of the Hawaii administrative rules ("HAR") shall be known, and may be cited, as the Heeia Community Development District ("CDD") rules.

(b) References to "rules" within this chapter are references to the Heeia CDD rules unless indicated otherwise. References to other regulations or provisions relevant to the Hawaii community development authority ("authority or HCDA"), where provided, are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure, or use from other regulations.

(c) The figures, dated _____, attached at the end of this chapter and the Heeia CDD plan, dated _____, are hereby incorporated by reference and made a part of this chapter.

[Eff _____] (Auth: HRS §§206E-5, 206E-7) (Imp: HRS §§206E-5, 206E-7)

§15-2__ - Purpose. The rules carry out the manao hooko (intent) and principles of the Heeia CDD plan by classifying and regulating land uses within the Heeia CDD district consistent with and in furtherance of chapter 206E, Hawaii Revised Statutes ("HRS").

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)

§15-2__ - Applicability. (a) This chapter, together with the Heeia CDD plan, shall govern all real property located within the Heeia CDD. In case of any discrepancy between the provisions of this chapter and the Heeia CDD plan, this chapter shall control.

(b) No building permit shall be approved by the HCDA for any project within the Heeia CDD unless the project conforms to the provisions of the Heeia CDD plan and this chapter.

(c) No public improvement or project within the Heeia CDD shall be initiated or adopted unless it conforms to and implements the Heeia CDD plan and this chapter.

(d) Except as otherwise specifically provided, the provisions of this chapter shall supersede the provisions of the city and county of Honolulu's land use ordinance. The foregoing ordinance is hereby declared to be inconsistent with this chapter, and shall therefore be inapplicable to projects within the Heeia CDD unless otherwise specifically stated.

(e) Except as otherwise specifically stated in this chapter, all other rules, regulations and laws shall continue to remain applicable to the projects and properties within the Heeia CDD, including but not limited to kuleana lands, as defined in §15-2__-8, definitions. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Minimum requirements. The provisions of the rules are minimum requirements for the protection and promotion of public health, safety, and welfare. Satisfaction of the minimum requirements does not mean that a decision-maker cannot impose additional requirements where authorized and appropriate and does not guarantee compliance with other rules, regulations, or laws imposed by other governmental entities. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Rules of interpretation. (a) Provisions of the rules are activated by "shall" when required; "should" when recommended; and "may" when optional.

(b) In addition to text-only contents of the rules, section 15-2__- (rules of interpretation) shall also control related captions, titles, and figures.

(c) Terms not defined in section 15-2__- (definitions of terms) shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and those found elsewhere within the HCDA's administrative rules, these rules shall take precedence.

(d) Where in conflict, numerical metrics shall take precedence over graphic metrics.

(e) Words used in the singular include the plural; words used in the plural include the singular.

(f) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(g) Within the rules, sections are occasionally prefaced with "purpose" or "intent" statements. Each such statement is intended as an official statement of legislative finding or purpose. The "purpose" or "intent" statements are legislatively adopted, together with their accompanying rules text. They are intended as a guide to the administrator and shall be treated in the same manner as other aspects of legislative history. However, they are not binding standards.

(h) In their interpretation and application, the provisions of the rules are considered minimal in nature. Whenever the provisions, standards, or requirements of HAR Chapter 219, HCDA's rules of practice and procedure, are higher or more restrictive, the latter shall control.

(j) Whenever the executive director determines that the meaning or applicability of any requirement of the rules is subject to interpretation generally, or as applied to a specific case, the executive director may issue an official interpretation. The executive director may also forward any interpretation of the meaning or applicability of any provision of the rules directly to the authority for a determination at a public meeting:

(1) The issuance of an interpretation shall

include findings stating the basis for the interpretation. The issuance of an interpretation shall also include a finding documenting the consistency of the interpretation with the Heeia CDD plan;

- (2) All interpretations shall be:
 - (A) Written and shall quote the provisions of the rules being interpreted, and the applicability in the particular or general circumstances that caused the need for interpretations, and the determination; and
 - (B) Distributed to the authority, executive director, and HCDA staff;
- (3) Any interpretation of the rules by the executive director may be appealed to the authority in compliance with section 15-2__ - (appeals); and
- (4) Any provision of the rules that is determined by the executive director to need refinement or revision will be corrected by amending the rules as soon as is practical. Until an amendment can occur, the executive director will maintain a complete record of all interpretations to the rules, indexed by the number of the subchapter, section or subsection that is the subject of the interpretation.

(k) If there is uncertainty about the location of any land use zone boundary shown on the land use plan, the location of the boundary shall be determined by the executive director by using the scale appearing on the land use plan. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Compliance with other regulations. (a) Whenever conflicting requirements are discovered in the application of the rules, they shall be resolved as follows:

- (1) Heeia CDD rules. If a conflict occurs

between requirements within the rules, the most restrictive shall apply;

- (2) Heeia CDD plan. The provisions of the rules, when in conflict with the Heeia CDD plan, shall take precedence; and
- (3) Federal regulations. If a conflict occurs between these rules and federal regulations, the federal regulations shall take precedence;
- (4) Kuleana lands. If a conflict occurs between these rules and Kuleana lands, the rights and regulations for kuleana lands shall take precedence; and
- (5) Private agreements. The rules apply to all real property located within the Heeia CDD regardless of whether it imposes a greater or lesser restriction on the project or use of structures or land than a private agreement or restriction.

(b) HAR Chapter 219, HCDA's rules of practice and procedure apply within the Heeia CDD and may be referenced herein. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Severability. These rules shall be liberally construed to protect and preserve the health, safety, and general welfare within the Heeia CDD. Should any provision of the rules be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Definition of terms. This section provides definitions for terms in these rules that are technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this section, then the executive director shall

determine the correct definition through the interpretation provisions of section 15-2__-5 (rules of interpretation).

"Administrative" is a use classification for uses pertaining to the affairs of a business, service, industry, or like activity, including offices, security and staff support uses;

"Agribusiness" is a use classification for accessory uses that provide the means to get an agricultural good to market, including production, marketing, and distribution;

"Agricultural building" means a nonresidential building or structure, built for agricultural or aquacultural purposes, constructed or installed to house farm implements, agricultural or aquacultural feeds or supplies, livestock, poultry, or other agricultural or aquacultural products, used in or necessary for the agricultural or aquacultural operation or for the processing or selling of agricultural and aquacultural products;

"Agricultural kauhale" means a building or structure built for the housing of farm workers;

"Aquaculture" is a use classification for the rearing of aquatic animals or the cultivation of aquatic plants for food;

"Artisan or craft production" is a use classification for the manufacturing and assembling of products primarily by hand, including but not limited to clothing, furniture, jewelry, pottery and other ceramics, art, and craft products;

"Authority" means the Hawaii community development authority established by section 206E-3, HRS;

"Building" means any permanently anchored structure used or intended for supporting or sheltering any use or occupancy;

"Civic" is a use classification which includes uses that foster community interaction and citizen participation in civic activities such as: meeting halls or clubhouse, conference centers, cultural facilities, public safety facilities, and public or government facilities;

"Cultural facilities" is a use classification for facilities of an historic, an educational, or a cultural interest;

"Educational facilities" is a use classification pertaining to instruction or education;

"Elevation" means an exterior wall of a building not along a frontage line;

"Executive director" means the executive director of the HCDA;

"Group assembly" is a use classification for the gathering of people for activities including a music festival, cultural event, exhibition, lecture, concert, celebration, or similar activity which is open to the public or to which members of the public are invited or admitted either for a charge or free of cost;

"Guideline" means a provision that is suggested to further the intent and the Heeiea CDD plan and rules, but that is not compulsory;

"Habitable space" means space in a structure for living, sleeping, eating or cooking. Bathrooms, closets, halls, storage areas and utility spaces are not considered habitable spaces;

"Hawaii revised statutes" or "HRS" means the Hawaii Revised Statutes;

"Health and healing centers" is a use classification for facilities that promote native Hawaiian healing, practices and traditions;

"Heeiea CDD" means the district, established by Hawaii Revised Statutes section 206E-202, which establishes the Heeiea Community Development District and its boundaries;

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges," as originally enacted and amended.

"Land use" means a designation of land with approved uses that can legally operate within the Heeiea CDD;

"Land use map" means the official map or maps that are part of the Heeia CDD rules and delineate the boundaries of individual zones and districts.

"Land use ordinance" or "LUO" means the land use ordinance adopted by Ordinance No. 86-96 of the city and county of Honolulu;

"Livestock" means all animals generally associated with farming, which are raised and kept for food and other agricultural purposes;

"New building" means and includes the construction of a building including structural supports, walls and a roof;

"Nonconforming structure" means a building or structure that was lawfully erected prior to the effective date of the adoption or amendment of this chapter but no longer complies with all the regulations applicable to the Heeia CDD as a result of adoption or amendment of this chapter or government action associated with eminent domain;

"Nonconforming use" means an activity using land, buildings or structures for purposes which were legally established prior to the effective date of the adoption or amendment of this chapter, but would not be permitted as a new use in any of the neighborhood zones established by this chapter;

"Outdoor recreation" is a use classification for recreational facilities operated for monetary or on a nonprofit basis and which typically include fields, play areas, and activities;

"Project site" means the gross land area of a lot for a proposed project;

"Public building" is a use classification pertaining to buildings owned or developed by public entities or developed on state-owned lands;

"Public project" means any project or activity of any county or state agency conducted to fulfill a governmental function for public benefit and in accordance with public policy;

"Public utility project" means any project or activity of any county or state agency conducted to upgrade or construct utilities, including sanitary

sewer, drain lines, water, gas, electrical, telephone, cable, pedestrian facilities, and roadway systems;

"Special flood hazard area" means a designation by the Federal Emergency Management Agency ("FEMA") that may include the V (velocity) zones and coastal A zones where building construction is forbidden, restricted, or contingent upon raising the building to the base flood elevation;

"Story" means a level within a building that can be used for living, work, storage, or recreation, excluding an attic or raised basement;

"Structure" means anything constructed or erected with a fixed location on the ground, including buildings, walls and signs;

"Utilities and communications" is a use classification for basic amenities such as water, sewerage, electricity, and communications that will support the individual facilities and uses in the Heeia CDD;

"Vocational school" is a use classification pertaining to training in a skill or trade to be pursued as a career;

[Eff] (Auth: HRS §§206E-2, 206E-4,
206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5,
206E-7)

§§15-2 -9 to 15-2 -20 (Reserved) .

SUBCHAPTER 2

LAND USE ZONES

§15-2 Purpose. This subchapter establishes the land use zones within the Heeia CDD and adopts the land use plan for the Heeia CDD as its zoning map. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2 Land use plan. The Heeia CDD rules land use plan (hereafter referred to as the "Land Use Plan") is included as Figure 1.2, dated _____, made a part of this chapter. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2 Land use zones. (a) The land use plan is divided into three land use zones corresponding to the Heeia CDD plan. (see Figure 1.2 Land use plan, dated _____, made part of this chapter and attached at the end of this chapter). These land use zones and their corresponding use rules and guidelines are as follows:

- (1) Wao ho ola zone. The Wao ho ola zone is located in the upland area of the district and is envisioned as an area of restoration and respite. Wao ho ola provides an opportunity for dry-land agriculture as well as an area for facilities that promote respite and healing.
- (2) Wao kahua zone. The Wao kahua zone is envisioned as the area of strong foundation to establish educational, cultural and agricultural support facilities. The Wao kahua zone will provide a range of uses, including dry land agriculture, cultural practices, education and research, restoration and resource management.

- (3) Wao loko ia kalo zone. The Wao loko ia kalo zone is the wetland area of the District and is envisioned as the area of mahiai (cultivate food) and aina momona (land that is abundant, food producing). The Wao loko ia kalo zone is the area of wetland and stream restoration, taro and dryland cultivation, development of loko ia (fish and detention ponds), the practice of Hawaiian culture and traditions, education and arts. It will also contain support structures and facilities for agricultural activities.

(b) Standards applicable to land use zones. All projects, use, and construction within the land use zones shall conform to the standards set forth in § 15-_____, which allocate land use and building parameters.

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

§15-2__ Allowable Land uses. (a) Buildings in each land use zone shall conform to the allowable land uses specified in Figure 1.3 (allowable land uses), dated _____, made a part of this chapter, and attached at the end of this chapter.

[Eff _____] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

§§15-2__ - to 15-2__ - (Reserved).

SUBCHAPTER 3

AREA-WIDE STANDARDS

§15-2__ Purpose. (a) This subchapter provides standards that:

- (1) Apply throughout the Heeia CDD; and
- (2) Either supplement or modify other standards provided elsewhere in the rules.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ Applicability. This subchapter applies to all permit applications and use classifications, except where a section provides otherwise.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__ - Agricultural use and structures. (a) The following agricultural buildings and structures that are not used as dwellings or lodging units are exempt from HCDA permit requirements where they are no more than one thousand square feet in size:

- (1) Nonresidential manufactured pre-engineered commercial buildings and structures;
- (2) Single stand-alone recycled ocean shipping or cargo containers that are used as nonresidential buildings and are properly anchored;
- (3) Notwithstanding the one thousand square foot floor area restriction, agricultural shade cloth structures, cold frames, or greenhouses not exceeding twenty thousand square feet in area per structure;
- (4) Aquaculture or aquaponics structures, including above-ground water storage or production tanks, troughs, and raceways with a maximum height of six feet about grade, and in-ground ponds and raceways, and piping

- systems for aeration, carbon dioxide, or fertilizer or crop protection chemical supplies within agriculture or aquacultural production facilities;
- (5) Livestock watering tanks, water piping and plumbing not connected to a source of potable water, or separation by an air gap from such a source;
- (6) Non-masonry fences not exceeding ten feet in height and masonry fences not exceeding six feet in height;
- (7) One-story masonry or wood-framed buildings or structures with a structural span of less than twenty-five feet and a total square footage of no more than one thousand square feet, including farm buildings used as:
 - (A) Barns;
 - (B) Greenhouses;
 - (C) Farm production buildings including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment or plant or animal supplies or feed; or
 - (E) Storage or processing buildings for crops, provided that the height of any stored items shall not exceed twelve feet in height;
- (8) Raised beds containing soil, gravel, cinders or other growing media or substrates with wood, metal or masonry walls or supports with a maximum height of four feet;
- (9) Horticultural tables or benches no more than four feet in height supporting potted plants or other crops; and
- (10) Nonresidential indigenous Hawaiian hale that do not exceed five hundred square feet in size, have no kitchen or bathroom, and are used for traditional agricultural activities or education;
- (b) Notwithstanding the one thousand square foot floor area restriction in § 15- ___, the following buildings, structures, and appurtenances shall be

exempt from HCDA permit requirements when compliance with relevant construction standards:

- (1) Nonresidential manufactured pre-engineered and county pre-approved commercial buildings and structures consisting of a total square footage greater than one thousand square feet, but no more than eight thousand square feet; and
 - (2) One-story wood-framed or masonry buildings or structures with a structural span of less than twenty-five feet and a total square footage greater than one thousand square feet, but no more than eight thousand square feet constructed in accordance with relevant construction standards, including buildings used as:
 - (A) Barns;
 - (B) Greenhouses;
 - (C) Farm production buildings, including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment, plant or animal supplies, or feed; or
 - (E) Storage or processing buildings for crops; provided that the height of any stored items shall not collectively exceed twelve feet in height.
- c) The exemptions in § 15- __, shall apply; provided that:
- (1) The aggregate floor area of the exempted agricultural buildings shall not exceed:
 - (A) Five thousand square feet for project sites of two acres or less;
 - (B) Eight thousand square feet for project sites greater than two acres, but not more than eight acres; and
 - (C) Eight thousand square feet plus two per cent of the acreage per project site for sites greater than five acres, provided that each exempted agricultural building is compliant with restrictions in § 15- __

- (2) The minimum horizontal separation between each agricultural building, structure, or appurtenance is fifteen feet;
- (3) The agricultural buildings, structures, or appurtenances are constructed or installed on property that is used primarily for agricultural or aquacultural operations and are used for general agricultural or aquaculture;
- (4) No electrical power and no plumbing shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit; and
- (5) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with HRS Chapter 342D.

§15-2__- Building form. (a) The height of any building or structure or portion thereof shall not exceed two stories.

(b) Height limits for attics or raised basements, masts, elevator bulkheads, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances on the roof level shall be limited to the height necessary for their proper functioning. The executive director shall make the final determination on the height necessary for their proper functioning. Attics shall not exceed fourteen feet in height.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2 - Architectural design. (a) (~~add specific requirements~~)

- (b) Lighting:
 - (1) Lighting sources shall be constructed or installed so that light is aimed downwards and does not spill over to abutting properties;
 - (2) Lighting that is visible from adjacent

properties or thoroughfares shall be indirect or incorporate full shield cut-offs; and

- (3) Incandescent exterior lights and high-pressure sodium lights are prohibited.

(c) Signage. All signs shall be in compliance with the applicable rules and regulations administered by the city and county of Honolulu, as provided for in the city and county of Honolulu's land use ordinance, as it may be amended from time to time.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-56 Landscape. Where applicable, all yards within projects shall be landscaped with native or adapted plant species and/or hardscaped with permeable material.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-62 Historical and cultural sites. (a) Purpose. The purpose of this section is to preserve, protect, and restore properties in the Heeia CDD that are determined to be historic and culturally significant.

(b) Applicability. This section applies to all historical or culturally significant properties as identified in the Heeia CDD Plan.

(c) Preservation and consultation. Properties situated in the Heeia CDD that are deemed to be historically or culturally significant shall be preserved and protected in accordance with the implementing regulations of section 106 of the National Historic Preservation Act and chapter 6E, HRS:

- (1) All projects that propose the restoration of historic and cultural sites shall consult with the department of land and natural resources, state historic preservation division ("SHPD"), department of land and

natural resources to allow an opportunity for review of the effect of the proposed project on any historic properties or burial sites, pursuant to section 6E-43, HRS;

- (2) A written letter of concurrence from SHPD or adequate documentation that the applicant has complied with the requirements of chapter 6E-10, HRS, shall be included with the permit application to the authority; and
- (3) All SHPD requirements shall be completed by the applicant prior to submittal of a permit application to the authority.

(d) Uses classifications. A property designated historic or culturally significant may be put to any use permitted in the neighborhood zone in which the property is situated, subject to the requirements of this section. [Eff _____] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-2__-63 Parking. (a) Applicability. This section applies to all new buildings in the Heeia CDD.

(b) There shall be no parking requirement for agricultural uses in all land use zones;

(c) For new buildings in the Heeia CDD, the executive director will review the proposed use and determine its equivalent and applicable off-street parking requirements; and

(d) Permeable surfaces for parking and maneuvering areas are permitted.

§15-2__-66 to 15-2__-78 (Reserved).

SUBCHAPTER 5

PROCEDURES

§15-2__-79 Rules clearance. (a) Applicability. Any uses, structures, and activities identified by

section 15-2__ below shall be issued a rules clearance from the rules when they are in compliance with applicable standards of subchapter 2 (land use plan) and subchapter 3 (area-wide standards) and, where applicable, those relating to section 15-2__- (nonconformities);

(b) Qualifying land uses, structures and activities. The following are eligible for issuance of a rules clearance when in compliance with section 15-2__(a) above:

- (1) Fences and walls in compliance with height and location requirements in section 15-2__-55(e) (architectural design);
- (2) Interior alterations or change in use.
- (3) Repairs and maintenance on all structures if the work does not change the approved land use of the site or structure;
- (4) Aquaculture and aquaponic uses;
- (5) Any public utility project.

(c) Action. In accordance with Figure 1.1 (approval requirements matrix), dated, made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all rules clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Facility permit. (a) Applicability. All new buildings shall require a permit unless waived in accordance with section 15-2__- (agricultural use and structures) or eligible for a rules clearance under section 15-2__-.

(b) Initiation. An applicant may apply for a facility permit by filing an application with the executive director.

(c) Types. All facility permits shall be subject to the authority review and action pursuant to Figure 1.

(approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter:

(d) Required findings. Approval of an facility permit shall require all the following findings of fact:

- (1) Heeia CDD plan consistency. That the proposal complies with and advances the goals, policies and objectives of the Heeia CDD plan;
- (2) Heeia CDD rules consistency. That the proposal will protect, preserve, or enhance desirable neighborhood characteristics through compliance with the standards and guidelines of the Heeia CDD rules; and
- (3) Compatibility. That the proposal will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.

(e) Conditions. In approving a facility permit, the authority may impose any reasonable conditions to ensure that the approval complies with the findings required above. Any conditions attached to an facility permit shall continue to apply to the proposed use and shall be enforceable as provided in section 15-2__- (violations and enforcement).

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15- Conditional use permit. (a) No inherent right exists to receive a conditional use permit. Every conditional use permit application shall, at a minimum, comply with every requirement contained in these rules. Mere compliance with the generally applicable requirements however may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

(b) Applicability. Uses are as designated in Figure 1.3 (allowable land uses), dated _____,

made a part of this chapter, and attached at the end of this chapter.

(c) Decision-maker. Conditional use permits are subject to authority review and action pursuant to Figure 1.1 (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter.

(d) Findings. Approval of a conditional use permit shall require all the following findings of fact:

- (1) The use is allowed within the applicable zone and complies with all other applicable provisions of the rules;
- (2) The use will conform to the Heeia CDD Plan;
- (3) The design, location, size and operating characteristics of the proposed use are compatible with manao hooko of the district;
- (4) The site is physically suitable for the type and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
- (5) Granting the permit would not be detrimental to the public health, safety, or welfare, or be materially injurious to persons, lots, or to the district.

(e) Conditions. In approving any conditional use permit, the authority may impose such reasonable standards, conditions, or requirements, as it may deem necessary to protect the public welfare and in order to ensure the approval will comply with the findings of this section. Such additional standards, conditions or requirements may include, but need not be limited to:

- (1) Limitations on operations and use.
- (2) Area requirements;
- (3) Standards pertaining to circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, and similar characteristics; or

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Variances. (a) Purpose. This section is intended to provide a mechanism for relief from the strict application of the rules where the strict application will deprive the applicant of privileges because of the subject site's unique and special conditions. Economic or financial hardship alone is not sufficient justification for granting a variance.

(b) Applicability. All requirements of the rules are mandatory unless approval of variance is obtained, except as limited by section 15-2__-(_) (variances).

(c) Variances shall be subject to authority review and action of Figure 1.1 (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter:

(d) Findings. Approval of a variance shall require all the following findings of fact:

- (1) Uniqueness. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular project area; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the rules;
- (2) Self-created hardship. That the practical difficulties or unusual hardship claimed as the basis for a variance has not been created by the applicant;
- (3) Minimal deviation. That the variance, if granted, is the minimum deviation necessary to afford relief; and to this end, the decision-maker may permit a lesser variance than that applied for;
- (4) Character. That the variance, if granted, will not alter the existing character of the area and will not be detrimental to the public welfare and the environment; and

- (5) No adverse impact. The variance would result in project that is not detrimental to or that would adversely impact the district.
- (e) Submittal requirements. Each variance application shall include, at a minimum, the following:
 - (1) A statement of the standard or standards that are the subject of the proposed variance;
 - (2) A textual description of the manner in which the applicant proposes to deviate from such evaluation standard or standards;
 - (3) Plans drawn to scale, showing the nature, location, and dimensions of the structure, area or part thereof that is the subject of the proposed variance;
 - (4) A justification for the proposed variance in light of the requirements set forth above; and
 - (5) Other information as may be required by the decision-maker. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-85 Completeness review. (a) Purpose. The purpose of the completeness review is to determine whether all required information is provided in a permit application. A completeness review shall not constitute a decision as to whether an application complies with the provisions of the rules.

(b) Applicability. This section applies to all applications for permits provided for in the rules.

(c) Application materials. No application may be deemed complete unless all of the information required by forms published by the HCDA is included. The executive director shall ensure that application materials are made available in hardcopy format at the HCDA office and electronically via the internet.

(d) Jurisdiction. All applications shall be reviewed by the executive director for completeness.

At the time of proposed filing, the executive director may reject any application that omits information required by forms published by the HCDA. Once accepted for filing, the executive director's final determination on completeness of an application is appealable to the authority pursuant to section 15-2__- (appeals).

(e) Commencement of time limit for application decision. Whenever the rules establish a time period for processing an application, such time period does not commence until the executive director has issued a certificate of completeness.

(f) Completeness review process:

- (1) The executive director shall provide a written determination on the completeness review within forty-five working days of receipt of the permit application. If a permit is deemed complete, the executive director shall issue a certificate of completeness. If the application is determined not to be complete, the executive director's determination shall specify those parts of the application that are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application;
- (2) If the application requires review by any other local, state, or federal agency or entity, the executive director may require the written comments from such agency or entity prior deeming the application complete and until such time that the executive director receives all such comments, the forty-five day period shall be tolled;
- (3) Upon receipt of any application that has been resubmitted, a new forty-five day period shall begin, during which period the executive director shall determine the completeness of the application;

- (4) If the applicant contests the executive director's determination of an incomplete application, the applicant may appeal the executive director's determination to the authority pursuant to section 15-2__-, (appeals). If the authority does not render a decision on the appeal within thirty working days after submittal of the requisite appeal form and filing fee, the application with the submitted materials shall be deemed complete for the purposes of this section; and
- (5) Nothing in this section precludes an applicant and the executive director from mutually agreeing to an extension of any time limit provided by this section.

(h) Time limits. A certificate of completeness is deemed issued if the executive director fails to act within the time period required for completeness review. In computing time periods of this section, the day upon which the application was submitted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

(i) Information requests. After the executive director issues a certificate of completeness or deemed as complete per section 15-2__- (completeness review), the executive director or authority may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, if such would be required by the decision-maker to render a final determination on the merits. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Automatic approvals. (a) The following permits shall be deemed approved and require no public hearing if a certificate of completeness has been issued and no decision is rendered within the following review periods:

- (1) Rules clearance (sixty calendar days);
- (2) Facility Permit (ninety calendar days); and
- (3) Variance (one hundred eighty calendar days).

(b) Whenever a proposed project requires more than one permit, the longest review period of section 15-22- shall apply for determining the deemed approved date. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Approval period. (a) Rules clearance approvals shall have an effective approval period of one year.

(b) Facility permits and variance approvals shall have an effective approval period of two years, unless extended under these rules.

(c) Prior to expiration and upon submittal of a written request and payment of the applicable filing fee, a facility permit may be extended by the authority for a period of up to one year. The executive director may issue up to two extensions.

(e) In computing the approval period, the day upon which the approval was granted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__- Appeals. (a) Decisions of the executive director rendered in the administration of the rules are appealable, as provided herein, to the authority (see Figure 1.1) (approval requirements matrix), dated _____, made a part of this chapter, and attached at the end of this chapter).

(b) An appeal of an executive director decision shall be sustained by the authority only if it finds:

- (1) The executive director's decision was based on an erroneous finding of material fact; or
- (2) The executive director acted in an arbitrary or capricious manner or had manifestly

abused his or her discretion.

(c) All appeals of a decision by the executive director shall be filed and processed in accordance with HAR Chapter 219, HCDA's rules of practice and procedure. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-90 Minor changes. (a) After final approval of a rules clearance, facility permit or variance, the executive director may allow minor amendments to the application without submittal of a new or amended application when the requested amendment(s) does not:

- (1) Introduce different land uses;
- (2) Request larger land area;
- (3) Request greater variance;
- (4) Reduce or eliminate conditions attached to the subject permit approval.

(b) Any other change requests which do not qualify under section 15-) (minor changes) shall require the filing of a new application to be processed in accordance with this subchapter.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-2__-91 Nonconformities. (a) Applicability. This section applies to nonconformities, including their continuation, enlargement, or expansion.

(b) Continuation. A nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all authority statutes or regulations in effect at that time may continue subject to this section.

(c) Violation of rules. The violation of this section shall immediately disallow a nonconformity.

(d) Nonconforming uses:

- (1) Continuance of nonconforming uses. The lawful use of any structure existing as of the effective date of the rules may be continued, although such use does not

condition, provided that such restoration is not otherwise in violation of the various provisions of this subsection prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.

§15-2__-92 Violations and enforcement. All provisions relating to violations of these rules and enforcement of said violations are provided in HCDA's rules of practice and procedure. [Eff]
(Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-2__-93 Fee schedule. There are no fees for rule clearance facility and conditional use permits. Public hearing costs for variance requests shall be the paid for by the applicant.

DPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

The adoption of chapter 15-2__, Hawaii Administrative Rules, on the Summary Page dated ____, were adopted on ____, following public hearings held on ____ and ____, after public hearing notices were given in the Honolulu Star Advertiser, Hawaii Tribune-Herald, The Maui News, West Hawaii Today, and The Garden Island, on ____ and ____, respectively.

The adoption of chapter 15-2__, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

DEEPAK NEUPANE, P.E., AIA
Executive Director
Hawaii Community Development
Authority

MICHAEL McCARTNEY
Director
Department of Business,
Economic Development, and
Tourism

APPROVED AS TO FORM:

Deputy Attorney General

DAVID IGE
Governor
State of Hawaii

Date:

Filed

List of Figures
(DATE)

General Figures:

- 1.1 Approval Requirements
- 1.2 Land Use Plan
- 1.3 Allowable Land Uses

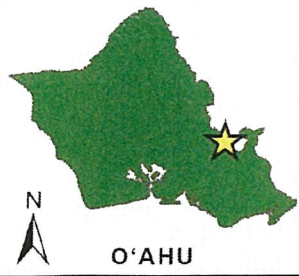
Figure 1.1 – Approval Requirements

Approvals	Decision Maker	
	Executive Director	Authority
Rules Clearance	D	A
Facility Permit	R	D
Conditional Use Permit	R	D
Variance	R	D

R: Provides Recommendation to the Authority

D: Renders Decision on Permit Application

A: Considers Appeal of Executive Director's Decision



Wao Ho'ōla: 137 ac. (Conservation District)
Wao Kahua: 99 ac. (Urban District, no wetlands)
Wao Loko I'a Kalo: 176 ac. (Wetlands in Urban District)

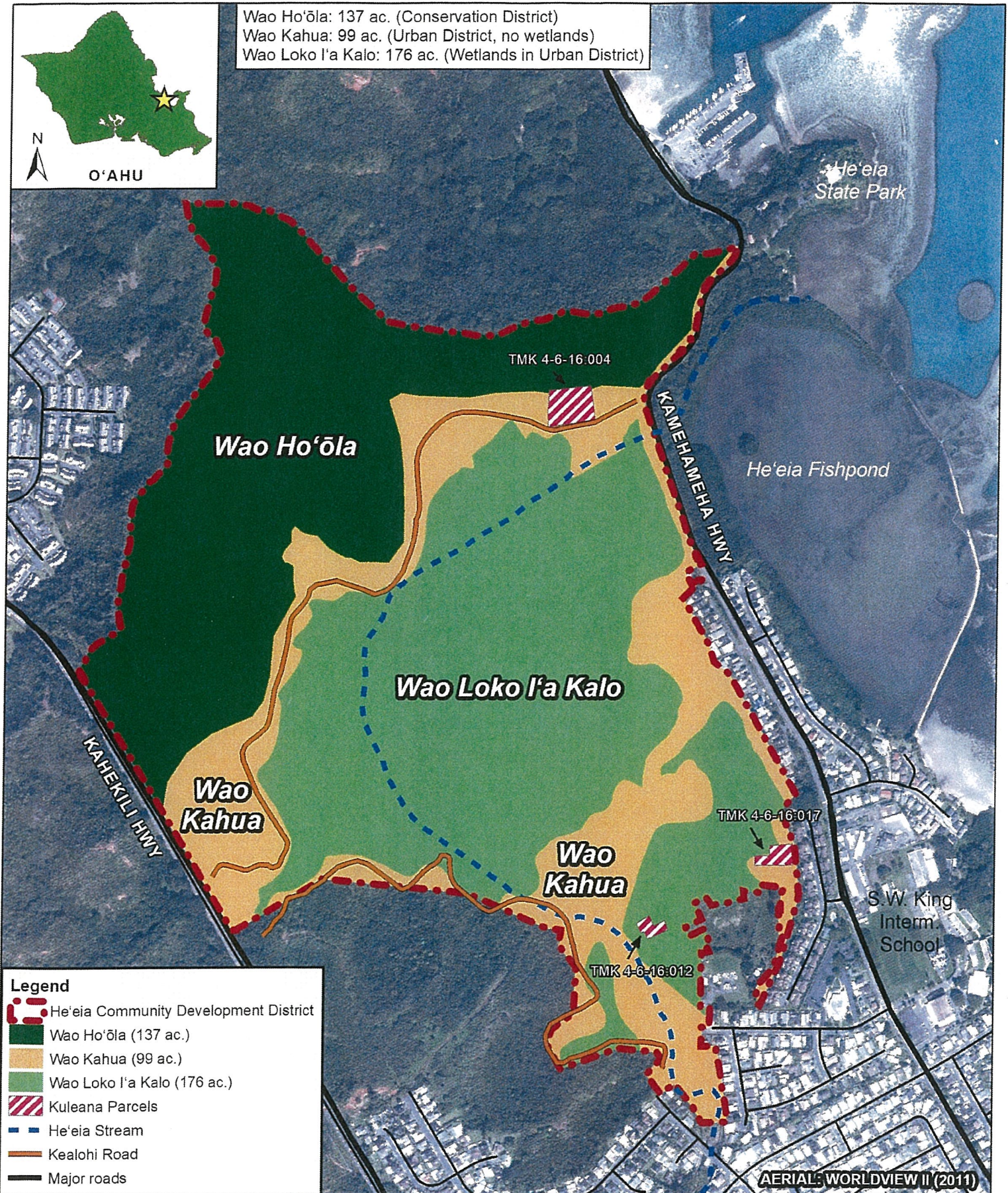


Figure 1.3 Allowable Land Uses

Uses:	Notes:
Agriculture:	
Administration, Security and Staff Support	
Agribusiness/Manufacturing	
Agricultural kauhale	Conditional Use Permit
Agricultural Support and Processing	
Aquaculture and Aquaponics	
Base yard, Maintenance and Warehouse	
Composting	
Crop Production	
Food Manufacturing and Production	
Nursery	
Livestock	
Research and Development	
Restoration and Land Management:	
Alanui	
Wetland	
Stream and 'Auwai	
Forest	
Natural/Ecosystem	
Educational and Cultural:	
Art and Cultural Centers	
Artisan and Craft Production	
Education Facilities:	
• Language Arts	
• Schools	
Vocational Training	
• Health and Healing Centers	Conditional Use Permit
Research and Development	
Retreat and Meeting Centers	Conditional Use Permit
Outdoor Recreation	
Recreation facilities	
Social and Civic Service	
Meeting Facility	
Public Use and Structures	
Educational	
Utilities and Sustainability	
Antennas	
Solar to support facilities	