NOTICE TO INTERESTED PERSONS

(April 10, 2009)

1. You are hereby notified that a written submission has been filed on behalf of the Rollover IRA of Barry Allan Sullivan (the "IRA"), Charles Schwab & Co., Inc., (the "Custodian"), with the United States Department of Labor (the "Department"), seeking final authorization, pursuant to class exemption 96-62 ("PTE 96-62" or "EXPRO"), 61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002, from the sanctions resulting from application of section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), to the proposed transaction described below (the "Proposed Transaction").

2. The submission has met the requirements for tentative authorization under PTE 96-62.

3. If authorized by the Department, pursuant to PTE 96-62, the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E), shall not apply to the sale by the IRA to Barry A. Sullivan ("Sullivan" or "Applicant"), a disqualified person with respect to the IRA, of the IRA's 36.430% membership interest in the Pauoa Valley Preserve LLC (the "Interest").

4. Applicant makes the following representations regarding this matter.

<u>Background</u>

5. The IRA is an individual retirement account, as described in section 408(a) of the Code. The IRA was established on April 18, 2008 by Sullivan. Sullivan is the sole participant in the IRA. Sullivan's wife is the beneficiary of the IRA, and his children are contingent beneficiaries. Sullivan has sole investment discretion over the assets of the IRA. Charles Schwab & Co., Inc. is the IRA Custodian.

6. The 401(k) Plan was a profit sharing plan intended to meet the tax qualification requirements of the Code, including sections 401(a) and 401(k), and which did satisfy such requirements throughout its duration. The 401(k) Plan was established by Sullivan as a sole proprietor, and Sullivan was its sole participant and fiduciary. The 401(k) Plan was not subject to Title I of the Employee Retirement Income Security Act of 1976, as amended ("ERISA"). However, it was subject to the provisions of Title II of the Act pursuant to section 4975 of the Code.

7. The Pauoa Valley Preserve LLC (the "Company") was organized on December 8, 2003 in the State of Hawaii as a member managed limited liability company. The Company had six original members, including the 401(k) Plan. On November 20, 2006, a new member was added. On April 24, 2008, the IRA succeeded the 401(k) Plan as a member of the Company through the rollover of the Interest to the IRA. In May, 2008, an original member was forced to withdraw for financial reasons, and on May 12, the IRA acquired the ownership interest of the withdrawing member. As of today, the Company continues to have six members -- one of the original members has withdrawn, a new member has been added, and the Interest is now held by the IRA instead of by the 401(k) Plan.

8. At the time that the Company was organized, the 401(k) Plan contributed $100,000 to the Company in exchange for an 11.430% equity interest. In response to a call for capital contributions in June, 2005, the 401(k) Plan contributed an additional $11,446 to the Company. Upon the addition of the new member on November 20, 2006, the equity Interest of the 401(k) Plan in the Company was diluted from 11.430% to 8.573%. On May 12, 2008, the IRA paid $250,000 to acquire the 27.857% interest of the withdrawing member. As of this date, the IRA continues to own a 36.430% equity Interest in the Company, with respect to which it has made payments totalling $361,446.

9. Except for two members of the Company who are individuals and are husband and wife, none of the Company's members (or principals of those members who are not individuals) are related to any other member, directly or indirectly, except through co-membership in the Company. Thus, none of the Company's members was a disqualified person with respect to the 401(k) Plan or the IRA.

10. Neither Sullivan nor any of his family members has ever invested in the Company in a personal capacity.

11. From the inception of the Company, Sullivan has been a manager of the Company. There are two other managers. Each of the other co-managers is also a member or a principal of a member of the Company. None of the managers has ever received compensation from the Company, directly or indirectly, in cash or in-kind, for services rendered as a manager or otherwise.

12. The purpose of the Company was to acquire 14.639 acres of unimproved land located at TMK 2-2-040-005-0000, 2914 Booth Rd., Honolulu, HI (the "Property"), and to take the Property through the initial stage of the development process.

13. On March 14, 2004, the Company acquired the Property for a purchase price of $1,500,000 from an unrelated party. The Company paid $750,000 in cash and gave the seller ("Seller") a $750,000 note for the balance, secured by a purchase money mortgage. Neither Sullivan, any person related to Sullivan, nor the 401(k) Plan guaranteed payment on the note given to Seller.

14. Apart from certain bank deposits, described below, the Property is the only property that the Company has ever owned. Without limiting the generality of the foregoing, the Company has never owned automobiles, computers or other office equipment, or a lease on office space.

15. On June 23, 2006, the Company entered into an acquisition loan with First Hawaiian Bank in the principal amount of $900,000 (the "Loan"). First Hawaiian Bank is an unrelated party with respect to the 401(k) Plan, the IRA, Sullivan, and the Company (except as the Company's creditor). First Hawaiian Bank is not a fiduciary or otherwise a disqualified person with respect to the 401(k) Plan or the IRA. Sullivan does not perform services for First Hawaiian Bank.

16. The Loan had an original maturity date of June 30, 2008. The Loan was supported by an appraisal of the Property which, at the time that the Loan was entered into, was determined to be worth $2,008,000. The Loan was secured by a mortgage on the Property and guaranteed by four individuals, two of whom were members of the Company and the other two of whom had beneficial interests in the Company through closely held LLCs each of which was a member. Neither Sullivan, any person related to Sullivan, nor the 401(k) Plan guaranteed payment on the Loan.

17. On June 30, 2006, the Company used part of the proceeds of the Loan to pay off its note to Seller. The Company used the excess proceeds of the Loan as a fund to defray future development and carrying costs, including debt service on the Loan. Ever since then, the Company has held the excess proceeds of the Loan over acquisition and aggregate carrying and development costs in gradually declining bank deposits on which it has earned interest.

18. The passive interest income of the Company on its bank deposits represents the only income that the Company has earned since its organization. The Company has not earned any business income, the allocation of which to the 401(k) Plan or to the IRA might constitute unrelated business taxable income within the meaning of section 512 of the Code.

19. Over the five years that the Property has been held by the Company, substantial carrying and development costs have been incurred. Costs in the approximate amount of $69,000 have been allocable to the Interest. About half of that amount has consisted of interest expense. It is anticipated that in the near future, the Company will be required to make calls for additional capital contributions upon the members.

20. On April 18, 2008, Sullivan adopted Resolutions to terminate the 401(k) Plan. Sullivan had frozen the 401(k) Plan upon his ceasing to be a sole practitioner and his joining a law partnership. Contemporaneously with Sullivan's terminating the 401(k) Plan, he established his IRA. On April 24, 2008, the assets of the 401(k) Plan Account, including the Interest, were rolled over to the IRA.

21. At the time of the rollover, the IRA's Interest represented an 8.573% equity interest in the Company. Measured at the Interest's then book value of $111,446, the Interest represented less than 14% of the IRA's value.

22. Over time, however, the main investment of the IRA has become the Interest, the book value of which now represents more than 83% of the value of the IRA. This result was not by design but is the unintended consequence of two events beyond Applicant's control: the forced withdrawal of an original member in May, 2008 and the broad and precipitous decline of the equity markets in the latter part of 2008.

23. The member forced to withdraw in May, 2008, faced grave financial challenges at the time of its withdrawal. The withdrawing member was a real estate development company the business interests of which were localized in California. Those interests had been severely damaged by the wild fires in San Diego, California in October, 2007 and by the general erosion of prices in the California residential real estate market. The withdrawing member had used its

interest in the Company as security for a loan to support its wider business operations. In May, 2008, the member was in arrears on the loan and had been threatened with foreclosure by the lender. The IRA was the only existing member of the Company which had the financial strength to buy out the withdrawing member. Applicant caused the IRA to do so, largely to protect the IRA's existing investment in the Company.

24. Upon acquiring the interest of the withdrawing member on May 12, 2008, the IRA's interest in the Company increased to a total equity interest of 36.430% of the Company, and the book value of the IRA's Interest increased to $361,446. At that time, however, the book value of the IRA's Interest in the Company still represented less than 50% of the IRA's total assets.

25. After May, 2008, however, the equity markets began their decline. As a consequence, the publicly traded equities held by the IRA lost much of their value. Owing to that loss of value, as of September 30, 2008, the book value of the Interest had grown to represent 83% of the value of the IRA.

26. Owing to the acquisition of the additional 27.857% equity interest in the Company and to the IRA's losses in the markets for publicly traded equities, the IRA is now illiquid and non-diversified. Further, it no longer has the liquidity needed to meet calls for capital contributions from the Company.

27. The Loan became due at the end of June, 2008. First Hawaiian Bank granted the Company a six month extension on the Loan to January, 2009. Upon the expiration of the first extension and, in part, as a consequence of this application, it granted an additional extension until May, 2009. However, First Hawaiian Bank will not further extend the Loan and will not re-negotiate the Loan without a personal guarantee of the Loan by Sullivan.

28. Sullivan is prevented from giving such a guarantee by the prohibited transaction rules under section 4975 of the Code, including section 4975(c)(1)(B).

29. In addition, it is necessary for the Company to make a call on its members for capital contributions in the near future. But the IRA no longer has the assets to meet such a capital call. Sullivan could meet the call, but owing to the prohibited transaction rules under sections 4975(c)(1)(A) and (B) of the Code, he may not do so as long as the IRA is a member of the Company.

30. Unless the Loan is re-negotiated and additional capital is contributed to the Company in the near future, the Property will be foreclosed upon and the IRA will lose the value of the Interest.

31. To prevent the foregoing events, Sullivan seeks relief from the application of section 4975(c)(1)(A) through (E) of the Code to the proposed sale to himself of the IRA's equity Interest in the Company. The Proposed Transaction will protect the value of the IRA, restore liquidity to the IRA, and enable Sullivan to diversify the IRA's investments. It will also relieve the IRA of ongoing and substantial obligations to the Company.

<u>Description of the Proposed Transaction</u>

32. The fair market value of the IRA's equity Interest of 36.430% in the Company has been determined to be $328,000.00 as of January 1, 2009, pursuant to an appraisal of the Property by Scot J. Voronaeff, MAI, and CCIM, and an appraisal of the Interest by Ed Kemp, CPA, ABV, CBA, and CFF. Voronaeff employed the comparable sales approach in appraising the Property, utilizing sales of six properties comparable to the Property. Kemp employed the asset based approach in appraising the Interest, adjusting an asset based valuation of the Company by minority and lack of marketability discounts. Voronaeff is licensed as a certified general appraiser by the State of Hawaii and has over 20 years of real estate appraisal experience. Kemp is licensed as a CPA and real estate salesperson by the State of Hawaii and has 26 years of experience in valuing businesses. Both Voronaeff and Kemp are independent of Sullivan in that they have no present or prospective interest in the Property or the Company and no bias with respect to Sullivan or any related or affiliated persons. The appraisers' assignment and compensation were not contingent upon developing or reporting a predetermined value or direction in value. Sullivan did not know either Voronaeff or Kemp prior to their involvement in appraising the Property and the Interest, and the amount paid to each of them by Sullivan represents either less than or approximately 1% of the gross receipts of the appraiser for the preceding 12 months.

33. On the date of the Proposed Transaction, the appraisals of the Property and Interest will be updated by Voronaeff and Kemp.

34. Although the proposed sale of the Interest to Sullivan will be at a loss since the fair market value of the Interest as appraised as of January 1, 2009 is less than the book value of the Interest, a sale to a third party would result in an even greater loss. There does not now appear to be a market for sale of equity interests such as the Interest. At least one other member of the Company has recently sought to market its interest and was not able to find any purchaser interested in acquiring its equity position in the Company.

35. The Proposed Transaction poses little, if any, risk of abuse or loss to the IRA owing to its proposed terms. The Proposed Transaction is subject to the following terms:

(A) All terms and conditions of the sale of the Interest to Mr. Sullivan (the "Sale") are at least as favorable to the IRA as those which the IRA could obtain in an arm's-length transaction with an unrelated party;

(B) The Sale price for the IRA's Membership Interest in the Company will be based on the greater of $328,000 or the fair market value of such interest as determined by the appraisal of qualified, independent appraisers on the date of the Sale (the "Appraisal");

(C) The Sale is a one-time transaction for cash;

(D) The IRA will not pay any commissions, costs or other expenses in connection with the Sale, including, without limitation, the cost of the Appraisal; and

(E) The Sale will be effected on a date that is no more than 10 days after the effective date of the updated Appraisal by means of a payment from Sullivan to the custodian of the IRA in immediately available funds.

36. The other members of the Company have consented to the sale of the Interest to Sullivan. Sullivan recused himself from the decision of the members to permit such a sale.

37. Sullivan will provide notice of the Proposed Transaction to his family members, the IRA Custodian, members and managers of the Company and First Hawaiian Bank. Such notice will be provided by either personal delivery or U.S. registered mail within 3 business days Sullivan's receipt of tentative authorization of the submission by the Department.

Tentative Authorization of Proposed Transaction

38. The Proposed Transaction became tentatively authorized as of the date first written above.

Substantially Similar Prior Exemptions

39. Relying upon PTE 96-62, Sullivan has identified as "substantially similar" to the Proposed Transaction the following individual exemption and EXPRO submission receiving approval from the Department within the past 60 months:

(A) **PTE 2006-17, 71 FR 67914 (November 24, 2006), involving the Frank D. May, D.M.D., P.A. 401(k) Profit Sharing Plan and Trust**. PTE 2006-17 involved an exemption transaction that is substantially similar to the exemption transaction in this case. It concerned the sale of stock held for the benefit of a participant in a 401(k) plan from the participant's account to the participant himself. The participant, a dentist, was the owner of the plan sponsor and a fiduciary of the plan. The stock was stock of a closely held company, the only asset of which was undeveloped land. Similarly, in this case, Sullivan seeks authority to cause his IRA to sell to him the IRA's interest in a limited liability company. Sullivan is the fiduciary and grantor of his IRA. The interest in the Company is an equity interest in a closely held entity, the only asset of which is undeveloped land. There, as here, the applicant for the prohibited transaction exemption proposed the sale of the equity interest, at a loss to the retirement vehicle, based upon an appraisal by an independent and qualified appraiser on a date simultaneous with the sale. The applicant in that case, as here, sought to provide liquidity and an opportunity for diversification to the underlying retirement account vehicle and to free that retirement vehicle from the burdens associated with ownership of the non-income producing equity interest in the closely held company.

(B) **FAN 2007-05E (April 6, 2007), involving the Individual Retirement Account #1474 for Randy Aulick ("Aulick")**. This submission was pursued by the applicant on an expedited basis under PTE 96-62 and sought relief from the prohibited transaction rules of section 4975 of the Code with respect to the sale of real property from an individual retirement account for which the applicant was grantor and fiduciary to the grantor himself for purposes of providing a home to his ailing father. There, as here, the subject real property was not marketable without further improvement, and there, as here, the IRA did not have sufficient resources to provide the necessary improvements. On the other hand, just as here, the grantor of the IRA was able to, but could not provide the funds necessary for the improvements to the real property without violating the prohibited transaction provisions of section 4975 of the Code. There, as here, the applicant proposed that the sale of the subject real property to himself would restore liquidity and the possibility of diversification to the IRA and relieve it of substantial obligations to the real property. Further, while the proposed sale in the Aulick case resulted in a loss to the IRA, there, as here, the applicant proposed that a sale to a third party would result in an even greater loss.

Your Right to Comment on the Proposed Sale

40. As an interested party, you have the right to submit written comments on the proposed Sale to the Department at the following address:

Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N–5700
Washington, D.C. 20210

41. Comments may also be faxed to (202) 219-0204 or emailed to Ly, Anh-Viet - EBSA [Ly.Anh-Viet@dol.gov]. Comments must be received by the Department no later than **May 11, 2009**. Please refer to the number of this EXPRO application, which is E-00628. You may also contact Mr. Ly by telephone at (202) 693-8648.

Anticipated Date of Sale

42. The Sale will be consummated only after the issuance of a final authorization by the Department. Final authorization occurs 5 days after the end of the comment period. It is anticipated that the Proposed Transaction will occur on the date of the final authorization, which is **May 16, 2009**.