

RS approval

# Lihue Land Company

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December 30, 2003

Mr. Anthony Ching  
Executive Officer  
Land Use Commission  
State of Hawaii  
Department of Business, Economic Development and Tourism  
P.O. Box 2359  
Honolulu, HI 96804-2359

Dear Mr. Ching:

Subject: 2004 Annual Report  
LUC Docket No. A94-703  
The Lihue Plantation Company, Limited  
Decision and Order, January 4, 1996 (as amended on April 12, 1996)  
Lihue-Hanamaulu Master Plan Project ("Project")

Submitted herewith are one original and two copies of this annual report. Copies of this report are also being provided to the State Office of Planning and the Planning Department, County of Kauai.

In July, 2001 Visionary LLC, a Virginia limited liability company dba Lihue Land Company, purchased most of Lihue Plantation Company's lands, including the Project area, from Lihue Plantation. Under the terms of the purchase, except for the Kaana Street improvements, which remained an obligation of Lihue Plantation, Lihue Land Company has accepted all obligations under this docket. To avoid confusion it should be pointed out that both Lihue Land Company and Grove Farm Company share common officers, directors and staff.

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LAND USE COMMISSION  
STATE OF HAWAII

## I. PROJECT PROGRESS

Concurrent with the processing of the above-captioned Petition for Boundary Amendment for the Project by the State Land Use Commission ("Commission"), the Petitioner submitted a Petition for a Zoning Amendment (Bill No. 1775) to the County of Kauai ("County") on August 25, 1995 (hereinafter "County Zoning Amendment"). Upon review and public hearings, the County Planning Commission recommended approval and the County Council approved the request on May 8, 1996 and the Mayor of Kauai signed the County Zoning Amendment into law on May 13, 1996 (Ordinance No. PM-326-96).

Petitioner continues to work on satisfying the conditions of approval for both the Petition for Boundary Amendment and the County Zoning Amendment that must be resolved prior to applying for County Zoning Permits and/or receiving final approval of any subdivision.

Petitioner has also had discussions with several community groups and government agencies as to the possible inclusion or relocation of certain sites into the Project Area. As discussed in our previous annual reports and letters dated September 29, 1997 and October 17, 1997 the following agreements have been reached.

1. Sale of approximately 4.4 acres to the UH for a Tropical Fruit Disinfestation Facility.
2. Sale of approximately 6.5 acres to the State of Hawaii for a Judiciary Complex.
3. Sale of approximately 10.0 acres to the County of Kauai for a police station, civil defense and transportation facility.

The design of the Kaana Street roadway improvements to serve the State's judiciary complex and County's police station from Kapule Highway was completed in 2001. Construction plans were put out to bid and a contract to construct was awarded to Goodfellow Bros. Construction was about to begin in early 2002 when Amfac, parent of Lihue Plantation, filed for bankruptcy. The ensuing bankruptcy proceedings delayed construction for nearly a year while new sources of funding were secured. Construction commenced in late 2002 and was completed in April, 2003.

## II. COMPLIANCE WITH COMMISSION'S CONDITIONS

Progress towards compliance with the conditions of the Commission's approval referred to and incorporated in the Decision and Order dated January 4, 1996, as amended on April 12, 1996, are summarized below.

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii to the satisfaction of the County of Kauai Housing Agency. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kauai.

Agreement between the Petitioner and the County of Kauai shall be obtained prior to the Petitioner applying for county zoning permits.

**Status:**

**This condition is acknowledged. In recent months preliminary discussions have been held with the County to ascertain this requirement.**

2. Petitioner shall provide its fair-share contribution for school facilities necessitated by the proposed Lihue-Hanamaulu Project, and for the benefit of the State Department of Education ("DOE"), as follows: Petitioner shall donate in fee simple, twelve (12) acres of off-site land in the Lihue district at Puhi, Kauai in an "as is" condition for an elementary school site. Agreement between Petitioner and the DOE as to the time of the conveyance(s) of the land(s) and the specific location of the twelve (12) acre site shall be obtained prior to the Petitioner applying for county zoning permits.

**Status:**

Petitioner has met with the Facilities Branch, State Department of Education ("DOE") and the County Planning Department ("Planning Department") to review the DOE's desired location of the twelve (12) acre elementary school site. Such a site was included by Petitioner in the Project area. Pursuant to the County Zoning Amendment, the Petitioner agreed to a condition of approval that provided the Planning Department and DOE a one-year time period to evaluate and resolve the desired school site. The original one-year time period expired on May 13, 1997 (one year after the date zoning was signed by Mayor). DOE has requested subsequent extensions and Petitioner has agreed to these extensions. In view of DOE's current need to expand its King Kaumualii Elementary School campus in Hanamaulu, DOE and Petitioner are exploring the possibility of Petitioner providing 2 - 3 acres for King Kaumualii in exchange for credit against Petitioner's obligations under this docket. Should Petitioner and DOE come to terms on such an arrangement, appropriate agency approvals, will be sought.

3. Petitioner shall participate in the pro rata funding and construction of adequate civil defense measures as determined by the State of Hawaii and County of Kauai civil defense agencies.

**STATUS:**

At such time that the detailed planning and engineering is substantially completed, Petitioner will participate in resolving its pro rata funding and construction of civil defense measures as determined by the State and County civil defense agencies.

4. Petitioner shall participate in the funding and developing of water source, storage, and transmission facilities to serve the proposed development.

**STATUS:**

This condition is acknowledged. Petitioner submitted its Water Master Plan to the County of Kauai, Department of Water on May 16, 2000 for its review and approval. Petitioner is now developing a surface water treatment plant that will provide initial source capacity for the Project.

5. Petitioner shall participate in the funding and construction of adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Kauai.

**STATUS:**

This condition is acknowledged. Petitioner has met with and is working with the County of Kauai, Department of Public Works ("DPW"), to finalize a Wastewater System Preliminary Engineering Report for the Project. The Wastewater System Preliminary Engineering Report was submitted to the

**County of Kauai on March 3, 1998. The County, in consultation with the State Department of Health ("DOH"), will require acceptance of this report prior to approving the subdivision of the Project. Discussions are currently under way with the County on the possible purchase of unused capacity from the County's Lihue treatment plant to be used by the Project.**

6. Should any human burials or any historic sites such as artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation Division ("Division"). The significance of these finds shall then be determine and approved by the Division. The Division must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawaii Revised Statutes.

**STATUS:**

**Petitioner will comply with this condition.**

7. Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation ("DOT") and the County of Kauai. Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner applying for county zoning permit or receiving final approval of any subdivision, whichever comes first.

**STATUS:**

**Petitioner has discussed the satisfaction of this condition with the State Department of Transportation ("DOT") and the County, and is working with the DOT to identify the level of pro rata funding and participation that Petitioner is required to provide. This agreement will be completed prior to applying for county zoning permits or receiving final subdivision approval, whichever comes first.**

8. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the appropriate State of Hawaii and County of Kauai agencies.

**STATUS:**

**Petitioner has prepared a drainage master plan, which was attached to the Environmental Impact Statement. As individual developments within the Project are planned the Petitioner will work with the appropriate County and State agencies to resolve details relating to the design of the required drainage improvements. As necessary Petitioner will also coordinate certain off-site drainage improvements with the State Airports Division and with the Kauai Lagoons Resort.**

9. Petitioner shall not construct single or multi-family residential, hotels, or transient lodging, and other noise sensitive public use structures (schools, day care centers, libraries, churches, health care facilities, nursing homes, or hospitals) within areas exposed to aircraft noise levels of 60 Ldn or greater as indicated on the 1994 and 2010 aircraft noise contours within the Petitioner's January 1995 EIS. Other public use structures (government services and office buildings serving the public, transportation facilities, and parking areas), commercial facilities, government facilities not normally accessible to the public, industrial and agricultural facilities, and recreational facilities (except for outdoor music shells, amphitheatres, professional/resort sport facilities, medial event facilities, etc.) are permitted within areas exposed to aircraft noise levels of 60 Ldn or greater. The State of Hawaii will not be responsible for mitigation of facilities developed within areas exposed to aircraft noise levels of 60 Ldn or greater.

**STATUS:**

**Petitioner will comply with this condition.**

10. Petitioner shall grant to the state of Hawaii an aviation (right to flight) easement in the form prescribed by the State of Department of Transportation ("DOT") and such easement and form shall be mutually acceptable to the DOT and the Petitioner.

**STATUS:**

**Petitioner will comply with this condition.**

11. Petitioner shall not construct any object that would constitute a hazard to air navigation at Lihue Airport as defined in Title 14, Code of Federal Regulations Part 77, (14 C.F.R. 77) and Title 19, Hawaii Administrative Rules Chapter 12 (19 H.A.R. 12), provided that this requirement shall be applicable to the construction of those improvements set forth in Petitioner's Exhibit 54, 55 and 56.

**STATUS:**

**Petitioner will comply with this condition.**

12. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

**STATUS:**

**Petitioner has contacted the DOH and the DOH has determined that there is no existing or planned air quality monitoring program for the subject Project area.**

13. Petitioner shall cooperate with the State Department of Health and the County of Kauai Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes, and the County of Kauai's approved integrated solid waste

management plans in accordance with a schedule and timeframe satisfactory to the State Department of Health.

**STATUS:**

**Petitioner will comply with this condition.**

14. Petitioner shall implement efficient soil erosion and dust control measures to the satisfaction of the State Department of Health and County of Kauai.

**STATUS:**

**Petitioner will comply with this condition.**

15. Petitioner shall notify all prospective buyers of property that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing activities may be deemed a nuisance.

**STATUS:**

**Petitioner will comply with this condition.**

16. Petitioner shall maintain the alignment of existing cane haul roads or shall provide alternative cane haul roads at its expense to serve any continuing sugarcane cultivation within the Property.

**STATUS:**

**There are no ongoing sugar operations as the Lihue Plantation Company ceased its operations three years ago.**

17. Petitioner shall initiate and fund a stream biological monitoring program. The monitoring program shall include quarterly monitoring as warranted, and be reviewed by the U.S. Fish and Wildlife Service, and approved by the State Division of Aquatic Resources, Department of Land and Natural Resources. Mitigation measures necessitated by this Project shall be implemented by the Petitioner if the results of the monitoring program warrant them. Mitigation measures, if necessary, shall be reviewed by the U.S. Fish and Wildlife Service, and approved by the State Division of Aquatic Resources, Department of Land and Natural Resources.

**STATUS:**

**Petitioner has prepared a stream biological monitoring program plan that has been reviewed by the U.S. Fish and Wildlife Service and has received approval from the Division of Aquatic Resources ("DAR"), Department of Land and Natural Resources, Stream biological monitoring will be conducted in accordance with the plan.**

18. Petitioner shall initiate and fund a nearshore and stream water quality monitoring program. The monitoring program shall be approved by the U.S. Fish and

Wildlife Service, the National Marine Fisheries Service, the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources. Mitigation measures shall be implemented by the Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

**STATUS:**

**Petitioner has prepared a nearshore and stream water quality monitoring program plan and has revised the plan in accordance with reviewing agency comments. The monitoring program plan has been approved by the DOH, DAR, and the National Marine Fisheries Service. The Petitioner is currently working with the State Office of Planning and the U.S. Fish and Wildlife Service to address their concerns and obtain their approval. Monitoring will be conducted in accordance with the approved plan.**

19. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

**STATUS:**

**Petitioner will comply with this condition.**

20. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

**STATUS:**

**Petitioner will continue to comply with this condition. See discussion on the change in ownership on pages 1 and 2.**

21. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Kauai Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

**STATUS:**

**Petitioner will comply with this condition.**

22. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

**STATUS:**

**Petitioner is fully aware of this condition.**

23. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

**STATUS:**

**Petitioner has complied with this condition.**

24. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.

**STATUS:**

**Petitioner has complied with this condition.**

We trust that the foregoing adequately describes the Project's status in compliance with condition 21. If there are questions please feel free to contact the undersigned at (808) 245-3678.

Sincerely,

LIHUE LAND COMPANY



Michael H. Furukawa  
Vice President

C: State Office of Planning  
Planning Department, County of Kauai