

CARLSMITH BALL LLP LAND USE COMMISSION
STATE OF HAWAII

A LIMITED LIABILITY LAW PARTNERSHIP

2011 OCT 28 P 1:13

121 WAIANUENUE AVENUE

P.O. BOX 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

SLIM@CARLSMITH.COM

October 28, 2011

VIA HAND DELIVERY

Orlando Davidson
Executive Officer
Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804

Re: **2011 Annual Report - Docket No.: A10-788**
Co-Petitioner: Forest City Hawaii Kona, LLC and
Hawaii Housing Finance and Development Corporation
To Amend the Agricultural Land Use District Boundaries into the Urban Land
Use District for certain lands situate at Keahuolu, North Kona; consisting of
approx. 271.837 acres at TMK Nos.: (3)7-4-021:020 (por), 024, 025, 026 and 027

Dear Mr. Davidson:

On behalf of our client, Forest City Hawaii Kona, LLC ("**Forest City**") and Co-Petitioner Hawaii Housing Finance and Development Corporation ("**HHFDC**") (hereinafter collectively referred to as the "**Co-Petitioners**"), we hereby submit the 2011 Annual Report in accordance with Condition 27 of the State Land Use Commission Findings of Fact, Conclusions of Law and Decision and Order, issued on November 5, 2011, in Docket No.: A10-788, to report on the status of the development of the Kamakana Villages at Keahuolu (the "**Project**"). The enclosed matrix will outline the Co-Petitioner's compliance with each of the 27 conditions of approval under said Decision and Order.

Since the issuance of the Decision and Order, development of the Project has been stalled due to the litigation against the Project and challenging the reclassification, initiated by Queen Lili'uokalani Trust ("**QLT**"). Specifically, the matters of Thomas K. Kaulukukui, Jr. et al. v. Land Use Commission, et al., Civil No. 10-1-2253-10 (RAN), which is in the First Circuit Court, and Thomas K. Kaulukukui, Jr. et al. v. Land Use Commission, et al., Civil No. 10-01-438K, which is in the Third Circuit Court. QLT filed Appellant's Opening Brief in Civ. No. 10-01-438K on September 23, 2011, and Co-Petitioner's Answering Brief is due November 4, 2011.

Although the litigation is still active, for the past year Co-Petitioners have been working diligently with QLT to resolve their differences. On October 13, 2011, the HHFDC Board approved in concept the settlement terms agreed to by Forest City and QLT. In light of these

October 28, 2011

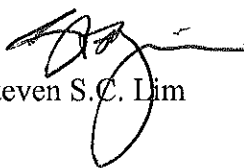
Page 2

efforts, Co-Petitioners fully expect that both matters will be fully settled soon, at which time the parties will file with the Courts stipulations for dismissal with prejudice.

Although the litigation has delayed progress on the development of the Project, Co-Petitioner's have nevertheless been working toward satisfaction of certain SLUC conditions of approval, as shown on the enclosed matrix. Co-Petitioners are hopeful that a speedy resolution of the QLT litigation will permit timely compliance with all conditions of approval.

We trust that the foregoing satisfies the annual reporting requirement of the subject Docket. Please feel free to contact me at anytime, should you have any questions or require any additional information from our client. Thank you for your attention.

Very truly yours,



Steven S.C. Lim

cc: Jesse Souki, State Office of Planning
BJ Leithead-Todd, Planning Director, County of Hawaii
Race Randle, Forest City Hawaii Kona, LLC
Stanley Fujimoto, Hawaii Housing Finance and Development Corporation
J. Benck, Carlsmith Ball LLP

4823-2795-8284.1

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")

State Land Use Commission Docket No.: A10-788

Effective Date: November 5, 2010

2011 Annual Report

State Land Use Commission Docket No.: A10-788 - Compliance with Conditions of Approval

On November 5, 2010, the State Land Use Commission (the "SLUC") reclassified approximately 271.837 acres of land, more particularly identified as Tax Map Key Nos.: (3) 7-4-021:020 (portion), (3) 7-4-021:024, 025, 026 and 027 (the "Petition Area"), from the Agricultural District to the Urban District under SLUC Docket No.: A10-7880. The Petitioner intends to develop the Petition Area, together with approximately 0.226 acres already within the Urban District, as a master planned, mixed-use affordable housing project known as Kamakana Villages at Keahuolu (the "Project").

No.	Condition	Status	Comments
1	<u>Affordable Housing.</u> Petitioner shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County of Hawaii's Office of Housing and Community Development and the certification of the Project as an HRS §201H-38 housing project. The location, distribution, and production schedule of the affordable units shall be under such terms as may be mutually agreeable between the Petitioner and the County.	On-going	The Co-Petitioners shall comply with this condition. Petitioner shall develop the Project consistent with Hawaii County Resolution No. 405-10 (approving the development of the Project as a HRS Chapter 201H project). Co-Petitioners have begun pre-development efforts for an affordable rental project application for Phase 1 of the Petition Area.
2	<u>Parks.</u> Petitioner shall design and construct a minimum of 25 acres of parks and shall include at least ten playground facilities.	On-going	The Co-Petitioners shall comply with this condition as the Project is developed.
3	<u>School Site and Construction Component Agreement.</u> Petitioner shall enter into an agreement with the State Department of Education to provide land for a school site and a cash contribution to the construction component of a school impact fee prior to submission of any applications for subdivision for the residential lots or plan approval for the multiple family and/or commercial units within the Project.	Completed	The Co-Petitioners have satisfied this condition. On April 25, 2011, the Petitioner and the Department of Education ("DOE") executed an Educational Contribution Agreement to fully satisfy the DOE education contribution requirements for the Project. The Educational Contribution Agreement requires payment to the DOE upon closing of each residential unit in the Project. The Educational Contribution Agreement also requires the Petitioner to dedicate land within the Project for use as a school site.
4	<u>Water Resource Allocation.</u> Petitioner shall fund and construct drinking water source, storage, and transmission facilities and improvements as required to accommodate development of the Petition Area, to the satisfaction of the County of Hawaii, Department of Water Supply and appropriate State agencies. To the extent practicable and available, the Petitioner shall utilize non-potable water for landscaping.	On-going	The Co-Petitioners shall comply with this condition. On September 27, 2011, the County of Hawaii Water Board approved the Co-Petitioners water development agreement with the Department of Water Supply ("DWS") to develop a potable water well, well site improvements, water storage facilities and transmission improvements acceptable for dedication to the Water Board as part of the approving the DWS North Kona water system.

HAWAII COUNTY
DEPARTMENT OF WATER SUPPLY

2011
9/27/11

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")

State Land Use Commission Docket No.: A10-788

Effective Date: November 5, 2010

2011 Annual Report

<p>5 Water Conservation Measures. Petitioner shall implement water conservation measures and Best Management Practices (BMPs), such as the use of indigenous and drought-tolerant plants and turf and incorporate such measures in the Project's landscape design. Petitioner shall design for and utilize for all irrigation purposes reclaimed water from the Kealakehe Wastewater Treatment Plant when that source is delivered to the Project boundary.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p>
<p>6 Transportation. Petitioner shall mitigate all project generated traffic impacts as recommended and/or required by the Traffic Impact Analysis Report (TIAR) prepared for the project that has been reviewed and accepted/approved by the State Department of Transportation (DOT) and the County of Hawaii. No final subdivision approvals shall be issued until the Petitioner has executed an agreement with DOT and Hawaii County committing to the implementation of all necessary measures to mitigate the direct impacts of the project on the surrounding roadway system as well as to the level of funding and participation for Petitioner's pro rata share of regional transportation improvements.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p> <p>Co-Petitioners have contracted Fehr & Peers to complete the TIAR for the Petition Area. As a result of discussions with Intervenor, Queen Lili'uokalani Trust, the TIAR study area was expanded to include additional intersections in the Kona area. This data has been gathered, and a revised TIAR is being prepared.</p>
<p>7 Street Lights. Petitioner shall use fully-shielded, low sodium street lights within the Project to avoid impacts to avifauna and other populations. Shielding shall conform to the County's standards for street lights to prevent light diffusion upward into the night sky.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p>
<p>8 Archaeological and Historic Preservation. Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), prior to issuance of any permit for grubbing and grading. Petitioner shall confirm in writing to the Land Use Commission that the SHPD has found Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p> <p>The Project archaeologist is currently preparing the required burial treatment plan, monitoring plan, and site preservation plan for the Project. The Co-Petitioners anticipate final action by the State Historic Preservation Division and the Hawaii Island Burial Council on these three (3) plans by early 2012.</p>

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")

State Land Use Commission Docket No.: A10-788

Effective Date: November 5, 2010

2011 Annual Report

<p>9</p> <p>Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Hawaii Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p>
<p>10</p> <p>Established Access Rights Protected. Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p>
<p>11</p> <p>Lava Tube Cave Preservation. Petitioner shall preserve any lava tube caves or subgrade cavities not previously identified in studies referred to herein, if required to be preserved by SHPD or the Hawaii Island Burial Council as part of an approved burial treatment plan.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p>
<p>12</p> <p>Water Wells. As recommended in the Final EIS, Petitioner shall install monitors for each source well, and reactivate the Komo Well as a monitoring well. Petitioner will also develop the Kamakana Well to provide monitoring. In providing potable water for the Project, Petitioner shall comply with all applicable laws and regulations to assess the potential impacts and identify the appropriate mitigation measures for such water source.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition. Co-Petitioners are nearing completion of the Kamakana Monitoring well, which is expected to be done by the end of the year.</p>

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")

State Land Use Commission Docket No.: A10-788

Effective Date: November 5, 2010

2011 Annual Report

<p>13</p> <p>Storm and Surface Water Runoff Quality. Prior to the occupancy of any residential unit within the Petition Area and as recommended in the Final EIS, Petitioner shall engineer, construct (or require to be constructed) and/or implement (or require to be implemented) and maintain storm and surface-water runoff BMPs, subject to any applicable review and approval of the State of Hawaii Department of Health (DOH), designed to minimize pollution and to prevent violations of State water quality standards as a result of storm-water discharges originating from the Petition Area.</p> <p>To the extent practicable and consistent with applicable laws, Petitioner shall implement landscaped areas, such as grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable BMPs engineered to treat the first flush runoff volume including the removal of suspended solids and oils and greases from all streets and parking lots, and debris catch basins to allow the detention and periodic removal of rubbish and sediments deposited by runoff using current industry and engineering standards.</p> <p>Not less than 45 days before submitting an application for subdivision approval for residential lots, Petitioner shall submit a copy of its designs for storm and surface water runoff BMPs to the National Park Service for consultation.</p> <p>As recommended in the Final EIS, Petitioner shall create and provide a pollution prevention plan for residential and commercial facilities, and provide copies to property purchasers. To reduce the amount of pollutants from entering the groundwater, Petitioner shall provide educational materials and programs to residents, establish community association covenants and implement BMPs. Educational materials and programs, and community association covenants would include, but not be limited to, the landscape management and vehicular maintenance controls recommended in the final EIS.</p> <p>To the extent practicable and consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the water table or coastal waters.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p>
--	-----------------	---

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")
 State Land Use Commission Docket No.: A10-788
 Effective Date: November 5, 2010
 2011 Annual Report

14	<p>Drainage. Petitioner shall fund, design and construct any drainage system improvements required to prevent adverse impact resulting from the development of the Project. Petitioner shall be required to prevent runoff from the Petition Area from adversely affecting State or County highway facilities and downstream properties. Petitioner shall submit plans to the DOT and appropriate State and County agencies for review and approval.</p>	On-going	The Co-Petitioners shall comply with this condition.
15	<p>Wastewater Facilities. Petitioner shall fund, design and construct transmission lines and connect to the County of Hawaii's Kealahou Sewage Treatment Plant to the satisfaction of the County Department of Environmental Management and the DOH.</p>	On-going	The Co-Petitioners shall comply with this condition. The Petitioner is currently working with the County of Hawaii Department of Environmental Management - Wastewater Division to install a sewer line within Ane Keohokalole Highway to provide the necessary wastewater transmission capacity needed for the Project.
16	<p>Solid Waste Management Plan. Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS §342G, and this plan shall emphasize waste diversion and recycling. Petitioner's solid waste management plan shall be approved by the County of Hawaii and the DOH.</p>	On-going	The Co-Petitioners shall comply with this condition.
17	<p>Civil Defense. Petitioner shall fund and install one or more outdoor solar-powered warning sirens serving the Petition Area as determined by the State Department of Defense, Office of Civil Defense.</p>	On-going	The Co-Petitioners shall comply with this condition.
18	<p>Air Quality Monitoring. Petitioner shall participate in an air quality monitoring program as required by the DOH.</p>	On-going	The Co-Petitioners shall comply with this condition.
19	<p>Best Management Practices. Petitioner shall implement applicable BMPs for each proposed land use to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the DOH guidelines.</p>	On-going	The Co-Petitioners shall comply with this condition.

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")
 State Land Use Commission Docket No.: A10-788
 Effective Date: November 5, 2010
 2011 Annual Report

20	<p>Energy Conservation. To the extent practicable Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that all commercial and institutional facilities be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for New Construction (LEED-NC), Silver level or higher. Petitioner shall plan, design, and construct or incorporate into its development agreements a requirement that, to the extent practicable, all homes be planned, designed, and constructed to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED-H), Silver level or higher.</p>	On-going	The Co-Petitioners shall comply with this condition.
21	<p>LEED-ND. To the extent practicable Petitioner shall plan, design and construct the Project to meet at a minimum the U.S. Green Building Council's Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND), Certified or higher.</p>	On-going	The Co-Petitioners shall comply with this condition.
22	<p>Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.</p>	On-going	The Co-Petitioners shall comply with this condition.
23	<p>Infrastructure Deadlines. Petitioner shall complete construction of all backbone infrastructure for Phases 1 through 3a, as described in Petitioner's Incremental Development Plan, including major roadway improvements and primary water, sewer, drainage, and electrical infrastructure for Phases 1 through 3a no later than ten (10) years from the date of the Commission's Decision and Order. Petitioner shall complete construction of all backbone infrastructure for Phases 3b through 6, as described in Petitioner's Incremental Development Plan, including major roadway improvements and primary water, sewer, drainage, and electrical infrastructure for Phases 3b through 6 no later than twenty (20) years from the date of the Commission's Decision and Order.</p>	On-going	The Co-Petitioners shall comply with this condition.

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")
 State Land Use Commission Docket No.: A10-788
 Effective Date: November 5, 2010
 2011 Annual Report

<p>24</p> <p>Automatic Order to Show Cause. If Petitioner fails to comply with the deadlines contained in Condition 23 (Infrastructure Deadlines), the Commission shall issue and serve upon the Petitioner an Order to Show Cause as required by law and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification, or be changed to a more appropriate classification.</p>		<p>The Co-Petitioners acknowledge this condition.</p>
<p>25</p> <p>Compliance with HRS Section 205-3.5, Relating to Agricultural Uses on Adjacent Agricultural Land. For all land in the Petition Area or any portion thereof that is adjacent to land in the State Agricultural District, Petitioner shall comply with the following: Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS Section 165-2, HRS. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS Chapter 165, the Hawaii Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosures required for the sale or transfer of real property or any interest in real property.</p>	<p>On-going</p>	<p>The Co-Petitioners shall comply with this condition.</p>
<p>26</p> <p>Notice of Change of Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the Petition Area at any time prior to completion of development of the Petition Area.</p>		<p>The Co-Petitioners acknowledge this condition.</p>

Forest City Hawaii Kona, LLC and Hawaii Housing Finance and Development Corporation (collectively referred to as the "Co-Petitioners")

State Land Use Commission Docket No.: A10-788

Effective Date: November 5, 2010

2011 Annual Report

<p>27</p> <p>Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.</p>		<p>The Co-Petitioners will continue to comply with this condition and submits this 2011 Annual Report in compliance with this condition.</p>
<p>28</p> <p>Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors or assigns.</p>		<p>The Co-Petitioners acknowledge this condition.</p>
<p>29</p> <p>Notice of Imposition of Conditions. Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawaii a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.</p>	<p>Completed</p>	<p>The Co-Petitioners have complied with this condition.</p> <p>The Petitioner recorded a "Notice of Imposition of Conditions" with the Bureau of Conveyances ("BOC") on 11/16/10 as Document No. 2010-176103. A copy of the <i>Notice of Imposition of Conditions</i> was filed with the LUC and sent to all parties on 11/16/10.</p>
<p>30</p> <p>Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR § 15-15-92.</p>	<p>Completed</p>	<p>The Co-Petitioners have complied with this condition.</p> <p>The Petitioner recorded the "Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban" was recorded with the BOC on 11/16/10 as Document No. 2010-176104.</p>