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STATE OF HAWAII
BUREAU OF CONVEYANCES
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RS

McCorrison Miller Mukai MacKinnon LLP
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawai'i 96813

Attn: DJM

Document Contains 18 Pages

Tax Map Key No. (4) 2-1-001:054

**DECLARATION OF CONDITIONS IMPOSED
BY THE STATE LAND USE COMMISSION**

KNOW ALL PERSONS BY THESE PRESENTS:

Petitioner COUNTY OF KAUA'I, by and through its Housing Agency
("Petitioner"), in Docket No. A17-802 before the State Land Use Commission ("*Commission*"),
hereby submits this declaration for recordation pursuant to the requirements of Section 15-15-92,
Hawai'i Administrative Rules.

WHEREAS, by Findings of Fact, Conclusions of Law, and Decision and Order
dated July 24, 2017 (the "*Order*"), in Docket No. A17-802, the Commission reclassified
approximately 75 acres of land situated in 'Ele'ele, Kaua'i, Hawai'i, more particularly identified
as Tax Map Key No. (4) 2-1-001:054 ("*Petition Area*"), from the State Land Use Agricultural
District to the State Land Use Urban District, as reflected in Exhibit "A" and described in
Exhibit "B" attached hereto; and

WHEREAS, pursuant to Section 205-4(g) of the Hawai'i Revised Statutes, and Sections 15-15-91 and 15-15-92 of the Hawai'i Administrative Rules, such conditions are required to be recorded in the Bureau of Conveyances of the State of Hawai'i (the "*Bureau*") so as to be imposed upon the Petition Area as covenants running with the land, and shall be binding upon the Petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer of the Petition Area; and

WHEREAS, pursuant to Section 205-4(g) of the Hawai'i Revised Statutes, and Section 15-15-92 of the Hawai'i Administrative Rules, Petitioner filed a Notice of Imposition of Conditions by the Land Use Commission with the Bureau on July 27, 2017 as Document No. A-64170704;

NOW, THEREFORE, Petitioner hereby states and declares that the Order is made subject to those 25 conditions which are more fully set forth on pages 75 through 85 of said Order, attached hereto and incorporated herein by reference as Exhibit "C".

Upon recordation at the Bureau, this Declaration of Conditions Imposed by the State Land Use Commission supersedes and automatically revokes the Notice of Imposition of Conditions by the Land Use Commission that was recorded with the Bureau on July 27, 2017 as Document No. A-64170704.

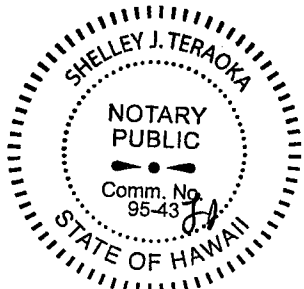
Dated: Lihu'e, Kaua'i, Sept. 1, 2017.

COUNTY OF KAUA'I
By and Through Its Housing Agency

By Kanani Fu
Kanani Fu
Its Housing Director

STATE OF HAWAI'I)
) SS.
COUNTY OF KAUA'I)

On this 1st day of September 2017, before me personally appeared **Kanani Fu**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

Shelley J. Teraoka
Notary Public, State of Hawai'i
Printed Name: Shelley J. Teraoka
My commission expires: July 21, 2021

NOTARY CERTIFICATION STATEMENT

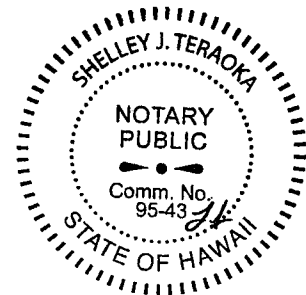
Document Identification or Description: Notice of Imposition of Conditions by the Land Use Commission

Doc. Date: 9/1/2017 or Undated at time of notarization.

No. of Pages: 17 Jurisdiction: Circuit 5th
(in which notarial act is performed)

Shelley J. Teraoka 9/1/2017
Signature of Notary Date of Notarization and Certification Statement

Shelley J. Teraoka
Printed Name of Notary



(Official Stamp or Seal)

Exhibit "A"

Map of Petition Area

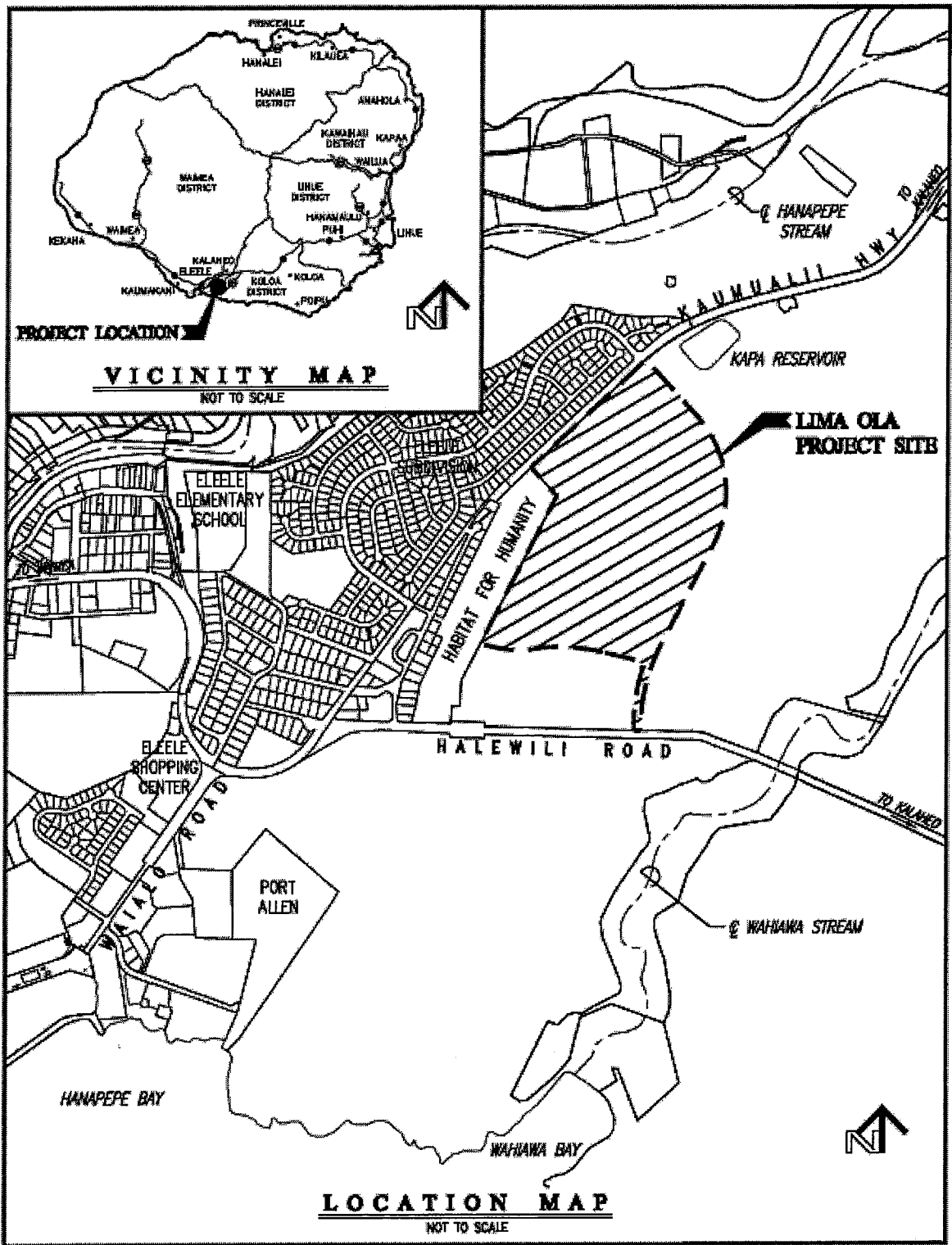


Exhibit "B"

LOT A

LAND SITUATED AT ELEELE, KOLOA, KAUAI, HAWAII

Being Portions of Royal Patent 4485, Land Commission Award 7712,
Apana 5 to M. Kekuanaoa

Beginning at the southwest corner of this parcel of land, on the north side of Halewill Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puolo" being 4,722.82 feet North and 10,419.33 feet East, thence running by azimuths measured clockwise from true South:

- | | | |
|----|--------------|---|
| | | along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot B), on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being: |
| 1. | 226° 42' 30" | 70.71 feet; |
| 2. | 181° 42' 30" | 100.00 feet along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot B); |
| | | thence along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot B), on a curve to the right with a radius of 1,340.00 feet, the chord azimuth and distance being: |
| 3. | 189° 33' 14" | 365.83 feet; |
| | | thence along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot B), on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being: |
| 4. | 150° 01' 29" | 73.58 feet; |
| 5. | 102° 39' | 317.34 feet along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot B); |
| | | thence along the remainder of R.P. 4485, L.A. Aw. 7712:5 (Lot B), on a curve to the left with a radius of 1,645 feet, the chord azimuth and distance being: |

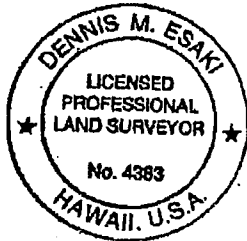
6.	93° 46'	508.05	feet;
7.	84° 53'	235.26	feet along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot B);
			thence along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot B), on a curve to the right with a radius of 550.00 feet, the chord azimuth and distance being:
8.	100° 44'	300.43	feet;
9.	206° 35'	1,397.79	feet along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot 10);
10.	136° 41'	376.73	feet along the remainder of R.P. 4485, L.C. Aw. 7712:5 (Lot 10);
11.	226° 41'	1,233.27	feet along the southeast side of Kaumualii Highway;
			thence along the southeast side of Kaumualii Highway, on a curve to the right with a radius of 2,470.00 feet, the chord azimuth and distance being:
11.	228° 30' 27"	157.25	feet;
			thence along the remainder of R.P. 4485, L.C. Aw. 7712:5 on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being:
12.	3° 30' 27"	72.93	feet;
13.	316° 41'	600.40	feet along the remainder of R.P. 4485, L.C. Aw. 7712:5;
			thence along the remainder of R.P. 4485, L.C. Aw. 7712:5 on a curve to the right with a radius of 982.00 feet, the chord azimuth and distance being:
14.	351° 38'	1,125.10	feet;

- | | | |
|-----------------|--------|--|
| 15. 26° 35' | 983.25 | feet along the remainder of R.P. 4485, L.C. Aw. 7712:5;

thence along the remainder of R.P. 4485, L.C. Aw. 7712:5 on a curve to the left with a radius of 1,744.00 feet, the chord azimuth and distance being: |
| 16. 14° 08'45" | 553.08 | feet; |
| 17. 1° 42'30" | 100.00 | feet along the remainder of R.P. 4485, L.C. Aw. 7712:5;

thence along the remainder of R.P. 4485, L.C. Aw. 7712:5 on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being: |
| 17. 316° 42'30" | 70.71 | feet; |
| 18. 91° 42'30" | 156.00 | feet along the north side of Halewili Road to the point of beginning and containing an area of 75.000 acres. |

SUBJECT, HOWEVER, to Easements D-1 and W-1.



Lihue, Hawaii
January 2010

DESCRIPTION PREPARED BY:
ESAKI SURVEYING & MAPPING, INC.

A handwritten signature in black ink, appearing to read "Dennis M. Esaki".

Dennis M. Esaki
Licensed Professional Land Surveyor
Certificate Number 4383

Exhibit "C"
DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 75 acres of land, situated in `Ele`ele, Kaua`i, Hawai`i, Tax Map Key No. (4) 2-1-001:054, and shown on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. Affordable Housing. Petitioner shall provide affordable housing opportunities in accordance with the certification of the Project as an HRS §201H-38 housing project.
2. Highway and Roadway Facilities.
 - A. Petitioner shall be responsible for the cost of all transportation improvements provided in the TIAR for Phase 1, and for all costs for the construction of the

remaining phased improvements for the Project.

- B. An updated TIAR shall be prepared prior to the execution of Phase 2 of the Project and before all subsequent phases to re-evaluate the validity of the TIAR, and revised if necessary and determine whether the previously proposed improvements are adequate or require revision. The TIAR shall be submitted to the DOT for review and acceptance, specifically for proposed transportation improvements in the State Highway right-of-way.
- C. The phase-related improvements shall be accepted by the DOT prior to the issuance of a Certificate of Occupancy for the Project phase.

3. Schools. Petitioner shall provide the DOE with estimates of the anticipated population densities prior to each phase of development. Petitioner shall coordinate all mitigation measures with the DOE and fund any school impact fees that are assessed.

4. Archaeological and Historic Preservation.

- A. For Phase 1 of the Project, Petitioner shall consult with the SHPD regarding an appropriate monitoring and historical data recovery scope prior to development of the mitigation

plan. The mitigation plan shall be submitted to the SHPD for review and acceptance prior to the initiation of the Project. Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the SHPD. Petitioner shall confirm in writing to the 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. The SHPD shall be notified at the initiation of the Project.

- B. Prior to the commencement of any phases beyond Phase 1 of the Project, Petitioner shall prepare an updated AIS and CIA for the Project. The AIS and CIA shall be submitted to the SHPD and the Kaua'i Island Burial Council for review and to the SHPD for acceptance of the AIS prior to the commencement of ground disturbance for any phases beyond Phase 1 of the Project.

5. 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, Kaua'i Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites 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 mitigation measures have been implemented to its satisfaction.

6. Established Access Rights Protected. Pursuant to Article, XII, Section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established gathering and 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. Petitioner shall facilitate consultation with adjoining landowners, Native Hawaiian cultural practitioners, local fishermen, and any other relevant or appropriate group or individuals on the health and sustainability of the nearshore marine resources, including limu and fish, at Wahiawa Bay.

7. Endangered Species. Petitioner shall comply with the following:
- A. Construction activity shall be restricted to daylight hours as much as practicable during the seabird breeding season (April through November) to avoid the use of nighttime lighting that could be an attraction to seabirds.

- B. For any nighttime work required during construction, all outdoor lighting shall be shielded to prevent upward radiation so as to reduce the potential for interactions of nocturnally flying Hawaiian petrels and Newell's shearwaters with external lights and man-made structures.
- C. Outside lights that are not needed for security and safety shall be turned off from dusk through dawn during the fledging fallout period (September 15-December 15).
- D. To avoid potential impacts to the Hawaiian hoary bat, no trees taller than 15 feet within the Petition Area shall be trimmed or removed between June 1 and September 15 when non-volant juvenile bats may be roosting in the trees.
- E. Any fences that are erected as part of the Project shall have a barbless top-strand wire to prevent entanglements of the Hawaiian hoary bat on barbed wire. For existing fences at the Petition Area, the top strand of barbed wire shall be removed or replaced with barbless wire.
- F. All outdoor lighting at the Project shall be shielded to prevent upward radiation so as to reduce the potential for seabird attraction. Shielding shall conform to the County's

standards for street lights to prevent light diffusion
upward into the night sky.

Petitioner shall coordinate construction activities with the USFWS during construction of the Project to avoid creating standing water and other attractive nuisances that could attract protected waterbirds to unsafe construction conditions. A qualified biologist shall survey the Petition Area prior to construction and after a delay of at least three days in construction for the presence of Hawaiian goose nests. Work shall immediately stop if a nest is discovered and the USFWS shall be contacted for further guidance.

8. Air Quality Monitoring. Petitioner shall participate in an air quality monitoring program as required by the DOH.
9. Water. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed uses for each phase of the Project. Water transmission facilities shall be coordinated and approved by the appropriate State and County agencies. The County's water use and development plan shall be amended to reflect changes in water demand forecasts and to supply the proposed uses.
10. Stormwater Management and Drainage. Petitioner shall fund, design and construct stormwater and drainage system improvements in compliance with applicable federal, State, and County laws and rules, and maintain the

improvements, or cause them to be maintained, as designed. Petitioner shall mitigate non-point source pollution by incorporating Best Practices for low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to reduce runoff and prevent pollution of affected State highway facilities, downstream properties, receiving gulches and streams, and estuaries that connect with coastal waters. Petitioner shall submit the drainage plan to the appropriate State and County agencies for review and approval.

11. Water Conservation Measures. Petitioner shall implement water conservation measures and BMPs, such as use of endemic, indigenous, and drought-tolerant plants and turf, and incorporate such measures into the Petition Area's site design and landscaping. BMPs shall include the maintenance of the swales, as appropriate, for the life of the Project.

12. 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:

- A. 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 §165-2; and

- B. Petitioner shall notify all prospective developers or purchasers of land or interests 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 Hawai'i 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 disclosure required for the sale or transfer of real property or any interest in real property.

13. Emergency Management. Petitioner shall consult with KEMA on an appropriate facility within the Project to serve as an emergency shelter.

14. Airports. Petitioner shall follow the guidelines contained in the

FAA's Advisory Circular (AC) 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports*. Plant and grass varieties used in the park shall not be attractive to wildlife which may create hazardous conditions for aircraft operations at the Port Allen Airport.

15. BMPs. Petitioner shall implement and maintain applicable BMPs to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and groundwater pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the DOH guidelines and County ordinances and rules.

16. Notification of Potential Nuisances. Petitioner shall properly disclose to all prospective purchasers, residents and/or occupants in the Petition Area of the potential adverse impacts of aircraft activity at and from Port Allen Airport, such as but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

Petitioner shall provide as part of any grant or transfer of interests in the Petition Area the notification of potential aircraft and airport activity by including it in any disclosure required for the sale or transfer to buyers and lessees and to other future owners, lessees, or occupants.

17. Energy Conservation Measures. Petitioner shall implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar water heating and

photovoltaic systems, into the design and construction of the Project. Petitioner shall also provide information to home purchasers regarding energy conservation measures that may be undertaken by the individual homeowners.

18. Sustainability Plan. Petitioner shall comply with the goals and objectives of its Sustainability Plan dated April 2017.

19. Public Information. Petitioner shall provide educational information about the environment and marine resources, including the protection of the Salt Ponds as valuable cultural and natural resources and the impacts of the overuse of certain suntan lotions on ocean resources. Petitioner shall regularly update the County website to include updates on the Project status.

20. Compliance with Representations. 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.

21. Notice to Commission. 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 Petition Area, prior to completion of development of the Petition Area.

22. Annual Reports. Petitioner shall timely provide without any prior

notice, annual reports to the Commission, OP, the County Planning Department, and Intervenor 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 submitted in a form prescribed by the Executive Officer of the Commission.

23. 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 the provision of adequate assurance of satisfaction of these conditions by Petitioner.

24. Notice of Imposition of Conditions. Within seven (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 of the State of Hawai'i a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) shall file a copy of such recorded statement with the Commission.

25. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR §15-15-92.