

6351-01
March 16, 2005

LAND USE COMMISSION
STATE OF HAWAII

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WILSON
OKAMOTO
CORPORATION



ENGINEERS
PLANNERS

1907 S. BERETANIA ST.
SUITE 400
HONOLULU, HI 96826
PH. (808) 946-2277
FAX: (808) 946-2253

Mr. Anthony Ching, Executive Officer
State of Hawaii
Land Use Commission
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Subject: 2005 Annual Report to the State Land Use Commission
Docket No. A00-732, TSA Corporation
Kaloko Industrial Park, Phases III & IV, North Kona, Hawaii

Dear Mr. Ching:

In accordance with Condition No. 14 of the subject Docket, herewith is the annual report submitted on behalf of TSA Corporation documenting project status and progress in complying with the conditions imposed.

Project Status: The Land Use Commission approved reclassification of approximately 102.016 acres, Tax Map Key 7-3-51: portion of 60, from the Conservation District to the Urban District on February 14, 2002. A Zone Change application was subsequently applied for and granted by the County of Hawaii amending the County Zoning Code through Ordinance No. 02-114 on September 25, 2002, changing the district classification from Open (O) to Industrial-Commercial Mixed District (MCX-1a). **Kaloko Industrial Park Phase III is presently undergoing preliminary subdivision review by the County of Hawaii.**

Progress in Complying with Conditions:

Wastewater

1a. *The Petition Area shall be developed with dry sewer lines for eventual connection to the Kealakehe Wastewater Treatment Plant (WWTP).*

1b. *The Petition Area shall be required to connect to the WWTP, when such connection is available. The Petitioner, its successors, and assigns, shall collaborate with the County of Hawaii to include the Petition Area within an improvement district, if one is developed to fund the connection to the WWTP. The Petitioner or individual lot owners within the Petition Area shall pay for their fair share of the cost to fund such connection to the WWTP, whether or not an improvement district is established.*

1c. *The Petitioner and/or any future owner(s) of the Petition Area shall refrain from constructing upon or occupying any portion of the Petition Area until such time as the portion (e.g., lot) to be constructed upon or occupied is connected to the WWTP, unless in the interim, the portion to be constructed upon or occupied has installed a septic tank system [i.e., Individual Wastewater System (IWS)] designed to remove no less than 60% Total Nitrogen from the treatment system (e.g., septic tank with FAST, Biofilter, Recirculation Filters, Sequential Batch Reactor, or comparable technology) and an*

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absorption field of import material which is designed to achieve no less than 80% reduction of nitrogen; featuring adequate percolation rate; and offering additional phosphorus removal. Installation is subject to conditions of approval dictated by the Director of the Hawaii Department of Health and Hawaii Administrative Rules (HAR) Title 11 Chapter 62. When connection to the WWTP becomes available, all portions of the Petition Area, including all individual lots therein, shall connect to the WWTP, whether or not an interim wastewater treatment system has been installed for any lots.

1d. Utilization of the IWS described above (i.e., septic tank with FAST, Biofilter, Recirculation Filters, Sequential Batch Reactor, or comparable technology and an absorption field of import material which is designed to achieve no less than 80% reduction of nitrogen; featuring adequate percolation rate; and offering additional phosphorus removal) shall be limited to no more than 45% of the individual lots to be developed in the Petition Area.

1e. The owner of the IWS shall certify with the Hawaii Department of Health that the IWS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

1f. Petitioner and/or each individual lot owner(s), shall develop and participate in a Wastewater Treatment System Maintenance Agreement, before constructing upon or occupying any portion of the Petition Area, that shall provide for safe and effective operation and maintenance of the treatment units(s), whether shared or individual, and/or the temporary sewage line. This requirement shall be included in the conditions of sale of any lot and/or parcel in the Petition Area.

1g. Should the National Park Service elect to pursue installation of a temporary sewage line to the WWTP for the Kaloko-Honokohau National Historic Park Visitor Center construction project, the Petitioner may elect, subject to prior authorization by the National Park Service, to dispose of wastewater from not more than 20 one-acre lots in the Petition Area, via such temporary line to the WWTP. In no event shall the temporary sewage connection be in place and utilized for longer than five (5) years from the date of completion of construction of such temporary line except at the sole discretion of the National Park Service. The Petitioner shall pay its fair share cost to fund such temporary connection to the WWTP, as determined by the National Park Service, the Petitioner and the County of Hawaii. When connection to the WWTP becomes available through permanent sewer lines, all portions of the Petition Area, including all individual lots that may have been connected to the above described temporary sewage line, shall connect to the WWTP through permanent lines, whether or not one or more lots were connected via the temporary sewage line. Connection of not more than twenty (20) one-acre lots to the WWTP via such temporary sewage line does

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not release any other individual lots within the Petition Area from compliance with any other condition(s) of this decision and order.

Status: On December 17, 2003, the Hawaii County Council adopted Resolution 129-03 relating to the preparation of (1) a North Kona Regional Sewerage Master Plan; and (2) a Council-initiated improvement district implementation study for the construction of certain wastewater and recycled water system improvements for Kealakehe, Honokohau, Kaloko and Kohanaiki, District of North Kona, Hawaii. A copy of this Resolution is attached. This Resolution authorizes the preparation of an implementation plan for an improvement district that would include an extension of the municipal sewer system and recycled water system to Kaloko and Kohanaiki. In 2004, the County of Hawaii engaged a consulting engineer to undertake preliminary planning for extending the collection system to the Kaloko area.

Storm and Surface Water Runoff

2a. *To the extent possible, all storm and surface water runoff shall be captured on the premises. To the extent possible, all runoff entering the ground shall be first treated to remove all industrial waste so that no industrial pollutants will reach the Kaloko-Honokohau National Park or enter the water table. Petitioner shall be subject to and prepare covenants, conditions, and restrictions for the Petition Area to contain spills and prevent materials associated with light industrial uses attributable to the operations of property, including petroleum products, chemicals, or other pollutants from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants shall be subject to the approval of the Hawaii State Department of Health, upon consultation with the National Park Service, and the County of Hawaii. The Petitioner and/or tenant shall obtain all required permits and construct required improvements for storm water discharge on and from the property. These conditions shall include the following:*

2b. *Prior to the occupancy of any part of the Petition Area, the Petitioner shall engineer, construct (or require to be constructed) and maintain surface water/storm water containment systems to ensure that no State water quality standards will be violated.*

2c. *No injection well shall be constructed as an element of a surface water/storm water containment system in the Petition Area unless, prior to the start of any construction, appropriate requirements of HAR §11-23 are satisfied and the Hawaii Department of Health issues an UIC (Underground Injection Control) permit. Contaminants shall be monitored and removed with best efforts prior to entering injection wells.*

2d. *If a large void, such as a lava tube or solution cavity, is encountered during drilling, where the drill rod drops more than three feet, measures shall be taken to prevent migration of the injected fluids to the Kaloko-Honokohau National Park to the satisfaction of the Hawaii Department of Health as described in HAR §11-23-09(f).*

2e. *All injection wells established in the Petition Area shall be operated in such a manner that they do not violate any of the Hawaii Department of Health's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and chapters 342-B, 342-D, 342-F, 342-H, 342-J, 342-L, and 342-N, Hawaii Revised Statutes (HRS). Relevant HAR includes but, are not limited to:*

- i. Chapter 11-20, "Rules Relating to Potable Water Systems";*
- ii. Chapter 11-62, "Wastewater Systems"; and*
- iii. Chapter 11-55, "Water Pollution Control".*

2f. *The operator of any injection well or wells in the Petition Area shall keep detailed records of the operation of the well or wells, including but, not limited to, the type and quantity of injected fluids, and the method and rate of injection for each well. Such records will be available for inspection or review by the Hawaii Department of Health as specified under appropriate sections of HAR §11-28.*

2g. *Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of HRS and HAR as they relate to but, not limited to: Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.*

2h. *The Petitioner, successors and/or individual lot owners in the Petition Area shall ensure that all drainage injection wells or subsurface drainage structures be designed with a debris catch basin to allow the detention and periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin's volume should be at least two (2) cubic yards (or approximately 4'x4'x4'). The debris catch basin shall be periodically inspected and cleaned accordingly. Oil/water separators shall be utilized where petroleum products are used.*

Status: No progress to report at this time. Subdivision design will address the required drainage improvements such as debris catch basins.

Pollution Prevention

3a. *Any public or private industrial development within the Petition Area which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.*

3b. *Before constructing upon or occupying any portion of the Petition Area, a Pollution Prevention Plan (PPP), after consultation with the National Park Service, shall be developed that addresses each of the types of uses permissible in the light industrial park, by specifically designating Best Management Practices (BMPs) tailored to each specific use. Emphasis shall be given to structural BMPs to prevent any and all pollutants that may be associated with such industries from being released into the environment, including reaching the groundwater. Structural BMPs shall include, but shall not be limited to, oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination. The PPP shall include but not be limited to:*

- i. *All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid acidic or caustic liquids, antifreeze, detergents, degreasers, etc. shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors if necessary, shall pass through a separator sump before being discharged.*
- ii. *Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed along with the local fire code)*
- iii. *All employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial spill onto the bare ground.*

In the event that a specific use is proposed for the Petition Area that is not specifically addressed in the PPP, the Petitioner and/or individual lot owner(s) proposing such use shall consult with the National Park Service to establish a set of BMPs appropriate for such proposed use and consistent with the goal of preventing any and all pollutants from being released into the environment. In the event that the Petitioner and the National Park Service cannot agree upon a mutually acceptable PPP within 12 months of the date of issuance of the boundary reclassification, the Commission shall review the PPP, along with written comments from the Petitioner, the National Park Service and the other parties, and shall issue a final PPP. In no event shall the Petitioner and/or individual lot owner(s) construct upon or occupy any portion of the Petition Area until such time as the final PPP is complete. The final PPP shall be recorded and shall

run with the land within the Petition Area in the same manner as all conditions of approval imposed by the Commission.

3c. *The Petitioner, its successors or individual lot owners shall provide signage for all drainage/injection wells in the Petition Area with the following warning. DUMP NO WASTES. GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT. Signage shall be either stand-up (legible from at least 30 feet, permanently posted at an effective and safe height) or painted on the ground next to the drainage well's inlet.*

3d. *For parking areas, BMPs will be established as covenants running with the land which emphasize pollution prevention rather than treatment. All large vehicles such as buses, trucks, or construction equipment shall utilize drip pans to avoid release of petroleum onto paved surfaces. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid buildup of oil or other automotive fluids. Maintenance work other than emergency work on vehicles will be banned in parking areas.*

3e. *Where site geometry permits, the Petitioner, its successors or individual lot owners shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales to capture storm water drainage from all perimeter lots, facilities, and parking areas of the Petition Area.*

3f. *Owner or operator covenants developed for the Petition Area shall expressly disclose to all future individual lot owner(s) the existence of the National Park System Resource Protection Act, 16 U.S.C. Sections 19jj-19jj-4, and the consequences of violation of such act. In particular, future land owners shall be made aware that any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury.*

3g. *The Petitioner shall participate and collaborate in a regional (Kaloko-Honokohau) pollution prevention forum to be convened by the Commission within one year from the issuance of this order. Intervenor shall be invited as well. Topics to be discussed include: pollution prevention planning; best available control technologies (BACT); structural and operational BMPs addressed to the type of uses permissible in the light industrial park; and formulas for determining fair and reasonable pro-rata share costs relating to any ground water monitoring program. Participants in this forum should include but not necessarily be limited to individuals or entities with property or development interests impacting the Queen Kaahumanu Highway corridor extending from the Kona International Airport to the Palani Road intersection.*

Status: Petitioner attended and participated in the Pollution Prevention Forum hosted by the Land Use Commission in November 2002. Following this Forum, a draft Pollution Prevention Plan was prepared by the Petitioner in January 2003 and

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was submitted to the National Park Service for review. A request for time extension (to September 30, 2003) was submitted to the Land Use Commission to afford the parties additional time to achieve a mutually acceptable Plan. Preliminary comments were provided at a meeting with the NPS in March 2003. Petitioner revised the PPP based on the preliminary comments received and submitted a final version to the NPS in February 2004. A copy of the final PPP is attached hereto.

Groundwater Quality Monitoring

4. *The Petitioner shall contribute its fair and reasonable pro-rata share of costs relating to a ground water monitoring program of USGS Wells 4161-01, 4161-02 and 4061-01, Aimakapa Pond, Kaloko Pond and two (2) other anchialine ponds of the Kaloko-Honokohau Historic National Park as identified by the National Park Service. Monitoring would continue once every six months for 10 years from initial occupancy, or until such time as sewer lines and hookup to the WWTP is implemented. Constituents to be monitored shall be of a full suite of nutrients (including nitrogen and phosphate), contaminants (including metals, phenolic compounds, pesticides and pesticide breakdown products, chlorinated solvents, BTEX compounds, selected pharmaceutical endocrine disruptive compounds, such as ethinyl estradiol, and nonylphenol), and standard water quality parameters (including pH, temperature, dissolved oxygenates, and salinity). The fair and reasonable pro-rata share of costs will be determined by the Commission and in conjunction with the findings generated at the regional pollution prevention forum discussed above.*

Status: Representatives of TSA and Lanihau met with the National Park Service in November 2002 and provided the NPS with a proposed ground-water monitoring program in compliance with the above condition. No formal comments were received, and a meeting will be scheduled with the NPS within the next few months to resume coordination and obtain approval of the monitoring program.

Regional/Local Transportation

5a. *The Petitioner shall participate and collaborate in a regional (Kaloko-Honokohau) transportation planning forum to be convened by the Commission within one year from the issuance of this order. Participants in this forum to be convened include but, are not limited to individuals or entities with a property or development interest impacting the Queen Ka'ahumanu Highway corridor extending from the Kona International Airport to the Palani Road intersection. Topics to be discussed include: regional transportation planning issues; the timing and cost of necessary improvements to the Queen Ka'ahumanu Highway as described in the Hawaii Long Range Transportation Plan; determination of individual fair share contributions; and process for resolving any conflicts which may arise.*

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5b. *The Petitioner shall contribute their fair and reasonable pro-rata funding and construction of regional transportation improvements and programs to the satisfaction of the State Department of Transportation for the Petition Area.*

5c. *The Petitioner shall participate and collaborate with the County of Hawaii Department of Public Works and other affected agencies in the development of County feeder streets within the Petition Area.*

5d. *Petitioner shall participate in the fair and reasonable pro-rata funding and construction of any such roadways from its northern boundary to the southern boundary in accordance with the roadway requirements of the County of Hawaii.*

5e. *Petitioner shall provide an appropriate easement as determined by the County of Hawaii on the south end of Kamanu Street in order to provide a North-South connection with the adjoining property.*

Status: The Petitioner participated in the Transportation Forum hosted by the Commission in November 2002. A revised Traffic Impact Assessment Report was accepted by the DOT in its letter of January 20, 2004, including agreement on the regional improvements to be undertaken by the Petitioner. Consultation and coordination with the County of Hawaii Department of Public Works has also been undertaken, and approval was obtained in December 2004 for the Project's traffic circulation and roadway improvements plan.

Financial Contribution Plan

6. *The Petitioner shall coordinate with affected state or county agencies the development of a financial plan for satisfying any financial contributions or requirements associated with this petition. All such plans may provide for an annual fair share incremental payment to the affected agency by the Petitioner out of the development revenues or otherwise. The affected state or county agency may establish a dedicated escrow account for the deposit and utilization of the financial contribution from Petitioner to facilitate this plan.*

Status: No progress to report at this time.

Affordable Housing

7. *The Petitioner shall submit a housing needs assessment and implementation plan to the Commission and appropriate County housing agency for their review and approval within six months of the issuance of this decision and order and comply with the County of Hawaii affordable housing policy. The housing needs assessment shall be based on an analysis of the jobs generated by the development, the projected number of qualified households which may be entitled to housing assistance as specified by the County of Hawaii, the number and availability of affordable housing units*

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and rentals in the West Hawaii area (both planned and built), the projected number of employees from the development who might be expected to commute from East Hawaii, the number of owner occupants (within the Petition Area) who reside in the West Hawaii area and the number of employees who might already reside in the West Hawaii area.

Status: In September, 2002, Petitioner requested and was granted by the Commission's October 8, 2002 Order a time extension based on a recommendation from the County of Hawaii that it would be prudent to defer preparation of the required housing needs assessment until after the completion of the State's Hawaii Housing Policy Study. The Commission modified the condition to reflect that the housing needs assessment would be submitted "within six months of the County's issuance of the updated Hawaii Housing Policy Study." The Housing Study was completed, but additional time extensions were requested of the LUC and granted to enable additional coordination with the County of Hawaii which was and is still in the process of enacting amendments to its affordable housing ordinance. A draft of the Housing Study was submitted the LUC staff in December 2004, but finalization and submittal to the County is pending final approval of the amendments to the County's affordable housing ordinance. Submittal to the County is anticipated in May 2005, with submittal to the LUC by September 2005.

Archaeological/Historical Sites

8a. *Eight sites (21999, 22010, 22014, 22016, 22017, 22018, 22023, and 22032) retain the potential to yield information important for understanding prehistoric and historic land use. If Petitioner believes that one or more of these sites cannot be preserved, it shall provide to the Land Use Commission no later than six (6) months after this decision and order is issued a mitigation plan for its review and approval.*

8b. *Should any previously unidentified burial, archaeological or historical sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, the Petitioner, developer(s) and/or landowners of the affected properties shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.*

Status: An Archaeological Data Recovery Plan was prepared and submitted to the State Historic Preservation Division (SHPD) in July, 2002. The SHPD in a letter dated December 11, 2002, accepted the data recovery plan, noting that this essentially is "basic recording". A follow-up with Dr. Ross Cordy of the SHPD by the Petitioner confirmed that no further preservation actions are needed.

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The field work for data recovery was completed in February 2003. Acknowledgement of this was provided by the SHPD in its letter of February 26, 2003. The report covering the data recovery effort was submitted to the SHPD on October 14, 2003. By letter dated December 29, 2003, the SHPD approved the report, indicating that it has fulfilled the requirements for data recovery reports as set forth in the newly approved administrative rules.

Landscaping

9a. *Petitioner shall develop a landscaping plan for the Petition area that can be followed by each subsequent lot owner/tenant. Fishermen knowledgeable of traditional reference points used in locating fishing grounds, and the National Park Service shall be consulted on the development of building and landscape design guidelines prior to construction to maintain these reference points.*

9b. *Petitioner, where feasible, shall use indigenous and water conserving plants such as the papyrus (native paper plant) and incorporate the same into common area landscape planting.*

9c. *The Amy B.H. Greenwell Botanical Garden, Kaloko-Honokohau National Historical Park and other interested parties and educational institutions shall be afforded the opportunity to gather seeds and cuttings of native plants on the property that cannot be rescued or incorporated into the project's landscaping plan.*

9d. *The Petitioner shall provide buffer fences/buffer strips to protect the Bidens Micrantha, a candidate endangered species by establishing a buffer zone with a minimum width of 30 feet, in the immediate vicinity of Bidens Micrantha #1 plant identified in the EIS. The Petitioner shall ensure that genetic material (seeds and cuttings) are propagated from the other three Bidens Micrantha plants located within the makai portion of the Petition area.*

Status: A construction buffer fence was provided around Bidens #1 and #4 to protect these plants during preliminary roadway grubbing and grading operations in 2003. A survey to assess the status of the four Bidens plants was made in April 2001 by botanist Winona Char – Bidens #2 and #3 were found to be dead; Bidens #1 and #4 were alive and healthy. No young plants or seedlings were found near any of the plants.

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Soil Erosion and Dust Control

10. *Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health.*

Status: No progress to report at this time.

Civil Defense

11. *Petitioner, developers and/or landowners of the affected properties shall add a solar powered siren with 115 Dbc omni directional speaker array, and insure that the siren be installed in a central location funded and constructed according to adequate civil defense measures as determined by the County of Hawaii and State Civil Defense agencies.*

Status: No progress to report at this time.

12. *Petitioner shall develop the Petition area in full compliance with all material representations made by the Petitioner to the Commission. Failure to do so for any reason including but not limited to economic feasibility, may result in the imposition of fines as provided by law for each and every separate violation, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification or a change to a more appropriate classification and/or any other legal remedies, including but not limited to suit for actual and punitive damages under federal or state law or suit for injunctive relief that requires the developer to restore the project area to its former condition.*

13. *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 development of the Petition Area.*

14. *Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawaii 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.*

15. *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.*

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16. *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 Petition Area is subject to conditions imposed by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file such copy of such recorded statement with the Commission.*

Status: The conditions were recorded on February 20, 2002 with the Bureau of Conveyances as Doc. No. 2002-029813 and submitted to the Commission on February 20, 2002.

Please feel free to call me if you should have any questions or require additional information.

Sincerely,



Rodney Funakoshi, A.I.C.P.
Project Manager

Enclosure

cc: Hideki Hayashi, TSA Corporation
Nathan Natori, Hawaii Law Group LLP
Office of Planning
County of Hawaii Planning Department