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LAND USE COMMISSION
STATE OF HAWAII

2020 MAR 12 P 3:23

March 12, 2020

VIA HAND-DELIVERY

Daniel E. Orodener
Executive Officer
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Re: 2020 Annual Report

Land Use Commission Docket No. A92-677

Original Petitioner: North Kona Development Group

Successor Petitioner: Kukio Community Association, Inc.

Tax Map Key Nos.: (3) 7-2-016:010, 12, and 013; 7-2-023:001 to 030; 7-2-024:001, 003, 006, 009 to 019; 7-2-028:001 to 008, 010, 013 to 032; 7-2-033:001, 002, 004, 005 to 35 (Formerly (3) 7-2-004: portion of 17)

Dear Executive Officer Orodener:

By Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A92-677, filed on March 5, 1993 (the "**D&O**"), the State of Hawai'i Land Use Commission (the "**Commission**") reclassified approximately 388.057 acres of land located at Maniniowali/Kuki'o 2, North Kona, Island, County and State of Hawai'i, formerly a portion of Tax Map Key ("**TMK**") No.: 7-2-004: 017 (the "**Petition Area**"), from the State Land Use ("**SLU**") Conservation District to the SLU Urban District. The Commission imposed twenty-two (22) conditions of approval upon the reclassification (the "**D&O Conditions**"), including D&O Condition No. 19, which requires the filing of annual reports with the Commission detailing the progress made in complying with the D&O Conditions. On behalf of our client, Kukio Community Association, Inc. ("**KCA**"), we hereby submit this Annual Report.

The responsibility to submit annual reports for the portion of the Petition Area covered by this Annual Report was turned over to KCA by KD Maniniowali, LLLP (f/k/a WB Maniniowali, LLC) ("**KDM**") in 2015 upon KDM's completion of all major elements of the Maniniowali

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Project, as discussed *infra*. On December 16, 2019, KCA filed its 2015-2019 Annual Report (the “**2015-2019 Annual Report**”). The chart enclosed herein as **Exhibit A** outlines the status of the D&O Conditions. For context, the following sections provide a brief summary of the development history and current status of the Petition Area.

I. Development History.

A. Subdivisions of Petition Area and Bulk Sale of Phase III.

On September 19, 2001, in compliance with Project District Ordinance No. 00-7, the County of Hawai‘i (the “**County**”) Planning Department (the “**Planning Department**”) approved a Project District Site Plan for the Petition Area (“**Site Plan**”). The Site Plan allowed the development of 140 market lots, consisting of 110 “estate” single-family residential lots, thirty (30) “cottage” single-family residential lots, and three (3) bulk lots for the Member’s Club and Pool, the Sports Club, and Play Field (collectively, the “**Maniniowali Project**”).

Subsequent to receiving approval of the Site Plan, the following Final Subdivision Approvals were granted by the County:

Subdivision No.	Subdivision Phase	Tentative Approval Date	Final Subdivision Approval Date	No. of Lots
2000-0096	Phase I	10/19/01	12/24/02	33
2003-0138	Villas	02/04/04	10/12/04	30
2004-000085	Phase II	09/04/04	10/11/05	43
2005-000225	Phase III	08/11/06	04/21/08	34
Total Lot Count:				140

As noted in KDM’s 2005 to 2014 Annual Report, filed June 27, 2014, and again in KCA’s 2015-2019 Annual Report, KDM sold the 34-lot Maniniowali Phase III Subdivision (TMK Nos.: (3) 7-2-034:001 through 037) in fee simple to TDM Kua 4, LLC (“**TDM**”) by Warranty Deed, dated May 12, 2008, and recorded in the State Bureau of Conveyances (“**BOC**”) as Document No. 2008-077398. On May 29, 2008, the Planning Department discharged KDM from its obligations under the original Phase III Subdivision Agreement and Bond. KCA understands that on February 19, 2020, TDM separately filed its own Annual Report for 2008-2020 covering Phase III of the Maniniowali Project.

Phase I now consists of twenty-seven (27) lots, as six (6) lots were consolidated and resubdivided into larger lots. Phase II now consists of thirty-nine (39) lots, as four (4) lots were consolidated. Seven (7) of the Villas lots were also consolidated and resubdivided for a total of twenty-four (24) lots. Therefore, there are a total of ninety (90) lots within KDM’s portion of the Maniniowali Project (“**KDM’s Project**”), which is the subject of this Annual Report.

B. Amenities Completed.

On May 8, 2006, KDM obtained Final Plan Approval for the Member's Comfort Station (*i.e.*, the Members Club and Pool), located on TMK No.: (3) 7-2-016:010. The Member's Comfort Station received Final Inspection on December 20, 2007. The Member's Comfort Station is located mauka of the 400-ft. open space buffer along the makai Property boundary, pursuant to the requirements of the following entitlements: SMA 395 (Condition 4); PDO 99-017 (Condition E); and the Declaration of Open Space Covenants, dated December 1, 2001.

On May 8, 2006, KDM also obtained Final Plan Approval for the Member's Sports Complex located on TMK No.: (3) 7-2-024:017. The Member's Sports Complex received Final Inspection on November 24, 2008. The Member's Sports Complex consists of a main structure housing a kitchen, storage area, and restrooms, a smaller shade structure, a pool, 4 tennis courts and a basketball court. KDM also constructed a Play Field on a neighboring parcel identified by TMK No.: (3) 7-2-024:018.

II. Current Status of KDM's Project and Turnover to KCA.

KDM sold all ninety (90) lots within KDM's Project (*i.e.*, all of Phase I, Phase II and the Villas). KDM completed the finish grading for all of the remaining house pads and any additional site refinement will be the responsibility of the individual lot owner. KDM also completed all of the roadways and utilities within Phase I, Phase II and the Villas, and the completed roadways were turned over to KCA by way of Limited Warranty Deed with Covenants and Reservations of Rights, dated February 18, 2015, recorded in the BOC as Document No. A-55271137. TDM has also informed KCA that the Phase III roadways have been completed, and we understand that TDM is in the process of conveying their interest in the roadways to KCA to allow for continued maintenance. There will be no further construction activities initiated by KDM within KDM's Project. While there might be future construction activities relating to the on-going maintenance of KDM's Project, the major elements of the development as proposed under the Petition Area's entitlements are complete.

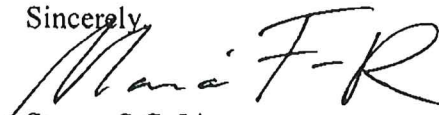
KDM turned over the common areas to KCA in 2015. KCA is now responsible for the maintenance of the areas under its control. KDM turned over the recreational amenities and improvements (*i.e.*, the Member's Comfort Station, Member's Sports Complex, Play Field) to the Kukio Golf and Beach Club, Inc. ("KGBC") in early 2013. KGBC is responsible for the maintenance of the areas under its control.

With the exception of those specific D&O Conditions that require on-going monitoring and/or compliance, and D&O Condition No. 7, which KCA is currently working towards satisfying, KDM satisfied all of the D&O Conditions prior to turning over its annual reporting responsibility to KCA in 2015.

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We trust that the information provided satisfies the annual reporting requirements of D&O Condition No. 19. If you require any additional information, please feel free to contact my paralegal Jason Knable at 808-935-6644 at any time.

Sincerely,


for Steven S.C. Lim
Derek B. Simon

Attachment(s)

SSL/jkk1

cc: KD Maniniowali, LLLP
Kukio Golf and Beach Club, Inc.
Office of Planning, State of Hawaii
County of Hawaii, Department of Planning

2015 to 2019 Annual Progress Report
LUC Docket No. A92-677
Reclassification of 388.057 acres from the Conservation District to the Urban District
Effective Date March 5, 1993
KD Maniniowali, LLLP (fka WB Manini'owali, LLC) ("KDM")

No.	Condition	Status	Comments
1.	<p>Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable among Petitioner, the State Housing Finance and Development Corporation and the County of Hawaii.</p>	Satisfied.	<p>This condition has been satisfied as to KDM's portion of the Maniniowali Project, which consists of the completed Phase I, Phase II, and the Villas subdivisions ("KDM's Project").</p> <p><u>REFERENCE:</u></p> <ul style="list-style-type: none"> • Hawaii County Housing Agency approval (10/23/01) - Resolution No. 126 approving payment of in-lieu fee of \$66,080.00 for 140 residential units. • County of Hawaii Office of Housing & Community Development approval (12/05/02) - \$66,080 payment of in-lieu fees for 140 residential units.
2.	<p>Petitioner shall immediately stop work on the impacted area and contact the Historic Preservation Division, State Department of Land and Natural Resources, should any archaeological resources such as artifacts, shell, bones or charcoal deposits, human burials, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property.</p>	Satisfied.	<p>This condition has been satisfied as to KDM's Project.</p> <p>KDM completed all site work and grading within KDM's Project.</p>
3.	<p>Petitioner shall preserve at least 5 historic sites (all or a portion of the mauka-makai trail as determined by the Department of Land and Natural and 4 burial sites), and archaeologically data recover the remaining sites, provided that if any remaining site is established as a shrine, its disposition shall be determined by the State Department of Land and Natural Resources. A detailed preservation plan (scope of work) and archaeological data recovery plan (scope of work) shall be approved by the State Department of Land and Natural Resources prior to the work. The detailed preservation plan shall include acceptable buffer zones around the sites, interim protection measures during construction, and long-term management measures (e.g., public access, trails,</p>	Satisfied.	<p>This condition has been satisfied as to KDM's Project.</p> <p><u>REFERENCE:</u></p> <ul style="list-style-type: none"> • State Department of Land and Natural Resources - Historic Preservation Division ("SHPD") approval (02/12/01) - <i>Archaeological Data Recovery Plan</i> (October 2000) • SHPD approval (11/29/01)- <i>Final Detailed Interim Preservation Plan</i> (09/11/01) • SHPD approval (07/30/03) - <i>Long-Term Preservation Plan, includes Interpretation Plan</i> (3/3/03) • SHPD approval (08/19/03) - <i>Archaeological Data Recovery Report</i> (2002) • T.S. Dye Final Data Recovery Report submitted letter to SHPD (11/12/03)- <i>Archaeological Data Recovery in the Barren Zone, Manini'owali and Kuki'o 2nd Ahupua'a, Kona Hawaii</i> (10/20/03)

	<p>interpretative sign design and text, maintenance). The buffer zones and interim protection measures shall be approved and implemented prior to construction. The archaeological data recovery plan shall be executed prior to construction. The State Department of Land and Natural Resources shall verify in writing the successful execution of both plans.</p>		
<p>4.</p>	<p>Petitioner shall fund, design, and construct the necessary roadway improvements to the satisfaction of the State Department of Transportation and the County of Hawaii.</p> <p>a. The Petitioner shall submit construction plans for work within the State highway right-of-way for review and approval by the State Department of Transportation.</p> <p>b. Petitioner shall participate in the funding and construction of off-site transportation improvements necessitated by the proposed development of the Property.</p> <p>c. In the event that the County of Hawaii adopts an impact fee ordinance for transportation improvements, the requirements set forth in condition 4 herein, shall be satisfied to the extent that the cost of any specific traffic improvement is also included in the County's impact fee computation..</p>	<p>Satisfied.</p>	<p>This condition has been satisfied as to KDM's Project.</p> <p>All highway access related improvements were coordinated with the State Department of Transportation ("DOT"). Primary access to KDM's Project is via the DOT-approved Kuki'o Resort channelized intersection at the Queen Ka'ahumanu Highway ("QKH").</p> <p>Secondary access to KDM's Project is via the Kekaha Kai State Park intersection at QKH. The secondary access is currently limited to construction and maintenance vehicle traffic.</p> <p>The County of Hawai'i has not adopted an Impact Fee Ordinance for transportation improvements; however, Condition U of Change of Zone Ordinance 00-7 required KDM to provide "fair-share" contributions to support road and traffic improvements for 140 residential lots. KDM constructed traffic improvements, and paid the balance of the required "fair-share" contributions for 140 residential lots. The County of Hawai'i Planning Department ("Planning Department") confirmed KDM's "fair-share" payment by letter dated December 24, 2002.</p> <p><u>REFERENCE:</u></p> <ul style="list-style-type: none"> • Condition M-3: Traffic Monitoring Program and approved by the State DOT. • Planning Department approval (12/24/02) - \$90,528.20 payment of fair share contribution (less credits for project infrastructure) for 140 residential units.
<p>5.</p>	<p>Petition shall provide its fair share for school facilities necessitated by the proposed development, as required by the State Department of Education.</p>	<p>Satisfied.</p>	<p>This condition has been satisfied as to KDM's Project.</p> <p>On December 19, 2001, KDM and the State Department of Education ("DOE") executed an Education Contribution Agreement ("ECA"), wherein KDM agreed to provide payments of \$1,011.01 per unit developed within the Petition Area, capped at 140 residential units.</p> <p>On May 17, 2004, KDM paid the DOE \$33,363.00 for the 33-lot Phase I subdivision. On February 29, 2008, KDM paid the balance of \$108,177.00 to the DOE to fully satisfy the terms of the ECA for the remaining 107 residential lots. On March 10, 2008, the DOE confirmed KDM satisfaction of the ECA. KDM paid a total of \$141,540.00 for</p>

			140 residential units. <u>REFERENCE:</u> <ul style="list-style-type: none"> • DOE agreement with KDM (12/19/01) - Education Contribution Agreement • DOE letter (03/10/08) - Satisfaction of Education of Contribution Agreement This condition has been satisfied as to KDM's Project.
6.	Petitioner shall implement effective soil erosion and dust control measures both during and after construction to the satisfaction of the State Department of Health.	Satisfied.	A soil erosion and dust control program was approved by the State Department of Health ("DOH") as part of the Air Quality Monitoring and Mitigation Plan for the overall Maniowali project. A letter from DOH approving the Air Quality Monitoring and Mitigation Plan was included with KDM's 2002 Annual Report as Attachment J. KDM completed all site work and grading within KDM's Project. KDM also completed all subdivision related improvements and the various member related amenities within KDM's Project. On November 5, 2001, the Planning Department acknowledged receipt of the final Emergency Preparedness and Response Plan, which required KDM to fund the installation of a civil defense siren. KCA is currently coordinating with the State of Hawai'i Emergency Management Agency ("HIEMA") and County Civil Defense Agency on installation of the required civil defense siren. KCA most recently corresponded with HIEMA regarding D&O Condition No. 7 on November 25, 2019, and is presently awaiting a response. <u>REFERENCE:</u> <ul style="list-style-type: none"> • Planning Department approval (11/05/01) - Emergency Preparedness and Response Plan On January 18, 2002, KDM informed the State of Hawai'i Land Use Commission (the "Commission") that KDM voluntarily downsized the scope of the Maniowali Project by, <i>inter alia</i> , eliminating the golf course from the current development; however, KDM also reserved the right to pursue the Maniowali Project's original scope, in the unlikely event that circumstances change. This issue was further confirmed by the Commission by letter dated January 30, 2002. <u>REFERENCE:</u> <ul style="list-style-type: none"> • SLUC confirmation (01/30/02) - Compliance letter This condition has been satisfied as to KDM's Project.
7.	Petitioner shall fund and construct adequate civil defense measures as determined by the State and County of Hawaii civil defense agencies.	Working towards satisfaction.	KDM developed a wastewater disposal system that met the approval of DOH and the County of Hawaii Department of Public Works ("DPW").
8.	Petitioner shall make available adequate golf tee times at affordable rates for public play to State of Hawaii residents.	No longer applicable.	
9.	Petitioner shall fund and construct adequate wastewater transmission and disposal facilities, as determined by the State Department of Health and the County of Hawaii Department of Public Works.	Satisfied.	

10.	Petitioner shall comply with the "Twelve (12) Conditions Applicable to All New Golf Course Developments", prepared by the State Department of Health dated January 1992 (Version 4), as amended.	No longer applicable.	See response to D&O Condition No. 8.
11.	Petitioner shall engage the services of a qualified golf course superintendent to oversee the irrigation of the golf course and applicable of fertilizers, pesticides and herbicides to the golf course within the Property and who shall be qualified in the application of fertilizers, pesticides and herbicides on those area..	No longer applicable.	See response to D&O Condition No. 8.
12.	Petitioner shall participate in the air quality monitoring program as specified by the State Department of Health..	Satisfied.	This condition has been satisfied as to KDM's Project. DOH approved an Air Quality Monitoring and Mitigation Program for the overall project.
13.	Petitioner shall cooperate with the State Department of Health and the County of Hawaii Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.	Satisfied.	A DOH letter dated January 16, 2002 acknowledged the KDM's compliance with the foregoing condition and was included with KDM's 2002 Annual Report as Attachment J. This condition has been satisfied as to KDM's Project. On October 21, 2001, the DPW approved the Integrated Solid Waste Management Program for the Project, which was included with KDM's 2002 Annual Report as Attachment M.
14.	Petitioner shall monitor coastal water quality, and develop and implement a program to identify major areas of groundwater introduction into the marine environment, in consultation with the State Department of Health.	Satisfied.	This condition has been satisfied as to KDM's Project. On December 18, 2001, DOH approved the Manini'owali Water Quality Monitoring Program, which was included with KDM's 2002 Annual Report as Attachment N. KDM submits annual Water Quality Monitoring Reports to the Planning Department and State of Hawaii Department of Health, Clean Water Branch, most recently on December 13, 2019. <u>REFERENCES:</u> <ul style="list-style-type: none"> • 2008 Annual Water Quality Monitoring Report: Submittal to Planning Department and DOH (02/10/09) • 2009 Annual Water Quality Monitoring Report: Submittal to Planning Department and DOH (08/24/10); Planning Department acknowledgment of receipt (09/09/10) • 2010 Annual Water Quality Monitoring Reports: Submitted to the Planning Department and DOH (04/05/12)

	<ul style="list-style-type: none"> • 2011 Annual Water Quality Monitoring Report: Submittal to the Planning Department and DOH (01/18/13); Planning Department acknowledgment of receipt (01/28/13) • 2012 Annual Water Quality Monitoring Report: Submittal to the Planning Department and DOH (05/29/13); Planning Department acknowledgment of receipt (08/13/13) • 2013 Annual Water Quality Monitoring Report: Submittal to the Planning Department and DOH (02.12.14); Planning Department acknowledgment of receipt (03/14/14) • 2014 to 2018 Annual Water Quality Monitoring Reports: Submittal to the Planning Department and DOH on December 13, 2019. 		<ul style="list-style-type: none"> • 2011 Annual Water Quality Monitoring Report: Submittal to the Planning Department and DOH (01/18/13); Planning Department acknowledgment of receipt (01/28/13) • 2012 Annual Water Quality Monitoring Report: Submittal to the Planning Department and DOH (05/29/13); Planning Department acknowledgment of receipt (08/13/13) • 2013 Annual Water Quality Monitoring Report: Submittal to the Planning Department and DOH (02.12.14); Planning Department acknowledgment of receipt (03/14/14) • 2014 to 2018 Annual Water Quality Monitoring Reports: Submittal to the Planning Department and DOH on December 13, 2019. 	
15.	<p>Petitioner shall fund the development of the necessary water source, storage, and transmission facilities to provide an adequate supply of potable water to the Property.</p>	<p>Satisfied.</p>	<p>This condition has been satisfied as to KDM's Project.</p> <p>KDM installed a private potable water system for KDM's Project, which is fully functional and operational. A public utility water company manages the private water system.</p>	
16.	<p>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 County of Hawaii Department of Public Works and the State Department of Land and Natural Resources.</p>	<p>Satisfied.</p>	<p>This condition has been satisfied as to KDM's Project.</p> <p>The DPW approved the drainage studies for KDM's Project.</p>	
17.	<p>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.</p>	<p>Satisfied.</p>	<p>This condition has been satisfied as to KDM's Project.</p> <p>On January 18, 2002, PBR Hawaii and Steven S.C. Lim, Esq. of Carlsmith Ball, LLP made a presentation to the Commission on the status of the development and KDM's compliance with the D&O Conditions and representations made to the Commission. Among the items addressed in the presentation were the reduction of the density of the Maniowalo Project (down to 140 units) and the elimination of the golf course.</p> <p>By way of letter dated January 30, 2002, the Commission confirmed that KDM and the reduced Maniowalo Project remained in substantial compliance with the representations previously made to the Commission on January 30, 2002. A copy of the Commission's letter was included with KDM's March Annual Report as Attachment O.</p> <p>KDM completed and sold all ninety (90) lots within KDM's Project (i.e., Phase I, Phase II and the Villas). KDM completed the finish grading for all of the remaining house pads and any additional site refinement will be the responsibility of the individual lot owner. KDM also completed all of the Project roadways and utilities for KDM's Project. There will be no further construction activities initiated by KDM within KDM's Project. While there might be future construction activities relating to the on-going</p>	

			<p>maintenance of the KDM's Project, the major elements of the development as proposed under the Petition Area's entitlements are complete.</p> <p>KDM turned over the common areas and project roadways for KDM's Project to KCA. KDM also turned over the recreational amenities and improvements (Member's Comfort Station, Member's Sports Complex and Play Field) to Kukio Golf and Beach Club, Inc. This condition has been satisfied as to KDM's Project.</p> <p>On November 8, 2001, notice was provided to the Commission of KDM's purchase of the Petition Area from Maniowai Equity Group, a copy of which was included with Petitioner's 2002 Annual Report as Attachment P.</p> <p>On May 12, 2008, KDM sold its interest in the Phase III subdivision to TDM Kua 4, LLC. KDM notified the Commission of this conveyance through its 2005 to 2014 Annual Report, filed June 27, 2014.</p> <p>KDM turned over its annual reporting obligations to the Kukio Community Association, Inc. ("KCA") in 2015. KCA submits this 2019 Annual Report in compliance with D&O Condition No. 19. A copy of this Annual Report, and all future annual reports filed with the Commission, will also be delivered to the Planning Department and State of Hawai'i Office of Planning.</p>
18.	<p>Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property covered by the approved petition prior to visible commencement of construction on the Property.</p>	Satisfied.	
19.	<p>Petitioner shall provide annual reports to the Land Use Commission, the Office of State 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.</p> <p>Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has been satisfied, in whole or in part. The Office of State Planning will certify for itself and all state departments and agencies, and the County of Hawaii Planning Department will certify for itself and all county departments and agencies. Any other party to the boundary amendment proceeding may be asked to indicate whether they concur in the certification of satisfaction.</p>	On-going.	
20.	<p>The commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.</p>	Acknowledged.	KCA acknowledges this condition.
21.	<p>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 to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property,</p>	Satisfied.	<p>This condition has been satisfied.</p> <p>Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, the original Petitioner recorded at Statement to the effect that the Property is subject to conditions imposed by the SLUC in the reclassification of the</p>

22.	and (b) shall file a copy of such recorded statement with the Commission. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Title 15, Chapter 15, Section 92, Hawaii Administrative Rules.	Satisfied.	property with the Bureau of Conveyances and filed a copy of said recorded Statement with the SLUC. This condition has been satisfied. The conditions of Docket No. 92-677 were recorded by the original Petitioner at the Bureau of Conveyances and a copy was filed with the Commission.
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