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LAND USE COMMISSION
STATE OF HAWAII

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**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of

Docket No. A94-706

KAONOULU RANCH To Amend the
Agricultural Land Use District Boundary into
the Urban Land Use District for approximately
88 acres at Kaonoulu, Makawao-Wailuku,
Maui, Hawaii; Tax Map Key Nos. 2-2-02:por.
of 15 and 3-9-01:16

**TWENTY THIRD AND TWENTY FOURTH ANNUAL REPORT OF
HONUA'ULA PARTNERS, LLC, SUCCESSOR PETITIONER TO
KAONOULU RANCH (2018 AND 2019)**

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

COMES NOW HONUA'ULA PARTNERS, LLC (the "Successor Petitioner")¹,
successor-in-interest to MAUI INDUSTRIAL PARTNERS, LLC ("MIP"), in regards to the real

¹ Honua'ula is the current owner of one of the seven parcels encumbered by the D&O. Honua'ula owns tax map key parcel (2) 3-9-001:169 (hereinafter, the "Honua'ula Parcel"). The remaining seven parcels encumbered by the D&O, tax map key parcels: (2) 3-9-001:016 and 170-174, are owned by Piilani Promenade South, LLC and Piilani Promenade North, LLC (hereinafter "the Piilani Parcels"). This

property which is the subject matter of Docket No. A94-706, as referenced above, and pursuant to Condition No. 17 of the Findings of Fact, Conclusions of Law, and Decision and Order issued on February 10, 1995 (the “D&O”), hereby submits this Twenty Third and Twenty Fourth annual report of compliance with the conditions established by said approval, for the years 2018 and 2019, as follows:

General Progress of the Project

Kaonoulu Ranch (the “Original Petitioner”) obtained a Community Plan Amendment and Change in Zoning for the Petition area referred to above (the “Petition Area”). On May 12, 2005, MIP purchased the fee simple interest in the Petition Area from the Original Petitioner, together with all of the interests in the Petition Area and its entitlements.

MIP actively engaged a consulting team to implement the plan of development for the project consistent with the D&O. MIP also involved the County of Maui and the State of Hawaii Department of Transportation (“SDOT”) in this effort. Subdivision of the Petition Area was applied for in September 2003, and civil construction plans for the Petition Area were submitted to the County of Maui in May 2005 addressing all requirements for preliminary subdivision approval. Final bonded subdivision approval was received by MIP on August 14, 2009, for both a large lot subdivision of the Petition Area and for an additional subdivided lot in the Petition Area required for construction of County of Maui water system improvements necessary for the subdivision. Subsequent to the finalization of the large lot subdivision, the Successor Petitioner purchased the Honua‘ula Parcel from MIP. The other parcels were purchased by Piilani in 2010.

Annual Report only addresses the Honua‘ula Parcel. Successor Petitioner understands that the owners of the Piilani Parcels will file their own separate annual report.

Condition No. 5 of County of Maui Ordinance No. 3554 originally required Successor Petitioner to develop and construct a 250 unit workforce affordable housing project on the Honua'ula Parcel, prior to completion of any market rate units on the land commonly referred to as Wailea 670. Honua'ula is the current owner/developer of the project formerly known as Wailea 670. Construction of this workforce housing project on the Honua'ula Parcel is dependent upon and must follow the installation of certain infrastructure for the project to be developed on the Piilani Parcels.

On April 11, 2012 and April 18, 2012, Maui County issued to Piilani two grading permits, placing Piilani in a position to begin construction of on-site and off-site infrastructure for the Piilani Parcels. However, on May 23, 2012, Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahale (collectively, "Intervenors") filed a Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief (the "Motion for Order to Show Cause"), which was granted on September 10, 2012. On September 11, 2012, the Commission entered a Prehearing Order, wherein it was stated that the Commission would first hold hearings to consider whether Piilani and Honua'ula had violated the 1995 D&O (hereinafter "Phase I"). Thereafter, if a violation was found, the Commission would then proceed to hold hearings to determine whether reversion or other designation is the appropriate remedy (hereinafter "Phase II").

On November 1, 2, 15 and 16, 2012, the Commission heard evidence and arguments in Phase I of the Order to Show Cause. At a meeting on February 7, 2013, a majority of the members of the Commission orally passed a motion finding that Piilani's and Honua'ula's proposed uses of the Piilani Parcels and the Honua'ula Parcel would violate Conditions 5 and 15 of the 1995 D&O, and that Condition 17 had also been violated.

On April 18, 2013, Piilani filed Motion to Stay Phase II of the Order to Show Cause Proceeding. Therein, Piilani represented to the Commission that Piilani intended to file a motion to amend the 1995 D&O to allow Piilani to develop a project different from that originally presented to the Commission when the D&O was issued (hereinafter “the Motion to Amend”). Piilani requested that the Commission Stay Phase II to allow the Commission to consider the Motion to Amend. Honua‘ula filed a joinder to that motion, committing not to commence development while the stay was in place. On June 27, 2013, the Commission granted the Motion to Stay Phase II of the Order to Show Cause Proceeding, and ordered that Phase II would be stayed, on the condition that Piilani file the Motion to Amend before December 31, 2013, and that no construction on the Property occur during the Stay.

On December 31, 2013, Piilani filed its Motion to Amend, which also seeks to bifurcate the Piilani Parcels from the Honua‘ula Parcel, and to have a separate Decision and Order issued that only applies to the Piilani Parcels, and not the Honua‘ula Parcel.

On June 27, 2017, Piilani filed its proposed Final Environmental Impact Statement (“FEIS”) with the Commission in support of its Motion to Amend.

On July 5, 2017, Honua`ula filed its Motion to Amend to address the 250 unit workforce affordable housing project and to bifurcate the Piilani Parcels and Honua`ula Parcel into separate petition areas.

On July 10, 2017, Honua`ula filed its Motion to Designate the Land Use Commission as Approving Agency for Environmental Impact Statement under HRS Chapter 343 and for Authority to Prepare Environmental Impact Statement (“Motion to Designate”).

On July 19 and 20, 2017, the Commission held its meeting to consider acceptance of Piilani's proposed FEIS.

On July 25, 2017, Honua`ula withdrew its Motion to Designate.

On July 27, 2017, the Commission entered its Findings of Fact, Conclusions of Law, and Decision and Order Denying the Acceptance of a Final Environmental Impact Statement.

On May 4, 2018, Honua`ula obtained a change in zoning to modify Condition No. 5 of County of Maui Ordinance No. 3554 to allow Honua`ula the option of developing the 250 units of workforce affordable housing either onsite the property commonly referred to as Wailea 670 or on the Honua`ula Parcel.

Honua`ula intends to develop the property in compliance with the 1995 D&O once the stay order is lifted.

This Twenty Third and Twenty Fourth Annual Report addresses compliance with the conditions of approval in the D&O for the Honua`ula Parcel.

Report on Compliance with Conditions Imposed by Commission

The following states whether the conditions in the approval have been met:

- 1. The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the County of Maui.**

This condition has been satisfied. The Kihei Makena Community Plan incorporating the required change was approved on March 20, 1998, and the Change in Zoning application was approved by the Maui County Council and became effective on May 25, 1999.

- 2. Petitioner shall cooperate with the State Department of Health and the County of Maui Department of Public Works and Waste Management to**

conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

Successor Petitioner intends to cooperate with the State Department of Health and the Department of Public Works and Environmental Management, formerly a part of the Department of Public Works and Waste Management.

- 3. Petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Waste Management.**

Successor Petitioner understands its obligation to contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities.

- 4. Petitioner shall fund and construct adequate civil defense measures as determined by the State and County Civil Defense agencies.**

Successor Petitioner understands its obligation to fund and construct adequate civil defense measures.

- 5. Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall provide traffic signals at the intersection of Piilani Highway and Kaonoulu Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner shall also install a fence and appropriate screening, i.e. landscaping, etc., along the highway right-of-way in coordination with the State Department of Transportation. Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition Area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.**

Successor Petitioner has been informed that the Piilani Owners intends to comply with this condition, however, that the State Department of Transportation has indicated that a frontage road parallel to Piilani Highway would not be feasible and could create traffic and safety issues, and that the State Department of Transportation would not approve a frontage road.

6. **Petitioner shall fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.**

Successor Petitioner understands its obligation to fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the development of the Honua'ula Parcel. Civil construction plans for the Piilani Parcels approved by the County of Maui include improvements addressing both potable and non-potable water systems and waste water collection systems located within and outside the Piilani Parcels.

7. **Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.**

Successor Petitioner intends to participate in an air quality monitoring program if required by the Department of Health.

8. **Petitioner shall fund the design and construction of its pro-rata share of drainage improvements required as a result of the development of the Property, including oil water separators and other filters as appropriate, and other best management practices as necessary to minimize non-point source pollution into Kulanihakoi Gulch, in coordination with appropriate state and county agencies, such as the following:**

- a. **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, where roofed or unroofed. The concrete floor shall be constructed so as to be able to contain any drips 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.**

The Successor Petitioner understands its obligation to comply with this condition.

- b. All employees shall be instructed 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 instructed to prevent any industrial liquid spills onto the bare ground.**

The Successor Petitioner understands its obligation to comply with this condition.

- c. Barrels for the temporary 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 barrels 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.)**

The Successor Petitioner understands its obligation to comply with this condition.

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

The Successor Petitioner understands its obligation to comply with this condition.

- 10. A long term preservation plan for the petroglyph stone (Site 50-10-3746) that was removed from the project area shall be reviewed and approved by the State Historic Preservation Division. Long term preservation measures shall be implemented within 60 days after final approval of the preservation plan.**

As stated in the Fifth Annual Report, the Original Petitioner prepared a long term preservation plan which has been approved by the State Historic Preservation Division, Department of Land and Natural Resources, State of Hawaii, a copy of which was transmitted to the Land Use Commission.

11. **Petitioner shall contribute its pro-rata share to a nearshore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.**

Successor Petitioner understands its obligation to contribute its pro-rata share to a nearshore water quality monitoring program as it is determined.

12. **Petitioner shall implement effective soil erosion and dust control methods during construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.**

Successor Petitioner understands its obligation to implement effective soil erosion and dust control methods during construction.

13. **Petitioner shall create a buffer zone between lands designated as SF (Single-Family) by the County's Kihei-Makena Community Plan and industrial uses on the Property to mitigate impacts between future residential activities and the proposed industrial development.**

The Successor Petitioner understands its obligation to comply with this condition.

14. **In the event Petitioner sells its interest in the Project, Petitioner shall subject the Property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.**

Successor Petitioner understands that it is required to comply with the terms and conditions in the Commission's Decision and Order and understands its obligation to comply with this condition.

15. **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.**

Successor Petitioner understands its obligation to comply with this condition. In the original Petition, the Petitioner proposed the construction of a commercial and light industrial

subdivision, and attached to the Petition a conceptual plan for that project. In Phase I of the Order to Show Cause Proceeding, Honua'ula contended that the proposed affordable housing development that had been planned was in substantial compliance with the representations made to the Commission by the Original Petitioner. The Commission found in Phase I that this condition had been violated. Phase II of this proceeding has been stayed to allow Piilani to present a new proposed development in the Motion to Amend. Honua'ula is considering its options, but has agreed that no development of the Honua'ula Parcel will take place while the stay is pending. Honua'ula reserves all rights with respect to Phase II of the Order to Show Cause Proceeding, including any appeal rights.

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

Successor Petitioner understands its obligation to comply with this condition.

- 17. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui 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 include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.**

Successor Petitioner understands its obligation to comply with this condition, and submits this annual report in compliance therewith.

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

This condition has been satisfied. Petitioner has recorded a Notice of Imposition of Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92 Hawaii Administrative Rules.

- 19. 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 a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property; and (b) shall file a copy of such recorded statement with the Commission.**

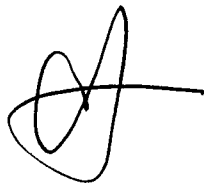
This condition has been satisfied. Petitioner has recorded a Document Listing Conditions to Reclassification of Land with the Bureau of Conveyances of the State of Hawaii and has filed a copy of the recorded document with the Commission.

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

The Successor Petitioner understands that the Commission may fully or partially release the conditions provided herein.

DATED: Honolulu, Hawai'i, June 25, 2020.

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88 acres at Kaonoulu, Makawao-Wailuku,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be duly served upon the following persons by electronic mail ("EM"), or by mailing said copy, certified mail, return receipt, postage prepaid, first class, in a United States post office ("M") or by hand delivery ("HD") in the manner indicated, addressed as set forth below:

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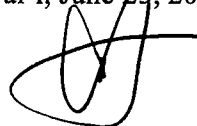
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