



KAUAI COUNTY HOUSING AGENCY
THE COUNTY OF KAUAI

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

ADAM P. ROVERSI
HOUSING DIRECTOR

August 17, 2020

Mr. Daniel E. Orodener
Executive Officer
Land Use Commission
State of Hawaii
PO Box 2359
Honolulu, Hawaii 96804

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LAND USE COMMISSION
STATE OF HAWAII

**Subject: 2020 Annual Report for the State Land Use Commission Docket
No. A17-802, Kauai County Housing Agency, Lima Ola 201H**

Dear Mr. Orodener,

In accordance with Condition No. 22 of the Finding of Fact, Conclusions of Law, and Decision and Order issued by the State of Hawaii Land Use Commission (Commission) on July 24, 2017, the Kauai County Housing Agency (Petitioner) submits this, the third Annual Report for the Lima Ola Workforce Housing Project (Project).

Status of Compliance/Activities Relating to Imposed Conditions

Listed below are each of the conditions imposed under the Decision and Order followed by the Project's status of each respective condition.

1. **Affordable Housing.** *Petitioner shall provide affordable housing opportunities in accordance with the certification of the Project as an HRS §201H-38 housing project.*

Petitioner acknowledges this obligation and intends to comply. The Project is targeting to commence infrastructure construction in December 2020, with the development of affordable housing to follow

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 cost for the construction of the remaining phased improvements for the project.*

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No change from 2018 Annual Report: Petitioner acknowledges this obligation and intends to comply.

- B. *An updated TIAR shall be prepared prior to the execution of Phase 2 of the project and before all subsequent phases to reevaluate 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.*

Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

- C. *The phase-related improvements shall be accepted by the DOT prior to issuance of a Certificate of Occupancy for the Project phase.*

Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission. Phase 1-related construction plans have been approved by DOT and construction is scheduled to commence in December 2020.

3. **Schools.** *Petitioner shall provide 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.*

No change from 2019 Annual Report: Petitioner acknowledges this condition and intends to comply with this condition, unless amended by the Commission.

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 initiation of the Project. Petitioner shall comply with all interim and/or permanent mitigation measures recommended and approved by the SHPD. Petitioner shall confirm in writing to the commission that the SHPD has found the 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.*

SHPD has reviewed and accepted the Project's Mitigation Plan that is inclusive of the Archaeological Monitoring Plan and Data Recovery Plan

elements. Further, the Petitioner acknowledges the obligations of this condition and intends to comply, unless amended by the Commission.

- 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 for acceptance of the AIS prior to the commencement of ground disturbance for any phases beyond Phase 1 of the project.*

SHPD has reviewed and accepted the Project's Mitigation Plan that is inclusive of the Archaeological Monitoring Plan and Data Recovery Plan elements. Further, the Petitioner acknowledges the obligations of this condition and intends to comply, unless amended by the Commission.

5. **Previously Unidentified Burials and Archaeological/Historic Sites.** *In the event that historic resources, including 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, Kauai 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 archeological clearance from SHPD that mitigation measures have been implemented to its satisfaction.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

6. **Established Access Rights Protected.** *Pursuant to Article, XII, Section 7, of the Hawaii 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. Petitioners 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 and Wahiwa Bay.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

7. **Endangered Species.** *Petitioner shall comply with the following:*

- A. *Construction activity shall be restricted to daylight hours as much as practicable during seabird breeding season (April to November) to avoid the use of nighttime lighting that could be an attraction to seabirds.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

- 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 nocturnal flying Hawaiian petrels and Newell's shearwaters with external lights and man-made structures.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

- C. *Outside lights that are not needed for security and safety shall be turned off from dusk to dawn during fledgling fallout period (September 15 – December 15).*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

- D. *To avoid potential impacts to the Hawaiian hoary bat, no trees taller than 15 feet within the Petitioner Area shall be trimmed or removed between June 1 and September 15 when non-volant juvenile bats may be roosting in the trees.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

- E. *Any fences that are erected as part of the Project shall have barbless top-strand wire to prevent entanglements of the Hawaiian hoary bat on barbed wire. For existing fences at the Petitioner Area, the top strand of barbed wire shall be removed or replaced with barbless wire.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

- 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.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

- G. *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 the construction for the presence of Hawaiian goose nest. Work shall immediately stop if a nest is discovered and the USFWS shall be contacted for further guidance.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

8. **Air Quality Monitoring.** *Petitioner shall participate in an air quality monitoring program as required by the DOH.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

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 forecast and to supply the proposed uses.*

Petitioner acknowledges this obligation and is in compliance with this condition. The updated Water Master Plan (May 2019) which includes water use and water demand forecast was approved by the County Department of Water.

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 or designed. Petitioner shall mitigate non-point source pollution by incorporating Best Management 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.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

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 and design and landscaping. BMPs shall include the maintenance of swales for the life of the Project.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

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 purposes of these conditions, "farming operations" shall have the same meaning as provided in HRS §165-2; and*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

- B. *Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide require subsequent notice or lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS chapter 165, the Hawaii Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural required for the sale or transfer of real property.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition.

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

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

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.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

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.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

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 interest 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.

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

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.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

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

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

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

No change from 2019 Annual Report: Petitioner has complied with this condition by providing educational information on the Project's website about the impacts of certain suntan lotions on ocean resources. The Project's website provides updates on the Project status. Petitioner will continue to comply with this condition.

20. **Compliance with Representations.** *Petitioner shall develop the Petition Area in substantial compliance with 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.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

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 interest in the Petition Area, prior to completion of development of the Petition Area.*

No change from 2019 Annual Report: Petitioner acknowledges this obligation and intends to comply with this condition, unless amended by the Commission.

22. **Annual Reports.** *Petitioner shall timely provide without any prior notice, annual report 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.

Petitioner acknowledges this obligation and intends to comply. This Annual Report for 2020 is submitted in compliance to this condition.

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 provisions of adequate assurance of satisfaction of these conditions by Petitioner.*

No change from 2019 Annual Report: **Petitioner acknowledges that the commission may fully or partially release the conditions provided herein.**

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 Hawaii 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.*

No change from 2019 Annual Report: **This condition has been satisfied. On July 27, 2017 a Notice of Imposition of Conditions by the Land Use Commission was recorded with the State of Hawaii Bureau of Conveyances (Document No. A-64170704), and has filed a copy of the recorded document 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.*

No change from 2019 Annual Report: **This condition has been satisfied. On September 8, 2017, a Declaration of Conditions was recorded with the State of Hawaii Bureau of Conveyances as Doc. No. A-6400589.**

Should you require any additional information or clarification regarding this report, please feel free to contact me at (808) 241-4444 or via email at aroversi@kauai.gov

Sincerely,



Adam P. Roversi, Director
Kauai County Housing Agency

Digitally signed by Adam
P. Roversi
Date: 2020.08.17
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