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October 13, 2021

Mr. Daniel E. Orodener, Executive Officer  
Land Use Commission, State of Hawai'i  
P.O. Box 2359  
Honolulu, Hawai'i 96804



Re: Annual Report to the Land Use Commission - Hawaiian Memorial Life Plan, Ltd.; LUC Docket No. A17-804

Dear Mr. Orodener:

Pursuant to Condition No. 20 of the Findings of Fact, Conclusions of Law, and Decision, and Order ("Decision and Order") of the Land Use Commission ("Commission") in the above-entitled docket, the Petitioner hereby submits the annual report for the year 2021, regarding the (1) status of the subject project ("Project"), and the (2) progress in complying with the conditions imposed herein.

## **1. General Progress of the Project**

The Decision and Order for the above-entitled docket was entered on October 13, 2020. Subsequently, the Project has commenced the initial stages of design and compliance with the conditions herein, including civil engineering, well monitoring, archaeology, the conservation easement and the landscape plan.

The utilities and storm water management structures, detention basins and other water quantity storage devices are in the design phase and are being analyzed for compliance with City and County regulations.

A formal survey of Lipalu Channel was conducted in January 2021 to supplement a prior February 2019 survey of the feature. A request for jurisdictional determination was filed with the United States Army Corps of Engineers ("USACE") on

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March 3, 2021. The USACE issued a jurisdictional determination dated May 10, 2021 that determined the Lipalu Channel is not a jurisdictional waterway.

Work has been completed to initiate well monitoring at the seep. A new cover for the well with a lock was installed to replace the former damaged cover, and a monitoring gauge was attached to the inside cover to allow monitoring of water levels.

Archaeological work is proceeding. Data Recovery Fieldwork is approximately 83% complete and completion is estimated to occur by the end of October 2021. The Archaeological Monitoring Plan ("AMP") will require the completion of the Data Recovery Fieldwork along with the processing and documentation of the data. The AMP is estimated to be completed by February 2022. The Preservation Plan is mostly complete and requires the consultation and data recovery information and is estimated to be complete by the end of January 2022.

The conservation easement has been drafted and submitted to the Hawaii Island Land Trust ("HILT") for consideration at their October 2021 board meeting.

In furtherance of the landscape plan, Petitioner has confirmed that native Hawaiian seeds and cuttings propagation will be managed by a native Hawaiian non-profit organization that operates a nursery specializing in native Hawaiian plants. The nursery will store the seeds and propagate cuttings obtained so that such plants can be grown out for eventual use within the project as a part of the landscape plan.

## **2. Progress in Complying with Conditions Imposed**

### **Condition No. 1:**

"1. Representations Made. Petitioner shall take and complete the actions described, including but not limited to, those described in Findings of Fact Nos. 324-370 as represented to the Commission."

### **Status:**

Petitioner will comply with this condition.

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**Condition No. 2:**

"2. Buffer Areas. Petitioner shall establish a buffer between the proposed cemetery expansion, Pohai Nani project, and other adjacent residential properties in substantial compliance with representations made to the commission and contained in the Ko'olau Poko Sustainable Communities Plan."

**Status:**

Petitioner will comply with this condition.

**Condition No. 3:**

"3. Conservation Easement and Restrictive Covenant. Petitioner shall record with the State of Hawai'i Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, a conservation easement and related declaration of restrictive covenant on the entirety of the 156.5-acre undeveloped portion of its Pikoiloa Tract property (TMK No. 4-5-033: 001) that limits, in perpetuity, any other future development on the property, except for the 27.5-acre portion of the property that encompasses the proposed Hawaiian Memorial Park expansion site, and the 14.5-acre portion of the property that encompasses the proposed Kawa'ewa'e Heiau cultural preserve.

A copy of the recorded conservation easement and declaration of restrictive covenant shall be submitted to the City and County of Honolulu, Department of Planning and Permitting ("DPP"), prior to the issuance of any grading permit or any other permit which involves ground disturbance.

Should the Petitioner desire to make any major changes to the conservation easement or the declaration of restrictive covenant, a request to amend the Decision and Order shall be made to the LUC. The LUC shall be the ultimate arbiter of whether a proposed change is major.

Petitioner shall formulate the easement and stewardship of the easement with a Land Trust that is accredited and in good standing with the Land Trust Accreditation Commission for the long-term management of the area."

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**Status:**

Petitioner has prepared a proposed Grant of Conservation Easement and Declaration of Restrictive Covenants ("Conservation Easement") and submitted the same to HILT for its consideration, and Petitioner has been informed that the HILT board of directors will be considering the proposed Conservation Easement at its meeting in October of 2021.

**Condition No. 4:**

"4. Landscape Plan and Tree Replacement. Prior to the issuance of a grading permit, the Petitioner shall submit to the DPP, a landscape plan and schedule of planting. In consideration for the potential impact of Climate Change, within the Petition Area, the loss of mature trees, defined as having a trunk diameter of six inches or greater, shall be replaced on a one-for-one basis, at a minimum, with preferably field stock trees that will have approximately similar size canopy coverage within a reasonable period of time. The locations of replacement trees are not limited to the Petition Area."

**Status:**

The landscape plan for the Project is being developed and will be prepared in compliance with this condition. The Petition Area has been surveyed for trees having a trunk diameter of six inches or greater and the replacement of said trees will be on a one-for-one basis in compliance with this condition.

**Condition No. 5:**

"5. Detention Basin Analysis. The Petitioner shall prepare a detailed "Detention Basin Analysis", using appropriate computer modeling software, to determine the size of the detention basins to be constructed immediately upstream of each of the existing drainage inlets that will receive runoff from the project. The inflow will be calculated based on at least a 10-year, 24-hour rainfall event and the basins shall be designed so that the outflow from each basin will be limited to the capacity of the existing downstream drainage improvements. The Detention Basin Analysis shall be

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submitted to DPP for approval. After the Detention Basin Analysis is approved, the detention basins shall be constructed as soon as practical after the start of grading for the project."

**Status:**

The detention basin analysis for the required detention basins and/or other water quantity storage devices and their outflow design to discharge runoff into the existing City and County of Honolulu Drainage System are being developed in compliance with this condition.

**Condition No. 6:**

"6. Stormwater Management and Drainage Improvements. Notwithstanding other conditions related to the preservation of the habitat for the endangered Hawaiian damselfly, to the extent possible, Petitioners shall implement applicable BMPs to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with State Department of Health ("DOH") guidelines and City ordinances and rules.

Petitioner, shall at the start of construction, install erosion and sediment controls and retention/detention basins prior to the clearing and grubbing of the site."

**Status:**

Petitioner will comply with this condition.

**Condition No. 7:**

"7. Air Quality Monitoring. Petitioners shall participate in an air quality monitoring program as required by the DOH."

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**Status:**

Petitioner will comply with this condition.

**Condition No. 8:**

"8. Established Access and Gathering Rights Protected. Pursuant to Article XII, Section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, gathering, and religious practice, or for access to other areas for such purposes."

**Status:**

Petitioner will comply with this condition.

**Condition No. 9:**

"9. Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and State Department of Land and Natural Resources - State Historic Preservation Division ("SHPD") shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction."

**Status:**

Petitioner will comply with this condition.

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**Condition No. 10:**

"10. Relocation of Rocks. Petitioner shall consult with the Cultural Preserve manager to determine whether any of the rocks that were part of the historic features should be relocated to the cultural preserve after data recovery."

**Status:**

Petitioner will comply with this condition.

**Condition No. 11:**

"11. Establishment of Cultural Preserve. Petitioner shall establish the Cultural Preserve in conjunction with an appropriate Native Hawaiian group (Group). The Petitioner shall work with the community and the Ko'olaupoko Hawaiian Civic Club in order to establish a preservation and management plan for the Cultural Preserve, in perpetuity. Petitioner shall also execute the agreement with the Ko'olaupoko Hawaiian Civic Club, in the event the Ko'olaupoko Hawaiian Civic Club does not execute the agreement, then with another local Native Hawaiian Organization, to manage and steward the Cultural Preserve that supports native Hawaiian cultural practices, containing all provisions consistent with the Petitioner's representations before any work involving ground disturbance occurs.

Petitioner shall pay for or otherwise assume financial responsibility for expenses associated with capital improvements within the preserve required to fulfill the conditions set forth by the Commission for all on-going maintenance of the preserve. Petitioner shall cover reasonable expenses incurred by the Group associated with the management of the preserve, including rockfall hazard mitigation and liability."

**Status:**

Petitioner is preparing an agreement for the consideration of the Ko'olaupoko Hawaiian Civic Club ("Civic Club") to address the requirements of this condition. Petitioner hopes to present the proposed agreement to the Civic Club immediately after the execution and recordation of the Conservation Easement.

**Condition No. 12:**

- "12. Endangered Species. Petitioners shall undertake the following:
- a. A subsurface drainage system designed utilizing a herringbone configuration shall be implemented in the cemetery expansion area planned for fill activities above the seep. The system shall be comprised of three subsurface drainage mainlines with smaller subdrains branching laterally from them. This system will help ensure water flow to the well and seep is maintained.
  - b. A well monitoring gauge shall be installed inside the wall of the well, located upslope from the seep to monitor water levels prior to, during and after the project construction.
  - c. Before earthmoving activities begin a minimum 50-meter buffer area above the seep where there will be no grading will be established, then a temporary water line shall be extended to the well from the cemetery's irrigation system. This irrigation line will serve as a short-term means of ensuring continued water flow to the seep. If the gauge indicates water levels have declined to levels potentially affecting the seep, water from the irrigation line to the well will be provided to stabilize water levels.
  - d. Once earthmoving activities conclude, a permanent water line shall be extended to the well from the expanded cemetery's irrigation system. This irrigation line will serve as a long-term means of ensuring continued water flow to the seep. If the gauge indicates water levels have declined to levels potentially affecting the seep, water from the irrigation line to the well shall be provided to stabilize water levels.
  - e. Small sticks upright and away from the edges of the waterlogged areas shall be placed along the seep to serve as molting safe zone for damselflies to avoid predation from crawling predators.
  - f. Habitat boundaries currently shown in the Final Environmental Impact Statement (FEIS) shall be reviewed during project final design based upon more accurate data collected from a topographic survey, and consultation with the State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DLNR-DOFAW") and U.S. Fish and Wildlife Service ("USFWS"). Habitat boundary shall be revised as appropriate. Fencing shall be constructed around the damselfly habitat



- g. boundary to protect the native damselfly from disturbance from feral pigs. Fencing shall consist of livestock panels appropriate to exclude pigs, with lower barbed strand to resist digging.
- h. Regular inspection of the seep shall occur to ensure the present flow of water is continued.
- i. Inspection of the seep shall be conducted at monthly intervals for one year prior to construction to establish baseline water flow conditions.
- j. Monitoring shall continue during construction, with the seep area inspected on a weekly basis to evaluate water flow in coordination with BMP (erosion control) measures.
- k. Once construction concludes, monitoring shall continue for six months to ensure continued water flow to the seep. Inspections shall occur weekly for the first three months, and every two weeks for the following three months.
- l. After the six-month monitoring period elapses, HMP staff shall conduct monthly water flow inspections.
- m. At any time, if water flow is documented to be outside of the range observed in the pre-construction monitoring phase, the temporary or permanent irrigation lines shall be used to provide supplemental water to the seep. Additional mitigation measures shall be determined through consultation between the contractor, design team, DLNR-DOFAW, USFWS and other specialists.
- n. Regular inspections of the seep (at intervals described in 12a-k) shall also include surveys to ensure that non-native fish, specifically poeciliid fish, are not present within this habitat area. If fish are observed, surveyors shall notify experienced biologists to ensure prompt identification, and USFWS and DLNR-DOFAW shall be consulted on what control measures can be implemented.
- o. Establish an education and outreach program to raise awareness of the existence of the blackline damselfly and habitat area on the property. The outreach shall include informing visitors to Hawaiian Memorial Park as well as members of the adjacent community. The program shall include information on restricted activities and other best practices to avoid and minimize adverse impacts to the habitat and the species."

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**Status:**

Petitioner has installed a well monitoring gauge and monitoring has commenced. Petitioner will comply with the other terms of this condition as the project progresses.

**Condition No. 13:**

“13. Hawaiian Hoary Bat. To avoid potential impacts to the Hawaiian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area shall not occur between June 1 to September 15 when bats may be carrying young and potentially could be at risk by such clearing activities.”

**Status:**

Petitioner will comply with this condition.

**Condition No. 14:**

“14. Disposal of Waste Material. Petitioner shall not dispose as waste material any clean fill at the PVT Land Company, Ltd. or any other construction and demolition landfill commercially in operation on the island of O`ahu as a result of grading work in the Petition Area.

Clean Fill is defined as “natural materials consisting of soil, clay, sand, volcanic cinder and ash, rock, and boulders measuring twelve inches or less in diameter; or a mixture or combination of such materials, which are not suspected to contain hazardous substances or concentrations of chemical contaminants of concern above the DOH’s Tier I Environmental Action Levels.”

**Status:**

Petitioner will comply with this condition.

**Condition No. 15:**

"15. Community Outreach. Petitioner shall establish an ongoing construction-related community outreach program to inform area residents and businesses of construction milestones and activities occurring on the property. In addition, the Petitioner shall establish a hotline and a dedicated email address to for immediate and prompt responses to questions, concerns or comments from the community and other stakeholders."

**Status:**

A community outreach program for construction activity is being developed and this program will have a dedicated website for the community to access. A hotline and email address for the community to contact the Petitioner with any questions or comments would be established as part of this program. However, this program would be initiated with the community closer to when construction work actually starts.

**Condition No. 16:**

"16. Development Timetable. Petitioner shall provide the Commission with a development timetable prior to obtaining grading permits from the City."

**Status:**

Petitioner anticipates that construction plans will be completed by the first quarter of 2022, and permitting will be completed by the end of 2022. Development of the Project should be completed by the end of 2024.

**Condition No. 17:**

"17. Infrastructure Deadline. Petitioners shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of the Decision and Order approving the Petition."

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**Status:**

Petitioner will comply with this condition.

**Condition No. 18:**

"18. Compliance with Representations. Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, and Decision and Order. Absent substantial commencement of use of the land in accordance with such representations, the Commission shall issue and serve upon the party bound by the condition and order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification."

**Status:**

Petitioner will comply with this condition.

"19. Notice of Change in Ownership. 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."

**Status:**

Petitioner will comply with this condition.

"20. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the Department of Planning and Permitting 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."

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**Status:**

Petitioner will comply with this condition.

"21. Release of Conditions. 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 Petitioner."

**Status:**

Petitioner acknowledges this condition.

"22. 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 or the State of Hawai'i Land Court, or both, as appropriate, 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."

**Status:**

Petitioner has satisfied this condition by recording the Notice of Imposition of Conditions, identified as Document No. A-75980682, with the Bureau of Conveyances on October 20, 2020.

"23. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, pursuant to section 15-15-92 Hawai'i Administrative Rules.

This Declaration of Conditions shall supersede the Notice of Imposition of Conditions by the Land Use Commission dated October 14, 2020 upon the recordation at the Bureau of Conveyances of this Declaration of Conditions."

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**Status:**

Petitioner has satisfied this condition by recording the Declaration of Conditions, identified as Document No. A-76460491, with the Bureau of Conveyances on December 7, 2020.

Please do not hesitate to contact the undersigned should you have any questions or comments with respect to the matters discussed above.

Very truly yours,

MATSUBARA, KOTAKE & TABATA

A handwritten signature in black ink, appearing to be 'CT Tabata', is centered on a light gray rectangular background.

Curtis T. Tabata

cc: Office of Planning  
Department of Planning and Permitting