

## Law Offices of Yeh & Kim

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LAND USE COMMISSION  
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November 22, 2022

Daniel Orodenker, Executive Officer  
Land Use Commission  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

Re: **2021-2022 Annual Progress Report**  
**Docket No.: A81-525**  
Original Petitioner: Y-O Limited Partnership  
Successor Petitioner: RCFC Kaloko Heights, LLC  
TMK Nos: (3) 7-3-009:019, 32, 57, 58, 59, 60, 61 and 62

Dear Mr. Orodenker:

This annual progress report is submitted on behalf of RCFC Kaloko Heights, LLC (“RCFC Kaloko”), Successor Petitioner in Land Use Commission (the “Commission”) Docket No. A81-525. By Findings of Fact, Conclusions of Law and Decision and Order filed on January 19, 1983, amended, the Commission reclassified approximately 213.473 acres of land from the Agricultural District to the Urban District (“Increment I”), and granted incremental Urban redistricting to approximately 195.246 acres of land designated as TMK (3) 7-3-003:019 (“Phase II”), all of which is located in Kaloko and Kohanaiki, North Kona, Island of Hawaii. Increment I and Phase II are hereinafter referred to as the “Subject Property.”

Since its acquisition of the Subject Property on January 22, 2013, RCFC Kaloko has been involved in preparing development and phasing options for the proposed development. As part of this phased development plan, on April 15, 2016, RCFC conveyed TMK (3) 7-3-009:019, consisting of the Phase II lands located on the south side of Hina Lani Street, to an affiliate entity, Kaloko Heights Investors, LLC, a Delaware limited liability company (“KHI”).

As an initial component of its phased development approach, on August 25, 2017, RCFC Kaloko submitted a subdivision application for a 50-lot subdivision (inclusive of a road lot) for lots consistent with the RS-15 zoning for the area comprising a portion of TMK (3) 7-3-009:062 (“Parcel 62”).

In mid-December of 2017, RCFC Kaloko conveyed TMK (3) 7-3-009:059 (“Parcel 59”) to an affiliate development entity, Kaloko Heights B1A Holdings, LLC, a Delaware limited liability company (“B1A”), for the development of said parcel consistent with its RS-10 zoning. On December 22, 2017, a subdivision application for a 49-lot subdivision was submitted to the Planning Department for Parcel 59 by B1A. The subdivision applications were submitted in

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conjunction with the Planning Department's September 8, 2017 approval of a revised master plan for Increment I of the project.

As to compliance with the affordable housing condition of said Decision and Order ("Condition 1"), RCFC Kaloko entered into an agreement with the Hawaii Island Housing Community Development Corporation ("HICDC"), a Hawaii non-profit corporation with substantial experience in the development of affordable housing projects on Hawaii Island, to develop a minimum of eighty (80) affordable housing units on Increment I of the Subject Property, primarily consisting of rental and "self-help" units. In conjunction with this plan and in recognition of the need for affordable rental housing in West Hawaii, on October 13, 2016, the Commission approved an amendment to Condition 1 which expressly authorizes the development of such rental units to satisfy the affordable housing condition.

Given the approved amendment to Condition 1, in April of 2017, RCFC Kaloko dedicated TMK (3) 7-3-009:032 (approximately 10.755 acres) to HICDC for the affordable housing project, which is now proceeding forward to obtain necessary funding and permits needed for its project to occur. RCFC Kaloko has now assigned a total of 100 water units for HICDC's project, which assignment has been recognized by the Department of Water Supply of the County of Hawaii.

As to infrastructure development, RCFC Kaloko has now completed the design of the entrance and first section of the road serving the initial Increment I development. In addition, as of June 2014, the County of Hawaii Department of Water Supply confirmed that the prevailing facilities charge for 1,494 water units to serve both the Increment I and Phase II projects had been satisfied, and the total amount of payments and credits with DWS is now \$9,090,990.

Upgrades to an existing water tank and pump system located on the water tank site previously dedicated to the County were also completed, and the water tank system components together with water lines were dedicated to the Department of Water Supply of the County on August 8, 2017, following flow tests on the system for inclusion and operation as part of the DWS' integrated water system for the area. On June 27, 2017, the Board of Water Supply had approved acceptance of the tank and pump system for dedication.

In more recent developments since the October 22, 2021 annual progress report was filed with the LUC, RCFC Kaloko, with the approval of the KHI and B1A entities, has been coordinating plans for the installation and connection of wastewater transmission lines from the project area, including the HICDC lands, to the County's wastewater treatment plant at Kealakehe ("WWTP"). Under this plan, wastewater from HICDC's affordable housing project and the development at Kaloko Heights will be treated at the WWTP or at a future treatment plant as the need arises. The funding for the wastewater connection will be through proposed community facilities district financing.



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On March 28, 2019, the Hawaii County Council adopted Resolution No. 86-19, authorizing the construction of a sewer line from the Project lands to the WWTP. Most recently, on July 7, 2021, the Council adopted Resolution No. 158-21 which authorized the initiation of procedures to establish the above-referenced properties as a community facilities district under Chapter 32 of the Hawaii County Code as a method of financing the sewer line improvements.

On October 6, 2021, the County adopted Ordinance No. 21-67, which establish the above-referenced properties as a community facilities district known as “Hawai`i County Community Facilities District No. 1-2021”, under which it is intended that the sewer line improvements will be financed by proceeds from a special tax to be levied upon the subject properties to pay for construction financing generated from anticipated bond sales. No other properties are part of this district.

On April 7, 2022, the County adopted Ordinance No. 22-33, authorizing the issuance of special tax revenue bonds for the purpose of financing the costs of constructing the sewer line improvements and related expenses, in sums not to exceed \$22,000,000.

On November 16, 2022, the County Council adopted Resolution 618-22, authorizing the issuance and sale of up to \$14,425,000 in bonds to fund the sewerline construction. Upon the issuance of such bonds, the petitioner will issue its notice to proceed with the construction of the sewerline, which is expected to take 12 to 15 months to complete. As such, the HICDC affordable housing project will be served by the wastewater system and sewer line improvements, but will not be required to finance its construction.

In compliance with Condition 4 of the Decision and Order, as amended, RCFC Kaloko hereby submits this annual report to provide the Commission with an update since RCFC Kaloko’s progress report dated October 22, 2021, and represents the current status of the project through December 31, 2021 and the date of this report.

Regarding compliance with the conditions of the Decision and Order, as amended, RCFC Kaloko offers the following, listing in order the governmental “Condition” and RCFC Kaloko’s “Response.”

### **Compliance with Conditions of Approval in Docket No. A81-525**

**Condition 1** (as amended by the Commission on November 22, 2016): **Petitioner shall provide housing opportunities for low- and moderate-income residents, by offering for sale or rental, on a preferential basis, on its own or in cooperation with both the Hawaii Housing Finance and Development Corporation (“HHFDC”) and the County of Hawaii, affordable housing units equivalent to ten percent (10%) of the lots and residential units to be developed in the Petition Area, to residents of the**

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**State of Hawaii of low- and moderate-income as determined by HHFDC and County of Hawaii Office of Housing and Community Development (“OHCD”) from time to time (the “Affordable Housing Requirement”). The affordable housing units shall be offered for sale or rent at prices or rents not exceeding prices or rents (“Affordable Prices”) that enable such purchasers and renters to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families, or that provide affordable rental housing opportunities to such families. This affordable housing condition shall be implemented to the satisfaction of OHCD.**

*Response:* Petitioner will satisfy this Condition. As discussed above, RCFC Kaloko has dedicated land in Increment I for development of the affordable housing project to HICDC and has also transferred a total of 100 water commitments necessary for the development of the affordable housing project to HICDC in accordance with its agreements with HICDC. Upon the completion of the planned sewer line improvements, access roads, water and wastewater facilities serving the HICDC project will also have been provided, in order to allow the development of a total of 99 affordable rental units and 1 manager’s unit on the affordable housing project site. Based on this dedication of land and water, Petitioner has also had discussions with the HHFDC and the County of Hawaii Office of Housing and Community Development on satisfying the affordable housing requirements, including those of the County, for the development of up to 990 units/lots within the Kaloko Heights project area. In addition, RCFC Kaloko previously acquired four (4) Affordable Housing Credits from a housing developer that developed a project meeting a critical housing need in the County of Hawaii. Pursuant to an Affordable Housing Agreement (Credits), dated March 30, 2015 between RCFC Kaloko and the County of Hawaii, in which the County recognized that RCFC Kaloko was entitled to use the four housing credits to satisfy affordable housing requirements for a maximum of forty (40) residential units pursuant to the LUC Docket A81-525 and Change of Zone Ordinance 86-91 for its first increment of development. The sewerline improvements will also serve the HICDC project.

**Condition 2: Petitioner shall afford lot purchasers public access from the subject property to Queen Kaahumanu Highway and to Mamalahoa Highway by participating in the construction of a roadway connecting the two highways and running through the subject property, the location and standard of design and construction of such roadway to be approved and accepted by the County of Hawaii. The Petitioner shall be responsible for constructing such portions of the roadway within the subject property. The Petitioner’s participation for the portions of the roadway outside the subject property may be by way of loans, loan guarantees, purchase of county obligations or otherwise.**



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*Response:* This Condition has been satisfied. As indicated in previous annual reports, Hina Lani Street, which extends beyond the Subject Property and runs from Queen Kaahumanu Highway to Mamalahoa Highway, was constructed and accepted by the County for dedication and has since been used by the public. In addition, the street lighting system and water transmission lines within the Subject Property have been completed and dedicated to the County. The channelized intersections at Mamalahoa Highway and Hina Lani Street, and at Queen Kaahumanu Highway and Hina Lani Street, are complete and have been accepted for dedication by the State Department of Transportation, Highways Division. The \$9,000,000 bond that was put up to construct the aforementioned roadway improvements along Hina Lani Street was satisfied in full as of September 2010.

**Condition 3: Petitioner shall dedicate to appropriate State and County Agencies sufficient land for the provision of necessary public facilities.**

*Response:* Petitioner will continue to satisfy this Condition. On July 29, 2001, Y-O delivered to the Department of Water Supply (“DWS”) a dedication deed, which was accepted by the Department, for an approximately 1.5875-acre parcel of land at TMK (3) 7-4-026:031 to be used as a water reservoir site. As discussed above, RCFC Kaloko has now dedicated the water tank and related infrastructure to complete the conveyance of a 1.0 MG water reservoir to the County of Hawaii Department of Water Supply. Over \$3,000,000 has been spent to build, maintain, upgrade and test the reservoir and its operating components before dedication was accepted by DWS. RCFC Kaloko will also dedicate certain project roadways to the County upon completion.

A 10MVA Substation has also been constructed, including transformer and switchgear, and installed underground 12KV feeder cables and vacuum switch (all of which was energized by HELCO as of December 2006). Total cost of the substation and feeder improvements was approximately \$515,000.

Upon completion of the construction of the proposed sewer line connections from the project area to the County’s Kealakehe wastewater treatment plant, the sewer line and related improvements will also be dedicated to the County.

**Condition 4: Petitioner shall submit annual progress reports to the Commission, Office of State Planning and Hawaii County Planning Department as to its progress in satisfying these conditions.**

*Response:* Petitioner submits this annual report to satisfy Condition 4 for the latter portion of 2021 through the date of this report.

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**Condition 5: The conditions may be fully or partially released by the Commission as to all or any portion of the subject properties upon timely motion and provisions of adequate assurance of satisfaction of these conditions by the Petitioner.**

*Response:* Petitioner will comply with this Condition.

**Condition 6: 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.**

*Response:* Petitioner will comply with this Condition. The Subject Property will be developed in substantial compliance with the representations made to the Commission. A revised Master Plan approved by the Planning Department was submitted with the progress report dated January 18, 2018, and is in substantial compliance with the LUC's Decision and Order, as amended, as well as the County of Hawaii's zoning for Increment I of the Project. Petitioner continues to make efforts to develop necessary infrastructure to serve the Project.

Petitioner and its subsidiary has also now received tentative subdivision approval for the initial phases or increments of two subdivisions within the project, being a 22-lot increment for minimum 15,000-square foot lots, and a 24-lot increment for minimum 10,000-square foot lots. Petitioner is making preparations to develop these subdivision increments together with related infrastructure, including primary and secondary access roads, water, electrical and sewer lines, etc., subject to market conditions.

**Condition 7: 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.**

*Response:* Petitioner will comply with this Condition. As discussed above, Parcel 19 was conveyed to the KHI entity, and Parcel 59 was recently conveyed to the B1A development entity which is now seeking the County's approval of a subdivision for that parcel under RS-10 zoning.

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Thank you for the opportunity to present Petitioner's annual report for 2021 through the date of this report. RCFC Kaloko trusts that this annual report sufficiently apprises the Commission of the present status of the Subject Property. RCFC Kaloko is pleased to report this substantial progress towards developing Increment I and required offsite infrastructure to develop the increment as intended, and it remains committed to satisfying the conditions of the LUC approval. Should you need more information, please do not hesitate to contact me.

Very truly yours,

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THOMAS L. H. YEH

cc: Office of State Planning  
Hawaii County Planning Department  
ec: RCFC Kaloko Heights, LLC  
Kaloko Heights Investors, LLC  
Kaloko Heights B1A Holdings, LLC