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January 2, 2024

Mr. Daniel E. Orodener, Executive Officer
Department of Business, Economic Development & Tourism
Land Use Commission
P. O. Box 2359
Honolulu, HI 96804-2359



Dear Mr. Orodener:

LUC Docket No. A94-705 (LUC 1028)

Applicant: County of Hawai'i Planning Department

Subject: 2023 Annual Progress Report

Tax Map Keys: (3) 7-4-008:063 por, 066, 080 (formerly a portion of 7-4-008:001); (3) 7-5-003:007, 008, 009 (formerly 7-5-003:006, 007); (3) 7-8-010:029, 030

Pursuant to Condition No. 13 of the Findings of Fact, Conclusions of Law and Decision and Order issued on June 22, 1998, for LUC Docket No. A94-705, we hereby provide you with a progress report describing the current status of properties involved in the boundary amendment.

A. General Progress of the Petition Area

Following is the status of the affected properties, by parcel and landowner, including any regulatory approvals pending or obtained:

1. Tax Map Key: (3) 7-4-008:063 por., 066, 080 (formerly a portion of (3) 7-4-008:001) – Lili'uokalani Trust

Subdivision No. 6601, approved on July 5, 1995, subdivided out an 11.947-acre parcel from TMK 7-4-008:001, which was identified as TMK 7-4-008:063. Ordinance 99-96, effective on August 19, 1999, rezoned TMK 7-4-008:063 from the Agricultural 1-acre (A-1a) district and Agricultural-5 acre (A-5a) district to the General Commercial - 10,000 square foot (CG-10) district. At the time, Lili'uokalani Trust (LT) proposed a 104,300-square foot commercial development for the subject property. According to a progress report dated June 16, 2023, LT continues to consider potential development opportunities for the property.

Ordinance 01-06, effective on January 25, 2001, rezoned a portion of TMK 7-4-008:001 from the Agricultural 1-acre (A-1a) district to the Residential Commercial Mixed Use (RCX-2) district. Subsequently, LT was granted approval for a proposed subdivision (SUB-06-000419), to subdivide out a 23.339-acre portion of TMK 7-4-008:001, identified as TMK 7-4-008:080. On September 27, 2010, LT obtained an administrative time extension, until January 25, 2021, to Condition D (Secure Final Subdivision Approval) of Ordinance 01-06. LT submitted a request for a time extension to Ordinance 01-06 on April 7, 2022, and the Planning Department requested additional information prior to accepting the application. According to the most recent annual report for Ordinance 01-06, dated January 25, 2023, LT is currently working on archeological studies and updated plans and continues to consider potential development opportunities for the property. As requested by the Planning Department, once the updated studies and plans have been completed, LT notes that they will continue with the requested time extension.

Subdivision No. 7058, approved on December 4, 1998, subdivided out a 1.598-acre portion of TMK 7-4-008:001, which was identified as 7-4-008:066. The property was subsequently sold to Hawai'i Electric Light Company for its use as a substation site, now in operation as Palani Substation.

2. (3) 7-5-003:007, 008, 009 (formerly (3) 7-5-003:006, 007) – SCD Kona 108 LLC; (3) 7-5-003:029 – Nicholson LLC; (3) 7-5-003:030-033 – PS Investments LLC (all formerly owned by Hawaiian Development Corporation)

Ordinance 98-129, effective on December 7, 1998, rezoned a 17.06-acre portion of TMK 7-5-003:006 from an Agricultural 5-acre (A-5a) zoning district to a General Commercial-20,000 square feet (CG-20) zoning district. Subdivision No. 02-000023, approved on June 24, 2003, subdivided out 6 separate lots from the original TMK 7-5-003:006, ranging in size from 13.153 acres to 20,265-square feet. The 13.153-acre property, identified as TMK 7-5-003:006, was sold to Lowe's HIW Inc. for the construction of a Lowe's Home Improvement Warehouse. On February 15, 2001, the Planning Department granted Final Plan Approval for the development of a commercial warehouse and related improvements and construction was completed in 2003. Through the subdivision process, TMK's 7-5-003:007, 008 and 009 were created, currently owned by SCD Kona 108 LLC (SCD) and TMK's 7-5-003:029-033 were created, currently owned by Nicholson LLC and PS Investments LLC.

Ordinance 06-152, effective on December 13, 2006, rezoned 10.829 acres (TMK 7-5-003:007) from an Agricultural 5-acre (A-5a) zoning district to a Multiple-Family Residential 3,500-square feet (RM-3.5) zoning district and rezoned 97.347 acres (TMK's 7-5-003:008 and 009) from an Agricultural 5-acre (A-5a) zoning district to a Residential and Agricultural 1-acre (RA-1a) zoning district. SCD's request at the time included 57 units of residential agricultural lots for the RA-1a zoned land and 16 units

of affordable housing plus a Salvation Army complex to include a church, preschool, and related uses for the RM-3.5 zoned land.

On April 25, 2023, Subdivision No. 16-001680 was approved to separate out the RM-3.5 zoned parcel (TMK 7-5-003-007), from the two larger parcels zoned RA-1a (TMK 7-5-003:008 and 009). In an annual progress report dated September 3, 2022, SCD reported they intended to convey the RM-3.5 zoned parcel (TMK 7-5-003:007) to the Ahe Group, a developer that specializes in affordable housing. Ahe Group proposes to develop a 100-unit multi-family, 100% affordable housing project and has submitted a 201H application that is currently under review by the County of Hawai'i. According to SCD, as long as additional water credits are available, they currently intend to develop 97 units of single-family housing on the RA-1a zoned parcels and they will submit a request to amend Ordinance 06-152, to request amendments as necessary and an extension of time for performance of timed conditions. An extension of time for performance of timed conditions for Ordinance 06-152 will also be required in order for Nicholson LLC and PS Investments LLC to develop TMK's 7-5-003:029-033 on the CG-zoned lands.

3. **(3) 7-8-010:029, 030 – Kamehameha Investment Corporation**

According to Kamehameha Investment Corporation (KIC), the above-referenced properties were a part of a much larger Keauhou master planned mixed use project that was originally conceived in the 1970s, consisting of residential, commercial, recreational and educational opportunities fully integrated into a resort-type setting, spanning over 2,000 acres and covering the entire ahupua'a of Kahalu'u, Keauhou 1st and 2nd, makai (west) of Kuakini Highway. On December 26, 2000, the County of Hawai'i Planning Commission issued Use Permit 183 (USE 183) and Special Management Area Use Permit No. 413 (SMA 413) for the development of a new 27-hole golf course, driving range, clubhouse, related maintenance support facilities, and associated improvements and infrastructure. According to a progress report dated November 29, 2023, KIC notes that while a substantial amount of archaeological work was completed for the subject property, they have not developed the golf course project set forth in SMA 143 and USE 183 and are currently analyzing and re-evaluating plans for the area. As such, the properties owned by KIC that are involved in the subject boundary amendment are undeveloped.

B. Condition Compliance

Following are the conditions imposed by the Land Use Commission and a brief report on landowners' efforts to comply with each stated condition:

1. *Provided that the land uses proposed generate the need for such facilities, Petitioner, developers and/or landowners of the affected properties, on an individual or collective basis, shall provide or cause to provide affordable housing opportunities*

for low, low-moderate, and gap group income residents of the State of Hawaii to the satisfaction of the County of Hawaii. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the developers and/or landowners and the County of Hawaii.

Petitioner has included conditions requiring compliance with Hawai'i County Code, Chapter 11, related to Affordable Housing Policy, as part of existing rezone ordinances for the affected properties and will continue to monitor compliance with these conditions.

As noted above, regarding TMK 7-5-003:007, the Ahe Group proposes to develop a 100-unit multi-family, 100% affordable housing project and has submitted a 201H application that is currently under review by the County of Hawai'i.

There are no current development efforts for affordable housing projects on the remaining properties affected by the subject boundary amendment. In a progress report dated September 29, 2023, KIC notes that while there are no development plans for their affected properties, if a proposed land use generates the need for affordable housing, KIC will comply with this condition.

2. *Provided that the land uses proposed generate the need for such facilities, Petitioner shall ensure that the developers and landowners of the affected properties and their successors and assigns contribute to the development, funding, and/or construction of public school facilities on a fair share basis as determined by and to the satisfaction of the State Department of Education. Petitioner shall ensure that a written agreement between the affected developers and/or landowners, their successors and assigns, and the Department of Education setting forth the contribution and timing of contributions is on-going as part of the County rezoning process and is fully executed prior to the County issuing any building permits.*

Petitioner acknowledges this requirement and will continue to monitor compliance with this condition.

3. *Provided that the land uses proposed generate the need for such facilities, Petitioner shall ensure that the developers and/or landowners of the affected properties participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a fair share basis, as determined by the County of Hawaii Department of Public Works (DPW) and the State Department of Health (DOH). Developer and/or landowner participation shall also be in compliance with conditions of approval of County zoning or determined prior to applying for county building permits if County rezoning is not required.*

Petitioner has included conditions in rezone ordinances for the affected properties that require either connection to the County sewer system or wastewater facilities approved by DOH and will continue to monitor compliance with these conditions.

4. *Petitioner shall ensure that the developers and/or landowners of the affected properties each submit for review by and receive approval from the State Department of Transportation (DOT) and the County of Hawaii DPW a Traffic Impact Analysis Report (TIAR), prior to the County approval of a rezoning application for each affected property or prior to applying for County building permits if rezoning is not required. The TIAR shall identify the traffic impacts attributable to the proposed development and recommend proposed mitigation measures. The report should also reflect the latest planning efforts for transportation (i.e., the conditions, assumptions, and findings for the upcoming Hawaii Land Transportation Plan). Based on an analysis of traffic related impacts, Petitioner shall ensure that the developers and/or landowners also participate, on a fair share basis, in the funding and construction of local and regional transportation improvements and programs, including dedication of rights-of-way as determined by the State DOT and the County of Hawaii DPW.*

Petitioner has included conditions requiring the submittal of a Traffic Impact Analysis Report (TIAR) and transportation improvements and/or fair share contributions for local and regional transportation improvements and programs as part of existing rezone ordinances for the affected properties and will continue to monitor compliance with these conditions.

Regarding properties owned by Lili'uokalani Trust (LT), there are two existing rezone ordinances, Ordinance 99-96 and Ordinance 01-06, that require traffic studies and/or fair share contributions for funding and construction of local and regional transportation improvements and programs. As part of LT's application to rezone TMK 7-4-008:063, approved as Ordinance 99-96, a TIAR for the proposed development was conducted by Wilbur Smith Associates. Regarding TMK 7-4-008:080, Ordinance 01-06 states that the applicant shall submit a TIAR within one year of final subdivision approval, as required by condition F, and shall participate in fair share contributions to fund construction of local and regional improvements and programs, as required by Condition E.

Regarding properties owned by SCD, including the RM-3.5 zoned parcel that will be conveyed to the Ahe Group, rezone Ordinance 06-152 requires compliance with fair share contributions for each single-family and multi-family residential unit to support road and traffic improvements. A TIAR dated October 11, 2004 was submitted as part of the original rezone application and the applicant will need to submit an updated TIAR as part of future amendment requests, if required by the County of Hawai'i Planning Department.

Regarding properties owned by KIC, a required TIAR will be submitted prior to any future request for a rezone or other development that may require a traffic study. KIC also notes that they dedicated a portion of TMK 7-8-010:030, located west of the affected properties, to the county to facilitate construction of the Ali'i Drive Extension, as approved by the Planning Department of November 16, 2012.

5. *Petitioner shall ensure that the developers and/ or landowners of the affected properties, on a fair share basis, fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies as part of the development of the affected properties.*

County Civil Defense is typically consulted on rezone applications that may affect their operations and section 25-2-46 (Concurrency Requirements) of the Hawai'i County Zoning Code require developers of residential, commercial and industrial uses to provide a civil defense siren in areas currently lacking coverage. The Petitioner will continue to monitor compliance with this requirement.

6. *The findings of the archaeological inventory surveys prepared by the developers and/ or landowners of each affected property shall be submitted to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) in report format for adequacy review. Prior to making a decision on the County rezoning or permit application for each property, the County agency shall receive in writing from SHPD verification that the survey report is acceptable, that significance evaluations are acceptable, and that the mitigation commitments are acceptable.*

Regarding properties owned by LT, The Department of Land and Natural Resources, State Historic Preservation Division (SHPD) approved the Archaeological Inventory Survey submitted as part of the rezone application that was approved as Ordinance 99-96. Additionally, Condition O of Ordinance 01-06 requires the applicant to submit an Archeological Data Recovery Plan for five significant sites on the subject property to SHPD for its review and approval. In a progress report dated September 18, 2023, LT reports that they are currently preparing an updated Archeological Inventory Survey and will submit it for review with a request for a time extension for Ordinance 01-06.

Regarding properties owned by SCD, an Archeological Inventory Survey was conducted in 1992 and approved by SHPD as part of the application for a rezone. Condition Z of Ordinance 06-152 requires the applicant to submit an Archeological Data Recovery and Preservation Plan to SHPD for review and approval. The Petitioner will continue to monitor compliance with this condition.

Regarding properties owned by KIC, as part of the applications for Use Permit 183 (USE 183) and Special Management Area Use Permit No. 413 (SMA 413), an archeological inventory survey was conducted, which found a total of 67 sites. A subsequent mitigation plan was prepared for these sites, which was approved by SHPD. According to a progress report dated September 29, 2023, KIC submitted a mitigation plan to SHPD for the TMKs 7-8-010:006, 022, 029, 030, and 050, which include portions of the petition area. The mitigation plan included data recovery, monitoring, burial treatment and long-term preservation and interpretation. SHPD reviewed and accepted the data recovery and monitoring plans on April 13, 2005. KIC notes that a burial treatment plan was submitted separately to the Hawai'i Island Burial Council for their review, however the burial sites are located outside of the properties affected by the subject boundary amendment.

7. *If significant historic sites, including trails and railroad right-of-ways, are present, the developers and/ or landowners of each affected property shall submit a detailed historic preservation mitigation plan for review by SHPD. This plan may include preservation and/or archaeological data recovery subplans (detailed scopes of work). SHPD must approve this plan before any land alteration can occur on the project area. SHPD must also verify in writing to the County agency approving the permit that the plan has been successfully executed, prior to any land alteration.*

SHPD review was required as part of the review process for all rezone applications, Use Permit applications and Special Management Area Use Permit applications on affected properties and will be required for any future rezone requests. The Petitioner will continue to monitor compliance with this condition.

8. *Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, the developers and/or landowners of the affected properties shall stop work in the immediate vicinity and SHPD shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from SHPD when it finds that mitigative measures have been implemented to their satisfaction.*

Petitioner included this requirement as a standard condition in rezone ordinances affecting the petition area, as well as the Use Permit and Special Management Area Use Permit issued to KIC for the affected properties and will continue to monitor compliance with this condition.

9. *Petitioner, developers and/or landowners of the affected properties shall notify all prospective buyers of the property of the potential odor, noise and dust pollution if there are any Agricultural District lands surrounding the affected properties.*

Petitioner acknowledges this requirement and will continue to monitor compliance with this condition.

10. *Petitioner, developers and/ or landowners of the affected properties shall notify all prospective buyers of property that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre- existing farm activities may be deemed a nuisance if there are any Agricultural District lands surrounding the affected properties.*

Petitioner acknowledges this requirement and will continue to monitor compliance with this condition.

11. *Provided that the land uses proposed generate the need for such facilities, Petitioner shall ensure that the developers and/ or landowners of the affected properties fund on a fair share basis, the design and construction of drainage improvements required as a result of the development of the affected properties to the satisfaction of the appropriate State and County agencies. Petitioner shall ensure that the developers and/ or landowners also participate, on a fair share basis, in other drainage improvement programs in the area as determined by the County of Hawaii DPW.*

Petitioner has included conditions requiring drainage improvements in compliance with Chapters 10 (Erosion and Sedimentation) and 27 (Flood Control) of the Hawai'i County Code as part of existing rezone ordinances for the affected properties and will continue to monitor compliance with these conditions.

12. *Petitioner shall ensure that the developers and/ or landowners participate on a fair share basis in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project(s). Water transmission facilities and improvements shall be coordinated and approved by appropriate State and County agencies. Petitioner shall transmit to the County of Hawaii DWS any changes in water demand forecasts and in water development plans to supply the proposed projects.*

The Department of Water Supply typically reviews rezone applications and landowners/developers are required to ensure there is water available for the proposed development. Petitioner has included conditions addressing water availability as part

of existing rezone ordinances for the affected properties and will continue to monitor compliance with these conditions.

13. *Petitioner shall timely provide without any prior notice, annual reports to the Land Use Commission and the Office of Planning, in connection with the status of the affected properties and the developers' and/or landowners' 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 submits this annual report in compliance with this condition and will continue to submit annual reports as required by Land Use Commission. In a letter dated June 29, 2005, the Petitioner requested that the Land Use Commission require annual reports directly from the successor landowners, rather than the Petitioner.

14. *The Commission may fully or partially release these conditions provided herein as to all or any portion of the affected properties upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the developers and/ or landowners of the affected properties.*

Petitioner acknowledges this condition and does not intend to file such a motion at this time.

15. *Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the State Bureau of Conveyances a statement that the properties are subject to conditions imposed by the Commission in the reclassification of the affected properties; and (b) file a copy of such recorded statement with the Commission.*

Per letter dated June 26, 1998, the required notice was sent to the State Bureau of Conveyances and the Land Use Commission.

16. *Petitioner shall ensure that the conditions imposed herein by the Commission are recorded with the Bureau of Conveyances pursuant to Section 15- 15- 92, Hawaii Administrative Rules.*

As reported previously, the conditions imposed were recorded with the State Bureau of Conveyances by the affected landowners.

17. *Petitioner, landowner/developer, their successors and assigns shall ensure that development of the reclassified area is in substantial compliance with the*

representations made before the Land Use Commission. Failure of Petitioner, landowner/ developer, their successors and assigns to ensure substantial compliance may result in reversion of the reclassified area to its former land use classification, or change to a more appropriate classification.

Petitioner will ensure that the conditions are complied with in development of the affected properties.

18. *Petitioner, landowner/developer, their successors and assigns 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 reclassified area prior to the visible commencement of construction.*

Petitioner acknowledges this requirement and will ensure that landowners comply with this condition.

If you have any questions, please feel free to contact Jessica Andrews at (808) 961-8155.

Sincerely,

Zendo Kern
Zendo Kern (Jan 2, 2024 10:19 HST)

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Planning Director

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