



**2023
STATUS OF THE PROJECT**

PROGRESS IN COMPLYING WITH LUC CONDITIONS OF THE DECISION AND ORDER

1. "The developer and/or landowner of the Property shall fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies."

W.H. Shipman, Limited (WHS) Response: In a letter dated September 24, 2004, the County Civil Defense Agency confirmed to WHS that approved shelter facilities have been established at Kea`au Elementary School and Kea`au High School. To the extent that additional civil defense measures may be required in the future, WHS will continue to work with Civil Defense agencies.

2. "The developer and/or landowner of the Property shall contribute to the development, funding and/or construction of school facilities, on a pro-rata basis, as determined by and to the satisfaction of the Department of Education (DOE). Agreement by DOE on the level of funding and participation shall be obtained prior to the developer and/or landowner applying for County zoning or prior to the developer and/or landowner applying for County building permits if County rezoning is not required."

WHS Response: This condition has been satisfied. On September 27, 2004, the Department of Education confirmed to the LUC that this condition had been satisfied by the donation of 15.399 acres for the construction of the Kea`au Elementary School, which has been completed.

3. "The developer and/or landowner of the Property shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a pro-rata basis, as determined by the State Department of Health and the County Department of Public Works."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

4. "The developer and/or landowner of the Property shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii to the satisfaction of the State Housing and Finance Development Corporation (HFDC) in accordance with the Affordable Housing Guidelines, adopted by the Housing and Finance Development Corporation, effective July 1, 1992, as periodically amended. 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 developer and/or landowner of the subject Property and the State Housing and Finance Development Corporation and the County of Hawaii. Agreement by the HFDC on the provision of affordable housing shall be obtained prior to the developer and/or landowner applying for County zoning or prior to the developer and/or landowner applying for County building permits if County rezoning is not required."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

5. "The developer and/or landowner of the Property shall have an archaeological inventory survey conducted by a professional archaeologist prior to submitting an application to the County of Hawaii for rezoning or prior to applying for a building permit if county rezoning is not required. The findings shall be submitted to the State Historic Preservation Division, Department of Land and Natural Resources ("HPD-DLNR") in report format for adequacy review. The HPD-DLNR must verify that the survey report is acceptable, must approve significance evaluations, and must approve mitigation commitments for significant historic sites prior to the landowner and/or developer submitting an application to the county for rezoning or prior to applying for a building permit if county rezoning is not required."

WHS Response: Paul H. Rosendahl, Inc. prepared an historical and archeological report for the 32 acres in Parcel D. No significant findings were discovered as the land had been in sugar cane for decades and is currently in papaya on an interim basis. The State Department of Land and Natural Resources- Historic Preservation District concurred with the report's finding in a letter dated June 16, 1999. Paul H. Rosendahl, Inc., conducted historical and archaeological research and a field inspection for the Keaau High School site, with a report submitted to the Historic Preservation Division, DLNR. Copies of DLNR's approval letter, dated August 12, 1997, were sent to DAGS and the Planning Department, County of Hawaii. Most recently, in April 2017, Scientific Consultant Services, Inc. prepared and submitted for State Historic Preservation Review a draft archaeological inventory survey (2017 AIS) for much of the petition areas east of the Belt Highway and which similarly concluded that no sites of significance requiring preservation remain due to the history of extensive sugar cane farming. Older structures in the vicinity have been documented for their past historic architectural styles. On February 12, 2018, SHPD approved the AIS and asked to be consulted prior to the issuance of permit applications for projects which may impact the historic integrity of architectural properties within the project area. WHS will comply with this request as project development occurs.

6. "If significant historic sites are present, then the developer and/or landowner of the Property shall agree to develop and execute a detailed historic preservation mitigation plan prior to any ground altering construction in the area. The HPD-DLNR must approve this plan, and must verify in writing to the Land Use Commission that the plan has been successfully executed."

WHS Response: The developer and/or landowner of the Property will abide by this condition. To date, no significant historic sites have been determined to exist which have required preservation plans or mitigation plans. As to structures which may have historic architectural styles, WHS will consult with SHPD on whether or not mitigation as to the historic integrity of those styles will be required.

7. "Should any human burials or any historic sites such as artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the developer and/or landowner of the Property shall stop work in the immediate vicinity and contact the HPD-DLNR. The significance of these finds shall then be determined and approved by the HPD-DLNR, and an acceptable mitigation plan shall be approved by the HPD-DLNR (if needed). The HPD-DLNR must verify that the fieldwork portion of the mitigation plans has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under the specific provisions of Chapter 6E, HRS."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

8. "The developer and/or landowner of the Property shall conduct a flora and fauna survey and prepare and agree to execute a mitigation plan which meets the requirements of the Department of Land and Natural Resources. The Department of Land and Natural Resources must approve the plan and a copy of the approved plan must be submitted to the Land Use Commission prior to the developer and/or landowner applying for county zoning or prior to the developer and/or landowner applying for county building permits if county rezoning is not required."

WHS Response: DLNR Division of Forestry (DOFAW) has previously commented that the entire 660 acres comprising the subject LUC reclassification thereby including the zoning application land concludes that "...vegetation at the project site (660 acres including the Gateway project area) does not require protection other than standard procedures consistent with good soil and water conservation practices. Accordingly, no mitigation measures are needed for these resources."

With regard to fauna, DOFAW stated that "...the Hawaiian hawk is the only endangered species likely to be encountered at the project site (660 acres). In the event nesting hawks are encountered during clearing or construction phases of the project DOFAW proposes standard mitigation procedures are."

In a more recent draft flora and fauna survey conducted for much of the petition areas south of the Belt Highway conducted in 2016, Ron Terry of Geometrician Associates, LLC reported that no threatened or endangered plant species as listed by the U. S. Fish and Wildlife Service (USFWS) appear to be present on the Project Area, nor are there uniquely valuable habitats. No existing or proposed federally designated critical habitat is present on or near the Project Area.

As to fauna, only common non-native species of birds were observed during the site survey. However, it was noted that the migratory resident Golden Plover (*Pluvialis fulva*) may be expected to be at least occasionally present, as it frequently rests and forages on pastures and open fields throughout the State of Hawai'i during its migratory residence from August to April. Geometrician Associates, LLC, also reported that the area is can be expected to be utilized by the endemic Hawaiian

Hawk (*Buteo solitarius*). The endangered Hawaiian Hawk is widespread, hunting throughout forested, agricultural and even residential areas of the island of Hawai'i. It nests in large trees and can be vulnerable during the summer nesting season. Aside from the hawk, it is considered unlikely that native forest birds would make much use of the Project Area because of its relatively low elevation and lack of native plants. It is possible that small numbers of the endangered endemic Hawaiian Petrel (*Pterodroma sandwichensis*) and the threatened Newell's Shearwater (*Puffinus auricularis newelli*) over-fly the Project Area between the months of May and November. The Hawaiian Petrel was formerly common on the Island of Hawai'i. This pelagic seabird reportedly nested in large numbers on the slopes of Mauna Loa and in the saddle area between Mauna Loa and Mauna Kea, as well as at the mid-to-high elevations of Hualālai. Hawaiian Petrels were first listed as an endangered species by the USFWS in 1967 and by the State of Hawai'i in 1973. Newell's Shearwaters were also once common on the Island of Hawai'i. Geometrician Associates also considered it likely that Hawaiian Hoary Bats (*Lasiurus cinereus semotus*), the only native Hawaiian land mammals, are sometimes present on the Project Area. They have been found throughout Puna and in most areas on the island of Hawai'i. Bats may forage for flying insects on the Project Area on a seasonal basis and may also roost in trees and large shrubs. Geometrician Associates, LLC offered the following recommendations in order to avoid impacts to endangered but widespread native birds and the Hawaiian hoary bat that maybe found on site:

- To minimize impacts to the endangered Hawaiian hoary bat, trees taller than 15 feet should not be removed or trimmed during the bat birthing and pup rearing season (June 1 through September 15), to the extent practical.
- To minimize impacts to Hawaiian Hawks, avoid earthmoving within 100 meters of tall trees or tree cutting during the breeding season for Hawaiian Hawks (March through the end of September). If this time period cannot be avoided, arrange for a hawk nest search to be conducted by a University of Hawai'i at Hilo biologist or other qualified biologist. If hawk nests are present in or near the Project Area, all land clearing activity should cease until the expiration of the breeding season.
- If development activities incorporate outdoor lighting, they may attract endangered Hawaiian Petrels and Newell's Shearwaters, which may become disoriented by the lighting. To avoid the potential downing of Hawaiian Petrels and Newell's Shearwaters by their interaction with outdoor lighting, there should be no construction or unshielded equipment maintenance lighting after dark between the months of April and October. All permanent lighting should be shielded in strict conformance with the Hawai'i County Outdoor Lighting Ordinance (Hawai'i County Code Chapter 9, Article 14), which requires shielding of exterior lights so as to lower the ambient glare caused by unshielded lighting.

The landowner or developer will submit the recommended mitigation measures to the Department of Land and Natural Resources (DLNR) for review of recommended mitigation measures and submit the approved plan to the LUC prior to applying for County zoning amendments or building permits, if such zoning is not required.

9. "The developer and/or landowner of the Property shall prepare a Traffic Impact Analysis Report prior to applying for County zoning or prior to the developer and/or landowner applying for County building permits if County rezoning is not required. The landowner and/or developer shall also participate in the funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation and the County Department of Public Works. Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to the developer and/or landowner applying for County zoning or prior to the developer and/or landowner applying for County building permits if County rezoning is not required."

WHS Response: This condition has been partially satisfied. By letter dated November 26, 1997, the State Department of Transportation considered the donation by WHS property needed for the Kea`au Bypass Road as fulfilling the requirement for participation on regional transportation improvements. The now completed Bypass Road has substantially improved regional traffic conditions. The developer and/or landowner of future rezoning of the Property will abide by this condition. The Traffic Impact Analysis Report was updated on June 15, 2022 for Area "A" and "B".

10. "The developer and/or landowner of the Property shall monitor the traffic attributable to the proposed project at on-site and off-site locations and shall undertake subsequent mitigative measures that may be reasonably required. These activities shall be coordinated with and approved by the State Department of Transportation."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

11. "The developer and/or landowner of the Property shall fund the design and construction of drainage improvements required as a result of the development of the property to the satisfaction of the appropriate State and County agencies."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

12. "The developer and/or landowner shall coordinate with the County of Hawaii and the State Department of Health regarding the establishment of appropriate systems to contain spills and prevent materials associated with industrial and commercial uses such as

petroleum products, chemical or other pollutants, from adversely affecting the groundwater resources of the area."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

13. "The developer and/or landowner of the Property shall participate in an air quality monitoring program as specified by the State Department of Health."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

14. "The developer and/or landowner of the Property shall cooperate with the State Department of Health and the County of Hawaii Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes, and the County's approved integrated solid waste management plans in accordance with a schedule and time frame satisfactory to the State Department of Health."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

15. "The developer and/or landowner of the Property shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic in the Property down to levels acceptable to the State Department of Health and the State Department of Transportation."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

16. "The developer and/or landowner of the Property shall notify all prospective buyers of Property of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District land."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

17. "The developer and/or landowner of the Property shall notify all prospective buyers of property that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which preexisting farming activities may be deemed a nuisance."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

18. "The Petitioner has represented that no golf courses will be developed within the Property by the developer and/or landowner. Any plans by the developer and/or landowner to include a golf course within the Property shall be subject to review and approval by the

Land Use Commission. The developer and/or landowner shall: (a) file an appropriate motion or petition, whichever is appropriate; (b) provide the necessary evidence to justify its proposed use; and (c) seek prior approval from the Commission for golf course use on the Property."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

19. "The developer and/or landowner of the Property shall develop the Property in substantial compliance with the representations made to the Land Use Commission. Failure to so develop the Property may result in reclassification of the Property to its former land use classification, or change to a more appropriate classification."

WHS Response: The developer and/or landowner of the Property will abide by this condition. The landowner and/or the developer of the Property will include plans which are in compliance with the representations made to the Land Use Commission.

20. "The developer and/or landowner of the Property shall promptly provide without any prior notice, annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and the developer's and/or landowner's progress in complying with the conditions imposed."

WHS Response: The developer and/or landowner of the Property will abide by this condition.

21. "The developer and/or landowner of the Property 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 the completion of the development of the Property."

WHS Response: The developer and/or landowner of the Property will continue to abide by this condition.

22. "The Land Use Commission may fully or partially release these conditions 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 developer and/or landowner of the Property."

23. "Within 7 days of the issuance of the Land Use Commission's Decision and Order for the subject reclassification, the Petitioner shall:

(a) record with the Bureau of Conveyances a Statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and

(b) file a copy of such recorded statement with the Commission."

WHS Response: The statement of Imposition of Conditions imposed by the Land Use Commission for the real property at Keaau, Hawaii, was filed with the Bureau of Conveyances Land Court System on July 22, 1994.

24. "The Petitioner shall record the conditions imposed by the Land Use Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR."

WHS Response: The Declaration of Conditions imposed by the Land Use Commission for the real property at Keaau, Hawaii, was recorded with the Bureau of Conveyances on August 11, 1994 as Document No. 94-133996, and filed on the same date with the Land Court as Document no. 2171696.