



February 18, 2025

Mr. Daniel E. Orodener
Executive Director
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Dear Mr. Orodener:

Re: **ANNUAL REPORT** for **2024** for the WAIKAPŪ COUNTRY TOWN (WCT) at 1670 Honoapi'ilani Highway Waikapū, Hawai'i on property identified as Tax Map Key Nos. (2) 3-6-004:003 (por); (2) 3-6-002:003 (por), (2) 3-6-004:006 and (2) 3-6-004:007 (por) (Docket No. A15-798)

On behalf of Waikapu Properties, LLC; MTP Land Partners, LLC; William F. Filios, Trustee of the William S. Filios Separate Property Trust dated April 3, 2000; and Waiale 905 Partners, LLC, the owners of the above-referenced properties, we are pleased to file the Annual Report for 2024 in support of the Waikapū Country Town ("WCT").

On February 26, 2018, the State Land Use Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order, and Certificate of Service. The Decision and Order reclassified the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District and from the State Land Use Agricultural District to the State Land Use Rural District. The Decision and Order was subject to thirty-two conditions. Condition No. 28 below, requires that an Annual Report be filed with the State Land Use Commission, the State Office of Planning, and the Maui Planning Department in accordance with the following:

Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, 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. The annual report shall consist of one original, one paper copy and one electronic copy and shall be due prior to or on the anniversary date of the approval of the Petition.

This Annual Report for 2024 is being filed in accordance with the above-referenced condition.

1670 Honoapi'ilani Hwy., Wailuku, HI 96793
albertboyce@gmail.com, 209-479-2896

Status of the Development of the Petition Area

The 2024 Annual Report provides a summary of the project's status since the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order on February 28, 2018. **The primary items completed in the calendar year 2024 to the present date are listed as items 15 through 32 below.**

Since the County of Maui's adoption of the project's community plan amendments and zoning ordinances, the Owners are initiating the following tasks to move the project towards development:

1. On December 16, 2019, Waikapu Properties, LLC filed a State Land Use Commission Special Permit application with the County of Maui's Department of Planning for the twelve-acre wastewater reclamation facility, which is proposed within the State Agricultural District.
2. On March 4, 2021, Waikapu Properties, LLC filed an Updated State Land Use Commission Special Permit application for the wastewater reclamation facility. The Updated Special Permit proposes an alternative wastewater treatment technology than the one proposed in the earlier application. This application is presently on hold, as the County of Maui, Department of Environmental Management, intends to develop a Central Maui Wastewater Reclamation Facility that will service the development and other neighboring existing and planned future projects. **The DEM published an Environmental Impact Statement Preparation Notice in 2023. Target date for start of construction is 2027 with completion in 2029.**
3. On July 2, 2021, the Petitioner filed a motion for modification of Condition 8(b) of Decision and Order Filed on February 26, 2018. On March 8, 2022, the Commission ordered that the Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, be amended to read as follows (**See Exhibit 1**):

*Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Petitioner shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memorandum of Agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the Project. **See item 26 below.***

4. On April 28, 2022, the Petitioner entered into a Public Private Partnership Agreement (PPPA) with the County of Maui, whereas the WCT may provide additional Residential Workforce Housing Units (RWHUs) along with additional acreage for a school site in the Development in-lieu of monetary contributions for infrastructure improvements. The agreement will not become effective until certain conditions of the CIZ and DBA are amended to reflect the terms of the Agreement, including the use of RWHUs to satisfy infrastructure requirements (**See Exhibit 2**).
5. On July 19, 2022, the Petitioner filed a motion to amend conditions 1, 4, and 8(b) of the Decision and Order filed on February 26, 2018. The amendments will allow the Petitioner to increase the size of the school site as described in the Educational Contribution Agreement executed on

January 31, 2017, and to increase the number of Residential Workforce Housing Units to be provided in the project in lieu of providing direct funding and/or participating in the construction of: (1) traffic improvements; and (2) private or public wastewater facilities (**See Exhibit 3**). **See item 32 below.**

6. On November 3, 2022, the County of Maui, Department of Planning, initiated a Change in Zoning on behalf of the Petitioner requesting amendments to conditions of zoning of Ordinance No. 4998, Bill No. 45 (2019) relating to changes in zoning for the Waikapu Country Town District, and to Title 19, Maui County Code, relating to Waikapu Country Town District of Ordinance No. 4997, Bill No. 44 (2019), located at 1670 Honoapiilani Highway, Tax Map Keys (2) 3-6-002:003 (POR), (2) 3-6-004:003 (POR), (2) 3-6-004:006 (POR), (2) 3-6-005:007 (POR), and (2) 3-6-006:036, Waikapu, District of Wailuku, Island and County of Maui (**See Exhibit 4**). The purpose of the requests is to align WCT's conditions of zoning, County Zoning designations, and its zoning code with the PPPA.
7. On December 13, 2022, the Maui Planning Commission conducted a public hearing on the Planning Department initiated amendments to the above-referenced conditions of zoning, WCT zoning ordinance, and community plan map. The Planning Commission voted unanimously to recommend approval of the subject amendments to the Maui County Council.
8. The National Park Service (NPS) recently received and accepted HAER documents for WSCo Reservoir No. 1 (HAER HI-161) and the Waihee Ditch (HAER HI-162).
9. The Petitioner prepared a Reconnaissance Level Survey Report and Historic Context Study for proposed impacts to the Waihee Ditch and Reservoir No. 1 (SIHP # 50-50-04-07881 Feature 3) as requested by the SHPD. **See item 24 below.**
10. Compliance with the conditions of the Commission's Decision and Order.
11. Compliance with the conditions of zoning.
12. Preparation of engineering plans and supporting documentation for approval of the backbone infrastructure, including: water source and transmission systems, wastewater treatment and transmission systems; off-site roadway improvements; and utilities. **See item 19 below.**
13. Preparation of Neighborhood Plans for County Neighborhood Plan Approval. **See item 19 below.**
14. Preparation of Preliminary Subdivision applications. **See items 29 - 31 below.**
15. **Engineering has been completed on the potable water wells and storage tank required for WCT. A "New Potable Public Water System" application was submitted to the State Department of Health, Safe Drinking Water Branch in 2024 and is currently being reviewed on an expedited basis.**
16. **An HOA is ready to be finalized and formed in 2025. A Declaration of CC&R's and a Declaration of Covenants is ready to sign and record.**
17. **A Conservation Easement or similar restrictive covenant will be put in place in 2025 for the Permanent Agricultural acreage in WCT. Work on this topic began in 2023.**
18. **A Low Income Housing Tax Credit application was submitted to the State in 2023, was submitted again in February, 2024, and was just submitted again for 212 rental units of Affordable Housing in WCT. "Aikanaha Residences".**
19. **System Master Plans for all utilities were prepared by Warren Unemori Engineering and improvement plans for the Phase 1 development of WCT will be finalized for submittal to the County of Maui in March, 2025.**
20. **Further Geotechnical testing was completed in 2023.**
21. **The Land Use Designation for the Makai TMK of WCT was processed by The County of Maui Planning Department in 2023 and approved in February, 2024.**

22. Initial Public Park design and proposed grading was completed in 2023, revised in 2024 and WCT is now finalizing a Park Dedication Agreement with the County of Maui. County Council approval of said agreement is anticipated in summer, 2025.
23. An Archaeological Monitoring Plan (AMP) was submitted to SHPD and approved in 2024.
24. A Reconnaissance Level Survey Report was submitted to SHPD and approved in 2024.
25. An Archaeological Preservation Plan was submitted to SHPD and approved in 2024.
26. A draft Traffic Memorandum of Understanding was submitted to the Department of Transportation in January, 2025.
27. Revised pump capacity permits for the two potable water wells to serve WCT were submitted to CWRM in 2024 and are scheduled for approval in March, 2025 at their monthly meeting.
28. The Department of Transportation signed off on a signalized intersection for the entrance of Maui Tropical Plantation and Honoapiilani Highway.
29. A subdivision application to create the WCT Neighborhood N1 Rural Subdivision was submitted to the County of Maui DSA in May, 2024.
30. A subdivision application to create the WCT N5 multifamily site ("Aikanaha Residences") was submitted to the County of Maui DSA in 2024 and received preliminary approval in January, 2025.
31. A subdivision application to create the WCT N4 single family subdivision received preliminary approval from the County of Maui DSA in March, 2023.
32. Negotiations are currently underway with the state Department of Education (Hawaii Schools Facilities Authority) regarding an expanded school site in WCT to accommodate a "New Central Maui School Development".

Status of Compliance with Conditions Imposed by the Decision and Order

The following documents the Owners compliance with the remaining thirty-two conditions.

DOCKET NO. A15-798 CONDITIONS

Condition No. 1	<u>Education Contribution Agreement</u> . Petitioner shall contribute to the development, funding, and/or construction of school facilities in compliance with the Educational Contribution Agreement for Waikapū Country Town undated but executed as of January 31, 2017 entered into by Petitioner and the DOE. Petitioner shall ensure that prospective buyers, purchasers, and subsequent owner builders of lots are given notice of the requirement to pay the Central Maui District Impact Fee in accordance with the Educational Contribution Agreement. Such notice shall be recorded and shall run with the land.
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Petitioner Response: The Petitioner and the DOE entered into an Educational Contribution Agreement for Waiakpū Country Town on January 31, 2017 (**See Exhibit 5**). On July 19, 2022, the Petitioner filed a motion to increase the size of the school site to align the agreement with the provisions of a Public Private Partnership Agreement entered into between the Petitioner the County of Maui (**See Exhibit 3**). **See item 32 above.**

Petitioner understands that prospective buyers, purchasers, and subsequent owner builders of lots shall be given notice of the requirement to pay the Central Maui District Impact Fee in accordance with the Educational Contribution Agreement. Such notice will be recorded and will run with the land.

Condition No. 2	<u>Storm Water Management and Drainage</u> . Petitioner shall maintain existing drainage patterns and shall implement applicable Best Management Practices a) to minimize infiltration and runoff from construction and vehicle operations, b) to reduce or eliminate the potential for soil erosion and groundwater pollution, and c) to formulate dust control measures to be implemented during and after the construction process in accordance with Department of Health guidelines and County of Maui ordinances and rules. The Best Management Practices shall include a program for the maintenance of drainage swales within the Project Area.
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Petitioner Response: The Petitioner's Storm Water Management and Drainage Plan will address infiltration and runoff, soil erosion and runoff, and dust in accordance with the requirements of Condition No. 2, the Department of Health's guidelines, and the County of Maui's ordinances and rules. The Petitioner's Best Management Practices (BMP's) will include a program for the maintenance of the drainage swales within the project area.

Condition No. 3	<u>Residential Workforce Housing</u> . Petitioner shall design and construct the Project, and provide residential workforce housing opportunities in accordance with the County of Maui's residential workforce housing requirements.
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Petitioner Response: The Petitioner filed a draft Residential Workforce Housing agreement with the County Department of Housing and Human Concerns in November 2021. **See item 18 above.**

Condition No. 4	<u>Wastewater</u> . Petitioner shall participate in the funding and/or construction of
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	adequate private or public wastewater source, storage, and transmission facilities to accommodate the proposed uses for each portion of the Petition Area. The private wastewater source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui. If applicable, the public wastewater source, storage, and transmission facilities shall be controlled or operated by the County of Maui. If the private wastewater source, storage, and transmission facilities are located outside the Petition Area and within the State and County agricultural districts, Petitioner shall apply for a State Special Permit in accordance with the provisions of HRS Chapter 205. If Petitioner participates in a regional wastewater system which is controlled or operated by the County of Maui, Petitioner may request to be released from this condition applicable to private wastewater source, storage and transmission facilities.
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Petitioner Response: The Petitioner understands the scope of the above-referenced condition. The Petitioner initially intended to develop private wastewater source, storage, and transmission facilities in accordance with the applicable State and County requirements. In accordance with the condition, the Petitioner filed an updated HRS Chapter 205 State Special Permit for the proposed wastewater reclamation facility (WWRF) on March 4, 2021, to operate the WWRF within the State Agricultural District.

However, the Petitioner is aware and collaborating with the County regarding the planned development of a County controlled and operated regional wastewater system for Central Maui. The Petitioner understands that it may request to be released from this condition applicable to private wastewater source, storage, and transmission facilities should it participate in a public system.

In addition, on July 19, 2022, the Petitioner filed a motion to amend conditions 1, 4, and 8(b) of the Decision and Order filed on February 26, 2018. The amendments to Condition 4 will allow the Petitioners to increase the size of the school site and to increase the number of Residential Workforce Housing Units for the project in lieu of providing direct funding and/or participating in the construction of private or public wastewater facilities. The amendment seeks to align the above-referenced conditions with the provisions of a Public Private Partnership Agreement entered into between the Petitioner the County of Maui (See Exhibits 2 and 3). **See item 2 above.**

Condition No. 5	<u>Air Quality</u> . Petitioner shall participate in an air quality monitoring program if so required by the Department of Health.
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Petitioner Response: The Petitioner understands that it shall participate in an air quality monitoring program if so required by the Department of Health.

Condition No. 6	<u>Energy Conservation Measures</u> . 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 and development of the Petition Area. Petitioner also shall provide information to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners within the Project.
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Petitioner Response: The Petitioner intends to incorporate energy conservation measures into the design, construction, and development of the Waikapū Country Town. Information will be provided to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners within the project.

Condition No. 7	<u>Notification of Proximity to Kahului Airport.</u> Petitioner, and all subsequent owners, shall notify and disclose to all prospective developers, purchasers, and/or lessees within any portion of the Project, as part of any conveyance document (deed, lease, or agreement of sale, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from the Kahului Airport, such as noise, right of flight, emissions, vibrations and other incidences of aircraft operations.
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Petitioner Response: The Petitioner is aware of the above-referenced disclosure requirements of the potential adverse impacts of aircraft activity at and from the Kahului Airport. The disclosure requirements will be made part of any conveyance document required for the sale or transfer of real property or any interest in real property within any portion of the project.

Condition No. 8	<p><u>Transportation - Highways.</u></p> <p>a. Petitioner shall submit to the State Department of Transportation and the County of Maui for review and approval a supplemental analysis to evaluate the "No Waiale Bypass" with Petitioner's Project in 2022 (Phase I), due to the current memorandum/addendum limited only to build-out year 2026 (Phase II). Petitioner shall also submit copies to OP, Maui County Planning Department, and the Commission.</p> <p>b. Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Petitioner shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memorandum of Agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the Project.</p>
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Petitioner Response: The Petitioner partially fulfilled Condition No. 8a on July 10, 2018, by transmitting a supplemental analysis to evaluate the "No Waiale Bypass" scenario with Petitioner's Project in 2022 (Phase 1). As shown in Exhibit 6, the supplemental analysis was transmitted to the State Department of Transportation, the County's Department of Public Works, and the County's Department of Planning (**See Exhibits 6 and Exhibit 7**).

The Petitioner transmitted the No Waiale Bypass 2022 Analysis via USPS to the Office of Planning and the State Land Use Commission on January 30, 2020 to satisfy Condition No. 8a.

Petitioner acknowledges that it shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Petitioner understands that a Memoranda of Agreement will be executed prior to the approval of the first subdivision application to the County of Maui. The Petitioner is consulting with the State and County regarding its compliance with the above-referenced conditions. **See item 26 above.**

Condition No. 9	<u>Transportation- Regional Planning.</u> Petitioner shall continue to work with the County of Maui to develop a timetable for the construction of the Waiale Bypass and shall work with appropriate County of Maui and State of Hawai'i agencies, including the Metropolitan Planning Organization of the County of Maui, to develop a comprehensive traffic review of the Central Maui region.
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Petitioner Response: The Petitioner acknowledges that it will work with the County of Maui regarding the timing and construction of the Waiale Bypass in accordance with its pro-rata share requirements. In addition, the Petitioner will work with the applicable State and County agencies and the Metropolitan Planning Organization to develop a comprehensive review of the Central Maui region. The Petitioner is consulting with the State and County regarding its compliance with the above-referenced conditions.

Condition No. 10	<u>Transportation- Airports.</u> Petitioner shall work with the State Department of Transportation to minimize hazards to aircraft operations from Kahului Airport, including but not limited to impacts from wildlife attractants, photovoltaic glint and glare, electromagnetic radiation, aviation easements, notices of proposed construction or alteration, and prospective purchaser/owner liability and covenants. As deemed necessary by the State Department of Transportation to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupancy and any insect, pest or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, wastewater treatment facilities or associated settling ponds) serving the Project. Petitioner shall enter into a Memorandum of Agreement with State Department of Transportation before final subdivision approval of the initial phase of on-site development by Petitioner outlining measures to be taken by Petitioner to address impacts.
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Petitioner Response: The Petitioner understands the scope of the above-referenced condition, and will enter into a Memorandum of Agreement with the State Department of Transportation before final subdivision approval of the initial phase of on-site development by Petitioner outlining measures to be taken by Petitioner to address impacts to Kahului Airport aircraft operations from the project.

Condition No. 11	<u>Water Conservation Measures.</u> Petitioner shall implement water conservation measures and best management practices such as the use of indigenous plants to the extent practicable and as required by the County of Maui.
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Petitioner Response: The Petitioner acknowledges that it will implement water conservation measures and best management practices such as the use of indigenous plants to the extent practicable and as required by the County of Maui.

Condition No. 12	<p><u>Water System.</u> Petitioner shall participate in the funding and/or construction of adequate private or public water source, storage, and transmission facilities to accommodate the proposed uses for each phase of the Project. The private water source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui, with plans submitted for approval by the appropriate agency. In the event that Petitioner participates in a regional water system which is controlled or operated by the County of Maui, Petitioner may request the release of this condition applicable to a private water system.</p> <p>Additionally, Petitioner shall work with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapū aquifer.</p> <p>Further, Petitioner shall submit such information as may be requested by the County of Maui to reflect changes in water demand forecasts and to supply the proposed uses for the County of Maui's Water Use and Development Plan.</p>
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Petitioner Response: The Petitioner understands the scope of the above-referenced condition. The Petitioner intends to develop private water source, storage, and transmission facilities in accordance with the applicable State and County requirements. The Petitioner acknowledges that should it participate in a regional water system which is controlled or operated by the County of Maui, Petitioner may request to be released from this condition applicable to private water source, storage and transmission facilities.

In addition, the Petitioner acknowledges that it shall work with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapū aquifer. Further, the Petitioner understands that it shall submit such information as may be requested by the County of Maui to reflect changes in water demand forecasts and to supply the proposed uses for the County of Maui's Water Use and Development Plan. **See item 27 above.**

Condition No. 13	<p><u>Street Lights.</u> Petitioner shall use fully-shielded street lights within the Petition Area to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.</p>
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Petitioner Response: The Petitioner understands that fully-shielded street lights within the project area shall be installed to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.

Condition No. 14	<p><u>Sirens.</u> Petitioner shall fund and install three (3) civil defense warning sirens as specified by and in the locations identified by the State Department of Defense.</p>
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Petitioner Response: The Petitioner is aware that it must fund and install three civil defense warning sirens as specified by and in the locations identified by the State Department of Defense.

PROJECT SPECIFIC CONDITIONS

Condition No. 15	<u>Parks.</u> Petitioner shall comply with the park dedication requirements of the County of Maui.
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Applicant Response: The Petitioner is in the process of working with the County of Maui to formalize a Parks Dedication Agreement. **See item 22 above.**

Condition No. 16	<u>Established Gathering and Access Rights Protected.</u> Pursuant to Article XII, Section 7 of the Hawai'i State Constitution, Petitioner shall preserve and protect 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 practices or for access to other areas for such purposes.
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Petitioner Response. The Applicant is aware that pursuant to Article XII, Section 7 of the Hawai'i State Constitution, Petitioner shall preserve and protect 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 practices or for access to other areas for such purposes.

Condition No. 17	<u>Agriculture Easement.</u> Petitioner shall submit an executed copy of the conservation easement or relevant instrument for at least 800 acres of adjacent agricultural lands to the Commission. No dwelling or structure shall or may be used for a residence or residential use, including farm dwellings or farm worker housing, on the adjacent agricultural lands which are subject to the agricultural easement or conservation easement, and such easement shall include this restriction. If any development is proposed in the area made subject to the conservation easement or relevant instrument, SHPD shall be notified and shall make a determination on whether an archaeological inventory survey is to be provided by Petitioner for such area. The Commission shall also be notified of any proposed development within the conservation easement lands and any determination made by SHPD.
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Petitioner Response: **The Petitioner is creating a new entity that will govern and manage the Agriculture Easement. The subject land will be conveyed to the new entity with Deed Restriction language that matches the requirements of the LUC Condition(s). The proposed agreement with HILT was too costly for the WCT farming tenants.**

Condition No. 18	<u>Notification of Agricultural Use.</u> Petitioner, and all subsequent owners, shall notify and disclose to developers, purchasers, and/or lessees of the provisions of HRS Chapter 165, the Hawai'i Right to Farm Act. The notice and disclosure
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	<p>shall be a part of any conveyance document such as a deed, lease or agreement of sale.</p> <p>The notice and disclosure shall contain at least the following information: a) that the developers, purchasers and/or lessees 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; and b) that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands.</p> <p>For the purpose of this condition, the term "farming operations" shall have the same meaning as provided in HRS § 165-2.</p>
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Petitioner Response: The Petitioner acknowledges and understands the scope of its responsibilities to notify and disclose to developers, purchasers, and/or lessees of the provisions of HRS Chapter 165, the Hawai'i Right to Farm Act.

<p>Condition No. 19</p>	<p><u>Previously Unidentified Burials and Archaeological/Historic Sites.</u> In the event that historic or archaeological resources, including human skeletal remains, are found and/or 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 State Historic Preservation Division shall be contacted immediately as required by HRS Chapter 6E and its applicable rules. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referenced to in these Findings of Fact and Conclusions of Law 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 State Historic Preservation Division that mitigation measures have been implemented to its satisfaction.</p>
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to previously unidentified burials, archaeological, and historic sites.

<p>Condition No. 20</p>	<p>Archeological/Historic Sites. Petitioner shall provide the following prior to any ground disturbance, as agreed upon with SHPD's acceptance of the Petitioner's Archaeological Inventory Survey:</p> <ol style="list-style-type: none"> a. Archaeological monitoring, which shall include data recovery of archaeological and historic sites; b. If site 50-50-04-5197 is impacted by the Project, it will be further documented in consultation with SHPD; c. Archaeological monitoring shall be conducted for all ground disturbing
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	<p>activities, including the Na Wai 'Eha sand dune system area. An archaeological monitoring plan shall be developed and submitted for SHPD's review and acceptance prior to commencing Project work;</p> <p>d. If any development is proposed for the area to be dedicated to agriculture, SHPD shall be notified and SHPD will make a determination on whether an archaeological inventory survey is to be provided by Petitioner;</p> <p>e. Petitioner shall submit a preservation plan to SHPD for two (2) sites: the irrigation features (Site 50-50-04-7884) and the WWII bunker (Site 50-50-04-7883). The preservation plan shall be submitted to the SHPD for review and acceptance prior to the initiation of the Project. Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the SHPD. Petitioner shall confirm in writing to the Commission that the SHPD has found 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.</p>
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to archaeological monitoring and preservation of applicable lands within the project area. In addition, the Petitioner understands that if any development is proposed for the area to be dedicated to agriculture, SHPD shall be notified and SHPD will make a determination on whether an archaeological inventory survey is to be provided by Petitioner. In accordance with this condition, the Petitioner filed an HRS 6e submittal form to the State Historic Preservation Division for the WWRF. The Log in Number is 2019.02347. Through consultation with SHPD, it was determined that an AIS would be conducted for the WWRF site. The Petitioner filed the AIS with SHPD's HICRIS system using SHPD Log in Number 2020PR32511. The Petitioner, through its archaeologist Cultural Survey's Hawaii, filed a Monitoring Plan with the SHPD on August 28, 2019, which was logged in under SHPD Log in Number 2019.01953. The Petitioner also filed HAER documents for potential project impacts to Reservoir No. 1 (HAER No. HI-161) and the Waihee Ditch (HAER No. HI-162). In addition, through consultation with SHPD, the Petitioner prepared a Reconnaissance Level Survey and Historic Context Study, which its consultant, Mason Architects, filed with HICRIS on November 16, 2022. The Petitioner is preparing its Preservation Plan. **See items 23-25 above.**

<p>Condition No. 21</p>	<p><u>Archaeological/Archaeological Monitoring.</u> Petitioner shall employ archaeological monitors to ensure that all ground disturbances associated with mass grading of the Petition Area, and the trenching and excavation related to the installation of utilities, do not impact any subsurface cultural remains within the Petition Area. Petitioner shall submit an archaeological monitoring plan for ground disturbing activities within the Petition Area to the State Historic Preservation Division for its review and acceptance or approval. Acceptance or approval of the archaeological monitoring plan shall be a condition to performing any ground disturbing activities. Data obtained from the archaeological monitoring plan shall be provided to the State Historical Preservation Division upon the completion of the monitoring of the Project. In the event that Site 50-50-04-5197 is impacted by any ground disturbances, Petitioners shall document the site in accordance with the directions</p>
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	of the State Historic Preservation Division.
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to archaeological monitoring prior to mass grading of the project area. As noted, the Petitioner, through its archaeologist Cultural Survey’s Hawaii, filed a Monitoring Plan with the SHPD on August 28, 2019, which was logged in under SHPD Log in Number 2019.01953. **See items 23-25 above.**

Condition No. 22	<p><u>Cultural.</u> Petitioner shall consult with those persons known as Waikapū Stream south kuleana lo'i kalo farmers and Hui o Na Wai 'Eha to minimize the impacts on their traditional customary rights and practices from any development in the Petition Area.</p> <p>Additionally, Petitioner shall grant access easements over the appropriate portions of the Petition Area in favor of the owners of the Mahi-Puleloa parcels, identified as LCA 2944:3 to Ehunui (TMK (2) 3-6-005:010) and as Grant 1513 to Ehunui (TMK (2) 3-6-005:009) and in favor of the owners of the Kauihou parcels, identified as LCA 3340:1 (por.) to Nahau (TMK (2) 3-6-005:067), as LCA 3103 to Kalawaia (TMK (2) 3-6-005:014) and as LCA 3110:3.2 to Kuolaia (TMK (2) 3-6-005:066). Such easements will run with the land.</p>
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to consultation with the Waikapū Stream south kuleana lo'i kalo farmers and Hui o Na Wai 'Eha to minimize impacts to traditional customary rights and practices. The Petitioner is also aware of and understands the scope of the access easements in favor of the owners of the Mahi-Puleloa parcels. **An Integrated Natural -Cultural Resource Preservation and Management Plan is to be finalized in 2025. An access easement for Mahi-Puleloa is also expected to be finalized in 2025.**

Condition No. 23	<p><u>Endangered Species.</u> Petitioner shall implement the following procedures to avoid potential impacts to endangered species. Petitioner shall not clear dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area during the period from June 1 to September 15 of each year which is the time that the Hawaiian hoary bat may be carrying young and thus could be at risk from the clearing activities. Petitioner shall consult with the United States Fish & Wildlife Service to determine measures needed with regard to the endangered Blackburn's Sphinx Moth and shall implement such measures in connection with the development of the Petition Area.</p> <p>Additionally, for any nighttime work required during any construction within the Petition Area and Project Area, and for long term operation of any private wastewater treatment facility servicing the Project, exterior lighting shall be shielded so as to reduce the potential for interactions of nocturnally flying Hawaiian Petrels and Newell's Shearwaters with external lights and man-made structures.</p>
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to procedures to avoid potential impacts to endangered species. Petitioner shall consult with the United States Fish & Wildlife Service to determine measures needed with regard to the

endangered Blackburn's Sphinx Moth and will implement exterior lighting that is shielded to mitigate impacts to Hawaiian Petrels and Newell's Shearwaters.

Condition No. 24	<u>Development in Compliance with Maui Island Plan.</u> Petitioner shall develop the Project in substantial compliance with the Planned Growth Area Rationale and goals, objectives, policies and implementing actions described in the Maui Island Plan for the Project identified as the "Waikapū Tropical Plantation Town."
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Petitioner Response: The Petitioner understands that it will implement the Project in substantial compliance with the Planned Growth Area Rationale and goals, objectives, policies, and implementing actions described in the Maui Island Plan for the Project identified as the "Waikapū Tropical Plantation Town."

Condition No. 25	<u>Infrastructure Deadline.</u> Petitioner shall complete construction of the proposed backbone infrastructure, which consists of primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and storm water/drainage and other utility system improvements, within ten years from the date of the Decision and Order approving the Petition.
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Petitioner Response: The Petitioner understands that the Project's backbone infrastructure shall be completed within ten years from the date of the Decision and Order approving the Petition.

Condition No. 26	<u>Order to Show Cause.</u> If Petitioner fails to complete the construction of the proposed backbone infrastructure within ten (10) years from the date of the Decision and Order approving reclassification of the Petition Area, the Commission may issue and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use District Agricultural Classification or be changed to a more appropriate classification.
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Petitioner Response: The Petitioner acknowledges that the Commission may issue and serve upon Petitioner an Order to Show Cause to appear before the Commission if the construction of the proposed backbone infrastructure is not completed within ten years from the date of the Decision and Order approving reclassification of the Petition Area.

Condition No. 27	<u>Compliance With Representations to the Commission.</u> Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in these Findings of Fact, Conclusions of Law, and Decision and Order. Failure to so develop the Petition Area in accordance with such representations may result in reversion of the Petition Area to its former classification or a change to a more appropriate classification.
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Petitioner Response: The Petitioner acknowledges that the Project Area shall be developed within substantial compliance with the representations made to the Commission and that failure to do so may

result in the reversion of the Petition Area to its former classification or a change to a more appropriate classification.

Condition No. 28	<u>Annual Reports.</u> Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, 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. The annual report shall consist of one original, one paper copy and one electronic copy and shall be due prior to or on the anniversary date of the approval of the Petition.
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Petitioner Response: The Petitioner understands that annual reports to the Commission, State Office of Planning, and the County of Maui Planning Department shall be filed to document the status of the development of the Petition Area and Petitioner's progress in complying with the conditions of the approval.

This annual compliance report is being filed in fulfillment of this condition for February 2025.

Condition No. 29	<u>Release of Conditions.</u> The Commission may fully or partially release conditions provided herein as to all or any part of the Petition Area upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner or their permitted successors and/or assigns.
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Petitioner Response: The Petitioner understands that the Commission may fully or partially release conditions provided herein upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner or their permitted successors and/or assigns.

Condition No. 30	<u>Notice of Change of Ownership.</u> Petitioner shall provide notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area.
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Petitioner Response: The Petitioner understands that it shall provide notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area.

Condition No. 31	<u>Notice of Imposition of Conditions.</u> Petitioner shall (a) within seven (7) days of issuance of the Commission's Decision and Order reclassifying the Petition Area, record with the Bureau of Conveyances of the State of Hawai'i and/or the Office of the Assistant Registrar of the Land Court, a statement that the Petition Area is subject to the conditions imposed in this Decision and Order by the Commission and (b) promptly thereafter file a copy of such recorded statement with the Commission.
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Petitioner Response: Exhibit 8 is the Notice of Imposition of Conditions. Exhibits 9 and 10 are the Declaration of Conditions and the recorded document numbers for the Notice of Imposition and Recordation of Conditions (**See Exhibits 8, 9, and 10**).

Condition No. 32	<u>Recordation of Conditions</u> . Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances of the State of Hawai'i, and/or the Office of the Assistant Registrar of the Land Court, pursuant to HAR Section 15-15-92.
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Petitioner Response: The Imposition and Declaration of Conditions were recorded with the Bureau of Conveyances of the State of Hawai'i on December 20, 2019. The recorded document numbers are A-72930472 and A72930473 (See Exhibit 9 and Exhibit 10).

Thank you for your prompt review of this Annual Report filed for 2024. Should you have any questions, please contact me at (209) 479-2896 or e-mail at albertboyce@gmail.com.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Albert Boyce', with a stylized flourish extending to the right.

Albert Boyce

Attachment

cc: Mr. Michael Atherton

Mr. Jeff Ueoka, Esq.

Planning Director, County of Maui, Attention Kurt Wallenhaupt

Ms. Mary Alice Evans - State Office of Planning