

DOCKET NO. A03-738
GENTRY INVESTMENT
PROPERTIES

Motion for an Order Releasing Conditions 1
Through 22 in the Findings of Fact, Conclusions of
Law, and Decision and Order dated and filed on
January 2, 2004

STAFF
REPORT

ACTION MEETING
September 24, 2025



Daniel E. Orodener, Executive Officer
Submitted: September 19, 2025

TABLE OF CONTENTS

<u>Section No.</u>	<u>Page No.</u>
1. Explanation of the Proceeding	3
2. Background Information	3 - 4
3. Evidence and Analysis for Release of Conditions	4 - 17
4. OPSD Position	17
5. City and County Position	17- 18
6. Staff Recommendation	18

1. EXPLANATION OF PROCEEDING

The proceeding before the Land Use Commission (“Commission”) is to consider the Motion to Release Conditions 1 through 22 in the Findings of Fact, Conclusion of Law, and Decision and Order dated January 2, 2004, submitted by Gentry Investment Properties (“Petitioner”), on January 24, 2025, and supplemented by filings on August 6, 2025.

Hawai‘i Administrative Rules (“HAR”) §15-15-70(a) provides that “[a]ny party may make motions before, during, or after the close of a hearing.”

Pursuant to HAR §15-15-94, a petitioner who desires to have a modification or deletion of a condition that was imposed by the Commission, or a modification of the Commission’s order shall file a motion in accordance with HAR §15-15-70, including proper service and affidavits or declarations if the motion requires the consideration of facts not appearing in the record.

If good cause is shown, the Commission may modify or delete any of the conditions imposed or modify the Commission’s order (HAR §15-15-94(b)). “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission.

Pursuant to Hawai‘i Revised Statute (“HRS”) 205-4 Amendments to district boundaries involving land areas greater than fifteen acres. 91-10(5), the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

2. BACKGROUND INFORMATION

The proceeding before the Land Use Commission (“LUC”) is to hear a motion by Gentry Investment Properties (“Gentry” or “Petitioner”) to release all conditions of approval in the subject docket. The Petition involved the reclassification of approximately 282.614 acres of land from the State Land Use Agricultural District to the State Land Use Urban District at ‘Ewa, O‘ahu, State of Hawai‘i, TMK Nos. 9-1-010:007 and 9-1-069:005.

The DBA was granted on January 1, 2004, subject to 22 conditions (see [2004 Decision and Order](#)).

The Project’s Conceptual Master Plan included approximately 550 single-family detached units on approximately 93 acres, 675 cluster units on approximately 64 acres, and 640 multi-family units on approximately 32 acres, community facilities (a middle school, community recreation center complex, and two churches/daycare sites) on approximately 24 acres, an industrial/commercial complex on approximately 30 acres, parks on approximately 11.5 acres, open space for infrastructure/drainage on approximately 14 acres, and roadways on approximately 14.5 acres. (Finding of Fact (FOF) 43, 2004 Decision and Order)

Petitioner submitted annual reports covering the following years: [2008-2009](#), [2010-2011](#), [2012-2013](#), [2014-2018](#), [2019-2021](#), and [2022-2023](#). Reporting was not provided annually; often there were one or more years gaps in updating the Commission on Petitioner’s progress.

On January 24, 2025, the Petitioner filed a Motion for an Order Releasing Conditions 1 through 22 in the Findings of Fact, Conclusions of Law, and Decision and Order dated and filed on January 2, 2004, Memorandum in Support of Motion, Declaration of Quentin Machida, Exhibits 1 and 2, and Certificate of Service (“[Motion](#)”).

On April 14, 2025, Petitioner requested that the Commission [reschedule the hearing on its Motion](#) from May 7-8, 2025, to September 24-25, 2025. Petitioner requested additional time to provide additional information that had been requested by the City and County, Department of Planning and Permitting (“County” or “DPP”).

On August 6, 2025, Petitioner filed its Supplemental Memorandum in Support of Petitioner’s Motion, Declaration of Quentin Machida, and Exhibits 3 – 22, and a Certificate of Service (“[Supplemental Memorandum](#)”).

3. EVIDENCE AND ANALYSIS FOR RELEASE OF CONDITIONS¹

Petitioner represents that the development of the Petition Area, referenced as ‘Ewa Makai, was completed and fully built-out in 2020. The completed ‘Ewa Makai project consists of 1,634 (632 single family and 1,002 single family condominiums) residential units, a middle school, a community recreation center complex, a church, a site for a future City and County day care site, and approximately 9.6 acres of park space (Petitioner’s Motion, Memorandum in Support, pgs. 3-4)

¹ The links to Petitioner’s Motion and Supplemental Memo and the page numbers referenced are to the pdf page numbers. Navigation in these documents should be to the referenced pdf page number that is specific to the Condition and evidence presented.

Condition 1

Affordable Housing. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawai‘i to the satisfaction of the City and County of Honolulu. 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 Petitioner and the County.

Evidence Provided

Petitioner executed an Affordable Housing Agreement with the City and County on November 19, 2004 for ‘Ewa Makai (Motion Exhibit 1, Appendix 2 of the 2006-2007 Annual Report and Exhibit 1 of the 2022-2023 Annual Report and as part of [Appendix 2 of Exhibit 1, pgs 31-40](#)).

In 2007, the Affordable Housing Agreement was amended (Appendix 2 of the 2006-2007 Annual Report and [Appendix 2 of Exhibit 1, pgs 41-42](#)).

By letter, the City DPP acknowledged that the Petitioner had fulfilled its affordable housing requirements for ‘Ewa by Gentry/‘Ewa Makai (Appendix B of the 2019-2021 Annual Report and Petitioner’s Motion [Appendix 3 of Exhibit 1, pgs 47-49](#)).

Staff Analysis

The condition required Petitioner to provide affordable housing to the satisfaction and under such terms as were agreed upon with the City and County. The executed affordable housing agreement, its amendment, and the DPP’s written acknowledgement that the Petitioner had fulfilled its affordable housing requirement are adequate proof that the condition has been satisfied.

Condition 2

Public School Facilities. Petitioner shall contribute to the development, funding, and/or construction of school facilities, on a fair-share basis, as determined by and to the mutual satisfaction of Petitioner and the Department of Education. Terms of the contribution shall be agreed upon in writing by Petitioner and the Department of Education prior to obtaining County rezoning.

Evidence Provided

An Education Contribution Agreement for Gentry ‘Ewa Makai was executed on July 23, 2003 between Petitioner and the Department of Education for contribution of 18 acres for a public middle school (Petitioner’s Motion, [Appendix 4 of Exhibit 1, pgs 50-57](#)).

Land for a middle school was deeded to the State on December 7, 2010. The Warranty Deed (Appendix C of the 2014-2018 Annual Report and as Petitioner’s Motion, [Appendix 6 to Exhibit 1, pgs 72-79](#)).

Staff Analysis

The condition required Petitioner to provide for development of public school facilities as determined by and to the satisfaction of the Department of Education (“DOE”). The

executed Education Contribution Agreement with DOE and the Warranty Deed are adequate proof that the condition has been satisfied.

Condition 3

Wastewater Facilities. Petitioner shall fund and construct adequate wastewater transmission and disposal facilities, as determined by the City and County of Honolulu Department of Environmental Services and the State Department of Health.

Evidence Provided

Petitioner completed construction of a new sewer pump station to service homes, businesses, the middle school and other facilities in ‘Ewa Makai. Petitioner stated that they had funded and constructed wastewater collection and transmission facilities in accordance with requirements of DES. (Petitioner’s [Motion](#), Exhibit 1, pg 22)

[Exhibit 3:](#) Copy of the Department of Environmental Services' acceptance of the Ewa by Gentry 2 Wastewater Pump Station dated March 23, 2011.

[Exhibit 4:](#) Copy of the Department of Environmental Services' invoice dated September 17, 2020, and Gentry's payment dated October 16, 2020, for the Upgrades to ‘Ewa Gentry 1 Pump Station.

Staff Analysis

The condition required Petitioner to fund and construct adequate wastewater transmission and disposal facilities as determined by the County DES and State DOH. Petitioner has provided evidence that DES required wastewater pump stations had been funded, developed, and accepted ([Supplemental Motion](#), Exhibits 3 and 4), evidence supports release of this Condition.

Condition 4

Transportation. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development according to the regulatory scheme and factors covered by the City and County of Honolulu’s impact fee ordinance – Chapter 33A, Revised Ordinances of Honolulu, and as determined by the State Department of Transportation.

Evidence Provided

Petitioner has paid its pro rata share of ‘Ewa highway impact fees for units built in ‘Ewa Makai either through actual impact fee payments or through credits. Since October 30, 2002 (when Ordinance 02-52 went into effect) through December 31, 2021, Petitioner has paid a total of \$3,042,307.73 in impact fees to help pay for ‘Ewa highway improvements. In addition, Gentry has received 4 credits in the amount of \$1,641,384.00 (894 units) for the development of Kapolei Parkway. (Petitioner’s [Motion](#), Exhibit 1, pg. 22; [Supplemental Memo](#), Exhibits 5 and 6; and [Third Supplemental Memo](#) Exhibits 33-36).

Staff Analysis

The condition required Petitioner to be part of the funding and construction of local and regional transportation improvements per the County's impact fee ordinance and as determined by DOT. Petitioner has provided a list of transportation projects for the 'Ewa region dated 2003 ([Supplemental Motion](#), Exhibit 5), list of 'Ewa Makai public roadway dedications ([Supplemental Motion](#), Exhibit 6), and Highway Impact Fee Credits and payments ([Third Supplemental Memo](#) Exhibits 33-36).

Neither exhibit draws a direct line between relevant Revised Ordinance of Honolulu and the dollar amounts cited in Petitioner's Motion and Exhibits. The evidence on the record does not support the release of this portion of the condition at this time.

Condition 4 Cont. Petitioner shall undertake subsequent mitigative measures that may be required by the Department of Transportation or the City and County of Honolulu. The mitigative measures shall be coordinated with and approved by the Department of Transportation and the City and County of Honolulu, as appropriate.

Evidence Provided

Petitioner has undertaken mitigative measures that were required by the State Department of Transportation ("SDOT") or the City's Department of Planning and Permitting ("DPP"), Traffic Review Branch, such as the design of roadway layouts to enhance connectivity.

Staff Analysis

The condition required Petitioner to make mitigative measures as required by DOT and the County and, that those measures be taken in coordination and approval by DOT and the County. Petitioner has not provided evidence of the mitigative measures required and approved by DOT and DPP. The evidence on the record does not support the release of this portion of the condition at this time.

Condition 4 Cont. Petitioner in coordination with DOT shall provide briefing and update on regional and local traffic improvement projects to the 'Ewa community on a semi-annual basis in conjunction with this project.

Evidence Provided

Petitioner and/or DOT have periodically made presentations at the 'Ewa Neighborhood Board and at other community meetings to update the community on regional and local traffic improvements (Petitioner's [Motion](#), Exhibit 1, pg. 22).

Staff Analysis

The condition required Petitioner to coordinate with the State DOT and periodically make presentations to the community regarding regional and local traffic improvements.

Petitioner has not provided evidence that any such presentations have occurred. The evidence on the record does not support the release of this portion of the condition at this time.

Condition 5

Landscaped Building Setback. Petitioner shall provide a landscaped building setback (approximately 12 feet) along the Project's Fort Weaver Road frontage to provide flexibility in accommodating future transportation needs along the route and to buffer roadway noise.

Evidence Provided

Petitioner has provided a landscaped building setback of at least 12 feet along the Fort Weaver Road frontage (Petitioner's [Motion](#), Exhibit 1, pgs. 23-24). Petitioner provided official plat maps for 'Ewa Makai West and 'Ewa Makai East ([Supplemental Motion](#), Exhibit 7 and 8, pgs. 19-20).

Staff Analysis

The condition requires Petitioner to provide a landscaped building setback along Fort Weaver Road frontage. The supplied plat maps indicate an easement or setback present, however, they do not clearly show a landscaped building setback ([Supplemental Motion](#), Exhibit 7 and 8, pgs. 19-20).

In order to release this Condition, Petitioner could provide photographic evidence of the landscaped setbacks. The evidence on the record does not support the release of this portion of the condition at this time.

Condition 6

Archaeological Inventory Survey. 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, Petitioner, developers and/or landowners of the affected properties shall comply with all applicable statutory provisions of Chapter 6E, Hawai'i Revised Statutes, and administrative rules of the Department of Land and Natural Resources.

Evidence Provided

Petitioner states that no archaeological resources were encountered during development of the Project (Petitioner's [Motion](#), Exhibit 1, pg. 23). Petitioner supplements that with reference to its County-approved Final Environmental Impact Statement ([Supplemental Motion](#), Exhibit 9, pgs. 21-65)

Staff Analysis

The Petitioner has asserted that no archaeological resources were encountered during development. The Project has now completed buildout and therefore no additional impacts would be anticipated. The evidence on the record supports the release of the condition.

Condition 7

Historic Preservation Mitigation Plan. Petitioner shall coordinate and discuss with the Office of Hawaiian Affairs the incorporation of Hawaiian cultural elements such as trail alignments, if deemed appropriate, and the use of proper place names for the proposed development.

Evidence Provided

Petitioner indicates that discussions in 2010 with OHA in naming ‘Ewa Makai Middle School and the naming of a private community park in ‘Ewa by Gentry (Petitioner’s [Motion](#), Exhibit 1, pg 23; [Supplemental Memo](#), Exhibits 10 and 11, pgs. 66-70).

Staff Analysis

The condition requires coordination and discussion with OHA in order to incorporate Hawaiian cultural elements and proper place names for the proposed development. The Petitioner has provided several instances of their attempts to contact OHA to seek their input. However, there is no evidence on the record that OHA provided any input on naming of the school or any other elements of the development. As the development is fully built out there would appear to be no opportunities for this condition to be utilized, therefore it could be released.

Condition 8

Solid Waste Management Plan. Petitioner shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawai‘i Revised Statutes. Petitioner’s Solid Waste Management Plan shall be approved by the City and County of Honolulu Department of Environmental Service. The Plan shall address and encourage an awareness of the need to divert the maximum amount of waste material caused by developments away from the County’s landfills.

Evidence Provided

Petitioner states that it has followed responsible waste management practices in development of ‘Ewa Makai as required by the City’s solid waste management plan and disposed of construction debris at PVT landfill. Petitioner states that it attempted to minimize the amount of waste material caused by its development (Petitioner’s [Motion](#), Exhibit 1, pg. 23; Supplemental Memo, Exhibit 12, pgs. 71-83).

County Filing: [Exhibit B](#) is a copy of the 2019 Integrated Solid Waste Management Plan prepared by the County in accordance with the Integrated Solid Waste Management Act, Chapter 342G, Hawai‘i Revised Statutes.

Staff Analysis

The condition requires Petitioner to develop a Solid Waste Management Plan in conformance with State law, to be approved by the County’s DES. Petitioner has provided reference to its FEIS and the section which covers potential impacts on solid waste and potential mitigation responses. The Petitioner has not provided a Solid Waste Management Plan in conformance with State law and approved by the County. The Petitioner has not provided adequate evidence to support the release of this condition.

Note: The intent of this Condition was to incorporate efficient waste management and waste reduction strategies within the project area (2004 Decision and Order, FOF 124)

Condition 9

Air Quality Monitoring. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

Evidence Provided

Petitioner has worked with DOH to ensure fugitive dust from construction was controlled and air quality standards were complied with (Petitioner's [Motion](#), Exhibit 1, pg. 24; [Supplemental Memo](#), Exhibit 13, pgs. 84-124).

Staff Analysis

The condition requires Petitioner to participate in an air quality monitoring program as specified by DOH, LUC Staff understands that the intent of this Condition is to reduce air pollution during construction. The Project has now completed buildout and therefore no additional impacts would be anticipated. The evidence on the record supports the release of the condition.

Condition 10

Drainage Improvements. Petitioner, its successors, and assigns shall coordinate the design and construction of drainage improvements on the Property required as a result of the development of the Property to the satisfaction of Federal, State, and City agencies with the goal of executing an agreement on the interim and ultimate regional drainage plan as soon as possible. Petitioner, its successors and assigns shall participate in the planning and coordination of offsite improvements with all landowners and developers in the Kalo'i drainage basin, and other Federal, State, and City agencies.

Evidence Provided

Petitioner prepared drainage master plans for 'Ewa Makai East and 'Ewa West that have been approved by DPP. Petitioner represents that it participated in Kalo'i Gulch Regional Drainage discussions.

Petitioner's [Motion](#), Exhibit 2, pdf pgs. 116-118): Letters dated September 23, 2004, and October 26, 2006, from DPP accepting Petitioner's Drainage Master Plan

Staff Analysis

The condition required Petitioner to coordinate the design and construction of drainage improvements with Federal, State, and City agencies on the Property and participate in planning on offsite regional drainage improvements in the Kalo'i Gulch drainage basin. The County DPP reviewed and found acceptable Petitioner's drainage master plan.

However, there is nothing on the record from government agencies that drainage improvements identified in the master plan have in fact been constructed.

The Petitioner has not provided adequate evidence that the condition has been fully complied with and should not be released at this time.

Condition 11

Regional Drainage Solutions. Petitioner, its successors, and assigns, agrees to work with the City to implement interim and long-term regional drainage solutions as follows:

- 11a.** Petitioner shall submit an updated drainage master plan if required for the Property to the City for its review and approval prior to any subdivision approvals other than for minor matters, such as easements.

Evidence Provided

Petitioner prepared drainage master plans for ‘Ewa Makai East and ‘Ewa Makai West, both of which were approved by the City's Department of Planning and Permitting (Petitioner’s [Motion](#), Exhibit 1 pgs 116-118).

Staff Analysis

The condition requires the Petitioner to submit updated drainage master plan to the County. Submission and acceptance by the County of the ‘Ewa Makai drainage master plan provides adequate evidence that this condition has been complied with and should be released.

- 11b.** Drainage solutions for the Property shall be compatible with the drainage designs for other developments in the Kalo‘i drainage basin and shall conform to applicable Federal, State, and City laws, rules, regulations, and standards.

Evidence Provided

Petitioner participated in Kalo‘i Gulch Regional Drainage meetings held by the City's Department of Planning and Permitting. Petitioner states that drainage improvements called for in the drainage master plan for ‘Ewa Makai West were compatible with drainage designs for other developments within the Kalo‘i Gulch drainage basin and conformed to Federal, State, and County laws, rules, regulations, and standards.

Staff Analysis

The condition required that drainage solutions for the Property would be compatible with regional drainage designs in the Kalo‘i Gulch drainage basin. Submission and acceptance by the County of the ‘Ewa Makai drainage master plan provides adequate evidence that this condition has been complied with and should be released.

- 11c.** Drainage improvements for the Property shall be consistent with the policies and principles in the ‘Ewa Development Plan.

Evidence Provided

Drainage master plans for ‘Ewa Makai East and ‘Ewa Makai West were approved by the City's Department of Planning and Permitting and are in accordance with the ‘Ewa Development Plan (Petitioner’s [Motion](#), Exhibit 1 pgs 116-118).

Staff Analysis

The condition required the Petitioner's drainage improvements were consistent with the 'Ewa Development Plan. Submission and acceptance by the County of the 'Ewa Makai drainage master plan provides adequate evidence that this condition has been complied with and should be released.

- 11d.** Petitioner shall be responsible for maintaining previously constructed drainage improvements which limit channelized runoff to 2,500 cubic feet per second at the Property's southern boundary (specifically at the property boundary between Petitioner's Property and Haseko's property) for events up to a 100-year storm. Petitioner shall also take reasonable measures to minimize non-channelized flows from the Property by construction of berms, detention basins, or other appropriate methods. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.

Evidence Provided

The drainage master plan for 'Ewa Makai West took into account the requirements set forth in Condition 11.d. Petitioner developed and provided interim drainage solutions until a permanent drainage solution for the Project was implemented.

Staff Analysis

This condition required Petitioner to maintain previous drainage improvements to limit runoff to neighboring properties until long-range regional drainage improvements are in place. Submission and acceptance by the County of the 'Ewa Makai drainage master plan provides adequate evidence that this condition has been complied with and should be released.

- 11e.** Petitioner has or shall enter into a Letter Agreement with the Hawai'i Prince to mutually address the drainage issues as it pertains to the Hawai'i Prince Golf Course."

Evidence Provided

Petitioner entered into a letter agreement with Hawai'i Prince Hotel in 2003 which mutually addressed drainage issues (Petitioner's [Motion](#), Exhibit 1, pg. 25; [Supplemental Memo](#), Exhibit 14, pgs. 125-127).

Staff Analysis

The condition required Petitioner to enter into an agreement with the Hawai'i Prince Golf Course to address drainage issues. Petitioner provided a copy of an executed agreement between the parties dated July 16, 2003. Petitioner has provided adequate evidence to support the release of this portion of the condition.

Condition 12

Water Resources Allocation and Permits. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to

accommodate the proposed Project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

Evidence Provided

Petitioner has constructed water system improvements as required by the Honolulu Board of Water Supply (“BWS”) and paid water system facilities charges imposed by BWS (Petitioner’s [Motion](#), Exhibit 1, pg. 25).

Staff Analysis

The condition requires the Petitioner to fund and construct water source, storage, and transmission facilities and improvements for the Project. These improvements are to be coordinated and approved by appropriate State and County agencies.

The Petitioner has not provided evidence from appropriate State and County agencies to support the release of the condition, however, the City and County provided [Exhibit A](#). Exhibit A is a correspondence form DPP and BWS confirming that Petitioners have fulfilled Condition 12 because Petitioner has contributed to water facilities or paid water system facilities charges and completed the necessary project.

There is adequate evidence to support the release of this Condition.

Condition 13

Avigation and Noise Easement. Petitioner shall grant to the State of Hawai‘i an avigation (right of flight) and noise easement in a form prescribed by the State Department of Transportation of any portion of the Property subject to aircraft noise contours exceeding 55 Ldn.

Evidence Provided

Petitioner granted an avigation and noise easement for portions of the Property to the State of Hawai‘i. Evidence is provided in the following filings: Petitioner’s Motion, [Appendix 7 to Exhibit 1, pgs 80-96](#), Supplemental Memo, Exhibits 15 and 16, pgs. 128-143, and Exhibits 23-32.

Staff Analysis

The condition requires Petitioner to grant State DOT an avigation and noise easement for all portions of the Project that would be subject to aircraft noise over 55 Ldn. Petitioner has provided evidence of executed easement agreements with DOT. The evidence on the record supports the release of the condition.

Condition 14

Sound Attenuation. Petitioner shall not construct residential units within areas exposed to Honolulu International Airport and Naval Station Barbers Point noise levels of 65 Ldn or greater.

Evidence Provided

Petitioner states they have not constructed any units within areas exposed to noise levels of 65 Ldn or greater (Petitioner's [Motion](#), Exhibit 1, pg. 12; [Supplemental Memo](#), Exhibits 17-18, pgs. 144-145).

Staff Analysis

The condition required no construction of units within areas with noise levels of 65 Ldn or greater. The noise contour maps do not appear to show the 'Ewa Makai Petition Area to be within noise level contours of 65 Ldn or greater. The Petitioner has provided adequate evidence that the condition has been complied with and should be released.

Condition 15

Civil Defense Systems. Petitioner, developers and/or landowners of the Property shall fund and construct adequate solar powered civil defense systems as determined by the County and State Civil Defense agencies.

Evidence Provided

Petitioner funded and constructed a solar powered civil defense system that has been inspected and found acceptable by State Civil Defense (Petitioner's Motion, [Appendix 8 of Exhibit 1, pgs 97-99](#)).

Staff Analysis

The condition required funding and constructing a solar powered civil defense system as determined by the County and State Civil Defense agencies. The letter from the State Civil Defense finding the solar powered siren adequate after testing provides evidence that the condition has been met and can be released.

Condition 16

Energy Conservation Measures. Petitioner shall implement energy conservation measures such as the use of solar energy and solar heating and incorporate such measures into the Project.

Evidence Provided

Petitioner indicates several standard features they provide in all its new homes that reduce energy and water use (Petitioner's [Motion](#), Exhibit 1, pg. 26; [Supplemental Memo](#), Exhibit 20, pg. 149).

Staff Analysis

The condition requires Petitioner to implement energy conservation features into the Project. The provided list of features, that includes solar water heating, appears to meet this requirement. The evidence on the record supports the release of the condition.

Condition 17

Compliance with Representations to the Commission. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

Evidence Provided

Petitioner states that they have developed the Property in substantial compliance with representations (Petitioner's [Motion](#), Exhibit 1, pg. 26).

Staff Analysis

The Petitioner has represented that the Project is at full build out and complete. Retention of this condition allows the Commission to take affirmative action in the event Petitioner is not found to be in compliance with conditions or representations made to the Commission.

The Commission should not release this condition unless it decides to release all conditions.

Condition 18

Notice of Change to Ownership Interests. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

Evidence Provided

Petitioner indicates no alteration of ownership in the Property prior to its development and therefore no notice was required (Petitioner's [Motion](#), Exhibit 1, pg. 27)

Staff Analysis

The Petitioner has represented that the Project is at full build out and complete. Therefore, this condition no longer has application and should be released.

Condition 19

Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the City and County Department of Planning and Permitting in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Evidence Provided

Petitioner submitted annual reports covering the following years: [2008-2009](#), [2010-2011](#), [2012-2013](#), [2014-2018](#), [2019-2021](#), and [2022-2023](#).

Staff Analysis

The condition required Petitioner to provide annual status reports to the Commission, the State Office of Planning and Sustainable Development, and the County DPP. Reporting was not provided annually; often there were one or more years gaps in updating the Commission on Petitioner's progress.

The Commission should not release this condition unless it decides to release all conditions.

Condition 20

Release of Conditions Imposed by the Commission. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner.

Evidence Provided

Petitioner has filed this motion in order to provide the adequate assurances that all conditions have been satisfied (Petitioner's Motion and Supplemental Memorandum).

Staff Analysis

The condition requires a timely motion be filed in order to fully or partially release conditions. Petitioner has filed its Motion to Release Conditions pursuant to HAR §§15-15-70(a) and 15-15-94.

The Commission should not release this condition unless it decides to release all conditions.

Condition 21

Recording of Conditions. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

Evidence Provided

Petitioner filed a copy of the notice of recordation of the imposition of conditions on December 22, 2003 (Petitioner's Motion, [Appendix 9 to Exhibit 1, pgs 100-104](#)).

Staff Analysis

The condition required a recording of the Conditions within 7 days of the Order with the BOC and file a copy with the Commission. The Commission received the notice of recordation of conditions with the BOC and that is adequate proof that the condition has been satisfied.

Condition 22

Recording of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, Hawai'i Administrative Rules.

Evidence Provided

The declaration of conditions was recorded with the BOC on February 11, 2004. An original certified copy was transmitted to the LUC on May 24, 2004 (Petitioner's Motion, [Appendix 10 or Exhibit 1 pgs 105-115](#)).

Staff Analysis

The condition required Petitioner to record the conditions in the Order with the BOC.

The original copy transmitted to the LUC in 2004 is adequate proof that the condition has been satisfied.

4. OPSD POSITION

On February 3, 2025, OPSD filed a [Notification of Position](#) on the Petitioner's Motion.

OPSD indicated that they were in support of the motion pending receipt of information being requested from State agencies that may be impacted and further review of the motion.

On September 18, 2025, OPSD filed [OPSD Response to Petitioner's Motion](#), [Exhibit A](#) and [Exhibit B](#)

OPSD has no objection to the release of the 22 conditions but notes a request for additional documentation from the State Department of Transportation with respect to Conditions 4 and 5.

Several conditions directly affect State interests, specifically Conditions 2, 4, 5, 6, 7, 9, 13, 14, and 15.

OPSD solicited comments from relevant State agencies by letter dated February 27, 2025, and copies of all letters sent, and responses received are attached as Exhibit A.

Exhibit B is additional documentation provided by Petitioner in regards to Condition 4; detailed spreadsheets documenting the impact fee credits, an example of such payments, and a spreadsheet listing the total amount of highway impact fees paid to the City each year from 2002 through 2024.

5. CITY AND COUNTY OF HONOLULU POSITION

On January 31, 2025 the County filed a [request for an extension of time to respond](#) to the Motion.

On April 10, 2025, the County filed a [letter in support of continuing the hearing](#) to a later date.

On September 9, 2025, The County filed their [Statement of Support of Motion](#).

The Counties Statement provides support for release of all conditions based on the Exhibits and Documents submitted by the Petitioner.

Further, the County takes the position that Conditions 6, 8, 9, and 18 are moot because they were not triggered throughout the course of construction and the imposition of these conditions is no longer necessary.

Condition 6, Archaeological Inventory Survey

Triggered if unidentified burials and other Archeological inventory

was found during construction.

Condition 8, Solid Waste Management Plan

Under HRS Chapter 342G and Revised Ordinances of Honolulu (“ROH”) § 42-1.13(a), the Department of Environmental Services (“ENV”) prepares and submits an Integrated Solid Waste Management Plan for City Council’s Review

Condition 9, Air Quality Monitoring.

Petitioner has represented to DPP that the Department of Health did not require Petitioner’s participation in an air quality monitoring program. Air Quality Monitoring occurs during construction.

Condition 18, Notice of Change to Ownership Interests.

Petitioner has maintained ownership in ‘Ewa Makai through development.

6. STAFF RECOMMENDATION

Should the Commission find the evidence provided by the Petitioner is sufficient and amounts to good cause to grant the Motion to Release Conditions, then it is suggested that if the Motion is granted it include the following:

Petitioner **has** provided adequate or substantial evidence for the release of the following conditions: 1, 2, 3, 6, 7, 9, 11, 12, 13, 14, 15, 16, 18, 21, 22.

Petitioner **has not** provided adequate, substantial, or supportive evidence for the full release of the following conditions: 4, 5, 8, and 10.

Condition 4: Missing evidence of relevant Revised Ordinance of Honolulu, specific mitigation measures required by the County or Department of Transportation, and coordination with the Department of Transportation and community meetings on a semi-annual basis.

Condition 5: Missing evidence of a landscaped setback, the setback is visible on maps provided by Petitioner, but missing evidence of landscaping.

Condition 8: Missing evidence of Petitioners solid waste management plan

Condition 10: Missing evidence from Federal and State government agencies that drainage design, construction, and improvements mitigative measures suggested in the drainage master plan have been constructed.

Release should be **based on release of all Conditions:** 17 Representations to the Commission, 19 Annual Reports, and 20 Release of Conditions.