

-LIPOA INVESTMENTS, LLC-
MAUI RESEARCH & TECHNOLOGY PARK

August 2, 2022

Mr. Daniel E. Orodener
Executive Officer
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804-2359



Subject: **Docket No. A84-585 &
Docket No. A10-787
2022 Annual Report for the State Land Use Commission
Lipoa Investments, LLC-Maui Research & Technology Park Master Plan Update**

Dear Mr. Orodener,

This constitutes Lipoa Investments, LLC's (formerly Maui R&T Partners LLC) ("Petitioner") 2022 annual report for the subject Maui Research & Technology Park ("M RTP") Master Plan Update ("Project").

Project Background and Status

By its Decision and Order dated November 22, 2013, the Land Use Commission granted approval of Maui R&T Partner's petition to Amend the Amended Findings of Fact, Conclusions of Law, and Decision and Order Dated February 25, 1986 regarding approximately 150.032 acres of land, situated at Kihei, Maui, Hawai'i. Approval of the petition was subject to 23 conditions.

Status of Compliance/Activities Related to Imposed Conditions

Listed below (in italics) are each of the conditions imposed under the Decision and Order followed by the status of compliance or activities pertaining to each respective condition (in bold).

1. **Water Source.** *Petitioner shall provide the necessary water source, storage, and transmission facilities and improvements to the satisfaction of the DWS and/or DOH as applicable to service the Petition Area.*

Petitioner continues to meet and hold discussions with representatives of the Maui County Department of Water Supply regarding water source, storage, and transmission facilities and

improvements, and is in compliance with this condition. Work is ongoing with the Department of Water Supply, Petitioner, and Petitioner's civil engineer.

2. **Water Conservation.** *Petitioner shall implement water conservation and best management practices in the design and construction of the Project in the Petition Area. Petitioner shall implement water conservation measures including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant native landscaping.*

Petitioner is in compliance with this condition.

3. **Storm Water Management and Drainage.** *Petitioner shall construct drainage improvements to accommodate the development of the Petition Area in accordance with the requirements of the DPW. Petitioner shall design, construct, and maintain stormwater and drainage system improvements in compliance with applicable Federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement Best Management Practices and incorporate Low Impact Development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution.*

Petitioner is in compliance with this condition.

4. **Highway and Roadway Improvements.** *Petitioner shall fund, construct, and implement roadway improvements to accommodate the development of the petition area in accordance with the requirements of the DPW. Petitioner shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to state roadway facilities caused by the Project as set forth in an MOA agreed to and executed by the DOT and Petitioner. Petitioner shall submit to the DOT an updated TIAR, and Petitioner shall obtain acceptance of the Project's TIAR from the DOT and shall execute the MOA prior to final subdivision approval of lots intended for above ground construction for the Petition Area in Docket A10-787, excluding construction of roads, utilities, and other infrastructure by Petitioner. The MOA shall include, but not be limited to, the following terms and conditions: (1) the accepted TIAR shall be incorporated in the MOA by reference; (ii) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (iii) a schedule of agreed to improvements and a schedule for future TIAR updates or revisions to be accepted by the DOT; (iv) development of the Project shall be consistent with the executed MOA and TIAR; and (v) any fees or in-kind contribution that is roughly proportional to any indirect or secondary impacts caused by the Project. Petitioner shall construct the portion of the Mauka Collector within the MRTTP boundary either during construction of Phase 2 or prior to 2034 concurrent with the development of the Kihei Mauka planned growth area as outlined in the Maui Island Plan and shall coordinate these efforts with the DOT.*

Petitioner is in compliance with this condition. On February 9, 2016, the Hawaii Department of Transportation found the Petitioner's May 2015 TIAR to be acceptable for further discussions between Petitioner and HDOT on the terms and conditions of the Memorandum of Agreement. Since acceptance of the 2015 TIAR, traffic conditions in the vicinity of the project have changed due to the

opening of a Charter School and other developments in the area. In addition, assumptions on the pace of buildout of MRTTP are significantly slower than expected. Therefore, Petitioner and its traffic consultant are updating the TIAR under coordination with HDOT to reflect current conditions. Coordination with HDOT is ongoing regarding the TIAR and MOA.

5. **Environment and Health.** *Petitioner shall comply with the requirements of the DEM and/or the DOH as applicable.*

Petitioner is in compliance with this condition.

6. **County Parks.** *Petitioner shall comply with the Parks Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.*

Petitioner is in compliance with this condition.

7. **Housing.** *Petitioner shall comply with all housing requirements to the satisfaction of the County of Maui Department of Housing and Human Concerns.*

Petitioner is in compliance with this condition.

8. **Archaeological and Historic Preservation.** *Archaeological features identified in the Waipu'ilani Gulch shall be protected from any construction-related activities. A report of monitoring activities shall be submitted to the State Historic Preservation Division ("SHPD") upon completion of fieldwork.*

Petitioner is in compliance with this condition. Following further survey of MRTTP lands and the above-noted archaeological features within Waipuilani Gulch (Site 6241), it was found that Site 6241 is located outside of MRTTP lands, on property not owned by Lipoa Investments, LLC. Therefore, Lipoa Investments' construction activities will not impact 6241. Nevertheless, as recommended by the State Historic Preservation Division, construction fencing has been installed surrounding the site.

9. **Previously Unidentified Burials and Archaeological/Historic Sites.** *In the event that historic resources, including human skeletal remains, are 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 SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites 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 SHPD that mitigation measures have been implemented to its satisfaction.*

Petitioner is in compliance with this condition.

10. **Endangered Species.** *Petitioner shall develop and implement mitigation measures to address any potential impacts on endangered species in the Petition Area, if any, and shall as necessary consult with the State of Hawai'i Department of Land and Natural Resources, Division of Forestry and Wildlife, and the U. S. Fish and Wildlife Service to develop such mitigation measures.*

Petitioner is in compliance with this condition.

11. **Flora and Fauna.** *Petitioner shall ensure that all exterior lighting fixtures are down-shielded to minimize the harmful effects of lighting on endangered avifauna.*

Petitioner is in compliance with this condition.

12. **Adjacent Agricultural Lands.** *For all land in the Petition Area or any portion thereof that is adjacent to land the State Land Use Agricultural District, Petitioner shall comply with the following:*

A. *Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management principles on adjacent or contiguous lands in the State Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS section 165-2; and*

B. *Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Agricultural District are protected under HRS chapter 165, the Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.*

Petitioner is in compliance with this condition.

13. **Native Hawaiian Access Rights.** *Pursuant to Article XII, section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.*

Petitioner is in compliance with this condition.

14. **Civil Defense.** *Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location identified by the SCD agency. To the extent feasible, Petitioner shall incorporate hardening measures for safe rooms within planned residential facilities and the hardening of community facilities so as to withstand high wind and seismic events.*

Petitioner is in compliance with this condition and continues to work with Hawaii State Civil Defense regarding the location and installation of a civil defense warning siren, and the best options for purchasing a siren. The Hawaii Emergency Management Agency and Maui Emergency Management Agency have conducted site visits to the MRTP with Petitioner in this regard.

15. **Schools.** *Petitioner shall enter into an impact fee agreement with the DOE prior to county subdivision approval.*

Petitioner continues coordination with the Hawaii Department of Education (DOE) regarding satisfaction of the impact fee agreement. An impact fee agreement is in process of review with the DOE and execution of said agreement is anticipated in the near future. Petitioner is in compliance with this condition.

16. **Infrastructure Deadline.** *Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within fifteen (15) years from the date of the Decision and Order approving the Petition.*

Petitioner is in compliance with this condition. Significant infrastructure improvements have been made to the project since the date of the Decision and Order, including roadways, electrical system improvements, and stormwater/drainage and other utility system improvements. Additional infrastructure improvements are ongoing.

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

Petitioner is in compliance with this condition.

18. **Order to Show Cause.** *If Petitioner fails to complete the proposed backbone infrastructure within fifteen (15) years from the date of the Decision and Order, 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 Agricultural District classification, or be changed to a more appropriate classification.*

Petitioner is in compliance with this condition.

19. **Notice of Change of Ownership.** *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 Petition Area, at any time prior to completion of development of the Petition Area.*

Petitioner is in compliance with this condition. Petitioner continues marketing and selling of lots within MRTTP and notification of such sales will continue with the Commission. Petitioner recently sold a portion of the Petition Area, identified as Lot 13-B-2-B-1 of the Haleakala Greens Subdivision (also identified by Tax Map Key Nos. (2) 2-2-24:008) and comprising 2.342 acres, to Level 3 Communications, LLC.

20. **Annual Reports.** *Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, 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.*

This annual report is respectfully submitted in compliance with this condition.

21. **Release of Conditions.** *The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.*

No release of conditions is currently contemplated.

22. **Notice of Imposition of Conditions.** *Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.*

This condition has been satisfied. On November 29, 2013 a "notice of imposition of Conditions by the Land Use Commission" was recorded with the State Bureau of Conveyances (Document No. A-50810528).

23. **Recordation of Conditions.** *Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92. This Declaration of Conditions shall supersede the Notice of Imposition of Conditions by the Commission dated November 26, 2013 upon the recordation at the Bureau of Conveyances of this Declaration of Conditions.*

This condition has been satisfied. On February 3, 2014 a "Declaration of Conditions" was recorded with the State Bureau of Conveyances (Document No. A-51470715).

Mr. Orodenker, please feel free to contact me if further information is needed. I can be reached by phone at 808-874-5263 or email at ryanc@pacificrimland.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Churchill". The signature is fluid and cursive, with the first name "Ryan" and last name "Churchill" clearly distinguishable.

Ryan Churchill

cc: State Office of Planning
County of Maui Planning Department