

August 28, 2023

Via email to: dbedt.luc.web@hawaii.gov

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



**Subject: 2023 Annual Progress Report
Land Use Commission Docket No. A89-646
Keahuolū, North Kona, Island of Hawai'i**

Aloha Mr. Orodenker -

Please find enclosed an annual progress report in compliance with Condition 22 of Land Use Commission Docket No. A89-646. This report addresses the status of the development and compliance with the conditions of approval for the current year.

If you have any questions or comments, please feel free to contact me at (808) 466-7949.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan K. Esmeralda".

Bryan K. Esmeralda, AICP
Manager, Land Planning

Enclosure

ANNUAL REPORT TO THE STATE LAND USE COMMISSION
Lili'uokalani Trust Keahuolū Lands
Land Use Commission Docket No. A89-646
Decision and Order Dated August 28, 1991

Submitted in Compliance with Condition 22

August 28, 2023

Introduction

This report is being submitted by Lili'uokalani Trust (LT, Petitioner) in compliance with Condition 22 of State Land Use Commission (LUC) Docket No. A89-646 and related Decision and Order dated August 28, 1991. This report addresses the current status of the development of the petition area and compliance with the conditions of approval for the current year.

Status of Conditions

Condition 1. *Petitioner shall generate one (1) non-tourism related job, or the equivalent thereof, for each hotel unit Petitioner is allowed to build. As used herein, "non-tourism related" means not related to hotels or residential condominiums intended for use as transient accommodations, or recreational, entertainment or other facilities and services used primarily by tourists. The equivalent value of one (1) non-tourism related job will be determined by the Office of State Planning.*

At the present time, the development of the Property does not include any hotel use(s). However, consistent with Findings of Fact (FOF) item 31.g., and FOF item 46, LT is currently attempting to engage a hotel developer for the Property. If successful, LT will comply with this condition.

Condition 2. *Petitioner shall design and construct all structures and buildings in compliance with County, State, and Federal codes and standards.*

The Kmart, Macy's (formerly Liberty House), Makalapua Stadium Cinemas, and Kona Judiciary Complex (Keahuolū Courthouse) projects within Phase I of the Petition Area have complied with this condition at the time of their completion in 1994, 1997, 2000, and 2019 respectively. LT and/or developers of property

within the Petition Area will continue to comply with this condition in future developments.

Condition 3. *There shall be no occupancy of any structures within a 1,300 foot buffer zone surrounding the Kealakehe Landfill until a permanent solution to smoke, fumes and other health hazards from the Landfill is in place.*

It is LT's understanding that the County of Hawai'i (County) has implemented a permanent solution to the smoke, fumes, and other health hazards which emanate from the Kealakehe Landfill site by covering the site with an impermeable seal. In addition, the landfill facility was permanently closed in 1993. It is noted that LT intends on requesting a modification to the subject Decision and Order to reflect an update to the conceptual master plan for the Petition Area, which may include changes to the 1,300-foot buffer zone adjacent to the landfill.

Condition 4. *The Landowner shall participate in an air quality monitoring program as specified by the State Department of Health.*

The State Department of Health (DOH) did not specify or require participation in an air quality monitoring program for the previously constructed projects within the Petition Area. LT and/or developers of property within the Petition Area will participate in an air quality program for all future developments if specified by the DOH.

Condition 5. *The Landowner shall implement effective soil erosion and dust control measures during all phases of the development.*

Soil erosion and pest control measures were implemented for the Kmart, Macy's, Makalapua Stadium Cinemas, and Keahuolū Courthouse projects. LT and/or developers of property within the Petition Area will continue to comply with this condition in future developments as required by applicable laws and regulations.

Condition 6. *Petitioner shall provide or cause to provide the necessary water source, storage, and transmission facilities to service the Project. Petitioner shall coordinate and explore joint development with the County of Hawaii, Department of*

Water Supply, the State Department of Land and Natural Resources, adjoining landowners, and/or other State or County agencies regarding measures designed to obtain the required water for the Project.

The Keahuolū well, reservoir, and transmission system to service the 49.9-acre first increment of Phase I of the Petition Area has been constructed, completed, and dedicated to the County. The County accepted the system on August 27, 1996. Additionally, the Keahuolū Lands Water Resource Development Agreement was signed by LT and the County Department of Water Supply (DWS) on February 23, 2010, which describes LT's participation in the development of the Palani transmission line and storage facilities on LT land adjacent to the Queen Lili'uokalani Village. Furthermore, LT participated in the construction of a water transmission line within the Ane Keohokālole Highway.

LT continues to work with the DWS on the planning and development of a water system that will service both regional and LT's water needs. Both LT and the DWS have engaged consultants to jointly plan the source development and transmission system to provide water in a timely manner.

Condition 7. *The Landowner shall connect the wastewater system for the proposed development of the Property to the Kealakehe Wastewater Treatment Plant. Construction of structures within the Property shall not commence until the Landowner has obtained assurances from the County of Hawaii that capacity at this plant has been reserved or will be available at the time occupancy occurs of structures within the Property; provided that, if the capacity at the Kealakehe Wastewater Treatment Plant is not sufficient for the proposed development of the Property, the Landowner may utilize other alternatives acceptable to the State Department of Health and County of Hawaii.*

LT has obtained the necessary approvals for connecting the existing structures within Phase I of the Petition Area to the County wastewater system. LT and/or developers of property within the Petition Area will continue to comply with this condition in future developments.

Condition 8. *Petitioner shall fund and construct highway improvements, including but not limited to the dedication of rights-of-way, necessitated by the proposed phased development and in designs and schedules accepted by and coordinated with the State Department of Transportation and the County of Hawaii.*

The necessary highway improvements for the Makalapua Shopping Center (accepted by and coordinated with the State Department of Transportation (DOT) and the County) were completed as part of the earlier Kmart and Macy's projects. LT conveyed the necessary right-of-way to the State to widen Queen Ka'ahumanu Highway in satisfaction of the condition. The transaction was memorialized in a Purchase and Sale Agreement (PSA) entered between the State DOT and LT dated September 12, 2003, as amended. The PSA transaction transferred nine (9) parcels of LT's lands to the State DOT and two (2) highway boundaries in favor of the State DOT for highway improvements. As part of the PSA transaction, the State Director of Transportation, Rodney K. Haraga sent a letter to Robert Ozaki, Trust Administrator, dated September 17, 2003, stating that the State DOT released LT from further obligations related to highway improvements under Condition 8.

Condition 9. *Petitioner shall work with the appropriate departments of the State and County on the designs and construction of all roadway improvements within the Property. Petitioner shall work with the appropriate departments of the State and County on regional traffic improvements necessitated by the proposed phases of the development. Petitioner's participation shall not at any time exceed its pro rata share of roadway improvements made necessary by the increased traffic resulting from each phase of the development. In the event that the County of Hawaii adopts an impact fee for transportation improvements, the foregoing funding requirements may be modified or deleted to the extent that the cost of any specific traffic improvement is also included in the County of Hawaii's impact fee computation.*

All the previously required roadway improvements within Phase I of the Petition Area were completed earlier as a part of the Kmart and Macy's projects in 1994 and 1997, respectively. The State DOT acquired the necessary lands from LT to widen the Queen Ka'ahumanu Highway right-of-way. This acquisition satisfied the pro rata share of State roadway improvements necessary for traffic resulting from the total development of Phase I of the Petition Area (315 acres) and the State DOT released LT from further obligations related to highway improvements as discussed in the response to Condition 8, above. Furthermore, as part of the roadway improvements for the Kona Commons Shopping Center development makai of Queen Ka'ahumanu Highway, LT received approvals from the appropriate departments and widened Makala Boulevard immediately mauka and makai of Queen Ka'ahumanu Highway to a

width of 100 feet. LT dedicated the makai roadway improvements of Makala Boulevard to the County via Resolution No. 234-13, dated December 18, 2013.

LT has and will continue to work with the County and State in the development and implementation of regional and local roadway improvements that could be directly or indirectly affected by development within the Petition Area as well as the other properties owned by LT.

Condition 10. *Petitioner shall undertake periodic monitoring of the traffic conditions within and adjacent to the Property throughout the Project's development period to the satisfaction of and with the approval of the State Department of Transportation and the County of Hawaii.*

LT will continue to monitor traffic conditions within the Petition Area and adjacent areas throughout future development activities to the satisfaction of and with the approval of the State DOT and County. As future development occurs in the Petition Area and in conformance with conditions that may be attached to relevant County zoning approvals, the Petitioner will prepare additional traffic monitoring studies as may be requested and submit the reports to the State DOT and County.

Condition 11. *Petitioner shall appoint a transportation manager whose function is the formulation, use, and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems. In the alternative, Petitioner may participate in a regional program for transportation management with other developers and/or landowners. This program shall address the formulation, use, and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems.*

LT has indicated to the State DOT its willingness to participate in a regional program for transportation in West Hawai'i. The County's Kona Community Development Plan includes a regional transit-oriented development plan; however, there is no formal regional program for transportation management. If one is created, LT is willing to participate.

LT will participate in a regional program for transportation management as needed, should one be developed.

Condition 12. *Petitioner shall work with the County to establish a reasonable buffer area along the boundary of the Property to maintain the visual integrity from Queen Kaahumanu Highway.*

A plan for landscaping of a buffer area along the Queen Ka'ahumanu Highway boundary of the Petition Area was submitted to the County in October 1993. Plans for new projects along Queen Ka'ahumanu Highway will include consideration of a buffer along the highway.

Condition 13. *Petitioner shall preserve those historic sites, as agreed to in writing with the Historic Preservation Division, State Department of Land and Natural Resources, in compliance with Chapter 6E, Hawaii Revised Statutes. The Petitioner shall submit to the State Historic Preservation Division a detailed historic preservation mitigation plan in two parts, a preservation plan and an archaeological data recovery plan. This mitigation plan must be approved by the State Historic Preservation Division, prior to any field work and prior to any construction in the vicinity of historic sites. Also, the Petitioner must obtain verification by the State Historic Preservation Division that successful execution of the mitigation plan has been completed prior to any construction in the vicinity of the historic sites.*

In a letter dated June 5, 1998, the State Historic Preservation Division (SHPD) approved a proposal on behalf of LT: 1) ensuring that the preservation plan for the preserve would be completed "before the adjacent parcels are developed," and 2) that the detailed "archaeological inventory survey of the preserve area is completed before the preservation plan is developed." LT worked with the County in the development of the Ane Keohokālole Highway. As part of the project, the County contracted Pacific Legacy, Inc. (PLI) and performed data recovery at selected sites within the highway corridor; completed an Archaeological Inventory Survey (AIS) within the 25-acre historic preserve area (HPA); as well as prepared a preservation plan. All this work has been done in conjunction with and accepted by SHPD.

Together with local community organizations and public agencies, LT's Kona-based staff continues to develop and implement short- and long-range plans that coordinate the planning, management, and maintenance of the 25-acre HPA.

In 2009, related to the Ane Keohokālōle Highway project, SHPD stated that newly acquired information has indicated that the previous archaeological report did not accurately reflect the nature, distribution, or significance of historic properties. As a result, LT contracted PLI to provide a new AIS for the area. A draft AIS for Urban Phases I and II was submitted to SHPD on December 20, 2015, for its review and approval. An updated AIS was subsequently prepared and submitted to SHPD on August 30, 2021 and resubmitted on March 11, 2022. As requested by SHPD, a Interim Protection Plan (IPP) for sites within Urban Phases I and II was also prepared and submitted on June 3, 2022. A draft AIS for Phase III was also submitted to SHPD on January 13, 2016. LT in conjunction with PLI is currently revising the AIS for Urban Phases I and II to address comments recently received by SHPD. The revised AIS will be submitted to SHPD for review and acceptance. SHPD accepted the final AIS for Phase III on September 9, 2019.

Condition 14. *Petitioner shall immediately stop work in the impacted area and contact the Historic Preservation Division, State Department of Land and Natural Resources, should any archaeological resources such as artifacts, shell, bones, or charcoal deposits, human burial, or rock or coral alignments, pavings or walls of historic or prehistoric origin be encountered during the development of the Property.*

LT and/or developers of property within the Petition Area will comply with this condition in future developments should archaeological resources be inadvertently encountered.

Condition 15. *Petitioner shall formulate a fire contingency plan prior to construction in the project area. The fire contingency plan shall be approved by the State Department of Land and Natural Resources, Division of Forestry and Wildlife.*

A fire contingency plan was completed and previously approved by the Division of Forestry and Wildlife. Future developments will comply with this requirement.

Condition 16. *Petitioner shall coordinate with the County of Hawaii and the State Department of Health to establish appropriate systems to contain spills and prevent materials such as petroleum products, chemicals, solvents, or other pollutants from*

leaching into the storm drainage system and adversely affecting the groundwater and coastal waters.

The Petitioner has coordinated with the County and the DOH to establish appropriate systems to contain spills and prevent materials from leaching into the storm drainage system and adversely affecting the groundwater and coastal waters. Spill prevention measures were developed and will be incorporated into construction plans and specifications in future projects.

Condition 17. *Petitioner shall prepare a drainage and erosion control plan and shall fund and construct the necessary drainage improvements and maintain ocean water quality to the satisfaction of the State Department of Health. Petitioner shall, to the extent necessary as determined by the County of Hawaii, coordinate off-site improvements with adjoining landowners and developers, and/or other Federal, State, or City agencies.*

LT and/or developers of property within the Petition Area will comply with this condition by incorporating this requirement into construction plans and specifications for future developments. Any drainage improvements necessitated by future development will be constructed by LT and/or its development partners and coordinated with adjoining landowners and developers as deemed necessary.

Condition 18. *Petitioner shall fund and install, to the specifications and satisfaction of the State Office of Civil Defense, the necessary facilities within the Property and a siren paging encoder in the Kona Police Department substation.*

As reported in earlier annual reports, the State Office of Civil Defense deferred to County jurisdiction on this matter, and the County has not required a siren paging encoder.

Condition 19. *Petitioner shall develop and maintain on-site facilities to insure that the nearshore, offshore, and deep ocean waters remain in pristine condition. Petitioner shall also participate in a water quality monitoring program in accordance with the methods and procedures approved by the State Department of Health.*

As part of a water quality monitoring program, Dr. Steve Dollar conducted sampling in June 1996, while earthwork for the Macy's, Makala Boulevard, and Luhia Street extension projects were in progress. No changes in water quality attributable to the projects were noticed. A report was submitted to DOH in September 1996 and subsequently approved, with a stipulation that the need for additional monitoring will be determined on a project-by-project basis. LT informed DOH of the grading for the Makalapua Stadium Cinemas project and received DOH's concurrence that no water quality monitoring was necessary, based on the results of the earlier study. LT and/or developers of property within the Petition Area will continue to inform DOH of future development to determine if future water quality monitoring is necessary.

Condition 20. *Petitioner shall complete the development on the Property in substantial compliance with the representations made before the Land Use Commission. Failure to so develop may result in the reversion of the Property to its former land use classifications or a change to a more appropriate classification.*

LT is currently reviewing the urbanized lands under this docket in the context of its other land holdings in North Kona and plans to update its conceptual land plan to address changes in market demand and community needs. This process is anticipated to be completed in the next couple of years. If there are any changes needing to be made to the permitted land uses earlier represented in this docket, LT will seek an amendment to the Decision and Order of the Commission.

Condition 21. *Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property, provided that individual tenant leases may not be reported.*

LT has conveyed in fee simple approximately ten (10) acres of land to the State for development of the Keahuolū Courthouse within Phase I of the Petition Area. LT will continue to comply with this condition for any future conveyances of land within the Petition Area.

Condition 22. *Petitioner shall provide annual reports to the Commission, the Office of State Planning and the County of Hawaii Planning Department in connection*

with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

LT will continue to comply with this condition. The next annual report will be due August 28, 2024.

Condition 23. *The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.*

LT believes it is substantially in compliance with all conditions to date.

Condition 24. *Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to title 15, chapter 15, section 92, Hawaii Administrative Rules.*

This condition has been completed.

Condition 25. *Petitioner shall submit to the Commission, OSP and the County a metes and bounds map and description of the reclassified portions of the property.*

This condition has been completed.