



LAND USE COMMISSION
STATE OF HAWAII

September 5, 2013

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**State of Hawaii Land Use Commission
Docket No. A03-744: Annual Report of
Palamanui Global Holdings, LLC**

PALALMANUI GLOBAL HOLDINGS, LLC, a Hawaii limited liability company, successor in title to HILUHILU DEVELOPMENT, LLC ("Petitioner") submits its Annual Report as required by the Findings of Fact, Conclusions of Law, Decision and Order ("Decision and Order") filed on June 13, 2005 in Docket No. A03-744, for the Petition Area consisting of approximately 725.2 acres of land at Kau, North Kona, Island, County, and State of Hawaii, identified as Tax Map Key No. (3) 7-5-002: 001.

This report quotes each of the conditions in the Decision and Order, and thereafter states the status of compliance.

1. Affordable Housing.

Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to the satisfaction of the County, acting in accordance with the County's Ordinance No. 05-23, Affordable Housing Policy For the County of Hawaii. Petitioner shall provide no less than 100 onsite affordable units in accordance with the Petitioner's representations to the Commission or whatever number of affordable units is deemed acceptable by the County in accordance with the County's Ordinance No. 05-23, Affordable Housing Policy For the County of Hawaii, whichever is greater. The location and distribution of the affordable housing units or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and County.

Petitioner has been working with the County of Hawaii to satisfy its requirements under Ordinance No. 05-23, which is now codified in Chapter 11 of the Hawaii County Code. Current development plans anticipate that all affordable housing

units will be built within the Petition Area. There will be not less than 100 affordable housing units. Petitioner continues to have discussions with the County of Hawaii Office of Housing and Community Development on the scope of the housing agreement for the project. Petitioner anticipates building affordable housing units incrementally in the Petition Area. Once Petitioner determines the appropriate mix of affordable housing units, it will present a draft of a housing agreement to the Office of Housing and Community Development and will address any concerns that the department may have. Thereafter, Petitioner will submit the finalized agreement for approval by the Hawaii County Housing Agency.

2. Public School Facilities.

Petitioner shall contribute to the development, funding and construction of public school facilities as determined by and to the satisfaction of the DOE. Petitioner shall enter into an agreement with the DOE covering the specific terms of such contribution prior to final subdivision approval and file such agreement with the Commission and the County.

An "Educational Contribution Agreement for Palamanui," dated November 14, 2007, was executed with the Hawaii State Department of Education. A copy of that Agreement was provided to the Commission on or about September 25, 2008.

3. Wastewater Facilities.

Petitioner shall design and construct its wastewater disposal system in compliance with the requirement of the County and the DOH.

As previously reported, Petitioner obtained approval from the Wastewater Division of the Hawaii State Department of Health for the design of the privately owned and operated sewage treatment plant. Construction has not started on this facility. For the opening of the first phase of the University of Hawaii West Hawaii Center ("UH-West

Hawaii”) in 2015, wastewater treatment will be provided by a “Living Machine”-type wastewater facility which will be constructed on the UH-West Hawaii site. This system has been approved by the Hawaii State Department of Health. Petitioner contributed \$ 700,000 to the UH-West Hawaii to cover the cost of this facility. The “Living Machine” is an environmentally superior treatment process, which will help UH-West Hawaii reach its goal of obtaining LEED certification.

Petitioner will construct a project- wide Wastewater Treatment Facility in the future to service commercial and housing uses at Palamanui as development proceeds.

4. Wastewater Agreement For Underground Injection Offsite.

Prior to final subdivision approval, Petitioner shall provide the Commission and the County with a copy of the executed agreement to inject wastewater underground offsite and above the UIC line on the adjacent State-owned land to the south of the Petition Area, or with other such landowner and location as approved by DOH.

As previously reported, it was determined that the required underground injection wells for the sewage treatment plant could be located within the Petition Area. The Hawaii State Department of Health concurred on locating those underground injection wells in the Petition Area. These injection wells have been constructed, tested and approved for future use. In general, they will be for back-up or overflow use, as the treated effluent is expected to be used for project irrigation.

5. Traffic Impacts and Mitigation.

Petitioner shall fund, design and construct its share of local and regional transportation improvements as determined by the SDOT and the County, which includes but is not limited to:

a. Midlevel connection with Ka'iminani Drive.

Petitioner shall provide at its sole cost and expense a two-lane roadway between the Petition Area and Ka'iminani Drive in an alignment approved by

the County and the University and acceptable to any other State agency with a property interest in the land on which the two-lane roadway is located.

This road is designated as "Road 2" on Exhibit B to County of Hawaii Project District Ordinance No. 09-132. After the road's alignment was approved by the State Department of Land and Natural Resources, the road was constructed in 2012 with \$4.4 million contributed by Petitioner. The road is now known as a portion of the Ane Keohokalole Highway, connecting Kaiminani Drive to the UH-West Hawaii campus and the Palamanui project. The road is referred as Road 3A on the Kona Community Development Plan map.

b. Mauka-Makai Connector Road.

A mauka-makai connector road providing public access between Queen Kaahumanu Highway and the Mamalahoa Highway shall be provided at Petitioner's sole cost and expense. Said mauka-makai connector road shall connect through such connector road to Mamalahoa Highway as Petitioner and the County may agree.

Petitioner will comply with this condition, in accordance with all agreements with the County of Hawaii.

c. Right-Of-Way for An Alternative Mauka-Makai Connector Road

Petitioner shall reserve a right-of-way along the east (mauka) portion of the Petition Area to support the possible future connection to the Mamalahoa Highway. Petitioner shall construct at its sole cost and expense all portions of said future road that is within the Petition Area. Any proposed road construction plans and associated utility easements which may impact the Lowland Dry Forest Preserve shall be subject to prior review and approval of the Commission and shall include consultation with the County, such that County engineering standards or other County requirements do not adversely impact the Lowland Dry Forest Preserve.

Petitioner will comply with this condition.

d. Request to Limit Vehicle Traffic on Portions of Makalei Drive.

In the event that the mauka-makai road connector road utilizes Makalei Drive, then to promote greater traffic safety, Petitioner shall prior to final subdivision

approval, use reasonable efforts to petition the County to limit motor vehicle traffic on Makalei Drive as a through street, as it transverses Makalei Estates, to only those vehicles that have a gross vehicle weight of less than 10,000 pounds.

Petitioner will comply with this condition. The dedication of the roads within the Makalei Estates subdivision to the County of Hawaii is currently in process. When the proposed dedication action reaches the Director of the County Department of Public Works, Petitioner will ask that the County adopt an ordinance that limits motor vehicle traffic speeds and limits the vehicles using Makalei Drive (except emergency vehicles) to less than 10,000 pounds gross vehicle weight, in accordance with this condition.

6. Integrated Natural Cultural Resource Management Plan (INCRMP).

Petitioner shall implement the revised INCRMP including completion of all plans (with appropriate approvals), covenants and easements required under the revised INCRMP. Such implementation shall include, but not be limited to the following:

Petitioner has been implementing this condition. Petitioner has drafted and recorded Master Covenants that apply to the entire Petition area. The covenants include the provisions described in the Integrated Natural Cultural Resource Management Plan ("INCRMP"). Petitioner also drafted and recorded Master Design Guidelines which apply to development within the entire Petition area. Among other matters, the design guidelines cover preservation of culturally significant views, use of native vegetation for landscaping and preservation of certain landforms. Copies of the recorded Master Covenants and Master Design Guidelines have been previously provided to the Commission and the County of Hawaii Planning Department. An inventory map showing all preservation sites has been finalized. All preservation areas have been fenced so they are clearly visible. Petitioner

finished the fire break area and fencing around the dry land forest and continues to maintain and monitor it.

Petitioner has retained a cultural monitor on the project: Mr. Walter Andrade.

a. **Preservation of Significant Historic, Cultural and Natural Resources**

Petitioner shall preserve all of the identified significant historic, cultural, and natural resources on the Petition Area as represented by the Petitioner to the Commission.

Petitioner will comply with this condition. As reported above, these sites have been identified and marked. They will also be shown on the project's Inventory Map.

b. **Historic Preservation Mitigation Plan.**

Petitioner shall submit data recovery plans and preservation plans to the SHPD and obtain approval of those plans within one year of the issuance of this Decision and Order. If said plans as approved vary from those incorporated into the revised INCRMP, Petitioner shall amend the revised INCRMP to reflect SHPD's recommendations and submit the amended revised INCRMP to the Commission for its approval prior to final subdivision approval.

The State Historic Preservation Division has approved the Data Recovery Plan, and the data recovery work has been completed. The proposed Preservation Plan is expected to be approved by the State Historic Preservation Division by the end of 2013.

c. **Preservation of Lowland Dry Forest.**

Petitioner shall permanently protect the Lowland Dry Forest Preserve. Any proposed road construction plans, irrigation well sites and proposed access and utility easements which may impact the Lowland Dry Forest Preserve shall be subject to prior review and approval of the Commission.

Petitioner will comply with this condition.

As reported previously, a fire break and protective fence around the perimeter of the dryland forest has been established and is being maintained.

d. **Coordination of Lowland Dry Forest Preservation Efforts.**

Petitioner shall use reasonable efforts to coordinate its preservation of the Lowland Dry Forest Preserve with the State of Hawai'i Department of Land and Natural Resources as the Lowland Dry Forest Preserve extends in some places onto the neighboring state-owned property. Such coordination shall include, but not be limited to: sharing information regarding updated biological surveys; coordinating the development of a fire prevention plan; establishing appropriate firebreaks; and exploring contingencies for using the Project's irrigation systems to control brush fires.

Petitioner has complied and will continue to comply with this condition. The Palamanui Dry Forest Working Group meets regularly. The group's members include Dr. Pat Hart, Lisa Hadway from the State Department of Land and Natural Resources, Susan Cordell, and Roger Harris (who works with Petitioner). Discussions continue with the North Kona Dry Land Forest Group and other groups about cooperative efforts to preserve the native dry land forests on the Palamanui land and adjacent State of Hawaii land.

e. **Preservation of Flora Outside of Lowland Dry Forest.**

Petitioner shall preserve all floras that are federally listed as Endangered Species throughout the Petition Area. Petitioner shall to the extent practicable, preserve flora identified as non-endangered indigenous and Species of Concern by incorporating such plants into the Project's landscaping and exclusionary fenced areas.

Petitioner will comply with this condition. Individual trees that are federally listed as endangered species have been fenced and currently appear healthy.

f. **Unidentified Archaeological Finds.**

If any burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

Petitioner will comply with this condition.

g. **Preservation of Native Hawaiian Gathering and Access Rights**

Petitioner shall preserve and protect any established Native Hawai'ian traditional and customary rights exercised for subsistence, cultural and religious practices on the Petition Area.

Petitioner will comply with this condition.

h. **Updated Biological Survey.**

Petitioner shall submit an updated biological survey of the Petition Area to the Commission before construction of the Project begins. The updated biological survey shall include but not be limited to, detailed information pertaining to any significant invertebrates and Hawai'ian Hoary Bats within the Petition Area.

Petitioner has complied with this condition.

i. **Cultural Monitor for Grubbing and Grading Activities.**

Petitioner shall retain the services of an appropriate number of qualified cultural monitors such that all grubbing and grading activities within the Petition Area are duly monitored.

Petitioner will comply with this condition. Mr. Walter Andrade will serve as cultural monitor during construction activities within the Petition Area.

7. **Open Space Buffer.**

Petitioner shall maintain an open space buffer on the Petition Area along Queen Kaahumanu Highway with a minimum width of 800 feet. The only man-made structures allowed in this open space buffer shall be the Northern Project Access Road, the Project's wastewater treatment plant, limited

portions of the Project's golf course, and a groundwater monitoring well -as represented by the Petitioner to the Commission. Petitioner shall appropriately screen such uses to maintain the visual continuity of such buffer.

Petitioner has complied with this condition. A notice of Open Space Buffer has been recorded in the State of Hawaii Bureau of Conveyances as Document No. 2007-006828.

8. Civil Defense.

Petitioner shall, on a fair-share basis, fund and construct adequate civil defense measures as determined by the State and County Civil Defense Agencies.

Petitioner will comply with this condition. By letter dated August 26, 2008, the County of Hawaii Civil Defense Agency approved an Emergency Response Plan submitted by Petitioner.

9. Air Quality Monitoring.

Petitioner shall participate in an air quality-monitoring program as specified by the DOH.

Petitioner will comply with this condition.

10. Noise and Avigation Easement.

Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area that over flights can occur from aircraft using KOA Airport. Petitioner shall grant to the State an avigation (right of flight) and noise easement in the form prescribed by the SDOT on any portion of the Petition Area subject to noise levels exceeding 55 Ldn.

Petitioner will comply with this condition.

11. Notification of Potential Nuisances- Agricultural.

Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area of potential odor, noise and dust pollution

if there are any lands in the Agricultural District surrounding the Petition Area.

Petitioner will comply with this condition. Documents for this purpose will be developed in conjunction with Petitioner's sales and leasing documents.

12. Notification of Potential Nuisances-HELCO.

Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area of the potential noise and air quality impacts associated with the existing use and proposed improvements to Hawaii Electric Light Company, Inc.'s Keahole Generating Station and Airport Substation.

Petitioner will comply with this condition. Documents for this purpose will be developed in conjunction with Petitioner's sales and leasing documents.

13. Hawai'i Right to Farm Act.

Petitioner shall notify all prospective buyers and future occupants of the Petition Area or portions of the Petition Area that the Hawai'i Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District surrounding the Petition Area.

Petitioner will comply with this condition.

14. Drainage Improvements.

Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of the appropriate State and County agencies.

Petitioner will comply with this condition. Drainage studies have been completed, and the County of Hawaii Department of Public Works has approved a project-wide drainage plan.

15. Integrated Solid Waste Management Plan.

Petitioner shall cooperate with the DOH and the County to conform to the program goals and objectives of Chapter 342G, HRS, and the County's approved integrated solid waste management plans in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities for the Project. This condition shall be included in the Project's CC&Rs.

Petitioner will comply with this condition. A Solid Waste Management Plan has been approved by the County of Hawaii Department of Environmental Management, Solid Waste Division, by letter dated August 29, 2008.

16. Groundwater and Near Shore Water Monitoring.

Petitioner shall participate in the coastal water-monitoring program with the SDOT Airports Division. Petitioner shall conduct groundwater monitoring from a monitoring well to be located at the makai end of the Petition Area. Monitoring programs and mitigation measures shall be approved by the DOH.

Petitioner will comply with this condition. An Agreement has been reached with State Department of Transportation Airports Division to have monitoring done along with the division's monitoring of the other airport monitoring wells. The monitoring well required by this condition has been constructed at Petitioner's cost, on State lands near the Kona International Airport at Keahole, and is being monitored twice a year as part of the Airports Division monitoring program. Petitioner pays the cost of the water quality sampling and monitoring of this well. All the monitoring reports are submitted to the State DOT—Airports Division and the Hawaii State Department of Health. To date, no variation in water quality has been detected.

17. Water Service.

Petitioner shall fund and construct adequate water source, storage, and transmission facilities and improvements as represented to the Commission and as required by the County Department of Water Supply to accommodate the Project.

Petitioner will comply with this condition.

The 1999 water agreement has been amended three times over the past 14 years. The County of Hawaii Water Board recently approved the latest amended and restated agreement on July 23, 2013.

Pursuant to the agreement, as amended, substantial progress has been made by Petitioner on planning and constructing the agreed-upon public water system which will bring water through the Palamanui project site, deliver water to the new UH-West Hawaii campus, and connect to the County Department of Water Supply's existing water system which currently terminates just mauka of the Kona International Airport. By mid-2014, this new water system will be complete and in service. This will create a much needed "loop" for the North Kona regional water system, effectively connecting the well sources up mauka along Mamalahoa Highway with the storage reservoirs and transmission lines now serving the Airport and uses along Queen Kaahumanu Hwy.

Before commencing construction on the water system improvements described above, Petitioner's engineers at substantial cost prepared and submitted detailed engineering and construction plans. These have been reviewed and approved by the County of Hawaii Department of Water Supply.

Finally, Petitioner has purchased an additional parcel of land south of Matsuyama Store on the mauka side of Mamalahoa Highway. The Department of Water Supply has approved this site for a future drinking water well should there be a need for Petitioner to bring on an additional water source sometime in the future.

Petitioner has already invested \$11.55 million to design and construct these water facilities, to serve both the project and the UH-West Hawaii campus. Petitioner will continue to comply with the requirements of this condition.

18. Best Management Practices.

Petitioner shall implement best management practices to reduce or eliminate soil erosion and groundwater pollution and implement dust control measures during the development process in accordance with DOH guidelines.

Petitioner will comply with this condition.

19. Water Conservation Measures.

Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and to the extent possible, use Species of Concern and Endangered Species, and incorporate such measures into common areas landscape planning, and shall incorporate low flow fixtures into the construction of all residential and commercial units.

Petitioner will comply with this condition.

20. Energy Conservation Measures.

Petitioner shall incorporate solar energy and energy conservation techniques where feasible into design of all residential and commercial units.

Petitioner will comply with this condition.

21. Hazardous Materials.

Storage and/or disposal of hazardous materials on the Petition Area shall comply with all applicable DOH requirements and all necessary permits shall be obtained.

Petitioner will comply with this condition.

22. Golf Course.

Petitioner shall comply with the principles of the DOH's "Guidelines Applicable to Golf Courses in Hawai'i" (July 2002, Version 6). Petitioner shall develop and maintain the golf course in accordance with the Audubon

International's Signature Silver Program standard. To the extent practicable, the Petitioner will utilize R-1 recycled wastewater to irrigate the golf course.

As reported previously, during the County of Hawaii rezoning process, Petitioner revised the project and agreed not to construct a golf course.

23. University Inn and Conference Center.

As represented before the Commission, the Project shall include an approximate 120-unit University Inn and Conference Center, which shall serve as a business hotel and provide accommodations in conjunction with University operations. The University Inn and Conference Center shall not be designed and operated as resort-type hotel or be used for time-share purposes.

Petitioner will comply with this condition.

24. Compliance with Representations to the Commission.

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 will comply with this condition.

In 2008 the County of Hawaii by ordinance adopted a new regional development plan known as the Kona Community Development Plan ("KCDP"). Petitioner has had numerous meetings with the County of Hawaii Design Center, as required by the KCDP, and as a result of those meetings has created a revised master plan that Petitioner understands has been recommended for approval by the Design Center. Petitioner has already invested more than \$20 million to help construct the UH-West Hawaii and related infrastructure in a cooperative undertaking with the University of Hawaii. This public-private partnership has refocused Petitioner around the planned "University Village" Regional Center located on both UH-West Hawaii and Petitioner's lands. The University Village Regional

Center, as proposed in the KCDP, is in substantial conformity with Petitioner's presentations to the Land Use Commission in 2004 and 2005. Petitioner's revised master plan in compliance with the KCDP still contains a maximum of 1,116 dwelling units including affordable housing, a small hotel, mixed commercial and open space uses, as described in prior annual reports. The planned infrastructure systems are similar to the prior plans and conform to the maps and requirements of the KCDP. Traffic will ultimately access the project site from Queen Kaahumanu Highway, the new road connecting to Kaiminani Drive (known as Road 3A on the KCDP), and a future connection to Mamalahoa Highway. Attached to this report is a copy of the "Regulating Plan" (the name of the master plan in accordance with the KCDP) for the Palamanui project.

25. Notice of Change of Ownership.

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, prior to development of the Petition Area.

Petitioner will comply with this condition. As previously reported, the original Petitioner transferred ownership of the Petition Area to Palamanui Global Holdings, LLC.

26. Annual Reports.

Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the County in connection with the status of the subject Project proposed for the reclassification area, and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the approval of the Petition.

This report is being submitted in compliance with this Condition.

27. 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 the Petitioner.

Petitioner understands and will comply with this condition, as appropriate..

28. Notice of Imposition of Conditions.

Within seven days of the approval date of the Petition, the Petitioner shall (a) Record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission; and (b) File a copy of such recorded statement with the Commission.

The Notice of Imposition of Conditions was recorded in the State of Hawaii Bureau of Conveyances on June 23, 2005, as Document No. 2005-123996.

29. Recordation of Conditions.

Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances within sixty days after the receipt of the Decision and Order pursuant to Section 15-15-92, HAR.

The Conditions contained in the Decision and Order were recorded in the State of Hawaii Bureau of Conveyances on September 7, 2005, as Document No. 2005-178780.



Roger Harris
Director of Governmental Affairs
Palamanui Global Holdings

Cc: State of Hawaii Office of Planning
County of Hawaii Planning Director