

WAINANI 42, LLC
c/o Clark Realty Corporation
75-5722 Kuakini Highway, Suite 203
Kailua-Kona, HI 96740
Telephone: (808) 329-5255
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August 26, 2013

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

Re: LUC Docket No. A89-645

Dear Mr. Orodener:

Enclosed are two copies of Wainani 42, LLC's Annual Progress Report, bringing matters up to date from our last filed report dated June 30, 2006. This report covers only that portion of the original site, now known as TMK: (3) 7-3-62: parcels 1 through 53, which is owned by Wainani 42, LLC. Other parties maintain responsibility for reporting and compliance respecting their separate portions of the original 125.041 acre site.

Please do not hesitate to contact me should any additional information be required.

Very truly yours,


Barry Francis
Project Manager

BWF:plh

Enclosure: Two copies of 2013 Annual Progress Report LUC Docket No. A89-645

cc w/ Enclosure: County of Hawai'i Planning Department
State of Hawai'i, Office of State Planning

2013 AUG 28 P 1:39
LAND USE COMMISSION
STATE OF HAWAII

**ANNUAL PROGRESS REPORT
LUC DOCKET NO. A89-645
(Effective date: February 6, 1990)
UPDATED: August 26, 2013**

2013 AUG 28 P 1:39
LAND USE COMMISSION
STATE OF HAWAII

GENERAL PROGRESS OF THE PROJECT

This Report is intended to bring up to date and to include those activities after the last filed Annual Report by Wainani 42, LLC.

This report is intended to address only those activities within the parcels owned or developed and sold by Wainani 42, LLC, specifically TMK: (3) 7-3-62: parcels 1 through 53. This 43.335 acre portion of the original 125.041 acre parcel consists of two subdivisions, the first of which has been completed and the second of which is being developed currently.

The first phase of this project, Wainani Estates "Akahi" Phase I (formerly known as Wainani Akahi Estates), which comprises an area of 22.715 acres, was granted final subdivision approval by the County of Hawai'i on December 19, 2007. This approval resulted in the subdivision of Lot 11-B (TMK: (3) 7-3-10:55) into Lots 1-49, Inclusive; Lot P-1 (an archaeological preservation site); Roadway Lots R1-R-4, Inclusive; Designation of Easements 1, 2-A, 2-B, 3-A, 3-B, 4 to 24, Inclusive; Buffer Zones 1 and 2; No Access Planting Screen (10-foot wide); and Future Road Widening Setback (5-foot wide). The lots resulting from the subdivision are now identified as TMK: (3) 7-3-62: parcels 1 through 51. To date, 30 of the 49 residential lots created by this subdivision have been purchased by third parties.

The second phase of this project, Wainani Estates "Elua" Phase II (formerly known as Wainani Elua Estates), which comprises an area of 20.620 acres that was formerly identified as Lot 11-A (TMK: (3) 7-3-10:27) and is now identified as Lot 11-A-1 (TMK: (3) 7-3-62:53) and Lot 11-A-2 (TMK: (3) 7-3-62:52), is currently being improved to meet conditions of tentative subdivision approval originally granted by the County of Hawai'i on April 19, 2005. As the result of several time extensions requested by the developer and granted by the County, the developer has until April 19, 2014, to comply with the stated conditions of subdivision approval. It is anticipated that all remaining improvements will be completed and final subdivision approval granted during the first quarter of 2014. If the remaining improvements cannot be made before the current deadline, the developer will request a further time extension from the County. When approved, this will result in the subdivision of Lot 11-A-1 and Lot 11-A-2 into Lots 1 to 41, Inclusive; Lot 42 (Reservoir Site); Lots 43 to 52, Inclusive; Roadway and Utility Lots R-4 to R-6, Inclusive; Designation of Easements 1 to 18; No Access Planting Screen (10-foot wide); and Future Road Widening Setback (5-foot wide). The 50 residential lots created by this subdivision will be offered for sale shortly after final subdivision approval is granted.

PROGRESS IN COMPLYING WITH THE LUC CONDITIONS OF THE DECISION AND ORDER

Condition 1 (As amended) Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate-income residents in the State of Hawaii to the satisfaction of the County of Hawaii. The County of Hawaii shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner's affordable housing plan. 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 of Hawaii.

The developer obtained approval from the County of Hawai'i Office of Housing and Community Development to pay in-lieu fees to fulfill the affordable housing condition as allowed in Section 11-4 under the County of Hawai'i affordable housing policy. The in-lieu fees for the subject property are described in the Hawai'i County Housing Agency Resolution No. 123, dated June 19, 2001. The developer paid \$23,128 for the first phase of the project on January 23, 2007, thereby fully satisfying the affordable housing condition on the 49 lots contained therein. Pursuant to Resolution 123, the applicable in-lieu fee for the second phase of the project will be \$23,600. This payment will be made prior to final subdivision approval.

Condition 2 Petitioner shall participate in the funding and construction of transportation improvements at the intersection of Kaiminani Street and the Queen Kaahumanu Highway as deemed necessary by the State Department of Transportation, provided that the extent of the Petitioner's participation shall not exceed the project's share of the increased community traffic impacts in the region. A schedule for the implementation of the Petitioner's participation on any regional transportation improvement, including the total costs paid by Petitioner for such improvements, shall be provided to the Petitioner by the State Department of Transportation within a reasonable time period after the effective date of this Decision and Order.

Construction of transportation improvements at the intersection of Ka'iminani Street and the Queen Ka'ahumanu Highway, which included signal lighting and left turns lanes on Queen Ka'ahumanu Highway, has been completed by the State.

Condition 3 Petitioner shall fund and construct the necessary water source and transmission facility improvements for the Property as are required by the County Department of Water Supply.

Working in conjunction with the County of Hawai'i Department of Water Supply (DWS), the developer has completed the construction of a 500,000 gallon reservoir, a by-pass valve on Mamalahoa Hwy and an offsite water line. Also, the developer has paid the DWS for all facilities charges and fees for the first phase of the project. The facilities charges and fees for the second phase of the project will be paid when due.

Condition 4 Petitioner shall fund and construct the necessary sewage treatment facilities for the Property as required by the State Department of Health.

The developer will work with DOH in complying with their standards.

Condition 5 Petitioner shall pay for its pro rata share for police, park, fire, and solid waste facilities as may be required by the County of Hawaii.

The developer will comply with applicable requirements for fair share contributions.

Condition 6 Petitioner shall pay for its pro rata share for school facilities as may be required by the State Department of Education. A schedule for the implementation of Petitioner's participation in any school facilities, including the total cost to be paid by petitioner for such facilities, shall be provided to the Petitioner by the State Department of Education within a reasonable time period after the effective date of this Decision and Order.

An agreement between the Petitioner and the State Department of Education was made on October 29, 1998 for its pro rata share for school facilities. Wainani 42, LLC paid \$18,700 to the State Department of Education for 22 lots in Phase I, Increment I, on August 28, 2008. The \$22,950 fee for the remaining 27 lots in Phase I, Increment II will be paid when due. The \$42,500 fee for Phase II will be paid once this subdivision is completed and lot sales begin.

Condition 7 Petitioner shall develop and implement a plan to mitigate the impact of the Project on the endangered and threatened botanical species located on the Property in accordance with Federal and State Guidelines. The plan shall be developed by the Petitioner prior to submission of a change of zone application of the Property to the County of Hawaii.

Pursuant to the Commission's previous findings and conclusions based on previous endangered species reports for the site, in 2006 the developer contracted the services of Reginald David, an endangered species biologist with Rana Productions, Ltd., to advise it on fulfilling the previous finding of *Ko'oko'olau* (*Bidens micrantha* var. *ctenophylla*) on the larger 125.041 acre site, of which the subject 43.335 acre property is a part. Mr. David searched the subject site for *Ko'oko'olau*, but could locate none. *Ko'oko'olau* is a rare endemic species, which is currently not listed under either Federal or State of Hawai'i endangered species statutes. Mr. David, therefore, has located *Ko'oko'olau* plants offsite for out planting to the site and will be working with horticulturalists at the Amy Greenwell Ethnobotanical Gardens, as additionally necessary, to secure the necessary plants and to assist in ensuring that the out-planting is completed in an appropriate fashion, possibly within a plantable portion of the archaeological/burial preserve that was created in Phase I of the project.

The *nehe* population found by Linney and Char in (1988), and originally tentatively identified as the endangered species (*Lipochaeta venosa*) was later identified by Char as (*Lipochaeta subcordata*), which is neither rare, nor listed under either the Federal or State of Hawai'i endangered species statutes (W. Char 1996). The extremely rare (*Lipochaeta venosa*) is only known to occur in six populations located between 2500-3600 feet of elevation in the South Kohala District, well north of the subject property (U. S . Fish & Wildlife Service 1999, Wagner et al 1990, 1999). There have been no other findings of endangered and threatened botanical species from within the subject parcel.

Char, W. P. 1996. Survey for Uhuhi, Pu'u Honua Estates, North Kona District, Island of Hawai'i.

Linney, C. K., and W. P. Char. 1988. Botanical survey, Pu'u Honua Estates subdivision project, District of North Kona, Hawai'i.

Wagner, W.L., D.R Herbst, and S.H. Sohmer. 1990. *Manual of the Flowering Plants of Hawai'i*. University of Hawaii Press, Honolulu, Hawaii 1854 pp.

Wagner, W.L. and D.R. Herbst. 1999. *Supplement to the Manual of the flowering plants of Hawai'i*, pp. 1855-1918. In: Wagner, W.L., D.R. Herbst, and S.H. Sohmer, *Manual of the flowering plants of Hawai'i. Revised edition*. 2 vols. University of Hawaii Press and Bishop Museum Press, Honolulu.

U.S. Fish & Wildlife Service 1990. Recovery Plan for *Lipochaeta venosa* and *Isondendron hosakae*. U. S. Fish and Wildlife Service, Portland, Oregon. Dated May 23, 1994.

Condition 8 Petitioner shall develop and implement a plan to mitigate the adverse impact on the air quality caused by the fugitive dust during the construction on the Property. The plan shall include, among other dust control measures, a provision for early landscaping of the Property. The plan shall be developed by the Petitioner prior to submission of a change of zone application of the Property to the County of Hawaii.

A Plan outlining the dust control measures was submitted as part of the change of zone application for the original 125.041-acre property. Dust control measures were implemented during construction of Wainani Estates "Akahi" Phase I and during grading of Wainani Estates "Elua" Phase II. To the extent that some limited additional site work may be necessary to complete required improvements within Phase II, the same dust control measures that were implemented in Phases I and II will be used again.

Condition 9 Petitioner shall prepare a preservation and data recovery plan for all the significant historic sites on the Property, which plan shall be submitted to the Department of Land and Natural Resources, State Parks Historic Sites Division and the County of Hawaii Planning Department for their review and approval.

The Data Recovery Plan and Mitigation Plan received approvals from SHPD, DLNR. Also, the Burial Treatment Plan received approval from the Burial Council. Copies of these approved plans were transmitted to the Land Use Commission under the developer's letter of July 26, 2005. Developer continues to comply with these plans and reports to SHPD, DLNR on compliance measures.

Condition 10 Petitioner shall immediately stop work on the impacted area and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, paving or walls be encountered during the construction of the Project.

The developer understands and will comply.

Condition 11 Petitioner shall pay for its pro rata share for a baseline study monitoring program regarding the impact of the proposed development upon the nearshore waters as may be required by NELH and HOST Park. A schedule for the implementation of petitioner's participation including the total cost to be paid by Petitioner shall be provided to the Petitioner by NELH and HOST Park within a reasonable period of time after the effective date of this Decision and Order.

Discussions with NELH and the developer's consultants resulted in an agreement in the amount of \$1,000 annually for its fair share contribution until the completion of the project.

Condition 12 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 prior to the development of the Property.

The changes in ownership have been discussed in the General Progress section of this Report.

Condition 13 Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.

The developer understands and will comply.

Condition 14 Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning and the County of Hawaii Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed in this Decision and Order.

This subject Report is being submitted to satisfy this condition. Also, copies of this report will be sent to the Office of State Planning and the County of Hawai'i Planning Department.

Condition 15 The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

The developer understands and will comply.

WAINANI 42, LLC
c/o Clark Realty Corporation
75-5722 Kuakini Highway, Suite 203
Kailua-Kona, HI 96740
Telephone: (808) 329-5255
Telefax: (808) 930-5276

August 26, 2013

Mr. Duane Kanuha, Director
Planning Department
County of Hawai'i
101 Pauahi Street, Suite 3
Hilo, HI 96720-8742

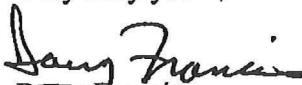
Re: Change of Zone Ordinance 91-22, as amended by Ordinance 98-66
TMK: (3) 7-3-62: parcels 1 through 53
(Formerly identified as TMK: (3) 7-3-10:27 and (3) 7-3-10:55)
Lot 11, File Plan 2237

Dear Mr. Kanuha:

Enclosed are two copies of Wainani 42, LLC's Annual Progress Report, bringing matters up to date from our last filed report transmitted on July 31, 2006. This report covers only that portion of the original site, now known as TMK: (3) 7-3-62: parcels 1 through 53, which is owned by Wainani 42, LLC. Other parties maintain responsibility for reporting and compliance respecting their separate portions of the original 125.041 acre site.

Please do not hesitate to contact me should any additional information be required.

Very truly yours,


Barry Francis
Project Manager

BWF:plh

Enclosure: Two copies of 2013 Annual Progress Report Change of Zone

cc w/ Enclosure: State of Hawai'i Land Use Commission
State of Hawai'i, Office of State Planning

2013 AUG 28 P 1:39
LAND USE COMMISSION
STATE OF HAWAII

2013
ANNUAL PROGRESS REPORT
Change of Zone Ordinance 91-22 (as amended by Ordinance 98-66)
UPDATED: August 26, 2013

2013 AUG 28 P 1:39
LAND USE COMMISSION
STATE OF HAWAII

I. GENERAL PROGRESS OF THE PROJECT

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The first phase of this project, Wainani Estates "Akahi" Phase I (formerly known as Wainani Akahi Estates), which comprises an area of 22.715 acres, was granted final subdivision approval by the County of Hawai'i on December 19, 2007. This approval resulted in the subdivision of Lot 11-B (TMK: (3) 7-3-10:55) into Lots 1-49, Inclusive; Lot P-1 (an archaeological preservation site); Roadway Lots R1-R-4, Inclusive; Designation of Easements 1, 2-A, 2-B, 3-A, 3-B, 4 to 24, Inclusive; Buffer Zones 1 and 2; No Access Planting Screen (10-foot wide); and Future Road Widening Setback (5-foot wide). The lots resulting from the subdivision are now identified as TMK: (3) 7-3-62: parcels 1 through 51. To date, 30 of the 49 residential lots created by this subdivision have been purchased by third parties.

The second phase of this project, Wainani Estates "Elua" Phase II (formerly known as Wainani Elua Estates), which comprises an area of 20.620 acres that was formerly identified as Lot 11-A (TMK: (3) 7-3-10: 27) and is now identified as Lot 11-A-1 (TMK: (3) 7-3-62:53) and Lot 11-A-2 (TMK: (3) 7-3-62:52), is currently being improved to meet conditions of tentative subdivision approval originally granted by the County of Hawai'i on April 19, 2005. As the result of several time extensions requested by the developer and granted by the County, the developer has until April 19, 2014 to comply with the stated conditions of subdivision approval. It is anticipated that all remaining improvements will be completed and final subdivision approval granted during the first quarter of 2014. If the remaining improvements cannot be made before the current deadline, the developer will request a further time extension from the County. Once final subdivision approval is secured, this will result in the subdivision of Lot 11-A-1 and Lot 11-A-2 into Lots 1 to 41, Inclusive; Lot 42 (Reservoir Site); Lots 43 to 52, Inclusive; Roadway and Utility Lots R-4 to R-6, Inclusive; Designation of Easements 1 to 18; No Access Planting Screen (10-foot wide); and Future Road Widening Setback (5-foot wide). The 50 residential lots created by this subdivision will be offered for sale shortly after final subdivision approval is granted.

II. PROGRESS IN COMPLYING WITH CONDITIONS OF ORDINANCE NO. 91-22 (AS AMENDED BY ORDINANCE NO. 98-66)

Condition (A) The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.

The developer is well in process of complying with all of the stated conditions of approval.

Condition (B) The applicant shall consummate a water agreement to provide water for the remaining units with the Department of Water Supply within ninety days from the date of approval of the change of zone. The zoning of the property shall not be in effect until the agreement is consummated.

There are a total of 101 water units assigned from the Department of Water Supply (DWS) to the subject property. Fifty of these water units have been utilized to supply water to the 49 residential lots and one irrigation meter in the Wainani Estates "Akahi" Phase I subdivision. The remaining 51 units will be used to supply water to the 50 residential lots and one irrigation meter in the Wainani Estates "Elua" Phase II subdivision.

In the last filed report, the developer reported that there were a total of 110 water units assigned to the subject property. These units were assigned as follows:

10 units assigned to Lot 11 from 5/4/00 agreement between previous owner, Haseko, and DWS;

85 units assigned per Lot 11 Owner's agreement with DWS for Owner's improvements to DWS system; and

15 units assigned to Lot 11 Owner from an adjacent owner, per Water Board consent.

In addition to the above-described 110 units, there was one unit that was previously assigned to TMK: (3) 7-3-10:27 but not accounted for in the earlier report, bringing the total number of water units assigned to the subject property to 111.

By "Assignment of Water Commitments Under Water Agreement" between Wainani 42, LLC and RS10 Kalaoa, LLC, dated July 2, 2010, 10 of the water units assigned to the subject property were transferred to TMK: (3) 7-3-28:102, thereby reducing the number of water units assigned to the subject property to 101. As described above, these 101 water units are sufficient to provide the water necessary for the 99 residential lots and 2 irrigation meters contained in both the Wainani Estates "Akahi" Phase I subdivision and the Wainani Estates "Elua" Phase II subdivision.

Condition (C) The Single Family Residential zoned areas shall be subdivided in two increments. The first increment shall consist of a maximum of seventy-seven (77) residential lots based upon the units of water available and committed to the applicant by the Department of Water Supply. Subdivision plans for the second increment shall be submitted only after the Department of Water Supply grants to the applicant the necessary water commitments for each of the proposed lots of the second increment. No variance from the minimum water requirements for any portion of the subject property shall be granted.

The total number of water commitments granted to the subject property for use by the developer is 101. See Condition (B).

Condition (D) In conjunction with the submittal of plans for subdivision review or plan approval review, a master plan of the subject property shall be filed with the Planning Director. The master plan is intended to provide comprehensive design principles and guidelines for the development of the commercial and residential areas in a manner consistent with infrastructural requirements and the surrounding area. Final Subdivision Approval or Final Plan Approval for any portion of the subject property shall be secured within five years from the effective date of this amendment.

In addition to the revised Master Plan of the larger 125.041 acre site, as previously approved by the Planning Department, the developer of the subject property submitted its Master Plan on September 19, 2003, as part of its subdivision application process. The plan includes large residential lots, consistent with the 10,000 and 15,000 sq. ft. lot sizes zoned for the Lot 11 area. Reference is made to the Planning Department files for "Wainani Estates Subdivision, Phase I" (SUB 2003-0120) and "Wainani Elua Estates Subdivision" (SUB 2004-0178). As noted in the general progress section of this report, final subdivision approval for the first phase of the project was granted by the County of Hawai'i on December 19, 2007. It is anticipated that final subdivision approval for the second phase of the project will be secured during the first quarter of 2014, in accordance with time extensions granted to date by the County. If necessary, the developer may submit an additional time extension request to enable it to complete the remaining improvements necessary for securing final subdivision approval. Subdivision approvals for portions of the larger, 125.041 acre, property that was the subject of the rezoning ordinance have been previously granted for Pu'u honua Phases I and II (located *mauka* of the subject property) as well as portions of the Lokahi Makai subdivision (located *makai* of the subject property).

Condition (E) Construction of the proposed development within the Neighborhood Commercial zoned area and Multifamily Residential area of the subject property shall be completed within five years from the date of receipt of Final Plan Approval for any portion of the subject property.

The previously approved Revised Master Plan did not include any commercial development or multi-family development within the larger 125.041 acre site. The above-referenced Master plan for the subject property includes only single family residential lots, pursuant to the zoning for that portion of the original 125.041 acre site.

Condition (F) A drainage system shall be constructed meeting with the requirements of the Department of Public Works in conjunction with final subdivision approval or Final Plan Approval for any portion of the subject Property.

There are no drainageways within the subject property. The owner, through its engineer, R.M. Towill Corporation, previously submitted its drainage report as part of its subdivision approval process. The approved plans for Lot 11-B and Lot 11-A meet the requirements of the drainage report and the Department of Public Works.

Condition (G) The main access road and interior subdivision roads to be dedicated to the County shall meet with the approval of the Department of Public Works. Further, as may be required by the Department of Public Works, the existing north-south roads of the Kona Palisades Subdivision shall be extended through the proposed development. Additionally, prior to occupancy permits for any multi-family development the subdivision road shall connect to Kaiminani Drive below the community center. Pending the completion of said subdivision road, if deemed appropriate by the Department of Public Works, a construction road to accommodate construction traffic associated with on-site infrastructural work shall be construction from the makai end of the subject property to the actual area of development.

As discussed with the Planning Department, the interior roads within the subject property will be privately maintained, except for, possibly, the Koi Koi Street extension, which has been built to dedicable standards. Design of the internal streets within the subject property is consistent with the variance previously approved by the Department, which is incorporated into the approved plans for Lot 11-B and Lot 11-A.

The Kapuahi Street and Koi Koi Street extensions have been designed to extend south of the project, in the event subsequently constructed.

Condition (H) A Solid Waste Management Plan for the subject property shall be submitted for review and approval to the Department of Public Works in conjunction with the submittal of subdivision plans or plan approval to the Planning Director.

By letter dated September 5, 2006, the County Department of Environmental Management approved the Solid Waste Management Plan for Lot 11-B (Wainani Estates "Akahi" Phase I). A plan addressing the same issues for Lot 11-A (Wainani Estates "Elua" Phase II) will be submitted prior to final subdivision approval.

Condition (I) An archaeological data recovery and mitigation/interpretation plan shall be submitted for review and approval by the Planning Department, in consultation with the State Department of Land and Natural Resources, Historic Preservation Division (DLNR-HPD), prior to submitting preliminary subdivision plans for any portion of the subject property; or prior to any land alteration activity, whichever occurs first.

The archaeological mitigation plan has been submitted to the Planning Director under separate cover dated August 27, 2001. Copies were previously sent to the State Department of Land and Natural Resources, Historic Preservation Division. A Burial Treatment Plan was submitted to the SHPD and has been approved. The owner continues to comply with both of these approved plans.

Condition (J) Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

The developer understands and will comply.

Condition (K) Restrictive covenants in the deeds of all the proposed residential lots within the subject property shall prohibit the construction of a second dwelling unit on each lot. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances for any portion of the subject property. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.

The previous owner of the entire 125.041 acre parcel, Hawai'i Agribusiness, LLC recorded a "Declaration Re: Condition K Hawaii County Ordinance 98-66" on July 10, 2002. This Declaration encumbers the entire 125.041 acre parcel, including Lot 11. The Planning Department has determined that the existing recorded Declaration is sufficient to satisfy this condition with respect to the development of Lot 11 by Wainani 42, LLC.

Condition (L) To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code, relating to Affordable Housing.

The developer has and will continue to fulfill this affordable housing condition by paying in-lieu fees as allowed in Section 11-4 under the County of Hawai'i affordable housing policy and as approved by the Hawai'i County Housing Agency Resolution No. 123, dated June 19, 2001. The developer paid \$23,128 for the first phase of the project on January 23, 2007, thereby fully satisfying the affordable housing condition on the 49 lots contained therein. Pursuant to Resolution 123, the applicable in-lieu fee for the second phase of the project will be \$23,600. This payment will be made prior to final subdivision approval.

Condition (M) A minimum area of four acres to be set aside within the area for active park uses. The park shall be kept in private ownership and maintenance until such time that the applicant intends to dedicate it to and with the acceptance of the County. The location and configuration shall be determined at the time of submittal of the master plan described in Condition (D) herein. Minimum improvements shall be provided for the park area prior to issuance of the occupancy permit for any development with the RM zoned area or prior to receipt of Final Subdivision Approval of the second increment for the Single Family Residential (RS) zoned area, and/or prior to the dedication to the County, whichever occurs first. The minimum improvement shall include, but not limited to, grading and grassing which meet with the approval of the Directors of the Planning Department and the Department of Parks and Recreation. Until such time that the park is dedicated to and accepted by the County, there shall be adequate assurance, as determined by the Corporation Counsel, for the maintenance of the private park by recorded covenant running with the land which shall include the following:

- (1) obligate the subdividers, purchasers, occupants, or association in the subdivision to maintain the private park in perpetuity; and**
- (2) empower the County, through the Director of the Department of Parks and Recreation, to enforce the covenants to maintain**

the private park, authorizing the performance of maintenance work by the County in the event of failure by the subdividers, purchasers, occupants, or association in the subdivision to perform such work and permit the subjecting of the land and properties in the subdivision to a lien until the cost of the work performed by the County has been reimbursed.

The park is located on a property on the *makai* side of the Kapuahi Street extension, and hence outside of the subject property.

Condition (N) Comply with all other applicable laws, rules, regulations and requirements, including those of the State Land Use Commission.

The developer understands and will comply.

Condition (O) Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein may, at the developers' election, be satisfied by the performance in accordance with the requirements of the Unified Impact Fees Ordinance.

The developer understands and will comply.

Condition (P) An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the change of zone. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been completed and the Planning Director acknowledges that further reports are not required.

This subject Report is being submitted to satisfy this condition. Also, copies of this report will be sent to the Office of State Planning and the State Land Use Commission. Many of the facts cited in this 2013 report have been previously submitted to the County in the context of the developer's two subdivision applications, referenced above.

Condition (Q) An extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:

- 1) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants,**

- successors, or assigns, and that are not the result of their fault or negligence;
- 2) Granting of the time extension would not be contrary to the General Plan or Zoning Code;
 - 3) Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone;
 - 4) The time extension granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year); and
 - 5) If the applicants should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.

The developer understands and will comply.

Condition (R) Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the area to its original or more appropriate designation.

There has been no change in status of this condition.