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WAINANI 42, LLC
c/o Clark Realty Corporation
75-5722 Kuakini Highway, Suite 203
Kailua-Kona, HI 96740
Telephone: (808) 326-9774
Telefax: (808) 930-5276

July 1, 2015

2015 JUL 13 A 7:50
LAND USE COMMISSION
STATE OF HAWAII

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: parcel 53
(Formerly identified as TMK: (3) 7-3-10:27
Lot 11, File Plan 2237
Annual Progress Report


Dear Mr. Kanuha:

Enclosed are two copies of Wainani 42, LLC's Annual Progress Report, bringing matters up to date from our last report dated August 26, 2013. This report covers only that portion of the original site, now known as TMK: (3) 7-3-62: parcel 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.

Wainani 42, LLC did renew the fifteen (15) water commitments by payment of the applicable deposit to the Department of Water Supply ("DWS"), as pointed out in your March 6, 2015 letter. A copy of DWS' most recent letter, dated June 3, 2015, concerning water availability for the Wainani Estates "Elua" Phase II (SUB 04-000178) is attached to the enclosed Report.

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

Very truly yours,


Putman D. Clark
Manager

PDC:bwf

Enclosure: Two copies of 2015 Annual Progress Report Change of Zone
cc w/ Enclosure: State of Hawai'i Land Use Commission ✓
State of Hawai'i, Office of State Planning

2015
ANNUAL PROGRESS REPORT
Change of Zone Ordinance 91-22 (as amended by Ordinance 98-66)
UPDATED: July 1, 2015

LAND USE COMMISSION
STATE OF HAWAII

2015 JUL 13 A 7:50

I. 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 remaining parcel owned by Wainani 42, LLC, specifically TMK: (3) 7-3-62: parcels 1 through 53. This 21.931 acre portion of the original 125.041 acre parcel is planned as a single subdivision, known as Wainani Estates "Elua" Phase II. Prior to this, owner Wainani 42, LLC completed development and sale of the Wainani Estates "Akahi" Phase I subdivision. All rezoning conditions have previously been satisfied for Wainani Estates "Akahi" Phase, as noted in the Planning Department's letter dated March 6, 2015. .

Wainani Estates "Elua" Phase II (formerly known as Wainani Elua Estates), which comprises an area of 21.931 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), 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, 2017 to comply with the stated conditions of subdivision approval. It is anticipated that all remaining improvements will be completed and final subdivision approval granted within that time frame. Once final subdivision approval is secured, this will result in the subdivision of Lot 11-A-1 into Lots 1 to 50, Inclusive; ; Roadway and Utility Lots R-4 to R-6, Inclusive; Designation of Easements 1 to 21; 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 upon final subdivision approval.

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 presently 51 water units assigned and available from the Department of Water Supply (DWS) for the subject property. These 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. A copy of DWS' letter dated June 3, 2015 concerning these units is attached.

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.

A total of 51 water commitments have been granted to the subject property for use for Wainani Estates "Elua" Phase II. 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). It is anticipated that final subdivision approval for the second phase of the project will be secured in accordance with time extensions granted to date by the County. Subdivision approvals for portions of the larger, 125.041 acre, property that was the subject of the rezoning ordinance have been previously granted for Wainani Estates "Akahi" Phase I (located adjacent to the remaining subject property), and for Pu'uohonua 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-A-1.

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 20154 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:

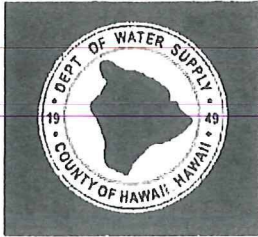
- 1) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns, and that are not the result of their fault or negligence;**
- 2) Granting of the time extension would not be contrary to the General Plan or Zoning 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.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
345 KEKŪANAŌ'A STREET SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

June 3, 2015

Mr. Barry Francis
Wainani 42, LLC
Kuakini Tower
75-5722 Kuakini Highway, Suite 204
Kailua-Kona, HI 96740

**WATER COMMITMENT TIME EXTENSION FOR THE TRI-PARTY HASEKO
AGREEMENT AND A PROPOSED 47-LOT SUBDIVISION DEVELOPMENT
SUBDIVISION APPLICATION NO. 04-000178
TAX MAP KEY 7-3-010:PORTION OF 027**

This is to acknowledge receipt of the required \$2,250.00 water commitment deposit for a commitment time extension for the proposed development. We are enclosing Receipt No. 280062 for your files.

Pursuant to Rule 5 of the Department's Rules and Regulations, a water commitment time extension for the proposed development in the amount of 6,000 gallons per day, or 15 additional units of water, through the Tri-Party Haseko Agreement at an average of 400 gallons per day, per unit, is hereby granted until May 31, 2016.

For your information, this subdivision consists of 50 single-family residential lots. Therefore, an additional 35 water units are required, which were assigned from the 85 additional units that became available after the completion of required offsite water system improvements with Wainani Estates Akahi Phase I.

Final subdivision approval is subject to the following conditions:

1. Construct necessary water system improvements, which shall include, but not be limited to:
 - a. water mains capable of delivering water at adequate pressure and volume under peak-flow and fire-flow conditions; minimum diameter of mains shall be 8 inches,
 - b. service laterals that will accommodate the 5/8-inch sized meter to each lot, and
 - c. fire hydrants spaced no more than 600 feet apart.

Submit installation plans prepared by a professional engineer, registered in the State of Hawai'i, for review and approval.

Please be informed that the Department's approval of the construction plans have expired and will need to be re-submitted for review and re-approval.

... Water, Our Most Precious Resource ... Ka Wai A Kāne ...

The Department of Water Supply is an Equal Opportunity provider and employer

2. Remit the prevailing facilities charge balance and capital assessment fee, which are subject to change, as shown below:

FACILITIES CHARGE (FC):

1 Haseko unit previously paid installment deferred	
<u>15 additional units @ \$5,500.00 per unit</u>	<u>\$82,500.00</u>
Total FC	\$82,500.00

WATER COMMITMENT DEPOSIT CREDIT (WCD):

<u>15 additional units @ \$150.00 per unit, times thirteen (13) payments</u>	<u>-\$ 29,250.00</u>
Subtotal	\$53,250.00

CREDIT FOR WELL DEVELOPMENT:

<u>22% of \$82,500.00</u>	<u>-\$ 18,150.00</u>
FC Balance (Haseko Units)	\$35,100.00

CAPITAL ASSESSMENT FEE (CAF):

<u>15 additional units @ \$500.00 per unit</u>	<u>\$ 7,500.00</u>
Total	\$42,600.00

FC FOR THE 35 ADDITIONAL UNITS:

<u>35 additional units @ \$5,500.00 per unit</u>	<u>\$192,500.00</u>
Total Amount	\$235,100.00

This is due and payable upon completion of the installation of the required water system improvements and prior to final subdivision approval being granted.

For your information, water commitment deposits are credited towards the final facilities charge requirement for the development. Note that the amount of water commitment deposit may exceed the prevailing facilities charge amount; for example, when requests for time extensions continue and are approved. Until the development is finally completed, these are separate and unrelated items. In the event that water commitment deposits exceed the facilities charge, no refunds are applicable.

3. Submit the appropriate documents, properly prepared and executed, to convey the water system improvements and necessary easements to the Water Board of the County of Hawai'i prior to final subdivision approval being granted. A registered land surveyor shall stamp and certify the metes and bounds description within the conveyance documents. However, prior to water meter services being granted to the development, or any lots within, the conveyance documents shall be accepted by the Water Board.
4. Comply with all other applicable policies and requirements of the Department's Rules and Regulations. Noncompliance may be cause for voiding this water commitment, at which time availability will be subject to change in accordance with prevailing water system conditions, policies, and Rules and Regulations.

Mr. Barry Francis
Page 3
June 3, 2015

Should there be any questions, please contact Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,



Quirino Antonio, Jr., P.E.
Manager-Chief Engineer

TS:dfg

Enc.

copy - Planning Department

Income Statement (Accrual)
Wili Wili Place - (wili)
June 2015

Page 1
Commercial
7/7/2015
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Prepared For:
 Niu Pia Land Company, Ltd.
 900 Fort Street Mall, Ste 1640
 Honolulu, HI 96813

Prepared By:
 Clark Realty Corporation
 75-5722 Kuakini Hwy
 Suite 214
 Kailua-Kona, HI 96740

	Month to Date	%	Year to Date	%
INCOME				
Base Rent	12,225.90	66.61	72,857.90	65.78
CAM	5,393.48	29.39	32,360.88	29.22
CAM Additional	0.00	0.00	1,113.75	1.01
GET Collected	734.00	4.00	4,429.70	4.00
TOTAL INCOME	18,353.38	100.00	110,762.23	100.00
RECOVERABLE EXPENSE				
Landscape, Parking & Security				
Landscape Maintenance	677.05	3.69	3,385.20	3.06
Security Service	520.83	2.84	2,604.15	2.35
TOTAL Landscape, Parking & Sec	1,197.88	6.53	5,989.35	5.41
Repairs & Maintenance				
Building Maintenance	100.45	0.55	7,117.27	6.43
Refuse Disposal	395.99	2.16	2,375.94	2.15
TOTAL Repairs & Maintenance	496.44	2.70	9,493.21	8.57
General & Administrative				
Insurance Package	0.00	0.00	3,489.60	3.15
Management Fees	0.00	0.00	3,906.32	3.53
Real Property Taxes	0.00	0.00	5,849.58	5.28
TOTAL General & Administrative	0.00	0.00	13,245.50	11.96
Utilities				
Electricity	103.01	0.56	517.28	0.47
Sewer	0.00	0.00	332.07	0.30
Water	0.00	0.00	981.81	0.89
TOTAL Utilites	103.01	0.56	1,831.16	1.65
Building Expenses				
Reserve Transfer-Maintenance	0.00	0.00	4,012.90	3.62
TOTAL Building Expenses	0.00	0.00	4,012.90	3.62
TOTAL RECOVERABLE EXPENSE	1,797.33	9.79	34,572.12	31.21
OWNER EXPENSE				
General Excise Tax-NR	0.00	0.00	3,702.95	3.34
TOTAL OWNER EXPENSE	0.00	0.00	3,702.95	3.34
TOTAL EXPENSE	1,797.33	9.79	38,275.07	34.56
NET INCOME	16,556.05	90.21	72,487.16	65.44