

HANOHANO LLC

LAND USE COMMISSION
STATE OF HAWAII

October 2, 2008

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Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Re: Third Annual Report of Hanohano LLC
Docket No. A03-745

Dear Chair and Members of the Commission:

In accordance with Condition 23 of the Findings Of Fact, Conclusions Of Law, And Decision And Order For A State Land Use District Boundary Amendment (the "D&O") entered in the above-referenced docket on May 17, 2005, Petitioner Hanohano LLC (the "Petitioner"), hereby submits its Third Annual Report to the Land Use Commission of the State of Hawaii ("LUC").

I. Status of the Project

As reported in the First Annual Report, Petitioner secured legal title to the Property (as this capitalized term is used in the D&O) on December 28, 2005. Petitioner filed with the Department of Public Works and Environmental Management of the County of Maui (the "Public Works Department") its preliminary plat and other supporting documents and information for the subdivision of the Property into forty-nine (49) residential lots and into various roadway, drainage and other lots (the "Subdivision"). On June 7, 2005, the Director of the Public Works Department (the "Public Works Director") granted his approval to the preliminary plat for the Subdivision. Between September 2, 2005 and September 16, 2005, Petitioner submitted to the Public Works Department construction plans for the improvements contemplated by the Subdivision (the "Construction Plans"). The construction and final plat for the subdivision have not been approved by the Public Works Director as of the date of this Third Annual Report.

II. Petitioner's Response to the Conditions imposed by the LUC in the D&O as follows:

- "1. Affordable Housing. Prior to approval of the "final plat" (as this term is defined in §18.04.190, Maui County Code for the Project (the "Final Subdivision Approval"), Petitioner shall enter into an agreement with the DHHC, whereby, among other things, Petitioner shall pay Habitat for Humanity Maui, Inc., on or before Final Subdivision Approval, the amount of ONE HUNDRED TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$125,000.00), in full satisfaction of the County of Maui's affordable housing requirements for the Project."

Status: Petitioner has complied with this condition. On February 10, 2006, Petitioner, through its counsel, submitted to the Director of the Department of Housing and Human Concerns of the County of Maui (the "DHHC") an agreement intended to satisfy this condition. The agreement was attached as Exhibit "A" in the Second Annual Report. Payment (\$125,000.00) will be made upon final subdivision approval.

- "2. Ohana Units. Not more than forty-nine (49) "dwelling units" (as this term is defined in §19.04.040, Maui County Code) shall be constructed or maintained on the Property, and not more than one (1) dwelling unit shall be constructed or maintained on each Residential Lot. No "accessory dwellings" (as this term is defined in §19.04.040, Maui County Code) or ohana units shall be permitted in the Project."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "3. Park Dedication Requirements. Prior to Final Subdivision Approval, Petitioner shall comply with the park dedication requirements under §18.16.320, Maui County Code, for the Project, as approved by the Parks Department. An executed agreement between the Petitioner and the Parks Department shall be delivered to the Commission, OP and the Planning Department."

Status: Petitioner acknowledges and agrees to comply with this condition.

“4. Archaeological. To protect the native Hawaiian practitioner’s exercise of customary and traditional practices in the subject area; to ensure appropriate public access to the Heiau located within the Property; to ensure the availability of natural and cultural resources for present and future generations; to promote the practice of ohana and conservation values with respect to the physical and cultural landscape:

4a. Petitioner shall establish on the Heiau/Retention Basin Lot, permanent 60 foot wide and 100 foot wide buffer zones around the Heiau, with a rock wall of not less than four (4) feet high demarcating the perimeter of the 60 foot buffer zone. Within 6 months of the filing of this Decision and Order, Petitioner shall use reasonable efforts to request, but shall not be required to obtain, the consent and cooperation of the owner of the parcel of land immediately adjacent to the Heiau/Retention Basin Lot to extend the permanent 100 foot wide buffer zone on such adjoining lot. Within six months of Petitioner receiving notice that the adjacent property has changed ownership, Petitioner shall use reasonable efforts to request the consent and cooperation to extend the 100 foot wide buffer on that adjoining lot and shall continue to use such reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to.”

Status: As to the first sentence of this condition, Petitioner acknowledges and agrees to comply with this condition. As noted in the supplemental information, dated August 1, 2006, provided in connection with the First Annual Report, Petitioner has completed the design of the rock wall demarking the perimeter of the sixty (60) foot wide buffer zone. The rock wall will be constructed in conjunction with Hanohano’s construction of the various on-site and off-site improvements required for the proposed subdivision of the subject property.

As to the second and third sentences of this condition, Petitioner has complied with said provisions, as noted in Petitioner’s letter to the LUC, dated November 16, 2005.

“4b. Petitioner shall include the CC&Rs provisions which prohibit public access, through the use of appropriate signage, to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot buffer zone and irrigation lines in the area between the perimeters of the 60 foot wide buffer zones, shall further prohibit the construction of any structures within the entire 100 foot wide buffer zones. Petitioner shall also install appropriate informational signage at the perimeters of the 100 foot wide buffer zone and the Heiau to aid in its preservation.”

Status: Petitioner acknowledges and agrees to comply with this condition. The informational signage will be installed in conjunction with the construction of the on-site and off-site subdivision improvements.

“4c. Petitioner shall cause the formation of a three (3) person committee, composed of a representative of the Homeowners’ Association pursuant to a provision in the CC&Rs, a representative from OHA, and a representative from the Kupuna Council of Maui (the “Curator Selection Committee”), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners’ Association; and (b) direct and coordinate the initial installation by the Petitioner and the perpetual maintenance by the Homeowners’ Association of the native plantings in the 60 foot wide buffer zone.”

Status: Petitioner acknowledges and agrees to comply with this condition. The Curator Selection Committee has not been formed as of the date of this Second Annual Report and is pending the selection of a representative of the Homeowners’ Association. The Homeowners’ Association will be established in conjunction with the preparation and recordation with the Bureau of Conveyances of written covenants, conditions and instructions applicable to all of the lots created by the subdivision (the “CC&Rs”). Since the subdivision has not yet received final approval from the County of Maui, the CC&Rs (which require descriptions of the separate lots created by the subdivision) has not been prepared. As such, without CC&Rs, the Homeowners’ Association has not

been created, thereby preventing the selection of the curator by the Curator Selection Committee, and the holding of any annual or special meetings by this body. Petitioner notes that a representative from OHA, Boyd P. Mossman, and a representative from the Kupuna Council of Maui, Patricia Nishiyama, have agreed to serve on the Curator Selection Committee.

- “4d. The Petitioner shall establish the Curator Selection Committee and its governing laws including succession plans no later than six months from the issuance of this Decision and Order. Upon establishment of the Curator Selection Committee, the Petitioner and Curator Selection Committee shall provide a written report to the Commission, OP and the Planning Department, with details as to the Curator Selection Committee composition and structure, procedures and plan of action to be approved by the Commission.”

Status: As noted in the status for item 4c. above, the Homeowners' Association has not been created, thereby preventing the selection of the curator by the Curator Selection Committee, and the holding of any annual or special meetings by this body.

- “4e. The Curator shall monitor the preservation and maintenance of the Heiau and the effectiveness of the Petitioner's actions to limit access to and/or preserve and maintain the Heiau. The Curator shall provide recommendations consistent with this Decision and Order to the Commission with respect to the maintenance and/or preservation of the Heiau and any other traditional and customary native Hawaiian practices and cultural resources on the Property.

The Curator shall provide reports on an annual basis describing items and issues relating to the preservation and maintenance of the Heiau and other traditional and customary native Hawaiian practices and cultural resources on the Property and discussions with the adjoining landowner with respect to the buffer on the adjoining landowner's property.”

Status: Petitioner acknowledges and agrees to comply with this condition.

“4f. Petitioner shall initially landscape with grass and install the necessary irrigation lines in the area between the 60 foot wide buffer zone and the perimeter of the 100 foot wide buffer zone. Petitioner shall, in consultation with the Curator, initially install appropriate native plantings, without any irrigation lines, in the 60 foot wide buffer zone.”

Status: Petitioner acknowledges and agrees to comply with this condition.

“4g. Upon the establishment of the Homeowners’ Association, said Homeowners’ Association shall maintain in perpetuity the Heiau/Retention Basin Lot. The CC&Rs will include a condition to the effect that the Homeowners’ Association shall bear the cost including reasonable out of pocket costs, if any, of the Curator, such that the Curator may perform the duties prescribed in this Decision and Order.”

Status: Petitioner acknowledges and agrees to comply with this condition.

“4h. The view planes from the Heiau will be preserved by prohibiting (a) the construction of any “structure” (as this term is defined in §19.04.040, Maui County Code), with the exception of the Retention Basin, the 4 foot high walls around the 60 foot wide buffer zones and the Retention Basin, and irrigation line on that portion of the Property north of the Heiau; and (b) the construction on the Property of any structure or landscaping that blocks the view plan from the Heiau to the summit of Haleakala (but structures that do not block such view plane may be constructed on the Property). This condition will also be included in the CC&R’s and in appropriate deed restrictions.”

Status: Petitioner acknowledges and agrees to comply with this condition.

“4i. Petitioner shall comply with any and all conditions proposed by SHPD for the Heiau. Within one month of notification from SHPD, Petitioner shall inform the Commission that SHPD has approved Petitioner’s commitments, if any, for the preservation and maintenance of the Heiau, and has determined that any historic preservation mitigation plan and

archaeological data recovery sub-plan have been successfully implemented.”

Status: Petitioner acknowledges and agrees to comply with this condition. Petitioner notes that SHPD has done a preliminary review; however, the final review remains pending.

- “5. Unidentified Archaeological Finds. If any previously unidentified human burial, or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, or loi walls (collectively the “Historic Sites”) are found during construction on the Property or any Residential Lot, work shall immediately stop and SHPD shall be notified of such Historic Sites. The requirements of Chapter 6E, HAW. REV. STAT., and the rules promulgated thereunder, applicable to the Historic Sites shall be satisfied before construction resumes. SHPD shall determine and approve the significance of the Historical Sites, and construction work shall re-commence at the Property only after both approval by an authorized archaeologist has been obtained and appropriate mitigative measures for the Historic Sites have been implemented.”

Status: Petitioner acknowledges and agrees to comply with this condition.

- “6. Traffic Impact Mitigation. On or before the completion of all improvements required by the Director of the DPW as a condition to Final Subdivision Approval, Petitioner shall cause, at its sole cost and expense, the construction of the following:

- 6a. Separate lanes for left turns and right turns on the northbound approach of the Project Entrance to Old Haleakala Highway;
- 6b. A left-turn pocket on the westbound approach on Old Haleakala Highway to the Project Entrance;
- 6c. A taper at the intersection of Old Haleakala Highway and the Project Entrance to facilitate eastbound traffic turning right into the Project;
- 6d. An extended shared through/left turn lane and an extended separated right turn lane approximately 200 feet long on the Old Haleakala Highway approach to the signalized intersection of Haleakala Highway, Kula Highway and Old

Haleakala Highway, which improvements shall include full curbs, gutters and sidewalk frontage improvements along the entire Project frontage on Old Haleakala Highway up to Kula Highway; and

- 6e. An extended separate right turn lane, approximately 150 feet long, on the makai bound approach of Haleakala Highway within the available right-of-way and within the constraints of the existing drainage ditch.

Petitioner shall also dedicate a sufficient right-of-way and setback, at no cost to the State of Hawaii, along portions of lots 19 and 20 of the Project fronting Old Haleakala Highway, and along a portion of the pedestrian and utility right-of-way between such lots, as shown on the Petitioner's Conceptual Development Plan (Petitioner's Exhibit 8), for the purpose of accommodating the storage lanes, turn lanes and sidewalk improvements described in Condition 6(d) above."

Status: Petitioner acknowledges and agrees to comply with this condition. The roadway improvement and dedication of the right-of-way and setback is contingent upon final subdivision approval, which is pending.

- "7. Hazard Mitigation. Within six months of issuance of this Decision and Order, the Petitioner shall properly test for the presence of any hazardous materials, and thereafter properly dispose of, the three (3) fifty-five (55) gallon drums currently on the Property. If such testing evidences the presence of hazardous materials, Petitioner shall conduct additional soil sampling at and in close proximity to the location of the drums on the Property to ascertain any potential impacts resulting therefrom and shall mitigate/cure any potential impacts resulting therefrom."

Status: Petitioner has complied with this condition, as noted in Petitioner's letter to the LUC dated November 16, 2005.

- "8. Responsibility of the Homeowner's Association to maintain the Property. All landscaping in the Project but outside of the Residential Lots, and all easements, cul-de-sac turn arounds, and emergency vehicle, pedestrian and utility rights of way established by Petitioner as a part of the Project shall be maintained in good repair as long as the Project exists."

Status: Petitioner acknowledges and agrees to comply with this condition.

- “9. Water Service. Prior to Final Subdivision Approval, Petitioner shall provide evidence, in the form of a fully executed agreement with DWS, whereby, among other things, the DWS shall allocate to and reserve for the Project any excess source and storage credits arising from the Kulamalu development. Petitioner shall provide adequate potable water transmission improvements for the Project as may be approved by the appropriate State agencies and the DWS.”

Status: Petitioner acknowledges and agrees to comply with this condition.

- “10. Wastewater. Petitioner or the owner of each Residential Lot shall provide adequate individual wastewater systems for such Residential Lot as determined by the DOH and the DPW.”

Status: Petitioner acknowledges and agrees to comply with this condition.

- “11. Civil Defense. Petitioner shall fund and construct adequate solar-powered civil defense measures for the Project, as determined by the Department of Defense and the Office of Civil Defense of the State of Hawaii and the Civil Defense Agency of the County of Maui.”

Status: Petitioner acknowledges and agrees to comply with this condition.

- “12. Drainage Improvements. Petitioner shall design and construct, at its sole cost and expense, drainage improvements required on the Property as a result of the Project to the satisfaction of the appropriate State agencies and the DPW.”

Status: Petitioner acknowledges and agrees to comply with this condition.

- “13. Solid Waste. Petitioner shall cooperate with the DOH and the County of Maui to conform the Project with the program goals and objectives of Chapter 342G, HAW. REV. STAT., and the County of Maui’s approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH.”

Status: Petitioner acknowledges and agrees to comply with this condition.

- "14. Best Management Practices. Petitioner shall implement at the Property applicable best management practices to reduce or eliminate soil erosion and ground water pollution and effect dust control measures during and after the construction of the Project in accordance with the DOH's guidelines and shall assure best management practices are followed by individual lot owners through appropriate deed restrictions."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "15. Water Conservation Measures. Petitioner shall implement water conservation measures and best management practices for the Project such as use of indigenous and drought tolerant plants and turf, and shall incorporate such measures into common area landscape planting."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "16. Energy Conservation Measures. Petitioner shall implement into the Project energy conservation measures such as use of solar energy and solar heating."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "17. Air Quality Monitoring. Petitioner shall participate in an air quality monitoring program during the construction of the Project as specified by the DOH."

Status: Petitioner acknowledges and agrees to comply with this condition.

- "18. Notification of Potential Nuisances. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots of potential odor, noise and dust pollution resulting from adjacent agricultural uses."

Status: Petitioner acknowledges and agrees to comply with this condition.

“19. Hawaii Right to Farm. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots that the Hawaii Right to Farm Act, Chapter 165, HAW. REV. STAT., limits the circumstances under which pre-existing farm activities may be deemed a nuisance.”

Status: Petitioner acknowledges and agrees to comply with this condition.

“20. Preservation of Access. The access rights of native Hawaiians who customarily and traditionally have used the Property for access onsite or to other areas for subsistence, cultural, and religious practices shall be preserved.”

Status: Petitioner acknowledges and agrees to comply with this condition.

“21. Compliance with Representations to the Commission. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or a change to a more appropriate classification.”

Status: Petitioner acknowledges and agrees to comply with this condition.

“22. Notice of Change to Ownership Interests. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property. This Condition shall be satisfied by the giving of notice only, and shall not require approval by the Commission. This Condition shall not apply to the sale of any Residential Lot from and after Final Subdivision Approval.”

Status: Petitioner acknowledges and agrees to comply with this condition. By letter dated January 25, 2006, Petitioner notified the LUC that Petitioner has closed on the purchase, and is now the landowner, of the Property.

“23. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the Planning Department in connection with the status of the Project, administration for the maintenance of the Heiau and its preservation program, and Petitioner’s progress in complying with

the Conditions. 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 Commission's approval and entry of this Decision and Order.

23a. Upon the sale of all of the Residential Lots and establishment of the Homeowner's Association, the Petitioner will transfer to the Homeowner's Association the responsibility of providing annual reports to the Commission."

Status: Petitioner acknowledges and agrees to comply with this condition. Petitioner submits this Third Annual Report in compliance with this condition.

"24. Release of Conditions. Petitioner shall have the right to seek from the Commission full or partial release of any of the Conditions as to all or any portion of the Property upon assurance acceptable to the Commission of satisfaction of such Conditions."

Status: Petitioner acknowledges this condition and will submit a timely motion to fully or partially release, or amend, certain conditions of the D&O upon compliance with the same.

"25. Notice of Imposition of Conditions. Within seven (7) days of the delivery to Petitioner of these Findings of Fact, Conclusions of Law, and Decision And Order for the subject reclassification, Petitioner (a) shall record with the Bureau of Conveyances of the State of Hawaii a statement that the Property is subject to the Conditions; and (b) shall file a copy of such recorded statement with the Commission."

Status: Petitioner has complied with this condition by its recordation of the Certificate of Conditions with the Bureau of Conveyances of the State of Hawaii on May 26, 2005, as Document No. 2005-105309.

"26. Recordation of Conditions. Petitioner shall record the Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92, Hawaii Administrative Rules."

Status: Petitioner has complied with this condition by its recordation of the Certificate of Conditions with the

Bureau of Conveyances of the State of Hawaii on
May 26, 2005, as Document No. 2005-105309.

Should you have any questions or require additional information, please do not
hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Don Fujimoto', with a stylized flourish at the end.

DON FUJIMOTO
Hanohano LLC

cc: Department of Planning, County of Maui
Office of Planning, State of Hawaii
Department of the Attorney General
Department of the Corporation Counsel