

WAINANI 42, LLC  
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LAND USE COMMISSION  
STATE OF HAWAII

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July 1, 2016

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

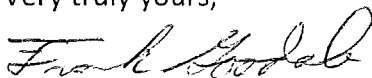
Re: LUC Docket No. A89-645

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 Aug 26, 2013. 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 space portions of the original 125.041 acre site.

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

Very truly yours,



Frank Goodale

Manager

Enclosure: Two copies of 2016 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

## 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 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 1 (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; 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. All rezoning conditions have previously been satisfied for Wainani Estates "Akahi" Phase, as noted in the Planning Department's letter dated March 6, 2015

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, 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. 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.

## II. 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 is \$23,600. This payment was made July 9, 2015.

**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 1, Increment 1, on August 28, 2008. The \$22,950 fee for the remaining 27 lots in Phase 1, Increment II will be paid this month. 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'olo'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'olo'olau* plants offsite for out planting to the site and will be working with horticulturalists at the Army 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 archeological/burial preserve that was created in Phase 1 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 *Isodendron 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 1 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 baselined 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.