

Exhibit O

Kaua'i County Planning Commission  
Tentative Subdivision Approval for HoKua Farm Lots  
June 19, 2014

Jan Kimura  
Chair

Angela Anderson  
Vice-Chair

Hartwell Blake  
John Isobe  
Wayne Katayama  
Sean Mahoney  
Amy Mendonca  
Members



PLANNING COMMISSION  
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Michael A. Dahilig  
Clerk of the Commission

JUN 19 2014

Mr. Brian M. Hennessy  
HONUA ENGINEERING, INC.  
Ching Young Center, Suite C7  
P.O. Box 851  
Hanalei, Hawai'i 96714

Subject: Hokua Farm Lots, being the Subdivision of Parcel 1 into Lots 1 to 6 inclusive and designating Easements "AU-1", "AU-2", "D-1", and "W-1", being a portion of Grant 5226 to Rufus P. Spalding at Kapa'a, Kaua'i, Hawai'i.  
(S-2014-02, HG Kauai Joint Ventures LLC)

Dear Mr. Hennessy,

This letter memorializes the action taken by the Kaua'i Planning Commission effective JUNE 10, 2014 concerning **TENTATIVE APPROVAL** of the above subject application. Final subdivision map approval, per your consent, is subject to the following conditions:

1. Requirements of the Planning Department:

- a. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.
- b. All existing and proposed easements shall be identified in the deed descriptions of affected lots and shown on the final subdivision map. Draft copies of the deed descriptions shall be submitted to the Planning Department for review and approval.
- c. Pursuant to section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.

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rec'd 6/21/14

File #5117

- d. The following fees shall be paid to the County of Kaua'i:
- 1) Park Dedication fee: \$900.00
  - 2) Environmental Impact Assessment fee: \$1,250.00
- e. A future road widening reserve shall be established along the frontage of Olohehena Road and Kapa'a By-Pass Road which shall be subject to the specifications of the Public Works Department for a major street. There shall be no new structures permitted within the reserve, and any new structures should be setback from the reserve. The reserve along with its restrictions shall be incorporated into the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- f. Prior to final subdivision approval, the subdivider shall delineate the Class "B" classified lands on the final subdivision map. In addition and pursuant to Act 199, Session Laws of Hawai'i, 1976, the applicant shall enter into an agreement with the County to incorporate agricultural restrictions into the instruments of conveyance for those lots which contain the Class "A" and/or "B" soils.
- g. The Applicant is advised that uses on the newly-created lots shall be limited to those listed as permissible uses within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm where agriculture activity provides income to the family occupying the dwelling. These restrictions shall be included in the covenants for the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- h. Prior to final subdivision approval, the Applicant shall submit to the Planning Department a density breakdown for each lot which will be subject to review and approval by the Department. These restrictions shall be included in the covenants and deed descriptions of the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.
- i. The pole sections of the double flag lots shall be designated as common access/utility easements in favor of each other and shall be incorporated into the deed descriptions of the affected lots (Lot 4 and Lot 5), draft copies of which shall be submitted to the Planning Department for review and approval.
- j. The subdivider shall resolve with the Planning and Public Works Departments the following:
- 1) Participation in the upgrading of the intersection of 'Olohehena Road, Ka'apuni and Kaehulua Roads by providing necessary lands to accommodate the future improvements.
  - 2) Limiting vehicular access points onto 'Olohehena Road.

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- 3) Establishing a road reserve within the project area in order to accommodate future construction of interior roadway system that would allow a connection for 'Olohehena Road to the Kapa'a By-Pass Road and relieve traffic off 'Olohehena Road.

The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- k. The Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- l. In order to ensure that the subdivision and development of property complies with the land use requirements contained in Chapter 205 of the Hawai'i Revised Statutes ("HRS"), the following matter shall be resolved prior to final subdivision approval:
- (1) The Applicant shall provide the following documents to the Subdivision Committee of the Planning Commission ("Subdivision Committee") for its review and approval:
    - (A) An Agriculture Master Plan shall describe the proposed agricultural uses of the property, the marketing and business plans associated with such activities, and the manner in which the agricultural and related uses on the property will comply with HRS Chapter 205.
    - (B) A map of the property showing the proposed location of: Agricultural Activities; Building Areas; and Agricultural Easements.
    - (C) A Declaration of Conditions, Covenants and Restrictions ("Restrictive Covenants") which will be recorded in the Bureau of Conveyances of the State of Hawai'i ("Bureau"), which will encumber and run with the property, and which will provide and require: that the owners of the lots in the subdivision ("Subdivision Lots") shall comply with the Agricultural Plan and the provisions of HRS Chapter 205; that the owners of all of the Subdivision Lots shall be members in an association ("Association") which will have the power and duty to enforce the Restrictive Covenants; that the Association shall file periodic reports (as determined by the Planning Department) with the Planning Department verifying compliance with the Agricultural Master Plan; and that the Agricultural Master Plan shall not be amended without prior approval of the Planning Department.
    - (D) An Agricultural Subdivision Agreement which will be recorded in the Bureau, run with and encumber the property, and which will provide and require: that each Subdivision Lot owner shall indemnify, defend and hold the County harmless from any claims arising out of the failure of the Subdivision Lot owner to comply with the Agricultural Master Plan and/or HRS Chapter 205; and that in the

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event of a Subdivision Lot owner's noncompliance with the Agricultural Master Plan and/or HRS Chapter 205 as determined by the Planning Department, the County and the State of Hawai'i shall have the right to refuse to grant any permits or approvals for uses or development on any Subdivision Lot affected by such noncompliance unless and until the noncompliance is cured, as determined by the Planning Department.

- m. The subdivider shall resolve with the Planning Department the provision of public access within the subdivision. The applicant shall propose an access plan for the review and approval of the Planning and Public Works Departments. Additionally, due to the farming activities, the subdivider shall work with the Planning Department on establishing a public access control system.

Proper documents shall be prepared and ready for execution prior to final subdivision approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

2. Requirements of the Department of Public Works:

DRAINAGE

- a. The subject subdivision abuts a natural unnamed drainage way on the West for which a detailed flood study has not been incorporated with the Flood Insurance Rate Maps (FIRM). Several natural drainage valleys or drainage swales traverses through and along the property. The natural drainage water courses will collect and concentrate storm flows through the site. A drainage study and provisions need to be established to prevent structures from being built in flood prone areas and to preserve the function and capacity of the natural water courses.

The subdivision and subsequent development of residences and other impermeable surfacing will increase storm water flowage. A drainage study needs to be made to evaluate the impacts of the increased storm runoffs. Measures to keep flow rates to predevelopment conditions is required.

- b. Flood studies need to include the existing bridge at the Kapa'a By Pass Road whether the bridge is adequate to convey storm flows without overtopping the Kapaa By Pass Road.
- c. The flood zoning, FIRM panel no. 204F and the date of the FIRM November 26, 2010 needs to be labeled on the final maps as well as the determined flood prone areas with base flood elevations. The applicant and future owners shall be advised that construction of new structures in flood prone areas presents flood risks and associated flood problems.

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ROAD

- d. The street name labeling for *Opala Road* needs to be amended to "**Malu Road**". The Kapa'a By Pass Road traverses through the proposed Lot 6. We recommend that the Kapa'a By Pass Road be named to facilitate house addressing assignment.
- e. The subject subdivision abuts the Olohena Road on the North. Olohena Road has a right of way width of 40 feet and an average pavement width of 20 feet. The pavement width is adequate for two way passenger vehicular type traffic. The right of way width is inadequate for a major collector street classification (60 feet right of way). We recommend a road reserve be established along Olohena Road or lands be dedicated to the County as well as improvements to Olohena Road to facilitate Safe Route to School and Complete Streets facilities.
- f. Access along Olohena Road **must** be restricted. Access for Lots 1, 2 and 3 **shall** be restricted to the pole section for Lots 4 and 5. Easement "AU-1" for roadway and utility purposes shall be restricted to the pole section for Lots 4 and 5. Comments should be solicited from the State Department of Transportation whether access would be allowed for Lot 6 from the Kapa'a By Pass Road.

OTHERS

- g. Complete Streets and Safe Route to School design principles needs to be incorporated with the subdivision improvements to Olohena Road. Complete Streets and Safe Route to School features include interconnected sustainable transportation networks providing opportunities for all modes of travel to and from neighborhood destination points for users of all ages and abilities. Comments should be solicited from the County's Transportation Planner.

3. Requirements of the Department of Water:

- a. The subdivider shall pay the Department of Water, a Facilities Reserve Charge of \$23,000 (5 lots at \$4,600 per lot). The subdivider shall pay any rate increase and/or applicable charges in effect at the time of receipt.
- b. The subdivider shall prepare and get Department of Water's approval on construction drawings for necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall also include:
- 1) Additional source facilities. The Applicant may wait until others (including the Department of Water) to construct additional source for this area.
  - 2) The domestic service connection.
- c. Locate and show all existing water meter/s (with appropriate water meter number) on the tentative subdivision map for the Department of Water's review and approval. Also identify the proposed subdivision lot that the existing water meter/s will be assigned to. The DOW comments may change depending on the approved tentative map.

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4. Requirements of the State Health Department:

- a. The existing individual wastewater system can continue to serve the existing building. However, wastewater generated from any additional dwelling units and other buildings shall be disposed of in wastewater systems that meet the wastewater rules in effect at the time of building permit application.
- b. Noise will be generated when construction occurs after Lots 1 through 6 are subdivided, shall not exceed the applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, entitled "Community Noise Control" unless a noise permit is obtained from the State Department of Health (DOH).
- c. Temporary fugitive dust emissions could be emitted when/if construction activities occur after Lots 1 through 6 are subdivided. At that time, in accordance with Title 11, HAR, Chapter 11-60.1, entitled "Air Pollution Control", effective measures for air pollution control shall be provided to minimize or prevent any fugitive dust emissions caused by the construction work from impacting the surrounding areas. This includes the off-site roadways used to enter / exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
- d. In accordance with Title 11, HAR, Chapter 11-58.1, entitled "Solid Waste Management Control", the construction waste that is generated when/if the subdivided lots are developed shall be either recycled or disposed of at a solid waste disposal facility that complies with the DOH. The open burning of any of these wastes on or off site is prohibited.
- e. Any project and its potential impacts to State waters must meet the following criteria:
  - 1) Anti-degradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
  - 2) Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
  - 3) Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
- f. Please call the Army Corps of Engineers at (808) 438-9258 to see if this project requires a Department of the Army (DA) permit. Permits may be required for work performed in, over, and under navigable waters of the United States. Projects requiring a DA permit also require a Section 401 Water Quality Certification (WQC) from our office.
- g. You are required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharges of wastewater, including storm water runoff, into State surface waters

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(HAR, Chapter 11-55). For the following types of discharges into Class A or Class 2 State waters, you may apply for NPDES general permit coverage by submitting a Notice of Intent (NOI) form:

- 1) Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi).
  - 2) Storm water associated with construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. **An NPDES permit is required before the start of the construction activities.**
  - 3) Treated effluent from leaking underground storage tank remedial activities.
  - 4) Once through cooling water less than one (1) million gallons per day.
  - 5) Hydro-testing water.
  - 6) Construction dewatering effluent.
  - 7) Treated effluent from petroleum bulk stations and terminals.
  - 8) Treated effluent from well drilling activities.
  - 9) Treated effluent from recycled water distribution systems.
  - 10) Storm water from a small municipal separate storm sewer system.
  - 11) Circulation water from decorative ponds or tanks.
- h. You must submit a separate NOI form for each type of discharge at least 30 days prior to the start of the discharge activity, except when applying for coverage for discharges of storm water associated with construction activity. For this type of discharge, the NOI must be submitted 30 days before to the start of construction activities.
  - i. For types of wastewater not listed in Item 3 above or wastewater discharging into Class 1 or Class AA waters, you must obtain an NPDES individual permit. An application for an NPDES individual permit must be submitted at least 180 days before the commencement of the discharge.
  - j. You must also submit a copy of the NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), or

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demonstrate to the satisfaction of the CWB that SHPD has or is in the process of evaluating your project. Please submit a copy of your request for review by SHPD or SHPD's determination letter for the project along with your NOI or NPDES permit application, as applicable.

- k. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with the water quality requirements contained in HAR, Chapter 11-54 and/or permitting requirements, specified in HAR Chapter 11-55 may be subject to penalties of \$25,000 per day per violation.

5. Requirements of the Housing Agency:

- a. Chapter 7A of the Kaua'i County Code, 1987, as amended, is applicable to the proposed subdivision, pursuant to Section 7A-1.4(c)(1).

Prior to final subdivision approval, the Applicant shall resolve the workforce housing assessment and shall execute a Workforce Housing Agreement with the Kaua'i County Housing Agency, as to the method of meeting the workforce housing requirement pursuant to Chapter 7A. The executed agreement shall be recorded on the deed of the project properties concurrent with final subdivision approval.

The Kaua'i County Housing Agency reserves the right to change this determination if the petition or application changes from the above, or if the project incorporates or becomes part of a larger residential or resort project, such that provisions of Kaua'i County Code, Section 7A-1.4 become applicable.

6. Requirements of the Department of Wastewater:

- a. The proposed subdivision is near the County's sewer service area. If sewer service is needed, the Applicant shall apply for County sewer service and shall be responsible for design and construction of all infrastructure necessary to connect to the County sewer and shall be responsible for payment of all applicable fees.

7. Requirements of the State Historic Preservation Division (SHPD):

- a. Pursuant to Hawaii Administrative Rules §13-284 we request an **archaeological inventory survey** be conducted by a qualified archaeologist in order to adequately determine the potential impacts of this subdivision on both surface and subsurface historic properties. We look forward to the opportunity to review the archaeological report prior to commencing further on the subdivision application. We recommend the final subdivision approval be deferred until the archaeological inventory survey report has been completed and appropriate mitigation measures/plans are in place.

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- b. As recommended by the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (DLNR), in the event that historic resources, including human skeletal remains are identified during routine construction activities, all work needs to cease in the immediate vicinity of the find, and the finds need to be protected from additional disturbance, and the State Historic Preservation Division, Kaua'i section, needs to be contacted immediately at (808)692-8015.

8. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the Applicant shall resolve these conditions with the respective agency(ies).

Sincerely Yours,



MICHAEL A. DAHLIG  
Clerk, Kaua'i Planning Commission

xc: COK Public Works Dept.  
COK Water Dept.  
COK Real Property – Assessment Div.  
State Dept. of Health  
State Historic Preservation Dept.

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