

WAINANI 42, LLC
c/o Clark Realty Corporation
75-5722 Kuakini Highway, Suite 203
Kailua-Kona, HI 96740
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LAND USE COMMISSION
STATE OF HAWAII

2018 SEP 10 A 9:08

September 4, 2018

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 as of July 1, 2018, from our last filed report dated June 30, 2017. This report covers only that portion of the original site, now known as TMK: (3) 7-3-62: Parcels 1 through 105, which was originally 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 2018 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
D.R. Horton – Schuler Homes, LLC

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LAND USE COMMISSION
STATE OF HAWAII

2018 SEP 10 A 9:08

September 4, 2018

Mr. Michael Yee, 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
Lot 11, File Plan 2327)
Annual Progress Report

Dear Mr. Yee:

Enclosed are two copies of Wainani 42, LLC's Annual Progress Report, bringing matters up to date as of July 1, 2018, from our last filed report dated July 10, 2017.

As stated last year, previously this report covered the 43.335 acre portion of the original 125.041 acre site, which subject property is now known as TMK: (3) 7-3-62: Parcels 1 through 102 and was initially owned and/or developed by Wainani 42, LLC.

As noted in the Planning Department's letter dated March 6, 2015, all rezoning conditions were previously satisfied for Wainani Estates "Akahi" Phase I. Accordingly, this updated report is limited to Wainani Estates "Elua" Phase II, covered by TMK (3) 7-3-62: 53-105, formerly TMK: (3) 7-3-62:53. Other parties maintain responsibility for reporting and compliance respecting their 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 2018 Annual Progress Report Change of Zone
cc w/ Enclosure: State of Hawai'i, Land Use Commission
State of Hawai'i, Office of State Planning
D.R. Horton – Schuler Homes, LLC

2018
ANNUAL Progress report
LUC DOCKET NO. A89-645
(Effective date: February 6, 1990)
UPDATED: As of June 30, 2018

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 then as Lot 11-A-1 (TMK: (3) 7-3-62:53) and Lot 11-A-2 (TMK: (3) 7-3-62:52), has been improved to meet conditions of tentative subdivision approval originally granted by the County of Hawai'i on April 19, 2005. On November 27, 2007, Wainani 42, LLC conveyed Lot 11-A-2 (TMK: (3) 7-3-62:52), the reservoir site, to the Water Board of the County of Hawai'i.

As the result of several time extensions requested by the developer and granted by the County, the developer had until April 19, 2017, to comply with the stated conditions of subdivision approval. The County of Hawai'i granted final subdivision approval of Wainani Estates "Elua" Phase II on February 3, 2017.

On July 7, 2016, Wainani 42, LLC conveyed Lot 11-A-1 (TMK: (3) 7-3-62:53) to WP2 Ventures, LLC ("WP2"). On October 6, 2016, WP2 conveyed an undivided 50% interest in Lot 11-A-1 (TMK: (3) 7-3-62:53) to D.R. Horton – Schuler Homes, LLC ("DRH", and, together with WP2, the "Phase II Developer").

Final subdivision approval of Wainani Estates "Elua" Phase II resulted in the subdivision of Lot 11-A-1 (TMK: (3) 7-3-62:53) into Lots 1 to 50, Inclusive; Roadway and Utility Lots R-4 to R-6, Inclusive; and Designation of Easements 4 to 21, Inclusive. On August 28, 2017, WP2 conveyed to DRH all of WP2's undivided 50% interest in Lots 16 to 40, inclusive, and Roadway Lots R-4 and R-5, and DRH conveyed to WP2 all of DRH's undivided 50% interest in Lots 1 to 15, inclusive, and 41 to 50, inclusive, and Roadway Lot R-6. On October 27, 2017, WP2 conveyed to DRH Lots 1 to 15, inclusive, and 41 to 50, inclusive, and Roadway Lot R-6.

Site construction of Wainani Estates "Elua" Phase II began in November 2016 and is complete. DRH commenced sales of the residential lots created by this subdivision in July 2017, and has sold twenty-two (22) homes, five (5) of which have closed, in each case, as of June 30, 2018.

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.

As reported in prior annual reports, Condition 1 (Amended) has been satisfied as to the subject property.

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.

As reported in prior annual reports, Condition 2 has been satisfied as to the subject property.

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.

As reported in prior annual reports, Condition 3 has been satisfied as to the subject property.

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

Under the tentative subdivision approval for Wainani Estates "Elua" Phase II, the County authorized installation and use of individual wastewater disposal systems, subject to approval of the State Department of Health. The Phase II Developer has been installing and plans to continue to install individual wastewater disposal systems that meet the approval of the State Department of Health.

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 understands and will comply.

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 was paid on July 29, 2016. The \$42,500 fee for the 50 lots in Phase II is being paid to the State Department of Education on an individual lot basis in the amount of \$850/lot at the closing of each lot.

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.

As reported in prior annual reports, Condition 7 has been satisfied as to the subject property.

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.

As reported in prior annual reports, Condition 8 has been satisfied as to the subject property, and the developers will continue to comply.

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.

As reported in prior annual reports, Condition 9 has been satisfied as to the subject property.

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.

This condition is acknowledged and the developers 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.

2018
ANNUAL PROGRESS REPORT
Change of Zone Ordinance 91-22 (as amended by Ordinance 98-66)
UPDATED: As of July 1, 2018

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.

Previously, this report covered the 43.335 acre portion of the original 125.041 acre site, which subject property is now known as TMK: (3) 7-3-62: Parcels 1 through 53 and was initially owned and/or developed by Wainani 42, LLC.

As noted in the Planning Department's letter dated March 6, 2015, all rezoning conditions were previously satisfied for Wainani Estates "Akahi" Phase I developed by Wainani 42, LLC. Accordingly, this updated report is limited to Wainani Estates "Elua" Phase II, covered by TMK (3) 7-3-62: 53-105, formerly TMK: (3) 7-3-62:53.

Wainani Estates "Elua" Phase II, which comprises an area of 19.930 acres that was formerly identified as a portion of Lot 11-A (TMK: (3) 7-3-10: 27) and then as Lot 11-A-1 (TMK: (3) 7-3-62: 53)¹, has been improved to meet conditions of tentative subdivision approval originally granted by the County of Hawai'i on April 19, 2005. On February 3, 2017, the County of Hawai'i granted final subdivision approval of Wainani Estates "Elua" Phase II.

On July 7, 2016, Wainani 42, LLC conveyed Lot 11-A-1 (TMK: (3) 7-3-62:53) to WP2 Ventures, LLC ("WP2"). On October 6, 2016, WP2 conveyed an undivided 50% interest in Lot 11-A-1 (TMK: (3) 7-3-62:53) to D.R. Horton – Schuler Homes, LLC ("DRH").

Final subdivision approval of Wainani Estates "Elua" Phase II resulted in the subdivision of Lot 11-A-1 (TMK: (3) 7-3-62:53) into Lots 1 to 50, Inclusive; Roadway and Utility Lots R-4 to R-6, Inclusive; and Designation of Easements 4 to 21, Inclusive. On August 28, 2017, WP2 conveyed to DRH all of WP2's undivided 50% interest in Lots 16 to 40, inclusive, and Roadway Lots R-4 and R-5, and DRH conveyed to WP2 all of DRH's undivided 50% interest in Lots 1 to 15, inclusive, and 41 to 50, inclusive, and Roadway Lot R-6. On October 27, 2017, WP2 conveyed to DRH Lots 1 to 15, inclusive, and 41 to 50, inclusive, and Roadway Lot R-6.

Site construction of Wainani Estates "Elua" Phase II began in November 2016 and is complete. DRH commenced sales of the residential lots created by this

¹ On November 27, 2007, Wainani 42, LLC conveyed Lot 11-A-2 (TMK: (3) 7-3-62:52), the reservoir site, to the Water Board of the County of Hawai'i.

subdivision in July 2017, and has sold twenty-two (22) total homes, five (5) of which have closed, in each case, as of July 1, 2018.

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. As reported in last year's annual report, (i) the developer's final payment of \$232,850 for the remaining water commitments at Wainani Estates "Elua" Phase II was mailed to the DWS on Dec. 8, 2016, and (ii) a confirmation letter of the payment was made back to the developer on Dec. 12, 2016.

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.

As reported in prior annual reports, in addition to the revised Master Plan of the larger 125.041 acre site, 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. Wainani Estates "Akahi" Phase I was granted final subdivision approval by the County of Hawai'i on December 19, 2007. The County of Hawai'i granted final subdivision of Wainani Estates "Elua" Phase II on February 3, 2017. 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).

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.

As reported in prior annual reports, Condition (E) does not apply to the subject property, as only single family residential will be developed thereon.

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.

As reported in prior annual reports, 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, and the project meets 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 reported in prior annual reports, the interior roads within the subject property will be privately maintained as discussed with the Planning Department, 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.**

As reported in last year's annual report, approval of Wainani Estates "Elua" Phase II Solid Waste Management Plan was issued to the developer on September 16, 2016.

- 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.**

As reported in prior annual reports, Condition (I) has been satisfied as to the subject property.

- 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.

As reported in prior annual reports, Condition (K) has been satisfied as to the subject property.

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.

As reported in last year's annual report, Condition (L) has been satisfied as to the subject property.

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.**

As reported in prior annual reports, Condition (M) does not apply to 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 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.

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.