

HONUA'ULA

LAND USE COMMISSION
STATE OF HAWAII

April 9, 2019

2019 APR 11 A 8:59

Mr. Daniel Orodener
Executive Director
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804-2359

Subject: Annual Report of Honua`ula Partners, LLC, Docket No.: A93-689

Dear Mr. Orodener:

The following 2019 annual report is sent to the Commission in compliance with Condition #18 of the Decision and Order (the "D&O") entered in the above-referenced docket on September 20, 1994. This report is provided as an update from the last report provided to the Commission in 2014. Although the conditions and their individual status have not changed significantly since the previous report due to time consuming legal settlement discussions and processing, there have been significant achievements in the areas of archaeological analysis, preservation plan approvals and improved land planning within the project as a result of those efforts. The following summarizes the current status of compliance with conditions of the subject D&O:

1. Condition #1 of the D&O states:

"1. Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adopted by the Housing Finance Development Corporation, effective July 1, 1992, with an addendum dated January 1, 1994, and as periodically amended. The location, 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 State Housing Finance and Development Corporation and the County of Maui, pursuant to Section 19.45.050.A.1 of the Maui County Code."

Response: The Maui County Council enacted in December 2006 the Residential Workforce Housing Ordinance, Chapter 2.96, Maui County Code, amended in 2014, establishing requirements for affordable housing in Maui County. Additionally, Condition #5 of Ordinance No. 3554 specifies the affordable housing requirements for the Project. The New Owner is complying with Chapter 2.96 and Ordinance No. 3554 of the Maui County Code.

2. Condition #2 of the D&O states:

"2. Petitioner shall implement effective soil erosion and dust control measures during construction and compliance with the rules and regulations of the State Department of Health and the County of Maui."

Response: The New Owner will comply with this condition. In addition, the Department of Health of the State of Hawaii (the "Health Department") and various agencies of the County of Maui (including its Department of Public Works, formerly known as the Department of Public Works and Environmental Management, offered comments to the current applications and the New Owner agrees to comply with those comments related to Condition #2.

Also, the New Owner shall comply with Condition #14 of Ordinance No. 3554 which requires non-potable water or effluent for dust control.

3. Condition #3 of the D&O states:

"3. Petitioner shall cooperate with the State Department of Health and the County Department of Public Works and Environmental Management to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes."

Response: The New Owner will cooperate with the Health Department and the Department of Environmental Management, Solid Waste Division during Phases II and III of the current applications to ensure that the project conforms with the program goals and objectives of the Solid Waste Management Act.

4. Condition #4 of the D&O states:

"4. Petitioner shall contribute its pro rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Environmental Management. When feasible, Petitioner shall contribute its pro-rata share and be required to connect to the County wastewater system and the Petitioner's temporary Sewage Treatment Plant shall be abandoned and dismantled."

Response: Condition #17 of Ordinance No. 3554 requires the New Owner to provide a private wastewater treatment facility and system for the Project. The New Owner will consult with the Department of Environmental Management and the Health Department to review project compliance during Phase II and Phase III. The New Owner fully discussed with the Department of Environmental Management, Wastewater Division (the "DEM"), and the State Department of Health ("DOH") its compliance with Condition #4 and Condition #17.

Additionally, Condition #16 of Ordinance No. 3554 required a Sewer Disposal Study (the "Study") to be prepared by the New Owner. The Study was prepared and submitted to the DEM, the DOH, the Department of Water Supply (collectively, the "Government Agencies") and the County Council for review and comment. The Government Agencies acknowledged that the Study satisfied their respective requirements. The County Council accepted the Study and filed it pursuant to its rules on November 29, 2010.

5. Condition #5 of the D&O states:

"5. Petitioner shall comply with the environmental health conditions from the State Department of Health, dated January, 1992 (Version 4), and entitled "Twelve (12) Conditions Applicable to all New Golf Course Development."

Response: Condition #18 of Ordinance No. 3554 also requires New Owner to comply with the DOH's Twelve Conditions Applicable to all New Golf Course Development. The New Owner will comply fully with Condition #5 and Condition #18.

6. Condition #6 of the D&O states:

"6. Petitioner shall participate in an air quality monitoring program, under such terms as may be mutually agreeable between the Petitioner and the State Department of Health."

Response: The New Owner will comply with Condition #6.

7. Condition #7 of the D&O states:

"7. Petitioner shall fund and construct adequate civil defense measures, as determined by the State and County of Maui, Civil Defense Agencies."

Response: Condition #23 of Ordinance No. 3554 incorporates this LUC Condition #7. The New Owner will comply with Condition #7 and Condition #23 of Ordinance No. 3554.

8. Condition #8 of the D&O states:

"8. Pursuant to the agreement with the Department of Education (DOE), Petitioner shall contribute to the development, funding and/or construction of school facilities, by paying \$850.00 per unit (based on 2,000 proposed units) to the DOE as the developer's school facilities fair share contribution, with 20 percent paid at the time the building permit is obtained, and 80 percent paid, through escrow, at the time of closing on each unit. A quarterly report will be provided to the DOE by developers' escrow company listing the units sold and total amount of funds transferred to the DOE during that period. No monies paid to the DOE under this condition are to revert to the petitioner or developer."

Response: The New Owner will comply fully with Condition #8. Successor Petitioner proposed to the State Department of Education (DOE) and the DOE accepted an offer to increase the project contribution from the previously approved \$850 per unit to \$3000 per unit based upon the same payment schedule as previously set forth by the LUC. A letter from DOE to the LUC confirms this offer and the formal agreement setting forth this change in contribution has been accepted by the New Owner. This contribution of \$3000 per unit has been incorporated in Condition #22 of Ordinance No. 3554.

9. Condition #9 of the D&O states:

“9. Petitioner shall fund, design and construct its pro rata share of the necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall revise the traffic study to re-examine the required mitigation measures if the roadway improvements cited and predecessors were not assumed to be place. The revised report shall also specify the improvements the developer will be committed to provide. The petitioner shall contribute its pro-rata share to the traffic improvements, as determined by the State Department of Transportation and the County of Maui.”

Response:

The New Owner is complying with all requirements of SLUC Condition #9 and Condition #2 and Condition #3 of Ordinance No. 3554. The New Owner has already prepared a draft EA for the widening of Piilani Highway from Kilohana Drive south to Wailea Ike Drive and received a Finding of No Significant Impact (FONSI) from the State Department of Transportation. Construction drawings for this improvement are presently at 35% complete. The New Owner has initiated a draft improvement agreement for other owners in the South Maui area for the Piilani Highway improvements as required by the State of Hawaii and that agreement is presently under review as a draft.

Also, Condition #2 of Ordinance No. 3554 specifies additional traffic requirements for the Project and Condition #3 incorporates the voluntary traffic impact contribution of \$5,000.00 per unit.

10. Condition #10 of the D&O states:

“10. Petitioner shall make available adequate golf tee times at affordable rates for public play to State of Hawaii residents.”

Response: The Original Petitioner proposed two (2) 18-hole golf courses and more than 2,000 single and multi-family dwelling units. Further, because the maximum number of allowable dwelling units for the Project has been reduced from more than 2,000 units to a

maximum of 1,400, in addition to legal challenges and regulatory requirements providing for substantial open space, native plant and cultural resource preservation areas, the economic success and viability of the project requires a variety of amenities to attract prospective purchasers. To fairly balance the benefits of these elements against the financial realities of fixed infrastructure requirements, the Current Development now proposes a golf amenity meeting the play requirements noted in the condition.

The Successor Petitioner submitted a request to amend the District Boundary Amendment D&O proposing modifications to Condition #10 that will provide for public play by incorporating both non-profit tournament play, as well as a youth golf program developed by the Successor Petitioner in cooperation with the Maui Junior Golf program. The LUC, in its Order Granting Petitioner's Motion to Amend the Decision and Order of Land Use District Boundary Amendment Docket No. A93-689, on January 21, 2003 approved the Petitioner's request to amend the original Condition #10 to read as follows:

"10. Petitioner shall (a) develop an organized instructional program for junior golfers at its facility, (b) permit Maui Junior Golf the use of the golf course in accordance with Petitioner's instructional program, (c) sponsor one nonprofit organization per quarter, other than Maui Junior Golf, the use of the golf course for a fund-raising activity upon terms mutually agreed upon with said nonprofit organization."

However, Condition #12 of Ordinance No. 3554 specifies new requirements for the golf course, among which is public play at the golf course and specified golf rates. Accordingly, the New Owner will discuss the new requirements with the LUC as to whether an amendment to LUC Condition No. 10 will be required.

11. Condition #11 of the D&O states:

"11. Petitioner shall fund and construct its pro rata share for adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies."

Response: In 1994, the Original Petitioner drilled two (2) wells on the Property, with generators installed the next year. Repeated tests of these two (2) wells confirmed that the water is non-potable and is of sufficient quantity to irrigate the golf course and common area landscape.

The Successor Petitioner has been working diligently to address the current shortfall of domestic water supply in Maui County as it relates to the successful approval of the subject project. As stated in the Planning Commission Conditions of approval dated November 30, 2001, the successor must develop a private water system to serve the subject project. In

response to this condition, the Successor Petitioner has accomplished both a private water source development agreement and water transmission easement agreements with adjacent private landowners. With these two agreements in place, the Successor Petitioner applied for well drilling permits necessary for development of a private water source system for the subject project.

Condition #1 of Ordinance No. 3554 specifies requirements for development of a water source for the Project. The work done thus far by the New Owner is in compliance with this ordinance. The New Owner will update the commission on the water system as it is developed and permitted for use.

12. Condition #12 of the D&O states:

“12. Petitioner shall fund the design and construction of its pro rata share of the drainage improvements required as a result of the development of the property in compliance with appropriate State and County agency requirements.”

Response: The New Owner will comply with Condition #12. Further, various agencies of the County of Maui and the State of Hawaii (including without limitation the Public Works Department and the Health Department) have offered comment on the current applications and review of the Current Development application for Phase II.

13. Condition #13 of the D&O states:

“13. Petitioner shall contribute its pro rata share to a near shore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.”

Response: The New Owner will comply with Condition #13.

Further, the New Owner has completed and provided to the State Department of Health baseline water quality reports in compliance with Condition #20 of ordinance No. 3554.

14. Condition #14 of the D&O states:

“14. Prior to filing of an amendment to the Project District Zoning Ordinance for Project District 9, an archeological inventory survey of the southern portion of the Property which was covered with a‘a (labeled as very stony land in Figure 7 of the Petition) shall be conducted to identify significant historic sites. A final report shall be submitted to the Department of Land and Natural Resources, State Preservation Division, for review and comments. If significant historic sites are identified, an acceptable mitigation plan shall be submitted to the Historic Preservation Division for approval and shall be implemented prior to any construction activities.”

Response: The New Owner commissioned a new and updated Archaeological Inventory Survey (AIS) by Scientific Consultant Services (SCS) in 2013. The AIS work involved not only the staff of SCS but members of the cultural community in the survey and site evaluation work as well as consultation on the various aspects of the cultural history and knowledge of the area. The updated AIS was accepted by the State Historic Preservation Division of DLNR in December of 2015. In compliance with Condition #26 of Ordinance No. 3554, the ownership commissioned development of a Historic Resource Preservation Plan (HRPP) pursuant to the condition and HRS 6E. This plan was submitted to SHPD for acceptance which was granted in August of 2017. The ownership awaits acceptance of the HRPP from The Office of Hawaiian Affairs per the terms of Condition #26. In compliance with Condition #13 of Ordinance No. 3554, the New Owner also commissioned a Cultural Resource Preservation Plan (CRPP) which has been completed and adopted by the Maui County Cultural Resource Commission in March of 2018.

15. Condition #15 of the D&O states:

"15. Petitioner shall provide at no cost to the County one (1) acre of land along Piilani Highway for a future fire station at a location satisfactory to the County."

Response: The New Owner is in compliance with this condition as Condition #24 of Ordinance No. 3554 requires a donation by New Owner to the County for a two-acre site for the Fire Department within the Project along with a contribution of \$550,000 to the County for the development of a police station in South Maui.

16. Condition #16 of the D&O states:

"16. Petitioner shall develop the property in substantial compliance with the representations made to the Commission. Failure to develop the property may result in reversion of the property to its formal classification, or change to a more appropriate classification."

Response: The New Owner will comply with Condition #16. Like the Successor Petitioner, New Owner will continue to fully advise the LUC of the differences between the Original Development and the Current Development. But as also noted above, the permitted uses between the Original Development and the Current Development remain the same, albeit the latter is reduced in its density from the former.

17. Condition #17 of the D&O states:

"17. Petitioner shall give notice to the Commission of any intent to sell, lease or assign, place in trust or otherwise voluntarily modify the ownership interest in the property prior to development of the Property."

Response: The New Owner will comply with Condition #17.

18. Condition #18 of the D&O states:

“18. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject project and petitioner’s progress in complying with the conditions imposed therein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.”

Response: The New Owner submits this Annual Report in compliance with Condition #18.

19. Condition #19 of the D&O states:

“19. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances, pursuant to Section 15-15-92, Hawaii Administrative Rules.”

Response: Original Petitioner complied with Condition #19 by its recordation on January 20, 1995, of the document listing conditions to Reclassification of lands (the “Recorded Conditions”) with the Bureau of Conveyances of the State of Hawaii as Document No. 95-009365.

20. Condition #20 of the D&O states:

“20. Within seven (7) days of the issuance of the Commission’s Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission and the reclassification of the property; and (b) shall file a copy of such recorded statement with the Commission.”

Response: Recorded conditions and the recorded copy thereof filed with the LUC by the Original Petitioner on February 13, 1995, fulfills Condition #20.

21. Condition #21 of the D&O states:

“21. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon a provision of adequate assurance and satisfaction of these conditions by the Petitioner.”

Response: Pursuant to the Successor Petitioner’s motion and adequate assurance of the reason for deleting Conditions #10 and #15, the LUC deleted Conditions #10 and #15 at its meeting on January 21, 2003. A new Condition #10 was substituted as noted above, but no

Mr. Daniel Orodener
April 9, 2019
Page 9

new provision was inserted for Condition #15. The New Owner will continue complying with Condition #21.

Mr. Orodener, I would appreciate your acknowledging the receipt of this annual report when time permits and as always, should you have any questions regarding this annual report letter or its intended purpose as the annual report per Condition #18 of the D&O, please feel free to contact me in my office at 879-5205, on my cell phone at 250-3178 or via email at charles@secondandpeck.com.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Jencks', written over a circular scribble.

Charles Jencks
Owner Representative
Honua`ula Partners, LLC

cc: Mr. Leo Asuncion, Administrator, State Office of Planning
Ms. Michele Chouteau McLean, Planning Director, County of Maui