

Burke Matsuyama  
73-1206 Akamai Street  
Kailua, Kona Hi. 96740

LAND USE COMMISSION  
STATE OF HAWAII

June 10, 2019

2019 JUN 12 A 11:05

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

SUBJECT: Request to close Docket A91-665 (Kamaaina Eight)  
Order Reclassifying lands from Conservation and Agricultural Districts to  
the Urban District: Development substantially completed  
DOCKET NO. A91-665 (Kamaaina Eight)

Dear Mr. Orodener,

In the capacity of my being a former member of the now-dissolved Petitioner entity for the above-referenced reclassification of lands by the Land Use Commission (the Commission), I, Burke Matsuyama, wish to: (1) advise the Commission that the development of the subject lands as represented in the subject Petition has been substantially completed in accordance with the Conditions of the reclassification Order, and (2) request that the Commission close Docket No. A91-665 on that basis.

Kamaaina Eight, a Hawaii General Partnership, the Petitioner for the above-referenced was formally dissolved in more than 5 years ago. As an individual, I was a member-partner of the dissolved Petitioner entity. Several of the other individual partners are now deceased, and the remaining living former partner-members other than myself are no longer available or able to participate in matters regarding land use regulations. This being the case, I have taken it upon myself to provide the Commission with information as to the status of development of the reclassified lands, particularly as to demonstrate through evidence of County development approvals, that the subject lands are substantially developed, and were developed in accordance with the Conditions of the Commission's favorable Order reclassifying these land to the Urban District.

I acknowledge the failure of the Petitioner entity to provide regular annual reports directly to the Commission as was required by Condition no. 15 of the Commission's Order. However, annual development progress and County ordinance compliance reports were provided to the County of Hawaii Planning Department pursuant to Condition Q of rezoning ordinance no. 94-102 (effective September 13, 1994); I believe we had mistakenly assumed that copies of those reports were concurrently provided to the Commission. I have enclosed a copy of our final annual report to the Planning Department together with other information noted below.

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As can be shown in the attached final annual report to the County Planning Department, enumerating the County's conditions of rezoning Ordinance 94-102, the conditions of the County rezoning ordinance substantially reflect the intent and specificity of the Conditions included with the Commission's reclassification Order for these lands. This report thusly documents the Petitioner's successful efforts to meet the various environmental and social objectives of the Commission's Order.

Substantial completion of the proposed development is further evidenced by the included copy of a June 25, 2008 letter from the County's Department of Public Works referencing the subject lands by Tax Map Key No. of the original, pre-subdivision parcel and as stated in the Petition. This letter documents that the subdivision roadway and drainage improvements were completed to County dedicable standards.

I would like to note that virtually all of the subdivided lots were sold to third parties who effected their respective developments individually in accordance with requirements of the County rezoning ordinance, which notably contains conditions for landscaping screens and site drainage controls to meet environmental control objectives in keeping with the objectives of the Conditions of the Commission's Order.

Finally, I have enclosed a copy of an aerial photo (Google Earth), presented as being taken May 15, 2018, showing the substantial extent of development of the individual industrially and commercially zoned lots now comprising the subject reclassified lands. These lots were subdivided with approvals of all governmental agencies as documented in the enclosed letter copies.

Based on the facts above and the documentation I have supplied with this letter, and as the sole responsible member of the dissolved Petitioner entity, I thus request that the Commission deem the subject lands substantially developed and done so in a manner consistent with the Conditions of the subject Order, and that this Docket be filed as closed.

Sincerely,

  
Burke Matsuyama

Harry Kim  
Mayor



Bruce C. McClure  
Director

Jiro A. Sumada  
Deputy Director

**County of Hawai'i**  
**DEPARTMENT OF PUBLIC WORKS**  
Aupuni Center  
101 Pauahi Street, Suite 7 - Hilo, Hawai'i 96720-4224  
(808) 961-8321 · Fax (808) 961-8630  
www.co.hawaii.hi.us

June 25, 2008

Earl De Leon  
Towne Reality Hawaii  
77-237 La'aloa Ave.  
Kailua-Kona, HI. 96740

**SUBJECT: COMPLETION OF IMPROVEMENTS**  
Subdivision No. 2000-043  
Subdivision: Kohanaiki Subdivision Phase II  
Subdivider: Kohanaiki Business Developers, LLC  
TMK 7-3-009:015  
DPW Fldr No.: 73177

This is to inform you that the road construction and street lights within the subject subdivision by Acme Construction, contractor, was completed according to County of Hawaii dedicable standards.

You are reminded that we will not be responsible for the road maintenance until a dedication deed, along with all related documents, are submitted to our Corporation Counsel and accepted by our County Council.

Please be informed that the Department of Public Works will not approve dedication of the roadway prior to injection well (drywell) compliance with Chapter 23, Underground Injection Control (UIC), Administrative Rules, Department of Health.

GALEN M. KUBA, Division Chief  
Engineering Division

c: Planning Department  
Smith Construction  
ENG Hilo/Kona  
Completion-Dedicable.wpd

Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

October 11, 1999

Mr. Steven S.C. Lim  
Carlsmith Ball  
121 Waiianuenu Avenue  
Hilo, HI 96720

Dear Mr. Lim:

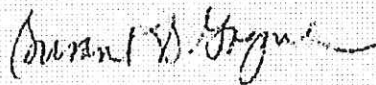
Change of Zone Ordinance No. 94 102 (REZ 772)  
Applicant: Kamaaina Eight Properties, LLC  
Subject: Final Annual Report/Release from Condition Q  
TMK: 7-3-9: 15

This is to acknowledge receipt of your letter and annual report dated September 10, 1999, submitted in compliance with Condition Q of the above-referenced ordinance. Thank you for complying with the annual report requirement. By copy of this letter, we will forward your report to the Planning Commission for their information.

As all conditions in the permit have been satisfied, annual reports will no longer be required. However, please be aware that you are required to continue to comply with all conditions as stated in the above-referenced ordinance.

Should you have any questions, please call Phyllis Fujimoto or Susan Gagorik of this office at 961-8288.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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Mr. Steven S.C. Lim  
Carlsmith Ball  
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c: Planning Commission  
West Hawaii Office  
County Council

**CARLSMITH BALL**

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING LAW CORPORATIONS  
121 WAIANUENUE AVENUE  
POST OFFICE BOX 686  
HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644  
FAX (808) 935-7975

September 10, 1999

Virginia Goldstein  
Planning Director  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

Re: Final Annual Progress Report/Request for Release from Condition Q (Annual Reports)  
Change of Zone (REZ 772)/Ordinance No. 94-102  
Applicant: Kamaaina Eight, a Hawaii general partnership  
Successor Applicant: Kamaaina Eight Properties, LLC  
Request: Unplanned and Open to CV-1a and ML-1a  
Tax Map Key: 7-3-09:15 (Kohanaiki Business Park)

Dear Ms. Goldstein:

Pursuant to Condition Q of Ordinance No.94-102 effective September 13, 1994, applicant Kamaaina Eight Properties, LLC (hereinafter the "Applicant") submits its final annual report regarding its compliance with the substantive conditions of rezoning approval, and requests herein a release from further annual reporting requirements.

On September 13, 1994, the Hawaii County Council adopted Ordinance No. 94-102, rezoning tax map key parcel (3) 7-3-09:15 (hereinafter the "Property"), from Open (O) to Village Commercial (CV-20) and Limited Industrial (ML-1a) designations, and from Unplanned (U) to Limited Industrial (ML-1a) designations, for development of a commercial and limited industrial subdivision on the Property. On May 24, 1999, pursuant to Condition C of Ordinance No. 94-102, Applicant was granted final subdivision approval for the proposed development.

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Compliance with Change of Zone Ordinance No. 94-102:

Condition A: The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

Response: Applicant has complied with the foregoing condition.

Condition B: The effective date of the change of zone shall be upon the acceptance by the Department of Water Supply of the required water commitment payment in accordance with its "Water Commitment Policy" within one-hundred-eighty (180) days from the effective date of this ordinance.

Response: On November 24, 1995, the Department of Water Supply (hereinafter the "DWS") confirmed that 49 water commitments are available to the project site as follows: 1) the 7 original units committed to the Property; 2) 30 additional units secured via the Kealakekua Source Agreement; and 3) 12 additional units upon dedication by Applicant to the Hawaii County Water Commission of a well site at Keopu. See, Exhibit 2 attached to Applicant's first annual progress report dated February 1, 1996 (hereinafter "first annual report").

On September 3, 1998, the DWS confirmed payment by Applicant of \$900.00 and \$23,625.00 for water commitments and facilities charges, respectively. See, Exhibit 1 attached to Applicant's fourth annual progress report dated September 11, 1998 (hereinafter "fourth annual report"). On May 12, 1999, the DWS acknowledged payment by Applicant of \$20,813.00 and \$3,000.00 in additional facilities charges and capital assessment fees, respectively. See, Exhibit 1 attached hereto.

Condition C: Final Subdivision Approval of the subject property shall be secured and approved by the Planning Director within five (5) years from the effective date of the rezoning as determined in Condition B.

Response: Final subdivision approval was granted by the Planning Department on May 24, 1999. See, Exhibit 2 attached hereto.

Condition D: An overall landscaping master plan, which includes a fifty foot wide open landscaped buffer at the western boundary along the Queen Kaahumanu Highway frontage of the subject property, landscaping along the interior subdivision roadways, and a program for the maintenance of the landscaping master plan, shall be submitted to the Planning

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Director for review and approval, prior to the issuance of Final Subdivision Approval and/or Final Plan Approval, whichever occurs first.

**Response:** The Planning Department approved Applicant's overall landscaping plan and maintenance program on November 4, 1998. See, Exhibit 3 attached hereto.

**Condition E:** A development design manual for the proposed commercial and industrial subdivision of the subject property shall be prepared and submitted to the Planning Director for approval prior to Final Subdivision Approval or Final Plan Approval, whichever occurs first. The purpose of the manual is to provide comprehensive principles and guidelines for the development of the commercial and limited industrial lots in order to achieve a high standard of quality for the proposed development. The manual shall include, but not be limited to, standards and guidelines relative to open space, architecture building controls (appearance, siting, heights, building materials, signs, etc.), terrain, topography, off-street parking, on-site landscaping, loading and unloading docks, setbacks from property lines and buildings, lot coverage ratio, etc. and enforcement procedures.

**Response:** The Planning Department approved the Design Manual for the proposed development on January 25, 1999. See, Exhibit 4 attached hereto.

**Condition F:** Plans to be submitted for Final Plan Approval shall be required to comply with the approved development design manual requirements and all conditions of approval as required by this change of zone. Buildings shall conform to all requirements of codes and statutes pertaining to building construction. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning code), plans shall be submitted within a minimum of forty five days prior to the date by which Final Plan Approval must be secured.

**Response:** As stated above, the Planning Department approved the Design Manual for the proposed development on January 25, 1999. Subsequently, on August 2, 1999, Applicant recorded the approved Design Manual as Exhibit B to its Declaration of Covenants, Conditions and Restrictions (hereinafter the "CC&Rs"). See, Exhibit 5 attached hereto.

Additionally, Article V, Section 1, of the CC&Rs provides that:

"1. Restrictions. The following provisions are standards, restrictions and requirements (hereinafter "restrictions") which apply to and govern the



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use of, and construction and development on each lot in **Kohanaiki Business Park**. No Improvement, excavation, fill, construction or other work shall be undertaken on any lot except in strict compliance with the following provisions. In the event of any conflict between the standards and restrictions set forth herein and any law, code or ordinance, the more restrictive provision shall control."

Applicant recorded the attached CC&Rs and Design Manual to ensure that the above covenant, among others, will run with the land, and govern the use and development of lots by future lot owners, including, but not limited to, lot improvement, building design and construction, and landscaping. Should Applicant itself construct structures within the subdivision, it will likewise comply with all requirements contained in the project CC&Rs, design manual and any other requirements necessary for issuance of Final Plan Approval for said structures.

**Condition G:** A wastewater disposal system shall be constructed in a manner meeting with the approval of the State Department of Health and the Department of Public Works.

**Response:** Since the project site is not currently served by a public wastewater disposal system, and the County of Hawaii will not accept any additional wastewater from projects situated north of its current treatment plant in Kealakehe, Applicant proposes to utilize individual septic tanks and leach fields within each lot in the project, subject to the approval of the State Department of Health and County Department of Public Works. Applicant's discussions to date with the applicable County and State agencies have been consistent with this proposal, and based on the same, the Planning Department issued construction plan approval for subdivision improvements on December 7, 1998. **See, Exhibit 6** attached hereto.

**Condition H:** A detailed drainage study shall be prepared by the applicant for review and approval by the Department of Public Works in conjunction with plans submitted for plan approval review or subdivision review whichever occurs first. A drainage system shall be installed meeting with the approval of the Department of Public Works, prior to issuance of Final Subdivision Approval for the subject property or prior to any land alteration whichever occurs first.

**Response:** As discussed above, the Planning Department issued construction plan approval for subdivision improvements on December 7, 1998. **See, Exhibit 6** attached hereto.

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**Condition I:** An archaeological mitigation plan shall be prepared and submitted for approval by the Planning Director, prior to submitting plans for plan approval review or subdivision review, whichever occurs first. Recommended mitigation measures shall be incorporated into plans submitted for plan approval and/or subdivision approval.

**Response:** On November 18, 1991, Applicant submitted to the Department of Land and Natural Resources a revised report on its archaeological surface reconnaissance survey of the project site. On February 5, 1992, staff from the State Historic Preservation Division conducted a site inspection to check for possible lava tubes containing cultural material. In its March 11, 1992 letter to Applicant's consultant PBR Hawaii, the State Historic Preservation Division accepted Applicant's revised archaeological survey report for the Property, and determined "that no historic sites are present and that the proposed development will have 'no effect' on such historic sites". See, Exhibit 4 to first annual report.

**Condition J:** Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.

**Response:** Applicant has not encountered any unidentified sites or remains during subdivision construction.

**Condition K:** A solid waste management plan shall be prepared meeting with the approval of the Department of Public Works prior to submitting plans for plan approval review or subdivision review, whichever occurs first. The plan shall include, but not be limited to, the management of solid waste generated from the construction and operating phase of the proposed development. Approved recommendations and mitigation measures shall be implemented at a time and in a manner meeting with the approval of the Department of Public Works.

**Response:** The Department of Public Works accepted Applicant's solid waste management plan on January 15, 1999. See, Exhibit 7 attached hereto.

**Condition L:** Intersection improvements at the Queen Kaahumanu Highway intersection shall be installed in a manner meeting with the approval of the State Department of Transportation. Curb, gutter and sidewalk improvements shall be installed within the

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commercial zoned portion of the subject property in accordance with the requirements of the County Department of Public Works, prior to the issuance of a certificate of occupancy or Final Plan Approval for any portion of the commercial zoned area of the subject property, whichever occurs first. The applicant shall provide for paved swales and paved shoulders within the ML-1a zoned portion of the subject property in accordance with the requirements of the County Department of Public Works, in conjunction with Final Subdivision Approval for any portion of the ML-1a zoned area of the subject property. Subdivision plans shall include road stub outs to the north and south, meeting with the requirements of the Department of Public Works, and the alignment delineated within the subject property for the "Mid-Level Road" with a maximum right-of-way width of 120 feet which is consistent with the roadway plan for the Keahole to Kailua Development Plan and which shall be approved by the Department of Public Works and the Planning Department. The applicant shall dedicate to the County of Hawaii upon its request all roadways, including the road stub outs and the 120-foot "Mid-Level Road" right-of-way.

**Response:** On November 21, 1995, the State Department of Transportation approved Applicant's proposal for relocation of the project access from Queen Kaahumanu Highway to a location within the Property's frontage with Queen Kaahumanu Highway, at a point approximately 300 feet south of the prior access point. See, Exhibits 5a and 5b to first annual report. As discussed above, the Planning Department issued construction plan approval on December 7, 1998, and final subdivision approval on May 24, 1999 based on surety documents ensuring completion of subdivision improvements. See, Exhibits 2 and 6 attached hereto.

**Condition M:** The Planning Director in consultation with the Chief Engineer shall delineate a one-hundred-twenty (120) foot wide right-of-way within the ML-1a zoned portion of the subject property for the "Mid-Level Road" identified in the Keahole to Kailua Development Plan prior to the applicant submitting plans for preliminary subdivision approval, or within one-hundred-eighty (180) days of the effective date of this ordinance, whichever occurs last. Should the Planning Director in consultation with the Chief Engineer be unable to establish the right-of-way alignment for the "Mid-Level Road" by that time period, the applicant shall delineate the "Mid-Level Road" right-of-way at approximately the 325-foot elevation of the subject property and which shall be depicted on the subdivision plat map.

**Response:** Applicant has agreed with the Department of Public Works to include a 120-foot wide right-of-way for the "Mid-Level Road" alignment at approximately the 325-foot elevation within the project area, as generally depicted in the County's Keahole-to-Kailua Regional/Community Development Plan. As discussed above, the Planning Department issued construction plan approval

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on December 7, 1998, and final subdivision approval on May 24, 1999 based on surety documents ensuring completion of subdivision improvements. See, Exhibits 2 and 6 attached hereto.

Condition N: In lieu of actual construction of infrastructural improvements as required herein, the applicant may enter into an agreement with the Planning Director to assure the County that the infrastructural improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable to the Planning Director and the Corporation Counsel. Upon execution of such agreement and/or filing of the security with the County, final subdivision approval for the subject property or portions thereof shall be granted prior to the actual construction of required infrastructural improvements.

Response: Based on Applicant's submittal of surety documents ensuring completion of infrastructural improvements, the Planning Department granted final subdivision approval on May 24, 1999. See, Exhibit 2 attached hereto.

Condition O: The applicant shall comply with all applicable laws, rules, regulations and requirements, including those of the Department of Health, Fire Department, and the Department of Water Supply for the development of the subject property.

Response: Applicant has complied with the foregoing conditions.

Condition P: 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 shall be credited towards the requirements of the Unified Impact Fees Ordinance.

Response: To date, the Council has not adopted a Unified Impact Fees Ordinance.

Condition Q: An annual progress report shall be submitted to the Planning Director prior to each anniversary date of the approval of this change of zone. The report shall address in detail 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 complied with and the Planning Director acknowledges that further reports are not required.

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**Response:** Applicant herein submits its final annual progress report, and respectfully requests release from further annual reporting requirements based on its compliance with all substantive conditions of rezoning approval.

**Condition R:** An extension of time for the performance of conditions within the ordinance, with the exception of Condition C, 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 applicant, its 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 shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
5. Should the Applicant request an additional extension of time, the Planning Director shall submit the Applicant's request to the County Council for appropriate reason.

**Response:** Applicant respectfully requests a determination by the Planning Director that it has complied with all of the substantive conditions of rezoning approval contained in Ordinance No. 94-102.

Thank you for the opportunity to present this final annual report on behalf of applicant Kamaaina Eight Properties, LLC. May we ask you to confirm in writing that the Applicant has complied with all conditions of rezoning approval set forth above, and is released from further annual reporting requirements.

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Thank you for your consideration in this matter.

Very truly yours,

CARLSMITH BALL

  
STEVEN S. C. LIM

SSL:JEC

Attachments

xc w/attachments: Burke Matsuyama  
Tom Yamamoto  
Robert Triantos

