

December 12, 2019

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



Subject: 2019 Annual Report for State Land Use Commission Docket No. A04-746/Waikapu 28 Investment, LLC District Boundary Amendment, Waikapu, Maui, Hawaii

Dear Mr. Orodener:

On Behalf of Waikapu 28 Investment, LLC, (Petitioner), we submit this 2019 annual report of the subject Docket A04-746.

Project Background and Status

The area covered by Docket A04-746 ultimately became the community of Waiolani Mauka. The community was developed to include 105 residential lots, a 2 acre community park, streets, and a small amount of "common area". The residential lots were sold as vacant parcels served with utilities including water meters. The community park and main roadways were dedicated to the County of Maui and all "common areas" were dedicated to the Waiolani Mauka Community Association, (WMCA). The families that purchased in Waiolani Mauka were responsible for the vertical construction of the homes on their lots subject to design guidelines overseen by the WMCA. The Petitioner sold the lots starting in 2007 and construction of homes started in 2008. As of November 5, 2019, ninety of the one hundred and five building lots were built out with homes by the lot owners. In addition, four building lots had begun the process of building, leaving eleven lots in the neighborhood vacant.

Status Related To Imposed Conditions

1. **Compliance with Representations to the Commission.** Petitioner shall develop the Property in substantial compliance with representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

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Petitioner developed the property in substantial compliance of Docket A04-746. The area covered by Docket A04-746 ultimately became the community of Waiolani Mauka. The community consists of 105 residential lots, a 2 acre community park, streets, and a small amount of "common area". The residential lots were sold as vacant parcels served with utilities including water meters. The community park and main roadways were dedicated to the County of Maui, and all "common areas" were dedicated to the Waiolani Mauka Community Association, (WMCA). The families that purchased in Waiolani Mauka were responsible for the vertical construction of the homes on their lots subject to design guidelines overseen by the WMCA. The chronology of the development of the community is as follows:

- On May 9, 2005, Petitioner successfully aligned the County of Maui Community Plan designation and County Zoning to accommodate the residential neighborhood represented to the Commission.*
- On December 18, 2006, the Petitioner obtained civil drawing approvals for the infrastructure required for the neighborhood.*
- On December 22, 2006, Petitioner received a "Bonded" final subdivision approval from the County of Maui.*
- On February 1, 2007, Petitioner obtained a Final Order of Registration from the State of Hawaii Department of Commerce and Consumer Affairs.*
- February 1, 2007, Petitioner was permitted to execute binding sales contracts and to commence with the closing of sales transactions upon completion of the two previous contingencies, Petitioner's receipt of "Bonded" final subdivision approval and Petitioner's obtaining the DCCA Final Order of Registration.*
- In 2007-08, the Petitioner constructed the on and off site improvements for the neighborhood.*
- In calendar year 2007, all of the parcels were initially sold.*
- Between 2008 and 2013, Petitioner executed a number of "buy-backs" and resales due to a request by Maui County officials for Petitioner to institute measures to discourage speculative purchases of Petitioner's "Market" lots. As such, Petitioner implemented a "buy-back" provision into the sales documents and bought back a number of lots then resold them. Most of these resales were done in 2008 except for one lot that was not resold until 2013.*
- Since 2013, Petitioner has not owned any property in the neighborhood.*

2. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to the satisfaction of the County of Maui, acting in accordance with its approved affordable housing policy, but no less than ten percent (10%) of the subdivided lots approved by the County subdivision. The location and distribution of the affordable housing and other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and the County of Maui.

On April 6, 2006, Petitioner entered into an Affordable Housing Agreement with the County of Maui. The Agreement provided for 11 lots, (parcels 8, 10, 12, 26, 47, 53, 64, 66, 88, 97, and 99), to be sold as "Affordable" under the terms of the Agreement. Eleven lots equates to 10.5% of the total community in compliance with Condition #2 of the SLUC decision and order. The Affordable lots were sold in 2007 as part of the first closings in Waiolani Mauka.

3. **Ohana units.** The Project shall limit ohana dwellings to no more than 54 of the Project's 108 units or 50% of the lots, which ever is less, as enforced by deed restrictions.

Waiolani Mauka has a total of 105 building parcels. Fifty percent of the 105 parcels equates to 52 parcels permitted to have an "Ohana" designation. 52 lots were designated as "Ohana Lots", (parcels). The designations were done via individual deed restrictions and is monitored by the WMCA during the design review process when a lot owner submits their building plans for review.

4. **Public School Facilities.** Petitioner shall work with the State Department of Education (DOE) relative to any fair share contributions. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County of Maui rezoning.

The Petitioner requested, via motion approved by the Commission on April 26, 2005, to have this condition amended to provide that the terms of the contribution would be agreed to prior to Petitioner obtaining County of Maui Final Subdivision approval rather than County of Maui rezoning. This allowed the necessary time for Petitioner and the DOE to generate an agreement. Petitioner and the DOE executed an Educational Contribution Agreement on March 24, 2006. The DOE acknowledged the satisfaction of the Agreement in a letter to Petitioner dated June 26, 2007.

5. **Traffic Impact Mitigation.** A traffic signal at the intersection of Pilikana Street and Honoapiilani Highway shall be installed and be operational prior to the issuance of final subdivision approval for the Project or the release of the subdivision bond by the County of Maui. Construction plans for the traffic signal shall be submitted to the Department of Transportation (DOT), Highways Division for review and approval.

Petitioner and Petitioner's consultants worked with the State Department of Transportation, (DOT), and the County of Maui to develop plans for a traffic signal and intersection improvements for the intersection of Pilikana Street and Honoapiilani Highway. Said plans were approved by the DOT and the County of Maui on September 28, 2006. As part of the onsite development of Waiolani Mauka, Petitioner's contractors installed the traffic signal and intersection improvements in accordance with the approved plans and specifications. On October 22, 2007, the DOT approved and accepted the improvements.

6. **Traffic Impact Analysis Report.** At the DOT's discretion, the Project's Traffic Impact Analysis Report (TIAR) shall be updated at the time that the Pilikana Street/Honoapiilani Highway traffic signal is designed. The DOT may require that a full traffic signal warrant analysis be submitted with the updated TIAR.

As part of the design work for the Pilikana Street/Honoapiilani Highway intersection, the TIAR was updated and accepted by the DOT.

7. **Highway Right-of-Way and Setback.** Sufficient right-of-ways and setbacks shall be dedicated, at no cost to the State of Hawaii, along the Honoapiilani Highway frontage currently shown as lots 15, 16, and 17 in the Project's preliminary subdivision layout as shown in Figure 3 of the Project's Final Environmental Assessment to accommodate possible storage and turn lanes for improvements to the Pilikana Street/Honoapiilani Highway intersection. The exact right-of-ways and setbacks, if any, shall be determined at the time that the traffic signal at the Pilikana Street/Honoapiilani Highway intersection is designed.

The State Department of Transportation did not need, and therefore did not require, any additional right-of-way or setbacks for the Pilikana Street/Honoapiilani Highway intersection improvements.

8. **Hawaii Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Property that the Hawaii Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed

a nuisance.

The Waiolani Mauka neighborhood was subject to a State of Hawaii Department of Commerce and Consumer Affairs, (DCCA), registration, (S-1148, Approved Final Order February 1, 2007). The registration requires disclosure of all material information related to the property. The Hawaii Right to Farm Act was included in this Disclosure. Further, the Hawaii Right to Farm Act recitals were also included in each conveyance deed to the individual buyers.

9. **Notification of Potential Nuisances.** Petitioner shall notify all prospective buyers and/or lessees of the Property of potential odor, noise, and dust pollution resulting from adjacent agricultural uses.

The Waiolani Mauka neighborhood was subject to a State of Hawaii Department of Commerce and Consumer Affairs, (DCCA), registration, (S-1148, Approved Final Order February 1, 2007). The registration requires disclosure of all material information related to the property. The Notification of Potential Nuisances was included in this Disclosure. Further, the Notification of Potential Nuisances recitals were also included in each conveyance deed to the individual buyers.

10. **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of appropriate State and County agencies.

Petitioner, in consultation with the appropriate State and County agencies, designed appropriate drainage improvements for Waiolani Mauka. On April 3, 2006, the design of the drainage facilities were approved by the appropriate County agencies and the facilities were constructed concurrently with the on-site improvements in 2007.

11. **Water Service.** Petitioner shall participate in the funding and construction of adequate water source, storage and transmission facilities and improvements to accommodate projected water use generated by the Project. Water facilities and improvements, or the payment of applicable fees, shall be coordinated and approved by the County of Maui, Department of Water Supply and, if applicable, the Commission on Water Resources Management of the Department of Land and Natural Resources.

Petitioner designed on-site water improvements that were approved by the appropriate County agencies including the Department of Water Supply on December 18, 2006. All on-site improvements were installed, approved, and accepted by the County of Maui on January 18, 2008. Petitioner also worked with the Department of Water Supply, and other parties working on water facilities in the area, to accommodate adequate source, storage, and transmission for the Petitioner's project. This included the financial participation in a 1.5 million gallon water storage tank, some off-site water lines, and the payment of fees to the Department of Water Department. All water meter fees for the lots in Waiolani Mauka were purchased on August 23, 2007 and were included in the lot purchase price. All meters were installed within a few months of payment of the meter fees. The 1.5 million gallon water storage tank was constructed, and, in 2007, the Petitioner exercised its option to 100,000 gallons of storage credits that the County of Maui Department of Water Supply required.

12. **Best Management Practices.** Petitioner shall implement best management practices to reduce or eliminate soil erosion and groundwater pollution and implement dust control measures during the development process in accordance with the State Department of Health guidelines.

The plans for Waiolani Mauka site improvements were approved by the Chief of the State of Hawaii Department of Health Environmental Management Divisions on November 24, 2006 and the County of Maui Department of Public Works on December 18, 2006. Sheets 14.01, (Erosion Control), 14.02, (Erosion Control Details and Notes), and 16.01, (Construction notes), provided for specific plans for erosion, groundwater pollution, and dust control "BMPs". The County of Maui inspected the installation of these measures and monitored their maintenance during construction. In addition, in September 2006, Petitioner submitted an application for coverage under a National Pollutant Discharge Elimination System General permit, (NPDES). The coverage was granted via File HIR10C689.

13. **Wastewater Facilities.** Petitioner shall fund and develop, as required by the County of Maui and the State Department of Health, on-site wastewater transmission facilities to transport wastewater from the Project to appropriate County wastewater transmission and treatment facilities. Petitioner shall pay a pro-rata share of off-site sewer improvements as determined by the County of Maui.

The County of Maui approved the Petitioner's on-site wastewater plans on December 18, 2006 as part of their review of the civil drawing approvals. The construction of the on-site wastewater transmission improvements were done in conjunction with the rest of the on-site construction. The County of Maui did not request, or require, any off-site sewer improvements.

14. **Solid Waste.** Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities.

The County of Maui had a solid waste recycling program and recycling facilities in place at the time of development of the Waiolani Mauka neighborhood. Aside from a prohibition of construction waste being taken to the County landfills, the County of Maui did not make any requests or requirements related to solid waste.

15. **Energy Conservation Measures.** Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed development.

In that the Petitioner sold the properties in Waiolani Mauka as "served", (with utilities to the lots), vacant property, it was not feasible for the Petitioner to implement energy conservation measures. Since the date of approval of Docket A04-746, the State of Hawaii began statutorily requiring solar hot water, (with some exceptions). As such, much of the Community has Solar Hot Water Systems. Further, many of the families that have built in the community have incorporated Solar PV in their homes.

16. **Civil Defense.** Petitioner shall fund and construct or provide its fair share of adequate civil defense measures serving the Property as determined by the State of Hawaii Department of Defense, Office of Civil Defense and County Civil Defense Agency.

On August 8, 2006, the State of Hawaii Department of Defense, Office of the Director of Civil Defense, sent a letter to the County of Maui Staff Planner for the Waiolani Mauka project. In the letter, the Civil Defense indicated that they would not be requiring any additional sirens or other improvements.

17. **Unidentified Archaeological Finds.** Petitioner shall stop work in the immediate vicinity should any previously unidentified human burials,

archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, loi walls be found. Petitioner shall immediately notify the Historic Preservation Division, and comply with the requirements of Chapter 6E, HRS, and applicable regulations. The Historic Preservation Division shall determine the significance of these finds and permit subsequent work to proceed with an archaeological clearance after appropriate measures have been implemented.

No unidentified human burials, archaeological, or historic sites were encountered during the civil construction of Waiolani Mauka.

18. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include an update on the status of construction of the 1.5 MG water storage tank located off Kuikahi Drive and all executed agreements pertaining to construction of the tank and allocation of water therefrom. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

This report is part of Petitioner's effort to comply with this condition and to "catch-up" with the reporting requirements. Given that the Petitioner has fully completed it's development of the land covered by Docket A04-746, no longer has any ownership interest in the land, and that the Petitioner is a LLC that is in the process of being closed, the Petitioner is also working on the proper vehicle for closing out the Docket including the annual reporting requirements.

19. **Release of Conditions.** 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 the provision of adequate assurance of satisfaction of these conditions by Petitioner.

The Petitioner is working with SLUC staff and Petitioner's attorneys to determine what, if any, conditions need to be released in order to "close out" the Docket. Petitioner will file the appropriate motion to facilitate the closing of the Docket.

20. **Notice of Imposition of Conditions.** Within 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 in the reclassification of the

Property, and (b) shall file a copy of such recorded statement with the Commission.

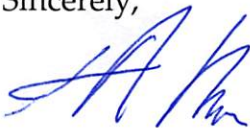
The Declaration of Conditions was executed by the Petitioner on December 17, 2004 and recorded with the Bureau of Conveyance on December 27, 2004 as Document 2004-260735.

21. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR.

The Declaration of Conditions was executed by the Petitioner on December 17, 2004 and recorded with the Bureau of Conveyance on December 27, 2004 as Document 2004-260735.

Please let us know if you have any questions regarding this report. We will transmit this report via e-mail as well .

Sincerely,



Scott Nunokawa
Managing Member
Waikapu 28 Investment, LLC

cc: State of Hawaii Office of Planning (via e-mail)
County of Maui Planning Department (via email)