



April 28, 2020



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

Subject: 2020 Annual Report of Hanohano LLC, Docket No. A03-745

Honorable Chair and Members of the Commission:

On behalf of Hanohano, LLC, and in accordance with Condition 23 of the Findings of Fact, Conclusions of Law, And Decision and Order for a State Land Use District Boundary Amendment (the "D&O") entered in the above-referenced docket on May 17, 2005, submits this Annual Report to the Land Use Commission of the State of Hawaii (SLUC).

I. Status of the Project

The Project has been constructed, and all the residential lots have been sold. Petitioner will be filing a motion to release conditions.

II. Petitioners Response to the Conditions imposed by the LUC in the D&O as follows:

1. Affordable Housing. Prior to approval of the final plat (as this term is defined in Section 18.04.190, Maui County Code for the Project (the Final Subdivision Approval), Petitioner shall enter into an agreement with the DHHC, whereby, among other things, Petitioner shall pay Habitat for Humanity Maui, Inc., on or before Final Subdivision Approval, the amount of ONE HUNDRED TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$125,000.00), in full satisfaction of the County of Maui's affordable housing requirements for the Project."

Status: Condition No. 1 has been fully satisfied by delivering to Habitat for Humanity the amount of \$125,000.00, in full satisfaction of the County of Maui's affordable housing requirements for the Project in 2011.

2. Ohana Units. Not more than forty-nine (49) dwelling units (as this term is defined in Section 19.04.040, Maui County Code) shall be constructed or maintained on the Property, and not more than one (1) dwelling unit shall be constructed or maintained on each Residential Lot. No accessory dwellings (as this term is defined in Section 19.04.040, Maui County Code) or ohana units shall be permitted in the Project."

Status: Petitioner has complied with this condition. The CC&Rs disclose this prohibition as well as the D&O is recorded on title.

3. Park Dedication Requirements. Prior to Final Subdivision Approval, Petitioner shall comply with the park dedication requirements under Section 18.16.320, Maui County Code, for the Project, as approved by the Parks Department. An executed agreement between the Petitioner and the Parks Department shall be delivered to the Commission, OP and the Planning Department.”

Status: Condition No. 3 has been fully satisfied. A 9.232-acre parcel, together with certain improvements, was conveyed to the County by Deed recorded on March 10, 2011 in the Bureau as Document No. 2011-041387. A copy of the Deed for the park parcel was submitted to the Commission through Petitioner's Fourth Annual Report that was submitted on April 22, 2011.

4. Archaeological. To protect the native Hawaiian practitioner’s exercise of customary and traditional practices in the subject area; to ensure appropriate public access to the Heiau located within the Property; to ensure the availability of natural and cultural resources for present and future generations; to promote the practice of ohana and conservation values with respect to the physical and cultural landscape:
 - 4a. Petitioner shall establish on the Heiau/Retention Basin Lot, permanent 60 foot wide and 100 foot wide buffer zones around the Heiau, with a rock wall of not less than four (4) feet high demarcating the perimeter of the 60 foot buffer zone. Within 6 months of the filing of this Decision and Order, Petitioner shall use reasonable efforts to request, but shall not be required to obtain, the consent and cooperation of the owner of the parcel of land immediately adjacent to the Heiau/Retention Basin Lot to extend the permanent 100 foot wide buffer zone on such adjoining lot. Within six months of Petitioner receiving notice that the adjacent property has changed ownership, Petitioner shall use reasonable efforts to request the consent and cooperation to extend the 100 foot wide buffer on that adjoining lot and shall continue to use such reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to.”

Status: Condition No. 4a has been satisfied. Petitioner established permanent 60-foot and 100-foot buffer zones around the Heiau/Retention Basin Lot. These buffers are depicted on the Project's File Plan 2488, which was recorded in the Bureau. A 4-foot high rock wall has been constructed to demarcate the boundary of the 60-foot buffer zone.

Subsequent to the issuance of the D&O, Petitioner contacted the owner of the parcels immediately adjacent to the Heiau/Retention Basin Lot (TMK Nos. (2) 2-3-009:031, 032). The owner, however, was not willing to extend the 100-foot buffer zone onto its parcels. Therefore, Petitioner proceeded to establish the Heiau/Retention Basin Lot with the required buffers only within the Petition Area.

- 4b. Petitioner shall include within the CC&Rs provisions which prohibit public access, through the use of appropriate signage, to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot buffer zone and irrigation lines in the area between the perimeters of the 60 foot wide buffer zones, shall further prohibit the construction of any structures within the entire 100 foot wide buffer zones. Petitioner shall also install appropriate informational signage at the perimeters of the 100 foot wide buffer zone and the Heiau to aid in its preservation.”

Status: Condition No. 4b has been satisfied. Petitioner has incorporated the necessary provisions into the Kualono CC&Rs. Appropriate informational signage has been installed at the perimeters of the 100-foot-wide buffer zone. The signage is in accordance with the SHPD-approved preservation plan (discussed below), which called for the following: "bronze plaque, which measures 18 inches by 10 inches, should be posted at two locations around the 100 ft. perimeter. The plaque will be inscribed, 'Access is permitted to this open space which surrounds a Native Hawaiian Religious Structure-SIHP 50-50-05-2701. Please Respect This Area.'".

- 4c. Petitioner shall cause the formation of a three (3) person committee, composed of a representative of the Homeowners Association pursuant to a provision in the CC&Rs, a representative from OHA, and a representative from the Kupuna Council of Maui (the Curator Selection Committee), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners Association; and (b) direct and coordinate the initial installation by the Petitioner and the perpetual maintenance by the Homeowners Association of the native plantings in the 60 foot wide buffer zone.”

Status: The Curator Selection Committee has been formed and comprises of Leahy Hall, Homeowners Association representative, Patty Nishiyama, Kupuna Council of Maui representative, and OHA provided their approval of the Curator – Sam Kaai. However, Sam Kaai is no longer living on Maui. Regardless, the obligations of the

Curator are set forth within this Condition No. 4 and documented in the Bylaws of the Kualono Heiau Curator Selection Committee ("CSC Bylaws").

- 4d. The Petitioner shall establish the Curator Selection Committee and its governing laws including succession plans no later than six months from the issuance of this Decision and Order. Upon establishment of the Curator Selection Committee, the Petitioner and Curator Selection Committee shall provide a written report to the Commission, OP and the Planning Department, with details as to the Curator Selection Committee composition and structure, procedures and plan of action to be approved by the Commission."

Status: A report dated September 18, 2018 was provided to the Commission. We are still waiting for the approval of the Commission on the report.

- 4e. The Curator shall monitor the preservation and maintenance of the Heiau and the effectiveness of the Petitioner's actions to limit access to and/or preserve and maintain the Heiau. The Curator shall provide recommendations consistent with this Decision and Order to the Commission with respect to the maintenance and/or preservation of the Heiau and any other traditional and customary native Hawaiian practices and cultural resources on the Property.

The Curator shall provide reports on an annual basis describing items and issues relating to the preservation and maintenance of the Heiau and other traditional and customary native Hawaiian practices and cultural resources on the Property and discussions with the adjoining landowner with respect to the buffer on the adjoining landowner's property."

Status: Petitioner has satisfied its obligations under Condition 4e by imposing all appropriate requirements of the Curator within the CSC Bylaws. The CSC Bylaws set forth the following responsibilities for the Curator: (a) oversee the maintenance of the Heiau by the Kualono HOA; (b) oversee the initial installation (by Petitioner) and perpetual maintenance (by the Kualono HOA) of the native landscaping within the 60-foot buffer zone; (c) monitor the effectiveness of Petitioner's efforts to limit access to and preserve and maintain the Heiau; (d) provide annual reports to the CSC; and (e) carry out the responsibilities of the Curator required under the D&O. The CSC Bylaws, therefore, satisfy the requirements of Condition No. 4e.

- 4f. Petitioner shall initially landscape with grass and install the necessary irrigation lines in the area between the 60 foot wide buffer zone and the perimeter of the 100 foot wide buffer zone. Petitioner shall, in consultation with the Curator, initially install appropriate native plantings, without any irrigation lines, in the 60 foot wide buffer zone.”

Status: Condition No. 4f has been satisfied. Petitioner has installed grass and irrigation within the area between the 100-foot buffer and 60-foot buffer zones. Petitioner has also installed appropriate native plants within the 60-foot wide buffer zone. Temporary irrigation lines have been installed within the 60-foot buffer area in order to establish the plants and will be removed at the appropriate time. As with all other landscaping within the Common Areas, the Kualono HOA is responsible for maintaining the landscaping within and around the Heiau.

- 4g. Upon the establishment of the Homeowners Association, said Homeowners Association shall maintain in perpetuity the Heiau/Retention Basin Lot. The CC&Rs will include a condition to the effect that the Homeowners Association shall bear the cost including reasonable out of pocket costs, if any, of the Curator, such that the Curator may perform the duties prescribed in this Decision and Order.”

Status: Condition No. 4g has been fully satisfied. The Heiau/Retention Basin Lot has been turned over to the Kualono HOA, which has the obligation to protect, maintain, monitor, and preserve the area under the Kualono CC&Rs. The Kualono CC&Rs also obligate the Kualono HOA to bear the reasonable out-of-pocket costs, if any, incurred by the Curator in connection with the performance of the Curator's duties.

- 4h. The view planes from the Heiau will be preserved by prohibiting (a) the construction of any structure (as this term is defined in Section 19.04.040, Maui County Code), with the exception of the Retention Basin, the 4 foot high walls around the 60 foot wide buffer zones and the Retention Basin, and irrigation line on that portion of the Property north of the Heiau; and (b) the construction on the Property of any structure or landscaping that blocks the view plan from the Heiau to the summit of Haleakala (but structures that do not block such view plane may be constructed on the Property). This condition will also be included in the CC&R's and in appropriate deed restrictions.”

Status: Condition No. 4h has been fully satisfied. Section 16.02 of the Kualono CC&Rs prohibits the installation or construction of any structures or other improvements within the 100-foot buffer zone. To protect the views of Halekala from the Heiau, Petitioner recorded a view corridor easement ("Easement V-1") over Lot 31 of File Plan 2488, which is immediately adjacent to the Heiau/Retention Basin Lot. The Kualono CC&Rs provide that "Any building, structure, or landscaping located within Easement V-1 [described in metes and bounds in Exhibit D of the CC&Rs] on Lot 31 shall not exceed a Height of four (4) feet."

- 4i. Petitioner shall comply with any and all conditions proposed by SHPD for the Heiau. Within one month of notification from SHPD, Petitioner shall inform the Commission that SHPD has approved Petitioner's commitments, if any, for the preservation and maintenance of the Heiau, and has determined that any historic preservation mitigation plan and archaeological data recovery sub-plan have been successfully implemented."

Status: . Condition No. 4i has been fully satisfied. As required by SHPD, a preservation plan was prepared for the Petition Area. On or about August 27, 2008, Petitioner submitted to SHPD its *Final Preservation Plan for Heiau Site 50-50-05-2701 Located in Makaeha Ahupua'a, Makawao District, Island of Maui, TMK: 2-3-11:01 and 02* ("Preservation Plan"), and SHPD approved the Preservation Plan by way of letter dated September 19, 2008. The short-term, i.e. during Project construction, measures were put into place consistent with the requirements of the Preservation Plan, and all long-term measures have been established.

5. Unidentified Archaeological Finds. If any previously unidentified human burial, or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, or loi walls (collectively the Historic Sites) are found during construction on the Property or any Residential Lot, work shall immediately stop and SHPD shall be notified of such Historic Sites. The requirements of Chapter 6E, HAW. REV. STAT., and the rules promulgated thereunder, applicable to the Historic Sites shall be satisfied before construction resumes. SHPD shall determine and approve the significance of the Historical Sites, and construction work shall re-commence at the Property only after both approval by an authorized archaeologist has been obtained and appropriate mitigative measures for the Historic Sites have been implemented."

Status: Condition No. 5 has been satisfied. No unidentified human burials or archaeological or historic sites were encountered during the construction of the Project. Requirements for notice to SHPD are embodied in the Kualono CC&Rs and apply to the Project on an ongoing basis. For example, Section 17 of the Kualono CC&Rs contains the following provision requiring property owners to stop all work and contact SHPD should any evidence of human burial, archaeological or historic sites be found.

Moreover, the requirements under HRS Chapter 6E apply to the Petition Area and the property owners irrespective of any of the Conditions.

6. Traffic Impact Mitigation. On or before the completion of all improvements required by the Director of the DPW as a condition to Final Subdivision Approval, Petitioner shall cause, at its sole cost and expense, the construction of the following:
 - 6a. Separate lanes for left turns and right turns on the northbound approach of the Project Entrance to Old Haleakala Highway;
 - 6b. A left-turn pocket on the westbound approach on Old Haleakala Highway to the Project Entrance;
 - 6c. A taper at the intersection of Old Haleakala Highway and the Project Entrance to facilitate eastbound traffic turning right into the Project;
 - 6d. An extended shared through/left turn lane and an extended separated right turn lane approximately 200 feet long on the Old Haleakala Highway approach to the signalized intersection of Haleakala Highway, Kula Highway and Old Haleakala Highway, which improvements shall include full curbs, gutters and sidewalk frontage improvements along the entire Project frontage on Old Haleakala Highway up to Kula Highway; and
 - 6e. An extended separate right turn lane, approximately 150 feet long, on the makai bound approach of Haleakala Highway within the available right-of-way and within the constraints of the existing drainage ditch. Petitioner shall also dedicate a sufficient right-of-way and setback, at no cost to the State of Hawaii, along portions of lots 19 and 20 of the Project fronting Old Haleakala Highway, and along a portion of the pedestrian and utility right-of-way between such lots, as shown on the Petitioners Conceptual Development Plan (Petitioners Exhibit 8), for the purpose of accommodating the storage lanes, turn lanes and sidewalk improvements described in Condition 6(d) above.”

Status: Condition No. 6 has been satisfied. The County issued final subdivision approval for the Project in June 2009 (subdivision project 2.2896), after review by all applicable agencies to confirm necessary improvements were provided. Moreover, the certified as-built drawings for the Project were approved by the SDOT and several County agencies, including the County of Maui Department of Public Works ("DPW") and Department of Water Supply ("DWS"), confirming that required improvements were in place.

With respect to Petitioner's obligation to dedicate a right-of-way to the State, as previously mentioned, Petitioner has been working closely with SDOT to dedicate Lot 59 (1,702 square feet) of File Plan No. 2488, which fronts Lot 19 and a portion of Lot 20. A tentative dedication map for Lot 59, along with the metes and bounds description, have been approved by SDOT. Conveyance documents are underway.

As also noted previously, Petitioner dedicated a right-of-way parcel (Lot 58) to the County by way of Warranty Deed dated June 20, 2019, and recorded with in the Bureau on July 11, 2019 as Document No. A-71310109.

7. Hazard Mitigation. Within six months of issuance of this Decision and Order, the Petitioner shall properly test for the presence of any hazardous materials, and thereafter properly dispose of, the three (3) fifty-five (55) gallon drums currently on the Property. If such testing evidences the presence of hazardous materials, Petitioner shall conduct additional soil sampling at and in close proximity to the location of the drums on the Property to ascertain any potential impacts resulting therefrom and shall mitigate/cure any potential impacts resulting therefrom."

Status: Condition No. 7 has been satisfied. Petitioner understands that it reported its compliance with this Condition by letter to the Commission dated November 16, 2005. On May 9, 2005, Vuich Environmental Consultants, Inc. conducted a site inspection on the Petition Area. Vuich inspected the three 55-gallon drums identified in the D&O, and determined that there was no remaining product, residue or odors related to the drums. The drums were subsequently removed from the Petition Area and disposed of in accordance with State and County regulations. Soil samples were also taken from the location of each drum and analyzed for contaminants, with a determination that no further work was necessary. The required investigations have been made, the three drums were properly removed, and no further work was required.

8. Responsibility of the Homeowner's Association to maintain the Property. All landscaping in the Project but outside of the Residential Lots, and all easements,

cul-de-sac turn arounds, and emergency vehicle, pedestrian and utility rights of way established by Petitioner as a part of the Project shall be maintained in good repair as long as the Project exists.”

Status: Condition No. 8 has been fully satisfied and the maintenance obligations for the Common Areas have been turned over to the HOA. All lots other than Residential Lots have been conveyed to the Kualono HOA under the HOA Deed. The HOA Deed requires the Kualono HOA, as the grantee thereunder, to observe, abide by and comply with all of the terms, conditions, covenants and restrictions contained in the Kualono CC&Rs, which contains provisions regarding the Kualono HOA's obligations to maintain the Common Areas (i.e., the Heiau/Retention Basin Lot, five Roadway Lots, and two Pedestrian Lots).

9. Water Service. Prior to Final Subdivision Approval, Petitioner shall provide evidence, in the form of a fully executed agreement with DWS, whereby, among other things, the DWS shall allocate to and reserve for the Project any excess source and storage credits arising from the Kulamalu development. Petitioner shall provide adequate potable water transmission improvements for the Project as may be approved by the appropriate State agencies and the DWS.”

Status: Condition No. 9 has been fully satisfied. The County of Maui DWS, by letter dated September 22, 2017 to the County of Maui DPW Development Services Administration, confirmed that the water system improvements for the Project were completed, passed final inspection, and were accepted, and that all other requirements of the DWS were satisfied.

10. Wastewater. Petitioner or the owner of each Residential Lot shall provide adequate individual wastewater systems for such Residential Lot as determined by the DOH and the DPW.”

Status: Condition No. 10 has been satisfied. Wastewater within the Project is treated by individual wastewater systems ("IWS"), which are installed by the owner of each Residential Lot prior to occupancy. Under the Kualono CC&Rs, all purchasers of Residential Lots were informed that the Residential Lots were not served by the County wastewater system and that an IWS would be required. In addition, County law mandates that all buildings must be connected to an IWS (or other private system) where public wastewater service is not available, and the County will not issue building permits for the construction of the single-family residences on the Residential Lots until an IWS has been constructed. See Maui County Code § 14-27.010. Appropriate requirements and safeguards are in place to ensure that all Residential Lots, when fully developed, will be serviced by an IWS.

11. Civil Defense. Petitioner shall fund and construct adequate solar-powered civil defense measures for the Project, as determined by the Department of Defense and the Office of Civil Defense of the State of Hawaii and the Civil Defense Agency of the County of Maui.”

Status: Condition No. 11 has been satisfied. Through its work with the State of Hawai'i Department of Defense, Hawai'i Emergency Management Agency ("HEMA"), Petitioner learned that SDOT had launched a State-wide program to install civil defense sirens on State-owned land. Petitioner subsequently secured an agreement with SDOT to participate in that program and allow Petitioner to install a civil defense siren on State-owned land in the vicinity of the Petition Area. By way of letter dated May 9, 2019, HEMA approved Petitioner's proposed siren location within a State-owned right-of-way near the Petition Area, which has been designated as siren MA155. The siren has been ordered and is expected to ship in the second quarter of 2020. Petitioner is under contract with a contractor for the installation of the siren.

12. Drainage Improvements. Petitioner shall design and construct, at its sole cost and expense, drainage improvements required on the Property as a result of the Project to the satisfaction of the appropriate State agencies and the DPW.”

Status: Condition No. 12 has been satisfied. As previously discussed, Petitioner's as-built plans for the Project were approved by a number of State and County agencies, including DPW. The as-built plans show the location of all of the completed drainage improvements that were required by DPW and constructed for the Project.

13. Solid Waste. Petitioner shall cooperate with the DOH and the County of Maui to conform the Project with the program goals and objectives of Chapter 342G, HAW. REV. STAT., and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH.”

Status: Condition No. 13 has been satisfied. The construction notes that were part of Petitioner's approved as-built plans contain sections addressing Water Pollution and Erosion Control Notes and the Waste Disposal Plan for the Project. The Waste Disposal Plan addressed the disposal of solid waste, hazardous waste, and sanitary waste for the Project. The requirements of the Waste Disposal Plan were implemented and followed throughout construction of the Project.

In addition, Section 5.08 of the Kualono CC&Rs provides that "[t]rash, garbage and domestic waste shall not be kept on any Lot except in containers, stored inside the dwelling, enclosed garage, or properly screened and not visible from any street or other Lot." The Kualono CC&Rs further prohibit the storage of new or used building materials on the Residential Lots except during times of active construction and require that all construction waste be promptly removed when the construction is complete.

14. Best Management Practices. Petitioner shall implement at the Property applicable best management practices to reduce or eliminate soil erosion and ground water pollution and effect dust control measures during and after the construction of the Project in accordance with the DOHs guidelines and shall assure best management practices are followed by individual lot owners through appropriate deed restrictions."

Status: Condition No. 14 has been satisfied. The construction notes from Petitioner's approved as-built plans detail Best Management Practices ("BMPs") for the Project. These BMPs are described in the Water Pollution and Erosion Control Notes, and further detailed in the following sub-sections: General Notes; Erosion and Sediment Control Inspection and Maintenance Practices; Good Housekeeping Best Management Practices; and Site Specific Spill Prevention Plan. The erosion control plan from the as-built plans depicts the location of the dust and silt fencing that was implemented for the Project, as well as the tire cleaning pad and staging and stockpile area.

BMPs are also required under the Kualono CC&Rs. Exhibit B to the Kualono CC&Rs provides the "Kualono Design and Construction Standards" and sets forth construction standards that each Residential Lot owner must comply with, including daily time limitations, guidelines for the storage of debris and other construction materials, and the requirement for sanitary facilities to be provided for construction workers. Moreover, the Kualono CC&Rs also: (a) prohibit Residential Lot owners from carrying out activities that may become an annoyance or nuisance, including, but not limited to, activities that cause dust, noise, or odors; (b) require each Residential Lot owner to keep their property in good order and repair, and to maintain irrigation and drainage free and clear of debris; and (c) require each Residential Lot owner to store waste in a tidy fashion.

15. Water Conservation Measures. Petitioner shall implement water conservation measures and best management practices for the Project such as use of indigenous and drought tolerant plants and turf, and shall incorporate such measures into common area landscape planting."

Status: Condition No. 15 has been satisfied. Native plants appropriate for the upcountry Maui climate were planted, including koa, ohia, and akia. Additionally, drip irrigation, where appropriate, and rain sensors were installed as water conservation measures.

16. Energy Conservation Measures. Petitioner shall implement into the Project energy conservation measures such as use of solar energy and solar heating.”

Status: Condition No. 16 has been satisfied. Petitioner has encouraged energy conservation measures in the Kualono CC&Rs by approving the use of alternative energy in the form of roof-top solar heating and photovoltaic panels on the Residential Lots. In addition, solar water heaters are required by law for each of the single-family residences to be developed on the Residential Lots. See HRS § 196-6.5(a) ("On or after January 1, 2010, no building permit shall be issued for a new single-family dwelling that does not include a solar water heater system that meets the standards established pursuant to section 269-44, unless the chief energy officer of the Hawaii state energy office approves a variance.").

17. Air Quality Monitoring. Petitioner shall participate in an air quality monitoring program during the construction of the Project as specified by the DOH.”

Status: Condition No. 17 has been satisfied in that the State of Hawai'i Department of Health did not require an air quality monitoring program for the construction of the Project. The Project is now fully constructed.

18. Notification of Potential Nuisances. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots of potential odor, noise and dust pollution resulting from adjacent agricultural uses.”

Status: Condition No. 18 has been satisfied. All prospective purchasers of Residential Lots were informed of the potential for nuisances relating to adjacent agricultural uses. Petitioner's public offering statement for the Residential Lots notified potential purchasers that their lots may be subject to nuisances from agricultural activities surrounding the Petition Area, including odor, smoke, dust, noise, heat, and agricultural chemicals. In addition, the deed for each Residential Lot contained a clause notifying the purchaser that the Petition Area is located in the vicinity of lands that are used for farming, ranching, and/or other agricultural uses that generate noise, dust, odors, or other impacts. Moreover, Section 18 of the Kualono CC&Rs notified purchasers that the Project is in close proximity to lands that are either in active agricultural use or that may be put to such use in the

future, and that those agricultural uses may result in odors, smoke, dust, noises, heat, agricultural chemicals, particulates and similar substances, and other similar nuisances. The Kualono HOA and/or owners of Residential Lots have provided and will continue to provide all lessees with copies of the Kualono CC&Rs. The Kualono HOA has been notified to ensure a process is in place for Residential Lot owners to notify any of their lessees.

19. Hawaii Right to Farm. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots that the Hawaii Right to Farm Act, Chapter 165, HAW. REV. STAT., limits the circumstances under which pre-existing farm activities may be deemed a nuisance.”

Status: Condition No. 19 has been satisfied. All potential purchasers and lessees of the Residential Lots are informed of the Hawai'i Right to Farm Act, found at Chapter 165, HRS. Each of Petitioner's deeds for a Residential Lot notified potential purchasers that the Project is located near lands zoned or designated "Agricultural," that such lands may be used for farming, ranching, and/or other agricultural uses, and that the Right to Farm Act limits the circumstances under which such pre-existing agricultural uses may be deemed a nuisance. The Kualono HOA has been notified to ensure a process is in place for Residential Lot owners to notify any of their lessees.

20. Preservation of Access. The access rights of native Hawaiians who customarily and traditionally have used the Property for access onsite or to other areas for subsistence, cultural, and religious practices shall be preserved.”

Status: Condition No. 20 has been satisfied. Petitioner reports that no access for traditional and customary practices has been requested, and no access has been denied. Furthermore, the Heiau/Retention Basin Lot was established to "protect the native Hawaiian practitioner's exercise of customary and traditional practices in the subject area; to ensure appropriate public access to the Heiau located within the Property; to ensure the availability of natural and cultural resources for present and future generations; to promote the practice of ohana and conservation values with respect to the physical and cultural landscape." See Condition No. 4. The Kualono HOA is obligated to maintain the Heiau/Retention Basin Lot in perpetuity. Therefore, appropriate access to the Property shall be ongoing.

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

Status: Condition No. 21 has been satisfied. All of the Residential Lots have been sold to individual purchasers and all subdivision improvements have been completed. The Project, as described in the D&O, has been fully developed in substantial compliance with the D&O and Petitioner's representations to the Commission.

22. Notice of Change to Ownership Interests. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property. This Condition shall be satisfied by the giving of notice only, and shall not require approval by the Commission. This Condition shall not apply to the sale of any Residential Lot from and after Final Subdivision Approval.”

Status: The Project has been fully developed as represented by Petitioner to the Commission. Therefore, by its terms, Condition No. 22 no longer applies.

23. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the Planning Department in connection with the status of the Project, administration for the maintenance of the Heiau and its preservation program, and Petitioner’s progress in complying with the Conditions. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission’s approval and entry of this Decision and Order.

- 23a. Upon the sale of all of the Residential Lots and establishment of the Homeowner’s Association, the Petitioner will transfer to the Homeowner’s Association the responsibility of providing annual reports to the Commission.”

Status: Petitioner has complied with Condition No. 23. The Project, as described and defined in the D&O, has been fully developed in substantial compliance with the D&O and Petitioner's representations to the Commission. All of the Project improvements have been completed and all Residential Lots have been sold. Petitioner has been compliant with the Commission's annual reporting requirement.

24. Release of Conditions. Petitioner shall have the right to seek from the Commission full or partial release of any of the Conditions as to all or any portion of the Property upon assurance acceptable to the Commission of satisfaction of such Conditions.”

Status: Petitioner will be requesting for release of certain conditions.

25. Notice of Imposition of Conditions. Within seven (7) days of the delivery to Petitioner of these Findings of Fact, Conclusions of Law, and Decision And Order for the subject reclassification, Petitioner (a) shall record with the Bureau of Conveyances of the State of Hawaii a statement that the Property is subject to the Conditions; and (b) shall file a copy of such recorded statement with the Commission.”

Status: Condition No. 25 has been fully satisfied. Petitioner recorded a Certificate of Conditions in the Bureau on May 26, 2005, as Document No. 2005-105309, which document contained a notice of the D&O, a property description of the Petition Area, and a list of all of the Conditions.

26. Recordation of Conditions. Petitioner shall record the Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92, Hawaii Administrative Rules.”

Status: Condition No. 26 has been fully satisfied. Petitioner recorded a Certificate of Conditions in the Bureau on May 26, 2005, as Document No. 2005-105309, which document contained a notice of the D&O, a property description of the Petition Area, and a list of all of the Conditions.

Should you have any questions or require additional information, please do not hesitate to contact me at 808-270-5936 or at leilanip@pacificrimland.com.

Sincerely,



Leilani Pulmano
Project Manager
Pacific Rim Land, Inc.

cc: Department of Planning, County of Maui
Office of Planning, State of Hawaii