

William W.L. Yuen
A Law Corporation
Partner

william.yuen@dentons.com
D +1 808 441 6214

Janna W. Ahu
Associate

janna.ahu@dentons.com
D +1 808 441 6181

Dentons US LLP
1001 Bishop Street
Suite 1800
Honolulu, HI 96813-3689
United States
dentons.com



May 8, 2020

Daniel E. Orodener, Executive Director
Land Use Commission
State of Hawaii
Post Office Box 2359
Honolulu, HI 96804-2359

Mary Alice Evans, Director
Office of Planning
Department of Business, Economic
Development & Tourism
State of Hawaii
235 South Beretania Street, 6th Floor
Honolulu, HI 96813

Michele Chouteau McLean, Director
County of Maui Planning Department
2200 Main Street
One Main Plaza, Suite 315
Wailuku, HI 96793

Re: 2019 Annual Report for LUC Docket No. A05-760
Petition of Pukalani Associates, LLC
Kula, Makawao, Maui, Hawai'i
Maui Tax Map Key Nos. 2-3-09:07 and 64

Ladies and Gentlemen:

Pursuant to the Condition No. 24 in the Decision and Order in the above referenced docket, Pukalani Associates, LLC ("Pukalani") is pleased to provide the annual progress report for the year 2019 to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department concerning the current status of compliance with the conditions of approval. The last report was filed on March 22, 2017.

General Project Progress:

The Land Use Commission of the State of Hawaii ("LUC") approved Pukalani's petition to reclassify approximately 87.702 acres of land at Kula, Makawao, Maui, Hawaii from the State Land Use Agricultural District to the State Land Use Urban District for the master-planned Kauhale Lani residential subdivision by order dated June 29, 2009. This letter is Pukalani's 2018-2019 annual progress report in this case. The Decision and Order sets forth twenty-seven (27) conditions of approval regarding the reclassification.

Conditions and Compliance:

1. ***Affordable Housing.*** *Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii substantially in accordance with the Residential Workforce Housing Policy of the County of Maui, Chapter 2.96 Maui County Code. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and the County of Maui; provided however, that if the Petitioner builds affordable housing, then 100 per cent of the affordable housing shall be constructed prior to the sale of more than 50 per cent of the market lots. Petitioner will not permit lot buyers to build any ohana units in the Project through the imposition of restrictive covenants.*

Compliance: On June 16, 2010, Pukalani filed an application with the County of Maui Department of Planning (the “Planning Department”) for Change in Zoning of the Petition Area from the Agricultural District to the R-2 Residential District, for the Kauhale Lani residential subdivision. The Planning Department requested and received comments from other County and State agencies in April and May 2011. No other activity has occurred with regard to this application since that time. The Planning Department ceased processing the Change in Zoning Application on May 18, 2015. Pukalani is now preparing a new Change in Zoning Application.

Pukalani is presently updating the subconsultant studies that will be incorporated in the Change in Zoning Application. Pukalani expects to submit the application in July 2017. The Change in Zoning Application will specify appropriate measures to satisfy the County of Maui’s revised Workforce Housing requirements. Following the Planning Department completion of processing the Change in Zoning Application, the Planning Department will forward its recommendation on the Change in Zoning Application to the Planning Commission. The Planning Commission will provide recommendations to the Maui County Council for final decision on the Change in Zoning.

2. ***Transportation Improvements.*** *Petitioner shall implement traffic improvements and mitigation measures as recommended or required by the TIAR for the Project, and as accepted by the State of Hawaii Department of Transportation Highways Division (“DOT”) and the County of Maui Department of Public Works, including, but not limited to, realignment and improvement of A`eloia Road to County of Maui standards and connection of A`eloia Road to Iolani Street and Old Haleakala Highway. Petitioner shall obtain DOT approval of the proposed traffic improvements and mitigation measures prior to the County of Maui approving an ordinance rezoning the Petition Area. Petitioner will contribute its fair share of the cost of State highway planned improvements and/or traffic mitigation measures to alleviate the impacts of the proposed development, as agreed to by Petitioner and DOT, in accordance with the findings of the TIAR and any required updates.*

Compliance: Following the LUC’s approval, Pukalani revised its Traffic Impact Analysis Report (“TIAR”) to comply with concerns raised by the State of Hawaii,

Land Use Commission
Office of Planning
County of Maui Planning Department
May 8, 2020
Page 3

Department of Transportation Highways Division (“DOT”). DOT approved the proposed traffic improvements and mitigation measures described in the revised TIAR in March 2010. Pukalani is presently updating its TIAR as part of the preparation of the Change in Zoning Application. No action has been taken to implement the proposed traffic improvements and mitigation measures.

3. **Civil Defense.** *Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawaii Department of Defense, Office of Civil Defense and County of Maui Civil Defense Agency.*

Compliance: No action has been taken to date.

4. **Archaeological Inventory Survey and Historic Preservation Mitigation Plan.** *Petitioner shall prepare, submit to, and obtain approval from the State of Hawaii Department of Land and Natural Resources, Historic Preservation Division of an archaeological monitoring plan to protect historic sites in the general vicinity of the Petition Area prior to commencement of any ground altering activities.*

Compliance: Pukalani intends to have an archaeological monitoring plan prepared for approval by the Historic Preservation Division prior to construction. No plan has been prepared to date.

5. **Unidentified Finds.** *In the event any previously unidentified human skeletal remains or archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, or lo'i walls are identified during construction activities, Petitioner shall cease work in the immediate vicinity of the find. Petitioner shall immediately notify the Historic Preservation Division, and comply with requirements of Chapter 6E, HRS, and applicable regulations. All construction activity in the vicinity of the find shall cease until the Historic Preservation Division has determined the significance of the find, and has issued an archaeological clearance that appropriate mitigative measures have been implemented in order for subsequent work to proceed.*

Compliance: No action has been taken to date.

6. **Established Access Rights Protected.** *Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.*

Compliance: No action has been taken to date.

7. **Air Quality Monitoring.** *Petitioner shall participate in an air quality-monitoring program if required by the State of Hawaii Department of Health.*

Compliance: No action has been taken to date.

Land Use Commission
Office of Planning
County of Maui Planning Department
May 8, 2020
Page 4

8. **Notification of Potential Nuisances.** *Petitioner shall disclose to all prospective buyers and/or lessees of the Petition Area that potential odor, noise and dust pollution may result from agricultural uses on adjacent lands.*

Compliance: No action has been taken to date.

9. **No Restraint on Farming Operations.** *Petitioner shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district.*

Compliance: No action has been taken to date.

10. **Notification to Prospective Developers or Purchasers.** *Petitioner shall notify all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under chapter 165, the Hawaii Right to Farm Act, and the notice shall be included in any disclosure required for the sale or transfer of real Petition Area or any interest in real Petition Area.*

Compliance: No action has been taken to date.

11. **Drainage Improvements.** *Petitioner shall fund the design and construction of drainage system improvements to prevent increased runoff resulting from the development of the Petition Area from adversely affecting State and County highway facilities to the satisfaction of appropriate State and County agencies, based on one hour of runoff from a 50 year storm. All drainage improvements will be developed in accordance with applicable DOH and County of Maui drainage requirements and standards.*

Compliance: No action has been taken to date.

12. **Integrated Solid Waste Management Plan.** *Petitioner shall cooperate with the State of Hawaii Department of Health and County of Maui Department of Environmental Services to conform to the program goals and objectives of Chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the State of Hawaii Department of Health. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities within the Petition Area.*

Compliance: No action has been taken to date.

13. **Water Resources Allocation.** *Petitioner shall provide adequate drinking water source, storage and transmission facilities and improvements to accommodate the development of the Petition Area to the satisfaction of the County of Maui Department of Water Supply and other appropriate State and County government agencies.*

Compliance: No action has been taken to date.

14. **Best Management Practices.** *Petitioner shall implement best management practices applicable to each proposed land use in order to minimize infiltration and runoff from construction and vehicle operations to reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the State Department of Health guidelines.*

Compliance: No action has been taken to date.

15. **Water Conservation Measures.** *Petitioner, where feasible, shall implement water conservation measures and best management practices, such as use of endemic, indigenous and drought tolerant plants and turf, and incorporate such measures into any common area landscape planting.*

Compliance: No action has been taken to date.

16. **Public School Facilities.** *Petitioner shall comply with HRS §302A-1603(a) regarding contribution to the development, funding and/or construction of school facilities.*

Compliance: No action has been taken to date.

17. **Energy Conservation Measures.** *Petitioner shall implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawaii, the U.S. Green Building Council, the Hawaii Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawaii, Energy Star, and Green Communities, into the design and construction of the Project and the structures within the Petition Area. Petitioner shall provide information to lot purchasers regarding energy conservation measures that may be undertaken by the individual homeowner.*

Compliance: No action has been taken to date.

18. **Infrastructure Deadline.** *Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access points, internal roadways, and water supply, sewage and electrical infrastructure for the Petition Area within ten (10) years from the date of the issuance of the Decision and Order.*

Compliance: On June 17, 2010, the Public Utilities Commission of the State of Hawaii (“PUC”) issued a decision and order approving the application of Pukalani and Hawaii Water Service Company, Inc. (“HWSC”) to expand HWSC’s existing service area to provide wastewater collection and treatment services to the Petition Area. PUC approval of the expansion of the service area is a prerequisite to an agreement regarding wastewater treatment service and construction of wastewater transmission and treatment improvements. No other action has been taken to implement proposed infrastructure improvements.

Land Use Commission
Office of Planning
County of Maui Planning Department
May 8, 2020
Page 6

19. **Order to Show Cause.** *If: (a) Petitioner fails to complete construction of the proposed backbone infrastructure as described above or furnish a bond to the County of Maui for such completion within ten (10) years from the date of the Decision and Order, or (b) prior to the approval of an ordinance changing the zoning district of the portion of the Petition Area identified as Parcel 7 to an appropriate Residential District an ordinance shall be enacted by the County of Maui pursuant to which Parcel 7 shall no longer be designated for Single Family Residential use in the Makawao-Pukalani-Kula Community Plan Land Use Map or its equivalent, or placing Parcel 7 outside of the Urban Growth Boundaries adopted by the Maui County Council as part of the Maui Island Plan, then in any of the preceding events, the Commission may, on its own motion or at the request of any party or other interested person, issue an Order to Show Cause requiring Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural District classification or be changed to a more appropriate classification.*

Compliance: To date there has been no change to the Makawao-Pukalani-Kula Community Plan Land Use Map.

Park Dedication. *Petitioner shall comply with the Parks Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.*

20. **Parcel 64.** *Parcel 64 of the Petition Area shall not be improved with any habitable structure.*

Compliance: The County of Maui has indicated in principle that it would be receptive to accepting Parcel 64 in satisfaction of Pukalani's Parks Dedication requirement. Pukalani is considering a dedication of Parcel 64 to the County, and is continuing to discuss with the County the terms of a possible dedication.

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

Compliance: Resubmission of the Change in Zoning Application will be in substantial compliance with the representations made during the reclassification process.

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 Petition Area, prior to development of the Petition Area. This condition shall not require notice of mortgage financing, and shall be satisfied by the giving of notice only, and shall not require approval by the Commission.*

Compliance: At the present time Pukalani has no intent to sell, lease, assign, place in trust, or otherwise alter the ownership interest in the Property covered in the Petition prior to development. Notice will be given to the Commission if any transfers are proposed.

Land Use Commission
Office of Planning
County of Maui Planning Department
May 8, 2020
Page 7

23. **Annual Reports.** *Petitioner shall provide timely and without any prior notice, annual reports to the Commission, the Office of Planning and the Maui County Planning Department in connection with the status of the development proposed for the Petition Area, and Petitioner's progress in complying with the conditions imposed. 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 Decision and Order.*

Compliance: This letter is the 2017 annual report submitted in compliance with this condition, and the first such report submitted since 2012.

24. **Release of Conditions Imposed by the Commission.** *Petitioner may seek from the Commission full or partial release of these conditions as to all or any portion of the Petition Area upon assurance acceptable to the Commission of satisfaction of these conditions.*

Compliance: When requesting the release of a condition, Pukalani will file the appropriate motions upon formal acknowledgment from the proper agencies of their satisfaction.

25. **Statement of Imposition of Conditions.** *Within seven 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 Petition Area is subject to conditions imposed by the Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.*


Compliance: Pukalani has recorded the Statement of Impositions of Conditions by Land Use Commission dated July 9, 2009, with the Bureau of Conveyances of the State of Hawaii as Document No. 2009-107079.

26. **Recording of Conditions.** *Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.*

Compliance: Pukalani has recorded the Declaration of Conditions dated July 9, 2009, as Document No. 2009-107078.

Your acceptance of this annual report is appreciated. Please let us know if there is any additional information required by the LUC at this time.

Sincerely,
Dentons US LLP


William W.L. Yuen
Janna W. Ahu

cc: Pukalani Associates, LLC