



R-852 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 MAY 26, 2005 08:02 AM  
 Doc No(s) 2005-105309



/s/ CARL T. WATANABE  
 REGISTRAR OF CONVEYANCES

20 1/1 Z3

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By Mail To:

Crockett and Nakamura  
 38 South Market Street  
 Wailuku, Hawaii 96793

**CERTIFICATE OF CONDITIONS**

1. Hanohano LLC (the "Petitioner"), a Hawaii limited liability company, filed its petition (the "Petition") with the Land Use Commission of the State of Hawaii (the "Commission") in Docket No. A03-745 (the "Docket") for a reclassification, from the state land use agricultural district to the state land use urban district, of approximately 28.696 acres of land situate at Keahua, Kula, Island and County of Maui, State of Hawaii, bearing tax map key numbers 2-3-11:1 and 2-3-11:2 (Second Taxation Division), and more particularly described in Exhibit "A" attached hereto and made a part hereof (collectively the "Property").

2. At its meeting of March 3, 2005, the Commission approved the amendment of the land use district boundary of the Property, from the state land use

agricultural district to the state land use urban district (the "District Boundary Amendment"), and entered in the Docket Findings Of Fact, Conclusions Of Law, And Decision And Order For A State Land Use District Boundary Amendment (the "Decision And Order"), effective       MAY 17      , 2005.

3. As a part of the Decision And Order, the Commission imposed, pursuant to §205-4(g), HAW. REV. STAT. and §15-15-90(a), Hawaii Administrative Rules (the "HAR"), a number of conditions on its approval to the District Boundary Amendment, which are set forth in Exhibit "B" attached hereto and made a part hereof (the "Conditions").

4. Pursuant to §205-4(g), HAW. REV. STAT. and §15-15-92, HAR, and the Decision And Order, Petitioner is required to record with the Bureau of Conveyances of the State of Hawaii a notice of the imposition of the Conditions.

NOW THEREFORE, in accordance with the requirements of §205-4(g), HAW. REV. STAT., §§15-15-91 and 15-15-92, HAR, and the Decision And Order, the Petitioner agrees as follows:

1. The Property shall be and is hereby made subject to the Conditions.

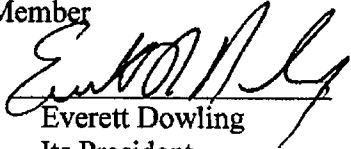
2. The Conditions shall "run with the Property", and shall be binding upon Petitioner and each and every owner, lessee, sub-lessee, transferee, grantee, assignee or developer of the Property, and shall continue to restrict the use and development of the Property so long as either the District Boundary Amendment is effective or until the Conditions have been fully satisfied and/or terminated, modified or waived as to all or any portion of the Property.

IN WITNESS WHEREOF, the undersigned has executed this Certificate  
Of Conditions on the 20<sup>th</sup> day of May, 2005.

HANOHANO, LLC, a Hawaii limited liability  
Company

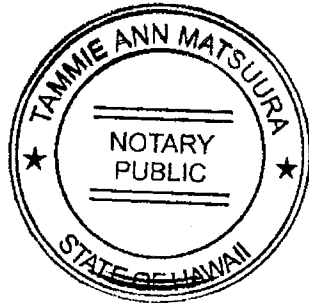
By: Maui Quest LLC, a Hawaii limited  
liability company  
Its Member

By: Dowling Company, Inc., a  
Hawaii corporation  
Its Member

By:   
Everett Dowling  
Its President

STATE OF HAWAII        )  
                                  )  
COUNTY OF MAUI        )        SS.

On this 20<sup>th</sup> day of May, 2005, before me personally appeared Everett Dowling, to me personally know, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Tammie Ann Matsuura  
Signature

**TAMMIE ANN MATSUURA**  
Print Name  
Notary Public, State of Hawaii

My commission expires: April 9, 2008

All of that certain parcel of land (being a portion of Lot E of the subdivision of Royal Patent Grant 1215 to Lono, a portion of Land Patent Grant 4006 to Joe de Freitas Phillipe, and a portion of Deed of Minister of Interior to W. H. Bailey, dated November 10, 1877, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 52, Page 412) situate, lying and being at Keahua, Kula, Island and County of Maui, State of Hawaii, being LOT 2 of the "PHILLIPS ESTATE SUBDIVISION", and thus bounded and described as per survey of Sherman Dudley DePonte, Registered Professional Land Surveyor, with Akamai Land Surveying, dated April 1, 1993, to-wit:

Beginning at a 3/4 inch pipe (found) at the northerly most corner of this parcel of land, being a point on the southwesterly right-of-way line of the Haleakala Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 7,942.02 feet south and 12,852.81 feet west and running by azimuths measured clockwise from true South; thence,

- |    |              |        |   |
|----|--------------|--------|---|
| 1. | 320° 46' 00" | 394.94 | feet along the southwesterly right-of-way line of the Haleakala Road to a 3/4 inch pipe (found); thence,  |
| 2. |              |        | Following along the same, along the arc of a curve to the left, having a radius of 408.07 feet, the chord azimuths and distance being 315° 51' 00" for 74.71 feet to a 3/4 inch pipe (found); thence, |
| 3. | 320° 59' 00" | 58.30  | feet along the southwesterly right-of-way line of the Haleakala Road to a 3/4 inch pipe (found); thence,  |
| 4. | 335° 45' 00" | 62.65  | feet along the same to a 1/2 inch pipe (found); thence,   |
| 5. | 352° 24' 00" | 24.58  | feet along the same to a 1/2 inch pipe (found); thence,   |

6.	68°	06'	30"	1,430.80	feet along Lots 1, 7, 8, 9, 10 and 11 of the Partition of Manuel F. Phillips Estate to a 3/4 inch pipe (found); thence,
7.	130°	17'	20"	285.18	feet along Lot 4 of the Boteilho Estate 1 Subdivision to a 1/2 inch pipe (set); thence,
8.	234°	39'	00"	1,443.84	feet along Lot 1 of Phillips Estate Subdivision to the point of beginning and containing an area of 14.401 acres, more or less.

All of that certain parcel of land (being a portion of Lot E of the subdivision of Royal Patent Grant 1215 to Lono, a portion of Land Patent Grant 4006 to Joe de Freitas Phillipe, and a portion of Deed of Minister of Interior to W. H. Bailey, dated November 10, 1877, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 52, Page 412) situate, lying and being at Keahua, Kula, Island and County of Maui, State of Hawaii, being LOT 1 of the "PHILLIPS ESTATE SUBDIVISION", and thus bounded and described as per survey of Sherman Dudley DePonte, Registered Professional Land Surveyor, with Akamai Land Surveying, dated April 1, 1993, to-wit:

Beginning at a 3/4 inch pipe (found) at the northerly most corner of this parcel of land, being a point on the southwesterly right-of-way line of the Haleakala Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 7,456.62 feet south and 13,229.78 feet west and running by azimuths measured clockwise from true South; thence,

- |    |      |     |     |          |   |
|----|------|-----|-----|----------|---|
| 1. |      |     |     |          | Following along the southwesterly right-of-way line of the Haleakala Road along the arc of a curve to the left, having a radius of 1,171.28 feet, the chord azimuth and distance being 325° 21' 30" for 187.53 feet to a 3/4 inch pipe (found); thence, |
| 2. | 320° | 46' | 00" | 427.48   | feet along the southwesterly right-of-way line of the Haleakala Road to a 3/4 inch pipe (found); thence,  |
| 3. | 54°  | 39' | 00" | 1,443.84 | feet along Lot 2 of Phillips Estate Subdivision to a 1/2 inch pipe (set); thence,   |
| 4. | 130° | 17' | 20" | 240.06   | feet along Lots 4 and 3 of the Boteilho Estate 1 Subdivision to an old 3/4 inch pipe (found), replaced with a 1/2 inch pipe (set); thence,  |

5.        220°    10'        00"            1,525.22    feet along Lots 5 and 4 of  
Phillips Estate Subdivision,  
Lot C of the Subdivision of  
Grant 1215 to Lono, to the  
point of beginning and  
containing an area of 14.294  
acres, more or less.



## **DECISION AND ORDER**

Except as otherwise provided in the Certificate Of Conditions to which this Exhibit "B" is attached, all capitalized terms used in the Decision And Order shall have the same meaning in this Exhibit "B".

1. **Affordable Housing.** Prior to approval of the "final plat" (as this term is defined in §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, 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.

2. **Ohana Units.** Not more than forty-nine (49) "dwelling units" (as this term is defined in §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 §19.04.040, Maui County Code) or ohana units shall be permitted in the Project.

3. **Park Dedication Requirements.** Prior to Final Subdivision Approval, Petitioner shall comply with the park dedication requirements under §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.

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 cooperate to extend the 100 foot wide buffer on that adjoining lot and continue to use such reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to.

4b. Petitioner shall include in 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.

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.

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.

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.

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.

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 reasonable out of pocket costs, if any, of the Curator, such that the Curator may perform the duties prescribed in this Decision and Order.

4h. The view planes from the Heiau will be preserved by prohibiting (a) the construction of any “structure” (as this term is defined in §19.04.040, Maui County Code), with the exception of the Retention Basin, the 4 foot high walls around the 60 foot wide buffer zone 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 plane 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&Rs and in appropriate deed restrictions.

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.

5. **Unidentified Archaeological Finds.** If any previously unidentified human burial, or archeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, 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.

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 Petitioner's Conceptual Development Plan (Petitioner's Exhibit 8), for the purpose of accommodating the storage lanes, turn lanes and sidewalk improvements described in Condition 7d above.

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/curb any potential impacts resulting therefrom.

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.

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.

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.

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.

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.

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.



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 DOH's guidelines and shall assure best management practices are followed by individual lot owners through appropriate deed restrictions.

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.

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

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

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.

19. **Hawaii Right to Farm Act.** 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.

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.

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.

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.

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 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.

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.