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**DTS202009230918SE**

**BEFORE THE LAND USE COMMISSION**

**OF THE STATE OF HAWAII**

<b>In the Matter of the Petition of</b>	)	<b>DOCKET NO. A03-745</b>
	)	
HANOHANO LLC, a Hawaii Limited Liability Company	)	OFFICE OF PLANNING’S RESPONSE TO PETITIONER HANOHANO LLC’S MOTION TO RELEASE AND MODIFY CONDITIONS;
	)	CERTIFICATE OF SERVICE
To Amend the State Land Use Agricultural District to the State Land Use Urban District for approximately 28.695 acres of land at Keahua, Kula, Island and County of Maui, State of Hawaii, bearing Tax Map Key Numbers 2-3-011:001 and 2-3-011:002 (Second Taxation Division)	)	

OFFICE OF PLANNING’S RESPONSE TO PETITIONER HANOHANO LLC’S MOTION TO RELEASE AND MODIFY CONDITIONS

THE OFFICE OF PLANNING, STATE OF HAWAII (“OP”), has no objection to Petitioner Hanohano LLC’s (“Petitioner”) Motion for the release of Conditions Nos. 1, 3, 5, 7 through 23 and 25 and to the modification of Conditions Nos. 4 and 26, pursuant to Hawaii Administrative Rules (“HAR”) §§ 15-15-70 and 15-15-94. OP has no objection to the release of Condition No. 6 in part (Conditions Nos. 6a through 6d) but does object to the release of Condition 6e, as a portion of this condition has not been satisfied.

**BACKGROUND**

On May 17, 2005, the Land Use Commission (“LUC” or “Commission”) reclassified approximately 28.695 acres of land at Keahua, Kula on the Island of Maui from the State Agricultural District to the State Urban District and issued its Findings of Fact, Conclusions of Law, and Decision and Order (“D&O”) subject to 26 conditions. Petitioner sought the reclassification in

order to develop the Kualono residential subdivision. The project area abuts Old Haleakala Highway near its intersection with Haleakala Highway and Kula Highway, two State roads. There is an existing heiau located within the project area that has been incorporated into a retention basin lot. The Kualono subdivision also contains 49 residential lots and five roadway lots. Petitioner states that the project has been completely built and that all the conditions of the D&O have been complied with and satisfied. All the residential lots have been sold and single-family residences have been built on about 50% of the lots. Petitioner's Motion is intended to resolve any uncertainty as to the status of the D&O conditions and to free the Kualono Homeowners' Association ("HOA") of the burden of preparing annual reports for a project that is completed, and is part of Petitioner's turnover of the project to the HOA.

#### **RELEASE OF CONDITIONS**

Petitioner seeks the release of Conditions Nos. 1, 3, 5, 6 through 23, and 25, and asserts that all have been satisfied. Petitioner also seeks modifications to Conditions Nos. 4 and 26. Petitioner does not seek release of Condition Nos. 2 or 24. OP has no objection to the release of Conditions Nos. 1, 3, 5, 7 through 23, and 25. Several Conditions directly affect State interests. Regarding Condition No. 5 – Unidentified Archaeological Finds, Petitioner states that “no unidentified human burials or archaeological or historic sites were encountered during the construction of the Project” and that “requirements for notice to the State Historical Preservation Division (“SHPD”) are embodied in the Kualono CC&Rs [Declaration of Covenants, Conditions, Easements and Restrictions] and apply to the subdivision on an ongoing basis.” (Motion, pg. 6.) OP solicited comments from SHPD on the Motion but has not received a response to-date. Regarding Condition No. 11 – Civil Defense, Petitioner states that the State Department of Defense, Hawaii Emergency Management Agency (“HI-EMA”) has approved Petitioner's proposed siren location near the subdivision, the siren has been ordered, and that Petitioner is under contract with a contractor to

install the siren. (Petitioner Exhibit 15.) OP solicited comments from HI-EMA on the Motion but has not received a response to-date.

Petitioner asserts that Condition No. 6 – Traffic Impact Mitigation has been satisfied. (Motion, pgs. 7-8.) OP notes that parts 6a through 6c of the Condition relate to County roadways, Petitioner provides evidence that these parts of the Condition have been satisfied, and therefore, OP has no objection to the release of these portions of Condition No. 6.

Parts 6d and 6e of the Condition relate to the State Highway system. Part 6d requires the Petitioner to construct an extended shared through/left turn lane and an extended separated right turn lane on the Old Haleakala Highway approach to the signalized intersection of Haleakala Highway, Kula Highway and Old Haleakala Highway and provide improvements such as full curbs, gutters and sidewalk frontage improvements. The State Department of Transportation (“DOT”) has verified that this portion of Condition No. 6 has been completed and has no objection to the release of part 6d of the Condition. (OP Exhibit 1.)

Part 6e of the Condition requires the Petitioner to construct an extended separate right turn lane on the makai bound approach of Haleakala Highway within the available right-of-way and within the constraints of the existing drainage ditch. Part 6e also requires the Petitioner to dedicate a sufficient right-of-way (“ROW”) and setback along portions of lots 19 and 20 fronting Old Haleakala Highway at no cost to the State of Hawaii for the purpose of accommodating the storage lanes, turn lanes and sidewalk improvements described in part 6d of the Condition. DOT has verified that the extended separate right turn lane has been completed but the dedication process for the ROW and setback is still pending. (OP Exhibit 1.) OP acknowledges that Petitioner has submitted conveyance documents for approval and a tentative dedication map for Lot 59 that fronts Lots 19 and a portion of Lot 20 has been approved by DOT. (Petitioner Exhibits 25 and 26.). However, until the land dedication process is completed, part 6e of the Condition remains to be satisfied and Petitioner should not be released from this obligation.

## **MODIFICATION OF CONDITIONS**

Petitioner seeks to modify Conditions Nos. 4 and 26. Condition No. 4 requires the protection of native Hawaiian practitioner's exercise of customary and traditional practices in the subdivision area and provides for the protection and maintenance of the Heiau and to ensure appropriate public access. The modifications Petitioner seeks are intended to: 1. Release portions of the Condition that have been completed with the establishment of the Heiau/Retention Basin lot (parts 4a, 4b, 4d, 4f, 4h, and 4i); 2. Retain portions that define an ongoing obligation for the HOA(4a and 4b); and 3. Modify portions related to the makeup of the Curator Selection Committee ("CSC"), the specific obligations for the HOA under the SHPD-approved Preservation Plan, and recognition of the establishment of the HOA. (4c, 4e, and 4g.) (Motion, pgs. 19-32.)

Petitioner states it has satisfied conditions relating to preservation of the Heiau (Petitioner Exhibit 26) and the requirements for the maintenance of the Heiau/retention basin, the establishment of the CSC, and the role of the Curator of the Heiau through the Kualono CC&Rs (Motion, pgs 25-26.) OP solicited comments from SHPD but has not received comments to-date.

Petitioner also seeks modification of the makeup of the CSC. The D&O required the three-person CSC be made up of representatives from the HOA, the Office of Hawaiian Affairs ("OHA"), and the Kupuna Council of Maui, respectively. A representative of the HOA volunteered to serve on the CSC. However, Petitioner states the Kupuna Council of Maui was found to be defunct and a substitute representative was found from Na Kupuna O Maui. A representative of OHA was able to attend the CSC meeting but Petitioner states that OHA does not appear to have a system to be a member of the CSC. The CSC selected Mr. Sam Kaai as Curator but he recently left Maui and another Curator is needed. In order to make the selection process practical, Petitioner seeks to modify the condition to allow the CSC to be made up of two members of the HOA, and a representative from the Hawaiian Civic Club, Aha Moku Council, or similar Hawaiian entity. The CSC would also seek input from OHA on its proposed Curator candidate prior to their retention. OP

solicited comments from OHA, but has not received any comments to-date.

OP assumes, but cannot ascertain at this time, that HI-EMA and OHA have no objections to the proposed deletion and modification of the respective conditions applicable to these agencies. SHPD had previously informed OP that they require a minimum of 45 days to provide comments as requested by OP on LUC matters. (As a note, OP typically allows at least 30 days from agency receipt of requests for comment, but only 21 days were given due to the compressed submittal timeframe.)

### **RECOMMENDATION**

OP has no objection to the release of Conditions Nos. 1, 3, 5, 7 through 23 and 25 and for the modification of Conditions Nos. 4 and 26. Furthermore, OP has no objection to the release of portions of Condition No. 6, parts 6a through 6d. OP objects to the release of part 6e of the Condition until the land dedication process is complete and this part of the Condition has been fully satisfied. For purposes of efficiency, OP recommends the LUC defer the release of Condition 6e until the dedication of the ROW and setback has been completed to DOT's satisfaction, and that the Commission authorize the LUC Chair to order the release of Condition 6e once evidence of the completion of the land dedication has been submitted to the LUC.

DATED: Honolulu, Hawaii, September 25, 2020.

OFFICE OF PLANNING  
STATE OF HAWAII

*Rodney Funakoshi*

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RODNEY Y. FUNAKOSHI  
Planning Program Administrator

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	)	
HANOHANO LLC, a Hawaii Limited Liability	)	CERTIFICATE OF SERVICE
Company	)	
	)	
To Amend the State Land Use Agricultural District to	)	
the State Land Use Urban District for approximately	)	
28.695 acres of land at Keahua, Kula, Island and	)	
County of Maui, State of Hawaii, bearing Tax Map	)	
Key Numbers 2-3-011:001 and 2-3-011:002 (Second	)	
Taxation Division)	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

Jennifer A. Lim, Esq.  
Derek B. Simon, Esq.  
Carlsmith Ball LLP  
1001 Bishop Street, Suite 2100  
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Kualono Homeowners Association  
c/o Associa Hawaii  
737 Bishop Street, Suite 3100  
Honolulu, Hawaii 96813

Michele Chouteau McLean, Director  
Department of Planning  
County of Maui  
2200 Main Street  
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Moana Lutey, Esq.  
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Michael Hopper, Esq.  
Deputy Corporation Counsel  
Department of the Corporation Counsel  
County of Maui  
200 S. High Street, Room 322  
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, September 25, 2020.

OFFICE OF PLANNING  
STATE OF HAWAII

*Rodney Funakoshi*

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RODNEY Y. FUNAKOSHI  
Planning Program Administrator

DAVID Y. IGE  
GOVERNOR



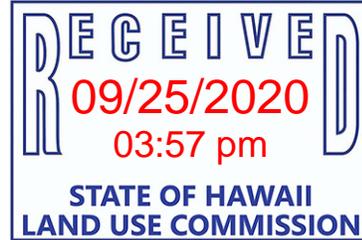
JADE T. BUTAY  
DIRECTOR

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LYNN A.S. ARAKI-REGAN  
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EDWIN H. SNIFFEN

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-509

IN REPLY REFER TO:  
DIR 0823  
STP 8.3023

September 14, 2020



TO: MS. MARY ALICE EVANS, DIRECTOR  
OFFICE OF PLANNING  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

ATTN: AARON SETOGAWA, PLANNER

FROM: JADE T. BUTAY, DIRECTOR   
DEPARTMENT OF TRANSPORTATION

SUBJECT: A03-745 HANO HANO LLC  
MOTION TO RELEASE AND MODIFY CONDITIONS  
KULA, MAUI, HAWAII  
TAX MAP KEY: (2) 2-3-011: 001 AND 002

The State of Hawaii, Department of Transportation (HDOT) has reviewed the subject Motion and understands Hanohano LLC (Petitioner) was issued a Decision and Order (D&O) from the Land Use Commission on May 17, 2005 granting the reclassification of 28.695 acres of land from the Agricultural District to the Urban District in order to develop the Kualono residential subdivision. The Petitioner has indicated that the project has been completed and is now seeking formal release of 22 of the 26 conditions, modification of two conditions (Condition Nos. 4 and 26), and no release or modification to Condition Nos. 2 and 24. Condition No. 6 of the D&O pertains to Traffic Impact Mitigation.

HDOT recommends either the deferral to the Petitioner's motion to release Condition No. 6 in its entirety, or as a partial release for a portion of the condition until the status of the dedication process are completed and satisfactory to HDOT.

HDOT notes that Condition Nos. 6(a) through 6(c) relate to County roadways and Condition Nos. 6(d) and 6(e) affects the State highway system under HDOT jurisdiction. HDOT acknowledges that Condition No. 6(d) and portions of Condition No. 6(e) are in compliance status as follows:

Condition No. 6(d) - 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.

*HDOT STATUS: Improvements have been completed as verified by the Highway Division, Maui District Office.*

Condition No. 6(e) - An extended separate right turn lane, approximately 150 feet long, on makai bound approach of Haleakala Highway within the available right-of-way (ROW) 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 6 (d) above.

*HDOT STATUS: The extended separate right turn lane has been completed as verified by the Highways Division, Maui District Office. However, the completion of the dedication process for the ROW and setback remains pending. According to our Highways Division Right-Of-Way Branch, additional processing may take approximately up to four months.*

If there are any questions, please contact Mr. Blayne Nikaido of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at [blayne.h.nikaido@hawaii.gov](mailto:blayne.h.nikaido@hawaii.gov).