

5/17/2021

LAND USE COMMISSION
STATE OF HAWAII

2021 JUN 14 A 10: 22

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

Subject: 2021 Annual Report of Hanohano LLC, Docket No. A03-745

Honorable Chair and Members of the Commission:

On behalf of Kualono Homeowners Association, 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, and Release and Modified Conditions on October 28, 2020, 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. The developer, Hanohano, LLC., has transferred responsibility to provide annual reports to the Kualono Homeowners Association (HOA).

II. Petitioners Response to the Conditions imposed by the LUC in the D&O as amended as follows (conditions listed as designated by their current numbering, with the numbering of the 2005 D&O provided in parenthesis):

1. (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: The CC&Rs and D&O recorded on title disclose this.

2. (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:

2a (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 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. 2a 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). And, in 2018 during construction, Petitioner contacted the owners again. The owners, 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.

The HOA has not received notice that the adjacent property has changed ownership.

2b (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.

Status: Condition No. 2b 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, 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

- 4 (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. 4 has been fully satisfied and the HOA is obligated to maintain the Common Areas. 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).

- 5 (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. 5 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.

- 6 (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. 6 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.

- 7 (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. 7 has been satisfied. The deed for each Residential Lot contains 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.

- 8 (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. 8 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.

- 9 (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. 9 has been satisfied. 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. 2. The Kualono HOA is obligated to maintain the Heiau/Retention Basin Lot in perpetuity. Therefore, appropriate access to the Property shall be ongoing.

- 10 (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 and HOA have been compliant with the Commission's annual reporting requirement.

- 11 (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: The HOA acknowledges this condition.

26. Recordation of Conditions. Petitioner shall record in the Bureau of Conveyance of the State of Hawai'i an amended and restated Certificate of Conditions recognizing the Commission's release of conditions and modification of conditions, as ordered pursuant to this Decision and Order, and restating the conditions reaffirmed by the Commission, if any, pursuant to this Decision and Order. The amended and restated Certificate of Conditions shall fully supersede

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and release the Certificate of Conditions that was recorded as Document No. 2005-105309.

Status: Upon confirmation by the State Land Use Commission, Petitioner will recorded a Certificate of Conditions in the Bureau.

Should you have any questions or require additional information, please do not hesitate to use the contact information below.

Respectfully submitted by,

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