

HONUA'ULA

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May 26, 2020

Honorable Alice Lee, Chair
And Members of the Maui County Council
200 S. High Street
Wailuku, Hawaii 96793

OFFICE OF THE
COUNTY CLERK

Dear Chair Lee and Councilmembers:

Subject: Honua'ula Annual Compliance Report to Maui County Council, CIZ 2000/009
and Ph1 2000/0001

Pursuant to Ordinance No. 3554, entitled "A BILL FOR AN ORDINANCE TO REPEAL ORDINANCE NO. 2171 (1992) AND TO ESTABLISH KIHEI-MAKENA PROJECT DISTRICT 9 (WAILEA 670) ZONING (CONDITIONAL ZONING), FOR APPROXIMATELY 670 ACRES SITUATED AT PAEHU, PALAUEA, KEAUHOU, MAUI, HAWAII", Honua'ula Partners, LLC hereby submits its Annual Compliance Report as required by Condition No. 29. Condition No. 29 reads as follows:

"29. That Honua'ula Partners, LLC, its successors and permitted assigns, shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions imposed, commencing within one year of the effective date of the ordinance."

As a preface to the following sections of this compliance report and requirements for compliance with time frames and/or milestones contained within the conditions of approval, a status report on the legal challenges against the actions taken by the Maui County Council must be provided. The delays and uncertainty created by these legal actions impact the ability of Honua'ula Partners, LLC (HPL) to achieve milestones with specific time frames. The following summarizes the time frames for legal filings, responses, decisions by the court and current status of the legal challenges:

March 2008 Honua'ula Phase I zoning application approved by Maui County Council

March 2008 Complaint filed with Hawaii Second Circuit Court by five local Maui residents, alleging that the County of Maui failed to strictly adhere to the open meetings requirements under the State of Hawaii's "Sunshine Law" when considering the project's Phase I zoning application (the "Sunshine Law Litigation"); no wrongdoing alleged against Honua'ula Partners

GENERAL COMMUNICATION NO. 20-3

<u>April 2008</u>	Motion for Preliminary Injunction granted by the Court in order to “preserve the status quo” until the merits of the Sunshine Law Litigation could be properly considered
<u>April 2008</u>	Motion to Intervene filed by Honua’ula Partners in the Sunshine Law Litigation, which was granted by the Court in May 2008
<u>June 2008</u>	Hearing on the Sunshine Law Litigation postponed by the Court until October 2008 to allow for discovery
<u>June 2008</u>	Complaint filed with Hawaii Second Circuit Court by local Maui resident, alleging that the County’s approval of the project’s Phase I zoning application should be voided because it was based upon an outdated Environmental Impact Statement (the “EIS Litigation”); no wrongdoing alleged against Honua’ula Partners
<u>Sept. 2008</u>	Hearing on the EIS Litigation held by the Court; the Court grants the County’s Motion to Dismiss, finding that (i) no EIS was required as a legal prerequisite to the County’s adoption of the zoning ordinances and (ii) the ordinances were not environmental triggers requiring an EIS under Hawaii law
<u>Oct. 2008</u>	Hearing on the Sunshine Law Litigation held by the Court
<u>Nov. 2008</u>	Court rules in favor of the County and Honua’ula Partners in the Sunshine Law Litigation, concluding that no violations of the Hawaii Sunshine Law had occurred
<u>Dec. 2008</u>	Final Judgment in the EIS Litigation entered by the Court
<u>Dec. 2008</u>	Notice of Appeal filed by the EIS Litigation plaintiff; lawsuit transferred to the Appellate Court
<u>Jan. 2008</u>	Final Judgment in the Sunshine Law Litigation entered by the Court
<u>Feb. 2008</u>	Notice of Appeal by the Sunshine Law Litigation plaintiff’s; lawsuit transferred to the Appellate Court
<u>June 2010</u>	Intermediate Court of Appeals Rejects EIS Litigation plaintiff’s Appeal
<u>July 2010</u>	EIS Litigation plaintiff files Writ of Certiorari with State Supreme Court for Review of Intermediate Court of Appeal Denial
<u>Aug. 2010</u>	Hawaii Supreme Court Rejects EIS Litigation plaintiff’s Writ of Certiorari Petition

- Oct. 2012 The Sierra Club and Maui Unite filed a Complaint for Declaratory Injunctive Relief against the County of Maui challenging the adequacy of the Honua`ula Project Environmental Impact Statement that was accepted by the Maui Planning Commission on July 25, 2012
- Nov. 2012 County of Maui submits Motion to Dismiss Sierra Club/Maui Unite Lawsuit
- Dec. 2012 Hearing with Judge Cahill results in dismissal without prejudice allowing Sierra Club/Maui Unite to substantiate position
- Feb. 2013 The Hawaii State Land Use Commission makes finding that the offsite affordable housing project mandated by Condition 5 of the Unilateral Agreement is in violation of the Decision and Order granted for the Kaonoulu Ranch Light Industrial project
- Feb. 2013 Hawaii Supreme Court hears oral argument on Kanahele vs. County of Maui Sunshine lawsuit
- April 2013 Sierra Club/Maui Unite lawsuit hearing before Judge Cahill regarding Motion to Dismiss submitted by County resulted in the request being denied. Both the ownership and County of Maui have discussed future action and responses to this legal challenge with general agreement that settlement is the preferred course of action. Over the last three years detailed discussions with Sierra Club have taken place on a regular basis along with field work and site specific survey work addressing specific areas of concern. The majority of issues addressed in the legal filing by Sierra Club have been addressed and a draft settlement agreement has been drafted.
- April 2016 Discussions with Sierra Club and Maui Unite are ongoing with agreement on major issue areas and commitment from all parties on achieving a signed settlement agreement the second quarter of 2016.
- October 2016 On October 14, 2016, Honua`ula Partners, LLC, Sierra Club, Maui Unite and the County of Maui entered into a settlement agreement signed by all parties. In response to the claims made against the county and HPL the settlement agreement provides for, among other matters, the following:
- A Native Plant Preservation Area of 134 acres,
 - Interim and long term access protocols for Plaintiffs, their guests and the public,
 - Protection of historic trails,
 - Expansion of the Maui Meadows buffer,
 - Establishment of South and North Preserve areas addressing native plant, archaeological and cultural matters,

- A non-profit fee manager and transfer of the North and South preserve areas to a nonprofit fee owner,
- Timelines for the survey of buffer areas and placement of fencing for protection of the NPPA,

November 2020

United States Department of Fish and Wildlife (USFWS) provides notice to Honua`ula Partners that the project is subject to CFR Section 106 as it relates to issuance of a Federal Permit (Incidental Take Permit) associated with the approval of the Habitat Conservation Plan (HCP) required to address both the Federal Endangered Species Act and HRS 195 for the State of Hawaii. In coordination with the USFWS Honua`ula Partners, LLC as well as other consulted parties such as the County of Maui, initiated 106 consultation with the first meeting held at the Kealia Wildlife Sanctuary on January 31, 2020. Subsequent consultation meetings are planned subject to availability of travel and restrictions on meetings per Covid 19 restrictions but in force by the State of Hawaii.

The above provides information as to the current status of the various legal actions taken against the County of Maui and the Honua`ula project. As of the date of this annual report there have not been any further changes to the legal status other than as indicated above. The filed legal actions and processing have delayed significant entitlement filings and investment by HLP in the project with the result being further delay in the development of offsite housing, infrastructure improvements as well as the processing of project related entitlement documents.

Status of Compliance with Conditions

1. That Honua`ula Partners, LLC, its successors and permitted assigns, shall, at their own cost and expense, develop, maintain, and operate, or cause to be developed, maintained, and operated, a private water source, storage facilities, and transmission lines for the Wailea 670 project in accordance with Department of Water Supply standards and all applicable community plans. Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with all reporting requirements of the State Commission on Water Resource Management.

In addition, Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with applicable water ordinances that pertain to the supply and transmission of water from the island of Maui when such ordinances are enacted.

At the time the project water system is completed, Honua`ula Partners, LLC, its successors and permitted assigns, shall offer to the County the right to purchase the project water system at the cost of development of such system.

The water rates for the residential workforce housing units shall be no higher than the general water consumer rates set by the County in its annual budget, for as long as the units are subject to Chapter 2.96, Maui County Code.

Status: HLP has engaged the firm of Tom Nance Water Resource Engineering for the design, permitting and construction of the project water system and will comply with the provision of this condition.

2. That Honua`ula Partners, LLC, its successors and permitted assigns, shall implement the following traffic improvements:
 - a. Upgrade Piilani Highway, from Kilohana Drive to Wailea Ike Drive, to four lanes of traffic. The improvements shall be completed prior to the commencement of any construction on the site, with the exception of grading.

In support of HPL's compliance with this condition, the following outline of deliverables and status is offered:

1. **Functional Classification Report – This report was submitted to address the scope of improvements and define the project for purposes of development of an Environmental Assessment (EA).**
 - Letter Report first submitted 3/6/09
 - Comments received 5/18/09
 - Report submitted to HDOT 8/10/09.
 - Response letter stating HDOT cannot re-classify received 12/22/09.
2. **Draft Environmental Assessment – This document was submitted for review and comment as a draft document at the request of SDOT with the assurance a quick review would be accomplished so that the project could move forward. The following summarizes the current status of the draft document:**
 - Draft Submittal to SDOT 9/1/09
 - SDOT Comments received 4/29/10
 - DEA Published by OEQC on 10/23/10
 - Community Meeting on Draft EA 12/1/10
 - Project team responding to public comments
 - Responses to public comments and final draft document transmitted to SDOT 9/10/11
 - SDOT to transmit Final EA to OEQC for publication on 4/23/12
 - Projected issuance of Final EA 30 days after publication
 - Project plans are at 35% completion

- **Project Development Agreement is in draft form and in the process of review with other stakeholders for finalization**

- b. Extend Piilani Highway for two lanes of traffic from Wailea Ike Drive to Kaukahi Street. The improvement shall be constructed at or prior to the completion of 50 percent of the project. Said improvement shall be maintained by Honua`ula Partners, LLC, its successors and permitted assigns.

A preliminary engineering report for this improvement has been completed and included within the project EIS/Phase II application.

- c. Signalize the Piilani Highway/Okolani Drive/Mikioi Place intersection and provide an exclusive left-turn lane on Okolani Drive prior to occupancy of the first unit in Kihei-Makena Project District 9.

Analysis of the improvements has been provided within the widening project environmental assessment with design of the system included in the plans for the widening.

- d. Modify the Piilani Highway/Wailea Ike Drive intersection into a signalized intersection and provide a free right-turn lane from Piilani Highway to Wailea Ike Drive and a second right-turn lane from Wailea Ike Drive to northbound Piilani Highway prior to occupancy of the first unit in Kihei-Makena Project District 9.

Analysis of the improvements has been provided within the widening project environmental assessment with design of the improvements included in the plans for the widening.

- e. Modify the Wailea Alanui/Wailea Ike Drive intersection to add a signalized double right-turn movement from northbound to eastbound turning traffic and provide two left-turn lanes for southbound traffic from Wailea Ike Drive prior to occupancy of the first unit in Kihei-Makena Project District 9.

Subdivision maps have been processed with a preliminary approval granted, an Environmental Assessment completed with a FONSI issued by the County of Maui Department of Public Works and a Special Management Area Permit approved by the Maui Planning Commission on April 13, 2010. Application was made to extend the SMA permit for another two years in November of 2018 and a two-year time extension was received from the Maui Planning Commission on January 22, 2019.

- f. Modify the Piilani Highway/Kilohana Drive/Mapu Place intersection to provide an exclusive left-turn lane, and the southbound Piilani Highway

approach to provide an exclusive right-turn lane into Mapu Place prior to occupancy of the first unit in Kihei-Makena Project District 9.

Analysis of the improvements has been provided within the widening project environmental assessment. Subdivision applications providing for road widening purposes have been given preliminary approval and are currently valid.

- g. Signalize the Wailea Ike Drive/Kalai Waa Street intersection in coordination with Wailea Resort and Makena Resort when warranted.

The initial design parameters have been completed and included within the project EIS.

- h. Signalize the Wailea Alanui/Kaukahi Drive/Kaukahi Street intersection in coordination with Wailea Resort and Makena Resort when warranted.

The initial design parameters have been completed and included within the project EIS.

With the significant legal challenges now resolved and further resolution of specific conditions of approval addressed HPL has initiated discussions with its development partners in south Maui and the engineering consultant community on the initiation of design and permitting for the above improvements.

- 3. That, as represented, Honua`ula Partners, LLC, its successors and permitted assigns, shall make a contribution to the County for traffic improvements in an amount equal to \$5,000 per unit. The contribution shall be paid to the County prior to issuance of a building permit. Upon adoption of a traffic impact fee ordinance, Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with the ordinance in lieu of this voluntary contribution. Should a traffic impact fee ordinance be adopted prior to the collection of this contribution, the applicable amount shall be the greater of the two. Such contributions or fees shall not be a substitute for any other traffic infrastructure requirements related to the Change in Zoning.

Status: HPL, its successors and permitted assigns, will comply with the provisions of said condition.

- 4. That Honua`ula Partners, LLC, its successors and permitted assigns, shall be responsible for all required infrastructural improvements for the project, including water source and system improvements for potable and non-potable use and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements and utility upgrades, as determined by the appropriate

governmental agencies and public utility companies. Except as otherwise provided by more specific conditions of zoning, said improvements shall be constructed and implemented concurrently with the development of each phase of Kihei-Makena Project District 9, and shall be completed prior to issuance of any certificate of occupancy or final subdivision approval, unless improvements are bonded by Honua`ula Partners, LLC, its successors and permitted assigns. Honua`ula Partners, LLC shall execute appropriate agreements with governmental agencies regarding participation in improvements of infrastructure and public facilities as determined by the agencies.

Status: HPL has received letters from both the County of Maui Department of Public Works and State of Hawaii Department of Transportation attesting to the fact that HPL is in full compliance with this condition.

5. That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code (the "Residential Workforce Housing Policy"); provided that, 250 of the required workforce housing units shall be located at the Kaonoulu Light Industrial Subdivision and completed prior to any market-rate unit, that 125 of those workforce housing units shall be ownership units, and that 125 of those units shall be rental units. In addition, construction of those workforce housing units shall be commenced within two years, provided all necessary permits can be obtained within that timeframe. Honua`ula Partners, LLC, its successors and permitted assigns, shall provide a minimum two-acre park at the Kaonoulu Light Industrial Subdivision, which shall be credited toward the requirements of Section 18.16.320, Maui County Code, for that subdivision.

Status: The project ownership initiated and processed through to final Maui County Approval a change in zoning request for this condition allowing for the partial or complete relocation of the affordable housing required into the project area. Land planning and civil engineering work to incorporate this affordable component into the project area is underway.

6. That a Drainage Master Plan and Phasing Plan of improvements shall be submitted for review and approval during Project District Phase II processing. Said plan shall include the recommended drainage improvements as represented in the Preliminary Drainage Report. The County may require periodic updates of the Drainage Master Plan and Phasing Plan.

Status: A Drainage Master Plan and Phasing Plan of improvements was included in the project EIS/Project District Phase II application and has been updated to reflect a revised concept plan.

7. That Honua`ula Partners, LLC, its successors and permitted assigns, shall prepare an animal management plan that shall be submitted during Project District Phase II processing and approved by the Department of Land and Natural Resources prior to submittal of Project District Phase III processing. Said plan shall include procedures for the management of animal intrusions including, but not limited to, construction of boundary or perimeter fencing, wildlife control permits, and rodent and feral cat control. Honua`ula Partners, LLC, its successors and permitted assigns, shall implement the approved animal management plan. The Department of Land and Natural Resources may require periodic updates of the plan.

Status: The animal management plan has been included as part of the EIS/Project District Phase II application. Per the terms of this condition, this report has been completed and transmitted to the referenced agencies for review and approval prior to Phase II approval.

8. That Honua`ula Partners, LLC, its successors and permitted assigns, shall inform owners within Kihei-Makena Project District 9 that the area is subject to the intrusion of mammals such as axis deer, pigs, and rodents, and the impacts and management plan associated with such intrusions.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition and the required information will be provided to owners within the project area.

9. That Honua`ula Partners, LLC, its successors and permitted assigns, shall prepare an assessment of the owl (Pueo or Hawaiian Short-eared Owl) and the Hawaiian Hoary Bat in coordination with the Department of Land and Natural Resources, and, if appropriate, mitigative measures shall be incorporated into Kihei-Makena Project District 9. Said assessment shall be prepared prior to submittal of Project District Phase II processing.

Status: The required assessment has been included within the EIS/Phase II application documents and the project team has and continues to meet with the appropriate State and Federal agencies to review current findings and recommendations regarding the assessment. This report has been completed and transmitted to the referenced agencies for review and approval prior to Phase II approval.

10. That, in lieu of the dedication of a Little League Field and related amenities as originally specified in Ordinance No. 2171 (1992), Exhibit "B", Condition No. 8, and based on current land and construction cost estimates for the Little League Field, not less than \$5,000,000 shall be paid to the County upon Project District Phase II approval for the development of the South Maui Community Park. Said amount shall not be credited against future park assessments.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

11. That Honua`ula Partners, LLC is proposing to develop 6 acres of private parks and 84 acres of open space within the development. Said private parks shall be open to the public and privately maintained. Furthermore, said private parks and open space shall not be used to satisfy the park assessment requirements under Section 18.16.320, Maui County Code, or for future credits under said subdivision ordinance. The Director of Parks and Recreation and Honua`ula Partners, LLC agree that the park assessment shall be satisfied with an in-lieu cash contribution for the entire project. The amounts and timing of payment of said in-lieu fees shall be subject to the provisions of Section 18.16.320, Maui County Code.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

12. That, as represented by Honua`ula Partners, LLC, the golf course shall be subject to the following conditions:
 - a. Honua`ula Partners, LLC, its successors and permitted assigns, shall permit one nonprofit organization per quarter of the calendar year, other than Maui Junior Golf Association ("Maui Junior Golf"), the use of the golf course and the clubhouse for a fund-raising activity upon terms mutually agreed upon with said nonprofit organization.
 - b. Honua`ula Partners, LLC, its successors and permitted assigns, shall:
 - (1) develop an organized instructional program for junior golfers at its facility from September to January each year; (2) permit Maui Junior Golf the use of the golf course in accordance with Honua`ula Partners, LLC's instructional program; and (3) sponsor one Maui Junior Golf fund-raising tournament per year. The terms of the Junior Golf Program by Honua`ula Partners, LLC shall be as follows:

The instructional program will be developed to teach youngsters ages 12 to 18 years of age the fundamentals of golf and how to play the game, while also providing quality instruction/training three days a week from September 1 through January 31, with some blackout dates. This program will support the overall efforts of Maui Junior Golf.

Private lessons will also be available at a discounted rate of 50 percent of the regular rate based on two lessons per junior golfer for a maximum of 50 lessons per month from February through August on a space-available basis.

For the annual fund-raising event for the Maui Junior Golf, the rate per player shall be 50 percent of the regular rate with the number of golfers limited to no more than 144 players per event.

- c. Honua`ula Partners, LLC, its successors and permitted assigns, shall permit the Maui Interscholastic League (“MIL”) and the Hawaii High School Athletic Association (“HHSAA”) to each use the golf course once per year for an official MIL golf tournament or an official HHSAA golf tournament if requested by the MIL or the HHSAA, or for regular season play-offs if requested by the MIL.
- d. Honua`ula Partners, LLC, its successors and permitted assigns, shall permit Maui residents to play at the golf course on Tuesday of each week. The charge for Maui residents for green fees, including golf cart rental fees, shall not exceed 40 percent of the average market rate for green fees and golf cart rental fees in South Maui, and shall exclude all membership fees.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

- 13. That Honua`ula Partners, LLC, its successors and permitted assigns, shall prepare a Cultural Resources Preservation Plan (“CRPP”), in consultation with: Na Kupuna O Maui; lineal descendents of the area; other Native Hawaiian groups; the Maui County Cultural Resources Commission; the Maui/Lanai Island Burial Council; the Office of Hawaiian Affairs; the State Historic Preservation Division, Department of Land and Natural Resources; the Maui County Council; Na Ala Hele; and all other interested parties. Prior to initiating this consultation process, Honua`ula Partners, LLC, its successors and permitted assigns, shall publish a single public notice in a Maui newspaper and a State-wide newspaper that are published weekly. The CRPP shall consider access to specific sites to be preserved, the manner and method of preservation of sites, the appropriate protocol for visitation to cultural sites, and recognition of public access in accordance with the Constitution of the State of Hawaii, the Hawaii Revised Statutes, and other laws, in Kihei-Makena Project District 9.

Upon completion of the CRPP, Honua`ula Partners, LLC, its successors and permitted assigns, shall submit the plan to the State Historic Preservation Division, Department of Land and Natural Resources, and the Office of Hawaiian Affairs for review and recommendations prior to Project District Phase II approval. Upon receipt of the above agencies’ comments and recommendations, the CRPP shall be forwarded to the Maui County Cultural Resources Commission for its review and adoption prior to Project District Phase II approval.

Status: In December of 2015 HPL received a letter of acceptance from SHPD for the new Archaeological Inventory Survey that would be the foundation for a Historic Resource Preservation Plan in compliance with HRS 6E and the conditioned CRPP document. HPL has fully complied with the provisions of this condition with adoption of the CRPP by the Maui County Cultural Resources Commission on March 1, 2018. This Condition has been satisfied.

14. That a non-potable water supply system shall be utilized for all irrigation purposes.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

15. That during construction, all dust control shall utilize nonpotable water or effluent, which may be obtained from the Kihei Wastewater Reclamation Facility when available.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

16. That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide a Sewage Disposal Analysis that has been reviewed and commented on by the State Department of Health, the State Department of Land and Natural Resources, the County Department of Environmental Management, and the County Department of Water Supply prior to Project District Phase II approval. The Sewage Disposal Analysis, along with reviews and comments, shall be submitted to the Maui County Council for review and the project shall be subject to additional conditions or amendments by the Maui County Council if warranted by the Sewage Disposal Analysis.

Status: This analysis was completed, transmitted to the agencies for review, their comments addressed in a final report with the final report transmitted to the Council for review and comment. This report was referred to the Council Planning Committee for review and comment and subsequently proposed for filing by the Committee. The Maui County Council approved the filing of the report. This condition has been satisfied.

17. That Honua`ula Partners, LLC, its successors and permitted assigns, shall construct, maintain, and/or participate in the operation of a private wastewater treatment facility and system that accommodate the needs of the entire Kihei-Makena Project District 9. All reclaimed water from the private wastewater treatment facility shall be utilized for irrigation, dust control, or other nonpotable purposes, and none of the reclaimed water shall be placed into injection wells.

The sewer rates for the residential workforce housing units shall be no higher than the residential sewer rates set by the County in its annual budget, for as long as the units are subject to Chapter 2.96, Maui County Code.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

18. That Honua`ula Partners, LLC, its successors and permitted assigns, shall address in their Project District Phase II application the following:
- a. Condition 1 of the Department of Health's "Twelve Conditions Applicable To All New Golf Course Development" ("12 Conditions") relating to an approved sampling plan, establishment of the baseline groundwater/vadose zone water quality, and if appropriate, nearshore water quality, has been met to the satisfaction of the Director of Health;
 - b. Conditions 2 and 3 of the Department of Health's "12 Conditions" relating to groundwater monitoring have been satisfied by the Director of Health;
 - c. Condition 4 relating to the preliminary proposal of the individual treatment system meets the requirements of the Department of Health, and final design shall be approved at the time of Project District Phase III;
 - d. Condition 5 of the Department of Health's "12 Conditions" relating to use of effluent has been satisfied;
 - e. Condition 6 of the Department of Health's "12 Conditions" relating to golf carts and storage of petroleum has been addressed and incorporated in the design and layout of the buildings;
 - f. Conditions 7, 8, and 11 of the Department of Health's "12 Conditions" relating to fertilizers, biocides, and pesticides and the Integrated Golf Course Management Plan have been reviewed, and comments from the Department of Agriculture and the Department of Health have been incorporated in the design and layout of the golf courses;
 - g. Condition 9 of the Department of Health's "12 Conditions" relating to noise from maintenance facilities has been addressed through the location and design of the maintenance activities and facilities;
 - h. Condition 10 of the Department of Health's "12 Conditions" and the County Department of Environmental Management's concerns and recommendations relating to solid waste disposal management activities and facilities are identified and designed;

- i. Condition 12 of the Department of Health's "12 Conditions" relating to soil runoff during construction and concerns of the State Department of Transportation; the County Department of Public Works; the State Department of Health; and the Natural Resources Conservation Service of the United States Department of Agriculture relating to drainage are addressed and incorporated in the design and layout of the plans, and a preliminary erosion control and drainage report is included in the application;
- j. Confirmation from Maui Electric Company, Ltd. ("MECO") that the proposal to relocate and/or landscape MECO facilities is incorporated in the application and site plan; and
- k. Roadway improvements to the satisfaction of the State Department of Transportation and the County Department of Public Works and proposed agreements are incorporated in the application and site plan and finalized as part of Project District Phase II approval.

Status: HPL will comply with the provisions of said condition. Items "a" through "k" have been addressed and included within the EIS/Phase II application.

- 19. That Honua`ula Partners, LLC, its successors and permitted assigns, shall execute appropriate agreements with the State of Hawaii and County of Maui agencies regarding participation in improvements of infrastructure and public facilities where such improvements are reasonably related to Honua`ula Partners, LLC 's project.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition. As referenced in the response to Condition 4 above, this condition has been satisfied.

- 20. That marine monitoring programs shall be conducted which include monitoring and assessment of coastal water resources (groundwater and surface water) that receive surface water or groundwater discharges from the hydrologic unit where the project is located. Monitoring programs shall include both water quality and ecological monitoring.

Water Quality Monitoring shall provide water quality data adequate to assess compliance with applicable State water quality standards at Hawaii Administrative Rules Chapter 11-54. Assessment procedures shall be in accordance with the current Hawaii Department of Health ("HIDOH") methodology for Clean Water Act Section 305(b) water quality assessment, including use of approved analytical methods and quality control/quality assurance measures. The water quality data shall be submitted annually to

HIDOH for use in the State's Integrated Report of Assessed Waters prepared under Clean Water Act Sections 303(d) and 305(b). If this report lists the receiving waters as impaired and requiring a Total Maximum Daily Load ("TMDL") study, then the monitoring program shall be amended to evaluate land-based pollutants, including: (1) monitoring of surface water and groundwater quality for the pollutants identified as the source of the impairment; and (2) providing estimates of total mass discharge of those pollutants on a daily and annual basis from all sources, including infiltration, injection, and runoff. The results of the land-based pollution water quality monitoring and loading estimate shall be submitted to the HIDOH Environmental Planning Office, TMDL Program.

The ecological monitoring shall include ecological assessment in accordance with the Coral Reef Assessment and Monitoring Program protocols used by the Department of Land and Natural Resources. The initial assessment shall use the full protocol. Subsequent annual assessments can use the Rapid Assessment Techniques. Results shall be reported annually to the Aquatic Resources Division, Department of Land and Natural Resources.

Status: The baseline annual reports have been updated, transmitted to the Department of Health and included within the project EIS/Phase II application.

21. That all exterior lighting shall be shielded from adjacent residential properties and near shore waters. Lighting requirements in force at the time of building permit application shall be applied.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

22. That Honua`ula Partners, LLC, its successors and permitted assigns, shall pay the Department of Education \$3,000 per dwelling unit upon issuance of each building permit to be used, to the extent possible, for schools serving the Kihei-Makena Community Plan area; provided that, should the State pass legislation imposing school impact fees that apply to Kihei-Makena Project District 9, Honua`ula Partners, LLC, its successors and permitted assigns, shall from that point forward comply with the State requirements, or contribute \$3,000 per dwelling unit, whichever is greater.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

23. That Honua`ula Partners, LLC, its successors and permitted assigns, shall fund and construct adequate civil defense measures as determined by the State and County of Maui civil defense agencies.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

24. That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide to the County two acres of land with direct access to the Piilani Highway extension for the development of fire control facilities within the village mixed-use sub-district at the time 50 percent of the total unit/lot count has received either a certificate of occupancy or final subdivision approval. The acreage provided shall have roadway and full utility services provided to the parcel.

That Honua`ula Partners, LLC, its successors and permitted assigns, shall contribute \$550,000 to the County for the development of a police station in South Maui, to be paid at the time a contract is entered into for the construction of that police station.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

25. That no transient vacation rentals or time shares shall be allowed within Kihei-Makena Project District 9; and further, no special use permit or conditional permit for such accommodations shall be accepted by the Department of Planning.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

26. That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide a preservation/mitigation plan pursuant to Chapter 6E, Hawaii Revised Statutes, that has been approved by the State Historic Preservation Division, Department of Land and Natural Resources, and the Office of Hawaiian Affairs prior to Project District Phase II approval.

Status: HPL acknowledges the provisions of said condition and have contracted for the development of a Historic Preservation Plan per the provisions of HRS 6E. With the receipt of the AIS acceptance letter from SHPD the draft report was completed and transmitted to both SHPD and OHA for review and approval. SHPD issued a letter of acceptance for the document and HPL awaits action from OHA on the document. The Office of Hawaiian Affairs has had the subject document for review for over three years and is expected to issue a letter of acceptance after completion of the Section 106 consultation process has been completed and the plan revised to reflect any necessary changes. This condition has been partially satisfied.

27. That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide the report “Remnant Wiliwili Forest Habitat at Wailea 670, Maui, Hawaii by Lee Altenberg, Ph.D.”, along with a preservation/mitigation plan, to the State Department of Land and Natural Resources, the United States Fish and Wildlife Service, and the United States Corps of Engineers for review and recommendations prior to Project District Phase II approval. The Maui Planning Commission shall consider adoption of the plan prior to Project District Phase II approval.

Such plan shall include a minimum preservation standard as follows: That Honua`ula Partners, LLC, its successors and permitted assigns, shall establish in perpetuity a Conservation Easement (the “Easement”), entitled “Native Plant Preservation Area”, for the conservation of native Hawaiian plants and significant cultural sites in Kihei-Makena Project District 9 as shown on the attached map. The Easement shall comprise the portion of the property south of latitude 20°40'15.00"N, excluding any portions that the State Department of Land and Natural Resources, the United States Fish and Wildlife Service, and the United States Corps of Engineers find do not merit preservation, but shall not be less than 18 acres and shall not exceed 130 acres.

The scope of the Easement shall be set forth in an agreement between Honua`ula Partners, LLC and the County that shall include:

- a. A commitment from Honua`ula Partners, LLC, its successors and permitted assigns, to protect and preserve the Easement for the protection of native Hawaiian plants and significant cultural sites worthy of preservation, restoration, and interpretation for public education and enrichment consistent with a Conservation Plan for the Easement developed by Honua`ula Partners, LLC and approved by the State Department of Land and Natural Resources, the United States Geological Survey, and the United States Fish and Wildlife Service; and with a Cultural Resource Preservation Plan, which includes the management and maintenance of the Easement, developed by Honua`ula Partners, LLC and approved by the State Department of Land and Natural Resources (collectively, the “Conservation/Preservation Plans”).
- b. That Honua`ula Partners, LLC, its successors and permitted assigns, shall agree to confine use of the Easement to activities consistent with the purpose and intent of the Easement.
- c. That Honua`ula Partners, LLC, its successors and permitted assigns, shall be prohibited from development in the Easement other than erecting fences, enhancing trails, and constructing structures for the maintenance needed for the area, in accordance with the Conservation/Preservation Plans.

- d. That title to the Easement shall be held by Honua`ula Partners, LLC, its successors and permitted assigns, or conveyed to a land trust that holds other conservation easements. Access to the Easement shall be permitted pursuant to an established schedule specified in the Conservation/Preservation Plans to organizations on Maui dedicated to the preservation of native plants, to help restore and perpetuate native species and to engage in needed research activities. These organizations may enter the Easement at reasonable times for cultural and educational purposes only.
- e. Honua`ula Partners, LLC, its successors and permitted assigns, shall be allowed to receive all tax benefits allowable under tax laws applicable to the Easement at the time that said Easement is established in Kihei-Makena Project District 9, which will be evidenced by the recordation of the Easement in the Bureau of Conveyances, State of Hawaii.

Status: HPL submitted to DLNR/DOFAW and USFWS a draft Habitat Conservation Plan (HCP) for which agency review has been ongoing and meetings held with the agencies and Endangered Species Review Committee (ESRC). A revised HCP document providing for a 134 acre Native Plant Preservation area has been submitted to the agencies for review and processing addressing a totally revised mitigation plan. The revised HCP plan addresses the provisions of this condition including the size and location of the Native Plant Preservation Area, Conservation Plan and easement. Final review with a recommendation for acceptance from the ESRC is expected in the fourth quarter of 2020. In addition, the HCP document and associated NEPA EA has been completed and transmitted to the USFWS for posting in the Federal Register for public review and comment. Finalization of this process is expected in the fourth quarter of 2020. In satisfaction of this condition the Maui Planning Commission adopted the draft Habitat Conservation Plan in satisfaction of this condition. Adoption of the document by the Commission was completed in July of 2018. This condition has been partially satisfied.

- 28. That, prior to the commencement of any construction activity, Honua`ula Partners, LLC, its successors and permitted assigns, shall develop and submit a Transportation Management Plan ("TMP"), to be reviewed and approved by the State Department of Transportation, the County Department of Public Works, and the County Department of Transportation. The purpose of the TMP shall be to reduce traffic generated by construction activity related to the Kaonoulu Light Industrial Subdivision and Kihei-Makena Project District 9, including traffic generated by the improvements to Piilani Highway between Kilohana Drive and Wailea Ike Drive. The TMP shall provide for programs such as park and ride, shuttles, and/or restrictions on worker access to ongoing construction activity

during peak hour traffic. Upon approval, project contractors shall implement the TMP during construction activities. Honua`ula Partners, LLC, its successors and permitted assigns, shall submit an annual report to the State Department of Transportation, the County Department of Public Works, the County Department of Transportation, and the Maui County Council to document the success of the TMP in meeting its benchmarks of reducing traffic during project construction.

That as part of the Project District Phase II application, Honua`ula Partners, LLC, its successors and permitted assigns, shall submit a TMP to reduce the dependency on individual vehicular transportation modes. The TMP shall be reviewed and approved by the State Department of Transportation, the County Department of Public Works, and the County Department of Transportation prior to Project District Phase II approval.

Status: The TMP documents have been reviewed and approved by all relevant agencies. This condition has been satisfied.

29. That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions imposed, commencing within one year of the effective date of the ordinance.

Status: HPL in compliance with said condition hereby submits this annual compliance report.

30. All energy systems for all residential units shall be designed and constructed to meet all applicable ENERGY STAR requirements established by the Climate Protection Division of the United States Environmental Protection Agency in effect at the time of construction. For purposes of this condition, energy systems shall include all hot water systems, roof and attic areas, outside walls, windows, air cooling systems, and heating systems.

All residential units shall be equipped with a primary hot water system at least as energy efficient as a conventional solar panel hot water system, sized to meet at least 80 percent of the hot water demand for the respective units.

All air cooling systems and all heating systems for laundry facilities, swimming pools, and spa areas shall make maximum use of energy-efficient construction and technology.

Status: HPL, its successors and permitted assigns will comply with the provisions of said condition.

Sincerely,

HONUA'ULA PARTNERS, LLC

A handwritten signature in black ink, appearing to be 'CJ', with a large loop and a trailing flourish.

By CHARLES JENCKS
It's Authorized Representative

cc: Department of Planning