

AH Committee

From: Krystal K. Cabiles
Sent: Wednesday, September 23, 2020 8:08 AM
To: AH Committee
Cc: Tamara A. Paltin
Subject: Fwd: Testimony for AH-1(7)
Attachments: 1-Testimony_LauraPeddle_20200225.pdf

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From: Krystal K. Cabiles
Sent: Monday, September 21, 2020 8:57:46 AM
To: AH Committee <AH.Committee@mauicounty.us>
Cc: Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Angela R. Lucero <Angela.Lucero@mauicounty.us>
Subject: Testimony for AH-1(7)

Good Morning,

Please see attached testimony.

Thank you for your valued time,
Krystal K. Cabiles
MAUI COUNTY COUNCIL
Office of Councilmember Paltin
Executive Assistant
West Maui District
(808) 270-5504

February 24, 2020

Department of Planning
2200 Main Str., Suite 315
Wailuku, HI. 96793

Subject:
West Maui Community Plan Advisory Committee
Specific to Olowalu

First and foremost, we as a Community whole-heartedly agree that affordable housing is desperately needed on the West side of Maui. That said, we have concerns about changing the community plan designation from AG to small town, as it opens the door to further development within the SMA. With that in mind, please allow us to enlighten you as to our experience as Owners living within this Special Management Area (SMA).

When each of us bought our property in Olowalu Mauka, an HOA of just 14 five acre lots, we were provided with just two documents: CC&Rs and one Amendment to allow for CPR). Those two documents seem insufficient in light of learnings from recently familiarizing ourselves with the documents related to the SMA.

Please note, we are well aware that the Developer for our community, Olowalu Mauka, is the same Developer for the newly proposed Lihau'ula below Olowalu Mauka, and also located within the SMA (see attached Vicinity Map and the Conceptual Site Plan that confirm development is planned to enter at and run along Luawai Street).

As the committee members are aware, every new development requires deep thinking, and much stakeholder engagement. Although not at that point, it is good to remind ourselves of the depth/breadth of stakeholder engagement necessary should a change in the Community Plan Designation lead to more.

Olowalu Mauka was approved some 20 years ago. Maui Planning Department submitted a Report to the Planning Commission for its Sept. 12, 2000 meeting. The report lays out a project description. For context, some language from pages 9 & 10 include:

"the applicant is requesting an SMA [special management] Permit to develop approximately 70 acres (located within the SMA) of the total 733 acres of the makai and Mauka properties at Olowalu into new agricultural lots.....".

"besides the development of the subdivisions The applicant proposes to establish a cultural reserve with a makai to Mauka orientation beginning from the shoreline and ending in the valley of West Maui Mountains. This cultural reserve is identified as Lot 25, easement 23 on the Mauka subdivisionin addition to the cultural reserve other cultural and archaeological sites on the property are slated for preservation such as but not limited to the burial sites, Olowalu Mill site and Olowalu Landing."

"the applicant proposes a system of greenways throughout the subdivisions through a series of greenway easements within the agricultural lots.....According to the applicant the intent is not to restrict access to the greenways but to develop a system of trails that connect from the ocean to the mountains. The greenways are proposed to be landscaped with native plants appropriate to the Olowalu climate, incorporation of water features using the former irrigation system and water, and opportunities for pedestrian ways, bikeways, and equestrian trails."

The Report continues with comments from Reviewing Agencies in great detail. Those Agencies included:

From Maui:

- Department of Water Supply
- Department of Fire Control
- Department of Parks and Recreation
- Department of Public Works and Waste Management
- Maui Police Department

From the State level:

- Department of Land and Natural Resources
- Department of Education
- Land Use Commission
- Department of Accounting and General Services
- Department of Health
- Department of Transportation
- Department of Labor
- Office of Hawaiian Affairs
- University of Hawaii at Manoa, Environmental Centre
- University of Hawaii Sea Grant Extension Service
- Department of Agriculture
- US Department of Army
- US Fish and Wildlife Service

Further:

Maui Electric Company
Maui County Cultural Resources Commission

After much debate, and a recess resulting in language amendments, the Planning Commission gave its approval, subject to 36 conditions.

Ten years later, Owners who bought into the new community of Olowalu Mauka, frustrated with non-cooperation by the Developer, found it necessary to involve the County to compel the Developer to comply with condition #32 related to roadways. That action resulted in further non-compliance issues being identified and the issuance of non-compliance letters Feb 25, 2010 and again Jun 29, 2010.

Subsequently, a Dec 16, 2010 letter stated they had been working with the Developer to resolve specific non-compliance with Conditions 2, 4, 8, 11, 12 and 32 (#32 is specific to related to roadway improvements to the Honoapiilani Highway including left-turn storage lanes, etc.

initiated by Owners), and also outlined the status of other non-compliance concerns that were thankfully deemed to be adequately addressed:

#14 - "development of a phased greenway system", noting "additional mitigation and planting was required in order to bring the project into compliance"

#19 - "archaeological and site preservation with both long and short-term milestones....."

#33 - "outdoor lighting plans for the subdivision shall be submitted to the Maui Planning Department for review and approval to reduce the negative impacts on seabirds...."

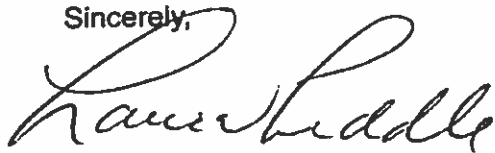
Now, a further 10 years later, our community has observed that some conditions appear to again have slipped into non-compliance. That is unfortunate as these issues have been brought to the attention of the Developer multiple times in the hopes of continuing a co-operative relationship and resolution to solutions. Unfortunately, the following issues remain a concern to our Community.

- Fire road has not been maintained
- Irrigation System:
 - CC&Rs crafted by the Developer subsequent to the SMA and Condition 15 that requires an Irrigation System instead states the Developer has no obligation
 - The System is inadequate even for our small community of 14 lots
 - We have heard for years about new wells, without any action being taken
- Community Gate, technically a legal property right, is being stalled, or at worse, denied

In addition, with the recent creation of Greenway trails — that for reasons not understood have been limited to our small community area — criminal activity has escalated with multiple police reports submitted.

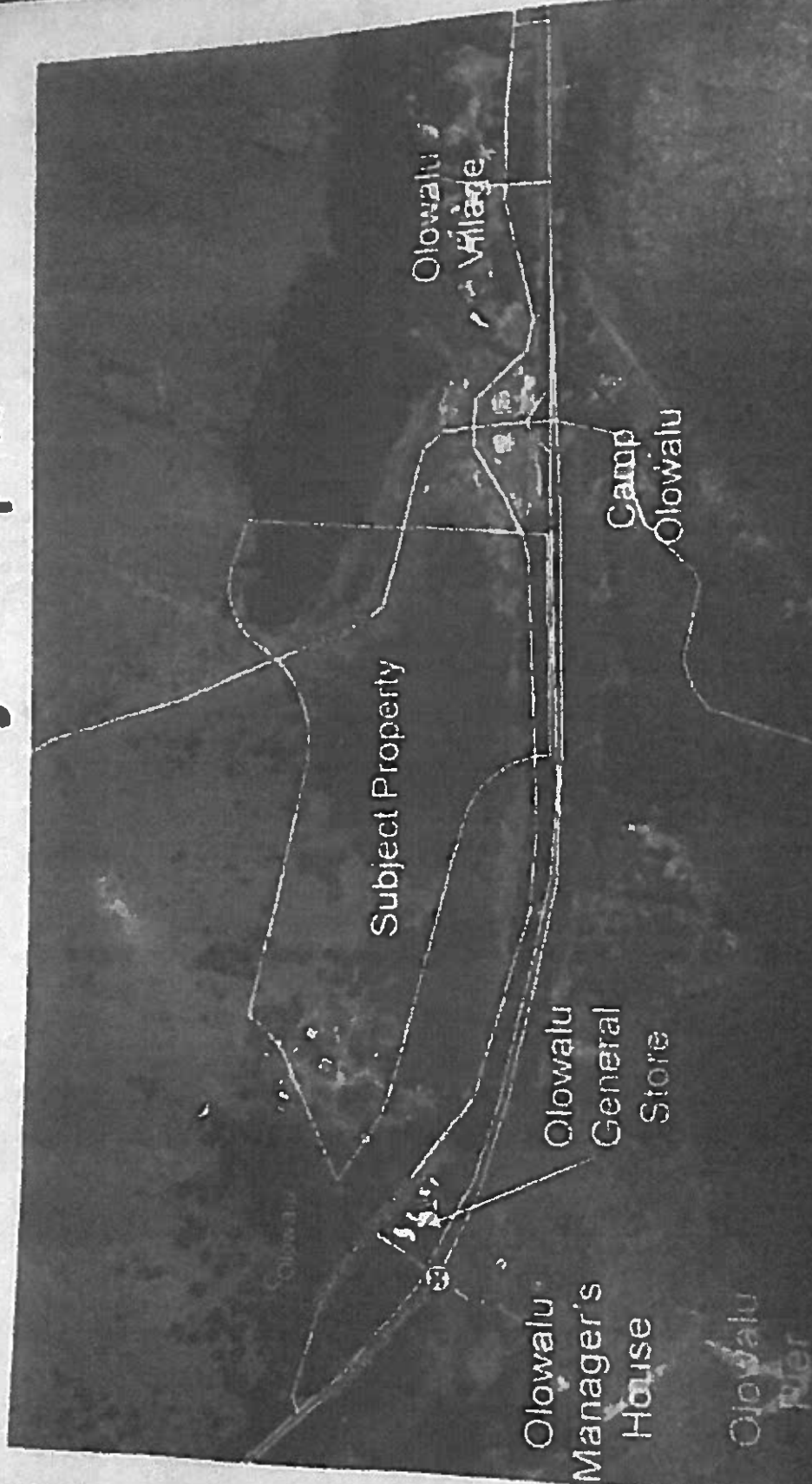
Detail related to the four topics are attached to this submission. We trust that understanding these ongoing issues will enlighten the Committee as to what living in Olowalu is actually like, as such may repeat should other communities be approved within the SMA. That said, these issues could be resolved through co-operation and/or pro-active enforcement of compliance to all Conditions.

Sincerely,

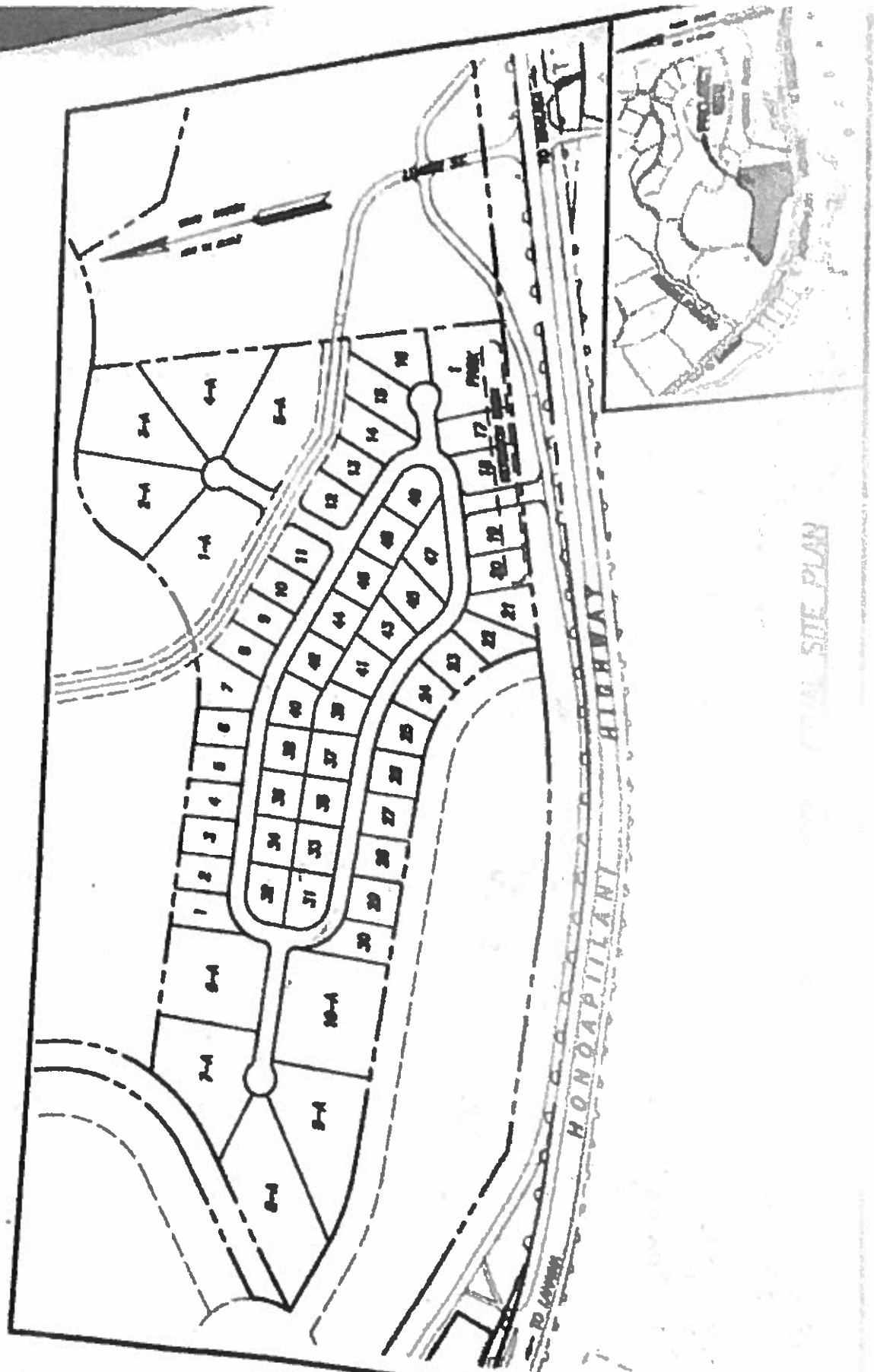


Laura Peddle, President,
Olowalu Mauka HOA

Vicinity Map ^{28 Nov 54}



Conceptual Site Plan



CONCEPTUAL SITE PLAN

Fire Road

When Condition #32, roadway, was resolved ten years ago to be relocated from original hi-way entrance, diagrams were submitted. Figure 6 includes the location for the Fire Road. Additionally, Paul Haake, Fire Prevention Bureau Captain, submitted comment, including "It seems that the original design provided the subdivision with two separated means of egress, whereas the new design has the subdivision exiting from one side. The inclusion of the fire access road on the south side will provide a solution, but it must be maintained."

In reality, the Fire Road has not been maintained. It is a dirt road that is initiated just above the dead-end of Luawai Street, that initially looks drivable. However, as one descends further, you quickly learn it is in fact impassable. There is a steep incline, rocks/boulders that leads to a gate, with no further road out.

Attachment

- Figure 6, depicting existing fire road
- email from Paul Haake, Fire Prevention Bureau Captain, dated Aug 24, 2010

Observation/Question:

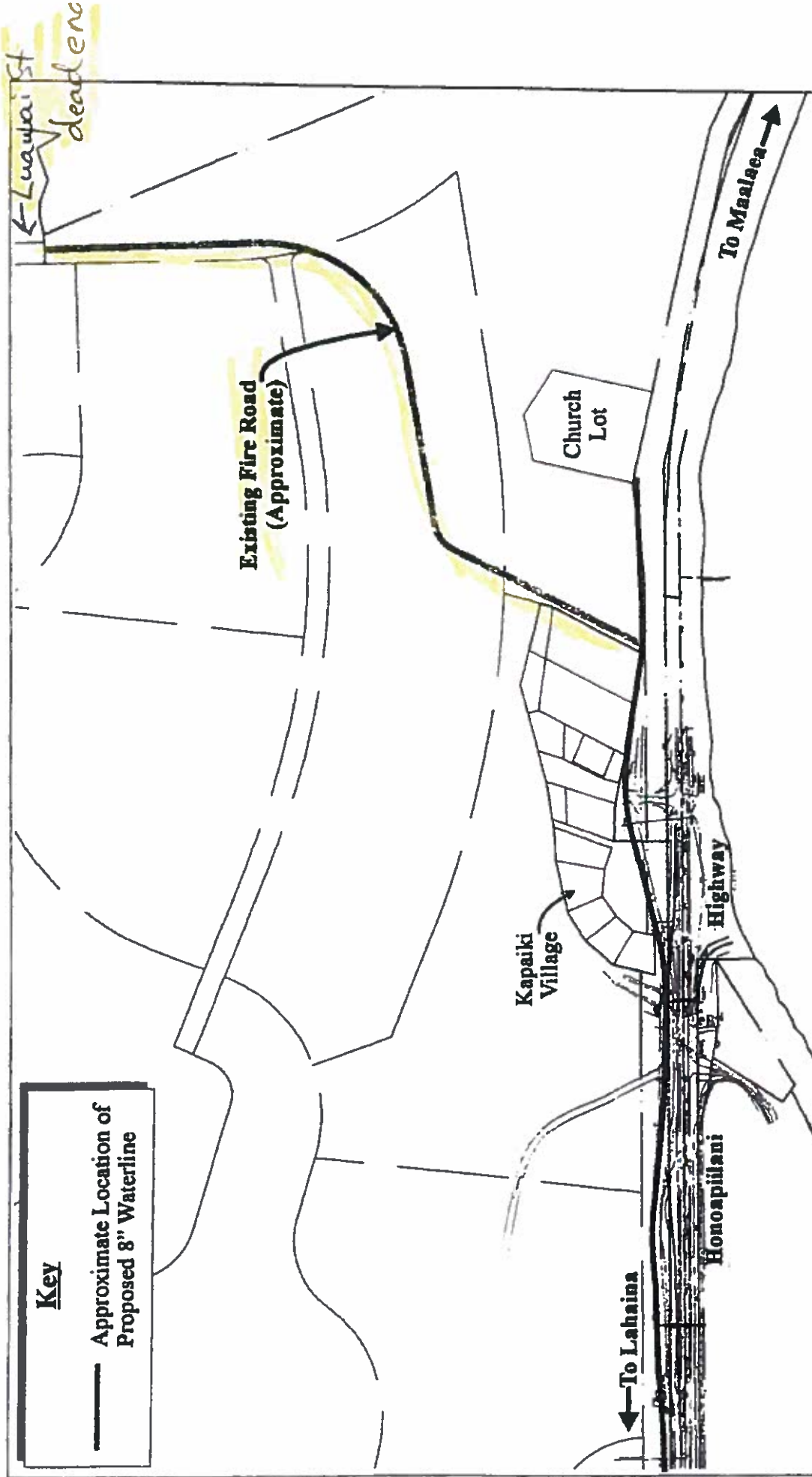
Has the Developer fallen out of compliance with:

Condition #11 (*develop the property in substantial compliance with the representations made to the Commission in obtaining the SMA Use Permit*),

Condition #12 (*the applicant shall be responsible for all required infrastructural improvements including, but not limited to water source and system improvements for both domestic and fire protection....*),

Condition #14 (*roadways for the proposed subdivisions shall be constructed in substantial compliance with the proposed greenway plan.....*)

Condition #32 (*roadway improvements*).



Source: R.T. Tanaka Engineers, Inc.

Figure 6

Relocation of Driveway "D" for the Olowalu Mauka Subdivision and Related Improvements Proposed 8-Inch Waterline and Fire Road



NOT TO SCALE

Prepared for: Olowalu Ehus Associates, LLC

MUNEKIYO & HIRAGA, INC.

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From: Paul Haake
To: Kurt Wollenhaupt
Date: 8/24/2010 12:52 PM
Subject: Olowalu Mauka Driveway "D" Relocation SM1 2010/0008

Date : August 24, 2010

To : Kurt F. Wollenhaupt
Staff Planner, County of Maui

Project : Relocation of Driveway "D" for the Olowalu Mauka Subdivision
SM1 2010/0008
TMK (2) 4-8-003: 101(POR), (2) 4-8-003: 102(POR),
(2) 2-4-8-003: 118 (POR)
Olowalu, Maui

Dear Kurt,

Thank you for the opportunity to comment on the proposed change to this subdivision's access. At this time, our office would require that the new road be designed to meet, at a minimum, the same specifications as the original access. Furthermore, any fire protection that was required on the original access must be provided on the new access at the required fire-flow and spacing approved on the original design.

Although the submitted documents included 500+ pages, the original design of the Driveway "D" was not included. It would have been useful to compare the original design with the new design. It seems that the original design provided the subdivision with two separated means of egress, whereas the new design has the subdivision exiting from one side. The inclusion of the fire access road on the south side will provide a solution, but it must be maintained.

The addition of the fire protection line for Kapali Village is a plus for this area. For the new water line into Kapali Village, hydrant spacing shall be at 350' maximum; outside of the village, hydrant spacing can be extended to 500' maximum.

If there are any questions or comments, please feel free to contact me at 244-9161 ext. 23.

Sincerely,

Paul Haake
Fire Prevention Bureau Captain
313 Manea Place Wailuku, HI 96793
244-9161 ext. 23
244-1363 fax

Greenways:

As stated earlier as part of original project context for the development of "approximately 70 acres (located within the SMA) of the total 733 acres of the makai and Mauka properties at Olowalu into new agricultural lots.....".

"the applicant proposes a system of greenways throughout the subdivisions through a series of greenway easements within the agricultural lots.....According to the applicant the intent is not to restrict access to the greenways but to develop a system of trails that connect from the ocean to the mountains. The greenways are proposed to be landscaped with native plants appropriate to the Olowalu climate, incorporation of water features using the former irrigation system and water, and opportunities for pedestrian ways, bikeways, and equestrian trails."

In reality, 20 years later, the Developer has only just recently provided water and plantings, and for ONLY a limited trail that runs directly below our Olowalu Mauka community, with vehicular access available below some of our homes via the Developer's non-potable water filter station.

Whereas the Greenway, per the map provided by the Deputy Director of Planning via email dated Jan 3, 2020, clearly depicts a much larger greenway area (see attachment)

Our concerns are multiple:

Why has the Developer only now, 20 years later, developed greenway trails?

Why are those newly developed trails located ONLY under our community versus the full extent of the promised Greenway?

Why do newly installed signs indicate Equestrian is not permitted?

Why has the historically and commonly used trailhead with parking opportunity on Luawai St and just ahead of our Community's maintained grassy common area been relocated adjacent to the first Owner within our community?

Moreover, criminal activity and homeless have escalated in the past year. Homes have been burglarized, more easily achieved given the easy access to the 4-wheel drivable trail out-of-sight from Luawai Street.

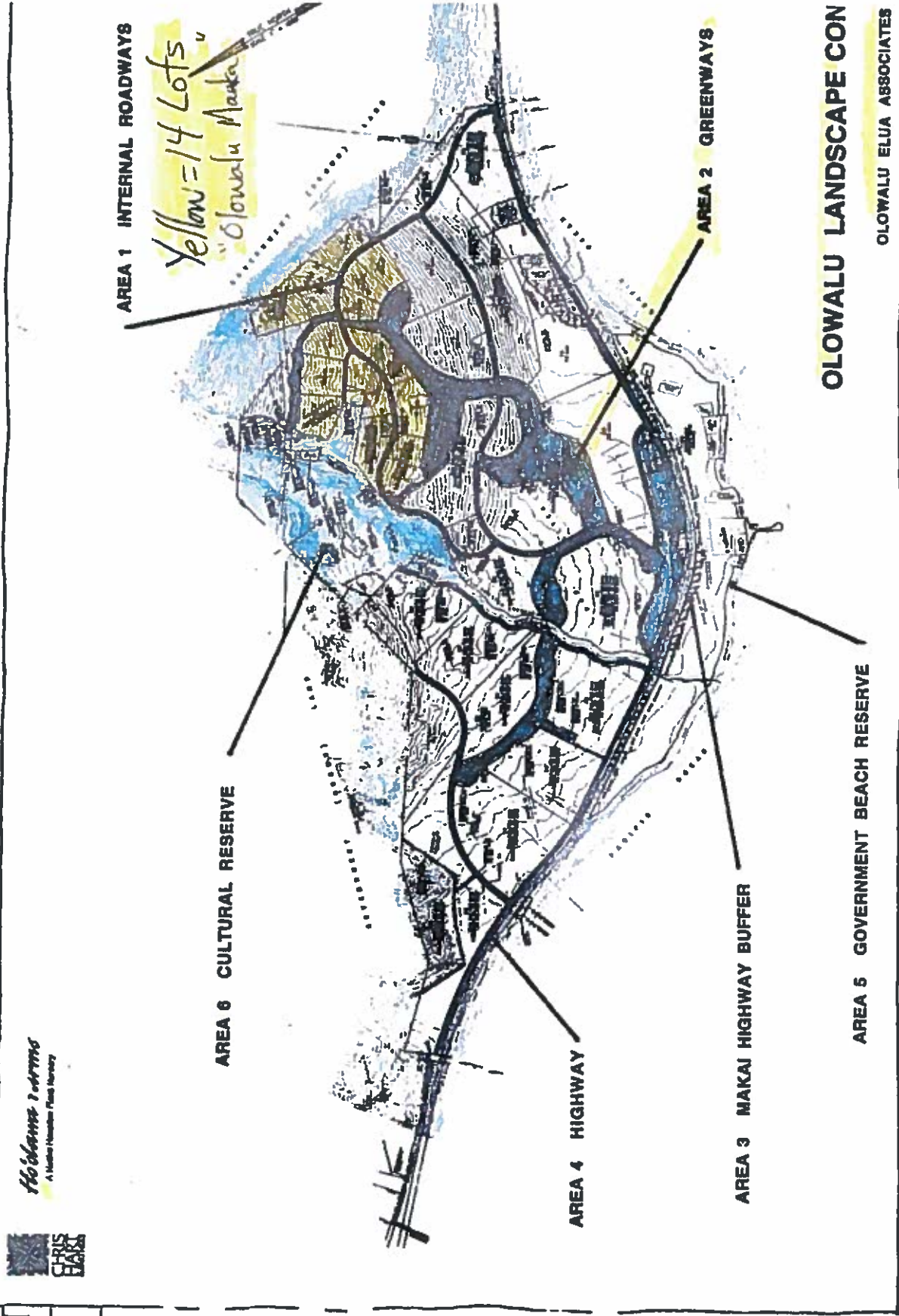
Attachments:

1. Map showing full extend of Greenways as submitted by Developer in 2000
2. Map showing the only portion of the Greenway with newly created trails, directly under Olowalu Mauka

Observation/Question:

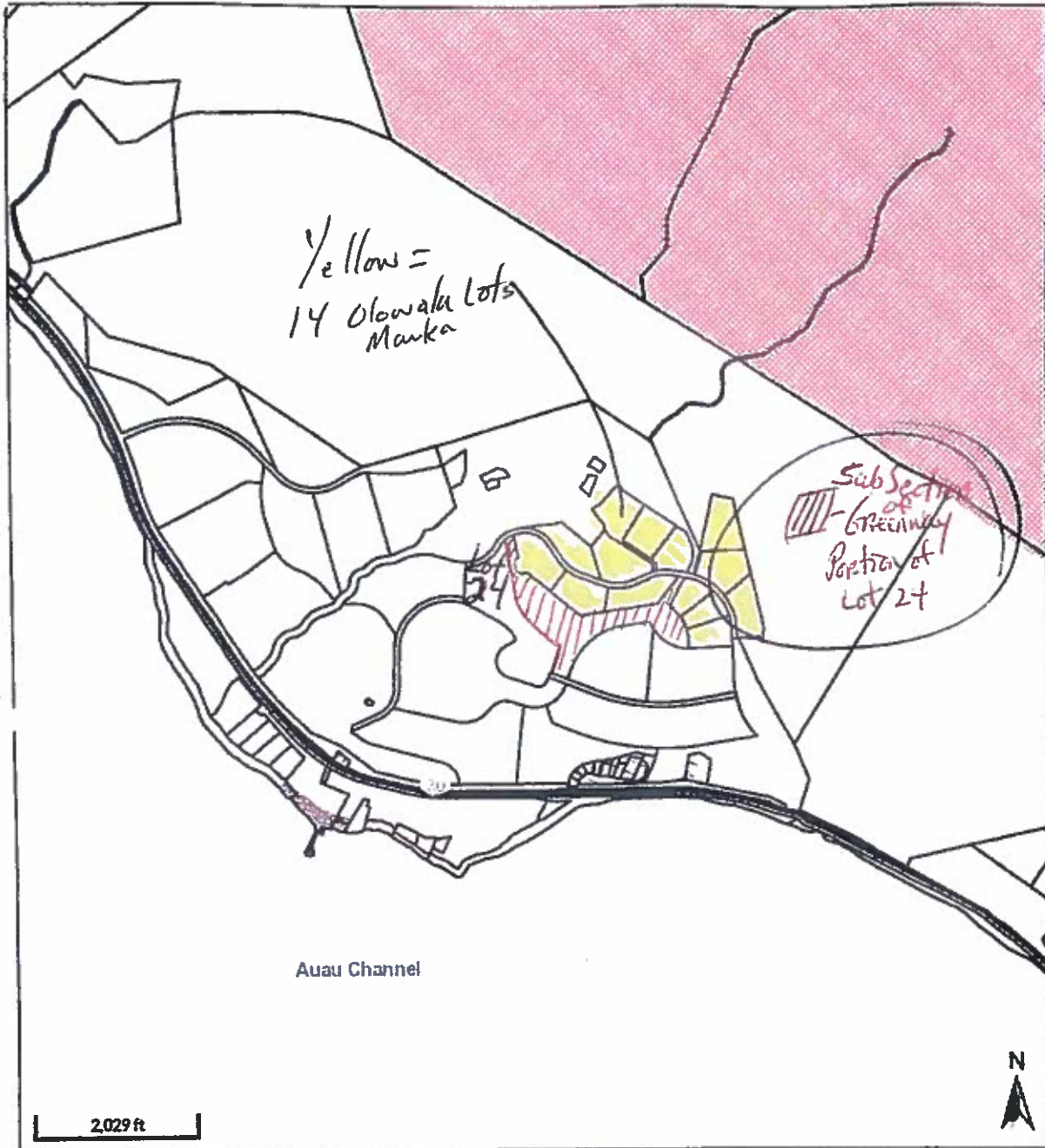
Is the Developer in compliance with the intent of the full extent of the Greenways, as evidenced by the Minutes of the Planning Commission meeting when the SMA was allowed?

Original Project - Dark Green = Greenways



Ho'olama
A Modern Hawaiian Plant Nursery





Overview



Legend

- Parcels
- Island of Maui Zoning (2019)
- R-0 Residential
- R-1 Residential
- R-2 Residential
- R-3 Residential
- Residential - MRA
- Multi Family - MRA
- D-1 Duplex
- D-2 Duplex
- A-1 Apartment
- A-2 Apartment
- H Hotel
- H-1 Hotel
- HM Hotel
- H-2 Hotel
- B-1 Business-Neighborhood
- B-2 Business-Community
- B-3 Business-Central
- BR Business-Resor
- B-CT Business-Country Town
- WCT Waikapu Country Town
- Commercial Mixec Use - MRA
- Business Multi Family - MRA
- SBR Service Business Residential
- M-1 Light Industria
- M-2 Heavy Industrial
- M-3 Heavy Industrial

2

Irrigation System

Condition 15 states "the applicant shall establish an irrigation system for the proposed agricultural subdivisions which addresses the supply, storage, and distribution of irrigation water to the proposed lots, and is secured in terms of permit acquisition, quality, quantity, availability and year-round operations and maintenance."

In the CC&Rs (dated Aug 5, 2002) clearly crafted approximately two years after the SMA with conditions was allowed the language about Irrigation are not aligned with the Developer's obligations. Instead, a new set of rules (CC&Rs) were created and distributed to potential buyers of the Olowalu Mauka lots indicating no obligation, ever, for Irrigation Water. While we understand having more customers would make the provision of water more viable for the Developer, to craft language that intentionally removes responsibility for the Irrigation System is at minimum disheartening and at worse, blatant.

(excerpts from Olowalu Mauka CC&Rs, including Exhibit "D" Irrigation System Plan, follow)

Of note: The difference in language between Condition 15 and our HOA CC&Rs has only come to light because of the necessary detailed research undertaken to deeply understand the SMA, which only occurred because of unknown conditions placed on our HOA's desire and property right for a Community Gate.

Moreover, since the flood of September 2016 knocked out the Primary Plan for Irrigation Water, we have heard about a new well solution — identified as the "Secondary Irrigation Plan" within Exhibit "D" of our CCRs. However, to date, there has been no action in this regard to improve the inadequate irrigation system.

Observation/Question:

Is the Developer in non-compliance with Condition #15 to provide and maintain Irrigation Water? How might the CCR's be corrected to reflect the Intent of Condition #15?

3.06 Irrigation System Plan.

Attached hereto as Exhibit D is the current version of Declarant's Irrigation System Plan, as required by the County of Maui. Declarant shall not be obligated to provide non-potable water for irrigation, but if in Declarant's discretion Declarant does so, all Owners will be bound by said plan. The Declarant reserves the right to change said plan from time to time as the irrigation and non-potable water system is implemented and operated, the requirements of regulatory authorities may change, the needs and requirements of system operations may dictate, and other developments to be served by the system shall require. Declarant shall obtain all necessary governmental approvals for each such change and shall notify the Association of each such change. Declarant may delegate this authority to any entity to which the system or its operation may be transferred or delegated.

EXHIBIT "D"

OLOWALU LANDS, LAHAINA, MAUI, HAWAII

IRRIGATION SYSTEM PLAN

Background:

At its meeting of September 12, 2000, the Maui Planning Department voted to grant approval of a Special Management Use Permit for the subdivision of lands at Olowalu, Maui, Hawaii. Condition No. 15 of the approval states:

That the applicant shall establish an irrigation system for the proposed agricultural subdivisions which addresses the supply, storage, and distribution of irrigation water to the proposed lots, and is secured in terms of permit acquisition, quality, quantity, availability, and year-round operations and maintenance. Documentation that the irrigation system has been established shall be submitted to the Maui Planning Department within ninety (90) days of construction of the subdivision.

Accordingly, this Irrigation System Plan confirms that an irrigation system is currently in place and that provisions for back-up contingency have been identified for implementation, as needed.

Historical Accounting:

Olowalu Sugar Company and Pioneer Mill Company installed and maintained an irrigation system for sugar cane cultivation. This system consisted of two stream intakes, two (2) wells, four (4) reservoirs, a ditch system to transport the water and appurtenant waterlines within the fields. Generally, each reservoir and appurtenant ditches irrigated specific fields. One well ("N" Shaft) was used to add capacity to a specific reservoir while the second well ("O" Pump) was used as a direct irrigation source for some lower fields. See Exhibit "C".

For the makai lands, the existing irrigation system (from Pioneer Mill Company) is currently being utilized and will provide the source for this irrigation system.

Primary Irrigation Plan:

The two stream intakes will be the primary source for non-potable water for agricultural parcels. One of the stream intakes is on State Land 1.1 miles above subject property and subject to a revocable permit from the State Department of Land and Natural Resources. Termination of the revocable permit by the State would impact some of the northern (mauka) parcels. The existing ditches and reservoirs will continued to be used in its present capacity, however, some field irrigation lines will need to be re-routed.

Secondary Irrigation Plan:

This Plan involves the use of the "N" Shaft as a non-potable water source and would be implemented under two circumstances. The first would be a major breakdown of the ditch system from the stream intake on State Land to subject property. This upper ditch system is subject to landslide damage, intermittent breach of a wooden flume and damage to the intake itself. The "N" Shaft would be used to add capacity to the three lower reservoirs, however, the northern (mauka) fields (generally serviced from the uppermost reservoir) cannot be provided non-potable water under this Plan.

Alternative Irrigation Plan:

This Plan involves the use of potable water from a State certified well, through potable waterlines to be established within the project. This Plan would be implemented under either of two circumstances. For the northern (mauka) parcels, the breakdown of the upper ditch system on State Lands would necessitate implementation of this Alternative Plan. For the rest of the agricultural parcels, the loss of the "N" Shaft as a water source and the breakdown of the upper ditch system on State Lands would necessitate implementation of this Alternative Plan. Loss of the "N" Shaft would either be because of pump failure or any de-certification by the State Department of Health.

General Conditions:

1. Users understand and accept that on the date of this plan, Declarant (Olowlu Elua Associates, LLC) owns the "System" under this Irrigation System Plan, and has exclusive control and rights to exercise management over the "System". Declarant has the right and option to designate all or part of said system as a Common Area under Section 2.04 of the Declaration or may transfer all or a part of said system to the Association or to another entity which may be formed in Declarant's discretion for the purpose of owning and operating all or any part of said system. This entity may be a cooperative entity; a privately owned public utility (regulated by the Hawaii Public Utilities Commission) or other operating arrangement. Upon such designation or transfer Declarant shall have no further liability or responsibility with respect to the operation of the System, any failure of the System or any other aspect of it.

The cost of operating and maintaining said system and funding reserves to repair and replace the components of this System will be provided by assessing each Lot Owner the Lot's fair share of the expenses, based on usage or other equitable division. Rates and fees shall be established to offset costs, consistently with operating as a noncommercial and nonprofit entity.

2. Users of the "System" water will indemnify and hold harmless Declarant, its successors, assigns, employees, contractors and agents from any loss, liabilities, claims, or demands for property damage, personal injuries, deaths or any other incidents arising out of any acts or omissions of user, its successor, assigns, officers, employees, contractors and agents, under this Irrigation System Plan.
3. All users are required to place non-potable warning signage on spigots, etc. Water in the System is dangerous to drink.
4. The operation of the System and provision of non-potable water for irrigation under this Plan shall be considered an amenity voluntarily provided by Declarant and not a legally enforceable promise for which Declarant or any successor or designee who shall hold and operate the System would be responsible or liable. In other words, if the System for any reason whatsoever shall fail to provide water (either temporarily or permanently) to any Property, or if the quality or quantity of water shall be diminished or unfit for use, regardless of cause, the Declarant and its successor or designee who shall be operating the System shall have no liability for any loss or damage arising out of such failure or circumstance. Without limiting the generality of the preceding sentence, Declarant makes no warranties, expressed or implied, as to the availability, quality or quantity of water or adequacy of water pressure for users' intended purpose. *
5. All users who also use potable water on their property will be required to install a "backflow preventative valve" on the potable system at their own expense, before initial use of the "System".
6. Users are obligated to pay for the installation of a meter, however, the System operator will install and maintain said meter.
7. If a non-potable water management company is established by Declarant, users will be given an opportunity to review and approve the "Rules and Regulations" governing the non-potable water system. Should any user not wish to participate in the "System", Declarant is under no obligation to provide water under the Irrigation Plan to said User. Said "Rules and Regulations" could include a water charge for the non-potable water or a co-maintenance agreement with all Users.

END OF EXHIBIT "D"

Gates:

Our Community's CC&Rs, crafted by our Developer, include provision for a community gate:

3.21 Community Gate. An entry gate may be installed within the main access road in the subdivision at the option of the Association provided that the decision to install and maintain such gate shall be approved by the affirmative vote or written consent of a majority of the Properties in Olowalu Mauka. Said gate, if so installed, shall be a common area of Olowalu Mauka and shall be maintained and operated by the Association as a common expense of the Neighborhood.

On April 4, 2019, our Owners formally approved moving ahead with the Gate. Costing/implementation plan are due at this year's annual meeting scheduled for April 2, 2020. Our Developer was immediately and formally advised of the Owners' vote to proceed.

However, on Nov 18, 2019, by email from a 3rd party who is a member of the Planning Commission, I was advised that the County has indicated our Gate is not possible. This led to a conversation with the Deputy Planning Commissioner, and ultimately a formal request for Government records related to the SMA, and later still, a meeting with Maui County Planning Department in early February (Kurt Wollenhaupt and Ann Cua). Verbally, Kurt and Ann agreed the CC&Rs were clear on the property right to have a community gate. They had no explanation for the email, asking us to leave the issue with them.

In/around the same time, Laura met with our Developer. Following much dialogue, the Developer instructed colleagues that a solution be worked out with the HOA.

Subsequent to both the meeting with the Developer and the meeting with the County, Laura received email from Kurt Wollenhaupt indicating that ONLY our Developer may submit a project submission for gate. The submission must include drawings/location, input from Stakeholders and how it is consistent with or does not conflict with the intent of conditions 13 & 14.

In light of this "new to us required process", and that given we are currently obtaining final quotes for the Owner approved community gate for the Annual Meeting now just weeks away, I again approached our Developer. The latest response is:

The partners have had conversations about your request to install a gate across Luawai Street however, they have not made a decision at this point. I will be in touch once they have decided what direction they would like to go.

The HOA is still assessing its next steps having just recently learned that the CC&R provided property right to a community gate is being stalled, or worse, possibly denied by our Developer (if they take no action as outlined by the County). Indeed, Owners now question whether the Developer, wanting to entice sales of the Olowalu Mauka lots, intentionally mislead them with the belief they were buying into a future gated community.

Observation/Question:

Given the other gates installed throughout the SMA, were they / are they all approved, or are they non-compliant with the SMA? Is there an alternate project submission should our Developer decline?