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Maui Land & Pineapple Company, Inc. 2020 DEC -3 AM 7: 34

OFFICE OF THE
COUNTY COUNCIL

December 2, 2020

Council Member Tamara Paltin, Chair
Maui County Council Planning and Sustainable Land Use Committee
County of Maui
200 S. High Street
Wailuku, Hawai'i 96793

**SUBJECT: COMPLIANCE REPORT FOR WEST MAUI PROJECT DISTRICT 2
(KAPALUA MAUKA) CHANGE IN ZONING ORDINANCE 3385 (PSLU-
54(5))**

Dear Council Member Paltin,

At your request we provide this report detailing Maui Land & Pineapple Company Inc.'s (MLP) compliance with West Maui Project District 2 (Kapalua Mauka) Change in Zoning Ordinance 3358.

Ordinance 3358 does not require annual reports detailing compliance with all Ordinance 3358 conditions however, MLP has previously provided reports to the Planning Department detailing compliance with all Ordinance 3358 conditions dated February 2006, December 6, 2006, and August 29, 2013.

MLP has also provided annual compliance reports to the State Land Use Commission detailing compliance with all 27 conditions of the Kapalua Mauka State Land Use Commission Decision & Order (D&O) (Docket No. A03-741) pursuant to D&O Condition No. 24.

Kapalua Mauka consists of approximately 924.8 acres in Honokahua, Napili 2 and 3, Lahaina, Maui. Maui County Code (MCC) Chapter 19.92 specifies that no more than 690 dwelling units shall be constructed in Kapalua Mauka. To date only 51 market-priced lots have been subdivided and developed in Kapalua Mauka. These lots are in the Mahana Estates subdivision, the northern 125 acres of Kapalua Mauka. Final subdivision approval for Mahana Estates was granted on February 8, 2017. The balance of Kapalua Mauka has not yet been developed.

Ordinance 3358 contains 13 conditions regarding Kapalua Mauka. The following details compliance toward satisfying these conditions:

- 1. That Best Management Practices designed to prevent infiltration of contaminants from reaching the underlying aquifer shall be incorporated into the design and construction of the project. Additionally, Maui Land & Pineapple Company, Inc. shall promulgate preventative measures to minimize potential groundwater contamination and provide copies of the preventive measures to new homeowners.*

Compliance: In compliance with this condition, MLP:

- Provided best management practices plans for Mahana Estates to the Department of Public Works and Environmental Management (See Attachment 1). The plans address impacts associated with erosion, contaminants, and construction waste. In addition, construction documents for Mahana Estates included an erosion control plan.
- Promulgated preventive measures to minimize potential groundwater contamination that are provided to all lot and home buyers within Kapalua Mauka, including Mahana Estates.

In further compliance with this condition, MLP will provide best management practices plans to the Department of Public Works and Environmental Management for all future construction.

- 2. That, as represented by Maui Land & Pineapple Company, Inc., water conservation techniques shall be incorporated into the project's design, construction and operation to discourage excessive use of water. Water conservation techniques shall include, but not be limited to, the installing and maintaining of low-flow fixtures and devices, limiting irrigation of turf area, preventing over watering by automated systems, eliminating single-pass cooling, using native plants for landscaping, and installing meters to potable and non-potable water systems. In addition, only non-potable water shall be used for irrigation of any golf course in the project.*

Compliance: MLP requires implementation of water conservation techniques to discourage excessive use of water for all phases of Kapalua Mauka (including Mahana Estates) design, construction, and operation.

Water conservation measures within Kapalua Mauka include:

- Installing low-flow fixtures and devices throughout the community pursuant to Maui County Code Section 16.20A.680;
- Prohibiting single pass cooling pursuant to Maui County Code Section 14.21.20;
- Limiting irrigation to a specified area of a lot;
- Requiring non-potable water for irrigation;
- Requiring irrigation systems that provide efficient water coverage and minimize water use and runoff, including drip irrigation systems that provide deep root-zone irrigation of trees and shrubs;
- Requiring irrigation systems with a central, computerized controller to maximize efficiency;
- Requiring grouping of plants according to water consumption needs;
- Prohibiting plants that are potentially destructive to indigenous plants and have weedlike characteristics; and
- Encouraging the use of climate adaptive native, indigenous, and Polynesian-introduced plants.

3. *That Maui Land & Pineapple Company, Inc. shall submit a Preservation Plan for the 39 historic sites recommended for preservation to the State Historic Preservation Division for approval and obtain State Historic Preservation Division approval for the Preservation Plan prior to the commencement of any ground altering activities. Maui Land & Pineapple Company, Inc. must obtain written verification from the State Historic Preservation Division that interim protection measures are in place prior to the commencement of any ground altering activities. Maui Land & Pineapple Company, Inc. must also obtain written verification from the State Historic Preservation Division that the interim protection measures have been successfully implemented, a copy of which shall be submitted to the County.*

Compliance: The State Historic Preservation Division (SHPD) accepted both preservation plans (one covering the original Project District 2 area and one covering the expanded Project District 2 area) prepared for the 39 historic sites in Kapalua Mauka recommended for preservation (Attachment 2 contains the acceptance letters). All the 39 historic sites in Kapalua Mauka recommended for preservation are in gulch areas, except for the Honokahua Camp Cemetery which is in the former golf course area of Kapalua Mauka.

Per SHPD recommendations, before commencement of any ground-altering activities, interim protection measures include demarcating the sites with orange construction fencing. The placement of the fencing will be verified and documented in a letter to SHPD. MLP will also obtain written verification from SHPD that the interim protection measures have been successfully implemented, a copy of which shall be submitted to the Planning Department.

4. *That Maui Land & Pineapple Company, Inc. shall obtain approvals of the Maui/Lanai Islands Burial Council and the State Historic Preservation Division Burial Program for its Preservation Plan or relocation of historic sites with burial components prior to the commencement of any land altering activities.*

Compliance: The Maui/Lanai Islands Burial Council voted unanimously to recommend approval of the burial treatment plan for the four possible burial sites in Honokahua Gulch. By letter dated January 11, 2007, SHPD is in approval of the plan (Attachment 2 contains the approval letter).

5. *That Maui Land & Pineapple Company, Inc. shall notify potential lot owners of the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which normal farming activities may be considered a nuisance.*

Compliance: Sales agreements for all individual homes within Kapalua Mauka, including Mahana Estates, contain or will contain specific notification regarding the Hawai'i Right to Farm Act, Chapter 165, HRS, which limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

6. *That Maui Land & Pineapple Company, Inc. shall contribute to the development, funding, and/or construction of school facilities on a fair share basis pursuant to the Education Contribution Agreement for Kapalua Mauka between Kapalua Land Company, Ltd. And the State of Hawaii Department of Education dated July 10, 2003.*

Compliance: Pursuant to the Education Contribution Agreement (see Attachment 3), MLP will pay \$1,011.00 to the Department of Education within 30 days of the closing and recordation of the sale of each residential unit or lot within Kapalua Mauka, including Mahana Estates.

7. *That Maui Land & Pineapple Company, Inc. shall implement, per State Department of Transportation standards, median left-turn lanes on Honoapiilani Highway into the West Maui Project District 2 (Kapalua Mauka) development at each of the proposed access intersections at Maui Land & Pineapple Company, Inc.'s sole expense.*

Compliance: Per their letter dated December 7, 2006 (see Attachment 4), the State Department of Transportation (DOT) confirmed that no intersection improvements are necessary at the intersection of Honoapi'ilani Highway and the Mahana Estates access road to accommodate Mahana Estates. When warranted, MLP will make all required improvements to Honoapi'ilani Highway necessary for access to the greater Kapalua Mauka area per State Department of Transportation standards.

8. *That Maui Land & Pineapple Company, Inc. shall implement, per State Department of Transportation standards, appropriate right-turn deceleration lanes at each of the three accesses to the West Maui Project District 2 (Kapalua Mauka) development at Maui Land & Pineapple Company, Inc.'s sole expense.*

Compliance: Per their letter dated December 7, 2006 (see Attachment 4), the DOT confirmed that no intersection improvements are necessary at the intersection of Honoapi'ilani Highway and the Mahana Estates access road to accommodate Mahana Estates. When warranted, MLP will make all required improvements to Honoapi'ilani Highway necessary for access to the greater Kapalua Mauka area per State Department of Transportation standards.

9. *That Maui Land & Pineapple Company, Inc. shall install appropriate signing and pavement markings at each of the three accesses to the West Maui Project District 2 (Kapalua Mauka) development at Maui Land & Pineapple Company, Inc.'s sole expense.*

Compliance: Per their letter dated December 7, 2006 (see Attachment 4), the DOT confirmed that no intersection improvements are necessary at the intersection of Honoapi'ilani Highway and the Mahana Estates access road to accommodate Mahana Estates. When warranted, MLP

will make all required improvements to Honoapiʻilani Highway necessary for access to the greater Kapalua Mauka area per State Department of Transportation standards.

10. That as represented by Maui Land & Pineapple Company, Inc., a voluntary contribution for road and traffic improvements in the West Maui Community Plan region shall be provided by Maui Land & Pineapple Company, Inc. to the County of Maui in the amount of \$3,500.00 or the prevailing rate in effect at the time of final subdivision approval, whichever is greater, per dwelling unit in the West Maui Project District 2 (Kapalua Mauka). This contribution shall be made prior to issuance of a building permit. An agreement between Maui Land & Pineapple Company, Inc. and the County of Maui shall be executed and recorded setting forth the terms and conditions of the voluntary contribution prior to Phase II Project District approval.

Compliance: MLP and the County of Maui executed a Traffic Impact Fee Agreement for Kapalua Mauka, which includes Mahana Estates (see Attachment 5). This agreement was recorded with the Bureau of Conveyances on October 31, 2006. Under the agreement, MLP agrees to pay \$3,500 per unit (or the prevailing rate in effect at the time of final subdivision approval) for road and traffic improvements in the West Maui Community.

11. That Maui Land & Pineapple Company, Inc. shall provide at least one affordable dwelling unit for every four market-priced dwelling units that are constructed. Affordable dwelling units will be offered only to full-time residents of the County of Maui to the maximum extent permitted by law.

a. That the affordable dwelling units must be provided as follows:

(i) Forty (40) affordable dwelling units must be completed prior to or concurrently with the completion of the first market-priced dwelling unit.

(ii) Thereafter, one affordable dwelling unit shall be completed prior to or concurrently with the completion of every four market-priced dwelling units.

(iii) Paragraphs (i) and (ii) above do not alter the maximum potential affordable housing requirement of 173 units.

b. That all affordable dwelling units must be located within the West Maui Community Plan area.

c. That affordable dwelling units offered for sale shall be offered to qualified, full-time Maui County resident owner-occupants only and shall be maintained as affordable for a 15- year minimum period through resale restrictions and buy-back clauses.

d. That affordable dwelling units offered for rent shall be offered to qualified full-time Maui County resident occupants only and shall be maintained as affordable in perpetuity.

e. That affordable dwelling units must be offered for an initial minimum period of 120 days to potential purchasers or renters in the designated

income bracket as shown on the attached matrix [see Table 1]. If none qualify to purchase or rent within that time period, the units shall be offered at the same price to potential purchasers or renters in each of the higher brackets for a period of 30 days for each bracket, in order, until a qualified purchaser or renter is found. If no purchasers qualify in any income bracket up through the highest affordable bracket, then for a subsequent 120-day period, the affordable dwelling unit shall be offered for sale to the County of Maui at the same price. If the County does not exercise the right to purchase within 120 days, the units may be offered at market rate, and upon sale, the County shall receive 80 percent of the difference between the affordable offering price and the actual market-rate sales price of the unit, for deposit into a fund or funds established by the County for affordable housing purposes. Affordable rental units shall not be rented to persons with incomes above the highest affordable bracket. If an existing renter's income rises above the highest affordable bracket, the renter shall be permitted to remain in the dwelling unit until the expiration of the renter's lease, not to exceed 12 months.

- f. That the affordable dwelling units required for this project shall not be counted towards the affordable housing requirement for any other project.*
- g. That, prior to final subdivision approval, any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply.*
- h. That Maui Land & Pineapple Company, Inc. shall provide annual status reports to the Director of Housing and Human Concerns and the Council for all affordable dwelling units, commencing within one year of the effective date of this ordinance. The status reports shall include: (1) the number of affordable dwelling units and market-priced dwelling units proposed for development; (2) the number of affordable dwelling units and market priced dwelling units completed; (3) the number of affordable dwelling units and market priced dwelling units sold or rented; (4) for each unit, the sales price or rental price, square footage, number of bedrooms and baths, and lot size; (5) the income bracket for each purchaser or renter of an affordable dwelling unit; (6) the number of units sold or rented to individuals in each category on Maui Land & Pineapple Company, Inc.'s prioritization list; (7) for prioritized employees, the length of time working for that employer; (8) the number of units sold or rented to individuals who are not qualified residents as defined in the housing agreement; (9) the number of units offered for resale or rental and the number of units sold on the resale market, if any, by both the developer as well as any other party; and (10) any buy back provisions, owner-occupancy requirements, or ohana-unit restrictions that apply.*
- i. That Maui Land & Pineapple Company, Inc. shall provide a voluntary contribution of \$500,000 to a first-time homebuyers and rental assistance fund that will be held in escrow or trust and administered by Maui Land &*

Pineapple Company, Inc. for its employees who earn up to 120 percent of the median income. The contribution shall be made prior to the completion of the first market-priced dwelling unit. Maui Land & Pineapple Company, Inc. shall provide annual updates to the Director of Housing and Human Concerns and the Council.

Table 1: Affordable Unit Matrix

Type of Unit	Percentage of Median Income									Total Units
	60 or less	61-70	71-80	81-90	91-100	101-110	111-120	121-130	131-140	
1-bedroom 600 square-foot rental	20									20
2-bedroom 750 square-foot rental		25	34	22						81
3-bedroom 1,000 square-foot rental					15	9				24
2-bedroom 1,200 square-foot for sale						10	14			24
3-bedroom 1,350 square-foot for sale								10		10
3-bedroom 1,400 square-foot for sale									14	14
Total Units	20	25	34	22	15	19	14	10	14	173

Compliance: MLP has satisfied all residential workforce housing requirements for Kapalua Mauka to date.

MLP fulfilled its affordable housing obligation for Mahana Estates by providing 26 affordable housing credits as detailed in the:

- Mahana Estates Subdivision Residential Workforce Housing Agreement executed on December 29, 2006 (Attachment 6);
- Memorandum of Mahana Estates Subdivision Residential Workforce Housing Agreement Doc. No. 2007-097329 dated May 31, 2007 (Attachment 7); and
- Mahana Estates Subdivision Residential Workforce Housing Agreement 2011 Annual Update Report dated July 7, 2011 (Attachment 8).

Condition 11(g) requires that prior to final subdivision approval, any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply. When approvals for Mahana Estates were sought in 2006, Maui County Code (MCC) Chapter 2.96 ("Residential Workforce Housing Policy") was recently enacted and required residential workforce housing units equivalent to at least 50 percent of the total number of market rate lots of a development (a greater number of affordable workforce housing units

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than Condition 11). Thus, by the terms of Condition 11 MCC Chapter 2.96 supersedes Condition 11.

The County of Maui and MLP affirmed that MCC Chapter 2.96 supersedes Condition 11 through the Mahana Estates Subdivision Residential Workforce Housing Agreement which was recommended for approval by the Director of Housing and Human Concerns, approved as to form and legality by the Deputy Corporation Council, and executed by the Mayor and MLP.

As stated in the background recitals section of the Mahana Estates Subdivision Residential Workforce Housing Agreement:

*By Ordinance No. 3418, effective December 1, 2006, the Council established a new affordable housing policy for the County set forth in Maui County Code ("MCC") Chapter 2.96 entitled "Residential Workforce Housing Policy" ("Chapter 2.96"). Chapter 2.96 would require a greater number of affordable workforce housing units with respect to subject developments within Kapalua Mauka, including the Project, and thus **by the express terms of Condition 11 Chapter 2.96 supersedes Condition 11 and applies to the Project** [emphasis added].*

With Mahana Estates 51 market-priced lots have been subdivided and developed. The balance of Kapalua Mauka has not been developed or built; therefore, no additional housing has been required or built. However, Condition 1 of the Kapalua Mauka State Land Use District Boundary Amendment Decision and Order (LUC Docket No. A03-74) requires 125 affordable units to be built at the Pulelehua project in fulfillment of the Kapalua Mauka affordable housing requirement.

The owner of the Pulelehua project has executed a Residential Workforce Housing Agreement with the County Maui for Pulelehua (Attachment 9). This agreement specifically references and requires the 125 affordable units required for Kapalua Mauka.

With the 26 affordable housing units provided in connection with the Mahana Estates subdivision and the 125 affordable housing that will be provided at Pulelehua, a total of 151 affordable housing units will be provided. As and when development of Kapalua Mauka proceeds and additional affordable units are required they will be provided at that time.

12. That Maui Land & Pineapple Company, Inc. shall immediately petition the State Commission on Water Resource Management to establish in-stream flow standards for Honokohau and Honolua Streams in accordance with the State Water Code. Any data necessary to support the petition will be paid for by Maui Land & Pineapple, Inc.

Compliance: MLP petitioned the State Commission on Water Resource Management to establish in-stream flow standards for Honokōhau Stream and Honolua Stream in accordance with the State Water Code. On October 2, 2006, the State Commission on Water Resource Management accepted the petition as complete (see letter in Attachment 10). MLP paid for the preparation of the petition and all data necessary to support the petition. The State Commission

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on Water Resource Management has not yet established in-stream or amended interim instream standards.

13. That Maui Land & Pineapple Company, Inc. shall signalize the intersection at Honoapi'ilani Highway and Office Road, when warranted.

Compliance: MLP will make all required improvements to Honoapi'ilani Highway necessary for access to the greater Kapalua Mauka area per State Department of Transportation standards when warranted.

Conclusion

In developing Kapalua Mauka to date MLP has complied with all conditions of Ordinance 3358. As and when the balance of development of Kapalua Mauka proceeds MLP will continue to comply with all conditions.

Please contact me should you have any questions or require additional information.



Paul Subrata
Vice President

Attachments:

1. Mahana Estates Best Management Practices Plan
2. State Historic Preservation Letters
3. State Department of Education/Maui Land & Pineapple Education Contribution Agreement
4. State Department of Transportation Mahana Estates Access Letter
5. Traffic Impact Fee Agreement
6. Mahana Estates Subdivision Residential Workforce Housing Agreement
7. Memorandum of Mahana Estates Subdivision Residential Workforce Housing Agreement
8. Mahana Estates Subdivision Residential Workforce Housing Agreement 2011 Annual Update Report
9. Pulelehua Residential Workforce Housing Agreement
10. State Commission on Water Resource Management Letter

cc: Michele McLean, Director, Department of Planning
Lori Tsuhako, Director, Department of Housing and Human Concerns

ATTACHMENT 1

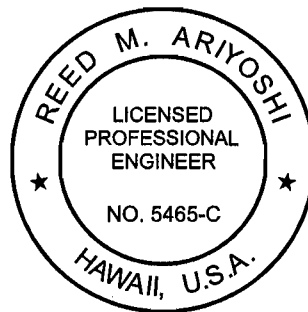
Mahana Estates
Best Management Practices Plan

Best Management Practices Plan

Mahana Estates Subdivision

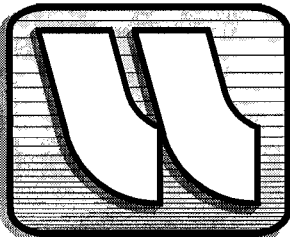
Honolua, Lahaina, Maui, Hawaii
TMK: (2) 4-2-01: portion of 42

Prepared For: Maui Land & Pineapple Co., Inc.
Kapalua, Maui, Hawaii



A handwritten signature in black ink that reads "Reed M. Ariyoshi". The signature is written in a cursive style and is underlined.

Date: October, 2006



WARREN S. UNEMORI ENGINEERING, INC.
Civil and Structural Engineers - Land Surveyors
Wells Street Professional Center - Suite 403
2145 Wells Street
Wailuku, Maui, Hawaii 96793

**TEMPORARY DE-SILTING BASIN CALCULATIONS
FOR THE PROPOSED MAHANA ESTATES SUBDIVISION
HONOLUA, MAUI, HAWAII**

PURPOSE:

The purpose of these calculations is to show that the Temporary De-Silting Basins installed during the mass grading phase will be adequate for their intended purpose.

TYPICAL BASIN SIZING:

In order to reduce the amount of calculations a generic basin will be used at each location. Each basin is to be constructed in accordance with the Best Management Practices (BMPs) for the County of Maui, Section 6.61.

REQ'D STORAGE CAPACITY CALCULATIONS:

The required storage capacity for each contributory drainage area was calculated assuming a uniform 1 inch of rainfall across the contributory drainage area, as stipulated by the Hawaii State Department of Health in the *Guidelines for NOI Form C, Item 15(BMPs).b.iv(Controls for Land Disturbances).1.a.* updated April 20, 2006.

CONCLUSION:

The basin to be used at each contributory drainage area has been conservatively designed to handle the maximum contributory drainage area of 10 acres, with 2 feet of freeboard to spare. Therefore, the design of the proposed temporary de-silting basins is expected to be adequate.

Date: September 29, 2006

RUNOFF VOLUME ANALYSIS AND DESIGN

Project: **Mahana Estates**
 Location: **Kapalua, Maui, Hawaii**
 Job Number: **WSUE #05051**

Objective: To determine the required size of the Temporary Siltation Basins assuming a uniform 1 inch storm across the Maximum Sized Contributory Drainage Area.

I. Determine Runoff Volume of Maximum Area of Contributory Drainage Area:

Maximum size of Contributory Drainage Area (acres): **10.00**

$$\begin{aligned} \text{Runoff Volume} &= (1 \text{ inch} * 1/12 \text{ feet per inch}) * X \text{ acres} \\ &= 0.83 \text{ acre-ft} \end{aligned}$$

IV. Determine Storage Volume Capacity of Basin:

Depth	Contour Area	Storage Volume			
0	14500.00 sf				
2	11548.51 sf	26048.51	cf	0.60	acre-ft
4	10009.30 sf	47606.32	cf	1.09	acre-ft
Total =		57615.62	cf	1.32	acre-ft

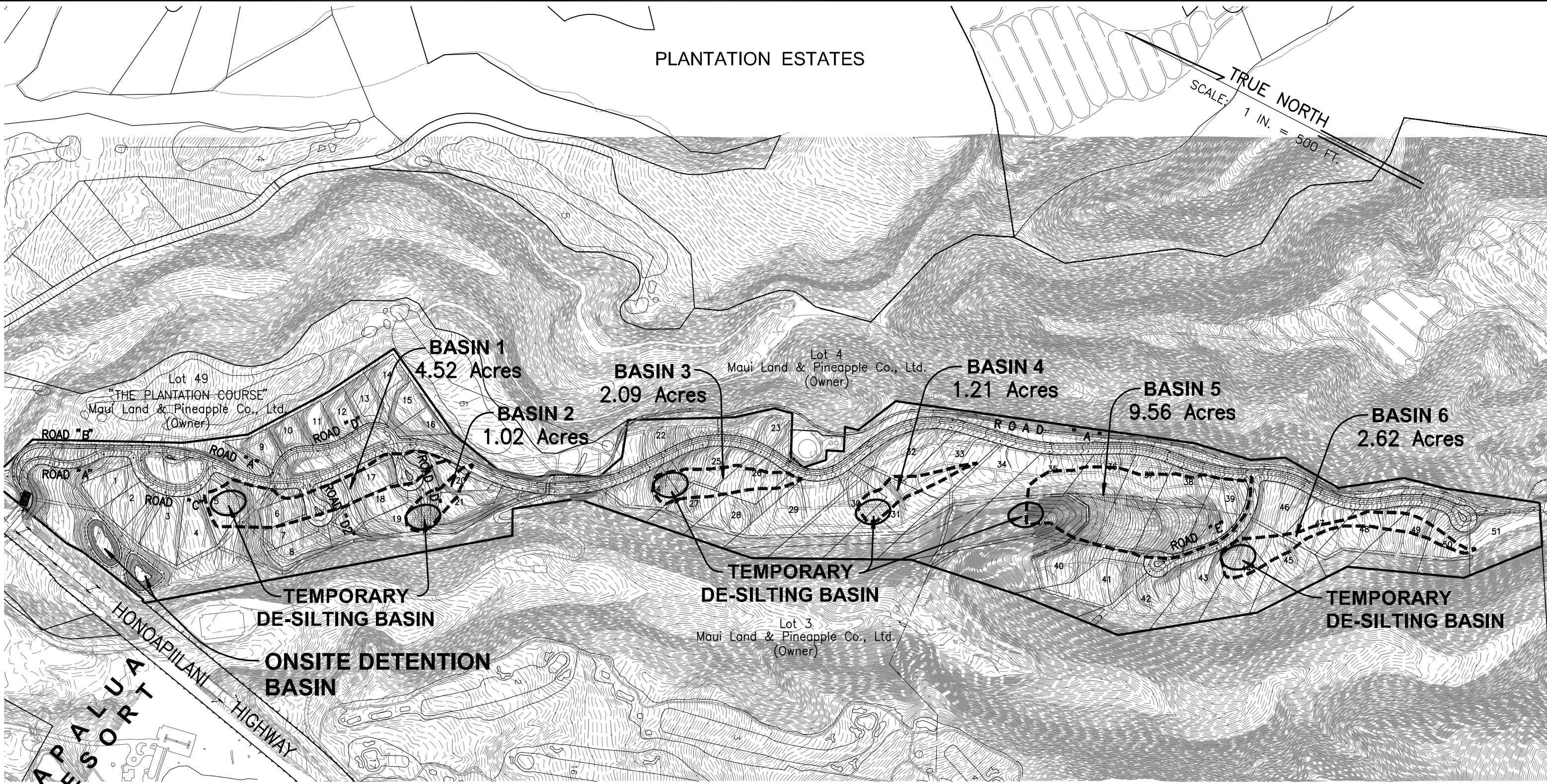
MAHANA ESTATES: Temporary De-Silting Basin Calculations

Temporary Siltation Basin (see Exhibit for location)	Contributory Drainage Area (acres)	Required Storage Capacity (acre-ft)
1	4.52	0.38
2	1.02	0.09
3	2.09	0.17
4	1.21	0.10
5	9.56	0.80
6	2.52	0.21

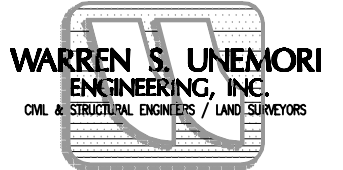
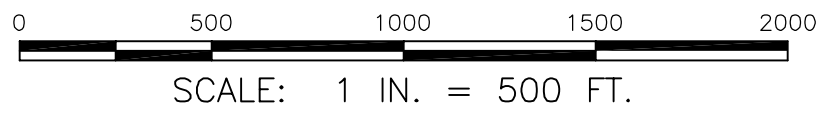
*Req'd Storage Capacity (acre-ft)= (1 inch * 1/12 feet per inch) * Contributory Drainage Area (in acres)*

PLANTATION ESTATES

TRUE NORTH
SCALE: 1 IN. = 500 FT.

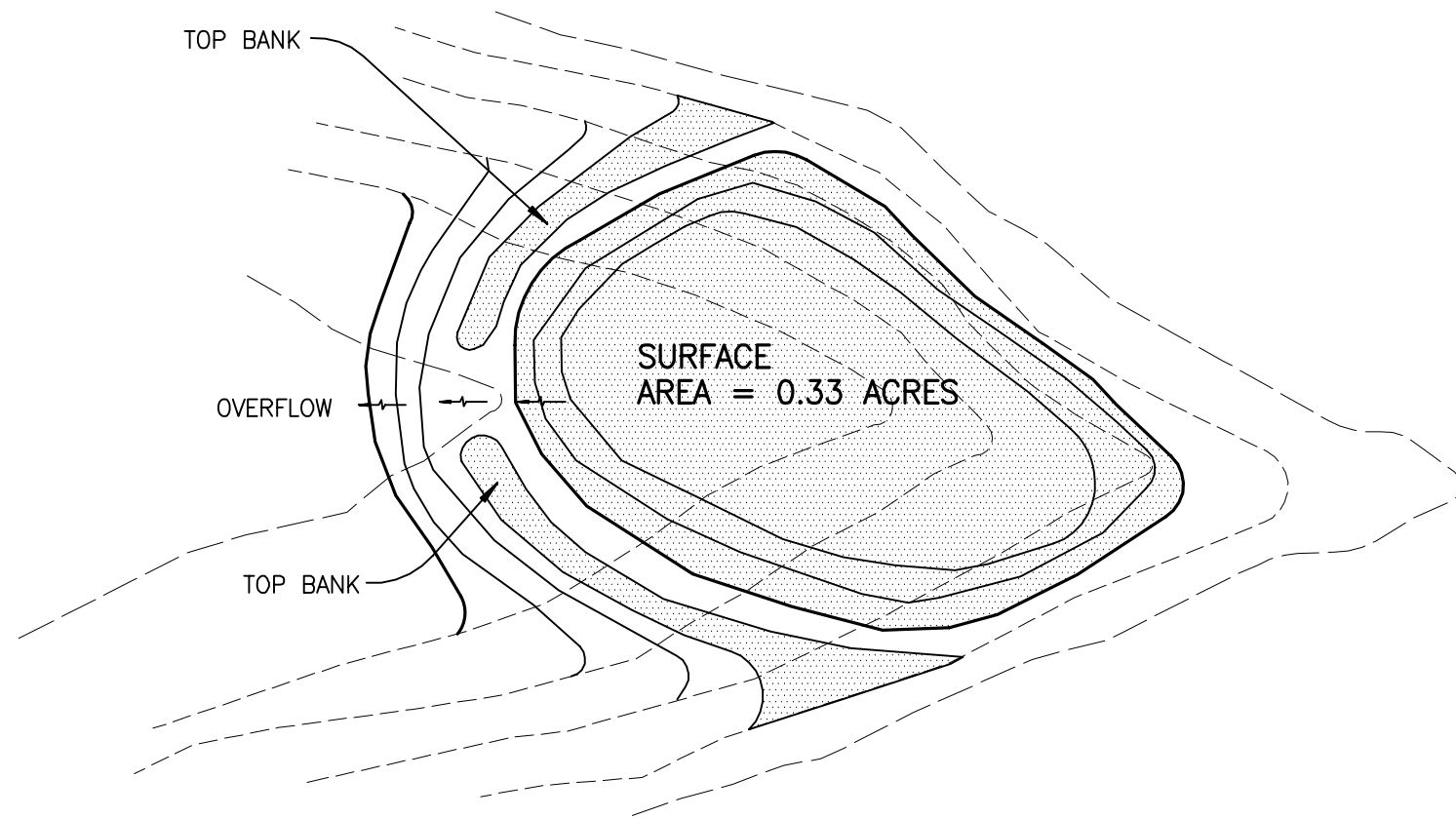


**TEMPORARY DE-SILTING BASIN
CONTRIBUTORY DRAINAGE AREA MAP**

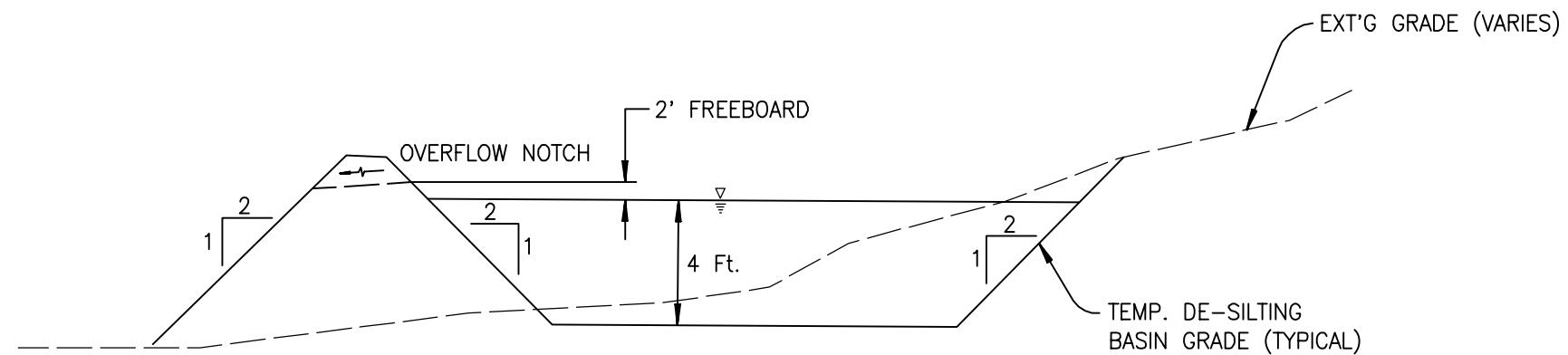


September 27, 2006

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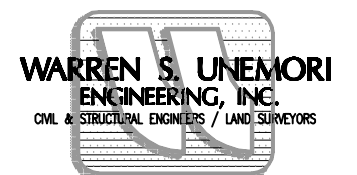


TEMP. DE-SILTING BASIN - PLAN VIEW
NOT TO SCALE



TEMP. DE-SILTING BASIN - PROFILE VIEW
NOT TO SCALE

EXHIBIT - TEMP. DE-SILTING BASIN TYPICAL PLAN & PROFILE VIEW
NOT TO SCALE



October 3, 2006

ATTACHMENT 2

State Historic Preservation Letters

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
JAN 15 2007
DEVELOPMENT OFFICE

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

January 11, 2007

Ms. Kalani Schmidt, Development Coordinator
Maui Land & Pineapple Company, Inc.
1000 Kapalua Drive
Lahaina, Hawaii 96761

LOG NO: 2007.0090
DOC NO: 0710HR01

Dear Ms. Schmidt:

**SUBJECT: Burial Treatment Plan and Preservation Plan for Site 50-50-01-5139 Feature E, 5142, 5157, and 5158 Features C and F, Located on the Kapalua Mauka Project Area, Honokahua Ahupuaa, Lahaina District, Island of Maui
TMK 4-2-01:42**

On September 28, 2006, the Maui/Lanai Islands Burial Council voted unanimously to recommend approval of the above Burial Treatment Plan and Preservation Plan subject to the revisions discussed at the meeting.

We have reviewed the final Burial Treatment Plan and Preservation Plan dated November 27, 2006, and wish to inform you that SHPD is in approval of the above plan.

Should you have any questions, please contact our Maui Cultural Historian, Mr. Hinano Rodrigues, at (808) 243-4640.

Sincerely,

A handwritten signature in cursive script, appearing to read "Melanie Chinen".

MELANIE CHINEN, Administrator
State Historic Preservation Division

cc: Hinano Rodrigues, Maui Cultural Historian
Erik Fredericksen, Xamanek Researches, LLC
Members, Maui/Lanai Island Burial Council

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
10-4-2006
DEVELOPMENT OFFICE



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

October 4, 2006

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ms. Kalani Schmidt, Development Coordinator
Maui Land & Pineapple Company, Inc.
1000 Kapalua Drive
Lahaina, Hawaii 96761

LOG NO: 2006.2470
DOC NO: 0610HR01

Dear Ms. Schmidt:

**SUBJECT: Burial Treatment Plan and Preservation Plan for Site 50-50-01-5139 Feature E, 5142, 5157, and 5158 Features C and F, Located on the Kapalua Mauka Project Area, Honokahua Ahupuaa, Lahaina District, Island of Maui
TMK 4-2-01:42**

On September 28, 2006, the Maui/Lanai Islands Burial Council voted unanimously to preserve in place the possible burials located on the subject property.

It was moved and seconded, "the Maui/Lanai Islands Burial Council determines that four possible burial sites identified as sites 50-50-01-5139 Feature C, 5142, 5157, and 5158 Feature C and Feature E at TMK: 4-2-01:42 shall be preserved in place based on the location of the burial sites in an area within a context of historic properties and as part of the cultural landscape in Honokahua gulch. In addition, the landowner requested preservation in place."

Should you disagree with the council's determination, you have the option of requesting council reconsideration in writing within ten (10) business days following receipt of this notice or your client may appeal the decision as a contested case. Any appeal must be submitted in writing to the DLNR within forty-five (45) days following receipt of this notice.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE HISTORIC PRESERVATION DIVISION
601 KAMOKELA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

June 27, 2006

Harlett H. Hammatt, Ph.D.
Cultural Surveys Hawai'i
P.O. Box 1114
Kailua, Hawai'i 96734

LOG NO: 2006.2002
DOC NO: 0606MK29
Archaeology

Dear Dr. Hammatt:

**SUBJECT: Chapter 6E-42 Historic Preservation Review -
Preservation Plan for Thirty-Three Historic Properties Adjacent to the Kapalua
Mauka Project Area
Honokahua, Napili 2-3, Napili 4-5 Ahupua'a, Lahaina District, Island of Maui
TMK: (2) 4-2-001:042 and 4-3-001:006 and 008**

Thank you for the opportunity to review and provide comments on this preservation plan that was received by our staff on February 9, 2006 (Lee-Greig and Hammatt 2006, *Preservation Plan for Thirty-Three Historic Properties Located in and Adjacent to the Kapalua Mauka Project Area, Honokahua, Napili 2-3, and Napili 4-5 Ahupua'a, Lahaina District, Maui Island, TMK: [2] 4-2-01:042 and [2] 4-3-01:006 and 008...Cultural Surveys Hawaii, Inc., ms).*

We have previously commented on various phases of the subject parcel including the archaeological inventory surveys (LOG NO: 21077/DOC NO: 9802BD10; LOG NO: 28752/DOC NO: 0111MK16; LOG NO: 29526/DOC NO: 0203MK05). We have also reviewed various other permitted actions for the subject parcels (LOG NO: 30367/DOC NO: 0207CD43; LOG NO: 30587/DOC NO: 0208CD45; LOG NO: 30937/DOC NO: 0210CD18; LOG NO: 31564/DOC NO: 0301CD37; and LOG NO: 2003.2156/DOC NO: 0310CD63). The comments reference the Final Environmental Assessment, Applications for Community Plan Amendments, Change in Zoning, Preliminary Plat Review, and Applications for Reclassification for the State Agricultural District to State Urban and Rural Districts.

A total of 33 sites are to be preserved under this preservation plan. The sites are distributed within Napili Gulch (N=8), Honokahua Gulch (N=22), Mokupe'a Gulch (N=1) and other minor gulches (N=2). Site types vary and include terraces, agricultural complexes, overhangs, embankments, roadways, bridges, shrines, temporary habitation sites, rock shelters, walls, and ceremonial enclosures. Details are presented in the above mentioned archaeological inventory survey report. Four (4) sites were identified as probable burial sites. Preservation of these probable burial sites are detailed in a separate preservation plan.

Specific preservation measures for the 33 sites addressed here included passive conservation (avoidance and protection, as well as interpretation for selected sites. The interim measures include the erection of construction barriers, orange construction fencing, along the ridges adjacent to the slopes of the gulches. The interim buffer will include at least 10-15 feet of area between the slope and the fencing. This will protect the sites from inadvertent pushing of material, during construction, over the lip of a gulch. SHPD shall be notified in writing by an archaeologist that the interim buffer fencing is in place.

Hallet Hamnatt
Page 2

Construction crews will be briefed on-site, as to the presence and significance of the historic properties within the gulches, and the importance of ensuring that the buffer integrity is maintained and no debris is pushed over the edge.

Should individuals or organizations wish to utilize the area within the gulches and the sites for traditional cultural practices; these will be evaluated on a case by case basis. Evaluation of requests will be in consultation with both the landowner and SHPD.

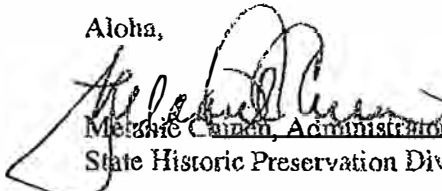
Long term preservation measures include a permanent preservation buffer. It was determined that the gulch itself provides an acceptable buffer as long as the construction fencing remains in place during construction. Prior to development of any access and interpretive trails within the gulch (plans for which will be reviewed by SHPD), a 20-foot no build buffer zone will be established from the outmost feature of any complex and/or site. Vegetation surrounding the historic properties will not be cleared, as it is useful for stabilizing the deposit and preventing erosion. Hand pruning will be allowable, although no root-removal will occur within the permanent no-build buffers. As indicated above, no formal access is proposed, and again, this will be determined in consultation with the landowner and SHPD.

An interpretive plan will be developed at such time as interpretive trails are discussed. The plan will include details about the educational/interpretive programs proposed for the area and will follow Hawaii Administrative Rules 13-277-7, with text for signage and brochures reviewed by SHPD. The interpretive plan will also describe "heritage trails" highlighting historic properties, and any other measures to educate the public during to-be-agreed upon access issues.

All of the sites are located at the base of slopes, or within the bottom of gulches. As such, increased run-off from development projects on the table lands above may create adverse affects to the historic properties. As such, we support and concur with the mitigation provision that periodic checks on the historic properties will serve as a preliminary and ongoing assessment procedure to ensure that the current integrity and condition of the historic properties is maintained. These periodic checks can also serve as an opportunity to remove any litter that has accumulated during the interim, and provide an opportunity to evaluate site stability as well.

The preservation plan is acceptable. We look forward to continued opportunities to review any proposed activities, including the interpretive programs proposed, as well as activities such as run-off control during development on the table lands that may inadvertently impact the historic properties within these gulches. Should you have any questions, please contact Dr. Melissa Kirkcaldy of the State Historic Preservation Division, Maui Section, at (808) 243-5159.

Aloha,



Melissa Kirkcaldy, Administrator
State Historic Preservation Division

MK:kf

c: Bert Ratta, DPWEM, County of Maui
Michael Foley, Director, Dept. of Planning, 250 S. High Street, Wailuku, HI 96793
Maui Cultural Resources Commission, Dept. of Planning, 250 S. High Street, Wailuku, HI 96793

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING, ROOM 555
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96767

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 7, 2003

Hallett H. Hammatt, Ph.D.
Cultural Surveys Hawaii
733 North Kalaheo Avenue
Kailua, Hawaii 96734

LOG NO: 2003.1976
DOC NO: 0310MK01

Dear Dr. Hammatt,

SUBJECT: Chapter 6E-42 Historic Preservation Review - Site Preservation Plan for Specific Sites in the Lands Comprising Project District 2 at Kapalua, Honokahua and Napili 2 & 3 Ahupua'a, Lahaina District, Maui

TMK (2) 4-2-01-01

Thank you for the opportunity to review this plan which was sent to our office on July 16, 2003 (O'Hare et al. 2003, *Preservation Plan for Specific Sites in the Lands Comprising Project District 2 at Kapalua, Honokahua and Napili 2 & 3 Ahupua'a, Lahaina District of Maui, TMK 4-2-01-01*. CSH ms). We apologize for the delay in our review. We previously reviewed and accepted an archaeological inventory survey, both draft and final versions (Log 21077/Doc 9802BD10 and Log 2875/Doc 0111MK16).

The plan details preservation commitments for two of the four sites that were recommended for preservation, a pre-contact rock-overhang shelter (SIHP 50-50-01-4460) and a pre-contact agricultural work area complex and petroglyph (50-50-01-4461).

Both sites will be protected primarily through avoidance and conservation. A buffer of 20 ft will be established around each of the sites. Interim protection measures include demarcating the sites with orange construction fencing, the placement of which will be verified and documented in a letter to DLNR-SHPD. Both sites will be accurately plotted on all construction drawings, and construction crew supervisors will be notified and informed of the nature and significance of both the sites and the protective buffer zones. No construction will be allowed within this buffer zone.

Long-term preservation will include the above buffers, within which no land alteration or construction activities will occur. The sites are located on the steep southwest side of Honokahua Gulch in an area in which no construction is anticipated. No vegetation clearance is proposed as the sites will be passively preserved, and the vegetation serves to stabilize the

Hallett H. Hammatt, Ph.D.
Page 2

steep slope. There is no proposed access to the site, and no trail improvement is allowed within the Long term preservation buffer. Litter removal is the responsibility of the property owner, and the preservation sites and buffers will be recorded on the property deed.

The plan is acceptable as written. If you have any questions, please contact Dr. Melissa Kirkendall at 243-5169.

Aloha,

P. Holly McEldowney

P. Holly McEldowney, Acting Administrator
State Historic Preservation Division

MK:jen

c: Michael Foley, Director, Department of Planning, County of Maui, FAX 270-7634
Bert Ratte, County of Maui, Land Use and Codes, FAX 270-7972
Glen Ueno, County of Maui, Land Use and Codes, FAX 270-7972
Cultural Resources Commission, Planning Dept, 250 S. High Street, Wailuku, HI 96793



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING, ROOM 655
851 KAHUKOHA BOULEVARD
KAPOLEI, HAWAII 96707

GILBERT B. COLOMA-AGARAN, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

DEPUTIES
ERIC T. HIRANO
LINNEE NISHIOKA

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS

R

July 30, 2002

Mr. Erik Fredericksen
Xamanek Researches
P.O. Box 880131
Pukalani, Hawaii 96788

LOG NO: 30421 ✓
DOC NO: 0207MK04

Dear Mr. Fredericksen:

Subject: Chapter 6E- Historic Preservation Review – Revised Archaeological Inventory Survey Report, 475 Acres in Kapalua District 2 Project Area Napili and Honokahua Ahupua'a, Lahaina District, Maui TMK (2) 4-2-01:por 1

This letter reviews this revised report which was sent to our office on 30 May 2002 (E. Fredericksen & D. Fredericksen 2002. Archaeological Inventory Survey of 475 Acres in Kapalua District 2 Project Area, Located in Napili and Honokahua Ahupua'a, Lahaina District, Maui Island. Xamanek Researches ms.) along with a fax of July 25, 2002, clarifying site counts in the significance section. The revisions were in response to our review letter of March 2002 (SHPD Log 29526, Doc. 0203MK05) and our fax of July 15, 2002.

The site interpretations have been clarified as per our comments. In addition, the summary and conclusions have been revised to include a discussion and maps indicating the distribution of various site types in the two gulches. Thirty-nine historic sites are present in the project area.

We concur with the significance evaluations that 26 sites are significant solely under Criterion "d" of the Federal and State historic preservation guidelines, and we agree that one of these sites (5161, an animal containment wall) is "no longer significant" as a reasonable and adequate amount of its significant information was recorded during the survey. Thirteen sites are significant under multiple criteria. [Sites 5139, 5142, 5157, and 5158 contain possible burial features.] Thus, 38 significant historic sites are present in the project area.

We also agree with the mitigation commitments for the 38 sites as indicated in the report. All but one site will be passively preserved. Site 5132 (a bridge foundation) has suffered damage and no longer retains integrity. No mitigation is needed for this site, and it needs no further protection.

Mr. Erik Fredericksen

Page Two

The next step in the review process is to go to the Maui/Lanai Islands Burial Council for a vote on treatment. Sites with burial components will need a burial preservation plan submitted to our Burials Program and the Maui/Lanai Islands Burial Council for consideration. Non-burial sites will need a simple preservation plan to be reviewed and approved by our Archaeology Branch.

The revised report is acceptable. If you have any questions, please contact Dr. Melissa Kirkendall at 243-5169.

Aloha,

Don Hibbard, Administrator
State Historic Preservation Division

MK:jk

- c: John Min, Director, Department of Planning, County of Maui, FAX 270-7634
- Bert Ratte, County of Maui, Land Use and Codes, FAX 270-7972
- Glen Ueno, County of Maui, Land Use and Codes, FAX 270-7972

The preparation of different maps or overlays based on the site type categories might facilitate examination in this manner, and allow for a better synthesis of the volume of data collected during this inventory survey.

Significance Evaluations

If the burials and religious (ceremonial) features are acceptably justified, then we plan on agreeing with the significance evaluations. One site, a ranch wall (5181), will be no longer significant, as an adequate and reasonable amount of its significant information was recorded during the survey. The other 38 sites will be significant -solely for their information content or under multiple criteria.

Mitigation Commitments

Regardless of the significance evaluations, we will be able to agree with the mitigation recommendations indicated in Table 7 that all but two sites will be passively preserved. Sites 5132 (bridge foundation) and 5181 (animal containment wall) have been severely damaged and no longer retain their integrity, and we agree that they will need no mitigation or protection. However, again, significance evaluations will be important in regard to burials. If justifications for burial interpretations cannot be given and some features are not considered to be burials, then certain sites might not go to the Burial Council. Clearly, this needs to be resolved in the survey report revisions.

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



GILBERT S. COLDMA-AGARAN, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DEPUTIES
JANET E. KAWALO
LUNNEL NISHIOKA

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
Kakuhikawa Building, Room 555
501 Kamokila Boulevard
Kapolei, Hawaii 96707

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS

December 10, 2001

Hallett H. Hammatt, Ph.D.
Cultural Surveys Hawai'i
733 North Kalaheo Avenue
Kailua, Hawaii 96734

LOG NO: 28752 ✓
DOC NO: 0111MK16

Dear Dr. Hammatt,

**SUBJECT: Historic Preservation Review 6E-42 - Archaeological Inventory
Survey Project District 2 at Kapalua
Honokahua and Napili 2 and 3 Ahupua'a, Lahaina District, Maui
TMK (2) 4-2-01:01**

Thank you for the opportunity to review this revised report which was retransmitted to our office on November 21, 2001. We apologize for the delay in our review. It is our understanding that these revisions were previously sent to our office several years back.

The revisions were in response to our letter of July 31, 1998 (Log 21077, Doc. 9802BD10). In that letter we indicated that the report was acceptable on the condition that the requested additions were addressed. Your revisions have addressed our initial concerns, and the report is acceptable. If you have any questions, please contact Dr. Melissa Kirkendall at 243-5169.

Aloha,

A handwritten signature in black ink, appearing to read "Don Hibbard".

Don Hibbard, Administrator
State Historic Preservation Division

MK:jen

c: John Min, Director, Department of Planning, County of Maui, FAX 270-7634
Bert Ratte, County of Maui, Land Use and Codes, FAX 270-7972
Glen Ueno, County of Maui, Land Use and Codes, FAX 270-7972



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
33 SOUTH KING STREET, 6TH FLOOR
HONOLULU, HAWAII 96813

AQUACULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES CONSERVATION AND ENVIRONMENTAL AFFAIRS CONSERVATION AND RESOURCES ENFORCEMENT CONVEYANCES
FORESTRY AND WILDLIFE HISTORIC PRESERVATION DIVISION
LAND MANAGEMENT STATE PARKS WATER AND LAND DEVELOPMENT

July 31, 1998

Dr. Hallett Hammatt
Cultural Surveys Hawaii
733 North Kalaheo Avenue
Kailua, Hawaii 96734

LOG NO: 21077
DOC NO: 9802ED10

Dear Dr. Hammatt:

SUBJECT: Chapter 6E-42 Historic Preservation Review of an Inventory Survey of ~~Project District 2 at Kapahua~~
Honokahua & Napili 2-3 Ahupua'a, Lahaina District, Island of Maui
TMK 4-2-01: 01

This is a Historic Preservation review of a document entitled *Archaeological Survey of the Lands Comprising Project District 2 at Kapahua* submitted by Cultural Surveys Hawaii on February 11, 1998. This review was misplaced in our office, and we apologize for its delay.

Field methods employed in the survey appear to have been adequate to locate all historic sites on the property, totaling 7 sites. Four of these sites are plantation era sites (4459 -- flood control feature; 4462, Honokahua Plantation Cemetery; 4463, reservoir; 4465, a wall), one is a bridge (4464), and two are potentially precontact in age (4460, a rock overhang; 4461, a platform and petroglyph). Background information, historical research, and a review of previous archaeology were also sufficient to reconstruct expected patterns of pre-Contact settlement in the *ahupua'a*. Site descriptions and interpretations are basically adequate, with only a few needed additions (such as clarifying the nature of layers in test excavations). See Attachment 1 for needed additions. The information is sufficient to proceed with our review, with the understanding that the survey report will be revised to include the additions and an acceptable inventory survey report will be resubmitted to our Division.

We concur with all significance evaluations except one. We agree that 3 of the plantation era sites (4459, 4463, 4465) are "no longer significant" given the fact that sufficient information was recorded during the survey. We agree that the rock overhang (4460) is significant solely for its information content. We agree that 4461 (platform/petroglyph) and 4462 (the Honokahua Plantation Cemetery) are significant for their information content and for their cultural significance (the petroglyph and the cemetery). We are unable to concur with the evaluation that State Site 4464 (a bridge) is significant under Criteria C and D until further documentation (i.e. a plan map, drawing, and/or photos) is provided to our Architectural Branch for review. The golf course located in the NW corner of the subject property lies within the boundaries of State Site 1591 (the Honokahua Historic District), but it contains no significant historic sites today. In sum, we agree 3 significant historic sites are present (4460, 4461, 4462). A fourth (the bridge, 4464) may be significant.

Dr. Hallett Harunatt
Page 2

We concur with the recommendation that sites 4460, 4461, and 4462 be preserved, and that a licensed land surveyor locate their respective buffer zones on future development plans. We are unable to concur yet with the recommendation that site 4464 (a bridge) undergo additional recording in the field, until documentation (i.e. a plan map, drawing, and/or photos) to resolve its significance is provided. We will also take into consideration the recommendation that State Site 1591 (the Honokahua Historic District) be redrawn to exclude the present golf course in the NW corner of the subject property.

We therefore find this inventory survey report to be acceptable, if the requested additions noted in Attachment 1 are addressed and an acceptable survey report is resubmitted to our Division. Please resolve the significance and mitigation issues for the bridge separately with our Architectural Branch. The mitigation commitment to preserve 4460, 4461 and 4462 (the two pre-Contact sites and the Honokahua Plantation Cemetery) is acceptable, and a Preservation Plan for these sites should be submitted to our Division for approval prior to beginning construction, outlining both interim and long-term protection measures. This plan need not be elaborate.

If you have any further questions, please contact Boyd Dixon at 243-5169.

Aloha,



DON HIBBARD, Administrator
State Historic Preservation Division

BD:jen

Attachment

cc. David Blane, Planning Department, County of Maui (fax: 243-7634)
Ralph Nagamine, Maui County Department of Public Works (fax: 243-7972)

ATTACHMENT 3

State Department of Education/Maui Land & Pineapple
Education Contribution Agreement

Education Contribution Agreement for
KAPALUA MAUKA

THIS INDENTURE, made this 10 day of ~~June~~^{July}, 2003, by and between KAPALUA LAND COMPANY, LTD, whose principal place of business and mailing address is 1000 Kapalua Drive, Kapalua, Hawaii 96761, and the State of Hawai'i DEPARTMENT OF EDUCATION, hereinafter referred to as "DOE," whose mailing address is Department of Education, Facilities and Support Services Branch, 809 8th Avenue, Honolulu, Hawai'i 96816.

WHEREAS KAPALUA LAND COMPANY, LTD is the developer of those certain parcels of land comprised of approximately 925 acres and identified as Tax Map Key parcels: (2) 4-2-1-1 (por.); (2) 4-2-5-50 (por.) & -51; (2) 4-3-1-6 (por.), -7 (por.) & -8 (por.), also known as "KAPALUA MAUKA;"

WHEREAS KAPALUA MAUKA is anticipated to contain a total of six hundred and ninety (690) residential units in the entire project;

WHEREAS KAPALUA LAND COMPANY, LTD and DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy DOE's fair-share requirement for KAPALUA MAUKA;

NOW THEREFORE, KAPALUA LAND COMPANY, LTD and DOE agree as follows:

1. KAPALUA LAND COMPANY, LTD's Cash Contribution. KAPALUA LAND COMPANY, LTD shall contribute SIX HUNDRED NINETY SEVEN THOUSAND FIVE HUNDRED NINETY AND NO/100 DOLLARS (\$697,590.00) (the "Cash Contribution"), subject to the escalation factor described below, to DOE.


- a. The Cash Contribution shall be paid out of Escrow and made payable to the "State of Hawai'i, Department of Education" in accordance with the following schedule:

- b. ONE THOUSAND ELEVEN AND NO/100 DOLLARS (\$1,011) and any escalation factor applicable shall be payable within thirty (30) days of the closing and recordation of the sale of each residential unit or lot within the project:
 - c. An escalation factor shall be applied to the balance of the Cash Contribution that remains to be paid every thirty-six (36) months after the date of this signed agreement. The escalation factor shall be based on the Over-the-Year Percent Change in the Annual Average Honolulu Area Consumer Price Index for All Items for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics of the United States Department of Labor. The Annual Average CPI-U for the year prior to the year the agreement is signed is used as the base year. Cash Contributions will be adjusted by the amount the most recent Annual Average CPI-U has increased or decreased over the base year.
 - d. It is intended and understood that the Cash Contribution will be the only education-related exaction with respect to the Kapalua Mauka project, based on a total of 690 residential units. Accordingly, DOE agrees that it will not impose, seek or support any additional assessment, exaction or contribution requirement relating to education or educational facilities with respect to Kapalua Mauka and that if any federal, state or county agency or authority imposes any such additional assessment, exaction or contribution with respect to Kapalua Mauka, the Cash Contribution shall be reduced by an amount equal to the amount or value of the additional assessment, exaction or contribution that is imposed or required.
2. DOE agrees that, if and when it is asked to comment on the State Land Use Commission District Boundary Amendment Petition and the County of Maui Change in Zoning and Project District designation for Kapalua Mauka, DOE will indicate that a fair-share agreement satisfying the DOE has been executed.
 3. DOE agrees that Cash Contribution payments made pursuant to this Agreement shall be used solely for capital improvement projects in the Lahainaluna High School Complex.

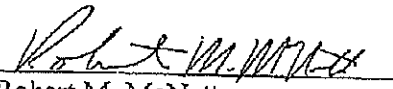
4. This Agreement shall be binding upon KAPALUA LAND COMPANY, LTD, or its successor in interest.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

KAPALUA LAND COMPANY, LTD

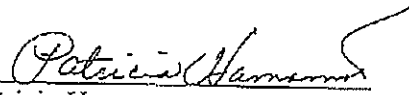
By 
Don Young
Its President & CEO

Date: June 16, 2003

By 
Robert M. McNatt
Its Vice President/Land Planning & Development

Date: June 16, 2003

DEPARTMENT OF EDUCATION

By 
Patricia Hamamoto
Its Superintendent

Date: 7.10.03

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) ss.

On this 10th day of July, 2005, before me personally appeared Patricia Hamamoto, Superintendent of the State of Hawai'i DEPARTMENT OF EDUCATION, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Diane C. Kanemoto Diane C. Kanemoto
Notary Public, State of Hawai'i

My commission expires: 6/16/07

STATE OF HAWAII)
)
COUNTY OF MAUI) ss.

On this 10th day of June, 2003, before me personally appeared Don Young and Robert M. McNatt, President & CEO and Vice President/Land Planning & Development, respectively, of KAPALUA LAND COMPANY, LTD., to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Debra A. Mahon DS
Debra A. Mahon

Notary Public, State of Hawai'i

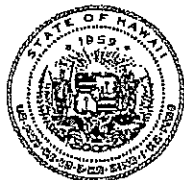
My commission expires: October 1, 2004

ATTACHMENT 4

State Department of Transportation
Mahana Estates Access Letter

LINDA LINGLE
GOVERNOR

COPY



RODNEY K. HARAGA
DIRECTOR

DEPUTY DIRECTOR
FRANCIS PAUL KEENO
BARRY FUKUNAGA
BRIAN H. SEKIGUCHI
BRENNON T. MORIOKA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
MAUI DISTRICT
650 PALAPALA DRIVE
KAHULUI, HAWAII 96732-2321

IN REPLY REFER TO:
HWY-M 2.437-06

December 7, 2006

RECEIVED

DEC 08 2006

WARREN S. UNEMORI ENGINEERING, INC.

MEMORANDUM

TO: Warren Unemori
Warren S. Unemori Engineering, Inc.

FROM: Paul M. Chung
State Highways

SUBJECT: Mahana Estates at Kapalua Mauka
ME 06-39

Based upon our review of the Traffic Impact Analysis Report by Parsons Brinckerhoff dated October 2006, a relatively low amount of traffic will be generated by the proposed project at 2020 full build out. Being that the projected volumes are low, we concur with the report that no intersection improvements will be required to accommodate the project.

If there are any questions or concerns, please call me at 873-3535.

/pmc

ATTACHMENT 5

Traffic Impact Fee Agreement

This is a copy of Bureau of Conveyances
Document No. 2004-198468, and / or
Land Court Document No. _____
affecting Certificate of Title No. _____
recorded on 10/31/04 at 9:01 o'clock PM.

TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup To:

RS

Maui Land & Pineapple Company, Inc.
c/o Kiefer & Merchant LLC
444 Hana Highway Suite 204
Kahului, Hawaii 96732
Attn: Rick Kiefer (808) 871-6016

TG MAUI 372890D

TITLE OF DOCUMENT:

TRAFFIC IMPACT FEE AGREEMENT
(West Maui Project District No. 2 - Kapalua Mauka)

PARTIES TO DOCUMENT:

MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii
corporation

COUNTY OF MAUI, a body politic and corporate,
and a political subdivision of the State of
Hawaii
200 South High Street
Wailuku, Hawaii 96793

TAX MAP (2) 4-2-001:042, (2) 4-3-001:006 (por.), &
KEY(S): (2) 4-3-001:008 (por.)

(This document consists of 21 pages.)

TRAFFIC IMPACT FEE AGREEMENT
(West Maui Project District No. 2 - Kapalua Mauka)

THIS AGREEMENT is made and entered into this 25th day of October, 2006, by and between MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, whose principal place of business is 120 Kane Street, Kahului, Hawaii 96732 and whose mailing address is P.O. Box 187, Kahului, Hawaii 96733, ("Owner"), and the COUNTY OF MAUI, a body politic and corporate, and a political subdivision of the State of Hawaii, having its principal place of business and mailing address at 200 South High Street, Wailuku, Maui, Hawaii 96793 ("County" or "County of Maui").

WHEREAS, Owner is the owner of those certain lands located at Kapalua, Maui, Hawai'i, comprised of approximately 924.8 acres, identified for real property tax purposes by Tax Map Key No(s). (2) 4-2-001:042, (2) 4-3-001:006 (por.), and (2) 4-3-001:008 (por.), and more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter referred to as the "Property");

Whereas, pursuant to the provisions regarding conditional zoning contained in Section 19.510.050, Maui County Code, the County Council of the County enacted Maui County Ordinance No. 3358 (2006) ("Ordinance No. 3358"), whereby the Property was designated and zoned "West Maui Project District No. 2 (Kapalua Mauka)" subject to the following condition no. 10 ("Condition No. 10"),

among other conditions:

That, as represented by Maui Land & Pineapple Company, Inc., a voluntary contribution for road and traffic improvements in the West Maui Community Plan region shall be provided by Maui Land & Pineapple Company, Inc. to the County of Maui in the amount of \$3,500.00 or the prevailing rate in effect at the time of final subdivision approval, whichever is greater, per dwelling unit in the West Maui Project District 2 (Kapalua Mauka). This contribution shall be made prior to issuance of a building permit. An agreement between Maui Land & Pineapple Company, Inc. and the County of Maui shall be executed and recorded setting forth the terms and conditions of the voluntary contribution prior to Phase II Project District approval.

Whereas, Condition No. 10 is also set forth in Exhibit 2 (Conditions of Zoning), paragraph 10, of that certain Unilateral Agreement and Declaration for Conditional Zoning (Amended and Restated) made by Owner, dated February 6, 2006, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-028545 (the "Unilateral Agreement").

Whereas, pursuant to Condition No. 10 and the Unilateral Agreement, Owner and the County are entering into this Agreement to set the terms and conditions of Owner's contribution for road and traffic improvements in the West Maui Community Plan region.

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That this Agreement is made pursuant to Condition No. 10 of Ordinance No. 3358 and Exhibit 2, paragraph 10, of the Unilateral Agreement.

2. That until written release by the County, the Property, and all parts thereof, is and shall be held subject to the following covenants, conditions and restrictions, and that all of such covenants, conditions and restrictions shall be effective as to the Property from and after the recording of this Agreement with the Bureau of Conveyances of the State of Hawaii, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Owner, the County, or any successor, personal representative, heir or assign, as the case may be of any of them; that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Agreement by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the Property, the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Agreement.

3. That this Agreement shall be a covenant running with the land and be binding on all present and future owners, lessees and occupants of the Property and anyone claiming under said owners, their heirs, personal representatives, successors and assigns, as owners or occupants thereof or otherwise.

4. That as a condition for issuance of a building permit for each dwelling unit constructed at the Property, Owner shall make a voluntary contribution to the County of Maui for road and traffic improvements in the West Maui Community Plan region. For each dwelling unit, such contribution shall be in an amount equal to the greater of (a) \$3,500.00, or (b) the County's standard, per-dwelling-unit traffic impact fee for the West Maui Community Plan region, if any, at the time at which the County grants final subdivision approval for the lot on which a dwelling unit is to be constructed. This contribution shall be made prior to issuance of a building permit for a dwelling unit on the lot.

5. That as set forth in Condition No. 10 all contributions received pursuant to this Agreement shall be used by the County of Maui for road and traffic improvements in the West Maui Community Plan region.

6. That this Agreement shall be recorded by the Owner with the State of Hawaii Bureau of Conveyances prior to the County's issuance of Phase II Project District approval for Owner's development of the Property.

7. That unless sooner released and cancelled by the County of Maui, this Agreement shall remain in effect until the contributions required pursuant to Condition No. 10 and Section 4, above, have been made for all six hundred ninety (690)

dwelling units permitted on the Property under Section 19.92.080(A), Maui County Code.

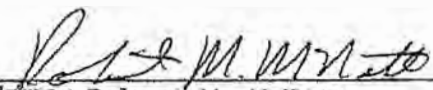
8. That the term "Owner" wherever used herein, and any pronoun used in place thereof, shall mean and include the singular and the plural, and the use of any general term shall mean and include all genders.

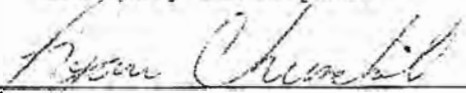
9. That the parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or the same counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.


OWNER:

MAUI LAND & PINEAPPLE COMPANY, INC.

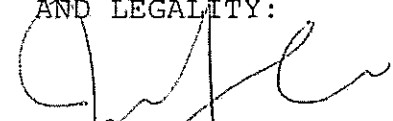
By 
Name: Robert M. McNatt
Its President
Community Development

By 
Name: Ryan Churchill
Its Vice President
Community Development

COUNTY OF MAUI:

By 
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 22nd day of May, 2006, before me personally appeared Robert M. McMaht, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhonda M. Pang
Name: Rhonda M. Pang
Notary Public, State of Hawaii

My commission expires: 5/25/07

L.S.

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 22nd day of May, 2006, before me personally appeared Ryan Churchill, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhonda M. Pang
Name: Rhonda M. Pang
Notary Public, State of Hawaii

My commission expires: 5/25/07

L.S.

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 25th day of October, 2000, before me personally appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Kelii P. Nahocikaika
Name: Kelii P. Nahocikaika
Notary Public, State of Hawaii

My commission expires: 4/30/10

v. S.

EXHIBIT A

West Maui Project District No. 2 (Kapalua Mauka)
Description of Perimeter Boundary

Land situated on the southeasterly side of Honoapiilani Highway, (F.A.P. No. RF-030-1(3)), at Honokahua, Napili 2 and 3, Napili 4 and 5, Lahaina, Maui, Hawaii

Being portions of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21), Royal Patent 1663, Land Commission Award 5524, Apana 1 to L. Konia

Beginning at a point at the southwesterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 5,756.60 feet South and 2,710.69 feet East and running by azimuths measured clockwise from True South:

1. 220° 37' 19" 222.56 feet along the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) to a point;
2. 310° 37' 19" 20.00 feet along same to a point;
3. 220° 37' 19" 356.68 feet along same to a point;
4. 130° 37' 19" 20.00 feet along same to a point;
5. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 130° 37' 19", and the point of tangency azimuth from the radial point being: 134° 02' 45", having a radius of 6,850.23 feet, the chord azimuth and distance being: 222° 20' 02" 409.30 feet to a point;

6. 239° 43' 01" 114.35 feet along same to a point;
7. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 134° 58' 15", and the point of tangency azimuth from the radial point being: 136° 15' 50", having a radius of 6,820.23 feet, the chord azimuth and distance being: 225° 37' 02.5" 153.92 feet to a point;
8. 178° 22' 04" 107.32 feet along same to a point;
9. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 136° 51' 41", and the point of tangency azimuth from the radial point being: 140° 35' 19", having a radius of 6,900.23 feet, the chord azimuth and distance being: 228° 43' 30" 448.80 feet to a point;
10. 320° 35' 19" 50.00 feet along same to a point;
11. 230° 35' 19" 630.62 feet along same to a point;
12. 213° 14' 05" 167.63 feet along same to a point;
13. 230° 35' 19" 223.80 feet along same to a point;
14. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 320° 35' 19", and the

point of tangency azimuth
from the radial point
being:

318° 56' 28", having a
radius of 2,750.09 feet,
the chord azimuth and
distance being:

229° 45' 53.5" 79.07 feet
to a point;

15. 318° 56' 28" 20.00 feet along same to a point;
16. Thence along same on a curve to the left with the
point of curvature
azimuth from the
radial point being:
318° 56' 28", and the
point of tangency azimuth
from the radial point
being:
317° 51' 36", having a
radius of 2,770.09 feet,
the chord azimuth and
distance being:
228° 24' 02" 52.27 feet to
a point;
17. 317° 51' 36" 30.00 feet along same to a point;
18. Thence along same on a curve to the left with the
point of curvature
azimuth from the
radial point being:
317° 51' 36", and the
point of tangency azimuth
from the radial point
being:
312° 27' 18", having a
radius of 2,800.09 feet,
the chord azimuth and
distance being:
225° 09' 27" 264.05 feet
to a point;
19. 132° 27' 18" 30.00 feet along same to a point;
20. Thence along same on a curve to the left with the
point of curvature

azimuth from the
 radial point being:
 312° 27' 18", and the
 point of tangency azimuth
 from the radial point
 being:
 309° 12' 43", having a
 radius of 2,770.09 feet,
 the chord azimuth and
 distance being:
 220° 50' 0.5" 156.77 feet
 to a point;

21. 129° 12' 43" 30.00 feet along same to a point;
22. Thence along same on a curve to the left with the
 point of curvature
 azimuth from the
 radial point being:
 309° 12' 43", and the
 point of tangency azimuth
 from the radial point
 being:
 291° 54' 57", having a
 radius of 2,740.09 feet,
 the chord azimuth and
 distance being:
 210° 33' 50" 824.03 feet
 to a point;
23. 217° 43' 38" 70.35 feet along same to a point;
24. Thence along same on a curve to the left with the
 point of curvature
 azimuth from the
 radial point being:
 290° 30' 38", and the
 point of tangency azimuth
 from the radial point
 being:
 277° 05' 19", having a
 radius of 2,760.09 feet,
 the chord azimuth and
 distance being:
 193° 47' 58.5" 645.09 feet
 to a point;

25. 187° 05' 19" 1,114.20 feet along same to a point;
26. 277° 05' 19" 10.00 feet along same to a point;
27. 185° 39' 23" 400.13 feet along same to a point;
28. 175° 46' 38" 101.98 feet along same to a point;
29. 187° 05' 19" 518.19 feet along same to a point;
30. 284° 00' 307.46 feet along Lot 49 of The
Plantation at Kapalua
(File Plan No. 2006) to a
point;
31. 328° 38' 787.92 feet along same to a point;
32. 320° 11' 342.84 feet along same to a point;
33. 299° 45' 473.25 feet along same to a point;
34. 294° 02' 414.26 feet along same to a point;
35. 22° 18' 545.98 feet along same to a point;
36. 6° 29' 302.12 feet along same to a point;
37. 342° 52' 171.59 feet along same to a point;
38. 313° 48' 23.52 feet along same to a point;
39. Thence along same on curve to the right, having a
radius of
597.00 feet, the chord
azimuth and distance
being:
322° 58' 30" 190.38 feet
to a point;
40. 332° 09' 147.95 feet along same to a point;
41. 286° 50' 160.00 feet along same to a point;
42. 246° 40' 198.00 feet along same to a point;
43. 326° 00' 559.72 feet along the remainder of

Royal Patent 2236, Land
Commission Award 8522-B
Apana 1 to Kale Davis
(Certificate of Boundaries
No. 21), being also along
Lot 4 of Kapalua Mauka
Large-Lot Subdivision to a
point;

- 44. 315° 00' 212.40 feet along same to a point;
- 45. 342° 00' 98.17 feet along same to a point;
- 46. 59° 30' 228.90 feet along same to a point;
- 47. 8° 00' 87.96 feet along same to a point;
- 48. 308° 20' 125.73 feet along same to a point;
- 49. 240° 00' 48.91 feet along same to a point;
- 50. 330° 00' 90.84 feet along same to a point;
- 51. 240° 00' 128.41 feet along same to a point;
- 52. 342° 00' 70.47 feet along same to a point;
- 53. 290° 00' 250.66 feet along same to a point;
- 54. 335° 30' 1,577.46 feet along same to a point;
- 55. 344° 00' 310.62 feet along same to a point;
- 56. 324° 00' 182.30 feet along same to a point;
- 57. 357° 00' 319.88 feet along same to a point;
- 58. 319° 00' 348.47 feet along same to a point;
- 59. 342° 00' 223.65 feet along same to a point;
- 60. 336° 00' 498.25 feet along same to a point;
- 61. 54° 00' 1,119.38 feet along same to a point;
- 62. 322° 55' 74.42 feet along same to a point;

63.	275°	40'		248.91 feet along same to a point;
64.	345°	00'		500.17 feet along same to a point;
65.	351°	00'		289.47 feet along same to a point;
66.	65°	59'	38"	55.00 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 3 of Honokahua Wells Subdivision to a point;
67.	335°	59'	38"	75.00 feet along same to a point;
68.	245°	59'	38"	110.72 feet along same to a point;
69.	324°	00'		622.16 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
70.	0°	00'		201.70 feet along same to a point;
71.	320°	00'		913.05 feet along same to a point;
72.	0°	00'		353.54 feet along same to a point;
73.	326°	56'		1,314.13 feet along same to a point;
74.	31°	44'	38"	417.99 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision and along Royal Patent 1663,

Apana 1, Land Commission
Award 5524 Part 1 to L.
Konia to a point;

75.	112°	03'	592.18 feet	along the remainder of Government (Crown) Land of Napili 4 and 5 to a point;
76.	124°	33'	719.66 feet	along same to a point;
77.	109°	42'	490.74 feet	along same to a point;
78.	120°	31'	730.42 feet	along same to a point;
79.	163°	42'	153.49 feet	along same to a point;
80.	111°	15'	194.60 feet	along Government (Crown) Land of Napili 4 and 5 to a point;
81.	77°	29'	118.47 feet	along the remainder of Government (Crown) Land of Napili 4 and 5 to a point;
82.	72°	43'	366.22 feet	along same to a point;
83.	208°	00'	291.16 feet	along same to a point;
84.	110°	45'	201.65 feet	along Government (Crown) Land of Napili 4 and 5 to a point;
85.	28°	00'	300.40 feet	along the remainder of Government (Crown) Land of Napili 4 and 5 to a point;
86.	113°	05'	819.15 feet	along same to a point;
87.	139°	00'	498.66 feet	along same to a point;
88.	187°	24'	413.29 feet	along same to a point;
89.	123°	17'	398.65 feet	along same to a point;

90.	123°	00'	19"	179.10 feet along same to a point;
91.	120°	37'		615.99 feet along same to a point;
92.	124°	03'		211.54 feet along same to a point;
93.	124°	18'		183.61 feet along same to a point;
94.	104°	00'		223.83 feet along same to a point;
95.	131°	00'		366.75 feet along same to a point;
96.	154°	40'		304.42 feet along same to a point;
97.	138°	52'		299.20 feet along same to a point;
98.	138°	58'		89.48 feet along same to a point;
99.	164°	53'		465.29 feet along same to a point;
100.	123°	34'		482.89 feet along same to a point;
101.	126°	07'		419.09 feet along same to a point;
102.	116°	02'		417.86 feet along same to a point;
103.	121°	21'		158.74 feet along same to a point;
104.	119°	01'		285.93 feet along same to a point;
105.	106°	32'		224.46 feet along same to a point;
106.	125°	00'		454.04 feet along same to the point of beginning and containing a Gross Area of 925.271 Acres, excepting and excluding therefrom Lot 1 (Napili Well "C") (0.342 Acre) and Lot 2 (Honokahua Well "A") (0.129 Acre) as described below, for a Net Area of 924.800 Acres.

Lot 1 (Napili Well "C")

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P No. RF-030-1(3)), at Napili 2 & 3, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 1663, Land Commission Award 5524 Apana 1 to L. Konia

Beginning at a point at the southwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 9,590.79 feet South and 8,749.90 feet East and running by azimuths measured clockwise from True South:

1. 205° 29' 38" 95.00 feet along the remainder of the Royal Patent 1663 Apana 1, Land Commission Award 5524 Apana 1 to L. Konia, being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
2. 226° 51' 38" 74.51 feet along same to a point;
3. 295° 29' 38" 56.50 feet along same to a point;
4. 340° 54' 38" 35.94 feet along same to a point;
5. 25° 29' 38" 30.78 feet along same to a point;
6. 45° 59' 38" 59.90 feet along same to a point;
7. 25° 29' 38" 42.00 feet along same to a point;
8. 70° 29' 38" 14.00 feet along same to a point;
9. 115° 29' 38" 78.00 feet along same to the point of beginning and containing an Area of 14,907 Square Feet or 0.342 Acre.

Lot 2 (Honokahua Well "A")

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)), at Honokahua, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21)

Beginning at a point at the southwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA", being 8,851.72 feet South and 8,775.18 feet East and running by azimuths measured clockwise from True South:

1. 209° 29' 38" 70.00 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
2. 299° 29' 38" 80.00 feet along same to a point;
3. 29° 29' 38" 70.00 feet along same to a point;
4. 119° 29' 38" 80.00 feet along same to the point of beginning and containing an Area of 5,600 Square Feet or 0.129 Acre.

TOGETHER WITH, the following:

1. Existing Waterline Easements, affecting portions of Honoapiilani Highway (F.A.P. RF-030-1 (3)), in favor of Kapalua Water Company, Ltd. and Maui Land & Pineapple Company, Inc.
2. Existing Golf Course Easements "A" to "D", inclusive, affecting portions of Honoapiilani Highway (F.A.P. RF-030-1 (3)), in favor of Maui Land & Pineapple Company, Inc.

SUBJECT, HOWEVER, to the following:

1. A Restriction of the Vehicular Access Right along Honoapiilani Highway (F.A.P. RF-030-1(3)).
2. Existing Electrical and Telephone Easements E-14 to E-17 in favor of Maui Electric Company, Ltd. and Verizon Hawaii Inc.

3. Existing Slope Easements "S-2" and "S-4", in favor of the State of Hawaii.
4. An existing Electrical and Telephone Easement (20 ft. wide) in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
5. Existing Electrical and Telephone Easements "B" and "C", in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
6. Existing Waterline Easements "A", "B" and "C" (20 ft. wide), in favor of the Board of Water Supply, County of Maui.
7. An existing Access Easement 4 in favor of Lot 51 of the Plantation at Kapalua (File Plan 2006).
8. A portion of existing Waterline Easement 12 in favor of Kapalua Water Company, Ltd.
9. Existing Electrical Easements E-9 and E-10 in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
10. A Perpetual Non-Exclusive Appurtenant Existing Underground Tunnel Deed: Territory of Hawaii to Baldwin Packers, Ltd.

NOTE: This description has been prepared solely for use by the Owners and shall not be construed as a description of a parcel of land separate from Government (Crown) Land of Napili 4 and 5. Only after required approvals from governmental agencies have been granted, can it be considered as a parcel of land separate from Government (Crown) Land of Napili 4 and 5.

ATTACHMENT 6

Mahana Estates Subdivision
Residential Workforce Housing Agreement

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

Kiefer, Merchant & Garneau LLC
444 Hana Hwy., Ste. 204
Kahului, Maui, HI 96732

Attention: Greg Garneau
Telephone (808) 871-6016

TITLE OF DOCUMENT:

MAHANA ESTATES SUBDIVISION
RESIDENTIAL WORKFORCE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

OWNER: MAUI LAND & PINEAPPLE COMPANY, INC.
P.O. Box 187
Kahului, Maui, Hawaii 96733

COUNTY: COUNTY OF MAUI
200 South High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEY(S): (2) 4-2-001:042 (por.)
Lot 3-B, Kapalua Mauka Large-Lot Subdivision No. 3
(This document consists of ___ pages.)

**MAHANA ESTATES SUBDIVISION
RESIDENTIAL WORKFORCE HOUSING AGREEMENT**

This Agreement is made this _____ day of _____, 2006, by and between MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, whose mailing address is P.O. Box 187, Kahului, Maui, Hawaii 96733, hereinafter called "MLP", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "County".

Background

1. By Ordinance No. 3358 ("Ordinance 3358"), the Council of the County of Maui ("Council") granted a conditional change in zoning to West Maui Project District 2 (Kapalua Mauka).

2. MLP has filed for subdivision approval of a 51-lot residential subdivision located on approximately 124.980 acres of land within Kapalua Mauka known as the Mahana Estates Subdivision, County Subdivision File No. 4.913 (the "Project"), said land being more particularly described in Exhibit A attached hereto (the "Property").

3. MLP represents that the Project will contain 51 residential lots and/or units with an anticipated 50% or more offered for sale for \$600,000.00 or more.

4. At the time Ordinance 3358 was enacted, the Council was considering establishing a new residential workforce housing policy.

5. Ordinance 3358 includes certain conditions of zoning including an affordable housing condition enumerated as Condition 11 ("Condition 11"), subsection (g) of which provides that any affordable housing policies adopted by the County prior to final subdivision approval which would result in a greater number of affordable units being required shall apply to Kapalua Mauka.

6. By Ordinance No. 3418, effective December 1, 2006, the Council established a new affordable housing policy for the County set forth in Maui County Code ("MCC") Chapter 2.96 entitled "Residential Workforce Housing Policy" ("Chapter 2.96"). Chapter 2.96 would require a greater number of affordable workforce housing units with respect to subject developments within Kapalua Mauka, including the Project, and thus by the express terms of Condition 11 Chapter 2.96 supersedes Condition 11 and applies to the Project.

7. In accordance with MCC §2.96.080, MLP desires to enter into this Mahana Estates Subdivision Residential Workforce Housing Agreement ("Agreement") with County to implement the provisions of MCC Chapter 2.96 with respect to the Project.

NOW, THEREFORE, MLP and County, in consideration of the recitals set forth above and the terms, covenants and conditions set forth in this Agreement below, agree as follows:

ARTICLE I - DEFINITIONS

Capitalized terms defined below shall have the following meanings when used in this Agreement:

A. "Buyer" or "Renter" means a person or family who, individually or collectively, as the case may be, meets the following minimum qualifications:

1. Is a citizen of the United States or a permanent resident alien;
2. meets one of the criteria for a "Resident" as set forth in MCC §2.96.020 prior to filing an Application for a Residential Workforce Housing Unit ("Application"), with documentation confirming the criteria is met;
3. Is at least eighteen (18) years of age;
4. In the case of a Buyer, has the financial ability to purchase a Residential Workforce Housing Unit ("Housing Unit" or "Unit"), including being able to qualify for a residential mortgage in a timely manner;
5. Falls within one of the Income Groups established by Chapter 2.96.

MLP shall be responsible for requesting and securing appropriate documentation and for verifying all of the foregoing requirements.

B. "Application for a Residential Workforce Housing Unit" or "Application" means the application form prepared by MLP and duly completed and signed by an applicant to determine the applicant's eligibility to be a Buyer or Renter to purchase or rent a Housing Unit.

C. "Cash Equity" means the actual amount of payments of principal which the Buyer has made for the purpose of purchasing a Housing Unit, including the cash down payment made, and payments of principal on mortgage loans secured to purchase the Housing Unit. The term "Cash Equity" shall not include interest or the appreciated value of the Housing Unit caused by market fluctuation. Cash Equity may include payments of principal for improvements as defined in this Agreement that add value to the Housing Unit.

D. "County" means the County of Maui.

E. "Council" means Maui County Council.

F. "Department" means the Department of Human Concerns of the County of Maui.

G. "Director" means the Director of the Department of Human Concerns of the County of Maui.

H. "Family" means two (2) or more persons related by blood, marriage or operation of law.

I. "Gross Annual Family Income" includes income from the following sources: wages, overtime, commissions, bonuses, profit sharing, tips, business income, child support, interest and dividends from funds retained after the closing, and other types of periodic payments which are anticipated for the 12 month period commencing with the date of Application.

J. "HUD" means the Department of Housing and Urban Development of the U.S. Government.

K. "Income Groups" are the six groups established and defined by Chapter 2.96 (specifically, "very low income", "low income", "below moderate income", "moderate income", "above-moderate income", and "gap income").

L. "Improvements" means substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the premises or substantial or total loss of value of said improvements and as may be further defined by MLP in its sales documents.

M. "Median Family Income" means the middle income in a series of incomes ranked from smallest to largest as determined by HUD for the County.

N. "Permanent Resident Alien" means an individual who has been issued a Permanent Resident Card by the United States Citizen and Immigration Services Department of the Department of Homeland Security.

ARTICLE II – RESIDENTIAL WORKFORCE HOUSING PROGRAM

A. Specific Requirements Applicable to the Mahana Estates Project.

1. Number of Units Required; Approved Satisfaction of Requirements.
Pursuant to MCC §2.96.040(A)(2), the Project is subject to a residential workforce housing requirement of 26 units. MLP has elected and agreed, with the approval of the Director, to satisfy this requirement as follows:

(a) Fifteen (15) of the required units (58%) are "for sale" Housing Units for the Below Moderate Income Group; this requirement is satisfied by applying MLP's fifteen (15) existing housing unit credits from MLP's sale of lots in the Kapua Village workforce housing subdivision, which are hereby surrendered by MLP and accepted by the County; and

(b) MLP shall satisfy the remaining eleven (11) required units by developing eleven (11) residential workforce housing units at MLP's Site 6-0 project (also known as Pailolo) or other site approved by the Director within the West Maui Community Plan region and renting those 11 units in accordance with Chapter 2.96 and this Agreement. Four (4) of those units (15%) shall be rented to qualified renters in the 120% to 140% income bracket, and seven (7) of those units (27%) shall be rented to qualified renters in the 140% to 160% income bracket. Rental Units will be offered for rent and occupancy no later than the time at

which homes at Mahana Estates are made available for occupancy by purchasers. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units in Mahana Estates unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units provided pursuant to this section concurrently or sooner. Subject to the approval of the Director, the units may be rented to special housing target groups identified by MLP as provided in MCC §2.96.080(A)(3). In accordance with MCC §2.96.070(E) such residential workforce housing units shall remain affordable for the life of the unit.

B. General Requirements Applicable to Sale of Housing Units.

1. Applicant Selection Process for Sale of Housing Units.

(a) Wait list procedure. MLP shall use the following procedure for establishing a waitlist for Buyers of Housing Units:

(1) MLP shall establish a wait list of interested applicants;
(2) Prior to initiating the wait list, MLP shall publish in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and

(3) Selection for purchase shall be made by a lottery administered by MLP and overseen by the Department, subject to the Applicant meeting the applicable eligibility criteria.

2. Eligibility criteria. In order to be eligible for a residential workforce housing unit, an applicant must meet the following minimum criteria:

(a) Be a citizen of the United States or a permanent resident alien who is a resident of the County;

(b) Be eighteen years of age or older;

(c) Have a Gross Annual Family Income (not to include the income of minors) which does not exceed one hundred sixty percent of the County's area median income as established by HUD. Initial determination for compliance with the maximum gross annual family income provision shall be made MLP for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the Applicant's income verification data is received;

(d) Have assets that do not exceed one hundred sixty percent of the County's area median income as established by HUD. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property;

(e) For a period of three years before the submittal of the ownership application, have not had an interest of fifty percent or more in real property in fee or leasehold

in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the Applicant is selling an Housing Unit and purchasing a different Housing Unit that is more appropriate for the Applicant's family size; and

(f) Pre-qualify for a loan with the Applicant's choice of lender.

3. Notification of change. Each Applicant shall be responsible for notifying MLP in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If Applicant fails to properly notify MLP of such changes and MLP is unable to contact the Applicant, MLP shall remove the Applicant's name from the wait list.

4. Selection priority.

(a) Residents on the wait list shall receive first priority for the available units. Non-residents on the wait list may purchase a residential workforce housing unit once the wait list has been exhausted of all residents;

(b) MLP may do a mass mailing of housing applications to applicants on the wait list;

(c) The Housing Units must be offered to qualified residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the Income Group for which they qualify. Non-residents will be offered residential workforce housing units in the order in which their names were drawn in the lottery; and

(d) In the event that Units are not sold or rented within the first ninety days after they are offered, and MLP has made a good faith effort, as determined by the Director, to contact and qualify Applicants on the wait list, the sale or rental of remaining Units shall be conducted as follows:

(1) For the next ninety-day period, Units shall be offered to the next-higher income preference group, at the original sales price or rental. For example, Units targeted for families earning up to one hundred twenty percent of the median income may be sold to families earning up to one hundred forty percent of the median income. All other eligibility criteria shall apply;

(2) Units shall be offered to the next higher Income Group every ninety days until the units are sold or rented or there are no more Income Groups available;

(3) Units shall then be offered to non-residents on the wait list in the order in which their names were drawn in the lottery, for the next ninety-day period, provided that the Applicant's income is within the residential workforce housing income groups; and

(4) Any for sale units that remain unsold may be offered at market rate without deed restrictions, provided that with the Director's approval they may also be rented in accordance with this Agreement until such time as a qualified buyer becomes available. Upon the sale of the unit, the County shall receive fifty percent of the difference between the original sales price of the unit and the actual market rate sales price, for deposit into the affordable housing fund. In this event, MLP shall still be deemed to have satisfied the requirement for producing a residential workforce housing unit.

5. MLP shall submit copies of the following information to the Department to verify the sale of Housing Units to eligible buyers:

(a) Applicant's completed ownership application;

- (b) Executed sales contract;
- (c) Pre-qualification notice from lender;
- (d) All signed federal tax returns used to determine eligibility, or any other documents used to determine eligibility by the lender; and
- (e) Escrow company's settlement statement.

6. An owner of a Housing Unit that is being re-sold must sell the unit to an income-qualified household and notify the Department of the sale. The Department shall verify the sales price.

7. Deed Restrictions for Housing Units Sold. Housing Units sold shall be subject to the following deed restrictions pursuant to the Residential Workforce Housing Policy:

(a) Housing Units sold shall be subject to MCC 2.96 for twenty-five (25) years from the initial sale of the Unit.

(b) Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:

- (1) Thirty percent of the ownership units shall be for "below-moderate income" residents;
- (2) Thirty percent of the ownership units shall be for "moderate income" residents;
- (3) Twenty percent of the ownership units shall be for "above-moderate income" residents; and
- (4) Twenty percent of the Ownership units shall be for "gap income" residents.

(c) Timing of completion.

(1) Residential workforce housing units shall be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development; and

(2) Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.

(d) Deed restrictions.

- (1) The unit must be owner-occupied;
- (2) The unit must remain affordable for twenty-five years from the initial sale, with the owner notifying the Department upon a decision to sell; and
- (3) Under special circumstances an owner of a residential workforce housing unit may appeal to the Department for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.

(e) Sales price - single-family dwelling units. The sales price of a new single-family dwelling unit shall be set by the Department, at the time MLP is ready to market the Unit, using the following guidelines:

- (1) A down payment of five percent shall be assumed;
- (2) The prevailing interest rate shall be used;

(3) The price of a one-bedroom Unit shall be based upon seventy percent of the median income of the wait list area, adjusted to the respective target Income Group;

(4) The price of a two-bedroom Unit shall be based upon eighty-five percent of the median income of the wait list area, adjusted to the respective target Income Group;

(5) The price of a three-bedroom Unit shall be based upon one hundred percent of the median income of the wait list area, adjusted to the respective target Income Group;

(6) The price of a four-bedroom Unit shall be based upon one hundred fifteen percent of the median income of the wait list area, adjusted to the respective target Income Group; and

(7) Applicants in each Income Group shall be assumed to pay no more than thirty percent of the gross annual income of the highest percentage in the Applicant's group.

(f) Sales price - two-family or multi-family dwelling units. The sales price of a new two-family or multi-family dwelling unit shall be ninety percent of the price of a single-family dwelling unit, as established in section 2.96.060(E).

(g) Resale price. The maximum resale price shall be established by the department using the following guidelines:

(1) An appraisal of the property shall be required before occupancy;

(2) A second appraisal shall be required upon a decision to sell the Unit; and

(2) Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.

(h) Foreclosures.

(1) The County shall have the first option to purchase the unit; and

(2) If the County does not exercise its right to purchase, the units may be offered at an affordable price, set by the Director, with the same deed restrictions.

C. General Requirements Applicable to Rental of Housing Units.

1. Applicant Selection Process for Rental of Housing Units.

(a) Wait list procedure. MLP shall use the following procedure for establishing a waitlist for Renters of Housing Units:

(1) MLP shall establish wait lists of interested applicants by rental development;

(2) Prior to initiating the wait list, MLP shall initiate the wait list process by publishing in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and

(3) Selection for rental Units shall be made by a lottery administered by MLP and overseen by the Department, subject to the Applicant meeting the eligibility criteria established in MCC §2.96.100(B).

2. Eligibility criteria. The eligibility criteria for rentals shall be established on a project-by-project basis by the director in the following manner:

(a) If the project is receiving federal and/or state assistance, the applicable federal and/or state eligibility criteria shall apply; and

(b) If the project is not receiving federal and/or state assistance, the minimum eligibility criteria in MCC §2.96.090(B) shall apply, except for MCC §2.96.090(B)(6).

3. Notification of change. Each Applicant shall be responsible for notifying MLP in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an Applicant fails to properly notify MLP of such changes and MLP is unable to contact the Applicant, the Applicant's name shall be removed from the applicable wait list.

4. Selection priority.

(a) Residents on the wait list shall receive first priority for the available Housing Units. Non-residents on the wait list may rent a Housing Unit once the wait list has been exhausted of all residents;

(b) MLP may do a mass mailing of housing applications to applicants on the wait list;

(c) Housing Units shall be offered to residents in the order in which their names were drawn in the lottery, provided that there is a Unit available in the Income Group for which they qualify. Non-residents will then be offered Housing Units in the order in which their names were drawn in the lottery, provided that there is a Unit available in the Income Group for which they qualify;

(d) MLP shall submit copies of the following information to the Department to verify the rental of Housing Units to eligible Renters:

(1) Applicant's completed final rental application;

(2) Executed rental lease; and

(3) All signed federal tax returns used to determine eligibility, or any other documents used to determine eligibility by MLP;

(e) MLP shall maintain a wait list for the development after all of the units are rented, which shall be used to fill any vacancy;

(f) Any rental Unit vacancy shall be filled by an Applicant in the same income group as the original tenant to maintain an equal distribution of rentals across the "very low income" and "low income", "below-moderate income", and "moderate income" groups;

(g) MLP shall follow the procedure in Section B.4(d) above if they cannot rent the Unit at the appropriate Income Group; and

(h) MLP, as an owner of a residential workforce housing rental development that is being re-sold, shall notify the Department of MLP's intent to sell and provide documentation that the new owner knows of the deed restrictions.

5. Deed Restrictions for Housing Units Rented. Housing Units rented shall be subject to the following deed restrictions pursuant to the Residential Workforce Housing Policy:

(a) Rental units shall be subject to Chapter 2.96 for the life of the unit, as determined by a building inspector with the Development Services Administration of the Department of Public Works and Environmental Management.

(b) Unless an exemption is granted by the Director, the percentage of rental units within each income group shall be as follows:

- (1) One third of the rental units shall be for "very low income" and "low income" residents;
- (2) One third of the rental units shall be for "below-moderate income" residents; and
- (3) One third of the rental units shall be for "moderate income" residents.

(c) Timing of completion.

(1) Except when the MLP is partnering with a non-profit organization or community land trust as allowed in MCC §2.96.040(B)(2), residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner; and

(2) When MLP is partnering with a non-profit organization or community land trust, the payment to the non-profit organization or community land trust must be made prior to final subdivision approval or issuance of a building permit for the market rate units. The residential workforce Housing Units must be constructed within three years of the date the certificates of occupancy are issued and/or the final inspections are passed for the market rate units.

(d) Vacancies. Any rental Unit vacancy must be filled by an Applicant in the appropriate Income Group to better maintain an equal distribution of rentals across the "very low income" and "low income", "below-moderate income", and "moderate income" groups.

(e) Deed restrictions.

(1) The rental Unit must remain affordable for the life of the unit;

(2) MLP must notify the department upon a decision to sell the rental development; and

(3) Any new owner must comply with the deed restrictions.

(f) Rental rates. The monthly rental rates shall be set by the department based on HUD income limits.

(g) Foreclosures.

(1) The County will have the first option to purchase the rental development; and

(2) If the County does not exercise its right to purchase, the rental development may be sold with the same deed restrictions.

D. Availability of Credits for Housing Units.

1. Residential workforce housing credits may be given under the following circumstances:

(a) One residential workforce housing credit shall be given for every single-family dwelling unit, two-family dwelling unit, or multifamily dwelling unit constructed in excess of the residential workforce housing required by MCC §2.96.040; and

(b) One residential workforce housing credit shall be given for every ten market rate units that contain a deed restriction requiring an owner to occupy the unit for a minimum of three years, and share with the County fifty percent of any profits realized from a sale of that unit within the three-year owner-occupancy period.

2. The credit must be used in the same community plan area in which the unit was constructed.

3. The credit must be applied toward the same type of unit constructed.

4. The credit must be used for the same Income Group in which the credit was earned, when the credit is earned by constructing more residential workforce housing units than required.

5. The credit must be used for the "gap income" group when the credit is earned by creating a deed restriction.

6. The credit may be used for a future development, but may not be used for an affordable housing or residential workforce housing unit owed at the time the credit is given.

ARTICLE III – VERIFICATION & REPORTING REQUIREMENTS

A. Availability of Information & Documentation. The County shall have the right to require MLP to provide such information as may be reasonably required for the administration and enforcement of this Agreement.

B. Annual Reporting Requirement. MLP shall provide the Department annual written status reports regarding the implementation of this Agreement, which shall contain the information required under MCC §2.96.110.

ARTICLE IV - TERM OF AGREEMENT

This Agreement shall remain in full force and effect until all of the residential workforce housing units required hereunder are developed and either sold to Buyers or rented to Renters, or the requirements hereunder are otherwise satisfied, provided that the provisions applicable to rental Units shall remain in effect so long as rental Units remain in rental use pursuant to this Agreement. The County agrees to, upon request, provide such written verification of compliance with this Agreement as MLP may reasonably request.

ARTICLE V - GOVERNING LAW

This Agreement and the rights and obligations of MLP and the County shall be interpreted in accordance with the laws of the State of Hawaii.

ARTICLE VI - CONSENTS; APPROVALS; WAIVERS; NOTICES

A. Consents, Waivers, Approvals.

Whenever under this Agreement the consent, waiver or approval of any party is required or permitted, such consent, waiver or approval shall be evidenced by a writing signed by such party and shall not be unreasonably withheld or delayed. Except where otherwise provided, consent from the County shall mean the consent or approval of the Mayor, the Director, or any others required by law. No consent or waiver, express or implied, by MLP or the County to or of any breach or default by the other party in the performance of the obligations hereunder shall be construed to be a consent or waiver to or of any other or further breach or default. Failure on the part of MLP or the County to complain of any act or omission by the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver by such party of any of its rights hereunder.

B. Notices.

All notices, demands, requests, consents, approval, or other communications ("Notices") required or permitted to be given under this Agreement or which are given with respect to this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to MLP, then to:

Maui Land & Pineapple Company, Inc.
P.O. Box 187
Kahului, Maui, Hawaii 96733
Attn: President

If to County, then to:

Mayor
County of Maui
200 South High Street
Wailuku, Hawaii 96793

cc: Director of Housing and Human Concerns

County of Maui
200 South High Street
Wailuku, Hawaii 96793

Notices given as provided in this section shall be deemed given on delivery or upon receipt if by personal delivery, telegram or facsimile transmission or on the fourth business day following the mailing thereof if by mail.

ARTICLE VII - OTHER PROVISIONS; RESTRICTIONS

A. No Partnership or Joint Venture.

Nothing contained in this Agreement shall constitute or be construed to constitute or create a partnership, joint venture, or lease by and between the parties.

B. Binding Effect.

Each and all of the covenants, terms, and provisions contained herein shall be binding upon MLP and its successors and assigns.

C. Indemnification.

MLP will defend, indemnify and hold the County harmless against all claims, including reasonable attorney's fees, made by any person or entity for: (1) failure of MLP or its agents to make any required disclosures to the prospective buyer or any other person as required by law; (2) any misrepresentations made by MLP or its agents, including but not limited to a sales agent, prospective buyer or any other person; (3) loss or damage, including property damage, bodily injury and wrongful death, arising out of or in connection with the construction and development of the Housing Units, including proper sub-base preparation and building foundation construction or during the performance of this Agreement caused, in whole or in part, by MLP, its agents, employees, contractors, subcontractors or invitees, or any failure by MLP to keep its property or any improvements thereon in a safe condition; and (4) any warranty pertaining to the Housing Units.

D. Third Party Beneficiary. This Agreement is made exclusively for the benefit of MLP and the County, and no other persons or entities shall acquire any rights, powers, privileges, remedies, or claims thereby.

E. Amendments.

This Agreement, or any provision thereof, may not be modified, altered or changed except by written instrument executed by MLP and the County.

F. Remedies not Exclusive.

MLP agrees that the County has the right to enforce or prosecute any breach of the terms of this Agreement by MLP, its successors or assigns. Except as otherwise specifically set forth herein, any remedies herein provided for breaches of obligations hereunder shall not be exclusive, and shall not impair the right of the County to exercise any other right or remedy it may have, whether for damages, injunction or otherwise.

G. Attorney's Fees.

In the event that any party brings an action or proceeding against any other party to enforce or to prevent the breach of any provision of this Agreement or for damages by reason of any breach of this Agreement, or for any other judicial or administrative remedy, then the

prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses.

H. Severability.

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

I. Captions.

Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference and do not define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.

J. Identification.

Whenever required by the context in which it is used, any pronoun shall include both the singular and plural, and any gender shall include the masculine, the feminine, and the neuter genders.

K. Neither Party Deemed Drafter.

The parties agree that neither party shall be deemed the drafter of this Agreement, and further, that if this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision thereof against any party as the drafter of this Agreement.


L. Effective Date.

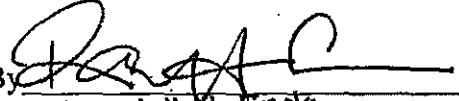
The effective date of this Agreement shall be the date set forth on the first page of this Agreement or, absent such a date, on the date on which the last party signs this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.


MLP:

MAUI LAND & PINEAPPLE COMPANY,
INC.


By 
Name: Ryan Churchill
Its: Vice President, Community Development

By 
Name: Randall H. Endo
Its: Vice President, Community Development

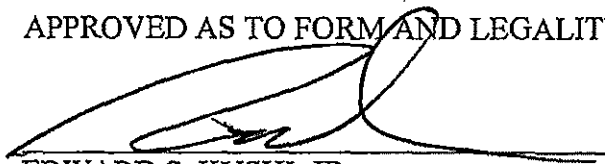
COUNTY OF MAUI

By 
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:


ALICE L. LEE
Director of Housing and Human Concerns


APPROVED AS TO FORM AND LEGALITY:


EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 15th day of December, 2006, before me personally appeared Ruan Churchill, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.


IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Name: Sheila Nakagawa N.S.
Notary Public, State of Hawaii
My commission expires: 10/3/07

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 15th day of December, 2006, before me personally appeared Bardall H. Endo, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Name: Sheila Nakagawa N.S.
Notary Public, State of Hawaii
My commission expires: 10/3/07

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 29th day of December, 2000, before me personally appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Keli P. Nahooikaka
Name: Keli P. Nahooikaka
Notary Public, State of Hawaii

My commission expires: 4/30/10

L.S.

EXHIBIT A

**Kapalua Mauka Large-Lot Subdivision No. 3
Description of Proposed Lot 3-B**

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) at Honokahua, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21)

Beginning at a point at the northwesterly corner of this parcel of land, being also the southwesterly corner of Lot 49 of The Plantation at Kapalua (File Plan 2006), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 101.02 feet North and 5,926.49 feet East and running by azimuths measured clockwise from True South:

1. 284° 00' 307.46 feet along Lot 49 of The Plantation at Kapalua (File Plan No. 2006) to a point;
2. 328° 38' 787.92 feet along same to a point;
3. 320° 11' 342.84 feet along same to a point;
4. 299° 45' 473.25 feet along same to a point;
5. 294° 02' 414.26 feet along same to a point;
6. 22° 18' 545.98 feet along same to a point;
7. 6° 29' 302.12 feet along same to a point;
8. 342° 52' 171.59 feet along same to a point;
9. 313° 48' 23.52 feet along same to a point;
10. Thence along same on a curve to the right, having a radius of

597.00 feet, the chord
azimuth and distance
being:
322° 58' 30" 190.38 feet
to a point;

- | | | | | |
|-----|------|-----|---------------|--|
| 11. | 332° | 09' | 147.95 feet | along same to a point; |
| 12. | 286° | 50' | 160.00 feet | along same to a point; |
| 13. | 246° | 40' | 198.00 feet | along same to a point; |
| 14. | 326° | 00' | 559.72 feet | along the remainder of
Royal Patent 2236, Land
Commission Award 8522-B
Apana 1 to Kale Davis
(Certificate of Boundaries
No. 21), being also along
Lot 4 of Kapalua Mauka
Large-Lot Subdivision to a
point; |
| 15. | 315° | 00' | 212.40 feet | along same to a point; |
| 16. | 342° | 00' | 98.17 feet | along same to a point; |
| 17. | 59° | 30' | 228.90 feet | along same to a point; |
| 18. | 8° | 00' | 87.96 feet | along same to a point; |
| 19. | 308° | 20' | 125.73 feet | along same to a point; |
| 20. | 240° | 00' | 48.91 feet | along same to a point; |
| 21. | 330° | 00' | 90.84 feet | along same to a point; |
| 22. | 240° | 00' | 128.41 feet | along same to a point; |
| 23. | 342° | 00' | 70.47 feet | along same to a point; |
| 24. | 290° | 00' | 250.66 feet | along same to a point; |
| 25. | 335° | 30' | 1,577.46 feet | along same to a point; |
| 26. | 344° | 00' | 310.62 feet | along same to a point; |

27.	324°	00'	182.30 feet	along same to a point;
28.	357°	00'	319.88 feet	along same to a point;
29.	319°	00'	348.47 feet	along same to a point;
30.	342°	00'	223.65 feet	along same to a point;
31.	336°	00'	498.25 feet	along same to a point;
32.	54°	00'	227.53 feet	along same to a point;
33.	125°	29'	442.49 feet	along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apāna 1 to Kale Davis (Certificate of Boundaries No. 21) to a point;
34.	152°	53'	614.19 feet	along same to a point;
35.	120°	31'	532.29 feet	along same to a point;
36.	138°	20'	735.61 feet	along same to a point;
37.	169°	34'	541.87 feet	along same to a point;
38.	165°	36'	613.74 feet	along same to a point;
39.	148°	06'	836.18 feet	along same to a point;
40.	166°	17'	967.27 feet	along same to a point;
41.	138°	24'	342.79 feet	along same to a point;
42.	57°	50'	140.01 feet	along same to a point;
43.	137°	06'	1,958.49 feet	along same to a point;
44.	187°	05' 19"	17.99 feet	along the southeasterly side of Honoapiilani Highway (F.A.P. No. RF- 030-1(3)) to a point;

- | | | | | |
|-----|------|-----|-----|---|
| 45. | 277° | 05' | 19" | 10.00 feet along same to a point; |
| 46. | 185° | 39' | 23" | 400.13 feet along same to a point; |
| 47. | 175° | 46' | 38" | 101.98 feet along same to a point; |
| 48. | 187° | 05' | 19" | 518.19 feet along same to the point of
beginning and containing
an Area of 124.980 Acres. |

ATTACHMENT 7

Memorandum of Mahana Estates Subdivision
Residential Workforce Housing Agreement

25



R-534 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAY 31, 2007 08:01 AM
Doc No(s) 2007-097329



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z12

LAND COURT SYSTEM *Ka* REGULAR SYSTEM

Return by Mail Pickup To:

PS

Kiefer Merchant & Gameau, LLC
444 Hana Highway, Suite 204
Kahului, Hawaii 96732
Attention: Greg Gameau
Telephone: (808) 871- 6016

TWA 378420D

TITLE OF DOCUMENT:

MEMORANDUM OF MAHANA ESTATES SUBDIVISION RESIDENTIAL
WORKFORCE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation

COUNTY OF MAUI

TAX MAP KEY(S): Maui 4-2-001:042 (por.); Lot 3-B Kapalua Mauka Large-Lot
Subdivision No. 3

(9 pages.)

**MEMORANDUM OF MAHANA ESTATES SUBDIVISION RESIDENTIAL
WORKFORCE HOUSING AGREEMENT**

THIS MEMORANDUM OF MAHANA ESTATES SUBDIVISION RESIDENTIAL WORKFORCE HOUSING AGREEMENT is made on May 22, 2007, by and between **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is P.O. Box 187, Kahului, Maui, Hawaii 96733, hereinafter referred to as "MLP", and **COUNTY OF MAUI**, whose address is 200 S. High Street, Wailuku, Hawaii, 96793, hereinafter referred to as "County".

Pursuant to an unrecorded Mahana Estates Subdivision Residential Workforce Housing Agreement dated December 29, 2006 (the "Agreement"), MLP has entered into an agreement with County regarding the workforce housing requirements for a project known as the Mahana Estates Subdivision, which is located on that certain parcel of land identified as Lot 3-B of the Kapalua Mauka Large Lot Subdivision No. 3, which is a portion of the land that as of the date of this Memorandum bears Tax Map Key No. (2) 4-2-001:042, and which is more particularly described in **Exhibit A**.

Under the Agreement, MLP and County agreed, among other things, that in accordance with Maui County Code ("MCC") §2.96.080, the purpose of the Agreement is to implement the provisions of MCC Chapter 2.96 with respect to the Mahana Estates Subdivision.

NOW THEREFORE, MLP and the County hereby enter into this Memorandum for purposes of giving notice of the terms of the Agreement, which are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed as of the date first written above.

MLP:

MAUI LAND & PINEAPPLE COMPANY, INC.

By Robert M. McNatt

Name: **Robert M. McNatt**


Its: **Executive Vice President / Community Development**

By Ryan L. Churchill

Name: **Ryan L. Churchill**

Its: **Sr. Vice-President Corporate Development**


COUNTY OF MAUI

By 
CHARMAINE TAVARES
Its Mayor

APPROVAL RECOMMENDED:


VANESSA A. MEDEIROS
Director of Housing and Human Concerns

APPROVED AS TO FORM AND LEGALITY:


EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 14th day of May, 2007, before me personally appeared Robert M. McKeef, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhonda M. Pang
Name: Rhonda M. Pang
Notary Public, State of Hawaii
My commission expires: 5/25/17

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

L.S.

On this 14th day of May, 2007, before me personally appeared Ryan L. Churchill, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhonda M. Pang
Name: Rhonda M. Pang
Notary Public, State of Hawaii
My commission expires: 5/25/17

L.S.

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 22nd day of May, 2007, before me personally appeared CHARMAINE TAVARES, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said CHARMAINE TAVARES acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Kelli P. Nahookaka
Name: **Kelli P. Nahookaka**
Notary Public, State of Hawaii

My commission expires: 4/20/10

L.S.

11.	332° 09'	147.95 feet along same to a point;
12.	286° 50'	160.00 feet along same to a point;
13.	246° 40'	198.00 feet along same to a point;
14.	326° 00'	559.72 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
15.	315° 00'	212.40 feet along same to a point;
16.	342° 00'	98.17 feet along same to a point;
17.	59° 30'	228.90 feet along same to a point;
18.	8° 00'	87.96 feet along same to a point;
19.	308° 20'	125.73 feet along same to a point;
20.	240° 00'	48.91 feet along same to a point;
21.	330° 00'	90.84 feet along same to a point;
22.	240° 00'	128.41 feet along same to a point;
23.	342° 00'	70.47 feet along same to a point;
24.	290° 00'	250.66 feet along same to a point;
25.	335° 30'	1,577.46 feet along same to a point;
26.	344° 00'	310.62 feet along same to a point;
27.	324° 00'	182.30 feet along same to a point;

28.	357°	00'	319.88 feet along same to a point;
29.	319°	00'	348.47 feet along same to a point;
30.	342°	00'	223.65 feet along same to a point;
31.	336°	00'	498.25 feet along same to a point;
32.	54°	00'	227.53 feet along same to a point;
33.	125°	29'	442.49 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21) to a point;
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36.	138°	20'	735.61 feet along same to a point;
37.	169°	34'	541.87 feet along same to a point;
38.	165°	36'	613.74 feet along same to a point;
39.	148°	06'	836.18 feet along same to a point;
40.	166°	17'	967.27 feet along same to a point;
41.	138°	24'	342.79 feet along same to a point;
42.	57°	50'	140.01 feet along same to a point;
43.	137°	06'	1,958.49 feet along same to a point;
44.	187°	05' 19"	17.99 feet along the southeasterly side of Honoapiilani Highway (F.A.P. No. RF- 030-1(3)) to a point;
45.	277°	05' 19"	10.00 feet along same to a point;

46. 185° 39' 23" 400.13 feet along same to a point;
47. 175° 46' 38" 101.98 feet along same to a point;
48. 187° 05' 19" 518.19 feet along same to the point of
beginning and containing
an Area of 124.980 Acres.

ATTACHMENT 8

Mahana Estates Subdivision Residential Workforce Housing Agreement
2011 Annual Update Report



Maui Land & Pineapple Company, Inc.

July 7, 2011

Jo-Ann T. Ridao
Director
County of Maui Housing Division
One Main Plaza Bldg.
2200 Main St., Suite 546
Wailuku, HI 96793

Re: Mahana Estates Subdivision Residential Workforce Housing Agreement
2011 Annual Update Report

Dear Ms. Ridao,

Pursuant to the Mahana Estates Subdivision Residential Workforce Housing Agreement dated December 29, 2006, recorded by Memorandum of Mahana Estates Subdivision Residential Workforce Housing Agreement dated May 22, 2007 (Agreement), Article III Verification & Reporting Requirements, attached please find our fourth and final annual written status report regarding the implementation of the agreement.

The subdivision application for Mahana Estates continues to be reviewed by the County of Maui, and no construction has yet taken place. The attached report lists the original 15 housing credits that were accepted by the County pursuant to the Agreement, as well as the 11 housing credits which have been assigned to the Mahana Estates project since our last annual status report. These 26 housing credits satisfy the specific requirements applicable to the Mahana Estates Project per Article II, Section A of the Agreement.

You may contact Yarrow Flower at yflower@mlpmaui.com or 808-665-5459 with questions or to request additional information.

Sincerely,

Ryan Churchill
President & COO

Encl.

Department of Housing and Human Concerns' Annual Status Report: Mahana Estates Subdivision Residential Workforce Housing Agreement

Article III B. Annual Reporting

Reporting Period: May 15, 2010 to May 14, 2011

	# of affordable dwelling units	# market rate units
Proposed	26	51
Completed	26	0
Sold	26	0
Rented	0	0

Wait list	0	0
------------------	---	---

Housing Unit Credits

# Units		Income Group	
15	Per Agreement	Below Moderate	Credits as approved in original agreement
11	Assigned by WK3 LLC	Below Moderate	

For Sale Units

# Units	# Bedrooms	Income Group	Sales Price	Resold
0				

Rental Units

# Units	# Bedrooms	Income Group	Rental Rate	Move in Date
0				

Notice of Exercise and Assignment of Act 141 Workforce Housing Credits
Assignment #4

1	Workforce Housing Credits available	
	Waiehu Kou 2	99
	Waiehu Kou 3	83
	Waiehu Kou 4	86
	Leialii Phase 1A	104
	Total	372
2	Workforce Housing Credits assigned prior to this assignment	<u>56</u>
3	Workforce House Credits to be assigned by this assignment	<u>2</u>
4	Workforce Housing Credits remaining after this assignment and available for future use	<u>314</u>

Submitted by:

WK 3 LLC

By Maui Quest LLC

Its: Member

By Dowling Company, Inc.

Its: Member

By:


Everett R Dowling

Its: President

June 3, 2010

Date

Transferor

Acknowledgement:

By:



Director

Department of Housing and Human Concerns

June 3, 2010 ²³ *Ufa*

Date

Credits Exercised by this assignment are for the following project:

Project Name: Mahana Estates
Project TMK: (2) 4-2-1: 45
Transferee's Name and Address: SMC Mahana LLC
3170 Noela Drive
Honolulu, HI 96815

Notice of Exercise and Assignment of Act 141 Workforce Housing Credits
Assignment #5

1	Workforce Housing Credits available	
	Waiehu Kou 2	99
	Waiehu Kou 3	83
	Waiehu Kou 4	86
	Leialii Phase 1A	104
	Total	372
2	Workforce Housing Credits assigned prior to this assignment	<u>58</u>
3	Workforce House Credits to be assigned by this assignment	<u>3</u>
4	Workforce Housing Credits remaining after this assignment and available for future use	<u>311</u>

Submitted by:

WK 3 LLC

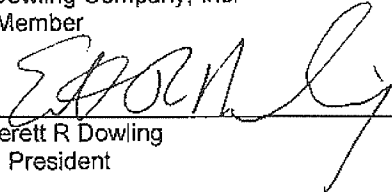
By Maui Quest LLC

Its: Member

By Dowling Company, Inc.

Its: Member

By:

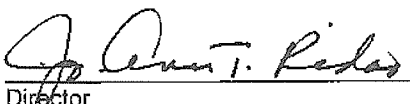

Everett R Dowling
Its: President

July 12, 2010
Date

Transferor

Acknowledgement:

By:


Director
Department of Housing and Human Concerns

July 13, 2010
Date

Credits Exercised by this assignment are for the following project:

Project Name: Mahana Estates
Project TMK: (2) 4-2-1:45
Transferee's Name and Address: SMC Mahana LLC
3170 Noela Drive
Honolulu, HI 96815

Notice of Exercise and Assignment of Act 141 Workforce Housing Credits
Assignment #6

1	Workforce Housing Credits available	
	Waiehu Kou 2	99
	Waiehu Kou 3	83
	Waiehu Kou 4	86
	Leialii Phase 1A	104
	Total	372
2	Workforce Housing Credits assigned prior to this assignment	<u>61</u>
3	Workforce House Credits to be assigned by this assignment	<u>6</u>
4	Workforce Housing Credits remaining after this assignment and available for future use	<u>305</u>

Submitted by:

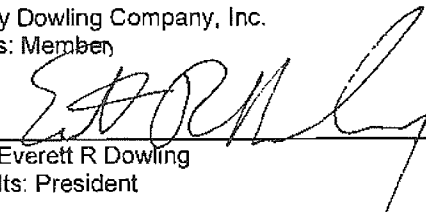
WK 3 LLC

By Maui Quest LLC

Its: Member

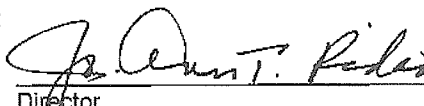
By Dowling Company, Inc.

Its: Member

By:  July 12, 2010
Everett R Dowling Date
Its: President

Transferor

Acknowledgement:

By:  July 13, 2010
Director Date
Department of Housing and Human Concerns

Credits Exercised by this assignment are for the following project:

Project Name: Mahana Estates
Project TMK: (2) 4-2-1:45
Transferee's Name and Address: SMC Mahana LLC
3170 Noela Drive
Honolulu, HI 96815

ATTACHMENT 9

Pulelehua
Residential Workforce Housing Agreement

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup

To: Department of Housing and Human Concerns
County of Maui
2200 Main Street, Suite 546
Wailuku, Hawaii 96793

TITLE OF DOCUMENT:

RESIDENTIAL WORKFORCE HOUSING AGREEMENT
PULELEHUA
MULTI-FAMILY DWELLING UNITS – RENTAL

PARTIES TO DOCUMENT:

DEVELOPER: **MAUI OCEANVIEW, LP, a Delaware Limited Partnership**
16610 Dallas Parkway Suite 1600
Dallas, Texas 75248

COUNTY: COUNTY OF MAUI
200 S. High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEY: (2) 4-3-001-082 and 083

(This document consists of 13 pages.)

RESIDENTIAL WORKFORCE HOUSING AGREEMENT

PULELEHUA

SINGLE-FAMILY FEE SIMPLE HOUSE LOTS; MULTI-FAMILY DWELLING UNITS –
RENTAL

THIS AGREEMENT is made this 7th day of March, 2019, by and between, MAUI OCEANVIEW, LP, a Delaware Limited Partnership, whose address is **16610 Dallas Parkway Suite 1600**, Dallas, Texas 75248 (“Developer”), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“County”).

WHEREAS, Developer intends to construct a development that is subject to County’s Residential Workforce Housing Policy, Chapter 2.96, Maui County Code (“MCC”); and

WHEREAS, Section 2.96.040, MCC, requires that prior to final subdivision approval or issuance of a building permit for a development, the Department of Housing and Human Concerns (“DHHC”) shall require a developer to enter into a Residential Workforce Housing Agreement.

NOW, THEREFORE, Developer and County hereby agree as follows:

1. Project Description. PULELEHUA (“Development”) is to be located at Lahaina, Maui, Hawaii, on that certain parcel of land identified as Tax Map Key No. (2)4-3-001-082 and 083 , area approximately 304 acres, and shall consist of a total of 900 (100 single family fee simple house lots and 800 multi-family rental) dwelling units, as provided in West Maui Project District No. 5 (Pulelehua Project District), Maui County Code Chapter 19.93. Maui County Code section 19.93.050, provides that no more than one thousand two hundred dwellings or dwelling units, including accessory dwellings, may be developed at Pulelehua.

2. Term of Agreement. The term of this agreement shall commence upon execution and shall expire thirty (30) years after the Initial Occupancy of the last residential workforce housing unit, unless sooner terminated as provided herein. Notwithstanding the foregoing, if Developer has not secured building permits for and signed a construction contract for construction of the Residential Workforce Housing Units by June 30, 2020 and County has not granted an extension to such date, this Agreement shall terminate and the Property shall be released from this Agreement and all deed restrictions recorded hereunder or in connection herewith.

3. Definitions:

“Below-moderate income” means those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai.

“Department” means the County of Maui’s Department of Housing and Human Concerns.

“Director” means the Director of the County of Maui’s Department of Housing and Human Concerns. “HUD” means the United States Department of Housing and Urban Development. “Initial Occupancy” means the effective date of the first lease for each residential workforce housing unit.

“Low income” means those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

“Moderate income” means those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai.

“Owner” means the person(s) or entity that owns the development.

"Resident" means a person who meets one of the following criteria:

1. Currently employed in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

“Very low income” means those households whose gross annual family income is more than fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

4. Residential Workforce Housing Requirement For Full Build Out:
 - a. Requirement: 25% of 620 market rate units (100 Single Family fee simple House Lots and 520 multi-family rental dwelling units), plus 125 units to fulfill Kapalua Mauka condition
 - b. Number of units required: 155
 - c. Number of total workforce housing units, including units Kapalua Mauka condition: 280. Developer will apply the total workforce housing units require on the 800 total multi-family rental dwelling units.
 - d. Developer is not required to identify specific units within the Development to be designated as Residential Workforce Housing Units. Developer shall be required to ensure

that in the Development is in compliance with the requirements of the deed restriction. Income Group Distribution:

- i. 93 units shall be for “very low income” and “low income” residents;
- ii. 93 units shall be for “below-moderate income” residents;
- iii. 94 shall be for “moderate income” residents.

5. Timing of Completion. Residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or proportionate final inspections are passed for the residential workforce housing units concurrently or sooner. For example, every 80 units of Certificate of Occupancy issued to market rate rental units must include at least 28 units of workforce housing units with Certificates of Occupancy issued concurrently.

6. Initial Occupancy. Developer shall submit a report to the Director of the County of Maui Department of Housing and Human Concerns (“DHHC”) within 90 days of the date upon which the last affordable unit in the Project is leased, which shall include the number of units that have been constructed and leased, including applicable rents and utility allowances of said units. Moreover, Developer shall provide, upon request, copies of any income certification or recertification or other reports required by the Hawaii Housing Finance & Development Corporation.

7. Annual Recertification. Within sixty (60) calendar days after the close of each calendar year, Developer or its management company shall provide the DHHC with a report including the following: (a) Each tenant rented to during the preceding calendar year along with their move-in date; and (b) The income group of the tenant or family.

8. Graduated income tenants. For those tenants who have graduated to a higher income during the term of the lease but still remain within an appropriate income group, if owner or owner’s representative elects to continue to lease to tenant, the monthly rental rate shall be the rate for the income group which tenant is within. For those tenants who during the term of the lease have graduated to an income level that is in excess of the income groups for rental units, if owner or owner’s representative elects to continue to lease to tenant, the annual rental shall be equivalent to thirty percent of tenant’s gross income. Owner or owner’s representative shall be responsible for paying County, for deposit into the affordable housing fund, the difference between the actual rent paid and the rent for the appropriate income group as required under the deed restriction. Owner or owner’s representative shall make its reasonable best efforts to maintain the proper distribution of rentals across the “very low income” and “low income,” “below moderate income” and “moderate income” groups.

9. Credits. For each residential workforce housing unit constructed and rented to an income qualified individual, where a deed restriction in accordance with the requirements of Chapter 2.96, MCC, is properly recorded with the appropriate entity, on the underlying property, the Developer shall receive one (1) residential workforce housing credit for each residential

workforce housing unit, in excess of the number of units required, that is subject to terms of the deed restriction. The credits shall be subject to the following:

- a. The credits may be used in any community plan area;
- b. The credits may be used to satisfy the requirement for any type of unit required throughout County of Maui; and
- c. The credits may be applied to satisfy the requirement for any income group.

10. Deed Restrictions – Rental Units. Developer shall record on the property a deed restriction which sets forth the following:

a. The 280 rental residential workforce housing units in the Development shall be subject to the requirements of Chapter 2.96, MCC, for thirty (30) years commencing upon the date of Initial Occupancy.

b. For the term of this Agreement, the owner of the Development must notify the department upon a decision to sell the rental development and the County shall have the first option to purchase the rental development from the owner; said option shall be available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.

c. In the event of a sale to a new owner, any new owner must comply with the deed restrictions. Prior to the closing of the sale, Owner shall provide documentation to the Department that the prospective new owner acknowledges and is aware of the terms, conditions, and restrictions encumbering the Development.

d. Within 90 days of the expiration of this Agreement, the owner shall offer the County the right to purchase the property at market value as determined by the owner.

e. Owner or owner's representative shall submit to DHHC proof of compliance with income guidelines for rentals quarterly.

11. Binding Effect; Assignment to Developer's Affiliate. Subject to the limitations on transferability contained herein, each and all of the covenants, terms, and provisions contained herein shall be binding upon Developer and its successors and assigns. Developer may, without prior consent or approval of the County, assign the benefits, obligations, covenants, representations, and burdens contained in this Agreement to a wholly-owned subsidiary or affiliate of Developer (an affiliate shall be an entity in which Developer or its parent owns or control more than fifty percent (50%) of the voting rights), which subsidiary or affiliate shall assume and thereafter be responsible to perform each and every covenant, obligation, representation, and burden to be observed and performed by Developer as set forth in this Agreement. Developer shall notify the County, in writing, of its intent thirty (30) days prior to the event of any assignment of benefits, obligations, covenants, representations and burdens contained in the Agreement. Such notification shall include a description of the assignment and the name, mailing address and telephone number of the individual or organization to whom it will be assigned.

12. Residential Workforce Housing Restrictions – Rental Units. The Owner shall use reasonable best efforts to comply with the deed restriction period set forth above to ensure that during any given month, for the number of units designated as Residential Workforce Housing Units in the recorded deed restriction:

a. Any rental unit vacancy must be filled by an applicant in the appropriate income group to better maintain an equal distribution of rentals across the "very low income," "low income," "below-moderate income," and "moderate income".

b. The income qualified individual shall reside in the residential workforce housing unit.

Owner acknowledges that failure to comply with income guidelines may result in owner paying to County, for deposit into the Affordable Housing Fund, the difference between the actual rent paid or the rent for the income group which the non-qualified renter falls into, whichever is greater, and the rent for the income group required under the deed restriction.

13. Rental Rates. The monthly rental rates for the Residential Workforce Housing Units shall be set by the department based on HUD income limits on an annual basis.

14. Marketing. Developer shall be required to use its reasonable best efforts to effectively market the Residential Workforce Housing Units. Developer shall create a marketing plan, DHHC shall approve said marketing plan prior to the issuance of any building permits for the Development. Developer shall publish in at least five (5) issues of a newspaper of general circulation within the County of Maui, a public notice that shall contain all information that is relevant to the Residential Workforce Housing Units in the Development along with information regarding the establishment of the Wait List described in Section 15 below.

15. Wait List:

a. The Developer shall establish a wait list of interested applicants for the Development.

b. Prior to initiating the wait list, the Developer shall initiate the wait list process by publishing in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list;

c. Selection for rental units shall be made by a lottery administered by the Developer and overseen by the Department, subject to the applicant meeting the eligibility criteria established in Section 20; and

d. The Developer shall maintain the wait list for the Development after all of the units are rented, which shall be used to fill any vacancy.

e. Any rental unit vacancy shall be filled by an applicant in the same income group as the original tenant to maintain an equal distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

16. Eligibility: Subject to any restrictions under HUD Housing regulations, in order to be eligible for a Residential Workforce Housing Unit, an applicant must at the time of application and upon initially occupancy of the unit meet the following criteria:

a. Be a citizen of the United States or a permanent resident alien who is a resident of the County of Maui;

b. Be eighteen (18) years of age or older;

c. Have a gross annual family income (not to include the income of minors) which does not exceed one hundred twenty percent (120%) of the County's area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai;

d. Have assets that do not exceed one hundred twenty percent (120%) of the County's area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property; and

e. For a period of three (3) years before the submittal of the Rental Application, have not had an interest of fifty percent (50%) or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposed, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size.

17. Notification of Change: It shall be the applicant's responsibility to notify Developer in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify Developer of such changes and Developer is unable to contact applicant, applicant's name shall be removed from the Wait List.

18. Rental Application: Prior to the selection lottery, described in Section 19 below, all interested applicants shall be required to submit a completed Rental Application to the Developer, on the form provided by the Developer.

19. Pre-Selection Verification: Initial determination for compliance with the maximum gross annual family income provision shall be made by Developer prior to the lottery for the Residential Workforce Housing Units, on the basis of the information provided in the Rental Application.

20. Initial Selection:

a. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may rent a residential workforce housing unit once the wait list has been exhausted of all residents.

b. The Developer may do a mass mailing of housing applications to applicants on the wait list.

c. The residential workforce housing units shall be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will then be offered residential workforce housing units in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify.

d. The Developer shall submit copies of the following information to the department to verify the rental of residential workforce housing units to eligible renters:

i. Applicant's completed final Rental Application;

ii. Executed Rental Lease; and

iii. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the Developer.

21. Vacancy. Residents on the wait list shall receive first priority for available units. Nonresidents on the wait list may rent a residential workforce housing unit once the wait list has been exhausted of all residents. Any rental unit vacancy unit shall be filled by an applicant in the same income group as the original tenant to maintain an equal distribution of rentals across

the “very low income” and “low income,” “below-moderate income,” and “moderate income” groups.

22. Post-Selection Verification: The Developer shall submit copies of the following information to the Department to verify the rental of residential workforce housing units to eligible renters:

- a. Applicant’s completed final Rental Application;
- b. Executed rental lease; and
- c. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the Developer.

23. Indemnification. Developer shall indemnify, defend, and hold harmless County and its officers, employees, and agents from and against any and all claims, including bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this Agreement.

24. Third Party Beneficiary. This Agreement is made exclusively for the benefit of Developer and the County, and no other persons or entities shall acquire any rights, powers, privileges, remedies, or claims thereby; provided however, that insofar as this Agreement is incorporated into or referenced by a separate but related agreement between Developer and the County but only to the extent provided in such separate and related agreement.

25. Consents, Waivers, Approvals. Whenever under this Agreement the consent, waiver or approval of any party is required or permitted, such consent, waiver or approval shall be evidenced by a writing signed by such party and shall not be unreasonably withheld or delayed. Except where otherwise provided, consent from the County shall mean the consent or approval of the Mayor and the DHHC and any others required by law. No consent or waiver, express or implied, by Developer or the County to or of any breach or default by the other party in the performance of the obligations hereunder shall be construed to be a consent or waiver to or of any other or further breach or default. Failure on the part of Developer or the County to complain of any act or omission by the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver by such party of any of its rights hereunder.

26. Amendments: This Agreement, or any provision thereof, may not be modified, altered or changed except by written instrument executed by Developer and County.

27. Notices: All notices, demands, requests, consents, approval, or other communications ("notices") required or permitted to be given under this Agreement or which are given with respect to this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to County, then to:
Mayor
County of Maui

200 South High Street
Wailuku, Hawaii 96793

cc:
Director of Housing and Human Concerns
County of Maui
200 South High Street
Wailuku, Hawaii 96793

If to Developer, then to:
Maui Oceanview LP
ATTN: Paul Cheng
16610 Dallas Parkway Suite 1600
Dallas, Texas 75248

Notices given as provided in this Section shall be deemed given on delivery or upon receipt if by personal delivery.

28. Severability: If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

29. Recordation: As required by MCC §2.96.080(B), MCC, this Agreement shall be recorded in the Bureau of Conveyances or the Land Court of the State of Hawai'i, as the case may be, so that the terms and conditions of this Agreement run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the property. By executing this Agreement, Developer agrees to record (and hereby authorizes the County to record in the event of failure by Developer to do so) this Agreement with the State of Hawaii Bureau of Conveyances, as an encumbrance on the Project Site. Once the Developer has satisfied the Residential Workforce Housing requirements specified in this Agreement, or the Agreement is terminated, the County shall, upon the request of the Developer, promptly execute a release of this Agreement, which release Developer may thereafter record.

30. Captions. Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference and do not define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.

31. Effective Date: The effective date of this Agreement shall be the date on which the last party signs this Agreement. This Agreement is made as of the day and year first above written.

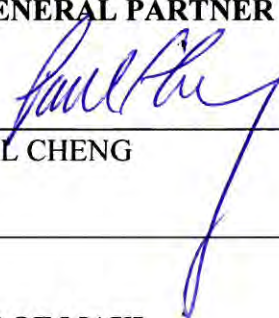
32. Governing Law: This Agreement and the rights and obligations of Developer and County shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law.

33. Term: This Agreement shall remain in full force and effect for the life of the Residential Workforce Housing Units.

IN WITNESS WHEREOF, Maui Oceanview, LP, and the County of Maui have executed this Agreement the day and year first above written.

**MAUI OCEANVIEW LP,
A Delaware Limited Partnership**

**By: MAUI OCEANVIEW GP INC.,
A Delaware Corporation,
Its GENERAL PARTNER**

By  _____
PAUL CHENG

Its _____

COUNTY OF MAUI

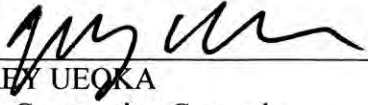
By  _____
MICHAEL VICTORINO
Its Mayor

RECOMMENDED APPROVAL:


WILLIAM SPENCE

Interim Director of Housing and Human Concerns

APPROVED AS TO FORM
AND LEGALITY:

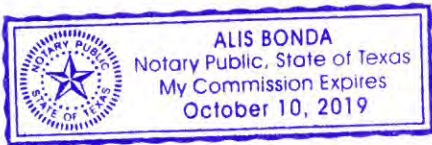


JEFFREY UEOKA
Deputy Corporation Counsel

STATE OF TEXAS)
) SS:
COUNTY OF DALLAS)

On this 27th day of FEBRUARY, 2019, before me appeared PAUL CHENG, to me personally known, who, being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Alis Bonda

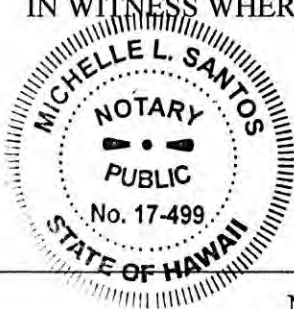
Notary Public, State of Texas
My commission expires: 10/10/19

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	<u>FEBRUARY 27, 2019</u> # Pages: <u>13</u>
Notary Name:	<u>ALIS BONDA</u> Judicial Circuit: _____
Doc. Description: <u>RESIDENTIAL WORKFORCE</u> <u>HOUSING AGREEMENT - PULELEHUA</u> <u>MULTI-FAMILY DWELLING</u> <u>UNITS-RENTAL</u>	
Notary Signature:	<u>Alis Bonda</u>
Date:	<u>02/27/19</u>

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this 7th day of March, 2019, before me appeared **MICHAEL VICTORINO**, to me personally known, who being by me duly sworn did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-6.2 and Section 9-18.1 of the Charter of the County of Maui; and the said **MICHAEL VICTORINO** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Michelle L. Santos
Notary Public, State of Hawaii
My commission expires: 12-31-21
MICHELLE L. SANTOS

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>3-7-19</u>	# Pages: <u>13</u>
Notary Name: <u>MICHELLE L. SANTOS</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>Residential</u> <u>Workforce Housing Agreement</u>	
Notary Signature: <u>Michelle L. Santos</u>	A circular notary seal for Michelle L. Santos, Notary Public, State of Hawaii, No. 17-499. The seal features a central emblem with a scale of justice and a book, surrounded by the text "MICHELLE L. SANTOS", "NOTARY PUBLIC", and "STATE OF HAWAII".
Date: <u>3-7-19</u>	

ATTACHMENT 10

State Commission on Water Resource Management Letter

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED

OCT 03 2006

PETER T. YOUNG
CHAIRPERSON

MEREDITH J. CHING
JAMES A. FRAZIER
NEAL S. FUJIWARA
CHIYOME L. FUKINO, M.D.
LAWRENCE H. MIKE, M.D., J.D.
STEPHANIE A. WHALEN

DEAN A. NAKANO
ACTING DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

October 2, 2006

Mr. Jeffrey Pearson, P.E.
Water Manager
Maui Land & Pineapple Company, Inc.
P.O. Box 187
Kahului, HI 96733-6687

Dear Mr. Pearson:

The staff of the Commission on Water Resource Management has reviewed the following petitions submitted by Maui Land & Pineapple Co., Inc.:

- 1) PETITION FOR ESTABLISHMENT OF INSTREAM FLOW STANDARD OR, IN THE ALTERNATIVE, FOR AMENDMENT OF INTERIM INSTREAM FLOW STANDARD, FOR HONOKOHAU STREAM, WEST MAUI, HAWAII,

and
- 2) PETITION FOR ESTABLISHMENT OF INSTREAM FLOW STANDARD OR, IN THE ALTERNATIVE, FOR CONFIRMATION OF INTERIM INSTREAM FLOW STANDARD, FOR HONOLUA STREAM, WEST MAUI, HAWAII.

We accept the petitions as complete. We will work with you and your consultant to gather the information we requested in our September 15, 2006 letter, as we concurrently conduct our data inventory and seek comments from other agencies and interested persons.

Please call me at 587-0214 or Ed Sakoda at 587-0234, or toll free from Maui at 984-2400 + 70214 (Dean) or 70234 (Ed), if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean A. Nakano".

DEAN A. NAKANO
Acting Deputy Director