

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

January 26, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 1/29/21
Mayor Date

For Transmittal to:

Honorable Tamara Paltin, Chair
Planning and Sustainable Land Use Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Paltin:

**SUBJECT: ANNUAL COMPLIANCE REPORT ON THE CHANGE IN
ZONING FOR KAPALUA MAUKA (ORDINANCE 3358)
(PSLU-54(5)) (CIZ 2002/0010)**

The Department of Planning (Department) is in receipt of your letter regarding whether the December 2, 2020, response by Maui Land & Pineapple (MLP) regarding compliance with the conditions of Ordinance 3358 (2006) for Kapalua Mauka are consistent with the Department's records. The Department extends a thank you to the Chair for additional time to complete a review of documents. **Exhibit 1** is the December 2, 2020, compliance report from MLP along with 10 attachments pertinent to specific conditions. The Department believes that the responses given by MLP for each of the conditions and the supporting documents are consistent with Department records and documents. Questions were brought up during the December 3, 2020, Planning and Sustainable Land Use Committee meeting regarding compliance with Condition 11 regarding affordable housing provisions within the context of the execution of the Mahana Estates Subdivision Residential Workforce Housing Agreement signed December 15, 2006, and shown as Attachment 6 of **Exhibit 1**. Discussion of this matter is ongoing.

For reference in regard to Condition 11, the Mahana Estates Subdivision Workforce Housing Agreement Background Section Paragraph 6 states:

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Planning and Sustainable Land Use Committee
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"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 [Mahana Estates], and thus by the express terms of Condition 11 [Ordinance 3358] Chapter 2.96 supersedes Condition 11 and applies to the Project [Mahana Estates]." (Emphasis in type added) This Workforce Housing Agreement was recommended for approval by the Director of Housing and Human Concerns, approved as to form and legality by the Deputy Corporation Counsel, and executed by the Mayor and MLP.

The question under review is whether the entirety of Condition 11 is superseded for the Mahana Estates subdivision. There does not appear to be a question whether or not Condition 11 still applies to the remainder of Kapalua Mauka and that annual compliance reports must be filed commenting on compliance status with Condition 11h of Ordinance 3358. However, the Mahana Estates subdivision representatives state that they have satisfied the requirements for affordable housing by providing a total of 26 affordable housing credits as outlined in their Workforce Housing Agreement previously referenced as Attachment 6 of **Exhibit 1**. Furthermore, since the remainder of Kapalua Mauka has not commenced construction with any dwellings, no other affordable housing triggers have been activated.

In answer to your question regarding additional discretionary permits needed for the unsubdivided larger portion of Kapalua Mauka, the Department states that a Project District Phase II review by the Maui Planning Commission would be required. The specific requirements for a Phase II are noted in Section 19.45.050 MCC and require review of proposals for drainage, streets, parking utilities, grading, landscaping, architectural design, building elevations, construction phasing, open spaces, land uses, signage, recreational and community facilities, lot coverage, net buildable areas, open space ratios, impervious ratios, density factors, and potential environmental, socioeconomic, and aesthetic impacts.

In answering the request for documents regarding this matter and in providing additional evidence of project compliance, the Department attaches the following:

- 2020 Annual Report for Land Use Commission Docket No. A03-741 for Maui Land & Pineapple covering the 27 conditions of approval for boundary redistricting from the Agricultural District to the Urban and Rural districts. **Exhibit 2**

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- 2020 Annual Report for Land Use Commission Docket No. A03-741 Mahana Estates 51 Lot Portion of Kapalua Mauka covering 27 conditions of approval for boundary redistricting. **Exhibit 3**
- 2020 Annual Report for Land Use Commission Docket No. A04-741 Petition of Maui Oceanview LP covering 36 conditions of approval for boundary redistricting from the Agricultural District to the Urban District for the Pulelehua Project. **Exhibit 4**

Thank you for your attention to this matter. Should you have any questions, please feel free to transmit them to the Department via transmittal through the Office of the Mayor.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

Attachment – Exhibits 1 - 4

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Lori Tsuhako, Director of Housing and Human Concerns (PDF)
Linda Munsell, Deputy Director of Housing and Human Concerns (PDF)
Buddy Almeida, Housing Administrator (PDF)
Ana Lillis, Council Services (PDF)
Clarita Balala, Council Services (PDF)
Tom Schnell, PBR Hawaii (PDF)
Project File

MCM:KFW:lp

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EXHIBIT 1



Maui Land & Pineapple Company, Inc.

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 3358 (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.*

Council Member Tamara Paltin

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

December 2, 2020

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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 Honoapi'ilani 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 Honoapi'ilani 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

Council Member Tamara Paltin

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

December 2, 2020

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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

Council Member Tamara Paltin

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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 Tshako, Director, Department of Housing and Human Concerns

ATTACHMENT 1

Mahana Estates
Best Management Practices Plan

Best Management Practices Plan

Mahana Estates Subdivision

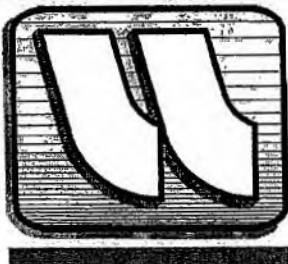
Honolua, Lahaina, Maui, Hawaii
TMK: (2) 4-2-01: portion of 42

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



A handwritten signature in cursive script that reads "Reed M. Ariyoshi".

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:

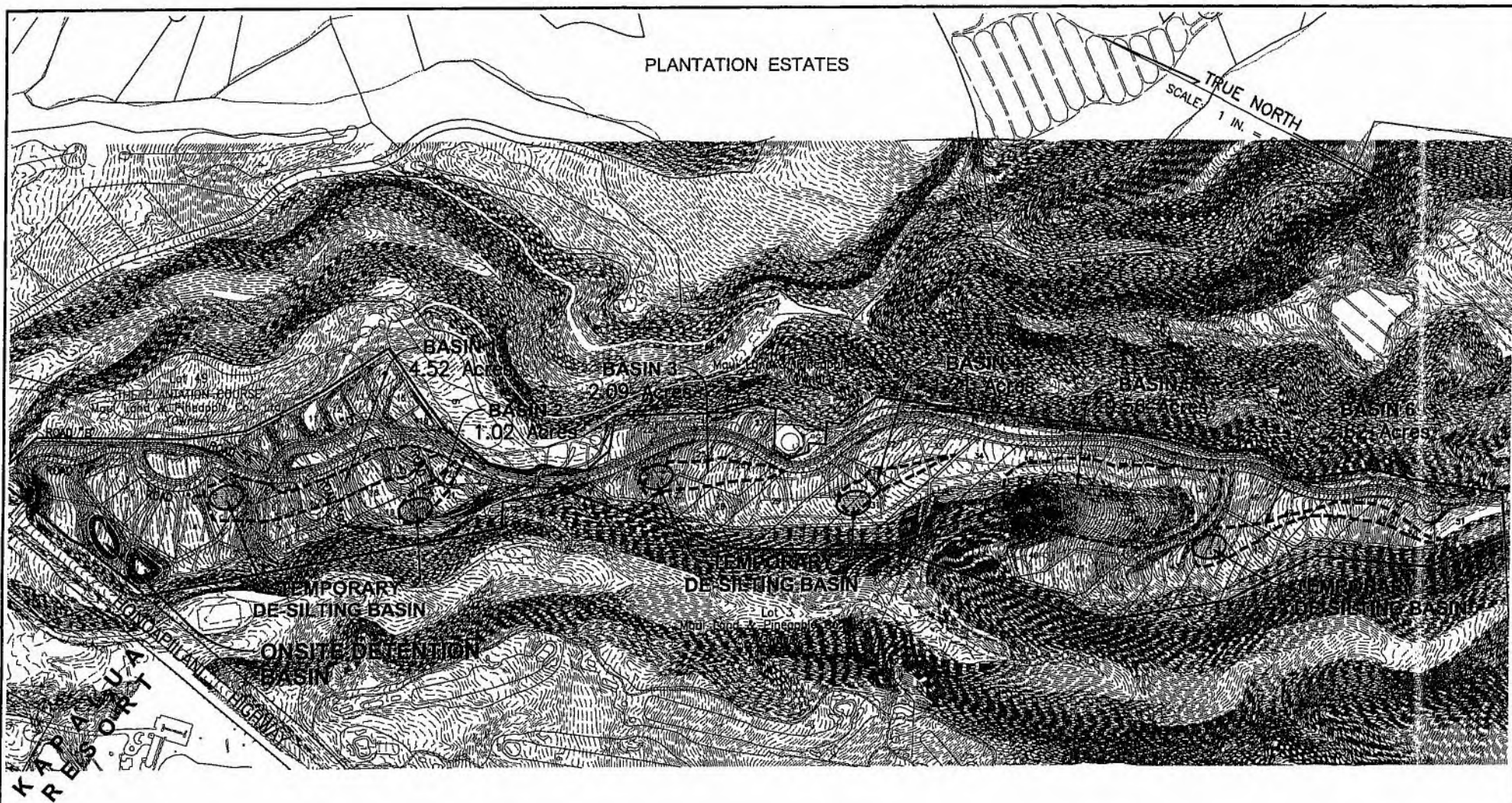
Depth	Contour Area	Storage Volume			
0	14500.00 sf				
2	11548.51 sf	26048.51	cf	0.60	acre-ft
4	10009.30 sf	47606.32	cf	1.09	acre-ft
		Total = 57615.62	cf	1.32	acre-ft

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)*

V:\Projdata\05proj\0505\dwg2004\exhibits\EXH-TEMP-BASIN.dwg



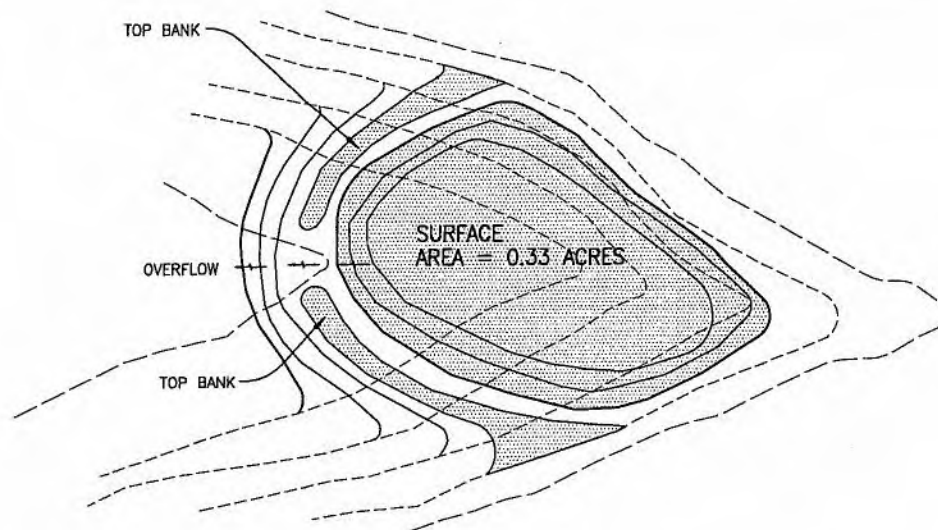
**TEMPORARY DE-SILTING BASIN
CONTRIBUTORY DRAINAGE AREA MAP**

0 500 1000 1500 2000

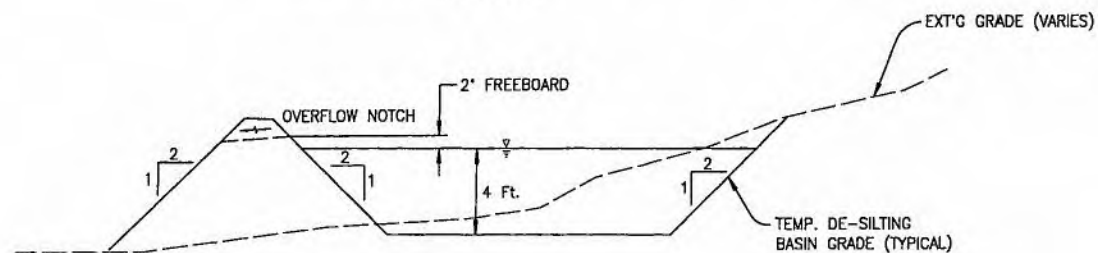
SCALE: 1 IN. = 500 FT.



September 27, 2006



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



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

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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 COORDINATOR
LAND
STATE PARKS

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,

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
OCT 10 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

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HISTORIC PRESERVATION
KAOHOLAWE ISLAND RESERVE COORDINATION
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 KAMOELEA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

1980 1980/000 1 372
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN HAKANO
ACTING DEPUTY DIRECTOR - WATER

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LAND
STATE PARKS

June 27, 2006

Hallett 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 Hammatt

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.

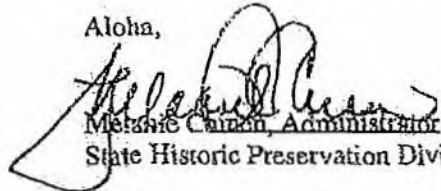
Long term preservation measures include a permanent preservation buffer. It was determined that the gulch itself provides an acceptable buffer as long as the construction fencing remains in place during construction. Prior to development of any access and interpretive trails within the gulch (plans for 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 Kirkengall of the State Historic Preservation Division, Maui Section, at (808) 243-5159.

Aloha,


Melanie Cannon, Administrator
State Historic Preservation Division

MK:kf

c: Bert Ratte, 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 96707

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
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PATROL

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

Honokahua

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
KAKUHIKIEWA BUILDING, ROOM 565
801 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

12
DILBERT B. GOLDMAN-ABRAHAM, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

DEPUTIES
ERIC L. HERAND
LATHIEL NISHIOKA

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

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

DEPUTIES
JANET E. KAWALO
LINNEL NISHIOKA

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
Kakuhikawa Building, Room 555
501 Kamokila Boulevard
Kapolei, Hawaii 98707

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 Kalanikoi 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", written over the word "Aloha".

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

MICHAEL D. WILSON, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

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GILBERT COLOMA-AGARAS

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RESOURCES ENFORCEMENT
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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: 9802BD10

Dear Dr. Hammatt:

SUBJECT: Chapter 6E-42 Historic Preservation Review of an Inventory Survey of
~~Project District 2 at Kapalua~~
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 Kapalua* 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 Hammatt
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:jcn

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 ^{July}~~June~~, 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.

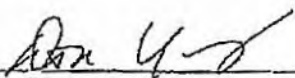
- a. The Cash Contribution shall be paid out of Escrow and made payable to the "State of Hawai'i, Department of Education" in accordance with the following schedule:

- 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.

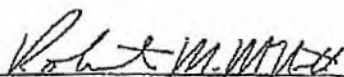
4. This Agreement shall be binding upon KAPALUA LAND COMPANY, LTD, or its successor in interest.

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

KAPALUA LAND COMPANY, LTD

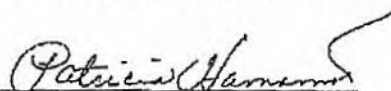
By 
Don Young
Its President & CEO

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, 2003, 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. Karamoto Diane C. Karamoto
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
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



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

December 7, 2006

RODNEY K. HARAGA
DIRECTOR

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

IN REPLY REFER TO:
HWY-M 2.437-06

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 ☒ Pickup ☐ To:
Mail

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

TL MAUWA 372880D

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.

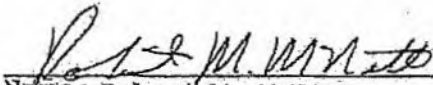
8. That the term "Owner" wherever used herein, and any pronoun used in place thereof, shall mean and include the singular and the plural, and the use of any general term shall mean and include all genders.

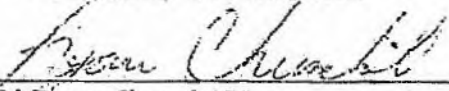
9. That the parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original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

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

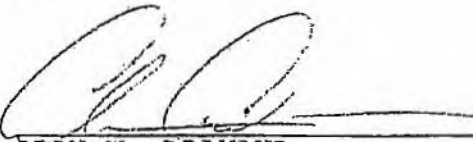
OWNER:

MAUI LAND & PINEAPPLE COMPANY, INC.

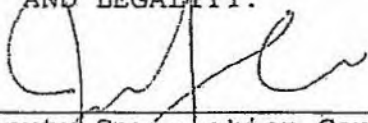
By 
Name: Robert M. McNatt
Its President
Community Development

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. McHaff, 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

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

L.S.

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. Nahooikaka

Name: Kelii P. Nahooikaka
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:
 $312^{\circ} 27' 18''$, and the
point of tangency azimuth
from the radial point
being:
 $309^{\circ} 12' 43''$, having a
radius of 2,770.09 feet,
the chord azimuth and
distance being:
 $220^{\circ} 50' 0.5''$ 156.77 feet
to a point;

21. $129^{\circ} 12' 43''$ 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:
 $309^{\circ} 12' 43''$, and the
point of tangency azimuth
from the radial point
being:
 $291^{\circ} 54' 57''$, having a
radius of 2,740.09 feet,
the chord azimuth and
distance being:
 $210^{\circ} 33' 50''$ 824.03 feet
to a point;

23. $217^{\circ} 43' 38''$ 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:
 $290^{\circ} 30' 38''$, and the
point of tangency azimuth
from the radial point
being:
 $277^{\circ} 05' 19''$, having a
radius of 2,760.09 feet,
the chord azimuth and
distance being:
 $193^{\circ} 47' 58.5''$ 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.

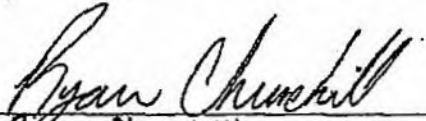
L. Effective Date.

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.

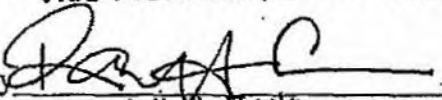
MLP:

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

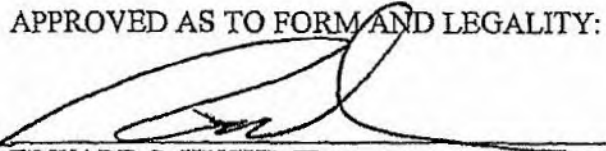
APPROVAL RECOMMENDED:



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 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.


Name: Sheila Nakagawa LS.
Notary Public, State of Hawaii

My commission expires: 10/3/07

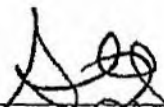
STATE OF HAWAII

)
) SS.
)

COUNTY OF MAUI

On this 15th day of December, 2006, before me personally appeared Bondall 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 LS.
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

15



R-534 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAY 31, 2007 06:01 AM
Doc No(s) 2007-087329



By 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

Tot 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 Kapelua 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

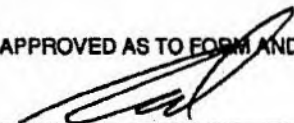
COUNTY OF MAUI

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. McKeeth, 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

STATE OF HAWAII

)
) SS.
)

L.S.

COUNTY OF MAUI

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: 5/25/07

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.

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

My commission expires: 4/20/10

L.S.

EXHIBIT A

Lot 3-B, Kapalua Mauka Large-Lot Subdivision No. 3

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, Apana 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 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	56
3	Workforce House Credits to be assigned by this assignment	2
4	Workforce Housing Credits remaining after this assignment and available for future use	314

Submitted by:

WK 3 LLC

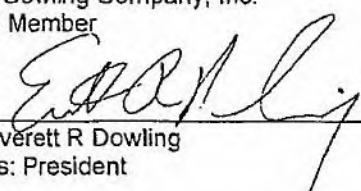
By Maui Quest LLC

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

23 jfu
June 3, 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 #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:

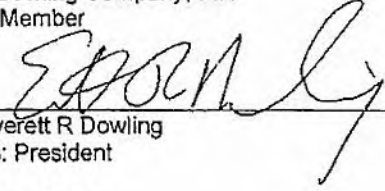
WK 3 LLC

By Maui Quest LLC

Its: Member

By Dowling Company, Inc.

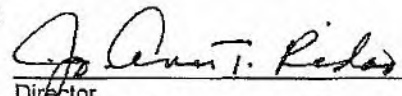
Its: Member

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	61
3	Workforce House Credits to be assigned by this assignment	6
4	Workforce Housing Credits remaining after this assignment and available for future use	305

Submitted by:

WK 3 LLC


By Maui Quest LLC

Its: Member

By Dowling Company, Inc.

Its: Member

By:

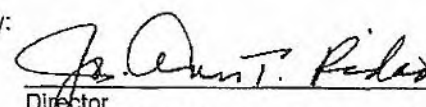

Everett R Dowling
Its: President

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

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 10th 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 Hāna, Lanāi, 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.

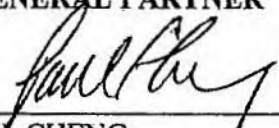
32. Governing Law: This Agreement and the rights and obligations of Developer and County shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law.

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

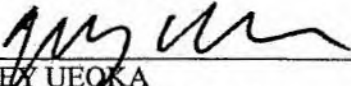
By  _____
MICHAEL VICTORINO
Its Mayor

RECOMMENDED APPROVAL:


WILLIAM SPENCE

Interim Director of Housing and Human Concerns

APPROVED AS TO FORM
AND LEGALITY:

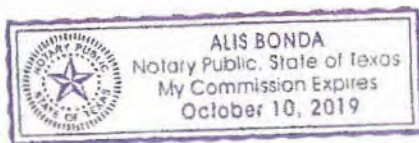


JEFFREY UEOKA
Deputy Corporation Counsel

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: FEBRUARY 27, 2019 # Pages: 13

Notary Name: ALIS BONDA Judicial Circuit: _____

Doc. Description: RESIDENTIAL WORKFORCE
HOUSING AGREEMENT - PULELEHUA
MULTI-FAMILY DWELLING
UNITS-RENTAL

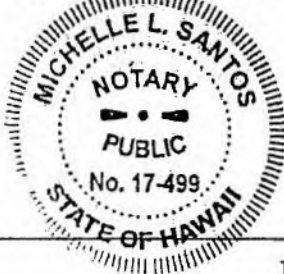
Notary Signature: Alis Bonda

Date: 02/27/19

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

MICHELLE L. SANTOS

NOTARY PUBLIC CERTIFICATION

Doc. Date: 3-7-19 # Pages: 13

Notary Name: MICHELLE L. SANTOS Judicial Circuit: 2nd

Doc. Description: Residential
Workforce Housing Agreement

Notary Signature: Michelle L. Santos

Date: 3-7-19



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

EXHIBIT 2

JUL 2 - 2020

RECEIVED



Maui Land & Pineapple Company, Inc.

June 29, 2020

Mr. Daniel Orodener, Executive Director
State Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Ms. Mary Alice Evans, Director
Office of Planning
Department of Business, Economic Development & Tourism
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

Ms. Michele Chouteau McLean, Director
Department of Planning
County of Maui
2200 Main St., Suite 315
Wailuku, Hawaii 96793

Re: Annual Report for LUC Docket No. A03-741
Petition of Maui Land & Pineapple Company, Inc.
Honokahua and Napili, Maui, Hawaii

Dear Mr. Orodener, Ms. Evans, and Ms. McLean,

Pursuant to Condition No. 24 in the Decision and Order for the referenced docket, Maui Land & Pineapple Company, Inc. ("MLP") is pleased to provide this 15th annual report regarding the current status of compliance with the conditions of approval.

General Project Progress:

The Land Use Commission of the State of Hawaii ("LUC") approved MLP's petition to reclassify approximately 790 acres of land at Honokahua and Napili, Maui, Hawaii from Agricultural District to Urban and Rural Districts for the Kapalua Mauka project, by order dated June 29, 2004. The Decision and Order sets forth 27 conditions of approval regarding the reclassification.

MLP submitted an application for Project District 2 (Kapalua Mauka) Phase II for the first construction phase of the project, which includes a 51-lot rural subdivision, an 18-hole golf course and offsite infrastructure. The Phase II application was approved by the Maui Planning Commission on November 15, 2006. An extension of the Phase II approval was granted by the Maui Planning Commission on August 26, 2009. Project District Phase III approvals for subdivision applications were received for the Kapalua Mauka Large Lot Subdivision No. 3 (File No. 4.912) on March 13, 2007, and for the Kapalua Mauka Large Lot Subdivision No. 4 (File No. 4.932) on May 18, 2011.

As previously reported, MLP sold a 124.98-acre parcel, known as “Mahana Estates,” to SMC Mahana LLC. MLP gave notice of the sale of the parcel to the Land Use Commission on August 21, 2009, as required under Condition 23 below. The sale of the parcel to SMC Mahana LLC was finalized on September 23, 2009. SMC Mahana submits an annual report for Mahana Estates under separate cover. This report covers property owned by MLP.

Conditions and Compliance:

1. *Affordable Housing. Petitioner shall provide affordable housing opportunities for low, low-moderate and gap-group-income residents of the State of Hawaii to the satisfaction of the County of Maui, acting in accordance with its approved affordable housing policy. The location and distribution of the affordable housing and other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and the County of Maui. Notwithstanding any affordable housing provision that may be agreed to by Petitioner and the County of Maui, Petitioner, at a minimum, shall develop no less than 125 affordable units as a part of its proposed Pulelehua project at Mahinahina.*

Compliance: On June 23, 2006, the LUC approved MLP's petition filed with the LUC in Docket No. 04-751 to reclassify approximately 310 acres of land (current Tax Map Keys (TMK) (2) 4-3-001-082 & 083; previous TMK (2) 4-3-001: 031 portion) at Mahinahina and Kahana, Lahaina, Maui, Hawaii from the Agricultural District to the Urban District for the Pulelehua affordable housing project. The decision and order filed in that docket contained a condition requiring MLP to develop no less than 125 affordable rental units in Pulelehua to satisfy this condition.

MLP filed a Community Plan Amendment, Change in Zoning from Agricultural to Project District and Project District Phase I applications to County of Maui for land use approvals for Pulelehua. The County approved the land use approvals for Pulelehua on November 18, 2011.

On June 3, 2016, MLP sold and transferred its ownership interests in Pulelehua to Maui Oceanview LP. As required under LUC Docket No. A04-751 Condition 28, MLP gave the LUC notice of the: 1) intent to Pulelehua on May 20, 2016; and 2) sale of Pulelehua on April 18, 2017.

As part of the sale, MLP and Maui Oceanview LP entered into an agreement whereby Maui Oceanview LP shall be responsible for satisfying the condition to provide 125 affordable housing units as part of the Pulelehua project. Under this agreement, Maui Oceanview LP shall designate the first 125 affordable housing rental units it builds in Pulelehua in satisfaction of this condition. Further, Maui Oceanview LP shall satisfy this condition as soon as reasonably practical, but not later than 10 years from June 3, 2016.

Mahana Estates Subdivision Residential Workforce Housing Agreement, dated December 14, 2006, was executed by MLP and the County of Maui and recorded by memorandum, dated May 31, 2007. Additional housing credits for Mahana Estates are summarized in the SMC Mahana annual report

2. *Public School Facilities. Petitioner shall contribute to the development, funding, and/or construction of public school facilities, on a fair-share basis, pursuant to an Education Contribution Agreement for Kapalua Maui, dated July 10, 2003, between Kapalua Land Company, Ltd. and the State of Hawaii Department of Education.*

Compliance: MLP will contribute pursuant to the Education Contribution Agreement, dated July 10, 2003, between Kapalua Land Company, Ltd. and the State of Hawaii Department of Education. No action has been taken to date.

3. **Wastewater Treatment and Disposal Facilities.** *Petitioner has paid the County of Maui the Petitioner's agreed-upon share to fund the construction of wastewater treatment and disposal facilities to serve the Property. Petitioner shall receive wastewater treatment service for wastewater from the Property pursuant to the Lahaina Wastewater Reclamation Facility ("LWWRF") Expansion Agreement dated January 20, 1994, among the County of Maui, Petitioner and Kapalua Wastewater Treatment Company. Petitioner shall construct, operate and maintain wastewater transmission facilities to transport wastewater from the Property to appropriate County wastewater transmission facilities.*

Compliance: MLP deducted 17,850 gallons pursuant to the LWWRF Expansion Agreement, pursuant to the letter dated October 4, 2006 to satisfy Mahana Estates.

4. **Transportation Improvements.** *Petitioner shall implement traffic mitigation measures for project generated traffic, at no cost to the State of Hawaii. All roadway improvements shall be designed to Department of Transportation standards, and shall include, but not be limited to, right-turn deceleration lanes, left-turn deceleration and storage lanes, signage, pavement markings, and streetlights. Petitioner shall also provide signalization at the Honoapi'ilani Highway Office Road intersection when warranted.*

Compliance: When warranted, MLP shall implement traffic mitigation measures for project-generated traffic at no cost to the State of Hawaii. All roadway improvements shall be designed to DOT standards.

5. **Traffic Impact Fee.** *Petitioner shall in the order specified below: (a) pay an impact fee pursuant to Chapter 14.62, Maui County Code, Impact Fees for Traffic and Roadway Improvements in West Maui, Hawai'i; however, if there is a written agreement between the County of Maui and the State of Hawai'i specified by section 14.62.080, the County shall share the funds collected from the Petitioner with the State in accordance with this written agreement; or (b) make a voluntary contribution to the County of Maui upon issuance of building permit for the first dwelling or final subdivision approval, whichever comes first; or (c) pay the impact fee to the State pursuant to the enactment of State legislation authorizing such payment.*

The impact fee is established as a function of an agreement reached amongst the Petitioner, the County of Maui and the State Office of Planning and will be applied towards the funding, design, and construction of local and regional transportation improvements and programs necessitated by the proposed development of the Property, but in any event will not exceed \$3,500 per unit or lot developed on the Property.

- a. **Traffic Impact.** *Requests for new or any changes to existing highway accesses (including use, location and size), shall be submitted in writing to and approved by the Highways Division Right of Way Branch. Administrative costs and consideration for any enhance value of vehicular access rights to the State highway shall be paid as required by the Highways Division Right of Way Branch.*

Compliance: MLP has entered into written agreement with the County of Maui to provide a voluntary contribution to the County of Maui for traffic and roadway improvements. The agreement was recorded on October 31, 2006 (Document No. 2006-198468).

A Use and Occupancy Agreement was finalized with the State Department of Transportation on March 3, 2008 to provide a utility crossing on Honoapi'ilani Highway. Administration costs and enhancement fees have been paid to DOT.

6. *Civil Defense. Petitioner shall fund and construct adequate solar-powered civil defense measures serving the Property as determined by the State of Hawai'i Department of Defense, Office of Civil Defense and County Civil Defense Agency.*

Compliance: MLP received approval of siren location from the State Department of Defense, in a letter dated January 18, 2008. As part of the Mahana Estates project, SMC Mahana constructed the siren at the approved location. The State Department of Defense inspected and tested the siren on September 22, 2016 and the siren is currently in operation.

7. *Archaeological Inventory Survey and Historic Preservation Mitigation Plan. Petitioner shall comply with the conditions recommended by the State of Hawai'i Department of Land and Natural Resources, Historic Preservation Division on January 27, 2003, regarding revisions to Petitioner's archaeological inventory surveys and approval of an acceptable Preservation Plan for any historic sites on the Kapalua Mauka Community Site prior to commencement of any ground altering activities. Petitioner shall confirm in writing to the Commission that the Historic Preservation Division has found Petitioner's mitigation commitments, if any, to be acceptable and has determined that any historic preservation mitigation plan and archaeological data recovery sub-plan has been successfully implemented.*

Compliance: The State Historic Preservation Division has reviewed and accepted a preservation plan prepared by Cultural Surveys Hawaii, Inc. for the documented historic properties (Log No: 2006.2002/ Doc No: 0606MK29) on the site. Additionally, the State Historic Preservation Division has reviewed and approved a burial treatment and preservation plan for possible burial features located on the project area (Xamanek Researches, LLC 2005, revised June 7, 2006) by letter dated January 11, 2007.

8. *Unidentified Finds. Petitioner shall stop work in the immediate vicinity should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, or lo'i walls be found. Petitioner shall immediately notify the Historic Preservation Division, and comply with requirements of Chapter 6E, HRS, and applicable rules. The Historic Preservation Division shall determine and approve the significance of these finds, and shall permit subsequent work to proceed with an archaeological clearance after appropriate mitigative measures have been implemented.*

Compliance: Should any previously unidentified human burials, archaeological or historic sites be found, MLP will stop work in the immediate vicinity and immediately notify the State Historic Preservation Division and comply with requirements of Chapter 6E, HRS, and all applicable rules.

9. *Quality Monitoring. Petitioner shall participate in an air quality-monitoring program as specified by the State Department of Health.*

Compliance: MLP will participate in an air quality-monitoring program as specified by the State Department of Health. No specific action has been taken to date.

10. *Notification of Potential Aircraft Noise. Petitioners shall notify all prospective buyers and/or lessees of the Property of potential noise from the over flight of aircraft using Kapalua West Maui Airport.*

Compliance: MLP has and will continue to notify all prospective buyers and/or lessees of the Property of potential noise from the over flight of aircraft using Kapalua West Maui Airport.

11. *Notification of Potential Nuisances. Petitioner shall notify all prospective buyers and/or lessees of the Property of potential odor, noise and dust pollution resulting from adjacent agricultural uses.*

Compliance: MLP has and will continue to notify all prospective buyers and/or lessees of the Property of potential odor, noise, and dust pollution resulting from any adjacent agricultural uses.

12. *The Hawai'i Right to Farm Act. Petitioner shall notify all prospective buyers and/or lessees of the Property that the Hawai'i Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.*

Compliance: MLP has and will continue to notify all prospective buyers and/or lessees of the Property that 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.

13. *Drainage Improvements. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of appropriate State and County agencies.*

Compliance: MLP will fund the design and construction of drainage improvements required as a result of development of the Property to the satisfaction of appropriate State and County agencies. No action has been taken to date.

14. *Integrated Solid Waste Management Plan. Petitioner shall cooperate with the State of Hawai'i Department of Health and County of Maui Department of Environmental Services to conform to the program goals and objectives of Chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the State of Hawai'i Department of Health. Petitioner shall, in coordination with the appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities, including bins in public places, such as schools and parks, if any, within the proposed development.*

Compliance: MLP will cooperate with the State of Hawai'i Department of Health and County of Maui Department of Environmental Services to conform to the program goals and objectives of Chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the State of Hawai'i Department of Health. MLP will, in coordination with the appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities, including bins in public places, such as schools and parks, if any, within the proposed development. No action has been taken to date.

15. ***Water Resources Allocation.** Petitioner shall provide adequate potable and non-potable water source, storage and transmission facilities and improvements to accommodate the proposed development on the Property. Water transmission facilities shall be approved by appropriate State agencies.*

Compliance: MLP will provide adequate potable and non-potable water source, storage and transmission facilities and improvements to accommodate the proposed development on the Property. All water transmission facilities shall be approved by appropriate State agencies. No action has been taken to date.

16. ***Access Rights.** Petitioner shall preserve access rights of native Hawaiians who customarily and traditionally have used the Property for access to other areas for subsistence, cultural and religious practices.*

Compliance: MLP will preserve access rights of Native Hawaiians who customarily and traditionally have used the Property for access to other areas for subsistence, cultural and religious practices. No requests for access have been received to date.

17. ***Best Management Practices.** Petitioner shall implement applicable best management practices applicable to each proposed land use to reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the State Department of Health guidelines.*

Compliance: MLP has prepared and will implement best management practices applicable to each proposed land use to reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the State Department of Health guidelines.

18. ***Water Conservation Measures.** Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common area landscape planting.*

Compliance: MLP will implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common area landscape planting. No action has been taken to date.

19. ***Energy Conservation Measures.** Petitioner shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed development on the Property.*

Compliance: MLP will implement energy conservation measures, such as use of solar energy and solar heating and incorporate such measures into the proposed development on the Property. No action has been taken to date.

20. ***Wellhead Protection Area (WPA).***

- a. *Any golf course green within the two-year time of travel of any County of Maui Department of Water Supply (DWS) well will be located outside a 500 feet radius from any such well.*

- b. *Petitioner will install an impervious liner beneath any green Mauka or up gradient of the DWS wells within the two-year time of travel, including the Honokohua A and Napili C wells. The design and construction of the greens will include a drainage system that could collect all water and percolate and pipe it to discharge away and down gradient of the DWS wells.*
- c. *Petitioner will pursue organic management practices for greens that may be constructed Mauka or up gradient of DWS wells within the two-year time of travel.*

Compliance: MLP will comply with all requirements described above. No action has been taken to date.

21. *Golf Course Guidelines. Petitioner shall comply with the recommendations of the State of Hawaii Department of Health's Guidelines Applicable to Golf Courses in Hawai'i (July 2002).*

Compliance: MLP will comply with the recommendations of the State of Hawaii Department of Health's Guidelines Applicable to Golf Courses in Hawai'i (July 2002). No action has been taken to date.

22. *Compliance with Representations to the Commission. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.*

Compliance: All permit applications and development submittals to date have been in substantial compliance with the representations made during the reclassification process.

23. *Notice of Change to Ownership Interests. Petitioner shall give notice to the commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property. This condition shall be satisfied by the giving of notice only, and shall not require approval by the Commission.*

Compliance: Notice has been made to the Commission, letter dated August 21, 2009, of the sale of a 124.98-acre parcel known as Mahana Estates to SMC Mahana LLC. The sale was finalized on September 23, 2009. At this time, MLP has no intent to sell, lease, assign, place in trust, or otherwise alter the ownership interest in the remaining Property covered in the Petition. Notice will be given to the Commission if any additional transfers are intended.

24. *Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning and the County of Maui Planning Department in connection with the status of the development proposed for the Property, and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval of the Petition.*

Compliance: This letter represents the 15th annual report submitted in compliance with Condition 24.

25. *Release of Conditions Imposed by the Commission. Petitioner shall seek from the Commission full or partial release of these conditions as to all or any portion of the Property upon assurance acceptable to the Commission of satisfaction of these conditions.*

Compliance: MLP will seek from the Commission full or partial release of these conditions as to all or any portion of the Property only upon assurance that such full or partial release is acceptable to the Commission and MLP is in satisfaction of these conditions.

26. *Statement of Imposition of Conditions. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.*

Compliance: MLP has recorded the Statement of Impositions of Conditions by Land Use Commission, dated June 16, 2004, with the Bureau of Conveyances as Document 2004-153380.

27. *Recording of Conditions. Petitioner shall record the conditions imposed by the Commission within the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.*

Compliance: MLP has recorded the Declaration of Conditions, dated July 20, 2004, as Document No. 2004-153381.

Please contact me at 808-757-2666 or psubrata@mlpmaui.com should you have any questions or require additional information. Thank you for taking the time to review this annual report.

Sincerely,



Paul Subrata,
Vice President
Maui Land & Pineapple Company, Inc.

EXHIBIT 3

10/500

SMC MAHANA LLC

RECEIVED
DEC 04 2020
3170 Noela Drive
Honolulu, Hawaii 96815
Telephone: (808) 842-4929
Facsimile: (808) 841-8281

November 30, 2020

Mr. Riley Hakoda, Chief Clerk

riley.k.hakoda@hawaii.gov

State Land Use Commission

Department of Business, Economic Development and Tourism

State of Hawaii

PO Box 2359

Honolulu, HI 96804-2359

Ms. Mary Alice Evans, Office Planning Director

maryalice.evans@hawaii.gov

State Office of Planning

PO Box 2359

Honolulu, HI 96804

Ms. Michele C. McLean, Director

planning@mauicounty.gov

County of Maui Planning Department

Kalana Pakui Building Suite 200

250 S. High Street

Wailuku, HI 96793

**Re: 2020 Annual Compliance Report PORION OF DOCKET NO. A03-741
Mahana Estates 51 lot portion of Kapalua Mauka (Project District 2)**

Via: US Mail and Email

Sirs and Madam,

The Land Use Commission of the State of Hawaii ("LUC") approved Maui Land & Pineapple Company, Inc. ("MLP") petition to reclassify approximately 790 acres of land at Honokahua and Napili, Maui, Hawaii from the Agricultural district to the Urban and Rural District for Kapalua Mauka (Project District 2) by order dated June 29, 2004, Docket No A03-741. The Decision and Order sets forth 27 conditions of approval regarding the reclassification.

Annual Compliance Report A03-741
Mahana Estates Portion of Kapalua Mauka
November 30, 2020

The Mahana Estates portion of Kapalua Mauka is within the State Rural Land Use District. This 124.98 acre, 51 lot parcel is now owned by SMC Mahana LLC. The following annual report details compliance with the Mahana Estates portion of the land.

1. Affordable Housing

MLP and the County of Maui have executed an affordable housing agreement for the Mahana Estates portion of the land in compliance with the County of Maui's Residential Workforce Housing Policy which requires 26 workforce housing credits for the Mahana Estates portion of the land. MLP has satisfied all of the affordable housing requirements pursuant to this agreement. Please see attached copy of the recorded Memorandum of Mahana Estates Subdivision Residential Workforce Housing Agreement Doc. No. 2007-097329 dated May 31, 2007 and the executed Mahana Estates Subdivision Residential Workforce Housing Agreement dated December 29, 2006 which documents the acceptance of 15 credits for Mahana Estates and the requirement for 11 additional credits. The 11 additional credits have been satisfied pursuant to the Mahana Estates Subdivision Residential Workforce Housing Agreement with the County acceptance of Notice of Assignment of Act 141 Workforce Housing Credits, Assignments #4, #5, and #6 as approved by the Director of the County of Maui Department of Housing and Human Concerns. Please see attached document dated June 23, 2010, July 13, 2010, and July 13, 2010. The agreement for Mahana Estates requires a total of 26 affordable housing credits, which have been satisfied by the 15 from the workforce housing agreement and the additional 11 from approved credits. **This condition has been satisfied in its entirety for the Mahana Estates portion of the land.**

2. Public School Facilities

Pursuant to the Educational Contribution Agreement for Kapalua Mauka dated July 10, 2003 between Kapalua Land Company, Ltd and the State of Hawaii Department of Education, the Mahana Estates portion responsibility has been assigned to SMC Mahana, LLC. Pursuant to this assigned portion of the agreement, SMC Mahana, LLC will pay \$1,011.00 to the Department of Education within 30 days of the closing and recordation for the sale of residential unit or lot with in Mahana Estates. There are a total of 51 lots planned for Mahana Estates. Effective March 12, 2019, Final Order of Subdivision Registration by the Department of Commerce and Consumer Affairs has been issued. Currently, 5 lots have been sold (Lot 2, 26, 27, 30, and 45).

3. Wastewater Treatment and Disposal Facilities.

MLP purchased allocations for wastewater treatment in the Lahaina Wastewater Reclamation Facility (LWRF) when the facility was constructed. In letter dated October 4, 2006, the County of Maui Department of Public Works acknowledged the allocation for Mahana Estates was deducted from the reserved wastewater allocation. A copy of the letter is attached for your use. A copy of this letter was submitted on February 28, 2007 attached to the compliance report for Project District Phase III approval for Mahana Estates, and acknowledged by letter dated March 28, 2007 from Jeff Hunt, Director of Planning, County of Maui.

SMC Mahana LLC has completed construction of a new gravity collection system to collect wastewater generated by Mahana Estates and transport it to the LWRF. Kapalua Wastewater Treatment Company, Ltd. has assumed ownership of the on-site wastewater system on 6/01/2017 and will operate and maintain the new wastewater transport system on Mahana Estates.

Annual Compliance Report A03-741
Mahana Estates Portion of Kapalua Mauka
November 30, 2020

4. Transportation Improvements

The State Department of Transportation (SDOT), per letter dated December 7, 2006, had confirmed that no intersection improvements would be necessary at the intersection of Honoapiilani Highway and the Mahana Estates access road, but later updated their requirement to include the installation of a deceleration lane at the Mahana Estates access road. The grading, drainage, pavement, striping and signage work for this deceleration lane has been completed. The DOT has accepted the improvements as completed on 12/05/2012 and has released the performance bond after the one year warranty period which ended 12/05/2013.

5. Traffic Impact Fee

Pursuant to the Traffic Impact Fee Agreement for Kapalua Mauka dated October 31, 2006 between MLP and the County of Maui, the Mahana Estates portion responsibility has been assigned to SMC Mahana, LLC. Pursuant to this assigned portion of the agreement, SMC Mahana, LLC will pay \$3,500.00 per unit or lot developed for road and traffic improvements in the West Maui Community at the time of final subdivision. There are a total of 51 lots planned for Mahana Estates. Effective March 12, 2019, Final Order of Subdivision Registration by the Department of Commerce and Consumer Affairs has been issued. Currently, 5 lots have been sold (Lot 2, 26, 27, 30, and 45). Petitioner has remitted payment to the Maui Department of Finance for the three (3) lots for which their General Contractor has applied building permits.

5a. Traffic Impact requests for changes

SMC Mahana, LLC will submit written requests to the SDOT Highways Division Right of Way Branch for any change to existing highway access related to Mahana Estates. To date, no such changes have been requested and none are anticipated.

6. Civil Defense

SMC Mahana, LLC has agreed to contribute 51/690th of the cost of the Civil Defense siren system to be constructed and installed by MLP. The Civil Defense siren has been installed on the Mahana Estates property next to the existing water tank across from Lot 29. The Civil Defense siren has been tested by the State Department of Defense on 9/22/2016, and is currently operational.

7. Archaeological Inventory Survey and Historic Preservation Mitigation Plan.

SMC Mahana, LLC and its contractors has and will continue to comply with the provisions of the approved preservation plans as it applies to the 124.98 acre Mahana Estates portion of the land.

8. Unidentified Finds

SMC Mahana, LLC and its contractors will comply with all laws and rules regarding the preservation of archaeological and historic sites should any sites be found during construction on the Mahana Estates portion of the land. No archeological and historic sites were found during the construction of Mahana Estates.

9. Air Quality Monitoring

SMC Mahana, LLC will participate in air quality monitoring program, as it relates to the Mahana Estates portion of the land, as specified by the State Department of Health.

Annual Compliance Report A03-741
Mahana Estates Portion of Kapalua Mauka
November 30, 2020

10. Notification of Potential Aircraft Noise.

Sales agreements for all individual homes or lots within Mahana Estates contain specific notification of potential noise from the over flight of aircraft using Kapalua West Maui Airport. To date, sales agreements have taken place for Lot 2, 26, 27, 30 and 45.

11. Notification of Potential Nuisances.

Sales agreements for all individual homes or lots within Mahana Estates contain specific notification of potential odor, noise, and dust pollution resulting from adjacent agricultural uses. To date, sales agreements have taken place for Lot 2, 26, 27, 30 and 45.

12. The Hawaii Right to Farm Act

Sales agreements for all individual homes or lots within Mahana Estates contain specific notification regarding the Hawaii Right to Farm Act, Chapter 165, HRS, which limits the circumstances under which pre-existing farm activities may be deemed a nuisance. To date, sales agreements have taken place for Lot 2, 26, 27, 30 and 45.

13. Drainage Improvements

Pursuant to SDOT approved Permit to Perform MA-11-32 issued 11/22/2011, construction of the drainage improvements for Mahana Estates requiring a State permit has been completed. The DOT has accepted the improvements as completed on 12/05/2012 and is has released the performance bond after the one year warranty period which ended 12/05/2013.

Pursuant to County of Maui approved Grading permit G 2011/0082 issued 09/21/2011, construction of the drainage improvements for Mahana Estates portion of the land is complete in accordance with the originally approved drainage design. SMC Mahana LLC was required to install additional drainage improvements as directed and approved by the County of Maui. The additional drainage improvements were completed on 01/26/2016.

14. Integrated Solid Waste Management Plan.

SMC Mahana, LLC will cooperate with the State of Hawaii Department of Health and the County of Maui Department of Environmental Services with their program goals and objectives for solid waste management. A Solid Waste Disclosure Form was filed with the Department of Health, Solid Waste Division on November 29, 2011 for the Mahana Estates portion of the land.

15. Water Resources Allocation

Pursuant with PUC regulated Kapalua Water Company, Ltd. approved construction plans, construction of the potable and non-potable systems for Mahana Estates transmission and storage facilities to serve the 51 lot residential area has been completed. Both the potable and non-potable systems for Mahana Estates have been turned over to the Kapalua Water Company, Ltd. on 6/01/2017, and they will operate and maintain the new waterline systems on Mahana Estates.

Annual Compliance Report A03-741
Mahana Estates Portion of Kapalua Mauka
November 30, 2020

16. Access Rights

Although there are no known historic trails within the Mahana Estates land, SMC Mahana, LLC will preserve access rights of native Hawaiians who may have customarily and traditionally used the property for access to other areas for subsistence, cultural, and religious practices.

17. Best Management Practices

SMC Mahana, LLC secured permit renewal of R10C659 dated 12/09/13 from the State Department of Health and has implemented and will continue to abide by all of the requirements for BMP's as directed by DOH for the Mahana Estates land. Additional permanent drainage BMP's have been installed on 1/26/2016 as directed by and approved by the DOH and the County of Maui.

SMC Mahana, LLC has filed for a Notice of Cessation on 12/4/2018 due to a halt of all construction activity on Mahana Estates land. The DOH has accepted cessation and has closed the NPDES permit.

18. Water Conservation Measures

To conserve water within Mahana Estates at Kapalua Mauka (Project District 2), in compliance with Ordinance 3358 (See Unilateral Agreement, Condition 2), SMC Mahana, LLC will:

- Install low flow fixtures and devices throughout the community.
- Limit irrigation of turf areas. The common area landscape plan has been approved by the County of Maui and includes the use of indigenous and drought tolerant plants and turf for the Mahana Estates land.
- Prevent over watering by automated systems. Irrigation controls will be used to regulate irrigation water at the common areas of Mahana Estates by a 50% reduction in the Fall and Winter seasons. Future individual homeowners will be encouraged to do the same.
- Not allow single pass cooling pursuant to Maui Count Code Section 14.21.20.
- Use native plants for landscaping. The common area landscape plan has been approved by the County of Maui and includes the use of indigenous and drought tolerant plants and turf for the Mahana Estates land.
- Install meters for both potable and non-potable systems to discourage excessive use. The water system for Mahana Estates has been designed with both potable and non-potable water meters. Meters have been installed at Lot 1 and 2 where model homes on these properties have already been completed.

19. Energy Conservation Measures

SMC Mahana LLC will implement energy conservation measures within the design of Mahana Estates. Design measures for energy conservation will be standardized in each residence such as:

- Large openings under roof for natural cross ventilation.
- Double insulated Low E glazing at windows and doors to reduce heat gain.
- Large roof overhangs 48" to 54" to maximize shading of building walls.
- Variable-Refrigerant-Flow split HVAC systems for minimal energy consumption.
- Dimming control systems and LED light fixtures to reduce energy consumption.

Annual Compliance Report A03-741
Mahana Estates Portion of Kapalua Mauka
November 30, 2020

20. Wellhead Protection Area.

Mahana Estates does not include any golf course construction. **This condition does not apply to the Mahana Estates portion of the land.**

21. Golf Course Guidelines.

Mahana Estates does not include any golf course construction. **This condition does not apply to the Mahana Estates portion of the land.**

22. Compliance with Representations to the Commission.

All permit applications and development submittals to date have been in substantial compliance with the representations made during the reclassification process.

23. Notice of Change to Ownership Interests.

The Commission was notified of the change in ownership from Maui Land & Pineapple Company, Inc. to SMC Mahana LLC in letter dated August 21, 2009. **Copy attached.**

24. Annual Reports

This letter is the annual report for the Mahana Estates portion of the land.

25. Release of Conditions Imposed by the Commission.

When requesting release of a condition as it relates to the Mahana Estates portion of the land, SMC Mahana LLC will file the appropriate motions upon formal acknowledgment from the proper agencies of their satisfaction with compliance with specific conditions.

26. Statement of Imposition of Conditions.

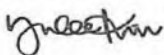
Done by Maui Land & Pineapple Company, Inc. This condition has been previously released.

27. Recording of Conditions

Maui Land & Pineapple Company, Inc. has recorded the Declaration of Conditions dated July 20, 2004 as Document No. 2004-153381. This condition has been previously released.

Please contact me at ykim@nanhawaii.com or 808-842-4929 if there are any questions.

Sincerely,



Yulee Kim
Assistant Project Manager

Annual Compliance Report A03-741
Mahana Estates Portion of Kapalua Mauka
November 30, 2020

Attachments:

1. Memorandum of Mahana Estates Subdivision Residential Workforce Housing Agreement Doc. No. 2007-097329 dated May 31, 2007 (RE: Condition 1)
2. Mahana Estates Subdivision Residential Workforce Housing Agreement dated December 29, 2006 (RE: Condition 1)
3. Notice of Assignment of Act 141 Workforce Housing Credits, Assignments #4, #5, and #6 (RE: Condition 1)
4. Letter dated October 4, 2006, County of Maui Department of Public Works to MLP (RE: Condition 3)
5. Letter dated August 21, 2009 regarding change in ownership to SMC Mahana, LLC.

RECEIVED

DEC 04 2020

COUNTY OF MAUI
DEPARTMENT OF PLANNING

ATTACHMENT 1



R-894
STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAY 31, 2007 09:01 AM
Doc No(s) 2007-097329



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 11 212

LAND COURT SYSTEM

Ka REGULAR SYSTEM

Return by Mail ☒ Pickup ☐ To:

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

PS

Tot 378200

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 31, 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

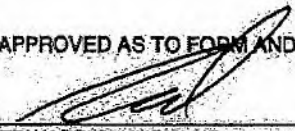
COUNTY OF MAUI

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: 5/21/17

STATE OF HAWAII

) SS.

L.S.

COUNTY OF MAUI

On this 14th day of May, 2007, before me personally appeared Ryan L. Chubb III 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: 5/21/17

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. Nahoolikale
Name: Kelli P. Nahoolikale
Notary Public, State of Hawaii

My commission expires: 4/20/10

L.S.

EXHIBIT A

Lot 3-B, Kapalua Manka Large-Lot Subdivision No. 3

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 Kapaiua 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;
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 2

Develop / b217 ACT Pro / POD2 / County / Dept of Housing & Human

UNRECORDED UNDATED
COPY TO C.R.
30/p: REG. BOLS. COUNTY
DEPT OF HOUSING

SCANNED
7-12-07

CF

KLC

14-1009

Rec'd FEB - 2 2007

Route To

Copy To

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.

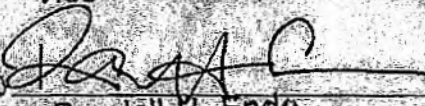
The effective date of this Agreement shall be the date set forth on the first page of this Agreement or, absent such a date, on the date on which the last party signs this Agreement.

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

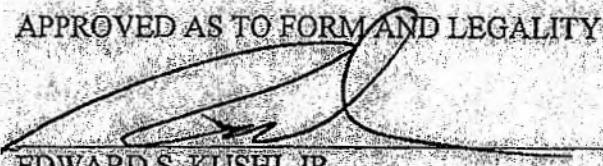
COUNTY OF MAUI

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 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.


Name: Shyla Nakagawa 15.
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 Bondall 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: Shyla Nakagawa 15.
Notary Public, State of Hawaii

My commission expires: 10/3/07

STATE OF HAWAII

COUNTY OF MAUI

)
) SS.
)

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. Nahaiakaka
Name: Keli P. Nahaiakaka
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. RE-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, Apana 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 3

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

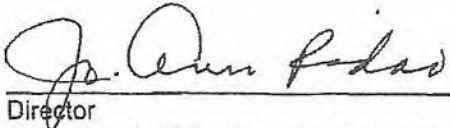
By Dowling Company, Inc.

Its: Member

By:  June 3, 2010
Everett R Dowling Date
Its: President

Transferor

Acknowledgement:

By:  June 3, 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

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
	Lelalii Phase 1A	104
	<u>Total</u>	<u>372</u>
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:

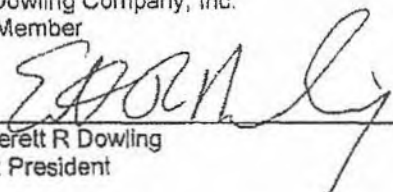
WK 3 LLC

By Maui Quest LLC

Its: Member

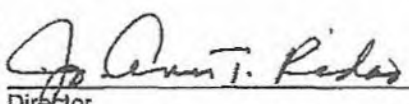
By Dowling Company, Inc.

Its: Member

By:  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

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	61
3	Workforce House Credits to be assigned by this assignment	6
4	Workforce Housing Credits remaining after this assignment and available for future use	305

Submitted by:

WK 3 LLC

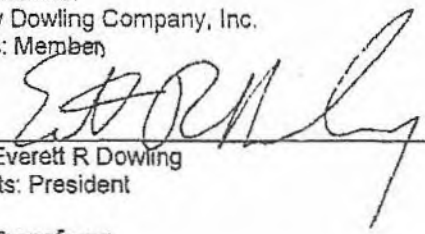
By Maui Quest LLC

Its: Member

By Dowling Company, Inc.

Its: Member

By:

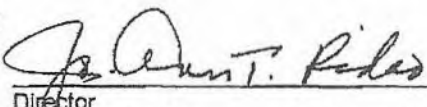

Everett R Dowling
Its: President

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:

Project TMK:

Transferee's Name and Address:

Mahana Estates

(2) 4-2-1:45

SMC Mahana LLC

3170 Noela Drive

Honolulu, HI 96815

ATTACHMENT 4

ALAN M. ARAKAWA
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director



RECEIVED

OCT 06 2006

RALPH NAGAMINE, L.S., P.E.
Development Services Administration

DAVID TAYLOR, P.E.
Wastewater Reclamation Division

CARY YAMASHITA, P.E.
Engineering Division

TRACY TAKAMINE, P.E.
Solid Waste Division

BRIAN HASHIRO, P.E.
Highways Division

**COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND ENVIRONMENTAL MANAGEMENT**
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

October 4, 2006

Mr. Jeffrey T. Pearson, P.E.
Maui Land and Pineapple Company, Inc.
P.O. Box 187
Kahului, Hawaii 96733-6687

Dear Mr. Pearson:

**SUBJECT: KAPALUA WASTEWATER ALLOCATION
KAPALUA MAUKA MAHANA
SUBDIVISION FILE NO.
TMK (2) 4-2-001: POR OF 042**

Wastewater Reclamation Division has reviewed the wastewater calculation and the request for assignment of allocation letter dated September 28, 2006, for the subject development and find it in accordance with the Lahaina Wastewater Reclamation Facility Expansion Agreement. Accordingly we will deducted 17,850 gpd from the Kapalua reserved allocation. This adjustment from the previously allocated quantity will result in 163,615 gpd in remaining capacity available to Kapalua projects.

If you have any further questions, please contact Mr. Arnold Abe or myself at 270-7417.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Taylor", is written over a horizontal line.

David Taylor, Chief
Wastewater Reclamation Division

ATTACHMENT 5



Maui Land & Pineapple Company, Inc.

August 21, 2009

Mr. Dan Davidson, Executive Director
Land Use Commission
Department of Business, Economic Development and Tourism
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Re: Notice of Intent to Sell or Transfer, Docket No. A03-741
Mahana Estates Subdivision

Dear Mr. Davidson:

As required by Condition 23, Notice of Change to Ownership Interests, Maui Land and Pineapple Company, Inc. ("MLP") does hereby give notice to the Land Use Commission of the State of Hawaii ("Commission") of MLP's intent to sell or transfer its ownership interest in a 124.980 acre portion of the property that is subject to the Commission's Findings of Fact, Conclusions of Law, and Decision and Order ("Order"), dated and entered on June 29, 2004 in Docket No. A03-741. This notice is for an anticipated sale of a portion of the property to a new owner. The property is undeveloped.

Description of Land to be Sold or Transferred: Lot 3-B of the "Kapalua Mauka Large Lot Subdivision No. 3", Tax Map Key No. (2) 4-2-01:45, containing an area of 124.980 acres and referred to as "Mahana Estates". MLP will retain ownership of the remaining land that is the subject of Docket No. A03-741.

New Owner of Lot 3-B: SMC Mahana LLC, a Hawaii limited liability company

Address: 3170 Noela Drive, Honolulu, Hawaii 96815

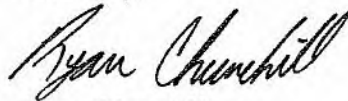
Telephone: (808) 842-4929

Manager or Registered Agent: Patrick Shin

Mr. Dan Davidson
August 18, 2009
Page 2 of 2

Should you have any questions regarding this notice, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Ryan Churchill". The signature is fluid and cursive, with the first name "Ryan" and last name "Churchill" clearly distinguishable.

Ryan Churchill
Sr. Vice President

cc. Mr. Jeffrey S, Hunt, Director, Department of Planning
Ms. Ann Cua, Planner, Department of Planning
Mr. Patrick Shin

EXHIBIT 4

Maui Oceanview LP
16610 N. Dallas Parkway Suite 1600
Dallas, TX 75248

LAND USE COMMISSION
STATE OF HAWAII

2020 DEC -7 A 8:04

Mr. Daniel E. Orodener, Executive Officer
Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii
PO Box 2359
Honolulu, HI 96804-2359

Ms. Mary Alice Evans, Director
Mr. Rodney Funakoshi, Planning Program Administrator I-
Land Use Division
Office of Planning
Department of Business, Economic Development & Tourism
State of Hawaii
PO Box 2359
Honolulu, HI 96804-2359

Ms. Michele McLean, Director
Department of Planning County of Maui
One Main Plaza #315
2200 Main Street
Wailuku, HI 96793-2155

December 3, 2020

Re: **2019 and 2020 Annual Report for LUC Docket No. A04-751**
Petition of Maui Oceanview LP, Mahinahina and Kahana, Lahaina, Maui, Hawaii
TMKs (2) 4-3-001-082 & 083 [previously (2) 4-3-01: por. 31]

Dear Mr. Orodener, Ms. Evans, Mr. Funakoshi, and Ms. McLean:

Pursuant to Condition No. 31 in the July 30, 2020 Stipulated Amended Findings of Fact, Conclusions of Law, and Decision and Order ("2020 Amended Decision and Order") for the above referenced docket, Maui Oceanview LP, is pleased to provide this report to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department concerning the current status of compliance with the conditions of approval.

General Project Progress:

The Land Use Commission of the State of Hawaii ("LUC" or "the Commission") approved Maui

Land and Pineapple's ("MLP's") petition to reclassify approximately 310 acres of land at Mahinahina and Kahana, Lahaina, Maui, Hawaii from Agricultural to Urban for the Pulelehua project on June 22, 2006. The Commission's June 30, 2006 Decision and Order ("D&O") sets forth thirty-two (32) conditions of approval regarding the reclassification.

Since the LUC's approval, the previous owner, MLP received several major discretionary governmental approvals for the Pulelehua project. On November 18, 2011, County of Maui Mayor Alan M. Arakawa approved:

- Bill No. 62 (2011), designated as Ordinance No. 3887, which amended the West Maui Community Plan Land Use Map from Agriculture, Park, and Open Space to West Maui Project District 5 (Pulelehua) for TMKs (2) 4-3-001-082 & 083 (previously (2) 4-3-01: por. 31);
- Bill No. 63 (2011), designated as Ordinance No. 3888, which amended Title 19, Maui County Code, by adding a new chapter designated as Chapter 19.93, West Maui Project District 5 (Pulelehua); and
- Bill No. 64 (2011), designated as Ordinance No. 3889, which granted a change in zoning from the County Agricultural District to West Maui Project District 5 (Pulelehua) (Conditional Zoning) for TMKs (2) 4-3-001-082 & 083 (previously (2) 4-3-01: por. 31).

On November 22, 2017, Maui Oceanview LP filed with the Commission a motion to amend the D&O. On August 28, 2018, June 21, 2019, August 27, 2019, September 16, 2019 and September 19, 2019, Maui Oceanview LP submitted additional filings to the Commission in support of the motion to amend. By stipulations, Maui Oceanview LP, the State of Hawaii Office of Planning ("OP") and the County of Maui Department of Planning ("Maui Planning") agreed to additional time for OP and Maui Planning to file responses to the motion to amend. The Commission held hearings on the motion on September 25-26, 2019, then deferred for a period of time to allow the Maui Oceanview LP to engage with the community regarding the proposed changes to the Pulelehua project. On November 14, 2019 and December 3, 2019, Maui Oceanview LP submitted additional filings to the Commission in support of the motion to amend. The Commission held further hearings on December 4-5, 2019, closing the hearing on December 5, 2019. The Commission granted Maui Oceanview LP's motion to amend the D&O on December 5, 2019 and adopted the Amended D&O on July 30, 2020. The Amended D&O sets forth thirty-six (36) conditions of approval regarding the motion.

Conditions and Compliance:

1. Affordable Housing. Petitioner shall do the following to provide affordable housing opportunities for low, low-moderate, moderate and gap group income residents of the State of Hawaii consistent with the County of Maui Residential Workforce Housing Policy, Chapter 2.96, Maui County Code, and a Housing Agreement with the County of Maui Department of Housing and Human Concerns (DHHC), and its representations in this docket:

- a. *Petitioner shall develop and offer for rent not less than 125 affordable housing units to qualified families or individuals to satisfy a condition imposed by the Commission in its approval of Original Petitioner MLP's Kapalua Mauka development in LUC Docket No. A03-741. Petitioner [Maui Oceanview LP] acknowledges that it will fulfill this obligation of Original Petitioner (MLP).*
- b. *Petitioner shall develop and offer for rent not less than 300 affordable (or workforce) housing units, which total includes the 125 Kapalua Mauka units, to low, low-moderate, and moderate income residents of Maui as a feature of Pulelehua in accordance with the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code and an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC. The workforce rental units will remain workforce rental units pursuant to Chapter 2.96, Maui County Code for no less than 30 years with the County of Maui hav[ing] the right of first refusal to purchase the units after that time. Petitioner shall prohibit the assessment of homeowners' association fees to workforce housing renters of multi-family workforce housing rental units and accessory dwelling units.*
- c. *Petitioner will develop and offer for sale not less than 100 workforce housing units, to low, low-moderate, moderate and above-moderate residents of Maui as a feature of Pulelehua in accordance with the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code and an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC. The workforce rental units will remain workforce rental units pursuant to Chapter 2.96, Maui County Code for no less than 30 years with the County of Maui hav[ing] the right of first refusal to purchase the units after that time. Petitioner will offer for sale, at the cost of development (which includes the pro-rata cost of the land, planning and infrastructure improvements), three (3) of the workforce housing lots to a non-profit organization in the business of developing and maintaining affordable housing.*
- d. *To ensure continued rental to qualified low, low-moderate and moderate income residents and maintain the affordable rental housing inventory within Pulelehua, Petitioner shall prior to the rental of any affordable housing unit comply with County-approved restrictions governing the rental-or transfer of all affordable housing units as set out in an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC. To ensure continued sale to qualified low, low-moderate, moderate and*

above-moderate income residents and maintain the affordable (workforce) housing inventory within Pulelehua, Petitioner shall prior to the sale of any affordable housing unit comply with County-approved restrictions governing the sale or transfer of all affordable housing units as set out in an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC.

- e. To ensure that accessory dwelling/'ohana units to be constructed on single family lots offered for sale at Pulelehua become part of the workforce housing inventory in West Maui, Petitioner will impose a deed restriction in perpetuity limiting third-party/ non-related rental of accessory dwelling/'ohana units to workforce housing rental rates as set out in an amended Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units-Rental with Maui DHHC.*
- f. Petitioner will prohibit transient vacation rental use, including bed and breakfasts in multi-family dwelling units. Petitioner will impose a deed restriction prohibiting transient vacation rental use, including bed and breakfasts on any single-family lots offered for sale at Pulelehua.*
- g. Petitioner shall establish at a minimum, qualifications for the renter or purchaser pursuant to Chapter 2.96, Maui County Code.*

Compliance: Maui Oceanview LP is negotiating an Amended Residential Workforce Housing Agreement with the County of Maui.

2. **Public School Facilities.** *Petitioner shall contribute to the development, funding, and/or construction of public-school facilities, on a fair-share basis, pursuant to an Education Contribution Agreement for Pulelehua executed between Petitioner and the DOE. The Education Contribution Agreement shall provide for the dedication of land and/or other consideration to be applied to the construction of a public elementary school in Pulelehua. Petitioner shall file the Education Contribution Agreement and any subsequent amendments with the Commission after it has been executed by Petitioner and the DOE. Petitioner shall also submit copies of all executed Education Contribution Agreements to the County of Maui prior to the Council approving an ordinance amending the West Maui Community Plan Land Use Map designation for Pulelehua.*

Petitioner shall pursue the feasibility of alternatives with the DOE or private contractors or developers who have experience with public school projects to expedite the design and construction of the public elementary school in Pulelehua. Such alternatives may include a design-build agreement whereby Petitioner would agree to design and build public school facilities for a sum to be paid by the DOE.

Compliance: The Education Contribution Agreement was executed on June 16, 2006 by the Petitioner's predecessor, Maui Land and Pineapple (MLP). A copy of the agreement was submitted to the Land Use Commission and County Planning Department which was included as an exhibit to the Community Plan Amendment, County Change in Zoning, and Project District applications. MLP had numerous meetings with the Department of Education ("DOE") to finalize the 13-acre school site. DOE conducted design charrettes in West Maui and completed its master plan in December 2015.

Maui Oceanview, LP has met with DOE officials, making them aware of the transfer of ownership and progress in moving forward on developing the Pulelehua project. DOE officials informed Maui Oceanview LP that they had preliminary architectural plans for the development. DOE officials explained that their budget does not include funding for the development of the School and they will inform Maui Oceanview LP when they are ready to move forward with a new campus. Petitioner has not yet pursued alternative means to expedite design and construction of the School.

3. *Wastewater Facilities. Provided the County of Maui has capacity to treat wastewater from Pulelehua, Petitioner shall connect to County facilities in accordance with an agreement for service with the County. Alternatively, Petitioner may develop a private wastewater treatment plant that uses comparable membrane filtering technology as proposed in the Waikapu Country Town project in the County of Maui.*

Compliance: Maui Oceanview LP had been working with the County of Maui Department of Environmental Management, Wastewater Reclamation Division on connection to the Lahaina WasteWater Reclamation Facility ("LWWRF"). In the event connection is not allowed, Maui Oceanview LP will go forward with developing a wastewater treatment facility on site to serve Pulelehua.

4. *Akahele Street: Petitioner shall enter into an agreement with the DOT, Airports Division, under terms and conditions acceptable to the DOT, for access to and use of Akahele Street. Petitioner acknowledges, understands, and agrees that Petitioner's obligation and responsibilities in an agreement can extend to, but not be limited to, design and construction of the roadway improvements and intersections, compliance with Kapalua-West Maui Airport security programs, and upkeep and maintenance of Akahele Street.*

Compliance: MLP submitted a revised Traffic Impact Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway (including Akahele Street) and airport facilities.

Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP has submitted a revised TIAR to DOT and has submitted a draft Memorandum of Understanding to the DOT.

5. *Transportation Improvements.* Petitioner shall submit a revised TIAR for Pulelehua to the DOT and to the County of Maui Department of Public Works for their review and acceptance prior to the start of construction for Scenario three (Phases 3, 4, and 5). The updated TIAR shall also verify the validity of recommended improvements related to the new elementary school operation anticipated to be completed by approximately 2035 (Phase 4). To the satisfaction of DOT, as recommended or required in the accepted TIAR, the Petitioner shall construct and ensure operation of all improvements related to the State Honoapi'ilani Highway for each phase/scenario prior to the first Certificate of Occupancy for the associated phases. Petitioner shall coordinate with DOT to provide any necessary roadway setbacks for future roadway improvements on the State Honoapi'ilani Highway.

Petitioner shall submit an application to the appropriate County of Maui agency to approve placing two (2) covered bus stops and shall install such bus stops in the manner required by the County of Maui.

Compliance: MLP submitted a revised Traffic Impact Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway (including Akahele Street) and airport facilities.

Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP has submitted a draft Memorandum of Understanding to the DOT. An updated TIAR has been completed and revised and will be reviewed by the County and the DOT.

6. *Regional Highway Contribution.* Petitioner shall apply its regional highway pro-rate contributions to the nearby Lahaina Bypass for the construction of Phase 1C (resulting from the total calculation of Phase 1A, 1B-1, 1B-2, and 1C). The Petitioner shall meet with DOT to determine the specific contribution amount and timetable that is mutually agreeable to DOT.

Compliance: An updated TIAR has been completed and revised and will be reviewed by the County and the DOT. The draft Memorandum of Understanding provided to the DOT includes the negotiated contribution amount and a proposed timetable for payments.

7. *Roadway Connectivity and Regional Circulation.* Petitioner shall plan and prepare for lateral (in general parallel to the coastline and fronting the highway) roadway connections from the Petition Area to adjoining lands in cooperation with the respective neighboring landowner(s) to provide potential alternate roadway routes to improve transportation capabilities in the area. Petitioner shall facilitate and promote the need for a Regional Traffic Circulation Plan from the County government to assist Petitioner and the DOT in determining roadway connections from the Petition Area to other adjoining lands and to existing roads and highways.

Compliance: Maui Oceanview LP is integrating lateral roadway connections into the design of the project.

8. Traffic Fair-Share Contribution. *Petitioner and the County of Maui shall enter into an agreement which establishes a Traffic Fair-Share or Voluntary Contribution to be paid by Petitioner to mitigate the traffic-related impact generated by the development of Pulelehua. A copy of the executed agreement shall be filed with the Commission prior to the occupancy of any unit within Pulelehua. The agreement shall provide that Petitioner shall in the order specified below:*

- a) pay the fee calculated pursuant to chapter 14.62, Maui County Code ("MCC"), Impact Fees for Traffic and Roadway Improvements in West Maui, Hawai'i; however, if there is a written agreement between the County of Maui and the State of Hawai'i specified by section 14.62.080 MCC, the County shall share the funds collected from Petitioner with the State in accordance with this written agreement; or*
- b) make a voluntary contribution to the County of Maui in an amount equivalent to the above referenced fee upon issuance of a building permit for each dwelling; or*
- c) pay the above referenced fee to the State pursuant to the enactment of State legislation authorizing such payment.*

The above referenced fee or voluntary contribution will be applied towards the funding, design, and construction of local and regional transportation improvements and programs necessitated by the proposed development of the Petition Area, but in any event neither the traffic fair-share nor the voluntary contribution will exceed the greater of (a) \$4,000 per market priced and gap group priced single-family unit or lot developed on the Petition Area, and \$2,000 per market priced and gap group priced multi-family unit developed on the Petition Area, or (b) the traffic impact fee established for a market priced and gap group priced single-family and multi-family unit pursuant to Maui County Code chapter 14.62 at the time a building permit is issued.

Compliance: Maui Oceanview LP agreed in processing its motion to amend to revise the fair-share unit amounts. No other specific action taken to date.

9. Civil Defense. *Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and the County of Maui Civil Defense Agency.*

Compliance: Maui Oceanview LP has been in contact with Maui Emergency Management Agency ("Maui-EMA") officials and provided Maui-EMA with current plans for the Pulelehua project.

10. Archaeological Inventory Survey and Historic Preservation

Mitigation Plan. Petitioner shall comply with the conditions recommended by the Department of Land and Natural Resources, State Historic Preservation Division ("DLNR, SHPD"), on March 3, 2005, regarding revisions to Petitioner's archaeological inventory survey and approval of an acceptable monitoring plan in the general vicinity of historic sites on the Petition Area prior to commencement of any ground altering activities.

Compliance: A plan will be developed at the time of Development to comply with this condition.

11. Previously Unidentified Burial/Archaeological/Historic Sites. *Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.*

Compliance: No specific action taken to date.

12. Air Quality Monitoring. *Petitioner shall participate in an air quality-monitoring program if required by the Hawaii Department of Health ("DOH").*

Compliance: No specific action taken to date.

13. Notification of Noise. *Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Petition Area, in accordance with State law, the potential adverse impacts of aircraft and airport activity from the adjacent Kapalua West Maui Airport, such as but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations. Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, whereby buyers and lessees and other future owners, lessees, or occupants will release the State of Hawai'i from and against all claims, liability, and losses resulting from aircraft and airport operations, provided that the State of Hawai'i shall not be released from its negligence.*

Compliance: Maui Oceanview LP will notify all prospective buyers and renters of potential adverse aviation impacts once sales and rentals commence.

14. Airport Infrastructure. *Petitioner shall provide and be responsible at its costs for any relocation, change, repair, or alteration to existing airport utility, service, and related infrastructure lines and equipment affected by Petitioner's Project, located in or surrounded by the Petition Area, to the satisfaction of the DOT.*

Compliance: MLP submitted a revised Traffic Impact Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which

details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway (including Akahele Street) and airport facilities.

Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP has submitted a draft Memorandum of Understanding to the DOT. An updated TIAR has been completed and revised and will be reviewed by the County and the DOT.

15. Sound Attenuation. *Petitioner shall employ the following noise mitigation measures: Petitioner shall follow the Maximum Operation Scenario in its noise study and place residential units and similar noise sensitive uses outside the 60 DNL (toward lesser DNL) noise contour. Residential units and similar noise sensitive uses located in between the 55 to 60 DNL noise contours should be properly designed and constructed to meet, at a minimum, Federal EPA residential interior noise standards. Industrial commercial-business type uses, if located in the 60-65 or higher noise contours, containing noise sensitive uses (e.g., rest area, offices, etc.) should have the noise sensitive area properly designed and constructed to meet, at a minimum, applicable Federal EPA interior noise standards.*

Compliance: Development plans prepared for Pulelehua by Maui Oceanview LP shall conform to the above requirements.

16. Runway Safety, Protection, and Use. *Petitioner acknowledges that portions of the Petition Area lay within, or are subject to, the airport runway safety and protection areas (the RPZ, the RSA, and the ROFA) required by the FAA at the Kapalua-West Maui Airport. Petitioner agrees to comply with FAA requirements and cooperate with the DOT for the documentation and recordation of the safety and protection areas. Petitioner agrees to provide the DOT access in order that the DOT may undertake mitigation measures (grading, lengthening, alteration, or improvement) to bring the safety and protection areas up to FAA standards. Petitioner will sell an aviation easement on the affected lands in favor of the State of Hawai'i.*

Compliance: MLP submitted a revised TIAR dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding reflecting the obligations of and requirements on MLP covering both DOT highway and airport facilities. Obligations of and requirements on MLP include compliance with all FAA, DOT and TSA requirements for runway and airport safety as well as agreement to give and grant an aviation easement in favor of the State of Hawaii.

Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP has submitted a draft Memorandum of Understanding to the DOT. An updated TIAR has been completed and revised and will be reviewed by the DOT.

17. Hazards to Aircraft Operations. a. *Petitioner shall take*

appropriate measures to fund and implement a program to control any bird nesting or gathering and any insect, pest, or wildlife infestation, especially in any drainage retention basins serving the Petition Area and in any portion of the Petition Area in the RSA, RPZ, and ROFA, or abutting the Kapalua-West Maui Airport to minimize the hazards to aircraft operations, as deemed necessary by the DOT, Airports Division. b. Petitioner, prior to developing and siting any proposed solar energy facilities in any portion of the Petition Area in the RSA, RPZ, and ROFA, or abutting the Kapalua-West Maui Airport, which DOT deems solar reflectivity may be an aviation safety issue, shall fund and conduct a glint and glare analysis, as deemed necessary by the DOT to minimize hazards to aircraft operations, and follow DOT recommendations and guidelines.

Compliance: No vertical development is designed to take place within the flight path or ends of the runway within Pulelehua that may pose as a hazard to aircraft operations. Presentations will be made to the DOT for their approval before Development begins.

18. Drainage. *Petitioner shall fund the design and construction of drainage system improvements to prevent runoff resulting from the development of the Petition Area from adversely affecting State airport and highway facilities to the satisfaction of appropriate State and County agencies, based on one hour of runoff from a 50-year storm.*

Compliance: Maui Oceanview LP will integrate drainage system improvements into the design of the project.

19. Notification of Potential Nuisances. *Petitioner shall disclose to all prospective buyers and/or lessees of the Petition Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands.*

Compliance: Maui Oceanview LP will notify all prospective buyers and renters of potential odor, noise, and dust pollution once sales and rentals commence.

20. Provisions of the Hawai'i Right to Farm Act. *Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District adjacent to the Petition Area.*

Compliance: Maui Oceanview LP will notify all prospective buyers and renters of the Hawaii Right to Farm act once rentals and sales commence.

21. Integrated Solid Waste Management Plan. *Petitioner shall cooperate with the DOH and the DPWEM to conform to the program goals and objectives of chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and*

promotion of solid waste recycling facilities, including recycling bins in public places, such as schools and parks, if any, within the proposed development.

Compliance: Maui Oceanview LP will comply with this condition.

22. Water Resources Allocation. *Petitioner shall provide adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate Pulelehua. Petitioner primarily shall utilize R-1 water, unless unavailable, for irrigation and fire flow protection.*

Compliance: Maui Oceanview LP will be constructing a potable water treatment plant and a non-potable transmission system to serve the Pulelehua project without an allocation from the Maui Department of Water Supply ("DWS"). Maui Oceanview LP has provided DWS with copies of its draft plans.

23. Established Access Rights Protected. *Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area for access to other areas to exercise subsistence, cultural, and religious practices.*

Compliance: No specific action taken to date but Maui Oceanview LP acknowledged community concerns raised during the processing of its motion to amend regarding access to lands *mauka* of Pulelehua that are not owned by Maui Oceanview LP.

24. Best Management Practices. *Petitioner shall implement applicable best management practices applicable to each proposed land use to reduce or eliminate soil erosion and groundwater pollution, and effect dust control measures during and after the development process in accordance with the DOH guidelines.*

Compliance: No specific action taken to date.

25. Soil Analysis. *Petitioner shall conduct a soil analysis study of the Petition Area to determine the impact of the Project from fertilizer and pesticide residue that may be present on the Petition Area and undertake measures to abate and remove any hazardous materials identified.*

Compliance: Prior soil studies performed on the property indicated no significant amounts of hazardous materials on site.

26. Water Conservation Measures. *Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and turf and incorporate such measures into common area landscape planting.*

Compliance: The potable water system planned for Pulelehua will incorporate R1 water reuse

for landscaping purposes. Landscape planting will include the use of indigenous and drought tolerant plants.

27. Energy Conservation Measures. *Petitioner shall implement energy conservation measures as much as economically feasible such as use of solar energy and solar heating and incorporate such measures into the Project where technically feasible.*

Compliance: Pulelehua will review in depth all renewable energy options available to it for economic practicality.

28. Parks. *Petitioner shall develop a 10-acre Community Park to be dedicated to the County of Maui, and pocket parks throughout Pulelehua with a system of sidewalks and walking trails connecting one end of the community to the other to be maintained by the Pulelehua community association. At least one of the pocket parks will include pet friendly features and Petitioner will establish a fenced dog park by the time 400 multi-family units are built and occupied at Pulelehua.*

Compliance: Maui Oceanview LP will comply with this condition in developing parks and trails for Pulelehua.

29. Compliance with Representations to the Commission. *Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification or change to a more appropriate classification.*

Compliance: All applications and developmental submittals to date have been in substantial compliance with the representations made during the processing of Maui Oceanview LP's motion to amend.

30. Notice of Change to Ownership Interests. *Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.*

Compliance: MLP sold ownership of the Petition Area to Maui Oceanview LP on June 3, 2016 and Maui Oceanview LP provided a notice to the Land Use Commission in compliance with the similar condition 28 of the 2006 D&O. Maui Oceanview LP will comply with this condition.

31. Annual Reports. *Petitioner shall provide timely and without any prior notice, annual reports to the Commission, the OP, and the Planning Department in connection with the status of the development proposed for the Petition Area, and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

Compliance: This letter represents the 2019 and 2020 annual report submitted in compliance with this condition and the similar condition No. 29 of the 2006 D&O. MLP provided annual reports in compliance with the 2006 D&O from 2007 through 2016. Maui Oceanview LP submitted an annual report for 2017 (filed June 16, 2017) and 2018 (filed April 24, 2019).

32. *Non-Applicability of Conditions to County of Maui.* While the drainage basin owned by the County of Maui is included in the Project acreage covered by this motion, the conditions set out in this order shall not be applicable to the County of Maui.

Compliance: Maui Oceanview LP acknowledges that the conditions of the order are not applicable to the County of Maui.

33. *Release of Conditions Imposed by the Commission.* The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Compliance: When requesting the release of a condition, Maui Oceanview LP will file the appropriate motions upon formal acknowledgement from the appropriate agencies on the satisfaction of these conditions.

34. *Statement of Imposition of Conditions.* Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) shall file a copy of such recorded statement with the Commission.

Compliance: With regard to the 2006 D&O, MLP recorded the Statement of Impositions of Conditions by Land Use Commission dated July 17, 2006, with the Bureau of Conveyances as Document 2006-129979. Maui Oceanview LP recorded the Statement of Impositions of Conditions by Land Use Commission on August 7, 2020 as Document No. A75240592.

35. *Recording of Conditions.* Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

Compliance: MLP has recorded the Amended and Restated Declaration of Conditions with the Bureau of Conveyances on September 29, 2006 as Document No 2006-178683. Maui Oceanview LP will record the Amended Declaration of Conditions with the Bureau of Conveyances.

36. *Substantial Commencement of Use of the Petition Area.* Pursuant to HRS §205-4(g), absent substantial commencement of use of the Petition Area in accordance with the representations made to the Commission in this docket, the Commission shall issue and serve upon the party bound by the condition an order to show cause why the

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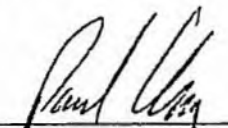
Petition Area should not revert to its former land use classification or be changed to a more appropriate classification.

Compliance: Maui Oceanview LP acknowledges this condition.

Should you have any questions or requests for additional information, please feel free to contact me at 214.415.8868(phone #) or paul@usaiinvestments.com(email). Your acceptance of this annual report is appreciated.

Sincerely,

MAUI OCEANVIEW LP
By MAUI OCEANVIEW GP, INC.
Its General Partner


By **PAUL CHENG**
Its President