

BFED Committee

From: Tamara Paltin <paltinoffice@gmail.com>
Sent: Tuesday, April 13, 2021 1:05 PM
To: Melissa.Magonigle@mpd.net
Cc: BFED Committee
Subject: Pulelehua Compliance Report
Attachments: Maui County Annual Report 2020.pdf

Mahalo Ms Magonigle for following up,
Aloha,
Tamara

Sent from my iPhone

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

The Honorable Alice L. Lee, Council Chair
The Honorable Tamara Paltin, Councilmember (West Maui)
Maui County Council
Kalana O Maui Building, 8th Floor
200 South High Street
Wailuku, Maui, Hawaii 96793

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: **2016 to 2020 Compliance Report for Ordinance No. 3889
A Bill for an Ordinance to Change Zoning From Agricultural District to
West Maui Project District 5 (Pulelehua) (Conditional Zoning) For
Property Situated at Mahinahina, Kahana, Lahaina, Maui, Hawaii
TMKs (2) 4-3-001-082 & 083 [previously (2) 4-3-01: por. 31]**

Dear Chair Lee, Councilmember Paltin, and Director McLean:

Maui Land & Pineapple Company, Inc. sold ownership of the Project District land area to Maui Oceanview LP on June 3, 2016. Pursuant to Condition of Zoning No. 17 of Ordinance No. 3889, Maui Oceanview LP, is pleased to provide this report to the Maui County Council and the County of Maui Planning Department concerning the current status of compliance with the conditions of change of zoning approval since the change in ownership.

General Project Progress:

The Land Use Commission of the State of Hawaii ("LUC" or "the Commission") approved the petition of Maui Land & Pineapple Company, Inc. ("MLP" or "Maui Land & Pineapple") 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.

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:

**2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)**

December 3, 2020

Page 2

- 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, as successor in interest to MLP, filed with the State of Hawaii Land Use Commission ("LUC") 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 LUC 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 LUC 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 LUC in support of the motion to amend. The LUC held further hearings on December 4-5, 2019, closing the hearing on December 5, 2019. The LUC 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.

Maui Oceanview LP has submitted to Maui Planning for review a Phase II Project District application. On November 13, 2020, the County of Maui Urban Design Review Board approved final design guidelines for the Pulelehua Project District Development.

Change in Zoning Conditions and Compliance:

The Maui County Council adopted Ordinance No. 3889 in 2011 to change the zoning for the Pulelehua project area from Agricultural District to the West Maui Project District 5 (Pulelehua), subject to the following seventeen (17) conditions:

1. That Maui Land & Pineapple Company, Inc. shall comply with the affordable housing provisions of Chapter 2.96, Maui County Code. In addition, Maui Land & Pineapple Company, Inc. shall construct the 125 units required by the State Land Use Commission Order filed on June 30, 2006, for Kapalua Mauka.

**2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)**

December 3, 2020

Page 3

Analysis: The Applicant will comply with the affordable housing provisions of Chapter 2.96, Maui County Code, including construction of the 125 units required by the LUC order filed on June 30, 2006 for Maui Land & Pineapple's Kapalua Mauka project, and is negotiating an Amended Residential Workforce Housing Agreement with the County of Maui.

2. *That Maui Land & Pineapple Company, Inc. shall provide potable and non-potable water source, storage and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply.*

Analysis: The Applicant will be constructing a potable water treatment plant and a non-potable transmission system, or connect to the Hawaii Water Company's nearby potable water service, to serve the Pulelehua project with no current planned allocation from the Maui Department of Water Supply ("DWS"). The Applicant will provide water source and storage. The Applicant has provided DWS with copies of its draft plans and may enter into discussions with DWS for a Well Contribution In Kind Agreement for future DWS served water supply.

3. *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.*

Analysis: The Applicant will notify potential lot owners of the Hawaii Right-to-Farm Act.

4. *That Maui Land & Pineapple Company, Inc. shall construct a 400 square-foot police substation in the Center Neighborhood District that includes a restroom, or provide an in-lieu cash contribution for the construction of a new West Maui Police Station, as determined by the Maui County Police Department.*

Analysis: The Applicant will provide an adequate location for a Police substation within the Center Neighborhood District. The Applicant will work with the Police department to identify the optimal location or will provide cash in-lieu of construction. The Applicant presently understands the Police department does not require the proposed facility but will make it available if so requested.

5. *That Maui Land & Pineapple Company, Inc. shall contribute land*

**2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)**

December 3, 2020

Page 4

for the development of a public elementary school to the State of Hawaii Department of Education ("DOE") along with a cash contribution as determined by the DOE on a fair share basis, pursuant to the education contribution agreement for Pulelehua executed on June 16, 2006 by DOE and Maui Land & Pineapple Company, Inc. In addition to the education contribution agreement, Maui Land & Pineapple Company, Inc. shall: dedicate an additional amount of land, contiguous with the land provided for in the educational contribution agreement, so that the DOE will receive a total of 13 acres; and include the land dedicated in the contribution agreement, to be used toward the development of one (1) elementary school within the project to serve the region.

Analysis: The Education Contribution Agreement was executed on June 16, 2006 by the Applicant's predecessor, Maui Land & Pineapple. 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.

Subsequent to its purchase of the Project District, the Applicant 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 the Applicant 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 the Applicant when they are ready to move forward with a new campus. Under Condition 2 of the Land Use Commission's July 30, 2020 Amended D&O,

[The Applicant] 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.

The Applicant has not yet pursued alternative means to expedite design and construction of the School.

6. That Maui Land & Pineapple Company, Inc. shall pursue alternatives with the DOE for the design and construction of the elementary school in Pulelehua. Such alternatives shall include, but not be limited to, a design-build arrangement whereby Maui Land & Pineapple Company, Inc., or a third party on Maui Land & Pineapple Company, Inc.'s behalf, may undertake the design and construction of public school facilities, subject to approval and reimbursement by the State of Hawaii, in order to expedite the delivery of school facilities.

**2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)**

December 3, 2020

Page 5

Analysis: The Applicant will continue to communicate with the DOE and consider design and construction alternatives for the proposed elementary school. Based on community engagement discussions and meetings, and as set out in Condition 2 of the Land Use Commission's July 30, 2020 Amended D&O, the Applicant has committed to meeting with local Maui developers who have constructed schools for the public-school system on Maui in the past. The Applicant has not received any interest from DOE to pursue alternative means to expedite design and construction of the School.

7. That, as represented by Maui Land & Pineapple Company, Inc., a voluntary contribution for road and traffic improvements in the West Maui Community Plan area shall be provided by Maui Land & Pineapple Company, Inc. to the County of Maui for all non-affordable dwelling units or lots developed at Pulelehua, at the rate of \$3,500 for each single family market unit or lot and gap group unit and \$1,500 for each multi-family market unit and gap group unit in the West Maui Project District 5 (Pulelehua), or the then prevailing County rate, whichever is higher. 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.

Analysis: As set out in Condition 8 of the Land Use Commission's July 30, 2020 Amended D&O, the Applicant will provide a voluntary contribution for road and traffic improvements in the West Maui Community Plan area to the County of Maui for all non-affordable dwelling units or lots developed at Pulelehua, at the rate of \$4,000 for each single family market unit or lot and gap group unit and \$2,000 for each multi-family market rate rental unit and gap group rate rental unit in the West Maui Project District 5 (Pulelehua), or the then prevailing County rate, subject to appropriate offsets, whichever is higher.

The contribution will be made prior to issuance of a building permit. An agreement between the Applicant and the County of Maui will be executed and recorded setting forth the terms and conditions of the voluntary contribution prior to Phase II Project District approval.

8. That Maui Land & Pineapple Company, Inc. shall: resolve the issue of the number of approved access points from Pulelehua to Honoapi'ilani Highway with the State Department of Transportation ("DOT") prior to public hearing on any Project District Phase II application for Pulelehua; and execute an agreement with the DOT Airports Division to utilize Akahale Street prior to Project District Phase II approval by the Maui Planning Commission.

Analysis: The Applicant has resolved the issue of the number of approved access points from Pulelehua to Honoapi'ilani Highway with the State Department of Transportation ("DOT"). MLP submitted a revised Traffic Impact

**2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)**

December 3, 2020

Page 6

Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which detailed 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.

The Applicant has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities, including Akahele Street. The Applicant has submitted a revised TIAR to DOT and has submitted a draft Memorandum of Understanding to the DOT.

9. That Maui Land & Pineapple Company, Inc. shall comply with requirements of the DOT to mitigate impacts associated with the development of Pulelehua, which may include, but not be limited to, traffic mitigation measures, roadway and intersection improvements, including roundabouts or signalization and pedestrian facilities, road widening for access to and use of Honoapi'ilani Highway and dedication of land within Pulelehua to accommodate the right-of-way for the Lahaina bypass as determined by and to the satisfaction of the DOT.

Analysis: The Applicant will comply with requirements of the DOT to mitigate impacts associated with the development of Pulelehua, which may include, but not be limited to, traffic mitigation measures, roadway and intersection improvements, including roundabouts or signalization and pedestrian facilities, road widening for access to and use of Honoapi'ilani Highway and dedication of land within Pulelehua to accommodate the right-of-way for the Lahaina bypass as determined by and to the satisfaction of the DOT.

10. That whenever a 4-way stop or traffic signal is considered as a means of traffic control at an intersection within the project, roundabouts that meet current federal standards must be deemed unwarranted prior to installing either a 4-way stop or traffic signal.

Analysis: Whenever a 4-way stop or traffic signal is considered as a means of traffic control at an intersection within the project, roundabouts that meet current federal standards must be deemed unwarranted prior to installing either a 4-way stop or traffic signal.

11. That Maui Land & Pineapple Company, Inc. shall notify all prospective buyers and/or lessees of the property of potential adverse impacts of aircraft and airport activity from the adjacent Kapalua-West Maui Airport, including but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations. Maui Land &

2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)

December 3, 2020

Page 7

Pineapple Company, Inc., shall provide covenants in the deed to initial purchasers releasing the County of Maui, State of Hawaii and the United States Government from all liability related to aircraft and airport activity from the adjacent Kapalua- West Maui Airport, including but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

Analysis: The Applicant will notify all prospective buyers and/or lessees of the property of potential adverse impacts of aircraft and airport activity from the adjacent Kapalua-West Maui Airport. The Applicant will provide covenants in the deed to initial purchasers releasing the County of Maui, State of Hawaii and the United States Government from all liability related to aircraft and airport activity from the adjacent Kapalua- West Maui Airport.

12. That Maui Land & Pineapple Company, Inc., shall plan and prepare for lateral roadway connections from the Property to adjoining lands in cooperation with the respective neighboring landowners to provide potential alternate roadway routes to improve transportation capabilities in the area.

Analysis: The conceptual site plan will provide future lateral roadway connection openings to adjacent lands.

13. That the two 5-acre parks within Pulelehua shall be privately owned, maintained and dedicated for public use. The two 5-acre parks shall be developed to the satisfaction of the Department of Parks and Recreation in fulfillment of the Park Dedication ordinance.

Analysis: The Applicant has met with the Maui County Department of Parks and Recreation. The Department determined it preferred the two, 5-acre parks be consolidated into a single 10-acre Community Park space with active sports fields, parking and comfort station. The dedication of the active park with amenities will fulfill the Applicants requirement of the park dedication ordinance.

14. That all other park sites within Pulelehua serving community, recreational, and neighborhood use shall be privately owned and maintained.

Analysis: The Applicant concurs that all other park sites within Pulelehua serving community, recreational, and neighborhood use will be privately owned and maintained.

2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)

December 3, 2020

Page 8

15. That Maui Land & Pineapple Company, Inc. designate and offer for sale to the County of Maui, at agricultural land rates, a 50-acre park site presently identified in the West Maui Community Plan at an alternate site mauka of the Honoapi'ilani Highway and along the Honoapi'ilani Highway in the vicinity of residential uses. The 50-acre park site shall be determined during the Community Plan Update process, provided that the park site not be located mauka of the Kapalua West Maui Airport.

Analysis: The Applicant's predecessor, Maui Land & Pineapple has confirmed that it will designate and offer for sale to the County of Maui, at agricultural land rates, a 50-acre park site presently identified in the West Maui Community Plan at an alternate site mauka of the Honoapi'ilani Highway and in the vicinity of residential uses. The 50-acre park site shall be determined during the 2018 West Maui Community Plan Update process. The park site shall not be located mauka of the Kapalua West Maui Airport.

16. That Maui Land & Pineapple Company, Inc. shall construct a private wastewater treatment plant, as approved by the Department of Health in the event the County of Maui's Lahaina Wastewater Reclamation Facility ("LWWRF") does not have the capacity or cannot be expanded to service Pulelehua. If Maui Land & Pineapple Company, Inc. connects to the LWWRF, it shall pay a fair-share contribution, as determined by the County, to fund improvements at the LWWRF necessary to accommodate the additional flow, and construct wastewater transmission facilities to transport wastewater from Pulelehua to the appropriate County wastewater transmission facilities leading to the LWWRF. The fair-share contribution shall be paid prior to the issuance of the first building permit requiring a connection to the LWWRF for Pulelehua.

Analysis: The Applicant has been working with the County of Maui Department of Environmental Management, Wastewater Reclamation Division on connection to the Lahaina Wastewater Reclamation Facility ("LWWRF"). If the Applicant connects to the LWWRF, it will pay for the wastewater transmission line to the County LWWRF and R1 return line back to Pulelehua, as determined by the County, and construct wastewater transmission facilities to transport wastewater from Pulelehua to the appropriate County wastewater transmission facilities leading to the LWWRF. In the event connection is not allowed, the Applicant will go forward with developing a wastewater treatment facility on site to serve Pulelehua. The private wastewater treatment plant will be operated by qualified operators, with the wastewater treatment plant using a system similar to or better than the system proposed by Waikapu Country Town, using organic membrane-type technology and no injection wells.

17. That Maui Land & Pineapple Company, Inc. shall provide annual

**2016 to 2020 Compliance Report for Ordinance No. 3889
West Maui Project District 5 (Pulelehua)**

December 3, 2020

Page 9

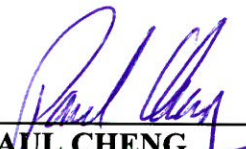
compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions imposed, commencing within one year of the effective date of the ordinance.

Analysis: The Applicant will provide compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions imposed.

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