



Maui Land & Pineapple Company, Inc.

June 1, 2010

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Land Use Commission
State of Hawaii
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County of Maui Planning Department
State of Hawaii
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LAND USE COMMISSION
STATE OF HAWAII
2010 JUN -7 A 8:26

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

Aloha,

Pursuant to the Condition No. 24 in the Decision and Order in the above referenced docket, Maui Land & Pineapple Co., Inc. ("MLP") is pleased to provide this sixth annual progress 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. For your reference please see the attached Location Map.

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 the agricultural district to the urban and rural districts for the Kapalua Mauka project by order dated June 29, 2004. This letter is our sixth annual progress report in this case. The Decision and Order sets forth twenty-seven (27) conditions of approval regarding the reclassification.

Since the submission of MLP's first annual progress report, MLP is continuing to pursue the discretionary governmental approvals for Kapalua Mauka. The Maui County Council approved MLP's petition to amend the West Maui Community Plan and Land Use Map from Agricultural and Open Space to West Maui Project District 2 (Kapalua Mauka), amend Title 19 of the Maui County Code to establish West Maui Project District 2 (Kapalua Mauka) and change in zoning from County Agricultural District and Interim District to West Maui Project District 2 (Kapalua Mauka) by Ordinance dated February 21, 2006. MLP submitted Project District 2 (Kapalua Mauka) Phase II and received approval on 11/15/2006. The first subdivision at Kapalua Mauka, Mahana Estates, received Phase III approval on 3/28/2007.

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 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 has also filed a Community Plan Amendment, Change in Zoning from Agricultural to Project District, and Project District applications to County of Maui for land use approvals for Pulelehua. The County Planning Commission recommended approval of the Community Plan Amendment and Change in Zoning on June 19, 2006.

Mahana Estates Subdivision Residential Workforce Housing Agreement dated 12/14/2006 has been executed for the first subdivision at Kapalua Mauka, Mahana Estates, pursuant to the County of Maui. The document was recorded by memorandum dated 5/31/2007.

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 Mauka dated July 10, 2003, between Kapalua Land Company, Ltd. And the State of Hawaii Department of Education.*

Compliance: No action has been taken to date.

3. ***Wastewater Treatment and Disposal Facilities.*** *Petitioner has paid the County of Maui 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: Petitioner has pre-paid it's agreed upon share to fund the construction to the Lahaina Wastewater Reclamation Facility. Petitioner shall receive wastewater treatment service for wastewater from the Kapalua Mauka Property pursuant to the Lahaina Wastewater Reclamation Facility ("LWWRF") Expansion Agreement No action to date has been taken on the construction of the onsite infrastructure for the project.

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: As part of compliance petitioner has submitted drawings to state Department of Transportation regarding Mahana Estates portion of Project District 2. The State Department of Transportation (DOT) is in the process of reviewing the proposed improvements necessary at the intersection of Honoapi'ilani Highway and the access road to accommodate Mahana Estates. Required improvements at Mahana Estates will be constructed in accordance with approved plans by SMC Mahana LLC, the owner of Mahana Estates parcel (see condition 23 for new ownership notification). When warranted, Maui Land & Pineapple Company will make all required improvements to Honoapi'ilani Highway necessary for access to the other areas of the greater Kapalua Mauka per State Department of Transportation 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. In the event a change in circumstance proves that a fee of up to \$3,500 is inadequate, the State or the County may seek to amend this Order

5a. 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: Petitioner and County have entered into written agreement to provide a voluntary contribution to the County of Maui for Traffic and Roadway improvements. The document has been 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 utility crossing on Honoapi'ilani Highway. Administration costs and enhancement fees have been paid to SDOT.

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 or Civil Defense and County Civil Defense Agency.*

Compliance: Approval of siren location granted by State Department of Defense letter dated January 18, 2008. No construction has taken place to date.

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 revision s 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 recover sub-plan has been successfully implemented.*

Compliance: A Preservation Plan has been prepared for all inventoried sites on the Kapalua Mauka Community Site and a Preservation Plan has been prepared for all Possible Burial Features within the Kapalua Mauka Community Site. Both plans were submitted to the State Historic Preservation District and Maui Lanai Islands Burial Council for review and approval on February 14, 2006.

All revisions to the archaeological surveys recommended by SHPD have been made and the State Historic Division (SHPD) accepted both (one covering the original Project District 2 area and one covering the expanded Project District 2 area) archaeological surveys.

The SHPD has accepted both preservation plans (one covering the original Project District 2 area and one covering the expanded Project District 2 area) prepared for the historic sites in Kapalua Mauka recommended for preservation.

The Maui/Lani Islands Burial Council voted unanimously to recommend approval of the burial treatment plan for the possible burial sites in Honokahua Gulch. By letter dated January 11, 2007 the State Historic Preservation Division is in approval of the plan.

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: No action has been taken to date.

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

Compliance: No 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: No action has been taken to date.

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: No action has been taken to date.

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: No action has been taken to date.

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: Maui Land & Pineapple Company will fund the design and construction of drainage improvements required as a result of development in the Kapalua Mauka area per State and County agencies as areas are developed.

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 appropriated 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: 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: Maui Land & Pineapple Company will provide adequate potable and non-potable water source, storage and transmission facilities and improvements to accommodate Kapalua Mauka area per State and County agencies as areas are developed. All water transmission facilities shall be approved by appropriate State agencies.

- 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: No action has been taken 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: Maui Land & Pineapple Company 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: 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: 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: 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: 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 to the Commission by letter dated August 21, 2009 of the sale of the 124.980 acre parcel known as Mahana Estates to SMC Mahana LLC. The sale was finalized September 23, 2009 At the present 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 sixth annual report submitted in compliance with this condition.

- 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: When requesting the release of a condition, MLP will file the appropriate motions upon formal acknowledgment from the proper agencies of their satisfaction.

- 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.*

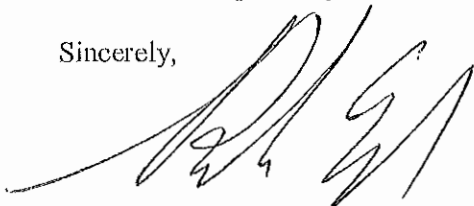
Compliance: MLP has recorded the Statement of Impositions of Conditions by Land Use Commission dated June 16, 2004, with the Bureau of Conveyances as Document 2004-153380.

- 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.

Your acceptance of this annual report is appreciated. Please let us know if there is any additional information required by the LUC at this time.

Sincerely,



Pam English, Development Manager
Community Development
Maui Land & Pineapple Company, Inc.

Cc: Patrick Shin, SMC Mahana LLC

