

SMC MAHANA LLC

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

June 4, 2013

Mr. Riley Hakoda, Chief Clerk
Riley.k.hakoda@dbedt.hawaii.gov
State Land Use Commission
Department of Business, Economic Development and Tourism
State of Hawaii
PO Box 2359
Honolulu, HI 96804-2359

Ms. Terresa Hee
State Office of Planning
PO Box 2359
Honolulu, HI 96804

Mr. William Spence, Director
planning@mauicounty.gov
County of Maui Planning Department
Kalana Pakui Building Suite 200
250 S. High Street
Wailuku, HI 96793

LAND USE COMMISSION
STATE OF HAWAII
2013 JUN - 3 A 7:48

**Re: Annual Compliance Report PORTION 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.

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Mahana Estates Portion of Kapalua Mauka
June 4, 2013

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. SMC Mahana, LLC requests the release of the Mahana Estates portion of this condition 1, pursuant to the requirements of condition 25. Release of Conditions Imposed by the Commission.** Please let us know if the condition has been released or if there is any additional information required for this request.

UPDATE 06/04/13: NOTIFICATION OF RELEASE OF THE ABOVE CONDITION WAS NOT RECEIVED BY SMC MAHANA, LLC FROM THE JUNE 2012 LUC COMPLIANCE REPORT. PLEASE FORWARD RELEASE OF CONDITION OR REQUEST FOR ADDITIONAL INFORMATION.

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. As of this date, the Mahana Estates portion has not been subdivided and no lots have been sold.

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

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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 is currently constructing a new gravity collection system to collect wastewater generated by Mahana Estates and transport it to the LWRF. The completion of this system is expected to take one more year.

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 has since 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 is scheduled to release the performance bond after the one year warranty period which will be 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. As of this date, the Mahana Estates portion has not been subdivided.

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 siren has not yet been installed.

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.

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.

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10. Notification of Potential Aircraft Noise.

Sales agreements for all individual homes or lots within Mahana Estates will contain specific notification of potential noise from the over flight of aircraft using Kapalua West Maui Airport. To date, no sales agreements have taken place.

11. Notification of Potential Nuisances.

Sales agreements for all individual homes or lots within Mahana Estates will contain specific notification of potential odor, noise, and dust pollution resulting from adjacent agricultural uses. To date, no sales agreements have taken place.

12. The Hawaii Right to Farm Act

Sales agreements for all individual homes or lots within Mahana Estates will 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, no sales agreements have taken place.

13. Drainage Improvements

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 has started. The construction is expected to take one more year.

Pursuant to SDOOT 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 scheduled to release the performance bond after the one year warranty period which will be 12/05/2013.

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 approved construction plans, construction of the potable and non-potable systems for Mahana Estates has started. The construction is expected to take one more year for the transmission and storage facilities to serve the 51 lot residential area.

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.

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17. Best Management Practices

SMC Mahana, LLC secured permit R10C659 dated 10/21/12 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.

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. No home construction has been started to date.
- 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. No work has been done to date on the landscape portion of the work.
- Prevent over watering by automated systems. No irrigation systems have been installed to date.
- Not allow single pass cooling pursuant to Maui Count Code Section 14.21.20. No home construction has started to date.
- 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. No work has been done to date on the landscape portion of the work.
- 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. No meters have been installed to date.

19. Energy Conservation Measures

SMC Mahana LLC will implement energy conservation measures, such as the use of solar energy and solar heating within the design of Mahana Estates. No homes have been constructed to date.

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. SMC Mahana, LLC requests the release of the Mahana Estates portion of this condition 20, pursuant to the requirements of condition 25. Release of Conditions Imposed by the Commission.** Please let us know if the condition has been released or if there is any additional information required for this request.

UPDATE 06/04/13: NOTIFICATION OF RELEASE OF THE ABOVE CONDITION WAS NOT RECEIVED BY SMC MAHANA, LLC FROM THE JUNE 2012 LUC COMPLIANCE REPORT. PLEASE FORWARD RELEASE OF CONDITION OR REQUEST FOR ADDITIONAL INFORMATION.

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. SMC Mahana, LLC requests the release of the**

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June 4, 2013

Mahana Estates portion of this condition 21, pursuant to the requirements of condition 25. Release of Conditions Imposed by the Commission. Please let us know if the condition has been released or if there is any additional information required for this request.

UPDATE 06/04/13: NOTIFICATION OF RELEASE OF THE ABOVE CONDITION WAS NOT RECEIVED BY SMC MAHANA, LLC FROM THE JUNE 2012 LUC COMPLIANCE REPORT. PLEASE FORWARD RELEASE OF CONDITION OR REQUEST FOR ADDITIONAL INFORMATION.

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. **This report contains the request and documentation for release of conditions 1, 20, and 21. Conditions 26 and 27 have been previously released.**

UPDATE 06/04/13: NOTIFICATION OF RELEASE OF THE ABOVE CONDITION WAS NOT RECEIVED BY SMC MAHANA, LLC FROM THE JUNE 2012 LUC COMPLIANCE REPORT. PLEASE FORWARD RELEASE OF CONDITION OR REQUEST FOR ADDITIONAL INFORMATION.

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 penglish@nanhawaii.com or 808-271-7430 if there are any questions.

Sincerely,



Pam English, Project Manager

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June 4, 2013

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.

ATTACHMENT 1

LAND USE COMMISSION
STATE OF HAWAII

2013 JUN 13 A 7:48



R-634 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAY 31, 2007 08:01 AM
Doc No(s) 2007-097329



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z12

LAND COURT SYSTEM

Ka REGULAR SYSTEM

Return by Mail ☒ Pickup ☐ To:

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

ps

Trk 378420D

TITLE OF DOCUMENT:

MEMORANDUM OF MAHANA ESTATES SUBDIVISION RESIDENTIAL
WORKFORCE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

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

COUNTY OF MAUI

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

(9 pages.)

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

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

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

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

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

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

MLP:

MAUI LAND & PINEAPPLE COMPANY, INC.

By Robert M. McNatt

Name: Robert M. McNatt

Its: Executive Vice President / Community Development

By Ryan L. Churchill

Name: Ryan L. Churchill

Its: Sr. Vice-President Corporate Development

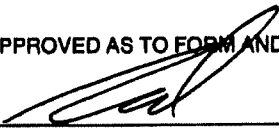
COUNTY OF MAUI

By 
CHARMAINE TAVARES
Its Mayor

APPROVAL RECOMMENDED:


VANESSA A. MEDEIROS
Director of Housing and Human Concerns

APPROVED AS TO FORM AND LEGALITY:


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

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 14th day of May, 2007, before me personally appeared Robert M. 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: 5/24/17

STATE OF HAWAII) L.S.
) SS.
COUNTY OF MAUI)

On this 14th day of May, 2007, before me personally appeared Ryan L. Chudchill, 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: 5/24/17

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. Nahookkala
Name: Kelli 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 2

Develop / b2 / ACT PC / POD2 / County / Dept of Ho & Human
UNRECORDED UNRECORDED
COPY TO AIR
30/p: REG. BODE! COUNTY
DEPT OF HOUSING.

SCANNED
7-12-07

CF _____
KLC 14-1009

Rec'd FEB - 2, 2007
Route To AS DA FAX CSH DL
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.

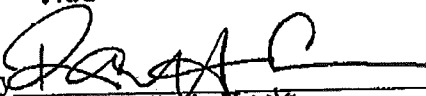
MLP:

MAUI LAND & PINEAPPLE COMPANY,
INC.

By 

Name: Ryan Churchill

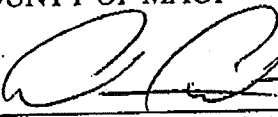
Its: Vice President, Community Development

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

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


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

My commission expires: 10/3/07

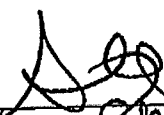
STATE OF HAWAII

)
) SS.
)

COUNTY OF MAUI

On this 15th day of December, 2006, before me personally appeared Bondail 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 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:  ²³ June 3, 2010 ^{JAF}
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 | |
| | Walehu Kou 2 | 99 |
| | Waiehu Kou 3 | 83 |
| | Walehu 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

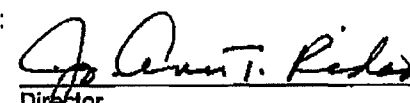
By Dowling Company, Inc.

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

Submitted by:

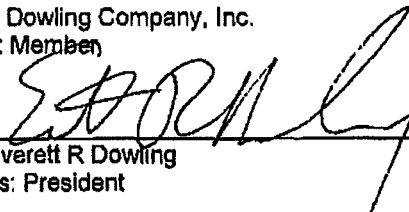
WK 3 LLC

By Maui Quest LLC

Its: Member

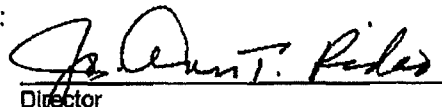
By Dowling Company, Inc.

Its: Member

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

Transferor

Acknowledgement:

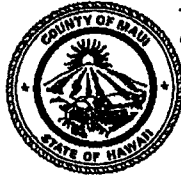
By:  July 13, 2010
Director Date
Department of Housing and Human Concerns

Credits Exercised by this assignment are for the following project:

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

ATTACHMENT 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, appearing to read "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