

# SMC Mahana LLC

3170 Noela Drive  
Honolulu, Hawaii 96815  
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November 30, 2022

Mr. Riley Hakoda, Chief Clerk  
[riley.k.hakoda@hawaii.gov](mailto:riley.k.hakoda@hawaii.gov)  
State Land Use Commission  
Department of Business, Economic Development and Tourism  
State of Hawaii  
P.O. Box 2359  
Honolulu, Hawaii 9804-2359



Ms. Mary Alice Evans, Officer Planning Director  
[maryalice.evans@hawaii.gov](mailto:maryalice.evans@hawaii.gov)  
State Office of Planning  
PO Box 2359  
Honolulu, HI 96804

Ms. Michele C. McLean, Director  
[planning@mauicounty.gov](mailto:planning@mauicounty.gov)  
County of Maui Planning Department  
Kalana Pakui Building Suite 200  
250 S. High Street  
Wailuku, HI 96793

RE: 2021 Annual Compliance Report PORITION of DOCKET NO. A03-741  
Mahana Estates 51 lot portion of Kapalua Mauka (Project District 2)

Sirs and Madam,

This serves as SMC Mahana LLC's 2021 Annual Compliance Report. 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.

The Mahana Estates portion of Kapalua Mauka is within the State Rural Land Use District. This 124.98-acre, 51 lot parcels is now part of the SMC Homeowners Association. The following annual report details compliance with the Mahana Estates portion of the land. As of the date of this report, all of the parcels have been sold: 50 parcels have been sold with the developer reserving 1 lot. For 2021 annual report compliance and reporting purposes, as of the close of 2021, 47 lots were sold.

## 1. Affordable Housing

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

## 2. Public School Facilities

Pursuant to the Educational Contribution Agreement for Kapalua Mauka dated July 10, 2003 between Kapalua Land Company, Ltd and the State of Hawaii Department of Education, the Mahana Estates portion responsibility has been assigned to SMC Mahana, LLC. Pursuant to this assigned portion of the agreement, SMC Mahana, LLC will pay \$1,011.00 to the Department of Education within 30 days of the closing and recordation for the sale of residential unit or lot with in Mahana Estates. There are total of 51 lots for Mahana Estates. Effective March 12, 2019, Final Order of Subdivision Registration by the Department of Commerce and Consumer Affairs has been issued. As of the date of this report, all 50 parcels have been sold (the developer reserving 1 lot, Lot 22) but for 2021 annual report compliance and reporting purposes as of the close of 2021, 47 lots were sold (lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 46, 49, 50, and 51).

## 3. Wastewater Treatment and Disposal Facilities

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

SMC Mahana LLC has completed construction of a new gravity collection system to

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

#### 4. Transportation Improvements

On December 7, 2006, the State of Hawaii Department of Transportation (“HDOT”) confirmed, via letter, that no intersection improvements would be necessary at the intersection of Honoapiilani Highway and the Mahana Estates access road. Subsequent to its December 7, 2006 letter, HDOT required 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. On December 5, 2012, HDOT accepted the completed improvement.

#### 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 was required to 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. As of the date of this Annual Report as noted above, all 51 lots with the Mahana Estates have been sold and all fees and/or assessments have been paid to the Maui Department of Finance.

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

#### 7. Archaeological Inventory Survey and Historic Preservation Mitigation Plan

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

#### 8. Unidentified Finds

No archeological and historic sites were found during the construction of the Mahana Estates.

#### 9. Air Quality Monitoring

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

#### 10. Notification of Potential Aircraft Noise

Sales agreements for all individual homes or lots within Mahana Estates contained a specific notification of potential noise from the over flight of aircraft using Kapalua West Maui Airport.

#### 11. Notification of Potential Nuisances

Sales agreements for all individual homes or lots within Mahana Estates contained a specific notification of potential odor, noise, and dust pollution resulting from adjacent agricultural uses.

#### 12. The Hawaii Right to Farm Act

Sales agreements for all individual homes or lots within Mahana Estates contained a 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.

#### 13. Drainage Improvements

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

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

#### 14. Integrated Solid Waste Management Plan

SMC Mahana, LLC will cooperate with the State of Hawaii Department of Health and the County of Maui Department of Environmental Services with their program goals and

objectives for solid waste management. A Solid Waste Disclosure Form was filed with the Department of Health, Solid Waste Division on November 29, 2011 for the Mahana Estates portion of the land.

#### 15. Water Resources Allocation

SMC Mahana, LLC has completed construction of the potable and non-potable systems for Mahana Estates that serves the 51-lot residential area. Both the potable and non-potable systems for Mahana Estates have been turned over to the Kapalua Water Company, Ltd., on 6/01/2017, and Kapalua Water Company, Ltd., will operate and maintain the new waterline systems for the Mahana Estates.

#### 16. Access Rights

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

#### 17. Best Management Practices

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

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

#### 18. Water Conservation Measures

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

- Install low flow fixtures and devices throughout the community.
- Limit irrigation of turf areas. The common area landscape plan has been approved by the County of Maui and includes the use of indigenous and drought tolerant plants and turf for the Mahana Estates land.
- Prevent over watering by automated systems. Irrigation controls will be used to regulate irrigation water at the common areas of Mahana Estates by a 50% reduction in the Fall and Winter seasons. Future individual homeowners will be encouraged to

do the same.

- Not allow single pass cooling pursuant to Maui Count Code Section 14.21.20.
- Use native plants for landscaping. The common area landscape plan has been approved by the County of Maui and includes the use of indigenous and drought tolerant plants and turf for the Mahana Estates land.
- Install meters for both potable and non-potable systems to discourage excessive use. The water system for Mahana Estates has been designed with both potable and non-potable water meters. Meters have been installed at Lot 1 and 2 where model homes on these properties have already been completed.

#### 19. Energy Conservation Measures

SMC Mahana LLC has implemented energy conservation measures within the design of Mahana Estates. The following design measures for energy conservation have been standardized for each residence:

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

#### 20. Wellhead Protection Acres

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

#### 21. Golf Course Guidelines

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

#### 22. Compliance with Representations to the Commission

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

#### 23. Notice of Change to Ownership Interest

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.

#### 24. Annual Reports

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

25. Release of Conditions Imposed by the Commission

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

26. Statement of Imposition of Conditions

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

27. Recording of Conditions

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

If you have any questions or comments, I may be reached at (808) 842-4929 or at [maiu@nanhawaii.com](mailto:maiu@nanhawaii.com).

Very truly yours,



Micah P. K. Aiu  
In House Counsel

Enclosures:

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.

# ENCLOSURE 1





R-034 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAY 31, 2007 08:01 AM  
Doc No(s) 2007-097329



for CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 212

LAND COURT SYSTEM

*Ke* 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, Walluku, 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.eee**

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.eee

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

MLP:eee

MAUI LAND & PINEAPPLE COMPANY, INC.eee

By *Robert M. McNatt*  
Name: **Robert M. McNatt**  
Its:eee **Executive Vice President / *Community Development***

By *Ryan L. Churchill*  
Name: **Ryan L. Churchill**  
Its: **Sr. Vice-President Corporate Development**eee

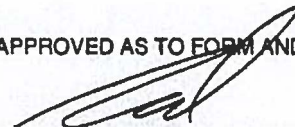
COUNTY OF MAUI

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

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

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

My commission expires: 5/25/07

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

L.S.

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

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

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

My commission expires: 5/25/07

L.S.

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF MAUI                    )

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

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

Kelli P. Nahoolkaka  
Name: Kelli P. Nahoolkaka  
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.eee284° 00'  | 307.46 feet along Lot 49 of The Plantation at Kapalua (File Plan No. 2006) to a point;              |
| 2.eee328° 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;eee   |
| 6. 22° 18'   | 545.98 feet along same to a point;  |
| 7.eee 6° 29'   | 302.12 feet along same to a point;  |
| 8. 342° 52'  | 171.59 feet along same to a point;  |
| 9.eee313° 48'  | 23.52 feet along same to a point;   |
| 10.eeeThence along same on a curve to the right, having a radiuseee<br>ofeee | 597.00 feet, the chord<br>azimuth and distance<br>being:<br>322° 58' 30" 190.38 feet<br>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.

# **ENCLOSURE 2**

Develop / b2P / ACT Pro / POD2 / County / Dept of Home & Human  
UNRECORDED UPDATE:  
COPY TO CIP  
30/p: REG. BODE: COUNT  
DEPT OF HOUSING

SCANNED  
7-12-07

CF

KLC 14-1009

Rec'd FEB - 2 2007

Route To AS DA FR CSH DC

Copy To

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:aaa

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. 3aaa

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

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

1.aaa Is a citizen of the United States or a permanent resident alien;aaa

2.aaa 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.aaa In the case of a Buyer, has the financial ability to purchase a Residentialaaa Workforce Housing Unit ("Housing Unit" or "Unit"), including being able to qualify for a residential mortgage in a timely manner;

5.aaa Falls within one of the Income Groups established by Chapter 2.96.aaa

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

B.aaa "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.aaa "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.aaa "County" means the County of Maui.aaa

E.aaa "Council" means Maui County Council.aaa

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

G.aaa "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.sss "Gross Annual Family Income" includes income from the following sources:sss 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.sss "HUD" means the Department of Housing and Urban Development of the U.S.sss Government.

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

L.sss "Improvements" means substantial structural or permanent fixed improvementssss 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.sss "Median Family Income" means the middle income in a series of incomes ranked.sss from smallest to largest as determined by HUD for the County.

N.sss "Permanent Resident Alien" means an individual who has been issued.sss 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.sss**

1.sss Number of Units Required; Approved Satisfaction of Requirements.sss  
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)sss Fifteen (15) of the required units (58%) are "for sale" Housing.sss 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)sss MLP shall satisfy the remaining eleven (11) required units by.sss 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 Plans.sss region and renting those 11 units in accordance with Chapter 2.96 and this Agreement. Four (4)sss of those units (15%) shall be rented to qualified renters in the 120% to 140% income bracket,sss and seven (7) of those units (27%) shall be rented to qualified renters in the 140% to 160%sss income bracket. Rental Units will be offered for rent and occupancy no later than the time at.sss



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.aaa

**B.aaa General Requirements Applicable to Sale of Housing Units.aaa**

**1.aaa Applicant Selection Process for Sale of Housing Units.aaa**

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

(1)aaa MLP shall establish a wait list of interested applicants;aaa

(2)aaa Prior to initiating the wait list, MLP shall publish in at leastaaa 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)aaa Selection for purchase shall be made by a lotteryaaa administered by MLP and overseen by the Department, subject to the Applicant meeting the applicable eligibility criteria.

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

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

(b)aaa Be eighteen years of age or older;aaa

(c)aaa Have a Gross Annual Family Income (not to include the income of aaa 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)aaa Have assets that do not exceed one hundred sixty percent of theaaa 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)aaa For a period of three years before the submittal of the ownershipaaa 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)sss Executed sales contract;sss
- (c)sss Pre-qualification notice from lender;sss
- (d)sss All signed federal tax returns used to determine eligibility, or anysss other documents used to determine eligibility by the lender; and
- (e)sss Escrow company's settlement statement.sss

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

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

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

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

(1)sss Thirty percent of the ownership units shall be for "below-moderate income" residents;

(2)sss Thirty percent of the ownership units shall be forsss "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 "gapsss income" residents.

(c)sss Timing of completion.sss

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

(2)sss Certificates of occupancy shall not be issued and/or finalsss 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)sss Deed restrictions.sss

(1)sss The unit must be owner-occupied;sss

(2)sss The unit must remain affordable for twenty-five years fromsss the initial sale, with the owner notifying the Department upon a decision to sell; and

(3)sss Under special circumstances an owner of a residentialsss 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.sThe sales price of a newsss 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)sss A down payment of five percent shall be assumed;sss

(2)sss The prevailing interest rate shall be used;sss



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

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

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

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

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

(f)eee Sales price - two-family or multi-family dwelling units.eThe salesee 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)eee Resale price. The maximum resale price shall be established by the department using the following guidelines:

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

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

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

(h)eee Foreclosures.eee

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

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

### C.eee General Requirements Applicable to Rental of Housing Units.eee

#### 1.eee Applicant Selection Process for Rental of Housing Units.eee

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

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

(2)eee Prior to initiating the wait list, MLP shall initiate the waiteee 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 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.000 Availability of Credits for Housing Units.**

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

(a)000 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)000 One residential workforce housing credit shall be given for every000 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.

2.000 The credit must be used in the same community plan area in which the000 unit was constructed.

3.000 The credit must be applied toward the same type of unit constructed.000

4.000 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.

5.000 The credit must be used for the "gap income" group when the credit is000 earned by creating a deed restriction.

6.000 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.000 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.000 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

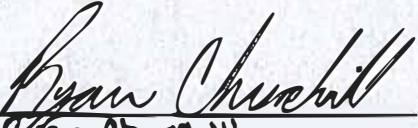
The effective date of this Agreement shall be the date set forth on the first page of this Agreement or, absent such a date, on the date on which the last party signs this Agreement.




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

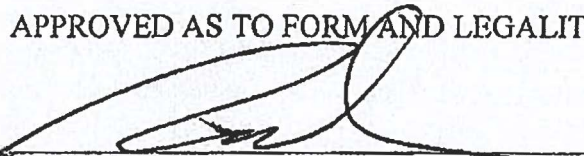
COUNTY OF MAUI

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 15<sup>th</sup> day of December, 2006, before me personally appeared Ruan Churchill, to meeee 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

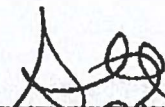
STATE OF HAWAII

)  
) SS.  
)

COUNTY OF MAUI

On this 15<sup>th</sup> 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 29<sup>th</sup> 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. Nahookali

Name: Keli P. Nahookali  
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.aaa320° 11' 342.84 feet along same to a point;
4. 299° 45' 473.25 feet along same to a point;a
- 5.aaa294° 02' 414.26 feet along same to a point;
- 6.aaa 22° 18' 545.98 feet along same to a point;
- 7.aaa 6° 29' 302.12 feet along same to a point;
- 8.aaa342° 52' 171.59 feet along same to a point;
- 9.aaa313° 48' 23.52 feet along same to a point;
- 10.aaaThence along same on a curve to the right, having a radiusaaa ofaaa

597.00 feet, the chord  
azimuth and distance  
being:

322° 58' 30" 190.38 feet  
to a point;

11.	332°	09000	147.95 feet	along same to a point;
12.	286°	50'	160.00 feet	along same to a point;
13.000	246°	40'000	198.00 feet	along same to a point;
14.000	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;
15.000	315°	00'	212.40 feet	along same to a point;000
16.000	342°	00'	98.17 feet	along same to a point;
17.000	59°	30'	228.90 feet	along same to a point;
18.000	8°	00'	87.96 feet	along same to a point;
19.000	308°	2000	125.73 feet	along same to a point;
20.000	240°	00'	48.91 feet	along same to a point;
21.000	330°	00'	90.84 feet	along same to a point;
22.000	240°	00'	128.41 feet	along same to a point;
23.000	342°	00'	70.47 feet	along same to a point;
24.	290°	000	250.66 feet	along same to a point;000
25.000	335°	30'000	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<br>beginning and containing<br>an Area of 124.980 Acres. |

# **ENCLOSURE 3**



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

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

**Submitted by:**

WK 3 LLC

By Maui Quest LLC

Its: Member

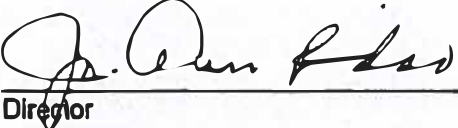
By Dowling Company, Inc.

Its: Member

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

**Transferor**

**Acknowledgement:**

By:  June 23, 2010 *jit*  
Director Date  
Department of Housing and Human Concerns

Credits Exercised by this assignment are for the following project:

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

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

1	Workforce Housing Credits available	
	Waiehu Kou 2	99
	Waiehu Kou 3eee	83
	Waiehu Kou 4	86
	Lelalii Phase 1Aeee	104
	<u>Total</u>	<u>372</u>
2eee	Workforce Housing Credits assigned prior to this assignment	<u>58</u>
3	Workforce House Credits to be assigned by this assignment	<u>3eee</u>
4eee	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

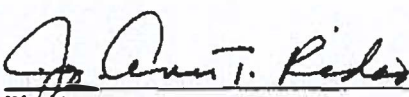
By Dowling Company, Inc.eee

Its: Member

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

Transferoreee

Acknowledgement:eee

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

Credits Exercised by this assignment are for the following project:eee

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

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
	<b>Total</b>	<b>372</b>
2	Workforce Housing Credits assigned prior to this assignment	<u>81</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:

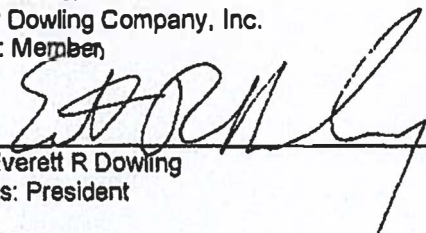
WK 3 LLC

By Maui Quest LLC

Its: Member

By Dowling Company, Inc.

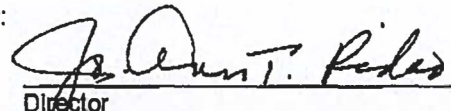
Its: Member

By:   
Everett R Dowling  
Its: President

July 12, 2010  
Date

Transferor

Acknowledgement:

By:   
Director  
Department of Housing and Human Concerns

July 13, 2010  
Date

Credits Exercised by this assignment are for the following project:

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

# ENCLOSURE 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".

David Taylor, Chief  
Wastewater Reclamation Division



# **ENCLOSURE 5**





Maui Land & Pineapple Company, Inc.

August 21, 2009

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

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

Dear Mr. Davidson:

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

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

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

Address: 3170 Noela Drive, Honolulu, Hawaii 96815

Telephone: (808) 842-4929

Manager or Registered Agent: Patrick Shin

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

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

Sincerely,

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

Ryan Churchill  
Sr. Vice President

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