

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ONE MAIN PLAZA, SUITE 400
2200 MAIN STREET, P.O. BOX 1086
WAILUKU, MAUI, HAWAII 96793-1086
TELEPHONE 808.242.4535 FAX 808.244.4974
WWW.CARLSMITH.COM

BKOBAYASHI@CARLSMITH.COM

September 16, 2009

COPY

2009 SEP 17 A 8 16
LAND USE COMMISSION
STATE OF HAWAII

Mr. Orlando Davidson
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

Re: LUC Docket No. A04-754
Fourth Annual Report by Maui Lani Village Center, Inc.,
Successor in Interest to Maui Lani 100, LLC
TMK (2) 3-8-007:151 (formerly 3-8-007:131 (portion))

Dear Mr. Davidson:

This firm represents Maui Lani Village Center, Inc. ("MLVC"), a Hawaii corporation and successor in interest to Maui Lani 100, LLC, a Hawaii limited liability company ("ML 100"). MLVC and ML 100 are related entities and shall sometimes be collectively referred to as "Petitioner".

A Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment in Land Use Commission Docket No. A04-754 was filed on September 15, 2005 ("Decision & Order"), reclassifying approximately 59.6 acres in the State Land Use Agricultural District at Wailuku, Maui, Hawaii, identified as Tax Map Key (2) 3-8-007:131 (por.) to the State Land Use Urban District ("Subject Property"). In compliance with Condition No. 17 of the Decision & Order, MLVC hereby submits this fourth annual report.

Successor in Interest to Maui Lani 100, LLC.

By Limited Warranty Deed and Assumption of Mortgages dated July 11, 2008 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-111998, ML 100 conveyed all of its interest in Lot 11-D-1-A-1-B, area 103.874 acres, and Lot 11-D-1-A-1-F, area 12.964 acres, to MLVC, a copy of which is attached hereto as **Exhibit "A"**.

By Reciprocal Quitclaim Deed dated January 23, 2009 and recorded in said Bureau of Conveyances as Document No. 2009-013557, Lot 11-D-1-A-1-B-1, Lot 11-D-1-A-1-B-2, Lot

11-D-1-A-1-B-3 and Lot 11-D-1-A-1-F-1 of the Maui Lani (Large-Lot) Subdivision No. 7 was conveyed to MLVC, a copy of which is attached hereto as **Exhibit "B"**.

The Subject Property was formerly a portion of Lot 11-D-1-A-1-B and is now portions of Lot 11-D-1-A-1-B-1 and Lot 11-D-1-A-1-B-2 and designated as TMK (2) 3-8-007:151 (portions).

General Progress of the Project.

On December 9, 2008, Project District Phase II approval was granted by the Maui Planning Commission for Maui Lani's Village Mixed Use ("VMX") District to include the VMX (C-R) and VMX (R) subdistricts of the Subject Property that were rezoned from the "Agricultural" district to 'Wailuku-Kahului Project District 1' in 2006, and subsequently received the Maui County Council's approval of the change in zoning and amendment of the Wailuku-Kahului Community Plan to include the Project.

Bonded final subdivision approval was obtained from the County on August 27, 2009 for the 75 lot Maui Lani Village Center Subdivision, which is the small lot subdivision for the VMX Commercial/Residential subdistrict. Final Construction Plan Approval was granted by the County on June 24, 2009 and final grading and construction of utilities is approximately 60% complete, with final completion expected by the end of 2009.

Construction of the extensions of Kuikahi Drive and Maui Lani Parkway which provide the basic utility infrastructure and access for the Petition Area is nearly complete, with only landscaping, Maui Electric service, and signalization remaining, all of which should be completed by the end of 2009.

Grading for the District Park is about 70% complete with final completion of grading due by the end of 2009. This will be followed by underground irrigation and grassing in the first quarter of 2010.

Report on Compliance with Conditions Imposed by Commission.

Condition 1: Affordable Housing. The Petitioner shall develop the Project to meet the County of Maui's affordable housing guidelines; provided, however, that at least 51% of the Project's residential units shall be priced to be affordable to families earning between 80% to 140% of the County of Maui's annual median income. The location and distribution of the affordable housing and other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and DHHC. Petitioner shall provide the Commission with an executed copy of the affordable housing agreement entered into with DHHC.

Response: Petitioner entered into an affordable housing agreement with DHHC, a copy of which was previously provided to the Commission. The Project has been, and will continue to be, developed in accordance with said agreement.

Condition 2: Public School Facilities. Petitioner shall work with the DOE relative to any fair share contributions to mitigate the impacts of the Project on public school facilities. Terms of the fair share contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County re-zoning of the Petition Area.

Response: Petitioner entered into an agreement with the DOE relative to fair share contributions to mitigate the impacts of the Project. A copy of the agreement with the DOE was previously provided to the Commission.

Condition 3: Traffic Impact Mitigation. Petitioner shall extend Kuikahi Drive between Waiale Road and future Maui Lani Parkway as a two-lane roadway, construct Maui Lani Parkway between Kuikahi Drive and Kamehameha Avenue as a two-lane roadway, and extend Kamehameha Avenue between Maui Lani Parkway and the southern boundary of Maui Lani Project District as a two-lane roadway. Petitioner shall monitor the Kuikahi Drive/Waiale Road intersection, and the Project's accesses on Maui Lani Parkway and Kuikahi Drive Extension; Petitioner shall signalize said areas when warranted. Petitioner shall also monitor the Waiale Road/Olomea Street intersection, the Waiale Road/Waiinu Street intersection, the Kuihelani Highway/Maui Lani Parkway intersection, and the Maui Lani/Kamehameha Avenue intersection, and shall pay its pro-rata share of the signalization of said intersections when warranted. Petitioner shall coordinate with adjoining developers to implement intersection improvements at Honoapiilani Highway and Kuikahi Drive, and Kaahumanu Avenue and Maui Lani Parkway at no cost to DOT. Petitioner shall install necessary intersection improvements, including signalization when warranted, initially for the two-lane, and ultimately for the four-lane, Maui Lani Parkway/Kuihelani Highway intersection.

Response: Construction of the extensions of Kuikahi Drive and Maui Lani Parkway will be complete by the end of 2009. Plans for signalization for the intersections of Waiale Road/Kuikahi Drive and Kuihelani Highway/Maui Lani Parkway have been approved by the County and State DOT and construction will begin in November 2009 with an estimated completion by the end of 2009. Monitoring of the other existing intersections within the Maui Lani Project District was completed in 2009 and an Intersection Monitoring Report was delivered to the County Department of Public Works on May 1, 2009. In addition, a separate study by Parsons Brinkerhoff to update the Maui Lani Roadway Master Plan was completed and provided to the County Department of Public Works on July 15,

2009. Petitioner continues to comply with the Maui Lani Master Roadway Agreement, dated June 3, 2003, executed with the Department of Public Works and Environmental Management.

Condition 4: **Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 5: **Notification of Potential Nuisances.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area of potential odor, noise, and dust pollution resulting from adjacent agricultural uses.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 6: **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of appropriate State and County agencies.

Response: Petitioner completed reconstruction of certain areas within The Dunes At Maui Lani golf course to increase its storm water retention capacity to accommodate drainage from the Petition Area. Storm drain systems within the extensions of Maui Lani Parkway and Kuikahi Drive which serve the Petition Area have been completed and the final connection to the golf course retention basins is under construction and will be completed by the end of 2009. In addition, the Petitioner has voluntarily completed installation of an offsite drainage system serving lands mauka of Maui Lani that traditionally utilized surface gullies to drain these mauka lands to the Waiale Reservoir spillway.

Condition 7: **Water Service.** Petitioner and its affiliate, Maui Lani Partners, shall construct 3 new wells which will draw water from the Kahului Aquifer to supplement DWS's source supply and will provide potable water supply for the Project in accordance with the terms and conditions of the Right-of-Entry Agreement between Maui Lani Partners and the County of Maui dated April 22, 2005, (Petitioner's Exhibit "40"). In the event contaminants are found, Maui Lani Partners shall remedy said contamination in accordance with, and for the term of, the Right-of-Entry Agreement. If any or all of the 3 wells cannot be developed to provide the potable water supply for the Project, Petitioner shall fund adequate water source, storage and transmission facilities and improvements to accommodate projected water use generated by the Project to the satisfaction of the DWS.

2009. Petitioner continues to comply with the Maui Lani Master Roadway Agreement, dated June 3, 2003, executed with the Department of Public Works and Environmental Management.

Condition 4: **Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 5: **Notification of Potential Nuisances.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area of potential odor, noise, and dust pollution resulting from adjacent agricultural uses.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 6: **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of appropriate State and County agencies.

Response: Petitioner completed reconstruction of certain areas within The Dunes At Maui Lani golf course to increase its storm water retention capacity to accommodate drainage from the Petition Area. Storm drain systems within the extensions of Maui Lani Parkway and Kuikahi Drive which serve the Petition Area have been completed and the final connection to the golf course retention basins is under construction and will be completed by the end of 2009. In addition, the Petitioner has voluntarily completed installation of an offsite drainage system serving lands mauka of Maui Lani that traditionally utilized surface gullies to drain these mauka lands to the Waiale Reservoir spillway.

Condition 7: **Water Service.** Petitioner and its affiliate, Maui Lani Partners, shall construct 3 new wells which will draw water from the Kahului Aquifer to supplement DWS's source supply and will provide potable water supply for the Project in accordance with the terms and conditions of the Right-of-Entry Agreement between Maui Lani Partners and the County of Maui dated April 22, 2005, (Petitioner's Exhibit "40"). In the event contaminants are found, Maui Lani Partners shall remedy said contamination in accordance with, and for the term of, the Right-of-Entry Agreement. If any or all of the 3 wells cannot be developed to provide the potable water supply for the Project, Petitioner shall fund adequate water source, storage and transmission facilities and improvements to accommodate projected water use generated by the Project to the satisfaction of the DWS.

2009. Petitioner continues to comply with the Maui Lani Master Roadway Agreement, dated June 3, 2003, executed with the Department of Public Works and Environmental Management.

Condition 4: **Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 5: **Notification of Potential Nuisances.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area of potential odor, noise, and dust pollution resulting from adjacent agricultural uses.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 6: **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of appropriate State and County agencies.

Response: Petitioner completed reconstruction of certain areas within The Dunes At Maui Lani golf course to increase its storm water retention capacity to accommodate drainage from the Petition Area. Storm drain systems within the extensions of Maui Lani Parkway and Kuikahi Drive which serve the Petition Area have been completed and the final connection to the golf course retention basins is under construction and will be completed by the end of 2009. In addition, the Petitioner has voluntarily completed installation of an offsite drainage system serving lands mauka of Maui Lani that traditionally utilized surface gullies to drain these mauka lands to the Waiale Reservoir spillway.

Condition 7: **Water Service.** Petitioner and its affiliate, Maui Lani Partners, shall construct 3 new wells which will draw water from the Kahului Aquifer to supplement DWS's source supply and will provide potable water supply for the Project in accordance with the terms and conditions of the Right-of-Entry Agreement between Maui Lani Partners and the County of Maui dated April 22, 2005, (Petitioner's Exhibit "40"). In the event contaminants are found, Maui Lani Partners shall remedy said contamination in accordance with, and for the term of, the Right-of-Entry Agreement. If any or all of the 3 wells cannot be developed to provide the potable water supply for the Project, Petitioner shall fund adequate water source, storage and transmission facilities and improvements to accommodate projected water use generated by the Project to the satisfaction of the DWS.

Response: Petitioner completed drilling and testing of the three (3) new wells and is currently constructing the well head control buildings. The well pump and control systems have been ordered and will be installed by the end of 2009. Transmission lines from the new wells to the County of Maui's Waiale Water Tank are complete.

Condition 8: Best Management Practices. Petitioner shall implement Best Management Practices ("BMPs") to reduce or eliminate soil erosion and groundwater pollution, and implement dust control measures during the development process in accordance with the DOH's guidelines.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 9: Wastewater Facilities. Petitioner shall fund and develop on-site wastewater transmission facilities to transport wastewater from the Project to appropriate County of Maui wastewater transmission and treatment facilities to the satisfaction of the DPWEM and the DOH. Petitioner shall pay a pro-rata share of off-site sewer improvements as determined by the County of Maui.

Response: Petitioner has completed construction of the wastewater transmission lines within the regional roadways serving the Petition Area and is installing the final connection to the County's 12" main in Kamehameha Avenue. Petitioner has also completed installation of sewer lines within the VMX (C-R) subdivision.

Condition 10: Solid Waste. Petitioner shall comply with solid waste disposal as required by the DPWEM.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 11: Precautions Relating to Proximity of Closed Waikapu Landfill. With regard to that part of the Petition Area which is adjacent to the County of Maui's closed Waikapu landfill ("Landfill"), Petitioner shall:

- a) Establish a residential buffer of 300 feet from the boundary of the Landfill to reduce the risk that any potential release (whether combustible gas, odor or other nuisances) may affect the Project. Within this buffer area, activities will be restricted to parking, roadway, other infrastructural uses, and open space. Commercial development activity (restricted to VMX uses as allowed by the County) may be allowed in the buffer area. To mitigate the potential of combustible gas migration on to the Petition Area, the Petitioner at its sole cost and expense, will install gas monitoring wells along the property line of the Petition Area adjacent to the Landfill with periodic inspections conducted by the Petitioner, its successors and assigns (including the Project's homeowner associations) and the findings reported to the appropriate County of Maui agency

and the DOH. The frequency of inspections shall be determined by agreement of the appropriate County of Maui agency, the DOH and the Petitioner, its successors and assigns (including the Project's homeowner associations);

Response: Petitioner understands its obligation, and will comply with this condition.

b) Grant a 30-foot wide easement within the Petition Area (where it abuts the Landfill) to the County of Maui to ensure that the County of Maui may appropriately monitor the northern boundary of the Landfill for settlement, runoff, maintenance, and other purposes related to health and safety. Such access should permit the movement of emergency or other vehicles by the County of Maui as the need may arise and may also serve to accept and appropriately contain any runoff from the Landfill;

Response: A 30 foot wide easement for access purposes was granted to the County on November 26, 2008. Petitioner has executed a Right of Entry Agreement with the County and is underway with grading work necessary to complete the access and drainage improvements by the end of 2009.

c) Evaluate the potential risk of air being introduced into the Landfill from sand mining operations, propose appropriate and feasible mitigative actions for review and comment by the DOH and the appropriate County of Maui agency, implement a mitigation program approved by the DOH and the appropriate County of Maui agency, and provide an update in Petitioner's annual report to the Commission;

Response: Petitioner has ceased sand mining activities in the vicinity of the Landfill.

d) Submit an initial report describing the implementation of Petitioner's mitigation program. Thereafter, Petitioner shall immediately report to the Commission, the DOH, and the County of Maui any instances where the integrity of the boundary between the Petition Area and the Landfill has been compromised and its response. The report detailing mitigation measures relating to the Landfill shall be updated and described in Petitioner's annual report to the Commission; and

Response: Grading work to reduce the steepness of slope of the northern slope of the Landfill is nearly complete. The work was reviewed by an independent engineer for the County and implemented under his recommendations to include special inspection and monitoring by a professional engineer selected by the County. This work will be completed by the end of 2009.

e) Record a deed restriction on the Petition Area which: (1) provides notice to all purchasers of residential or commercial property that the adjacent property

is a closed landfill and (2) prohibits any construction or activity within the Petition Area that would compromise the integrity of the landfill cap or permit air or water to access the Landfill.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 12: Energy Conservation Measures. Petitioner, where feasible, shall implement energy conservation measures, such as use of solar energy and solar heating and incorporate such measures into the Project.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 13: Civil Defense. Petitioner shall provide its fair share of the cost of adequate civil defense measures serving the Petition Area as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 14: Unidentified Archaeological Finds. If any burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls which have not been identified in the Project's Archaeological Monitoring Plans (Petitioner's Exhibit 16) are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

Response: Petitioner continues to coordinate all work involving earth altering activities with SHPD in accordance with approved archaeological monitoring plans.

Condition 15: Notice of Change to Ownership Interests. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.

Response: Through this report, ML 100 is informing the Commission of the change in ownership interests in the Petition Area.

Condition 16: Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

Response: Petitioner understands its obligation, and will comply with this condition.

Condition 17: Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission and should be submitted within 1 year of the date of the Decision & Order and annually thereafter.

Response: Petitioner understands its obligation and will comply with this condition.

Condition 18: Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Response: Petitioner understands that the Commission may fully or partially release the conditions provided herein.

Condition 19: Notice of Imposition of Conditions. Within 7 days of the issuance of the Commissions Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.

Response: Petitioner recorded a Notice of Imposition of Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92 Hawaii Administrative Rules, and previously provided a copy of the recorded document with the Commission.

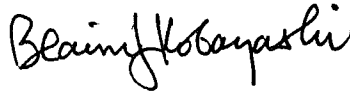
Condition 20: Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR. A copy of the recorded conditions shall be submitted to the Commission.

Mr. Orlando Davidson
September 16, 2009
Page 9

Response: Petitioner recorded a Declaration of Conditions with the Bureau of Conveyances of the State of Hawaii, and previously provided a copy of the recorded document with the Commission.

We hope this annual report sufficiently appraises the Land Use Commission of the present status of the Subject Property. Should you need more information, please do not hesitate to contact the undersigned. Thank you for your consideration of this matter.

Sincerely,



Blaine J. Kobayashi

BJK/mmi

Enclosures

cc: Abbey Seth Mayer, Administrator, Office of Planning
Abe Mitsuda, Office of Planning, Land Use Division
Bryan C. Yee, Esq., Deputy Attorney General
Jeffrey S. Hunt, Planning Director, County of Maui

4830-8476-2116.2.032444-00005