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January 27, 2005

VIA FACSIMILE (1-808-587-3827) AND U.S. MAIL

Land Use Commission of the State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Re: Annual Report of WCPT/GW Land Associates
Docket No.: A93-689

Honorable Chair and Members:

I represent WCPT/GW Land Associates, LLC (the "Successor Petitioner"), the successor entitled to the interests of petitioner, Palauea Bay Partners (the "Original Petitioner") in and to the properties which are the subject of the above-referenced docket.

Successor Petitioner hereby submits this Eleventh Annual Report to the Land Use Commission of the State of Hawaii (the "LUC") in compliance with Condition 18 of the Findings of Fact, Conclusions of Law, Decision and Order (the "D&O"), entered in the above-referenced docket on September 20, 1994.

I. Status of the Project.

A. Pre – LUC Proceedings by Original Petitioner before Maui County agencies.

In or about 1988, Original Petitioner proposed a residential resort development on approximately 670 acres of land situate at Wailea, Maui, Hawaii, bearing Tax Map key numbers 2-1-8:56 and 2-1-8:71 (collectively the "Property"). Original Petitioner's proposed development of the property included more than 2,100 single and multi-family dwelling units, two (2) 18-hole golf courses, an area combining residential and commercial features (called the Village Mixed Use District), and a neighborhood shopping component (together the "Original Development").

Original Petitioner obtained from the County of Maui several land use entitlement approvals for the Original Development.

First, in December, 1988, the Planning Commission of the County of Maui (the "Planning Commission") accepted a final environmental impact statement for the Original Development.

Second, in March, 1992, following review by the Planning Commission and approval by the Council of the County of Maui (the "County Council"), the Mayor of the County of Maui signed into law an ordinance designating the property "Kihei-Makena Project District 9" under the Kihei-Makena Community Plan.

Because of its "Project District" designation under the Kihei-Makena Community Plan, the necessary implementing zoning entitlements include not only an ordinance changing the zoning of the property from agriculture and open space to Kihei-Makena Project District 9, but also a second ordinance which must first be reviewed by the Planning Commission then adopted by the County Council and the Mayor as a part of a three (3) phase project district process. Besides Phase I (the enactment of an ordinance setting forth the permitted land uses, densities, setback, building height and the like), the Project District process requires the adoption of a preliminary site plan (Phase II) by the Planning Commission and the approval to a final site plan (Phase III) by the Director of the Department of Planning of the County of Maui (the "Planning Director").

Thus, in October, 1992, the Planning Commission reviewed and the County Council and the Mayor approved two (2) ordinances affecting the Property; (a) an ordinance changing the zoning of approximately 402.35 acres of the 670 acres comprising the Property from agriculture and open space to Kihei-Makena Project District 9; and (b) an ordinance granting Phase I approval to two (2) 18-hole golf courses, a clubhouse, and other accessory uses and a six (6) acre park, all proposed by the Original Petitioner on the 402.35 acre portion of the Property concurrently zoned Kihei-Makena Project District 9.

The Original Petitioner later obtained from the Planning Commission and the Planning Director, respectively, Phase II and Phase III approvals to those portions of the Property granted Phase I approval. The Original Petitioner also obtained a variety of administrative permits relating to the original development.

B. Proceedings Before the LUC Brought by Original Petitioner.

By its D&O, the LUC amended, at the request of the Original Petitioner, the land use district boundaries for the Property by reclassifying its 670 acres from the agriculture district to the Urban District, all in conjunction with the Original Development of more than 2,000 single and multi-family dwelling units, two (2) 18-hole golf courses, a village mixed use area, and a neighborhood shopping component.

C. Current Proceedings by the Successor Petitioner Before Maui County Agencies.

On January 10, 2000, the Successor Petitioner purchased the Property from the Original Petitioner.

Successor Petitioner proposes a development substantially reduced in scope from the Original Development, but with the same principal uses (the "Current Development"):

1. Fourteen Hundred (1,400) single and multi-family dwelling units, an almost one-third (1/3) reduction from the more than 2,000 dwelling units in the Original Development.
2. One (1) 18-hole golf course, clubhouse and accessory uses instead of the two (2) 18-hole golf courses proposed by the Original Petitioner.
3. A neighborhood shopping component and a village mixed use area.

To implement the Current Development, Successor Petitioner filed on June 30, 2000, two (2) zoning applications, as later amended, with the Planning Commission (the "Current Applications"):

(a) An application to change the zoning of that portion of the Property not already zoned Kihei-Makena Project District 9 (267.65 acres) from agriculture and open space to Kihei-Makena Project District 9, coupled with a request to eliminate two (2) conditions imposed by the County Council in its approval to the Phase I ordinance in 1992; and

(b) An ordinance for Phase I approval to the Current Development.

On October 30, 2000, the Planning Commission held a public hearing on the Successor Petitioner's two (2) Current Applications, but deferred any decisions on the request. Following further meetings with various community groups and governmental agencies, the Planning Commission decided at its meeting of October 23, 2001, to recommend to the County Council approval of the Current Applications. A copy of the letter from the Maui Planning Department formally notifying Successor Petitioner of the Planning Commission's action on the Current Applications, together with recommended conditions to their approval, was attached to the 2002 annual report.

The Current Applications are now before the County Council for its disposition. Under the rules of the County Council, action on the Current Applications must first be taken by the Land Use Committee (the "LUC") which has assumed the work left by its predecessor, the 2002-2004 Council Planning and Land Use Committee, at the end of 2004. Thereafter, the LUC returns the Current Applications to the full County Council for final disposition. Successor Petitioner is waiting for the LUC chair to schedule the Current Applications for consideration by the LUC.

II. The Successor Petitioner's response to the LUC conditions.

Successor Petitioner responds to the conditions imposed by the LUC in the D&O as follows:

1. Condition 1 of the D&O states:

"1. Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adapted by the Housing Financial Development Corporation, effective July 1, 1992, with an addendum dated January 1, 1994, and as periodically amended. The location, distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the petitioner and the State Housing Finance and Development Corporation and the County of Maui, pursuant to Section 19.45.050.A.1 of the Maui County Code."

Response: In response to comments by the Department of Housing and Human Concerns of the County of Maui, the Successor Petitioner agreed to comply with all duly enacted affordable housing requirements of the County of Maui.

Successor Petitioner understands that the State Agency has delegated compliance with this requirement to the County of Maui.

2. Condition 2 of the D&O states:

"2. Petitioner shall implement effective soil erosion and dust control measures during construction and compliance with the rules and regulations of the State Department of Health and the County of Maui."

Response: Successor Petitioner will comply with this condition. In addition, the Department of Health of the State of Hawaii (the "Health Department") and various agencies of the County of Maui (including its Department of Public Works and Environmental Management formally known as the Department of Public Works and Waste Management) offered comments to the current applications and Successor Petitioner agrees to comply with those comments related to Condition 2.

3. Condition 3 of the D&O states:

"3. Petitioner shall cooperate with the State Department of Health and the County Department of Public Works and Environmental Management to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes."

Response: On June 22, 1993, the Department of Public Works and Waste Management of the County of Maui (the "Public Works Department") approved the Solid Waste Management Plan for the original development in accordance with the Solid Waste Management Act. Further, Successor Petitioner intends to cooperate with the Health Department and the Public Works Department during Phases I, II and III of the current applications to ensure that the Current Development conforms with the program goals and objectives of the Solid Waste Management Act.

4. Condition 4 of the D&O states:

"4. Petitioner shall contribute its pro rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Environmental Management. When feasible, Petitioner shall contribute its pro-rata share and be required to connect to the County wastewater system and the Petitioner's temporary Sewage Treatment Plant shall be abandoned and dismantled."

Response: Both the Public Works Department and the Health Department offered comments on the Current Applications (which includes Phase I), and will review the Current Development during Phase II and Phase III. Successor Petitioner intends to discuss further with the Department of Public Works and the Health Department its compliance with condition 4.

5. Condition 5 of the D&O states:

"5. Petitioner shall comply with the environmental health conditions from the State Department of Health, dated January, 1992 (Version 4), and entitled "Twelve (12) Conditions Applicable to all New Golf Course Development."

Response: Original Petitioner obtained final approval from the Health Department in July, 1993, to the Integrated Golf Course Management Plan required under the "Twelve (12) Conditions Applicable to all New Golf Course Development." Successor Petitioner intends to comply fully with Condition 5.

6. Condition 6 of the D&O states:

"6. Petitioner shall participate in an air quality monitoring program, under such terms as may be mutually agreeable between the Petitioner and the State Department of Health."

Response: Successor Petitioner intends to comply with Condition 6. Further, the Health Department has offered comment on the current applications and will review the Current Development in Phase II and Phase III.

7. Condition 7 of the D&O states:

"7. Petitioner shall fund and construct adequate civil defense measures, as determined by the State and County of Maui, Civil Defense Agencies."

Response: Successor Petitioner intends to comply with Condition 7.

8. Condition 8 of the D&O states:

"8. Pursuant to the agreement with the Department of Education (DOE), Petitioner shall contribute to the development, funding and/or construction of school facilities, by paying \$850.00 per unit (based on 2,000 proposed units) to the DOE as the developer's school facilities fair share contribution, with 20 percent paid at the time the building permit is obtained, and 80 percent paid, through escrow, at the time of closing on each unit. A quarterly report will be provided to the DOE by developers' escrow company listing the units sold and total amount of funds transferred to the DOE during that period. No monies paid to the DOE under this condition are to revert to the petitioner or developer."

Response: Successor Petitioner intends to comply fully with Condition 8. Further, in its review of the Current Application (proposing not more than 1,400 dwelling units most of which Successor Petitioner believes will be second and third homes for their purchasers), the Department of Education of the State of Hawaii stated in a letter dated July 31, 2000, that the per unit fee of \$850.00 is acceptable for the Current Development.

9. Condition 9 of the D&O states:

"9. Petitioner shall fund, design and construct its pro rata share of the necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall revise the traffic study to re-examine the required mitigation measures if the roadway improvements cited and predecessors were not assumed to be place. The revised report shall also specify the improvements the developer will be committed to provide. The petitioner shall contribute his pro-rata share to the traffic improvements, as determined by the State Department of Transportation and the County of Maui."

Response: In conjunction with its Current Applications, Successor Petitioner initially submitted a traffic study for the Current Development. At the request of the Planning Commission, Successor Petitioner submitted a second traffic report in further support of its current applications.

The Successor Petitioner, by agreement with the State Department of Transportation and in coordination with Makena Resort, has paid in excess of \$350,000 for the design of improvements to Piilani Highway. Current status of this project is that the project is complete

and is now in use by the public. Traffic capacity on the highway has been generously increased with a significant reduction in traffic congestion as a result of this effort.

Successor Petitioner has also volunteered to contribute up to \$5,000.00 per dwelling unit for improvements to Maui County's roadways in the Kihei-Makena Community Plan area.

Successor Petitioner intends to comply with all other requirements of Condition 9.

10. Condition 10 of the D&O states:

"10. Petitioner shall make available adequate golf tee times at affordable rates for public play to State of Hawaii residents."

Response: As noted above, the Original Developer proposed two (2) 18-hole golf courses and more than 2,000 single and multi-family dwelling units. Further, because the maximum number of allowable dwelling units at the property has been reduced from more than 2,000 units to 1,400, the economic success and viability of a markedly less dense project (but with minimal reduction of on and off site infrastructure costs) necessarily requires a variety of amenities to attract prospective purchasers. To fairly balance the benefits of a less dense project against the financial realities of fixed infrastructure requirements, the Current Development now proposes a single 18-hole private golf course as an amenity to and with play limited to homeowners and/or guests at the property.

Lastly, in its review of the Current Application, the Department of Parks and Recreation of the County of Maui commented that it has no objection to the deletion of a substantively identical condition imposed by the County Council in its 1992 approval to the ordinance changing the zoning of 402.35 acres of the Property from agriculture and open space to Kihei-Makena Project District 9. As shown by the transmittal (attached to the 2002 annual report) from the Director of Planning to the Maui County Council, the Planning Commission deleted a condition similar to Condition 10, imposed when the Original Petitioner received Project District approval in 1992 for two (2) 18-hole golf courses. The Planning Commission recommends in the conditions that the Current Petitioner's single 18-hole golf course be made available for fundraising tournaments by non-profit groups and for Maui junior golf programs. Petitioner filed a petition to amend the District Boundary Amendment D&O proposing modifications to Condition 10 that will provide for public play by incorporating both non-profit tournament play, as well as a youth golf program developed with the Successor Petitioner in cooperation with the Maui Junior Golf program. The Commission, in its Order Granting Petitioner's Motion to Amend the Decision and Order of Land Use District Boundary Amendment Docket No. 893-689, on January 21, 2003 approved the Petitioner's request to amend the original Condition 10 to read as follows:

"10. Petitioner shall (a) develop an organized instructional program for junior golfers at its facility, (b) permit Maui Junior Golf the use of the golf course in accordance with Petitioner's instructional program, (c) sponsor one nonprofit organization per quarter,

other than Maui Junior Golf, the use of the golf course for a fund-raising activity upon terms mutually agreed upon with said nonprofit organization.”

11. Condition 11 of the D&O states:

“11. Petitioner shall fund and construct its pro rata share for adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.”

Response: In 1994, the Original Petitioner drilled two (2) wells on the Property, with pumps and generators installed the next year. Repeated tests of these two (2) wells confirmed that the water is non-potable and is of sufficient quantity to irrigate the golf course and common area landscape.

The successor petitioner has been working diligently to address the current shortfall of domestic water supply in Maui County as it relates to the successful approval of the subject project. As stated in the Planning Commission Conditions of approval dated November 30, 2001, the successor must develop a private water system to serve the subject project. In response to this condition, the successor has accomplished both a private water source development agreement and water transmission easement agreements with adjacent private landowners. With these two agreements in place, the successor will be applying for well drilling permits necessary for development of a private water source system for the subject project.

Further, as a part of the current applications, Successor Petitioner intends to provide the County Council, the Department of Water Supply in the County of Maui, and the appropriate agencies of the State of Hawaii with additional information about its proposed potable water system.

12. Condition 12 of the D&O states:

“12. Petitioner shall fund the design and construction of its pro rata share of the drainage improvements required as a result of the development of the property in compliance with appropriate State and County agency requirements.”

Response: Successor Petitioner intends to comply with Condition 12. Further, various agencies of the County of Maui and the State of Hawaii (including with limitation the Public Works Department and the Health Department) have offered comment on the current applications and review of the Current Development in Phase II and Phase III.

13. Condition 13 of the D&O states:

“13. Petitioner shall contribute its pro rata share to a near shore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.”

Response: Successor Petitioner intends to comply with Condition 13. Further, the Health Department and the Division of Aquatic Resources of the Department of Land and Natural Resources of the State of Hawaii have reviewed the Current Applications.

14. Condition 14 of the D&O states:

"14. Prior to filing of an amendment to the Project District Zoning Ordinance for Project District 9, an archeological inventory survey of the southern portion of the Property which was covered with a'a (labeled as very stony land in Figure 7 of the Petition) shall be conducted to identify significant historic sites. A final report shall be submitted to the Department of Land and Natural Resources, State Preservation Division, for review and comments. If significant historic sites are identified, an acceptable mitigation plan shall be submitted to the Historic Preservation Division for approval and shall be implemented prior to any construction activities."

Response: Mr. Aki Sinoto, an archaeologist engaged by Successor Petitioner, submitted to the Planning Commission, the Cultural Resources Commission of the County of Maui, and the Historic Preservation Division of the Department of Land and Natural Resources of the State of Hawaii (the "SHPD"), an archeological inventory survey report of the southern portion of the property which is covered with a'a lava. Though not required by Condition 14, Successor Petitioner also caused Mr. Aki Sinoto to prepare and submit to the Planning Commission, the Cultural Resources Commission and SHPD a supplemental archeological inventory report for the balance (and vast majority) of the property. These reviewing agencies approved both reports. Mr. Aki Sinoto is now preparing a preservation plan for various cultural sites in the property, which will, upon its completion, be submitted to the Cultural Resources Commission and SHPD for their review and approval.

15. Condition 15 of the D&O states:

"15. Petitioner shall provide at no cost to the County one (1) acre of land along Piilani Highway for a future fire station at a location satisfactory to the County".

Response: The Department of Fire Control of the County of Maui (the "Fire Department") informed Successor Petitioner that it no longer requires a one (1) acre portion of the property for a future fire station. The Fire Department advised Successor Petitioner that the agency has instead secured another site for its future fire station. Construction of a fire station at the new site has already been commenced, with its completion scheduled for early 2003. Petitioner filed a petition to amend the District Boundary Amendment D&O proposing deletion of Condition 15 in its entirety due to the fact that the County and Department of Fire Control had already selected a site for the new facility. Letters supporting the Petitioner's request were received from both the Departments of Fire Control and Planning. The Commission, in its Order Granting Petitioner's Motion to Amend the Decision and Order of Land Use District Boundary Amendment Docket No. 893-689, on January 21, 2003 approved the Petitioner's request to delete Condition 15 in its entirety as requested by the Petitioner.

16. Condition 16 of the D&O states:

"16. Petitioner shall develop the property in substantial compliance with the representations made to the Commission. Failure to develop the property may result in reversion of the property to its formal classification, or change to a more appropriate classification."

Response: Successor Petitioner intends to comply with Condition 16. Successor Petitioner has and will continue to fully advise the LUC of the differences between the Original Development and the Current Development. But as also noted above, the permitted uses between the Original Development and the Current Development remain the same, albeit the latter is reduced in its density from the former.

17. Condition 17 of the D&O states:

"17. Petitioner shall give notice to the Commission of any intent to sell, lease or sign place in trust or otherwise voluntarily the ownership interest in the property prior to development of the Property."

Response: Successor Petitioner intends to comply with Condition 17.

18. Condition 18 of the D&O states:

"18. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject project and petitioner's progress in complying with the conditions imposed therein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."

Response: Successor Petitioner submits this Eleventh Annual Report in compliance with Condition 18.

19. Condition 19 of the D&O states:

"19. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances, pursuant to Section 15-15-92, Hawaii Administrative Rules."

Response: Original Petitioner complied with Condition 19 by its recordation on January 20, 1995, of the document listing conditions to Reclassification of lands (the "Recorded Conditions") with the Bureau of Conveyances of the State of Hawaii as Document No. 95-009365.

20. Condition 20 of the D&O states:

"20. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission and the reclassification of the property; and (b) shall file a copy of such recorded statement with the Commission.

Response: Recorded conditions and the recorded copy thereof filed with the LUC by the Original Petitioner on February 13, 1995, fulfills Condition 20.

21. Condition 21 of the D&O states:

"21. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon a provision of adequate assurance and satisfaction of these conditions by the Petitioner."

Response: Pursuant to Successor Petitioner's motion and adequate assurance of the reason for deleting Conditions #10 and #15, the Commission deleted Conditions #10 and #15 at its meeting on January 21, 2003. A new Condition #10 was substituted as noted, above, but no new provision was inserted for Condition #15. Successor Petitioner intends to continue complying with Condition 21.

Should you have any questions about the matter contained in this annual report, please do not hesitate to contact me.

Very truly yours,



B. Martin Luna

BML:mea

cc: WCPT/GW Land Associates, LLC
Department of Planning of the County of Maui (Certified Mail/RRR)
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