

S & F LAND COMPANY, INC.

P.O. Box 806

PUUNENE, MAUI, HAWAII 96784

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January 19, 2012

Orlando "Dan" Davidson  
Executive Officer  
Land Use Commission  
P O Box 2359  
Honolulu, HI 96804-2359

Dear Dan:

Enclosed herewith are two copies of sections 1 and 2 of the 2011 reports on General Progress and Specific Conditions of Docket #A96-717 for Central Maui Baseyard on Maui. We have concurrently copied the landowner Alexander and Baldwin, Inc., together with the others whom you have previously requested we provide copies.

Those receiving copies and the amount of copies forwarded are set forth at the bottom of the page. Should you have any questions regarding this report please advise us and we will try to respond as quickly as possible.

Sincerely yours



Robert Stoner

RS/tlo

Enclosure

CC: Rick Stack (1)  
Caroline Lorenzo – via email  
Abe Mitsuda (1)  
Clayton Yoshida (1)  
Bill Crockett (1)

## SECTION 1

### **Report on General Progress of S&F Land Company, Inc. On Docket #A96-717 for Calendar 2011**

As stated in previous reports, development has been completed on the entire Baseyard, which includes lots 1A, 1B, and 1C and totals approximately 50 acres of combined M1 and M2 Industrial zoned property. All improvements to the baseyard necessary for 100% occupancy have been completed including paved roadways, fire and potable water service, landscaping, all onsite grading and drainage improvements, perimeter and internal lot fencing, and any related offsite work such as water service lines, highway frontage improvements, etc.

Although the project is now 100% complete our occupancy is about 80% due to the prolonged downturn in economic conditions affecting the State. However, our tenant count remains consistent at approximately 100 as of this writing.

Since development is complete, we did petition the Commission in 2011 to remove all of the conditions placed upon the property. We were successful in having a number of the conditions removed. Those that remain are reported on in Section Two.

This constitutes the general progress on the subject docket during calendar year 2011.

## **SECTION 2**

### **Specific Conditions of Docket #A96-717 and Progress on Said Conditions During calendar year 2011**

7. Petitioner shall require its tenants who utilize such materials to establish appropriate systems to contain spills and prevent materials associated with light industrial usage (such as petroleum products, chemicals or other pollutants) from leaching or draining into above ground or subsurface storm drainage collection areas. Petitioner will use and/or cause to be used best management practices to minimize non-point source pollution into the irrigation ditches and Pulehu Gulch. Petitioner shall consult with the State Department of Health and County of Maui, Public Works and Waste Management and obtain any permits required or construct improvements required for storm water discharge on the property.

Petitioner has completed all surface drainage as reported in previous reports. This includes a number of catch basins and drain lines on the property. All grading of property is complete.

For tenants that deal with potential pollutants, we have strict rules at Central Maui Baseyard that require paved catchment areas that retain potential run off of any materials that may be spilled or spread by storm waters. ( Please see attached Section 11 of our sub-lease).

8. Petitioner shall require all tenants of the property to implement best management practices to minimize possible subsurface and ground water contamination from activities on the property. This shall include all activity including delivery, removal, storage, use and handling of industrial agents on tenant or common areas of the property.

All tenant activities are controlled by our tenant lease. Please see attached sections of our lease (sections 6 , 7 , 9 and 11. Further as stated in section 12 of our lease we do annual environmental inspections of the property. This annual audit is required by our landlord and creditors.

10. Petitioner and/or landowner shall limit disturbance of the natural drainage features of Pulehu Gulch, and shall consult with the Army Corps of Engineers should any activity be proposed that would impact Pulehu Gulch.

All work along Pulehu gulch has been completed. The perimeter that abuts the gulch is fully fenced or blockaded. As has been previously reported, there has been no disturbance of Pulehu gulch.

12. Petitioner shall maintain a buffer of undisturbed kiawe and vegetative cover on the property along Pulehu Gulch to minimize disturbance to native bird habitat provided by Pulehu Gulch.

Please see answer to question 10. There has been no disturbance of Pulehu gulch. It is not accessible from tenant lots due to security fencing.

13. Petitioner shall fund and construct adequate civil defense measures as may be required by the State Civil Defense and County Civil Defense Agencies.

Petitioner is working with State Civil Defense and County Civil Defense Agencies to implement necessary civil defence measures. Full implementation should be completed by 2016 per petitioners agreement with State Civil Defense.

16. Petitioner shall ensure that the proposed project will not negatively impact the use of cane haul roads and irrigation ditches or otherwise interfere with continued agricultural operation of adjoining sugar cane cultivation areas.

Since all grade work and development of the baseyard is complete, there are no sugar operations within the property. The auwai that runs through the property is owned and operated by HC&S (A&B property). Our lease with A&B allows them to "install improvements and grant easements" as necessary.

With regards to Agricultural activity please refer to the letter provided by HC&S dated February 28, 2011.

19. Petitioner shall inform prospective tenants and shall include in all tenant license agreements language informing tenants of possible odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

Please see letter referenced in condition 16.

23. Petitioner shall provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include any supporting documentation from State and/or County agencies relating to progress in complying with said conditions. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

This is the annual report for the calendar year 2011.

26. The Commission may fully or partially release these conditions as to all or any portion of the property upon timely motion, and upon the provisions of adequate assurance of satisfaction of these conditions by the Petitioner and/or landowner.

Petitioner petitioned for release of certain conditions in 2011. Said petition resulted in the release of the conditions that were omitted from this report.

**This completes section 2.**

may be given to the Tenant (exclusively or otherwise) by any such rule, ordinance or statute.

6. Use.

Tenant shall use the Unit Premises only as \_\_\_\_\_,

\_\_\_\_\_ and no other use, except such use as may be directly incidental thereto, shall be made of the Unit Premises, or any part thereof. The foregoing statement of the permitted use of the Unit Premises by the Tenant shall not be construed as a grant by Landlord to the Tenant of an exclusive privilege to carry on at the Entire Premises any particular line of business, it being understood that the Landlord shall have the right to grant a lease of another part of the Entire Premises to a person who might compete with the business carried on by the Tenant at the Unit Premises. In any event, and notwithstanding the foregoing statement of the permitted use of the Unit Premises, no use shall be made or permitted to be made of the Unit Premises that would violate any government statute, ordinance, or regulation; which will increase the cost of obtaining any insurance for the Unit Premises, or for obtaining any insurance for the Entire Premises; which will cause the cancellation of any such insurance policy. If Unit Premises contains any building or improvement, then Tenant shall keep at the Unit Premises and maintain in good working condition a sufficient number of fire extinguishers. Tenant shall not keep or use in or about the Unit Premises, any goods or equipment which might be prohibited by the standard form of fire insurance policy. If any use made of the Unit Premises by the Tenant causes any increase in the cost of obtaining any insurance for the Unit Premises,

or for obtaining any insurance for the Entire Premises, then Tenant shall reimburse Landlord for the increased cost of any such insurance. Tenant shall at its cost comply with any requirements of any such insurer with respect to the use of the Unit Premises. Tenant shall not conduct or permit any auction sale on the Unit Premises. Tenant shall not, without the prior written consent of the Landlord, use any Common Area of the Entire Premises for the storage of material, except that Tenant may leave trash and waste at any place expressly designated for such purpose by Landlord. Tenant shall use the Common Areas of the Entire Premises only for the purposes for which the same was designed. Tenant has determined, by its independent investigation, that all applicable statutes, ordinances and government regulations permit and enable Tenant to use the Unit Premises for the purposes contemplated by the Tenant and permitted by this Lease. Landlord has not made any statement or representation to the Tenant about the permitted uses for the Unit Premises under any statute, ordinance or government regulation.

7. Compliance With Applicable Law.

Tenant shall use the Unit Premises in accordance with all applicable laws and government regulations. If any law or regulation (such as, but not limited to, the Americans With Disabilities Act Of 1990) should require the renovation or alteration of the Unit Premises, the Tenant shall be responsible for such alteration or renovation and shall pay all costs and expenses required to alter or renovate the Unit Premises to conform to any such law or government regulation. If any law or government regulation (such as, but not limited to the Americans With Disabilities Act Of 1990) should require the renovation or alteration of the Common Areas, the Landlord shall be responsible for

such alteration or renovation and shall pay all costs and expenses required to alter or renovate the Common Areas to conform to any such law or government regulation. Tenant shall indemnify and defend Landlord against any loss suffered or liability incurred by Landlord, and all actions, suits, damages or claims brought against the Landlord, as a result of the Tenant's failure to use or keep the Unit Premises in accordance with any such law or government regulation.

8. Unit Premises Security.

Landlord is not responsible for the security of the Unit Premises. Tenant shall take all necessary steps to protect the Unit Premises against trespass, theft, malicious damage, vandalism, assault and the like. Landlord may obtain the services of a private security agency to patrol the Common Areas. Tenant should not rely upon the services of such private security agency as adequate protection for the Unit Premises against trespass, theft, malicious damage, vandalism, assault and the like.

9. Waste.

Tenant shall not do or commit or permit or suffer to be done any willful or voluntary waste, spoil or destruction in or upon the Unit Premises or the Entire Premises, nor shall Tenant remove any dirt, gravel, soil or timber from the Entire Premises, or dig any well upon the Entire Premises. Landlord reserves the right to from time to time enter, or have its duly designated agent enter, the Unit Premises to inspect the same at reasonable hours upon reasonable advance notice given to Tenant. Landlord shall inform Tenant by letter of its agent, if any, so designated for such purpose. Tenant shall be

liable, and shall upon demand reimburse Landlord, for any damage to the Common Areas caused by a person who is at the Entire Premises in connection with Tenant's business.

10. Tenant Acceptance Of Prime Lessor Use Of Surrounding Lands For Agriculture.

Tenant hereby agrees and acknowledges that the Landlord and Prime Lessor have not made, and will not make, any representation or warranty with respect to the condition of the Entire Premises, including but not limited to, any express or implied warranty of merchantability of fitness for a particular purpose. Tenant acknowledges that Prime Lessor and its affiliates conduct active agricultural and processing operations of lands surrounding the Entire Premises which activities in the normal course may from time to time bring about on the property smoke, heat, agricultural chemicals, particulates and similar substances. Tenant further acknowledges and agrees that this Lease is subject to any effect that the presence of such substance may have from time to time upon the Unit Premises and the Tenant's use thereof. Tenant has entered upon this Lease, and its right to the use of the Unit Premises thereunder, with full assumption of the risk, and consequences thereof, of Prime Lessor's and Prime Lessor's affiliates' said operations (which operations may include but are not limited to the growing of sugar cane), including but are not limited to, dust caused as a result thereof, quality of water on the property damaged as a result thereof, burning of sugar cane, use of equipment and use of chemicals normally used in said operations. In consideration of the right to use the Unit Premises granted to the Tenant under this Lease, Tenant agrees that it shall not make any claim for any damages, losses or injuries of any kind or nature whatsoever, against Prime

Lessor, its affiliates and/or subsidiaries, Prime Lessor's agents, employees or representatives, and/or Prime Lessor's other lessees, resulting from or in connection with said operations and will not seek to impose any restrictions upon said operations. Tenant agrees to defend, indemnify and hold harmless Prime Lessor for any and all losses, costs and/or damages, including but not limited to, reasonable attorney's fees and court costs arising out of or in connection with any such claims brought by Tenant, its employees, agents, licensees, tenants, or third persons. All goods, wares, merchandise or other property or effects of Tenant and its permitted tenants, if any, which are brought into or upon the Unit Premises shall be kept thereon without liability to Prime Lessor for injury or damage thereto and Prime Lessor shall not be held liable or responsible for any damage thereto by any cause whatsoever.

11. Hazardous Materials.

Except for Hazardous Materials (as defined below) which are necessary to and customarily used in the normal operations of Tenant and Tenant's approved assignees or subtenants and provided that such Hazardous Materials are used, handled and disposed of in accordance with all applicable Hazardous Materials laws (as defined below), the Tenant shall at all times keep the Unit Premises (and improvements thereon) free of any and all flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substance", "hazardous wastes", "hazardous materials", or

“toxic substances” (collectively, “Hazardous Materials”) under any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Unit Premises and improvements thereon, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 47 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any state and local laws and ordinances and the regulations now or hereafter adopted, published and or promulgated with respect to Hazardous Materials (collectively, the “Hazardous Materials Laws”). The Tenant shall keep and maintain the Unit Premises and all improvements thereon, including, without limitation, the ground water on or under the Unit Premises, in compliance with, and shall not cause or permit the Unit Premises and improvements thereon to be in violation of, any Hazardous Materials Laws. The Tenant shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or above the Unit Premises and improvements thereon, any Hazardous Materials.

If, at any time of the term of this Lease, any measures or actions are required to be taken by the Tenant so as to render the improvements constructed, or to be constructed, upon the Unit Premises, and the Tenant’s use of the Unit Premises, in

compliance with any applicable Hazardous Materials Laws, the Tenant shall, promptly after discovering that such measures or actions must be taken, deliver to the Landlord a written statement signed by the Tenant, in reasonable detail, describing (a) all measures and actions required to be taken by the Tenant so as to render the improvements to be constructed upon the Unit Premises, and the Tenant's use of the Unit Premises, in compliance with all applicable Hazardous Materials Laws, including, without limitation, all filings or registrations required to be made by the Tenant with any government agency, (b) the specific Hazardous Material Law and section thereof, which requires such measures to actions to be taken, and (c) the date by which the Tenant intends to take or implement such measures or action. Upon the Landlord's request, the Tenant shall promptly provide the Landlord with satisfactory proof that the Tenant has taken all measures and actions required under any applicable Hazardous Materials Laws. The Tenant shall promptly deliver to the Landlord a true, correct and complete copy of all filings or registrations made with any government agency pursuant to any Hazardous Materials Laws, all responses to or comments made by such agency with respect to such filings or registrations, and all amendments made by the Tenant to such filings or registrations. If the Tenant fails to comply with any Hazardous Materials Laws, the Landlord shall have the right (but shall be under no duty or obligation whatsoever) to enter upon the Unit Premises and take all actions necessary to achieve such compliance without being liable for trespass or damages. The Tenant shall pay to the Landlord, promptly upon the Landlord's demand, all costs and expenses incurred by the Landlord in undertaking such compliance, together with interest at the rate of one percent (1%) per

month on the amounts incurred by the Landlord. The foregoing shall be in addition to the Landlord's right to declare a default under this Lease and to exercise all of the Landlord's rights and remedies under this Lease.

The Tenant shall immediately advise the Landlord in writing of (a) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Unit Premises or improvements thereon, (b) all claims made or threatened by any third party against the Tenant, the Landlord or the Unit Premises or improvements thereon relating to damage, contribution, cost, recovery, compensation, loss or injury resulting from any Hazardous Materials or violation of or compliance with any Hazardous Materials Laws, and (c) the Tenant's discovery of any occurrence or condition on the Unit Premises or improvements thereon or any real property adjoining or in the vicinity of the Unit Premises which could subject the Landlord, the Tenant or the Unit Premises or improvements thereon to any restrictions on ownership, occupancy, transferability or use of the Unit Premises or improvements thereon under any Hazardous Materials Laws.

Except for Hazardous Materials which exist on the Unit Premises prior to this Lease, the Tenant shall indemnify and hold harmless the Landlord and Prime Lessor, their directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of Hazardous

Materials on, under or about the Unit Premises or any improvements thereon, including, without limitation: (i) all foreseeable and unforeseeable consequential damages; (ii) all fines which may be imposed and all costs of any required or necessary repair, clean up or detoxification of the Unit Premises or improvements thereon, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the Landlord or Prime Lessor in connection with clauses (i) and (ii), including, without limitation, reasonable attorney's fees.

Prior to the surrender, expiration or termination of this Lease, the Tenant, at its expense, shall (A) remove from the Unit Premises all storage tanks (above ground or underground) installed during the term of this Lease and all Hazardous Materials which were introduced to the Unit Premises during the term of this Lease and any improvements thereon, (B) restore the Unit Premises to a good and orderly condition, even-grade and to substantially the same condition the Unit Premises were in as of the date of this Lease, and fill all areas from which underground storage tanks were removed in a manner reasonably satisfactory to the Landlord, (C) remediate and clean-up any contamination, spills or leakages upon the Unit Premises or any improvements thereon so as to render the Unit Premises and improvements in compliance with all applicable Hazardous Materials Laws, and (D) provide the Landlord with a written certification (dated no earlier than the date the Tenant fully vacates the Unit Premises) from an independent licensed engineer or other environmental expert approved by the Landlord that clauses (A) and (C) have been satisfied and that there exists no violation of any Hazardous Materials Laws pertaining to the Unit Premises or any improvements thereon.

All of the agreements and obligations of the Tenant under this paragraph shall survive, and shall continue to be binding upon the Tenant notwithstanding, the termination, expiration or surrender of this Lease.

12. Periodic Environmental Inspection.

The Landlord shall, annually, engage an environmental expert, who is approved by the Prime Lessor, to perform an environmental audit of the Entire Premises, including the Unit Premises. Tenant, by the payment to Landlord of Unit Premises Common Area Expense Share, shall reimburse Landlord for the Tenant's share of the cost and expense for such environmental inspection and evaluation of the Entire Premises. If the report prepared by such environmental consultant identifies either any violations of applicable Hazardous Materials Laws or any concerns regarding the use or condition of the Unit Premises, the Landlord shall deliver a copy of such report to the Tenant, and the Tenant shall promptly take such remedial action with respect to the Unit Premises so identified by such report.

13. Unit Premises Alterations.

Tenant shall not commence any Tenant's Alterations without first obtaining the approval of the Landlord. If the Tenant wants to obtain such Landlord approval for Tenant's Alterations, the Tenant shall prepare and submit to Landlord for its approval Tenant's Construction Plans. Landlord shall not unreasonably withhold its approval of the Tenant's Construction Plans. If Landlord does not approve the Tenant's Construction Plans, Landlord shall give Tenant written notice of its disapproval, and its grounds for such disapproval, within sixty (60) days after Tenant's submission of the



February 28, 2011

Mr. C. Earl Stoner, Jr.  
S & F Land Company, Inc.  
P. O. Box 806  
Puunene, HI 96784

**Subject:** S & F Land Company Annual Reporting to State Land Use per docket #A96-717  
regarding 51.96 acres made up of State of Hawaii tax keys #3-8-05 por 1, 19, 22, and 38.

Dear Earl:

In reference to the above-mentioned docket, we have reviewed the two conditions that apply to HC&S. I have stated each condition and responded below:

**Condition #16** "Petitioner shall ensure that the proposed project will not negatively impact the use of cane haul roads and irrigation ditches or otherwise interfere with continued agricultural operation of adjoining sugar cane cultivation areas."

S & F Land Company's operation at Central Maui Baseyard has had no negative impact on HC&S's operation. We are provided complete access to the property to maintain our ditch that runs through the property and to access any of our roads that are connected to the baseyard. All sugar harvesting has ceased within the baseyard property and we no longer need to access the property for cultivation or hauling.

**Condition #19** "Petitioner shall inform prospective tenants and shall include in all tenant license agreements language informing tenants of possible odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance."

We have reviewed A & B Properties lease with S & F Land Company as well as S & F Land Company's tenant lease as it applies to our right to farm. We are satisfied with language in both leases and feel that our interests are protected.

I hope that this is helpful. If you have any questions on this matter, please feel free to contact me.

Sincerely yours,

Christopher J. Benjamin  
Plantation General Manager

RECEIVED

MAR 02 2011