

**STATE OF HAWAII**  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
**LAND USE COMMISSION**

P.O. Box 2359  
Honolulu, Hawaii 96804-2359  
Telephone: 808-587-3822  
Fax: 808-587-3827

October 19, 2006

Blaine J. Kobayashi, Esq.  
Carlsmith Ball LLP  
One Main Plaza, Suite 400  
2200 Main Street, P. O. Box 1086  
Wailuku, Hawaii 96793-1086

Dear Mr. Kobayashi:

Subject: Filing of the First Annual Report for LUC Docket No. A04-754 Maui Lani 100,  
LLC

This is to acknowledge receipt of the first annual report for the subject docket received by the Land Use Commission on October 15, 2006. Upon completion of our review of the annual report, we will submit our comments to you, if necessary.

Please note that we have requested the County of Maui, Planning Department, to review and comment on the annual report, with the understanding that you have submitted a copy of the annual report to the County. Any comments they may have will be provided to you.

Thank you for your cooperation in this annual reporting requirement. Please do not hesitate to contact Max Rogers of my staff at 587-3822, should you require clarification or any further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Anthony J. H. Ching".

ANTHONY J. H. CHING  
Executive Officer



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October 19, 2006

Mr. Michael Foley, Director  
Department of Planning  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

Dear Mr. Foley:

Subject: Filing of the First Annual Report for LUC Docket No. A04-754 Maui Lani 100, LLC

On October 15, 2006, the Land Use Commission received the first annual report from the Petitioner filed pursuant to Condition No. 17 of the Findings of Fact, Conclusions of Law, and Decision and Order issued on September 15, 2005. As required by said conditions, we understand that the County of Maui Planning Department has been served with a copy of the annual report.

We request your assistance in reviewing the annual report and provide us with any comments you may have regarding the Petitioner's compliance with conditions. We request that any comments that your agency may have be submitted to our office with a copy to the Petitioner by November 19, 2006.

Please do not hesitate to contact Maxwell Rogers of my staff at 587-3822, should you require clarification or any further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anthony J. H. Ching".

ANTHONY J. H. CHING  
Executive Officer

MR

LAND USE COMMISSION  
STATE OF HAWAII

2006 OCT 15 P 4: 45

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Attorneys for Petitioner  
MAUI LANI 100, LLC

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Petition Of  
  
MAUI LANI 100, LLC  
  
To Amend The Agricultural Land Use  
District Boundary Into The Urban Land  
Use District For Approximately 59.6 Acres  
of Land at Wailuku, Maui, Hawaii,  
Tax Map Key No. 3-8-007:131 (portion).

DOCKET NO. A04-754

FIRST ANNUAL REPORT OF MAUI  
LANI 100, LLC; CERTIFICATE OF  
SERVICE

FIRST ANNUAL REPORT OF MAUI LANI 100, LLC

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

MAUI LANI 100, LLC

To Amend The Agricultural Land Use District Boundary Into The Urban Land Use District For Approximately 59.6 Acres of Land at Wailuku, Maui, Hawaii, Tax Map Key No. 3-8-007:131 (portion).

DOCKET NO. A04-754

FIRST ANNUAL REPORT OF MAUI LANI 100, LLC

**FIRST ANNUAL REPORT OF MAUI LANI 100, LLC**

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

COMES NOW MAUI LANI 100, LLC. ("Petitioner"), a Hawaii limited liability company, and pursuant to Condition No. 17 of the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment issued on September 15, 2005, hereby submits to the State Land Use Commission ("Commission") its first annual report of compliance with the conditions established by said approval as follows:

**General Progress of the Project.**

On March 3, 2006, the Maui County Council approved a bill for an ordinance to change the zoning of the subject property from the "Agricultural" district to "Wailuku-Kahului Project District 1." Concurrent with the Maui County Council's approval of the change in zoning, the Maui County Council also approved a bill to amend the Wailuku-Kahului Community Plan to include the Project.

## Report on Compliance with Conditions Imposed by Commission.

With respect to Petitioner's compliance with the conditions of the Commission's approval, we offer the following:

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 has submitted a draft affordable housing agreement to the County of Maui that sets forth detailed provisions for affordable housing consistent with the foregoing condition. The draft agreement is currently being reviewed by the Department of Housing and Human Concerns.

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 understands its obligation, and will comply with this 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 plans for the extension of Kuikahi Drive and sections of Maui Lani Parkway are currently being designed. Kamehameha Avenue has been extended out towards the southern boundary of the Wailuku-Kahului Project District. Petitioner will be monitoring the foregoing intersections, and will comply with intersection improvements as warranted. 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.

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.

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.

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 understands its obligation, and will comply with this 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 has commenced with construction of the 3 new wells.

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.

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 understands its obligation, and will comply with this 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.

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

- 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 is in the process of conducting an evaluation of the potential risk of air being introduced into the Landfill from sand mining operations. Appropriate and feasible mitigative actions, including the preparation of a mitigation program, will be proposed upon completion of said evaluation.



- 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:** Petitioner's mitigation program will be formulated and submitted upon completion of the evaluation referenced above.

- 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.

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.

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.

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

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 to comply with this condition, and submits this annual report in compliance therewith.

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.

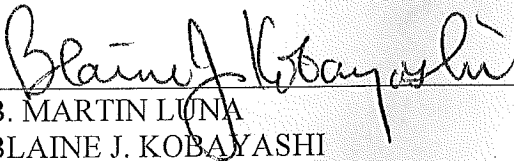
19. **Notice of Imposition of Conditions.** Within 7 days of the issuance of the Commissions Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission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

**Response:** Petitioner has 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 has filed a copy of the recorded document with the Commission.

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.

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

DATED: Wailuku, Maui, Hawaii, October 12, 2006.

  
B. MARTIN LUNA  
BLAINE J. KOBAYASHI

Attorneys for Petitioner  
MAUI LANI 100, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

MAUI LANI 100, LLC

To Amend The Agricultural Land Use  
District Boundary Into The Urban Land  
Use District For Approximately 59.6 Acres  
of Land at Wailuku, Maui, Hawaii,  
Tax Map Key No. 3-8-007:131 (portion).

DOCKET NO. A04-754

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that due service of a copy of the First Annual Report of Maui Lani 100, LLC was made by depositing the same with the U. S. mail, postage prepaid, or by hand delivery, on October 12, 2006, addressed to:

LAURA H. THIELEN  
Director  
Office of Planning  
State of Hawaii  
P. O. Box 2359  
Honolulu, Hawaii 96804

BY MAIL

ABE MITSUDA  
Planning Program Administrator  
Office of Planning , Land Use Division  
State of Hawaii  
P. O. Box 2359  
Honolulu, Hawaii 96804

BY MAIL

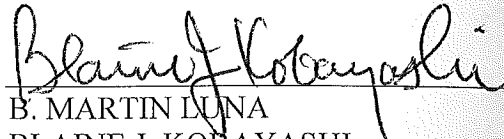
BRYAN C. YEE  
Deputy Attorney General  
Department of the Attorney General  
Commerce & Economic Development Division  
425 Queen Street  
Honolulu, Hawaii 96813

BY MAIL

MICHAEL W. FOLEY  
Director, Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

BY HAND DELIVERY

DATED: Wailuku, Maui, Hawaii, October 12, 2006.

  
B. MARTIN LUNA  
BLAINE J. KOBAYASHI

Attorneys for Petitioner  
MAUI LANI 100, LLC