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January 31, 2009

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FEB 17 2009
STATE OF HAWAII
LAND USE COMMISSION~~

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

RECEIVED
FEB 17 2009

STATE OF HAWAII
LAND USE COMMISSION

Dear Mr. Davidson:

Subject: 2009 Annual Report
LUC Docket No. A94-703
The Lihue Plantation Company, Limited
Decision and Order, January 4, 1996 (as amended on April 12, 1996 and
December 18, 2006)
Lihue-Hanamaulu Master Plan Project ("Project")

Submitted herewith are one original and two copies of this annual report. Copies of this report are also being provided to the State Office of Planning and the Planning Department, County of Kauai.

In July 2001, Lihue Land Company, a Virginia limited liability company, purchased most of Lihue Plantation Company's lands, including the petition area, from Lihue Plantation. Under the terms of the purchase, Lihue Land Company accepted all obligations under this docket except for the Kaana Street improvements, which remained an obligation of Lihue Plantation. To avoid confusion it should be pointed out that both Lihue Land Company and Grove Farm Company share common officers, directors and staff.

I. PROJECT PROGRESS

Concurrent with the processing of the above-captioned Petition for Boundary Amendment for the Project by the State Land Use Commission ("Commission"), the Petitioner submitted a Petition for a Zoning Amendment (Bill No. 1775) to the County of Kauai ("County") on August 25, 1995 (hereinafter "County Zoning Amendment"). Upon review and public hearings, the County Planning Commission recommended approval and the County Council approved the request on May 8, 1996 and the Mayor of Kauai signed the County Zoning Amendment into law on May 13, 1996 (Ordinance No. PM-326-96).

Petitioner continues to work on satisfying the conditions of approval for both the Petition for Boundary Amendment and the County Zoning Amendment that must be resolved

prior to applying for County Zoning Permits and/or receiving final approval of any subdivision.

Petitioner has also had discussions with several community groups and government agencies as to the possible inclusion or relocation of certain sites into the Project Area. As discussed in our previous annual reports and letters dated September 29, 1997 and October 17, 1997 the following agreements have been reached.

1. Sale of approximately 6.5 acres to the State of Hawaii for a Judiciary Complex.
2. Sale of approximately 10.0 acres to the County of Kauai for a police station, civil defense and transportation facility.
3. Sale of approximately 2.510 acres to the YWCA for a community center.

The design of the Kaana Street roadway improvements from Kapule Highway to serve the Judiciary Complex and County's police station site was completed in 2001. Construction plans were put out to bid and a contract to construct was awarded to Goodfellow Bros. Construction was about to begin in early 2002 when Amfac, parent of Lihue Plantation, filed for bankruptcy. The ensuing bankruptcy proceedings delayed construction for nearly a year while new sources of funding were secured. Construction commenced in late 2002 and was completed in April, 2003.

II. COMPLIANCE WITH COMMISSION'S CONDITIONS

Progress towards compliance with the conditions of the Commission's approval referred to and incorporated in the Decision and Order dated January 4, 1996, as amended on April 12, 1996, is summarized below.

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii to the satisfaction of the County of Kauai Housing Agency within the entire Petition Area. The location and 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 County of Kauai. An Affordable Housing Agreement between the Petitioner and the County of Kauai shall be obtained prior to the Petitioner applying for county zoning permits or receiving final approval of any subdivision, whichever comes first, for any portion of the Petition Area other than the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle.

Status:

This condition was amended in December 2006 and is emphasized above. D.R. Horton has purchased the Hanamaulu Triangle and a significant amount of this project will consist of affordable housing. This condition

was amended to allow them to proceed with the lengthy zoning permit process prior to the execution of the affordable housing agreement.

In June 2006, we reached an agreement with the County Housing Agency to provide 25% of the housing units at affordable prices and took steps towards obtaining County Council approval. However, in October 2006 Bill No. 2202 Draft 2 assessing a 30% affordable housing requirement to all residential developments with incentives was passed by the County of Kauai Council in November 2007 and became in effect December 2007. Subsequently, Administration and County of Kauai Housing executed an amended Housing Agreement with Ha'ili Moe, Visionary and DRHorton on June 5th 2008.

2. Petitioner shall provide its fair-share contribution for school facilities necessitated by the proposed Lihue-Hanamaulu Project, and for the benefit of the State Department of Education ("DOE"). Terms of the donation shall be agreed upon in writing by Petitioner and the DOE prior to Petitioner receiving final subdivision approval, or apply for a building permit, whichever comes first, for any portion of the Petition Area.

Status:

This condition was amended in December 2006 and is emphasized above.

In addition to this condition, the County of Kauai imposed a condition pursuant to Ordinance No. PM-326-96 requiring the Petitioner to reserve a 15-acre site within the "Ahukini Mauka" portion of the Lihue-Hanamaulu Project for a future school site. Although this ordinance contradicted the LUC's original condition for a school site in Puhi, the DOE preferred a site in Lihue-Hanamaulu because of its future growth potential and the infrastructure limitations in Puhi. This condition has now been amended to eliminate the requirement of a 12 acre site in Puhi.

An Educational Contribution Agreement was executed with the DOE on January 17, 2007. Pursuant to this agreement, we will donate 12 acres for a new school site in the Ahukini Mauka portion and 3 acres adjacent to King Kaumualii Elementary School for future expansion for a total of 15 acres. Therefore, this condition is satisfied.

3. Petitioner shall participate in the pro rata funding and construction of adequate civil defense measures as determined by the State of Hawaii and County of Kauai civil defense agencies.

STATUS:

We will work with the civil defense agencies to resolve this condition.

4. Petitioner shall participate in the funding and developing of water source, storage, and transmission facilities to serve the proposed development.

STATUS:

We submitted our Water Master Plan to the County of Kauai, Department of Water on May 16, 2000 for its review and approval. Subsequently after review and comments received from the Department of Water, and several revised drafts were resubmitted, the latest version was submitted on December 22, 2008. We continue to work with the DOW to obtain approval.

The initial source capacity for the Project will come from a surface water treatment plant. This plant was completed and has been operating since early 2006. We will work with the DOW to provide adequate storage and transmission facilities for the remainder of the Project.

5. Petitioner shall participate in the funding and construction of adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Kauai.

STATUS:

Pending the approval of our Wastewater Master Plan dated December 30, 2008. We will continue to work with the County of Kauai and State Department of Health in identifying the necessary treatment, transmission and disposal facilities; and participate in the funding and construction of these wastewater requirements.

6. Should any human burials or any historic sites such as artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation Division ("Division"). The significance of these finds shall then be determine and approved by the Division. The Division must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawaii Revised Statutes.

STATUS:

We will comply with this condition.

7. Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation ("DOT") and the County of Kauai. Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner applying for county zoning permit or receiving final approval of any subdivision, whichever comes first, **for any portion of the Petition Area other than the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle. Agreement between the Petitioner and the DOT as to the level of funding and participation required for the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle shall be obtained prior to the Petitioner applying for a county building permit or receiving final approval of any subdivision, whichever comes first, for the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle.**

STATUS:

This condition was amended in December 2006 and is emphasized above. The State Department of Transportation has reviewed D.R. Horton's plans for the Hanamaulu Triangle and has provided comments. This amendment allows D.R. Horton to proceed upon satisfaction of the DOT conditions.

We are working with the DOT to identify the level of pro rata funding and participation that we are required to provide for the remainder of the Project.

8. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the appropriate State of Hawaii and County of Kauai agencies.

STATUS:

We prepared a drainage master plan, which was attached to the Environmental Impact Statement. As individual developments within the Project are planned, we will work with the appropriate County and State agencies to resolve details relating to the design of the required on-site and off-site drainage improvements.

9. Petitioner shall not construct single or multi-family residential, hotels, or transient lodging, and other noise sensitive public use structures (schools, day care centers, libraries, churches, health care facilities, nursing homes, or hospitals) within areas exposed to aircraft noise levels of 60 Ldn or greater as indicated on the 1994 and 2010 aircraft noise contours within the Petitioner's January 1995 EIS. Other public use structures (government services and office buildings serving the public, transportation facilities, and parking areas), commercial facilities, government facilities not normally accessible to the public, industrial and agricultural facilities, and recreational facilities (except for outdoor music shells, amphitheatres, professional/resort sport facilities, medial event facilities,

etc.) are permitted within areas exposed to aircraft noise levels of 60 Ldn or greater. The State of Hawaii will not be responsible for mitigation of facilities developed within areas exposed to aircraft noise levels of 60 Ldn or greater.

STATUS:

We will comply with this condition. However, please note that the State DOT-Airports published a Final Environmental Impact Statement for the Lihue Airport Improvements in November 2007 which included an updated acoustic study by Y. Ebisu & Associates (Appendix C). In it, the study found that the areas projected to be exposed to 60 Ldn or greater noise impacts in 2011 and 2020 are significantly reduced due to improvements in aircraft technologies. (We could also attach the updated figures. Let me know if you need copies.)

10. Petitioner shall grant to the State of Hawaii an avigation (right to flight) easement in the form prescribed by the State of Department of Transportation ("DOT") and such easement and form shall be mutually acceptable to the DOT and the Petitioner.

STATUS:

We will comply with this condition.

11. Petitioner shall not construct any object that would constitute a hazard to air navigation at Lihue Airport as defined in Title 14, Code of Federal Regulations Part 77, (14 C.F.R. 77) and Title 19, Hawaii Administrative Rules Chapter 12 (19 H.A.R. 12), provided that this requirement shall be applicable to the construction of those improvements set forth in Petitioner's Exhibit 54, 55 and 56.

STATUS:

We will comply with this condition.

12. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

STATUS:

The Department of Health has determined that there is no existing or planned air quality monitoring program for the Project.

13. Petitioner shall cooperate with the State Department of Health and the County of Kauai Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes, and the County of Kauai's approved integrated solid waste management plans in accordance with a schedule and timeframe satisfactory to the State Department of Health.

STATUS:

We will comply with this condition.

14. Petitioner shall implement efficient soil erosion and dust control measures to the satisfaction of the State Department of Health and County of Kauai.

STATUS:

We will comply with this condition.

15. Petitioner shall notify all prospective buyers of property that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing activities may be deemed a nuisance.

STATUS:

We will comply with this condition.

16. Petitioner shall maintain the alignment of existing cane haul roads or shall provide alternative cane haul roads at its expense to serve any continuing sugarcane cultivation within the Property.

STATUS:

Sugarcane is no longer being cultivated on the Property.

17. Petitioner shall initiate and fund a stream biological monitoring program. The monitoring program shall include quarterly monitoring as warranted, and be reviewed by the U.S. Fish and Wildlife Service, and approved by the State Division of Aquatic Resources, Department of Land and Natural Resources. Mitigation measures necessitated by this Project shall be implemented by the Petitioner if the results of the monitoring program warrant them. Mitigation measures, if necessary, shall be reviewed by the U.S. Fish and Wildlife Service, and approved by the State Division of Aquatic Resources, Department of Land and Natural Resources.

STATUS:

A stream biological monitoring program plan has been reviewed by the U.S. Fish and Wildlife Service and has received approval from the Division of Aquatic Resources ("DAR"), Department of Land and Natural Resources. Stream monitoring will be conducted in accordance with the plan.

18. Petitioner shall initiate and fund a nearshore and stream water quality monitoring program. The monitoring program shall be approved by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the State Department of

Health and the State Division of Aquatic Resources, Department of Land and Natural Resources. Mitigation measures shall be implemented by the Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

STATUS:

A nearshore and stream water quality monitoring program plan has been approved by these agencies listed above. Monitoring will be conducted in accordance with the approved plan.

19. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

STATUS:

We will comply with this condition. Our large lot subdivision plans were submitted in January 2007 and tentative approval was received April 11, 2007. Construction plans for the Molokoa section of Wailani were recently submitted to the County of Kauai Planning Department in December 2008 for review and approval. Further, tentative subdivision plans for the Ahukini Makai portion of Wailani adjacent to the Lihue Airport were submitted in January 2009.

20. 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 Property, prior to development of the Property.

STATUS:

We will comply with this condition.

In September 2005, we sold the "Hanamaulu Triangle" portion of the Project, TMK (4) 3-7-03:020, to D.R. Horton.

The State Department of Transportation Airports Division has expressed an interested in acquiring a portion of the "Ahukini Makai" portion of the Project, TMK (4) 3-7-02:001 for future expansion of the Lihue Airport. In January 2009, Visionary, LLC signed a Memo of Understanding with the State Department of Transportation Airports Division for the potential purchase of 77.5 acres within TMK (4) 3-7-02:001 for their future expansion plans of the Lihue Airport. Sale shall consummate upon completion of infrastructure.

As noted in the 2007 Annual report, the YWCA expressed interest in purchasing a 2.5 acre portion of the "Molokoa" portion of the Project, TMK (4) 3-6-02:001. This sale closed in December 2007..

21. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Kauai 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 be submitted in a form prescribed by the Executive Officer of the Commission.

STATUS:

We will comply with this condition.

22. 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 the provision of adequate assurance of satisfaction of these conditions by Petitioner.

STATUS:

We are aware of this condition.

23. Within 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 in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

STATUS:

We have complied with this condition.

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

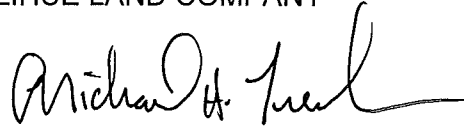
STATUS:

We have complied with this condition.

If there are questions please feel free to contact the undersigned at (808) 245-3678.

Sincerely,

LIHUE LAND COMPANY



Michael Tresler
Sr. Vice President

cc: Planning Department, County of Kauai