

TAKITANI AGARAN & JORGENSEN,
LLLP

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June 14, 2017

Mr. Daniel E. Orodener, Executive Officer
Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

2017 JUN 16 A 10:37
LAND USE COMMISSION
STATE OF HAWAII

Re: **Notice of Change of Ownership Interests for LUC Docket No. A04-751**
Petition of Maui Land & Pineapple Company, Inc.
Petition Area TMKs (2) 4-3-001: 082 & 083 (previously (2) 4-3-001: 031 portion)
Property Pulelehua Subdivision

Dear Mr. Orodener:

Our law firm represents Maui Oceanview LP. Submitted with this Notice of Change of Ownership Interest for LUC Docket No. A04-751 is the 2017 Annual Report for LUC Docket No. A04-751.

As required by Condition No. 28 of the Decision and Order (Notice of Change of Ownership Interests), Maui Oceanview LP hereby gives notice to the Land Use Commission of the State of Hawaii ("Commission") that Maui Land & Pineapple Co. Inc. sold and transferred its ownership interest of the Petition Area that is subject to the Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated and entered on June 30, 2006 in Docket No. A04-751. The date of the sale was June 3, 2016.

New Owner of Petition Area: Maui Oceanview LP.

Address: 2525 McKinney Avenue, Suite B
Dallas, Texas 75201

Telephone: (214) 415-8868

Contact: Paul Cheng

Notice of Change of Ownership Interests for

LUC Docket No. A04-751

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Should you have any questions or requests for additional information, please contact me at (808) 242-4049. Your acceptance of this notice is appreciated.

Sincerely,

TAKITANI AGARAN & JORGENSEN, LLLP

A handwritten signature in black ink, appearing to read "G.S.C. Keith-Agaran". The signature is written in a cursive style with a long horizontal flourish extending to the right.

By GILBERT S.C. KEITH-AGARAN
Attorneys for Maui Oceanview LP

cc: Paul Cheng/ Maui Oceanview LP
Jordan Hart/Chris Hart & Associates

June 14, 2017

Mr. Daniel E. Orodener, Executive Officer
Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii
PO Box 2359
Honolulu, HI 96804-2359

Mr. Leo R. Asuncion, Jr., AICP, Director
Office of Planning
Department of Business, Economic Development & Tourism
State of Hawaii
PO Box 2359
Honolulu, HI 96804-2359

Mr. William Spence, Director
Department of Planning County of Maui
One Main Plaza #315
2200 Main Street
Wailuku, HI 96793-2155

Re: **2017 Annual Report for LUC Docket No. A04-751**
Petition of Maui Oceanview LP, Mahinahina and Kahana, Lahaina, Maui, Hawaii
TMKs (2) 4-3-001-082 & 083 [previously (2) 4-3-01: por. 31]

Dear Messrs. Orodener, Asuncion, and Spence:

Pursuant to Condition No. 29 in the Decision and Order for the above referenced docket, Maui Oceanview LP, is pleased to provide this report to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department concerning the current status of compliance with the conditions of approval. Submitted concurrently with this report is a notice of change of ownership interests from Maui Land & Pineapple, Inc. ("MLP") to Maui Oceanview LP as required by Condition No. 28.

General Project Progress:

The Land Use Commission of the State of Hawaii ("LUC") approved MLP's petition to reclassify approximately 310 acres of land at Mahinahina and Kahana, Lahaina, Maui, Hawaii from Agricultural to Urban for the Pulelehua project on June 22, 2006. The Decision and Order sets forth thirty-two (32) conditions of approval regarding the reclassification.

Since the LUC's approval, the previous owner, MLP received several major discretionary governmental approvals for the Pulelehua project. On November 18, 2011, County of Maui Mayor Alan M. Arakawa approved:

- Bill No. 62 (2011), designated as Ordinance No. 3887, which amended the West Maui Community Plan Land Use Map from Agriculture, Park, and Open Space to West Maui Project District 5 (Pulelehua) for TMKs (2) 4-3-001-082 & 083 (previously (2) 4-3-01: por. 31);
- Bill No. 63 (2011), designated as Ordinance No. 3888, which amended Title 19, Maui County Code, by adding a new chapter designated as Chapter 19.93, West Maui Project District 5 (Pulelehua); and

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STATE OF HAWAII

- Bill No. 64 (2011), designated as Ordinance No. 3889, which granted a change in zoning from the County Agricultural District to West Maui Project District 5 (Pulelehua) (Conditional Zoning) for TMKs (2) 4-3-001-082 & 083 (previously (2) 4-3-01: por. 31).

Conditions and Compliance:

1. *Affordable Housing. Petitioner shall do the following to provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii in accordance with the affordable housing policies and guidelines of the County of Maui and its representations in this docket:*
 - a. *Petitioner shall develop and offer for rent not less than 125 affordable housing units to qualified families or individuals to satisfy a condition imposed by the Commission in its approval of Petitioner's Kapalua Mauka development in LUC Docket No. AOJ-741.*
 - b. *In addition, Petitioner shall develop and offer for sale not less than 325 affordable housing units to low, low-moderate, and moderate income residents of Maui as a feature of Pulelehua.*
 - c. *To ensure continued owner occupancy, rental, and resale to qualified low and moderate income residents and maintain the affordable housing inventory within Pulelehua, Petitioner shall prior to the rental or sale of any affordable housing unit establish County-approved restrictions governing the rental, sale, or transfer of all affordable housing units.*
 - d. *Subject to applicable laws, Petitioner shall establish at a minimum, qualifications for rental or purchase which specify that a renter or buyer must: be currently employed in Maui; attain a minimum age of 18 years; demonstrate evidence of sufficient income; agree to physically reside in the affordable housing unit; and not already own a housing unit or other real property.*

Compliance: Maui Oceanview LP is in the process of finalizing a Workforce Housing Agreement with the Maui County Department of Housing and Human Concerns which will have these terms.

1. Total number of workforce affordable housing required for Pulelehua will be equal to the current County of Maui workforce affordable housing requirements.
2. The workforce affordable housing units within Pulelehua can be "for rental" and/or for sale

Additionally, the County of Maui has requested that Maui Oceanview LP submit contemporaneously with the request above its site plan and request the LUC to confirm the plan is a conforming site plan. Maui Oceanview LP intends to submit a request to the LUC to specifically allow it the option of developing rental housing only.

2. *Public School Facilities. Petitioner shall contribute to the development, funding, and/or construction of public school facilities, on a fair-share basis, pursuant to an Education Contribution Agreement for Pulelehua executed between Petitioner and the DOE. The Education Contribution Agreement shall provide for the dedication of land and/or other consideration to be applied to the construction of a public elementary school in Pulelehua. Petitioner shall file the Education Contribution Agreement and any subsequent amendments with the Commission after it has been executed by Petitioner and the DOE. Petitioner shall also submit copies of all executed Education Contribution Agreements to the County of Maui prior to the Council approving an ordinance amending the West Maui Community Plan Land Use Map designation for Pulelehua.*

Petitioner shall pursue alternatives with the DOE to expedite the design and construction of the public elementary school in Pulelehua. Such alternatives may include a design- build agreement whereby Petitioner would agree to design and build public school facilities for a sum to be paid by the DOE.

Compliance: The Education Contribution Agreement was executed on June 16, 2006 with the Petitioner's predecessor, MLP. A copy of the agreement was submitted to the Land Use Commission and County Planning Department which was included as an exhibit to the Community Plan Amendment, County Change in Zoning, and Project District applications. MLP has had numerous meetings with the DOE to finalize the 13-acre school site. DOE has conducted design charrettes in West Maui and completed its master plan in December 2015. Maui Oceanview,LP has met with the DOE and showed them our progress. DOE informed us that they had preliminary architectural plans for the development, and were made aware of the transfer of ownership and new

progress made on the site. DOE explained that their budget does not include any funding for the development of the School and they will inform Maui Oceanview LP when they are ready to move forward with a new campus.

Wastewater Facilities. Discussions are underway with the Maui County Wastewater Reclamation Department for Phase 1 temporary needs. At the same time, Maui Oceanview LP has been in full development planning for a wastewater treatment facility on site that will serve Pulelehua. It is the intention of Pulelehua to have a zero discharge wastewater treatment facility at completion such that all treated R-1 water will be reused for internal landscaping purposes.

Compliance: Maui Oceanview LP has been working with the County of Maui Department of Environmental Management, Wastewater Reclamation Division on connection to the LWRF.

- 4. Akahahele Street. Petitioner is under discussions and shall be entering into an agreement with the DOT, Airports Division, under terms and conditions acceptable to the DOT, for access to and use of Akahahele Street. Petitioner acknowledges, understands, and agrees that Petitioner's obligation and responsibilities in an agreement can extend to, but not be limited to, design and construction of the roadway improvements and intersections, compliance with the Kapalua-West Maui Airport security programs, and upkeep and maintenance of Akahahele Street.*

Compliance: MLP submitted a revised Traffic Impact Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway (including Akahahele Street) and airport facilities.

- 5. Transportation Improvements. Petitioner shall submit a revised TIAR for Pulelehua to the DOT for their review and approval no later than the completion date of the final development and internal circulation plan for Pulelehua. Petitioner shall implement traffic mitigation measures and roadway intersection improvements, including signalization and pedestrian facilities, for access to and use of Honoapi'ilani Highway, as determined by and to the satisfaction of the DOT, including those improvements and mitigation measures as recommended or required by the TIAR approved by the DOT. Petitioner shall obtain the DOT's prior written approval of Petitioner's TIAR and Petitioner may not proceed with the development of Petitioner's project until the DOT approves the TIAR.*

Compliance: An updated TIAR has been completed and will be reviewed by the County and the DOT as well as submitted to the LUC as part of its request for amendment stated above.

- 6. Roadway Connectivity and Regional Circulation. Petitioner shall plan and prepare for lateral (in general parallel to the coastline and fronting the highway) roadway connections from the Petition Area to adjoining lands in cooperation with the respective neighboring landowner(s) to provide potential alternate roadway routes to improve transportation capabilities in the area. Petitioner shall facilitate and promote the need for a Regional Traffic Circulation Plan from the County government to assist Petitioner and the DOT in determining roadway connections from the Petition Area to other adjoining lands and to existing roads and highways.*

Compliance: Maui Oceanview LP is integrating lateral roadway connections into the design of the project.

- 7. Traffic Fair-Share Contribution. Petitioner and the County of Maui shall enter into an agreement which establishes a Traffic Fair-Share or Voluntary Contribution to be paid by Petitioner to mitigate the traffic-related impact generated by the development of Pulelehua. A copy of the executed agreement shall be filed with the Commission prior to the occupancy of any unit within Pulelehua. The agreement shall provide that Petitioner shall in the order specified below:*

- a. *pay the fee calculated pursuant to chapter 14.62, Maui County Code ("MCC"), Impact Fees for Traffic and Roadway Improvements in West Maui, Hawai'i; however, if there is a written agreement between the County of Maui and the State of Hawai'i specified by section 14.62.080 MCC, the County shall share the funds collected from Petitioner with the State in accordance with this written agreement; or*
- b. *make a voluntary contribution to the County of Maui in an amount equivalent to the above referenced fee upon issuance of a building permit for each dwelling; or*
- c. *pay the above referenced fee to the State pursuant to the enactment of State legislation authorizing such payment.*

The above referenced fee or voluntary contribution will be applied towards the funding, design, and construction of local and regional transportation improvements and programs necessitated by the proposed development of the Petition Area, but in any event neither the traffic fair-share nor the voluntary contribution will exceed the greater of

- (a) *\$3,500 per market priced and gap group priced single-family unit or lot developed on the Petition Area, or*
- (b) *the traffic impact fee established for a market priced and gap group priced single-family and multi-family unit pursuant to Maui County Code chapter 14.62 at the time a building permit is issued.*

Compliance: No specific action taken to date.

8. *Civil Defense. Petitioner shall, on a fair-share basis, fund and construct adequate solar- powered civil defense measures serving the Petition Area as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and the County of Maui Civil Defense Agency.*

Compliance: No specific action taken to date.

9. *Archaeological Inventory Survey and Historic Preservation Mitigation Plan. Petitioner shall comply with the conditions recommended by the DLNR, SHPD, on March 3, 2005, regarding revisions to Petitioner's archaeological inventory survey and approval of an acceptable monitoring plan in the general vicinity of historic sites on the Petition Area prior to commencement of any ground altering activities.*

Compliance: A plan will be developed at the time of Development to the above.

10. *Previously Unidentified Burial/Archaeological/Historic Sites. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, 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 DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.*

Compliance: No specific action taken to date.

11. *Air Quality Monitoring. Petitioner shall participate in an air quality-monitoring program if required by the DOH.*

Compliance: No specific action taken to date.

12. *Notification of Noise.* Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Petition Area, in accordance with State law, the potential adverse impacts of aircraft and airport activity from the adjacent Kapalua-West Maui Airport, such as but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations. Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, whereby buyers and lessees and other future owners, lessees, or occupants will release the State of Hawaii from and against all claims, liability, and losses resulting from aircraft and airport operations, provided that the State of Hawaii shall not be released from its negligence.

Compliance: Maui Oceanview LP will notify all prospective buyers and lessors of potential adverse aviation impacts once sales commence.

13. *Airport Infrastructure.* Petitioner shall provide and be responsible at its costs for any relocation, change, repair, or alteration to existing airport utility, service, and related infrastructure lines and equipment affected by Petitioner's Project, located in or surrounded by the Petition Area, to the satisfaction of the DOT.

Compliance: MLP submitted a revised TIAR dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway and airport facilities. A draft Memorandum of Understanding will be prepared and will be finalized by Maui Oceanview LP once additional infrastructure design for the highway connection is completed and an updated TIAR is completed and accepted by DOT.

14. *Sound Attenuation.* Petitioner shall employ the following noise mitigation measures: Petitioner shall follow the Maximum Operation Scenario in its noise study and place residential units and similar noise sensitive uses outside the 60 DNL (toward lesser DNL) noise contour. Residential units and similar noise sensitive uses located in between the 55 to 60 DNL noise contours should be properly designed and constructed to meet, at a minimum, Federal EPA residential interior noise standards. Industrial commercial- business type uses, if located in the 60-65 or higher noise contours, containing noise sensitive uses (e.g., rest area, offices, etc.) should have the noise sensitive area properly designed and constructed to meet, at a minimum, applicable Federal EPA interior noise standards.

Compliance: Development plans prepared for Pulelehua by Maui Oceanview LP shall conform to the above requirements.

15. *Runway Safety, Protection, and Use.* Petitioner acknowledges that portions of the Petition Area lay within, or are subject to, the airport runway safety protection areas (the RPZ, the RSA, and the ROFA) required by the FAA at the Kapalua-West Maui Airport. Petitioner agrees to comply with FAA requirements and cooperate with the DOT for the documentation and recordation of the safety and protection areas. Petitioner agrees to provide the DOT access in order that the DOT may undertake mitigation measures (grading, lengthening, alteration, or improvement) to bring safety and protection areas up to FAA standards. Petitioner will sell an aviation easement on the affected lands in favor of the State of Hawaii.

Compliance: MLP submitted a revised TIAR dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway and airport facilities. Obligations of and requirements on MLP include compliance with all FAA, DOT and TSA requirements for runway and airport safety as well as agreement to give and grant an aviation easement in favor of the State of Hawaii. A draft Memorandum of Understanding will be prepared and will be finalized by Maui Oceanview LP

once additional infrastructure design for the highway connection is completed and an updated TIAR is completed and accepted by DOT.

16. *Hazards to Aircraft Operations. Petitioner shall take appropriate measures to fund and implement a program to control any bird nesting or gathering and any insect, pest or wildlife infestation, especially in any drainage retention basins serving the Petition Area and in any portion of the Petition Area in the RSA, RPZ, and ROFA, or abutting the Kapalua-West Maui Airport to minimize the hazards to aircraft operations, as deemed necessary by the DOT, Airports Division.*

Compliance: No vertical development is designed to take place within the flight path or ends of the runway within Pulelehua that may pose as a hazard to aircraft operations. Presentations will be made to the DOT for their approval before Development begins.

17. *Drainage. Petitioner shall fund the design and construction of drainage system improvements to prevent runoff resulting from the development of the Petition Area from adversely affecting State airport and highway facilities to the satisfaction of appropriate State and County agencies, based on one hour runoff from a 50-year storm.*

Compliance: Maui Oceanview LP will integrate drainage system improvements into the design of the project.

18. *Notification of Potential Nuisances. Petitioner shall disclose to all prospective buyers and/or lessees of the Petition Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands.*

Compliance: Maui Oceanview LP will notify all prospective buyers and lessees of potential odor, noise, and dust pollution once sales commence.

19. *Provisions of the Hawaii 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 if there are any lands in the Agricultural District adjacent to the Petition Area.*

Compliance: Maui Oceanview LP will notify all prospective buyers and lessees of the Hawaii Right to Farm act once sales commence.

20. *Integrated Solid Waste Management Plan. Petitioner shall cooperate with the DOH and the DPWEM to conform to the program goals and objectives of chapter 342G, HRS and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities, including recycling bins in public places, such as schools and parks, if any, within the proposed development.*

Compliance: Maui Oceanview LP will comply with the above.

21. *Water Resources Allocation. Petitioner shall provide adequate potable and non-potable water source, storage, and transmission facilities and improvements to the satisfaction of the DWS to accommodate the proposed development on the Petition Area.*

Compliance: Maui Oceanview LP is in ongoing discussions with the DWS regarding water resource allocation and will have a plan to provide such prior to Development.

22. *Established Access Rights Protected. Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area for access to other areas to exercise subsistence, cultural, and religious practices.*

Compliance: No specific action taken to date.

23. *Best Management Practices. Petitioner shall implement applicable best management practices applicable to each proposed land use to reduce or eliminate soil erosion and groundwater pollution, and effect dust control measures during and after the development process in accordance with the DOH guidelines.*

Compliance: No specific action taken to date.

24. *Soil Analysis. Petitioner shall conduct a soil analysis study of the Petition Area to determine the impact of the Project from fertilizer and pesticide residue that may be present on the Petition Area and undertake measures to abate and remove any hazardous materials identified.*

Compliance: Prior soil studies performed on the property indicated no significant amounts of hazardous materials on site.

25. *Water Conservation Measures. Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common area landscape planting.*

Compliance: The potable water system planned for Pulelehua will incorporate R1 water reuse for landscaping purposes.

26. *Energy Conservation Measures. Petitioner shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the Project.*

Compliance: Pulelehua will review in depth all renewable energy options available to it for economic practicality.

27. *Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with the 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.*

Compliance: All applications and developmental submittals to date have been in substantial compliance with the representations made during the reclassification process.

28. *Notice of Change of 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.*

Compliance: MLP sold ownership of the Petition Area to Maui Oceanview LP on June 3, 2016. Notice of Change of Ownership Interests is submitted concurrently with the report.

29. *Annual Reports.* Petitioner shall provide timely and without any prior notice, annual reports to the Commission, the OP, and the Planning Department in connection with the status of the development proposed for the Petition Area, 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.

Compliance: This letter represents the 2017 annual report submitted in compliance with this condition. MLP provided annual reports in compliance with this condition from 2007 through 2016. With this report Maui Oceanview LP would like to become current with reporting obligations and respectfully requests acceptance of this report in covering the reporting requirements for 2017.

30. *Release of Conditions Imposed by the Commission.* 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.

Compliance: When requesting the release of a condition, Maui Oceanview LP will file the appropriate motions upon formal acknowledgement from the appropriate agencies on the satisfaction of these conditions.

31. *Statement of Imposition of Conditions.* Within seven 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 Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.

Compliance: MLP has recorded the Statement of Impositions of Conditions by Land Use Commission dated July 17, 2006, with the Bureau of Conveyances as Document 2006-129979.

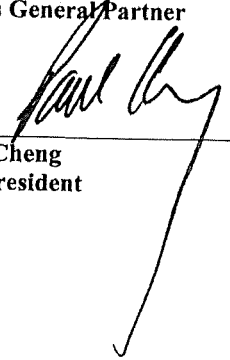
32. *Recordation of Conditions.* Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

Compliance: MLP has recorded the Amended and Restated Declaration of Conditions with the Bureau of Conveyances on September 29, 2006 as Document No 2006-178683.

Should you have any questions or requests for additional information, please feel free to contact me at 214.415.8868(phone #) or paul@usainvestments.com(email). Your acceptance of this annual report is appreciated.

Sincerely,

MAUI OCEANVIEW LP
By MAUI OCEANVIEW GP Inc.
It's General Partner


By Paul Cheng
It's President