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Maui Land & Pineapple Company, Inc.

COPY

June 9, 2009

Mr. Dan Davidson, Executive Officer
Land Use Commission
State of Hawaii
Post Office Box 2359
Honolulu, Hawaii 96804-2359

Mr. Abbey Mayer, Director
Office of Planning
Department of Business, Economic
Development & Tourism
State of Hawaii
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

Mr. Jeffrey Hunt, Director
County of Maui Planning Department
State of Hawaii
250 South High Street
Wailuku, Maui, Hawaii 96793-7109

Re: **Annual Report** for LUC Docket No. A04-751
Petition of Maui Land & Pineapple Company, Inc.
Mahinahina and Kahana, Lahaina, Maui, Hawaii
TMK 4-3-01: por. 31

Gentlemen,

Pursuant to the Condition No. 29 in the Decision and Order in the above reference docket, Maui Land & Pineapple Co., Inc. ("MLP") is pleased to provide this annual progress 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.

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LAND USE COMMISSION
STATE OF HAWAII

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. This letter is our third annual progress report. The Decision and Order sets forth thirty-two (32) conditions of approval regarding the reclassification.

Since LUC's approval, MLP continues to pursue discretionary governmental approvals for Pulelehua. The Maui County Planning Commission recommended approval to amend the West Maui Community Plan and Land Use Map from Agricultural, Open Space and Park to West Maui Project District (Pulelehua), amend Title 19 of the Maui County Code to establish West Maui Project District (Pulelehua) and change zoning from County Agricultural and Interim Districts to West Maui Project District (Pulelehua). The applications were submitted to the County Council on July 28, 2006 and were referred to the County Land Use Committee for subsequent hearings. The County Land Use Committee held hearings on September 5, 2007 and again on March 12, 2008 and August 20, 2008 to discuss the project. The committee has deferred the hearings until later this year.

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. A03-741.*
 - 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: No specific action taken to date.

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 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. 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.

Governor Linda Lingle released \$300,000 for the planning of the school and the DOE conducted a charrette in April 2007 for the master planning. No additional funds have been budgeted for continuation of school design this year. The State still has the school scheduled to open in 2014.

3. **Wastewater Facilities.** *Petitioner shall, upon connection, pay a fair-share contribution to fund improvements to wastewater treatment facilities to serve the Petition Area if such facilities are approved and developed by the County of Maui prior to the issuance of building permits, and Petitioner shall receive wastewater treatment service for wastewater from the Petition Area from the County of Maui at the LWWRf. In the event connection is made to the LWWRf, Petitioner shall construct wastewater transmission facilities to transport wastewater from the Petition Area to appropriate County wastewater transmission facilities leading to the LWWRf.*

Compliance: No specific action taken to date.

4. **Akahele Street.** *Petitioner shall enter into an agreement with the DOT, Airports Division, under terms and conditions acceptable to the DOT, for access to and use of Akahele 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: A memorandum of understanding was submitted to the DOT, Airports Division on November 28, 2005. MLP continues to work with the DOT on the details of access to and use of Akahahele Street.

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 a 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: The completed TIAR is currently under review by State DOT.

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: MLP continues to include in the development plans lateral roadway connections to neighboring landowner(s) for the ability to create local circulation patterns.

MLP continues to sponsor of Lahaina Bypass Now (LBN), a community-based organization dedicated to finding transportation solutions. With the ultimate goal of the construction of the Lahaina Bypass, LBN continuously seeks solutions that will make an immediate difference in traffic circulation and create a better quality of life. With an open and collaborative approach to creating solutions, LBN works cooperatively with State Department of Transportation, the Maui Mayor and County Council, and local businesses and residents.

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 in 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: No specific action taken to date.

- 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 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 Hawai'i from and against all claims, liability, and losses resulting from aircraft and airport operations, provided that the State of Hawai'i shall not be released from its negligence.*

Compliance: No specific action taken to date.

- 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: No specific action taken to date.

- 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: No specific action taken to date.

- 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 Hawai'i.

Compliance: No specific action taken to date.

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 specific action taken to date.

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: No specific action taken to date.

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: No specific action taken to date.

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

Compliance: No specific action taken to date.

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: No specific action taken to date.

- 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: No specific action taken to date.

- 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: No specific action taken to date..

- 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: No specific action taken to date.

- 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: No specific action taken to date..

- 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: At the present time, MLP has no intent to sell, lease, assign, place in trust, or otherwise alter the ownership interest in the Petition Area.

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 third annual report submitted in compliance with this condition.

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, MLP 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 date July 17, 2006, with the Bureau of Conveyances as Document 2006-129979.

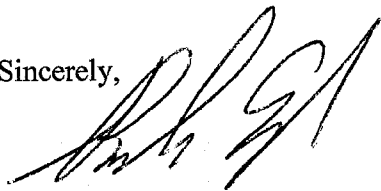
32. Recordation of Conditions. *Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.*

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.

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Annual Report for LUC Docket No. A04-751
June 9, 2009

Your acceptance of this annual report is appreciated. Please let us know if there is any additional information required by the LUC at this time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pam English', written in a cursive style.

Pam English, Development Manager