

LAND USE COMMISSION
STATE OF HAWAII

2004 AUG -9 A 9:40

August 1, 2004

Land Use Commission
State of Hawaii
PO Box 2359
Honolulu, HI 96804-2359

**RE: Annual Report for LUC Docket No. A94-710
West Maui Venture Group**

Gentlemen:

Pursuant to Condition No. 22 in the Decision and Order on the above-referenced docket matter, this letter is submitted as the annual report of the status of this project.

The following is a summary of the County Subdivision Approval process and status of construction:

- 12/19/97: Amended Preliminary Subdivision approval granted by the Maui County Department of Public Works.
- 12/15/98: Construction plans approved by the Maui County Department of Public Works.
- 05/10/99: Petitioner elected to phase the subject project and submitted revised construction plans to the Maui County Department of Public Works for their review and approval.
- 02/24/00: Final Subdivision Approval granted for Phase 1 by Maui County Department of Public Works.
- 06/15/00: Construction of Phase 1 Improvements begins.
- 3/30/01: Construction of Phase 1 Improvements complete.
- 8/03: Phase 1 lots sold out.
- 10/20/03: Preliminary Subdivision Approval of Phase II granted by Maui County Department of Public Works and Environmental Management.

The following lists all of the conditions set forth in the Decision and Order accompanied by a response describing the efforts by the Petitioner in order to comply with each said condition.

1. *Petitioner shall implement effective soil erosion and dust control measures during construction to the satisfaction of the State Department of Health and County of Maui.*

- Response: Petitioner has complied with this condition

2. *Petitioner shall cooperate with State Department of Health and the County of Maui to conform to the program goals and objectives of the Integrated Solid Waste Management Act Chapter 342G, Hawaii Revised Statutes.*

Response: In March of 1995, Petitioner submitted a Solid Waste Management Plan in accordance with Act Chapter 342G, Hawaii Revised Statutes, to the State Department of Health and the Maui County Department of Public Works, Solid Waste Management Division. The County Solid Waste Management Division approved Petitioner's Solid Waste Management Plan and accordingly, components and requirements of the said plan are included in the Conditions, Covenants and Restrictions (the "CC&Rs") for the project.

3. *Petitioner shall participate in the funding and construction of adequate wastewater transmission and disposal facilities on a pro-rata basis, as determined by the State Department of Health and the County Department of Public Works and Waste Management.*

Response: Petitioner's Subdivision Approval met all requirements relative to wastewater transmission and disposal facilities on a pro-rata basis, as determined by the State Department of Health and the County Department of Public Works and Waste Management.

4. *Petitioner shall fund and construct adequate civil defense as measures determined by the State and County civil defense agencies.*

Response: Petitioner has had numerous correspondences with the State and County civil defense agencies in regards to Petitioner's agreement to fund and construct adequate civil defense measures. At this time, Petitioner is awaiting final determination by the State and County civil defense agencies as to exactly what those civil defense measures will be.

5. *Petitioner shall fund, design and construct necessary local regional roadway improvements necessitated by the proposed development in designs and schedules coordinated with HFDC, and accepted by the State Department of Transportation and the County of Maui.*

Petitioner shall work with HFDC and submit a traffic master plan, including a scenario with the connector roadway and necessary roadway setbacks in relation to the Petition Area and the HFDC property (Villages of Leiali'i), for the review and approval by the State Department of Transportation and the County of Maui. Petitioner shall coordinate and consult with HFDC on the location and road right-of-way for the proposed connector road.

Response: HCDCH (formerly HFDC) has approved the Petitioner's revised subdivision layout (Exhibit A) and a revised alignment of the future collector

road connecting Honoapiilani Highway to the future Lahaina Bypass by way of a letter of agreement dated July 14, 1997. A specific connector point for the connector road has been designated by the State Department of Transportation and the HCDCH and the Petitioner have agreed to the location of this connector point. Petitioner has prepared a traffic master plan which was approved by the State Department of Transportation and the County of Maui for Phase I and an amended traffic impact analysis for Phase II, both of which include a scenario with the connector roadway and necessary roadway setbacks in relation to the Petition Area and the HCDCH property (Villages of Leialiʻi).

In the event HFDC and Petitioner agree on the relocation of the connector road through the Property, Petitioner shall provide and dedicate the ultimate road right of way width on the subject Property for the connector roadway leading to the Lahaina Bypass Highway as determined by the State Department of Transportation and the County Department of Public Works and Waste Management.

Response: Petitioner and HFDC reached agreement on the revised subdivision layout and alignment of the future connector road. The right-of-way for the proposed connector road through the subject Property will be eighty-eight (88) feet in width. The Phase I portion of the connector road is completed.

6. *In the event that the connector road is relocated through the Property, Petitioner shall prepare an amended traffic impact analysis, as may be deemed appropriate by the State Department of Transportation and the County of Maui.*

Response: Petitioner has prepared an amended traffic impact analysis at the request of the State Department of Transportation.

7. *Petitioner shall fund and construct adequate potable and non-potable water source, storage and transmission facilities and improvements to accommodate the proposed project as determined by the appropriate State and County agencies, or shall be subject to the assessments for the same by the County.*

Response: Petitioner has had numerous meetings with the Maui County Department of Water Supply (the "DWS"). As set forth in letter from Petitioner's consultant dated October 9, 1996, an agreement has been reached between the Petitioner and the DWS as to the extent of improvements the Petitioner will be responsible to provide.

8. *Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.*

Response: Petitioner has included an Emissions Control statement in the CC&Rs and requires a certification of no emissions from each lot developed with an appropriate consultant providing for assurance of mitigation if emissions are anticipated including methods of mitigation.

9. *Petitioner shall fund the design and construction of the drainage improvements required as a result of the development of the Property, including oil/water separators and other filters as appropriate, and through covenants running with the land, shall require implementation of other best management practices as necessary to minimize non-point source pollution into Kahoma Flood Control Channel, in coordination with appropriate state and county agencies, such as the following:*
- a. *All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, where roofed an unroofed. The concrete floor shall be constructed so as to be able to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from this concrete floor, if necessary, shall pass through a separator sump before being discharged.*
 - b. *All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be instructed to prevent any industrial liquid spills onto the bare ground.*
 - c. *Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be sealed and kept under shelter from the rain (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code.)*

Response: During the calendar months of April and May of 1996, the Petitioner had meetings with the Department of Public Works and Waste Management, State Department of Health and the Maui County Planning Department in order to comply with all the issues addressed by the State Land Use Commission's Order No. 10. With the assistance of Dr. Wendy Wiltse of the State Department of Health, a satisfactory agreement on the implementation of an adequate drainage system for the project site was reached between the Petitioner and all government agencies involved.

Pursuant to the request of the State Department of Health, the Petitioner has included the following provision in the Final Conditions, Covenants and Restrictions:

"runoff from buildings and parking lots shall be contained onsite in subsurface infiltration facilities designed for a 2 year 24-hour storm or 50 year 1 hour storm."

Furthermore, Petitioner has included 10(a), 10(b) and 10(c) of the Land Use Commission's Decision and Order within the CC&Rs conditions.

10. *Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be found, during the construction of the lots,*

Petitioner shall stop work in the immediate vicinity and contact the Association. The significance of these finds shall be 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, HRS.

Response: Petitioner intends to comply with this condition.

11. *Petitioner shall contribute pro-rata share to a nearshore water quality monitoring program as determined by the State Department of Health and the Division of Aquatic Resources, State Department of Land and Natural Resources.*

Response: Petitioner intends to comply with this condition.

12. *Petitioner shall insure that the proposed project will not negatively impact the use of the cane haul road or the Kaanapali Railroad.*

Response: Petitioner has dedicated a separate railroad crossing easement to Pioneer Mill Company, Limited. Also, a Keawe Street Use Agreement was executed with Maui Pineapple Company, Ltd.

13. *Petitioner shall initiate sound attenuation measures as determined by the State Department of Health.*

Response: Petitioner has included a Noise condition in the CC&Rs as follows:

“No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Lot and improvements thereon, shall be placed or used upon any Lot. No sound shall be permitted to be emitted on any Lot which is unreasonably loud or annoying.”

14. *A landscape buffer shall be established along the north and east boundaries of the Property abutting the Leiali'i residential project and along the south boundary of the Property abutting the Kahoma Stream to aid in the control of litter and general aesthetics of the surrounding area.*

Response: The Petitioner has incorporated this condition in the CC&Rs.

15. *Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the County of Maui prior to development of the Property.*

Response: On December 12, 1995, the Maui County Planning Commission voted to approve the Community Plan Amendment and Change in Zoning applications. The Maui County Planning Department recommended to the Maui County Planning Commission use restrictions for the project. The Maui County Planning Commission recommended that no use restrictions or conditions be attached to the application. On May 1, 1996, the Maui County Council voted unanimously for the Community Plan Amendment and Change in Zoning.

On November 10, 1994, concurrent applications for a Change in Zoning and a Community Plan Amendment were filed with the Maui County Planning Department for the subject application. Following a public hearing, the Maui Planning Commission voted to defer action on the applications because the State Land Use Commission (the "Commission") was still reviewing the District Boundary Amendment. Subsequent to the Commission reclassifying the subject property, on December 12, 1995, the Maui Planning Commission voted to approve the Community Plan Amendment and the Change in Zoning applications. The Maui Planning Commission recommended that there be no conditions attached to the applications. On January 26, 1996, the Maui County Planning Department transmitted the subject applications to the Maui County Council for review and action. On May 1, 1996, the Council voted on and approved the applications for Community Plan Amendment and Change in Zoning. On May 17, 1996, the Unilateral Agreement and Declaration of Conditional Zoning was recorded with the Bureau of Conveyances.

16. *Petitioner shall develop covenants, conditions and restrictions ("CC&Rs") to run with the finished lots which include, but are not limited to the following:*
- a. *requirements and standards to mitigate noise, dust and impacts related to various chemical disposal, oil disposal hazardous waste disposal (especially with regard to small quantity generators), and other such mitigative measures;*
 - b. *urban design standards minimize the visual/aesthetic impact of the development through landscaping, color schemes, lighting, building setbacks/staggering, and other such mitigative measures;*
 - c. *and, if appropriate, standards for the construction of drainage structures on individual lots, which also include, but are not limited to oil/water separators.*

Response: The above items a, b and c are incorporated in the project's CC&Rs.

17. *Petitioner shall work with the appropriate state, county and federal agencies to remove a 55-gallon drum of unidentified contents and any unidentified white powder/ash from the Property prior to the commencement of development.*

Response: During Pioneer Mill's final harvest of the sugar on the subject property, the 55-gallon drum was removed from the development site.

18. *A mixture of retail commercial and light industrial uses shall be proposed for each phase of development.*

Response: Petitioner has complied with this condition in Phase I and intends to continue to comply with this condition in Phase II.

19. *Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to do so may result in*

reversion of the Property to its former classification, or change to a more appropriate classification.

Response: Petitioner intends to comply with this condition.

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.*

Response: Petitioner intends to comply with this condition.

21. *Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

Response: Petitioner is complying with this condition by submitting this status report.

22. *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.*

Response: Petitioner has complied with this condition.

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

Response: Petitioner has complied with this condition.

If you have any questions or require additional information, please contact Donna Clayton, Project Coordinator, at (808) 874-5263.

Sincerely,
West Maui Venture Group


J. Stephen Goodfellow
General Partner

cc: County of Maui - Department of Planning
Office of State Planning, PO Box 2359, Honolulu, HI 96804-2359
John M. Kean - General Partner
File