

WEST MAUI LAND COMPANY, INC.

LAUNIUPOKO ■ OLOWALU ■ KAUAULA ■ KAHOMA ■ MAKILA

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May 13, 2021

Daniel E. Orodener
Executive Officer
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804-2359



Re: ***2021 Annual Report for the State Land Use Commission
Docket No. A12-795/West Maui Land Company - Kahoma Residential***

Dear Mr. Orodener:

This constitutes West Maui Land Company, Inc.'s ("West Maui") 2021 Annual Report for the Kahoma Residential Subdivision Affordable Housing Project ("Project").

A. **Project Background and Status.**

By its Decision and Order dated April 5, 2013, the State Land Use Commission ("Commission") granted approval of West Maui's petition to reclassify about 16.7 acres of land from the agricultural to the urban land use district at Lahaina, Maui, Hawaii. Approval of the petition was contingent upon 19 conditions. The development of the subject property is planned to include a residential community of about 68 units, a one acre neighborhood park, a detention basin and some open space areas.

As noted in the petition, additional land use approvals, including a subdivision, are required for the Project. On March 17, 2014 West Maui received Preliminary Subdivision approval of a preliminary subdivision plat. Construction plans have been approved by the County of Maui and appropriate federal and state agencies. Site work and infrastructure improvements commenced on or around October 27, 2014 and are complete.

In addition, one of the Intervenor's in the above docket appealed the Decision and Order of the Commission to the Second Circuit Court in the County of Maui. On December 5, 2013, the Second Circuit Court entered its Findings of Fact, Conclusions of Law, and Decision and Order affirming the Commission's Decision and Order. Following a motion for reconsideration which was denied on January 27, 2014, a Final Judgment was entered January 27, 2014. On February 24, 2014, the Intervenor filed a Notice of Appeal with the Intermediate Court of Appeals of the State of Hawaii ('ICA'). An Order Denying Motion for Reconsideration was filed on Nov. 30, 2015 by the ICA followed with the filing of a Judgment on Appeal upholding the Second Circuit's Findings of Fact, Conclusions of Law, and Decision

and Order affirming the Commission's Decision and Order filed on December 16, 2015. The Intervenor filed a Writ of Certiorari with the Supreme Court of the State of Hawaii on January 6, 2016. The Supreme Court of the State of Hawaii filed an Order Rejecting the Application for Writ of Certiorari on February 16, 2016.

B. Status of Activities Relating to Imposed Conditions.

Listed below are each of the conditions imposed under the Decision and Order and the status of activities pertaining to each respective condition.

1. *Education Contribution Agreement. Petitioner shall contribute to the development, funding, and/or construction of school facilities in compliance with the School Impact Fee Agreement for Kahoma Residential Project, dated February 9, 2012, entered into by Kahoma Residential, LLC and the DOE. Petitioner shall ensure that prospective buyers, purchasers and subsequent owner/builders of lots are given notice of the requirement to pay the West Maui School Impact Fee in accordance with the School Impact Fee Agreement. Such notice shall be recorded and shall run with the land.*

This condition has been satisfied. West Maui has complied with the School Impact Fee Agreement. Compliance included payment of the School Impact Fee on a per lot basis and was paid through escrow at the time of recordation and closing of each lot. The amount paid at each closing was equal to West Maui School Impact fee at the time the fee is paid. The current West Maui School Impact Fee is \$5,778 for a new dwelling in the district. In addition, the notice of requirement to pay West Maui School Impact Fee was recorded with each deed for each of the subdivided lots.

2. *Water Conservation Measures. Petitioner shall implement water conservation measures and best management practices such as the use of indigenous and drought-tolerant plants and turf to the extent practicable and incorporate such measures into the Project's landscape planting.*

This condition has been satisfied. Petitioner will comply with this condition as construction and landscape plans have been reviewed and approved by the County of Maui. Landscape plans specify the native Milo for the street tree and Naupaka for hedging around the basin and park. El Toro Zoysai, a drought tolerant durable grass, is being planted in the Park. Landscaping has been installed in accordance with plans and specifications.

3. *Transportation. Petitioner shall implement traffic improvements and mitigation measures, if any, as required by the State Department of Transportation and the County of Maui, Department of Public Works.*

This condition has been satisfied. Petitioner has implemented traffic improvements and mitigation measures as required by the State Department of Transportation and the County of Maui, Department of Public Works.

4. *Street Lights.* Petitioner shall use fully-shielded low sodium street lights within the Project to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.

This condition has been satisfied. Petitioner has installed County of Maui standard street lights which are fully-shielded sodium street lights typically operated and maintained by Maui Electric Company, Ltd.

5. *Affordable Housing.* Petitioner shall design and construct the Project, and provide affordable housing opportunities in substantial conformance with Maui County Council Resolution No. 11-126 dated December 2, 2011, approving the Project as an HRS § 201H-38 Affordable Housing Project, and the Affordable Housing Agreement or any other agreement entered into by Petitioner and the County pursuant to said resolution.

This condition has been satisfied.

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

This condition has been satisfied.

7. *Archaeological Monitoring.* Petitioner shall employ archaeological monitors to ensure that all ground disturbances associated with mass grading of the Petition Area, and the trenching and excavation related to the installation of utilities, do not impact any subsurface cultural remains within the Petition Area.

This condition has been satisfied. An archaeological monitor was present during all ground disturbances associated with the on-going mass grading of the project site.

8. *Previously Unidentified Burials and Archaeological/Historic Sites.* In the event that historic or archaeological resources, including human skeletal remains, are found and identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Maui Island Section, shall be contacted immediately as required by HRS Chapter 6E and its applicable regulations. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referred to herein are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

This condition has been satisfied.

9. *Storm Water Management and Drainage.* Petitioner shall design and construct storm water and drainage system improvements in compliance with applicable federal, state and county laws and rules, and maintain the improvements, or cause to be maintained, the improvements, as designed. To the extent feasible, Petitioner shall mitigate non-potent source pollution by incorporating low impact development practices for on-site storm water capture and reuse into the Petition Area's site design and landscaping to reduce run-off and prevent pollution of affected state highway facilities, downstream properties, receiving gulches and streams and estuaries that connect with coastal waters.

Petitioner has complied with this condition in the development and implementation of its construction plans which have been reviewed and approved by the County of Maui and appropriate federal and state agencies.

10. *Best Management Practices.* Petitioner shall implement applicable best management practices for each proposed land use to minimize infiltration or run-off from construction and vehicle operations, to reduce or eliminate soil erosion and ground water pollution, and to formulate dust control measures to be implemented during and after the development process in accordance with the State DOH guidelines and rules and applicable County ordinances.

This condition has been satisfied.

11. *Compliance with Exhibit 1 of Resolution 11-126.* Petitioner shall comply with all provisions of the Modifications stated in Exhibit 1 of Resolution 11-126 and any agreement entered into by Petitioner and the County of Maui in accordance with that resolution.

This condition has been satisfied.

12. *Infrastructure Deadline.* Petitioner shall complete construction of the proposed backbone infrastructure, which consists of primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and storm water/drainage improvements, within ten years from the date of the Decision and Order approving the Petition.

This condition has been satisfied. Petitioner has completed the construction of the infrastructure, which consists of primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and storm water/drainage improvements, within ten years from the date of the Decision and Order approving the Petition.

13. *Order to Show Cause.* If Petitioner fails to complete the construction of the proposed backbone infrastructure within ten years from the date of the Decision and Order approving reclassification of the Petition Area, the Commission may issue and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use District Agricultural Classification or be changed to a more appropriate classification.

Petitioner acknowledges this condition.

14. *Compliance with Representations to the Commission.* Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, Decision and Order. Failure to develop the reclassified area in accordance with the representations may result in reversion of the reclassified area to its former classification or a change to a more appropriate classification.

This condition has been satisfied. Petitioner proceeded with development of the Project in substantial compliance with representations made to the Commission.

15. *Annual Reports.* Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of 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.

This Annual Report is being submitted in compliance with this condition.

16. *Release of Conditions.* The Commission may fully or partially release conditions provided herein as to all or any part of the Petition Area upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner or its successor assigns.

This condition is not currently applicable.

17. *Notice of Change of Ownership.* Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Petition Area at any time prior to completion of construction of the backbone infrastructure of the Project.

This condition has been satisfied and is no longer applicable. On December 5, 2013, West Maui became the owner of the subject property receiving title from Co-Petitioner Kahoma Residential, LLC. The infrastructure has been completed.

18. *Notice of Imposition of Conditions.* Petitioner shall (a) within seven (7) days of issuance of the Commission's Decision and Order reclassifying the Petition Area, record with the Bureau of Conveyances of the State of Hawaii a statement that the Petition Area is subject to the conditions imposed in this Decision and Order by the Commission and (b) promptly thereafter file a copy of such recorded statement with the Commission.

This condition has been satisfied. On April 11, 2013, a Notice of Imposition of Conditions by the Land Use Commission was recorded with the Bureau of Conveyances of the State of Hawaii as Document No. A-48490364. The Notice of Imposition of Conditions by the Land Use Commission was filed with the Land Use Commission on April 15, 2013.

19. *Recordation of Conditions.* Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances of the State of Hawaii pursuant to HAR Section 15-15-92.

This condition has been satisfied. On May 6, 2013, the conditions imposed by the Commission were recorded in the Bureau of Conveyances of the State of Hawaii under the "Declaration of Conditions" applicable to the Petition for District Boundary Amendment in Docket No. A12-795 of the Commission, as Document No. A-48740743. It was determined that the Declaration of Conditions was recorded without an exhibit that was referenced in the Declaration. The filing was corrected by recording the exhibit on November 13, 2014 as Document Number A-54300494.

Please contact me should you require further information regarding this Annual Report. A '.pdf' version of this report will be transmitted to your office for your use.

Sincerely,

WEST MAUI LAND COMPANY, INC.



By Peter Martin
Its Vice President

cc: State Office of Planning
County of Maui Planning Department