

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ONE MAIN PLAZA, SUITE 400
2200 MAIN STREET
WAILUKU, MAUI, HAWAII 96793-1086
TELEPHONE 808.242.4535 FAX 808.244.4974
WWW.CARLSMITH.COM

LETTER OF TRANSMITTAL

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

DATE: August 30, 2021

RE: Docket No. A04-754;
Maui Lani Village Center, Inc.


Mailed Hand Delivered

THE FOLLOWING IS (ARE) TRANSMITTED HERewith:

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	08/30/2021	Thirteenth Annual Report by Maui Lani Village Center, Inc., Partial Successor in Interest to Maui Lani 100, LLC

<input checked="" type="checkbox"/> For Your Information	<input type="checkbox"/> For Review and Comment
<input checked="" type="checkbox"/> For Your Files	<input type="checkbox"/> For Necessary Action
<input type="checkbox"/> Per Your Request	<input type="checkbox"/> For Signature and Return (Black Ink)
<input type="checkbox"/> Per Our Conversation	<input checked="" type="checkbox"/> See Remarks Below

REMARKS: Attached is the Thirteenth Annual Report by Maui Lani Village Center, Inc., Partial Successor in Interest to Maui Lani 100, LLC. Please contact Nancy Zhao at nzhao@carlsmith.com or at (808) 242-4524 if there are any questions.

By 
Stacy D. Everett-Harding
Assistant to Nancy H. Zhao

Enclosure

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ONE MAIN PLAZA, SUITE 400
2200 MAIN STREET
WAILUKU, MAUI, HAWAII 96793-1086
TELEPHONE 808.242.4535 FAX 808.244.4974
WWW.CARLSMITH.COM

NZHAO@CARLSMITH.COM

OUR REFERENCE NO.:
032444-00006

August 30, 2021

VIA U.S. MAIL AND EMAIL (Daniel.e.orođenker@hawaii.gov)

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

Re: LUC Docket No. A04-754;
TMK Nos. (2) 3-8-007:151(por), (2) 3-8-007:150(por), (2) 3-8-097:011(por) and
(2) 3-8-098:001-163(por); formerly TMK No. (2) 3-8-007:131 (por);
Thirteenth Annual Report by Maui Lani Village Center, Inc.,
Partial Successor in Interest to Maui Lani 100, LLC

Dear Mr. Orođenker:

This firm represents Maui Lani Village Center, Inc. ("MLVC"), a Hawaii corporation. MLVC is the partial successor in interest to Maui Lani 100, LLC, a Hawaii limited liability company, the original Petitioner in the subject Docket A04-754. By Findings of Fact, Conclusions of Law, and Decision and Order dated September 15, 2005 ("D&O"), the State Land Use Commission approved the reclassification of approximately 59.6 acres of land in Wailuku, Maui, Hawaii, then-identified as Tax Map Key (2) 3-8-007:131 (por.) and currently identified as Tax Map Keys (2) 3-8-007:151(por), (2) 3-8-007:150(por), (2) 3-8-097:011(por) and (2) 3-8-098:001-163(por), from the State Land Use Agricultural District to the State Land Use Urban District ("**Petition Area**"). In compliance with D&O Condition No. 17, MLVC hereby submits this annual report for 2021.

The 59.6-acre Petition Area is part of a larger Village Mixed Use Development known as Maui Lani Village Center, consisting of approximately 130 acres. Development within the small portion of the Petition Area under the ownership of MLVC (MLVC owns less than 13 acres within the Petition Area) is proceeding consistent with the representations in the D&O. This

report does not address the status of compliance of those portions of the Petition Area that are under the ownership or control of others.

I. Successor Owners Within the Petition Area

As previously reported, MLVC acquired a large portion of the Petition Area and additional lands from the original Petitioner, Maui Lani 100, LLC, in 2008. Prior to that, in 2007, The Traditions, Inc., a Hawaii corporation, acquired from Maui Lani 100, LLC, approximately 16.886 acres of land, of which approximately 8.56 acres are within the Petition Area. This property is at the far eastern end of the Petition Area, near Pomaikai elementary school. A copy of the Limited Warranty Deed from Maui Lani 100, LLC as grantor to The Traditions, Inc. as grantee, dated October 23, 2007 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-190263, was included with MLVC's December 2018 annual report to the Commission as background information.

In 2015, MLVC conveyed approximately 47 acres of land (approximately 27 acres of which are within the Petition Area) to Gentry Maui Development, LLC, a Hawaii limited liability company, by Limited Warranty Deed and Reservation of Rights dated September 30, 2015 and recorded in the Bureau as Document No. A-57510146. A copy of that deed was included with MLVC's December 2018 annual report to the Commission.

In 2017, Maui Lani 100, LLC conveyed approximately 14.440 acres of land, a portion of which is within the Petition Area, to the County of Maui through its Department of Public Works. Prior to conveyance to the County, Maui Lani 100, LLC developed this land as the first phase of a district park (the Maui Lani Community Park). Final grading, grassing and irrigation of the 14.44-acre first phase of the park and a comfort station with parking was completed in 2016. A copy of the Deed dated March 23, 2017, and recorded in the Bureau as Document No. A-63020104, was included with MLVC's December 2018 annual report to the Commission.

Approximately 1.25 acres of the Petition Area is used partially (approximately 0.45 acres) as an existing Drainage and Landfill Maintenance Easement D-2 (in favor of the County of Maui), and the remainder (approximately .8 acres) is spread across four lots within the Maui Lani Village Center subdivision. These subdivided lots are planned for industrial development for warehouse use. MLVC owns one of these four lots (TMK No. (2) 3-8-097:011).

Currently, MLVC owns less than 13 acres of land within the Petition Area, of which approximately 12.11 acres are planned for phase 2 of the Maui Lani Community Park. This phase 2 park area has already been mass graded. The timing for completion of development of phase 2 of the park is pursuant to a Park Assessment Agreement with the County of Maui Department of Parks and Recreation.

II. **Report on Compliance with Conditions Imposed by Commission.**

Condition 1: Affordable Housing. The Petitioner shall develop the Project to meet the County of Maui's affordable housing guidelines; provided, however, that at least 51% of the Project's residential units shall be priced to be affordable to families earning between 80% to 140% of the County of Maui's annual median income. The location and distribution of the affordable housing and other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and DHHC. Petitioner shall provide the Commission with an executed copy of the affordable housing agreement entered into with DHHC.

Response: Satisfied. Petitioner entered into an affordable housing agreement with DHHC, a copy of which was provided to the Commission with Petitioner's Second Annual Report to the Commission dated February 2008. This agreement runs with the land. The Petition Area will continue to be developed in accordance with said agreement.

Condition 2: Public School Facilities. Petitioner shall work with the DOE relative to any fair share contributions to mitigate the impacts of the Project on public school facilities. Terms of the fair share contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County re-zoning of the Petition Area.

Response: Satisfied. Petitioner entered into an agreement with the DOE relative to fair share contributions to mitigate the impacts of the Project. A copy of the agreement with the DOE was provided to the Commission with Petitioner's Second Annual Report to the Commission dated February 2008.

Condition 3: Traffic Impact Mitigation. Petitioner shall extend Kuikahi Drive between Waiale Road and future Maui Lani Parkway as a two-lane roadway, construct Maui Lani Parkway between Kuikahi Drive and Kamehameha Avenue as a two-lane roadway, and extend Kamehameha Avenue between Maui Lani Parkway and the southern boundary of Maui Lani Project District as a two-lane roadway. Petitioner shall monitor the Kuikahi Drive/Waiale Road intersection, and the Project's accesses on Maui Lani Parkway and Kuikahi Drive Extension; Petitioner shall signalize said areas when warranted. Petitioner shall also monitor the Waiale Road/Olomea Street intersection, the Waiale Road/Waiinu Street intersection, the Kuihelani Highway/Maui Lani Parkway intersection, and the Maui Lani/ Kamehameha Avenue intersection, and shall pay its pro-rata share of the signalization of said intersections when warranted. Petitioner shall coordinate with adjoining developers to implement intersection improvements at Honoapiilani Highway and Kuikahi Drive, and Kaahumanu Avenue and Maui Lani Parkway at no cost to DOT. Petitioner shall install necessary intersection

improvements, including signalization when warranted, initially for the two-lane, and ultimately for the four-lane, Maui Lani Parkway/Kuihelani Highway intersection.

Response: Satisfied. Construction of the extension of Kuikahi Drive between Waiale Road and future Maui Lani Parkway as a two-lane roadway, and the construction of Maui Lani Parkway between Kuikahi Drive and Kamehameha Avenue as a two-lane roadway, has been completed. These roadways were opened to the public on June 8, 2010, and accepted by the Maui County Council for dedication to the County of Maui on December 6, 2013. Petitioner has also extended Kamehameha Avenue between Maui Lani Parkway and the southern boundary of Maui Lani Project District as a two-lane roadway.

Signalization of the Waiale Road/Kuikahi Drive intersection was completed prior to the opening of the new roadways to the public. Signalization of the Kuihelani Highway/Maui Lani Parkway intersection was completed in January, 2010. Monitoring of the existing intersections within the Maui Lani Project District as well as certain intersections outside the Maui Lani Project District at Waiale Road/Olomea Street, Waiale Road/Waiinu Street, and Honoapiilani Highway/Kuikahi Drive, continues on an annual basis. The first study was completed and reported to the County's Department of Public Works on May 1, 2009, and similar reports updating traffic conditions have been provided to the County's Department of Public Works every year since 2010.

Petitioner agreed with the County's Department of Public Works to provide traffic engineering and construction plans for a traffic signal for the Waiinu/Waiale intersection. Petitioner completed construction plans for signalization of the Kamehameha Avenue/Maui Lani Parkway intersection in 2015 based on preliminary plans approved by the Department of Public Works on August 13, 2014. However, in 2016 the Department of Public Works revised its traffic control solution for this intersection to a roundabout. By that certain Cost Sharing Agreement for the Construction of a Traffic Roundabout dated August 14, 2018, Petitioner has agreed with the Department of Public Works to make the same financial contribution to the roundabout as proposed to fund the construction of the traffic signal. The roundabout was completed in July 2020 and is under the control of the Department of Public Works.

Condition 4: 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.

Response: Satisfied. Petitioner provided notice to all of its buyers within the Petition Area of the provisions under the Hawaii Right to Farm Act (Hawaii Revised Statutes, Sections 165-1 through 165-4). Notice was provided through sales contracts and also through covenants that were recorded in the Bureau of Conveyances of the State of Hawaii on October 8, 2009 as Document No. 2009-154916 against the Petition Area lands owned by MLVC.

Condition 5: Notification of Potential Nuisances. Petitioner shall notify all prospective buyers and/or lessees of the Petition Area of potential odor, noise, and dust pollution resulting from adjacent agricultural uses.

Response: Satisfied. Petitioner provided notice to all prospective buyers and/or lessees of the potential for odor, noise, and dust resulting from agricultural uses that may take place on lands adjacent to or near the Petition Area. Notice was provided through sales contracts and also through covenants that were recorded in the Bureau of Conveyances of the State of Hawaii on October 8, 2009 as Document No. 2009-154916 against the Petition Area lands owned by MLVC.

Condition 6: Drainage Improvements. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of appropriate State and County agencies.

Response: Satisfied. Petitioner has completed all drainage improvements required to serve the Petition Area in accordance with State and County standards and requirements.

Condition 7: Water Service. Petitioner and its affiliate, Maui Lani Partners, shall construct 3 new wells which will draw water from the Kahului Aquifer to supplement DWS's source supply and will provide potable water supply for the Project in accordance with the terms and conditions of the Right-of-Entry Agreement between Maui Lani Partners and the County of Maui dated April 22, 2005, (Petitioner's Exhibit "40"). In the event contaminants are found, Maui Lani Partners shall remedy said contamination in accordance with, and for the term of, the Right-of-Entry Agreement. If any or all of the 3 wells cannot be developed to provide the potable water supply for the Project, Petitioner shall fund adequate water source, storage and transmission facilities and improvements to accommodate projected water use generated by the Project to the satisfaction of the DWS.

Response: Satisfied. Petitioner completed drilling, testing and construction of the three (3) new wells including the well control buildings, pumps, and control systems. The complete new water system was turned over to the Maui County Department of Water Supply for operation on August 6, 2010.

Condition 8: Best Management Practices. Petitioner shall implement Best Management Practices (“BMPs”) to reduce or eliminate soil erosion and groundwater pollution, and implement dust control measures during the development process in accordance with the DOH’s guidelines.

Response: Satisfied. All grading permits require implementation of BMPs. The only grading left to be done within the portion of the Petition Area owned by MLVC is phase 2 of the district park, and BMPs will be followed in connection with grading that land (mass grading of the phase 2 area was already done and BMPs were implemented).

Condition 9: Wastewater Facilities. Petitioner shall fund and develop on-site wastewater transmission facilities to transport wastewater from the Project to appropriate County of Maui wastewater transmission and treatment facilities to the satisfaction of the DPWEM and the DOH. Petitioner shall pay a pro-rata share of off-site sewer improvements as determined by the County of Maui.

Response: Satisfied. Petitioner completed construction of the wastewater transmission lines within the regional roadways serving the Petition Area (as well as those within the VMX (C-R) subdivision) to the satisfaction of the Department of Environmental Management (formerly a part of the Department of Public Works and Environmental Management) and DOH. Pro-rata share of off-site sewer improvements is provided through the payment of sewer assessment fees at the time of building permit issuance.

Condition 10: Solid Waste. Petitioner shall comply with solid waste disposal as required by the DPWEM.

Response: Satisfied. All solid waste requirements have been followed.

Condition 11: Precautions Relating to Proximity of Closed Waikapu Landfill. With regard to that part of the Petition Area which is adjacent to the County of Maui’s closed Waikapu landfill (“Landfill”), Petitioner shall:

11.a) Establish a residential buffer of 300 feet from the boundary of the Landfill to reduce the risk that any potential release (whether combustible gas, odor or other nuisances) may affect the Project. Within this buffer area, activities will be restricted to parking, roadway, other infrastructural uses, and open space. Commercial development activity (restricted to VMX uses as allowed by the County) may be allowed in the buffer area. To mitigate the potential of combustible gas migration on to the Petition Area, the Petitioner at its sole cost and expense, will install gas monitoring wells along the property line of the Petition Area adjacent to the Landfill with periodic inspections conducted by the

Petitioner, its successors and assigns (including the Project's homeowner associations) and the findings reported to the appropriate County of Maui agency and the DOH. The frequency of inspections shall be determined by agreement of the appropriate County of Maui agency, the DOH and the Petitioner, its successors and assigns (including the Project's homeowner associations);

Response: Satisfied. Petitioner has installed, with County approval as to design, location and number, a gas monitoring well at the property line of the Petition Area adjacent to the Landfill. The first annual report consisting of four quarterly readings taken between July 2010 and April 2011 was provided to the County's Department of Environmental Management ("DEM") in May 2011. No evidence of combustible gas was detected. A second report of semi-annual monitoring was provided to the County's DEM in May 2012, again with no evidence of combustible gas detected. Annual reports submitted in 2013, 2014, 2015, and 2018 also showed no evidence of combustible gas. The duration and frequency of monitoring is subject to Petitioner's agreement with DEM.

11.b) Grant a 30-foot wide easement within the Petition Area (where it abuts the Landfill) to the County of Maui to ensure that the County of Maui may appropriately monitor the northern boundary of the Landfill for settlement, runoff, maintenance, and other purposes related to health and safety. Such access should permit the movement of emergency or other vehicles by the County of Maui as the need may arise and may also serve to accept and appropriately contain any runoff from the Landfill;

Response: Satisfied. A 30 foot wide easement was granted to the County on November 26, 2008. Grading work to improve the integrity of the boundary between the Petition Area and the Landfill was completed in June 2009. Pursuant to a Right of Entry Agreement, Petitioner completed grading and access improvements along the northern boundary of the Landfill in June 2009. This was followed by further structural stabilization and grassing of the Landfill's northern slope by the County's Division of Solid Waste Management, completed in September 2009 to prevent any possible settlement or erosion. This work on the northern slope of the Landfill was reviewed by an independent civil engineer for the County and implemented under his recommendations to include special inspection and monitoring by a professional environmental engineer selected by the County.

11.c) Evaluate the potential risk of air being introduced into the Landfill from sand mining operations, propose appropriate and feasible mitigative actions for review and comment by the DOH and the appropriate County of Maui agency, implement a mitigation program approved by the DOH and the appropriate County of Maui agency, and provide an update in Petitioner's annual report to the Commission;

Response: Not applicable. Sand mining activities in the vicinity of the Landfill have ended.

11.d) Submit an initial report describing the implementation of Petitioner's mitigation program. Thereafter, Petitioner shall immediately report to the Commission, the DOH, and the County of Maui any instances where the integrity of the boundary between the Petition Area and the Landfill has been compromised and its response. The report detailing mitigation measures relating to the Landfill shall be updated and described in Petitioner's annual report to the Commission; and

Response: Not applicable. As reported above, Petitioner has stopped all sand mining operations in the vicinity of the Landfill so no mitigation measures are required.

11.e) Record a deed restriction on the Petition Area which: (1) provides notice to all purchasers of residential or commercial property that the adjacent property is a closed landfill and (2) prohibits any construction or activity within the Petition Area that would compromise the integrity of the landfill cap or permit air or water to access the Landfill.

Response: Satisfied. A recorded deed restriction is contained in that certain Limited Warranty Deed and Assumption of Mortgages (page 3, second and third paragraphs) dated July 11, 2008 and recorded in said Bureau as Document No. 2008-111998, a copy of which was previously provided to the Commission.

Condition 12: Energy Conservation Measures. Petitioner, where feasible, shall implement energy conservation measures, such as use of solar energy and solar heating and incorporate such measures into the Project.

Response: Petitioner has complied with this condition where feasible.

Condition 13: Civil Defense. Petitioner shall provide its fair share of the cost of adequate civil defense measures serving the Petition Area as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.

Response: Satisfied. None of the civil defense agencies requested contributions from MLVC in connection with the development of MLVC's portion of the Petition Area.

Condition 14: Unidentified Archaeological Finds. If any burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls which have not been identified in the Project's Archaeological Monitoring Plans (Petitioner's Exhibit 16) 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 SHPD that mitigative measures have been implemented to its satisfaction.

Response: Satisfied. Construction within the Petition Area has been and will continue to be conducted consistent with all SHPD requirements.

Condition 15: Notice of Change to 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.

Response: Satisfied. The portion of the Petition Area that is owned by MLVC has been developed, therefore no notification to the Commission of sales is required. Nevertheless, the first section of this Annual Report recites the significant conveyances that have taken place since the Commission issued the D&O. It is expected that the land comprising phase 2 of the district park will be conveyed to the County upon completion of the construction of the park in accordance with the Park Assessment Agreement with the County of Maui Department of Parks and Recreation.

Condition 16: Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with 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.

Response: Satisfied. The Petition Area has been developed in substantial compliance with the representations made to the Commission as documented in the D&O.

Condition 17: Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County in connection with the status of the 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 and should be submitted within 1 year of the date of the Decision & Order and annually thereafter.

Response: Petitioner will continue to comply with this condition until Petitioner completes development of its lands within the Petition Area or otherwise obtains relief from this requirement from the Commission.

Condition 18: Release of Conditions. 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.

Response: Petitioner understands that it may seek full or partial release of the conditions provided herein from the Commission.

Condition 19: Notice of Imposition of Conditions. 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 Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.

Response: Satisfied. Petitioner recorded a Notice of Imposition of Conditions with the Bureau pursuant to Section 15-15-92 Hawaii Administrative Rules, and previously provided a copy of the recorded document with the Commission.

Condition 20: Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR. A copy of the recorded conditions shall be submitted to the Commission.

Response: Satisfied. Petitioner recorded a Declaration of Conditions with the Bureau, and a copy of that recorded document was provided to the Commission.

Mr. Daniel E. Orodenker
August 30, 2021
Page 11

We hope this annual report sufficiently apprises the Land Use Commission of the present status of the portion of the Petition Area held by MLVC. Should you need more information, please do not hesitate to contact the undersigned. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy H. Zhao", with a stylized flourish at the end.

Nancy H. Zhao

cc: Riley K. Hakoda, Planner/Chief Clerk, Land Use Commission
Mary Alice Evans, Director, Office of Planning
Michelle McLean, Planning Director, County of Maui

4828-7622-9879.2