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July 10, 2014

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Piilani Promenade North, LLC. and Piilani Promenade  
South, LLC  
c/o Sarofim Realty Advisors  
Mr. Robert Poyner, Vice President  
8115 Preston Road, Suite 400  
Dallas, Texas 75225

Chris Hart & Partners, Inc.  
115 North Market Street  
Wailuku, Hawaii 96793-1717

Re: Draft Environmental Impact Statement (DEIS) for  
Piilani Promenade, June 2014  
LUC Docket No. 94-706

Dear Sirs and Madam,

2014 JUL 14 A 8:15  
LAND USE COMMISSION  
STATE OF HAWAII

**South Maui Citizens for Responsible Growth, Inc. (SMCRG) respectfully requests that the DEIS prepared for the above development not be published for comment at this time because it fails to meet the minimum requirements of HAR Section 11-200-16 and 17. SMCRG urges referral of the DEIS back to the Applicant for additional development sufficient to meet the requirements of law.**

## I. COMPLIANCE WITH LAW

### A. HAR 200-17, subsection 8

HAR 200-17, subsection 8, requires an applicant to include a statement of the relationship of the proposed action to land use plans, policies, and controls for the affected area and to *discuss how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls for the area affected.*

The DEIS is devoid of discussion and analysis of the impact the commercial component of the proposed project (the majority of the project) will have on the community, particularly when the specific provisions of the Kihei Makena Community Plan (KMCP) restrict commercial development to four distinct area in Kihei, all *makai* of the Piilani Highway, in order to avoid further urban sprawl and to create a sense of place and downtowns in a community that remains in need of focused commercial and retail centers. (KMCP, pp. 17-18.) The KMCP is both law and an expression of the desire of the people of south Maui for a true, smart, sustainable, live-able community. The KMCP was adopted into law in 1998. It is part of the General Plan, is recognized in the county charter and is a creature of the county code. It cannot simply be brushed aside, particularly not in a DEIS that describes a project in direct contravention of the plan. Real discussion is needed, not expressions of argument, particularly without legal or factual substance. (See, e.g., DEIS, p. 211.) The outcome will determine the future of south Maui: will it realize its plan, or will a developer simply be allowed to do what it wants, regardless?

Many downtowns in communities across America in the 1950s, '60's and 70's were destroyed by development of retail shopping centers on the outskirts of town, sucking the economic life out of what were previously vibrant economic and social hubs. The people of Kihei wanted to avoid, and still want to avoid, this consequence, which found expression in the KMCP in several places:

- (1) Restriction of commercial growth to four areas *makai* of the Piilani Highway (KMCP, pp. 17-18);
- (2) Designation of the land on the attached map as "LI" or light industrial, narrowly defined as ". . . warehousing, light assembly, service and craft-type industrial operations" (KMCP, p. 55); and

(3) Limiting retail and commercial uses within the industrial area to those that “are accessory or provide service to the predominate light industrial use.” (KMCP, p. 18.)

Likewise, the DEIS contains no meaningful discussion of Maui’s Countywide Policy Plan adopted in 2010 that eschews sprawl and embraces smart growth, state Act 181 enacted in 2011, or the Hawaii Sustainability Plan. The concepts of sprawl, smart growth, and sustainability are simply absent from the market and economic analysis as if they have no bearing on the project when in fact the community’s opposition to the project relates in large part to just that (as well as the developer’s refusal to give the people a voice - by denying the need for a community plan amendment, a zoning change, or in the Order to Show Cause matter before the state Land Use Commission, a hearing to change the 1995 Order from commercial and light industrial use to a different one). In fact, the project represents classic sprawl with all the negatives that such development impose on a community: it is on the outskirts of town; it violates planning orders, laws and policies (1995 LUC Order, KMCP, county zoning, Countywide Policy Plan, Act 181 and the Hawaii State Plan); it is automobile centric (“The majority of the gross operating revenues within the project, 97%, will be a result of outside patrons coming to the in-project companies . . .” Appendix K, p. 20); it is disconnected from the community as it exists today, including neighborhoods, schools and infrastructure, etc. The failure to assess the true economic impact of the project is underscored by the recent gathering of state, county and business leaders to endorse an “Aloha+ Challenge” that enthusiastically embraces the creation of smart, sustainable communities by increasing livability and resilience in the built environment. We are owed an analysis, at least!

Aside from discussion of planning principles and goals, the DEIS doesn’t even mention existing, significant vacancy rates in almost all shopping centers on Maui, including the Queen Kaahumanu Shopping Center, Maui Mall, and Azeka Place (East and West) even as a huge new Target store is being constructed in Central Maui just a few minutes drive from north Kihei. In short, the DEIS contains no legally sufficient discussion of economic impact.

Finally, a good discussion of law regarding the enforceability of the KMCP is completely ignored in the DEIS. (See Letter dated October 14, 2013, from SMCRG to Applicant found in Appendix “A”.) The DEIS also fails to recognize the fact that light industrial zoning is explicated stated to be primarily for light industrial use: “The M-1 light industrial district is designed to contain mostly warehousing and distribution types of activity, and permits most compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials.” (Maui County Code section 19.24.010 – Purpose and Intent.) Despite this clear language, and without acknowledgement, analysis or foundation, Applicant states that new zoning need not be obtained for the project even though it

will include only an insignificant amount, and perhaps ephemeral, light industrial use.

B. HAR 200-17, subsection 9

Similarly, HAR 200-17, subsection 9, requires an applicant to assess the probable impact of a proposed project on the human environment. This includes the economic health of the community. The remarks contained above are reiterated here. Discussion and assessment of the economic impact the project will likely have on the community is largely missing, other than to tout the effect of temporary construction jobs created by the project and the jobs the retail center will create. None of the meaningful economic questions posed in SMCRG's letter dated October 14, 2013, have been answered, including, for instance,

- The economic impact the project will have as a result of thwarting the KMCP's/community's desire to concentrate commercial development *makai* of the highway to create a sense of place and enhance quality of life;
- The effect the project will likely have on existing commercial properties *makai* of the highway, including existing shopping centers that, by the way, are experiencing significant vacancy rates, none of which is mentioned, assessed or commented upon in the DEIS;
- The effect ever-increasing on-line shopping trends will have on future retail space needs in the community (see U.S. Census Bureau News, May 15, 2014, Quarterly Retail E-Commerce Sales, 1<sup>st</sup> Quarter 2014, showing a steady trend upward since 2005; also see, e.g., "Slowing Customer Traffic Worries U.S. Retailers," Online Wall Street Journal, June 10, 2014.)
- The impact "Big Box" stores will likely have on the community's economy, wages and small, family owned retailers, not to mention impact on economic recirculation rates when retail sales revenue is exported by Big Box stores outside the island community;
- Expected rate and impact of cannibalization of retail sales on existing retail and commercial enterprises;
- The effect of loss of light industrial space on south Maui as a result of transformation of the project from mostly light industrial use to mostly retail use;
- The effect of sprawl on the value of real properties throughout south Maui and the consequent effect of loss of real property tax revenue due to suppressed values/missed opportunity costs.

## II. SCHOOLS

The insufficiency of the DEIS is also apparent from the skeletal discussion of schools and the proposed impact new housing will have on them, on families and on children of school age. The DEIS reports that school fees will be paid; that's about it. It notes that Kihei Elementary School is at or near capacity, but does not mention that this school is the nearest to the project, or how far away Kamalii Elementary school (located in south Maui) is from the site. It does not mention or assess the significance of the language in the KMCP stating "Include conditions of approval for new residential developments requiring that adequate school facilities shall be in place before a certificate of occupancy is issued." (KMCP, p. 19.) Nor does it mention "Consider a third elementary school site of approximately 20 acres in the North Kihei area." (KMCP, p. 40.) Is this sustainability, when the only way children can get to school is by automobile? Is the concept of the neighborhood elementary school dead? Does the inability to walk to school contribute to the U. S. childhood obesity epidemic that is universally recognized by health experts and the U. S. Centers for Disease Control? Does the DOE have plans for a new elementary school in north Kihei? If so, where, when, etc. How is the public to respond to a DEIS that is virtually silent on matters of intense interest to residents, families and children? Must we all do our own research as a work-around to a deficient analysis?

## III. SEGMENTATION

Finally, the EIS for Wailea 670/Honua'ula did not address or assess the workforce housing component of that development, that being 250 housing units to be constructed on 13 of the 88 acre parcel in issue here (Honua'ula's parcel). This was and is unpermitted segmentation. Now Piilani Promenade North, LLC, and Piilani South, LLC, seek to submit a DEIS that likewise segments out the 13 acre parcel even though it is part of the 88 acre parcel before the state Land Use Commission. The law requires an entire project to be assessed, not assessed in part or in segments. Whether the DEIS is sufficient without inclusion of the Honua'ula parcel is a threshold question that should be addressed before the matter proceeds to the comment phase. If it is determined that exclusion of Honua'ula's 250 housing units from the DEIS is an error in law, then the DEIS fails on its face. SMCRG asserts that it is unpermitted segmentation.

## IV. CONCLUSION

The above is a sample of material deficiencies in the DEIS. Please refer the draft back to the Applicant with direction to prepare a draft for comment that meets the requirements of HAR 200-16 and 17 before publication for comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark G. Hyde". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark G. Hyde  
President, SMCRG