

To: Hawaii State Land Use Commission
Department of Business, Economic Development & Tourism State of Hawaii
P.O. Box 2359, Honolulu, Hawaii 96804-2359
Contact: Mr. Daniel Orodener, Executive Officer (808.587.3822)

Pi'ilani Promenade North LLC. and Pi'ilani Promenade South LLC. c/o Sarofim Realty Advisors, 8115 Preston Road, Ste. 400, Dallas, Texas, 75225
Contact: Mr. Robert Poynor, Vice President (214.692.4227)

Chris Hart & Partners, Inc.
115 North Market Street, Wailuku, Hawaii 96753 Contact: Mr. Jordan E. Hart, President (808.242.1955)

Office of Planning, State of Hawaii
235 South Beretania Street
Honolulu, Hawaii 96813

Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813
Attn: Bryan Yee

From: South Maui Citizens for Responsible Growth
4320 E. Waiola Loop, Kihei, Hawaii 96753
Attn: Mark G. Hyde, President

**Re: Pre-Final Environmental Impact Statement for
Pi'ilani Promenade, April 2017
Docket No. A-94-706
Expected Hearing Date: May 18, 2017**

Introduction

Before getting "lost in the trees" of detailed commentary on the PFEIS, please appreciate what is at stake here: the future of south Maui itself. This Project, if allowed, will blow a hole in the community's ability to realize a true downtown and "sense of place." It's that dramatic and that stark.

Pi'ilani Promenade is a rogue project at odds with Maui County's Countywide Policy Plan, smart growth principles embraced in that policy statement, the Kihei-Makena Community Plan (KMCP) and modern concepts of good community planning.

In summary, the Project:

1. Is vague and illusory and therefore cannot be adequately assessed for environmental impact;
2. Violates the KMCP;
3. Is inconsistent with Light Industrial zoning;
4. Will over-burden local schools;
5. Is a classic example of urban sprawl, unsupported by current infrastructure and undermining the community's desire to enhance existing neighborhoods while cutting down on automobile traffic and trips;
6. Provides no safe way for children to get to and from school;
7. Fails the sustainability test and is automobile centric;
8. Will threaten, if not kill, the prospects for the Kihei Downtown Project and ruin the retail market in south Maui;
9. Will exacerbate downstream flooding;
10. Without a complete archeological assessment, cannot be gaged for impact;
11. Will perpetuate low paying jobs;
12. Is reliant on a speculative source of water for landscape irrigation;
13. Will destroy any chance Kihei has to remedy its sprawling community design; and
14. Segments the 13-acre Honua'ula housing project from analysis.

I. Project Summary

A. Brief description of the action, page 12.

Unlike the application made to the LUC in 1995 by Kaonoulu Ranch, which proposed a classic 123-lot light industrial park, this Project is a 530,000 square foot retail, office, business/commercial development with an additional 58,000 square feet of light industrial space, 226 multi-family apartments and a Maui Electric substation.

And, unlike Kaonoulu Ranch's proposal, which was supported by the community and became embedded in the KMCP, adopted into law by the county in 1998, Applicant's proposed project violates that plan, is not supported by the community and would undermine the economic viability of the "Kihei Downtown Project," an infill development which complies with the plan and would enable Kihei to create a much needed "sense of place" and literal downtown.

Finally, by labeling the proposed development plan "conceptual," Applicant is asking the LUC to approve an environmental impact statement for a Project lacking sufficient definition, visually presented in the form of a "bubble" site plan. This vagueness means true Project impacts are unknown. ¹

¹ How will one determine whether Applicant has developed the land as represented to the LUC when the proposed development is a "concept" rather than a commitment?

B. Significant beneficial and adverse impacts with Mitigation Measures, p. 12.

The beneficial impacts of the Project, p. 12.

When this matter came before the LUC in 2012 on an Order to Show Cause for failure to develop the land as represented to the LUC in 1995, Applicant's predecessor in interest unsuccessfully argued that the 123-lot light industrial park previously proposed by Kaonoulu Ranch was merely a "conceptual plan," even in the face of a definite site plan filed by the Ranch with the LUC showing 123 individual lots created expressly for light industrial use. The LUC rejected this argument and found Applicant's predecessor's Pi'ilani Promenade retail project(s) and the Honolulu housing project non-compliant with Kaonoulu Ranch's prior representations.

Fast-forward to today and Applicant is seeking approval for what it describes as a "conceptual plan" with no real commitment as to what will actually be built. As a conceptual plan, the LUC will have no way to really assess what will ultimately be built on the Project site or be able to hold Applicant accountable should the Project later morph into something entirely different, with different environmental impacts.

For instance, a Project benefit is said to be "Providing light-industrial space for south Maui business," but with the plan labeled "conceptual" coupled with oral comments made by Applicant's representatives to KCA that perhaps no light industrial space will be developed², one cannot truly assess the benefits and detriments of the project.

Similarly, what if Applicant later decides residential rental housing is simply not economically feasible and instead develops the property to more retail space? Would Applicant argue that the plan presented to the LUC was merely conceptual and not binding as a representation made to the LUC?

Land Use Commission Rule 15-15-50 requires an applicant to describe the "type of use or development proposed. A "conceptual plan" is a hedge, failing short and rendering the Project illusory.

The potential adverse impacts of the Project, p. 13

1. Topography and Soils, p. 13.

The key issue here is whether it's reasonable to believe that man can and will improve on Mother Nature by removing and filling the existing gulch traversing the site (a tributary of the larger Kulanihakoi/Ka'ono'ulu gulch) and redirecting the flow it has historically carried, then rechanneling the flow across the top of the Project,

² The small area designated for light industrial use isn't even to be connected to the light industrial complex immediately to the north, isolating it.

down Kaonoulu Street and depositing it into the neighboring Kulanihakoi gulch, which has been the source of recent significant downstream flooding.

The environmental impact analysis to be done here should take into account:

(1) Recent extreme flooding on Maui (Iao Valley was significantly and historically impacted this past winter by violent Iao Stream flow caused by an intense rain event, costing the county \$900,000 for repair (Maui News, 4/27/2017);

(2) The effects of climate change models predicting more intense future storm events, producing increased runoff (See, e.g., “Applying Risk Informed Decision-Making Framework for Climate Change to Integrated Water Resource Management Planning - West Maui Watershed Plan,” U.S. Army Corp of Engineers Final Report, April 2013.);

(3) A history of destructive flooding immediately downslope of the Project;

(4) The hydrological purposes and beneficial effects of natural gulches; and

(5) The applicable burden of proof as stated in the November 15, 2016, draft of the Maui Island Water Use and Development Plan, at page 4, which states:

“The Precautionary Principle

The precautionary principle (or precautionary approach) states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of a consensus on scientific evidence that the action or policy is not harmful, **the burden of proof that it is not harmful falls on those taking an action that may or may not be a risk to public or environmental health.** The principle is used by policy makers to justify discretionary decisions in situations where there is the possibility of harm from making a certain decision (e.g. taking a particular course of action) when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.”

According to the PFEIS, the Project will comply with existing county ordinances, rules and regulations, positing that such compliance is sufficient to meet the burden to satisfy environmental concerns before the LUC. While compliance with county water management standards is a good starting point, it’s not dispositive, particularly given the five factors listed above.

Rivers, streams and gulches play a significant role in watershed management, in part due to percolation and recharge. (See, e.g., “Comparison of Methods to Estimate Ephemeral Channel Recharge, Walnut Gulch, San Pedro River Basin, Arizona,” by Goodrich, et al., 2004, <https://www.coastal.ca.gov/nps/watercyclefacts.pdf>.)

Hardened, urban landscapes, by comparison, negatively affect percolation and recharge. (See, e.g., “How Urbanization Affects the Hydrologic System,” USGS, <https://water.usgs.gov/edu/urbaneffects.html>.)

And we lack a comprehensive flood plan for the area. (See, e.g., April 26, 2017, edition of the Maui News reporting that a flood plan for Kihei, 10 years in the making, is still not complete, quoting Mike Moran, president of KCA as follows: “Our understanding is the major problem is Kulanihakoi (Gulch). That whole area.” (<http://www.mauinews.com/news/local-news/2017/03/kihei-flood-plan-10-years-in-draft-stage-is-almost-complete/>.)

Below is a picture of South Kihei Road, one of two arteries in and out of Kihei, near Kulanihakoi gulch taken after a recent storm.



(Maui News, April 26, 2016.)

On April 25, 2017, the Maui News reported recent flash flooding experienced below the Project:

“Lightning and thunder rattled Maui and heavy rains Upcountry swelled gulches that swamped South Kihei Road on Tuesday afternoon and evening.

The Kulanihakoi Gulch was nearly filled to the top of its banks, and the water overwhelmed South Kihei Road near Kaonoulu Road in its march to the ocean. South Kihei Road was closed between Kaonoulu Road and Kulanihakoi Street in Kihei at 4 p.m. and firefighters had to rescue occupants of three cars swamped in the floodwaters.

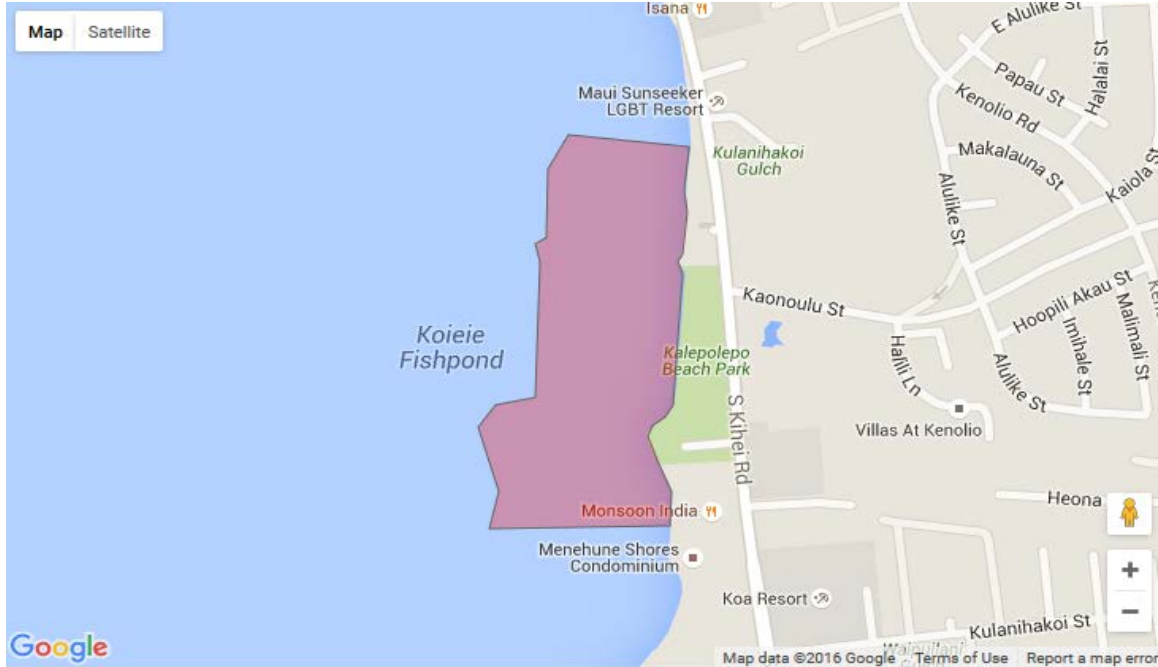
“It’s a swimming pool out here,” said Kevin Olson, who was in front of Kihei Bay Vista, near Kalepolepo Beach Park around 4 p.m. Tuesday. He said he saw at least 3 feet of water on South Kihei Road.

The water also flooded parking lots of condos in the area and swamped cars in brown water.”

As noted, flooding creates brown water, which washes into near shore waters causing well-known damage to coral reefs and other aquatic life, not to mention potential adverse health effects for humans. Below is a photograph of brown water occurring downstream from the Property at where Kulahakoi gulch empties into the ocean.



Note the location of this 2016 brown water advisory issued by the state Department of Health for coastal waters immediately downstream of the Project. This is a recurrent event.



Despite this, the PFEIS shrugs off downstream flooding, even as Applicant proposes to significantly alter the topography of the site (moving soil from the north to the south side of the parcel and eliminating the natural gulch currently traversing the property - nature's water management system).

Compared to Mother Nature, man has proven to be a poor watershed manager. The burden falls to Applicant to show otherwise. But given the current situation, that burden cannot be met without further hydrological studies. In the alternative, approval of the Project should be conditioned on designing around existing topographical features, including retaining the existing tributary gulch and working with the slope of the land as opposed to flattening it by cut and fill.

3. Archeological Resources, p. 14.

According to a letter dated April 20, 2017, from Applicant's representative to SMCRG, "[A]pplicant's Archeologist submitted a data recovery plan that was received by the SHPDA on June 17, 2016 and approval is pending."

As a consequence, Applicant's draft is not ripe for public comment or for LUC assessment and determination.

4. Groundwater Resources, p. 14.

The PFEIS fails to adequately account for the following:

(1) The Project is located in what is technically a desert;

(2) Climate change models predict Hawaii will, in the future, experience less precipitation overall, more intense storms, and greater evaporation of rain, leading to less percolation and therefore degradation of water resources; and

(3) To the extent the Project will rely on the Kamaole aquifer for 171,000 gpd of non-potable water for irrigation, the PFEIS fails to take into account that

(a) The Kamaole aquifer is poorly understood and is therefore rated “3” or “uncertain” by the state and

(b) Multiple south Maui developers and developments cite the Kamaole aquifer as a source for project water while none account for the overall draw taken by others, rendering capacity estimates extraordinarily uncertain.

For instance, the anticipated Kihei High School just to the south of the Project intends to draw 185,000 gpd from the Kamaole aquifer for landscape irrigation. (Declaration of Daniel Lum, consultant to Kihei High School project; [http://luc.hawaii.gov/wp-content/uploads/2013/03/A11-794_DOE-KiheiHS Exhibit-25.pdf](http://luc.hawaii.gov/wp-content/uploads/2013/03/A11-794_DOE-KiheiHS_Exhibit-25.pdf).)

Wailea 670's (Honua'ula) 4 wells have the capacity to draw 2.4 mgd. (<http://maui-tomorrow.org/mauis-water-resources-a-general-overview/>.)

So, too, the Wailea and Makena golf courses, draw from the Kamaole aquifer in large quantities (millions of gallons per day), particularly in the summer months. (SWRM well reports.)

This cavalier approach to evaluation of the viability and sustainability of a mission-critical project resource (water) is the equivalent to having a checking account believed, without certainty, to contain \$11,000, then handing out checks to many, with no central accounting feature while letting each tap the account under the fiction that their withdrawals occur in a vacuum and without consequence so long as each withdrawal is, standing alone, less than \$11,000.

Without a full accounting of current and expected users of and draws from the Kamaole aquifer, including seasonal water draw fluctuations (significantly more is drawn in the summer months compared to winter months), there is no way to assess the truth and viability of the Project's source of water for landscape irrigation. Because south Maui has limited water capacity, every developer wants to stick a straw into the Kamaole aquifer to prove a source of water and to obtain development approval, but no one reports how much this poorly understood aquifer

is being asked to provide to others, nor is there any discussion of seasonal influences on draws, impacts of over-pumping during dry summer months, etc.

The analysis provided to the LUC in the PFEIS is simply inadequate to allow for any rational determination of the Project's proposed non-potable water supply.

6. Schools, p. 16.

No public schools exist *mauka* of the Pi'ilani Highway, which is essentially a freeway, where the Project site is located. The elementary school closest to the Project, Kihei Elementary School, is near capacity and consists in large part of portable classrooms ("trailers") that were expected to be retired decades ago but have not been.

When the KMCP was adopted 19 years ago, the community recognized the need for additional school facilities in the area, stating the following (none of which is acknowledged in the PFEIS):

"Education

Objectives and Policies

a. Require the delivery of quality educational facilities at the time such facilities are needed. Emphasize advanced planning so that school facilities such as classrooms, playground, libraries, cafeterias and other appurtenant structures are delivered in a timely manner so as to eliminate the use of portable facilities.

c. Consider a third elementary school site of approximately 20 acres in the North Kihei area. "
(KMCP, p. 40.)

It's one thing to comply with Department of Education school impact fees, but it's another actually to meet the needs of residents for adequate local school facilities. Furthermore, the KMCP explicitly enjoins further development until infrastructure and public facilities are available prior to or concurrent with development.

"Land Use

Goal

A well-planned community with land use and development patterns designed to achieve the efficient and timely provision of infrastructural and community needs

Objectives and Policies

c. Upon adoption of this plan, allow no further development unless infrastructure, public facilities and services needed to service new development are available prior to or concurrent with the impacts of new development.”
KMCP, p. 16 - 17.)

Additionally, the PFEIS does not recognize or consider the impact other adjacent housing projects will have on Kihei school capacity, including but not limited to

(1) The nearby 650 Kamalani condominium home housing project currently under construction, also located *mauka* of Pi'ilani Highway and about a quarter mile north the Project;

(2) The 250 unit Honua'ula housing project located on the same 88 acre parcel as the Project; and

(3) The 186-unit Kenolio Apartment project located directly across the street from the Project, *makai* of the highway.

These projects will add 1,312 new housing units to north Kihei, all in the vicinity of the Project, and all targeted for occupancy by local families, not tourists, which means that all these units will increase the number of school age children needing accommodation. Applying Applicant's own student-to-housing conversion factor (50 children from its 226 units, or .22 per unit) to the totality of these units indicates a need to absorb 289 additional students, not just 50. (The conversion factor referenced is contained in a letter dated April 20, 2017, from Applicant's representative to SMSCR, at p. 1.)

How many of these will attend elementary versus middle or high school is unknown, but assuming a normal distribution (289 additional students divided by 13 grade levels [K-12]), one could reasonably anticipate 133 will attend K-5 (elementary), 67 attend middle school (grades 6-8) and 90 will attend four years of high school.

Using school population data supplied by Applicant, 133 elementary school children added to Kihei Elementary School, the nearest, would put it over its reported capacity of 890 students (2016 enrollment count of 786 + 133 new students = 919, 29 over capacity). While Kamalii Elementary School located further to the south has greater ability to absorb new students, it is 4 miles distant from the Project site, twice as far as Kihei Elementary School.

Here's the point: the PFEIS does not adequately assess school capacity because it does not consider the cumulative effects of known, nearby housing projects, and in so doing violates the KMCP which requires development to proceed only when public facilities are available prior to or concurrent with new development. Paying school fees to the DOE a good thing, but it is insufficient to meet this rational planning threshold.

7. Roadways, p. 16.

Unmentioned is the fact that this proposed development, unlike any other development *mauka* of Pi'ilani Highway, will convert Pi'ilani Highway into an unwanted south Maui "Main Street" by perching a retail complex along roadway frontage. Currently, Pi'ilani Highway has little retail presence, from top to bottom, with two small exceptions. None exists from Wailea all the way to the Shell gas station just to the north of the property. Additionally, there is some intermixed in the light industrial park to the north. That's it.

This Project, on the other hand, if permitted, will bring distinct and material change to the south Maui community, contrary to the express language of the KMCP which limits retail development to four distinct locations *makai* of the highway - to create community, a sense of place and to avoid further urban sprawl, which is what this project represents. (KMCP, p. 17-18.)

Also notable is the absence of unbiased discussion of Safe Routes to School policies, policies favoring walk-able and bike-able communities (Hawaii State Pedestrian Plan), the need for active living to combat obesity and diabetes, to achieve sustainability goals, multimodal transportation policies (Hawaii Act 54), and the like. It's not enough to say that 226 residents will be able to walk and bike within the shopping center. The fact remains that most of the traffic into and out of the development will come via automobile trips from outside.

Furthermore, because all public schools in south Maui are located *makai* of the highway, children living within the Project will necessarily have to be driven to school. The same goes for the planned high school, even though it is to be constructed nearly next door, because it is located on the other side of the Kulanihakoi Gulch, with *mauka* access being the high-speed Pi'ilani Highway, spanning the gulch via a bridge that narrows to create a dangerous pinch point, bringing pedestrians and bicyclists close to automobiles traveling 6" to a 1 foot away at between 45 and 60 miles per hour. It's not safe, as can be seen from the photo below taken on 4/28/27.



Here's what the American Academy of Pediatrics (AAP) says about kids and cars: "Motor vehicle injuries are the *leading cause* of death and acquired disability in childhood and adolescence. In addition, concerns with safety cause caregivers and students to choose methods other than walking and biking to school, reducing the amount of physical activity they have throughout the day." (American Academy of Pediatrics website.)

AAP's comments are consistent with U. S. Centers for Disease Control policies for preventing obesity. To reduce increasing obesity in our youth, the CDC recommends: "17. Enhance infrastructure supporting bicycling. 18. Enhance infrastructure supporting walking. 19. Support locating schools within easy walking distance of residential areas."

Ditto the World Health Organization: "Encouraging children to walk to school without providing pavements or safe places to cross the road, or reducing the speed of traffic, could in fact lead to increased injuries."

Then there is Maui County's Countywide Policy to consider, which rejects urban sprawl and embraces Smart Growth, including walk-able neighborhoods. (Countywide Policy Plan, p. 21-22.) Being able to walk within a shopping center complex as envisioned by Applicant's does not qualify as a walk-able neighborhood.

Walk Score, an organization whose mission is to promote walk-able neighborhoods, labels Kihei a "Car-dependent city," noting "Most errands require a car" and assigning Kihei a walk score of 40. (<https://www.walkscore.com/HI/Kihei>). Walk Score's vision is for all properties to have a score of 84 or better.

All of this ties back to the proposition that infrastructure must precede or occur simultaneously with development. To allow housing, needed as it is, to be built on the other side of a high speed highway without also requiring construction of safe

routes to school for children who will live in that housing, is inconsistent with numerous local, state and federal planning principles and policies.

Finally, let's not be fooled into thinking that the Project will have little effect on south Maui traffic. Aside from the fine calculations of expected increased automobile trips per day caused by the Project (Applicant's economic analysis indicates 97% of sales generated in the Project's retail stores will come from offsite), leasing literature published by Applicant's predecessor, Eclipse, crowed that the shopping center will draw people from all over the island to what it claimed it will become "**the busiest intersection in Maui County**"!

The potential secondary and cumulative impacts, p. 19.

Socio-Cultural Environment, p. 21.

The Project, if constructed, will devastate the south Maui community.

(1) It violates the express terms of the KMCP.

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 PFEIS fails to meet this burden. Here's why:

(a) The KMCP expressly restricts commercial development in the area to four distinct area of Kihei, all *makai* of the Piilani Highway, in order to avoid further urban sprawl and to create a sense of place and a downtown in a community that remains in need of focused commercial and retail centers. (KMCP, pp. 17-18.) This is what the community plan says under "Land Use:"

"Goal

A well-planned community with land use and development patterns designed to achieve the efficient and timely provision of infrastructural and community needs while preserving and enhancing the unique character of Ma'alaea, Kihei, Wailea and Makena as well as the regions natural environment, marine resources and traditional shorelines.

h. Develop commercial services at the following locations to meet community needs:

1) North Kihei, between the existing South Kihei Road, Pi'ilani Highway and Uwapo Road.

2) A central business and commercial center for Kihei cluster about the South Kihei Road/Road 'C' intersection.

3) In existing commercially zones areas along South Kihei Road in the vicinity of Kalama Park.

4) Along South Kihei road opposite the Kama'ole beach parks."

Why would a community want to focus commercial development as described? The answer lies in the plan itself, immediately preceding discussion of "Land Use" at page 16. It says:

"Kihei's linear form has been largely defined by two parallel roadways., South Kihei Road and Pi'ilani Highway. This linear pattern of development, combines with near total reliance on South Kihei Road and Pi'ilani Highway, forces residents to travel by car for their shopping, recreation and other basic needs, often resulting in traffic congestion. A general theme of the Plan is to create more independent neighborhoods within Kihei, thus reducing unnecessary vehicular trips to South Kihei Road and Pi'ilani Highway."

Unless or until the KMCP is amended, expansion of retail and commercial uses outside these four areas is prohibited. This includes the Project site.

(b) Additionally, the community plan speaks directly and explicitly to use of the Project site - for light industrial services, allowing for retail businesses only to the extent "they are accessory or provide service to the predominate light industrial use" so as to "locate industrial uses near existing and proposed transportation arteries for the efficient movement of goods." (KMCP, p. 18.) Here's the actual community plan wording, again under "Land Use:"

k. Provide for limited expansion of light industrial services in the area south of Ohukai and *mauka* of Pi'ilani Highway³, as well as limited marine-based industrial services in areas next to Ma'alaea Harbor. Provide for moderate expansion of light industrial use in the Central Maui Baseyard, along Mokulele Highway. These areas should limit retail business or commercial activities to the extent that they are accessory or provide service to the predominate light industrial use. These actions will place industrial use near existing and proposed transportation arteries for the efficient movement of goods."

(c) The Land Use Map attached to the KMCP designates the property "LI," narrowly defined as "[W]arehousing, light assembly, service and craft-type industrial operations." (KMCP, p. 55.)

³ This is the area subject to Applicant's Motion to Amend.

The KMCP is both law and an expression of the desire of the people of Maui for a true, smart, sustainable, live-able community. It was enacted into law by the county in 1998, ordinance number 2641, after being developed by means of a thorough planning process defined in the county code in conformance with the Hawaii State Plan and HRS 226-58, which requires county general plans to include, among other things:

“[O]bjectives to be achieved and policies to be pursued with respect to population density, **land use**, transportation system location, public and community facility locations, water and sewage system locations, visitor destinations, urban design, and all other matters necessary for the coordinated development of the county and regions within the county”

Furthermore, the KMCP has been found to have the force and effect of law by both the Hawaii Supreme Court in Gatri v. Blane, and in Leone v. County of Maui, decided in the Hawaii Intermediate Court of Court of Appeal. The County of Maui was a party to and is bound by the decisions made in both cases.

Here’s what the Hawaii Supreme Court said about the KMCP in the Gatri case:

“The KMCP was adopted after extensive public input and enacted into law by the Maui County Council on July 17, 1985, as an amendment to section 2.80.050 of the Maui County Code. It is part of the general plan of Maui County. Therefore, **it has the force and effect of law and a proposed development which is inconsistent with the KMCP may not be awarded an SMA permit without a plan amendment.**”
(Emphasis added.)

Maui County and Applicant have repeatedly tried to distinguish and dismiss Gatri as applicable only in land use cases tied to SMA regulation. This is unsupportable for two reasons.

First, the Gatri opinion articulated a general statement the law; it did not limit the opinion’s effect to property with SMA jurisdiction.

Second, in a subsequent case, Leone v. County of Maui, involving property not subject to SMA jurisdiction, the court applied Gatri, reiterating that the KMCP has the force and effect of law. Here’s what it says, in pertinent part, in footnote 8 of the court’s opinion:

[“T]he Maui County Code (MCC) renders the Community Plan binding on all county officials. MCC 2.80B.030(B) (2006). Under the express language of the code, neither the director nor the Planning Commission may approve land uses that are inconsistent with the Kihei–Makena Community Plan. *Id.*; see also *Pono v. Molokai Ranch, Ltd.*, 119 Hawai’i 164, 192, [194 P.3d 1126](#),

[1154](#) (App.2008) (“Under the MCC, before the [Department of Public Works and Waste Management] or any other county agency issues a permit, the agency must ensure that the project in question adheres to the specifications of the general plan and community plans of Maui County”), *abrogated on other grounds by County of Hawai'i v. Ala Loop Homeowners*, 123 Hawai'i 391, [235 P.3d 1103](#) (2010); *see also* MCC 19.04.015(A) (1991) (purpose of zoning is to regulate land usage in accordance with general and community plans); MCC 19.510.040(A)(4)(b) (1991) (change of zoning must comply with community plan). “

Because the KMCP is (1) law and part of the county General Plan, (2) recognized in the county charter, (3) a creature of the county code, and (4) state statute, it cannot be brushed aside here, particularly when the PFEIS describes a Project which on its face is in direct violation of the community plan.

In addition to the rule of law, also at stake here is whether the people of Maui will achieve their community vision, or whether developers, often representing out of state money, can do as they please.

For all the above reasons, the PFEIS is deficient. Applicant continues to deny enforceability of South Maui's lawful community plan, which is part of the State Plan. A pattern of behavior is evident here, beginning with Applicant's predecessor's violation of the LUC's 1995 Order and continuing through this PFEIS.

(2) The Project does not comply with light industrial zoning.

The Maui County Code specifies that light industrial zones are to contain **mostly** classic light industrial uses. Section 19.24.010 defines the “Purpose and Intent” of light industrial zones as follows:

“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.**”

Webster's New World College Dictionary, 4th Edition, 1999, defines the word “most” as “greatest in amount, quantity or degree” and “the greatest number of.”

The Project fails this test because it is **mostly retail**. While a number of other uses other than classic light industrial uses are allowed in light industrial zones, the overall purpose of such zones cannot be ignored.

Who would think otherwise? Well, oddly, the County of Maui Planning Department, which has taken the erroneous position that light industrial zones need not contain even one shred of common light industrial uses. But this interpretation is illogical

and defeats the whole purpose of zoning theory and practice, leading to chaotic development, allowing light industrial zones to become wild places with numerous disparate nonconforming uses, including anything and everything allowed in three business zones (B-1, B-2 and B-3) in addition to apartments. Why, then, would any developer seek B-1, B-2 or B-3 zoning when it could get all three + apartments with light industrial zoning?

Despite this, Applicant contends new zoning is not needed for what amounts to a mostly retail project⁴, failing to recognize that when light industrial zoning was awarded for the Property in 1999, the Project was 100% light industrial. Now it's 6-7% light industrial, if any at all⁵.

Again, Applicant's PFEIS shows complete disregard for basic community planning tools. For this reason, too, the PFEIS is deficient.

(3) The Project is classic urban sprawl and violates the Countywide Policy Plan which eschews sprawl and embraces smart growth.

Maui County's Countywide Policy Plan adopted in 2010 eschews sprawl and embraces smart growth as does Hawaii State Act 181 enacted in 2011, known as the Hawaii Sustainability Plan. Here's how the Countywide Policy Plan defines Sprawl (p. 20 - 21.)

"2. SPRAWL

Urban sprawl is a phrase coined to describe the post-World War II phenomenon of consuming land, resources, and infrastructure at a faster rate than neighborhoods have been traditionally built. Sprawl segregates people by income level and relies upon automobile-scaled development and cheap fossil fuel. Sprawl occurs when rural and agricultural lands are developed into large-lot subdivisions or when new population or economic centers are built away from the existing infrastructure grid that still has available capacity.

"Per capita, sprawl requires more taxpayer support and consumes more land, infrastructure, and natural resources than traditional development patterns.

"Enabling urban sprawl can be wasteful and costly. It degrades once-quaint rural communities and devours scenic open spaces. It is responsible for the excessive loss of agricultural lands and natural wildlands. Large-lot, single-

⁴ There will be no light industrial use in the Project if the area shown for light industry is eliminated, as foreshadowed by Applicant in comments to KCA.

⁵ Applicant's sales literature designates this project as one of its many **retail projects** nationwide.

family subdivisions consume more land *per capita*, require more taxpayer support *per capita*, and function less efficiently than traditionally scaled neighborhoods. If all of the landscape was developed with a single residence for every 2.5 acres there would be no countryside to enjoy.”

The Project meets this definition: it is on the outskirts of town, not infill; it violates planning orders, laws and policies (1995 LUC Order, KMCP, county zoning, Countywide Policy Plan, Act 181, the Hawaii State Plan and HRS 226-58); 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 . . .” PFEIS); and it is disconnected from existing neighborhoods, schools and infrastructure.

Additionally, not too long ago the state of Hawaii announced what it dubbed the “Aloha+ Challenge,” enthusiastically embracing the creation of smart, sustainable communities by increasing livability and resilience in the built environment. This Project is the opposite of that.

(4) It will negatively impact the viability of the community-supported Kihei Downtown Project.

As noted above, one of the hallmarks of smart growth is infill, by taking advantage of existing infrastructure and enhancing, not destroying, existing communities by locating services within easy walking distance of neighborhoods.⁶ Unlike the Pi’ilani Promenade Project, the Kihei Downtown Project represents desirable in-fill, it is supported by the community⁷ and is located in a place described in the KMCP for commercial development. (See below, a true example of smart growth and infill.)

⁶ See “Sustainable Community Envisioned for Downtown Kihei, Maui Now.com, 7/29/09 (<http://mauinow.com/tag/downtown-kihei/>.)

⁷ “Council Member Don Couch, who holds the South Maui residency seat, said the [Kihei Downtown] project has support from the Kihei community and that ‘people are looking forward’ to the project.” (Maui News, 7/8/15.)



Additionally, development of Pi'ilani Promenade at a time when “brick and mortar” retail is under siege (see below) will dim prospects for the Kihei Downtown Project. Like an old west town, there isn't room in Dodge for both. The Kihei Downtown Project is in compliance with the law and the plan; Pi'ilani Promenade does not comply with either.

(5) Produce minimum wage retail jobs instead of higher value light industrial jobs.

Bottom line, the Pi'ilani Promenade Project is a retail project. Minimum wage sales jobs will predominate. While Applicant's DEIS earlier represented that technology jobs would be created on site, when questioned about this response to comments about the draft by SMCRG, Applicant withdrew these unsubstantiated claims.

Light industrial jobs, unlike retail sales jobs, produce higher wages and better economic prospects. The following table is from the Direct Written Testimony of Richard D. Mayer, dated October 19, 2012, submitted and filed in this matter in conjunction with the Order to Show Cause contested case hearing:

Is a "light industrial park" the same as "retail shopping centers + housing"? If different, how are they different?		
LIGHT INDUSTRIAL USES	vs.	RETAIL and HOUSING USES
Higher wages		Lower wages
High income and jobs multipliers: More \$s circulating in Maui + Hawai'i economy		Low income and jobs multipliers: Less money circulating in Maui + Hawai'i economy
Economic engine, driver, and stimulus		"Feeder" Work
Locally owned sole proprietorships with profits remaining locally		Nationally owned businesses with profits leaving Hawai'i
Fee-simple property owned by locals		Leased property owned by California based developers
Small businesses		"Big-box" stores
Entrepreneurs + Skilled craftsman		Sales clerks + "stock-boys"
Mostly full-time workers		Many part-time workers, most of whom earn lower wages
Most have employee benefits		Many part-timers w/o employee benefits
South Maui lacks light industrial sites; light industry generates a net increase in businesses and jobs		Much existing South Maui retail will be jeopardized and probably displaced
Strengthens local community/economy by adding diversity		Cannibalism of existing locally owned retail stores; "Zero-sum" game
Compliance with LUC order		Violates LUC conditions for light industrial, frontage & connector roads
Compliance with Kihei-Makena Community Plan		Violates Kihei-Makena Community Plan's retail location requirements
Compliance with County Code 19.24 zoning, requiring <u>mostly</u> light industrial		Violates County Code with non-permitted housing and <u>mostly</u> retail
More stable vehicle traffic flows throughout the business day		Greater tendency for peak traffic volumes which coincide with high traffic volumes on Piilani Highway, especially late afternoons
Can supply construction jobs <u>now</u>		Can supply construction jobs, <u>only after</u> changed LUC order, community plan + zoning

Planned development		Sprawl
Sense of Place		Homogenization and monoculture

(6) The Project will crush smaller local retailers with the introduction of “big box” stores better suited to Kahului where they are aggregating in and around the new A&B commercial center, currently home to Costco, Home Depot, Lowes, Office Max, Verizon, Target, Wal-Mart and Kmart (closing).

(7) It will add retail space at a time when retailers are closing stores and filing for bankruptcy in record numbers due to increased online shopping and a shrinking middle class. Case in point on Maui: Kmart.

The retail landscape in America is changing dramatically. Consider the list of recent retail bankruptcies and store closings listed in Exhibit “A” hereto, then consider Applicant’s claim that more retail is needed in Kihei. The claim is unfounded.

Segmentation

Finally, the issue of segmentation is present here because:

(1) The Honua’ula housing project is part of above numbered action and part of the 88 acres parcel itself; and

(2) The Honua’ula parcel and project have never been the subject of an environmental impact study; it was itself segmented from consideration when the project of which it is an element, Wailea 670, presented its environmental assessment.

Respectfully submitted,



South Maui Citizens for Responsible Growth
 By Mark G. Hyde
 President

Exhibit "A"

Macys to close 68 stores (January 2017)

<http://www.usatoday.com/story/money/business/2017/01/04/macys-identifies-68-stores-close/96169742/>

Sears/Kmart to close 150 stores. (January 2017)

<http://www.businessinsider.com/list-of-sears-and-kmart-stores-closing-2017-1>

Sears warns it may not be a going concern (March 21, 2017)

<http://www.cnbc.com/2017/03/21/sears-flags-going-concern-doubts.html>

J C Penny to close up to 140 stores. (February 2017)

<http://www.usatoday.com/story/money/2017/02/24/jc-penney-store-closures/98344540/>

Sports Authority to close all 140 retail outlets. (August 2016)

<https://www.thebalance.com/sports-authority-closing-sales-locations-3885582>

Borders closing remaining 399 stores and liquidating. (July 2011)

<http://www.ibtimes.com/borders-closing-why-bookstore-chain-failed-300009>

The Limited to close all of its 250 stores. (February 2017)

<http://www.clark.com/major-retailers-closing-2017>

Wet Seal closing all 171 retail stores and liquidating. (February 2017)

<http://www.clark.com/major-retailers-closing-2017>

American Apparel to close all 110 of its stores. (February 2017)

<http://www.clark.com/major-retailers-closing-2017>

Wal-Mart to close 269 stores. (January 2016)

<http://www.usatoday.com/story/money/business/2016/01/15/list-of-walmart-stores-closing/78852898/>

Barnes & Noble to close 197 stores by 2022. (January 2016)

<http://goodereader.com/blog/business-news/barnes-and-noble-will-close-a-record-number-of-stores-in-2016>

Aeropostale to close 154 stores. (September 2016)

<http://www.clark.com/major-retailers-closing-stores>

American Eagle to close over 150 stores over the next three years. (September 2016)

<http://www.clark.com/major-retailers-closing-stores>

Chicos to close 120 stores between 2015 and 2017. (September 2016)

<http://www.clark.com/major-retailers-closing-stores>

The Children's Place to close 200 stores between 2015 and 2017. (September 2016)

<http://www.clark.com/major-retailers-closing-stores>

Men's Warehouse and Jos. A. Banks to close 250 stores. (September 2016)

<http://www.clark.com/major-retailers-closing-stores>

Office Depot/Office Max to close 400 stores. (September 2016)

<http://www.clark.com/major-retailers-closing-stores>

Wallgreens to close 200 stores. (September 2016)

<http://www.clark.com/major-retailers-closing-stores>

CVS to close 70 stores in 2017 (March 2, 2017)

<http://www.clark.com/major-retailers-closing-2017>

BCBG Max Azria files for Chapter 11 Bankruptcy (March 1, 2017)

<http://www.prnewswire.com/news-releases/bcbg-takes-next-step-in-repositioning-its-brands-through-chapter-11-reorganization-300415709.html>

Abercrombie & Fitch to close 60 stores (March 7, 2017)

<https://www.fool.com/investing/2017/03/07/these-10-retailers-are-closing-stores-in-2017.aspx>

Crocs to close 160 retail stores in 2017 (March 7, 2017)

<https://www.fool.com/investing/2017/03/07/these-10-retailers-are-closing-stores-in-2017.aspx>

Payless Shoes Source filed for Bankruptcy (April 4, 2017)

<http://money.cnn.com/2017/04/04/news/companies/payless-shoesource-bankruptcy/index.html>

RadioShack filed for Bankruptcy, Again (April 4, 2017)

<http://money.cnn.com/2017/04/04/news/companies/payless-shoesource-bankruptcy/index.html>

Ralph Lauren closing its flagship store on 5th Avenue in New York, closing 50 stores and laying off 8% of its workforce (April 4, 2017)

<http://money.cnn.com/2017/04/04/news/companies/payless-shoesource-bankruptcy/index.html>

Bebe is closing all its stores (April 21, 2017)

<http://money.cnn.com/2017/04/21/news/companies/bebe-closing-stores/index.html>

Moody's Paints a Stark Picture of Retailers (April 4, 2017)

<http://www.retaildive.com/news/moodys-number-of-distressed-retailers-nearing-recession-era-levels/437050/>

"A third of all shopping malls are projected to close." (March 6, 2017)

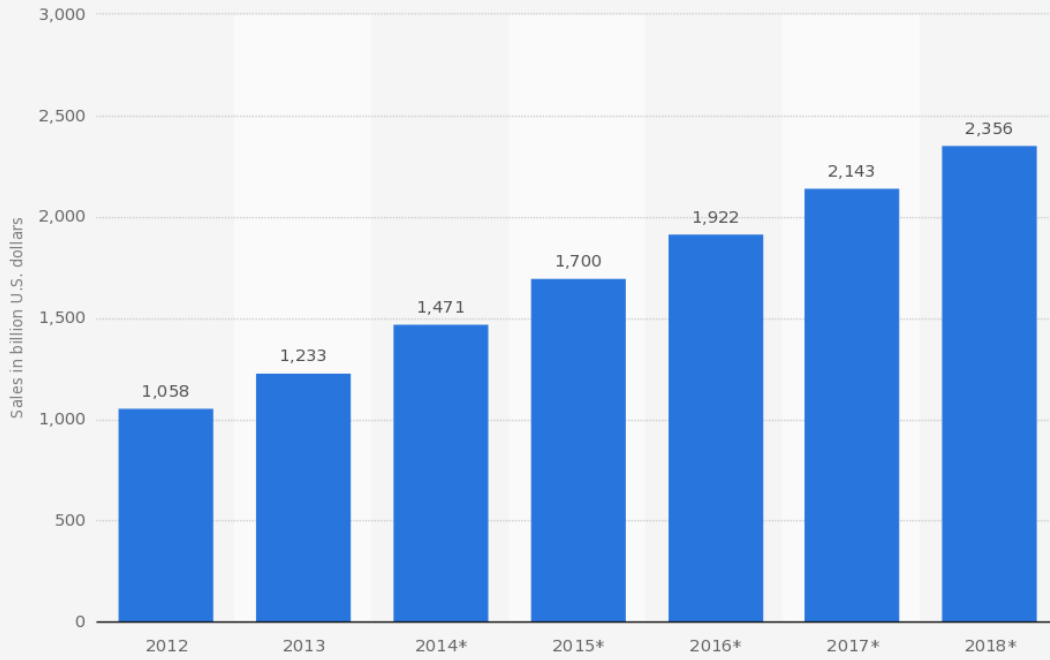
<http://www.clark.com/major-retailers-closing-2017>

Hundreds of dead malls across America (2017)

<http://deadmalls.com/stories.html#HI>

E Commerce is growing exponentially.

B2C e-commerce sales worldwide from 2012 to 2018 (in billion U.S. dollars)



Source:
eMarketer
© Statista 2015

Additional Information
Worldwide; eMarketer; 2012 to 2014

