

South Maui Citizens for Responsible Growth
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Applicant:
Pi'ilani Promenade North, LLC
Pi'ilani Promenade South, LLC
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8115 Preston Road, Suite 400
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Accepting Authority:
Land Use Commission
Department of Business &
Economic Development
State of Hawaii
P.O. Box 2359
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Re: DEIS for Pi'ilani Promenade
TKM: (2) 3-9-001: 016,170-174

South Maui Citizens for Responsible Growth ("SMCRG") submits the following comments and objections to the Draft Environmental Impact Statement ("DEIS") filed by Pi'ilani Promenade North and South for the development known as Pi'ilani Promenade ("Project").

The DEIS is not ripe for review since neither it nor Applicant's letter in response to SMCRG's October 14, 2013, letter re the EISPN address many of the central questions raised about the Project and its environmental impact. As a result, the DEIS thwarts the intended environmental review process that is designed to afford interested parties a means to question and assess the true impact a project will have on a community. The comments below are made in the absence of this critical information and are made without waiving this objection to the ripeness of the draft.

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LAW OFFICE OF J. J. HARRIS
ATTORNEYS AT LAW

PART I. OVERARCHING COMMENTS

I. SCHOOLS AND SAFE ACCESS TO SCHOOL: The DEIS lacks any analysis of the Project's impact on local schools and children.

A. The DEIS does not answer questions posed by SMCRG regarding school impact contained in SMCRG's letter to the Project's proponent dated October 14, 2013. Specifically, see pages 8 and 9 of the October 14, 2013 letter.

B. The DEIS does not address the applicability and impact of the 1998 Kihei Makena Community Plan ("KMCP") insofar as that ordinance speaks to infrastructure and schools.

(1) "'Policy recommendations contained herein express the long-term visions for the Kihei-Makena community. They will be used to formulate and prioritize programs and strategies and will affect the sequence and patterns of growth in the region.'" (KMCP, p. 15.)

(2) "Upon adoption of this plan, it shall be required that adequate facilities and infrastructure will be built concurrent with future development." (KMCP, p. 15.)

(3) "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. 17.)

(4) "In the long term, there is a need for a third elementary school, and a high school, which would serve the Kihei-Makena region." (KMCP, p. 12.)

(5) "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.)

(6) See the discussion below about the legal effect of the KMCP.

C. The analysis contains no discussion of safe routes to school (and other locations) for children living in the proposed development (and Honua'ula's 250 units). For orientation, see the photo of Pi'ilani Highway adjacent to and immediately south of the Project attached to SMCRG's letter dated October 14, 2013, included in the DEIS, evidencing a hazardous walkway students would have to use to gain access to the adjacent planned Kihei High School, unless they traversed the intervening gulch overland akin to what children might do in a third world country. Kihei Elementary and Lokelani Middle School are located even further south, with

no safe way for children to walk or bicycle to school, one of the consequences of automobile-centric sprawl.

(1) “Pedestrian safety continues to be a top priority for the Hawaii Department of Transportation. . . . The [Statewide Pedestrian Master] Plan . . . envisions a multi-modal transportation system that provides a safe and well-connected pedestrian network that encourages walking among all ages and abilities.” (Introductory comments by Glenn Okimoto, Director, Hawaii Department of Transportation, contained in the Draft Statewide Pedestrian Master Plan, dated August 2011.)

(2) HB 2626, enacted in 2012 by the Hawaii State Legislature, creates a state-wide public policy in favor of safe routes to school for our keiki. How will the residential units in the Project, and in the neighboring Honua’ula project, satisfy the intent of this initiative?

(3) “Many of us remember a time when walking and bicycling to school was a part of everyday life. In 1969, about half of all students walked or bicycled to school. Today, however, the story is very different. Fewer than 15 percent of all school trips are made by walking or bicycling, one-quarter are made on a school bus, and over half of all children arrive at school in private automobiles. This decline in walking and bicycling has had an adverse effect on traffic congestion and air quality around schools, as well as pedestrian and bicycle safety. In addition, a growing body of evidence has shown that children who lead sedentary lifestyles are at risk for a variety of health problems such as obesity, diabetes, and cardiovascular disease. Safety issues are a big concern for parents, who consistently cite traffic danger as a reason why their children are unable to bicycle or walk to school.” (U.S. Department of Transportation, see <http://safety.fhwa.dot.gov/saferoutes/>.)

(4) The American Academy of Pediatrics supports safe routes to school and increased walking and biking as a means of keeping our children health. The AAP notes, however, that walking and biking are reduced when children do not have a safe way to use these modalities to get to school safely, as is the case with the Project.

“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 or biking to school, reducing the amount of physical activity they have throughout the day.” (See AAP website.)

(5) In 2009, the U.S. Centers for Disease Control recommend 24 strategies to prevent obesity in the United States, including “17. Enhance infrastructure supporting bicycling,” “18. Enhance infrastructure supporting walking,” and “19. Support locating schools within easy walking distance of residential areas.” Given this, how will locating residential units *mauka* of the Pi’ilani Highway affect the long term health of the children living within the development when the only existing

elementary and middle schools serving the region are *makai* of the highway and miles away?

(6) The World Health Organization likewise supports safe routes to school:

“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.” (See WHO website.)

(7) Hawaii’s people in general and Maui’s adults in particular are increasingly obese and diabetic, partly due to the fact that our communities are poorly designed and built. (See CDC County Level Estimates of Obesity and Diabetes depicting increasing levels of both in Hawaii and Maui County from 2004 to 2009.) How will the isolated Pi’ilani Promenade and Honua’ula housing projects impact public health given the lack of connectivity to the rest of the community, except by means of a high speed highway? What public health burden will this this isolated development impose on current and future generations?

D. The DEIS contains no analysis of the sustainability of locating housing in a place that discourages (and makes it unsafe for) children to walk and bike to school. The Hawaii 2050 Sustainability Plan has bearing here. Where is the discussion? How do you defend a project that will require residents to use an automobile to access basic needs and schooling? What are the social and economic costs?

E. The DEIS makes no mention of the fact that the LUC recently conditioned land reclassification for the Kihei High School on construction of an overpass or an underpass to enable children living *makai* of the Pi’ilani Highway to get to the campus safely, without having to traverse the roadway itself. Given this, what steps need to be taken to enable children living *mauka* of the Highway to walk or bike to school when the only pedestrian/bike access route to the high school is a thin strip of asphalt at the edge of the roadway, pinched inward at the bridge just south of the Project, that fails to meet safe bike lane standards and is, on its face, dangerous, posing a significant and foreseeable risk of serious injury and death to children, with consequent state and county liability for personal injury or wrongful death with the added possibility of punitive damages being awarded upon a finding of “reckless disregard” for the health and safety of others?

A key requirement of the KMCP (and good planning in general) is that development must proceed in concert with adequate infrastructure:

“Upon adoption of this plan, it shall be required that adequate facilities and infrastructure will be built concurrent with future development.”
(KMCP, p. 15; emphasis added.)

There are no roads, walkways and bike lanes currently in place or that will support safe routes to school (state policy and good sense) from the Project to (a)

the Kihei High School, (b) either of the elementary schools and/or (c) to the middle school serving south Maui. What mitigations are needed to address this health and safety issue? Where is the discussion in the DEIS? There is none.

II. COMPLIANCE WITH THE KIHAI-MAKENA COMMUNITY PLAN.

The DEIS dodges a key question that must be answered by the Land Use Commission (LUC): conformance with, and enforceability of, the KMCP.

The DEIS relegates the question to the status of an unresolved issue, erroneously asserting that the only parties involved in the matter are the Applicant and the County of Maui Department of Planning. In fact, the question must be resolved by the LUC; HRS section 205-16 mandates that all actions by the LUC must conform to the Hawaii state plan. Since community plans are part of the state plan, the LUC cannot approve the Project except by conditioning approval of the ultimate EIS upon amendment of the KMCP.

Additionally, the people have an independent interest in conformance and enforceability of the Project with the community plan because south Maui is, after all, a community of residents, businesses and visitors with hopes and aspirations embodied in the KMCP, a plan that was carefully and diligently developed, debated and enacted into law according to explicit procedures set forth in the Maui County Code.

Here, the developers, acting in concert with the county, have steadfastly refused to seek amendment of the KMCP, preferring instead to pursue economic gain without following the law, thereby denying citizens the right to be heard (a component of the amendment process) and the right to develop the community as planned, and not according to the singular economic interests of an out-of-state developer and owner with little or no stake in the live-ability and long-term quality of life here.

A. The Project violates the KMCP.

It is indisputable that the Project violates the clear language of the KMCP.

(1) The required land use map attached to the KMCP explicitly designates the subject parcel of land "LI," defining LI narrowly as "Light Industrial (LI) This is for warehousing, light assembly, service and craft-type industrial operations." (See Land Use Map and definition of LI at KMCP page 55; note that land use categorization is specifically required of Maui island land according to Maui County Code section 2.80B.070, E., 7 and 8.)

(2) The KMCP specifically speaks to the parcel as follows: "Provide for limited expansion of light industrial services in the area south of Ohukai and *mauka* of Pi'ilani Highway These areas should limit retail business or commercial

activities to the extent that they are accessory or provide services to the predominate light industrial use. These actions will place industrial use near existing and proposed transportation arteries for the efficient movement of goods.” (KMCP, p. 18.)

(3) “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 clustered about the South Kihei Road/Road “C” intersection. 3) In existing commercially zoned areas along South Kihei Road in the vicinity of Kalama Park. 4) Along South Kihei Road opposite the Kama’ole beach parks.” (KMCP, p. 18; note that all these areas are *makai* of Pi’ilani Highway while the Project is *mauka* of the highway.)

(4) “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. (KMCP, p. 16.)

(5) “Intended Effects of the Kihei-Makena Community Plan. Policy recommendations contained herein express the long-term visions for the Kihei-Makena community. They will be used to formulate and prioritize programs and strategies and will affect the sequence and patterns of growth in the region.” (KMCP, p. 15.)

B. The KMCP has the force and effect of law.

(1) The Hawaii Supreme Court and a Hawaii Appellate Court have both held, in cases to which the County of Maui was a party, that the KMCP, both the 1998 plan and its predecessor, have the force and effect of law. (See Gatri v. Blaine, 88 Hawaii 108 (1998) and Leone v. County of Maui, 128 Hawaii 183 (2012). Because the County of Maui was a party in each case, it is barred from asserting that the KMCP does not have the force and effect of law.

(2) Aside from the above, which is dispositive, the legal scheme by which community plans are adopted independently supports the binding legal effect of all community plans, a factor cited in both Gatri and Leone.

(a) The Maui County Charter speaks to the process for creation, adoption and amendment of community plans. (Section 8-8.5 and 8-8.6.)

(b) The Maui County Code also contains explicit directions for creation, adoption and amendment of community plans. (M.C.C section 2.80B.070) It speaks to “enforcement of the community plans” at subsection H, language inconsistent with plans merely being optional at the discretion of the mayor or planning director. Finally, the Code provides a process for amendment of community plans, an unnecessary activity if community plans were merely suggestive.

(c) Other Maui County resources likewise support the enforceability of community plans. For instance, the County's "Capital Budget Guidelines and Policies" speaks to the need to develop CIP budgets in concert with the "General Plan, Island Plan and Community Plans." "The Community Plans will reflect the unique characteristics of each Community Plan area and enable residents and stakeholders within those areas to address location specific challenges." (Guideline, p. 1-8.)

(d) Maui County Code section 2.80B.030 states that "All agencies shall comply with the general plan," noting that community plans are part of the general plan.

(e) The KMCP is county ordinance No. 2641 and is, *ipso facto*, law.

Finally, because none of the above is referenced or discussed in the DEIS, even when the matter was explicitly raised by SMCRG in its October 14, 2013, letter to the Applicant in response to its EISPN, and because a DEIS must include a robust discussion of the relationship of a proposed action to "applicable land use plans, policies, and controls for the affected area," the DEIS is legally deficient on its face, and fails to meet the requirements of Section 11-200-17 of Hawaii's environmental laws.

III. COUNTYWIDE POLICY PLAN

A key driver of Maui's Countywide Policy Plan is the avoidance sprawl and the promotion of "smart growth." Urban sprawl is variously defined. The following definition is cited in Community Planning by Eric Kelly, 2nd ed. 2010, at page 16, culled from research at the University of Wisconsin:

"We consider sprawl to be any environment characterized by
(1) a population widely dispersed in low density residential development;
(2) rigid separation of homes, shops and work places;
(3) a lack of distinct, thriving activity centers, such as strong downtowns or suburban town centers; and
(4) a network of roads marked by large block size and poor access from one place to another."

Here we have a Project located away from the existing community, built almost entirely *mauka* of Pi'ilani Highway; disconnected except by one proposed access point that will be a major highway intersection on a high speed highway; that is automobile-centric and not walk-able, even to the proposed high school next door or to the neighboring light industrial development; and that destroys the community plan that is designed to create infill and develop commercial/downtown centers. The Project meets the definition of classic sprawl. To abide by the requirements of section 11-200-17, the DEIS must recognize this reality and discuss

the impact it will have on south Maui's quality of life, on degraded real estate values, diminished real property tax revenue and public health and welfare.

In addition, because the Project initially proceeded in violation of a state Land Use Commission order and is now proposed to proceed in violation of the KMCP and zoning, the negative impact this Project has had and will continue to have on the trust of citizens in government must be assessed.

IV. SEGMENTATION

The DEIS fails to acknowledge and discuss unpermitted segmentation that will necessarily arise from separating the Pi'ilani Promenade portion of the 88 acre parcel from the Honua'ula portion of the development. The proposed Honua'ula component of the Project was wrongfully omitted from the environmental assessment done of the related Wailea 670 project located further south in Wailea. The request to bifurcate the Pi'ilani Promenade Project from the Honua'ula component of the 88 acre parcel may be a thinly veiled attempt to separate the wrongs of the Applicant from the errors and omissions of Honua'ula. (Note: all these projects are represented and coordinated by the identical owners' representative.)

IV. ECONOMIC IMPACT ANALYSIS

Assessment of the economic impact of the Project is inadequate. Essentially, the assessment states that construction jobs will be created and after the construction phase is completed, retail jobs will be created. Unanswered are questions posed by SMCRG in its October 14, 2014, letter to the Applicant in response to the EISPN. (See questions 1 – 14 at pages 11 – 12.) Without answers to these key questions, the economic analysis is incomplete, particularly since the Project will, if allowed, destroy a key component of the KMCP, which is targeted at reining in sprawl by restricting retail and commercial development to four distinct commercial zones *makai* of the Pi'ilani Highway. If the KMCP cannot be realized due to the rogue nature of the Project, what will the consequences be? Are the State and community planning processes simply irrelevant and dead, with developers and county mayors getting to decide who gets to do what, where, and when regardless of the will of the people, expressed in community plans? Will this become a function of who donates the most to political campaigns, or who knows whom in county government?

Additionally, since the DEIS does not disclose the configuration, location and size of proposed retail space, it is impossible to calculate the kind of retail enterprises that will populate the shopping centers. If retail pads are to be occupied by "Big Box" stores that currently do not exist in south Maui, calculation of economic impact will take on a distinctly different analysis in terms of impact on existing retailers in the community, recirculation of income, etc. None of this is provided.

Finally, there is no recognition that Maui County has the highest retail center vacancy rate in the state of Hawaii: 9.2% according to credible data published in CBRE's Q2 2014 "Hawaii Retail Market View." What impact will the Project have on a retail environment that already exhibits a high level of vacant retail space, particularly when coupled with a well-documented trend toward increased on-line shopping?

The analysis also fails to recognize and assess the impact other large commercial projects underway elsewhere on Maui will have on the Project and on the south Maui community, such as the large Target store now under construction in the A&B business park, and the A&B business park itself, both of which are located at the terminus of the Mokulele Highway nearest Kihei in Kahului. Instead, the analysis is presented in a vacuum of information and data.

PART II. SPECIFIC COMMENTS AND OBJECTIONS

SMCRG submits the following specific comments and objections to the text:

HAWAII STATE PLAN

1. Objective and Policies for Population (p. 86)

Items (1) – (4) and (7) should read "N/S" since the Project is sprawl, composed largely of retail uses that will produce low paying, dead-end jobs, and violates state and county planning policies, procedures and governing documents.

2. Objectives and Policies for the Economy – In General (p. 87)

Items (2), (3), (8)-(10), (14), (15), and (17) should read "N/S" since the Project is sprawl, composed largely of retail uses that will produce low paying, dead-end jobs, and violates state and county policies, procedures and governing documents.

3. Objectives and Policies for the Economy-Potential Growth Activities (p. 89)

Items (1), (5), (6), (9) and (11) should read "N/S" because the Project will not promote new, technological or growth industries.

4. Objectives and Policies for the Physical Environment – Land Based, Shoreline and Marine Resources (p. 91)

Items (1) – (9) should read "N/A" since the issues are not applicable to the Project.

5. Objectives and Policies for the Physical Environment – Scenic, Natural Beauty, and Historic Resources (p. 92)

Items (1) – (5) should read “N/A” since the Project will do none of these things. If anything, the Project will document historic cultural sites, then the sites will be obliterated. The land itself will not be enhanced or beautified by addition of a sprawling shopping center with acres of asphalt parking lots and Big Box stores that characterize an increasingly homogenous, soul-less America.

6. Objectives and Policies for the Physical Environment – Land, Air, and Water Quality (p. 93)

Items (1) and (2) under “Objectives” should read “N/S” since cultural sites will be destroyed and the area replaced by a sprawling shopping center that is not walkable or bikeable and is automobile-centric so that access to the site will have to be by vehicle trips that will burn fossil fuel in direct opposition to sustainability principles that are designed to protect our natural resources, including air and water.

Items (2) – (5), (6) and (7) should read “N/S” since the Project will require more automobile trips in the region, alter the natural landscape by eliminating the Ka’ono’ulu Gulch, redirect runoff into a neighboring gulch, cover the ground with impervious material and heighten the risk of flooding in an area already plagued by flood risk. The Project is not located within commercial zones already existing in Kihei and is therefore not close to existing services and facilities. Its remote location on the fringe of town and on the *mauka* side of the Pi’ilani Highway will work to degrade community quality of life.

7. Objectives and Policies for Facility Systems – Transportation (p. 96)

Items (1) – (3), (5) and (6), and (9) – (13) should read “N/S” since the Project is not multi-modal and is, in fact, automobile-centric. This will in turn result in further reliance on and expenditure of fossil fuels. It will also impede future, quality growth in the community by denying the region the focused commercial growth plan imbedded in the KMCP. So, not only will automobile traffic increase in the area, the ability to generate greater walking and biking in a community will be dashed, creating a “lose/lose” for Kihei and Hawaii.

8. Objectives and Policies for Facilities and Systems – Energy (p. 97)

Items (4), (8) and (9) should read “N/S” since the Project is automobile-centric and will therefore generate greater greenhouse gas, coupled with frustration of the KMCP’s plan to create walkable and bikeable downtowns in designated areas in south Maui. Item (10) should read “N/A” since there is no evidence that the Project will provide priority handling of energy permits, a government function.

9. Objectives and Policies for Socio-cultural Advancement – Housing (p. 99)

Item (2) under “Objectives” should read “N/S” since the Project is the opposite of “orderly development.” The Project has previously been found in violation of the LUC’s 1995 Order (failure to construct a frontage road; failure to file annual progress reports; and failure to develop the property as represented to the LUC) and it remains in violation of the KMCP and zoning, for which no amendment has been or apparently will be sought by the Applicant. This is *disorderly development*.

Items (5) and (7) should read “N/S” since the Project’s proposed housing is not located in existing neighborhoods and will in fact be located in scrub land completely removed from Kihei’s core and without any existing infrastructure, with the exception of a water line that runs through the Property and delivers all of south Maui’s potable water needs. Items (4) and (8) should read “N/A” because neither apply.

10. Objectives and Policies for Socio-cultural advancement – Health (p. 101)

Items (1) and (2) should read “N/S” because the Project will negatively impact the health of the people living on site and the health of the larger community because it is automobile-centric in contravention of all knowledge about the causes of America’s obesity and diabetes epidemics and the effect lack of exercise in daily life plays in the development of these and other debilitating and costly diseases. The Project is not even neutral; it *promotes poor health and disease*.

11. Objectives for Socio-cultural Advancement – Leisure (p. 101)

Items (1) – (7) should read “N/S” and items (6) and (8) – (10) should read “N/A.” This is, after all, a shopping center.

12. Objectives for Socio-cultural Advancement – Public Safety (p. 103)

Item (3) should read “N/S” since there is no evidence that the Project will in any way promote a sense of community responsibility for the welfare and safety of Hawaii people other than what already exists.

13. Objectives and Policies for Socio-cultural Advancement – Government (p. 103)

Items (1) and (2) should read “N/S” since the Project has violated the LUC’s 1995 Order and the Applicant now proposes to proceed with development despite the light industrial use required by the KMCP and county zoning. The Applicant’s and County’s actions to date have eroded the people’s confidence in government and given rise to speculation that cronyism is at work given the County’s refusal to enforce the LUC’s 1995 order and its apparent current posture that no amendment of the KMCP is needed, even in the face of a project that bears no resemblance to the

light industrial use carefully and explicitly articulated in the community plan, not to mention (1) holdings by state courts that the KMCP has the force and effect of law, (2) the County Charter, (3) County ordinances and (4) other County resource document holding up community plans as inviolable (in the absence of amendment). That the Applicant's representative is a former Maui County Public Works director with relationships with County officials has not gone unnoticed either, which perhaps would not be worthy of comment except for the County's remarkable lack of enforcement in this case.

14. Economic Priority Guidelines to Stimulate Economic Growth . . . to Encourage a Diversified Economy (p. 104)

Items (1) - (10) should read "N/S" since the Project is mostly retail, generating mostly retail jobs that are neither diversified nor likely to lead to satisfying careers. To say otherwise is fiction, unsupported by fact.

15. Guidelines to Promote Economic Health and Quality of the Visitor Industry (p. 106)

Item (1) should read "N/S" since the Project is automobile-centric and will necessarily increase traffic in the region. The economic analysis, such as it is, estimates that 97% of the sales generated in the Project's retail stores will come from offsite. As boldly claimed in leasing literature published by the previous developer, Eclipse, the planned shopping centers will drawn people from all over Maui at what it bragged would become the busiest intersection in Maui County! How increased local traffic will engender "the Aloha Spirit and minimize inconveniences" claimed by the Applicant is not explained.

Traffic choked, ugly Dairy Road in Kahului is a good example of what sprawl and vehicle load can do to an area. By developing a huge regional shopping center in Kihei, the community's desire to create walk-able/bike-able downtowns will be destroyed. These downtowns, not "Mega Malls" on the highway, are what will engender the Aloha Spirit, minimize inconveniences and create a much needed sense of community in what is already a sprawling Kihei (which is exactly why the KMCP is written as it is).

Items (8) and (9) should read "N/A" since there is no factual basis presented for the claims made and it is illogical that shopping malls will create a safer environment or stimulate advance data techniques any more that they will create world peace.

16. Priority Guidelines for Water Use and Development (p. 107)

Items (3) and (4) should read "N/A" since there are no facts presented that the Project will do either of these things.

17. Priority Guidelines for Energy Use and Development (p.107)

Items (1) – (3) should read “N/A” since there are no facts presented that the Project or its Applicant will do any of these things. Item (4) should read “N/S” because the Project is automobile-centric sprawl that will create more traffic, use more fossil fuel and deny the public a walk-able and bike-able community that would result in energy conservation.

18. Priority Guidelines to Promote the Development of the Information Industry (p.107)

Items (2) – (6) should read “N/A” since the Project is a retail shopping center, not a high technology incubator project. To claim that Big Box and other retail outlets will expand high tech in Hawaii is unsubstantiated, illogical and hyperbolic.

19. Priority Guidelines to Effect Desired Statewide Growth and Distribution (p. 108-9)

Items (1) – (3) should read “N/S” since the Project flies in the face of the existing state Land Use Commission order, the KMCP and zoning. This is not a planned project; it is had been, and continues to be, a rogue project. In 2005 the new owners of the 88-acre parcel changed the planned development from a permitted light industrial park into a proposed huge regional retail shopping center. The Project, if allowed, will swamp south Maui roads, impair existing retailers and retail shopping centers in the area, destroy the KMCP’s design and violate the citizens’ right to be heard (since the developers seek to pursue an entirely different project from the one approved and imbedded in the KMCP without following the amendment process set forth in the Maui County Charter and Code that afford the people a right to be heard).

Item (4) should likewise read “N/S” because when developers skirt the law (1995 LUC Order, KMCP, zoning, and mandated amendment processes), then bemoan the difficulty of developing in Hawaii, they convey the impression that development here is difficult. In fact, when developers do not follow the law problems can arise if the citizenry is sophisticated enough and has the ability to raise legal objections in administrative and judicial venues, as has been done here.

Item (7) should read “N/A” since the Project will not support the development of high technology parks as claimed.

20. Priority Guidelines for Regional Growth Distribution and Land Resource Utilization (p. 109)

Items (1), (3) – (5), (7) and (12) should read “N/S” since this huge retail complex will be located away from areas designated in the KMCP where water and infrastructure already exist. Additionally, there is little known about the Kamaole

aquifer from which the Project intends to draw some of its water. The aquifer is listed as least known by the state Commission on Water Resources Management. At the same time, many developers *mauka* of Pi'ilani Highway are looking to it to supply water without a global accounting for total draw and calculation of the sustainability of multiple draws upon the resource. It is a high-risk "crap shoot" that threatens the long term integrity of the Kamaole aquifer, bearing in mind that the Project is located in what is essentially a desert that is likely to get even drier with climate change. (State policy embraces an expectation of a drier future for the Hawaiian islands; see, e.g., DLNR proclamations and projections.)

Items (9), (10) and (13) should read "N/A" since they do not apply; no facts support application.

21. Priority Guidelines in the Area of Criminal Justice (p. 111)

Items (1) and (3) should read "N/A" since no facts are presented to support the claims. In terms of safety, greater automobile use caused by the Project will lead to more opportunities for automobile mishaps and accidents that will negatively affect public health and safety. To the extent children living within the Project walk or bike to school from the Project by means of Pi'ilani Highway, the probability of accidents leading to severe injury and/or death are increased. Pi'ilani Highway is not safe for pedestrian traffic.

22. State Functional Plan – Employment (p. 119)

Items (a), (d) and (e) should read "N/S" since there are no facts presented that employment training will be provided, or that quality of life will be enhanced by the development of an unpermitted, sprawling, regional retail shopping center that will offer entry level, dead-end retail jobs.

23. State Functional Plan – Energy (p. 119)

Items (a) and (b) should read "N/S" because the Project is a perfect example of unsustainable development requiring increased automobile traffic due to its location, particularly when the community plan calls for concentration of retail and commercial services in four distinct areas *makai* of the Pi'ilani Highway - where the population resides and elementary schools and the middle school are located. With this Project, every trip will involve a car.

Item (d) should read "N/A" since there are no articulated plans by the shopping center developers to launch into the business of integrated energy development and management.

24. State Functional Plans – Health (p. 120)

Item 1. Should read “N/S” since the project is not walk-able or bike-able and is a perfect example of 1960s urban sprawl that has made America obese, diabetic and sick. Getting to and from the Project will necessarily entail an automobile trip and not walking and biking. This is exactly what credible planners and health professionals rail against. So to claim that somehow the Project will promote health and disease prevention is absurd in the extreme.

25. State Functional Plan – Historic Preservation (p. 121)

The Ka’ono’ulu area is rich in Hawaiian history, none of which will be evident in the Pi’ilani Promenade shopping center and housing Project. Rather, the petroglyph rock has been removed and some historic sites recorded, all in preparation for cultural eradication on site. There are no facts presented that the shopping center and housing will relate this history to residents and visitors. Accordingly, claims of historic preservation are without foundation and items A – G should read “N/S.”

26. State Functional Plan – Housing (p. 122)

None of this applies because the targets are pegged to the year 2000.

27. State Functional Plans – Tourism (p. 124)

Item 2a should read “N/S” since the Project will present a cookie-cutter, homogenous retail shopping center to tourists. Big Box stores presumably intended to occupy space in the Project will be the same as those on the Mainland, undercutting Hawaii’s brand as a special place/island paradise. Furthermore, to claim that the Project will be sensitive to neighboring communities is an unsupportable fiction since it contravenes the KMCP, zoning and law.

28. State Functional Plans – Transportation (p. 125)

Items 1a, 1f, and 1h should read “N/S” since the Project will increase area traffic, discourage walking and biking, put pedestrians at risk of injury and death on Pi’ilani Highway and make it virtually impossible for people with disabilities to come and go except by car.

29. State Functional Plans – Water Resources Development (p. 126)

Other than building a water tank on a portion of the property, none of the claims made in this section are supportable by the facts presented. The Project is located in a desert and the aquifer below it is uncertain with many other projects looking to it as a source of water. Climate Change is expected to lead to less precipitation in Hawaii, more evaporation, and greater storm events likely to lead to increased risk of flooding. Elimination of a natural gulch on the property, hardening the surface with asphalt and redirecting storm water to a neighboring gulch that has led to

lowland flooding in the past is hardly support for the claims made in this section. Consequently, items a – i should be answered “N/S.”

MAUI COUNTYWIDE POLICY PLAN

1. Improve the Opportunity to Experience the Natural Beauty and Preserve Biodiversity (p. 127)

The best that can be said for the Project is that negative impacts to the natural beauty of the island will be mitigated. To claim that the Big Box shopping center will somehow “improve the opportunity to experience the natural beauty and native biodiversity of the islands” is ridiculous. Item (1) should read “N/S” since the Project will interfere with the view plain from the ocean to Haleakala. Obstruction of the view can be mitigated by trees and landscaping - to hide the Project - but views of Haleakala will not be made more lovely. Again, Dairy Road in Kahului is a good place to see how sprawl affects the natural beauty of Maui.

2. Improve the Quality of Environmentally Sensitive Land (p. 127)

Items a – i should read “N/S” since the Project will eliminate a historic gulch, redirect runoff into a neighboring gulch, cover the natural landscape with hardscape and asphalt and increase the risk of flooding in the area.

3. Improve the Stewardship of the Natural Environment (p. 128)

No facts support any of the claims made. Items a – d in section one and item b in section 2 should read “N/S” since the Project will impair the natural environment by creating an automobile-centric sprawling development that will result in greater use of fossil fuel, contravene explicit state and county sustainability goals and lead to greater global warming. Items e and g should read “N/A” since there are no facts presented that the Applicant will take it upon itself to become an evangelist for the “possible effects of global warming,” a particularly difficult task when one’s pulpit is located atop a Big Box shopping center that violates the community plan that would, if served, achieve fossil fuel use reduction through creation of walk-able, bike-able, and live-able communities in south Maui.

4. Educate Residents and Visitors about Interconnectedness of the Natural Environment and People (p. 130)

Item c should read “N/S” since the Project will increase the use of fossil fuel and impair the environment.

5. Perpetuate the Hawaiian Culture, Lifestyles and Art (p. 131)

All items in these two categories should read “N/S” since the plan is to remove, document and destroy all evidence of Hawaiian existence on the property. Nothing

could be further from the *ahupua'a* concept. No evidence of an earlier Hawaiian culture will remain, unless plastic grass skirts and other trinkets likely made in China are sold on site. Perhaps modern Hawaiian music will resonate throughout the shopping center to create a false sense of place.

6. Improve Education – Develop Safe Walking and Bicycling Programs for School Children (p. 136)

As pointed out before, the Project lacks connective to the greater community and to schools, even the adjacent proposed Kihei High School. Pi'ilani Highway is a high-speed roadway with inadequate and dangerous shoulders that are unsuitable for foot and bike traffic. The location of housing on site makes it impossible for school children to get to school safely except via motor vehicle. No walking or biking program can be successful in this context. The answer to item a. is therefore "N/S."

7. Strengthen the Local Economy – Promote a Diversified Economic Base (p. 138)

The Project is essentially a Big Box shopping center with some housing. Retail sales jobs already exist on island. The Project will not lead to any diversification of the job market and will instead produce more low paying retail sales and stocking jobs. Clearly all jobs can be rewarding in one way or another, but to cast the Project as a champion of diversification, economic vitality, and supportive of entrepreneurship is absurd. This is particularly the case when Big Box stores and other national retailers will export revenue derived from the site to home offices located on the mainland or elsewhere. This economic model actually works to impoverish communities and is a factor in the diminishment of America's middle class.

None of the state's economic goals will be achieved by the addition of this sprawling, mainland owned and developed, 1960s-style shopping complex. All items in this category should read "N/S."

8. Improve Parks and Public Facilities (p. 140)

All items in this section should be answered "N/S" because the Project degrades the community's opportunity to create a walk-able and bike-able means of mobility given its isolation and singular connection to the larger community by way of a high speed highway. This does not promote physical fitness; in fact it works against it just as studies have shown. And, because the project is not a part of the larger Kihei community and can only be accessed safely by automobile, there will be diminished opportunity for social interaction and overall community health. Consequently, all items in this section should read "N/S."

9. Diversify Transportation Options – Environmentally Sustainable Transportation Systems; Reduce Reliance on the Automobile (p. 142)

The Project does just the opposite of this goal, in contravention of the KMCP and good planning principles. Items a – d under Policies and a and b under Implementing Actions should read “N/S.”

12. Promote Sustainable Land Use and Growth Management (p. 151)

Because the Project violates the LUC’s 1995 order, the KMCP and zoning and because Applicant has failed and refused to pursue amendment of the KMCP and zoning appropriate for the Project, it is a poster child for unmanaged, unsustainable and ineffective land use practices. For this reason, the following items should read “N/S”: section (1) b, e, h and i; section (2) e, g, h, and i; (4) a, b, and d – g.

13. Strive for Good Governance (p. 153)

The Project fails the good governance test given the Applicant’s violation of the 1995 LUC order, noncompliance with the KMCP and zoning, and Maui County Charter and Code provisions for amendment of community plans, not to mention judicial precedent binding the County with respect to enforceability of the KMCP. The pathway taken by the developers (and the County) here has been outside the bounds of the state planning scheme and good government. The developers’ behavior, and that of the County of Maui, has undermined confidence in the integrity and fairness of government, a prime example of cronyism at the expense of the people. Items (1) – (5) should read “N/S.”

MAUI ISLAND PLAN

1. Economic Development - Achieve a More Diversified Economy (p. 155)

In this day and age, an environmentally sustainable transportation system is one that is multi-modal. That is why the public policy of this state and the county is to develop "Complete Streets" and communities that are walk-able and bike-able. The Project is at odds with this strategic goal given its location, automobile-centric character and the destructive effect it is likely to have on the community plan that is designed to aggregate commercial activities in four locations *makai* of the highway in and near existing neighborhoods. Consequently, all items in this section should read "N/S."

10. Promote Energy Self-Sufficiency (p.144)

Automobile-centric, sprawling shopping centers increase the use of fossil fuels and there make it more difficult for Hawaii to achieve energy self-sufficiency. Consequently, items (3) a, j, k, and m should read "N/S." Items (3) d, f, h and i should read "N/A."

11. Direct Growth Toward Existing Infrastructure (p. 149)

Retail jobs arising from the Project will not produce a more diversified economy. All items in this section should read "N/S."

2. Economic development – Support Principles of Sustainability (p. 156)

Retail jobs arising from this automobile-centric, disconnected development are the antithesis of sustainability. All items in this section should read "N/S."

3. Economic Development – Emerging Sectors (p. 157)

Nothing in the Project will support high technology, green practices or new industries. Yes, the buildings constituting the physical structure of this automobile-centric, sprawling, unpermitted project may have some alternative energy components, but that is a far cry from the objectives outlined here that are overcome by the negatives posed to the environment and economy by the Project itself. Items 4.4.1.b and 4.4.1.c should read "N/S."

4. Urban Land Use Issues – Human Scale and Infill (p. 159)

The Objective seeking a "compact, efficient, human-scale urban development pattern" will not be served by this huge, sprawling, automobile-centric, unpermitted Big Box shopping center that will dwarf human scale, deny infill and undermine the community's desire to concentrate commercial activity in four distinct commercial zones identified in the KMCP. This item should read "N/S."

The Policies seeking infill will likely be defeated by the Project. Items 7.3.1a and 7.3.1c, 7.3.1g, and 7.3.1i should read "N/S." Item 7.3.1g should read "N/A" since the Project has nothing to do with agriculture.

5. Urban Land Use Issues – Self-Sufficient and Sustainable Communities (p. 160)

See the discussion and definition of sprawl in the opening remarks above. The Project is classic urban sprawl. Items 7.3.2 - 7.3.2f should read "N/S."

6. Urban Land Use Issues – Sense of Place (p. 162)

Big Box shopping centers create the opposite of a "sense of place." They are cookie-cutter retail establishments composed of uninspiring, boxy "architecture," and lacking in any connection to Hawaii, or anywhere else for that matter. Item 7.3.3 entitled "Strengthen the island's sense of place" should read "N/S."

7. Urban Land Use Issues – Transparency (p. 163)

The way the Project has been managed to date is the *opposite* of transparency. First, in 2005 new owners began to take development of the 88-acre parcel away from light industrial use and toward what the community accurately dubbed a

“Mega Mall” complex (when it finally found out years later through a front page article in the Maui News) beyond the scale of anything like it in south Maui. The developers hid this fact from the LUC, the County and the public by failing to file four mandatory, successive annual reports. When the next two reports were filed, the owners asserted that the Project would comply with the 1995 order when nothing could be further from the truth, as evidenced by the finding by the LUC that the developers failed to develop the 88-acre parcel as represented, among other violations. Simultaneously, the County of Maui failed and refused to enforce the LUC’s 1995 Order as required by law. To call this transparency is akin to calling day night.

Items 7.3.5, and subsections a - d should read “N/S.”

KIHEI-MAKENA COMMUNITY PLAN

1. Land Use - Objectives and Policies (p. 165)

Items b, f - i and k should read “N/S” since the Project defies these explicit provisions of the KMCP. Items d, e, l and p should read “N/A” since they have no bearing.

2. Land Use - Implementing Actions (p. 167)

Item b is explicitly violated by this project and should read “N/S” unless the LUC conditions approval of the DEIS upon construction a new elementary school in north Kihei as indicated on page 12 of the KMCP: “[T]here is a need for a third elementary school, and a high school, which would serve the Kihei-Makena region;” and at page 17: “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.” The high school is soon to be a reality, but a new elementary school isn’t on the horizon, even as multiple housing projects are approved or under development in north Kihei (A&B 650 units; Honua’ula 250; Pi’ilani Promenade 200+, etc.).

Other items in this section are claimed to be supported by the Project when there is, in fact, no nexus, such as items e, f, h, and c. These should read “N/A.”

3. Cultural Resources (p. 172)

All items listed under “Goal” and “Objectives and Policies” should read “N/S” since the plan of action is to record and eradicate all evidence of the pre-existence of the Hawaiian culture on site.

Item a under “implementing Actions” should read “N/A” since the Applicant presents no facts to support a claim that it will prepare a Kihei Makena specific cultural resources management plan.

4. Economic Activity (p. 176)

By ignoring the KMCP and proposing to develop a huge regional shopping center complex in scrub land on the *makai* side of the Pi'ilani Highway, the Project defies planned growth and the state planning scheme. Accordingly, items a and f should read "N/S." items b and d should read "N/A" since the Project will not undertake or touch either of these goals.

5. Physical and Social Infrastructure (p. 180)

Items a - d and g should read "N/S" since the Project contravenes the KMCP. Furthermore, the Project is automobile-centric and not suitably accessed by walking or bicycle, and it would not be safe for children living in the shopping center to walk or bike to any of the schools in the region. Items b, f and i should read "N/A" since none of these things, for which the Applicant claims credit, bear any relationship to the Project.

6. Energy and Public Utilities (p. 186)

Item b should read "N/S" since the Project is at odds with the KMCP that calls for co-location of commercial and retail services in close proximity to residential centers.

7. Education (p. 193)

See the discussion of educational facility needs and concerns above. The DEIS gives no consideration to the need for a third elementary school in north Kihei. The existing schools have some incremental capacity, but they are located far away from and *makai* of the 88-acre site.

School needs cannot be assessed in a vacuum. While the DEIS contains an estimate of expected student growth from the Project itself, it does not take into account the cumulative effect of all the housing projects moving forward in north Kihei. For these reasons, item c should read "N/S."

8. Government - Planning Standards (p. 193)

This section is worth quoting because it gets to the core of one of the key issues here: **"All zoning applications and/or proposed land uses and developments shall be consistent with the Land Use Map and Objectives and Policies of the Kihei-Makena Community Plan."** Incredibly, the Applicant asserts that the Project supports this standard. It is the opposite. This item a should read "N/S."

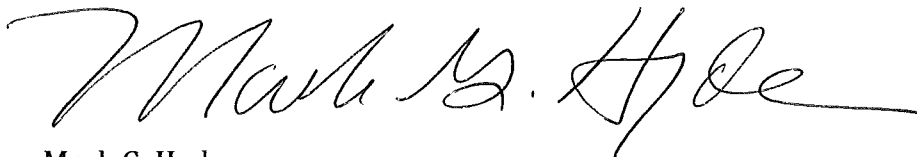
COUNTY ZONING

The DEIS fails to mention and discuss the meaning and significance of Maui County Code section 19.24.010 that defines M-1 light industrial zones, which states, in pertinent part, "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.**" Other uses are permitted within M-1 zones, but the plain meaning of the definition is that light industrial zones are to be comprised mostly of customary light industrial uses.

The word "mostly" is commonly defined as "to the greatest extent." Here the Project is mostly retail and commercial and only insignificantly light industrial, if light industrial at all. In a presentation to the Kihei Community Association approximately 1.5 years ago, representatives of the developer indicated the possibility that no light industrial uses may be developed on site, depending on demand, raising the specter that no light industrial uses will be developed on the parcel owned by Pi'ilani Promenade North, while there are *no* contemplated light industrial uses planned for the parcel owned by Pi'ilani Promenade South since it is entirely intended for retail use (and therefore should be zoned for business and commercial use).

The proposed development is inconsistent with M-1 zoning requirements, nomenclature and logic. The concept defeats the purpose of zoning, which is to regulate, direct and control growth. Applicant would have the LUC believe that M-1 zoning is a free pass with little, or even no nexus to light industrial use of land. We have seen the results of this kind of free-for-all development on Maui: Dairy Road in Kahului, is a good example of a thoroughfare that contains many light industrial zoned parcels with little or no light industrial use, filled with various retail uses, and now the subject of a costly bypass road from the airport to Mokulele Highway since Dairy Road is both an eyesore and is commonly snarled with traffic.

Respectfully submitted,

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

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