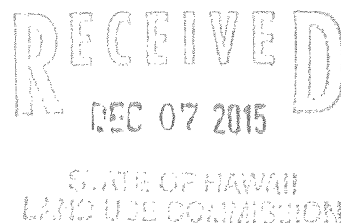


CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM



DIRECT DIAL NO.
808.523.2557

JLIM@CARLSMITH.COM

OUR REFERENCE NO.:
063792-1

December 7, 2015

VIA HAND DELIVERY

Daniel Orodener
Executive Office
Land Use Commission
State Office Tower
Leiopapa A Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Edmund Aczon, Chair
and Members of the Commission
Land Use Commission
State Office Tower
Leiopapa A Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Re: Olowalu Town LLC and Olowalu Ekolu LLC's Response to County of Maui,
Department of Planning Comments dated November 24, 2015 regarding
Proposed Olowalu Town Master Plan, LUC Docket No. A10-786

Dear Chair Aczon, Executive Officer Orodener and Members of the Commission:

As you know, we represent Olowalu Town LLC and Olowalu Ekolu LLC (collectively "**Applicant**"). On behalf of Applicant, we submit this response to the County of Maui, Department of Planning's ("**Department**") comments in its letter dated November 24, 2015, which letter was received by our client on December 3, 2015, and apparently received by the Land Use Commission and the Office of Planning on the same day, based upon the time/date stamp on the letter.

Although the Department was provided a copy of Applicant's Final Environmental Impact Statement ("**EIS**") for review as early as October 12, 2015, the Department waited until after the Commission's November 18-19, 2015 meetings on the EIS to provide its limited comments. This letter is to address the Department's comments, which note a concern about the scope of the traffic impact analysis report ("**TIAR**") in the EIS, and professes confusion over the number of residential units assessed for the Olowalu Town Master Plan ("**OTMP**") under the EIS. Applicant reserves all rights to further address the Department's comments through the

presentations to be made by Applicant's witnesses as the Commission meeting on December 7, 2015.

I. **Applicant's Responses to the Department's Comments.**

A. **Department Comment #1**

The Applicant's response to the Planning Department's Comment No. 25 is insufficient. The Department specifically commented by letter dated April 17, 2012 that, "Impacts and mitigation for traffic impacts to Honoapi'ilani Highway, between Ma'alaea and Puamana should be evaluated." The Applicant's response, dated October 26, 2015, states "with the agreement of HDOT, the traffic study was limited to the length of the highway from roughly the Olowalu Recycling and Refuse Convenience Center to approximately mile marker 14 or so."

The area of study specified by HDOT only comprises a distance of approximately three (3) to four (4) miles in the project vicinity. While that may be adequate for HDOT's purposes, it is not adequate for the Department. The area of study specified by the Department is approximately twelve (12) miles, and comprises the length of one of the most heavily congested roads on Maui.

The County is especially concerned about a stretch of highway between Ma'alaea and Ukumehame otherwise known as the "Pali." While we note that Honoapi'ilani Highway is proposed to be realigned and widened in increments at some unspecified time in the future, no improvements are proposed for the Pali. The TIAR assigns forty percent (40%) of the outbound trips toward Ma'alaea, but there appears to be no analysis for this stretch of road.

Applicant's Response.

Honoapi'ilani Highway is a State highway, under the jurisdiction and ownership of the State of Hawai'i Department of Transportation ("**DOT**"), not the County of Maui Planning Department. See EIS Vol. I, p. 221. While the County may coordinate on traffic issues, particularly at the point of subdivision approval or when construction plans are under review, the County has no such special authority at the EIS stage. Additionally, Applicant respectfully notes that the authority to approve roadway plans lies with the County Department of Public Works ("**DPW**"), and not with the Planning Department. Should Applicant obtain the several land use entitlements necessary to develop OTMP, DPW will unquestionably be consulted on relevant traffic issues. This is clearly stated in the EIS, which provides:

Although a Final Traffic Impact Analysis Report (TIAR) (Appendix "P-1") was prepared, as the project progresses through the land use entitlement and permitting processes, more defined project plans will be developed. As more specific details are developed, additional TIARs will be prepared and additional traffic improvements may be required by the HDOT and Department of Public Works (DPW). These improvements will be implemented in coordination with HDOT and DPW.

EIS Vol. 1, p. 398.

Applicant notes that DPW did not provide any comments on the Draft EIS. *See* EIS Vol. II. DPW's July 20, 2010, comments on the EIS Preparation Notice were limited to noting the following: (1) that Applicant will be responsible for all required improvements as required state statute, rule, or the Maui County Code; (2) that, as applicable, construction plans shall be designed in conformance with Hawaii Standard Specifications for Road and Bridge Construction dated 2005 and Standard Details for Public Works Construction, 1984, as amended; and (3) that, as applicable, worksite traffic-control plans/devices conform to the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003. *See* DPW letter, EIS Vol. I, Part X.

With respect to the EISPN, the County Department of Transportation merely asked that the OTMP incorporate a bus stop and shelter into the development, with the location to be determined later. *See* EIS Vol. I, Part X (July 12, 2010 comment letter from County Department of Transportation).

Applicant acknowledges that within the Planning Department's 9-page comment letter on the Draft EIS, the Department requested an expanded scope of the preliminary TIAR that was included in the Draft EIS. However, Hawai'i Revised Statutes ("**HRS**") Chapter 343 and Hawai'i Administrative Rules ("**HAR**") Title 11, Chapter 200 ("**EIS Rules**") do not require an EIS preparer to jump through every hoop mentioned in a comment letter. Comment letters are not mandates. The Department's contention that Applicant's response to the Department's April 17, 2012 is insufficient is without merit.

Applicant provided a substantive response to the Department's comment letter, as

required under the EIS Rules. *See* HAR § 11-200-18(4) (Content Requirements; Final EIS “The final EIS shall consist of: . . . The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation process.”). Applicant’s response to the Department, as required by law, included (1) a point-by-point discussion of the validity, significance, and relevance of comments; and (2) a discussion as to how each comment was evaluated and considered in planning the proposed action. HAR § 11-200-22(c). Further, Applicant’s response satisfies the standard under HAR § 11-200-22(c), which dictates that a response letter shall:

endeavor to resolve conflicts, inconsistencies, or concerns. . . . In particular, the issues raised when the applicant's or proposing agency's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

Id.

Applicant's response to the Department's Comment No. 25 undoubtedly follows the requirements of HAR § 11-200-22(c). As explained in Applicant's October 26, 2015 response, the scope of Applicant's TIAR and was decided upon agreement with DOT, the agency that owns, and has jurisdiction over, Honoapi'ilani Highway. The fact that Applicant did not adopt the Department's recommendations does not render such response insufficient under HAR § 11-200-22(c). *See Price v. Obayashi Hawaii Corp.*, 81 Hawai'i 171, 181, 914 P.2d 1364, 1375 (1996) (holding an EIS adequate despite challenge of inadequacy due to conflicting expert opinions). The rationale for not following the Department’s comments is explained in the response letter, as required under HAR § 11-200-22(c).

Furthermore, Applicant's TIAR was prepared in accordance with the Institute of Transportation Engineers ("ITE") guidelines, which is a standard accepted by the DOT. The scope of the TIAR for OTMP was established and coordinated with DOT according to ITE standards. If DOT had requested a larger scope of work for the TIAR, Applicant would have likely complied with such a request.

B. Department Comment #2

Project documents have historically stated that Olowalu Town will contain 1,500 units with a breakdown of approximately 900 single-family and 600 multi-family units. The Draft FEIS discusses the various types of dwelling units envisioned in the project and lists the option for accessory dwellings in the Agricultural Home, Rural Home, Large Town Lot Home, Medium Town Lot Home, Small Town Home, and Sideward House lots. The Department would like clarification as to whether the 1,500-unit count presented to the public, various Boards and Commissions, the Maui County Council, and contained in documents regarding the project include the potential accessory dwellings. If it does not, the Department also seeks clarification as to whether the Draft FEIS and all the included reports and studies account for the total potential amount of units within the project.

Applicant's Response.

As noted in numerous places in the EIS, a total of 1,500 dwelling units are proposed for OTMP. *See, e.g.*, the Master Plan Land Use Allocation Summary, EIS Table 2, p. 25 (explaining that the Table lists “[a] range of housing units given in each category not to exceed a total of 1,500 units.”); Preliminary Engineering Report, EIS App. C (“At final build-out, OT will consists [*sic*] of approximately 1,500 residential dwelling units[.]”); Olowalu Town Stormwater Quality Enhancements, EIS App. C-2 (“At final build-out, OT will consists [*sic*] of approximately 1,500 residential dwelling units[.]”); Impact on Water Resources of the Olowalu Town Project, EIS App. D (“At full build-out, the community would consist of up to 1500 residential units and related commercial, public, park, and open space land uses.”); TIAR, EIS App. P-1 (“At final build-out, Olowalu Town will consists [*sic*] of approximately 1,500 residential dwelling units[.]”).

The EIS assessed the impacts of OTMP containing 1,500 dwelling units. If both a primary and accessory dwelling unit are constructed on a parcel, that parcel would be deemed to have two dwelling units.

Edmund Aczon, Chair
Members of the Commission
Executive Officer Orodener
December 7, 2015
Page 6

II. Conclusion

We respectfully submit this response with hopes that it facilitates the Commission's review of the EIS for the Olowalu Town Master Plan.

Sincerely,



Jennifer A. Lim
Craig G. Nakamura
Onaona P. Thoene

JAB1/jah

cc: Leo R. Asuncion, Jr., Office of Planning
Bryan C. Yee, Esq., Deputy Attorney General
William Spence, Director, Maui County Planning Department
Patrick Wong, Esq./Michael Hopper, Esq., Department of Corporation Counsel,
Maui County