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MAUI OCEANVIEW LP

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

IN THE MATTER OF THE PETITION OF

MAUI LAND & PINEAPPLE COMPANY,
INC., a Hawaii corporation,

TO AMEND THE AGRICULTURAL
DISTRICT BOUNDARY INTO THE
URBAN LAND USE DISTRICT FOR
APPROXIMATELY 310.440 ACRES OF
LAND AT MAHINAHINA AND KAHANA,
DISTRICT OF LAHAINA, MAUI, HAWAII,
TAX MAP KEY NO. 4-3-01; POR. 31 AND
79

DOCKET NO. A04-751

MOTION OF PETITIONER MAUI
OCEANVIEW LP TO AMEND DECISION
AND ORDER ; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATION
OF PAUL CHENG; EXHIBITS A- F;
DECLARATION OF GILBERT S.C. KEITH-
AGARAN; EXHIBIT G; CERTIFICATE OF
SERVICE

**MOTION OF PETITIONER MAUI OCEANVIEW LP
TO AMEND DECISION AND ORDER**

MAUI OCEANVIEW LP, Successor Petitioner (“Petitioner”) to Maui Land & Pineapple Company, Inc. in the above-captioned docket, by and through its attorneys, moves the LAND USE COMMISSION of the State of Hawaii (the “Commission”) to amend the decision and order of June 22, 2006 (“2006 D&O”) to allow Petitioner the option to develop an rentals in compliance with the current Maui County Workforce Housing Policy requirements, and to reflect

Petitioner's proposed design of the Pulelehua Project. Petitioner also requests that the Commission amend the D&O to reflect that Pulelehua will comply with the current County of Maui Workforce Housing requirements by constructing a minimum of 180 affordable units. Accordingly, Petitioner requests that the 2006 D&O, p. 71 ¶1(b) be amended to state:

In addition, Petitioner shall develop and offer for sale or rent 180 ~~[325]~~ units for low, low-moderate, moderate and above-moderate income residents of Maui as a feature of Pulelehua.

Petitioner further requests that the Commission note that Maui Oceanview LP may seek a zoning amendment to convert the contemplated Accessory Units into the total density that Petitioner is allowed to construct for West Maui Project District 5 (Pulelehua), Maui County Code chapter 19.93. Maui Oceanview LP also asks that the Commission clarify whether the condition of offering 125 affordable housing units for rent imposed on MLP as compliance with LUC Docket No. A03-741 (MLP's Kapalua Mauka project) applies to the developer of Pulelehua.

Finally, Petitioner requests that the Commission acknowledge the revised Pulelehua design and site plan which incorporates the same number of units approved and the same amount of retail square feet allowed, but which provides more open space in its design and layout.

Petitioner files this motion pursuant to Hawaii Administrative Rules §§15-15-70, 15-15-94 and D&O, p. 81 ¶30¹, and is supported by the attached Memorandum in Support of Motion, Declaration of Paul Cheng, Exhibits A- G, Declaration of counsel, and the files and records in this Docket No.A04-751.

¹ 2006 D&O, ¶30 provides:

Release of Conditions Imposed by the Commission. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

DATED: Wailuku, Maui, Hawaii, 20 November 2017.



GILBERT S.C. KEITH-AGARAN
DAVID M. JORGENSEN

Attorneys for Petitioner MAUI OCEANVIEW LP

MEMORANDUM IN SUPPORT OF MOTION

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DOCKET NO. A04-751

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MEMORANDUM IN SUPPORT OF MOTION

MAUI OCEANVIEW LP, Successor Petitioner to Maui Land & Pineapple Company, Inc. ("MLP") in the above-captioned docket, by and through its attorneys, moves the LAND USE COMMISSION of the State of Hawaii (the "Commission" or "LUC") to amend the decision and order of June 22, 2006 ("2006 D&O") to allow MAUI OCEANVIEW LP the option to develop rentals and to reflect that Pulelehua will comply with the current County of Maui Workforce Housing Policy requirements in developing a minimum of 180 affordable units across four income categories of low, low-moderate, moderate and above-moderate incomes. Specifically, Petitioner requests that the 2006 D&O, p. 71 ¶1(b) be amended to state:

In addition, Petitioner shall develop and offer for sale or rent 180 [325] units for low, low-moderate, moderate and above moderate income residents of Maui as a feature of Pulelehua.

Petitioner further requests that the Commission note Maui Oceanview LP may seek a zoning amendment to convert the contemplated 318 Accessory Units into the total density that Petitioner can construct at the West Maui Project District 5 (Pulelehua), Maui County Code chapter 19.93. Maui Oceanview LP also asks that the Commission clarify whether the condition of offering 125 affordable housing units for rent imposed on MLP to comply with requirements in LUC Docket No. A03-741 (MLP's Kapalua Mauka project) applies to Maui Oceanview LP and further, whether those 125 affordable housing units for rent will be in addition to the 180 units required under Maui County's current Workforce Housing Policy ordinance.

Finally, Petitioner requests that the Commission acknowledge the revised Pulelehua design layout and site plan which incorporates the same number of units approved and the same amount of retail square feet allowed, but which provides more open space in a one story design, resident friendly and view friendly layout.

1.0 PULELEHUAPROJECT OVERVIEW

Pulelehua is a 304-acre² masterplan entitled residential and mixed use Project District development in West Maui. Maui County has codified Project District Zoning for Pulelehua in Maui County Code Chapter 19.93. Situated between Kaanapali and Napili, Maui Oceanview LP has designed Pulelehua is a community accommodating workforce housing³ and

² The entire West Maui Project District 5 (Pulelehua) includes 310 acres. The County of Maui, through its Department of Public Works, authorized including its approximately 6 acre lot to be included in the Petition Area. See 2006 D&O, ¶¶18-19.

³ The Maui County Code defines "residential workforce housing" as follows:

"Residential workforce housing unit" means a unit or lot to be sold or rented to residents within one of the following income groups as established by the department:

1. "Very low income," which are those households whose gross annual family income is fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

regular housing along with a school and retail located within a walkable community. Maui Oceanview LP envisions Pulelehua for workforce and long term market rate rental and fee simple housing. Pulelehua Phase 1 will be the first modern eco-friendly long term rental project to come online in West Maui. Located on the mauka side of the Honoapiilani Highway just downhill from the Kapalua-West Maui Airport, Pulelehua will feature one story only residential buildings constructed along the existing contours of the property. Pulelehua includes a 10-acre multi-sport County regional park, a walking trail throughout the project area and over 100 acres of open space. See Site and Phasing Plan [Exhibit A] and Phase 1 Site Plan [Exhibit B].

1.01 MAUI OCEANVIEW MAINTAINS PULELEHUA EXISTING DENSITY

Both the 2006 D&O and Maui County Code chapter 19.93 contemplate Pulelehua with an entitled density of 1,200 total residential units with approximately 900 units planned for development directly by Maui Oceanview LP currently.⁴ Maui Oceanview LP proposes an initial 240 unit all rental Phase 1 with 60 workforce housing units and the remaining 180 units offered as

2. "Low income," which are those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

3. "Below-moderate income," which are those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

4. "Moderate income," which are those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

5. "Above-moderate income," which are those households whose gross annual family income is more than one hundred twenty percent, but not more than one hundred forty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

Maui County Code §2.96.020.

⁴ The 2006 D&O noted ML&P planned to develop approximately 882 units with the possibility of 318 Accessory Units (or Ohanas) as potential units to be developed by buyers of single family house lots. 2006 D&O, ¶¶34-37. The Maui County Zoning Ordinance for Pulelehua provides: "Density. No more than one thousand two hundred dwellings or dwelling units, including accessory dwellings, shall be developed in the Pulelehua project district." Maui County Code §19.93.50(1). The Hawaii Revised Statutes chapter 343 studies incorporated into the Environmental Impact Statement for Pulelehua analyzed conditions based on 1200 total units.

long term market rate rentals. See Phase 1 Site Plan [Exhibit B]. The 60 Workforce Housing units will be developed and rented out pursuant to a Workforce Housing Agreement with the Maui County Department of Housing and Human Concerns⁵

Maui Oceanview LP is in discussions with the County of Maui regarding incorporating the 300+ allowed Accessory Units within Pulelehua's basic residential unit density given the available space in the updated Pulelehua layout and the use of multi-family and single family buildings.

1.02 MAUI OCEANVIEW LP PROPOSES RENTAL HOUSING DEVELOPMENT

While there is discussion of rental units in the Findings of Fact, the 2006 D&O, at p. 71 ¶1(b), appears to only allow "sale" of residential units across three income categories:

In addition, Petitioner shall develop and offer for sale 325 units for low, low-moderate, and moderate income residents of Maui as a feature of Pulelehua.

Maui Oceanview LP intends to develop predominantly rental units designed for the working residents of West Maui. Paul Cheng Declaration ("Cheng Decl."), ¶4. Maui Oceanview LP will comply with current Workforce Housing Policy requirements of the County of Maui. Cheng Decl., ¶12. Maui County Code §2.96.40 provides:

Developers shall be required to provide a number of residential workforce housing units equivalent to at least twenty-five percent, rounding up to the nearest whole number, of the total number of market rate lots, lodging units, time share units, or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code, created.

⁵ The Workforce Housing Agreement will implement the requirement in 2006 D&O, p. 72 ¶1(c) which provides:
To ensure continued owner occupancy, rental, and resale to qualified low and moderate income residents and maintain the affordable housing inventory within Pulelehua, Petitioner shall prior to the rental or sale of any affordable housing unit establish County-approved restrictions governing the rental, sale, or transfer of all affordable housing units.

The current Maui County Workforce Housing Policy ordinance also expands the income categories to include above-moderate income within the Workforce Housing definition. See Maui County Code §2.96.020. As required by Maui County Code §2.96.80, Maui Oceanview LP is negotiating with the Maui Department of Housing and Human Concerns (DHHC) a Housing Agreement to memorialize the commitment to provide 180 residential workforce housing units at Pulelehua over the income categories of low income, below moderate, moderate and above-moderate. Cheng Decl., ¶12. In compliance with the Workforce Housing Policy ordinance, the Housing Agreement will include:

1. Sales or rental periods for the residential workforce housing units, which specify procedures for the release of units from the residential workforce housing requirements should units not be sold or rented following the expiration of the sales or rental periods;
2. Identification of the number, type, and location of units;
3. Designation of units for specific income and/or special housing target groups;
4. Marketing process for the residential workforce housing units;
5. Eligibility of income-qualified households;
6. Provision for residential workforce housing credits, as applicable;
7. Payment of in-lieu fees or provision of in-lieu land; and
8. Resale restrictions, which may include buy-back provisions, shared equity, and encumbrances.

Maui County Code §2.96.80(A).

1.03 MAUI OCEANVIEW LP PLANS ECOLOGICALLY FRIENDLIER DEVELOPMENT AND SITE PLAN DESIGN

Maui Oceanview LP proposes a design and layout for Pulelehua that is ecologically friendly. Pulelehua's buildings and roads will be cut into the hills on the property thus leaving a small sight footprint. Each building will have 6 to 12 residential units that has direct access parking and walkable sidewalks. See Phase 1 Site Plan [Exhibit B]. Individual units will feature energy efficient features from energy efficient appliances to E Glass for energy savings.

Unlike MLP's 2005 conceptual design, Maui Oceanview LP's proposed Pulelehua layout will incorporate more open space. Buildings will be constructed in tiers along the hillside creating the least amount of visual change and the multi-family buildings will blend into the hillside as each building will be limited to one story. Between each tier of buildings will be a landscaped bank separating each tier down below so that each resident will maintain ocean views. Compare 2006 D&O, p.11 ¶31.

The design of each building is done in native color friendly themes with each unit having 10' ceilings and some having above ceiling additional storage areas. Each unit will have individually controlled air conditioning. Some of the units will be handicap accessible and most if not all the units will be at grade from resident parking making it wheelchair friendly.

Even though the site is on a steep 7%+ grade, each of the roads is designed to be fairly level giving residents much easier ingress egress to their own units. The roads will be perpendicular to the slopes of Pulelehua which will create minimum slope. The rear half of each residential building will be on higher ground than the front half which will also maintain view corridors for each resident.

Pulelehua will offer a private wastewater treatment facility that will generate only R-1 water which will be used for onsite landscaping needs. No injection wells will be drilled for disposal of treated wastewater. There will also be a private water treatment plant that will be serving the majority if not all of Pulelehua's ultimate potable water needs from the MLP ditch system. Fireflow water will also come from the MLP ditch system. Additionally, Pulelehua is likely to feature solar power for some of its needs either on rooftops or on new ground based solar facilities.

Throughout the Project Area, Pulelehua will include a continuous hike and bike trail that will ultimately connect to a new 10-acre multi-sport County regional park and a future elementary school. The park will allow play for baseball, soccer and football and other sports, with bathrooms and parking. Additionally, Maui Oceanview LP's Pulelehua layout will likely allow room for private park facilities and other neighborhood services and or recreational facilities that are in early planning stages.

All of the residential buildings will be built outside the Kapalua-West Maui Airport noise zone. The airport is not set up for nighttime flying and closes at sundown daily.

The gross density will remain a minimum of the 882 units discussed by MLP in 2005 but no more than 1,200 spread between development Phases. However, Maui Oceanview LP contemplates primarily long term rentals. In some cases may sell a portion of the residential units when built--Maui Oceanview LP may develop larger edge lots and single family lots for sale only and/or built with a house and `ohana on the lot and sold. No less than 25% of the total of market residential units built in Pulelehua (approximately 180 of the 882 units) shall be for rent under the County of Maui Workforce Housing Policy requirements. The balance would be used as market rentals. Compare 2006 D&O pp. 12-13 ¶¶35-36.

The current owner of the project, Maui Oceanview LP, is requesting that the Commission amend the 2006 D&O to reflect the present plans – that units will be offered for rental as well as possible sales and that the affordable housing requirements reflect the present County of Maui Workforce Housing Policy ordinance (Maui County Code chapter 2.96) and the

Workforce Housing Agreement between the owner and the County of Maui.⁶ Maui Oceanview LP also requests the Commission approve allowing Pulelehua to develop the total density of 1200 residential units, provided that Petitioner obtains a zoning change from the County of Maui to allow use of the proposed 318 Accessory Units within the total approved density for multi-family units. Compare 2006 D&O p. 14 ¶37. Maui Oceanview LP also asks that the Commission clarify whether the condition of offering 125 affordable housing units for rent imposed on MLP in connection with LUC Docket No. A03-741 (MLP's Kapalua Mauka project) applies to the successor owner of Pulelehua, and whether those 125 units can be included within the 180 Workforce Housing units required by Maui County. 2006 D&O, p. 71 ¶1(a).

2.0 PROCEDURAL HISTORY

MLP initially proposed and owned Pulelehua and obtained a boundary amendment in 2006 from the LUC. 2006 D&O, ¶¶1-32. MLP also successfully had the project area zoned by the County of Maui as West Maui Project District 5 (Pulelehua). Maui County Code, chapter 19.93. A Final Environmental Impact Statement was prepared by MLP for Pulelehua in August 2005. However, MLP commenced no in the ground development work on the property since obtaining the land use boundary change and County zoning approvals.⁷ MLP has worked over the years with the Hawaii Department of Education and other agencies on various issues related to the future development of the property.

⁶ The 2006 D&O describes the requirement of 325 affordable units. 2006 D&O, p. 71 ¶1(b). The current Maui County Code requirement is 25% of the market units, or 176 of the total 882 units planned for development (or 180 of the total 720 market units allowed for development).

⁷ Maui Oceanview LP understands that Pulelehua has not been in cultivation since approval of the original D&O in 2006. Cheng Decl., ¶4.

3.0 MAUI OCEANVIEW LP'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

In June of 2016, MLP conveyed the property to Maui Oceanview LP, an entity affiliated with USA Infrastructure Investments, LP, ("USAI") a Paul Cheng family owned development company out of Texas that has investments on Maui already. USAI and its affiliated entities have extensive development expertise in multi-family, retail and also affordable multi-family housing. Declaration of Paul Cheng (Cheng Decl.), ¶3. USAI and its affiliates have won awards in several master-planned community developments in Texas as well an award for affordable senior multi-family housing in Forney, Texas in which they won \$500,000 from the Federal Home Loan Bank Board for being one of two best affordable national senior multi-family development in the nation for 2013. Cheng Decl., ¶3.

Petitioner intends to start construction of Phase 1 of Pulelehua as soon as all approvals are obtained from the County of Maui, including Project District Phase 2 approval and approval of construction and site plans. Cheng Decl., ¶14. Assuming the LUC grants this motion and County construction plan approvals are received, Petitioner projects construction to begin in late-Spring 2018 and the first units becoming available in early-2019. Cheng Decl., ¶15. Petitioner intends to develop Pulelehua in continuous manner until all permitted improvements are complete over the course of ten years. Cheng Decl., ¶16.

The costs to develop the entire Pulelehua community are preliminary and will be better defined during the detailed engineering and design phase. Cheng Decl., ¶17. The order of magnitude of costs for the development of onsite utility infrastructure is \$15Million to 20Million for the wastewater package treatment plant and potable water treatment plant. Cheng Decl., ¶17. Petitioner has budgeted site work at \$400,000 to \$600,000 per acre. Cheng Decl., ¶17. Each phase

of the residential unit development is budgeted at \$50Million with retail development budgeted for \$30Million. Cheng Decl., ¶17.

Petitioner believes it has ample committed resources to proceed with development of Pulelehua as presented in this motion. Cheng Decl., ¶¶17-19.

Maui Oceanview LP is a joint venture between USA Infrastructure Investments, LP, a privately held developer, and ANICO Eagle LLC, an affiliate of a large publicly held insurance company based in Texas with assets of over \$20Billion and serving customers for over 100 years. Cheng Decl., ¶18. USA Infrastructure Investments, LP has ongoing real estate ventures with the insurance partner of over \$100Million. Funding for development of Pulelehua has been approved by both partners and is ready to go subject to necessary local and state approvals. Cheng Decl., ¶18. USA Infrastructure Investments, LP has ongoing consolidated commercial real estate assets of over \$100Million and active development of over \$50Million. Cheng Decl., ¶19.

4.0 MAUI'S NEED FOR THE PROPOSED DEVELOPMENT: SOCIO-ECONOMIC IMPACTS

As entitled, Pulelehua can accommodate about 900 units of residential units and up to 300 more Accessory Units, or residential Ohanas⁸, 95,000 SF of Neighborhood Retail, and other allowable uses within the Planned District zoning approved. Maui County Code, chapter 19.93.

4.01 AFFORDABLE HOUSING MARKET CONDITIONS IN MAUI

Maui Oceanview, LP proposes to address the needs of low income, below moderate income, moderate income and above moderate income and gap income

⁸ West Maui Project District 5 (Pulelehua) limits total density to 1,200 units in total. Maui County Code § 19.93.050(1) provides: "Density. No more than one thousand two hundred dwellings or dwelling units, including accessory dwellings, shall be developed in the Pulelehua project district." Based on Maui Land and Pineapple's initial concept of developing traditional single-family lots, up to 300 accessory dwellings or "Ohana units" were contemplated as part of the total 1,200 unit density contemplated in the Project District. Maui Oceanview LP may seek a determination from the County whether Maui County will allow up to 1200 units if the entire development will be multi-family dwelling units.

residents by providing at least 25% of the total market residential units built in Pulelehua as rentals set aside exclusively for residents in such income categories. Maui Oceanview LP's commitment would be memorialized under terms and conditions approved by the County of Maui Department of Housing and Human Concerns.⁹ Cheng Decl., ¶12. Pulelehua will allow residents who occupy its rental units to live where they work rather than commuting from Central or Upcountry Maui. Compare 2006 D&O, p. 14 ¶39.

Maui Oceanview, LP recently obtained from CBRE an updated Market Study, Economic Impact Analysis, and Public Fiscal Assessment of the Proposed Pulelehua 900-unit Apartment Project confirming the continuing need for rental units in West Maui. See Market Study [Exhibit F].¹⁰ As the report summarizes, “[w]hile the Maui market and economy has moved through significant cycles since 2005, *the demand for reasonably-priced rental units has continued to increase unabated with minimal additions to supply.*” See Market Study [Exhibit F], p. 2 (emphasis added).

West Maui is one of the two centers of the island’s tourism industry and is a primary region for economic activity and employment. Market Study [Exhibit F], p. 5. West Maui has an estimated 2017 population of 25,530 and by 2030 is projected to have between 30,831 and 36,058 resident population. See Market Study [Exhibit F], pp. 6. Of the estimated 13,625 single and multi-

⁹ The Housing Agreement will incorporate the current HUD median income guidelines for Maui County rather than the 2006 information including in the original 2006 D&O. In addition, Maui Oceanview LP and the County of Maui are discussing incorporating guidelines on maintaining the spread of affordable units among the four categories (low, below moderate, moderate and above moderate). Compare 2006 D&O, p. 15 ¶¶41-42, 44. Maui Oceanview LP will also commit to the renter preference priorities set out in the Maui County Code to the extent they do not contravene HUD housing requirements. Compare 2006 D&O, p. 16 ¶¶44-45.

¹⁰ CBRE has absorbed the Hallstrom Group which prepared the market study associated with MLP’s original petition. CBRE notes that maximum build-out density is 1200 and assuming the County of Maui approves the 300+ Accessory Units can be included in the overall density, 960 units will be rented at “market rate” and 240 will be “workforce’ apartment units with rents calculated as being ‘affordable’ to resident households with incomes ranging from 60 percent (or less) of the Maui median household income up to those with incomes up to 140 percent of median.” Market Study [Exhibit F], p.1.

family units in West Maui, approximately 4,740 (or 34.8%) are used for vacation rentals. Market Study [Exhibit F], p. 7.¹¹ Further, approximately 20% of the 8,885 housing units in Lahaina available for non-vacation rental residential use “are owned by non-residents as second/vacation homes”. Market Study [Exhibit F], p. 7. CBRE points out, “[t]his buyer demographic [non-residents buying second/vacation homes] has grown over the past two decades and is now represented in virtually every market-priced project; particularly new development.” Market Study [Exhibit F], p. 7. The amount of non-resident owners of second/vacation homes in West Maui is expected to increase to between 26%-30% by 2030. Market Study [Exhibit F], p. 7.

CBRE estimates the demand for new residential (non-TVR) units in West Maui through 2030 will total between 5,728 and 8,941 units. Market Study [Exhibit F], p. 8. Further, CBRE observes West Maui has nine major apartment complexes (1,086 units) serving households with incomes ranging from 80% of the Maui median to market levels. Market Study [Exhibit F], p. 8. CBRE states “99 percent are currently occupied at monthly rents ranging from \$1,195 (studio) to \$3,500 (3B).” Market Study [Exhibit F], p. 8. “Numerous other projects that were originally built to be rental apartments have been converted to for sale condominium units or are now used as Transient Vacation Rentals (TVRs).” Market Study [Exhibit F], p. 8. Further, “[e]ach project has a waitlist for households interested in tenancy” and CBRE reports, “all management confirmed available apartments are ‘*always*’ re-leased upon vacant.” Market Study [Exhibit F], p. 8 (emphasis added).

¹¹ CBRE notes “It is anticipated this [34% TVR] of total units will generally decline over the long-term as more residential-oriented units are constructed in the expanding communities, the existing resorts are built-out, and the County further limits short-term rental homes (STRHs)/transient vacation units (TVUs) outside the designated resort areas.” Market Study [Exhibit F], p. 7.

Approximately 22.4% (1,662 units) of the Lahaina district resident housing inventory are within dedicated apartment complexes. Market Study [Exhibit F], p. 8. Significantly, CBRE reports:

Our survey of the West Maui residential rental market from late September through early November 2017 identified 48 units of various type offered for long-term rent, with asking rents ranging from \$1,272 to \$5,373 per month, averaging \$3,391; with about half including some/all utilities and half no utilities. Virtually all units listed for rents were successfully leased in the month of their offering, particularly those priced at \$3,000 per month or less, and *according to apartment complex managers and rental agents demand for residential rentals in West Maui is very high (and increasing) and far outstrips available supply. . . .*

Market Study [Exhibit F], p. 8 (emphasis added).

While there are 7,566 total proposed residential units (not including Pulelehua) associated with West Maui projects, “many of the projects are ‘on-hold’, require additional entitlements (only 2,066 are considered approved), lack access to sufficient supporting infrastructure, and/or the ownerships are under financial duress.” Market Study [Exhibit F], p. 9. Also, CBRE suggests the 2,560 (34%) of the total units planned for Kaanapali and Kapalua Resort areas are potentially TVRs or short-term rentals and will not contribute to the West Maui residential housing supply. Market Study [Exhibit F], p. 9. CBRE concludes, “[w]e consider it unlikely that a significant portion of the proposed units will be manifest by 2030, with only 60 to 80 percent of the fully and partially-entitled units having a reasonable chance of being built over the projection period.” Market Study [Exhibit F], p. 9.

Pulelehua “is a competitive location. . . regarding access, views, topography, shape, size, proximity to commercial and support facilities, lack of incompatible nearby uses, County planning guidelines and objectives, climate, and ability to provide quality lifestyle opportunities for resident Maui households.” Market Study [Exhibit F], p. 9. CBRE expects that workforce rental units at Pulelehua “will be absorbed via a lottery/waiting list as quickly as they are offered to the

market” and the “market-priced units would be quickly leased-up as they are completed.” Market Study [Exhibit F], p. 9. The “absorption estimate” of Pulelehua’s units “represents only about 16 percent of total regional residential demand during their offering period and 58 percent of the multifamily/apartment sector.” Market Study [Exhibit F], p. 9. CBRE provides, “[i]t is not expected there will be in-migration to Maui as a direct result of the project. It is intended solely to provide housing opportunities for families and individuals who are already part of the existing island population base.” Market Study [Exhibit F], p. 12.

4.02 ECONOMIC IMPACT OF PULELEHUA DEVELOPMENT

Maui Oceanview LP anticipates that development and construction of Pulelehua will generate approximately \$400 Million of direct new capital investment and spending into the Maui County economy over the ten year development period. P. Cheng, ¶18. Independently, CBRE provides a model in its report depicting the economic impact of the Pulelehua project running from 2018 to 2030:

- The development of the Pulelehua project will bring in an estimated \$310 million of new, direct capital investment with significant unquantified indirect expenditures into the island's real estate market and generate \$1 billion in total economic activity islandwide during its build-out and stabilization over a 13-year period (forecast from circa 2018 to 2030). It will contribute some \$85.8 million in annual economic activity on a stabilized basis thereafter.
- The construction of the Pulelehua infrastructure and finished apartment units, will directly create an estimated 1,445 "worker-years" of employment (the equivalent of 52 work weeks at 40 hours per week) in the construction trades, support and supply businesses during build-out, averaging about 120 worker years annually, with an estimated \$104.7 million in wages (averaging about \$8.7 million per year).
- The commercial/retail business, apartment rental company, and community management and landscape/maintenance of the 70,000 square feet of commercial space and 1,200 apartment units will create 1,903 worker-years of employment from 2020 through 2030 and associated wages of \$65.1 million. Once stabilized these project components will create demand for 231 permanent FTE positions with annual wages of \$7.9 million.

- Associated secondary/off-site employment during the overall development and absorption time-frame will total 1,116 worker-years with wages of \$60.3 million and a stabilized FTE job-count of 77 with total wages of \$4.2 million per year.
- During build-out the 1,200 households containing 3,060 residents at Pulelehua will have aggregate incomes of \$400.4 million (2020-2030) and will stabilize at \$96.4 million annually thereafter. Discretionary expenditures into Maui businesses by the Pulelehua population will be some \$200.2 million during build-out and average \$48.2 million per year on a stabilized basis. We note this will not necessarily be new income and spending for Maui as the households would merely be located elsewhere on the island if Pulelehua wasn't constructed.
- The on-going commercial/retail, apartment rental, and management and maintenance activity in the community will total \$716.0 million during the 2020-2030 projection period and average \$85.8 million per year on a stabilized basis. The base impact to the Maui from 2018 through 2030 will be \$1.0 billion and average \$85.8 million annually thereafter.

Market Study [Exhibit F], p. 11.

5.0 IMPACT ON RESOURCES OF THE REGION

Maui Oceanview LP plans to build out as many For Rent multifamily units as is allowed on the Pulelehua property. Cheng Decl., ¶4. Maui Oceanview LP contemplates at least 180 units will be in the affordable workforce category subject to approved rents by the County of Maui for the affordable median income groups ranging from of 50% to 140%.¹² Maui Oceanview LP intends to build a for rent product similar to its national award winning single story design. Maui Oceanview LP contemplates that the non-workforce units will also be offered as rentals. Cheng Decl., ¶4.

Since purchasing the property Maui Oceanview LP has prepared conceptual plans for Pulelehua that better incorporates the existing topography and landscape, fostering more open space within the proposed neighborhoods than in the MLP conceptual plans. See Site & Phasing

¹² As noted previously, Maui County Code §2.96.020 defines “Residential Workforce Housing” by referring to HUD affordability standards.

Plan [Exhibit A], Phase 1 Plan [Exhibit B]. There will be a continuous jogging trail that meanders through the property. See Site & Phasing Plan [Exhibit A], Phase 1 Plan [Exhibit B]. The buildings and roads will be built that follows the contour of the hillside on which Pulelehua is located and the single story design of only 10 units per building will allow the property to blend into the hillside in an environmentally friendly way. See Site & Phasing Plan [Exhibit A], Phase 1 Plan [Exhibit B].

A signature architectural style to Pulelehua as planned will be its single story building design. The residential multi-family rental units will feature the award winning style of single story direct access units affiliates of Maui Oceanview LP have developed. USAI has used this unique architectural style of multi-family projects before and has won a prestigious national award for being one of the best in the nation. Cheng Decl., ¶3; see Site & Phasing Plan [Exhibit A], Phase 1 Plan [Exhibit B]. Advantages of this type of design is easy access for residents who can park their car directly in front of their unit, increased safety from all units being on the ground level, stylistically compatible with the hillside location Pulelehua is located on as well as convenient easy outdoor living with its many community wide amenities. See Site & Phasing Plan [Exhibit A], Phase 1 Plan [Exhibit B].

Maui Oceanview LP and/or its engineering and planning consultants have met with various State and County agencies to discuss its conceptual plans and requirements for the development of the Project District. In November 2016, Maui Oceanview LP has also held an initial public meeting in West Maui to introduce its Pulelehua conceptual plans. Cheng Decl., ¶12.

5.01 ARCHAEOLOGICAL, HISTORICAL AND CULTURAL RESOURCES

After preliminary meetings with LUC and Office of Planning staff, Maui Oceanview LP also contracted to update the Cultural Impact Assessment (CIA) conducted in connection with the initial 2005 LUC review and approval of the project. Cheng Decl., ¶11. Maria Orr of Kaimipono Consulting Services LLC, the consultant who prepared the original CIA, concludes “[t]here are no changes to the 2005 Cultural Impact Assessment.” Orr CIA Update [Exhibit D], p. 9. Specifically,

Cultural Resources (Land) Impact. The lands within the project area were heavily impacted by the historic activities of the 19th and 20th centuries. Any cultural sites and/or resources would have been destroyed or buried by ranching, sugar and pineapple plantation activities; therefore there will be no adverse impact to any cultural resources on Pulelehua lands (except for the gulches). However, it should be noted that cultural sites (i.e., hearths/*imu*) have been found below the plow zone in other areas (islands) of sugar cultivation.

Cultural Practices/Access (Land) Impact. Since there are no cultural resources on Pulelehua lands, there will be no adverse effects to cultural practices on Pulelehua lands. However, there are cultural resources in the gulches and access to these areas may be adversely impacted or compromised by the Pulelehua Community.

Cultural Practices: Indirect Adverse Impact. According to consultants interviewed, there are two conditions that have the potential to create an adverse effect or impact on the cultural fishing practices and resources *makai* of the proposed Pulelehua Community; over-flow runoff and contaminated groundwater seepage. Given the propensity for runoff problems in West Maui, unless they are adequately addressed, development activities for this project may adversely impact both traditional cultural marine resources and practices by the silt-laden overflow into the ocean from both the drainages and surface runoff. One suggested solution was to periodically remove dried sediment from the desilting basins before any heavy rain fall can create overflows taking the collected sediment/silt with it into the ocean. The condition of the contaminated groundwater seepage into the ocean is created by the continuous use of pesticides and fertilizers leaching into the aquifer or groundwater. While this may be mitigated by a change from agricultural use to urban use, unless private (residents/business) and public (open spaces/parks) activity is monitored, this problem could persist.

See Orr Update [Exhibit D], p. 9.. A separate CIA update¹³ prepared by Tanya Lee-Grieg of `Aina Archaeology makes similar findings:

Uncle Felimon Sadang has stated that in regard to the specific lands of the proposed Pulelehua Community project, both personally and as the Kā'anapali Moku representative, and per those in the *moku* that he has reached to, there are no known traditional cultural practices being carried out within the boundaries of the proposed project area. This assertion is also shared by all who have participated in this study (see also section 4.2) which is also consistent with the documentation of the initial cultural impact assessment (Orr 2005:106).

Aina Arch CIA [Exhibit E], Sec. 6.1 pp. 95-96. Further, Grieg finds:

With regard to potential direct effects on the adjacent gulch environments and historic properties within the gulch bottoms, the development footprint does not extend to the gulch edge and therefore no direct adverse effects to gulche areas are anticipated. The existing field roads along both Kahana and Māhinahina Gulches

¹³ In the course of her work on the updated CIA, Ms. Grieg was referred to members of the Aha Moku Advisory Committee. Felimon Sadang was identified as the Kaanapali Moku. Aina Arch CIA [Exhibit E], sec. 4.2.5. Since LUC approval of the 2006 D&O, the legislature recognized the Aha Moku Advisory Committee system to assist DLNR. Hawaii Revised Statute §171-4.5 provides:

Aha moku advisory committee; established. (a) There is established the aha moku advisory committee to be placed within the department of land and natural resources for administrative purposes. The committee may advise the chairperson of the board of land and natural resources in carrying out the purposes of this section.

(b) The committee shall consist of eight members appointed by the governor and confirmed by the senate from a list of nominations submitted by the aha moku councils of each island. Oversight of the aha moku advisory committee shall be by the chairperson of the board of land and natural resources. The committee members shall select the committee chairperson from among the members.

(c) The members shall not receive compensation for their service, but shall be reimbursed for necessary expenses, including travel expenses, incurred while participating in meetings and events approved in advance by the chairperson of the board of land and natural resources.

The aha moku advisory committee may hire an executive director who shall be exempt from chapter 76. The executive director may hire an administrative or executive assistant to assist the executive director in accomplishing the purposes of the aha moku advisory committee.

(d) The aha moku advisory committee may provide advice on the following:

(1) Integrating indigenous resource management practices with western management practices in each moku;

(2) Identifying a comprehensive set of indigenous practices for natural resource management;

(3) Fostering the understanding and practical use of native Hawaiian resource knowledge, methodology, and expertise;

(4) Sustaining the State's marine, land, cultural, agricultural, and natural resources;

(5) Providing community education and fostering cultural awareness on the benefits of the aha moku system;

(6) Fostering protection and conservation of the State's natural resources; and

(7) Developing an administrative structure that oversees the aha moku system.

are situated approximately 80 ft. from the gulch edges with no development plans for the space between these field roads and the gulches. Additionally, building construction is anticipated to be a minimum of 150 ft. from the edges of the gulches thus creating a construction buffer between the proposed project and the gulch edges.

Therefore, and in so long as access to the *mauka* region and upper reaches of the gulches are maintained (see Figure 5-1), no direct adverse effects from proposed project on traditional cultural practices are anticipated.

Aina Arch CIA [Exhibit E], Sec. 6.1 p. 96. Grieg notes,

Uncle Felimon Sadang has stated that in regard to the specific lands of the proposed Pulelehua Community project, both personally and as the Kā'anapali Moku representative, and per those in the *moku* that he has reached to, there are no known traditional cultural practices being carried out within the boundaries of the proposed project area. This assertion is also shared by all who have participated in this study (see also section 4.2) which is also consistent with the documentation of the initial cultural impact assessment (Orr 2005:106).

Aina Arch CIA [Exhibit E], p. 95. Indirect effects are described as follows:

With regard to potential indirect effects, according to those consulted for this study, the most prominent and significant cultural practice within the vicinity of the current project revolves around the coastal marine resources of Kahana and Māhinahina. This finding is consistent with the findings of the initial cultural impact assessment completed by Maria Orr (2005). Fishing, diving, and resource gathering continues to play a large role in the livelihood of those consulted for this study, as well as the previous study. Siltation and construction run off from project development and cumulative effects of storm water run-off from the life-span of the development itself was a concern expressed by those who participated in both studies. Current development plans, as indicated by the project proponent, calls for use of the current drainage infrastructure and desilting basins and zero runoff. Those consulted for this study remain cautious, and advocate for some balance to allow for some nutrients to come through the *muliwai* in order to have thriving *limu* beds, but only in so far as what might naturally occur. Some concern was also expressed about the increase in population affecting the integrity of the marine resources as more people are present to observe the locations of the generational fishing grounds which may result in the loss of the resource to over fishing or destruction.

See Aina Arch CIA [Exhibit E], p. 96. As the LUC found in the original proceeding, the most significant cultural practices in the general vicinity remain fishing and gathering along the Mahinahina and Kahana shoreline outside of the Petition Area. 2006 D&O, ¶74. An additional

concern expressed by kamaaina was maintaining access to areas mauka of the Petition Area and Kapalua-West Maui Airport.¹⁴ To the extent Petitioner has control of existing mauka access from its property, access from Pulelehua will not be impeded. Cheng Decl., ¶11.

5.02 ADEQUACY OF PUBLIC SERVICES AND FACILITIES¹⁵

5.02.01 HIGHWAYS

The existing Akahele Street will continue to be the main entrance to Pulelehua. An additional access to Honoapiilani Highway has been proposed to the Hawaii Department of Transportation (DOT) with proposed left turn and right turn limitations. See Site & Phasing Plan [Exhibit A].¹⁶ At the request of State DOT-Highways, a Transportation Impact Assessment Report (TIAR) [Exhibit C] reanalyzes traffic impacts related to the Pulelehua development. The TIAR contemplates build out of Pulelehua in four phases: the initial Phase 1 development of 240 residential units, a second phase of 240 residential units along with 70,000 square feet of retail space, and a third phase of 420 residential units with the 10-acre County Regional Park. See TIAR [Exhibit C], Exec. Summary, p. 1.

In Phase 1, two new Project roadways would bisect Akahele Street and provide direct access to the residential buildings. See TIAR [Exhibit C], Executive Summary, p. 2. In the

¹⁴ Orr noted:

While there are no cultural practices on Pulelehua Community lands to be adversely impacted, there is potential that access to gathering and hunting practices in the upper gulches/mountains may be compromised during the construction phase of the proposed Pulelehua Community. However, concerns regarding access to upper gulches/mountain resources would be mitigated upon completion of the project and the subsequent dedication of the project streets as public thoroughfares.

Orr CIA Update [Exhibit D], p. 8.

¹⁵ Maui Oceanview LP is not aware of any discussions or progress between MLP and the Hawaii Health Systems Corporation on locating a public health care facility in the Project District and is not planning on locating a facility as part of the Pulelehua development. D&O, p. 17 ¶46.

¹⁶ MLP proposed two additional accesses from Honoapiilani Highway in addition to the existing Akahele Street access to Kapalua-West Maui Airport. Maui Oceanview LP will be requesting only an additional access largely to service the proposed 10-acre County Regional Park.

second phase, primary access will be provided by Akahahele Street. A retail area north of Akahahele St will also be served by a proposed right-in, right-out access on Honoapiilani Highway. See TIAR [Exhibit C], Exec. Summary, p. 2. The residential units and County Park in the third phase would be serviced by Akahahele Street and a new Project roadway that intersects Honoapiilani Highway south of Mahinahina Gulch. See TIAR [Exhibit C], Exec. Summary, p. 2.

The school development, with its timetable outside of Maui Oceanview LP's control, was included as a fourth scenario with build out at some point in the future. See TIAR [Exhibit C]. In order to accommodate the proposed school location, Maui Oceanview LP will provide land on its property for future development of storage and turning lanes towards the Akahahele Street entrance to the property. Cheng Decl., ¶9.

The TIAR notes that Pulelehua will increase both regional and local traffic along Honoapiilani Highway with percentage increases as follows:

Phase 1: Increase overall regional traffic by less than 5% and local traffic by less than 10% from the TIAR base year conditions

Phase 2: Increase overall regional traffic by 5-15% and local traffic by 10-40% from the TIAR base year conditions

Phase 3: Increase overall regional traffic by 5-20% and local traffic by 10-50% from the TIAR base year conditions.

TIAR [Exhibit C], Exec. Summary, p. 4. Table ES-3 of the TIAR outlines proposed improvements to mitigate the impacts., TIAR [Exhibit C], Exec. Summary, p. 5; pp. 77-81; 83-84.

5.02.02 SCHOOLS

Maui Oceanview LP's plans for Pulelehua includes locating a future Hawaii Department of Education (DOE) elementary school off Honoapiilani Highway within the Project District. The location selected by the DOE is shown on the updated Site Plan. See Phasing Plan [Exhibit A]. Maui Oceanview, LP will reserve portions of its property along Honoapiilani

Highway for future dedication for storage and turning lanes that may be required when the school is developed and operating. Cheng Decl., ¶9.

5.02.03 TRAIL AND BIKEWAY

Maui Oceanview LP will also install a trail and bikeway system to provide pedestrian access and recreational use connecting the entire Pulelehua community. See Site & Phasing Plan [Exhibit A].

5.02.04 POTABLE WATER, WASTEWATER AND IRRIGATION WATER

Maui Oceanview LP has secured water delivery rights to 1,000,000 gallons per day sourced from the MLP ditch system. The water delivery amount secured will provide more than enough for the planned development density. Maui Oceanview LP will develop its own plants to provide potable water and to process wastewater generated from the project. Cheng Decl., ¶5.

The D&O contemplated that Pulelehua would transmit its generated wastewater to the County of Maui's Lahaina Wasterwater Reclamation Facility (LWWRF). Maui Oceanview LP, in its initial phase, will hook up to nearby County of Maui facilities for processing wastewater. Cheng Decl., ¶7. When the Pulelehua water and wastewater facilities are built, Maui Oceaview LP will terminate the use of County wastewater facilities and be self-sufficient. Cheng Decl., ¶¶6-7. Further, unlike the LWWRF, Maui Oceanview LP will not include injection wells within its wastewater treatment system design. Cheng Decl., ¶6. Instead, R-1 grey water will be used for landscaping and any excess treated water not needed by landscaping will be sent back to MLP who has agreed to take the excess for their ranching and other agricultural purposes. Cheng Decl., ¶6

Solid waste will be trucked away from Pulelehua on a regular schedule. Cheng Decl., ¶8.

5.02.05 DRAINAGE

Maui Oceanview, LP's consultant Kimley Horn has prepared a preliminary draining report on the Pulelehua project as proposed for development"

At full build-out the development is planned to construct approximately 900 affordable and market-rate, multi-family residential units (roughly 90 buildings with 10 units each), 150 single-family units, 150 ohanas, a 10-acre community park, 2 retail centers totaling 70,000 square feet, and open space of varying levels of use. A future school site is also planned for the site, situated on approximately 13 acres.

See Preliminary Drainage Report ("Prelim. Drainage Rep.") [Exhibit G], p. 1. The Final Environmental Impact Statement prepared for Pulelehua noted, "development of the Pulelehua project is not expected to have a significant adverse effect on downstream properties or coastal marine waters." Prelim. Drainage Rep. [Exhibit G], p. 3. Kimley Horn estimates "[t]he post development runoff from the Pulelehua site is estimated to be 851 cfs, an increase of 451 cfs over existing conditions." Prelim. Drainage Rep. [Exhibit G], p. 3. "However, additional runoff due to development of the community will be detained onsite in a series of detention basins, with no increased flow to downstream properties (including Honoapi'ilani Highway and the Kahana Hui and Kahana Ridge subdivisions), or into the existing drainage ways, desilting basins, or the ocean." Prelim. Drainage Rep. [Exhibit G], p. 3 & Exhibit 5. "No additional runoff will be released into the existing drainageways or onto Honoapiilani Highway." Prelim. Drainage Rep. [Exhibit G], p. 5. Maui Oceanview LP will have detailed drainage studies prepared to accompany the improvement plans for each phase of development and will include storm drain inlet and pipe sizing calculations, detention basin sizing and draw-down calculations and the design of onsite storm drain related features. Prelim. Drainage Rep. [Exhibit G], p. 4. "The net result of the proposed drainage improvements will be no increase in runoff from the project site to the downstream properties." Prelim. Drainage Rep. [Exhibit G], p. 5.

5.02.06 RECREATIONAL & MARINE RESOURCES

Maui Oceanview, LP has reached an agreement with the Maui Department of Parks and Recreation to develop and dedicate to the County a 10-acre regional park. The park will be located off Honoapiilani Highway and will be accessed through the additional access requested from the Hawaii Department of Transportation. See Site Plan [Exhibit A].

Maui Oceanview LP's development plan will be more ecologically friendly for the makai nearshore waters. As discussed above, Section 5.02.04, Maui Oceanview, LP will be developing a wastewater treatment facility to serve the entire project. No injection wells will be used. Instead, Maui Oceanview, LP plans to use the reclaimed water for the irrigation needs of Pulelehua.

6.0 CONTINUED CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

The Commission did find that MLP's original petition to reclassify the petition area generally conformed to the Hawaii State Plan, and generally conforms to the functional plans in the following program areas: employment, housing, recreation, and transportation. 2006 D&O, ¶¶131-132. Maui Oceanview, LP's plans to implement development of Pulelehua remain generally consistent with those findings. Housing for its residential workforce remains an important need on Maui and in West Maui. See Section 4.01. Maui Oceanview LP will comply with the present requirements of the Maui County Code regarding workforce housing. Phase 1 will include 60 units that will be offered rent in accordance with HUD income guidelines as set out in the Maui County Code §2.96.020. Maui Oceanview LP will make the commitment concrete in a Housing Agreement with the Maui County Department of Housing and Human Concerns. See Sections 1.01-1.02.

Maui Oceanview, LP's layout and building plans will be more sensitive to the existing physical and natural attributes of the project site. The buildings will require less grading work than the development of single lots (as MLP originally proposed) and will conform more to the existing contours of the property. Roadways as well will conform to the existing contours. See Section 1.03.

The 2006 D&O contemplated that Pulelehua would transmit wastewater to the County of Maui's Lahaina Wasterwater Reclamation Facility (LWWRf). Maui Oceanview, LP's plans to develop its own wastewater treatment facility and its connection with the LWWRf for the first Phase will be temporary. Further, unlike the LWWRf, Maui Oceanview, LP will development a wastewater treatment system that does not employ injection wells. Instead, the treated water will be used for Pulelehua's irrigation needs (and excess will be taken by MLP for its project needs). Cheng Decl., ¶¶6-7; see Section 5.02.04.

Also, Maui Oceanview, LP will develop a 10-acre County of Maui park as well as a number of smaller privately maintained park as part of the Pulelehua community. A trail system will connect all phases of Pulelehua. See Site & Phasing Plan [Exhibit A]; Sections 5.02.03, 5.02.06.

Maui Oceanview LP plans to build out the project over a ten-year period, including any further permitting and changes to discretionary approvals that might be required. Cheng Decl., ¶16.

7.0 DECISION AND ORDER AMENDMENT REQUEST

In discussions with the County of Maui regarding processing of Maui Oceanview LP's plan to develop an initial all-rental project, the County Planning Department has requested that the Commission amend language in the 2006 D&O that appears to require sale of units

developed and that the LUC review the Maui Oceanview LP conceptual site plans and layout for the entire development. Cheng Decl., ¶13. Maui Oceanview LP is requesting that the LUC order given for the Pulelehua be amended to allow the units of affordable housing to be either For Sale “OR FOR RENT”. This will allow Maui Oceanview LP to gauge the market demand for workforce rental and give it the flexibility of serving the West Maui community’s demand as it materializes.

Maui Oceanview LP also requests that the Commission order also provide that Pulelehua will comply with the current requirements of the Maui County Workforce Housing requirements and that Maui Oceanview LP must provide a minimum of 180 units that comply in accordance with a Housing Agreement with the Maui County Department of Housing and Human Concerns. Specifically, Maui Oceanview LP requests that the 2006 D&O, p. 71 ¶1(b) read as follows:

In addition, Petitioner shall develop and offer for sale or rent 180 units for low, low-moderate, moderate and above moderate income residents of Maui as a feature of Pulelehua.

MLP proposed in the original proceeding for this docket to develop approximately 125 additional residential units as affordable rentals to satisfy a condition of the Commission approval of MLP's Kapalua Mauka development in the separate LUC Docket No. A03-741. D&O, pp. 14-15 ¶40; p. 71 ¶1(a). Maui Oceanview LP requests the Commission clarify whether the condition applies to Maui Oceanview LP as Successor Petitioner for this particular project area and, further, whether the 125 affordable rentals are in addition to the current requirements under Maui County's Workforce Housing requirements of 180 units.

CONCLUSION

Maui Oceanview LP requests an amendment of D&O, p. 71 ¶1(b) be amended to state: "Petitioner shall develop and offer for sale or rent 180 units for low, low-moderate, moderate and above moderate income residents of Maui as a feature of Pulelehua." Further, Maui Oceanview LP requests the Commission to acknowledge review of its conceptual plans for development of the project area. Finally, Maui Oceanview LP requests clarification regarding its responsibility for MLP's satisfaction of the affordable rental condition of the Commission's approval of MLP's Kapalua Mauka development.

DATED: Wailuku, Maui, Hawaii, 20 November 2017.



GILBERT S.C. KEITH-AGARAN
DAVID M. JORGENSEN

Attorneys for Petitioner MAUI OCEANVIEW LP

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

IN THE MATTER OF THE PETITION OF

DOCKET NO. A04-751

MAUI LAND & PINEAPPLE COMPANY,
INC., a Hawaii corporation,

DECLARATION OF PAUL CHENG;

TO AMEND THE AGRICULTURAL
DISTRICT BOUNDARY INTO THE
URBAN LAND USE DISTRICT FOR
APPROXIMATELY 310.440 ACRES OF
LAND AT MAHINAHINA AND KAHANA,
DISTRICT OF LAHAINA, MAUI,
HAWAII, TAX MAP KEY NO. 4-3-01;
POR. 31 AND 79

DECLARATION OF PAUL CHENG

I, PAUL CHENG, declare upon penalty of perjury, the following:

1. I am the President of MAUI OCEANVIEW GP, INC., the general partner of MAUI OCEANVIEW LP, a Delaware limited partnership registered to do business in Hawaii as a foreign limited partnership.

2. MAUI OCEANVIEW LP is the successor in interest to MAUI LAND & PINEAPPLE COMPANY, INC. MAUI OCEANVIEW LP is an affiliate of USA Infrastructure Investments, LP which completed the purchase of the project area from MAUI LAND & PINEAPPLE COMPANY, INC. in June 2016. USA Infrastructure Investments, LP is a Paul Cheng family owned development company based in Texas.

3. USA Infrastructure Investments LP and/or its affiliates have other real estate investments on Maui and have extensive development expertise in multi-family, retail and also affordable multi-family housing. They have won awards in several master-planned community

developments in Texas as well an award for affordable senior multi-family housing in Forney, Texas in which they won \$500,000 from the Federal Home Loan Bank Board for being one of two best affordable national senior multi-family development in the nation for 2013.

4. Maui Oceanview LP plans to build out as many For Rent multifamily units as is allowed on the Pulelehua property. Attached as Exhibit A is a true and correct copy of the Site and Phasing Plan for Pulelehua and Exhibit B is a true and correct copy of conceptual plans for the initial phase of Pulelehua that Maui Oceanview LP. Units not priced as affordable or workforce units will also be offered as rental units. I understand that the property has not been in cultivation since the Land Use Commission approval of the boundary amendment in 2006.

5. Maui Oceanview LP has water rights to 1,000,000 gallons per day sourced from Maui Land and Pineapple which should provide more than enough potable water for the planned development density. Maui Oceanview LP will develop its own potable water treatment plant and to process wastewater generated from the project.

6. Wastewater treatment internal to Pulelehua will have a no injection well design. R-1 grey water will be used for landscaping needs and any excess treated water not needed by landscaping will be sent back to Maui Land and Pineapple who has agreed to take the excess for their ranching and other agricultural purposes.

7. Maui Oceanview LP will in its initial phase hook up to nearby County of Maui facilities for processing wastewater and is finalizing an agreement with the County of Maui Department of Environmental Services. When the Pulelehua water facilities are built, Maui Oceanview LP will terminate the use of County wastewater facilities and be self-sufficient.

8. Solid waste will be trucked away from Pulelehua on a regular schedule.

9. The Department of Education has determined that it wishes to use a 13-15 acre site along the Honoapiilani Highway border of the property for a future school site. In order to accommodate that location, Maui Oceanview LP with reserve land on its property for future development of storage and turning lanes along Honoapiilani Highway and the intersection with Akahahele Street. The location of the school is shown on Exhibit A.

10. As a result of meetings and discussions with Hawaii Department of Transportation Airports Division and Highways Division officials, Maui Oceanview LP obtained an updated Traffic Impact Assessment Report. Attached as Exhibit C is a true and correct copy of the report of Austin Tsutsumi & Associates, Inc. updating the Traffic Impact Assessment Report to reflect Maui Oceanview LP's more concrete plans for improvements to Honoapiilani Highway and Akahahele Street and the proposed access points from Honoapiilani Highway to the project area.

11. As a result of preliminary meetings with Hawaii State Land Use Commission and Office of Planning officials, Maui Oceanview LP has prepared an updated Cultural Impact Assessment. Attached as Exhibit D is a true and correct copy of the report of Maria Orr updating her Cultural Impact Assessment to reflect the passage of time since the approval of the 2006 Decision and Order in this Docket. Attached as Exhibit E is a true and correct copy of the report of Aina Archaeology updating the Cultural Impact Assessment to reflect the passage of time since the approval of the 2006 Decision and Order in this Docket. The Aina Archaeology Cultural Impact Assessment noted kamaaina expressed an additional concern of maintaining access to areas mauka of the Petition Area and Kapalua-West Maui Airport. To the extent Petitioner has control of existing mauka access from its property, mauka access from Pulelehua will not be impeded.

12. Maui Oceanview LP and/or its engineering and planning consultants have met with various State and County agencies to discuss its conceptual plans and requirements for the development of the Project District. In November 2016, Maui Oceanview LP has also held an initial public meeting in West Maui to introduce its Pulelehua conceptual plans. Maui Oceanview LP is finalizing a Housing Agreement with the County of Maui Department of Housing and Human Concerns that will outline requirements for workforce/affordable housing units on the property, including allocation of units for low income, below moderate, moderate and above moderate categories as defined by HUD.

13. In discussions with the County of Maui regarding processing of Maui Oceanview LP's plan to develop an initial all-rental project, the County Planning Department has requested that Maui Oceanview LP request the LUC amend the 2006 D&O language that appears to require sale of units developed and that the LUC review the Maui Oceanview LP conceptual site plans for the entire development.

14. Petitioner intends to start construction of Phase 1 of Pulelehua as soon as all approvals are obtained from the County of Maui, including Project District Phase 2 approval and approval of construction and site plans.

15. Assuming the LUC grants this motion and County approvals are received, Petitioner projects construction to begin in late-Spring 2018 and the first units becoming available in early-2019.

16. Petitioner intends to develop Pulelehua in a continuous manner until all permitted improvements are complete over the course of ten years.

17. The costs to develop the entire Pulelehua community are preliminary and will be better defined during the detailed engineering and design phase. The order of magnitude of costs


for the development of onsite utility infrastructure is \$15-20Million for the wastewater package treatment plant and potable water treatment plant. Petitioner has budgeted site work at \$400,000 to \$600,000 per acre. Each phase of the residential unit development is budgeted at \$50Million with retail development budgeted for \$30Million.

18. Maui Oceanview LP is a joint venture between USA Infrastructure Investments, LP, a privately held developer, and ANICO Eagle LLC, an affiliate of a large publicly held insurance company based in Texas with assets of over \$20Billion and serving customers for over 100 years. USA Infrastructure Investments, LP has ongoing real estate ventures with the insurance partner of over \$100Million. Funding for Pulelehua has been approved by both partners and is ready to go subject to necessary approvals. Maui Oceanview LP anticipates that development and construction of Pulelehua will generate approximately \$400Million of direct new capital investment and spending into the Maui County economy over the ten year development period.

19. USA Infrastructure Investments, LP has ongoing consolidated commercial real estate assets of over \$100Million and active development of over \$50Million.

20. Attached as Exhibit F is a true and correct copy of a Market Study, Economic Impact Analysis, and Public Fiscal Assessment of the Proposed Pulelehua 900-Unit Apartment Project prepared by CBRE.

DATED: NOV. 10, 2017



PAUL CHENG

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

IN THE MATTER OF THE PETITION OF

MAUI LAND & PINEAPPLE COMPANY,
INC., a Hawaii corporation,

TO AMEND THE AGRICULTURAL
DISTRICT BOUNDARY INTO THE
URBAN LAND USE DISTRICT FOR
APPROXIMATELY 310.440 ACRES OF
LAND AT MAHINAHINA AND KAHANA,
DISTRICT OF LAHAINA, MAUI, HAWAII,
TAX MAP KEY NO. 4-3-01; POR. 31 AND
79

DOCKET NO. A04-751

DECLARATION OF GILBERT S.C. KEITH-
AGARAN;

DECLARATION OF GILBERT S.C. KEITH-AGARAN

I, GILBERT S.C. KEITH-AGARAN, declare upon penalty of perjury:

1. I am one of the lawyers representing MAUI OCEANVIEW LP, a Delaware limited partnership registered to do business in Hawaii as a foreign limited partnership, in this proceeding before the Land Use Commission.

2. I make this statement to identify a report prepared by consultants for MAUI OCEANVIEW LP.

3. Exhibit G is a true and correct copy of the November 2017 Pulelehua Preliminary Drainage Report prepared by Kimley Horn.

DATED: Wailuku, Maui, Hawaii, 20 November 2017.



GILBERT S.C. KEITH-AGARAN

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

IN THE MATTER OF THE PETITION OF

MAUI LAND & PINEAPPLE COMPANY,
INC., a Hawaii corporation,

TO AMEND THE AGRICULTURAL
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DISTRICT OF LAHAINA, MAUI, HAWAII,
TAX MAP KEY NO. 4-3-01; POR. 31 AND
79

DOCKET NO. A04-751

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that a copy of the MOTION OF PETITIONER MAUI OCEANVIEW LP
TO AMEND DECISION AND ORDER has been duly served on the following parties at their last
known address by hand delivery, electronic mail or depositing in the U.S. mail, postage prepaid
on November 20, 2017:

Rodney Funakoshi
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State of Hawaii
235 S Beretania Street, 6th Floor
Honolulu, Hawaii 96813

Dawn Takeuchi-Apuna, Esq.
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Patrick Wong, Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 S. High Street, 3rd Floor
Wailuku, Maui, Hawaii 96793

DATED: Wailuku, Maui, Hawaii, 20 November 2017



GILBERT S.C. KEITH-AGARAN
DAVID M. JORGENSEN

Attorneys for Petitioner MAUI OCEANVIEW LP