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**LAND USE COMMISSION**  
Department of Business, Economic Development & Tourism  
State of Hawai'i

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December 11, 2017

Gilbert S.C. Keith-Agaran, Esq.  
Takitani Agaran & Jorgensen, LLLP  
24 North Church Street, Room 409  
Wailuku, Hawai'i 96793

Dear Mr. Keith-Agaran:

Subject: Docket No. A04-751/Maui Land & Pineapple Company, Inc.  
Motion of Petitioner Maui Oceanview LP to Amend Decision and  
Order

This is to acknowledge receipt of the Motion of Petitioner Maui Oceanview LP to Amend Decision and Order, Memorandum in Support of Motion, Declaratations of Paul Cheng and Gilbert S.C. Keith-Agaran, Exhibits A-G, and Certificate of Service (collectively "Motion to Amend D&O") filed on November 22, 2017.

We have reviewed the Motion to Amend D&O and have the following comments:

- 1) According to the Findings of Fact, Conclusions of Law, and Decision and Order issued in the subject docket,<sup>1</sup> the County of Maui, through its Department of Public Works and Environmental Management ("DPWEM"), is the owner of TMK: 4-3-01: 79, consisting of approximately 6.181 acres.<sup>2</sup> The parcel is the location of certain drainage improvements constructed for the Honolua Watershed project. The Petition Area in the docket completely surrounds and includes the parcel. While Maui Oceanview LP ("Maui Oceanview")

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<sup>1</sup> Please be advised that the Findings of Fact, Conclusions of Law, and Decision and Order was issued on June 30, 2006. The Motion to Amend D&O references June 22, 2006, which is the date the Land Use Commission ("LUC") orally approved the reclassification in the docket.

<sup>2</sup> We understand that the DPWEM was since split into the Department of Public Works ("DPW") and the Department of Environmental Management.

acknowledges that the DPW (then the DPWEM) previously authorized the inclusion of its parcel to the Petition Area, the DPW's authorization is once more required as the filing of the Motion to Amend D&O represents a separate action apart from the original Petition for Land Use District Boundary Amendment. With this property interest, the DPW should also be served with a copy of the Motion to Amend D&O pursuant to Hawai'i Administrative Rules §15-15-94(a). Any other person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the Motion to Amend D&O is filed should likewise be served with said motion and identified on the Certificate of Service. Please note that the tax map shows various access and utility easements. The grantees of these easements should be served if applicable.

- 2) Maui Oceanview is identified as the Successor Petitioner to Maui Land & Pineapple Company, Inc. ("MLP"). Clarification should be provided as to whether it is Maui Oceanview's intention that the Land Use Commission recognize its standing to seek and obtain the relief requested in the Motion to Amend D&O as the successor-in-interest to MLP.
- 3) According to the Motion to Amend D&O, MLP conveyed the Petition Area to Maui Oceanview in June 2016. We request that a true copy of the deed as evidence of the conveyance be provided as part of the Motion to Amend D&O.
- 4) The Motion to Amend D&O notes that Maui Oceanview is a joint venture between USA Infrastructure Investments, LP, and ANICO Eagle LLC, and provides information on the assets and the value of active development/ventures of these entities. We request that a current certified balance sheet and income statement of these entities as of the end of the last calendar year (or last fiscal year) and a clear description of the manner in which Maui Oceanview proposes to finance its development be provided.
- 5) The Motion to Amend D&O does not fully address the availability or adequacy of existing public services and facilities and the extent to

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which they would be impacted by Maui Oceanview's proposed development.

For example, the Traffic Impact Analysis Report ("TIAR") does not address the potential development of the 'ohana units within the development, indicating that "[f]uture traffic analysis and roadway mitigation measures will be assessed at a later date." Instead, the TIAR addresses the impacts from only 898 multi-family residential units. To the extent that Maui Oceanview is requesting the LUC to, among other things, "...approve allowing Pulelehua to develop the total density of 1200 residential units...", we believe that the TIAR should likewise address the impacts from all 1,200 units to fully determine the adequacy of the existing transportation infrastructure and the effectiveness of any proposed mitigation measures.

Other public services and facilities that should be more fully addressed include, but are not limited to, wastewater (the initial phase of the development will hook up to County of Maui facilities), solid waste, police and fire protection, medical services, public utilities, recreational resources, and emergency management (fka civil defense). What limited information there is on wastewater and potable water centers on the order of magnitude of costs for the development of the onsite utility infrastructure consisting of the treatment plants. There is no information on how these costs were determined. In addition, there is no analysis of the quantity of wastewater generated and the drinking and non-drinking water demands by the proposed development. (There is also no information on the amount of solid waste that will be generated.) Relatedly, Maui Oceanview represents that it has secured water delivery rights to 1 million gallons per day sourced from the MLP ditch system. Documentation to verify Maui Oceanview's rights to this resource should be provided.

With respect to recreational resources, the Motion to Amend D&O states that Maui Oceanview has reached an agreement with the County Department of Parks and Recreation to develop and dedicate a 10-acre regional park. If possible, we request that the written agreement be provided. In the alternative, information regarding the terms of the agreement and the obligations of the parties should be provided.

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- 6) Given the location of the proposed development adjacent to the Kapalua Airport, we request that an updated noise assessment be provided to ensure that noise impacts from the airport are disclosed and any impacts to Maui Oceanview's development are properly mitigated. In the alternative, we request clarification as to whether Maui Oceanview has consulted with the Department of Transportation, Airports Division, and received confirmation that the existing sound attenuation condition remains sufficient to address potential noise impacts to its proposed development.
- 7) The Motion to Amend D&O points out that Maui Oceanview 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. However, it appears that the market study (Exhibit F) based its conclusions on a 1,200 rental apartment development without considering the possibility of for sale single-family lots with or without a house. We believe that the market study should consider all options proposed by Maui Oceanview to provide a comprehensive picture of the need for the development.
- 8) We understand that Maui Oceanview intends to develop the proposed rental units for the working residents of West Maui. As such, the public fiscal assessment for the proposed development (Exhibit F) states that "[t]here will be no 'new' or additional per capita costs to either the State or County resulting from the development of Pulelehua, ...." as it is assumed that "...the cost of providing governmental services to [the Pulelehua households] is already being absorbed." We are unable to find any analysis supporting this conclusion in the assessment, as there is no information on the current amount of governmental expenditures on the provision of services to the local population expected to reside in the development.
- 9) Although Maui Oceanview plans to develop Pulelehua as a master-planned residential and mixed use project, we believe the development still represents a modification to the original MLP proposal to warrant an updated assessment of its conformity to (i) the objectives and policies of the Coastal Zone Management Program; and (ii) the county general plan, community plan, and zoning designations and policies. While we acknowledge that MLP obtained zoning of the Petition Area

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as West Maui Project District 5, the assessment should address the policies of this district designation relative to the proposed development.

- 10) The Motion to Amend D&O is silent with respect to flora and fauna, air quality, agricultural, and groundwater resources. A discussion on these and other resources of the area should be provided regardless of whether it is the position of Maui Oceanview that there have been no changes to these resources since the reclassification of the Petition Area, and that its proposed development will not result in any adverse impacts to them.
- 11) Please include the most recent annual report filed in the docket as part of the Motion to Amend D&O to document past and current compliance to all 32 conditions of the June 30, 2006, Findings of Fact, Conclusions of Law, and Decision and Order.
- 12) We request that a proposed decision and order reflecting the proposed changes (in ramseyer format) to the June 30, 2006, Findings of Fact, Conclusions of Law, and Decision and Order be provided as a paper original, one paper copy, and one electronic copy.

We have no further comments to offer at this time. Should you have any questions on this matter, please feel free to call our office at 587-3822.

Sincerely,



Daniel E. Orodener  
Executive Officer

c: Office of Planning  
County of Maui Department of Planning