

July 29, 2019

VIA EMAIL bert.k.saruwatari@hawaii.gov and REGULAR MAIL

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Land Use Commission
State of Hawaii
235 South Beretania Street, Suite 406
Honolulu, Hawaii 96813

SUBJECT: Docket No. A04-751/Maui Land & Pineapple Company, Inc.; MAUI OCEANVIEW LP's MOTION TO AMEND DECISION AND ORDER

Dear Mr. Saruwatari:

Thank you for your email of July 24, 2019 which provides your initial concerns with the Maui Oceanview LP's filings. I apologize for any confusion regarding Maui Oceanview LP's request for relief to the Land Use Commission (LUC) and am providing this letter to clarify.

The materials submitted by Maui Oceanview LP in support of its motion to amend the LUC's decision and order in its initial filings are primarily intended to obtain LUC permission to rent as well as to sell units in the Pulelehua Development, and to show the proposed conceptual development layout for Pulelehua. The materials in the Supplemental Memorandum in Support filed in 2018 and the Second Supplemental Memorandum in Support filed in June 2019 (Second Supp. Memo.) provide additional information in response to the Land Use Commission's comments in the December 11, 2017 letter. The additional materials also reflect certain adjustments in the plan and conceptual development layout based on input and comments on the project from County of Maui officials and Hawaii State Department of Transportation officials.¹

For example, County of Maui officials determined that Maui Oceanview LP should provide its own water treatment plant and wastewater treatment plant to serve the Pulelehua community without connections to or service from the County of Maui systems. Maui Oceanview LP is requesting amendments to the decision and order conditions (conditions 3 and 20) to recognize and reflect those county determinations.

¹ As indicated in the Second Supp. Memo., p. 7:

Since the filing of its motion, Maui Oceanview LP and its consultants have continued to meet with State and County agencies interested in certain portions and aspects of the proposed project, including the various divisions of the Hawaii Department of Transportation, the Maui Department of Planning, the Maui Department of Water Supply, the Maui Department of Environmental Management, and the Maui Department of Public Works.

As you note, the specific relief requested from the LUC will require more than the change in language requested in Maui Oceanview LP's initial motion. As set out in the Second Supplemental Memorandum, the amendments to conditions of the order requested are as follows:

1.a. Petitioner shall develop and offer for rent not less than 125 affordable housing units to qualified families or individuals to satisfy a condition imposed by the Commission in its approval of Petitioner's Kapalua Mauka development in LUC Docket No. A03-741. **Maui Oceanview LP acknowledges that it will fulfill this obligation of original Petitioner MLP.**

1.b. ~~In addition, Petitioner~~ **Maui Oceanview LP** shall develop and offer for ~~sale~~ **rent** not less than ~~325~~ **280** affordable housing units, **which total includes the 125 Kapalua Mauka units,** to low, low-moderate, and moderate income residents of Maui as a feature of Pulelehua **in accordance with the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code and the executed Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units-Rental with Maui DHHC dated March 7, 2019.**

1.c. To ensure continued ~~owner occupancy, rental and resale~~ **rental** to qualified low, ~~low-moderate~~ and moderate income residents and maintain the affordable **rental** housing inventory within Pulelehua, ~~Petitioner~~ **Maui Oceanview LP** shall prior to the rental ~~or sale~~ of any affordable housing unit **comply establish with** County approved restrictions governing the rental, ~~sale~~ or transfer of all affordable housing units **as set out in the Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units-Rental with Maui DHHC.**

1.d. Subject to applicable laws, ~~Petitioner~~ **Maui Oceanview LP** shall establish at a minimum, qualifications for rental ~~or purchase~~ which specify that a renter ~~or buyer~~ must be currently employed in Maui, **be retired from employment in Maui; be a full-time student residing in Maui; be a disabled person residing in Maui and previously employed in Maui; be the parent or guardian of a disabled person residing in Maui; be the spouse or dependent of any such employee, retired person, student or disabled person, in the event of death of an employee, retired person, student or disabled person the spouse or dependent of any such person residing in Maui,** attain a minimum age of 18 years, demonstrate evidence of sufficient income, agree to physically reside in the affordable housing unit, and not already own a housing unit or other real property.

...
3. ~~Wastewater Facilities. Petitioner shall, upon connection, pay a fair share contribution to fund improvements to wastewater treatment facilities to serve the Petition Area if such facilities are approved and developed by the County of Maui prior to the issuance of building permits, and Petitioner shall receive wastewater treatment service for wastewater from the Petition Area from the County of Maui at the LWWRF. In the event connection is made to the LWWRF, Petitioner shall construct wastewater transmission facilities to transport wastewater from the Petition Area to appropriate County wastewater transmission facilities leading to the LWWRF. Maui Oceanview LP shall develop and construct a wastewater treatment facility for Pulelehua.~~

...

20. **Water Resources Allocation.** ~~Petitioner~~ **Maui Oceanview LP** shall provide adequate potable and non-potable water source, storage and transmission facilities and improvements ~~to the satisfaction of the DWS~~ to accommodate the proposed development on the Petition Area.

Further, as you point out, an additional condition 29 is requested to reflect a request from the County of Maui Department of Public works:

While the drainage basin owned by the Maui County Department of Public Works is included in the Project acreage covered by this Petition, the conditions set out in this order shall not be applicable to the Maui County Department of Public Works.

Maui Oceanview LP's Pulelehua Project

Maui Oceanview LP's Pulelehua Project is a mixed-use community with 100 Single Family Lots, 800 rental units and some commercial/retail space. Maui Oceanview LP will construct the multi-family rental buildings and units and commercial buildings. Live/Work spaces will be included in certain of the multi-family rental buildings. The rental units will include 280 workforce housing units and 520 market priced rental units. The project will include a site selected by the Hawaii Department of Education for a proposed new elementary school, a 10-acre County park, smaller pocket parks and open space areas, and a trail and walking path system which connects different areas of the community.

In response to your specific comments:

Your comment:

In the Motion, Movant was requesting that Petitioner be allowed to develop and offer for sale or rent 180 units for low, low-moderate, moderate, and above-moderate income residents. The Supplemental subsequently included changes to the workforce housing component, among other things. I understand that the project proposal has further changed, and that Movant now proposes to develop and offer for rent not less than 280 affordable housing units, including the 125 Kapalua Mauka units, to low, low-moderate, and moderate income residents. This is reflected in the proposed amended language to Condition No. 1b. Movant also proposes 100 single-family lots for sale and does not intend to construct any accessory `ohana units as part of the development.

Maui Oceanview LP's Response:

Maui Oceanview LP based its initial calculation of workforce housing units required by the current Maui Workforce Housing Ordinance (Maui County Code, Chapter 2.96) on the maximum allowed density of 900 units. In discussions with County officials, the number of workforce housing units was adjusted to reflect that Maui Oceanview LP, as MLP's successor in interest of the Pulelehua parcel, would be including MLP's commitment in connection with its Kapalua Mauka project to provide 125 workforce housing rental

housing units on the property (Kapalua Mauka commitment). The 125 units in the Kapalua Mauka property reduced the density at Pulelehua to 775 units. Calculated on the 775 units, the workforce housing requirement for Pulelehua from Maui Oceanview LP is 155 units. Added to the Kapalua Mauka commitment of 125 units, Maui Oceanview LP will be providing a total of 280 workforce housing rental units at Pulelehua. The adjusted number of workforce housing units and the income group distribution is reflected in the Workforce Housing Agreement executed with the County of Maui and attached to the Second Supp. Memo as Exhibit T.²

While Maui Oceanview LP will offer for sale 100 single family lots, it will not be constructing the homes on those lots, nor will it then construct any 'Ohana units on those lots (as you understand, Maui County allows 'ohana units only on certain sized single family lots in Maui County).

As you observed, the adjustment to the number of units is reflected in the proposed change to the Decision and Order condition 1.a. and 1.b. See Second Supp. Memo, Exhibit , p. 86.

Your comment:

In the Motion, the LUC was requested to provide additional relief as follows: (1) note that Movant may seek a zoning amendment to convert the contemplated 318 accessory units into the total density that Movant can construct at the West Maui Project District 5. . . .

Maui Oceanview LP's response:

Maui Oceanview LP has no intention to seek a zoning amendment to increase the total density allowed under West Maui Project District 5. In discussions with the County of Maui, Pulelehua will include 100 single family lots. The purchasers of those lots will have the option of constructing homes and 'ohanas as allowed under West Maui Project District 5.

Your comment:

In the Motion, the LUC was requested to provide additional relief as follows: . . . (2) clarify whether the requirement to provide 125 affordable housing units for rent imposed on MLP in its Kapalua Mauka project approved in Docket A03-741 applies to the Movant and whether these 125 affordable housing units for rent will be in addition to the 180 units required under Maui County's current Workforce housing Policy ordinance; . . .

Maui Oceanview LP's response:

As discussed above, Maui County's current Workforce Housing unit requires Maui Oceanview LP to provide 155 workforce housing units not 180 units. Maui Oceanview LP, as successor in interest

² The calculation of workforce housing units proposed is described in the Second Supp. Memo., pp. 8-10.

of the Pulelehua property from MLP, will be taking on the obligation of MLP with regard to the Kapalua Mauka commitment to provide 125 workforce housing rental units on the property. The Kapalua Mauka commitment is in addition to the 155 workforce housing unit requirement for Maui Oceanview LP under the Maui County's current Workforce Housing ordinance. Maui Oceanview LP, as reflected in its Workforce Housing Agreement with the County of Maui, will provide a total of 280 workforce housing rental units at Pulelehua (which includes the Kapalua Mauka commitment).

Your Comment:

In the Motion, the LUC was requested to provide additional relief as follows: . . . (3) acknowledge Movant's proposed design of the Pulelehua development which incorporates the same number of units originally approved and the same amount of retail square feet allowed while providing more open space.

Based on the proposed changes to Condition No. 1b and to the development as a whole, it would appear that the additional relief would need to be amended/clarified to jive with the present proposal for affordable housing units and the overall development. Neither the materials accompanying the Supplemental filed in 2018 nor the Second Supplemental specifically clarified what the requested relief is given the above changes.

Maui Oceanview LP's response:

Maui Oceanview LP is requesting the LUC to acknowledge its revised layout and unit mix for the Pulelehua community. The total base density for Pulelehua remains 900 units with the major shift in kinds of units from mainly single-family house lots and homes to mainly multi-family units.. Maui Oceanview LP's project will include:

100 Single Family Lots

800 Rental Units

The 800 rental units will include 520 market priced rental units and 280 workforce housing rental units. The 280- workforce housing units includes the Kapalua Mauka commitment of 125 units and 155 units required of Maui Oceanview LP under Maui County's current workforce housing ordinance.

Maui Oceanview LP's development intends to adapt to the existing contours of the property which does change the amount of grading that would have been required under MLP's proposed layout for Pulelehua.

Your comment:

Also, as noted in our 12/11/17 letter, clarification should be provided as to whether it is Movant's intention that the LUC recognize its standing to seek and obtain the relief requested as the successor-in-interest to MLP.

Maui Oceanview LP's response:

Maui Oceanview LP included its deeds for the Pulelehua property from MLP. Second Supp. Memo., Exhibits I, J. Maui Oceanview LP is requesting that the LUC recognize its standing to seek and obtain the amendment of the decision and order as the successor-in-interest to MLP. Also provided in the materials, at Second Supp. Memo, Exhibit S, is an agreement between MLP and Maui Oceanview LP which allocates fulfilling MLP's Kapalua Mauka commitment to Maui Oceanview LP as the new owner of the Pulelehua property and MLP's continued commitment to the County of Maui to provide a site for a 50-acre regional park.

Your comment:

Finally, the changes to Condition No. 1 and additional Condition 29 in the proposed amended D&O (in ramseyer format) (Exhibit R-1) are not reflected in the Second Supplemental Memorandum in Support.

Maui Oceanview LP's response:

Maui Oceanview LP set out the proposed changes to the decision and order at the Second Supp. Memo., pp. 2-3, and which are shown in Exhibit R-1 (proposed amended D&O in ramseyer format). However, as you note, Maui Oceanview LP did not mention the specific language requested for new Condition 29 in the Second Supp. Memo. Condition 29 reflects a request from Department of Public Works as set out in Exhibit H.

I hope this provides more clarity on the relief requested by Maui Oceanview LP from the LUC.

Please do not hesitate to contact me if you have further questions and concerns.

Very truly yours,

TAKITANI AGARAN JORGENSEN & WILDMAN, LLLP

By 
GILBERT S.C. KEITH-AGARAN

cc: Maui Oceanview LP (via email)
Dan Orodenker (via email)
Riley Hakoda (via email)