

LAND USE COMMISSION
STATE OF HAWAII

2019 SEP -6 A 9:17

August 30, 2019

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

Bert K. Saruwatari
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:

This provides further material in response to your emails of July 29 and 31, 2019 regarding Maui Oceanview LP's filings.

In further response to your specific comments:

Your comment:

Also, in our December 11, 2017, letter to you, we noted that the TIAR should account for any `ohana units that may be built at Pulelehua. We understand that the decision to build `ohana units will be left to the individual lot purchasers and not to the Movant. Nevertheless, it does not appear that the current TIAR dated May 13, 2019, addresses the additional impact that may be created by `ohana units. The CBRE market, economic impact analysis, and public fiscal assessment report also fails to consider `ohana units despite admitting that "Pulelehua could also potentially contain up to 300 `Ohana' (accessory dwelling) units...."

Any analysis of the adequacy of public services and facilities, including, but not limited to, solid waste, police and fire protection, medical services, and public utilities should take into account the impact of these `ohana units.

Maui Oceanview LP's response:

An updated Traffic Impact Analysis Report (TIAR August 13, 2019) which takes into account the possible future construction of accessory dwelling units (`ohanas) was provided previously, along with hardcopies of Sections 6 (Conclusions) and Section 7 (Recommendations) from the updated TIAR August 13, 2019. The relevant findings in the proposed Amended D&O have been revised to reflect the updated TIAR.

As previously mentioned, an analysis of the adequacy of public services and facilities will be submitted no later than September 4, 2019 as you suggest in an email of August 19, 2019.

Your comment:

In the proposed Amended D&O, reference is made to a 10-acre park. FOF 130 refers to it as a "Community Park" (as does the Conceptual Site Plan), while FOF 131 and 207 refer to it as a "Regional Park." It does not appear that there are two 10-acre parks proposed, so are these terms interchangeable? If not, what is the correct description?

Maui Oceanview LP's response:

The proposed Amended D&O has been revised to reflect Maui Oceanview LP's commitment of one 10-acre "Community Park" for the project which will be dedicated to the County, and the continuing separate commitment from Maui Land & Pineapple (MLP) to the County of Maui to provide a 50-acre Regional Park

Your comment:

*Please provide the file of the proposed Amended D&O in MS Word. Also, if automatic numbering was used, please remove it in the document for ease of editing. It appears that the document was retyped in its entirety from the .pdf copy that is on the LUC website? It should be proofread as I noticed some errors in the document. To clarify my fourth comment below, **some** (not all) of the errors are in the FOFs in the Socio-Economic Impacts section of the proposed Amended D&O. They appear to reference numbers that were in the previous CBRE study. You may also want to double-check the FOFs in the Commitment of State Funds and Resources section as well.*

Maui Oceanview LP's response:

The proposed Amended D&O in MS Word with correction of errors and other revisions is attached with the email transmittal of this letter; a digital copy of the same will be forthcoming.

Bert K. Saruwatari
Land Use Commission
August 30, 2019
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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

Attachments:

Proposed Amended D&O

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

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII

2019 SEP -6 A 9:21

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. 031 AND
079

DOCKET NO. A04-751

AMENDED CERTIFICATE OF SERVICE
RE: THIRD SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION OF PETITIONER MAUI
OCEANVIEW LP TO AMEND DECISION
AND ORDER; EXHIBITS M-2, U-V

AMENDED CERTIFICATE OF SERVICE RE: THIRD SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION OF PETITIONER MAUI OCEANVIEW LP TO AMEND
DECISION AND ORDER; EXHIBITS M-2, U-V

I certify that a copy of the THIRD SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION OF PETITIONER MAUI OCEANVIEW LP TO AMEND DECISION
AND ORDER; EXHIBITS M-2, U-V was duly served on the following parties at their last known
address by depositing in the U.S. mail, postage prepaid on **August 23, 2019**:

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

Dawn Takeuchi-Apuna, Esq.
Deputy Attorney General
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Department of the Attorney General
425 Queen Street
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Michelle McLean, Director
Department of Planning
County of Maui
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Wailuku, Maui, Hawaii 96793

Moana Lutey, Corporation Counsel
Michael Hopper, Dep. Corp. Counsel
Office of the Corporation Counsel
County of Maui
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Wailuku, Maui, Hawaii 96793

Rowena Dagdag, Director
Maui County Department of Public Works
200 S. High Street
Wailuku, Maui, Hawaii 96793

Jeff Pearson, Director
Maui County Department of Water Supply
200 S. High Street
Wailuku, Maui, Hawaii 96793

Maui Electric Company, Limited
ATTN: Corporate Secretary
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Honolulu, Hawaii 96840
(DIGITAL COPY ONLY)

Maui Electric Company, Limited
c/o Susan A. Li
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Hawaiian Telecom, Inc.
ATTN: Legal Department
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Hawaiian Telecom, Inc.
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Hawaiian Airlines
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Honolulu, Hawaii 96819
(DIGITAL COPY ONLY)

Land Use Commission
235 S. Beretania Street #406
Honolulu, Hawaii 96813
ATTN: Riley K. Hakoda

DATED: Wailuku, Maui, Hawaii, August 30, 2019.



GILBERT S.C. KEITH-AGARAN
DAVID M. JORGENSEN
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LAND USE COMMISSION
STATE OF HAWAII

2019 SEP -6 A 9:18

ATTORNEYS FOR PETITIONER
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

THIRD SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION OF PETITIONER MAUI
OCEANVIEW LP TO AMEND DECISION
AND ORDER; EXHIBITS M-2, U-V;
CERTIFICATE OF SERVICE

**THIRD SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
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, moved the LAND USE COMMISSION of the State of Hawaii (the “Commission”) to amend the decision and order of June 22, 2006 (“2006 D&O”) pursuant to Hawaii Administrative Rules §§15-15-70 and 15-15-94.

On July 24, 2019, July 29, 2019, and July 31, 2019, the Land Use Commission staff wrote to Petitioner, provided comments, and requested additional information. Petitioner, through counsel, responded by letter on July 29, 2019 (Exhibit U) and August 19, 2019 (Exhibit V) to the LUC staff with the following additional information and clarifications:

		Maui Oceanview LP is the successor in interest to Maui Land & Pineapple Company, Inc.
	EXHIBITS I, J	Limited Warranty Deed with Reservations and Covenants from Maui Land and Pineapple Company, Inc., recorded in the Bureau of Conveyances of the State of Hawai'i on June 3, 2016 as Document No. A-59980843 (for TMK 4-3-01-82); and Limited Warranty Deed with Reservations and Covenants from Maui Land and Pineapple Company, Inc., recorded in the Bureau of Conveyances of the State of Hawai'i on June 3, 2016 as Document No. A-59980844 (for TMK 4-3-01-83) Attached to Exhibit V are Print Outs of the Maui County Parcel History for TMK 4-3-01-82 and TMK 4-3-01-83) which indicate the re-assigned TMKs from TMK 4-3-01-31 (por.).
	EXHIBIT M-2	UPDATED and REVISED Traffic Impact Analysis Report (TIAR) (August 13, 2019) Attached to Exhibit V are copies of Sections 6 and 7 of the updated and revised TIAR (August 13, 2019).
	EXHIBIT U	Letter from G. Keith-Agaran to B. Saruwatari dated July 29, 2019.
	EXHIBIT V	Letter from G. Keith-Agaran to B. Satuwatari dated August 19, 2019 (w/ attached copies of Maui County Parcel History Print Outs for TMK 4-3-01-82 and TMK 4-3-01-83 (which indicate the re-assigned TMKs from TMK 4-3-01-31 (por.)), and copies of Sections 6 and 7 of the updated and revised TIAR (August 13, 2019).

Additional information responding to the LUC staff comments will be submitted.

MAUI OCEANVIEW LP seeks the following relief from the Land Use Commission: amendment of the Findings of Fact, Conclusions of Law, and Decision and Order

(D&O) to reflect that MAUI OCEAVIEW LP will provide 280 affordable multi-family workforce housing units for rent (inclusive of MLP's Kapalua Mauka commitment to provide 125 workforce housing units) in the Pulelehua development consistent with the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code, and the Residential Workforce Housing Agreement executed between MAUI OCEANVIEW LP and the County of Maui Department of Housing and Human Concerns dated March 7, 2019, acknowledgement of MAUI OCEANVIEW LP's revised layout and unit mix that includes 800 affordable and market multi-family rental units and 100 single family for sale lots, and recognition of MAUI OCEANVIEW LP's standing to seek and obtain the amendment of the D&O as successor-in-interest to Maui Land & Pineapple Company, Inc. (MLP).

MAUI OCEANVIEW LP specifically requests the following amendments to the conditions of the 2006 D&O to reflect plans for its predominantly rental housing project:

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.

MAUI OCEANVIEW LP also requests the following additional condition as requested by the Maui County Department of Public Works:

29. 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 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 and offer for sale the 100 Single-Family Lots. 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 280 workforce housing rental units includes MLP's Kapalua Mauka commitment of 125 workforce rentals. The project will include a site selected by the Hawaii Department of Education

for a proposed new elementary school, a 10-acre County community park, smaller pocket parks and open space areas, and a trail and walking path system which connects different areas of the community.

CONCLUSION

Maui Oceanview LP requests the relief requested.

DATED: Wailuku, Maui, Hawaii, August 23, 2019.



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

Attorneys for Petitioner MAUI OCEANVIEW LP