



LAND USE COMMISSION  
STATE OF HAWAII

2019 OCT 28 P 2: 22

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 Hawai'i corporation	)	ORDER DEFERRING DECISION-MAKING ON MAUI OCEANVIEW LP'S MOTION TO AMEND DECISION AND ORDER AND
To Amend The Agricultural Land Use District Boundary Into The Urban Land Use District For Approximately 310.440 Acres Of Land At Māhinahina And Kahana, Lahaina, Maui, Hawai'i, Tax Map Key: 4-3-01: Por. 31 And 79	)	CERTIFICATE OF SERVICE

ORDER DEFERRING DECISION-MAKING ON MAUI OCEANVIEW LP'S MOTION  
TO AMEND DECISION AND ORDER

AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT  
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE  
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

Date 10/28/2019

BY   
DANIEL GRODENKER  
Executive Officer



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Land At Māhinahina And Kahana, Lahaina, )  
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ORDER DEFERRING DECISION-MAKING ON MAUI OCEANVIEW LP'S MOTION  
TO AMEND DECISION AND ORDER

On September 25, 2019, the State of Hawai`i Land Use Commission ("LUC") met in the Alexa Higashi Meeting Room at the Maui Arts & Cultural Center in Kahului, Maui, Hawai`i, to consider the Motion to Amend Decision and Order filed by Maui Oceanview LP ("Movant") on November 22, 2017, pursuant to Hawai`i Administrative Rules ("HAR") §§15-15-70 and 15-15-94.<sup>1</sup> In the Motion to Amend

<sup>1</sup> On August 28, 2018, and on June 21, 2019, August 27, 2019, September 16, 2019, and September 19, 2019, Movant filed five Supplemental Memorandums in Support of the Motion to Amend Decision and Order ("Supplemental Memorandums in Support"), respectively, as well as declarations and various new and revised exhibits. The Motion to Amend Decision and Order and the five Supplemental Memorandums in

D&O, Movant requested the LUC to (1) amend the Findings of Fact, Conclusions of Law, and Decision and Order (“Decision and Order”) issued on June 30, 2006,<sup>2</sup> in Docket No. A04-751 to allow Movant to provide 280 affordable multi-family workforce housing units for rent (inclusive of the Kapalua Mauka commitment to provide 125 workforce housing units)<sup>3</sup> 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 Movant and the County of Maui Department of Housing and Human Concerns (“DHHC”) dated March 7, 2019; (2) acknowledge Movant’s revised layout and unit mix for Pulelehua that includes 800 affordable and market multi-family rental units and 100 single-family for sale lots; and (3) recognize Movant’s standing to seek and obtain the amendment of the Decision and Order as the successor-in-interest to Maui Land & Pineapple Company, Inc., a Hawai`i corporation (“MLP”).

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Support, declarations, and exhibits are hereinafter collectively referred to as the “Motion to Amend D&O.”

<sup>2</sup> Movant refers to the June 22, 2006, date in which the LUC orally approved the docket.

<sup>3</sup> The Kapalua Mauka development represents the next phase of the Kapalua Resort expansion and consists of a master-planned upscale resort residential, rural residential, and recreational community on approximately 790 acres of land at Honokahua, Nāpili 2 and 3 and Nāpili 4 and 5, Maui, Hawai`i. The LUC approved the development in Docket No. A03-741/Maui Land & Pineapple Company, Inc., a Hawai`i corporation. Under Condition No. 1 of the Findings of Fact, Conclusions of Law, and Decision and Order, the LUC required MLP, at a minimum, to develop no less than 125 affordable units as a part of its proposed Pulelehua project.

Gilbert S.C. Keith-Agaran, Esq., and Paul Cheng appeared on behalf of Movant. Michael Hopper, Esq., Michele Mclean, and Ann Cua appeared on behalf of the County of Maui Department of Planning (“DP”). Dawn Takeuchi-Apuna, Esq., and Aaron Setogawa appeared on behalf of the State of Hawai`i Office of Planning (“OP”).<sup>4</sup> Following the introduction of the parties, the LUC heard public testimony from Kai Nishiki, Tiare Lawrence, Dick Mayer, Etan Krupnick, Lucienne DeNaie, Stan Franco, councilmember Tamara Paltin, Albert Perez, Melissa Harding, Aggie England, Michaelyn Burke, and Mike Wildberger.<sup>5</sup>

Following the receipt of public testimony, Movant proceeded with its presentation on its Motion to Amend D&O. The LUC heard from Movant’s witnesses Tom Coppin, Tyler Fujiwara, Ray Montoya, Tom Holliday, Paul Cheng, Tanya Lee-Greig, and Preston Cheng. The LUC thereafter recessed the meeting to the following day, September 26, 2019.

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<sup>4</sup> At the beginning of the meeting, Commissioner Lee Ohigashi disclosed that he knew Movant’s counsel, Mr. Keith-Agaran, as a fellow attorney with whom he has socialized in the past, but that he believed this would not impede his decision-making on the matter. Chair Jonathan Scheuer also disclosed that in his private consulting practice on water rights issues, he represents three different parties who have an interest in receiving water from the Honokohau Ditch system, which Movant has also considered as a potential source of water for its project, but that the outcome of this proceeding on Movant’s Motion to Amend D&O made no difference in his engagement in those matters. The parties voiced no objections to the continued participation of Commissioners Ohigashi and Scheuer in the proceeding.

<sup>5</sup> At the meeting, the DP filed a document entitled *List of Deficiencies in Amended Decision and Order* (“List of Deficiencies”).

On September 26, 2019, the LUC resumed consideration of Movant's Motion to Amend D&O at the Haynes Meeting Room at the Maui Arts & Cultural Center in Kahului, Maui, Hawai'i.<sup>6</sup> At this time, the LUC heard from Ann Cua and Michele Mclean of the DP. The DP noted, among other things, that it supported Movant's Motion to Amend D&O, provided that Movant's Proposed Amended Findings of Fact, Conclusions of Law, and Decision and Order ("Proposed Amended D&O") could be corrected to reflect the items raised in DP's List of Deficiencies. The DP also provided a background of the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code, and the Residential Workforce Housing Agreement executed between Movant and the DHHC.

Following the presentation of the DP's case, Movant's counsel, Mr. Keith-Agaran, orally moved to defer given the concerns expressed by the LUC regarding the adequacy of the record and the filings of the parties to: (1) allow Movant to work with the DP on revising Movant's Proposed Amended D&O; and (2) allow both OP and the DP to obtain comments from the respective state and county agencies which had not provided comments on the Motion to Amend D&O. Chair Scheuer acknowledged Movant's oral motion to defer and asked whether OP would like to proceed with its

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<sup>6</sup> At the continued meeting, Movant filed a document entitled *West Maui Community Plan – Housing Technical Resource Paper* dated October 15, 2018, and identified it as Movant's Exhibit W. There being no objections from the other parties, the LUC admitted the document into the record. Movant also provided individual hard copies of its previously filed Exhibits N-1, N-2, and T to the LUC and the parties.

presentation on Movant's Motion to Amend D&O. OP responded affirmatively and commenced its presentation, noting among other things that due to time constraints and Movant's numerous filings, OP and the state agencies that were requested to review Movant's Motion to Amend D&O were limited in their review of the matter. Based on the information available to OP, OP recommended that Movant's Motion to Amend D&O be conditionally approved by incorporating proposed conditions recommended by the State of Hawai'i Department of Transportation ("DOT"). Upon questioning by the Chair, OP expressed support for a deferral of the matter in order to receive more agency comments in the event they are filed. OP then offered Aaron Setogawa as OP's witness to address questions from the LUC regarding the DOT, Airports Division, and the Kapalua-West Maui Airport, and the impact of Movant's proposed development on current flight operations. Upon further questioning on whether a supplemental environmental impact statement ("SEIS") would be appropriate for Movant's development proposal under Hawai'i Revised Statutes ("HRS") chapter 343, OP noted that was an issue that could be addressed during the deferral period.

Following OP's presentation, the Chair Scheuer requested that the parties identify the issues that would be addressed during a deferral period in the event the LUC were to grant Movant's oral motion to defer. Movant noted that it would work

with the parties to revise Movant's Proposed Amended D&O, and that it would hold community meetings in West Maui on Movant's development proposal for Pulelehua.

The DP expressed the need to revise Movant's Proposed Amended D&O and obtain additional county agency comments on Movant's Motion to Amend D&O during the deferral period. The DP further pointed out the need for additional community outreach on the part of the Movant prior to any action on its Motion to Amend D&O.

OP noted that during the deferral period, the issues of whether an SEIS is warranted under HRS chapter 343 for Movant's development proposal and whether good cause exists to amend the D&O should be addressed. OP also noted that the deferral would provide additional time for OP to obtain comments from state agencies which have not provided comments on Movant's Motion to Amend D&O and for the Movant to have more community engagement regarding its development proposal.

All the parties expressed the desire to be afforded further time to work together on a stipulated Amended D&O.

Following the parties' comments, Chair Scheuer requested that the Commissioners share their thoughts on what they would like addressed during a deferral period. The Commissioners echoed the parties' comments and pointed out additional areas that should be addressed during the deferral period, including (1) additional community engagement in West Maui; (2) a breakdown of the actual low



cost housing and whether there is by law a required percentage within the different income categories; (3) whether good cause exists to amend the D&O for Movant's development proposal; (4) a deadline of November 15, 2019, by which all parties shall file any and all requested documents; (5) a matrix of Movant's exhibits to enable easier accessibility of each exhibit; (6) an analysis of whether an SEIS is warranted under HRS chapter 343 for Movant's development proposal; (7) clarification as to whether any of the housing units at Pulelehua will satisfy the County affordable housing requirements of a future project and whether the 125 workforce housing units to meet the obligation of Kapalua Mauka project will be built within Pulelehua during its development; (8) whether Movant has met the burden of complying with all applicable laws under HRS chapters 6E, 205, and 343, including but not limited to the requirements for archaeological inventory surveys and cultural impact assessments; (9) an analysis that supports the economic feasibility of Movant's development proposal and the likelihood that it will be built over MLP's original proposal for Pulelehua; (10) whether the affordable housing agreement between Movant and the DHHC should be reopened to include an additional income category up to 140 percent of the area median income to address the critical housing needs for that segment of the population; (11) substantial information on the steps to secure a long-term reliable source of water for Movant's development proposal; and (12) an analysis of the different impacts of providing rental housing versus for sale housing on families.

Following the Commissioners' comments, Chair Scheuer outlined a potential motion to defer decision-making to allow:

(1) all parties to work towards a stipulated Amended D&O which will address the following:

- a) a specific description of the breakdown on what affordable housing units are being produced, including distinguishing by the different levels of affordability and the relationship to previously required affordable housing units that are now being built at Pulelehua;
- b) after significant community engagement, whether the affordable housing agreement between Movant and the DHHC should be reopened/renegotiated to include an additional income category up to 140 percent of the area median income; and
- c) the steps that are being taken to secure a long-term reliable source of water for Movant's proposed development;

(2) Movant to brief the LUC on whether an SEIS is warranted for Movant's proposed development under HRS chapter 343 (OP and the DP are also invited to brief the LUC on this issue);

(3) all parties to brief the LUC on whether there is good cause for the LUC to amend the D&O, including the following:

- a) an analysis from the County regarding the impact of rental housing versus for sale housing; and
- b) an analysis from Movant explaining why the original proposal for Pulelehua is not economically feasible and why Movant's current proposed project is economically feasible;

(4) OP and the DP to obtain additional state and county agency comments, respectively, on Movant's Motion to Amend D&O; and

(5) Movant to have more meaningful community engagement in West Maui regarding Movant's Motion to Amend D&O.

Chair Scheuer further noted that the parties should file with the LUC all documents to address the specific issues identified by the Chair no later than November 15, 2019, that the electronic copies of the documents should be in a form that is useable and postable to the LUC website so that they can be easily identified and reviewed by the LUC and the general public, and that the parties are to update the LUC as to whether the parties will be prepared to continue proceedings on December 4, 2019.

Thereafter, a motion was made and seconded to defer decision-making on Movant's Motion to Amend D&O to December 4, 2019, or to a date that may be determined by the LUC Chair and the parties and to request that the parties no later than November 15, 2019, file with the LUC all documents to address the specific issues outlined by the Chair. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion passed.

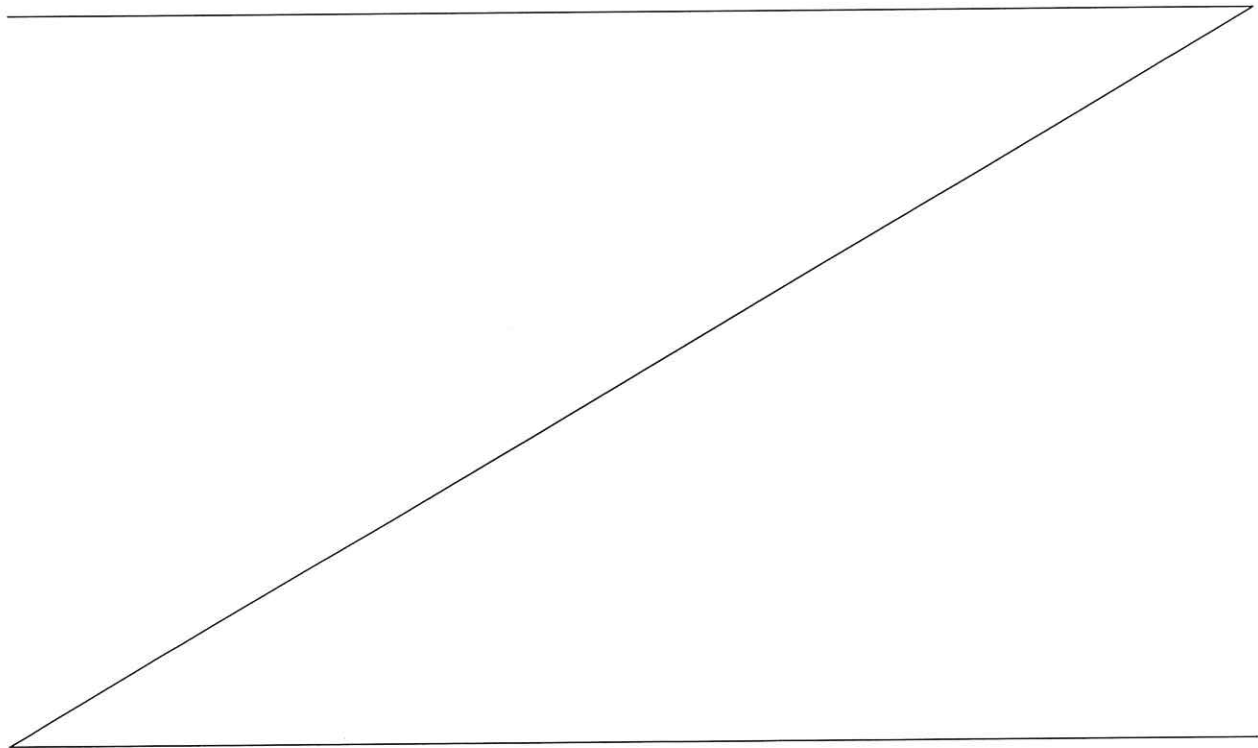
#### ORDER

The LUC, having duly considered the arguments of Movant, OP, and the DP in the proceeding, and a motion having been made and seconded at a meeting on September 26, 2019, in Kahului, Maui, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS that decision-making on Movant's Motion to Amend D&O be DEFERRED.

Accordingly, decision-making on this matter shall be deferred to December 4, 2019.

IT IS FURTHER ORDERED that no later than November 15, 2019, Movant, OP, and the DP shall file with the LUC all documents to address the specific issues identified by the LUC Chair, that the electronic copies of the documents shall be in a form that is useable and postable to the LUC website so that they can be easily identified and reviewed by the LUC and the general public, and that the parties are to update the LUC as to whether the parties will be prepared to continue proceedings on December 4, 2019.



ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 28th, day of October, 2019, per motion on  
September 26, 2019.

LAND USE COMMISSION

APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy Attorney General

STATE OF HAWAI'I

By   
\_\_\_\_\_  
JONATHAN SCHEUER  
Chairperson and Commissioner

Filed and effective on:

October 28, 2019

Certified by:

  
\_\_\_\_\_  
DANIEL ORODENKER  
Executive Officer

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CERTIFICATE OF SERVICE

I hereby certify that an ORDER DEFERRING DECISION MAKING ON MAUI OCEANVIEW LP'S MOTION TO AMEND DECISION AND ORDER was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

DEL.: MARY ALICE EVANS, Director  
State Office of Planning  
P. O. Box 2359  
Honolulu, Hawai'i 96804-2359

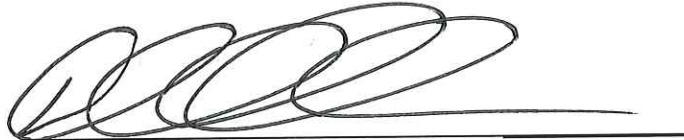
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250 South High Street  
Wailuku, Hawaii 96793

Dated: Honolulu, Hawai'i, October 28, 2019

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

DANIEL ORODENKER

Executive Officer