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 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

To Amend The Agricultural Land Use District  
 Boundary Into The Urban Land Use District for  
 Approximately 310.440 Acres of Land at  
 Mahinahina and Kahana, Lahaina, Maui, Hawaii,  
 Tax Map Key: 4-3-01: Por. 31 And 79.

)  
 ) SIXTH MEMORANDUM IN SUPPORT OF  
 ) MOTION TO AMEND; DECLARATION OF  
 ) GILBERT S.C. KEITH-AGARAN;  
 ) DECLARATION OF PAUL CHENG;  
 ) EXHIBITS A-3, A-4, M-2 EXCERPT, M-3, N-3,  
 ) N-4, N-5, O-1, O-2, R-3, W, W-2, W-3, X, Y, Z,  
 ) AA; MEMORADUM ON LEGAL ISSUES:  
 ) WHETHER PULELEHUA REQUIRES A  
 ) SUPPLEMENTAL ENVIRONMENTAL  
 ) IMPACT STATEMENT AND STATEMENT  
 ) SUPPORTING GOOD CAUSE TO AMEND  
 ) THE 2006 DECISION AND ORDER;  
 ) CERTIFICATE OF SERVICE  
 )

SIXTH MEMORANDUM IN SUPPORT OF MOTION TO AMEND

Petitioner Maui Oceanview LP, through counsel, submits additional information in support of its motion to amend the 2006 Findings of Fact, Conclusions of Law, and Decision and Order ("2006 D&O") in the Petition for Land Use Boundary Amendment ("Original Petition") filed by MAUI LAND & PINEAPPLE COMPANY, INC., a Hawai'i corporation ("Original Petitioner MLP") on June 28, 2004, and an Amended Petition For Land Use District Boundary Amendment ("Amended Petition") on July 27, 2005, pursuant to

condition 30 of the 2006 D&O and Hawaii Administrative Rules §§15-15-70, 15-15-94. This memorandum also responds to the conditions of the Commission’s deferral motion.

RELIEF REQUESTED

Petitioner Maui Oceanview LP requests the Commission grant the following relief:

1. Recognize it as successor in interest to the original petitioner Maui Land and Pineapple Company, Ltd. (“MLP”).
2. Acknowledge its proposed development layout for Pulelehua.
3. Amend the 2006 D&O to allow rentals as well as sales, the development of a private water treatment plant, and a private wastewater treatment plant if required by the County of Maui, amend the number of workforce housing units proposed for Pulelehua, and clarify that the development conditions do not apply to the County of Maui Public Works Department.

COMMUNITY ENGAGEMENT

Following the deferral of the Commission consideration of the Motion to Amend, Petitioner Maui Oceanview LP entered into discussions and meetings with various members of the West Maui and Maui community, including holding two public meetings on Wednesday, November 6, 2019 and Saturday, November 9, 2019 at Princess Nahienaena Elementary School in Lahaina, Maui, Hawaii. Declaration of Paul Cheng (“Paul Cheng Decl.”), ¶13. At the meetings, Maui Oceanview LP had an opportunity to share its proposed vision for Pulelehua (*see* EXH. A-4), and community members raised various concerns and comments regarding the proposed development. Paul Cheng Decl., ¶13.

Maui Oceanview LP, as part of community engagement discussions, proposes

to make the following adjustments to its proposals for Pulelehua:

a. 100 units of the 800 Multi-Family Units will be offered for sale to qualified Maui residents as Workforce Housing Units distributed as follows:

INCOME CATEGORY	UNITS
(Low) 60% or less	20
(Below Moderate) 60% to 80%	20
(Moderate) 80% to 100%	40
(Above Moderate) 100% to 120%	20
TOTAL	100

Petitioner Maui Oceanview LP will seek an amendment of its Housing Agreement in order to include a deed restriction in accordance with the County of Maui Workforce Housing ordinance and the Housing Agreement between Maui Oceanview LP and the County of Maui Department of Housing and Human Concerns (“DHHC”). Petitioner Maui Oceanview LP will propose the use of an advisory committee that includes community members to assist it in reviewing and evaluating the eligibility of buyers of such units. (Paul Cheng Decl., ¶14.a.).

b. 300 units of the 800 Multi-Family Units will be offered to qualified Maui residents as Workforce Housing Rentals distributed as follows:

INCOME CATEGORY	UNITS
(Low) 80% or less	100
(Below Moderate) 80% to 100%	100
(Moderate) 100% to 120%	100
TOTAL	300

The 300 workforce rental units include the 125 Kapalua Mauka units, the 155 units required for Pulelehua under the County’s workforce housing ordinance and an additional 20 workforce units (in addition to the 100 for sale workforce units). The 300 workforce housing units will remain workforce units for no less than 30 years with the County of Maui having a right of first refusal to purchase the units after that time, or to subsidize the rents to maintain them as workforce units. The eligibility and process for selecting renters of the 300 workforce housing units will be in accordance with the County of Workforce Housing ordinance and the Housing Agreement between Petitioner Maui Oceanview LP and the County of Maui DHHC. (Paul Cheng Decl., ¶14.b.).

c. Covenants and deed restrictions for Pulelehua will ban short-term rentals and/or bed and breakfast operations; (Paul Cheng Decl., ¶14.c.).

d. Workforce Housing Renters within Pulelehua will be exempt from paying Homeowner Association fees. (Paul Cheng Decl., ¶14.d.).

e. 3 of the 99 single family residential lots will be offered for sale at the cost of developing the lots to a non-profit organization involved in constructing and maintaining affordable housing. (Paul Cheng Decl., ¶14.e.).

f. The 99 single family lots and the large estate lot offered for sale will all have the right to build an accessory dwelling unit/‘ohana at the discretion of the

homeowner. The use of the 100 accessory/'Ohana units for rental to third-party, non-relatives of the homeowner will be deed restricted in perpetuity to workforce rental rents, adding up to 100 additional units to the workforce housing inventory. (Paul Cheng Decl., ¶14.f.).

g. With regard to development of the 13-acre school site, Petitioner Maui Oceanview LP will meet with local private developers who have built schools for the State of Hawaii on Maui to explore the feasibility of financing and constructing the school in similar fashion.<sup>1</sup> (Paul Cheng Decl., ¶14.g.).

h. At least one of the pocket parks will include pet friendly features and Petitioner Maui Oceanview LP will established a fenced dog park by the time Pulelehua is 50% built out. ¶14.h.).

i. The community development will follow Smart Growth principles, including construction of single story buildings (except for the two-story Live/Work units), incorporation of solar panels, provision of hikeable and bike friendly walkways and bus transportation stops, preservation of gulches and maintaining open space in addition to the Community and pocket parks, and adopting Hawaiian themed residential building designs. (Paul Cheng Decl., ¶14.i.).

j. The source of water may be groundwater or surface water, if available and approved by relevant regulatory agencies. (Paul Cheng Decl., ¶14.j.).

k. Maui Oceanview LP will contribute to create a source to fund down payment loans for eligible purchasers to buy workforce housing units. (Paul Cheng Decl., ¶14.k.).

Petitioner Maui Oceanview LP will provide 120 workforce housing units more than the 155 units required for Pulelehua under the County of Maui Workforce Housing ordinance, as well as Original Petitioner MLP's Kapalua Mauka commitment of 125 workforce housing rental units. Petitioner Maui Oceanview LP will limit the density of Pulelehua to 1000 total units<sup>2</sup> and will provide up to 400 workforce housing units (300 multi-family units or 30% of the total possible unit density, 100 multi-family for sale units or 10% of the possible unit density, up to 100 accessory dwelling/'ohana units or another 10% of the possible total unit density. (Paul Cheng Decl., ¶15.). The remainder will be market units (400 multi-family rental housing units, 99 single family lots,

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<sup>1</sup> Petitioner Maui Oceanview LP will reserve portions of its property along Honoapi'ilani Highway for future dedication to the State for storage and turning lanes that may be required when the elementary school is constructed and operating. (Paul Cheng Decl., ¶17).

<sup>2</sup> The Project District ordinance 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 §19.93.050.

and 1 large estate lot). (Paul Cheng Decl., ¶15.). Moreover, Petitioner Maui Oceanview LP targets more of its proposed workforce units towards the lower income categories (140 units for 50% to 80% of AMI, 140 for 81% to 100% of AMI, and 120 for 100% to 120% of AMI, and no units above 120% of AMI). (Paul Cheng Decl., ¶16.). Original Petitioner MLP proposed to develop 88 units for 50% to 80% of AMI, 185 units for 81% to 100%, and 177 units for 101% to 140%. (Paul Cheng Decl., ¶16.).

Other features of Petitioner Maui Oceanview LP's proposal remain in place. Petitioner anticipates, provided all necessary approvals are received from government agencies, that a portion of Pulelehua's electrical needs will be supplied by onsite energy generating facilities. (Paul Cheng Decl., ¶19.). Petitioner envisions solar panels on commercial buildings for some energy needs and multi-family buildings for water heating and other energy needs as may be allowed by the County, federal aviation administration and the Department of Transportation. (Paul Cheng Decl., ¶19.). Also, to the extent Petitioner Maui Oceanview LP has control of existing *mauka* access from its property, it will not impede continued *mauka* access. (Paul Cheng Decl., ¶21.).

#### STATUS OF STIPULATED DECISION AND ORDER

Maui Oceanview LP has provided counsel for the Office of Planning and the County of Maui Department of Planning drafts of a revised amended decision and order but have not reached agreement on a stipulated version. Declaration of Gilbert S.C. Keith-Agaran, ¶5.

#### FINANCIAL CAPABILITY TO UNDERTAKE PULELEHUA DEVELOPMENT

Maui Oceanview LP is a partnership between ANICO-EAGLE and USA Infrastructure Investments, LP of Texas. ANICO-EAGLE is a subsidiary of the American

National Insurance Company, based in Galveston, Texas and is a publicly held NASDAQ listed insurance company with over \$26Billion in assets. Petitioner Maui Oceanview LP intends to finance the project's funding needs from internal or appropriate external resources as it arises. ANICO-EAGLE typically finances such construction needs with either construction financing or equity financing. A separate audited statement is not prepared for ANICO-EAGLE but the most recent statement was submitted for American National Insurance Company. USA Infrastructure Investments, LP is a Paul Cheng owned development company based in Texas. USA Infrastructure Investments, LP and/or its affiliates have other real estate investments on Maui and have extensive expertise in multi-family, retail and also affordable multi-family housing. (Paul Cheng Decl., ¶3; *see* Memo. Supp., Paul Cheng Decl., ¶¶2-3). 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 for being one of the two best affordable national senior multi-family developments in the nation for 2013. (Paul Cheng Decl., ¶4; *see* Memo. Supp., Paul Cheng Decl., ¶3. USA Infrastructure Investments LP has ongoing real estate ventures with ANICO Eagle LLC of over \$100million. (Paul Cheng Decl., ¶6; *see* Memo. Supp., Paul Cheng Decl., ¶18). USA Infrastructure Investments, LP has ongoing consolidated real estate assets of over \$100million and active development of over \$50million. (Paul Cheng Decl., ¶3; *see* Memo. Supp., Paul Cheng Decl., ¶19).

#### ALTERNATIVE SOURCES OF WATER

Petitioner Maui Oceanview LP has negotiated access to water from Original Petitioner MLP through the Honolua or Honokohau ditch and plans to develop a private water

treatment facility for Pulelehua. (Paul Cheng Decl., ¶8; *see* Supp. Memo. Supp., EXHs. N-1, N-2).

The County DWS notes

[p]lans devised for this source were developed before large storms in 2018 destroyed some of the intakes from the Honokohau Stream. Current water availability from this source has been diminished. According to the Commission on Water Resource Management's Instream Flow Standard Assessment Report (IFSAR) for Honokohau, dated June 2019, current off stream uses of water diverted from the Honokohau ditch are 5.19 mgd (median flow) for non-potable uses. To meet current demand, DWS needs 2.1 mgd at the Mahinahina Treatment Facility. Honokohau stream flow during low flow conditions is 7.76 mgd according to the IFSAR. Instream flow standards are anticipated to restore some streamflow to Honokohau and remaining diverted streams in West Maui.

(County Pos. Stmt., pp. 5-6). Further, DWS comments, “[s]urface water development is now considered a less reliable water source than groundwater due to projected impacts from climate change. These included diminished stream flow associated with reduced rainfall and long term droughts.” (County Pos. Stmt., p. 6). “Streamflow restoration and protection is a pending matter putting the availability of Honokohau water in question.” (County Pos. Stmt., p. 6). “DWS strongly recommends groundwater development as a primary or supplemental source to meet project potable needs and maximizing reclaimed water and alternative sources to meet project non-potable demand in the proposed private system.” (County Pos. Stmt., p. 6).

Petitioner Maui Oceanview LP has also discussed connecting to the existing Hawaii Water Service Company, Inc. (“HWSC”) system, provided the Hawaii Public Utilities Commission approves the expansion of HWSC’s service territory to include Pulelehua. (Paul Cheng Decl., ¶9; EXHs. N-3, N-4, N-5).

Maui Oceanview LP also is exploring the option of developing a water well from groundwater sources and is discussing a general use and access agreement with Original Petitioner MLP to drill a well on MLP land mauka of Pulelehua. (Paul Cheng Decl., ¶10).

CONCLUSION

Maui Oceanview LP requests that the Commission grant the relief requested.

DATED: November 14, 2019 Wailuku, Maui, Hawaii,

  
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MAUI OCEANVIEW LP