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LAND USE COMMISSION
 STATE OF HAWAII
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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,)	MEMORANDUM ON LEGAL ISSUES:
INC., a Hawaii corporation)	WHETHER PULELEHUA REQUIRES A
)	SUPPLEMENTAL ENVIRONMENTAL
To Amend The Agricultural Land Use District)	IMPACT STATEMENT AND STATEMENT
Boundary Into The Urban Land Use District for)	SUPPORTING GOOD CAUSE TO AMEND
Approximately 310.440 Acres of Land at)	THE 2006 DECISION AND ORDER;
Mahinahina and Kahana, Lahaina, Maui, Hawaii,)	EXHIBIT A; CERTIFICATE OF SERVICE
Tax Map Key: 4-3-01; Por. 31 And 79.)	
)	
)	

MEMORANDUM ON LEGAL ISSUES:
 WHETHER PULELEHUA REQUIRES A SUPPLEMENTAL ENVIRONMENTAL
 IMPACT STATEMENT AND STATEMENT SUPPORTING GOOD CAUSE TO
AMEND THE 2006 DECISION AND ORDER

The Land Use Commission (“Commission”), in granting the deferral, requested briefing on whether the Final Environmental Impact Statement (“Final EIS”) remains valid for development of Pulelehua and what good cause exists for the Commission to amend the 2006 Decision and Order (“D&O”).

Petitioner Maui Oceanview LP asserts that the Final EIS by Original Petitioner Maui Land & Pineapple Company (“MLP”) remains effective and no Supplemental Environmental Impact Statement is required. Further, the Commission has good cause to amend the 2006 D&O.

THE FINAL EIS FOR PULELEHUA REMAINS VALID AND EFFECTIVE

Under the existing standards in rule and case law, the Final EIS remains valid and no Supplemental EIS (“SEIS”) is required.

Pursuant to Hawaii Administrative Rule (“Haw. Admin. Rule”) §11-200.1-30, an approved Environmental Impact Statement (“EIS”) is conclusive and “no other statement for [a] proposed action shall be required” unless the project undergoes a substantive change “in size, scope, intensity, use, location or timing, among other things.” Not only must such a change be substantive, but it must also “have a significant effect.” Haw. Admin. Rule §11-200.1-30. The Commission is imbued with tremendous authority when assessing whether a project has undergone such a change. *See Unite Here! Local 5 v. City & Cty. of Honolulu*, 123 Haw. 150, 181, 231 P.3d 423, 454 (2010) (holding that even the Hawaii Supreme Court may not disturb the Commission’s findings unless the Commission wholly disregards the environmental effect of a proposed change and/or exceeds its authority). “If the [Commission] has followed the proper procedures, its action will only be set aside if the court finds the action to be ‘arbitrary and capricious,’ given the known environmental consequences.” *Id.*; *see also Haole v. State*, 111 Haw. 144, 152, 140 P.3d 377, 385 (2006) (“[The Commission] can only wield powers expressly or implicitly granted to it by statute.”).

The Hawaii Supreme Court, in *Unite Here! Local 5*, indicated that a supplemental EIS is required only when a “project constitutes an ‘essentially different action.’” 123 Haw. at 179, 231 P.3d at 450. Moreover, the Supreme Court confirmed:

A court is not to substitute its judgment for that of the agency as to the environmental consequences of its action. Rather, the court must ensure that the agency has taken a “hard look” at environmental factors.

If the agency has followed the proper procedures, its actions will only be set aside if the court finds the action to be “arbitrary and capricious,” given the known environmental consequences.

Unite Here! Local 5, 123 Haw. at 181, 231 P.3d at 454 (2010) (quoting *Price v. Obayashi Hawai'i Corp.*, 81 Hawai'i 171, 182 n.12, 914 P.2d 1364, 1375 n.12 (1996)).

The costly and time-consuming process associated with preparing a Supplemental Environmental Impact Statement (“SEIS”) should not be invoked lightly. Indeed, both the U.S. Supreme Court and the Hawaii Supreme Court agree that an applicant must not be required to “supplement an EIS every time new information comes to light after the EIS is finalized[.]” *Unite Here! Local 5*, 123 Haw. at 180, 231 P.3d at 453 (quoting *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 373, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989)). “[T]o require otherwise would render agency decision-making intractable.” *Id.*

An applicant should be required to prepare a SEIS only when its project undergoes a change that: (1) was “not [] disclosed” in its original EIS and (2) is so substantial that it makes the project an “essentially different action” than was originally proposed. Haw. Admin. Rule §11-200.1-30. This determination is governed by the “rule of reason,” which does not require an EIS to be “exhaustive to the point of discussing all possible details bearing on the proposed action,” but instead provides that the Commission must uphold an existing EIS if it is:

[C]ompiled in good faith and sets forth sufficient information to enable the [Commission] to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives.

See Unite Here! Local 5, 123 Haw. at 180, 231 P.3d at 454.

In *Unite Here! Local 5 v. City & Cty. of Honolulu*,¹ also-commonly known as the “*Turtle Bay* case,” the Hawaii Supreme Court was faced with a unique set of facts that actually merited the preparation of a SEIS. *See Unite Here! Local 5*, 123 Haw. at 180, 231 P.3d at 453. In that case, a predecessor in interest to the Kuilima Resort (the “Resort”) received approval to complete an extensive “[r]esort [e]xpansion [p]roject” in or around 1985 (the “Kuilima Project”). *Id.* at 428. During the application process for the Kuilima Project, the Resort prepared and submitted an EIS that analyzed several environmental impacts arising from the Project, including “drainage, traffic, dust generation, water consumption, marsh drainage input, loss of agricultural uses, construction noise, air quality, and solid waste disposal.” *Id.* This EIS, however, considered the environmental and social impact of the Kuilima Project only through 2000. *Id.* at 451.

After the EIS approval, the Kuilima Project experienced several delays. *See id.* at 430. In 2005—twenty years after the Project was originally approved—the Resort still had not “construct[ed] major components of the Project, including the hotel rooms and the condominium units.” *Id.* at 431. Nonetheless, the Resort attempted to modify the Project by “seeking subdivision approval for approximately 744 acres of its 808-acre property.” *Id.* at 429–31. In response, several groups of concerned community members objected and demanded that the Resort prepare a SEIS. *Id.* at 433. These groups asserted that the area surrounding the Kuilima Project had changed drastically during the pendency of the Project—thus, requiring the Resort to prepare a SEIS pursuant to Haw. Admin. Rule §11-200-26.² Said another way, the community members asserted that the passage of time had rendered the Project an “essentially different action” than was originally proposed in 1985. *See id.* at 437; *see also* Haw. Code R. 11-200-26. The Resort

¹ As discussed herein, the facts and circumstances before the Commission are divergent from those considered in the *Turtle Bay* case. Nonetheless, Maui Oceanview LP discusses the case in response to certain questions posed during the Commission’s meetings on September 25-26, 2019.

² Haw. Admin. Rule 11-200-26 is the predecessor to 11-200.1-30(a).

responded that the Project never underwent a substantial “change” because: (1) there was “no ‘new’ evidence that was ‘not originally disclosed or previously dealt with in the 1985 EIS’” and (2) the 1985 EIS never “explicitly” defined a timeline for the Project. *Id.* at 452.

The Hawaii Supreme Court disagreed with the Resort. The Court noted that several sections of the EIS were time-bounded because the projections included therein extended only through 2000. *Id.* at 451. Therefore, the EIS did not contain any information regarding the environmental impact of the Kuilima Project in 2005 and had, essentially, expired. *See id.*

The Court further noted that there was evidence in the record that an endangered species had moved into the affected area during the pendency of the Project. Thus, while the Court acknowledged “that supplemental environmental review is [not] required ‘every time new information comes to light after [an] EIS is finalized,’” it held that there were significant undisclosed changes to the Kuilima Project to necessitate the preparation of a SEIS. *Id.* at 453.

Turning to the matter at hand, the circumstances surrounding the Pulelehua project are distinguishable from those in the *Turtle Bay* case and do not necessitate the preparation of a SEIS. Haw. Admin. Rule §11-200.1-30 provides:

(a) . . . An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no supplemental EIS for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location, or timing, among other things. If there is any change in any of these characteristics which may have significant effect, the original EIS that was changed shall no longer be valid because an essentially different action would be under consideration and a supplement EIS shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the EIS associated with that action shall be deemed to comply with this chapter.

Development of Pulelehua will address a portion of the housing needs in West Maui. The Final EIS approved in 2005 for Pulelehua described and analyzed the impacts of

a housing development with a maximum density of 1200 units; a mixture of single family and multi-family units, a school, parks, trails, walkways and roadways, live/work units and retail space; and the possibility of additional 'Ohana units to be constructed by homeowners. As the Commission found, "Permitting, development, buildout, and sale of [Original Petitioner MLP's] Pulelehua was proposed to occur over an eleven-year period. Permitting is anticipated to require at least two years, and design and construction would commence as soon as all discretionary permits have been obtained." 2006 D&O, FOF ¶135 (emphasis added).

Similarly, Petitioner Maui Oceanview LP anticipates that Pulelehua will be developed in phases stretching out over a ten or eleven year period. Pulelehua, as proposed by Maui Oceanview LP, remains a housing development, but with a maximum density of 1000 units, 200 units less than the original proposal and allowed under the present Maui County Project District ordinance; with a mixture of single family and multi-family units, a school, trails, walkways and roadways, live/work units and retail space; and with the possibility of additional 'Ohana units to be constructed by homeowners.

Original Petitioner MLP proposed to develop 325 units of the 882 units at Pulelehua as affordable and an additional 125 workforce housing units to fulfill its Kapalua Mauka obligation. Petitioner Maui Oceanview LP will develop 400 workforce housing units of the 800 multi-family units at Pulelehua, with 300 dedicated as workforce rental housing and 100 sold as workforce housing. Petitioner Maui Oceanview LP includes the 125 Kapalua Mauka units among the 300 workforce rental units. In addition, Petitioner Maui Oceanview LP will require that any 'Ohana units constructed if rented to third parties serve as additional workforce or affordable rentals.

The revised project clearly does not represent a substantive change under Haw. Admin. Rule §11-200.1-30. Unlike in the *Turtle Bay* case, the Final EIS here has not expired. Whereas the EIS in the *Turtle Bay* case included outdated projections, ten years expired by the time the Supreme Court reached its decision, projections included in Original Petitioner MLP's Final EIS extend through 2020 or through the time of completion of "25 developments, including Pulelehua, that [were, at the time,] projected to be built or under construction by 2011." *See, e.g.*, Appendix H (Transportation Report) to Original Petitioner MLP's Final EIS, pg. ii. Given that no substantive changes have occurred, the projections are still valid.

The following studies were completed and appended to Original Petitioner MLP's Final EIS. Relevant time frames are noted.

Appendix A	Market Study and Economic Impact Analysis (<i>E.g.</i> , "The West Maui housing sector is currently undersupplied by some 470 to 1,168 units and will require some 3,447 to 5,440 new units over the next 17 years (<u>through 2020</u>) in order to adequately service demand." Study Pg. 2. (Emphasis added))
Appendix B	Pulelehua Design Book (Indefinite time frame)
Appendix C	Marine Environment Assessment Report (Indefinite time frame)
Appendix D	Botanical Resources Assessment Study (Indefinite time frame)
Appendix E	Avifaunal and Feral Mammal Field Survey (Indefinite time frame)
Appendix F	Archaeological Inventory Survey Report

- (Indefinite time frame)
- Appendix G Cultural Impact Study/Assessment
- (Indefinite time frame)
- Appendix H Transportation Report
- (*E.g.*, “The Transportation Report identifies 25 developments, including Pulelehua, that [were, at the time,] projected to be built or under construction by 2011.” Study Pg. ii. An updated TIAR by Original Petitioner MLP was approved in 2009 which includes projections through 2017. Petitioner Maui Oceanview LP has prepared a 2019 TIAR. A memorandum regarding this 2019 TIAR is attached hereto as Exhibit “A”. Given that no substantive changes have occurred following the completion of the studies, the projections are still valid.)
- Appendix I Environmental Noise Assessment Report
- (*E.g.*, “Analysis of traffic noise was completed for the existing (2004) condition . . . and future (2011) with all 25 projects (including Pulelehua).” Study Pg. 5 (emphasis added). Given that no substantive changes have occurred following the completion of the study, the projections are still valid.)
- Appendix J Air Quality Study
- (*E.g.*, “Development and full occupancy of the Pulelehua is expected to be completed by 2011.” Study Pg. 1. Given that no substantive changes have occurred following the completion of the study, the projections are still valid.)
- Appendix K Public Costs/Benefits Assessment
- (*E.g.*, “The excise taxes paid to the state will grow from \$1.95 million per year during the initial construction phase (Years 1 through 3), increasing to a total of \$6.9 million annually in Year 10 and beyond.” Study Pg. 7 (emphasis added).)
- Appendix L Preliminary Engineering Report
- (Indefinite time frame)

Appendix M	Preliminary Drainage Report (<i>E.g.</i> , “The Pulelehua Community is expected to generate a <u>50-year</u> storm runoff of 878.0 cfs[.]” Study Pg. 4 (emphasis added).)
Appendix N	Airport Noise Report (<i>E.g.</i> , “The range of forecasts . . . were linearly extrapolated to the year <u>2025</u> .” Study Pg. 10 (emphasis added).)
Appendix O	Consultation (Indefinite time frame)

Further distinguishing this case from *Turtle Bay* is the fact that Maui Oceanview LP requests mere modifications to its existing development plan. The Resort in *Turtle Bay* sought subdivision approval for approximately 744 acres of its 808-acre property—but here, Maui Oceanview LP simply requests permission to modify the existing mix of single-family and multi-family dwellings. There is no proposed increase in the total units to be constructed. In fact, Maui Oceanview LP’s 1,000 unit count is even less than the 1,200 total potential units contemplated by the Final EIS.

The Final EIS analyzed a project with generally greater impacts than Maui Oceanview LP’s project. Studies supporting the Final EIS considered an original unit count of 882 single and multi-family units and 318 potential ‘Ohana units. EXH. AA, p. 4. Original Petitioner MLP, however, reduced the number of potential ‘Ohana units associated with its project. “With the reduction in potential [‘Ohana] units [to 267 units] and the potential that some of the [‘Ohana] units may not ever be constructed by individual owners, the impact from [‘Ohana] units will be overstated in the reports.” EXH. AA, p. 4. The Final EIS asserted “utility demands, traffic, air emissions, and solid waste generation [were] conservative figures compared to what might actually exist in the future.” EXH. AA, p. 4.

Petitioner Maui Oceanview LP's various consultants analyzed the Final EIS and concluded that the approved Final EIS considered greater impacts than what is expected of the current proposed unit mix, private water treatment, and expected traffic impacts in Petitioner Maui Oceanview LP's Pulelehua development. (See EXHs M-2 Excerpts, M-3, Y, Z, E).

The Final EIS identified existing water sources as groundwater from the Honokohau and Napili wells and surface water from the Honokohau ditch and described the use of R-1 treated reuse water to reduce the overall potable demands for Pulelehua; Maui Oceanview LP has a water delivery agreement with Original Petitioner MLP for ditch water and the current plan includes the possible use of groundwater either through Hawaii Water Service or new wells. Sixth Supp. Memo., Paul Cheng Decl., ¶¶8-10; EXH. N-3, N-4, N-5. The Final EIS noted "[the] existing wastewater facilities along Lower Honoapiilani Road were not designed to accommodate sewage flows from development mauka of Honoapiilani Highway and therefore, Pulelehua's wastewater system will not connect to these facilities." Sixth Supp. Memo., EXH. Z, citing Final EIS, p. 100, Sec. 4.9.4. The Final EIS also stated, "in the event the Lahaina Wastewater Reclamation Plant cannot accommodate Pulelehua, Maui Land & Pineapple Company, Inc. will evaluate the installation of a package sewer treatment plant to address Pulelehua's wastewater treatment demands." Sixth Supp. Memo., EXH. Z, p.101. Sec. 4.9.4.

Through meetings with the County in 2017 in which the County indicated the Lahaina plant could not accommodate Pulelehua, Maui Oceanview LP shifted to the current plan which includes a private wastewater treatment plant, and the reuse of R-1 treated water for onsite non-potable landscape irrigation needs, consistent with the discussion in the Final

EIS. Sixth Supp. Memo., EXH. Z. More recently, the County has indicated it may be able to accommodate treatment of wastewater from Pulelehua. Paul Cheng Decl., ¶11. In the event Pulelehua does connect to the County system, it will still utilize R-1 treated water for non-potable landscape irrigation and fire flow purposes. Paul Cheng Decl., ¶11.

In the time between Original Petitioner MLP's approved TIAR in 2009 through Petitioner Maui Oceanview LP's prepared TIAR—an approximate 8 to 10 year period—Maui Oceanview LP's traffic consultant observes there has been no growth in traffic along Honoapiilani Highway between Napilihau Street to Lower Honoapiilani Road, and a slight increase along Honoapiilani Highway from Lower Honoapiilani Road to Keawe Street. Sixth Supp. Memo., EXHs. M-2, M-3. “Based on the limited growth described. . . the projected background growth in the Approved 2009 MLP TIAR was not realized and significantly over-projected” and “[the] over-projection is primarily attributed to inclusion of major known developments that were not constructed in the West Maui region.” Sixth Supp. Memo., EXHs. M-2, M-3.

Further, Original Petitioner MLP confirmed “that Maui Land & Pineapple Company, Inc. (‘MLP’) is not aware of any activity, or discovery of cultural or archaeological finds since the completion of the EIS in 2005 until the date of this letter.” Sixth Supp. Memo., EXH. X.

In sum, the original Final EIS disclosed and considered a project with similar if not greater impacts than now proposed by Original Petitioner MLP. Pursuant to Haw. Admin. Rule §11-200.1-30, an approved EIS is conclusive and “no other statement for [a] proposed action shall be required” unless the project undergoes a substantive change “in size, scope, intensity, use, location or timing, among other things.” (Emphasis added). Here, there is no proposed increase

in size, scope, or intensity. Maui Oceanview LP proposes no increase in the total units to be constructed. In fact, Maui Oceanview LP's 1,000 unit count is even less than the 1,200 total potential units contemplated by the Final EIS. Water and wastewater plans are in conformance with the scope of the original plans contemplated in the Final EIS. Also, over an approximate 8 to 10 year period, there has been no growth in traffic along Honoapiilani Highway between Napilihau Street to Lower Honoapiilani Road, with only a slight increase along Honoapiilani Highway from Lower Honoapiilani Road to Keawe Street—growth which falls far short of the conservative projections in the Approved 2009 MLP TIAR.

The project has further not undergone a substantive change in use. Pulelehua, as proposed by Maui Oceanview LP, remains a housing development, but with a maximum density of 1000 units; with a mixture of single family and multi-family units, a school, trails, walkways and roadways, live/work units and retail space; and with the possibility of additional 'Ohana units to be constructed by homeowners.

Nor has the project undergone a substantive change in location or timing. The general development area remains the same; and permitting, development, buildout, and sale of Pulelehua will take roughly ten or eleven years, total, nearly identical to Original Petitioner MLP's representations. Regarding "other things" to be considered under Haw. Admin. Rule § 11-200.1-30, there is no evidence or allegation that any endangered species have moved into the area (unlike in the *Turtle Bay* case), nor that any discovery of cultural or archaeological finds has occurred since the Final EIS's acceptance.

It is very important to emphasize why the "timing" issue does not call for a SEIS in this case. In the *Turtle Bay* case, the Hawaii Supreme Court held: "[W]e conclude that the project, although unchanged in terms of size, scope, location, intensity, and use, is – due to the

change in timing – an ‘essentially different action’” “[i]nasmuch as . . . over twenty years have passed since the approval of the 1985 EIS . . . [yet] environmental impacts were examined only through 2000. *Unite Here ! Local 5*, 123 Haw. at 178, 231 P.3d at 451 (emphasis added). In other words, the Court’s holding regarding “timing” was not about the twenty-year delay in a vacuum. Rather, the Court’s holding unquestionably stood for the idea that the “timing” of the EIS had expired, given that the Resort sought subdivision approval in 2005 despite the fact that environmental impacts were examined only through 2000. Hence, whatever time has passed since an EIS’s acceptance must not be viewed simply as a number. Here, Maui Oceanview LP seeks to amend the 2006 D&O. The conservative projections in Original Petitioner MLP’s Final EIS extend through 2020, or through the time of completion of “25 developments, including Pulelehua, that [were, at the time,] projected to be built or under construction by 2011.” *See, e.g.*, Appendix H (Transportation Report) to Original Petitioner MLP’s Final EIS, pg. ii.. Given that no substantive changes have occurred, there can be no debate that the sort of “timing” issue necessitating a SEIS in the *Turtle Bay* case is not present in the instant case. *See id.*

This is not the *Turtle Bay* case. There are clearly no substantive changes here to require a SEIS under Haw. Admin. Rule §11-200.1-30. Maui Oceanview LP’s proposed Pulelehua project in no way “constitutes an ‘essentially different action’” than Original Petitioner MLP’s project. *See Unite Here! Local 5*, 123 Haw. at 179, 231 P.3d at 450 (emphasis added); Haw. Admin. Rule §11-200.1-30. Because no changes are substantive, they will not “have a significant effect.” *See* Haw. Admin. Rule §11-200.1-30. Lacking such a “significant effect,” “no supplemental EIS . . . shall be required.” *Id.* Therefore, Original Petitioner MLP’s Final EIS remains valid.

THE COMMISSION HAS GOOD CAUSE TO AMEND THE 2006 D&O

Haw. Admin. Rule §15-15-94 provides in part:

(a) If a petitioner, pursuant to this subsection, desires to have a modification or deletion of a condition that was imposed by the commission, or imposed pursuant to section 15-15-90(e) . . . , or modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70

(b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.

Also, Haw. Admin. Rule §15-15-70(l) provides:

[A] party for good cause shown may move to re-open the hearing to take newly discovered evidence. The motion shall specify the facts claimed to constitute good cause, including material changes of fact or of law alleged to have occurred since the closing of the hearing and shall provide a description of the proposed additional evidence and an explanation of why the newly discovered evidence was not previously adduced.

Good cause to amend 2006 D&O exists due to changes in market conditions impacting local working families. As discussed in the original 2006 D&O, much of the housing in West Maui has been aimed at the higher end purchaser. During the time since the boundary petition, the need for rental housing, in an area where jobs are filled by Maui residents who need to commute to West Maui, has continued to grow. Additionally, the present plan lessens the project's impact on regional infrastructure systems and arguably reduces traffic congestion by shortening commutes by providing housing for the workforce closer to places of employment in West Maui. *See* Sixth Supp. Memo., EXH. Y. As the County recognizes in its background material for the pending update of the West Maui community plan,

West Maui has a high jobs/housing ratio, with over two jobs for every occupied housing unit (Community Profile, 2018). This jobs to housing imbalance depicts the area's workforce housing shortage, forcing many workers to live outside of West Maui. This imbalance creates the need for many workers to

commute in to West Maui for work, likely contributing to the traffic congestion problems in the area.

EXH. W, p. 13. “The Maui Metropolitan Planning Organization (MPO) and the West Maui Commuter Needs Survey, completed by Lahaina Bypass Now in January 2007 estimates that 30-35 percent of the entire West Maui workforce” commutes from other regions of the island. Sixth Supp. Memo., EXH. M-3.

A comparison of the primarily single family for sale plan proposed by Original Petitioner MLP and the mainly rental plan proposed by Petitioner Maui Oceanview LP shows: the current plan directly and significantly addresses critical housing needs in West Maui, with a housing mix directed towards existing Maui residents rather than new population. Sixth Supp. Memo., EXH. Y. As Maui Oceanview LP’s engineering consultant notes, the current plan revolves around the delivery of sustainable long-term affordable housing options:

Every aspect of the plan is directed towards that goal, from the efficient layout to the mix of product, while still providing the features of a great community, like open space, views, recreational amenities, live-work opportunities and shopping that provide for safe, dignified, and affordable living.

Sixth Supp. Memo., EXH. Y.

Moreover, Petitioner Maui Oceanview LP believes workforce rental housing units provide advantages over for sale units in maintaining an inventory of affordable units. Sixth Supp. Memo., EXH Y. Under the Maui County Workforce Housing ordinance, and as reflected in the Housing Agreement, the rental housing units would be maintained at workforce housing rates for thirty years. EXH. T; Sixth Supp. Memo., EXH. Y. Maui Oceanview LP’s Housing Agreement with the County guarantees a long-term supply of affordable housing options for “very low,” “low,” “below-moderate,” and “moderate” income residents, versus a one-time sale of single-family homes. Sixth Supp. Memo., EXH. Y. For-

sale units only require maintenance at a range of five to ten years depending on the income level of the for sale affordable housing purchaser. *See* Maui County Code §2.96.60.B.1.a, 1.b., 1.c. The National Low Income Housing Coalition notes, “[a]cross Hawaii, there is a shortage of rental homes affordable and available to extremely low income households (ELI)” evidenced by a graph showing shortages faced even by renter households at 80% of AMI and 100% of AMI. Sixth Supp. Memo., EXH. W-3.

The County of Maui recognized in its background material for the pending update of the West Maui community plan that Petitioner Maui Oceanview LP’s Pulelehua project represents one of only two projects expected to provide more than 200 workforce housing units in the region. EXH W, p. 9 & Table 4. While the County of Maui’s former affordable housing policy requiring half of new developments be “affordable” was adopted after the 2006 D&O, market realities are reflected by the County of Maui revising its workforce housing ordinance to requiring developers provide 25% of the proposed market units. *See* Sixth Supp. Memo., EXH. W-2, p. 53. A report on the Maui Rental Market prepared for the County Department of Housing and Human Concerns indicates a backlog of rental units for households across the income levels. Sixth Supp. Memo., EXH. W-2, pp. 28-29 & Tables VIII-3. VIII-4 and VIII-5. “Relative to what has been supplied, the number of rental units affordable to those making 80% (and 60%, and 50%, and 30% of AMI), the supply/demand imbalance is tremendous, in quantitative terms.” Sixth Supp. Memo., EXH. W-2, p. 61. The County reports: “In 2017, there were 13,318 housing units in West Maui, a 12% increase from 2010.” EXH. W, p. 4. “Only 31%[, however,] of the housing units in West Maui were owner occupied; 35% were renter occupied; and the remaining 34% were vacant (ESRI 2017).” EXH. W, p. 4.

In addition, the layout and proposed development of Petitioner Maui Oceanview LP's Pulelehua will provide several enhancements that will directly benefit Pulelehua residents, including:

- Stops which provide alternative transportation options to local employment centers, and commercial destinations.
- Compact placement of units which promote pedestrian access and preserve 40% of the project area as open space.
- Single story construction preserves mauka and makai views of the mountains and ocean for all residents and neighbors.
- Over 6 miles of multi-use trails and walkways to promote walking and biking options connect all locations within the community.
- Streets and units conform with the natural topography making a majority of the streets and walkways ADA accessible.
- A 10-acre community park will include soccer and baseball fields
- Over 20 community pocket parks will provide additional recreation opportunities for residents.
- Approximately 40% of the Maui Oceanview LP plan is open space, versus approximately 32% of the MLP plan (124 acres vs. 99.2 acres).
- Less impact to existing neighboring communities, with significantly fewer units planned adjacent to the Kahana Ridge Subdivision, and without reliance and interconnection with the existing Kahana Ridge street network.

Sixth Supp. Memo., EXH Y.

Finally, a comparison of the major project infrastructure costs indicates, on average, the plans by Original Petitioner MLP required significantly more infrastructure, and cost almost triple what it will cost to develop Maui Oceanview LP's planned development of Pulelehua:

MAUI OCEAVIEW LP PLAN

MLP PLAN

Pavement	1.1M sf	\$1.5M	2M sf	\$2.4M
8" Water Line	24,500 lf	\$2.2M	51,500 lf	\$4.6M
Fire Hydrants	46	\$207K	110	\$495K
8" Sewer Line	22,000 lf	\$1.7M	51,500 lf	\$3.9M
24" Storm Drain	27,000 lf	\$2.7M	55,000 lf	\$5.5M
Retaining Walls	493,000 sf	\$30M	1.5M sf	\$90M
	Total Costs	\$38.3M		\$106.9M

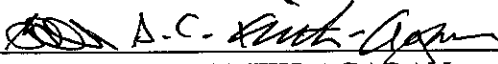
Sixth Supp. Memo., EXH. Y. As Maui Oceanview LP’s engineering consultant recounts, “The highly gridded network of streets and alleys, and intensive placement of single-family lots in the MLP plan greatly increases the costs of infrastructure while decreasing the flexibility of the plan.” Sixth Supp. Memo., EXH. Y. In contrast, “[t]he use of multi-family units in the [Maui Oceanview LP] plan provides a condensed footprint which requires less developed land to implement the plan.” Sixth Supp. Memo., EXH. Y. Under the new plan, there will be more streets that are relatively flat as compared to Original Petitioner MLP’s plan which had much more *makai* to *mauka* vertically ascending roads with steeper grades. See Sixth Supp. Memo., EXH. A-3.

In light of the above, the Commission has good cause to amend the 2006 D&O to allow the current plan which addresses the need for additional rental and workforce housing inventory in West Maui.

CONCLUSION

Maui Oceanview LP submits that the Final EIS remains valid and effective for Pulelehua and the Commission has good cause to amend the D&O to allow this project to move forward.

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



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#16-582

October 11, 2019

Mr. Paul Cheng
Maui Oceanview LP
2525 McKinney Ave., Suite B
Dallas, TX 75201

Dear Mr. Cheng:

**Subject: Memorandum for Pulelehua Traffic Impact Analysis Report (TIAR)
Comparing Maui Land & Pineapple Co. Inc. 2009 TIAR vs.
Maui Oceanview LP 2019 TIAR
Lahaina, Maui, Hawaii**

The purpose of this memorandum by Austin, Tsutsumi & Associates, Inc. (ATA) is to document the updates to the Maui Oceanview LP Traffic Impact Analysis Report (TIAR) and comparison to the last approved TIAR for the proposed Pulelehua development by Maui Lani and Pineapple Co. Inc. (MLP) located in Lahaina, Maui, Hawaii.

Project Description

An EIS for MLP's Pulelehua development was previously completed in August 2005. As part of the finalized June 2006 State Land Use Commission (LUC) Decision and Order (D&O), a revised TIAR was required as part of the LUC conditions. The revised TIAR was completed and submitted to DOT in May 2009 and was approved in September 2010 ("Approved 2009 MLP TIAR").

On September 2006 Maui Oceanview LP purchased the Pulelehua lands from MLP and subsequently filed a motion to amend the June 2006 LUC 1D&O on November 2017. As part of the motion to amend filing, an updated TIAR was prepared by ATA, with the final version completed and submitted to LUC dated August 13, 2019 ("2019 Maui Oceanview LP TIAR"). This memo serves to compare the TIAR assumptions and findings from the Approved 2009 MLP TIAR and the current 2019 Maui Oceanview LP TIAR.

Approved 2009 MLP TIAR and 2019 Maui Oceanview LP TIAR Comparison

Table 1 shows the differences between the Approved 2009 MLP TIAR and the 2019 Maui Oceanview LP TIAR. In addition to the changes noted in Table 1, trip generation rates and intersection analysis methodology were also updated in the 2019 Maui Oceanview LP TIAR to reflect the latest editions of the Institute of Transportation Engineers (ITE) Trip Generation Manual and Transportation Research Board Highway Capacity Manual.

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EXHIBIT "A"



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Table 1 – Approved 2009 MLP TIAR and the 2019 Maui Oceanview LP TIAR Comparison

Topic	Approved 2009 MLP TIAR	2019 Maui Oceanview LP TIAR
Existing Traffic Counts	<ul style="list-style-type: none"> February 2008 (No portion of Lahaina Bypass Road constructed) Weekday AM and PM peak hours 	<ul style="list-style-type: none"> December 2016 (Lahaina Bypass Road Phases 1A and 1B-1 constructed) May 2018 at Keawe Street intersection (Lahaina Bypass Road Phase 1A, 1B-1 and 1B-2 constructed) Weekday AM, PM and Saturday midday peak hours
Background Developments and Growth	<ul style="list-style-type: none"> Annual defacto growth rates based on the Maui Regional Travel Demand Model including trips generated by Kaanapali 2020, DHHL Villages of Leialii, Puunoa, Wainee, Kahoma, Puukolii Mauka and Kapalua Mauka 	<ul style="list-style-type: none"> Annual defacto growth rate plus trips generated separately by Pailolo Place, Mahana Estates, Wailele Ridge, Honua Kai Townhouses, Westin Nanea Ocean Villas, West Maui Hospital and Medical Center, Kaiaulu Affordable Homes, Lanikeha Kaanapali, HHFDC Keawe Street Apartments, Lahaina Business Park Infill, Lahaina Cannery Mall Gas Station, Kahoma Village, Kaiaulu o Kupuohi Apartments, and Kahoma Residential Subdivision.
Build-Out Year and Phasing	<ul style="list-style-type: none"> Year 2017 10-year build-out 	<ul style="list-style-type: none"> Year 2022 (Phase 1) Year 2025 (Phase 2) Year 2030 (Phases 3, 4 and 5) Year 2035 (DOE Elementary School) 11-year build-out for Pulelehua (not including the school, which will be constructed by the DOE) Assumed 16-year build-out for DOE School.



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Topic	Approved 2009 MLP TIAR	2019 Maui Oceanview LP TIAR
Pulelehua Land Use	<ul style="list-style-type: none"> • 995 Residential Units <ul style="list-style-type: none"> ○ 534 Single Family ○ 112 Ohana Units ○ 349 Multi-Family • 100,000 SF Retail/Office • 10.2-Acre Park • 550-Student Elementary School • 15,000 SF Recreational/Wellness Center • 15,000 SF Church 	<ul style="list-style-type: none"> • 1,000 Residential Units <ul style="list-style-type: none"> ○ 100 Single Family Lots ○ 100 Ohana Units ○ 800 Multi-Family • 70,000 SF Retail • 10-Acre Park • 750-Student Elementary School
Trip Generation Volumes	<ul style="list-style-type: none"> • 887(1098) AM(PM) Trips 	<ul style="list-style-type: none"> • 1056(928)[1043] AM(PM)[SAT] Trips
Project Accesses via Honoapiilani Highway	<ul style="list-style-type: none"> • Three (3) accesses • North Road (N. of Kahana Ridge), Akahele Street and South Road (S. of Mahinahina Gulch) 	<ul style="list-style-type: none"> • Three (3) accesses along Project Frontage • North RIRO Access, Akahele Street and Road J (S. of Mahinahina Gulch)
Roadway Improvement Recommendations	<p><u>Base Year</u></p> <ul style="list-style-type: none"> • Widen Honoapiilani Highway from 4 to 6 lanes from north of Puukolii Road (for LOS E) or north of Lower Honoapiilani Road (for LOS D) to south of Keawe Street • Grade separation at Honoapiilani Highway & Kaanapali Parkway intersection <p><u>Future Year</u></p> <ul style="list-style-type: none"> • Widen Honoapiilani Highway from 1 to 2 southbound through lanes from Akahele Street to Lower Honoapiilani Road • Widen Akahele Street westbound at Honoapiilani Highway to dual left-turn lanes 	<p><u>Base Year</u></p> <ul style="list-style-type: none"> • Widen Kaanapali Parkway eastbound at Honoapiilani Highway from 1 to 2 left-turn lanes • Restripe Kapunakea Street eastbound at Honoapiilani Highway to provide an exclusive left-turn lane <p><u>Future Year</u></p> <ul style="list-style-type: none"> • Lengthen left-turn lanes at Honoapiilani Highway/Akahele Street and optimize signal timing • Monitor Project's south access intersection with Honoapiilani Highway and signalize if warranted.



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Evaluation of Approved 2009 MLP TIAR and the 2019 Maui Oceanview LP TIAR

Existing Traffic Counts

The 2019 Maui Oceanview LP TIAR includes new traffic count data that reflects current existing conditions. The new traffic count data includes the completion of Phases 1A, 1B-1 and 1B-2 of the Lahaina Bypass Road (LBR). Based on these 2016/2019 traffic counts, roughly an 8 to 10-year period from when the Approved 2009 MLP TIAR was completed, there has been:

- No growth in traffic along Honoapiilani Highway between Napilihau Street to Lower Honoapiilani Road.
- Slight increase of 50-200 vehicles along Honoapiilani Highway from Lower Honoapiilani Road to Keawe Street.

Based on the limited growth described above, the projected background growth in the Approved 2009 MLP TIAR was not realized and significantly over-projected. The Approved 2009 MLP TIAR assumed traffic growth of 200-400 AM vehicles and 300-600 PM vehicles throughout the entire study area along Honoapiilani Highway. This over-projection is primarily attributed to inclusion of major known developments that were not constructed in the West Maui region.

Background Development and Growth

Consistent with acceptable standards, the 2019 Maui Oceanview LP TIAR includes trips generated from known background developments in the study area in addition to ambient growth. This overall background traffic growth increases traffic along Honoapiilani Highway by 300-500 vehicles south of Lower Honoapiilani Road and 100-200 vehicles north of Lower Honoapiilani Road.

As noted above, the Approved 2009 MLP TIAR significantly over-projected traffic in the study area by 200-400 vehicles in some areas, due to numerous developments not constructed over this 8 to 10-year period. For this reason, traffic growth in the 2019 Maui Oceanview LP TIAR is still likely conservative.

Build-Out Year

The 2019 Maui Oceanview LP TIAR assumes an 11-year build-out timeframe for Pulelehua (phases 1 to 5), similar to the 10-year build-out timeframe in the Approved 2009 MLP TIAR. The 2019 Maui Oceanview LP TIAR provides analysis of iterative traffic scenarios that coincide with specific phases of the Project, which will allow roadway improvements to be implemented in conjunction with incremental phases of development for Pulelehua.

Pulelehua Land Use & Trip Generation

The mix of land uses proposed for Maui Oceanview LP's Pulelehua site plan is generally similar to the approved MLP plan, with some differences. Both plans proposed similar residential unit counts, with 995 units for the MLP plan and 1,000 units for the Maui Oceanview LP plan. However, Maui Oceanview LP proposes a majority of multi-family rental apartments, which is a



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change from MLP's plan to provide mostly single-family homes. Maui Oceanview LP also proposes a smaller retail component and removal of the previously proposed church and recreational/wellness center. The Maui Oceanview LP plan accounts for a higher student enrollment at the proposed school. It should be noted that the planning and decision-making for student enrollment at this proposed school was identified by the State DOE's West Maui Elementary School Master Plan and is outside of Maui Oceanview LP's purview.

Based on Maui Oceanview LP's proposed land plan, the current project would generate 169 more AM peak hour trips and 170 less PM peak hour trips than the MLP plan. The Approved 2009 MLP TIAR used trip generation rates from the ITE Trip Generation Manual 8th Edition, while the 2019 Maui Oceanview LP TIAR used the most current ITE Trip Generation Manual 10th Edition. Since trip rates differ for all land uses from the 8th and 10th edition, resulting trips cannot equally be compared between the 2019 Maui Oceanview LP TIAR and Approved 2009 MLP TIAR.

The increase in AM peak hour trips for the 2019 Maui Oceanview LP plan is mainly attributed to the ITE 10th Edition trip rate increase and higher enrollment for the proposed school. However, this increase does not majorly impact the findings of the study for the following reasons:

- North of Lahainaluna Road, the only school in the region is the Maui Preparatory Academy (private school) in Napili. Therefore, all elementary DOE students that live in the Kaanapali, Honokowai, Napili and Kapalua areas attend the two (2) elementary schools in town. The proposed elementary school in the Pulelehua site will cut down the regional traffic in/out of Lahaina Town since parents that are already making the drive into town will instead be diverted a shorter distance to the Pulelehua site to drop off their children.
- The PM peak hour is generally more critical than the AM peak hour, so Project increases from Pulelehua in the AM peak hour are not as impactful.

Since the current Maui Oceanview LP plan generates 170 less vehicles during the more critical PM peak hour, the critical impacts to Honoapiilani Highway are less.

Maui Oceanview LP intends to convert the majority of residential units to rental apartment, which differs from MLP's previously proposed for-sale single-family units. The Maui Metropolitan Planning Organization (MPO) and the West Maui Commuter Needs Survey, compiled by Lahaina Bypass Now in January 2007 estimates that 30-35 percent of the entire West Maui workforce commutes to work to/from the Central, South and East Maui regions. The Maui Oceanview LP plan could provide the needed rental housing in West Maui that is geared towards the local workforce, to help reduce some of the existing regional traffic over the Pali on a daily basis. Since this cannot be quantified, the 2019 Maui Oceanview LP TIAR does not account for this regional reduction.

Roadway Improvement Recommendations & Fair Share

The most notable change in the 2019 Maui Oceanview LP TIAR is the removal of recommendations for regional road widening along Honoapiilani Highway, which was removed for the following reasons:



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- At the time the Approved 2009 MLP TIAR was finalized, only phase 1A of the LBR was being constructed from Keawe Street to Lahainaluna Road. LBR phase 1B-1 and 1B-2, which extends further south from Lahainaluna Road to Launiupoko, was only in the design stage. Since the completion of LBR phases 1B-1 and 1B-2 and subsequent north extension with phase 1C was uncertain in 2009, Honoapiilani Highway widening was viewed as the alternative solution to mitigate capacity issues in lieu of the future LBR extensions. Based on current 2019 conditions, LBR phases 1A, 1B-1 and 1B-2 have been completed. HDOT has listed LBR phase 1C as a high priority capacity improvement for the island of Maui and is actively pursuing funding for its construction. Therefore, construction of LBR 1C is a feasible improvement that will likely be implemented in the future, negating the need for Honoapiilani Highway widening as an alternative capacity solution. Widening Honoapiilani Highway between Akahele Street and Keawe Street is also not identified as HDOT's long-range capacity improvement.
- The current generally acceptable thresholds for intersection analysis allows mainline through movement along Honoapiilani Highway and the overall intersection Level of Service (LOS) to operate at LOS D or better. Some side street approaches and mainline left-turn movements are allowed to operate at LOS E/F condition (likely due to low volume or long cycle lengths) as long as each movement operates below capacity and storage lanes can accommodate associated queues. The 2019 Maui Oceanview LP TIAR recommends optimizing the signal timing at the Akahele Street intersection and lengthening left-turn lanes to accommodate the traffic increases at all three (3) Project accesses, meeting thresholds that do not require the widening of Honoapiilani Highway.
- HDOT recommended a new LUC condition for Maui Oceanview LP's LUC D&O. This condition will require Maui Oceanview LP to update the TIAR prior to construction of Pulelehua Phases 3, 4 and 5. This update or "monitoring" of the study intersections after Pulelehua Phases 1 and 2 is constructed, gives assurances to HDOT that TIAR recommendations fall in line with projected traffic conditions and if there are any unforeseen issues, Maui Oceanview LP will mitigate to HDOT's satisfaction prior to construction of Pulelehua Phases 3, 4 and 5.
- Consistent with the original LUC D&O condition, Maui Oceanview LP will contribute its fair share towards regional roadway improvements in the study area. As HDOT requested in their proposed update to the LUC D&O, Maui Oceanview LP's fair share will be based on the total costs for LBR phases 1A, 1B-1, 1B-2 and 1C, with Maui Oceanview LP's contribution being applied to the future LBR phase 1C improvement. This condition should more than adequately address Maui Oceanview LP's regional fair share contribution since it retroactively accounts for fair share costs for the already completed LBR phase 1A, 1B-1 and 1B-2 improvements as well as the future phase 1C improvement.



Mr. Paul Cheng
Maui Oceanview LP

October 11, 2019

We appreciate the opportunity to prepare this memorandum for Maui Oceanview LP's Pulelehua Project. Should you require clarification, please contact me at (808) 244-8044.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 

TYLER K. FUJIWARA, P.E.
Chief Transportation Manager – Maui

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,) CERTIFICATE OF SERVICE
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.)
)
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon the foregoing parties at their last known address by U.S. mail, postage pre-paid on November 15, 2019.

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