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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

)  
 ) MEMORANDUM OF PETITIONER MAUI  
 ) OCEANVIEW LP IN OPPOSITION TO  
 ) KAHANA HUI LOT OWNERS' PETITION TO  
 ) INTERVENE; DECLARATION OF PRESTON  
 ) CHENG; EXHIBIT A; CERTIFICATE OF  
 ) SERVICE  
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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.

MEMORANDUM OF PETITIONER MAUI OCEANVIEW LP  
 IN OPPOSITION TO KAHANA LOT OWNERS' PETITION TO INTERVENE

Petitioner Maui Oceanview LP, through counsel, opposes the untimely petition  
 to intervene brought by the Kahana Hui Lot Owners<sup>1</sup> in these proceedings considering

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<sup>1</sup> The Petitioners George Van Fischer, Michelle N. Fischer, Mtr Ala Hoku, LLC, Michael Reid, Lar Wernars, Timothy Hehemann as trustee and individually, Cynthia B. Hehemann as trustee and individually, Inoka Taufu, John D. Sheveland, Wendy Laurel-Sheveland, Daniel Frank Shay, Dennis Shigeyuki Nakamura s trustee, Marsha Shinsato Nakamura as trustee, Cooper Byron Pitts, Linda Lyerly, James T. Kurose as trustee, Eunice Z. Kurose as trustee, William O. Delaney, Jr., and Karen A. Delaney will be collectively referred to as the "Kahana Hui Lot Owners".

Petitioner's motion to amend this Commission's 2006 decision and order. As the Commission is aware, Petitioner is seeking amendments to conditions in the decision and in accordance with the applicable Commission rules<sup>2</sup> and the conditions of the 2006 Decision and Order. The boundary amendment proceedings moving the petition area out of the agricultural district has been completed and the County of Maui has validated and followed the Commission's determination by including the petition area within the urban growth boundary of the Maui General Plan and in zoning the petition area as West Maui Project District No. 5 (Pulelehua). Maui County Code chapter 19.93.

Since the Kahana Hui Lot Owners hold no property interest in Pulelehua, they were not entitled under the Commission rules to service of Petitioner's motion. Nevertheless, as shown in their filings, they were aware of Petitioner's motion and even participated in the recent community meetings at Princess Nahienaena Elementary School. They are landowners in an "agricultural" subdivision located adjacent to Pulelehua and Pulelehua is an approved Project District within the County of Maui urban growth boundary that has already undergone the boundary amendment process addressing whether it is appropriate to locate urban residences next to the Kahana Hui Lot Owners' "agricultural" subdivision. The Kahana Hui

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<sup>2</sup> Haw. Admin. Rules §15-15-94 provides:

Modification or deletion of conditions or orders . (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 (f), or modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed. (b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order. (c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11.

Lot Owners' property is located next to a portion of the Pulelehua Project District where the original Petitioner Maui Land and Pineapple planned to develop **184 single family homes spanning much of that area**—Maui Oceanview LP is proposing to develop **58 lots on a portion of that same area while maintaining the remainder in open space and trails.**

The Commission rule provides:

§15-15-53 Intervention in other than district boundary amendment proceeding or important agricultural lands designation proceeding. {a) In any proceeding other than a district boundary amendment proceeding or important agricultural lands designation proceeding before the commission, petitions to intervene and become a party shall conform to subchapter 5 and be filed no later than fifteen days after the date of the publication of the hearing notice.

The Kahana Hui Lot Owners filed their petition to intervene on November 27, 2019 (*See* Petition), two months after the initial hearing on Petitioner's motion on September 24, 2019. Clearly, the request to participate at this late date would only serve to delay the proceedings and the Kahana Hui Lot Owners will provide the Commission with little additional information to make a decision on the pending motion.

A review of the misstated concerns raised by the petition to intervene illustrate how little they will contribute to these proceedings:

The Motion to Amend substantially alters the original project scope that was approved in 2006 by, among other things, increasing density near Proposed Intervenors' properties, eliminating and/or altering large open spaces, and altering the primary design features and mitigation measures of the original project that had a "primary neighborhood commercial core" with large open areas and buffers protecting the nearby agricultural community in which Proposed Intervenors own property and reside.

Petition, p. 3.

The Kahana Hui lot owners claim Maui Oceanview LP's proposed layout increases the density of the single-family homes abutting their property to the South by 50%, from 10 lots

to 15 and open space and buffers have been lost. Actually, the total lots abutting the Kahana Hui Lot Owners' properties on their southern and eastern boundaries were reduced by 14% or 5 lots from 39 Lots to 34 Lots. *See* Preston Cheng Declaration, ¶3 and Exhibit A. Further, as the Kahana Hui lot owners' own exhibits illustrate, the total density surrounding Kahana Ridge and the Kahana Hui lots between the two gulches that define this portion of the Project District are reduced from Maui Land and Pineapple's **2006 proposed site plan total of 184 lots**, to Maui Oceanview LP's **proposed site plan of 58 lots**. Further, Maui Oceanview LP, unlike the bald claims of the Kahana Hui Lot Owners to the contrary, provides dramatically more open space, with the amount of buffer zone alone increased by over 1200 feet, while still maintaining trails and providing for connectivity throughout the Pulelehua community. *See* Preston Cheng Declaration, ¶¶3-6 and Exhibit A. Clearly the Pulelehua layout in Maui Oceanview LP's concept reduces the density near the Kahana Hui and Kahana Ridge communities and provides more open space and buffers for whatever pseudo-agricultural (and semi-industrial landscaping baseyard) uses that the Kahana Hui Lot Owners are pursuing.

The Kahana Hui Lot Owners complain that the Maui Oceanview LP's Pulelehua concept calls for a commercial building near their property and in an area that was previously reserved for open space and trails. The only commercial area in this region of the Project District is on the other side of a gulch, over 300 feet from their community and allowed under the Project District ordinance controlling the uses in Pulelehua. The location of commercial operations within the community furthers the interest of the County in providing retail opportunities throughout the Pulelehua neighborhoods and neighboring communities, and promoting walkability throughout the entire area.

The Kahana Hui Lot Owners also argue that Maui Oceanview LP's layout for the Pulelehua community eliminates the original project concept of having the "primary neighborhood commercial core" in the middle of the community and avoiding "strip malls." They further claim Maui Oceanview LP's proposed retail center/strip mall is directly on Honoapi'ilani Highway, which contradicts what was proposed by Maui Land and Pineapple. The claims are simply false. As shown in Maui Oceanview LP's allocation map in (RED), Pulelehua has a primary core that wraps the school site without access to Honoapiilani Highway. Further, the proposed retail buildings faces the the Pulelehua community and not the Honoapiilani Highway and an interior road and may only be accessed by through Akahahele Street, the airport road.



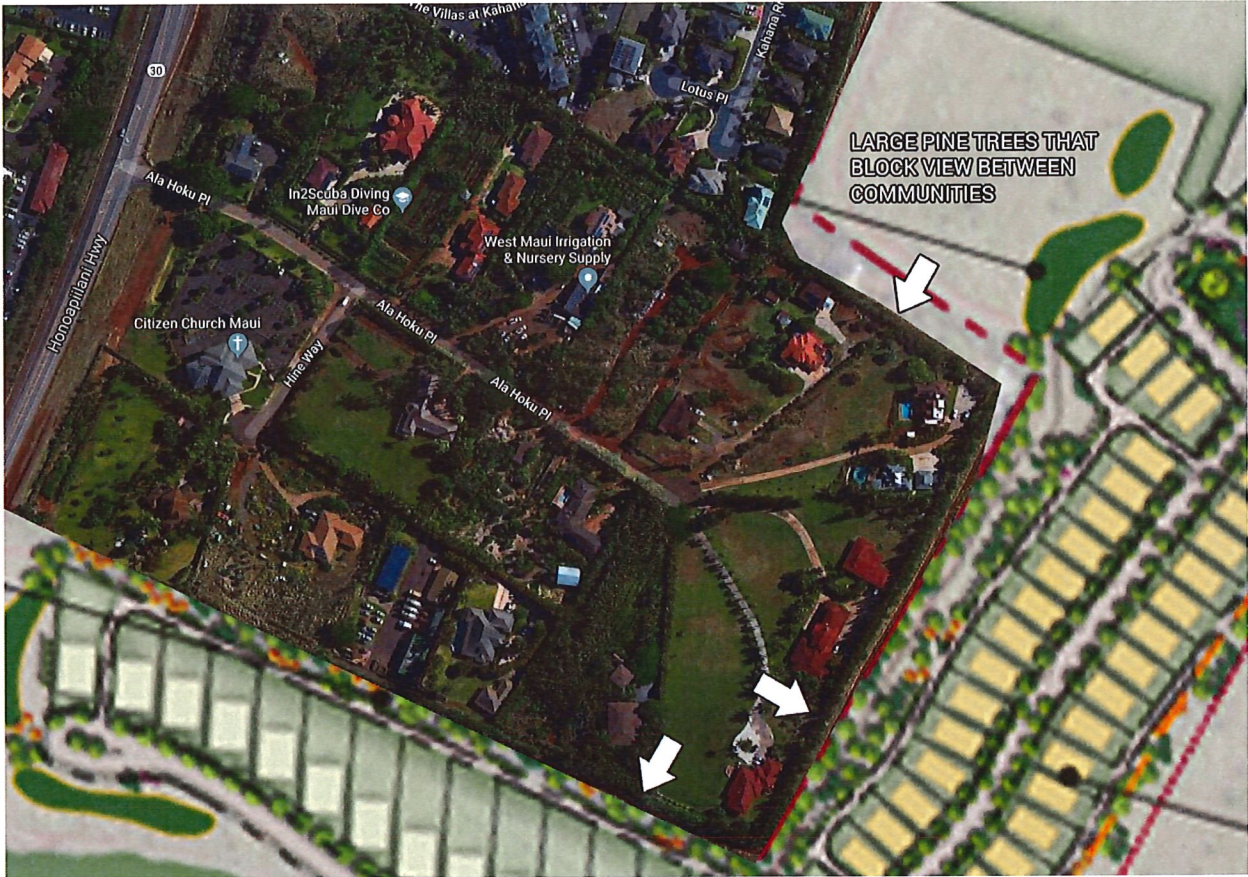
The Kahana Hui Lot Owners also suggest Maui Oceanview LP's layout eliminates the second access point necessary for fire vehicles and creates a potential fire hazard for access for fire and emergency vehicles. Again, the allegation is specious. Simply put, leaving the Project District in its fallow state, which is non-irrigated dry and undeveloped brush provides a greater fire threat. Development of Pulelehua will undeniably reduce the risk of fire into Kahana Hui Lot

Owners' properties. Furthermore, Pulelehua includes three access points (highlighted by the red circles below), to get in and out of Pulelehua just as Maui Land and Pineapple proposed, including access north of Akahahele Road.



The Kahana Hui Lot Owners' purported solutions do not reflect the existing state of the neighborhoods adjoining the Project District (as shown below) or promote Maui Oceanview LP's intention to develop homes for West Maui's working people. Maui Land and Pineapple's original plan proposed 10 lots along the southern border of the Kahana Lot Owners' property—the gulch never served as a buffer and actually no buffer existed on the southern boundary. (See Exhibit A). Maui Oceanview LP's layout adds a buffer along that southern boundary before the 15 smaller lots proposed in that area. The proposal to limit the number of proposed lots to the east of the Kahana Hui Lot Owners' property and to create larger lots simply masks an attempt to make those lots more expensive for prospective West Maui buyers. Maui Oceanview LP is simply not developing another gentlemen's estate subdivision in this portion of the Project District and prefers to maintain the designated open space as open space rather than more house lots.

Further, Maui Oceanview LP has committed to addressing any drainage issues and will abide by the standards for roadways and drainage required by the State Department of Transportation and the County of Maui. Maui Oceanview LP is committed to providing a trail system that effectively and efficiently connects the entire Pulelehua community for walkability and bike-friendly use and will locate those trails and sidewalks accordingly. Presently (as shown in the overhead photo below), landscape buffers, including large pine trees, exist to provide a buffer between Pulelehua and the Kahana Hui Lot Owners' properties and Maui Oceanview LP has already incorporated those existing areas as buffers in its plans.



Existing pine trees already block view between the two communities with Pulelehua installing additional enhanced landscape buffer between them.



CONCLUSION

Maui Oceanview LP requests that the Commission deny the petition to intervene.

DATED: DECEMBER 3, 2019 Wailuku, Maui, Hawaii,

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

Attorneys for Petitioner/Movant  
MAUI OCEANVIEW LP



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To Amend The Agricultural Land Use District )  
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Mahinahina and Kahana, Lahaina, Maui, )  
Hawaii, Tax Map Key: 4-3-01: Por. 31 And 79. )  
)

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DECLARATION OF PRESTON CHENG

I, PRESTON CHENG, declare under penalty of perjury,

1. I am employed by Maui Oceanview LP, a family owned development business based in Dallas, Texas which is headed by my father Paul Cheng.
2. Attached as EXHIBIT A is a true and correct copy of a of a document I prepared that compares the development adjacent to the Kahuna Hui lot owners neighborhood as proposed by Maui Land and Pineapple Company (“MLP”) and as presently proposed by Maui Oceanview LP.
3. As shown on EXHIBIT A, MLP proposed 39 lots adjacent to the Kahuna Hui lot owners neighborhood while Maui Oceanview LP proposes 34, or 14% fewer lots.
4. Further, MLP proposed no open space adjacent to Kahuna Hui lot owners while Maui Oceanview LP proposes 10 acres of open space.
5. MLP’s buffer did not extend around the entire perimeter of Kahuna Hui lot owners property while Maui Oceanview LP proposes 1200 feet more of buffer around the Kahuna Hui lot owners neighborhood.

6. MLP proposed trails only within its proposed buffer zone while Maui Oceanview LP proposed trails in the buffer zone which connect the entire Pulelehua community.

I make this statement under penalty of perjury.

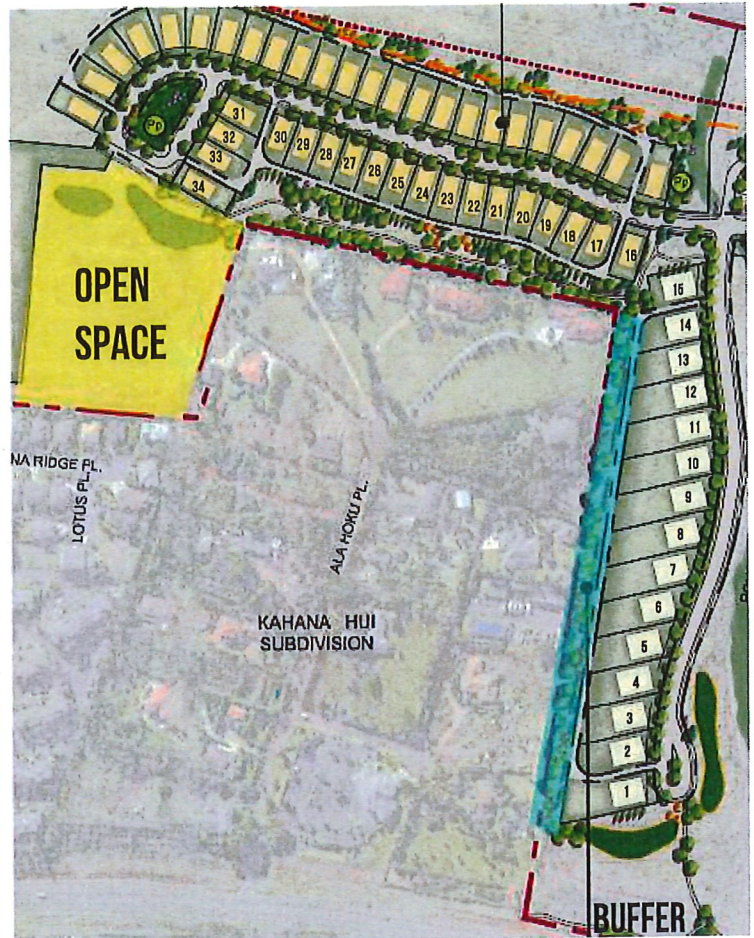
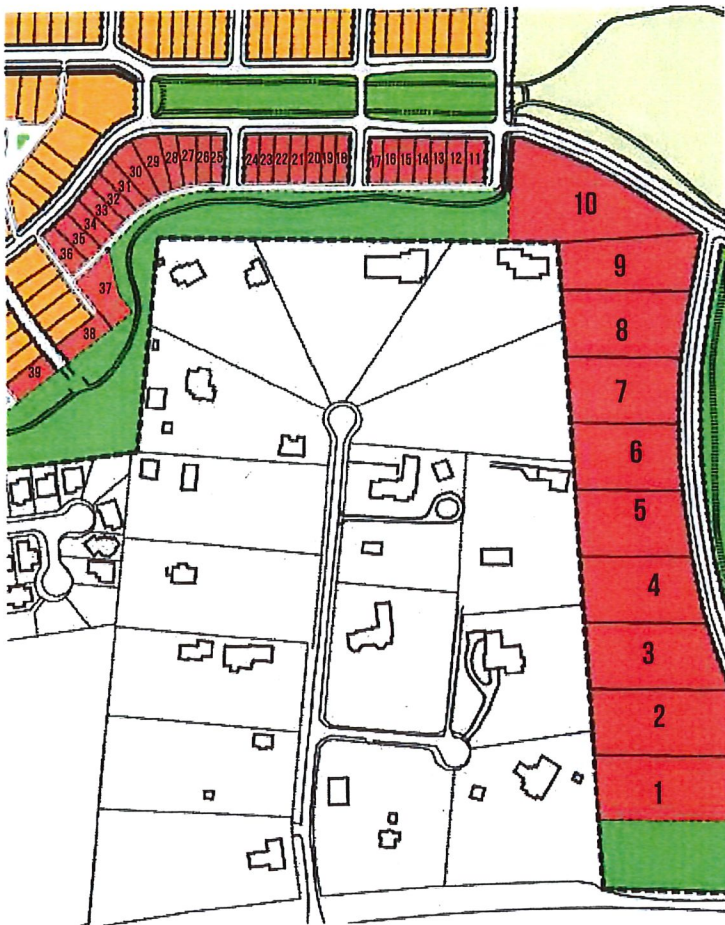
DATED: Dallas, Texas, December 2, 2019.



PRESTON CHENG

**EXHIBIT A**  
**KAHANA HUI DENSITY COMPARISON**

# KAHANA HUI DENSITY COMPARISON



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. 031 AND  
079

DOCKET NO. A04-751

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that a copy of the MEMORANDUM OF PETITIONER MAUI OCEANVIEW LP IN OPPOSITION TO KAHANA HUI LOT OWNERS' PETITION TO INTERVENE was duly served on the following parties at their last known address by depositing in the U.S. mail, postage prepaid on **December 3, 2019**:

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Michelle McLean, Director  
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Moana Lutey, Corporation Counsel  
Michael Hopper, Dep. Corp. Counsel  
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Jeff Pearson, Director  
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Maui Electric Company, Limited  
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Maui Electric Company, Limited  
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Honolulu, Hawaii 96813  
ATTN: Riley K. Hakoda

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BAYS LUNG ROSE & HOLMA  
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700 Bishop Street, Suite 900  
Honolulu, Hawaii 96813

DATED: Wailuku, Maui, Hawaii, December 3, 2019.

  
\_\_\_\_\_  
GILBERT S.C. KEITH-AGARAN  
DAVID M. JORGENSEN  
Attorneys for Petitioner MAUI OCEANVIEW LP