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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,	)	PROPOSED AMENDED FINDINGS OF FACT,
INC., a Hawaii corporation	)	CONCLUSIONS OF LAW, AND DECISION
	)	AND ORDER
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.	)	
_____	)	

PROPOSED AMENDED  
 FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER

On November 22, 2017, MAUI OCEANVIEW LP (“Petitioner Maui Oceanview LP”) filed a 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”)<sup>1</sup> 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

<sup>1</sup> At the time of its original Petition, Original Petitioner MLP’s address and principal place of business was 120 Kane Street, Kahului, Hawai’i, 96732.

Rules §§15-15-70, 15-15-94.<sup>2</sup> The County of Maui Department of Housing and Human Concerns submitted a letter on December 4, 2017.

By Limited Warranty Deeds With Reservations and Covenants, dated June 3, 2016,<sup>3</sup> Petitioner Maui Oceanview LP purchased the portions of the project area owned by Original Petitioner MLP.<sup>4</sup> The County of Maui Planning Department (“Planning Department”) filed its Statement of Position on September 16, 2019 and County’s List of Deficiencies in Amended Decision and Order on September 25, 2019. The State Office of Planning (“OP”) filed its Statement of Position on September 24, 2019. The LUC heard the motion on September 25 and 26, 2019 and deferred decision until a subsequent meeting pursuant to an Order Deferring Decision-Making on Maui Oceanview LP’s Motion to Amend Decision and Order issued on October 28, 2019. The Planning Department filed an additional statement of position on October 31, 2019. OP filed a Response to Specific Issues on November 19, 2019.

The Commission held a further hearing on the motion on December 4, 2019 and December 5, 2019. The Commission, having heard and examined the testimony, evidence, and arguments of counsel presented during the hearings; the Proposed Amended Findings of Fact, Conclusions of Law, and Decision and Order “(Amended D&O)” submitted by Petitioner Maui Oceanview LP; any Exceptions to the Amended D&O filed by the Planning Department and OP; any

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<sup>2</sup> In addition to the materials submitted with its Motion to Amend on November 22, 2017, Petitioner Maui Oceanview LP filed a Supplemental Memorandum in support of its motion on August 28, 2018, a Second Supplemental Memorandum on June 21, 2019, a Third Supplemental Memorandum on August 27, 2019, a Fourth Supplemental Memorandum on September 9, 2019, and a Fifth Supplemental Memorandum on September 17, 2019. Petitioner Maui Oceanview LP filed a Sixth Memorandum in Support on November 14, 2019, a Legal Memorandum on November 15, 2019 and a Seventh Memorandum in Support on December 3, 2019.

<sup>3</sup> Limited Warranty Deed with Reservations and Covenants from Maui Land and Pineapple Company, Inc., recorded in the Bureau of Conveyances of the State of Hawai’i on June 3, 2016 as Document No. A-59980843 (for TMK 4-3-01-82); and Limited Warranty Deed with Reservations and Covenants from Maui Land and Pineapple Company, Inc., recorded in the Bureau of Conveyances of the State of Hawai’i on June 3, 2016 as Document No. A-59980844 (for TMK 4-3-01-83). (Supp. Memo. Supp., EXHs. I-J).

<sup>4</sup> The Petition Area involved in the 2006 D&O will be referred to as the “Project District area.”

Comments on the Amended D&O filed by Petitioner Maui Oceanview LP; hereby makes the following findings of fact, conclusions of law, and amended decision and order:

FINDINGS OF FACT

1. Petitioner Maui Oceanview LP proposes to develop Pulelehua as a 900-unit primarily rental project with a retail component, a school site, a community park and pocket parks, with a sidewalk and trail system connecting the entire development. Specifically, Maui Oceanview LP proposes:

- a. 800 multi-family units, 99 single family residential lots only, one large estate edge lot.
- b. The 800 multi-family units will include 400 market rental units, 300 workforce rental units, and 100 workforce housing for sale units. The 300 workforce rental units include 125 workforce housing units attributable to an obligation of Original Petitioner MLP for its Kapalua Mauka project. Workforce Housing renters within Pulelehua will be exempt from paying Homeowner Association fees. The 800 multi-family units will include 70 live/work units (60 market rate and 10 workforce units). The 300 workforce rental 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 Chapter 2.96, Maui County Code, and a Housing Agreement between Petitioner Maui Oceanview LP and the County of Maui Department of Housing and Human Concerns (“DHHC”). The 100 workforce housing units offered for sale will include a deed restriction for not less than thirty years with the County of Maui having the right of first refusal to purchase the units in accordance a Housing Agreement between Petitioner Maui Oceanview LP and the County of Maui. From the community engagement conducted, Petitioner Maui Oceanview LP also proposed an advisory committee that includes community members to assist Petitioner in reviewing and evaluating the eligibility

of buyers of such units.

c. The 99 single family residential lots and one estate edge lot will be offered for sale as lot only. Three of the single-family residential lots will be offered for sale at the cost of developing the lots (which includes the pro-rata cost of the land, planning and infrastructure improvements) to a non-profit organization involved in constructing and maintaining affordable housing.

d. An additional 100 accessory dwelling/‘Ohana units associated with the 99 single family residential lots and one estate edge lot may be built, as allowed by County requirements, by the individual buyers of those lots. The use of the 100-accessory dwelling/‘Ohana units for rental to third-party, non-relatives of the homeowner will be deed restricted in perpetuity in accordance with a Residential Workforce Housing Agreement with Maui DHHC.

e. 70 Live/Work units will be incorporated among the multi-family units in proximity to the commercial retail area.

f. Approximately 70,000 to 75,000 square feet of commercial space.

g. A 13-acre school site, with financing and construction to be explored with local developers who have constructed schools on behalf of the State of Hawaii.

h. A 10-acre Community Park to be dedicated to the County of Maui, and pocket parks throughout Pulelehua with a system of sidewalks and walking trails connecting one end of the community to the other to be maintained by the Pulelehua community association. At least one of the pocket parks will include pet friendly features and Petitioner Maui Oceanview LP will establish a fenced dog park by the time 400 multi-family units are built and occupied at Pulelehua.

i. The community development will follow Smart Growth principles, including construction of primarily single story buildings (except for two-story live/work units), incorporation of solar panels on commercial buildings for some energy needs, and on single-family residences 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-Airports Division, provision of hike-able 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.

j. Petitioner Maui Oceanview LP will connect to the County wastewater system provided capacity is available. In that event, R-1 treated water, unless unavailable, will be returned to Pulelehua for non-potable landscape irrigation and fire flow purposes, and the cost of installing all required infrastructure will be borne by Maui Oceanview LP as required and approved by the Maui Department of Environmental Management. Alternatively, Maui Oceanview LP will develop a private wastewater treatment plant to be operated by qualified operators, with the wastewater treatment plant using a system similar to or better than the system proposed by Waikapu Country Town, using organic membrane-type technology and no injection wells. (Sixth Memo. Supp., Paul Cheng Decl., ¶12)

k. Petitioner Maui Oceanview LP will develop a private water treatment plant. The source of water may be groundwater or surface water, if available and approved by relevant regulatory agencies. Alternatively, Pulelehua may connect to the Hawaii Water Service Company groundwater system or develop a well from groundwater sources on Original Petitioner MLP's land.

l. Deeds and Covenants for Pulelehua will include restrictions banning short-term rentals and/or bed and breakfast operations.

As the Office of Planning notes, [Petitioner Maui Oceanview LP]

. . . Proposes to develop a community will demonstrate many principles within the traditional neighborhood/smart growth concept. These principles include:

- Create a compact sustainable community with a mix of uses, housing types and activities.
- Provide affordable housing options, indistinguishable from market units and integrated within Pulelehua neighborhoods.
- Provide mixed uses that combine living and workplaces.

- Create a sense of place that values incorporating Hawaiian architecture, landscape, views and climate into the community and building types.
- Provide connectivity and ease of access to all uses within the community.
- Provide pedestrian and bike friendly walkways and streets.

(OP Pos. Stmt., pp. 4-5).

2. On June 30, 2006, the Land Use Commission (“LUC” or “the Commission”), pursuant to chapter 205, Hawai'i Revised Statutes ("HRS"), and chapter 15-15, Hawai'i Administrative Rules ("HAR"), granted Original Petitioner MLP’s petitions and amended the State Land Use District boundary to reclassify approximately 310.440 acres of land at Mahinahina and Kahana, Lahaina, Maui, Hawai'i, identified as Tax Map Key ("TMK"): 4-3-01: por. 31<sup>5</sup> and 79 ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District for the master-planned Pulelehua residential community ("Pulelehua" or "Project").

3. Petitioner Maui Oceanview LP filed a motion on November 22, 2017, requesting amendments of the Commission’s 2006 D&O to facilitate its proposed development by clarifying a number of findings and conditions.

MLP’s ORIGINAL PETITION

4. Original Petitioner MLP described Pulelehua as a master-planned "sustainable" or "traditional neighborhood design" residential and mixed-use community. The 310-acre community incorporated into its conceptual design a mix of residential, commercial, and public uses. parks, open space, a public elementary school, biking and walking paths, a town center, pedestrian friendly streets, community gardens, and accessible public spaces. (2006 D&O, FOF ¶30).

5. Original Petitioner MLP proposed Pulelehua in three distinct neighborhoods:

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<sup>5</sup> The property has since been assigned TMK 4-3-01: 082, :083.

Central, Kahanaiki, and Mahinahina. Other design principles of Pulelehua included an identifiable town center, where development was more intense, neighborhoods with an edge, a mix of land uses and building types, an integrated network of walkable streets, and sites reserved for civic purposes, including view corridors. (2006 D&O, FOF ¶31).

6. The neighborhood center was to combine commercial and residential uses. Live/work units were intended to be allowed to change over time to reflect the needs of the residents, allowing a residential building to be converted to a building with a small shop or office on the first floor. (See 2006 D&O, FOF ¶32).

7. Original Petitioner MLP intended to develop approximately 882 residential units in Pulelehua in a variety of housing types, including mixed use apartments above commercial spaces, apartment houses, townhouses and detached terrace houses, detached single-family residences, and large estate edge lots on the boundaries and along gulches of the Petition Area. (2006 D&O, FOF ¶34). The gross density for residential areas would average 2.8 dwelling units per acre.(See 2006 D&O, FOF ¶35).

8. Original Petitioner MLP proposed selling market price homes (as house and lot packages) at a range of prices and Estate edge lots as finished lots. (See 2006 D&O, FOF ¶36). The construction of ‘ohana units, where permitted, would be at the discretion of the individual homebuyers. (2006 D&O, FOF ¶37).

9. Original Petitioner MLP proposed addressing the housing needs of low income, low-moderate, moderate income, and gap groups in accordance with an approved affordable housing policy of the County of Maui, or in the absence of such policy, under terms and conditions mutually agreeable to Original Petitioner MLP and the County of Maui. Original Petitioner MLP intended to satisfy the requirement by offering at least 325 units in Pulelehua as “affordable housing” for sale to low, low-

moderate, and moderate-income residents of Maui. (2006 D&O, FOF ¶39).

10. Original Petitioner MLP also proposed offering approximately 125 additional residential units as affordable rentals to satisfy a condition imposed by the Commission in approving Original Petitioner MLP's Kapalua Mauka development in LUC Docket No. A03-741. ("Kapalua Mauka units") ((2006 D&O, FOF ¶40).

11. Original Petitioner MLP anticipated once construction commenced, it intended to develop Pulelehua in one continuous phase, to be substantially completed over a ten-year period. (See 2006 D&O, FOF ¶¶47, 135).

12. Original Petitioner MLP also intended to develop up to approximately 175,000 square feet of leasable commercial floor space throughout Pulelehua. (See 2006 D&O, FOF ¶57).

#### THE ENVIRONMENTAL IMPACT STATEMENT

13. Original Petitioner MLP included an Environmental Impact Statement Preparation Notice with its petition pursuant to sections 343-5(a)(1) and 343-5(a)(6), HRS, and sections 11-200-6(b)(1)(A), 11-200-6(b)(2)(A), and 11-200-6(b)(2)(B), HAR. (2006 D&O, FOF ¶1).

14. On July 8, 2004, and by a written Order dated September 1, 2004, the Commission (i) agreed to be the accepting authority pursuant to chapter 343, HRS; and (ii) determined that the proposed action may have a significant effect on the environment to warrant the preparation of an Environmental Impact Statement ("EIS"). (2006 D&O, FOF ¶2).

15. Studies supporting the Final EIS considered an original unit count of 882 single and multi-family units and 318 potential 'ohana units. (Final EIS, p. 4.). "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." (Final EIS, 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.” (Final EIS, p. 4.).

16. The Final EIS included an archaeological inventory survey that identified historical sites located in the gulches on the property. The State Historic Preservation Division (“SHPD”) recommended monitoring be conducted in the vicinity of the identified artifacts as mitigation against adverse impacts to historic properties. Original Petitioner MLP also agreed to prepare an archaeological monitoring plan for approval by SHPD prior to commencing constructing activities. (2006 D&O, FOF ¶¶71-72; Final EIS, p. 7.).

17. The Final EIS considered a development that included 21,475 sq. ft. of retail space, 54,000 sq. ft. of specialty retail/office space and 20,300 sq. ft. of workplace edge commercial space; and 13 acres for a public school. (Final EIS, p. 6.). The Final EIS also considered construction of a private wastewater treatment plant in the event the LWWRP could not accommodate Pulelehua. (See Final EIS, p. 101.).

18. On July 13, 2005, and by a written Order dated August 18, 2005, the Commission accepted the Final EIS. (2006 D&O, FOF ¶5).

#### THE COMMISSION DECISION IN THE 2006 D&O

19. After hearings on the Original Petitions on November 17, 2006, November 18, 2006, December 2, 2005, February 16, 2006, February 17, 2006, and April 7, 2006, the Commission adopted the 2006 D&O on June 30, 2006. (2006 D&O, FOF ¶¶10,12, 13, 14).

20. The Commission conditioned the approval on 32 conditions, including:

1. **Affordable Housing.** Petitioner shall do the following to provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii in accordance with the affordable housing policies and guidelines of the County of Maui, and its representations in this docket:

a. Petitioner shall develop and offer for rent not less than 125 affordable housing units to qualified families or individuals to satisfy a condition imposed by

the Commission in its approval of Petitioner's (MLP's) Kapalua Mauka development in LUC Docket No. A03-741.

b. In addition, Petitioner shall develop and offer for sale not less than 325 affordable housing units to low, low-moderate, and moderate-income residents of Maui as a feature of Pulelehua.

c. To ensure continued owner occupancy, rental, and resale to qualified low and moderate income residents and maintain the affordable housing inventory within Pulelehua, Petitioner shall prior to the rental or sale of any affordable housing unit establish County-approved restrictions governing the rental, sale, or transfer of all affordable housing units.

d. Subject to applicable laws, Petitioner shall establish at a minimum, qualifications for rental or purchase which specify that a renters buyer must: be currently employed in Maui; attain a minimum age of 18 years; demonstrate evidence of sufficient income; agree to physically reside in the affordable housing unit; and not already own a housing unit or other real property.

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...

5. **Transportation Improvements.** Petitioner shall submit a revised TIAR for Pulelehua to the DOT for their review and approval no later than the completion date of the final development and internal circulation plan for Pulelehua. Petitioner shall implement traffic mitigation measures and roadway and intersection improvements, including signalization and pedestrian facilities, for access to and use of Honoapi'ilani Highway, as determined by and to the satisfaction of the DOT, including those improvements and mitigation measures as recommended or required by the TIAR approved by the DOT. Petitioner shall obtain the DOT's prior written approval of Petitioner's TIAR and Petitioner may not proceed with the development of Petitioner's Project until the DOT approves the TIAR.

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7. **Traffic Fair-Share Contribution.** Petitioner and the County of Maui shall enter into an agreement which establishes a Traffic Fair-Share or Voluntary Contribution to be paid by Petitioner to mitigate the traffic-related impact generated by the development of Pulelehua. A copy of the executed agreement shall be filed with the Commission prior to the occupancy of any unit within Pulelehua. The agreement shall provide that Petitioner shall in the order specified below:

a) pay the fee calculated pursuant to chapter 14.62, Maui County Code ("MCC"), Impact Fees for Traffic and Roadway Improvements in West Maui, Hawai'i; however, if there is a written agreement between the County of Maui and the State of Hawai'i specified by section 14.62.080 MCC, the County shall share the funds collected from Petitioner with the State in accordance with this written agreement; or

b) make a voluntary contribution to the County of Maui in an amount equivalent to the above referenced fee upon issuance of a building permit for each dwelling; or

c) pay the above referenced fee to the State pursuant to the enactment of State legislation authorizing such payment.

The above referenced fee or voluntary contribution will be applied towards the funding, design, and construction of local and regional transportation improvements and programs necessitated by the proposed development of the Petition Area, but in any event neither the traffic fair-share nor the voluntary contribution will exceed the greater of (a) \$3,500 per market priced and gap group priced single-family unit or lot developed on the Petition Area, and \$1,500 per market priced and gap group priced multi-family unit developed on the Petition Area, or (b) the traffic impact fee established for a market priced and gap group priced single-family and multi-family unit pursuant to Maui County Code chapter 14.62 at the time a building permit is issued.

...  
21. **Water Resources Allocation.** Petitioner shall provide potable and non-potable water source, storage, and transmission facilities and improvements to the satisfaction of the [Maui Department of Water Supply] to accommodate the proposed development of the Petition Area.

...  
30. **Release of Conditions Imposed by the Commission.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

SUBSEQUENT PROCEEDINGS; STATE AND COUNTY LAND USE PLANS AND PROGRAMS

21. At the time of the original petitions, the Project District area contained cultivated pineapple fields and fallow fields formerly cultivated in pineapple. (2006 D&O, FOF ¶20). The Project District area has not been in cultivation for many years.

22. The Project District area is located makai of the existing Kapalua- West Maui Airport, and borders the mauka side of Honoapi'ilani Highway. The primary access point remains Akahahele Street, which intersects Honoapi'ilani Highway, a limited access State highway. (2006 D&O, FOF ¶21).

23. The Project District area is bordered by Kahanaiki Gulch along its northern boundary. Shallow Pohaku-Ka'anapali Gulch bisects the Project District area at the approximate midpoint. Mahinahina Gulch traverses the Project District area at approximately 1,000 feet from its southern boundary. ((2006 D&O, FOF ¶22).

24. Elevations within the Project District area range from 75 feet above mean sea

level ("MSL") along its western boundary to approximately 240 feet above MSL along its eastern boundary. The grade of the Project District area, exclusive of gulches, is gently sloping. (2006 D&O, FOF ¶24; OP Pos. Stmt., p. 4).

25. Original Petitioner MLP selected the Project District area as the site for Pulelehua because it is centrally located between West Maui's two primary employment bases, Kapalua to the north and Ka'anapali to the south. The Project District area is readily accessible to Honoapi'ilani Highway, is adjacent to existing infrastructure and is adjacent to existing urban uses. (See 2006 D&O, FOF ¶33).

26. The Project District area is currently designated in the State Land Use Urban District, as reflected on the Commission's official maps M-1 (Honolua) and M-2 (Lahaina). (Compare 2006 D&O, FOF ¶51).

27. Following the 2006 D&O, Original Petitioner MLP successfully re-zoned the Petition Area as West Maui Project District No. 5 (Pulelehua), codified in Maui County Code chapter 19.93 by Ordinance No. 3888 (2011), and amended the West Maui Community Plan and its Land Use Map to create Project District 5 (Pulelehua) by Ordinance No. 3887 (2011). Also following the 2006 D&O, the County of Maui adopted the Maui Island Plan on December 28, 2012, which designated the Petition Area as within the Urban Growth Boundary, and the Countywide Policy Plan on March 24, 2010. (County Pos. Stmt., p. 2). (See County Pos. Stmt., EXHs. 1-2).

28. The Project District Area is not within the County of Maui's special management area. (2006 D&O, FOF ¶53).

29. Original Petitioner MLP also worked with the Hawaii Department of Education to identify a future school site in the Project District along Honoapiilani Highway.

30. As the State recognizes, "[l]and uses surround the Project District area remain

unchanged since the 2006 D&O. These include the Kapalua Airport, residential subdivisions (Kahana Ridge, and Kahana Nui) and Department of Hawaiian Home Lands property to the south.” (OP Pos. Stmt., p. 3 & OP EXHs. 2 & 3).

MAUI OCEANVIEW LP’S MOTION AND PROPOSAL

PROCEDURAL BACKGROUND OF THE MOTION TO AMEND

31. On June 16, 2017, Maui Oceanview LP filed with the Commission a Notice of Change of Ownership. The date of the sale to Maui Oceanview LP was June 3, 2016. (Supp. Memo. Supp., Exhs. I-J, Q).

32. On November 22, 2017, Maui Oceanview LP filed a motion with the Commission to amend the 2006 D&O.

33. On November 29, 2017, December 19, 2017, February 23, 2018, October 15, 2018, and November 8, 2018, Maui Oceanview LP, OP and the Planning Department filed stipulations extending the time for the State and the County of Maui to file responses to the motion.

34. Petitioner Maui Oceanview LP filed a Supplemental Memorandum in support of its motion on August 28, 2018, a Second Supplemental Memorandum on June 21, 2019, a Third Supplemental Memorandum on August 27, 2019, a Fourth Supplemental Memorandum on September 9, 2019, and a Fifth Supplemental Memorandum on September 17, 2019.

35. The County of Maui filed its Statement of Position conditionally in support of the Motion to Amend on September 16, 2019 and the County’s List of Deficiencies in Amended Decision and Order on September 25, 2019. OP filed its Statement of Position conditionally in support of the Motion to Amend on September 24, 2019.

36. On September 25 and 26, 2019, the Commission opened the hearing on the Motion to Amend at the Maui Arts and Cultural Center, Kahului, Maui, pursuant to a public notice.

37. On September 25, 2019, the following individuals testified as public witnesses and/or provided written testimony and/or submitted email testimony: Crystal Smythe, Tamilyn White, Carrie Larrita, Delaney De La Barra, Dina Edmisson, Michael Tancayo, Karen Comcowich, Pi'imauna Aiwohi, Kennard Kekona, Gretchen Losano, Jen Mather, Michaellyn Burke, Ashley Olson, Mike Jucker, Emil Jansevskis, Rita Medina, Kai Nishiki, Tiare Lawrence, Richard Mayer, Etan Krupnik, Lucienne DeNaie, Stan Franco, Tamara Paltin, Albert Perez, Melissa Harding, Aggie England, and Michael Wildberger. (Transcript 9/26/19, pp. 37-97). On September 26, 2019, the Commission resumed the hearing.

38. On September 26, 2019, the Commission approved a motion to defer consideration of the Motion to Amend until its next meeting on Maui on December 4, 2019. During the period of deferral, the Commission directed the parties to do the following:

A. Work on a proposed stipulated decision and order and to specifically address the following in such stipulated decision and order: (1) a specific description of the workforce housing units proposed differentiating by levels of affordability as well as the relationship to previously required affordable housing units that will now be built in the Pulelehua project; (2) after significant public engagement, the terms of any reopened or renegotiated Housing Agreement between Petitioner Maui Oceanview LP and the County of Maui DHHC; and (3) a description of steps taken by Petitioner Maui Oceanview LP to secure a reliable, long-term source of water;

B. Petitioner Maui Oceanview LP, at least, should brief the Commission on the need, if any, for a Supplement Environmental Impact Statement (“SEIS”);

C. All parties should brief the Commission on whether there is “good cause” to amend the 2006 D&O;

D. Allow the County of Maui and Office of Planning to have meaningful time to

receive additional agency comments from their respective County and State agencies; and

E. Allow Petitioner Maui Oceanview LP to have meaningful community engagement in West Maui

The Commission also asked that Maui Oceanview LP submit any additional documents in an easily identifiable and searchable form easily useable and postable for the Commission website for access by the Commissioners, other stakeholders and the members of the public.

(Transcript, 9/26/19, pp. 82-84). See LUC Order Deferring Decision-Making on Maui Oceanview LP's Motion to Amend Decision and Order filed October 28, 2019.

39. Petitioner Maui Oceanview LP filed a Sixth Supplemental Memorandum on November 14, 2019, a Memorandum on Legal Issues: Whether Pulelehua Requires a Supplemental EIS and Supporting Good Cause to Amend the 2006 Decision and Order on November 15, 2019 and a Seventh Supplemental Memorandum on December 3, 2019. OP filed a Response to Specific Issues Identified by the LUC on November 19, 2019.

40. Subsequently, the Commission received written testimony by letter or email from the following (a) on November 19, 2019: Sal Marino, Loren E. Clive, Thomas Gould, Chevylee K. Malise, Ron Gess, Jeremy Solyn, Robert Vafaie; (b) on November 27, 2019: Douglas Fischer, Josh Massion, Dean Otto, Brian Richard, Barry Lee Brown, Danny Shay, Josh Grubar, Michael Reid, Jill Clark, Anne Louise Riach, Kathryn Riach, Scott Davalos, Diana Rodburn, Buz Moffet, Laura Massion, Kimo Clark, Derek and Kristen De Carausaz, Yvette Richard, Ellen Geary, Mike Jocker and Tim Hehemann; (c) between November 23 and December 2, 2019: Kai Nishiki, Kamuela Samudio, Joseph Pluta, Pat Lindquist, Shauna Buckner, R. Kehau Filimoe'atu, Ravinder Bugga, Gordon Firestein, Maria Linz, Doris Lang, and Michael Williams/Maui Tomorrow; (d) December 2, 2019: Danielle Gaveglio; (e) on December 3, 2019: Alice Lee, Fred Findlen, Gretchen Losano, Stan

Franco, Tambara Garrick, Teresa Jacques, Shane Sinenci, Wayne Hedani, Laura Kaplan, Malia King, Lori Sablas, Archie Kalepa, Kai Nishiki, Lahela Aiwohi, and Mike Molina; (f) on December 4, 2019: Buz Muffett, Ellen K. Geary, Kathryn Riach, Anne Louise Riach, Tasha Kama, Chad Adolfo Maurie, Stephanie Bruenelle, Aley Bailey, Jacqueline Rose Comero, Nipuu Keahi-Ng, Tiare Lawrence, Kukui Keahi, Charkel Vasquez, Karen Comcowich, Tricia Petersen, Jim Petersen, Keani Rawlins, and Kirra Downing; (g) December 5, 2019: Kai Nishiki and Lucienne de Naie/Sierra Club Maui Group; and (h) December 6, 2019: Maui County Council and Stand Up Maui.

41. On November 27, 2019, Proposed Intevenor Kahana Hui Lot Owners filed a petition to intervene. The petition was withdrawn on December 4, 2019. (Transcript 12/4/19, pp. 105-107).

42. On December 4, 2019, the Commission resumed the hearing on the Motion to Amend at the Maui Arts and Cultural Center, Kahului, Maui. The following individuals testified as public witnesses: Van Fischer, Tim Hehemann, Bernie Bays, Sharon Banaag, Aris Banaag, Joseph Pluta, Kelly King, Tiare Lawrence, Dick Mayer, Shane Sinenci, Rod Antone, Yuki Lei Sugimura, Junya Nakoa, Bruce U'u, Albert Perez, Kathy Kaohu, Kai Nishiki and Tamara Paltin. (Transcript 12/4/19, pp. 12-85) On December 5, 2019, the Commission resumed the hearing on the Motion to Amend, at the Maui Arts and Cultural Center, Kahului, Maui.

43. The Commission closed the hearing on the Motion to Amend on December 5, 2019 and voted to approve the motion to amend subject to approval of an amended Decision and Order.

44. On \_\_\_\_\_, 20\_\_, the Commission met to consider the proposed Amended Decision and Order at the \_\_\_\_\_ in \_\_\_\_\_, Maui.

45. On \_\_\_\_\_, 20\_\_ the Commission adopted the Amended Decision



and Order.

### THE PROJECT DISTRICT

46. Petitioner Maui Oceanview LP is the owner in fee simple of those portions of the original Petition Area designated as TMK 4-3-01-82 and TMK 4-3-01-83. (Supp. Memo. Supp., EXHs. I, J; County Pos. Stmt., p. 1).

47. The County of Maui, through its Department of Public Works (“Maui Public Works”)<sup>6</sup>, remains the owner of Lot 2-B-2 of the ML&P-NHLC Subdivision (Subdivision File No. 4.823), an area of approximately 6.18 acres (“Lot 2-B-2”). Lot 2-B-2 is the location of certain drainage improvements constructed for the Honolua Watershed Project. The Project District area surrounds Lot 2-B-2. At the time the Petitions were filed, the County of Maui had not yet assigned a tax map key number to Lot 2-B-2. Lot 2-B-2 has since been designated as TMK: 4-3-01: 79. (See 2006 D&O, FOF ¶18). By letter dated February 8, 2005, Maui Public Works authorized Original Petitioner MLP to include Lot 2-B-2 as a portion of the Petition Area in this Petition. (2006 D&O, FOF ¶19).

48. By letter and notarized document from David C. Goode, Maui Public Works Director dated February 12, 2018, Maui Public Works confirmed Maui Oceanview LP was authorized to file the motion seeking amendments to the 2006 D&O in this docket. Director Goode requested that any amended Decision and Order include clarification that TMK 4-3-001-079 be released from all Commission conditions as that property is merely a drainage basin, and that Maui Oceanview LP agree to take over maintenance of the drainage basin. (Supp. Memo. Supp., EXH. H).

### MAUI OCEANVIEW LP’S PROPOSAL

49. Petitioner Maui Oceanview LP, as successor in interest to MLP, filed a motion to amend the 2006 D&O to reflect its plans to develop 800 primarily rental residential units and 100 single

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<sup>6</sup> At the time of the original petitions, Maui Public Works was known as the Department of Public Works and Environmental Management.

family for sale lots at Pulelehua. Petitioner Maui Oceanview LP will offer for rent 800 units in apartment houses and will offer for sale 99 single family residential lots and one (1) large estate edge lot on the northern boundaries between Kahanaiki and Mahinahina gulches. Some live-work units will be allowed in apartment buildings in proximity to the proposed commercial areas.

50. The County Project District zoning for the Pulelehua Project District provides for a maximum number of 1200 units, which includes up to 300 accessory dwelling/'ohana units. Maui County Code §19.93.050(1). With 100 single family lots, the total units that could be developed in Petitioner Maui Oceanview LP's Pulelehua project is 1,000 (800 multi-family units, 99 single family residential lots, one estate edge lot, and 100 accessory dwelling/'ohana units on the single family residential lots and the estate edge lot). Petitioner Maui Oceanview LP does not intend to construct any accessory dwelling/'ohana units as part of the Pulelehua Project. Construction of accessory dwelling/'ohana units, where permitted, will be at the discretion of the individual homebuyers of the single family residential lots and the estate edge lot in the proposed development.

51. In a revised proposal, Petitioner Maui Oceanview LP proposed to address through the workforce housing component of the project's residential unit mix the rental housing needs of low income, low-moderate income, and moderate income residents in a manner consistent with HUD requirements, the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code. Petitioner Maui Oceanview LP entered into a Housing Agreement with DHHC dated March 7, 2019. (Second Supp. Memo. Supp, EXH. T). Petitioner Maui Oceanview LP proposed to develop 155 workforce housing long-term rental units to fulfill County requirements associated with Pulelehua's 520 market rate long-term rental units, 99 Single-Family House Lots for sale and One Estate Edge lot for sale. In addition, Petitioner Maui Oceanview LP would also develop 125 workforce housing rental units to fulfill Original Petition MLP's Kapalua Mauka obligation.

52. In total, Petitioner Maui Oceanview LP’s primarily rental project proposed 280 units, or 35% of the 800 rental units, as workforce rental housing.

53. Petitioner Maui Oceanview LP included preferences for the 280 workforce housing units consistent with the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code and the Housing Agreement with DHHC.

54. Petitioner Maui Oceanview LP integrated the Residential Workforce Housing rental units with the market rental apartment units developed throughout the Pulelehua Project.

55. During the deferral period between the September 25-26, 2019 hearings and December 4, 2019, Petitioner Maui Oceanview LP held community engagement meetings with various members of the West Maui and Maui community and held public meetings on the proposed Pulelehua development at Princess Nahienaena Elementary School on Wednesday, November 6, 2019 and Saturday, November 9, 2019.

56. In connection with and based on the community engagement meetings and public meeting, and as set out in part in a written settlement agreement between Petitioner Maui Oceanview LP and the West Maui Preservation Association (Seventh Supp. Memo., EXH. BB), Petitioner Maui Oceanview LP revised its proposed Pulelehua development as follows:

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

The 100 workforce housing units offered for sale will include a deed restriction for not less than 30 years with the County of Maui having the right of first refusal to purchase the units in accordance with a Housing

Agreement between Petitioner Maui Oceanview LP and the County of Maui. From the community engagement, Petitioner Maui Oceanview LP also proposed an advisory committee that includes community members to assist Petitioner in reviewing and evaluating the eligibility of buyers of such units.

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%	<u>100</u>
TOTAL	<u>300</u>

The 300 workforce rental 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 an amended Housing Agreement between Petitioner Maui Oceanview LP and DHHC.

c. Covenants and deed restrictions for Pulelehua will ban short-term rentals and/or bed and breakfast operations;

d. Workforce Housing renters within Pulelehua will be exempt from paying Homeowner Association fees.

e. Three of the 99 single family residential lots will be offered for sale at the cost of developing the lots (which includes the pro-rata cost of the land, planning and infrastructure improvements) to a non-profit organization involved in constructing and maintaining affordable housing.

f. The 99 single family lots and the large estate lot offered for sale will all have the right to build an accessory dwelling /‘ohana unit at the discretion of the homeowner. The use of the 100-accessory dwelling/‘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.

g. Regarding 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.

h. At least one of the pocket parks will include pet friendly features and Petitioner Maui Oceanview LP will establish a fenced dog park by the time 400 multi-family units are built and occupied at Pulelehua.

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 on commercial buildings for some energy needs and single-family residences 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-Airports Division, 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.

j. Petitioner Maui Oceanview LP will connect to the County wastewater system provided capacity is available. In that event, R-1 treated water, unless unavailable, will be returned to Pulelehua for non-potable landscape irrigation and fire flow purposes, the costs of which will be borne by Petitioner Maui Oceanview LP as required and approved by the Maui Department of Environmental Management. Alternatively, Maui Oceanview LP will develop a private wastewater treatment plant to be operated by qualified operators, with the wastewater treatment plant using a system similar to or better than the system proposed by Waikapu Country Town, using organic membrane-type technology and no injection wells. (Sixth Memo. Supp., Paul Cheng Decl., ¶12)

k. Petitioner Maui Oceanview LP will develop a private water treatment plant. The source of water may be groundwater or surface water, if available and approved by relevant regulatory agencies. Alternatively, Pulelehua may connect to the Hawaii Water Service Company groundwater system or develop a well from groundwater sources on Original Petitioner MLP's land.<sup>54</sup>

57. In summary, Pulelehua will provide up to 400 workforce housing units (300 multi-family rental housing units, 100 multi-family for sale units), and 500 market housing units (400 multi-family rental housing units, 99 single family lots, 1 large estate lot). A deed restriction on the 99 single family lots and 1 large estate lot limiting rental to third parties of accessory dwelling/'ohana units to workforce housing rents offers the potential future addition of another 100 units to the West Maui workforce housing inventory.

58. Petitioner Maui Oceanview LP submitted its settlement agreement with the West Maui Preservation Association dated November 28, 2019 (Seventh Supp. Memo, Exhibit BB) which memorializes a number of agreements between the parties to that settlement and commitments to make contributions to various community organizations. Except for certain terms specifically included as conditions in this Decision and Order, the terms of that settlement shall remain private and enforceable between the parties to that settlement.

59. Original Petitioner MLP proposed to develop 88 units for income levels between 50% to 80%, of the average median income (AMI), 185 units for income levels 81% to 100% of AMI and 177 units for income levels 101% to 140% of AMI. 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).

60. The differences between the Original Petitioner MLP and Petitioner Maui Oceanview LP proposals are as follows:

Project Element	MLP Plan	Maui Oceanview LP Plan
Total Units	882 Units/ 267 ‘Ohana Units	900 Units/ 100 ‘Ohana Units
Affordable/Workforce Units	450 Units	400 Units/ 100 ‘Ohana Units
Ownership Units	731	100 Single Family Lots/ 100 Multi-Family Units
Rental Units	151 Units/ 267 ‘Ohana Units	700 Units/ 100 ‘Ohana Units
Timetable for Construction of Affordable/Workforce Units	Project Lifetime As Sold	Phases 1-4
Water Source	Ground water and surface water sources	Ground water and surface water sources
Projected Water Use	919,313 GPD	638,320 GPD
R-1 Water Use	199,747 GPD	348,642 GPD
Wastewater Treatment Methodology	Maui County Lahaina WWTP	Maui County Lahaina WWTP/ or onsite private WWTP
Project Wastewater generation	345,688 GPD	348,642 GPD
Park	2.5 acre parks	10 acre Community Park
School	13 acre School Parcel	13 acre School Parcel
Compliance with local and state plans	Hawaii State Plan; Chapter 226, Haw. Rev. Stat.; Hawaii State Functional Plans; Maui County General Plan; West Maui Community Plan; Maui County Zoning	Hawaii State Plan; Chapter 226, Haw. Rev. Stat.; Hawaii State Functional Plans; Maui County General Plan; West Maui Community Plan; Maui County Zoning

61. The modifications to the Pulelehua project plans comply with zoning requirements in the West Maui Project District 5 (Pulelehua) ordinance. (County Pos. Stmt., p. 5).

62. Petitioner Maui Oceanview LP proposes the following distribution of unit types in the table below:

Pulelehua - Unit Count				
(based on Conceptual Lot Lavout)				
Unit Type	Neighborhood			Total
	Central	Kahanaiki	Mahinahina	
Main Street Apartment		0		
Live/Work	70	0	0	70
Apartment	280	240	210	730
Single Family Residential (Lots Only)		85	14	99
Estate House (Lot Only)		1		1
<b>Residential Units</b>	<b>350</b>	<b>326</b>	<b>224</b>	<b>900</b>

63. Petitioner Maui Oceanview LP expects construction in the following phases:

	<u>PHASE 1</u>	<u>PHASE 2</u>	<u>PHASE 3</u>	<u>TOTAL</u>
<u>Multi-Family Market Rate Rental</u>	<u>120</u>	<u>110</u>	<u>110</u>	<u>340</u>
<u>Multi-Family Workforce Rental</u>	<u>80</u>	<u>130</u>	<u>80</u>	<u>290</u>
<u>Multi-Family Workforce For Sale</u>	<u>40</u>	<u>40</u>	<u>20</u>	<u>100</u>
<u>Live/Work Workforce Rental</u>		<u>10</u>		<u>10</u>
<u>Live/Work Market Rate Rental</u>		<u>60</u>		<u>60</u>
<u>TOTAL</u>	<u>240</u>	<u>350</u>	<u>210</u>	<u>800</u>

Phase 1 is planned for build-out through 2022. Phase 2 is planned for build out through 2025 with possibly 100 Multi-Family units in an initial sub-phase and 250 Multi-Family units in a second sub-phase. Phase 3 is planned for build out through 2030. Through 2035, Phase 4 is planned for construction of the



commercial retail space and Phase 5 and a possible Phase 6 will develop the various sections of single-family lots. However, Maui Oceanview LP noted that the timing of units and improvements from each phase may not follow in strict chronological order. The commercial portion of the property may be built concurrent with, but not before, the residential portions.

CONSTRUCTION COSTS, FINANCING AND CONSTRUCTION IMPACTS AND PETITIONER'S  
FINANCIAL CAPABILITY TO UNDERTAKE THE DEVELOPMENT

64. At the time of the Original Petition, infrastructure costs to develop the Pulelehua community were expected to exceed \$65 million. (2006 D&O, FOF ¶48). Residential construction costs were estimated to be at least \$201 million. Commercial construction costs were estimated to be approximately \$34 million. In total, costs for Pulelehua were estimated to exceed \$301 million. (2006 D&O, FOF ¶49).

65. When Petitioner Maui Oceanview LP purchased Pulelehua, MLP had not yet begun any construction of improvements on the Project.

66. Petitioner Maui Oceanview LP has demonstrated it has the necessary economic ability to carry out the development of the Project. Petitioner 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 \$26 billion 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 and 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 affordable multi-family housing. (Memo. Supp., Paul Cheng Decl., ¶¶2-3). They have won awards in several master-planned community developments in Texas as well an award for an affordable LIHTC senior multi-family housing in Forney, Texas developed in association with partners 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. (Memo. Supp., Paul Cheng Decl., ¶3. USA Infrastructure Investments LP has ongoing real estate ventures with ANICO Eagle LLC of over \$100million. (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. (Memo. Supp., Paul Cheng Decl., ¶19).

67. Initially, Petitioner Maui Oceanview LP anticipated construction to cost over \$300 million (Sixth Memo. Supp., Paul Cheng Decl., ¶7). Petitioner Maui Oceanview LP now anticipates construction to cost over \$250 million. (Sixth Supp. Memo., Paul Cheng Decl., ¶7).

68. Petitioner Maui Oceanview LP hired Tom Holliday from CBRE to provide a Market Study, Economic Impact Analysis and Public Fiscal Assessment of the Proposed Pulelehua 900-Unit Project.

69. CBRE constructed a model depicting the economic impact of the Pulelehua project on the Maui and Statewide community during its "lifespan" from anticipated ground-breaking in 2019, through build-out and absorption in 2026, and stabilized "operations" (commercial/retail businesses, common element management and maintenance) thereafter.

70. CBRE indicated, from a direct perspective, Petitioner Maui Oceanview LP's proposed 900 residential units (800 apartment rental units and 100 single family homes) and 70,000 square feet maximum of commercial space will create numerous construction, equipment operator and specialty

trade jobs on- and off-site, directly and indirectly, during the planning and emplacement of the infrastructure, and building of the improvements.

71. CBRE reported the development of the Pulelehua project will bring in an estimated \$342.2 million of new, direct capital investment with significant unquantified indirect expenditures into the island's real estate market and generate \$966.3 million in total economic activity island wide during its build-out and stabilization over a nine-year period (forecast from circa 2018 to 2026). Pulelehua will contribute some \$74.8 million in annual economic activity on a stabilized basis thereafter.

72. Infrastructure cost estimates prepared by Petitioner Maui Oceanview LP and planning team members, are forecast at \$20-30.0 million, excluding design, entitlement and indirect expenses incurred in the islands. Vertical construction costs would total \$294.2 million during the modeling period (based on construction costs averaging \$208,333 per unit estimated from Petitioner Maui Oceanview). The development costs are not intended to be indicative of the rental rates for the respective units, as the developer may elect to allocate base costs in a far different manner.

73. Pulelehua development will infuse on average an anticipated \$40.5 million annually into the Maui building industry on average over the 8-year build-out period. While a significant percentage of the materials needed to build Pulelehua's infrastructure, and residential and commercial structures must be imported to Maui, a portion of the construction costs spent in the development will directly flow to local businesses in the form of contractor profits and supplier profits.<sup>7</sup>

74. The total Contractor's Profit generated by Pulelehua for local building companies will average some \$4.1 million per year, with a cumulative profit of \$32.4 million over the construction period. The total annual Supplier's Profit would be some \$1.6 million equating to \$13 million in aggregate.

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<sup>7</sup> Typically, within the industry net contractor profit margins are expected to be at 8 to 20 percent of total construction costs. CBRE used a conservative ten percent figure and extrapolated supplier profits at four percent of total costs

## NEED FOR THE PROPOSED DEVELOPMENT

75. At the time of the Original Petition, the Hallstrom Group, Inc., prepared a market study and economic impact analysis report and a public cost/benefit assessment of the Project. The market study and economic impact analysis report analyzed the West Maui housing sector. The West Maui housing sector was undersupplied by between 470 to 1,168 units and would require some additional 3,447 to 5,400 new housing units for the period 2004 thru 2020. Approximately 31 percent of the unit demand during the next two decades would be at prices (or rental equivalents) of under \$205,000 in current 2005 dollars, 25 percent of the demand would be for units priced between \$205,000 and \$380,000, 25 percent for homes ranging between \$380,000 to \$550,000, and 18 percent for homes priced above \$550,000. (2006 D&O, FOF ¶54).

76. At the time, single-family homes comprised over 60 percent of the offered inventory in West Maui. Projections were for multi-family units to take an increasing role, reaching approximately 48 percent of total new product in West Maui by 2020. Virtually all new "residential" product recently offered in West Maui had either been resort oriented (within Kapalua or Ka'anapali), estate-sized agricultural lots (Launiupoko), or homesites beyond the affordability of most local households (Kahana Ridge). Even so, all offered product had been rapidly absorbed, with most developments having waiting lists. (2006 D&O, FOF ¶55).

77. Hallstrom noted there had been proposals and discussion for approximately 10,664 potential additional units within major proposed West Maui developments over the past two decades. Only a fraction of those units, approximately 1,265 units (excluding Pulelehua) had a likely chance of being built in the mid to near term. Approximately 8,500 units were in developments in the earliest planning stages, or faced meaningful community opposition, or were for native Hawaiians only, or had been halted by interminable litigation and thus were unlikely to be developed within the

next 10 years. The approximately 1,265 units which may be completed in the near future would satisfy less than 1/3 of projected demand through the year 2020. (2006 D&O, FOF ¶56).

78. Petitioner Maui Oceanview LP hired Tom Holliday from CBRE to provide updates to the Hallstrom Group reports. The Hallstrom Group is now affiliated with CBRE. CBRE prepared for Maui Oceanview LP a Market Study, Economic Impact Analysis and Public Fiscal Assessment of the Proposed Pulelehua 900-Unit Project. (Second Supp. Memo. Supp., EXH. O-1).

79. CBRE reports an estimated 13,625 single and multi-family housing units in West Maui with some 4,750 (or 34.8 percent) are used for vacation rentals. Of the 8,885 housing units available for standard non-vacation rental residential use in the Lahaina District, approximately 20 percent are owned by non-residents in second/vacation homes. This buyer demographic has grown over the past two decades and is now represented in virtually every market-priced project, particularly new developments. The percentage of this segment is anticipated to increase to between 26 percent and 30 percent by 2030. (Second Supp. Memo. Supp., EXH. O-1, p. 7).

80. CBRE estimates the demand for new residential (non-Transient Vacation Rentals [TVRs]) units in the West Maui region through 2030 will total between 5,278 and 8,941 units, with a mid-point of 7,335. CBRE reports there are nine major apartment complexes remaining in West Maui serving households with incomes from 80 percent of the Maui median to market levels comprising some 1,086 total units. Other projects that were originally built to be rental apartments have been converted to for sale condominium units or are now used for TVRs. Each project has a waitlist for households interested in tenancy and project management confirmed available apartments are “always” leased upon vacant. There are 576 units in six low income designated projected with rents set at prices affordable to households’ earnings 60 percent or less of the Maui median income and all have long waitlists. Dedicated apartment complexes comprise 1,662 rental units or

approximately 22.4 percent of the Lahaina District resident housing inventory. (Second Supp. Memo. Supp., EXH. O-1, p. 8).

81. Excluding Pulelehua, the Planning Department reports 7,566 total proposed residential units in existing and planned West Maui projects with 62 percent being single family and 38 percent multifamily/apartment. However, many of the projects are “on hold”, require additional entitlements (only 2,066 are considered approved), lack access to sufficient supporting infrastructure, and/or have ownership are under financial duress. (Second Supp. Memo. Supp., EXH. O-1, p. 9).

82. Some 2,560 (34 percent) of the total proposed units will be in Kaanapali and Kapalua Resorts and could potentially be TVRs or short-term rentals which will not contribute to the West Maui housing supply. (Second Supp. Memo. Supp., EXH. O-1, p. 9).

83. CBRE considers it unlikely that a significant portion of the proposed units will be manifest by 2030, with only 60 to 80 percent of the fully and partially entitled units having a reasonable chance of being built over the projection period. (Second Supp. Memo. Supp., EXH. O-1, p. 9). The County of Maui briefing paper for the update of the West Maui Community Plan indicates that the rate of development of additional housing units needed to meet demand over the next twenty years would be approximately 251 units (330 including non-resident demand) per year from 2019 to 2040. However, new development at that rate did not occur in West Maui from 2008 to 2017. (See EXH. W, p. 11 & Figure 9).

84. The County of Maui briefing paper for the update of the West Maui Community Plan recognizes that Pulelehua, as proposed by Maui Oceanview LP, would be one of only four projects offering over 100 workforce housing units in West Maui. (See EXH. W, p. 9 , Table 4; Transcript 9/26/19, pp. 24-25). Pulelehua is one of two projects proposing more than 200 workforce housing units. (EXH W, p. 9, Table 4). Pulelehua’s proposal for 280 workforce units was the largest

number in development in West Maui. (Transcript 9/26/19, p.25).

85. At the time of the Original Petition, Hallstrom found total demand for neighborhood and airport-oriented commercial-mixed use space at Pulelehua would be approximately 175,000 square feet of leasable floor space. Pulelehua residents would generate the need for approximately 96,000 square feet of neighborhood and supporting commercial and light industrial floor space. Secondary consumer groups, including guests, workers, specialty shoppers, and airport users, are anticipated to support demand for an additional 40,300 square feet of floor space. Retail uses will be limited and oriented towards meeting the direct daily consumer demands of the community. Airport-related businesses will generate a demand for approximately 39,000 square feet of floor space. (2006 D&O, FOF ¶57).

86. Petitioner Maui Oceanview LP proposes to develop retail space in multiple locations, with neighborhood, island style retail south of Akahele Street and at the north and south ends of the project site. Approximately 70 live/work units will be allowed in certain apartment buildings near the central commercial area offering local services. The Pulelehua master plan includes a commercial/retail component envisioned to provide approximately 70,000 square feet maximum of gross leasable area spread among multiple development pads totaling approximately 21 acres south of Akahele Street (the airport access drive) mauka of Honoapi'ilani Highway, as well as at the north and south ends of the development. The intent of the commercial/retail component is to primarily service the needs of the Pulelehua community residents. Based on the average Maui per capita demand for commercial/retail space at 36.0 square feet per person and typical capture rates for "neighborhood retail", "service commercial/medical" and "support/other commercial" space types, with nominal additional demand from on-site workers, passersby and residents of nearby development, CBRE conservatively estimates there will be in-place demand for approximately 66,000 square feet of proposed space. (Second Supp. Memo.

Supp., EXH. O-1, p. 49). Petitioner Maui Oceanview LP's proposal represents "a reduction from the approximately 74,475 square feet proposed in the 2006 D&O for retail (21,475 sq. ft.) and specialty/retail office live/workspace (21,475 sq. ft.)" (OP Pos. Stmt., p. 5).

#### SOCIO-ECONOMIC IMPACTS

87. Maui Oceanview LP's Pulelehua Project, offering primarily rental units, would provide long term rental opportunities for Maui residents working in West Maui to rent a unit closer to work. As the County of Maui recognizes, "[t]he 800 multi-family units expand the available rental inventory in West Maui." (County Pos. Stmt., p. 3).

88. Based on indicators provided by the construction of comparable sized projects and Hawaii industry averages, CBRE estimated the demand for on- and off-site, direct and indirect, fulltime equivalent employment positions associated with laying of initial infrastructure systems, construction of the units, and the on-going commercial/retail businesses and the apartment business (and its community association efforts) in the project. (Second Supp. Memo. Supp., EXH. O-1, p. 54).

89. The construction, operating economic activities, and indirect/off-site employment opportunities created by the subject development will not all be "new" jobs requiring new Maui residents, but will be vitally needed new opportunities for in-place resident construction trade workers and existing local businesses. The jobs associated with the commercial/retail tenants and apartment business operations will represent an expansion of the employment pool. CBRE assumed the off-site/indirect work created will be steered towards existing Maui supply, equipment providers. (Second Supp. Memo. Supp., EXH. O-1, p. 54).

90. A total of 1,516 worker-years of employment in the construction trades will be needed for developing Pulelehua. The commercial/retail businesses will have worker-years totaling 886 during the modeling period and 200 per year thereafter. The apartment business/community association and



maintenance worker-years will total 97 during the modeling period and 28 per year thereafter. Off-site/Indirect/Secondary employment created by Pulelehua will total 776 worker-years from 2019 through 2026 and 76 FTE positions per year as stabilized. (Second Supp. Memo. Supp., EXH. O-1, p. 55).

91. The construction of the Pulelehua infrastructure and finished apartment units, will directly create an estimated 1,516 "worker-years" of employment (the equivalent of 52 work weeks at 40 hours per week) in the construction trades, support and supply businesses during build-out, averaging about 189 worker years annually, with an estimated \$110.3 million in wages (averaging about \$13.8 million per year). (Second Supp. Memo. Supp., EXH. O-1, pp. 55-56).

92. The commercial/retail businesses, apartment rental company, and community management and landscape/maintenance of the maximum 70,000 square feet of commercial space and 800 apartment units will create 983 worker-years of employment from 2020 through 2026 and associated wages of \$33.5 million. Once stabilized these project components will create demand for 228 permanent FTE positions with annual wages of \$7.9 million. (Second Supp. Memo. Supp., EXH. O-1, pp. 55-56).

93. Associated secondary/off-site employment during the overall development and absorption timeframe will total 654 worker-years with wages of \$42.0 million and a stabilized FTE job-count of 76 with total wages of \$4.1 million per year. (Second Supp. Memo. Supp., EXH. O-1, pp. 55-56).

94. Off-Site/Indirect/Secondary employment created by Pulelehua will total 776 worker-years from 2019 through 2026 and 76 FTE positions per year as stabilized. (Second Supp. Memo. Supp., EXH. O-1, pp. 55-56).

95. Total construction wages paid during build-out will be \$110.3 million. Total commercial/retail employee wages during the modeling period will be \$29.5 million and stabilize at \$6.7 million thereafter. Total apartment business/association and maintenance employee wages during the

modeling period will be \$4 million and stabilize at \$1.2 million thereafter. Off-site/indirect employee wages will total \$42.0 million during build-out and be \$4.1 million annually on a stabilized basis. (Second Supp. Memo. Supp., EXH. O-1, pp. 56-57).

96. During build-out the 898 households containing 2,380 residents at Pulelehua will have aggregate incomes of \$334.6 million (2020-2026) and will stabilize at \$81.2 million annually thereafter. Discretionary expenditures into Maui businesses by the Pulelehua population will be some \$167.3 million during build-out and average \$40.9 million per year on a stabilized basis. CBRE notes the amounts will not all necessarily be new income and spending for Maui as many of the households would merely be located elsewhere on the island if Pulelehua wasn't constructed. (Second Supp. Memo. Supp., EXH. O-1, pp. 58-59).

97. CBRE estimate that about one-half (50%) of the resident households in the project will be comprised of new/in-migrating Maui residents. Their household income and spending will be "new" to Maui and not just redirected from elsewhere on the island. These 1,190 persons will have cumulative household incomes of some \$167.3 million during build-out and \$40.9 million annually on a stabilized basis. Their discretionary income will total \$83.7 million from 2020 through 2026 and stabilize at \$20.4 million per year. (Second Supp. Memo. Supp., EXH. O-1, pp. 59-60).

98. The on-going commercial/retail, apartment rental, and management and maintenance activity in the community will total \$642.1 million during the 2020-2026 projection period and average \$74.8 million per year on a stabilized basis. The base impact to Maui from 2018 through 2026 will be \$966.3 million and average \$74.8 million annually thereafter.<sup>8</sup> (Second Supp. Memo. Supp., EXH. O-1, p. 61).

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<sup>8</sup> CBRE notes application of the Hawaii Inter-County Input-Output Model macro multipliers depicting direct, indirect and induced economic impacts arising from development of Pulelehua result in significantly higher economic out-flow indicators for every item than those from CBRE's direct, subject-specific micro model.

## IMPACT ON RESOURCES OF THE AREA

### Agricultural Resources

99. Following the 2006 D&O, the Original Petitioner ended pineapple cultivation on the Petition Area. The Project District is presently fallow land.

### Flora and Fauna

100. At the time of the Original Petition, Winona P. Char of Char & Associates conducted a survey of flora on the Petition Area. Gulch vegetation consists primarily of koa haole and guinea grass. Seven native plant species were observed scattered about the Petition Area. All are widespread throughout the Hawaiian Islands in lowland and dry to mesic environments. There were no plant species detected in the Petition Area that were classified as an endangered or threatened species by the U.S. Fish and Wildlife Service ("USFWS") nor any plant species of concern in the Petition Area. Development of Pulelehua was not expected to have an adverse impact on the botanical resources of the Petition Area. (2006 D&O, FOF ¶¶67-68).

101. Phillip L. Bruner, Environmental Consultant, conducted an avifaunal and feral mammal survey of the Petition Area for the Original Petitioner. No native water birds or land birds were observed on the Petition Area. Two native birds, the Pueo, or Hawaiian owl (*Asia flammeus sandwichensis*), and Nene, or Hawaiian goose (*Branta sandvicensis*), have been observed on lands similar in character to the Project District area. The Pueo is listed by the State of Hawai'i as an endangered species on the island of O'ahu but not elsewhere. The Nene is listed as an endangered species by the USFWS. The Petition Area was not believed to be a critical habitat for either species. Two migratory plover and eleven introduced birds were observed on the Project District area. The Small Indian Mongoose (*Herpestes auropunctatus*) and the Roof Rat (*Rattus rattus*), both introduced species, were the only mammals observed in the Project District area. Development of Pulelehua was

not expected to have an adverse impact on the faunal resources of the Project District area. (2006 D&O, FOF ¶69).

102. Maui Oceanview LP's landscape planning consultant T.H. Pritchett/Associates provided a letter describing the Pulelehua project area and the Concept Landscape Plan for the development. (Supp. Memo. Supp., EXH. P). The ecosystem on the site today was transformed by human activity dating back to very early cattle grazing, farming, and most recent times Pineapple Cultivation. These past uses have resulted in the site's native ecosystem removal completely. Even the ravines are eroded native ecosystems and continue to be changing. (Supp. Memo. Supp., EXH. P).

103. Pritchett describes what is present today is evolving as farming has stopped for over 10 years and the land has laid fallow. The landscape is evolving as a native Low Land Dry Shrubland and Grassland found elsewhere in this general West Maui area. (Supp. Memo. Supp., EXH. P). The Flora now has been blown in as seeds and or dropped seeds by passing birds and is primarily Pili Grasslands and 'A'ali'i shrublands. The Fauna most likely contains introduced animals such as rats, mongoose, and cats. Alien birds such as House Finches (*Carpodacus mexicanus*) and Japanese White-eye (*Zosterops japonicus*) have largely replaced native animals.

Source: Atlas of Hawaii, Third Edition, 1998 (Supp. Memo. Supp., EXH. P).

104. Petitioner Maui Oceanview LP's Concept Landscape Plan will introduce Hawaiian Endemic Plants, Native Plants, Polynesian introduced plants and other plants used as landscape plant materials to create a creative planting using many diverse types of plants, including the following Hawaiian Endemic Plants, Native Indigenous Plants and Polynesian introduced plants:

Hawaiian Endemic Plants

Common name	Botanical name
Lama	<i>Diospyros sandwicensis</i>
Hoawa	<i>Pittosporum hosmeri</i>
Ohia Lehua	<i>Metrosideros polymorpha</i>

Koa	Acacia Koa
Loula	Prichardia hillebrandii
Naeo	Myoporum sandwicense
Nupaka Kuahuiwi	Scaevola chamissoniana
Nupaka	Scaevola coriacea
Ha'awa	Pittosporum glabrum
Ape	Alocassia macrorrhiza
Nehe	Lipochaeta intesrifolia
Hibiscus, Aloalo	Hibiscus brackenridgei , yellow,
Hibiscus, Koki'o	Hibicus koki'o 'ula , yellow, orange
Hibiscus, Koki'o ula	Hibicus clayi, koki'o 'ula , red
Na'nu	Gardenia brighami

#### Native, Indigenous Plants

Common name	Botanical name
'A'ali'i	Donodnaea viscosa
Milo	Thespesia populnea
Pandauas	Pandauas tectorius
Iliee	Plumbago zeylanica
Kalo, Taro	Colocasia esculenta
Pauchiiaka	Jacquemontia ovalifolra, sandwicensis
Lavae Fern	Phymatosorus scolopendria
Kupukupu fern	Neprolepis cordifolia
'Ilima,	Sida fallax
Beach Vitex	Vitex rotundifolia
Pili Grass	Heteropgon contrtus

#### Polynesian Introduced Plants

Common name	Botanical name
Ti	Cordyline fruiticosa

Listed below are the Quality Locally Available Landscape Plants Maui Oceanview LP is proposing to use in the Landscape in addition to the list of plants above

#### Trees

Common name	Botanical name
Alibangbang	Bauhinia hookeri
Red Bottlebrush	Callistemon citrinus
Tree Fushia	Schotia brachypetala
Yellow Bauhinia	Bauhina tomentosa
Australian Flame	Brachychiton acerifolios
Golden Shower	Cassia fistula
Hong Kong Orchid	Bauhinia blakeana
Rainbow Shower	Cassia nealiae
Yellow Trumpet	Tabebuia ochracea

Singapore Plumeria	Plumeria Obtusa
Dwarf Poinciana	Caesalpina pulcherrima
Jatropha	Jatropha intergerrima
Royal Poinciana	Delonix regia
Monkey Pod	Samanea Saman
Coral Shower	Cassia Grandis
Pink Tecoma	Tabebuia heterophylla
Df. White Tecoma	Tabebuia bahamensis
Plumeria	Plumeria obtuse
Norfolk island pine	Araucaria heterophylla
Yellow Poinciana	Peltophorum pterocarpum

#### Palms

Common name	Botanical name
Pigmy Date Palm	Phoenix Roebelinii
Manila Palm	Vetchia merrilli
Foxtail Palm	Wodyetia bifurcata
Queen Palm	Syagrus romanzoffiana
Jonais Palm	Vetchia Joannis
Royal Palm	Roystonea regis

#### Shrubs

Common name	Botanical name
Bouganvillea	Bouganvillea, Red, White, Purple
Red Ginger	Alipina Purpurata
Eldorado	Pseuderanthemum carruthersii
Natal Plum	Carissa macrocarpa
Cape Plumbago	Plumbago auriculate
Df. Bird of Paradise	Strelizia reginae
Oleander, red	Nerium oleander, red
Mock Orange	Philadelphus coronaries

#### Ground Covers and Vines

Common name	Botanical name
Hottentot Fig	Carpobrotos edulis
Blue Daze	Evolvulus glomertus grandifloras
Late Yellow Daylily	Hemerocallis thumbergii
Pink Honeysuckle	Lonicerus x heckrotii
Purple Lantana	Lantana Montevicensis trailing
Mondo Grass	Ophiopogon japonicum
Hawaiian Moon	Impomea horsfalline
Evergreen Clematis	Clematis armandii
Rocket Trumpet	Diplandenia mandevilla, red
Fig Ivy	Ficus Pumila

#### Grasses

Common name	Botanical name
Zoyzia, El Toro	Zoyzia japonica
Vetiver Grass	Chrysopogon zizanoiides

(Supp. Memo. Supp., EXH. P).

Archaeological, Historical, and Cultural Resources

105. In *Ka Pa'akai O Ka'Aina v. Land Use Commission*, 95 Haw. 31, 46, 7 P. 3d 1068

(2000) the Hawai'i Supreme Court held that Article XII, Section 7, of the Hawai'i State Constitution obligates the Commission to protect the reasonable exercise of native Hawaiian customary and traditional practices *to the extent feasible* when granting a petition for district boundary amendment.

The Court established the following three-prong test:

In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must--at *a minimum-make* specific findings and conclusions as to following: (1) the identity and scope of "valued cultural, historical, or natural resources" in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources-including traditional and customary native Hawaiian rights-will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist

(2006 D&O, FOF ¶70).

106. In connection with the Original Petition, Jeffrey Pantaleo of Archaeological

Services of Hawai'i, LLC, conducted an archaeological inventory survey of the Petition Area. The remains of a historic flume in the Mahinahina 1, 2, 3 Gulch constructed in the nineteenth century by Pioneer Mill Company, Ltd., and abandoned in 1917 and three isolated surface artifacts were identified. SHPD concurred with Archaeological Services Hawai'i, LLC's, conclusion that these sites are significant under criteria D for the potential to yield information and recommended that monitoring be conducted in the vicinity of the artifacts as mitigation against adverse impacts to

historic properties. No other preservation actions were required. (2006 D&O, FOF ¶71).

107. Original Petitioner MLP agreed to prepare an archaeological monitoring plan for approval by the DLNR/SHPD, prior to the commencement of any construction activities. (2006 D&O, FOF ¶72). On October 19, 2019 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. Z).

108. In connection with the original petitions, Maria Ka'imipono Orr conducted a cultural impact study and assessment of the Petition Area. At one time, the gulch areas may have been inhabited and other areas may have been used for cultivation of sweet potatoes and dry land taro. Other than a few kukui trees in the gulches, there were no traces of any native plants that were used for food, medicine, crafts, and lumber within the Project District area. To the extent that the gulches will not be developed, there will be no adverse impact to any cultural resources. (2006 D&O, FOF ¶73).

109. Kama'aina interviewed as a part of the cultural survey all stated that use of the valleys for cultivation of lo'i or dry land crops such as sweet potatoes had long since ceased. All kama'aina recalled that the upland plains between the valleys have been in pineapple cultivation since the mid-nineteenth century. Although pig hunters use mauka trails in areas adjacent to the Project District area intermittently, no kama'aina were aware of access over the Project District area for gathering or other cultural purposes. The most significant cultural practices in the general vicinity were fishing and sea gathering along the Mahinahina and Kahana shoreline outside of the Project District area. (2006 D&O, FOF ¶74).

110. Petitioner Maui Oceanview LP also contracted to update the Cultural Impact Assessment (CIA) conducted in connection with the initial 2005 LUC review and approval of the project.



111. Maria Orr of Kaimipono Consulting Services LLC, the consultant who prepared the original CIA, concludes “[t]here are no changes to the 2005 Cultural Impact Assessment.” Specifically,

**Cultural Resources (Land) Impact.** The lands within the project area were heavily impacted by the historic activities of the 19<sup>th</sup> and 20<sup>th</sup> centuries. Any cultural sites and/or resources would have been destroyed or buried by ranching, sugar and pineapple plantation activities; therefore, there will be no adverse impact to any cultural resources on Pulelehua lands (except for the gulches). However, it should be noted that cultural sites (i.e., hearths/*imu*) have been found below the plow zone in other areas (islands) of sugar cultivation.

**Cultural Practices/Access (Land) Impact.** Since there are no cultural resources on Pulelehua lands, there will be no adverse effects to cultural practices on Pulelehua lands. However, there are cultural resources in the gulches and access to these areas may be adversely impacted or compromised by the Pulelehua Community.

**Cultural Practices: Indirect Adverse Impact.** According to consultants interviewed, there are two conditions that have the potential to create an adverse effect or impact on the cultural fishing practices and resources *makai* of the proposed Pulelehua Community; over-flow runoff and contaminated groundwater seepage. Given the propensity for runoff problems in West Maui, unless they are adequately addressed, development activities for this project may adversely impact both traditional cultural marine resources and practices by the silt-laden overflow into the ocean from both the drainages and surface runoff. One suggested solution was to periodically remove dried sediment from the desilting basins before any heavy rain fall can create overflows taking the collected sediment/silt with it into the ocean. The condition of the contaminated groundwater seepage into the ocean is created by the continuous use of pesticides and fertilizers leaching into the aquifer or groundwater. While this may be mitigated by a change from agricultural use to urban use, unless private (residents/business) and public (open spaces/parks) activity is monitored, this problem could persist.

(Memo. Supp., EXH. D).

112. A separate CIA update<sup>9</sup> prepared by Tanya Lee-Grieg of `Aina Archaeology makes

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<sup>9</sup> In the course of her work on the updated CIA, Ms. Grieg was referred to members of the Aha Moku Advisory Committee. Felimon Sadang was identified as the Kaanapali Moku. Aina Arch CIA [Exhibit E], sec. 4.2.5. Since LUC approval of the 2006 D&O, the legislature recognized the Aha Moku Advisory Committee system to assist DLNR. Hawaii Revised Statute §171-4.5 provides:

Aha moku advisory committee; established. (a) There is established the aha moku advisory committee to be placed within the department of land and natural resources for administrative purposes. The committee may advise the chairperson of the board of land and natural resources in carrying out the purposes of this section.

(b) The committee shall consist of eight members appointed by the governor and confirmed by the senate from a list of nominations submitted by the aha moku councils of each island. Oversight of the aha moku advisory committee shall be by the chairperson of the board of land and natural resources. The committee members shall select the committee chairperson from among the members.

similar findings:

Uncle Felimon Sadang has stated that in regard to the specific lands of the proposed Pulelehua Community project, both personally and as the Kā'anapali Moku representative, and per those in the *moku* that he has reached to, there are no known traditional cultural practices being carried out within the boundaries of the proposed project area. This assertion is also shared by all who have participated in this study (see also section 4.2) which is also consistent with the documentation of the initial cultural impact assessment (Orr 2005:106).

(Memo. Supp., EXH. E).

113. Further, Grieg finds:

With regard to potential direct effects on the adjacent gulch environments and historic properties within the gulch bottoms, the development footprint does not extend to the gulch edge and therefore no direct adverse effects to gulch areas are anticipated. The existing field roads along both Kahana and Māhinahina Gulches are situated approximately 80 ft. from the gulch edges with no development plans for the space between these field roads and the gulches. Additionally, building construction is anticipated to be a minimum of 150 ft. from the edges of the gulches thus creating a construction buffer between the proposed project and the gulch edges. Therefore, and in so long as access to the *mauka* region and upper reaches of the gulches are maintained (see Figure 5-1), no direct adverse effects from proposed project on traditional cultural practices are anticipated.

(Memo. Supp., EXH. E).

114. Grieg describes indirect effects as follows:

With regard to potential indirect effects, according to those consulted for this study, the most prominent and significant cultural practice within the vicinity of the current project revolves around the coastal marine resources of Kahana and Māhinahina. This finding is consistent with the findings of the initial cultural impact assessment completed by Maria Orr (2005). Fishing, diving, and resource gathering continues to play

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(c) The members shall not receive compensation for their service, but shall be reimbursed for necessary expenses, including travel expenses, incurred while participating in meetings and events approved in advance by the chairperson of the board of land and natural resources.

The aha moku advisory committee may hire an executive director who shall be exempt from chapter 76. The executive director may hire an administrative or executive assistant to assist the executive director in accomplishing the purposes of the aha moku advisory committee.

(d) The aha moku advisory committee may provide advice on the following:

- (1) Integrating indigenous resource management practices with western management practices in each moku;
- (2) Identifying a comprehensive set of indigenous practices for natural resource management;
- (3) Fostering the understanding and practical use of native Hawaiian resource knowledge, methodology, and expertise;
- (4) Sustaining the State's marine, land, cultural, agricultural, and natural resources;
- (5) Providing community education and fostering cultural awareness on the benefits of the aha moku system;
- (6) Fostering protection and conservation of the State's natural resources; and
- (7) Developing an administrative structure that oversees the aha moku system.

a large role in the livelihood of those consulted for this study, as well as the previous study. Siltation and construction run off from project development and cumulative effects of storm water run-off from the lifespan of the development itself was a concern expressed by those who participated in both studies. Current development plans, as indicated by the project proponent, calls for use of the current drainage infrastructure and desilting basins and zero runoff. Those consulted for this study remain cautious, and advocate for some balance to allow for some nutrients to come through the *muliwai* in order to have thriving *limu* beds, but only in so far as what might naturally occur. Some concern was also expressed about the increase in population affecting the integrity of the marine resources as more people are present to observe the locations of the generational fishing grounds which may result in the loss of the resource to overfishing or destruction.

(Memo. Supp., EXH. E).

115. As the Commission found in the original proceeding, the most significant cultural practices in the general vicinity remain fishing and gathering along the Mahinahina and Kahana shoreline outside of the Petition Area. (See 2006 D&O, ¶74).

116. An additional concern expressed by kama'aina was maintaining access to areas mauka of the Project District area and Kapalua-West Maui Airport.<sup>10</sup> (Memo. Supp., EXH. E). To the extent Petitioner Maui Oceanview LP has control of existing mauka access from its property, mauka access from Pulelehua will not be impeded.

#### Groundwater Resources

117. In the Lahaina region, the Honolua and Honokowai Aquifers serve as a source of water for area wells. Each aquifer has a sustainable yield of 8 million gallons per day ("MGD"). At the time of the Original Petition, the current pumpage from the aquifers by area wells was substantially below their sustainable yield. The Commission on Water Resource Management has not designated either aquifer as groundwater management areas. (2006 D&O, FOF ¶75).

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<sup>10</sup> Orr noted:

While there are no cultural practices on Pulelehua Community lands to be adversely impacted, there is potential that access to gathering and hunting practices in the upper gulches/mountains may be compromised during the construction phase of the proposed Pulelehua Community. However, concerns regarding access to upper gulches/mountain resources would be mitigated upon completion of the project and the subsequent dedication of the project streets as public thoroughfares.

Orr CIA Update [Exhibit D], p. 8.

118. The County Department of Water Supply (DWS) has encouraged Petitioner Maui Oceanview LP to consider the option of groundwater as a source for Pulelehua. (County Pos. Stmt., p. 6).

119. Petitioner Maui Oceanview LP has entered into water delivery agreements with Original Petitioner MLP for delivery of water, primarily through MLP's ditch system. (Supp. Memo. Supp., EXHs. N-1, N-2).

120. Petitioner Maui Oceanview LP has also discussed connecting to the existing Hawaii Water Service Company, Inc. ("HWSC") system. (Sixth Memo. Supp., EXH. N-3).

121. Petitioner Maui Oceanview LP has also been in discussions with Original Petitioner MLP and the DWS regarding the future development of additional water wells and is discussing a general use and access agreement with MLP to drill a well on MLP land mauka of Pulelehua. (Sixth Memo. Supp., Paul Cheng Decl., ¶10).

#### Recreational Resources

122. At the time of the original petitions, the Lahaina area had over 10.3 acres of sub-regional and special-use park land per 1,000 residents. The sub-regional park system consisted of 23 neighborhood parks. The West Maui community had access to two tennis courts, two sports fields, a gym, and a community center. The resorts in the area also offered supplemental recreational facilities. (2006 D&O, FOF ¶76).

123. Petitioner Maui Oceanview LP has reached a general agreement with the Maui Department of Parks and Recreation to develop and dedicate to the County a 10-acre Community Park in lieu of standard park fees. (See County Pos. Stmt., p. 5). The Community Park will be located at the southern boundary of the property, off Honoapi'ilani Highway, and will be accessed through the additional access requested from the Hawaii Department of Transportation.

124. Maui Oceanview LP will also develop several smaller, privately maintained park areas as part of the Pulelehua community and will incorporate pet friendly features. By the time 400 multi-family units are built and occupied at Pulelehua, Petitioner Maui Oceanview LP will also provide a fenced-in dog park. A trail system, walkable, hikeable, and bike friendly, will connect all phases of Pulelehua.

125. Pulelehua will increase the number of recreational facilities available to Maui residents. Pulelehua will contain approximately 100 acres of parks and recreation areas. Recreation areas will include a 10-acre Community Park with ball fields, multiple neighborhood and pocket parks with community gardens, passive recreational areas, and an extensive multi-use trail system. Gulch areas will provide an additional 33 acres of open space. Petitioner Maui Oceanview LP intends to develop all parks and dedicate the Community Park and ball fields to the County of Maui. Petitioner Maui Oceanview LP intends to have the homeowner association maintain the trail system and neighborhood and pocket parks.

126. Original petitioner MLP acknowledges it retains the obligation to provide the County of Maui with a 50-acre regional park. (Second Supp. Memo., EXH. S; County Pos. Stmt., p. 5).

#### Scenic Resources

127. As described in the Original Petition, the Project District area remains gently sloping and primarily characterized by fallow agricultural fields. Forested areas rise to the mountain peaks beyond the pineapple fields. An earthen berm and ironwood trees along Honoapi'ilani Highway block most mauka views, although such views are available where the highway crosses Mahinahina Gulch. From the highway in front of the Kahana Ridge Subdivision, the high retaining walls and houses block all mauka views. Within the Project District area in the makai direction, there are panoramic views of the Pailolo Channel, Lana'i, and Moloka 'i from most areas. (2006 D&O, FOF

¶78). Development of Pulelehua would change existing mauka views from Honoapi'ilani Highway and Akahahele Street from fallow agricultural fields to urban uses. Pulelehua will include a landscaped greenway along the length of Honoapi'ilani Highway and will incorporate a system of trails and walkways, hikeable and bike friendly, connecting all phases of the project. (2006 D&O, FOF ¶79).

128. Petitioner Maui Oceanview LP represents that all common area exterior lighting within Pulelehua will be shielded from adjacent residential properties to the extent possible. In addition, street lighting and common area lighting will be designed to minimize night sky light pollution to the extent possible. Petitioner Maui Oceanview LP will incorporate a combination of properly selected light fixture shades, bulb types and wattages, reflectors, and lens used within each fixture. To further reduce the visual impacts of Pulelehua, Petitioner Maui Oceanview LP will bury all utility lines underground. (2006 D&O, FOF ¶80).

#### Coastal/Marine Resources

129. In connection with the Original Petition, Dr. Steven J. Dollar of Marine Research Consultants, Inc., assessed the marine environment in the nearshore areas off the Petition Area. As the Commission found in connection with the 2006 D&O, development of housing at Pulelehua would have a positive rather than a negative effect on nearshore ocean water quality. All drainage will be retained onsite. The amount of nitrogen and phosphate expected to enter the ocean will be significantly reduced from the amounts used in pineapple cultivation. In addition, former pineapple fields presently lying fallow will no longer be subject to erosion, reducing sedimentation discharge to the ocean and consequently the impact to any potential cultural practices along the shoreline. (2006 D&O, FOF ¶¶81-82).

130. "Compared to former agricultural uses, the development of Pulelehua will

improve conditions for the marine environment by the reduction of sedimentation discharge to the ocean resulting in a decrease in the flux of nutrients (e.g., fertilizers) to the ocean. (OP Pos. Stmt., p. 12).

## ENVIRONMENTAL QUALITY

### Noise

131. In connection with the Original Petition, D.L. Adams & Associates, Ltd., prepared non-aircraft noise assessments for Pulelehua. The dominant noise sources in the vicinity of the Petition Area are traffic from Honoapi'ilani Highway and aircraft from the Kapalua-West Maui Airport. Other noise sources include wind and birds. The dominant short-term noise sources during construction of Pulelehua will be earth moving and other equipment. Petitioner will incorporate mitigative measures to minimize the level of noise and comply with all Federal and State noise control regulations. Following completion of construction, vehicular traffic volumes will increase due to the Project. Traffic noise predictions for the year 2011 including Pulelehua and other planned West Maui developments will increase ambient noise levels less than 3 decibels ("Db") over existing conditions. The noise impact due to Pulelehua traffic is less than 2 Db over future predictions of ambient noise levels without Pulelehua. A 3 Db increase is not perceptible to most people. (2006 D&O, FOF ¶83).

132. The Kapalua-West Maui Airport currently has limited operations per day. Under zoning and other rules currently in effect, airport operations could increase to a maximum of 140 operations per day. These restrictions preclude jet aircraft, helicopters, night flights, and general aviation. Mestre Greve Associates developed Day Night Noise Level ("DNL") Contours for the Kapalua-West Maui Airport using both the then-current level of operations and maximum level of operations. These models showed that residential development at Pulelehua will not be significantly impacted by airport noise under the current level of operations or at maximum level of operations at

Kapalua-West Maui Airport. (2006 D&O, FOF ¶84).

133. Petitioner will implement the following mitigation measures to ensure compatibility of the residential portion of Pulelehua with the Kapalua-West Maui Airport:

- Notification to buyers of the proximity of the Kapalua-West Maui
- Airport and the presence of aircraft noise.
- No homes will be located within the 65 DNL contour (existing or on maximum operations).
- The residential units, if any, that are within the maximum operations 60 DNL will be built using noise reduction measures.
- No single-wall residential construction.

(2006 D&O, FOF ¶85).

#### Air Quality

134. In connection with the Original Petition, B.D. Neal & Associates prepared an air quality study of the Petition Area. The Commission found that any impact development of Pulelehua was expected to have on ambient air quality would not be significant; therefore, implementing mitigation measures for traffic related air quality impacts was both unnecessary and unwarranted. (2006 D&O, FOF ¶86).

#### Soil Quality

135. Since approximately 1985, Original Petitioner MLP cultivated portions of the Project District area in pineapple. The property is presently fallow. Petitioner Maui Oceanview LP will conduct appropriate assessment and soils analyses to determine the possible impact to human habitation due to potential residues of fertilizers and pesticides that may be present in the soil of former pineapple fields. If necessary, Petitioner Maui Oceanview LP will undertake measures to



abate and remove any hazardous materials identified. (2006 D&O, FOF ¶87).

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

136. In connection with the Original Petition, Hall Planning and Engineering, Inc., prepared a Traffic Impact Analysis Report ("TIAR") for Pulelehua in March 2005 to identify the long-range traffic impacts of development of the Petition Area on the West Maui regional transportation system at peak hour traffic conditions at full buildout in the year 2011. (2006 D&O, FOF ¶88). Honoapi'ilani Highway is a State highway with limited access that is designed primarily for regional circulation. It is intended to accommodate travel from one region to another as quickly and safely as possible and provides the primary access between West Maui and the rest of Maui. From Nakalele Point to Honokowai, it is a two-lane, undivided roadway. Between Honokowai and South Lahaina it is a four-lane, undivided roadway. From South Lahaina to Ma'alaea, it is again a two-lane, undivided roadway. (2006 D&O, FOF ¶89).

137. In connection with the 2006 D&O conditions, Original Petitioner MLP completed and submitted to DOT a revised TIAR in May 2009. DOT approved the 2009 TIAR in September 2010. (Sixth Supp. Memo., EXH. M-3).

138. Under Maui Oceanview LP's proposed development, the existing Akahahele Street continues to be a primary entrance to Pulelehua. Two additional access points to Honoapi'ilani Highway have been proposed to the Hawaii Department of Transportation (DOT). The northernmost access point will be limited to right-in, right-out access, whereas the southernmost access will provide full access to the southern retail and residential units, and the proposed 10-acre County Community Park on the project site.

139. At the request of DOT-Highways, a Transportation Impact Assessment Report

(TIAR) dated August 13, 2019 was prepared and revised to reanalyze traffic impacts related to the Pulelehua development. This August 2019 TIAR contemplates build out of Pulelehua as four scenarios. (Memo. Supp., EXH. M-2, pp. 101-02).

140. In the initial scenario, for development of Phase 1 with a build-out of 2022 for 240 Multi-family residential units north of Akahahele Street, a new Project roadway (Road A) would bisect Akahahele Street and provide direct access to the residential apartment buildings in addition to a new right-in, right-out (RIRO) connection at Honoapi'ilani Highway. In the second scenario, for development of Phase 2A and 2B with a build-out of 2025 for 100 Multi-family residential units (Phase 2A) south of Akahahele Street, with direct access provided by a new Project Roadway, Road C, intersecting Akahahele Street to the East of Road A, and for 250 Multi-family units (Phase 2B) south of Akahahele Street with direct access provided by Road A and Road C. In the third scenario, for development of Phases 3-5 with a build-out of 2030 for 210 multi-family residential units (Phase 3) south of Mahinahina Gulch, with access provided from a new Project roadway, Road J, intersecting Honoapi'ilani Highway south of Mahinahina Gulch; a 10-acre Community Park (Phase 3) south of Mahinahina Gulch with access from Roadway J; North Central Neighborhood Retail (Phase 4) consisting of approximately 6,000 square feet of commercial space located north of Akahahele Street near the Kapalua Airport, with access provided by Roadway C; South Core Retail (Phase 4) consisting of approximately 55,000 square feet of commercial space located on the southeast corner of Honoapi'ilani Highway/Road J intersection, with access provided by Road J; 86 Single Family residential lots (Phase 5) north of Akahahele Street, with access provided by Road C (with additional 'ohana units possible on each lot for a total of 172 single family residential units); 14 single family residential lots (Phase 5) south of Mahinahina Gulch, with access provided by Road J (with additional 'ohana units possible on each lot for a total of 28 single family residential units). In the fourth scenario, a future elementary school, to be planned/developed by the State Department of

Education. Since the school development is not in the direct control of Maui Oceanview LP, the timeframe for the school has yet to be determined but for purposes of the TIAR, a forecast build-out of 2035 was assumed, with access provided by Road A. (Third Supp. Memo., EXH. M-2, pp. 104-07).

141. The updated TIAR includes existing traffic counts at the Honoapiilani Highway/Keawe Street intersection with the recently opened Lahaina Bypass Road Phase 1B-2 and various widening/restriping improvements at this intersection. The TIAR also anticipates that by Base Year 2022, Intersection improvements will occur at the Honoapi'ilani Highway/Napilihau Street intersection as part of the Wailele Ridge development. All study intersections are forecast to operate similar to existing conditions with the exception of the eastbound shared left-turn/through movement of Honoapi'ilani Highway/Kaanapali Parkway and the westbound left-turn at Honoapi'ilani Highway/Kapunakea Street during the PM peak hour of traffic. The TIAR provides possible improvements to mitigate any forecast over-capacity conditions. (Third Memo. Supp., EXH. M-2).

142. By completion of Scenario 1, Pulelehua is expected to generate relatively minimal traffic increases. (Third Supp. Memo., EXH. M-2, pp. 104, 108).

143. The southern approach of Road A at Akahahele Street and a new Akahahele Street/Road C intersection will be constructed, to service the new residential units as part of Scenario 2, resulting in two (2) new unsignalized 4-legged intersections along Akahahele Street. Left-turn storage lanes are recommended at both intersections along Akahahele Street. The consultant also recommends optimizing signal timing at Honoapi'ilani Highway/Akahahele Street to accommodate turning movement increases. (Third Supp. Memo., EXH. M-2, p. 109).

144. By completion of Scenario 3, the consultant recommends optimizing signal timing at Honoapi'ilani Highway/Akahahele Street to accommodate turning movement increases and lengthening existing left-tun storage lane lengths. (Third Supp. Memo., EXH. M-2, p. 109).

145. When the school is constructed, the consultant recommends optimizing signal timing at Honoapi'ilani Highway/Akahele Street to accommodate turning movement increases and lengthening the left-turn storage lane at that intersection. Also, the Honoapi'ilani Highway/Road J intersection would be monitored to determine if or when a signal will be warranted based on actual traffic volumes. (Third Supp. Memo., EXH. M-2, p. 110).

146. The State DOT reviewed and accepted this August 2019 TIAR, requesting two additional conditions based on the updated TIAR (OP Pos. Stmt., p. 19):

- a. Submission of a revised TIAR for the DOT's review and acceptance prior to the start of construction for Scenario three (Phases 3, 4 and 5). The TIAR shall also verify the validity of recommended improvements related to the new elementary school operation anticipated to be completed by 2035 (Phase 4). All improvements related to Honoapiilani Highway recommended or required in the accepted TIAR shall be constructed to the satisfaction of DOT for each phase/scenario prior to the first Certificate of Occupancy for the associated phases;
- b. Regional highway pro-rata contributions to the nearby Lahaina Bypass (resulting from the total calculation of Phase 1A, 1B-1, 1B-2, and 1C) shall apply for the construction of Phase 1C.

#### Kapalua-West Maui Airport

147. The Kapalua-West Maui Airport borders the Project District area to the east. The Kapalua-West Maui Airport was privately built in 1987 and was subsequently acquired by DOT, Airports Division, which presently operates the Kapalua-West Maui Airport. There is an average of 25 aircraft operations a day at the Kapalua-West Maui Airport. Operations at the Kapalua-West Maui Airport are subject to a number of acquisitions, zoning, and other restrictions which preclude operation of helicopters, jet aircraft, air tours, or general aviation. The limited size of the terminal,

lack of fuel facilities, and topography of adjacent gulches as well as economics are other limiting factors to expansion of the airport or aircraft operations. (2006 D&O, FOF ¶98). The Commission acknowledged that the FAA determined that proposed buildings and improvements in Pulelehua present no hazard to air navigation. (2006 D&O, FOF ¶99. Petitioner Maui Oceanview LP will not develop any structures within the Runway Object Free Area (ROFA), the Runway Protection Zone (RPZA), or the Runway Safety Area (RSA).

148. There is a rise in the terrain at the approach (south) end of the runway that extends down the runway for about 1,500 feet. This rise in terrain penetrates the imaginary surface (transitional surface) within the ROFA. This obstruction is a discrepancy resulting in the Kapalua-West Maui Airport not following the requirements of Title 14 CFR Part 139 of the FAA's Airport Certification Manual. This discrepancy is related to development of the Kapalua-West Maui Airport but is not caused by and has no relationship to the development of Pulelehua. (2006 D&O, FOF ¶100).

#### Potable Water Service

149. 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. (Supp. Memo. Supp., EXHs. N-1, N-2).

150. 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).

151. 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. (Sixth Supp. Memo., EXHs. N-3, N-4).

152. 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. (Sixth Supp. Memo., Paul Cheng Decl., ¶10).

#### Non-Potable Water Service

153. Original Petitioner MLP intended to use recycled R-1 water from the LWWRP located approximately 3,500 feet south of the Project District area to irrigate landscaping for the parks, open spaces, and the common areas for the multi-family units and the proposed school site, as well as to satisfy fire flow requirements. Irrigation requirements were estimated to be 0.2 MGD. At the time, LWWRP pumped R-1 treated water to a 5.5 million-gallon open reservoir above the Kapalua-West Maui Airport where it was mixed with surface water and used for plantation irrigation. Use of R-1 treated water for irrigation was to reduce the average daily potable water demand of

Pulelehua by approximately 22 percent to 0.72 MGD of water per day. (2006 D&O, FOF ¶103).

154. Petitioner Maui Oceanview LP intends to satisfy fire emergency and landscaping needs by using R-1 treated water from the County wastewater system, if available (or from Pulelehua's private system, in the event Maui Oceanview LP develops a private wastewater treatment plant) (Sixth Memo. Supp., Paul Cheng Decl., ¶12).

#### Wastewater

155. All existing County wastewater facilities in the vicinity of the Petition Area are located makai of Honoapi'ilani Highway, along Lower Honoapi'ilani Road. These facilities include gravity sewer lines, sewer force mains, and sewer pump stations. All sewage from the area is transported to the LWWRF. (2006 D&O, FOF ¶104).

156. Original Petitioner MLP intended to construct a new sewage collection system within the Project District area to transport wastewater to the LWWRF for processing and disposal. (2006 D&O, FOF ¶105). When fully built out, Pulelehua was expected to generate approximately 0.346 MGD of wastewater. At the time of the original petitions, LWWRF had enough capacity, including the continued use of injection wells, to treat wastewater to be generated by Pulelehua if the Project were developed at that time. (2006 D&O, FOF ¶106).

157. Petitioner Maui Oceanview LP will connect to the County wastewater system provided capacity is available. In that event, R-1 treated water, unless unavailable, will be returned to Pulelehua for non-potable landscape irrigation and fire flow purposes. The existing R-1 transmission lines do not extend to the Pulelehua site and so Petitioner Maui Oceanview LP will install the necessary infrastructure at its expense as required and approved by the Maui Department of Environmental Management to extend the lines to provide R-1 water to the project. Alternatively, Maui Oceanview LP will develop a private wastewater treatment plant to be operated by qualified

operators, with the wastewater treatment plant using a system similar to or better than the system proposed by Waikapu Country Town, using organic membrane-type technology and no injection wells. (Sixth Memo. Supp., Paul Cheng Decl., ¶12)

### Drainage

158. “The drainage pattern over the [Project District area] remains unchanged since the 2006 D&O. . . .” (OP Pos. Stmt., p. 4). Three drainageways traverse through or bound the Project District area. To the north, Kahanaiki Gulch traverses the northern boundary. It joins Kahana Stream before it crosses Honoapi'ilani Highway. The shallow Pohaku-Ka'anapali Gulch traverses approximately midway through the Project District area. The Kapalua-West Maui Airport intercepts drainage from the upper limits of this gulch so that it is primarily dry within the Project District area. Mahinahina Gulch traverses the Project District area at approximately 1,000 feet from its southern boundary. (2006 D&O, FOF ¶107).

159. The existing drainage pattern is generally in the east to west (mauka-makai) direction toward Honoapi'ilani Highway. There are three large existing drainage basins within or adjacent to the Project District area which collect runoff and remove silt and debris before the runoff discharges into the ocean. These basins are: (i) the Kahana Basin located immediately to the north of the Project District area; (ii) the Pohaku-Ka'anapali Basin located approximately in the middle of the Project District area; and (iii) the Mahinahina Basin located at the southwest corner of the Project District area. Two smaller detention basins are located to the north and south of the intersection of Akahela Street and Honoapi'ilani Highway. (2006 D&O, FOF ¶108).

160. Petitioner Maui Oceanview LP's consultant Kimley-Horn prepared a preliminary drainage report for the Pulelehua project as proposed for development. At full build-out the development is planned to construct approximately 800 affordable and market-rate, multi-family residential units



(roughly 80 buildings with 10 units each), 99 single-family residential lots, a large estate lot, a 10-acre Community Park, 3 retail centers totaling approximately 70,000 square feet, along with open space of varying levels of use. A future school site is also planned for the site, situated on approximately 13 acres. (See Memo. Supp., EXH. G, p. 1).

161. The Final Environmental Impact Statement prepared for Pulelehua noted, “development of the Pulelehua project is not expected to have a significant adverse effect on downstream properties or coastal marine waters.” (Memo. Supp., EXH. G, p. 3).

162. Kimley-Horn estimated “[t]he post development runoff from the Pulelehua site is estimated to be 851 cfs, an increase of 451 cfs over existing conditions.” Prelim. Drainage Rep. [Exhibit G], p. 3. “However, additional runoff due to development of the community will be detained onsite in a series of detention basins, with no increased flow to downstream properties (including Honoapi’ilani Highway and the Kahana Hui and Kahana Ridge subdivisions), or into the existing drainage ways, desilting basins, or the ocean.” (Memo. Supp., EXH. G, p. 3 & Exhibit 5). “No additional runoff will be released into the existing drainageways or onto Honoapi’ilani Highway.” (Memo. Supp., EXH. G, p. 5).

163. Petitioner Maui Oceanview LP will have detailed drainage studies prepared to accompany the improvement plans for each phase of development and will include storm drain inlet and pipe sizing calculations, detention basin sizing and draw-down calculations and the design of onsite storm drain related features. (Memo. Supp., EXH. G, p. 4). “The net result of the proposed drainage improvements will be no increase in runoff from the project site to the downstream properties.” (Memo. Supp., EXH. G, p. 5).

#### Solid Waste

164. The County of Maui provides residential refuse collection in the Mahinahina area. Refuse is collected and taken to the County's Central Maui Sanitary Landfill, located four miles

southeast of the Kahului Airport on Pulehu Road. The Olowalu transfer station is located about four miles southeast of Lahaina and accepts self-haul waste from West Maui residents for transfer to the landfill. The landfill was projected to have enough capacity to accommodate residential and commercial waste through 2020. (2006 D&O, FOF ¶111).

165. Currently, no significant levels of solid waste are being generated from the Project District area. (2006 D&O, FOF ¶112).

166. After buildout and sales of all Pulelehua homes, total waste from all households was estimated to be approximately 10,827 pounds per day. This estimate included the waste from all potential 'ohana units. The County of Maui Solid Waste Division did not have an established method or formula to estimate the amount of solid waste generated from commercial and light industrial uses. There was also no established methods or formulae established by the State of Hawai'i or at the national level. This was likely due to the fact that, unlike residential uses, the type and amount of solid waste generated by commercial and light industrial uses can vary widely and is therefore difficult to accurately project. (2006 D&O, FOF ¶113).

167. Petitioner Maui Oceanview LP anticipates that it will collect solid waste generated by the commercial operations, and the homeowners associations will contract with private refuse collection companies to dispose of solid waste generated by residents of Pulelehua. All solid waste will be disposed at the landfill. Petitioner Maui Oceanview LP will encourage recycling, including a green waste recycling program for all green waste generated on the Project District area. The development of Pulelehua is not expected to adversely impact the County of Maui's solid waste facilities. (2006 D&O, FOF ¶114).

### Schools

168. Original Petitioner MLP designated a 13-acre site in Pulelehua for development

of a public elementary school ("School Site"). The DOE was willing to accept the School Site and construct a public school on the School Site, subject to legislative approval and appropriation of funds. Original Petitioner MLP and the DOE estimated that at full buildout, Pulelehua would generate approximately 239 elementary school students, 115 middle school students, and 136 high school students for a total of 490 public school students. (2006 D&O, FOF ¶117).

169. Children living in Pulelehua would attend either Pulelehua's new elementary school, Lahaina Intermediate School, or Lahainaluna High School. Pulelehua's school would also serve many of Kamehameha III School's students who live north of Kaanapali. (2006 D&O, FOF ¶118).

170. Original Petitioner MLP and the DOE entered into an education contribution agreement for Pulelehua which provided for dedication of approximately 5.8 acres of land as well as a cash contribution of up to \$2.38 million which was to be used to acquire the remainder of the School Site. These contributions would be made to the DOE pursuant to the conditions set forth in the agreement. (2006 D&O, FOF ¶119).

171. Petitioner Maui Oceanview LP's plans for Pulelehua include locating a future Hawaii DOE elementary school off Honoapi'ilani Highway within the Project District. DOE has selected a location as shown on the updated Site Plan. Petitioner Maui Oceanview LP will reserve portions of its property along Honoapi'ilani Highway for future dedication for storage and turning lanes that may be required when the school is constructed and operating.

172. The DOE has accepted the site subject to the school conditions in the 2006 D&O and this amended D&O. (OP Pos. Stmt., p. 19).

173. Petitioner Maui Oceanview LP, as part of community engagement discussions, has agreed to explore private financing and construction options with local Maui developers who

have financed and constructed Maui schools previously for the State of Hawaii. (See Seventh Supp. Memo., EXH. BB)

#### Police and Fire Protection

174. The Project District area is located within the County of Maui Police Department's Lahaina District. The closest police station is at the Lahaina Civic Center. Petitioner Maui Oceanview LP is willing to include a police substation in the proposed commercial retail area. Development of Pulelehua was not expected to significantly impact the need for public police services. (2006 D&O, FOF ¶121).

175. Two firestations cover the Lahaina region: the Lahaina Fire Station and the Napili Fire Station. The Lahaina Fire Station is responsible for the Lahaina, Olowalu, and Ka'anapali areas. The Napili Fire Station is responsible for the Honokowai, Napili, and Kapalua areas and is approximately two miles from the Project District area. (2006 D&O, FOF ¶122).

176. The proposed street widths of Pulelehua are enough to accommodate fire equipment in an emergency. (2006 D&O, FOF ¶123).

177. The Napili Fire Station is adequate to provide the level of service that is needed for Pulelehua. (2006 D&O, FOF ¶124).

#### Emergency Medical Services

178. Emergency medical services to the Project District area are presently provided from the Maui Memorial Medical Center in Kahului. Original Petitioner MLP offered the HHSC a 15-acre site in Pulelehua for the development of a medical facility in West Maui that could include urgent care and long-term care services. (2006 D&O, FOF ¶125). Maui Oceanview LP is not aware of any plans by HHSC to develop a medical facility at Pulelehua or elsewhere in West Maui but is open to entertaining such a facility within Pulelehua if it is economically feasible to all parties.

### Electrical Power and Telecommunications Services

179. Main electrical, telephone, and cable television overhead transmission lines are located on the mauka side of Honoapi'ilani Highway. Maui Electric Company, Ltd., has a substation adjacent to the Petition Area above the Kapalua-West Maui Airport. Electrical and telecommunications capacity is adequate to serve the Project District area. All utility lines and distribution systems serving Pulelehua will be underground. (2006 D&O, FOF ¶126). Petitioner Maui Oceanview LP anticipates, provided all necessary approvals are received from government agencies, that a portion of Pulelehua's electrical needs will be supplied by onsite solar energy generating facilities.

### COMMITMENT OF STATE FUNDS AND RESOURCES

180. Government costs to provide services are expected to exceed State and County tax revenues derived from Pulelehua on a long-term basis, which follows the normal trend of residential housing subdivisions. Government costs will include public education, fire, emergency medical service, and police service. Although Petitioner Maui Oceanview LP is expected to contribute its fair share for the capital cost of constructing government improvements, the cost of delivering public services to a housing development with a substantial affordable component will exceed anticipated tax revenues. (2006 D&O, FOF ¶127).

181. Petitioner Maui Oceanview LP's consultant CBRE forecast public fiscal (or cost/benefit) impacts estimated on a per capita basis founded on a conservative assumption that each new person added to the Maui community is "responsible for" a similar tax cost/obligation as every other person on the island. CBRE's analysis focused on "new" or additional fiscal benefits (incoming tax dollars) to the State and County arising from the development of Pulelehua not those monies/costs which are merely flowing from elsewhere on the island. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep.,

EXH. O-2).

182. In-migration to Maui accounts for about 50 to 60 percent of the total net increase in resident population figures. CBRE estimated that about half (50%) of Pulelehua residents and households will be in-migrating during the absorption period. These individuals represent "new" impacts to the economy and the public purse. Their household income and spending create new tax dollars the State, while their presence on the island creates new per capita spending obligations for the State and County. CBRE's analysis focused on these "new" to Maui 1,190 individuals and 450 households. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

183. The 1,190 full-time residents within the subject project which are not in-migrants are the product of "natural growth" of existing Maui households or relocating from elsewhere on the island. As such, their government fiscal impacts (tax revenues and services costs) are already in-place and factored into existing County and State budgets. Their household income and spending and the tax dollars they create are already being earned, spent and taxed, while their public costs, such as schools, parks, emergency and social services and capital expenditures are already being expensed in governmental budgets. Neither their taxes-generated or government-costs are "new" or additions to Maui and the State, they are assumed to already be flowing through the Maui economy and government coffers and would continue to do so at the same level regardless of the development of Pulelehua. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

184. The "new" tax benefits flowing from Pulelehua include Real Property Taxes to Maui County; the General Excise Taxes and Income Taxes to the State from construction worker wages, the new Maui households, the commercial/retail businesses and their employees, the apartment rental operation, and community association management and maintenance (and their employees). (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

185. The County of Maui will realize "new" Real Property Taxes (\$9.8 million), traffic impact fees (\$6 million), and other secondary receipts and development fee totaling \$33.8 million during the 9-year building and initial residency projection period (2018-2026), and \$6.1 million annually on a stabilized basis thereafter. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

186. The State of Hawaii will receive "new" Gross Excise and Income taxes, secondary revenues, and school impact fees of \$89.0 million during the 2018-2026 modeling period, and \$9.4 million per year thereafter. The County of Maui will incur "new" additional per capita public costs of \$15.2 million during build-out and \$4.1 million annually on a stabilized basis in 2027 and beyond. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

187. The State of Hawaii will incur "new" additional per capita public costs of \$36.6 million during build-out and \$9.9 million annually on a stabilized basis in 2027 and beyond. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

188. The net public benefit to Maui from Pulelehua, beyond the provision of critical workforce and market rental opportunities in West Maui, will be \$18.6 million during construction and absorption and \$1.9 million per year as stabilized. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

189. The net public benefit to the State of Hawaii from Pulelehua will be \$52.5 million during construction and absorption and a loss of \$540,000 per year as stabilized. (See Second Supp. Memo., EXH. O-1; Fifth Supp. Rep., EXH. O-2).

#### CONFORMANCE TO URBAN DISTRICT STANDARDS

190. In approving the 2006 D&O, the Commission found Pulelehua generally conformed to the standards applicable to establishing the boundaries of the State Land Use Urban

District set forth in section 15-15-18, HAR. (2006 D&O, FOF ¶130).

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

Hawai'i State Plan

191. Pulelehua still generally conforms to the following applicable goals, objectives, policies, and guidelines of the Hawaii State Plan.

**HRS §226-4 State goals**

Goal: (3) *Physical, social, and economic well-being, for individuals and families in Hawaii, that nourishes a sense of community responsibility, of caring, and of participation in community life.*

**HRS §226-5 Objective and policies for population**

Policies: 5(b)(1) *Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.*

5(b)(3) *Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.*

As a function of conditions imposed on Petitioner's Kapalua Mauka development in LUC Docket No. A03-741 and representations by Petitioner in this docket, and Maui Oceanview LP's motion, Pulelehua continues to promote increased opportunities for Hawai'i's people to pursue their physical, social, and economic aspirations by:

- Helping to satisfy the housing demand of a growing population and expanding job base by providing 900 homes in West Maui, at least 31 percent of which will be for rent to families earning less than 140 percent of the County of Maui median income;
- Creating a community that fosters an authentic sense of place, respects the land, and provides a vital and sustaining life experience;
- Providing affordable and moderately priced housing for the working families of Maui, and specifically for residents who work in West Maui;



- Providing homes near employment centers, thereby increasing quality of life by decreasing commuting; and
- Creating "affordable housing with dignity," by providing a variety of affordable housing options integrated into a complete community rather than an affordable housing development

**HRS §226-6 Objectives and policies for the economy in general**

**Policies:**

- (a)(1) *Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people.*

Pulelehua will contribute to Hawai'i's economy by:

- Providing homes for sale and rent to Maui's primary workers who earn less than 140 percent of the median income. These workers, including resort employees, teachers, police, firefighters, and others, fill necessary positions and provide essential services crucial to keeping Maui's economy stable and growing; and
- Creating approximately:
  - 1,516 "worker years" of construction trades employment on Maui over the initial construction and sales period (a "worker year" is the amount of time one full-time worker can work in one year); the commercial/retail businesses will have 886 worker years and business/community association and maintenance worker years will total 97 during the same period;
  - 200 permanent full-time equivalent jobs onsite (businesses within Pulelehua) with annual wages of \$7.9 million, with initially 983 worker years of employment from 2020 to 2026 and associated wages of \$33.5 million;
  - permanent full-time equivalent jobs in the regional economy with annual wages of \$1.2 million (maintenance, landscaping, and upgrading of the Pulelehua homes and buildings); and \$40.9 million per year in discretionary expenditures infused into the island economy from community residents.

**HRS §226-11 Objectives and policies for the physical environment-land-based, shoreline, and marine resources**

**Policies:**

- 11(b)(2) *Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.*
- 11(b)(3) *Take into account the physical attributes of areas when planning and designing activities and facilities.*

- The Project District area is not a known habitat for any threatened or endangered plant species.
- The Project District area is not a known habitat for any threatened or endangered species of bird or mammal.
- Pulelehua has the potential to improve conditions in the marine environment as sedimentation discharge to the ocean will be significantly less with Pulelehua compared to agricultural uses, and there is likely to be a decrease in the flux of nutrients (e.g., fertilizers) to the ocean. Any cultural practices along the Mahinahina and Kahana shoreline will not be adversely impacted.

**HRS §226-13 Objectives and policies for the physical environment-land, air, and water quality**

**Policies:** 3(b)(2) *Promote the proper management of Hawai'i 's land and water resources.*

13(b)(7) *Encourage urban developments in close proximity to existing services and facilities.*

Pulelehua's design will be sensitive to the environment and scenic beauty and will complement the Project District area's natural attributes. The portions of the Project District area planned for residential use are located on gently sloping areas formerly cultivated in pineapple. To the extent possible, improvements will conform to the contours of the land, limiting the need for extensive grading.

Development of Pulelehua will have a positive rather than an adverse effect on coastal marine waters. Detention and desilting basins within Pulelehua will maintain the exiting flows and there will be no increase in runoff flowing from the Project District area.

The Project District area is located between West Maui's primary employment areas of Kapalua and Ka'anapali. The Project District area is also bordered by existing urban uses makai of Honoapi'ilani Highway, Kapalua-West Maui Airport, and the Kahana Ridge Subdivision

**HRS §226-15 Objectives and policies for facility systems-solid and liquid wastes**

*Encourage the adequate development of sewerage*

Policies: 15(b)(1) *facilities that complement planned growth.*

15(b)(2) *Promote re-use and recycling to reduce solid and liquid wastes and employ a conservation ethic.*

Petitioner Maui Oceanview LP will connect to the County wastewater treatment facility in West Maui and will use R-1 treated water, unless unavailable, to irrigate common area landscaping and for fire protection. Alternatively, Maui Oceanview LP may develop a private wastewater treatment plant to be operated by qualified operators, with the wastewater treatment plant using a system similar to or better than the system proposed by Waikapu Country Town, using organic membrane-type technology and no injection wells. (Sixth Memo. Supp., Paul Cheng Decl., ¶12).

Petitioner Maui Oceanview LP will encourage recycling, including recycling of all green waste onsite. Petitioner Maui Oceanview LP will also encourage low flow water fixtures and water efficient appliances.

#### **HRS §226-16 Objective and Policies for Facility Systems-Water**

Policies: 16(b)(1) *Coordinate development of land use activities with existing and potential water supply.*

16(b)(3) *Reclaim and encourage the productive use of runoff water and wastewater discharges.*

16(b)(4) *Assist in improving the quality, efficiency, service, and storage capabilities of water systems for domestic and agricultural use.*

Petitioner Maui Oceanview LP will provide potable water for Pulelehua by treating water from the privately-owned and operated Honolua Ditch, without increasing the amount of water diverted from the Honokohau Stream. Petitioner Maui Oceanview LP will use R-1 water, unless unavailable, for non-potable irrigation and fire requirements. In the event surface water is not available, Petitioner Maui Oceanview LP will pursue water service through Hawaii Water Service Company or through development of a groundwater source with Original Petitioner MLP

and/or the DWS.

### **HRS §226-17 Objectives and policies for facility systems-transportation**

- Policies:**
- 17(a)(1) *An integrated multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe, and convenient movement of people and goods.*
  - 17(b)(6) *Encourage transportation systems that serve to accommodate present and future development needs of communities.*
  - 17(b)(10) *Encourage the design and development of transportation systems sensitive to the needs of affected communities and the quality of Hawai'i 's natural environment.*
    - Pulelehua's homes near employment will allow workers more transportation options to travel to work, such as walking and bicycling, and will make public transportation more feasible by clustering populations and destinations within in a defined area along a practical route.
    - Providing homes near employment centers will decrease commuting time, thereby increasing quality of life.

### **HRS §226-19 Objectives and policies for socio-cultural advancement-housing**

- Policies:**
- 19(b)(1) *Effectively accommodate the housing needs of Hawai'i's people.*
  - 19(b)(2) *Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households.*
  - 19(b)(3) *Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.*
  - 19(b)(5) *Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.*
  - 19(b)(7) *Foster a variety of lifestyles traditional to Hawai'i through the design and maintenance of neighborhoods that reflect the culture and values of the community.*

As a function of conditions imposed on Original Petitioner MLP's Kapalua Mauka development in LUC Docket No. A03-741 and representations by Petitioner Maui Oceanview LP in this docket and in its motion, Pulelehua implements objectives and policies for socio-cultural advancement by:

- Helping to satisfying the housing demand of a growing population and expanding job base by providing 900 homes in West Maui, at least 44 percent of which will be for sale or rent to families making less than 140 percent of the County of Maui median income;
- Creating “affordable housing with dignity,” by providing a variety of affordable housing options integrated into complete neighborhoods, and not segregated into an affordable "project;"
- Creating a community that fosters an authentic sense of place, respects the land, and provides a vital and sustaining life experience;
- Providing affordable and moderately priced rental and for sale housing for the working families of Maui, and specifically for those who work in West Maui;
- Providing homes near employment centers, thereby increasing quality of life by decreasing commuting;
- Creating genuine neighborhoods by design where residents can walk and interact with their neighbors; and
- Creating neighborhoods with a mix of uses and housing types that embrace a diversity of people and activities.

**HRS §226-23 Objective and policies for socio-cultural advancement-leisure**

**Policies:** 23(b)(3) *Enhance the enjoyment of recreational experiences through safety and security measures, educational opportunities, and improved facility design and maintenance.*

- Pulelehua will include neighborhood parks, ball fields, community gardens, and an extensive trail system of linked paths and trails to allow pedestrians and bicyclists to have another option for movement through the neighborhood. Petitioner Maui Oceanview LP will provide the County of Maui with a 10-acre Community Park.
- Pulelehua's parks will be open to all Maui residents.

**HRS §226-104 Population growth and land resources priority guidelines**

104(a)(1) *Encourage planning and resource management to ensure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawai'i 's people.*

- Maui County's population is projected to increase from 139,573 people in 2005 to 175,136 people in 2020, a 25.5 percent increase. West Maui's population is expected to increase from 19,779 people in 2005 to 25,431 people in 2020, a 28.5 percent increase. The increase in West Maui's population results in projected housing demand of approximately 5,278 to 8,941 additional homes in West Maui by 2030. Most of this demand will be for homes affordable to families making between 80 to 140 percent of the County of Maui median income.
- Pulelehua will help to satisfy the housing demand of a growing population and expanding job base, thus contributing to the stable social and economic well-being of residents.

### **HRS §226-106 Affordable Housing**

*Create incentives for development which would*

226-106(4) *increase home ownership and rental opportunities for Hawaii's low- and moderate- income households, gap group households, and residents with special needs.*

*Encourage public and private sector cooperation in*

226-106(6) *the development of rental housing alternatives.*

*Give higher priority to the provision of quality*

226-106(8) *housing that is affordable for Hawaii's residents and less priority to development of housing intended primarily for individuals outside of Hawaii'i.*

As a function of conditions imposed on Petitioner's Kapalua Mauka development

in LUC Docket No. A03-741 and representations by Petitioner Maui Oceanview LP in this docket and in its motion, Pulelehua implements these affordable housing guidelines by:

- Helping to satisfy the housing demand of a growing population and expanding job base by providing 900 homes in West Maui, at least 44 percent of which will be for sale or rent to families making less than 140 percent of the County of Maui median income;
- Creating neighborhoods with a mix of uses and housing types that embrace a diversity of people and activities;
- Creating "affordable housing with dignity," by providing a variety of affordable housing options integrated into complete neighborhoods, and not segregated into an affordable "project;"
- Creating genuine neighborhoods by design where residents can walk and interact with their neighbors; and
- Providing homes near employment centers, thereby increasing quality of

life by decreasing commuting.

(2006 D&O, FOF ¶131).

Functional Plans

192. Pulelehua still generally conforms to the functional plans in the following program areas: employment, housing, recreation, and transportation. (2006 D&O, FOF ¶132).

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

193. Pulelehua is not within the County Special Management Area. As found in the 2006 D&O, Pulelehua still generally conforms to the objectives and policies of the Coastal Zone Management Program as defined in chapter 205A, HRS, as follows:

(1) *Recreational resources*

(A) *Provide Coastal recreational opportunities to the public*

While not on the coast, Pulelehua will include neighborhood parks, ball fields, community gardens, and an extensive trail system, which will be open to the public. Maui Oceanview LP will provide the County of Maui with a 10-acre Community Park.

(2) *Historical resources*

(A) *Provide, preserve, and where feasible, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.*

No significant archaeological resources have been identified on the Petition Area. Petitioner will comply with all laws and rules regarding the preservation of archaeological, cultural, and historic sites should any sites be found during construction of Pulelehua.

(3) *Scenic and open space resources*

(A) *Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.*

Pulelehua is located mauka of Honoapi'ilani Highway and will not impede the coastal scenic and open resources of the area. Pulelehua will be a compact community designed to preserve and enhance open space areas. It will feature a landscaped greenway along the length of Honoapi'ilani Highway. Moreover, all common area exterior lighting will be shielded from adjacent residential properties and designed to minimize night sky light pollution to the extent possible.

(4) *Coastal ecosystems*

(A) *Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.*

Development of Pulelehua has the potential to improve conditions in the marine environment. With the change from agricultural use to residential use, there is likely to be a decrease in the flux of nutrients (e.g., fertilizers) to the ocean. It is likely that sedimentation discharge to the ocean will be significantly less following development of Pulelehua.

(5) *Economic uses*

(A) *Provide public or private facilities and improvements important to the State's economy in suitable locations.*

With the increase in West Maui's population, forecasts of housing demands, and the creation of additional jobs in West Maui, Pulelehua will provide homes to workers, including resort employees, teachers, police, firefighters, and others who provide essential services that keep Maui's economy stable and growing. Pulelehua is an in-fill community between existing urban areas and is not located along the coast.



(6) Coastal hazards

(A) *Reduce hazard to life and property; from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.*

- Pulelehua is not in a tsunami zone or flood zone.
- All additional runoff due to the community will be retained on site with no increased flow to downstream properties (including Honoapi'ilani Highway, and the Kahana Hui and Kahana Ridge Subdivisions).
- Pulelehua will follow all laws and regulations regarding runoff and non-point source pollution, ensuring that storm water runoff and siltation will not adversely affect the downstream marine environment and nearshore and offshore water quality.

(7) *Managing development*

(A) *' Improve the development review process, communication, and public participation in the management of coastal resources and hazards.*

(8) *Public participation*

(A) *Stimulate public awareness, education, and participation in coastal management.*

Original Petitioner MLP conducted a week-long public charrette in March 2004 to solicit public participation in the design of Pulelehua. The potential short-term and long-term impacts of Pulelehua have been described in the Final EIS for Pulelehua which the Commission accepted on July 13, 2005. In addition, the Maui County Planning Commission conducted public hearings on Pulelehua, and the County adopted zoning for Pulelehua as Project District No. 5 and codified as Maui County Code chapter 19.93.

(9) *Beach protection*

(A) *Protect beaches for public use and recreation.*

Pulelehua will not be located along the shoreline and is therefore not expected to interfere with the public's use of the beaches in the area.

(10) *Marine resources*

(A) *Promote the protection, use, and development of marine and coastal resources to assure their sustainability.*

Development of Pulelehua has the potential to improve conditions in the marine environment. With the change from agricultural use to residential use, there is likely to be a decrease in the flux of nutrients to the ocean. It is likely that sedimentation discharge to the ocean will be less following development of Pulelehua. (2006 D&O, FOF ¶133).

**COMPLIANCE WITH MAUI ISLAND PLAN AND COUNTY WIDE POLICY PLAN**

194. Pulelehua generally complies with goals and objectives of the Maui Island Plan and County Wide Policy Plan. Pulelehua is located within the directed growth area for West Maui which supports growth in a sustainable and manageable manner. Pulelehua supports the Housing objectives in the Maui Island Plan and the County Wide Policy Plan by providing a mixture of affordable and market rate rental and for sale multi-family housing units (800 units) as well as for sale homes sites (100 lots) aimed at meeting the housing needs of the residents of West Maui. The 700 multi-family rental units expands the available rental inventory in West Maui. The community CC&Rs will preclude vacation rentals and housing uses within the project. Petitioner Maui Oceanview LP entered into a Residential Workforce Housing Agreement with the County of Maui ensuring that rental units will be set aside for low, low-moderate, and moderate-income residents.

Pulelehua includes features consistent and supportive of Land Use and Infrastructure goals and principles identified in the Maui Island Plan and County Wide Policy Plan. The design and layout of the proposed project addresses public recreational goals and provides an integrated network of trails, sidewalks and multi-use facilities which connect residents to local retail, education and recreational opportunities reducing the number of vehicle trips within and outside of the community. Pulelehua will preserve natural gulches and waterways throughout the community and will incorporate onsite stormwater

quality basins to protect and enhance the water quality and watersheds within and adjacent to the project. Approximately 40% (124 acres) of the Pulelehua community is designated as open space. Pulelehua will provide its own water treatment facility to meet the needs of the community. Pulelehua will use wastewater reclaimed as R-1 water, unless unavailable, to meet the fire and irrigation needs of the community significantly reducing the domestic water demand of the community. No demand will be placed on existing County facilities for water. The project includes a 13-acre site for a future elementary school.

### CULTURAL, HISTORICAL AND ARCHAEOLOGICAL RESOURCES

- GOAL:** 2.1 Our community respects and protects archaeological and cultural resources while perpetuating diverse cultural identities and traditions.
- OBJECTIVE:** 2.1.1 An island culture and lifestyle that is healthy and vibrant as measured by the ability of residents to live on Maui, access and enjoy the natural environment, and practice Hawaiian customs and traditions in accordance with Article XII, Section 7, Hawai'i State Constitution, and Section 7-1, Hawai'i Revised Statutes (HRS).
- POLICY:** 2.1.1.c Ensure traditional public access routes, including native Hawaiian trails, are maintained for public use.
- ANALYSIS:** Maui Oceanview LP's cultural survey identified maintaining mauka access as a community concern; to the extent it has control over mauka access, Maui Oceanview LP will support mauka access through Pulelehua.
- OBJECTIVE:** 2.2 A more effective and efficient planning and review process that incorporates the best available cultural resources inventory, protection techniques, and preservation strategies.
- POLICY:** 2.1.2.c Ensure that cultural, historic, and archaeological resources are protected for the benefit of present and future generations.
- ANALYSIS:** Maui Oceanview LP submitted an update of the Cultural Survey prepared by MLP's original consultant Kaimipono LLC as well as a separate update by Aina Archaeology.
- OBJECTIVE:** 2.3 Enhance the island's historic, archaeological, and cultural resources.

**POLICY:** 2.1.3.c Support regulations to require developers, when appropriate, to prepare an Archaeological Inventory Survey, Cultural Impact Assessment, and Ethnographic Inventories that are reviewed and commented upon by the Office of Hawaiian Affairs, Native Hawaiian advisory bodies, the State Historic Preservation Division (SHPD), and the Office of Environmental Quality Control, and systematically comply with the steps listed in SHPD's administrative rules, including consultation and monitoring during construction phases of projects.

2.1.3.h Ensure compliance with historic preservation laws, and discourage demolition of properties that are determined to be eligible for listing on the National or State Register of Historic Places.

**ANALYSIS:** Maui Oceanview LP prepared updated Cultural Surveys.

#### SHORELINES, REEFS AND NEARSHORE WATERS

**GOAL:** 2.2 An intact, ecologically functional system of reef, shoreline, and nearshore waters that are protected in perpetuity.

**OBJECTIVE:** 2.2.3 Water quality that meets or exceeds State Clean Water Act standards.

**POLICY:** 2.2.3.a Reduce the amount of impervious surface and devise site plan standards that aim to minimize storm runoff and NPS pollution.

2.2.3.b Support the revision of existing regulations to require an Erosion and Sedimentation Control Plan (ESCP) for development activities that may pose a threat to water quality.

2.2.3.c Require an on-site monitoring program, where applicable, when grading may pose a threat to water quality or when recommended in the ESCP.

2.2.3.e Phase out cesspools and restrict the use of septic systems in ecologically sensitive coastal areas by converting to environmentally-friendly alternative sewage treatment systems, and connecting to central sewerage systems when and where feasible.

2.2.3.f Prohibit the development of new wastewater injection wells, except when unavoidable for public health and safety purposes.

**ANALYSIS:** Maui Oceanview LP will comply with best management practices during construction to minimize runoff.

#### SCENIC RESOURCES

**GOAL:** 2.5 Maui will continue to be a beautiful island steeped in coastal, mountain,

open space, and historically significant views that are preserved to enrich the residents' quality of life, attract visitors, provide a connection to the past, and promote a sense of place.

OBJECTIVE: 2.5.1 A greater level of protection for scenic resources.

POLICY: 2.5.1.a Protect views to include, but not be limited to, Haleakalā, `Īao Valley, the Mauna Kahalawai (West Maui Mountains), Pu`u Ō`la`i, Kaho`olawe, Molokini, Moloka`i, and Lāna`i, Mauna Kea, Mauna Loa, sea stacks, the Pacific Ocean, and significant water features, ridgelines, and landforms.

2.5.1.b Identify, preserve, and provide ongoing management of important scenic vistas and open space resources, including mauka-to-makai and makai-to-mauka view planes.

2.5.1.d Protect ridgelines from development where practicable to facilitate the protection of public views.

2.5.1.e Protect scenic resources along Maui's scenic roadway corridors.

ANALYSIS: Pulelehua will be developed to minimize slope changes, preserving views from Honoapiilani Highway of the mauka areas above the proposed community.

#### NATURAL HAZARDS

GOAL: 3.1 Maui will be disaster resilient.

OBJECTIVE: 3.1.3 A more coordinated emergency response system that includes clearly defined and mapped evacuation routes.

POLICY: 3.1.3.a Identify and expand shelter facilities and evacuation routes away from areas susceptible to natural hazards

ANLYSIS: Maui Oceanview LP will serve to provide access mauka during tsunami or shoreline flooding disasters.

#### ECONOMIC DEVELOPMENT

GOAL: 4.1 Maui will have a balanced economy composed of a variety of industries that offer employment opportunities and well-paying jobs and a business environment that is sensitive to resident needs and the island's unique natural and cultural resources.

OBJECTIVE: 4.1.2 Increase activities that support principles of sustainability.

POLICY: 4.1.2.b Encourage and support local businesses.

4.1.2.c Substitute imports with locally-produced services and products where practicable.

**ANALYSIS:** 70 of the 700 rental units will be set aside as Live / Work units. These rental units will allow residents to operate a small business from their home to meet the needs of the local community. An additional 70,000 +/- SF of commercial / retail space has been distributed throughout the community. These retail areas put 97% of all residential units within a 5 min walk of retail.

**OBJECTIVE:** 4.1.3 Improve the island's business climate.

**POLICY:** 4.1.3.b Ensure an adequate supply of affordable workforce housing.

4.1.3.c Develop neighborhoods and communities that are attractive to the workforce of a diversified economy.

**ANALYSIS:** Maui Oceanview LP will develop 300 Workforce Rental Housing Units, including 125 units fulfilling an MLP commitment for workforce rentals as a condition of land use approvals for MLP's Kapalua Mauka project. Maui Oceanview LP will be negotiating with the County of Maui amendments to the Housing Agreement to address additional workforce housing provisions arising from community engagement discussions and meetings; for example, Maui Oceanview LP also will offer for sale 100 Workforce Multi-Family Housing Units.

**GOAL:** 4.4 A diverse array of emerging economic sectors.

**OBJECTIVE:** 4.4.2 Increase the development of renewable energy technologies that are supported by the local community

**POLICY:** 4.4.2.a Support the expansion of the renewable energy sector and the use of solar, wind, wave, and biofuel technologies.

4.4.2.b Provide incentives to encourage renewable energy development, the use of green energy technologies, and energy conservation.

**ANALYSIS:** Maui Oceanview LP intends to utilize pV technology as allowed throughout the Pulelehua community 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 ("FAA") and the Department of Transportation-Airports Division ("DOT-A"). Maui Oceanview LP may also utilize some areas for "Brightfield" development as allowed by the FAA and DOT-A.

## HOUSING

- GOAL:** 5.1 Maui will have safe, decent, appropriate, and affordable housing for all residents developed in a way that contributes to strong neighborhoods and a thriving island community.
- OBJECTIVE:** 5.1.1 More livable communities that provide for a mix of housing types, land uses, income levels, and age.
- POLICY:** 5.1.1.a Promote livable communities (compact/walkable/bikeable, access to transit) that provide for a mix of housing types and land uses, including parks, open space, and recreational areas.
- 5.1.1.b Promote planning approaches that provide a mix of multifamily and single-family housing units to expand housing choices.
- 5.1.1.e Use planning and regulatory approaches to provide higher housing densities.
- ANALYSIS:** Pulelehua will provide a mixture of affordable and market rate rental and for sale housing units (800 units) as well as for sale homes sites (100 lots) aimed at meeting the housing needs of the residents of West Maui. Pulelehua has entered into a Residential Workforce Housing Agreement with the County of Maui ensuring that 300 rental units will be set aside for low, very low, below-moderate, and moderate-income residents, and 100 units will be sold to low, very low, and below-moderate and moderate-income residents. Pulelehua will provide a variety of recreational and educational opportunities for its residents. These include a 10-acre community park to be dedicated to Maui County and a 13-acre school campus site. Multiple pocket parks located throughout the community will provide residents with additional recreation opportunities. An integrated network of trails, sidewalks and multi-use facilities will connect residents to local retail, education and recreational opportunities reducing the number of vehicle trips within and outside of the community. Connections to the County's Maui Bus system will provide residents with additional opportunities to connect to destinations outside of the community. This will include local employment centers. 70 of the 800 rental units will be set aside as Live / Work units. These rental units will allow residents to operate a small business from their home to meet the needs of the local community. An additional 70,000 +/- SF of commercial / retail space has been distributed throughout the community. These retail areas put 97% of all residential units within a 5 minute walk of retail.
- OBJECTIVE:** 5.1.2 Better monitoring, evaluation, and refinement of affordable housing policy in conjunction with the economic cycle.

**POLICY:** 5.1.2.b Utilize the following approaches to promote resident housing and to minimize offshore market impacts: (1) Ensure that the future housing stock is composed of a mix of housing types (multifamily, small lots, ohana units, co-housing, cottage houses, etc.); (2) Encourage new housing in proximity to jobs and services, in places that are conducive/affordable to island residents.

**ANALYSIS:** Maui Oceanview LP will provide:

a. 100 units of the 800 Multi-Family Units 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
<b>TOTAL</b>	<b>100</b>

The 100 workforce housing units offered for sale will include a deed restriction for not less than 30 years with the County of Maui having the right of first refusal to purchase the units in accordance with a Housing Agreement between Petitioner Maui Oceanview LP and the County of Maui.

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%	<u>100</u>
<b>TOTAL</b>	<b><u>300</u></b>

The 300 workforce rental 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 Chapter 2.96, MCC, and an amended Housing Agreement between Petitioner Maui Oceanview LP and DHHC.

c. Covenants and deed restrictions for Pulelehua will ban short-term rentals and/or bed and breakfast operations;

d. Workforce Housing renters within Pulelehua will be exempt from paying Homeowner Association fees.

e. Three of the 99 single family residential lots will be offered for sale at the cost of developing the lots (which includes the pro-rata cost of the land, planning and infrastructure improvements) to a non-profit organization involved in constructing and maintaining affordable housing.

f. The 99 single family lots and the large estate lot offered for sale will all have the right to build an accessory dwelling /‘ohana unit at the discretion of the homeowner. The use of the 100-accessory dwelling/‘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.

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**OBJECTIVE:** 5.1.3 Provide affordable housing, rental or in fee, to the broad spectrum of our island community.

**POLICY:** 5.1.3.a Consider regulations that can help keep affordable housing available at affordable rents.

5.1.3.b Seek to have ownership of affordable for-sale and rental housing vested in a non-profit community land trust, or other qualified housing provider, committed to keeping such housing affordable in perpetuity.

**ANALYSIS:** Pulelehua will provide a mixture of affordable and market rate rental housing units (800 units) as well as for sale homes sites (100 lots) aimed at meeting the housing needs of the residents of West Maui. Pulelehua has entered into a Residential Workforce Housing Agreement with the County of Maui ensuring that 300 rental units will be set aside for low, very low, below moderate, and moderate-income residents. DHCC and will provide the workforce units in the mix and with the deed restriction in favor of the County of Maui described above.

**OBJECTIVE:** 5.1.6 Reduce the cost to developers of providing housing that is affordable to families with household incomes 160 percent and below of annual median income.

**POLICY:** 5.1.6.b Require the construction of affordable for-sale and rental housing units as part of the construction of new housing developments.

**ANALYSIS:** Pulelehua will provide a mixture of affordable and market rate rental housing units (800 units) as well as for sale homes sites (100 lots) aimed at meeting the housing needs of the residents of West Maui. Pulelehua has entered into a Residential Workforce Housing Agreement with the County of Maui ensuring that 300 rental units will be set aside for low, very low, below moderate, and moderate-income residents.

**LAND USE:** URBAN

**GOAL:** 7.3 Maui will have livable human-scale urban communities, an efficient and sustainable land use pattern, and sufficient housing and services for Maui residents.

**OBJECTIVE:** 7.3.1 Facilitate and support a more compact, efficient, human-scale urban development pattern.

**POLICY:** 7.3.1.a Ensure higher-density compact urban communities, infill, and

redevelopment of underutilized urban lots within Urban Growth Boundaries.

7.3.1.b Maintain a distinct separation between communities, such as but not limited to, Wailuku and Waikapū; Wailuku and Waihe`e; Pukalani and Makawao; Pukalani and Kula; Makawao and Hāli`imaile; Lahaina and Kā`anapali; Kihei and Mā`alaea; and Mā`alaea and Waikapū, to protect the character and identity of Maui's communities.

7.3.1.c Strengthen evaluation requirements for new urban expansion, new towns, and major urban infill projects within urban growth areas. Tailor submittal requirements to reflect the impact or scale of different projects.

7.3.1.d Ensure future amendments to urban growth boundaries achieve the following: (1) provide a beneficial extension of the existing community; (2) are in areas where it is cost effective to provide and operate infrastructure/public service facilities; and (3) do not promote automobile-oriented land use patterns.

7.3.1.f Encourage the development and implementation of neighborhood design standards that are environmentally friendly, such as LEED for Neighborhood Development (LEED – ND) standards.

7.3.1.i Discourage land use and urban design that impedes inter-connectivity between adjacent communities.

**ANALYSIS:** Pulelehua is within the directed growth area for West Maui and will be developed in compliance with its zoning as Project District No. 5, Maui County Code Chapter 19.93.

**OBJECTIVE:** 7.3.2 Facilitate more self-sufficient and sustainable communities.

**POLICY:** 7.3.2.a When developing new communities, provide sufficient lands for commercial, appropriate industrial, educational, spiritual, and non-profit uses to serve the daily needs of community residents.

7.3.2.b Site community facilities such as schools, parks, libraries, and community centers within walking and biking distance of residences.

7.3.2.c Facilitate self-sufficient communities and shorten commutes by: (1) Directing residential development to job-rich areas; (2) Allowing for appropriate commercial development and community services to shorten commutes; and (3) Allowing home occupations or home-based businesses that are compatible with surrounding neighborhoods and lifestyles.

7.3.2.d Ensure, where appropriate, that affordable employee housing and multi-modal transportation opportunities are located near major employment centers.

7.3.2.e Discourage the establishment of bedroom communities where long commutes are required to employment centers.

7.3.2.f Facilitate the development of housing by focusing projects in locations where land and infrastructure costs facilitate the development of affordably-priced housing.

7.3.2.g Provide incentives to facilitate the development of multifamily housing.

7.3.2.h Encourage the placement of rental housing projects in the same areas as for-sale housing to facilitate mixed-income communities.

7.3.2.i Develop communities that provide sufficient parks, schools, libraries, and other essential public facilities and services to serve resident needs.

**ANALYSIS:** Pulelehua will provide a mixture of affordable and market rate rental housing units (800 units) as well as for sale homes sites (100 lots) aimed at meeting the housing needs of the residents of West Maui. Pulelehua has entered into a Residential Workforce Housing Agreement with the County of Maui ensuring that 300 rental units will be set aside for low, very low, below moderate, and moderate-income residents.

Pulelehua will provide a variety of recreational and educational opportunities for its residents. These include a 10-acre community park to be dedicated to Maui County and a 13-acre school campus site. Multiple pocket parks located throughout the community will provide residents with additional recreation opportunities.

An integrated network of trails, sidewalks and multi-use facilities will connect residents to local retail, education and recreational opportunities reducing the number of vehicle trips within and outside of the community. Connections to the County's Maui Bus system will provide residents with additional opportunities to connect to destinations outside of the community. This will include local employment centers.

70 of the 800 rental units will be set aside as Live / Work units. These rental units will allow residents to operate a small business from their home to meet the needs of the local community. An additional 70,000 +/- SF of commercial / retail space has been distributed throughout the community. These retail areas put 97% of all residential units within a 5 min walk of retail. This further reduces the need for residents to venture outside of the community for basic services.

**OBJECTIVE:** 7.3.3 Strengthen the island's sense of place.

**POLICY:** 7.3.3.f Require design enhancement, landscaping, and integration of park and rides, bicycle parking areas, and mass-transit infrastructure to mitigate the effect of parking lots and structured parking on the urban landscape.

7.3.3.g Ensure that safe and attractive public spaces (e.g., plazas, parks, town/village squares) are provided throughout the island’s urban areas.

**ANALYSIS:** Pulelehua will provide a variety of recreational and educational opportunities for its residents. These include a 10-acre community park to be dedicated to Maui County and a 13-acre school campus site. Multiple pocket parks located throughout the community will provide residents with additional recreation opportunities.

An integrated network of trails, sidewalks and multi-use facilities will connect residents to local retail, education and recreational opportunities reducing the number of vehicle trips within and outside of the community. Connections to the County’s Maui Bus system will provide residents with additional opportunities to connect to destinations outside of the community.

**OBJECTIVE:** 7.3.4 Strengthen planning and management for the visitor industry to protect resident quality of life and enhance the visitor experience.

**POLICY:** 7.3.4.c Manage short-term rentals and bed-and-breakfast homes through a permitting and regulatory process in accordance with adopted ordinances and community plan policies.

**ANALYSIS:** The Pulelehua community CC&Rs will preclude vacation rentals and housing uses within the project.

#### URBAN AND SMALL-TOWN GROWTH AREAS

**GOAL:** 8.1 Maui will have well-serviced, complete, and vibrant urban communities and traditional small towns through sound planning and clearly defined development expectations.

**POLICY:** 8.1.e New development shall be consistent with the UGBs, STBs, and all other applicable policies of the MIP. New urban-density development shall not be allowed outside of a UGB or STB.

8.1.h The County will seek to focus capital improvements (schools, libraries, roads, and other infrastructure and public facilities) within the UGBs and STBs in accordance with the MIP.

**ANALYSIS:** Maui Oceanview LP’s Pulelehua project is within the directed growth area for West Maui as shown on Directed Growth Map W-2.

195. The following are General Plan objectives and policies that are applicable to

Pulelehua:

## Land Use

*Objective 1: To preserve for present and future generations existing geographic, cultural and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the country.*

*Objective 2: To use the land within the County for the social and economic benefit of all the County's residents.*

*Policy a: Formulate a directed land use growth strategy that will encourage the redevelopment and infill of existing communities allowing mixed land uses, where appropriate.*

*Policy b: Encourage land use patterns that foster a pedestrian oriented environment to include such amenities as bike paths, linear parks, landscape buffer areas, and mini parks.*

*Policy d: Encourage land use methods that will provide a continuous balanced inventory of housing types in all price ranges.*

*Policy e: Encourage programs to stabilize affordable land and housing prices.*

Pulelehua will be developed as a community between existing urban areas in accordance with widely accepted planning principles of placing new urban uses contiguous to existing urban uses. Pulelehua will include rental and for-sale housing in all price ranges. Pulelehua's [~~traditional~~] neighborhood design, with homes, neighborhood businesses, and recreation areas all within walking distance, will encourage pedestrian and bicycle access and minimize use of the automobile. Pulelehua's compact design will encourage preservation of surrounding productive agricultural lands.

## Housing

*Objective 1: To provide a choice of attractive, sanitary, and affordable homes of all our residents.*

*Policy b: Encourage the construction of housing in a variety of price ranges and geographic locations.*

*Policy f: Encourage large landowners in the context of new projects to provide land and/or*

housing for their employees.

Policy j. *Ensure that each community plan region contains its fair share of affordable housing.*

To satisfy affordable housing requirements imposed on Petitioner's Kapalua Mauka development in LUC Docket No. A03-741 and workforce housing requirements on this docket, Maui Oceanview LP proposes to provide [450] 300 workforce [affordable] housing rental units (which includes 125 workforce rentals to satisfy MLP's Kapalua Mauka commitment) for [sale or] rent and 100 workforce housing units for sale to families making less than 140 percent of the County of Maui's median income. Plans for the affordable housing units include integrating affordable units with market price units in the different phases. Pulelehua is expected to include such services as neighborhood commercial, parks, and trails. The community has been designed to encourage walking which will decrease the need for commuting and reduce traffic impacts. The design of the affordable units is proposed with the same quality and materials as the market units. Pulelehua, with its affordable component and gap group housing, is planned to fill a critical need for the working families of West Maui.

### **West Maui Community Plan**

196. Ordinance No. 3877 (2011) amended the West Maui Community Plan with the following language applying to the Pulelehua project:

*Project District 5 (Pulelehua) approximately 310 acres*

*This project district is within the Mahinahina region between Honoapi'ilani Highway and the Kapalua West Maui Airport. It is generally bound by Kahanaike Gulch to the north and the Department of Hawaiian homelands property to the south.*

*The project district is intended to provide a mix of residential units for all income groups, commercial, civic uses, parks and open space. "Traditional neighborhood design" (TND) concepts shall be incorporated to emphasize mixed uses, pedestrian friendly streets, multi-modal transportation options, traditional architecture, and urban design. The project district may contain up to 900 single-family and multi-family units with the potential for an additional 300 accessory dwelling units. A 13-acre school site is included in the project district. The project district overall average residential density is approximately 2.8 units per acre.*

*The project district will include a range of districts. The limited Core Neighborhood District will contain the highest densities and most intense mix of uses. From the Core Neighborhood District, each subsequent district will have progressively less intense uses, with the Estate Edge District, marked by single family homes and larger lots, primarily along edges of the project district. The Open Space District will provide for buffer areas and separation of neighborhoods. The restricted Workplace Edge District will allow for a range of appropriate uses as a buffer to the Kapalua West Maui Airport. Spatial allocations are as follows:*

<i>DISTRICT</i>	<i>ACRES</i>
<i>Core neighborhood district</i>	7
<i>Central neighborhood district</i>	20
<i>General neighborhood district</i>	83
<i>Edge neighborhood district</i>	48
<i>Estate edge district</i>	23
<i>Workplace edge district</i>	5
<i>Open space district</i>	124

**Analysis:** The proposed development plan for Pulelehua has been designed in accordance with the required development standards as outlined in Chapter 19.93 and the West Maui Community Plan. The proposed development will feature residential uses, retail, public/quasi-public, a 13-acre elementary school site, 10-acre active sports Community Park and over 120 acres of open space.

The project will contain all of the allowed districts and will emphasize Traditional Neighborhood Design (TND) concepts such as providing pedestrian friendly streets and an extensive pedestrian pathway network throughout the site providing connectivity to the commercial, residential, public/quasi-public, and recreational uses.

The residential component of Pulelehua is comprised of approximately 700 rental apartment units, 100 ownership apartment units, and 100 single family lots, for a total of 900 residential units (with the possibility of 100 accessory dwelling/‘ohana units on the single-family lots). Except for live/work units, the Apartments are designed as one-story residential buildings containing 10 units per building that have direct access to parking and sidewalks. (See: Figure No. 2 Conceptual Site Plan)

The Core neighborhood district is proposed to contain commercial/retail space, which is the most intense development of the proposed project and subsequent districts have progressively less intense uses. The commercial/retail component of the project will contain a maximum of 70,000 square feet in size and is envisioned as multi-tenant buildings located on both

sides of Akahahele Street at the project connection with the Honoapi'ilani Highway as well as near the north and south ends of the project. Commercial Buildings will be sited along roadway frontages with parking behind the buildings. (See: Figure No. 2 Conceptual Site Plan)

Public/Quasi-public uses will include a 13-acre elementary school site, a police substation within the core Neighborhood or Center Neighborhood districts and public park space. The Open Space District with pedestrian pathway networks will provide for connectivity, active park space, buffer areas, and separation of neighborhoods.

Pulelehua will provide a mixture of affordable and market rate rental for sale multi-family housing units (800 units) as well as for sale homes sites (100 lots) aimed at meeting the housing needs of the residents of West Maui. The community CC&Rs will preclude vacation rentals and housing uses within the project. Pulelehua has entered into a Residential Workforce Housing Agreement with the County of Maui ensuring that rental units will be set aside for low, very low, below moderate, and moderate-income residents.

Pulelehua will provide a variety of recreational and educational opportunities for its residents. These include a 10-acre community park to be dedicated to Maui County and a 13-acre school campus site. Multiple pocket parks located throughout the community will provide residents with additional recreation opportunities.

An integrated network of trails, sidewalks and multi-use facilities will connect residents to local retail, education and recreational opportunities reducing the number of vehicle trips within and outside of the community. Connections to the County's Maui Bus system will provide residents with additional opportunities to connect to destinations outside of the community. This will include local employment centers.

Pulelehua will preserve natural gulches and waterways throughout the community and will incorporate onsite stormwater quality basins to protect and enhance the water quality and watersheds within and adjacent to the project.

Approximately 40% (124 acres) of the Pulelehua community is designated as open space. These areas will provide opportunities to protect native flora and fauna and connect residents with the natural environment. They will also provide ample opportunities for views of the surrounding ocean and mountains. Native plant species will be utilized for landscaping throughout the community.

Pulelehua is located outside of the Tsunami Evacuation Zone and Extreme Tsunami Evacuation Zone. The project will provide access for evacuation routes for lower lying areas.

70 of the 700 rental units will be set aside as Live / Work units (60 market and 10 workforce). These rental units will allow residents to operate a small business from their home to meet the needs of the local community. An additional 70,000 +/- SF of commercial / retail space has been distributed throughout the community. These retail areas put 97% of all



residential units within a 5 min walk of retail. This further reduces the need for residents to venture outside of the community for basic services.

Pulelehua will provide housing alternatives for West Maui residents reducing the strain on local roads and reducing commute times for residents employed by local resorts and businesses.

Pulelehua will utilize solar energy to meet the electric needs for multi-family units and commercial buildings.

Pulelehua will provide its own water treatment facility to meet the needs of the community. Pulelehua will use reclaimed R-1 water, unless unavailable, to meet the fire and irrigation needs of the community significantly reducing the domestic water demand of the community. No demand will be placed on existing County facilities for water. In addition, Pulelehua will connect the Kapalua Airport to its new system providing the airport with dependable water services and further reducing the demand on existing County Facilities.

Pulelehua will incorporate traditional housing elements and local architectural styles into building architecture. These elements will be documented in project-wide design guidelines that will be developed for the community.

Together these elements enhance the livable nature of Pulelehua and support the growth of West Maui and its residents, consistent with the goals and objectives of the West Maui Community Plan.

197. Original Petitioner MLP will also continue to cooperate with the County to designate a 50-acre site mauka of the Kapalua-West Maui Airport and to the north of Pulelehua for development of a regional district park for West Maui. The County's Parks Department supports the parks plans for Pulelehua.

198. To satisfy affordable housing requirements imposed on Original Petitioner MLP's Kapalua Mauka development in LUC Docket No. A03-741 and on this docket, Petitioner Maui Oceanview LP will offer a variety of housing options to families of various income levels. Petitioner proposes to offer 300 (which includes 125 workforce rentals to satisfy Original Petitioner MLP's Kapalua Mauka commitment) of the 700 rental units for rent and 100 workforce housing units for sale to families earning less than 140 percent of the County of Maui's median income. Speculation in the resale of homes will be discouraged with strong buy backs and shared appreciation provisions.

The Housing Agreement between Maui Oceanview LP and Maui DHHC will include provisions to maintain the rents of the 300 units as affordable within HUD guidelines and will include language with buy back provisions. (2006 D&O, FOF ¶134).

199. Title 19 of the Maui County Code provides comprehensive zoning for the County. The purpose and intent of comprehensive zoning is to regulate the utilization of land in a manner encouraging orderly development and to promote and protect the health, safety and welfare of the people of the County. The Petitioner obtained Project District zoning for the Petition Area and the proposed project is subject to Chapter 19.93 West Maui Project District 5 (Pulelehua).

200. Section 19.93.010 Purpose and Intent, states:

“The purpose and intent of these standards is to create a compact, pedestrian-oriented, mixed use neighborhood where residential and community-related commercial and civic uses are within close proximity to each other. The planning concept is based on a study of historical Hawaiian towns and the principles of traditional neighborhood design.”

*Analysis:* As proposed, Pulelehua will provide a pedestrian-oriented, mixed use neighborhood where rental apartments, active recreational facilities, an elementary school, commercial and civic uses are proposed within proximity to each other and connected by an extensive onsite pedestrian path network. The planning concept for the proposed project is based on a study of the previous design and the Applicants market/business experience in building rental apartments.

201. Section 19.93.030 land use categories and acreage provides: “The following are established as the approximate acreage for the various land use categories within the West Maui project district”

DISTRICT	ACRES
Core neighborhood district	7
Central neighborhood district	20
General neighborhood district	83
Edge neighborhood district	48

Estate edge district	23
Workplace edge district	5
Open space district (Note this district includes a County owned retention basin)	124
TOTAL	310 acres

**Analysis:** The Applicant has prepared a District Allocation map identifying the location and size of proposed districts in conformance with Section 19.93.030 land use categories and acreage. (See: Figure No. 4 District Land Use Allocation Map) Similar to the approved Pulelehua Master plan the districts are dispersed throughout the total 310-acre site.

Section 19.93.040 Districts:

A. Core neighborhood district

**Analysis:** The Applicant has prepared a District Allocation map identifying the location and size of proposed districts in conformance with Section 19.93.040 District. (See: Figure No. 4 District Land Use Allocation Map) The proposed Core neighborhood district will contain the majority of project’s commercial space, which is the most intense land use within the proposed project. The Core neighborhood district is located on the south side of Akahele Street, which is the main entrance to Pulelehua.

B. Central neighborhood district

**Analysis:** The Central neighborhood district is proposed to contain a portion of the commercial space and rental apartments. The central neighborhood district is located adjacent to proposed commercial uses, residential units and the 10-acre active recreation Community Park space.

C. General neighborhood district

**Analysis:** The General neighborhood district occurs in 5 locations containing residential units and the elementary school, with adjacent open spaces. The majority of the general neighborhood district is located on either side of Akahele Street, which is the main entrance to Pulelehua. The district is also connected by the onsite trail network.

D. Edge neighborhood district

**Analysis:** The Edge neighborhood district is located on 48 acres of land at the north and south edges of the project site with adjacent open space. The applicant is proposing this district for 99 single family residences.

E. Estate edge district

**Analysis:** The Estate edge district is located adjacent to the Edge neighborhood district at the extreme northern edge of the project site. The applicant is proposing this district for one single family residence.

F. Workplace edge district

**Analysis:** As proposed the Workplace edge district is five acres in size and will not contain dwellings. The district may be developed as a “brightfield” (*brightfield means property covered by a solar photovoltaic energy system*) or will be maintained as a private open space. The Applicant is not proposing to develop this district with workshop uses. The Workplace edge district is located at the northern portion of the project site.

Any “Brightfield” development will be completed in compliance with FAA and State DOT Airports requirements.

G. Open space district

**Analysis:** Similar to the approved Pulelehua Master plan the open space district is the largest district and contains a county stormwater retention basin, active park space and on-site pedestrian pathway network.

Section 19.93.050 Additional standards for all districts.

*1. Density. No more than one thousand two hundred dwellings or dwelling units, including accessory dwellings, shall be developed in the Pulelehua project district.*

**Analysis:** The proposed project estimates 800 multifamily units and 100 single family units, and an additional 100 accessory dwelling/‘ohana units, as may be allowed by the County on the 100 single family lots.

*2. Design. Each building or structure within Pulelehua shall be designed to conform to the Pulelehua design guidelines which shall be approved by the urban design review board.*

**Analysis:** Each building or structure shall conform to the Pulelehua design guidelines to be adopted and approved by the urban design review board.

*3. Landscaping. A landscape planting plan shall be provided to specify plant species, sizes, quantities, and locations. Drought tolerant and/or slow growing hardy grasses, native and indigenous plants, shrubs, ground covers, and trees appropriate for local conditions shall be used to minimize the need for irrigation. Each landscape planted area shall be irrigated and maintained as needed. Landscape planting and irrigation plans shall be reviewed and approved by the department of planning.*

**Analysis:** The Applicant has retained a Landscape Architect to prepare a

landscape planting plan and irrigation plans for review and approval by the Department of Planning.

*4. Signs. A comprehensive sign plan shall be submitted for Pulelehua, subject to review and approval by the department of planning. The department of planning may refer the comprehensive sign plan to the urban design review board.*

**Analysis:** The Applicant has retained an Architect to prepare a comprehensive signage plan for review and approval by the Department of Planning.

*5. Special building elements. Special building elements, such as awnings/marquees, balconies, colonnades/arcades, porches, and outside open air dining, may project within the right-of-way, subject to Chapter 16.26, Maui County Code, as amended.*

**Analysis:** The Applicant acknowledges that special building elements are subject to Chapter 16.26 Maui County Code, as amended.

*6. Live/work mixed uses may be permitted only on live/work lots.*

**Analysis:** The Applicant acknowledges that live/work mixed uses are only permitted on live/work lots.

*7. A dwelling or dwelling unit shall not be used for fractional ownership or as a transient vacation rental, time-share unit or bed and breakfast home.*

**Analysis:** No dwelling or dwelling unit will be used for fractional ownership or as a transient vacation rental, time-share unit or bed and breakfast home.

*8. Parking requirements. The intent of these parking regulations is to encourage a balance between compact pedestrian oriented development and necessary car storage. Notwithstanding any provision in Chapter 19.36 of this Code to the contrary, the off-street parking requirements shall be as follows:*

*a. The mixed-use land pattern within Pulelehua fosters more pedestrian trips and fewer automobile trips than other more automobile dependent commercial districts in Maui County. Therefore, a thirty percent reduction in the required number of parking spaces stated below shall be applied to all non-residential uses.*

**Analysis:** The Applicant acknowledges this parking requirement for non-residential uses.

*b. When the computation of required parking spaces results in a fractional number of spaces, the number of spaces required shall be rounded up to the nearest whole number when a fraction of a space is greater than or equal to .5 and rounded down when a fraction of a space is less than .5.*

**Analysis:** The Applicant acknowledges this requirement for calculating parking spaces.

## Conditions of Zoning

202. The Maui County Council adopted Ordinance No. 3889 in 2011 to change the zoning for the Pulelehua project area from Agricultural District to the West Maui Project District 5 (Pulelehua). Consistent with Ordinance No 3889, the Pulelehua development is subject to the following seventeen (17) conditions:

1. *That Maui Land & Pineapple Company, Inc. shall comply with the affordable housing provisions of Chapter 2.96, Maui County Code. In addition, Maui Land & Pineapple Company, Inc. shall construct the 125 units required by the State Land Use Commission Order filed on June 30, 2006, for Kapalua Mauka.*

**Analysis:** The Applicant proposes to comply with the affordable housing provisions of Chapter 2.96, Maui County Code.

2. *That Maui Land & Pineapple Company, Inc. shall provide potable and non-potable water source, storage and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply.*

**Analysis:** The Applicant will provide potable and non-potable water source, storage and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply.

3. *That Maui Land & Pineapple Company, Inc. shall notify potential lot owners of the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which normal farming activities may be considered a nuisance.*

**Analysis:** The Applicant will notify potential lot owners of the Hawaii Right-to-Farm Act.

4. *That Maui Land & Pineapple Company, Inc. shall construct a 400 square-foot police substation in the Center Neighborhood District that includes a restroom, or provide an in-lieu cash contribution for the construction of a new West Maui Police Station, as determined by the Maui County Police Department.*

**Analysis:** The Applicant will provide an adequate location for a Police substation within the Center Neighborhood District. The Applicant will work with the Police department to identify the optimal location or will provide cash in-lieu of construction. Maui Oceanview LP presently understands the Police department does not require the proposed facility but will make it available if so requested.

5. *That Maui Land & Pineapple Company, Inc. shall contribute land for the development of a public elementary school to the State of Hawaii Department of Education ("DOE") along with a cash contribution as determined by the DOE on a fair share basis, pursuant to the education contribution agreement for Pulelehua executed on June 16, 2006 by DOE and Maui Land & Pineapple Company, Inc. In addition to the education contribution agreement, Maui Land & Pineapple Company, Inc. shall: dedicate an additional amount of land, contiguous with the land provided for in the educational contribution agreement, so that the DOE will receive a total of 13 acres; and include the land dedicated in the contribution agreement, to be used toward the development of one (1) elementary school within the project to serve the region.*

**Analysis:** The Applicant will provide the 13-acre school site for a DOE elementary school site in the location selected by DOE.

6. *That Maui Land & Pineapple Company, Inc. shall pursue alternatives with the DOE for the design and construction of the elementary school in Pulelehua. Such alternatives shall include, but not be limited to, a design-build arrangement whereby Maui Land & Pineapple Company, Inc., or a third party on Maui Land & Pineapple Company, Inc.'s behalf, may undertake the design and construction of public school facilities, subject to approval and reimbursement by the State of Hawaii, in order to expedite the delivery of school facilities.*

**Analysis:** The Applicant will continue to communicate with the DOE and consider design and construction alternatives for the proposed elementary school. Based on community engagement discussions and meetings, Maui Oceanview LP has committed to meeting with local Maui developers who have constructed schools for the public-school system on Maui in the past.

7. *That, as represented by Maui Land & Pineapple Company, Inc., a voluntary contribution for road and traffic improvements in the West Maui Community Plan area shall be provided by Maui Land & Pineapple Company, Inc. to the County of Maui for all non-affordable dwelling units or lots developed at Pulelehua, at the rate of \$3,500 for each single family market unit or lot and gap group unit and \$1,500 for each multi-family market unit and gap group unit in the West Maui Project District 5 (Pulelehua), or the then prevailing County rate, whichever is higher. This contribution shall be made prior to issuance of a building permit. An agreement between Maui Land & Pineapple Company, Inc. and the County of Maui shall be executed and recorded setting forth the terms and conditions of the voluntary contribution prior to Phase II Project District approval.*

**Analysis:** The applicant will provide a voluntary contribution for road and traffic improvements in the West Maui Community Plan area to the County of Maui for all non-affordable dwelling units or lots developed at Pulelehua, at the rate of \$3,500 for each single family market unit or lot and gap group unit and \$1,500 for each multi-family market unit and gap group unit in the West Maui Project District 5 (Pulelehua), or the then prevailing County rate, subject to appropriate offsets, whichever is higher.

The contribution will be made prior to issuance of a building permit. An agreement between the Applicant and the County of Maui will be executed and recorded setting forth the terms and conditions of the voluntary contribution prior to Phase II Project

District approval.

*8. That Maui Land & Pineapple Company, Inc. shall: resolve the issue of the number of approved access points from Pulelehua to Honoapi'ilani Highway with the State Department of Transportation ("DOT") prior to public hearing on any Project District Phase II application for Pulelehua; and execute an agreement with the DOT Airports Division to utilize Akahele Street prior to Project District Phase II approval by the Maui Planning Commission.*

**Analysis:**

The Applicant will:

- (1) resolve the issue of the number of approved access points from Pulelehua to Honoapi'ilani Highway with the State Department of Transportation ("DOT") prior to public hearing on any Project District Phase II application for Pulelehua; and
- (2) execute an agreement with the DOT Airports Division to utilize Akahele Street prior to Project District Phase II approval by the Maui Planning Commission.

*9. That Maui Land & Pineapple Company, Inc. shall comply with requirements of the DOT to mitigate impacts associated with the development of Pulelehua, which may include, but not be limited to, traffic mitigation measures, roadway and intersection improvements, including roundabouts or signalization and pedestrian facilities, road widening for access to and use of Honoapi'ilani Highway and dedication of land within Pulelehua to accommodate the right-of-way for the Lahaina bypass as determined by and to the satisfaction of the DOT.*

**Analysis:** The Applicant will comply with requirements of the DOT to mitigate impacts associated with the development of Pulelehua, which may include, but not be limited to, traffic mitigation measures, roadway and intersection improvements, including roundabouts or signalization and pedestrian facilities, road widening for access to and use of Honoapi'ilani Highway and dedication of land within Pulelehua to accommodate the right-of-way for the Lahaina bypass as determined by and to the satisfaction of the DOT.

*10. That whenever a 4-way stop or traffic signal is considered as a means of traffic control at an intersection within the project, roundabouts that meet current federal standards must be deemed unwarranted prior to installing either a 4-way stop or traffic signal.*

**Analysis:** Whenever a 4-way stop or traffic signal is considered as a means of traffic control at an intersection within the project, roundabouts that meet current federal standards must be deemed unwarranted prior to installing either a 4-way stop or traffic signal.

*11. That Maui Land & Pineapple Company, Inc. shall notify all prospective buyers and/or lessees of the property of potential adverse impacts of aircraft and airport activity from the adjacent Kapalua-West Maui Airport, including but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations. Maui Land & Pineapple Company, Inc., shall provide covenants in the deed to initial purchasers releasing the County of Maui, State of Hawaii and the United States Government from all liability related to aircraft and airport activity from the adjacent*



*Kapalua- West Maui Airport, including but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.*

**Analysis:** The Applicant will notify all prospective buyers and/or lessees of the property of potential adverse impacts of aircraft and airport activity from the adjacent Kapalua- West Maui Airport. The Applicant will provide covenants in the deed to initial purchasers releasing the County of Maui, State of Hawaii and the United States Government from all liability related to aircraft and airport activity from the adjacent Kapalua- West Maui Airport.

*12. That Maui Land & Pineapple Company, Inc., shall plan and prepare for lateral roadway connections from the Property to adjoining lands in cooperation with the respective neighboring landowners to provide potential alternate roadway routes to improve transportation capabilities in the area.*

**Analysis:** the conceptual site plan provides future lateral roadway connection openings to adjacent lands.

*13. That the two 5-acre parks within Pulelehua shall be privately owned, maintained and dedicated for public use. The two 5-acre parks shall be developed to the satisfaction of the Department of Parks and Recreation in fulfillment of the Park Dedication ordinance.*

**Analysis:** The Applicant has met with the Maui County Department of Parks and Recreation. The Department determined it preferred the two, 5-acre parks be consolidated into a single 10-acre Community Park space with active sports fields, parking and comfort station. The dedication of the active park with amenities will fulfill the Applicants requirement of the park dedication ordinance.

*14. That all other park sites within Pulelehua serving community, recreational, and neighborhood use shall be privately owned and maintained.*

**Analysis:** The Applicant concurs that all other park sites within Pulelehua serving community, recreational, and neighborhood use will be privately owned and maintained.

*15. That Maui Land & Pineapple Company, Inc. designate and offer for sale to the County of Maui, at agricultural land rates, a 50-acre park site presently identified in the West Maui Community Plan at an alternate site mauka of the Honoapi'ilani Highway and along the Honoapi'ilani Highway in the vicinity of residential uses. The 50-acre park site shall be determined during the Community Plan Update process, provided that the park site not be located mauka of the Kapalua West Maui Airport.*

**Analysis:** The Applicant's predecessor, Maui Land & Pineapple Company, Inc. will designate and offer for sale to the County of Maui, at agricultural land rates, a 50-acre park site presently identified in the West Maui Community Plan at an alternate site mauka of the Honoapi'ilani Highway and in the vicinity of residential uses. The 50-acre park site shall be determined during the 2018 West Maui Community Plan Update process. The park site shall not be located mauka of the Kapalua West Maui Airport.

16. *That Maui Land & Pineapple Company, Inc. shall construct a private wastewater treatment plant, as approved by the Department of Health in the event the County of Maui's Lahaina Wastewater Reclamation Facility ("LWWRF") does not have the capacity or cannot be expanded to service Pulelehua. If Maui Land & Pineapple Company, Inc. connects to the LWWRF, it shall pay a fair-share contribution, as determined by the County, to fund improvements at the LWWRF necessary to accommodate the additional flow, and construct wastewater transmission facilities to transport wastewater from Pulelehua to the appropriate County wastewater transmission facilities leading to the LWWRF. The fair-share contribution shall be paid prior to the issuance of the first building permit requiring a connection to the LWWRF for Pulelehua.*

**Analysis:** If the Applicant connects to the LWWRF, it will pay a fair-share contribution, as determined by the County, to fund improvements at the LWWRF necessary to accommodate the additional flow, and construct wastewater transmission facilities to transport wastewater from Pulelehua to the appropriate County wastewater transmission facilities leading to the LWWRF. The fair-share contribution shall be paid prior to the issuance of the first building permit requiring a connection to the LWWRF for Pulelehua. Alternatively, Maui Oceanview LP may develop a private wastewater treatment plant to be operated by qualified operators, with the wastewater treatment plant using a system similar to or better than the system proposed by Waikapu Country Town, using organic membrane-type technology and no injection wells.

17. *That Maui Land & Pineapple Company, Inc. shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions imposed, commencing within one year of the effective date of the ordinance.*

**Analysis:** The Applicant has provided compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions imposed.

#### SUPPLEMENTAL EIS AND GOOD CAUSE

203. Permitting, development, buildout, and sale of Pulelehua are 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. Petitioner is planning to develop infrastructure for the Project as a single integrated system. Therefore, incremental redistricting would be inappropriate for Pulelehua. (2006 D&O, FOF ¶135).

204. On November 15, 2019, Petitioner Maui Oceanview LP submitted additional information in support of the motion and briefed the Commission on the Supplemental EIS and “good

cause” questions raised in the Commission’s motion to defer.

205. Petitioner Maui Oceanview LP argued the Final EIS remains valid without the need to process a supplement EIS.

206. 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.

207. The Hawaii Supreme Court, in Unite Here! Local 5 v. County of Honolulu, has indicated that a supplement EIS is required when a “project constitutes an ‘essentially different action.’” 123 Haw. 150, 179, 231 P.3d 423, 450 (2010). However, it has also 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)).

208. Development of Pulelehua seeks to 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, with a mixture of single family and multi-family units, a school, parks, trails, walkways and roadways, live/work units and retail space,

with 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, Maui Oceanview anticipates that Pulelehua will be developed in phases stretching out over a ten- or eleven-year period.

209. Pulelehua, as proposed by Petitioner Maui Oceanview LP remains a housing development (but with a maximum density of 1000 units which is 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, 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.

210. The Final EIS analyzed a project with generally greater impacts. As discussed above, 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.).

211. Petitioner Maui Oceanview LP’s various consultants analyzed the Final EIS and show 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).

212. 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).

213. 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 states, “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 where 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, unless unavailable, 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, unless unavailable, for non-potable landscape irrigation and fire flow purposes. Paul Cheng Decl., ¶11. Alternatively, Maui Oceanview LP may develop a private wastewater treatment plant to be operated by qualified operators, with the wastewater treatment plant using a system similar to or better than the system proposed by Waikapu Country Town, using organic membrane-type technology and no injection wells. (Sixth Memo. Supp., Paul Cheng Decl., ¶12).

214. In the time since the approved TIAR in 2009 prepared by the Original Petitioner MLP to the TIAR prepared for Petitioner Maui Oceanview LP— approximately an 8 to 10 year period, Petitioner Maui Oceanview’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).

215. 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).

216. Haw. Admin. Rules §15-15-94 provides:

(a). If a petitioner, pursuant to this subsection, desires to have a modification or deletion of a condition that was imposed but eh 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. . . .

and Haw. Admin. Rules §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.

217. Good cause to amend 2006 D&O exists due to changes in market conditions impacting local working families.

218. As discussed in the original 2006 D&O, much of the housing in West Maui has been aimed at the higher end purchaser and during the time since the boundary petition, the need for rental housing in an area where jobs are filled by Maui residents that 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. (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 into 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).

219. 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)” and includes a graph showing shortages faced even by renter households at 80% of AMI and 100% of AMI. (Sixth Supp. Memo., EXH. W-3).

220. 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. (See 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.” (See Sixth Supp. Memo., EXH. W-2, p. 61). The County reports “[i]n 2017, there were 13,318 housing units in West Maui, a 12% increase from 2010.” (EXH. W, p. 4). However, “[o]nly 31% 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).

221. 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 most of the streets and walkways ADA accessible.
- A 10-ac community park will include soccer and baseball fields
- Over 20 community pocket parks will provide additional recreation opportunities for residents.
- Approximately 40% of the MOV 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).

222. Further, 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

(See 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).

223. The Commission has good cause to amend the 2006 D&O to allow the current project which addresses the need for additional rental and workforce housing inventory in West Maui.

### **RULING ON PROPOSED FINDINGS OF FACT**

Any of the proposed findings of fact submitted by Petitioner or any other party not already ruled upon by the Commission by adoption, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

Any conclusion of law improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

### **CONCLUSIONS OF LAW**

1. In 2006, the Commission, pursuant to chapter 205, HRS, and the Commission Rules under chapter 15-15, HAR, and upon consideration of the Commission decision making criteria under section 205-17, HRS, found upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 310.440 acres of land at Mahinahina and Kahana, Lahaina, Maui, Hawai'i, and identified as TMK: 4-3-01: por. 31 and 79, from the State Land Use Agricultural District to the State Land Use Urban District for the development of Pulelehua, subject to the conditions in the 2006 D&O, conformed to the standards for establishing the Urban District boundaries, was reasonable, did not violate section 205-2, HRS, and was consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS. (2006 D&O, Conclusion of Law [“COL”] ¶1).

2. Article XII, Section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights: The State reaffirms and

shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. (2006 D&O, COL ¶2).

3. In 2006, the Commission found no significant archaeological sites were encountered during the archaeological inventory surveys of the Petition Area. (2006 D&O, COL ¶3). Original Petitioner MLP confirmed that in the time since the 2006 D&O, no changes have occurred disturbing areas identified as locations for historic properties. (Sixth Supp. Memo., EXH. E-1).

4. In 2006, the Commission found the Petition Area was set well back from the coast, had no surface water, and no unique topographic features. There were no commoner land claims within the Petition Area. There was no evidence that native Hawaiians utilized the Petition Area for gathering or any cultural or religious purposes. (2006 D&O, COL ¶4).

5. Article XI, Section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. (2006 D&O, COL ¶5).

6. In 2006, the Commission found there were no naturally growing endangered or threatened species of flora nor any species of concern on the Petition Area. (2006 D&O, COL ¶6).

7. There is no critical habitat of any endangered or threatened species of bird, mammal, or insect nor any critical habitat of any species of fauna proposed as a candidate for listing as an endangered or threatened species on the Petition Area. (2006 D&O, COL ¶7)

8. The ambient air quality of the Petition Area and the surrounding communities is anticipated to be adversely impacted from fugitive dust during the construction phase of Pulelehua. A dust control plan that would include watering of active work areas and the use of wind screens in sensitive areas will be employed to minimize the potential for fugitive dust emissions. (2006 D&O, COL ¶8).

9. Based on the relatively small increases in predicted concentrations from Pulelehua's traffic and continued compliance with national standards, air quality mitigation measures for long-term traffic related impacts from the development are unnecessary. (2006 D&O, COL ¶9).

10. The development of Pulelehua will alter the existing views from lands makai of the Petition Area. However, most distant views of the Petition Area and the West Maui mountains as well as makai views of the ocean from the Petition Area will not be impeded. (2006 D&O, COL ¶10).

11. Article XI, Section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. (2006 D&O, COL ¶11).

12. In 2006, while the Commission recognized development of Pulelehua would eliminate continuation of plantation agriculture on the Petition Area or the possibility of using these areas for diversified agriculture, it found Pulelehua's urbanization would not adversely impact growth of diversified agriculture in West Maui in particular, or on Maui, as a whole. There remains ample agricultural land available on Maui for diversified agriculture because of the closure of the sugar plantations. (2006 D&O, COL ¶12).

13. Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect the use of Hawai'i's water resources for the benefit of its people.

(2006 D&O, COL ¶13).

14. The Commission found development of the Pulelehua would not adversely affect stream flows of Honokohau Stream. At the time, there was presently sufficient water flowing through Honolua Ditch to accommodate the additional 2.0 MGD proposed to be treated by the DWS, including water to serve the potable water requirements of Pulelehua, without diverting additional water from Honokohau Stream. In the alternative, the Commission recognized that should Petitioner Maui Oceanview LP elect to draw potable water from new wells or existing wells used by Hawaii Water Service, the potable water requirements of Pulelehua will not adversely affect recharge of the Honolua or Honokowai Aquifers. Petitioner Maui Oceanview LP will use R-1 treated water, unless unavailable, for non-potable requirements. (See 2006 D&O, COL ¶14).

15. Original Petitioner MLP prepared and processed a Final Environmental Impact Statement (“Final EIS”) in connection with the Petition. The Final EIS remains valid and adequate and no supplemental EIS is required.

16. The Commission finds that the growth of the need for rental housing on Maui and West Maui, in particular, open space and less ground disturbance and grading, in Maui Oceanview LP’s proposed layout, and support from the West Maui community for the revised mix of unit types, provides good cause for amending the conditions of the 2006 D&O.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area in Docket No. A04- 751, consisting of approximately 310.440 acres of land in the State Land Use Agricultural District located at Mahinahina and Kahana, Lahaina, Maui, Hawai'i, identified as TMK: 4-3-01: por. 82 and 83, and approximately shown on Exhibit “A,” attached hereto and incorporated by reference herein, shall be

and is hereby reclassified to the State Land Use Urban District, and the State Land Use District boundary shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS HEREBY FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions which shall replace the previously recorded conditions of the 2006 D&O in their entirety :

**1. Affordable Housing.** Petitioner shall do the following to provide affordable housing opportunities for low, low-moderate, moderate and gap group income residents of the State of Hawaii consistent with the County of Maui Residential Workforce Housing Policy, Chapter 2.96, Maui County Code, and a Housing Agreement with the County of Maui Department of Housing and Human Concerns (DHHC), and its representations in this docket:

- a. Petitioner shall develop and offer for rent not less than 125 affordable housing units to qualified families or individuals to satisfy a condition imposed by the Commission in its approval of Original Petitioner\_MLP's Kapalua Mauka development in LUC Docket No. A03-741. Maui Oceanview LP acknowledges that it will fulfill this obligation of Original Petitioner (MLP).
- b. Petitioner shall develop and offer for rent not less than 300 affordable (or workforce) housing units, which total includes the 125 Kapalua Mauka units, to low, low-moderate, and moderate income residents of Maui as a feature of Pulelehua in accordance with the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code and an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC. The workforce rental units will remain workforce

rental units pursuant to Chapter 2.96, Maui County Code for no less than 30 years with the County of Maui have the right of first refusal to purchase the units after that time. Petitioner shall prohibit the assessment of homeowners' association fees to workforce housing renters of multi-family workforce housing rental units and accessory dwelling units.

- c. Petitioner will develop and offer for sale not less than 100 workforce housing units, to low, low-moderate, moderate and above-moderate residents of Maui as a feature of Pulelehua in accordance with the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code and an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC. The workforce rental units will remain workforce rental units pursuant to Chapter 2.96, Maui County Code for no less than 30 years with the County of Maui have the right of first refusal to purchase the units after that time. Petitioner will offer for sale, at the cost of development (which includes the pro-rata cost of the land, planning and infrastructure improvements), three (3) of the workforce housing lots to a non-profit organization in the business of developing and maintaining affordable housing.
- d. To ensure continued rental to qualified low, low-moderate and moderate income residents and maintain the affordable rental housing inventory within Pulelehua, Petitioner shall prior to the rental of any affordable housing unit comply with County-approved restrictions governing the rental-or transfer of all affordable housing units as set out in an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC. To ensure continued sale to qualified low, low-moderate, moderate and above-moderate income residents and maintain the affordable (workforce) housing inventory within Pulelehua, Petitioner shall prior to the sale of any affordable housing unit comply with County-approved restrictions governing the sale or transfer of all affordable housing units as set out in an amended Residential Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units – Rental with Maui DHHC.
- e. To ensure that accessory dwelling/'ohana units to be constructed on single family lots offered for sale at Pulelehua become part of the workforce housing inventory in West Maui, Petitioner will impose a deed restriction in perpetuity limiting third-party/ non-related rental of accessory dwelling/'ohana units to workforce housing rental rates as set out in an amended Workforce Housing Agreement Pulelehua Multi-Family Dwelling Units-Rental with Maui DHHC.
- f. Petitioner will prohibit transient vacation rental use, including bed and breakfasts in multi-family dwelling units. Petitioner will impose a deed restriction prohibiting transient vacation rental use, including bed and breakfasts on any single-family lots offered for sale at Pulelehua.



- g. Petitioner shall establish at a minimum, qualifications for the renter or purchaser pursuant to Chapter 2.96, Maui County Code.

**2. Public School Facilities.** Petitioner shall contribute to the development, funding, and/or construction of public-school facilities, on a fair-share basis, pursuant to an Education Contribution Agreement for Pulelehua executed between Petitioner and the DOE. The Education Contribution Agreement shall provide for the dedication of land and/or other consideration to be applied to the construction of a public elementary school in Pulelehua. Petitioner shall file the Education Contribution Agreement and any subsequent amendments with the Commission after it has been executed by Petitioner and the DOE. Petitioner shall also submit copies of all executed Education Contribution Agreements to the County of Maui prior to the Council approving an ordinance amending the West Maui Community Plan Land Use Map designation for Pulelehua.

Petitioner shall pursue the feasibility of alternatives with the DOE or private contractors or developers who have experience with public school projects to expedite the design and construction of the public elementary school in Pulelehua. Such alternatives may include a design-build agreement whereby Petitioner would agree to design and build public school facilities for a sum to be paid by the DOE.

**3. Wastewater Facilities.** Provided the County of Maui has capacity to treat wastewater from Pulelehua, Petitioner shall connect to County facilities in accordance with an agreement for service with the County. Alternatively, Petitioner may develop a private wastewater treatment plant that uses comparable membrane filtering technology as proposed in the Waikapu Country Town project in the County of Maui.

- 4. Akahele Street.** Petitioner shall enter into an agreement with the DOT,

Airports Division, under terms and conditions acceptable to the DOT, for access to and use of Akahele Street. Petitioner acknowledges, understands, and agrees that Petitioner's obligation and responsibilities in an agreement can extend to, but not be limited to, design and construction of the roadway improvements and intersections, compliance with Kapalua-West Maui Airport security programs, and upkeep and maintenance of Akahele Street.

**5. Transportation Improvements.** Petitioner shall submit a revised TIAR for Pulelehua to the DOT and to the County of Maui Department of Public Works for their review and acceptance prior to the start of construction for Scenario three (Phases 3, 4, and 5). The updated TIAR shall also verify the validity of recommended improvements related to the new elementary school operation anticipated to be completed by approximately 2035 (Phase 4). To the satisfaction of DOT, as recommended or required in the accepted TIAR, the Petitioner shall construct and ensure operation of all improvements related to the State Honoapiilani Highway for each phase/scenario prior to the first Certificate of Occupancy for the associated phases. Petitioner shall coordinate with DOT to provide any necessary roadway setbacks for future roadway improvements on the State Honoapiilani Highway.

Petitioner shall submit an application to the appropriate County of Maui agency to approve placing two (2) covered bus stops and shall install such bus stops in the manner required by the County of Maui.

**6. Regional Highway Contribution.** Petitioner shall apply its regional highway pro-rate contributions to the nearby Lahaina Bypass for the construction of Phase 1C (resulting from the total calculation of Phase 1A, 1B-1, 1B-2, and 1C). The Petitioner shall meet with DOT to determine the specific contribution amount and timetable that is mutually agreeable to DOT.

**7. Roadway Connectivity and Regional Circulation.** Petitioner shall plan and prepare for lateral (in general parallel to the coastline and fronting the highway) roadway connections from the Petition Area to adjoining lands in cooperation with the respective neighboring landowner(s) to provide potential alternate roadway routes to improve transportation capabilities in the area. Petitioner shall facilitate and promote the need for a Regional Traffic Circulation Plan from the County government to assist Petitioner and the DOT in determining roadway connections from the Petition Area to other adjoining lands and to existing roads and highways.

**8. Traffic Fair-Share Contribution.** Petitioner and the County of Maui shall enter into an agreement which establishes a Traffic Fair-Share or Voluntary Contribution to be paid by Petitioner to mitigate the traffic-related impact generated by the development of Pulelehua. A copy of the executed agreement shall be filed with the Commission prior to the occupancy of any unit within Pulelehua. The agreement shall provide that Petitioner shall in the order specified below:

- a) pay the fee calculated pursuant to chapter 14.62, Maui County Code ("MCC"), Impact Fees for Traffic and Roadway Improvements in West Maui, Hawai'i; however, if there is a written agreement between the County of Maui and the State of Hawai'i specified by section 14.62.080 MCC, the County shall share the funds collected from Petitioner with the State in accordance with this written agreement; or
- b) make a voluntary contribution to the County of Maui in an amount equivalent to the above referenced fee upon issuance of a building permit for each dwelling; or
- c) pay the above referenced fee to the State pursuant to the enactment of State legislation authorizing such payment.

The above referenced fee or voluntary contribution will be applied towards the funding, design, and construction of local and regional transportation improvements and programs necessitated by the proposed development of the Petition Area, but in any event neither the traffic fair-share nor the voluntary contribution will exceed the greater of (a) \$4,000 per market priced and gap group priced single-family unit or lot developed on the Petition Area, and \$2,000 per market

priced and gap group priced multi-family unit developed on the Petition Area, or (b) the traffic impact fee established for a market priced and gap group priced single-family and multi-family unit pursuant to Maui County Code chapter 14.62 at the time a building permit is issued.

**9. Civil Defense.** Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and the County of Maui Civil Defense Agency.

**10. Archaeological Inventory Survey and Historic Preservation Mitigation Plan.** Petitioner shall comply with the conditions recommended by the DLNR, SHPD, on March 3, 2005, regarding revisions to Petitioner's archaeological inventory survey and approval of an acceptable monitoring plan in the general vicinity of historic sites on the Petition Area prior to commencement of any ground altering activities.

**11. Previously Unidentified Burial/Archaeological/Historic Sites.** Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.

**12. Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program if required by the DOH.

**13. Notification of Noise.** Petitioner shall notify and disclose to all

prospective buyers and/or lessees of the Petition Area, in accordance with State law, the potential adverse impacts of aircraft and airport activity from the adjacent Kapalua West Maui Airport, such as but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations. Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, whereby buyers and lessees and other future owners, lessees, or occupants will release the State of Hawai'i from and against all claims, liability, and losses resulting from aircraft and airport operations, provided that the State of Hawai'i shall not be released from its negligence.

**14. Airport Infrastructure.** Petitioner shall provide and be responsible at its costs for any relocation, change, repair, or alteration to existing airport utility, service, and related infrastructure lines and equipment affected by Petitioner's Project, located in or surrounded by the Petition Area, to the satisfaction of the DOT.

**15. Sound Attenuation.** Petitioner shall employ the following noise mitigation measures: Petitioner shall follow the Maximum Operation Scenario in its noise study and place residential units and similar noise sensitive uses outside the 60 DNL (toward lesser DNL) noise contour. Residential units and similar noise sensitive uses located in between the 55 to 60 DNL noise contours should be properly designed and constructed to meet, at a minimum, Federal EPA residential interior noise standards. Industrial commercial-business type uses, if located in the 60-65 or higher noise contours, containing noise sensitive uses (e.g., rest area, offices, etc.) should have the noise sensitive area properly designed and constructed to meet, at a minimum, applicable Federal EPA interior noise standards.

**16. Runway Safety, Protection, and Use.** Petitioner acknowledges that portions of the Petition Area lay within, or are subject to, the airport runway safety and protection

areas (the RPZ, the RSA, and the ROFA) required by the FAA at the Kapalua-West Maui Airport. Petitioner agrees to comply with FAA requirements and cooperate with the DOT for the documentation and recordation of the safety and protection areas. Petitioner agrees to provide the DOT access in order that the DOT may undertake mitigation measures (grading, lengthening, alteration, or improvement) to bring the safety and protection areas up to FAA standards. Petitioner will sell an aviation easement on the affected lands in favor of the State of Hawai'i.

**17. Hazards to Aircraft Operations.** **a.** Petitioner shall take appropriate measures to fund and implement a program to control any bird nesting or gathering and any insect, pest, or wildlife infestation, especially in any drainage retention basins serving the Petition Area and in any portion of the Petition Area in the RSA, RPZ, and ROFA, or abutting the Kapalua-West Maui Airport to minimize the hazards to aircraft operations, as deemed necessary by the DOT, Airports Division. **b.** Petitioner, prior to developing and siting any proposed solar energy facilities in any portion of the Petition Area in the RSA, RPZ, and ROFA, or abutting the Kapalua-West Maui Airport, which DOT deems solar reflectivity may be an aviation safety issue, shall fund and conduct a glint and glare analysis, as deemed necessary by the DOT to minimize hazards to aircraft operations, and follow DOT recommendations and guidelines.

**18. Drainage.** Petitioner shall fund the design and construction of drainage system improvements to prevent runoff resulting from the development of the Petition Area from adversely affecting State airport and highway facilities to the satisfaction of appropriate State and County agencies, based on one hour of runoff from a 50-year storm.

**19. Notification of Potential Nuisances.** Petitioner shall disclose to all prospective buyers and/or lessees of the Petition Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands.

**20. Provisions of the Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District adjacent to the Petition Area.

**21. Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the DOH and the DPWEM to conform to the program goals and objectives of chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities, including recycling bins in public places, such as schools and parks, if any, within the proposed development.

**22. Water Resources Allocation.** Petitioner shall provide adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed development. Petitioner primarily shall utilize R-1 water, unless unavailable, for irrigation and fire flow protection.

**23. Established Access Rights Protected.** Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area for access to other areas to exercise subsistence, cultural, and religious practices.

**24. Best Management Practices.** Petitioner shall implement applicable best management practices applicable to each proposed land use to reduce or eliminate soil erosion and groundwater pollution, and effect dust control measures during and after the development process in accordance with the DOH guidelines.

**25. Soil Analysis.** Petitioner shall conduct a soil analysis study of the Petition

Area to determine the impact of the Project from fertilizer and pesticide residue that may be present on the Petition Area and undertake measures to abate and remove any hazardous materials identified.

**26. Water Conservation Measures.** Petitioner shall implement water conservation measures and best management practices, such as use of indigenous and drought tolerant plants and turf and incorporate such measures into common area landscape planting.

**27. Energy Conservation Measures.** Petitioner shall implement energy conservation measures as much as economically feasible such as use of solar energy and solar heating and incorporate such measures into the Project where technically feasible.

**28. Parks.** Petitioner shall develop a 10-acre Community Park to be dedicated to the County of Maui, and pocket parks throughout Pulelehua with a system of sidewalks and walking trails connecting one end of the community to the other to be maintained by the Pulelehua community association. At least one of the pocket parks will include pet friendly features and Petitioner will establish a fenced dog park by the time 400 multi-family units are built and occupied at Pulelehua.

**29. Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification or change to a more appropriate classification.

**30. Notice of Change to Ownership Interests.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.

**31. Annual Reports.** Petitioner shall provide timely and without any prior notice, annual reports to the Commission, the OP, and the Planning Department in connection with the status of the development proposed for the Petition Area, and Petitioner's progress in complying



with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

**32. Non-Applicability of Conditions to County of Maui.** While the drainage basin owned by the County of Maui is included in the Project acreage covered by this motion, the conditions set out in this order shall not be applicable to the County of Maui.

**33. Release of Conditions Imposed by the Commission.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

**34. Statement of Imposition of Conditions.** Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) shall file a copy of such recorded statement with the Commission.

**35. Recording of Conditions.** Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR

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ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as conforming to the vote taken on Maui on \_\_\_\_\_, 20\_\_\_\_. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Any person aggrieved by this decision and order may seek judicial review in

accordance with the provisions of HRS section 91-4.

Done at Maui, Hawai'i, this [ ] day of \_\_\_\_\_, 20\_\_\_\_, per motion on  
\_\_\_\_\_, 20\_\_\_\_.