

Maui Oceanview LP
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Mr. Daniel E. Orodener, Executive Officer
Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii
PO Box 2359
Honolulu, HI 96804-2359

Mrs Mary Alice Evans, Director
Ms. Katia Balassiano, Planning Program Administrator I-
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PO Box 2359
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Kate Blystone, Director
Department of Planning County of Maui
One Main Plaza #315
2200 Main Street
Wailuku, HI 96793-2155

July 15, 2024

Re: **2023 Annual Report for LUC Docket No. A04-751**
Petition of Maui Oceanview LP, Mahinahina and Kahana, Lahaina, Maui, Hawaii
TMKs (2) 4-3-001-082 & 083 [previously (2) 4-3-01: por. 31]

Dear Mr. Orodener, Mrs Evans, Ms. Balassiano, and Ms. Blystone:

Pursuant to Condition No. 31 in the July 30, 2020 Stipulated Amended Findings of Fact, Conclusions of Law, and Decision and Order (“2020 Amended D & O”) for the above referenced docket, Maui Oceanview LP, is pleased to provide this report to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department concerning the current status of compliance with the conditions of approval. This report covers the period where the CWRM designation of Water Management District status for West Maui as well as the Lahaina Fires conditions and resulting emergency requirements limited certain activities regarding moving the project forward.

General Project Progress:

The Land Use Commission of the State of Hawaii ("LUC" or "the Commission") approved Maui Land and Pineapple's ("MLP's") petition to reclassify approximately 310 acres of land at Mahinahina and Kahana, Lahaina, Maui, Hawaii from Agricultural to Urban for the Pulelehua project on June 22, 2006. The Commission's June 30, 2006 Decision and Order ("D&O") sets forth thirty-two (32) conditions of approval regarding the reclassification.

Since the LUC's 2006 approval, the previous owner MLP received several major discretionary governmental approvals for the Pulelehua project. On November 18, 2011, County of Maui Mayor Alan M. Arakawa approved:

- Bill No. 62 (2011), designated as Ordinance No. 3887, which amended the West Maui Community Plan Land Use Map from Agriculture, Park, and Open Space to West Maui Project District 5 (Pulelehua) for TMKs (2) 4-3-001-082 & 083 (previously (2) 4-3-01: por. 31);
- Bill No. 63 (2011), designated as Ordinance No. 3888, which amended Title 19, Maui County Code, by adding a new chapter designated as Chapter 19.93, West Maui Project District 5 (Pulelehua); and
- Bill No. 64 (2011), designated as Ordinance No. 3889, which granted a change in zoning from the County Agricultural District to West Maui Project District 5 (Pulelehua) (Conditional Zoning) for TMKs (2) 4-3-001-082 & 083 (previously (2) 4-3-01: por. 31).

On November 22, 2017, Maui Oceanview LP filed with the Commission a motion to amend the D&O. On August 28, 2018, June 21, 2019, August 27, 2019, September 16, 2019 and September 19, 2019, Maui Oceanview LP submitted additional filings to the Commission in support of the motion to amend. By stipulations, Maui Oceanview LP, the State of Hawaii Office of Planning ("OP") and the County of Maui Department of Planning ("Maui Planning") agreed to additional time for OP and Maui Planning to file responses to the motion to amend. The Commission held hearings on the motion on September 25-26, 2019, then deferred for a period of time to allow Maui Oceanview LP to engage with the community regarding the proposed changes to the Pulelehua project. On November 14, 2019 and December 3, 2019, Maui Oceanview LP submitted additional filings to the Commission in support of the motion to amend. The Commission held further hearings on December 4-5, 2019, closing the hearing on December 5, 2019. The Commission granted Maui Oceanview LP's motion to amend the D&O on December 5, 2019 and adopted the Amended D&O on July 30, 2020. The Amended D&O sets forth thirty-six (36) conditions of approval regarding the motion.

Following the LUC approval of the Amended D&O, Maui Oceanview LP applied for and received Project District Phase II approval from the Maui County Planning Commission as documented in a November 4, 2021 letter from Maui County Planning Director Michele McLean, subject to twenty conditions. Subsequently, Maui Oceanview LP received Project

District Phase III approval from the Maui County Planning Department as documented in an April 1, 2022 letter from Director McLean, subject to four conditions. Also in connection with the project, Maui Oceanview LP also received preliminary subdivision approval from the Maui County Department of Public Works for Mahinahina Mauka Subdivision on September 9, 2021, as documented in a letter from Public Works Director Rowena M. Dagdag-Andaya, and for Mahinahina Mauka Subdivision-Phase I on September 16, 2021, by letter from Director Dagdag-Andaya.

Maui County issued a Mass Grading Permit and Retaining Wall Building Permit for the first phase of Pulelehua on April 6, 2023, site work construction has been underway and is now more than 75% complete along with most of the retainer walls intended for Phase 1 of the Project. Alpha Construction is the assigned contractor.

Pulelehua has drilled 2 wells as its intended potable water supply but have not been able to make use of it because of the CWRM Water Management District designation. It is our understanding that when CWRM completes its hearing of existing and new users for our aquifer, it is likely Pulelehua will be granted the right to use its wells to provision potable water for its own use.

On August 8, 2023, the Lahaina Fires destroyed much of the retail and residential buildings in Lahaina town worsening the already serious housing crisis that the island has been facing. Pulelehua stands ready to expedite the construction of workforce housing units for rent.

Pulelehua urgently needs County support to provide temporary potable water service to the property so we can obtain necessary building permits to build on the property. We believe in a relatively short period of time, the CWRM hearings for New User applications for our aquifer will take place and Pulelehua will have its own well supplied potable water.

Conditions and Compliance:

*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. Petitioner [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 hav[ing] 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 hav[ing] 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.*

Compliance: Maui Oceanview LP has signed an Amended Residential Workforce Housing Agreement with the County of Maui. In October 2022, Maui Oceanview LP agreed with Maui Mayor Michael Victorino’s administration to pilot the recently approved reduced affordable home sales price and lottery guidelines for Maui County, and to prioritize building primarily more for sale workforce housing units within Pulelehua’s first phase of construction out of the allowed total units.

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.

Compliance: The Education Contribution Agreement was executed on June 16, 2006 by the

Petitioner's predecessor, Maui Land and Pineapple (MLP). A copy of the agreement was submitted to the Land Use Commission and County Planning Department which was included as an exhibit to the Community Plan Amendment, County Change in Zoning, and Project District applications. MLP had numerous meetings with the Department of Education ("DOE") to finalize the 13-acre school site. DOE conducted design charrettes in West Maui and completed its master plan in December 2015.

Maui Oceanview, LP has met with DOE officials, making them aware of the transfer of ownership and progress in moving forward on developing the Pulelehua project. DOE officials informed Maui Oceanview LP that they had preliminary architectural plans for the development. DOE officials explained that their budget does not include funding for the development of the School and they will inform Maui Oceanview LP when they are ready to move forward with a new campus. Petitioner has not yet pursued alternative means to expedite design and construction of the School.

Update:

Maui Oceanview LP has signed a temporary school site lease with the DoE. Additionally, Maui Oceanview LP is assisting the State DoE to design and size the school site based on the needs of West Maui since the elementary school and a library have been burned down in the Lahaina Fires.

*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.*

Compliance: Maui Oceanview LP had been working with the County of Maui Department of Environmental Management, Wastewater Reclamation Division on connection to the Lahaina WasteWater Reclamation Facility ("LWWRF"). Maui Oceanview LP received a letter from the County of Maui Department of Environmental Management dated July 2022 stating that the LWWRF has capacity to serve the projected full-build out wastewater demand of Pulelehua. In the event connection is not allowed in the future, Maui Oceanview LP will go forward with developing a wastewater treatment facility on site to serve Pulelehua.

*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.*

Compliance: MLP submitted a revised Traffic Impact Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which

details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway (including Akahahele Street) and airport facilities. Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP submitted a revised TIAR to DOT on August 13, 2019 which was accepted by DOT on September 17, 2019. Maui Oceanview LP executed a Memorandum of Understanding with the DOT on January 7, 2022. A Draft Agreement based on the executed MOU between Maui Oceanview LP and DOT is in final draft review.

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 Honoapi'ilani 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 Honoapi'ilani 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.

Compliance: MLP submitted a revised Traffic Impact Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway (including Akahahele Street) and airport facilities. Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP submitted a revised TIAR to DOT on August 13, 2019 which was accepted by DOT on September 17, 2019. Maui Oceanview LP executed a Memorandum of Understanding with the DOT on January 7, 2022. A Draft Agreement based on the executed MOU between Maui Oceanview LP and DOT is in final draft review.

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.*

Compliance: Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP submitted a revised TIAR to DOT on August 13, 2019 which was accepted by DOT on September 17, 2019. Maui Oceanview LP executed a Memorandum of

Understanding with the DOT on January 7, 2022. The Memorandum of Understand with the DOT includes the negotiated contribution amount and a proposed timetable for payments. A Draft Agreement based on the executed MOU between Maui Oceanview LP and DOT is in final draft review.

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.*

Compliance: Maui Oceanview LP is integrating lateral roadway connections into the design of the project.

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.

Compliance: Maui Oceanview LP agreed in processing its motion to amend to revise the fair-share unit amounts. Maui Oceanview LP will be contributing \$4,150,000.00 as its fair share amount for regional improvements. This contribution if required will be made pro-rata during phase 3.

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.*

Compliance: Maui Oceanview LP has been in contact with Maui Emergency Management Agency ("Maui-EMA") officials and provided Maui-EMA with current plans for the Pulelehua project. Civil defense measures will be on Maui-EMA property.

10. Archaeological Inventory Survey and Historic Preservation Mitigation Plan. *Petitioner shall comply with the conditions recommended by the Department of Land and Natural Resources, State Historic Preservation Division ("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.*

Compliance: SHPD issued an approval letter dated December 2021 with a determination of "No historic properties affected" and advised no mitigation work and no monitoring is needed onsite Pulelehua property.

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.*

Compliance: No specific action taken to date.

12. Air Quality Monitoring. *Petitioner shall participate in an air quality-monitoring program if required by the Hawaii Department of Health ("DOH").*

Compliance: No specific action taken to date.

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.

Compliance: Maui Oceanview LP will notify all prospective buyers and renters of potential adverse aviation impacts once sales and rentals commence.

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.*

Compliance: MLP submitted a revised Traffic Impact Analysis Report (TIAR) dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding that will reflect the obligations of and requirements on MLP covering both DOT highway (including Akahahele Street) and airport facilities.

Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP has submitted a revised TIAR to DOT on August 13, 2019 which was accepted by DOT on September 17, 2019. Maui Oceanview LP executed a Memorandum of Understanding with the DOT on January 7, 2022. A Draft Agreement based on the executed MOU between Maui Oceanview LP and DOT is in final draft review.

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.*

Compliance: Development plans prepared for Pulelehua by Maui Oceanview LP shall conform to the above requirements.

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.

Compliance: MLP submitted a revised TIAR dated May 4, 2009 to DOT. DOT provided a letter of acceptance for the TIAR dated September 9, 2010 which details conditions for a Memorandum of Understanding reflecting the obligations of and requirements on MLP covering both DOT highway and airport facilities. Obligations of and requirements on MLP include compliance with all FAA, DOT and TSA requirements for runway and airport safety as well as agreement to give and grant an aviation easement in favor of the State of Hawaii.

Maui Oceanview LP has had further meetings and correspondence with DOT regarding modifications to obligations and requirements covering DOT highway and airport facilities. Maui Oceanview LP has submitted a revised TIAR to DOT on August 13, 2019 which was accepted by DOT on September 17, 2019. Maui Oceanview LP executed a Memorandum of Understanding with the DOT on January 7, 2022, which includes provisions regarding runway safety, protection, and use. A Draft Agreement based on the executed MOU between Maui Oceanview LP and DOT is in final draft review.

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.

Compliance: No vertical development is designed to take place within the flight path or ends of the runway within Pulelehua that may pose as a hazard to aircraft operations. Presentations will be made to the DOT for their approval before Development begins. DOT-Airports is in review of the plans and will sign the plans upon approval.

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.

Compliance: Maui Oceanview LP will integrate drainage system improvements into the design of the project. Maui Oceanview LP was approved on April 6, 2023 and is more than 75% complete along with the majority of the retainer walls intended for Phase 1 of the Project installed. Alpha Construction is the assigned contractor.

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.*

Compliance: Maui Oceanview LP will notify all prospective buyers and renters of potential odor, noise, and dust pollution once sales and rentals commence.

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.*

Compliance: Maui Oceanview LP will notify all prospective buyers and renters of the Hawaii Right to Farm act once rentals and sales commence.

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.*

Compliance: Maui Oceanview LP will comply with this condition.

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

Compliance: Maui Oceanview LP has completed and tested two water well and has submitted its use application to the CWRM. A reverse osmosis membrane system has been designed to treat the chloride levels of the well water. To expedite the construction of the project given the need for housing in West Maui, Maui Oceanview is requesting County Water in exchange for its completed water wells. Maui Oceanview intends to use the 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.

Compliance: No specific action taken to date but Maui Oceanview LP acknowledged community concerns raised during the processing of its motion to amend regarding access to lands *mauka* of Pulelehua that are not owned by Maui Oceanview LP.

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.*

Compliance: Best Management Practices (BMP's) in the form of dust fence, silt fence, sand bags, etc were approved as part of the Phase 1 mass grading plans approved April 6, 2023, and the designated contractor, Alpha, has been upkeeping all BMP's throughout the construction processes to our knowledge. A lawsuit was filed by a neighboring subdivision towards the end of 2023, Alpha has informed Maui Oceanview LP that it has complied with the requirements for dust control as approved on the plans and as approved on the field by County inspectors and has taken up the defense of the lawsuit on behalf of Maui Oceanview since it is the only contractor hired to do all the grading work.

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.*

Compliance: Prior soil studies performed on the property indicated no significant amounts of hazardous materials on site.

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.*

Compliance: The potable water system planned for Pulelehua will incorporate R1 water reuse for landscaping purposes. Landscape planting will include the use of indigenous and drought tolerant plants.

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.*

Compliance: Pulelehua will review in depth all renewable energy options available to it for economic practicality.

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.*

Compliance: Maui Oceanview LP will comply with this condition in developing parks and trails for Pulelehua. Maui Oceanview LP is working on a ground lease with Maui County to provide land for temporary housing for the displaced residents of West Maui on the 10 acre park land that was not due to be built until after Phase II of the project but it is not likely this will take place due to County Administration indication of location preferences.

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.*

Compliance: All applications and developmental submittals to date have been in substantial compliance with the representations made during the processing of Maui Oceanview LP's motion to amend.

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.*

Compliance: MLP sold ownership of the Petition Area to Maui Oceanview LP on June 3, 2016 and Maui Oceanview LP provided a notice to the Land Use Commission in compliance with the similar condition 28 of the 2006 D&O. Maui Oceanview LP will comply with this condition.

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.*

Compliance: This letter represents the 2023 annual report submitted in compliance with this condition and the similar condition No. 29 of the 2006 D&O. MLP provided annual reports in compliance with the 2006 D&O from 2007 through 2016. Maui Oceanview LP submitted an

annual report for 2017 (filed June 16, 2017), 2018 (filed April 24, 2019), 2019 and 2020 (filed December 3, 2020), and 2021 and 2022 (originally filed December 20, 2023; updated version filed July 15, 2024).

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.*

Compliance: Maui Oceanview LP acknowledges that the conditions of the order are not 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.*

Compliance: When requesting the release of a condition, Maui Oceanview LP will file the appropriate motions upon formal acknowledgement from the appropriate agencies on the satisfaction of these conditions.

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.*

Compliance: With regard to the 2006 D&O, MLP recorded the Statement of Impositions of Conditions by Land Use Commission dated July 17, 2006, with the Bureau of Conveyances as Document 2006-129979. Maui Oceanview LP recorded the Statement of Impositions of Conditions by Land Use Commission on August 7, 2020 as Document No. A75240592.

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.*

Compliance: MLP has recorded the Amended and Restated Declaration of Conditions with the Bureau of Conveyances on September 29, 2006 as Document No 2006-178683. Maui Oceanview LP will record the Amended Declaration of Conditions with the Bureau of Conveyances.

36. *Substantial Commencement of Use of the Petition Area.* Pursuant to HRS §205-4(g), absent substantial commencement of use of the Petition Area in accordance with the representations made to the Commission in this docket, the Commission shall issue and serve upon the party bound by the condition an order to show cause why the Petition Area should not revert to its former land use classification or be changed to a more

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appropriate classification.

Compliance: Maui Oceanview LP acknowledges this condition.

Should you have any questions or requests for additional information, please feel free to contact me at 214.415.8868 (phone #) or paul@usaiinvestments.com (email). Your acceptance of this annual report is appreciated.

Sincerely,

**MAUI OCEANVIEW LP
By MAUI OCEANVIEW GP, INC.
Its General Partner**



By PAUL CHENG
Its President