

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700
(808) 944-2200 • Fax (808) 973-2841



FEB 0 5 2007

Mr. John Sabas
Molokai Properties Limited
745 Fort St. Mall, Suite 600
Honolulu, HI 96813

Dear Mr. Sabas:

This letter serves as comment on the Draft Environmental Impact Statement (DEIS) for the proposed La'au Point development project on the island of Molokai, Hawaii. The National Marine Fisheries Service, Pacific Islands Region (NMFS), is concerned about how the development may affect the endangered Hawaiian monk seal (*Monachus schauinslandi*). The letter incorporates comments and concerns both from our regional office's Protected Resources Division and the Pacific Islands Fisheries Science Center.

The monk seal is protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). The DEIS acknowledges the presence of monk seals in the area and also mentions that two seals were observed resting on Sam Wrights Beach north of La'au Point during the fauna surveys (p.44).

Use of La'au Point area by Hawaiian monk seals

The Project Area identified in the DEIS (from Kaupo Beach south to La'au Point and east to Hale O Lono), hereafter referred to as "La'au Point", is known to be frequently used by Hawaiian monk seals.

The only systematic surveys of seals in the main Hawaiian Islands (MHI) were conducted using aircraft in 2000 and 2001 (Baker and Johanos 2004). In both years, seals (two in 2000, and one in 2001) were seen during the days Molokai was surveyed. In 2000, the aerial survey pilot (John Weiser), a resident of Molokai, related that he usually saw seals when flying by La'au Point.

The NMFS also maintains records of non-systematic monk seal sightings provided by a number of sources (public, other agency staff, and NMFS biologists). These data corroborate the conclusion that La'au Point is important habitat for seals. Since 1984, a total of 169 monk seal sightings have been documented on the shorelines of the project area. Most of these sightings (125) were documented in 2005-2006 when increased observation effort occurred. A total of 18 uniquely identifiable individual seals have been documented among these sightings, demonstrating that this area is used by a significant number of animals, rather than just a few seals accounting for the many sightings. It should be noted that because not all seals are tagged or well-identified by natural marks, these 18 represent a minimum number of individuals that have used the area. Of the 18 identified seals, nine were known to have born on Molokai. Eight of these nine were born at Kalaupapa Peninsula, and one pup was born in 1996 at a small pocket beach between La'au Point proper and Hale O Lono.



Favorable characteristics of the La'au Point area as monk seal habitat
A number of features of the La'au Point area seem to make it especially good monk seal habitat.

Remoteness and limited access

While certain individual monk seals appear to be particularly tolerant of human presence at sites such as Poipu Beach, Kauai and certain Oahu beaches, these animals seem to be the exception rather than the rule. Aerial surveys revealed a strong trend for seals to land at remote areas of the MHI where human presence was relatively low (Baker and Johanos 2004). As noted in the DEIS, La'au Point is currently quite isolated. Few people visit the beaches and fishing activity is low. As a result, monk seals that land at La'au Point are currently unlikely to be molested by people or dogs.

Sandy beach substrate

Monk seals land on a variety of substrates in the MHI, but most sightings occur on sandy beaches, of which there is a considerable amount in the La'au Point area.

Proximity to foraging areas

Monk seals are believed to forage primarily on or near the sea floor in waters 200 meters deep or less, based upon studies conducted in the Northwestern Hawaiian Islands and to a lesser extent in the MHI (Stewart et al. 2006, Litman et al. 2006). Around most of the MHI, the ocean floor falls away quite rapidly such that there is only a narrow band of shallow water. Penguin Bank is, in contrast, a relatively shallow (generally less than 60m) flat-topped bank that extends from the west coast of Molokai approximately 70 km to the southwest. La'au Point is the nearest land to Penguin Bank, suggesting that proximity to favorable foraging grounds may make it an attractive place for monk seals to rest. This is supported by data from two monk seals captured at La'au Point and subsequently tracked with satellite transmitters. Both animals, an adult female and a yearling male, the latter born at Kalaupapa, commuted repeatedly between La'au Point and Penguin Bank for several months (Litman et al. 2006). These data, combined with the information noted above (total of eight Kalaupapa born seals documented at La'au Point), suggest that while Kalaupapa provides favorable birthing habitat, La'au Point is desirable for its proximity to productive foraging grounds.

Potential deleterious effects of proposed action

The specific threats to monk seals that can be expected to increase considerably as a result of the proposed development include:

- 1) Human-caused disturbance (both unintentional and deliberate harassment)
- 2) Disturbance, physical harm and potentially disease transfer from dogs
- 3) Hooking and entanglement associated with shore-based fishing

Residential development will vastly increase number of people present on the shoreline associated with the new homes. Additionally, a goal of the proposed development is to facilitate public access to this currently quite isolated area of Molokai. Specifically the plan designates a "subsistence fishing zone" which encompasses the entire La'au Point area where monk seals have been documented. Given that access to these shorelines is currently highly restricted, the plan will greatly increase the number and distribution of fishers in areas consistently used by monk seals. One can expect that this can only result in increased disturbance to the seals. Other

likely outcomes are increased interactions between fishers, their gear and seals (including seals removing bait and catch), seals being hooked and injured, and increased risk of seals becoming entangled in laynets/gillnets to the extent these will be used in the area.

Monk seals have evolved in the absence of terrestrial predators, and therefore, despite their large size, are vulnerable to attack by dogs. The presence of dogs on beaches with monk seals pose a variety of risks, including direct attack and harm, displacement from land, and disease transfer. The proposed action is likely to greatly increase the presence of dogs. These may include pets of residents and public beach visitors, as well as hunting dogs that may range to the shoreline from newly accessible hunting areas inland. The DEIS states that dogs will not be allowed for deer hunting. It is unclear whether other types of hunting might involve dogs.

Concerns regarding proposed mitigating measures

The DEIS proposes to limit public entry points to just two sites at opposite ends of the project area. However, even these two entry points will facilitate far greater access to the area beaches, which indeed is a goal of the plan. Further, it seems clear that residents of the proposed housing development will have multiple beach access points. It is not clear how members of the public will be prevented from accessing the shoreline from the residential areas.

The DEIS states that residents and visitors will be educated about proper behavior when monk seal are encountered in the project area, though details of how this will be achieved are not provided. This is a laudable goal and may indeed reduce the risks of some impacts on monk seals, especially among people who are compliant by nature. However, education without enforcement will not address the problem of persons who do not choose to respect guidelines of behavior. Additionally, one of the challenges of such education programs in Hawaii is that there is a large transient population of tourists. This segment of the population will also enjoy greater access to La'au Point if the proposed development occurs, and it is not clear how these people will be educated and policed.

A measure proposed to mitigate impact of increased shoreline access is: "...a caretaker or Land Trust steward will supervise access to ensure that damage to the environment does not take place, and that those who access the area have taken the appropriate education classes in traditional subsistence gathering and access responsibilities, safety and protocol." The apparent intention of this measure is primarily to allay concerns that opening the area to fishing will result in depletion of subsistence resources. It is not clear that the Land Trust steward would be charged with ensuring protection of monk seals. Moreover, it is not clear what authority the steward would have to actually police and enforce fishing practices, or any other behavior of beach visitors. Thus, we must anticipate that this measure will not provide adequate protection to monk seals at La'au Point.

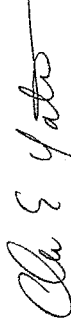
The DEIS states that "A State Land Use District Boundary Amendment is proposed to protect and expand the existing Conservation District (shoreline area) by 254 acres, thereby increasing the amount of shoreline and habitats, such as for monk seals, put into permanent protection" (p. 17). This statement appears to suggest that if the plan is implemented, monk seals will somehow be afforded greater protection than they currently enjoy. In fact, the elements of the proposed plan discussed here suggest just the opposite will occur.

In addition to our concerns, NMFS recently received a total of 22 letters from Moloikai residents voicing their concerns for the monk seals of La'au Point. Residents are well aware of the importance of this currently remote and relatively undisturbed habitat to monk seals. While we typically do not respond to public outcry over coastal development, the letters are indicative of the degree of public support for protection of the seals and this valuable habitat.

Because this species is highly endangered and susceptible to disturbance by human presence, we are very interested in ensuring that the mitigation measures developed for this project will effectively protect seals when they haul out on beaches in the development area. In particular, we believe that the potential for increased disturbance warrants your consideration of hiring a full-time Hawaiian monk seal protection specialist, who could both educate the public about the seals and also protect them from the expected interactions. We are available to discuss this suggestion as well as any other ideas you may have for ways to ensure that the seals will not be adversely impacted by this development.

Thank you for working to protect our nation's living marine resources. If you have any questions regarding these comments, please contact Jayne Lefors on my staff at (808) 944-2277 or at the e-mail address jayne.lefors@noaa.gov.

Sincerely,



Chris E. Yates
Assistant Regional Administrator
for Protected Resources

cc: Anthony Ching, State Of Hawaii Land Use Commission
✓ Thomas Witten, PBR Hawaii and Associates, Inc.
Genevieve K.Y. Salmonson, State of Hawaii Office of Environmental Quality Control



REFERENCES

- Stewart, B.S. et al. (2006):
Foraging biogeography of Hawaiian monk seals in the Northwestern Hawaiian Islands.
Atoll Research Bulletin 543Q: 131-145.
- Litman, C.L. et al. (2006):
Survey for Selected Pathogens and Evaluation of Disease Risk Factors for Endangered Hawaiian
Monk Seals in the Main Hawaiian Islands. EcoHealth 3(4): 232-244.
- Baker J.D., Johanos T.C. (2004) Abundance of the Hawaiian monk seal in the main Hawaiian
Islands. Biological Conservation 116:103-110.

November 1, 2007

Chris E. Yates
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Yates:

Thank you for your letter dated February 5, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). We note that we have previously met with you on March 21, 2007 and July 12, 2007, and sent you an initial response to your February 5, 2007 comments on April 17, 2007, following our first consultation meeting. With this letter, we respond to your comments on the Draft EIS contained in your letter dated February 5, 2007.

We appreciate the breadth of knowledge you provided about Hawaiian monk seals and their presence at in the Lā'au Point areas. We acknowledge that the Lā'au Point area is frequented by Hawaiian monk seals and is considered a good Hawaiian monk seal habitat because of its limited access, sandy beach substrate, and proximity to foraging areas.

We note that NOAA National Marine Fisheries Service (NMFS) has non-systematic Hawaiian monk seal data provided by public sightings, other agency staff, and NMFS biologists. Although not systematic, these documented sightings provide reasonable conclusion that Lā'au Point is an important habitat for monk seals.

We acknowledge that the specific threats to monk seals that could be expected as a result of the project include: 1) human-caused disturbance; 2) disturbance, physical harm, and potential disease transfer from dogs; and 3) hooking and entanglement associated with shore-based fishing.

To incorporate the relevant above information provided in your letter under the headings, "Use of Lā'au Point area by Hawaiian monk seals," "Favorable characteristics of the Lā'au Point area as monk seal habitat," and "Potential deleterious effects of proposed action," into the Final EIS, in the Final EIS Section 3.7 (Fauna) will be revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)."

Concerns regarding proposed mitigating measures

1. *The DEIS proposes to limit public entry points to just two sites at opposite ends of the project area. However, even these two entry points will facilitate far greater access to the area beaches, which indeed is a goal of the plan. Further, it seems clear that residents of the proposed housing development will have multiple beach access points. It is not clear how members of the public will be prevented from accessing the shoreline from the residential areas.*

Response: As you point out, the project will create two public access points at each end of the project. Homeowners may access the shoreline from the residential area; however, they will be required to adhere to the rules of the Shoreline Access Management Plan (SAMP). The lack of infrastructure and paths through to the shoreline, and the density of the foliage and rough terrain as a practical and natural barrier, will support adherence to the SAMP and serve to limit widespread access to the shoreline.

To incorporate the relevant above information into the Final EIS, in the Final EIS Section 4.3 will be revised as follows:

Some community members have expressed concerns that subdivision lot owners and their friends will have preferential access to the coast. Their concern is that there will be nothing to stop the owners who live along the shoreline and their guests from walking down to the beach and even using a vehicle. To some community members, affording only two access points for the general public while owners in the subdivision will have access from their homes, seems unequal. Informants also expressed concern that landowners might call police if they see the general public walking on the beach, as this has happened at Pāpohaku. To mitigate these concerns, all La'au Point homeowners will be required to undergo an education program about the restrictions on access, its importance, and the requirements of the SAMP. Adherence to the SAMP is mandatory. In addition, the educational process, the lack of infrastructure and paths through to the shoreline, and the density of the foliage and rough terrain as a practical and natural barrier, will support adherence to the SAMP and serve to limit widespread access to the shoreline.

2. *The DEIS states that residents and visitors will be educated about proper behavior when monk seal are encountered in the project area, though details of how this will be achieved are not provided. This is a laudable goal and may indeed reduce the risks of some impacts on monk seals, especially among people who are compliant by nature. However, education without enforcement will not address the problem of persons who do not choose to respect guidelines of behavior. Additionally, one of the challenges of such education programs in Hawaii is that there is a large transient population of tourists. This segment of the population will also enjoy greater access to La'au Point if the proposed development occurs, and it is not clear how these people will be educated and policed.*

Response: The SAMP sets forth an education program required of all homeowners and visitors to the area that covers: cultural practices; cultural sensitivity and respect; environmental protection and concerns; historical significance of the area and resources; and the social fabric, traditions and culture of the Moloka'i community. In sum, the program is intended to make the users of the area aware of the value of the resources they encounter/harvest and to honor others' rights and needs in the area.

Education will be conducted in a variety of forms - written, audio-visual and personal hands-on on-site orientations—and not be limited to any one form. It is intended that everyone be required to undertake the educational requirement. From a practical standpoint it is recognized that short term guests may not have the time to undertake the program. However, it can be assumed that the homeowners who have undertaken the program will inform and educate their guests.

Admittedly, educational classes for landowners, vacationing or permanent, are a new approach to a decades old problem of disconnect between new landowners from outside Hawai'i and the local and Native Hawaiian communities.

We assume that educating new residents would have a better effect than if new residents were not educated at all. It is very likely that new buyers will be willing to attend classes to learn how to protect the environmental resources and Moloka'i lifestyle and culture. This is already occurring, whereby relatively newer residents are participating in environmental advocacy and protection efforts.

Currently, MPL allows limited beach access for MPL employees and Maunaloa residents to the area projected for residential development. It is mandatory that employees and their guests view a conservation video to qualify for a beach pass. This system has worked well and received the cooperation of those who have used beach passes.

To incorporate the relevant above information into the Final EIS, in the Final EIS Section 4.3 will be revised as follows:

Education (cultural and environmental of homeowners) – All homeowners must undertake an education program. This program will be designed to create awareness and will mitigate cultural and social impacts as well as instruct and inform homeowners and users of the rules and requirements of the SAMP and the cultural and biological resources being protected. The educational program sets forth topic areas on Hawaiian culture and Molokai social and cultural traditions to mitigate concerns that homeowners will not be sensitive to, or understand, the cultural environment they are entering. The program will explain rules on the handling of cultural and archaeological sites, their significance and use in the Hawaiian culture to prevent destruction and desecration and to provide recognition of the rights of families and practitioners to access the sites. Education on the social fabric of Molokai is designed to inform homeowners of the subsistence lifestyle and traditional use of the area for hunting, fishing, and gathering and its importance to Molokai's way of life. Training on the rules regarding Hawaiian monk seals and notice of the opportunity to volunteer in monitoring programs will be given to ensure adherence to the Hawaiian monk seal requirements. Similar instruction is required for biological assets to ensure their preservation. Additional training is to be provided to educate the homeowners on the rules and management policies regarding enforcement to ensure adherence to the SAMP guidelines and rules.

3. *A measure proposed to mitigate impact of increased shoreline access is: "... a caretaker or Land Trust steward will supervise access to ensure that damage to the environment does not take place, and that those who access the area have taken the appropriate education classes in traditional subsistence gathering and access responsibilities, safety and protocol." The apparent intention of this measure is primarily to allay concerns that opening the area to fishing will result in depletion of*

Chris E. Yates, Assistant Regional Administrator
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 4 of 5

subsistence resources. It is not clear that the Land Trust steward would be charged with ensuring protection of monk seals. Moreover, it is not clear what authority the steward would have to actually police and enforce fishing practices, or any other behavior of beach visitors. Thus, we must anticipate that this measure will not provide adequate protection to monk seals at La'au Point.

Response: The "Monk Seal Protection Program" established in the SAMP has incorporated the information gained from our consultations with NOAA. Elements of the SAMP program were taken from the draft *Recovery Plan for the Hawaiian Monk Seal* (NOAA, 2006). The SAMP reiterates the rules required to ensure non-disturbance of Monk seal habitat and the promotion of La'au Point as an area for Monk seals to frequent and "haul out."

In response to your comment regarding the duties of the Resource Manager in relation to Hawaiian Monk Seal protection, in the Final EIS Section 3.7 (Fauna) will be revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)."

4. The DEIS states that "A State Land Use District Boundary Amendment is proposed to protect and expand the existing Conservation District (shoreline area) by 254 acres, thereby increasing the amount of shoreline and habitats, such as for monk seals, put into permanent protection" (p. 17). This statement appears to suggest that if the plan is implemented, monk seals will somehow be afforded greater protection than they currently enjoy. In fact, the elements of the proposed plan discussed here suggest just the opposite will occur.

Response: We note that the current Conservation District designation of the shoreline area affords protection from many activities that could be detrimental to monk seals. It is noted that the additional potential human visits to the project area could result in an increase in the likelihood of human conflict with Monk seals. It is anticipated however that the education program and the supervision of the Resource Manager will minimize the conflict. At present there is considerable human visitation to the area that is unsupervised and the threat to the Monk seals is potentially greater from fewer area users. We also note that the current vacant status of the property affords protection to the area as well. However, if the property were developed to its potential allowed under its existing Agricultural District designation, and thereby the Conservation District near the shoreline was not expanded, development could occur closer to the shoreline than what is being proposed by this project.

5. In addition to our concerns, NMFS recently received a total of 22 letters from Molokai residents voicing their concerns for the monk seals of La'au Point. Residents are well aware of the importance of this currently remote and relatively undisturbed habitat to monk seals. While we typically do not respond to public outcry over coastal development, the letters are indicative of the degree of public support for protection of the seals and this valuable habitat.

Response: We acknowledge your comment.

6. Because this species is highly endangered and susceptible to disturbance by human presence, we are very interested in ensuring that the mitigation measures developed for this project will effectively protect seals when they haul out on beaches in the development area. In particular, we believe that the potential for increased disturbance warrants your consideration of hiring a full-time Hawaiian monk seal protection specialist, who could both educate the public about the seals and also protect them from the expected interactions. We are available to discuss this suggestion as well as any other

Chris E. Yates, Assistant Regional Administrator
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 5 of 5

ideas you may have for ways to ensure that the seals will not be adversely impacted by this development.

Response: We appreciate the consultation and expertise NOAA has already provided in developing mitigation measures to protect Hawaiian monk seals. We look forward to a continued relationship in developing monitoring programs, training, and other issues to protect Hawaiian monk seals. The SAMP does provide for hiring Resource Manager(s) to protect the cultural, biological, and social resources of the area, including Hawaiian monk seals. In response to your comment, in Final EIS Section 3.7 (Fauna) will be revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)."

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.
Sincerely,



Peter Nicholas
President and CEO
Molokai Properties Limited

Attachment: Revised Section 3.7 (Fauna)

cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PBR HAWAII



DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, HONOLULU
FT. SHAFTER, HAWAII 80858-5440

REPLY TO
ATTENTION OF

Regulatory Branch

Nancy McPherson
County of Maui
Department of Planning
250 South High Street
Waikuku, HI 96793

March 23, 2007

File No. POH-2007-49

Dear Ms. McPherson:

This is in response to your letter dated December 19, 2006 for comments and recommendations for a proposed community development at Lā'au Point, Molokai Island, Hawaii (TIMKs: (2) 5-10-02; 30; 5-1-08; 157; 5-1-08; 03, 04, 06, 07, 13, 14, 15, 21, and 25). We have reviewed the information you provided under the Corps' authority to issue Department of the Army (DA) permits pursuant to Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 USC 403) and Section 404 of the Clean Water Act (CWA) (33 USC 1344).

Based on the information provided as part of the applicant's, Molokai Properties Limited, draft environmental impact statement (DEIS), we are unable to determine whether or not a DA permit will be required for the proposed subject project. We have identified that the proposed project site contains several intermittent streams and is adjacent to the Pacific Ocean, a navigable water of the U.S.; however, more detailed information (i.e. design plans) are required in order to issue a permit determination.

The applicant should submit for review to this office information regarding proposed development within any intermittent streams or work within the vicinity of the shoreline areas. The information requested is required in order to issue a final jurisdictional and permit determination for the proposed subject project. Should you have any questions regarding this request for information or other project concerns, please contact Ms. Joy Anamizu by phone at 808-438-7023, by facsimile at 808-438-4060, or by e-mail at joy.anamizu@usace.army.mil and refer to the file number above.

Sincerely,

George P. Young, P.E.
Chief, Regulatory Branch

Copy Furnished:

Thomas Witten, PBR Hawaii, ASB Tower, Suite 650, Honolulu, HI 96813
Peter Nicholas, Molokai Properties Limited, 745 Fort Street Mall, Suite 600, Honolulu, HI 96813



November 1, 2007

George P. Young, P.E.
Regulatory Branch
Department of Army
U.S. Army Engineer District, Honolulu
Ft. Shafter, Hawaii 96858-5440

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Young:

Thank you for your letter dated March 23, 2007 (File No. POH-2007-49) regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your agency's comments.

We acknowledge that any activity involving the development within any intermittent streams or the work in the vicinity of the shoreline areas may require a Department of the Army permit. When developed, plans for activities within these areas will be forwarded to you for determination of Department of the Army permit requirements.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,

Peter Nicholas
President and CEO
Molokai Properties Limited

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PBR HAWAII

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Commander
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Command Pacific (6)

Chief, Civil Engineering Division
301 Civil Street, Suite 700N
Oakland, CA 94612-5203
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SUBJ: LA'AU POINT PARCEL RE-ZONING

11011

11011
March 19, 2007

Nancy McPherson
County of Maui Planning Department
250 South High Street
Wailuku, HI 96793

Tom Witten
PBR HAWAII
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, HI 96813

Anthony Ching
State Land Use Commission
P.O. Box 2359
Honolulu, Hawaii 96804

Genevieve Salmonson
Office of Environmental Quality Control
235 S Beretania St, Suite 702
Honolulu, HI 96813

Peter Nicholas & John Sabas
Molokai Properties Limited
745 Fort Street Mall, Suite 600
Honolulu, HI 96813

Ladies and Gentlemen:

Thank you for the opportunity to comment on the application by Molokai Properties Limited, 745 Fort Street Mall, Suite 600, Honolulu, HI 96813, 808/534-9509 to change the zoning designation of that parcel identified at La'au Point, West Molokai and by Tax Map Key (TMK): 5-1-02-30 (por) from State Land Use District Agricultural, Conservation and Community Plan Designation: Agricultural, Conservation, Agricultural to Rural.

We respectfully request that this letter be presented to the Planning Commission, be considered by the Commissioners, and made a part of the record of the proceedings.

Should the parcel be re-zoned, future land owners can expect the Coast Guard to be a good neighbor. At the same time, the Coast Guard will be a neighbor with an important job to do, and sometimes unpredictable hours. Pursuant to Title 14 United States Code, the Coast Guard administers the U.S. Aids to Navigation System. To fulfill its statutory duties the Coast Guard, from time to time, issues federal regulations pertaining to the U.S. Aids to Navigation System, and Coast Guard personnel plan the location of these aids, identify the proper physical characteristics, and construct, maintain, and repair each aid. The foregoing is relevant to the rezoning application now under consideration because a federal aid to navigation, La'au Light, is located on a parcel immediately adjacent west of the parcel under consideration.

The light structure height is twenty feet. The light is on a white mono pole with 3 white/black non-lateral daymarks. There is a power box, approximately 4' x 4', attached at the base of the light. Additionally, there is a white Conex type structure immediately adjacent to the light. The light can be seen 360 degrees with a seven nautical mile nominal range. Note, most of the navigational aids in Hawaii can be seen further than the nominal range.

This light is one of the aids that the Aids to Navigation Team will soon be changing the 250mm lantern for a 300mm lantern. The intensity will be reduced by 50 candelas.

The Coast Guard currently accesses the light from a roadway originally named Kualapuu Road. The Coast Guard's sole interest is to protect the efficacy of the La'au Light as a navigational aid - in daylight hours and at night - and to preserve the federal right to access the property to maintain, repair, modify, demolish, reconstruct, and power the aid. A white lighthouse is more difficult for mariners to see if white or light-colored buildings are erected in close proximity to it. Likewise, a light loses its efficacy at night when other lights are in close proximity. Also, access for emergency repairs is dramatically impeded if access to the light is blocked by a locked gate.

To reiterate, regardless of the zoning designation, the Coast Guard will continue to be a good neighbor, but one with a job to do. We have no choice but to perform our statutory responsibilities for the safety of maritime navigation. Thus, whether the status quo remain or we welcome new neighbors, the Coast Guard will defend the efficacy of La'au Light against any action that degrades, or leads to the degradation of the La'au Light as a federal aid to navigation, during daylight or night hours, or the federal right to unfettered access to the aid to navigation.

If you have any questions, please give my real property specialist, Mr. Jay Townley, a call at (510) 637-5540.

Sincerely,

PATRICK WALLIS
Branch Chief, South Team
U. S. Coast Guard
Chief, Civil Engineering Division
By direction

Copy: CGD Fourteenth



November 1, 2007

Patrick Wallis
Civil Engineering Division
U.S. Coast Guard
1301 Clay Street, Suite 700N
Oakland, California 94612-5203

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Wallis:

Thank you for your letter dated March 19, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your agency's comments.

Based on your letter, in the Final EIS Section 2.1.3 (Surrounding Uses) will be revised as follows:

An un-manned USA Lighthouse Station, Lā'au Light, is located at the tip of Lā'au Point, on property owned by the US government encompassing a total of 21 acres. The US Coast Guard regulates this federal aid to navigation. The light structure is twenty feet high on a white mono pole with three white/black non-lateral daymarks. The light can be seen 360 degrees with a seven nautical mile nominal range. In their comment letter on the Draft EIS dated March 19, 2007, the US Coast Guard noted that they will soon be changing the Lā'au Light's 250mm lantern to a 300mm lantern.

We offer the following responses to your comments:

1. *The white lighthouse is more difficult for mariners to see if white or light-colored buildings erected in close proximity to it.*

Response: As stated in Section 2.3.6 (Convents) of the Draft EIS, the Lā'au Point Conditions, Covenants, & Restrictions (CC&Rs) will place restrictions on building materials, color, and roofs, requiring homes to blend into the surrounding landscape. White colored buildings will therefore be prohibited.

2. *The light loses its efficacy at night when other lights are in close proximity.*

Response: As stated in Section 2.3.6 (Convents) of the Draft EIS, the Lā'au Point CC&Rs will require exterior lighting to be shielded from adjacent properties and the ocean.

Mr. Patrick Wallis
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 2

3. *Access for emergency repairs is dramatically impeded if access to the light is blocked by a locked gate.*

Response: Lā'au Point will not be a gated community and no locked gates will impede access to the Lā'au Light from or through the project area.

MPL will work with the Coast Guard to assure that the Lighthouse is not adversely impacted by the project.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,

Peter Nicholas
President and CEO
Molokai Properties Limited

cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PRR HAWAII

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CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

COLLEEN M. SUYAMA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

February 23, 2007

Mr. Peter Nicholas, President and CEO
Mr. John Sabas, General Manager, Community Affairs
Molokai Properties Limited
745 Fort Street Mall, Suite 600
Honolulu, Hawaii 96813

Mr. Thomas S. Witten, ASLA, President
PBR HAWAII
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, Hawaii 96813

Mr. Anthony Ching, Executive Officer
State Land Use Commission
Post Office Box 2359
Honolulu, Hawaii 96804

Dear Sirs:

RE: REQUEST FOR COMMENTS, DRAFT ENVIRONMENTAL
IMPACT STATEMENT (DEIS) FOR THE LAVAU POINT PROJECT
LOCATED AT TMK: 5-1-002:030 (portion), KALUAKO'I, ISLAND
OF MOLOKAI, HAWAII (COUNTY OF MAUI FILE NO'S EAC
2006/0017, CPA 2006/0009, CIZ 2006/0015, SM1 2006/0040,
CUP 2006/0005)

Enclosed are comments which were received and submitted by the Maui county
Cultural Resources Commission (CRC) at a special meeting that was held on February
14, 2007 on the above project's Draft Environmental Impact Statement (DEIS). The
comments are being submitted to PBR for transmittal to the State Land Use
Commission.

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 2

Comments from members of the Maui County Cultural Resources Commission
included the following:

1. There are a number of people who have stated that the actual gathering places for traditional practitioners or the places that are of most benefit to them are some distance from two public access points. It does sort of seem that the ability to practice your gathering rights and other cultural activities are going to be severely limited. Please respond.
2. If the new homeowners are using water tanks, five thousand gallon water tanks, how will they produce enough pressure for fire sprinklers?
3. You have a section here that indicates that you are going to educate the new homeowners. How is this going to be handled? In a classroom type setting or just by handing them a piece of paper?
4. In my experience with CC&R's 50 percent of them don't read the covenants, and of the other 50 percent that do, 20 percent of those don't understand what they're reading. How will you guarantee compliance?
5. How many areas in the development itself provide access for residents only?
6. My question is basically concerned with access for the public versus access for the residents. Will the public only have limited access while the residents in the area have unlimited access within the so-called preservation zone area---the protected zone?
7. If the residential areas are provided unlimited access within the preservation zone then wouldn't that trigger the so-called Article 12, Section 7, HRS 7-1, and HRS 1-1?
8. I read that the homeowners are going to have control over the area that they're in and it's not going to be a partnership, it's a homeowners' association. That really concerned me because it's only homeowners and not really even the land trust. Please respond.
9. There are issues such as height variances because of view planes, where the so-called water treatment plant is going to be that need to be resolved because that's culturally relevant to making sure that we don't get into an area that's

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 3

highly sensitive to our history on Molokai. Also, whether or not these houses are going to be post and pier, whether or not they're going to be on slabs. Can you comment on how these houses are going to be built and where the cesspool plant is going to be, the water treatment area, all of those kinds of things, and whether or not it's going to be in a rural area?

10. Is anyone working on the restrictions for the homeowners as part of their guidelines?
11. With regard to the homeowners' association, are you going to have another public/community group working with these groups to preserve and protect historical sites, some of the fauna, and endangered species? Do you have any plans on how these areas are going to be protected? Do you have guidelines on the setbacks from historical area, endangered plants, etc.?
12. With regard to protection and buffer zones, do you have any guidelines for construction or grading to insure that there is protection for historical sites or endangered species?
13. When the homeowners move in and one guy wants to put up a rock wall, and another wants to put up fencing, and another wants to grow a hedge, are there any guidelines to determine what gets built? You need specific criteria or guidelines. These are the kind of guidelines that we want to see.
14. Usually when you have grading and grubbing, you have the BMP's or Best Management Practices, but a lot of times that's for runoff. You may also have silt fences, and dust fences but it may be important for us to be more specific, like with the question on how would one protect the flora.
15. It's important for the view planes too. One needs to preserve that mauka-makai connection in the historical areas. The view plane is important.
16. Later on, when this project moves forward, we want to be able to make recommendations on the protection and preservation of these areas.
17. In the beginning, when someone wants to buy the property, they're very much interested in the culture and preservation, but later on down the line there's no interest. It's not important to them anymore. How important is having them be

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 4

educated about the island, the area, and the culture, and who will enforce this? If someone decides that they don't want to live on Molokai anymore and they want to sell, what happens to the new owner?

18. We keep hearing about a community-based Master Land Use Plan for Molokai Ranch. This master plan is an agreement between the Molokai Enterprise Community, the EC, and Molokai Ranch. It is not a county land use plan; it is not a plan that is in any way part of the General Plan. We need to be really aware of that as well as a distinction between the people of Molokai and the EC.
19. Are you encouraging that residents practice agriculture in this area? Doesn't it fall under the agricultural guidelines? Also, will there be potable water used for this area, or will it come from non-potable sources, and where is the non-potable water coming from?
20. We all know that overgrazing causes runoff...but development causes greater runoff. How will runoff be controlled and how will they enforce it, and to what extent?
21. Will the people of Molokai be allowed to go into these preservation areas and not practice their rights, but do their rights?
22. If you're going to have enforcement, will the homeowners be educated about the people who are there? Are they going to know that these people are allowed to be there because of their rights?
23. With regard to grading, it's real easy to change the slope from 50 percent to 25 or what not, so maybe there need to be regulations on grading, on how much can be graded down.
24. If the conservation zone area is going to be expanded, it will put a majority of the archaeological sites and cultural sites along the ocean side within that district. Since a lot of the archaeological sites are on the ocean side, how does this effect access to those sites? How does one get to the other archaeological sites, especially the ones that are closer to the lighthouse area, and coming up to Kahaleponaku? There's a few sites over there in the conservation area.
25. If some of these sites are spiritual sites and people want to practice their religion, how are they going to access those areas?

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 5

26. Somewhere in this document it says that the homeowners will have the right to build their own trails and have their own access down to the beach. If that's really true, then how are we going to protect against them doing things in this area? If the homeowners have access into the conservation area where there are all these archaeological sites, what is to protect the archaeological sites from them? Who would enforce it on a daily basis?
27. When are the covenants and restrictions for the potential homeowners going to be drawn up because I think that this (comment 34) should be introduced in the convent or in the agreements for purchase or sale?
28. This conservation area from the residential areas down to the beach, will fences be put up by the Nature Conservancy?
29. Looking at all these burials and possible burials, there are some that are right within the development area. There are some areas that had data recovery, so they're listed with site numbers. But there are a lot of unidentified burials and it looks like some of them fall within house lot areas. Are those going to be relocated or preserved in situ and protected?
30. Would the applicant be open to the idea of preservation in place, with buffer zones to protect those historical areas within the development?
31. It should be encouraged that everything you come across be protected in place, and not just go through a process of relocating any history to accommodate just the development itself.
32. There should be something from the homeowners' association that shows how the members are going to create something to protect those areas, not just for themselves, because it becomes an association's responsibility.
33. There is a danger of this turning into an association's so-called home rule versus the protection of the history of that place and encroaching heavily on those areas. There should be something where the State or the County, the Feds, or even the Nature Conservancy to draw up a plan so that this area is not going to be impacted from these residents.

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 6

34. With regard to the CC&R's for the development and protecting the beach and the conservation zone, will there be some type fencing that can be placed around the conservation district so that there isn't a lot of access mauka-makai from residents and that they will also have to access from the two exterior point?
35. It is recommended that some type of fencing be placed around the conservation district. Fencing can be anything from maybe vegetation, but preferably be something like they do along Sugar Beach where they just have wooden pickets for the turtles and signage that says, "This is a conservation district, no access. Please access at the extreme points."
36. If the two distant access points are essentially good enough for the people of Molokai, perhaps they should be good enough for the people who will be living there as well.
37. With regard to comments about no grading, no grading should really be taken seriously because the impact of grading is very severe. Whether it's the flying silt or whether it's the actual changes in the landscape which cause runoff to happen, this should be a no grading area. The houses that are built should not impact the natural coastal structure. They should be post and pier or some kind of pole structures that would not have any impact on these resources.
38. Perhaps the house lots should be more strict on grading, but more lenient for roads and utilities.
39. Also, as far as grading is concerned, ether should not be any fill, because this has also become an issue right here on Maui where people have filled in the gulches so that they have better views. It needs to be said that filling is also not an appropriate concept.
40. In the cultural resources section, where the last paragraph states "The plan also provides for covenants, conditions, and restrictions that La'au Point homeowners will need to accept and agree to uphold in order to purchase a lot," we need to have a copy of that plan and have the right to comment on it.
41. Under scenic resources, if our archaeological sites and historical sites are going to be part of the scenic resources, we should comment on them too, because historical sites and archaeological sites are part of these scenic resources.

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 7

42. In this document, what are functional plans?
43. The ideas of the Moloka'i Planning Commission's hearings should be given specific attention. The Maui Cultural Resources Commission recognizes the importance of the testimony that comes from the island of Moloka'i through their own Planning Commission, and that it recognizes that this commission needs to be in support of the cultural values of the various islands of Maui County. Therefore we request that specific attention be paid to or looked at concerning the information coming from the Moloka'i Planning Commission.
44. It is important to educate newcomers to Moloka'i.
45. A site visit would be helpful for the Commission.
46. The Commission requests that the Planning Department provide an additional opportunity for a cultural review of this project and that the possibility of zoning conditions that the Maui County Council could incorporate into its changes of zoning, as well as SMA conditions that the Moloka'i Planning Commission could incorporate into their permit. It is important that the CRC comment before it goes to zoning.
47. The Commission would like to leave open the idea that there may be further comments to make after having an opportunity to see the site.
48. With regard to any after-the-fact finds such as historical sites, or burials, that the mitigation process be strict for the relocation of those sites or burials, to ensure that they are not disturbed or moved. They need to stay in that area.
49. With regard to a note on the CC&R's that reads, "The final CC&R cannot be changed..." I have never seen CC&R's that did not have a lot of loopholes that didn't need to be cleaned up later. That shouldn't be there.
50. Who will determine and establish the policies that permit subsistence gathering and cultural practices, as well as allowing resources managers to protect the subsistence lifestyle? When it gets to cultural issues, they must talk to the Native Hawaiian practitioners. There should be clarity based upon access rights, native Hawaiian traditional gathering rights, their rights to practice not only on the gathering level but also on the spiritual level.

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 8

51. There should be established CC&R's before the EIS is accepted.
52. There is no indication of what historic post-contact sites are located at La'au point, so, there should be information provided on things dating from after contact through 1950.
53. There is mention of a Cultural Conservation management Zone to include historic cultural sites, but there is no information on what historical sites are being preserved.
54. It is very unclear with such incredibly high subsistence or resource concentrations on the west end that are noted, why all of the population concentrations are on the east side. The narrative needs to explain why there is so rich a concentration of resources but no settlements that correspond with them. What happened to cause that population shift?
55. Who will review the final CC&R's before it goes to LUC to make sure they are consistent with what is proposed in the DEIS?
56. With regard to the fence line between the Conservation District and private property, will future owners of lots understand completely that they may not access the beach except at the two ends of the shoreline? Can they walk down to the beach from their lots, or do they have to go all the way to either end? If these lots are being marketed as shoreline lots, then wouldn't the new owners expect to have direct access instead of having to drive down to the opposite ends of the beach for access? This seems like a hard concept to convey and implement.
57. Will there be any bike trails? There should be.
58. When will permanent trails and access routes to religious and other archaeological sites be established and submitted for public review?
59. Is the existing shoreline trail access easement shown on Figure 1 currently utilized by Moloka'i residents?

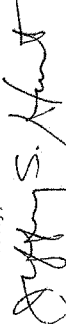
Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas A. Witten
Mr. Anthony Ching
February 23, 2007
Page 9

Comments from the General Public at the February 14, 2007 CRC Special Meeting including the following:

1. One thousand people of the population on Molokai were involved in this. That's not enough. That's why we have a lot of people grumbling, and fighting, and protesting because they know it's not for them.
2. La'au Point is a significant area. We can preserve the sites. I don't like the word "preserve" in a way, because it is Hawaii and that's what makes Hawaii. That is our past. We need to start implementing more guidelines, more restrictions, no houses at all in any of the areas where there is a site.
3. Grading should not be allowed. Make the houses post and pier because if you put post and pier you won't damage any of the sites in the areas as much as a slab for housing.
4. Then that area where the kupuna have said that's a shark area. Those waters are where the mano spawn. That's their homes out there.
5. I looked at the waster water plant, where it's going to be. Why is it going to be on the point there there's a heiau out there on that point? Is the non-potable water coming from the streams? Where are they getting it from for the agriculture?
6. These are big issues that should be heard and done correctly with the whole island, not just a thousand people.
7. The historical significance of the area really needs to be looked at. The houses shouldn't be built higher than anything else, they should be just level. The level of each house should remain the same. The grading should be limited.
8. The water treatment plant, I just have a hard time with the elevation. What elevation is the water treatment plant going to be at? The sewage treatment plant is another issue.
9. The representative of the developers has stated that their main reason for preventing runoff is to better assist the reef to thrive. The reef is already thriving.

If you have any questions, please contact CRC Planner, Stan Solamillo via email at stanley.solamillo@co.maui.hi.us, or by phone at 270-7506.

Sincerely,



JEFFREY S. HUNT
Planning Director

JSH:SCS:jlp
Attachments

c:
Colleen M. Suyama, Deputy Planning Director
Clayton I. Yoshida, AICP, Planning Program Administrator
Nancy M. McPherson, Staff Planner Molokai
Stanley Solamillo, Cultural Resources Planner
OEQC
Molokai Planning Commission
Cultural Resources Commission
Project File
General File
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Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 22

November 1, 2007

Jeffrey S. Hunt, Director
County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Hunt:

Thank you for your letter dated February 23, 2007 containing comments from the Maui County Cultural Resources Commission (CRC) regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to the comments.

1. There are a number of people who have stated that the actual gathering places for traditional practitioners or the places that are of most benefit to them are some distance from two public access points. It does sort of seem that the ability to practice your gathering rights and other cultural activities are going to be severely limited. Please respond.

Response: The area proposed for development of the rural residential lots is on private property. This area has been privately owned since Charles Reed Bishop purchased the Kaluako'i ahupua'a in 1875. The coastal areas where the rural residential lots are projected have been inaccessible by vehicle except for shareholders, cowboys and employees of Molokai Ranch until the development of "lanialows" at Kaupoa also opened vehicular access to guests of the Molokai Ranch Lodge and Beach Village.

The nearest public point of access at this time is at Hale O Lono on the south and at Dixie Maru on the west. The proposed access point at Pu'u Hakima on the southern shore will be closer to Lā'au Point than Hale O Lono. The proposed access point at Kama'ka'ipō on the western shore will be much closer. The project will provide a shoreline park, parking, and comfort stations at each proposed access points. The proposed project will thus improve access along the south and western coastal areas. As a means of limiting the impact upon subsistence resources with the increased access, vehicular access to the shoreline is limited to the two public access points, while walking access to the shoreline is unlimited. Access will also be improved for the general public on other lands granted to the Molokai Land Trust.

2. If the new homeowners are using water tanks, five thousand gallon water tanks, how will they produce enough pressure for fire sprinklers?

Response: The purpose of the 5,000-gallon water tanks is to capture and store water for irrigation, not for fire protection. Fire sprinklers will be connected via the homes main water system.

Molokai Properties Limited dba Molokai Ranch • 745 Fort Street Mall • Suite 600 • Honolulu, Hawaii 96813
Telephone 808.531.0150 • Facsimile 808.521.2279

3. You have a section here that indicates that you are going to educate the new homeowners. How is this going to be handled? In a classroom type setting or just by handing them a piece of paper?

Response: The Shoreline Access Management Plan (SAMP) for the area sets forth an education program required of all homeowners and visitors to the area that covers: cultural practices; cultural sensitivity and respect; environmental protection and concerns; historical significance of the area and resources; and the social fabric, traditions and culture of the Molokai community. In sum, the program is intended to make the users of the area aware of the value of the resources they encounter/harvest and to honor others rights and needs in the area.

SAMP education will be conducted in a variety of forms - written, audio-visual and personal hands-on on-site orientations - and not be limited to any one form. The educational requirement will be mandatory. From a practical standpoint, it is recognized that short-term guests may not have the time to undertake the program. However, it can be assumed that the homeowners who have undertaken the program will inform and educate their guests.

Admittedly, educational classes for landowners, vacationing or permanent, are a new approach to a decades old problem of disconnect between new landowners from outside Hawai'i and the local and Native Hawaiian communities.

We assume that educating new residents would have a better effect than if new residents were not educated at all. It is very likely that new buyers will be willing to attend classes to learn how to protect the environmental resources and Molokai lifestyle and culture. This is already occurring, whereby relatively newer residents are participating in environmental advocacy and protection efforts.

Currently, MPL allows limited beach access for MPL employees and Maunaloa residents to the area projected for residential development. It is mandatory that employees and their guests view a conservation video in order to qualify for a beach pass. This system has worked well and received the cooperation of those who have used beach passes.

To reflect the information above in the Final EIS, as well as to address other questions and concerns regarding shoreline access issues, Section 4.3 (Trails and Access) has been revised as shown on the attachment titled, "Revised Section 4.3 (Trails and Access)," and the SAMP has been included as an Appendix to the Final EIS.

4. In my experience with CC&R's 50 percent of them don't read the covenants, and of the other 50 percent that do, 20 percent of those don't understand what they're reading. How will you guarantee compliance?

Response: The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point, affected lot owners, and in certain circumstances, Molokai Properties Limited as the Declarant under the CC&Rs. The Land Trust will also have some enforcement powers over some CC&Rs. To include this information in the Final EIS, Section 2.3.6 (Covenants) will be revised as follows:

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007

Page 3 of 22

As previously stated, La'au Point aims to attract people who respect the unique character of the site and Moloka'i, and who support conservation, cultural site protection, and coastal resource management. Residents of La'au Point will be educated and informed about the environment and culture, and taught to "malama'āina," take care of the land and sea, through strict Conditions, Covenants, & Restrictions (CC&Rs) attached to the subdivision. The CC&Rs provide that every person whose name is on the property title must commit to undergo a certain amount of education about the Moloka'i community and its desires and aspirations with kupuna and the Maunaloa community. This will be conducted under the guidance of the Moloka'i Land Trust. The CC&Rs have been strengthened to protect the environment and resources at La'au Point. Enforcement and substantial penalties will be put in place to ensure that the covenants are respected and upheld. Although the CC&Rs are currently under development, because of the Master Plan process (Section 2.1.6), MPL does have a general idea of what the CC&Rs and some of the key provisions and concepts will be.

The CC&Rs will be monitored and enforced by the Board of the Association of Owners of La'au Point (the Board), affected lot owners, and in certain circumstances, the Moloka'i Land Trust as a signatory and Molokai Properties Limited as the Declarant under the CC&Rs. Failure to comply with the terms of the CC&Rs would expose the non-complying owner to sanctions which include monetary fines, suspending an owner's right to vote, suspending services provided by the Association, exercising self-help or taking action to abate any violation, removal of the non-compliant structure or improvement, precluding contractors, agents, or employees of any owner who fails to comply with the terms of the CC&Rs.

5. How many areas in the development itself provide access for residents only?

Response: We are unclear about the question. Residential common areas and private lots will be private property accessible to its residents and guests only.

6. My question is basically concerned with access for the public versus access for the residents. Will the public only have limited access while the residents in the area have unlimited access within the so-called preservation zone area—the protected zone?

Response: The project will create two public access points, one at each end of the project, which will include shoreline parks, parking, and comfort stations. Homeowners may access the shoreline from the residential area; however, they will be required to adhere to the rules of the SAMP, which designate certain protected areas in the Conservation zone as off-limits to non-cultural practitioners.

7. If the residential areas are provided unlimited access within the preservation zone then wouldn't that trigger the so-called Article 12, Section 7, HRS 7-1, and HRS 1-1?

Response: See our response to #6 above. Native Hawaiian rights guaranteed under Article 12, section 7 of the Hawaii Constitution, Sections 1-1 and 7-1 of the HRS will be honored. Vehicular access will be closer than it is presently. Walking access will be unlimited from the proposed parks on the western and southern shorelines. Harvesting and gathering will be managed both under the SAMP and under a proposed community-based subsistence fishing management zone. Those wishing to engage in subsistence fishing and gathering shall be

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007

Page 4 of 22

oriented to the rules and regulations of the fishing management area. Section 5.3 of the Cultural Impact Assessment (Appendix F of the Draft EIS) outlines the subsistence area management guidelines that community members developed in The Master Plan.

8. I read that the homeowners are going to have control over the area that they're in and it's not going to be a partnership, it's a homeowners' association. That really concerned me because it's only homeowners and not really even the land trust. Please respond.

Response: The Land Trust will hold and be able to enforce the easement over the expanded Conservation District (434 acres) within the La'au Point project area. As stated in Section 2.3.1 of the Draft EIS, the expanded Conservation District will be managed jointly by the homeowners and the Land Trust; in other words both entities will discuss and jointly decide on the management of the lands within the scope of the easement provisions under guidelines set out in the SAMP.

There will be common residential areas (about 382 acres) outside the Conservation District easement areas that are well back from the shoreline and that will be owned by the Homeowners' Association. These common residential areas are shown on Figure 11 of the Draft EIS.

9. There are issues such as height variances because of view planes, where the so-called water treatment plant is going to be that need to be resolved because that's culturally relevant to making sure that we don't get into an area that's highly sensitive to our history on Moloka'i. Also, whether or not these houses are going to be post and pier, whether or not they're going to be on slabs. Can you comment on how these houses are going to be built and where the cesspool plant is going to be, the water treatment area, all of those kinds of things, and whether or not it's going to be in a rural area?

Response: All buildings shall be restricted to 25 feet in height and consist of only one story. There is no restriction on whether houses must be post and pier or slab on grade. The wastewater treatment plant shall be located inland from the lighthouse station, approximately 1,500 feet from the nearest shoreline point. Individual lots will not have cesspools, but will be connected to the wastewater treatment plant.

The proposed wastewater handling facility is an advanced treatment system that will be located on about 14 acres of land immediately upland of the development. The facility will centrally serve the sewered community and be empty set-back from frontage roads and homes so as not to create an obtrusive view. Ultra-filtration membranes afford better-than-secondary treatment performance that is orders-of-magnitude better than how septic tanks and cesspools perform that typically serve individual homes in rural areas.

10. Is anyone working on the restrictions for the homeowners as part of their guidelines?

Response: Yes. As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in the Final EIS. The CC&Rs will be available for review at

the Land Use Commission hearings on the State Land Use District Boundary Amendment petition.

11. *With regard to the homeowners' association, are you going to have another public/community group working with these groups to preserve and protect historical sites, some of the fauna, and endangered species? Do you have any plans on how these areas are going to be protected? Do you have guidelines on the setbacks from historical area, endangered plants, etc.?*

Response: The Land Trust will work with the homeowners' association in protecting the area. As it stands, preservation sites have established buffers that pertain regardless of whether the site is located within or outside of a subdivision lot.

12. *With regard to protection and buffer zones, do you have any guidelines for construction or grading to insure that there is protection for historical sites or endangered species?*

Response: The protection consists of clearly marked protection buffers in the vicinity of any construction, augmented by archaeological monitoring which will enforce the buffers and halt work should any archaeological materials be discovered during construction.

13. *When the homeowners move in and one guy wants to put up a rock wall, and another wants to put up fencing, and another wants to grow a hedge, are there any guidelines to determine what gets built? You need specific criteria or guidelines. These are the kind of guidelines that we want to see.*

Response: The issues you raise are being covered in the CC&Rs. There will be four types of fences that homeowners will be able to build on lots that are closest to the ocean.

14. *Usually when you have grading and grubbing, you have the BMP's or Best Management Practices, but a lot of times that's for runoff. You may also have silt fences, and dust fences but it may be important for us to be more specific, like with the question on how would one protect the flora.*

Response: The Shoreline Access Management Plan (SAMP) provides guidelines to protect environmentally sensitive features, including native, rare, threatened, and endangered plants. To address this comment in the Final EIS, as well as to address other questions and concerns regarding flora, Section 3.6 (Flora) of the Final EIS has been revised as shown on the attachment titled, "Revised Section 3.6 (Flora)."

15. *It's important for the view planes too. One needs to preserve that mauka-makai connection in the historical areas. The view plane is important.*

Response: The Preservation Plan protects view sheds through the establishment of large preserves in areas such as Hakina and Kamāka'ipō, and through the concentration of road corridors and subdivision lots in areas where historical properties area either absent or marginal. It also specifies large buffers for heiau and unobstructed makai view sheds for fishing shrines.

View planes will be established through the creation of the building envelopes permitted on each lot and will take into account any historic sites located on the lot and in the vicinity of the lot. To

address the above comment in the Final EIS, the following discussion has been added to the potential impacts and mitigation section of Section 4.1 (Archaeological Resources):

In their July 5, 2006 comment letter on the EISPN, OHA stated: "Further consultation also may show that view planes must be preserved between existing heiau and other cultural sites." The archaeological preservation plan provides for a buffer with a radius of nine meters to extend from burials and heiau. In the case of ko'a shrines, an additional aspect of the buffer will be a requirement to keep an open view plane toward the ocean. In the case of the Maika-Makai preserve at Kamāka'ipō, the entire area will be a buffer, so that the overall character of the cultural landscape will be preserved.

16. *Later on, when this project moves forward, we want to be able to make recommendations on the protection and preservation of these areas.*

Response: The Commission will have more opportunities to make project recommendations during the permitting process and your input will be welcomed.

17. *In the beginning, when someone wants to buy the property, they're very much interested in the culture and preservation, but later on down the line there's no interest. It's not important to them anymore. How important is having them be educated about the island, the area, and the culture, and who will enforce this? If someone decides that they don't want to live on Moloka'i anymore and they want to sell, what happens to the new owner?*

Response: All sales of Lā'au Point lots will contain the CC&Rs and real estate legal documents. The CC&Rs contain provisions requiring adherence to the SAMP and the educational program and are attached to the lot in perpetuity regardless how many times the land is sold. The Homeowners' Association and Land Trust can enforce their provisions as outlined in our response to #4 above.

Under the SAMP, the Homeowners' Association will work in conjunction with the Land Trust cultural resource staff to monitor the condition of sites and compliance with preservation commitments in the future.

18. *We keep hearing about a community-based Master Land Use Plan for Molokai Ranch. This master plan is an agreement between the Moloka'i Enterprise Community, the EC, and Molokai Ranch. It is not a county land use plan; it is not a plan that is in any way part of the General Plan. We need to be really aware of that as well as a distinction between the people of Moloka'i and the EC.*

Response: In the EIS, the Community-Based Master Land Use Plan for Molokai Ranch is clearly conveyed as a separate document from the County's General Plan. The separate plans are discussed in different sections of the EIS: The Community-Based Master Land Use Plan for Molokai Ranch is discussed in Section 2.1.7, the Maui County General Plan is discussed in Section 5.2.1, and the Moloka'i Community Plan is discussed in Section 5.2.2.

19. *Are you encouraging that residents practice agriculture in this area? Doesn't it fall under the agricultural guidelines? Also, will there be potable water used for this area, or will it come from non-potable sources, and where is the non-potable water coming from?*

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 7 of 22

Response: The Lā'au Point residential area will be re-districted to rural from agricultural. The CC&RS prohibit agricultural activities in the residential areas. The residential areas will be irrigated with non-potable water.

20. *We all know that overgrazing causes runoff... but development causes greater runoff. How will runoff be controlled and how will they enforce it, and to what extent?*

Response: Proper development, including stabilization through retaining features, vegetation, and other means, will decrease runoff. In the short run, this requires best management practices during construction (such as silt-fencing and minimizing grading), while the long term solution lies in management of the grazing animals and stabilization of the soils.

As discussed in Section 4-9.1 of the Draft EIS, all Lā'au Point lots will be required to retain runoff of their lot in surface or subsurface retention basins onsite. This requirement ensures additional runoff generated by the project is kept within the project limits in accordance with Maui County Storm Drainage Standards.

To address the above comment in the Final EIS, Section 4-9.1 (Drainage) has been revised as shown:

Roadways constructed across existing drainageways will be provided with culverts to convey 100-year, 24-hour offsite runoff safely across them. Storm drainage systems will also be installed along the roadway shoulders to convey pavement runoff into the closest drainageways. Subsurface storage and filtration systems (de-silting basins) will be installed at the end of each roadway drainage system to intercept waterborne silt and other debris before it is discharged into drainageways and coastal waters.

Perforated risers will be added to the inlets of these culverts as shown in Exhibit 7 of Appendix R. In addition, subject to the availability of boulders from the roadway excavation, boulder berms will be constructed upstream of some of the inlets to reduce the velocity in the drainway and also to induce gravitational settling of water borne silt and debris before it enters the culverts. Energy dissipators will be constructed at the outlets of these drainage culverts to keep the velocities equal to or less than pre-development velocities, in accordance with the provisions of Article 15-04-06 subparagraph (8) of Title NC-15, A Rules for the Design of Storm Drainage Facilities in the County of Maui.

Where necessary, grass-lined diversion ditches will be installed along mauka boundaries of the project site to keep offsite runoff from flowing across the lots. All lots will also be required to retain runoff of their lot in surface or subsurface retention basins onsite. This is to ensure that additional runoff generated by the project is kept within the project limits in accordance with Maui County Storm Drainage Standards. The contractor will also be required to comply with State and County approved Best Management Practices for the duration of the construction period.

The current runoff from the proposed lots is 512 cubic feet per second (c.f.s.) for a 50-year 1-hour storm. This is expected to increase by 111 c.f.s. to 623 c.f.s. The total volume needed to store this increase is 152,390 ft³. Since the increase in runoff due to the roadway pavement is estimated at (537/111) = 48%, approximately 52% is attributable to

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 8 of 22

the imperviousness in each lot. The required storage in the roadway and lots are (0.48 x 152,390) = 73,147 ft³ and 79,243 ft³ respectively. It is estimated that approximately 20 feet of 5 feet diameter perforated pipe buried in each lot or a retention basin of equal capacity will be required to handle the additional runoff generated during a 50-year 1-hour storm event. See Exhibit 6 in Appendix R for details of subsurface systems on road and in lots.

As previously discussed in Section 3.8 (Marine Environment), marine waters surrounding Lā'au Point will experience episodic "red water" events following periods of heavy rainfall. Sediment delivery to coastal waters is exacerbated by soil loosened by natural causes, including the effects of deer and livestock trampling and foraging in upland areas. Erosion control practices are planned for Lā'au Point that will protect existing natural drainageways and nearshore water quality, such as drainage control systems, revegetation as a means of permanent erosion control measures throughout the developed areas, and fencing to keep deer and other animals from disturbing the soil near the community.

21. *Will the people of Moloka'i be allowed to go into these preservation areas and not practice their rights, but do their rights?*

Response: Federal and State legislation guarantees that Native Hawaiians may engage in cultural activities, although the boundaries of these actions are not entirely clear. Generally, where the exercise of the right does not destroy the integrity of the site where it takes place, it is acceptable archaeologically, and Moloka'i Hawaiian community standards must be the ultimate arbiter (perhaps through a Kīpuna Council). All homeowners, including future re-sales, will receive orientation that makes them aware of cultural activities that occur in or near their property. Also, see response to #7 above.

22. *If you're going to have enforcement, will the homeowners be educated about the people who are there? Are they going to know that these people are allowed to be there because of their rights?*

Response: Yes. All homeowners, (including those who are owners following future re-sales) will receive orientation that makes them aware of cultural activities that occur in or near their property. There will be a required education program (addressed in our response to #3 above) that will ensure that the homeowners know the cultural significance of the area, the rights of the Hawaiian community and individuals to access the area. There will be enforcement of the right to access through SAMP under the direction of the Land Trust.

23. *With regard to grading, it's real easy to change the slope from 50 percent to 25 or what not, so maybe there need to be regulations on grading, on how much can be graded down.*

Response: All grading will be done in accordance with Chapter 20.08, of the Maui County Code (MCC).

24. *If the conservation zone area is going to be expanded, it will put a majority of the archaeological sites and cultural sites along the ocean side within that district. Since a lot of the archaeological sites are on the ocean side, how does this effect access to those sites? How does one get to the other*

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 9 of 22

archaeological sites, especially the ones that are closer to the lighthouse area, and coming up to Kahalepohaku? There's a few sites over there in the conservation area.

Response: There is open access laterally along shoreline from the West shoreline at Kaupoa Beach to the South shoreline at Hale O Lono. While there may not be dedicated access trails to all sites from the road, the State of Hawai'i protects the rights of people who navigate near-shore waters and walk the coast, from which all the preserved shoreline sites are accessible on foot, just as during the period they were occupied.

Access to the archaeological and cultural sites will be managed so as to protect the cultural integrity of the sites as well as to provide access to those who have a connection to and kuleana for the sites. As at present, access to most of the sites will be by foot rather than by vehicle in order to protect the sites. Access will be governed by the provisions of the SAMP and governed by the Land Trust.

Residents will be educated about the cultural significance of the sites and the protocols which will protect the sites. The resource managers who will live on site will monitor and enforce the cultural guidelines and protocols. Native Hawaiian practitioners and kama'āina residents of the Kaitoko'i ahupua'a will be consulted.

Section 5.5 of the Cultural Impact Assessment (Appendix F in the Draft EIS) provides an outline of the cultural site protection measures that the community recommended in The Master Plan:

Protection and restrictions have also been written into the Shoreline Access Management Plan (SAMP), as a result of the Cultural Plan, which has two major components—archaeological and cultural. The Plan will follow the community guidelines for Policies and Principles adopted for this Master Plan. The CC&Rs will require adherence to the SAMP. The SAMP has been appended to the Final EIS.

25. If some of these sites are spiritual sites and people want to practice their religion, how are they going to access those areas?

Response: The areas are open access. Parking and initial access will be through the two designated parks. Most of these sites are in the expanded shoreline Conservation District, and are accessible through the routes described in #24 above. Known heiau are within cultural preserved that should be accessible from the road, and the heiau and ko'a at Kamāka'ipō are within or adjacent to what will be a publicly accessible park.

26. Somewhere in this document it says that the homeowners will have the right to build their own trails and have their own access down to the beach. If that's really true, then how are we going to protect against them doing things in this area? If the homeowners have access into the conservation area where there are all these archaeological sites, what is to protect the archaeological sites from them? Who would enforce it on a daily basis?

Response: Homeowners may access the shoreline from the residential area; however, they will not be able to disturb the environment or "build" trails in the Conservation District and they will be required to adhere to the rules of the SAMP, which designate certain protected areas in the

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 10 of 22

Conservation zone as off-limits to non-cultural practitioners. Land Trust steward/manager will enforce the SAMP.

27. When are the covenants and restrictions for the potential homeowners going to be drawn up because I think that this (comment 34) should be introduced in the covenant or in the agreements for purchase or sale?

Response: As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in the Final EIS. The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition.

28. This conservation area from the residential areas down to the beach, will fences be put up by the Nature Conservancy?

Response: The Land Trust, not the Nature Conservancy, will be managing the expanded Conservation District. It is not planned that the expanded Conservation District will be fenced.

29. Looking at all these burials and possible burials, there are some that are right within the development area. There are some areas that had data recovery, so they're listed with site numbers. But there are a lot of unidentified burials and it looks like some of them fall within house lot areas. Are those going to be relocated or preserved in situ and protected?

Response: The burial/potential burial sites are marked with orange dots and site numbers on Figure 10 of the Draft EIS. As shown in the figure, the subdivision lot lines are sited away from these burial sites. Except for two possible burial sites located in the residential open space areas between lots, all burial/potential burial sites are located within the proposed expanded Conservation District and Cultural Protection Zones. The burials will not be relocated.

The data recovery sites are marked with green dots and site numbers on Figure 10 of the Draft EIS. There are approximately 21-24 data recovery sites located within the road/infrastructure corridor and proposed subdivision lots. Data recovery sites mostly consist of very simple agricultural modifications, lithic scatters, and more recent historical sites. The residential lots have been sited away from the most significant archaeological sites identified for preservation. The Preservation Plan, Data Recovery Plan, Burial Treatment Plan, and Monitoring Plan (provided in Appendix E of the Final EIS) all emphasize the preferred method of treatment is preservation in situ.

30. Would the applicant be open to the idea of preservation in place, with buffer zones to protect those historical areas within the development?

Response: As the EIS indicates, we will make every attempt to do so. The residential lots already avoid significant sites. These sites will be preserved and protected in place by

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 11 of 22

designating the surrounding area of the archaeological site into Cultural Protection Zone and expanded Conservation District.

31. It should be encouraged that everything you come across be protected in place, and not just go through a process of relocating any history to accommodate just the development itself.

Response: Preservation in place is the treatment for the majority of sites. This is indicated in the Archaeological reports provided as Appendix E of the Draft EIS.

32. There should be something from the homeowners' association that shows how the members are going to create something to protect those areas, not just for themselves, because it becomes an association's responsibility.

Response: All historic sites within the Conservation District shall be under the joint management and operation and control by the Association and the Moloka'i Land Trust. Hence, these historic sites will be maintained essentially by the Moloka'i Land Trust and its cultural advisers who have the knowledge and expertise to properly preserve the cultural and historic importance of the sites. There are very few sites within the project area outside of the expanded Conservation District. These few sites will be subject to protection under Hawai'i law and a general prohibition on disturbance in the CC&Rs. The majority of the sites listed in the Archaeological Plans contained in Appendix E of the EIS, pursuant to the Master Plan, will be placed in Preservation Zones which are outside of the project area or in lands which will be owned by the Land Trust and are not impacted by the development.

33. There is a danger of this turning into an association's so-called home rule versus the protection of the history of that place and encroaching heavily on those areas. There should be something where the State or the County, the Feds, or even the Nature Conservancy to draw up a plan so that this area is not going to be impacted from these residents.

Response: See our response to #32 above. Historic sites will be under the joint management of the Homeowners Association and the Land Trust pursuant to the SAMP. The SAMP requires a management plan be developed in conjunction with area Kupu and cultural practitioners to preserve and maintain the cultural sites in accordance with the principals contained in the Archaeological Plans (Appendix E to the Draft EIS).

34. With regard to the CC&R's for the development and protecting the beach and the conservation zone, will there be some type fencing that can be placed around the conservation district so that there isn't a lot of access mauka-makai from residents and that they will also have to access from the two exterior points?

Response: Each of the residential lots shall be at least 250 feet from the nearest shoreline and improvements for each lot shall be further restricted to an area at least 50 feet mauka of such boundary. Each makai lot owner shall be required to install and maintain a physical demarcation, in the form of four types of specified fences, running along the owner's property line which reflects the approximate boundary of the private near shore lots and the conservation district areas.

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 12 of 22

Inasmuch as the expanded Conservation District will be the entire shoreline area under the joint jurisdiction of the Moloka'i Land Trust and the Association, it is anticipated that there should be no landscaping or development in the expanded Conservation District except as to preserve the historic sites therein and for security and safety purposes. As such, the lack of active landscaping should encourage the growth of natural plants and vegetation in the area which will act as a natural barrier to access to the shoreline.

35. It is recommended that some type of fencing be placed around the conservation district. Fencing can be anything from maybe vegetation, but preferably be something like they do along Sugar Beach where they just have wooden pickets for the turtles and signage that says, "This is a conservation district, no access. Please access at the extreme points."

Response: Your suggestions have been noted.

36. If the two distant access points are essentially good enough for the people of Moloka'i, perhaps they should be good enough for the people who will be living there as well.

Response: Your comment is noted.

37. With regard to comments about no grading, no grading should really be taken seriously because the impact of grading is very severe. Whether it's the flying silt or whether it's the actual changes in the landscape which cause runoff to happen, this should be a no grading area. The houses that are built should not impact the natural coastal structure. They should be post and pier or some kind of pole structures that would not have any impact on these resources.

Response: All grading will be done in accordance with Chapter 20.08, of the Maui County Code (MCC). In addition, all building heights in regard to grading and fill will be in accordance with Chapter 19.04, MCC. Post and pier construction may lessen dust during construction but has the same potential for runoff as at grade housing, if not more. Regardless of the construction method chosen, all homeowners will have to adhere to the CC&R provisions mitigating runoff.

38. Perhaps the house lots should be more strict on grading, but more lenient for roads and utilities.

Response: Your comment is noted.

39. Also, as far as grading is concerned, either should not be any fill, because this has also become an issue right here on Maui where people have filled in the gulches so that they have better views. It needs to be said that filling is also not an appropriate concept.

Response: Building heights in regard to grading and fill will be in accordance with Chapter 19.04, MCC. Building restrictions shall still limit the height of any building on any lot to 25 feet and not more than one storey. All grading will be done in accordance with Chapter 20.08, of the Maui County Code (MCC).

Some situations call for fill as a means of stabilizing protecting archaeological deposits and soils in general. Because many areas have been reduced to hardpan (which greatly increases runoff), use of retaining walls and fill can be the only means of re-vegetating some areas. In areas where

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 13 of 22

there are subsurface archaeological deposits in the road corridor, fill can result in preservation where grading would mean destruction.

40. *In the cultural resources section, where the last paragraph states "The plan also provides for covenants, conditions, and restrictions that La'au Point homeowners will need to accept and agree to uphold in order to purchase a lot," we need to have a copy of that plan and have the right to comment on it.*

Response: As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in the Final EIS. The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition, at which time your comments will be welcome and appreciated.

41. *Under scenic resources, if our archaeological sites and historical sites are going to be part of the scenic resources, we should comment on them too, because historical sites and archaeological sites are part of these scenic resources.*

Response: Based on comments regarding view planes and historical sites, the following discussion has been added to Sections 4.1 (Archaeological Resources) and 4.7 (Scenic Resources) of the Final EIS:

In their July 5, 2006 comment letter on the EISPN, OHA stated: "Further consultation also may show that view planes must be preserved between existing heiau and other cultural sites." The archaeological preservation plan provides for a buffer with a radius of nine meters to extend from burials and heiau. In the case of ko'a shrines, an additional aspect of the buffer will be a requirement to keep an open view plane toward the ocean. In the case of the Mauka-Makai preserve at Kamāka'ipō, the entire area will be a buffer, so that the overall character of the cultural landscape will be preserved.

42. *In this document, what are functional plans?*

Response: Section 5.1.6 of the Draft EIS contains an analysis of the project's relationship to the State of Hawai'i Functional Plans. As stated in the EIS (page 116), the Hawai'i State Plan directs State agencies to prepare functional plans for their respective program areas. There are 14 state functional plans that serve as the primary implementing vehicle for the goals, objectives, and policies of the Hawai'i State Plan.

43. *The ideas of the Moloka'i Planning Commission's hearings should be given specific attention. The Maui Cultural Resources Commission recognizes the importance of the testimony that comes from the island of Moloka'i through their own Planning Commission, and that it recognizes that this commission needs to be in support of the cultural values of the various islands of Maui County. Therefore we request that specific attention be paid to or looked at concerning the information coming from the Moloka'i Planning Commission.*

Response: We agree with your comment.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 14 of 22

44. *It is important to educate newcomers to Moloka'i.*

Response: We agree with your comment.

45. *A site visit would be helpful for the Commission.*

Response: We agree and a site visit for the Commission is welcomed whenever the request is to be made.

46. *The Commission requests that the Planning Department provide an additional opportunity for a cultural review of this project and that the possibility of zoning conditions that the Maui County Council could incorporate into its changes of zoning, as well as SMA conditions that the Molokai Planning Commission could incorporate into their permit. It is important that the CRC comment before it goes to zoning.*

Response: The Cultural Resources Commission will have the opportunity to comment during the County permit hearings.

47. *The Commission would like to leave open the idea that there may be further comments to make after having an opportunity to see the site.*

Response: Your comment is noted.

48. *With regard to any after-the-fact finds such as historical sites, or burials, that the mitigation process be strict for the relocation of those sites or burials, to ensure that they are not disturbed or moved. They need to stay in that area.*

Response: As stated in the archaeological Burial Treatment plan of (Appendix E of the Draft EIS), construction will be planned to avoid any burials or suspected burials recorded in previous studies and during the supplemental road corridor survey. Therefore, it is very unlikely that any burials will be disturbed. Should it prove extremely difficult to plan around a possible burial, then (as a last resort) that feature may be tested to determine its actual function. If it is in fact a human burial, then it will be covered, and preserved in place. Human remains encountered during such a test will not be removed, photographed, or collected.

While it is advised that any burial be preserved in place, there is a small possibility that doing so would not be a good idea. One example would be if lineal or cultural descendants were to request its reinterment elsewhere, either out of concern for its safety and stability, or to remove it from close proximity to a sewer line or the like. Another instance in which data recovery of a site or movement of human remains could be the best path is when preservation in place would cause worse impacts wherever the road or construction is rerouted. Preservation in place should remain the preferred option, but not when it defies the overall aim of preservation.

If testing does not encounter human remains, the feature will be subject to data recovery according to the procedures and standards described in the Data Recovery Plan (also located in Appendix E of the Draft EIS). If, during the course of the project, human burials are

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 15 of 22

inadvertently discovered, work in the vicinity will be halted while the archaeologist determines if they are likely to have been in place for more than 50 years. If not, the matter comes under the jurisdiction of local police, who will be notified. If so, the SHPD Burials Program will be consulted. The preferred treatment will be to leave any burials in the location they were found, and avoid any further disturbance.

49. *With regard to a note on the CC&R's that reads, "The final CC&R cannot be changed..." I have never seen CC&R's that did not have a lot of loopholes that didn't need to be cleaned up later. That shouldn't be there.*

Response: We respectfully disagree. The La'au Point residential community will be different than other subdivisions. The CC&Rs are very strict and will not allow future changes to key provisions arising out of the Master Plan process. Please also see our response to # 4 above.

50. *Who will determine and establish the policies that permit subsistence gathering and cultural practices, as well as allowing resources managers to protect the subsistence lifestyle? When it gets to cultural issues, they must talk to the Native Hawaiian practitioners. There should be clarity based upon access rights, native Hawaiian traditional gathering rights, their rights to practice not only on the gathering level but also on the spiritual level.*

Response: The Land Trust has determined and established the policies under the Shoreline Access Management Plan, which is appended to the Final EIS. These policies will be reflected within the provisions of the Easement Deed that will be affixed to the property title over the expanded Conservation District area in favor of the Land Trust. The Land Trust, even in its infancy and within its establishment board, has as directors at least one cultural practitioner of long-standing and experience, and experts in Native Hawaiian culture and practice.

51. *There should be established CC&R's before the EIS is accepted.*

Response: As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in the Final EIS. The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition.

52. *There is no indication of what historic post-contact sites are located at La'au point, so, there should be information provided on things dating from after contact through 1950.*

Response: There is in fact discussion of post-contact sites in the EIS. There is some discussion in the Introduction to the archaeological plans (Appendix E of the Draft EIS), and in site-specific sections. Information in the Archaeological plans about historic sites appears in the Data Recovery Plan, on Introduction pages 10, and 15-16, as well as Appendix A, which reports the inventory data for relevant sites. Additional information occurs in the Preservation Plan, pages 13, 16, and Appendix A, which reports the inventory data for relevant sites.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 16 of 22

In addition to ranch-related sites, there are some apparent military training features, deer-hunting blinds, and on the USCG property, features associated with the lighthouse. In and adjacent to the project area, there are 13 sites that appear to have a post-contact component. The above referenced sections of the Recovery Plan and Preservation Plan indicate that there are a few ranching structures, a few stone walls that are related to hunting and/or military training, and the lighthouse that are post contact. Most of the historic artifacts and structures occur in or near older sites. Several of the post-Contact sites were not judged to be significant, either because they were modern, or because they offered no potential to provide information beyond what the inventory record provided, and did not qualify under other significance criteria.

53. *There is mention of a Cultural Conservation management Zone to include historic cultural sites, but there is no information on what historical sites are being preserved.*

Response: Figure 10 and Appendix E of the Draft EIS provide this information. This information is also contained in the Preservation Plan. We refer you to Tables 1-10 of the Preservation Plan contained in Appendix E to the Draft EIS for a complete list of the sites being preserved and how they are being treated.

54. *It is very unclear with such incredibly high subsistence or resource concentrations on the west end that are noted, why all of the population concentrations are on the east side. The narrative needs to explain why there is so rich a concentration of resources but no settlements that correspond with them. What happened to cause that population shift?*

Response: As described in more detail in Appendix E (Archaeological Reports, Preservation Plan, Introduction, page 12, History and Archaeology) of the Draft EIS, archaeological literature has accepted that Kaluako'i was a dry and thinly populated area. While there is good stone for adzes and good fishing, the limited rainfall hampered agricultural production, which was always the mainstay of subsistence. There appear to have been long term settlements at the small bays of the west end, but not on the level of the east. Rather than a population shift from west to east, it appears that the small west end population died out and/or left in early historic times, while the east end remained populated. There are a few sources indicating that east end people (specifically Pelekunu Valley) came to the west end on a seasonal basis to fish, and it is possible that at least some of the population spent some time on each end. The following discussion has been added to Section 4.1.1 of the Final EIS to provide further explanation of this situation:

Stokes (1909) stated that "inhabitants of the western end of Molokai deserted or were removed from their homes nearly half a century ago" (Stokes 1909:30), a period when Kamehameha V had begun ranching operations on the island. Stokes, after his 1909 survey also stated, "This part of the island [Kaluaoko'i] does not give any evidence of a dense population . . . It is probable that formerly, as now, coasts were periodically visited by the inhabitants of the rest of the island for the purpose of fishing, the waters there yielding very abundantly." (cited in Summers, p.40)

According to John Wesley Coulter in *Population and Utilization of Land and Sea in Hawaii, 1853 (1931)*, "Nearly all the western half of the island was uninhabited. There the semi-arid climate precluded successful agriculture."

Traditional wisdom among archaeologists has also concluded that this region would have been settled only after sweet potato was available, and after population densities had risen in the wetter areas, probably no earlier than about AD 1500 (Kirch 1983). Radiocarbon dates suggest somewhat earlier occupation may be possible, although the limited data make it hard to discern sporadic early use from a stable early habitation. An inland quarry yielded a radiocarbon date of AD 1260-1440, and the south Kamaka'ipo coastal site was dated between AD 1410-1955. A subsequent, unpublished date from the 1991 excavations at Site 654, in a coastal imu that Weisler originally recommended dating, provided an even earlier date of AD 1019-1211, confirming the suspicion that coastal areas were used much earlier than they were permanently settled.

In addition, Section 3.3 of the Cultural Impact Assessment (Appendix F of the Draft EIS), describes how the West end of Moloka'i was never densely populated as follows:

According to Summers, Kamakau described the ahupua'a of Kahako'i in which Mo'omomi is situated as a desolate land of famine.

George Cooke notes that according to the logs of Captain James Cook, when he came by Moloka'i in the winter, he saw red water from the gulches out half mile from shore. Erosion is not just in modern times, but it got worse with cattle and pineapple culture. Even in ancient times there was soil run off.

Stokes, after his 1909 survey stated, "This part of the island [Kalaoko'i] does not give any evidence of a dense population . . . It is probable that formerly, as now, coasts were periodically visited by the inhabitants of the rest of the island for the purpose of fishing, the waters there yielding very abundantly." (cited in Summers, p.40)

According to John Wesley Coulter in *Population and Utilization of Land and Sea in Hawaii, 1853* (1931), "Nearly all the western half of the island was uninhabited. There the semi-arid climate precluded successful agriculture." His map, shown below, illustrates the distribution of the population on Moloka'i in 1853. It depicts Kahako'i as an area without any inhabitants.

William Bonk conducted archaeological excavations in West Moloka'i for his 1954 M.A. Thesis, "Archaeological Excavations on West Moloka'i." He excavated 9 archaeological sites on West Moloka'i that were either adjacent to the shoreline or less than one mile from the ocean. Based upon his excavations, Bonk concluded that the Kalaoko'i ahupua'a was of significance to early Native Hawaiians for its adze quarries and extensive fishing resources. He writes:

"A conclusion which comes to the fore, as a result of this investigation of west Moloka'i, is that the contents of the sites excavated bear out what we had every reason to expect, that this was a decidedly marginal land for the inhabitants of Moloka'i. Fishing and the quest for adze stone brought people into the area, and fighting probably sent refugees into it, but temporarily. The small population of Moloka'i must have found ample room on the richly watered and larger land of east Moloka'i. Only a few fishermen families seem to have found it worth while to build homes on west Moloka'i. Being a distant, bare region, except for fishing, the wanderers into it would go lightly burdened and would not tarry longer

than to obtain their fish or stone. They therefore would have a strong incentive not to loose(sp?) the few, vital things they took with them, and would not be much concerned with the manufacture of articles, while camping in the shelters. Hence the relatively few artifacts, in number or kind, as compared with sites on Oahu and Hawaii." (p. 139)

Bonk also provided a review of observations about West Moloka'i by early explorers and ethnographers which reinforce his conclusion that West Moloka'i was a dry, marginal, sparsely populated area of the island. The following are excerpts from these observations cited by Bonk.

Captain George Vancouver:

"The country had the same dreary and barren appearance, as that noticed on the south side, and I was informed it was equally destitute of water." (p. 16)

Archibald Menzies, naturalist on Vancouver Voyage:

"presents a naked dreary waste without either habitation or cultivation; its only covering is a kind of think withered grass, which, in many parts, is scarcely sufficient to hide its surface apparently composed of dry rocky and sandy soil." (p.16)

Foundaeder in History of Kuai'i:

"The cause of all the trouble was this: The chiefs on the Koolau side of Moloka'i were anxious to get possession of Kekaha, a stretch of country from Kawela to Maamomi (sp); and the reason why these chiefs were so desirous of getting possession of this section of country was on account of the fishing. But the chiefs of Kekaha, know the value of these fishing grounds, were determined to hold on to them, so this determination on their part caused a general internal conflict at this time. . . ." (p. 17)

55. Who will review the final CC&R's before it goes to LUC to make sure they are consistent with what is proposed in the DEIS?

Response: As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust to ensure the CC&Rs conform with the Master Plan and other findings within the EIS. The CC&Rs will need to be signed off by the Moloka'i Land Trust before they are acceptable to MPL. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in the Final EIS. The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition.

56. With regard to the fence line between the Conservation District and private property, will future owners of lots understand completely that they may not access the beach except at the two ends of the shoreline? Can they walk down to the beach from their lots, or do they have to go all they way to either end? If these lots are being marketed as shoreline lots, then wouldn't the new owners expect to

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 19 of 22

have direct access instead of having to drive down to the opposite ends of the beach for access? This seems like a hard concept to convey and implement.

Response: The project will create two public access points, one at each end of the project, which will include shoreline parks, parking, and comfort stations. Homeowners may access the shoreline from the residential area; however, they will be required to adhere to the rules of the SAMP, which designate certain protected areas in the Conservation zone as off-limits to non-cultural practitioners. The SAMP is appended to the Final EIS.

57. Will there be any bike trails? There should be.

Response: Existing bike trails will remain. There are no new bike trails planned as it is envisaged access through the expanded Conservation District will be by foot only, with the exception of emergency access and the infirmed.

58. When will permanent trails and access routes to religious and other archaeological sites be established and submitted for public review?

Response: At this time, no specific trails have been proposed to provide access routes to existing cultural and religious resources. The community has concerns over the sanctity of the sites and the need to keep the knowledge with the Kupuna and family members who practice at the sites. The SAMP provides for access in a manner that ensures preservation of the cultural sites.

Should there be a network of trails planned in the future, they would be based on survey and analysis of field conditions, and then submitted for review as a Supplemental Preservation Plan.

59. Is the existing shoreline trail access easement shown on Figure 1 currently utilized by Moloka'i residents?

Response: The public is currently allowed to access the shoreline. Moloka'i residents are known to utilize the shoreline and sometimes gain access to old trails on MPL property via the beach which is public property.

Comments from the General Public at the February 14, 2007 CRC Special Meeting including the following:

1. One thousand people of the population on Molokai were involved in this. That's not enough. That's why we have a lot of people grumbling, and fighting, and protesting because they know it's not for them.

Response: The meetings were open to everyone that wanted to participate. As Section 2.4 (Community Meetings and Involvement) of the Draft EIS describes, much effort was put into publicizing the meetings, meetings were held Island-wide, and most of the meetings were aired on the Akaku Channel 53. There have been numerous opportunities for public involvement, input, and review.

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 20 of 22

2. La'au Point is a significant area. We can preserve the sites. I don't like the word "preserve" in a way, because it is Hawaii and that's what makes Hawaii. That is our past. We need to start implementing more guidelines, more restrictions, no houses at all in any of the areas where there is a site.

Response: We believe the lengths the Moloka'i Land Trust and MPL has gone to concerning the controls on this project will make it a guideline for future developments in the islands.

3. Grading should not be allowed. Make the houses post and pier because if you put post and pier you won't damage any of the sites in the areas as much as a slab for housing.

Response: All grading will be done in accordance with Chapter 20.08, of the Maui County Code (MCC). In addition, all building heights in regard to grading and fill will be in accordance with Chapter 19.04, MCC. Post and pier construction may lessen dust during construction but has the same potential for runoff as at grade housing, if not more. Regardless of the construction method chosen, all homeowners will have to adhere to the CC&R provisions mitigating runoff.

4. Then that area where the kupuna have said that's a shark area. Those waters are where the mano spawn. That's their homes out there.

Response: We note your comment and note that many areas off the western coastline are extremely dangerous in which to swim.

5. I looked at the waste water plant, where it's going to be. Why is it going to be on the point there there's a heiau out there on that point? Is the non-potable water coming from the streams? Where are they getting it from for the agriculture?

Response: The wastewater treatment plant is centrally located to serve the entire La'au Point community. It is a significant distance from the heiau. Also, see response also to # 9 above.

Non-potable water for the project will come from the Kākalahale Well, recycled water from the WWTP, and individual water catchment systems. As no agriculture will be allowed within the project area, no water is needed for agriculture. However, as outlined in the Water Plan (provided in Appendix P of the Draft EIS), 1,000 gallons per day has been allocated for potable use in the La'au parks and 40,000 gallons per day of non-potable water for irrigation of the expanded Conservation District for irrigation and for subsistence practices.

6. These are big issues that should be heard and done correctly with the whole island, not just a thousand people.

Response: The meetings were open to everyone that wanted to participate. As Section 2.4 (Community Meetings and Involvement) of the Draft EIS describes, much effort was put into publicizing the meetings, meetings were held Island-wide, and most of the meetings were aired on the Akaku Channel 53. There have been numerous opportunities for public involvement, input, and review.

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 21 of 22

7. *The historical significance of the area really needs to be looked at. The houses shouldn't be built higher than anything else, they should be just level. The level of each house should remain the same. The grading should be limited.*

Response: The CC&Rs contain restrictions on grading and on the building envelope which will leave 1/3 of the lot undisturbed.

8. *The water treatment plant, I just have a hard time with the elevation. What elevation is the water treatment plant going to be at? The sewage treatment plant is another issue.*

Response: The water treatment plant is not located within the project site; it is at Pu'u Nana. The wastewater treatment plant will be designed to fit into the surroundings. Modern wastewater treatment plants are usually one story in height with most of the facility at ground level.

Regarding the wastewater treatment plant, the Department of Health (DOH) Wastewater Branch stated: "we have no objections to the proposed construction of an R-1 wastewater facility." To reflect this information in the Final EIS, Section 4.9.3 (Wastewater) has been revised as follows:

Lā'au Point will include its own private wastewater treatment system to be maintained through homeowners' association dues. In their July 6, 2006 comment letter on the EISP, the State Department of Health stated: "As the project cannot be served by the County sewer service system, we have no objection to the proposed option for a private wastewater treatment system." In their comment letter on the Draft EIS dated January 31, 2007, the State Department of Health stated: "we have no objections to the proposed construction of an R-1 wastewater facility." MPL will build the onsite sewer collection system within Lā'au Point. A centrally-located site of 14 acres has been designated for the wastewater treatment system, which will accommodate the projected full development flow. The proposed sewage system will be designed to County of Maui standards. In addition, all wastewater plans will conform to applicable provisions of HAR, Chapter 11-62, "Wastewater Systems."

9. *The representative of the developers has stated that their main reason for preventing runoff is to better assist the reef to thrive. The reef is already thriving.*

Response: As discussed in Section 3.8 (Marine Environment) of the Draft EIS, the marine waters surrounding Lā'au Point experience episodic "red water" events following periods of heavy rainfall. Turbidity, suspended solids and nutrient concentrations may be significantly elevated during these events. Sediment delivery to coastal waters is exacerbated by soil loosened by natural causes, including the effects of deer and livestock trampling and foraging in upland areas. The return to baseline conditions after a storm event is aided by turbulent mixing from waves and advection by currents along this exposed coast. The coastal marine communities are adapted to this periodic influx of runoff as well as to occasional high surf and the resulting scour from moving sand and rocks. Coral cover in particular is low and the low relief of the substratum provides limited fish habitat.

The marine water quality report concludes that it is likely that sediment discharge from runoff to the ocean will be significantly less with the Lā'au Point development compared with existing conditions. This conclusion is based on several measures planned for Lā'au Point that will

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 22 of 22

protect near-shore waters from increased degradation of water quality, such as drainage control systems, CC&Rs to regulate the use of fertilizers and pesticides, re-vegetation as a means of permanent erosion control measures throughout the developed areas, and fencing to keep deer and other animals from disturbing the soil near the community. Therefore, it is also likely that the long-term water quality in adjacent coastal waters may be improved by these measures.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,

Peter Nicholas
President and CEO
Molokai Properties Limited

Attachments:
Revised Section 4.3 (Trails and Access)
Revised Section 3.6 (Flora)

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Thomas S. Witten, PBR HAWAII

ALAN M. ARAKAWA
MAYOR



CARL M. KAUPALOLO
CHIEF
NEAL A. BAL
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY

200 DAIRY ROAD
KAHULUI, MAUI, HAWAII 96732
(808) 270-7561
FAX (808) 270-7919

December 28, 2006

Mr. Thomas S. Witten
PBR Hawaii
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, Hawaii 96813

Subject: Draft EIS for La'au Point, Molokai, Hawaii

Dear Mr. Witten,

I have had an opportunity to review the draft EIS notice. It is too early in the planning stages for our department to make detailed construction requests of the proposed project. We will take a detailed look of the project during the building permit process. Items we are concerned with include water for fire protection and roadway widths to allow emergency vehicles adequate access.

As you are well aware, the nearest fire station is in Ho'olehua. This distance is outside the 5 road miles required to have a favorable fire insurance rating as determined by the Hawaii Insurance Bureau. Does the project intend to include a fire station site?

Please feel free to contact myself at 244-9161 ex 29 if there are any questions or concerns.

Sincerely,

Valeriano F. Martin
Captain
Fire Prevention Bureau

November 1, 2007

Valeriano F. Martin
County of Maui
Department of Fire & Public Safety
200 Dairy Road
Kahului, Hawaii 96732

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Captain Martin:

Thank you for your letter dated December 28, 2006 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

We understand that you will conduct a detailed review of the project during the building permit process when more detailed construction plans are available. We acknowledge items you are concerned with include water for fire protection and roadway widths to allow emergency vehicles adequate access.

As stated section 4.10.3 (Fire Protection) of the Draft EIS: "A water storage tank or reservoir will be constructed above the project site to provide adequate pressure and to meet the storage requirements for fire protection."

Roadway widths for the project will be built to County of Maui standards to allow future dedication to the County of Maui. This will ensure adequate emergency vehicle access and turnaround. It is noted in section 4.4 of the Draft EIS that all Lā'au Point road "will be built using county standards."

We are aware that the nearest fire station is in Ho'olehua and that the distance to Lā'au Point from Ho'olehua is outside the five road miles required to have a favorable fire insurance rating as determined by the Hawaii Insurance Bureau.

To protect provide increased fire protection at Lā'au Point until there is a fire station within the five road miles required to have a favorable fire insurance rating, the Lā'au Point Covenants, Conditions, and Restrictions (C&Rs) will require all residential structures to have sprinkler systems meeting standards specified in the Fire Code. In the Final EIS Section 4.10.3 (Fire Protection) will be revised as follows:

The project may impact fire protection services due to the increased demand generated by additional population, the presence of more structures, and potential increased activity at the parks and along the shoreline. The project area is about 25 to 35 minute response time from the Ho'olehua fire station and about 20 additional minutes from Kaunakakai's station. These response times are estimates and emergency response times may take longer. Currently access to the area is via unimproved and dirt roads. With the project,

Mr. Valeriano Martin, Captain
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 2

the access road will be paved, improving the road conditions, which may reduce emergency response times.

Most responses to the project area would probably be medical related given the older population. Further, there is a risk of brush fires in the area due to dryness and high winds, although fire breaks will be cut regularly during summer months.

A water storage tank or reservoir will be constructed above the project site to provide adequate pressure and to meet the storage requirements for fire protection. Fire hydrants will be installed along the road spaced at intervals between 450 to 500 feet.

To provide increased fire protection at Lā'au Point until there is a fire station within the five road miles required to have a favorable fire insurance rating as determined by the Hawaii Insurance Bureau, the Lā'au Point Covenants, Conditions, and Restrictions (CC&Rs) will require all residential structures to have sprinkler systems meeting standards specified in the Fire Code. The Fire Department does not require MPL to provide a fire station on the West End for Lā'au Point.

Fire and rescue emergency services will be able to access Lā'au Point and the shoreline from the new paved access road from Kahaiko'i and the existing emergency access dirt road from Hale-O-Lono-Harbor, with access to the shoreline through the subdivision at designated locations. Emergency responders can also use an existing emergency access dirt road from Hale O Lono Harbor and do not have to go all the way to Kahaiko'i to access Lā'au Point.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,



Peter Nicholas
President and CEO
Molokai Properties Limited

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PBR HAWAII

CHARMAINE TAVARES
Mayor
JEFFREY S. HUNT
Director
COLLEEN M. SUYAMA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

January 23, 2007

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas Witten
January 23, 2007
Page 2

Based on the foregoing, the Department provides the following comments on the Draft Environmental Impact Statement (EIS):

1. For further clarity, list the proposed land use amendments in Section 1.1, "Project Profile". Only existing land use designations are listed;
2. Paragraph one of Section 2.1.5, "Detailed Land Use History", needs clarification and correction. On p. 16 it is stated that "In 1897, a group of Honolulu businessmen, which included Judge Alfred S. Hartwell, Alfred W. Carter, and A.D. McClellan, purchased 70,000 acres of land in fee simple from the trustees of Princess Pauahi's estate..." As stated in Appendix F, the Cultural Impact Assessment, section 3.2, "Ownership of Molokai Ranch and Use of Kaluako'i Lands", Charles M. Cooke was a partner in the original purchase of lands from Bishop Estate in 1898, then later bought out his partners in 1908. Discussion also needs expansion for modern period, from 1968 joint venture formation of Kaluako'i Corporation, then to sale of stock by Cooke family to Briery in 1987, through today, including a discussion focusing on the "Alpha" parcel and Alpha USA history of ownership. This history is also outlined in Appendix F, Cultural Impact Assessment, Section 3.2, "Ownership of Molokai Ranch and Use of Kaluako'i Lands". Relevant excerpts should be summarized here, and a timeline format would be more helpful and explanatory to those reviewing the document;
3. Approximately 17 acres are proposed to be reclassified from both the Agricultural (8 acres) and Conservation District (9 acres) to the Rural District to allow for the proposed two parks to be dedicated to the County of Maui. Expand the discussion at the bottom of p.98 regarding how reclassification of the proposed south shore beach park's 9 acres from Conservation to Rural is consistent with state land use law, and if not consistent, how expansion of coastal areas in Conservation serves as mitigation; and

Mr. Peter Nicholas
Mr. John Sabas
Molokai Properties Limited
745 Fort Street Mall, Suite 600
Honolulu, Hawaii 96813

Mr. Thomas Witten
PBR Hawaii
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, HI 96813

Dear Gentlemen:

RE: Comments On A Draft Environmental Impact Statement (DEIS) For The Proposed La'au Point Project Located At TMK's: 5-1-02:030; 5-1-006:157; 5-1-008:004, 003, 006, 007, 013, 014, 015, 021, And 025, Kaluako'i, Island of Moloka'i, Hawaii (EAC 2006/0017) (CPA 2006/0009) (CIZ 2006/0015) (SM1 2006/0040) (CUP 2006/0005)

The Maui Planning Department (Department) is in receipt of the above-referenced document for the proposed La'au Point Development. The Department understands the proposed action includes the following:

- 200 single-family, rural-residential lots, required infrastructure, access road, cultural preserves, open space, parks and shoreline access;
- Total project area measures 1,432 acres, and the petition area for a State Land Use Commission District Boundary Amendment petition area measures 1,113 acres; and
- The proposed project will require the following permits by the Department: Community Plan Amendment, Change in Zoning, County Special Use Permit and Special Management Area Use Permit.

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas Witten
January 23, 2007
Page 3

Mr. Peter Nicholas
Mr. John Sabas
Mr. Thomas Witten
January 23, 2007
Page 4

4. Expand discussion of current Maui County General Plan update and its relationship to long range planning for Molokai. Discussion begins with section 5.2.1, "Maui County General Plan" on p. 120, and describes the update process to date, then continues for 7 more pages, but is based entirely on the 1990 Plan, and does not discuss how MPL intends to interact with and respond to the ongoing General Plan/GPAC Update process, as their applications are being submitted in the middle of the process. In addition, there has not been interaction, consultation or discussion with the Maui County Planning Dept. to date regarding the Community-based Master Land Use Plan for Molokai Ranch. Since such a large weight is given to this Plan as a basis for the design and implementation of the Project, please discuss how the Plan meets the goals and objectives of both the Maui County General Plan and the Molokai Community Plan.

Under Section 5.2.2, "Molokai Community Plan", the impending Molokai Community Plan Update process is not mentioned. Please include a discussion of how MPL intends to interact with and respond to applicable issues and concerns that arise during this process.

Thank you for the opportunity to comment. Please include the Department on the distribution list for the Final EIS and provide three (3) hard copies. Should you require further clarification, please contact Ms. Nancy McPherson, Staff Planner, Molokai at nancy.mcpherson@co.maui.hi.us or 553-3221 on Molokai, 270-1768 on Maui.

Sincerely,



JEFFREY S. HUNT, AICP
Planning Director

JSH:NMM:bv

c: Colleen M. Suyama, Deputy Planning Director
Clayton I. Yoshida, AICP, Planning Program Administrator
Nancy M. McPherson, Staff Planner Molokai
Stanley Solamillo, Cultural Resources Planner
Nina Kawano, Molokai Planning Office
OEQC
Molokai Planning Commission
Cultural Resources Commission
Project File
General File
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Mr. Jeff Hunt, Director
 SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
 November 1, 2007
 Page 2 of 8

November 1, 2007

Mr. Jeff Hunt, Director
 County of Maui
 Planning Department
 250 South High Street
 Wailuku, Hawaii 96793

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT;
 EAC 2006/0017; CPA 2006/0009; CIZ 2006/0040; & CUP 2006/0005**

Dear Mr. Hunt:

Thank you for your letter dated January 23, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS) and related County applications for Community Plan Amendment, Change in Zoning, Special Management Area Permit, and County Special Use Permit approvals. With this letter, we are responding to your comments.

1. For further clarity, list the proposed land use amendments in Section 1.1, "Project Profile". Only existing land use designations are listed;

Response: As requested, the proposed land use designations have been added to Section 1.1 (Project Profile) of the Final EIS as shown below:

Proposed Land Use Designations: State Land Use: Agricultural to Rural; Agricultural to Conservation; Conservation to Agricultural
 Community Plan: Agricultural to Rural and Park
 County Zoning: Agricultural to Rural and Open Space

2. Paragraph one of Section 2.1.5, "Detailed Land Use History", needs clarification and correction. On p. 16 it is stated that "In 1897, a group of Honolulu businessmen, which included Judge Alfred S. Hartwell, Alfred W. Carter, and A.D. McClellan, purchased 70,000 acres of land in fee simple from the trustees of Princess Pauahi's estate..." As stated in Appendix F, the Cultural Impact Assessment, section 3.2, "Ownership of Molokai Ranch and Use of Kaluako'i Lands", Charles M. Cooke was a partner in the original purchase of lands from Bishop Estate in 1898, then later bought out his partners in 1908. Discussion also needs expansion for modern period, from 1968 joint venture formation of Kaluako'i Corporation, then to sale of stock by Cooke family to Brierty in 1987, through today, including a discussion focusing on the "Alpha" parcel and Alpha USA history of ownership. This history is also outlined in Appendix F, Cultural Impact Assessment, Section 3.2, "Ownership of Molokai Ranch and Use of Kaluako'i Lands". Relevant excerpts should be summarized here, and a timeline format would be more helpful and explanatory to those reviewing the document;

Response: We wish to emphasize that Molokai Properties Limited (MPL) is focused on the future and is committed to implementing current plans as presented in the Community-Based Master Land Use Plan for Molokai Ranch and as discussed in Section 2.1.6 (The Planning

Process for the Community-Based Master Land Use Plan for Molokai Ranch) and Section 2.1.7 (Key Points of the Community-Based Master Land Use Plan for Molokai Ranch) of the Draft EIS. The complete Community-Based Master Land Use Plan for Molokai Ranch also was included as Appendix A of the Draft EIS.

However, in response to your comment Section 2.1.5 (Detailed Land Use History) has been revised as shown below. While we acknowledge your comment regarding a timeline format, we fail to see how this would assist reviewers of the EIS assess the potential impacts and proposed mitigation measures associated with the proposed Lā'au Point project. For the purposes of the EIS, we believe the following revised Section 2.1.5 (Detailed Land Use History) provides a clear chronology of the land use history of the property:

Lands that eventually became part of Molokai Ranch were assigned in 1848 as part of the Great Mahele. In 1859, Kamehameha IV established a sheep ranch on the west end at Kaluako'i. His brother, High Chief Kapuāiwa gained title to the land that is now Molokai Ranch when he became King Kamehameha V in 1863, and he expanded this holding through acquisition of more land and addition of other types of livestock.

Princess Ruth Keliiohalani inherited the land on Molokai'i from King Kamehameha V upon his death. When she died in 1883, the property passed on to Princess Bernice Pauahi Bishop, the last descendant of the Kamehameha dynasty. Princess Pauahi's inheritance excluded the land of Kaluako'i in West Molokai'i, as these were granted to her husband Charles Bishop in 1875.

In 1897, a group of Honolulu businessmen, which included Judge Alfred S. Hartwell, Alfred W. Carter, and A.D. McClellan, purchased 70,000 acres of land in fee simple from the trustees of Princess Pauahi's estate and leased another 30,000 from the Hawaiian government.

In 1898, the American Sugar Company Limited was incorporated by Judge Alfred S. Hartwell and Alfred Carter (who were partners in the Molokai Ranch), and Charles M. Cooke, George H. Robertson and George R. Carter. Early in 1898, the American Sugar Company Limited took over the land and households of large tracts of government land lying between the ranch lands; thus starting a venture with sugar cane production. Unfortunately, American Sugar Company was unsuccessful in cane sugar cultivation due to saline well water. The company and its interests were purchased and bought out in 1908 by Charles M. Cooke, son of the early missionary teacher, Amos Starr Cooke. He established Molokai Ranch, which his son George P. Cooke subsequently managed. Under George P. Cooke, Molokai Ranch progressed through cattle grazing, sweet potato, and wheat crops. When the Ranch began producing honey, Molokai'i became the world's largest producer of honey from 1910 to 1937.

The Cooke family owned Molokai Ranch for almost 80 years until the late 1980s. It was operated as a family corporation separate from Casile and Cooke. George Cooke served as manager of the Ranch for 35 years, from 1908 through 1943. Under his tenure it became the second largest cattle ranch in Hawaii and a major producer of beef.

In the early 1920's, pineapple came to the island and Maunaloa was developed as a plantation village to house the immigrant pineapple workers. By 1923, the Libby,

McNeill & Libby Company had begun raising pineapple in the Maunaloa area on lands leased from Molokai Ranch. They continued operations until selling to the Dole Corporation in 1972. Del Monte, then known as California Packing Corporation, arrived in 1977 and made their headquarters at Kualapu'u. They soon commenced large-scale pineapple cultivation, mostly on land leased from Molokai Ranch. Dole ceased its Molokai operations on January 1, 1976. Del Monte phased out its operations in the mid-1980s.

In the early 1970s, Molokai Ranch, then owned by the Cooke family, entered into a partnership with Louisiana Land and Exploration Company for the development of the Kaluako'i Hotel and Resort. Louisiana Land and Exploration Company was provided a contingency for the Ranch's West End lands. The Kaluako'i Resort opened in 1977 and included a hotel, a golf course, and condominiums. In 1978, the Molokai Ranch Wildlife Park opened for safari-like tours on the ranch lands.

In 1980, Louisiana Land and Exploration Company separated its interests from Molokai Ranch and exercised its option over the West End lands from Kaluako'i to Kawakui. These lands were sold to Tokyo Kosan in 1987. Operating as Kukui (Molokai), Inc., the company subdivided its property and developed the Papohaku Ranchland Subdivision.

Molokai Ranch subsequently sold its interest in the undertaking and later tried to diversify into mainland commercial property. It also sold the lands from Hale O Lono to Kaupoa to an individual investor. This investor sold the lands to Alpha U.S.A. Alpha U.S.A. hired Henry Avau as its representative, Walter Rütte as a consultant, and Group 70 as its planner. They developed a plan to develop the La'au parcel that involved Hawaiian villages.

After initial success, the cash requirements of these investments led to the eventual sale of Molokai Ranch stock to Briery Investments Limited (later to become BIL International Limited), who became its sole stockholder in 1987. At that time, Molokai Ranch consisted of approximately 52,000 acres.

In 1991, Tokyo Kosan went bankrupt, it sold Kukui (Molokai), Inc., which owned the Kaluako'i Resort and Golf Course and the adjacent lands over to Kawakui, back to the Ranch, or its parent company, Briery Investments Limited. The Kaluako'i Hotel, under separate ownership, closed in 2000 January 2001.

In October 2001, BIL International, on behalf of Molokai Ranch, re-acquired 6,300 acres on the southwest corner of Molokai previously known as the Alpha parcel. In December 2001, Molokai Ranch acquired the land holdings of Kukui (Molokai), Inc., that included the abandoned Kaluako'i Hotel, the Kaluako'i Golf Course, and the undeveloped lands of the resort area. In December 2002, seeing that Molokai Ranch had operations that went beyond ranching, the corporation's name was changed to Molokai Properties Limited (MPL). The golf course was renovated and re-opened in 2004. The hotel and most of the common facilities have yet to be re-opened.

Comments on the Draft EIS asked questions related to the activities of prior owners of the La'au parcel. MPL has stated that it has no knowledge of the prior financial or other activities of the previous owners, with the exception of some development plans

proposed in the early 1990s; these previous development plans were on a far larger scale than this proposed La'au Point project.

3. *Approximately 17 acres are proposed to be reclassified from both the Agricultural (8 acres) and Conservation District (9 acres) to the Rural District to allow for the proposed two parks to be dedicated to the County of Maui. Expand the discussion at the bottom of p.98 regarding how reclassification of the proposed south shore beach park's 9 acres from Conservation to Rural is consistent with state land use law, and if not consistent, how expansion of coastal areas in Conservation serves as mitigation;*

Response: In response to your comment, in the Final EIS Section 5.1.2 (State Land Use Law Chapter 205, Hawaii Revised Statutes) has been revised as follows:

A reclassification of nine acres from Conservation to Rural District is also proposed for the public shoreline park on the south shore. While park-type uses are compatible with the standards set forth in §15-15-20, HAR, the reclassification to the Rural District will facilitate implementation of park improvements (such as a comfort station, a parking lot, a Resource Manager's residence, an individual wastewater system, a drainage system, and footpaths) without the need for a Conservation District Use Application (CDUA). In their comment letter dated February 23, 2007, the DLNR Office of Conservation Coastal Lands confirmed that a petition to re-district the nine acres from Conservation to Rural for the park development would not require a Conservation District Use Application (CDUA).

4. *Expand discussion of current Maui County General Plan update and its relationship to long range planning for Molokai. Discussion begins with section 5.2.1, "Maui County General Plan" on p. 120, and describes the update process to date, then continues for 7 more pages, but is based entirely on the 1990 Plan, and does not discuss how MPL intends to interact with and respond to the ongoing General Plan/GPAC Update process, as their applications are being submitted in the middle of the process. In addition, there has not been interaction, consultation or discussion with the Maui County Planning Dept. to date regarding the Community-based Master Land Use Plan for Molokai Ranch. Since such a large weight is given to this Plan as a basis for the design and implementation of the Project, please discuss how the Plan meets the goals and objectives of both the Maui County General Plan and the Molokai Community Plan.*

Under Section 5.2.2, "Molokai Community Plan", the impending Molokai Community Plan Update process is not mentioned. Please include a discussion of how MPL intends to interact with and respond to applicable issues and concerns that arise during this process.

Response: In response to your comment, in the Final EIS Section 5.2.1 (Maui County General Plan) will be revised as follows:

The County of Maui Charter requires that the Maui County General Plan set forth the desired sequence, patterns, and characteristics of future development. This is accomplished through long-range objectives focusing on the social, economic, and environmental effects of development coupled with specific policies designed to implement the objectives. The Maui County General Plan is a public document, and

Mr. Jeff Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 8 of 8

Mr. Jeff Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 7 of 8

Moloka'i Community Plan is a public document, and therefore, is available directly from the County of Maui Planning Department, and accessible directly from the Maui County website.

In conjunction with the Maui County General Plan Update process noted in Section 5.2.1, the 2001 Moloka'i Community Plan will also be updated. It is expected that after the General Plan update process, the GPAC will transition into the Moloka'i Citizen Advisory Committee (CAC) to review and update the 2001 Moloka'i Community Plan. Per conversation with the Maui County Long Range Division (phone call February 1, 2007), the updated Community Plan may not reach approval stages until 2009.

MPL has submitted information regarding the *Community-Based Master Land Use Plan for Molokai Ranch* and La'au Point to the GPAC. In addition, this EIS, including the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A of the Draft EIS), has been submitted to the Maui Planning Department and has been widely available for public review. Further, the La'au Point project and the *Community-Based Master Land Use Plan for Molokai Ranch* have been widely discussed within the Moloka'i community and many Moloka'i GPAC members: 1) participated in the process of creating, or attended meetings regarding, the *Community-Based Master Land Use Plan for Molokai Ranch*; and 2) commented on this EIS. While the La'au Point project and the *Community-Based Master Land Use Plan for Molokai Ranch* are well known on Moloka'i, MPL intends to continue to be available to respond to questions on these issues.

Ultimately, the Maui County Council will approve the updated Moloka'i Community Plan. However, until the Maui County Council approves the updated Moloka'i Community Plan, the 2001 Moloka'i Community Plan is still in effect. Discussion of how the La'au Point project conforms to the relevant objectives and policies of the 2001 Moloka'i Community Plan is provided below.

The Moloka'i Community Plan Land Use Map designates specific areas of the La'au Point site as AG (Agricultural) and C (Conservation) (Figure 6). The applicant is seeking a Community Plan Amendment to change the area of the proposed house lots from Agricultural (AG) to Rural (R) and Park (P). Community Plan amendments are processed through the Moloka'i Planning Commission, which provides their recommendation to the County Council and Mayor.

The relevant objectives and policies of the *Moloka'i Community Plan* pertaining to La'au Point, along with a discussion of how the community conforms to these objectives and policies, are discussed below.

Thank you for reviewing the Draft EIS and related County applications. Your letter will be included in the Final EIS.

Sincerely,



Peter Nicholas
President and CEO
Molokai Properties Limited

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Thomas S. Witten, PBR HAWAII

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therefore, is available directly from the County of Maui Planning Department, and accessible directly from the Maui County website.

The Maui Planning Department is currently in the process of updating the *General Plan of the County of Maui, 1990 Update*. Ordinance 3166, commonly referred to as "Bill 84", was adopted in 2002 and established an improved process for the update of the General Plan and Community Plans. The Planning Department is responsible for writing the plan with the inclusion of input from State and County agencies and the general public.

A community-based visioning process for Maui County was undertaken in 2003 called Focus Maui Nui. This process identified the following as issues specific for the island of Moloka'i (Retrieved from: <http://www.co.maui.hi.us/departments/Planning/pdf/molokai.pdf>):

- Consider each island and its unique needs individually from Maui.
- Expanded opportunities for vocational training and apprenticeships.
- Connect economic development with environmental preservation.
- Increased local control.
- Treatment and prevention of substance abuse.
- Nurture and respect local cultural heritage and values.
- Preserve natural and cultural resources.

To assist the Planning Department in updating the *General Plan of the County of Maui, 1990 Update*, General Plan Advisory Committees (GPACs) have been formed on Maui, Molokai, and Lanai. The above-mentioned Focus Maui Nui issues provide provided a starting point for the Moloka'i General Plan Advisory Committee (GPAC) GPACs to discuss, comment, advise, and provide recommendations to the Planning Director on the General Plan 2030 (updated General Plan). The plan will then be reviewed by the Moloka'i Planning Commission, who in turn provides its proposed revisions and recommendations, and those made by the GPAC, to the County Council. It is then the County Council's responsibility to adopt the General Plan by ordinance.

In January 2007 a Countywide Policy Plan—the portion of the General Plan which provides broad policies and objectives that portray the desired direction of the County's future—was distributed to the GPACs for review and comment. In August 2007, the Countywide Policy Plan was provided to the Maui, Moloka'i, and Lanai Planning Commissions for review.

MPL has submitted information regarding the *Community-Based Master Land Use Plan for Molokai Ranch* and *La'au Point* to the GPAC. In addition, this EIS, including the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A of the Draft EIS), has been submitted to the Maui Planning Department and has been widely available for public review. Further, the *La'au Point* project and the *Community-Based Master Land Use Plan for Molokai Ranch* have been widely discussed within the Moloka'i community and many Moloka'i GPAC members: 1) participated in the process of creating, or attended meetings regarding, the *Community-Based Master Land Use Plan for Molokai Ranch*; and 2) commented on this EIS. While the *La'au Point* project and the *Community-Based Master Land Use Plan for Molokai Ranch* are well known on Moloka'i, MPL intends to continue to be available to respond to questions on these issues.

As of September 2007 the updated General Plan was still a work in progress. Since the content of the updated General Plan is not finalized, and thus is ultimately unknown, it is not possible to discuss the *La'au Point* project in context of the unfinished updated General Plan.

Ultimately, the Maui County Council will approve the updated General Plan. However, until the Maui County Council approves the updated General Plan, the current *General Plan of the County of Maui, 1990 Update* is still in effect. Discussion of how the *La'au Point* project conforms to the relevant objectives and policies of the *General Plan of the County of Maui, 1990 Update* is provided below.

Discussion: As discussed in Section 2.1.6, Moloka'i community members involved in the *Community-Based Master Land Use Plan for Molokai Ranch* process clearly indicated their desire to plan their own future, thereby expressing a desire for "increased local control." The Plan provides measures which set unique precedents. These precedents are related to community planning, the creation of a Land Trust for the community, the donation of legacy lands to the Land Trust, the donation of easements to the Land Trust, and the protection of subsistence fishing, gathering, and hunting. The Plan also provides for covenants, conditions and restrictions that *La'au Point* homeowners will need to accept and agree to uphold in order to purchase a lot.

With the Plan's implementation, 26,200 acres will be donated to a Land Trust for preservation. In addition, the *La'au Point* project will include approximately 1,000 acres dedicated for cultural resource protection over the entire parcel and will expand the existing Conservation District by 254 acres along the shoreline and related resource areas. This proposed expansion will provide for a total of 434 acres of the project area to be protected as open space in the Conservation District.

The creation of the Moloka'i CDC is another example of "local control." The CDC will provide the Moloka'i community a means to plan their own future (see Section 2.1.9). With the Plan's implementation and the *La'au Point* project, MPL will gift land and assets to the CDC for future community expansion and affordable housing projects.

Because the General Plan 2030 is still a work in progress, this EIS will discuss the relevant objectives and policies of the existing *General Plan, 1990 Update* pertaining to *La'au Point*. Discussion of how the *La'au Point* project conforms to these objectives and policies is provided below.

In addition, in the Final EIS Section 5.2.2 (Moloka'i Community Plan) will be revised as follows:

The *Moloka'i Community Plan*, most recently updated in 2001, is one of nine community plans for Maui County. It reflects current and anticipated conditions for the island of Moloka'i and addresses planning goals, objectives, policies, and implementation considerations as a decision-making guide in the region through the year 2010. The *Moloka'i Community Plan* provides specific recommendations to address the goals, objectives, and policies contained in the General Plan, while recognizing the values and unique attributes of Moloka'i, to enhance the region's overall living environment. The

CHARMAINE TAVARES
Mayor
MILTON M. ARAKAWA, A.I.C.P.
Director
MICHAEL M. MIYAMOTO
Deputy Director



RALPH M. NAGAMINE, L.S., P.E.
Development Services Administration
DAVID TAYLOR, P.E.
Wastewater Reclamation Division
CARY YAMASHITA, P.E.
Engineering Division
BRIAN HASHIRO, P.E.
Highways Division
TRACY TAKAMINE, P.E.
Solid Waste Division

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COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND ENVIRONMENTAL MANAGEMENT
DEVELOPMENT SERVICES ADMINISTRATION
DEPT OF PLANNING 250 SOUTH HIGH STREET
COUNTY OF MAUI WAILUKU, MAUI, HAWAII 96793
RECEIVED

January 22, 2007

MEMO TO: JEFFREY S. HUNT, DIRECTOR OF PLANNING

FROM: MILTON M. ARAKAWA, DIRECTOR OF PUBLIC WORKS
AND ENVIRONMENTAL MANAGEMENT

SUBJECT: APPLICATIONS FOR EAFIS REQUEST FOR COMMENTS,
COMMUNITY PLAN AMENDMENT, CHANGE IN ZONING, SPECIAL
MANAGEMENT AREA & COUNTY SPECIAL USE PERMITS
FOR LA'AU POINT
TMK: (2) 5-1-002:030
EAC 2006/0017, CPA 2006/0009, CIZ 2006/0015, SM1 2006/0040, CUP
2006/0005

We reviewed the subject application and have no comments to offer at this time.
If you have any questions regarding this memorandum, please call Michael
Miyamoto at 270-7845.

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November 1, 2007

Milton Arakawa, Director
County of Maui
Department of Public Works & Environmental Management
250 South High Street
Wailuku, Hawaii 96793

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Arakawa:

Thank you for your letter dated January 22, 2007 regarding the La'au Point Draft Environmental
Impact Statement (EIS). We acknowledge that you have no comments to offer at this time.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,

Peter Nicholas
President and CEO
Molokai Properties Limited

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PBR HAWAII

CHARMAINE TAVARES
Mayor



DEPARTMENT OF WATER SUPPLY

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
www.mauiwater.org

JEFFREY K. ENG
Director

ERIC H. YAMASHIGE, P.E., L.S.
Deputy Director

Mr. Jeffrey S. Hunt
Page 2
February 20, 2007

Should you have any questions, please contact the Water Resources & Planning Division at 244-8550.

February 20, 2007

Mr. Jeffrey S. Hunt, Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

RE: Draft Environmental Impact Statement

Project Name: La'au Point

TMK: 5-1-002-030, 5-1-006:157, 5-1-008:003, 004, 006, 007,013, 014, 015, 021, and
25

Dear Mr. Hunt:

Thank you for the opportunity to comment on this Draft Environmental Impact Statement on La'au Point.

Molokai Properties Limited(MPL) has acknowledged that they are actively working with the Department of Hawaiian Home Lands(DHHL), the United States Geological Survey(USGS) and our Department on a comprehensive evaluation and solution to Molokai's cumulative water demands and resources through a comprehensive modeling analysis. This comprehensive modeling analysis will be an important planning tool that will show the possible effects of well pumping by MPL, DHHL and the Department in the Kualapu'u aquifer, as well as MPL's Kakalahale Well in the nearby Kamilo'oa aquifer. The Department recommends that the comprehensive modeling analysis be completed prior to the acceptance of any required permits and approvals by the respective agencies.

MPL also states that they have publicly acknowledged that their water use would yield to DHHL's priority first rights to water. The Department's municipal water system serves a significant portion of Molokai's residents. However, MPL has not acknowledged that they would yield to the Department's water use. The Department recommends that they be required to do so.

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5864 (voics and TDD)

Printed on recycled paper

Sincerely,

Jeffrey K. Eng, Director

ayi

c: Applicant
PBR, Hawaii
Nancy McPherson, Molokai Staff Planner
Engineering Division
WRPD File



Mr. Jeffrey Eng
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 2

We will, however, continue to actively work with all stakeholders to develop a water solution for Moloka'i. To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that such uses will not interfere with DWS's existing permits.

To include recent information regarding water in the Final EIS, provide evidence to address your recommendations (as noted above), as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,

Peter Nicholas
President and CEO
Molokai Properties Limited

Attachment: Revised Section 4.9.2 (Water)

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PBR HAWAII

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November 1, 2007

Jeffrey K. Eng, Director
County of Maui
Department of Water Supply
250 South High Street
Wailuku, Hawaii 96793-2155

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Eng:

Thank you for your letter dated February 20, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter we are responding to your agency's comments.

As you know, MPL has been attempting to work diligently with the Department of Hawaiian Homelands (DHHL) and the County of Maui Department of Water Supply (DWS) to find water solutions for Moloka'i's future needs.

Since September of 2006, we have attempted to join with DHHL and the DWS in having USGS perform a comprehensive model for the Moloka'i aquifers. We are now pleased that USGS is to move forward with a joint study, the terms of which are currently under discussion with all parties.

We acknowledge that your Department recommends that the comprehensive modeling analysis be completed prior to acceptance of any required permits and approvals; however we respectfully disagree with this recommendation.

USGS has recently undertaken a two-dimensional modeling exercise of the Kualapu'u and adjacent aquifers for the Army Corps of Engineers. This study included modeling of the impact of the Kākahale Well on the DHHL wells. The results, which were outlined in a briefing to all interested parties in late June, indicate that the pumping of 1.0 mgd from the Kākahale Well would have a negligible effect on the DHHL wells and the Kualapu'u aquifer as a whole. This study is extremely conservative in nature.

We also respectfully disagree with your department's recommendation that MPL should yield to DWS's water use. The County of Maui does not have the priority rights to water as DHHL has. MPL acknowledges that DHHL has priority rights to water based upon statutory provisions. See Hawaii Revised Statutes §174C-49(e) and §174C-101(a), and Hawaiian Homes Commission Act §221. Comparable statutory rights are not accorded to the counties. Moreover, it should be noted that Molokai Public Utilities and Waiola O Molokai are both regulated public utilities which, like the County's municipal water system, are obligated to serve a significant resident population of Moloka'i.

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

COLLEEN M. SUYAMA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

February 21, 2007

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FEB 23 2007

PBR HAWAII

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 2

Public Comment, by Draft EIS chapter/category:

1 INTRODUCTION AND SUMMARY

Comment #1:

Expand discussion, summary in Section 1.7.8, specifically "probable adverse effects that can't be avoided -- unquantifiable impacts to overall spiritual quality of the area". Discuss maintaining Molokai's rural island character.

2 PROJECT DESCRIPTION

2.1 BACKGROUND INFORMATION

2.1.5 Detailed Land Use History

Comment #1:

Expand discussion of the history of land management practices on the West End and how they may have contributed to increasingly arid conditions.

2.1.7 Key Points of the Community-Based Master Land Use Plan for Molokai Ranch

Comment #1:

Correct error in number of acres actually being transferred to the Community through the Land Trust -- it is 26,200, not 50,000 as reported. Expand description and definition of the land being put into "Rural Landscape Reserve," Agricultural Reserve," etc. Discuss what is going to happen above Kawakiu. Explain how additional "Cultural Easement" protections serve the community, when the State Historic Preservation Division will probably not let any development occur in those areas anyway because of the presence of so many archaeological resources.

Comment #2:

Include Land Trust and CDC documents in EIS. Specific language needs to be included in order to determine if these documents can be relied upon. Discuss how State Land Use Commission can act on District Boundary Amendment application without seeing these documents.

Comment #3:

Discuss whether or not Molokai residents will have a say in the decisions made by the Molokai Land Trust and the CDC.

Peter Nicholas, President and CEO
John Sabas, General Manager, Community Affairs
Molokai Properties Limited
745 Fort Street Mall, Suite 600
Honolulu, Hawaii 96813

Thomas S. Witten, ASLA, President
PBR HAWAII
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, Hawaii 96813

Anthony Ching, Executive Officer
State Land Use Commission
Post Office Box 2359
Honolulu, Hawaii 96804

Dear Sits:

RE: REQUEST FOR COMMENTS, DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) FOR THE LA'AU POINT PROJECT LOCATED AT TMK: 5-1-002:030 (portion), KALUAKO'I, ISLAND OF MOLOKAI, HAWAII (COUNTY OF MAUI FILE NO'S EAC 2006/0017, CPA 2006/0009, CIZ 2006/0015, SM1 2006/0040, CUP 2006/0005)

Herewith are transmitted comments on the Draft EIS for La'au Point approved by the Molokai Planning Commission at their regular meeting on February 14, 2007. The comments incorporate a summary of verbal comments given as public testimony to the Molokai Planning Commissioners on the above project's Draft Environmental Impact Statement, during the Commission's Special Meetings held on January 24 and 30, 2007, as well as comments from the Commissioners submitted in writing prior to the February 14, 2007 meeting. The Molokai Planning Commission previously submitted an initial set of comments on the Draft EIS in the form of a memo to the Commission from the staff planner dated January 18, 2007.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 3

Comment #4:

Provide more details on and a more complete description of the Molokai Land Trust – who is a member, who is on the Board, and who will be making the decisions.

Comment #5:

Include legal documents, specific language, and the Mission Statement for the Land Trust and CDC. Provide legal descriptions of "chunks of land" receiving various designations.

Comment #6:

There were too many Ranch employees involved in the EC and the vote on the Master Land Use Plan. Many people consider the vote to have been illegal. Discuss the validity of the EC vote on the Plan.

Comment #7:

There is no strong statement from Brierley's top management regarding a commitment to follow through on implementation of the Master Plan. Discuss how the parent company intends to provide assurance to the community that actions proposed in the Draft EIS will actually take place.

Comment #8:

Peter Nicholas originally assured the community that it was to make the final decision on the Plan. Now that there is controversy about whether or not that took place, why is MPL going back on Peter's word? Please explain how MPL can still assert that the Plan is a result of the community's decision.

2.3.6 Covenants

Comment #1:

CC&R's are not the strongest tool for enforcing conditions on landowners. Discuss how the Papohaku Ranchlands subdivision lot owners were able to vote to eliminate the prohibition against subdividing their lots. Discuss other options there may be for strengthening the force and enforceability of conditions that may be imposed on the project, and the individual lot owners, in perpetuity.

Comment #2:

A Hawai'i Supreme Court case regarding height restrictions in CC&R's set a precedent that they are not enforceable in Hawai'i. Discuss how reliable CC&R's are in the State of Hawai'i for enforcing restrictions on property owners' actions.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 4

Comment #3:

Expand discussion of who will enforce CC&R's – explain how it will work for homeowners to police themselves.

3 DESCRIPTION OF THE NATURAL ENVIRONMENT, POTENTIAL IMPACTS, AND MITIGATION MEASURES

Comment #1:

The wealth of this island is in its natural resources. We cannot give up the water because that is what supports the subsistence and homesteader lifestyles. Describe how the natural resource wealth of Molokai will be protected by this project.

3.1 CLIMATE

Comment #1: The issue all along for development potential on Ranch lands has been availability of water. Since the Ranch was purchased by a foreign company, the water situation hasn't changed – there has never been enough water to develop the dry West End. Discuss how this project is different than all previous proposals as regards the water availability issue.

3.2 GEOLOGY AND TOPOGRAPHY

3.3 SOILS

Comment #1:

There are problems with the soils in the area. The soils will erode, and impact plants and agriculture in the area. If the soil type is unstable and can't support native plants, how will the proposed revegetation be successful? Expand discussion of problems with certain soil types in the project area, and how those will be mitigated.

Comment #2:

Molokai Ranch destroyed the land originally – explain why now it is up to the Molokai Community to restore it.

3.4 AGRICULTURAL IMPACT

Comment #1:

Data on issue of water availability is incomplete and inaccurate. Add discussion of increasing salinity of wells on Molokai, especially Kualapu'u. Discuss alternatives for minimizing water usage, revise underestimations of demand. Use more up to date water data – Alpha USA data is 13 years old. Discuss how DHHL water rights are nonnegotiable.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 5

Discuss how island is in a severe water crisis and suffers from drought. The water for a 2,905 million gallons per day reservation from Kualapuu doesn't exist. Discuss how no water can be taken from Kaunakakai. Include mandate to keep good data, records on water usage and supply. Include reference to requests that the State Water Commission monitor the situation. There is currently only 10% build out at Kaluakoi – base water usage assessment on Kaluakoi at buildout. Include discussion of projected water usage – 3,000 gallons per day per house.

Comment #2:
Discuss impacts to the water supply for Hawaiian Homesteads and their agricultural enterprises.

Comment #3:
The continued viability of agriculture on Molokai depends on long term availability of water. Discuss how the project's use of water supports the long range sustainability of agricultural uses and activities on Molokai.

Comment #4:
Water needs to go to the farmers, period. Discuss why a luxury development should be a higher priority for land and water use on Molokai than farming.

Comment #5:
Traditionally, Hawaiian Homesteaders prayed for rain in times of drought, so there would be enough water for their farms. If you were pono, it would rain. If you weren't, there would be no rain. Discuss how MPL intends to be pono in order to get enough water for the project.

Comment #6:
Homesteader childhood memories often involve carrying water in buckets from a distance to supply the homestead. The homesteaders have always had a hard time getting access to water. They knew that no one could build on that [West] side, because the water would have to be brought over. Discuss why, with such a limited supply of water on the island, that luxury homes are a better use of it than family farms.

Comment #7:
Peter Nicholas has been quoted as saying that agriculture is a "dead horse" on Molokai. Discuss this perspective – describe what data led him to make a statement like that, and whether or not this perspective is shared by the rest of the corporation.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 6

Comment #8

The main issue is water -- provide discussion of assurance that taro farming in Halawa and Waiatua valleys can be maintained by preventing additional diversions of water from mountain sources.

3.5 NATURAL HAZARDS 3.6 FLORA

[See comments under 3.3. Soils]

Comment #1:

Provide additional information on endangered species, including the Ihi Iau Kea.

Comment #2:

Expand discussion of 'ihiihi fern -- it is a special fern with sacred and cultural significance, and needs to have critical habitat protection.

Comment #3:

Draft EIS needs to expand discussion of 'ihiihi (Versilia memrosa). This endangered plant has the highest level of federal protection -- it is critically endangered. There are only five known occurrences, and two occur on the west end of Molokai. Occurrences can be spaced out for several years -- spores are in the ground. If found, the USFWS is mandated to protect it with critical habitat. Kamakaipo Guich and Mokio are likely places, but it needs a major flood, then the waters have to subside. There needs to be scarification of the spores. This is not addressed in the EIS. You can go out and look for it and find it -- it doesn't even look like a fern.

Comment #4:

Ihiihi habitat at La'au was originally registered with the US Fish and Wildlife Service and was on the Critical Habitat list -- in 2003 it was delisted as critical habitat. Provide discussion of why this happened.

3.7 FAUNA

Comment #1:

Expand discussion of endangered monk seal population, and their current status and biological viability statewide. Discuss how important remote areas with quiet beaches are to their life cycle.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 7

Comment #2

Provide improved studies on natural resources at La'au Point, especially marine life and birds, using local researchers who are knowledgeable on the presence and habitat of endemic species.

Comment #3:

The draft EIS stated that there were no land birds, mice or rats. Therefore, there must be pueo (owl), because otherwise there would be a lot of mice and rats. Provide additional data from other researchers as to the likelihood of the presence of owls at La'au.

3.8 MARINE ENVIRONMENT

Comment #1:

The fish ponds need fresh water. Include a discussion of how fresh water springs along the coastline provide ideal conditions for fish and how these water sources are needed to do successful fishpond restoration.

Comment #2:

Expand discussion of subsistence fishing to include impacts on rest of island, not just La'au Point --how will subsistence fishing pressure likely be displaced to other areas of the island? How will this displacement be handled?

Comment #3:

Provide improved assessment of underwater resources -- people from O'ahu did a study, and dove the reef, but they didn't see all the life down there such as sea cucumbers, coral, and wana, as well as lobster and he'e, moi and ophi. Explain how there could be such a discrepancy between local reports and the reports of outside researchers. Research needs to be done by people in the community -- the limu expert didn't find many species, but local people found lots of kinds of limu.

4 ASSESSMENT OF THE HUMAN ENVIRONMENT, POTENTIAL IMPACTS, AND MITIGATION MEASURES
4.1 ARCHAEOLOGICAL AND HISTORIC RESOURCES

[Most comments subsumed under next heading, 4.2 Cultural Resources]

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 8

Comment #1:

There are many known burials and sites along the route of the proposed roadway, and 20% to 40% of the lot have known burials and artifacts -- what are the CC&Rs exactly? How are they guaranteed to protect all of these cultural resources?

Comment #2:

The Plan says they will protect these areas - Naliwa, Kaana -- that's a given -- they are not really "part of the package" [too many cultural/archaeological sites]. Sacred sites under those kiawe trees are not destroyed. Discuss why these areas need protection and/or restoration.

4.2 CULTURAL RESOURCES

Burials and Handling of Kupuna

Comment #1:

Discuss how families on Molokai will be able to protect their ancestors' burials in the project area. Discuss how the impact of having burials disturbed can be mitigated for those descendants.

Comment #2:

Discuss plans for a Burial Council for West Molokai, and how the Master Plan will provide for the handling of burial issues and discovery of human remains in the project area, including the use of hooponopono. Discuss how there currently is no active Burial Council on Molokai.

Comment #3:

Discuss how disturbing the land where ancestors are buried is considered desecration by Native Hawaiians. Discuss the sensitivity of such areas, and how the sense that they are threatened with desecration causes stress to all Hawaiians, but especially the lineal descendants of those kupuna. Discuss how the presence of ancestors, whether in the form of 'iwi or of cultural artifacts and other archeological remains, makes an area sacred in the minds of Native Hawaiians as well as non-native Hawaiians who are often long term residents of the island. Discuss how disturbing these areas is considered "not pono" and requires mitigation and remediation, both spiritual and physical.

Comment #4:

Discussion of moolelo of La'au needs to be expanded. I am Maka'iwi -- testifying on behalf of kupuna. There are ancient chants that are 900 years old. John Ka'imikaua preserved them -- they tell of how La'au is a sacred place. It was a place of fishing for local people,

and that was the place where the kahuna closed the Makahiki, which began with the rise of Makali'i, the constellation of Pleiades. Kapuupo'i -- began at east end of island. The end of the Makahiki was at La'au -- this place was not randomly chosen -- it is sacred. Kapukai o Lono -- there was a heiau under water in front of every ahupua'a -- the heiau attracted the fish. The area from La'au to Palaa'u attracts fishes. It has mana, a lot of mo'i holes, kole, aho'lehole. That place was called Po'o Lo'ulo'u, a word special to Molokai. It means turbulent -- a metaphor for the wealth of Molokai -- a place for the gathering of fishes. It was a special place for Kū and Hina -- Kane and Wahine. There were heiau. The fish spawning begins at Palaa'u. The 'iole, the hatchlings would stock the fish ponds -- there is a cultural record. It is untrue that the fishing grounds are not as plentiful there. It is a wahi pana [sacred place]; it is significant. The mana goes into asking for fertility, then the fish would be abundant.

4.2.4 Cultural Assessment

Comment #1:

Discuss how Hawaiians were obedient and took care of the land. Add discussion of how life on Molokai is about balance - people lived in the places that had water. Rivers were bigger before. Discuss how Native Hawaiians' connections to the land help them to survive.

Comment #2:

Cultural impact study is incomplete, as informants were not qualified. Families who support the land should have been interviewed. Discuss how social and economic issues for Native Hawaiians stem from loss of land. Discuss how C.R. Bishop, who was not Hawaiian, gave the land away to non-Hawaiians.

Comment #3:

Expand discussion of how many Hawaiians on Molokai depend on subsistence resources and intangible spiritual benefits of La'au to survive.

Comment #4:

Add research on sacredness of La'au as an 'uhane lele, legend of Kane and Kanaloa, how they came there by canoe and Kane plunged his ko'o into the sand to create water there. Discuss how this 'uhane lele is rich in cultural importance to the Hawaiian people.

Comment #5:

Discuss the cultural and social impacts of local people with low incomes being exposed to luxury homes -- how does the impact of looking at all that wealth affect how the young people here see their simpler island way of life?

Comment #6:

Discuss how high end marketing of land, and the internal conflicts caused by controversy over the Master Land Use Plan and the proposed project, is causing stress to Native Hawaiians, who have already lost most of their land to questionable land sale practices in the past.

Comment #7:

Expand discussion of cultural and social impacts to Native Hawaiians and other local Molokai people due to increased exposure to Mainland or off-island ways when buyers of the La'au development start to arrive.

Comment #8

Expand discussion of how the development pressure on Molokai, and the confusion caused by this very process, is impacting Molokai residents now, even before any development begins. Discuss how the numerous meetings on the DEIS and later, the various permit applications could be stressing the community.

Comment #9:

Expand discussion of adequacy of cultural easements that will be put in place. Include John Ka'imikaua's comments on how the Land Trust must be pono, made right before his death. Discuss how hidden agendas will make this project "not pono."

Comment #10

Section 4.2.4 Cultural Assessment is inadequate. The true sense of the community was not accurately portrayed. An unscientific survey of 100 residents revealed that 70% of those polled would not support a master plan that depended on a development at La'au Point. A full public vote was denied by the EC, because a majority of the community isn't for the plan, and that would have been revealed. Almost everyone was in favor of reopening Kalua'okoi hotel, however. Expand discussion of these issues.

Comment #11:

Draft EIS didn't discuss spiritual connection of people to place -- place is 'ohana -- your family -- we are tied to the land. Hawaiians have a covenant and a kuleana. We are not in good shape -- our health is bad -- because we are disconnected from our ohana lands. Our health is compromised, because what you do to the land you do to the place and to the people. Expand discussion of this spiritual connection to the land and how impacts to it affect Native Hawaiian health and well being.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 11

4.3 TRAILS AND ACCESS

Comment #1 – Public Access:
It's far from the end of the road to the nice spots down at La'au – discuss how much access Molokai residents will have compared to residents of the development.

4.4 ROADWAYS AND TRAFFIC

Comment #1 – Traffic Impacts:
Discuss how infrastructure improvements will precede, or be tied to an increase in development on the West End. Discuss how the same scenario that has occurred on Kaua'i, that of rampant growth without concurrent infrastructure improvements, will be avoided on Molokai as this and the other residential and resort areas on the West End approach buildout.

4.5 NOISE

4.6 AIR QUALITY

4.7 SCENIC RESOURCES

4.8 SOCIAL AND ECONOMIC CHARACTERISTICS

Comment #1:
Discuss how impacts from skyrocketing property taxes, as has happened on Maui and Kaua'i, will not occur on Molokai and force long time residents to leave. Discuss how for many Hawaiians, there is no other place to go – Hawaii is home for us.

Comment #2:
Expand discussion of proposed economic strategies, including any proposals for programs that will increase the number of Native Hawaiians and other local Molokai residents in management positions for the Kaluakoi Hotel and other enterprises proposed as part of the Master Land Use Plan.

Comment #3:
There is not enough discussion of how Molokai contractors and residents will be given preference for contracts and employment as the purchasers of the La'au lots start to build their homes. What mechanisms will be in place, such as affirmative hiring plans, to assure that the "Design/Build" phenomenon, where the owner can bring contractors here from out of state, circumventing Hawai'i state regulations, and not hire anyone from Molokai? If MPL should go bankrupt, how can it be assured that development of each individual lot will be done by local contractors?

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 12

Comment #4:

Discuss what kinds of jobs will be created as a result of implementation of the Master Plan, how well they will pay, who they will be for, and how long they may last.

Comment #5:

Social impacts are not adequately detailed or addressed. Expand discussion of possible social impacts due to project development and influx of new residents.

Comment #6:

Expand discussion of grief and resentment being experienced in the community right now due to the controversy over La'au Point. Discuss how it is dividing families and how it is putting the soul of Molokai at stake.

Comment #7:

Describe exactly who the "1,000 people who participated" in the Master Plan process were. Discuss exactly how many people really supported the Plan, and provide a breakdown of how many of those were either Ranch/MPL employees directly, or family members of Ranch/MPL employees.

Comment #8:

Expand discussion of how the addition of 200 to 400 new millionaire homes will impact the people of Molokai. Discuss if and how these new residents, with political savvy and possibly much more conservative politics, could begin to sway political outcomes to their own favor and dominate the local residents.

Comment #9:

Include discussion of who was on the EC Land Use Committee, and a breakdown of the 140 names listed, whether they are from Molokai or from other islands. I counted 36 for the plan and 46 against out of 140 names listed.

4.8.1 Population 4.8.2 Housing

Comment #1:

Discuss how DHHL is planning to build more homes for Hawaiians in Kamiloa and Hoolehua, and how water is reserved for DHHL and cannot be negotiated away. Provide thorough discussion of DHHL Island Plan for Molokai and possible impacts to that Plan caused by the project.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 13

4.8.3 Community Character

Comment #1:

Molokai Ranch/MPL over the years has made a lot of promises to the community, yet kept very few of them. Discuss trust issues with the Ranch that have developed, and how MPL's recent actions have or have not served to divide a once tightly knit community, by creating insiders and outsiders, people who are invited to Ranch events and people who are not, etc.

4.8.4 Economy

Comment #1:

Discussion of economic impacts and tourism are inadequate. Expand discussion on how project impacts tourism and on what economic engine is that will drive desired outcomes of project and Master Plan.

Comment #2:

Discussion of economic impacts needs to be focused more on local community -- it was never explained exactly how the project will benefit the local community directly. Discuss how the proposed strategy is or is not the best way to help an economically depressed community.

4.9 INFRASTRUCTURE AND UTILITIES

4.9.2 Water

[Also see comments under 3.4, AGRICULTURAL IMPACT]

Comment #1:

Provide discussion of contingency plans if the water wells go salty. Discuss how the agencies make adjustments to water allocations, and whether or not those allocations can be reduced once they are given and development has occurred.

Comment #2:

I lived on a ranch, then the well ran dry. Colorado River water doesn't even reach Mexico anymore. Aquifers are going dry in the Southwest, because water is being diverted to areas of development. Hydrology is not an exact science. The monitoring well that was drilled is no longer in use. Provide expanded discussion of hydrological issues, status of monitoring well, and where water is going to come from if and when the wells run dry, or salty as the case may be.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 14

Comment #3:

Information on water availability is inadequate or inaccurate -- include latest water studies, and/or discuss whether or not there is enough data on water on Molokai to make sound planning decisions.

Comment #4:

Discuss how important it is for Laau residents to have access to fresh water, when the rest of us have to wait a year to get a water meter and can't even wash our kids off at the fish pond. Discuss how limu and baby fish need fresh water from coastal springs, and how additional withdrawals from aquifer could threaten that ecosystem.

Comment #5:

Clarify how MPL is in negotiations with DHHL -- DHHL water rights are non-transferable and nonnegotiable.

4.10 PUBLIC SERVICES

Comment #1:

Discuss how this project will provide badly needed improvements in community facilities, bridges and roads.

4.10.2 Police Protection (see 4.10.3 Fire Protection)

4.10.3 Fire Protection

Comment #1:

Data on response times is inaccurate and understated. It takes at least 25 minutes for fire trucks to respond to Maunaloa from the Hoolehua station, as reported by a firefighter, so it will take additional time to get to the development. Provide more accurate response times, and provide discussion on how impacts to demands on fire protection services will be mitigated.

4.10.5 Recreational Facilities

Comment #1:

Discuss how this project will help Molokai build a new gym in Maunaloa, as well as help create youth programs.

5 RELATIONSHIP TO LAND USE PLANS AND POLICIES

5.1 STATE OF HAWAII

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 15

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 16

DHHL

Comment #1:

Hawaiian Homesteaders are often not allowed to subdivide so they can build additional homes for their children, and the reason given is because of the limitations on water. Explain how the project's water requirements takes into account the fact that Hawaiian homesteaders cannot intensify the agricultural uses of their land, or densify residential uses, because water is so limited on the island.

5.2 COUNTY OF MAUI

Comment #1:

Discuss status of SMA boundaries on Molokai, and how putting the entire island into the SMA is one of implementing actions of the Molokai Community Plan.

Comment #2:

Discuss current efforts to enact a water moratorium and put the entire island into the SMA.

5.2.2 Molokai Community Plan

Comment #1:

Molokai is one big ahupua'a – what happens on one part of the island affects the rest of the island. Discuss how the Master Land Use Plan, including the La'au Point project, serves the rest of the island – was it done with the Molokai Community Plan in mind? Is it intended to coordinate activities with what is happening on the rest of the island?

Comment #2:

The Molokai Community Plan is not the same as the Master Land Use Plan for Molokai Ranch – provide detailed discussion of how the Master Plan interface with the Community Plan.

Comment #3:

Expand discussion of how the project is or is not in conformance with the Molokai Community Plan. Describe conflicts and how they will be mitigated or avoided.

5.3 APPROVALS AND PERMITS

Comment #1:

Discuss how concurrent processing of permit applications could create pressure on the community and serve to dampen community participation. Discuss how concurrent processing serves or does not serve the Molokai community.

5.4 APPROVALS AND PERMITS

Comment #1:

Discuss how concurrent processing of permit applications could create pressure on the community and serve to dampen community participation. Discuss how concurrent processing serves or does not serve the Molokai community.

Comment #2:

If Maui County does not wait to process its applications until after the State Land Use Commission has decided on the District Boundary Amendment, there will be simultaneous meetings on project applications of the LUC and the Molokai Planning Commission. Discuss why concurrent processing was requested, and whether this serves the applicant or the community.

Comment #3:

Permits for water use should come first before all other permits. The farmers and homesteaders should not have to go to court with DLNR over water because of development applications. Discuss the issue of getting land use entitlements before the supply of water for the development has been secured. Why is that logical, or why not? Maui County is drilling wells to look for water just to serve existing development on the island – discuss how MPL proposes to coordinate with the State and County to identify sustainable and adequate sources of water for the development.

Comment #4:

Bring decision making power back to Molokai, and to the Molokai Planning Commission. Discuss why going for the District Boundary Amendment first and having the Land Use Commission as the accepting authority was better for Molokai, or not. Explain why home rule was not respected in this application process.

6 ALTERNATIVES TO THE PROPOSED ACTION

Comment #1:

Everyone on the island supports the reopening of the Kahuakoi Hotel. Expand the discussion of economic alternatives with realistic and frank information on MPL's current financial condition and what it would take to get it "out of the red."

Comment #2:

The La'au Point project is a luxury subdivision that will be unavailable to most if not all long time Molokai residents. Discuss why this alternative was explored so much more thoroughly than the other alternatives, and why other ways to develop were not given as much time, energy or thought.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 17

Comment #3:

The people of Molokai can come up with something much better, if we work together, and preserve what we love best about our island, after all the debates and discussion. Discuss why the process has not yet been reopened to public debate and an island-wide vote or referendum.

Comment #4:

Whole families have been hired into the ranch. MPL originally paid \$6 million for the Tokyo Kosan 600 acres [Alpha parcel]. The island is only 10 miles wide. In Keawanui, people wanted to build a traditional structure and project -- they had to get an SMA permit for it, but these big new houses don't need one? Add discussion on the aspect of single-family dwellings being "not development" under SMA.

- 6.1 "NO ACTION" ALTERNATIVE
- 6.2 BULK OR "PIECE-MEAL" SALE OF OTHER MPL LAND INVENTORY ALTERNATIVE
- 6.3 AGRICULTURAL SUBDIVISION ALTERNATIVE
- 6.4 OTHER MPL LAND DEVELOPMENT ALTERNATIVES
- 6.5 ALDC ALTERNATIVES

[Also see written testimony submitted by Matt Yamashita]

Comment #1:

Community participation, exploration of alternatives misrepresented in DEIS

Comment #2:

There was a lack of genuine search for alternatives, and the discussion of the La'au development was held to the very end of the process.

Comment #3:

Molokai Properties Ltd. went through the motions in order to meet the requirements of community participation for the EIS process.

Comment #4:

Corrections need to be made to facts and dates in Section 6.4. The nine alternatives were submitted by MPL and were not ALDC-generated alternatives.

Comment #5:

The way the alternatives are framed is like apples and oranges -- there is no way to directly compare the La'au alternative to the other alternatives.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 18

Comment #6:

The alternatives submitted in the ALDC's last report to the Now of the EC should be included in EIS. These alternatives should be looked at in a more legitimate way.

Comment #7:

Expand the discussion on a the general price for the Alpha parcel that would meet MPL's needs

Comment #8:

Discuss cost to fund other aspects of the project and break them down in the draft EIS.

- 6.6 OTHER PROPOSED USES FOR MPL LANDS (NON-RESIDENTIAL AND NON-AGRICULTURAL) ALTERNATIVES
- 6.7 POSTPONING ACTION PENDING FURTHER STUDY OR DELAYS
- 7 CONTEXTUAL ISSUES
- 7.1 RELATIONSHIP BETWEEN THE SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY
- 7.2 CUMULATIVE AND SECONDARY IMPACTS

Comment #1:

Assess cumulative impacts based on current zoning out at West End -- true cumulative impact of project being ignored. Include in discussion all subdivisions that were part of the original Kaluakoi master plan -- 6 hotels, condos, rural, single-family dwellings, another golf course -- 1538 total dwelling units at buildout. Assess true cumulative impacts based on existing zoning in the area, and do not exclude "resort area".

Comment #2:

Discuss how each lot on the West End can subdivide, and how 75% of homeowners are needed to change CC&Rs and bylaws.

Comment #3:

Expand discussion of how the project will not serve to open the door to additional development on the island.

Comment #4:

Discuss guarantees that will be in place to assure the community that this will be "the last development" on MPL property. Discuss how secure these guarantees are or are not.

Peter Nicholas & John Sabas
Thomas S. Witten
Anthony Ching
February 21, 2007
Page 19

Comment #5:

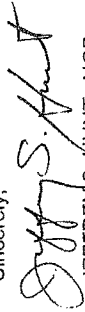
Discuss how a piecemeal review of the master land-use plan that only focuses on the La'au Point development satisfies environmental review requirements. Discuss why the applicant does not have to accept comments on all of the master plan, but only on the La'au Point development portion.

- 7.3 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES
- 7.4 PROBABLE ADVERSE ENVIRONMENTAL EFFECTS THAT CANNOT BE AVOIDED
- 7.5 UNRESOLVED ISSUE
- 8 CONSULTED PARTIES AND PARTICIPANTS IN THE EIS PROCESS
- 9 LIST OF PREPARERS
- 10 REFERENCES
- 11 COMMENTS ON THE ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE AND RESPONSES

END OF PUBLIC COMMENTS

If you have any questions, please contact me by email at nancy.mcpherson@co.mauhi.hi.us, or by phone at 553-3221 (Molokai) or 270-1768 (Maui).

Sincerely,



JEFFREY S. HUNT, AICP
Planning Director

JSH:NMM:by
Attachments

- c: Colleen M. Suyama, Deputy Planning Director
- Clayton I. Yoshida, AICP, Planning Program Administrator
- Nancy M. McPherson, Staff Planner Molokai
- Stanley Solamillo, Cultural Resources Planner
- Nina Kawano, Molokai Planning Office
- OEQC
- Molokai Planning Commission
- Cultural Resources Commission
- Project File
- General File
- K:\WP_DOCS\PLANNING\EAC\2006\0017_Laau_Point_Molokai\DEIS Comments MoPC_Trans2.wpd

To: Molokai Planning Commission
From: Commissioner Chaikin

Re: Further Comments to the Draft Environmental Impact Statement (DEIS) for the development of Laau Point

What is your contingency plan in the event that brackish water from the kakalahale well becomes to high in salinity for irrigation?

Who will be responsible for providing water to the agricultural easements?

If there is an inconsistency between The Community-Based Master Land Use Plan For Molokai Ranch and the FEIS which one prevails?

Who are the current board of directors of the Molokai Community Development Corporation (MCDC) and the Molokai Land Trust (MLT)?

Is Laau Point already subdivided?

How many times has there been an attempt to develop Laau Point?

What were the reasons that previous attempts to develop Laau point never proceeded.

What are the long-term plans for the hotels sites, the multi-families sites, the single-family sites and the rural zoned land that is not yet developed in the Kahuakoi area?

Why are not many community members showing up at the public hearings to support the The Community-Based Master Land Use Plan For Molokai Ranch?

What does the ranch intend to do if the State Land Use Commission denies its application for a land use change for Laau Point?

Does MPL and the MLT intend to try to have the The Community-Based Master Land Use Plan For Molokai Ranch adopted into the molokai community plan?

Documentation that needs to be included in FEIS

- 1) Molokai Land Trust Agreement
- 2) Partnership Agreement between MRL and MLT
- 3) Articles of Incorporation and Bylaws of the Molokai Community Development Corporation
- 4) CC&Rs of the Laau Point development
- 5) Bylaws of the Laau Point Homeowners Association
- 6) Deed Restrictions on the 26200-acre land gift
- 7) Language that will make the Agricultural Easements run in perpetuity
- 8) Deed restriction language that will make the land a rural landscape reserve

Chaikin Comments p.1



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kamehamehi Blvd., Suite 1110
Honolulu, Hawaii 96817-4700
(808) 844-2920 • Fax: (808) 979-2941

FEB 0 5 2007

What is an agricultural easement?
How long will the agricultural easements be managed by MLT?
Who will pay the property taxes on the agricultural easement during the time the MLT manages the easements?
Will the MLT have an option to extend their management of the agricultural easement at the end of the management term?

END

Mr. John Sabas
Molokai Properties Limited
745 Fort St. Mall, Suite 600
Honolulu, HI 96813

Dear Mr. Sabas:

This letter serves as comment on the Draft Environmental Impact Statement (DEIS) for the proposed La'au Point development project on the island of Molokai, Hawaii. The National Marine Fisheries Service, Pacific Islands Region (NMFS), is concerned about how the development may affect the endangered Hawaiian monk seal (*Monachus schauinslandi*). The letter incorporates comments and concerns both from our regional office's Protected Resources Division and the Pacific Islands Fisheries Science Center.

The monk seal is protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). The DEIS acknowledges the presence of monk seals in the area and also mentions that two seals were observed resting on Sam Wiggits Beach north of La'au Point during the fauna surveys (p.44).

Use of La'au Point area by Hawaiian monk seals

The Project Area identified in the DEIS (from Kaupo Beach south to La'au Point and east to Hale O Lono), hereafter referred to as "La'au Point" is known to be frequently used by Hawaiian monk seals.

The only systematic surveys of seals in the main Hawaiian Islands (MHI) were conducted using aircraft in 2000 and 2001 (Baker and Johannes 2004). In both years, seals (two in 2000, and one in 2001) were seen during the days Molokai was surveyed. In 2000, the aerial survey pilot (John Weiser), a resident of Molokai, related that he usually saw seals when flying by La'au Point.

The NMFS also maintains records of non-systematic monk seal sightings provided by a number of sources (public, other agency staff, and NMFS biologists). These data corroborate the conclusion that La'au Point is important habitat for seals. Since 1984, a total of 169 monk seal sightings have been documented on the shorelines of the project area. Most of these sightings (125) were documented in 2005-2006 when increased observation effort occurred. A total of 18 uniquely identifiable individual seals have been documented among these sightings, demonstrating that this area is used by a significant number of animals, rather than just a few seals accounting for the many sightings. It should be noted that because not all seals are tagged or well-identified by natural marks, these 18 represent a minimum number of individuals that have used the area. Of the 18 identified seals, none were known to have been born on Molokai. Eight of these nine were born at Kalaupapa Peninsula, and one pup was born in 1996 at a small pocket beach between La'au Point proper and Hale O Lono.



Ritte Comments p.1

Chaikin Comments p.2

Favorable characteristics of the La'au Point area as monk seal habitat
A number of features of the La'au Point area seem to make it especially good monk seal habitat.

Remoteness and limited access

While certain individual monk seals appear to be particularly tolerant of human presence at sites such as Puipui Beach, Kanai and certain Oahu beaches, these animals seem to be the exception rather than the rule. Aerial surveys revealed a strong trend for seals to land at remote areas of the MHI where human presence was relatively low (Baker and Johannes 2004). As noted in the DEIS, La'au Point is currently quite isolated. Few people visit the beaches and fishing activity is low. As a result, monk seals that land at La'au Point are currently unlikely to be molested by people or dogs.

Sandy beach substrate

Monk seals land on a variety of substrates in the MHI, but most sightings occur on sandy beaches, of which there is a considerable amount in the La'au Point area.

Proximity to foraging areas

Monk seals are believed to forage primarily on or near the sea floor in waters 200 meters deep or less, based upon studies conducted in the Northwestern Hawaiian Islands and to a lesser extent in the MHI (Stewart et al. 2006, Litman et al. 2006). Around most of the MHI, the ocean floor falls away quite rapidly such that there is only a narrow band of shallow water. Penguin Bank, in contrast, a relatively shallow (generally less than 60m) flat-topped bank that extends from the west coast of Molokai approximately 70 km to the southwest. La'au Point is the nearest land to Penguin Bank, suggesting that proximity to favorable foraging grounds may make it an attractive place for monk seals to rest. This is supported by data from two monk seals captured at La'au Point and subsequently tracked with satellite transmitters. Both animals, an adult female and a yearling male, the latter born at Kalaupapa, commuted repeatedly between La'au Point and Penguin Bank for several months (Litman et al. 2006). These data, combined with the information noted above (total of eight Kalaupapa born seals documented at La'au Point), suggest that while Kalaupapa provides favorable birthing habitat, La'au Point is desirable for its proximity to productive foraging grounds.

Potential deleterious effects of proposed action

The specific threats to monk seals that can be expected to increase considerably as a result of the proposed development include:

- 1) Human-caused disturbance (both unintentional and deliberate harassment)
- 2) Disturbance, physical harm and potentially disease transfer from dogs
- 3) Mooring and entanglement-associated with shore-based fishing

Residential development will vastly increase number of people present on the shoreline associated with the new homes. Additionally, a goal of the proposed development is to facilitate public access to this currently quite isolated area of Molokai. Specifically the plan designates a "subsistence fishing zone" which encompasses the entire La'au Point area where monk seals have been documented. Given that access to these shorelines is currently highly restricted, the plan will greatly increase the number and distribution of fishers in areas consistently used by monk seals. One can expect that this can only result in increased disturbance to the seals. Other

2
Rife Comments p.2

likely outcomes are increased interactions between fishers, their gear and seals (including seals removing bait and catch), seals being hooked and injured, and increased risk of seals becoming entangled in laynets/gillnets to the extent these will be used in the area.

Monk seals have evolved in the absence of terrestrial predators, and therefore, despite their large size, are vulnerable to attack by dogs. The presence of dogs on beaches with monk seals pose a variety of risks, including direct attack and harm, displacement from land, and disease transfer. The proposed action is likely to greatly increase the presence of dogs. These may include pets of residents and public beach visitors, as well as hunting dogs that may range to the shoreline from newly accessible hunting areas inland. The DEIS states that dogs will not be allowed for deer hunting. It is unclear whether other types of hunting might involve dogs.

Concerns regarding proposed mitigating measures

The DEIS proposes to limit public entry points to just two sites at opposite ends of the project area. However, even these two entry points will facilitate far greater access to the area beaches, which indeed is a goal of the plan. Further, it seems clear that residents of the proposed housing development will have multiple beach access points. It is not clear how members of the public will be prevented from accessing the shoreline from the residential areas.

The DEIS states that residents and visitors will be educated about proper behavior when monk seal are encountered in the project area, though details of how this will be achieved are not provided. This is a laudable goal and may indeed reduce the risks of some impacts on monk seals, especially among people who are compliant by nature. However, education without enforcement will not address the problem of persons who do not choose to respect guidelines of behavior. Additionally, one of the challenges of such education programs in Hawaii is that there is a large transient population of tourists. This segment of the population will also enjoy greater access to La'au Point if the proposed development occurs, and it is not clear how these people will be educated and policed.

A measure proposed to mitigate impact of increased shoreline access is: "...a caretaker or Land Trust steward will supervise access to ensure that damage to the environment does not take place, and that those who access the area have taken the appropriate education classes in traditional subsistence gathering and access responsibilities, safety and protocol." The apparent intention of this measure is primarily to allay concerns that opening the area to fishing will result in depletion of subsistence resources. It is not clear that the Land Trust steward would be charged with ensuring protection of monk seals. Moreover, it is not clear what authority the steward would have to actually police and enforce fishing practices, or any other behavior of beach visitors. Thus, we must anticipate that this measure will not provide adequate protection to monk seals at La'au Point.

The DEIS states that "A State Land Use District Boundary Amendment is proposed to protect and expand the existing Conservation District (shoreline area) by 254 acres, thereby increasing the amount of shoreline and habitats, such as for monk seals, put into permanent protection." (p. 17). This statement appears to suggest that if the plan is implemented, monk seals will somehow be afforded greater protection than they currently enjoy. In fact, the elements of the proposed plan discussed here suggest just the opposite will occur.

3
Rife Comments p.3

In addition to our concerns, NMFS recently received a total of 22 letters from Molokai residents voicing their concerns for the monk seals of La'au Point. Residents are well aware of the importance of this currently remote and relatively undisturbed habitat to monk seals. While we typically do not respond to public outcry over coastal development, the letters are indicative of the degree of public support for protection of the seals and this valuable habitat.

Because this species is highly endangered and susceptible to disturbance by human presence, we are very interested in ensuring that the mitigation measures developed for this project will effectively protect seals when they haul out on beaches in the development area. In particular, we believe that the potential for increased disturbance warrants your consideration of hiring a full-time Hawaiian monk seal protection specialist, who could both educate the public about the seals and also protect them from the expected interactions. We are available to discuss this suggestion as well as any other ideas you may have for ways to ensure that the seals will not be adversely impacted by this development.

Thank you for working to protect our nation's living marine resources. If you have any questions regarding these comments, please contact Jayne LeFors on my staff at (808) 944-2277 or at the e-mail address jayne.lefors@noaa.gov.

Sincerely,

Chris E. Yates
Assistant Regional Administrator
for Protected Resources

cc: Anthony Ching, State Of Hawaii Land Use Commission
Thomas Winen, FBR Hawaii and Associates, Inc.
Genevieve K.Y. Salmonson, State of Hawaii Office of Environmental Quality Control

Rife Comments p.4

Debray

Planning Commission Comment: Alternatives to La'au Point Development (Pages 143 thru 157 of the Draft Environmental Impact Statement)

At its January 30 meeting, Molokai Resident Matt Yamashita, a co-chairman of the Alternative to La'au Development Committee (ALDC) presented to members of the Molokai Planning Commission extensive written testimony complete with exhibits. Mr. Yamashita focused his testimony on explaining why he felt a series of specific statements contained in the Ranch's Draft Environmental Impact Statement (DEIS) were misleading and inaccurate relative to integrity of the Ranch's claim that it diligently pursued alternatives to the La'au Point development component of the Master Land Use Development Plan.

One of the attachments to Mr. Yamashita's testimony was 3-page exhibit prepared by Molokai Properties Limited (i.e. Molokai Ranch). The document included a list of "financial objectives" the Ranch anticipated funding through profits generated from its proposed La'au Point development.

The document reportedly was prepared by Ranch CEO Peter Nicholas, and included the statement that the stated financial objectives were ones "that any alternative plan (to La'au) needs to consider to meet what the community has requested and what the Molokai Ranch needs to remain solvent."

Mr. Yamashita testified the "financial objectives" document was provided to the ALDC Group by the Ranch to use in ALDC's quest to seek an alternative plan to the development of the La'au Point shorelines.

Mr. Yamashita urged the Commission to pursue an explanation of the various line items contained document. He explained that the ALDC Group did not receive any detailed explanations of the financial objectives from Mr. Nicholas.

Mr. Yamashita also represented to the Commission that despite repeated requests from the ALDC, Mr. Nicholas refused to provide the Committee with a) a firm price to purchase the La'au Point site or, b) a list of incentives the ranch was offering its prospective investors, so that the ALDC could craft those same incentives into its proposals to attract investors willing to provide an alternative to the La'au development.

Based on Mr. Yamashita's request to the Planning Commission to qualify the line item components of the Ranch's financial objectives paper (in italic type) shown below, the Commission is requesting the Ranch to respond to its questions related to the line items contained in its financial objective proforma. The Commission's comments are noted at the conclusion of the Ranch's financial objectives paper.

RANCH'S FINANCIAL OBJECTIVE PROFORMA FOR ITS LA'AU POINT DEVELOPMENT WITH COMMENTS FROM THE MOLOKAI PLANNING COMMISSION:

Molokai Properties Limited (i.e Molokai Ranch)

Vanderbilt Comments p.1

The current proposal for the 100 year Plan for Molokai Ranch under EC Project #47 is receiving community input.

A committee has been established to complete the task of finding development alternatives for La'au Point other than the proposal set forth by Molokai Properties Limited

This paper outlines the financial objectives that any alternative plan needs to consider to meet what the community has requested and what the company needs to remain solvent.

The current Draft Plan meets all these criteria outlined below.

1. Kaluakoi Hotel Rebuild:

Hotel opened in December 2006

| | | |
|-----------------------------------------------------------------------------------------------|-------|-------|
| (a) Capital | 19.69 | |
| (b) Startup costs, initial marketing blitz, losses until b/even | 3.85 | 23.44 |
| (a) Construction finance for \$19.59 million for 2 years @ 7.55% | 2.94 | |
| (b) Finance for 8-years to repay total outlay of \$23.44 m @ 7% (Hotel is profitable in Yr 4) | 13.13 | 16.07 |

2. Kaluakoi Golf Course

Return course to resort standard to attract visitors

- (a) Capital – new irrigation system, CAPEX for starter shack, Maintenance shed, cart barn, reduce turf to 80 acres
- (b) Losses until end of YR 4

| | | |
|--|------|-------|
| | 8.77 | |
| | 1.79 | 10.56 |

(c) Financing:

- \$8.77m for 1 year @ 7.5%
- \$1.79m for 1 year @ 7%

| | | |
|--|------|------|
| | 0.66 | |
| | 0.38 | 1.04 |

3. Repair Kaluakoi Infrastructure

Requirements – must be completed

- (a) Meet Health Dept compliance order for drinking water

| | | |
|--|------|------|
| | 2.00 | 2.00 |
|--|------|------|

- (d) Fund infrastructure CAPEX for 7 years until profitability of core operations can repay debt (7% rate)

| | | |
|--|------|------|
| | 0.98 | 0.98 |
|--|------|------|

MPL Losses

Plan must meet MPL losses and capital requirements for 5 years

Current losses per annum, in cash requirements

- (a) \$4 million for annum, reducing to 2.2m in Yr. 5

| | |
|--|-------|
| | 16.70 |
|--|-------|

(b) Capital requirements for 5 years

| | | |
|--|------|-------|
| | 1.98 | 18.68 |
|--|------|-------|

(c) Funding:

- Potential sale of current lots to fund losses run out in Dec 2005
- Need therefore to fund \$14.25m for four years @ 7%

| | | |
|--|------|------|
| | 3.99 | 3.99 |
|--|------|------|

5. Land Trust

Plan funds Cons Fund, subdivision and Land Trust land and legals

- (a) Costs as per above
- (b) Funding @ 7% for one year

| | | |
|--|------|------|
| | 0.44 | |
| | 0.04 | 0.48 |

6. Land Trust Evergreen Income

- % of lot sale revenue from La'au Point sales over 5 years only
- Estimated income from Land Trust based on %

| | | |
|--|-------|-------|
| | 10.00 | 10.00 |
|--|-------|-------|

7. Restoration of La'au Coastal Strand, Marine Resources, archeological sites preservation

Lot owners were to be required to contribute \$600,000 per annum to ensure marine, coastal resources repaired, archaeological sites maintained and protected.

- (a) \$600,000 pa from other sources x 5 year timeframe

| | | |
|--|------|------|
| | 3.00 | 3.00 |
|--|------|------|

Alternative Project Total Funds Needed:

90.24

8. Return for MPL

MPL has \$110 m of depreciated assets employed. This is not BIL's equity investment in the company. This includes lands at historic cost, Lodge and BV, infrastructure costs, Maunaloa town, affordable housing project, industrial park costs, Kaluakoi hotel and golf course; all assets depreciated. With the addition of the capital for the Kaluakoi Hotel, the golf course and other capital projects over the five year period, these assets will increase by \$66 million

The committee should establish what is a suitable return on an annual basis on these assets.

222

Criteria that must be used when reviewing alternatives:

Vanderbilt Comments p.2

Vanderbilt Comments p.3

These criteria are met in current Draft Plan

1. All 140 current MPL staff positions must remain employed
2. The community was unanimous in its desire to have the Kaluakoi Hotel re-opened
3. The current Plan has the hotel reopened by December 2006
4. Additional, not replacement jobs, must be created. 130 are planned for the hotel.
5. The Land Trust receives evergreen funding to ensure it benefits the people of Molokai.
6. Only 100,000 gals of drinking water and an equivalent amount of irrigation water must be used. Any plan needing more than that will require additional drinking water permits.
7. Population: La'au projects only 200 people living in La'au at any one time as these will be part-time residents. This is current % occupancy status of Papohaku 69 houses constructed.
8. MPL and its parent company, BIL International Limited, will not timeshare on its property. The risk, the upfront costs (45% of revenue for sales and marketing) and the sales techniques used are contrary to the company's business philosophy.

END OF RANCH UNDATED FINANCIAL OBJECTIVES PAPER FOR LA'AU POINT DEVELOPMENT

Planning Commission comments/questions on Ranch's Financial Objectives for response by Molokai Ranch in its Final Environmental Impact Statement document for La'au Point.

THE FOLLOWING COMMENTS RELATED TO MPL'S STATED FINANCIAL OBJECTIVES SUBMITTED AS PART OF THE MOLOKAI PLANNING COMMISSION'S COMMENTS ON THE DRAFT ENVIRONMENT IMPACT STATEMENT FOR LA'AU POINT AND ARE INTENDED TO ASSIST IN MAKING THE FINAL ENVIRONMENTAL DOCUMENT A MORE THOROUGH INFORMATION DOCUMENT TO ALLOW DECISION MAKERS TO BETTER UNDERSTAND COMPONENTS OF ANY ALTERNATIVE ACTIONS AND WHETHER OR NOT THE APPLICANT APPLIED ADEQUATE DUE DILIGENCE IN PURSUING ALTERNATIVE ACTIONS.

BEGIN COMMENTS:

Who prepared the above Financial Objectives document and what is the date it was prepared?

MPL'S FINANCIAL OBJECTIVE 1: Kaluakoi Hotel Rebuild: Hotel opened in December 2006.

In order for MPL to have reopened by December 2006, by what date did MPL assume its investor would had to invest money?

What criteria did MPL anticipate would have to be met in order to give an investor the comfort level needed to make investment funds available for the renovation and reopening of the Kaluakoi hotel?

Vanderbilt Comments p. 4

MPL told the community it needs to find an investor to reopen the Kaluakoi Hotel and that the La'au Point development was needed in order to provide the investor with assurances needed that his investment would be returned. How long has MPL been pursuing an investor and what is the current status (as of February 23, 2007) of MPL's investor search?

Assuming MPL receives its land use and water use entitlements for its proposed La'au Point development, please explain why MPL needs the investor, assuming the La'au lots are able to be presold to the "pentamillionaire" market MPL claims in the DEIS it is targeting, and funds to renovate and reopen the Kaluakoi Hotel can be borrowed based on solid presale commitments.

Assuming MPL all the land and water entitlements approved for the proposed La'au Point development, please explain why MPL could not rely on its parent company BIL or The Guoco Group, which is described in the DEIS as Molokai Ranch's "ultimate parent company", to provide the funding needed to renovate and reopen the Kaluakoi Hotel.

What is the net worth of Brierley Investments Limited?

What is the net worth of The Guocco Group?

MPL's Peter Nicholas sent the EC's Land Use Committee a letter stating that the investor MPL was seeking most likely would be someone who sees more in Molokai than just dollars. Please explain the profile of such an investor? Did MPL anticipate that such an investor, who sees more in Molokai than just dollar, might consider a lower return on investment?

a) Around the time his financial objectives proforma was being prepared, MPL presented materials to the community showing that MPL was seeking an investor to put up \$45 million. Please explain where the \$45 million figure and uses of those funds are listed in the eight financial objectives presented herein.

b) What costs are included in the \$19.58 million "Capital" cost?

c) Please provide a breakdown of how the \$3.85 million is divided up between "start up costs", the cost of the "initial marketing blitz" and the cost of the "losses to breakeven". What is included in "start up costs"?

d) What collateral and/or loan guarantees are anticipated to be required by the lender(s) underwriting the construction loan?

e) When did MPL anticipate the 8-year loan begin?

When the hotel breaks even in Year 4, what occupancy and average room rates did MPL assume?

Are there any other costs associated with the design, renovation, construction and reopening of the hotel?

Vanderbilt Comments p. 5

MPL'S FINANCIAL OBJECTIVE 2: Kaluakoi Golf Course: Return course to resort standard attract visitors.

- a) Please breakdown the \$8.77 million Capital costs among the five costs items identified.
- b) What is CAPEX?
- c) Which of the identified buildings will be new and which ones will be renovated?
- d) To reach breakeven, what is assumed as the number of players per day and the green fees charged?
- e) Are the financing costs shown interest only?
- f) How will the loan be repaid (i.e. from proceeds generated by the La'au Point lot sales or otherwise?). If otherwise, please explain the source of repayment funds.

If ALDC was expected come up with an alternative to La'au, which would have had to involve an investor, ALDC, or anyone else seeking an alternative to La'au, would have had to been able to explain projected estimated costs and revenues and the timing of the factors just as MPL would have to do in seeking an investor.

MPL'S FINANCIAL OBJECTIVE 3: Repair Kaluakoi Infrastructure: Requirements-must be completed.

- (a) Please identify specific costs associated with meeting the Health Department compliance order and the deadline by which the compliance issues have to be resolved.
- (b) How is the \$980,000 funding cost on CAPEX debt for seven years calculated? Please describe what is included in MPL's "core operations". What is the amount of loan? Did MPL anticipate the loan coming from an investor or being guaranteed by an investor or was the loan intended to be taken down by MPL or its parent company?

MPL'S FINANCIAL OBJECTIVE 4: MPL Losses: Alternative plan must meet MPL's and capital requirements for 5 years.

- (a) Year 1 of the 5-year period of losses was anticipated to begin when? What did MPL estimate its losses would be for each of the 5-years? Did MPL assume its losses would be \$0 in Year 6?
 - (b) What items make up capital requirements for each year of the 5-year period?
 - (c) How many lots make up the inventory of lots that MPL anticipated would run out in December 2,005?
- How many lots at Papohaku Ranchlands and the Moana Makani subdivisions were still owned by MPL when this financial objective proforma was prepared?

If MPL anticipated there would be no more lots available to sell to help fund losses for 2006, 2007, 2008 and 2009, how did MPL plan to cover the losses, through an investor or from a loan taken out by MPL or its parent company? How many agricultural subdivision lots does MPL or its affiliates currently own (as of February 23, 2007 the deadline for comments on the La'au Point draft EIS)?

MPL'S FINANCIAL OBJECTIVE NO. 6: Land Trust: Alternative Plan must fund Conservation Fund, subdivision and Land Trust land and legals.

- (a) How much did MPL anticipate would be needed to fund "The Conservation Fund" and what did MPL anticipate those funds would be used for? How much funding will be needed for "subdivision", and what specific subdivision activities "will the funds be specifically used for? How much funding did MPL anticipate would be used for "Land Trust land" and what will these funds be used for? What are "legals" and how much funding was anticipated to be required to fund these items? What was the anticipated source of the one-year loan at 7% interest?

MPL'S FINANCIAL OBJECTIVE NO. 7: Land Trust Evergreen Income: Percentage of lot sale revenue from La'au Point sales over 5 years only?

- (a) The estimated income of \$10,000,000 assumed what percentage of gross lot sales. In calculating the \$10,000,000, how many lots are assumed to be sold during the 5-year period? How long of a period did MPL anticipate from the time it was qualified to sell the lots until all 200 lots were sold? How many months after a Master Development Plan was agreed to in principal did MPL think it would take before MPL would be in a position to offer La'au Point lots for sale?

MPL'S FINANCIAL OBJECTIVE NO. 7: Restoration of Coastal Strand, Marine Resources, archeological sites preservation: Lot owners were to be required to contribute \$600,000 per annum to ensure marine, coastal resources repaired, archeological sites maintained and protected?

- What repairs to marine resources were envisioned and what was the estimated cost of these repairs?
 What repairs to coastal resources were envisioned and what was the estimated cost of these repairs?
 Were there any costs assumed for any repairs of archeological sites or did MPL envision that these sites would just be maintained in their existing condition?
 What annual costs did MPL assume to maintain and protect archeological sites?

Vanderbilt Comments p6

Vanderbilt Comments p.7

- (a) Did MPL anticipate the \$600,000 annual contribution from the lot owners would end at the end of five years?

MPL'S FINANCIAL OBJECTIVE NO. 8: Return for MPL?

Explain what is meant by "depreciated assets employed".

Is the \$110m total for depreciated assets employed meant to reflect \$110,000 or \$110,000,000 total dollar amount?

MPL states that "depreciated assets employed" is not BIL's "equity investment in MPL. What book value does BIL report for its MPL investment.

Please breakdown the total dollars included in "depreciated assets employed" among a) land (identify at historic cost, b) Lodge and BV (What is BV?), c) specific infrastructure costs (i.e. water pipelines, Kaluakoi roads, etc.), d) Kaluakoi hotel, e) Kaluakoi golf course, front nine, back nine, f) Maunaloa Town, g) affordable housing project (is this located in Maunaloa Town?), h) industrial park costs (at Pala'au or Maunaloa?), i) Describe "other capital projects over the five year period" (Timeframe of 5-year period), j) Breakdown of the \$56,000,000 increase in depreciated assets MPL anticipated between Kaluakoi Hotel and Kaluakoi golf course and "other capital projects" referenced, m) Explain how these increases in depreciable assets are related to the amount of depreciable assets MPL says it already has on the books for the hotel and golf course.

What does BIL's management feel is a suitable annual return to expect on MPL's "depreciated assets employed"? As of February 23, 2007 what is the value of MPL's depreciated assets?

What suitable annual return on "depreciated assets employed" is MPL projecting from its proposed La'au Point development?

How many years does MPL project the La'au Point development will fund a suitable annual return on its "depreciated assets employed"?

If no Master Development Plan is accepted by MPL, how does MPL anticipate it will secure a suitable annual return on its "depreciated assets employed"?

What has been BIL's return on MPL's "depreciated assets employed" over the last 5-years of MPL operations?

Where in BIL's 2004 annual report is MPL's \$110 "depreciated assets employed" noted?

In the DEIS for La'au Point, MPL estimates the gross value of lots sales will exceed project costs (including \$10.5mm earmarked for the Land Trust) by approximately \$100,000,000. If an alternative proposal included an upfront cash offer of \$100,000,000 payable to MPL to purchase the proposed La'au Point project lands and the 26,000

Vanderbilt Comments p.8

acres of land MPL intended to donate to the Trust, assuming La'au Point would not be developed and the 26,000 acres would be donated to a community land trust along with at least \$10,500,000 invested in a community land trust and/or community development corporation to fund the objectives of these community organizations?

CRITERIA that must be used when reviewing alternatives: These criteria are met in the current draft plan.

1. How many full-time, part-time and on-call employees are included in the 140 staff positions projected by MPL?
2. Is the community unanimous in what type of operation the hotel will house when it reopens (i.e. standard, full-service hotel, educational center, wellness center, community-owned facility, etc.)? What type of hotel operation is MPL planning for in its projection to breakeven in 5 years? In its DEIS, MPL has mentioned a "put option" to the community for the hotel. Please explain the details of the "put option".
3. MPL has stated it will need to find an investor to put up the money needed to accept the Kaluakoi Hotel. How long after a Master Development Plan is accepted by MPL in principal, does MPL estimate it will be before all the documents and entitlements are legally secured to the point where an investor will be willing to release his investment to fund the renovation of the hotel?
4. How many rooms will the renovated hotel include? What mix of full-time, part-time and on-call jobs is being projected for the 130 jobs planned at the hotel during each of its first five years of operations? Please provide a copy of MPL's financial budget for the hotel that will lead to breakeven in hotel operations in five years.
5. Is the Evergreen funding earmarked for the Land Trust or a Community Development Corporation?
6. MPL projects drinking water use at La'au Point 500 gpd per lot and an equivalent amount for irrigation water per lot must be used? Are these projected water uses still applicable as of February 23, 2007. Will MPL make the water it projects providing for its La'au development available to the development plans associated with an alternative plan to La'au?
7. This figure cannot be controlled by CCR's or otherwise and therefore seems to be an arbitrary criteria that holds little weight.
8. Is MPL prepared to restrict the future development of timeshare projects on the lands that currently owns at the Kaluakoi Resort and elsewhere on Moloai by applying deed restrictions or other appropriate means to insure this restriction is perpetuated into the future?

End of comments on Financial Objectives document.

Vanderbilt Comments p.9

Financial return
Water Use
Population increase
Land requirement

Section 6.52

Please provide dollar amounts for the following items that MPL states (on page 156) must be covered in an acceptable purchase offer for the La'au parcel:

1. MPL's development return, and what the return is based on.
2. Estimated cost to protect subsistence areas (Identify subsistence areas)
3. Amount of endowment income needed for a Molokai Land Trust/CDC.

Based on the above funding requirements being met, what would MPL's sale price be for the La'au Point parcel.

Appendix J calls The Guocco Group MPL's "ultimate parent" and that a report had been prepared that set forth what Guocco could get for its lands if it shut down ranch lands and sold off its property "on a breakup basis".

What is meant by the term "ultimate parent" and explain what

How much could the Ranch expect today for its lands if a decision was made to sell off all the Ranch lands on a breakup basis?

Has anyone from Guocco ever been to Molokai, and if so did that representative ever meet with the community?

Have any representatives from BIL been to Molokai, and if so did they meet with in the community?

The DEIS provides no in depth information regarding the ranch's operation losses that are emphasized often in the DEIS to justify the La'au project. Please identify the components, which make up the Ranch's 3.7 multi-million dollars annual loss from its current operations, and also explain how and by what dates the ranch intends to eliminate these operating losses.

If MPL (the Ranch) were experiencing financial difficulties, why did MPL purchase the La'au Point parcel for a reported \$12,000,000 and 4,000 acres at the Kalukoi Resort for a reported \$9,000,000?

Since purchasing the Kalukoi resort properties, what is the gross sale value MPL has realized through lot sales?

Vanderbilt Comments p. 11

Other comments related to testimonies received by the Commission which relate to the financial aspects of the La'au project and alternative to that project.

At the Commission's January 10 meeting. Concerns were raised about the amount of profitability of the La'au Point development by both a Commissioner and by a member of the public who testified.

At the Commission's January 30 meeting other concerns related to the financial component of La'au were raised by Commissioners and testifiers.

The Commission received testimony questioning the depth of Molokai Ranch's efforts to seek an alternative to La'au. This testimony seems especially pertinent in light of the fact that through the Master Planning process it appears that the community had indicated a strong lack of support for development at La'au.

This was opposition to La'au was validated in the January 31, 2007 EC elections in which those elected by more than a 2 to 1 margin opposed development at La'au.

A testifier mentioned a company referenced in the DEIS known as the Guocco Group, which was described as the "ultimate parent" of MPL (Molokai Ranch). The testifier indicated neither BIL nor The Guocco Group have been in direct contact with our community, and that our community has no assurance from either of these off-shore companies regarding a specific commitment to Molokai based on La'au Point being approved or not approved.

This is a major missing link in the communication chain. No matter how hard our community works to come up with workable solution to La'au, all the effort to resolve the issue may be for naught if the Ranch's two parent companies have other designs for their investments in Molokai. This is a major concern.

The following comments in hope that the responses received will lead to better understanding the Ranch's financial objectives at La'au for decision maker's. This in turn will enhance the efforts to come up with an alternative to development at La'au.

COMMENTS:

Section 6.0 ALTERNATIVES TO THE PROPOSED ACTION

Section 6.4 Other MPL Land Development Alternatives:

In order to allow decision makers to make a meaningful comparative analysis, next to each of the alternatives analyzed by the Ranch, list the corresponding line items for the La'au development, which include:

- Revenue per lot
- Total Revenue
- Cost to develop

Vanderbilt Comments p. 10



November 1, 2007

Jeffrey S. Hunt, Director
County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Hunt:

Thank you for your letter dated February 21, 2007 containing comments from the Molokai Planning Commission regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to the Molokai Planning Commission's comments.

1 INTRODUCTION AND SUMMARY

Comment #1: Expand discussion, summary in Section 1.7.8, specifically "probable adverse effects that can't be avoided -- unquantifiable impacts to overall spiritual quality of the area". Discuss maintaining Molokai's rural island character.

Response: Section 1.7.8 of the EIS is part of the Executive Summary and is meant to be a concise summary of issues addressed in greater detail in the body of the EIS. For further discussion on maintaining Molokai's rural character please see the following sections of the Draft EIS: 4.8.3 (Community Character) and 7.4 (Probable Adverse Environmental Effects that Cannot be Avoided).

2.1.5 Detailed Land Use History

Comment #1: Expand discussion of the history of land management practices on the West End and how they may have contributed to increasingly arid conditions.

Response: MPL is unaware of any practices within the timeframe of its ownership that would have contributed to "increasingly arid conditions." It cannot comment on the actions of its predecessors. The archaeological and cultural reports contained in the Draft EIS both state that the West End has historically been dry.

2.1.7 Key Points of the Community-Based Master Land Use Plan for Molokai Ranch

Comment #1: Correct error in number of acres actually being transferred to the Community through the Land Trust -- it is 26,200, not 50,000 as reported. Expand description and definition of the land being put into "Rural Landscape Reserve," Agricultural Reserve," etc. Discuss what is going to happen above Kawakii. Explain how additional "Cultural Easement" protections serve the community, when the State Historic Preservation Division will probably not let any development occur in those areas anyway because of the presence of so many archaeological resources.

Response: The Draft EIS does not state that 50,000 acres is being "transferred to the Community through the Land Trust." What it does say is, "The implementation of the Community-Based

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 57

Master Land Use Plan for Molokai Ranch and the Lā'au Point project will provide the community with the tools to protect more than 50,000 acres of land from development" (See Section 7.2, Cumulative and Secondary Impacts).

As stated in the Draft EIS in Section 2.1.7 (Key Points of the *Community-Based Land Use Plan for Molokai Ranch*) and as further explained in Section 2.1.8 (Molokai Land Trust), the Land Trust will gain 26,200 acres in fee simple donation and control another 24,950 acres with restrictive easements. Therefore, the Land Trust will have full management responsibility for more than 50,000 acres, which includes the land above Kawakii.

Section 2.1.8 (Molokai Land Trust) of the Draft EIS discusses which lands will be donated to the Land Trust and the easement lands, including land being put into Rural Landscape and Agricultural Reserves. Section 2.1.8 (Molokai Land Trust) also references readers to Draft EIS Appendix A for more information in regard to the Rural Landscape and Agricultural Reserves.

Cultural easements (referred to in the EIS as "cultural protection zones") will give the Land Trust the management authority of these areas, which are presently on private property. Although you are correct that the SHPD would not let any development occur in those areas, the cultural protection zones will ensure that the Land Trust, not private landowners, will be stewards of the cultural resources.

To clarify the lands that the Molokai Land Trust will own, manage, and administer, the Final EIS will contain a figure showing the locations of the various parcels as shown on the attachment titled, "Land Trust Land Donations and Easements." In addition, in the Final EIS, Section 2.1.8 (Molokai Land Trust) will be revised to indicate the notation for the added figure as follows:

The Molokai Land Trust, a community-based land steward organization, will be entrusted with ownership and management of the 26,200 acres (40 percent of Ranch lands) that MPL will donate to the Molokai community under the conditions of the *Community-Based Master Land Use Plan for Molokai Ranch*. In addition, the Land Trust will also administer land use policies that permanently protect 24,950 acres of easement lands and 434 acres of Lā'au Point's cultural preservation zones and Conservation District lands. The Land Trust will ensure perpetual care of these lands and any other future donated lands. Figure 10 shows potential future ownership and management for Molokai Ranch property, including the lands the Molokai Land Trust will own, manage, and administer.

Comment #2: Include Land Trust and CDC documents in EIS. Specific language needs to be included in order to determine if these documents can be relied upon. Discuss how State Land Use Commission can act on District Boundary Amendment application without seeing these documents.

Response: We are not clear what you are referring to in regard to "Land Trust and CDC documents." However, if you are referring to easements documents regarding the rural reserve, agricultural lands, or expanded Conservation District, these easements are currently being drafted and negotiated with the Molokai Land Trust, and will be available at the time of LUC hearings petition hearings.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 3 of 57

Comment #3: Discuss whether or not Molokai residents will have a say in the decisions made by the Molokai Land Trust and the CDC.

Response: All current Land Trust directors are Molokai community members. The CDC, is also expected to be composed of Molokai community members.

Comment #4: Provide more details on and a more complete description of the Molokai Land Trust—who is a member, who is on the Board, and who will be making the decisions.

Response: In response to your comment, as well as other comments regarding the Land Trust, Section 2.1.8 (Molokai Land Trust) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 2.1.8 (Molokai Land Trust)."

Comment #5: Include legal documents, specific language, and the Mission Statement for the Land Trust and CDC. Provide legal descriptions of "chunks of land" receiving various designations.

Response: The Land Trust and the CDC are separate entities from MPL. A CDC steering committee is examining the best type of organization that suits its mission and was to be incorporated in October 2007. As stated above, easement documents are currently being drafted and negotiated with the Molokai Land Trust, and will be available at the time of LUC hearings on the State Land Use District Boundary amendment hearings.

The Land Trust's mission was stated in Section 2.1.8 of the Draft EIS (page 20) as follows:

- The Molokai Land Trust will provide for the community's self-determination and protection of the island's resources with a mission "to protect and restore the land, natural and cultural resources of Molokai, and to perpetuate the unique Native Hawaiian traditions and character of the island, for the benefit of the future generations of all Molokai, particularly Native Hawaiians" (EC 2006). The Land Trust's unique goals are:
- Protecting historic cultural archeological sites.
 - Preserving the precious natural and environmental resources.
 - Enhancing indigenous rights through the protection of subsistence gathering.

Section 2.1.9 of the Final EIS has been revised to reflect the CDC's mission statement as follows:

A CDC steering committee, a project of the Molokai EC, has been already established and is investigating legal and tax structures to ensure the optimum use is made of its mission.

The CDC mission statement has now been defined by the steering committee as follows: "A community-based non-profit organization working to enhance the quality of life for residents primarily in the area of affordable homes for the community, as well as economic development, education, health care, leadership, culture, and the environment while preserving Molokai's rural character."

Regarding legal descriptions of "chunks of land" receiving various designations, it is premature to prepare legal descriptions of these properties; however, general designations, areas, and

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 4 of 57

locations have been provided in the Draft EIS (Appendix A). In addition, the Final EIS will contain a figure showing the locations of the various parcels as shown on the attachment titled, "Land Trust Land Donations and Easements." In addition, Section 2.1.8 (Molokai Land Trust) in the Final EIS will be revised to indicate the notation for the added figure as follows:

The Molokai Land Trust, a community-based land steward organization, will be entrusted with ownership and management of the 26,200 acres (40 percent of Ranch lands) that MPL will donate to the Molokai community under the conditions of the *Community-Based Master Land Use Plan for Molokai Ranch*. In addition, the Land Trust will also administer land use policies that permanently protect 24,950 acres of easement lands and 434 acres of La'au Point's cultural preservation zones and Conservation District lands. The Land Trust will ensure perpetual care of these lands and any other future donated lands. Figure 10 shows potential future ownership and management for Molokai Ranch property, including the lands the Molokai Land Trust will own, manage, and administer.

Comment #6: There were too many Ranch employees involved in the EC and the vote on the Master Land Use Plan. Many people consider the vote to have been illegal. Discuss the validity of the EC vote on the Plan.

Response: MPL staff members, or "Ranch employees," are Molokai residents and community members. MPL staff and their families represent a large portion of the Molokai community, living in Maunaloa, Ho'olehua, Kaunakakai, and the East End. Ranch employees have just as much, if not more, of a vested interest in the future plans of the Molokai Ranch lands contained in the *Community-Based Master Land Use Plan for Molokai Ranch*. There was nothing "illegal" about their presence and participation in the process.

Regarding the EC vote, there were two elected members of the EC, John Pele and Raymond Hino, who were MPL employees at the time. They were elected by properly constituted elections. If those MPL employees had abstained from voting, the EC vote would have still been a majority vote for adoption of the Master Plan. If reference to the Land Use Committee vote, only three people out of more than 30, who served on the EC's Land Use Committee, were MPL employees: Peter Nicholas, Harold Edwards, and Jimmy Duvauchelle.

In reference to the validity of the EC vote on the *Community-Based Master Land Use Plan for Molokai Ranch*, this was only raised as an issue by some people once the vote went contrary to their opinions. The EC vote holds no legal status and State and County regulatory approvals still must be obtained for various land use approvals necessary to implement the *Community-Based Master Land Use Plan for Molokai Ranch*.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding the validity of the community-based planning process, in the Final EIS Section 2.4 will be revised as shown on the attachment titled, "Revised Section 2.4 (Community Meetings and Involvement)."

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 5 of 57

Comment #7: There is no strong statement from Brierley's top management regarding a commitment to follow through on implementation of the Master Plan. Discuss how the parent company intends to provide assurance to the community that actions proposed in the Draft EIS will actually take place.

Response: Pending the State and County approvals for the Lā'au Point project, MPL, a registered Hawai'i Corporation, will sign a legal agreement ensuring the implementation of the overall *Community-Based Master Land Use Plan for Molokai Ranch*.

To include the above information in the Final EIS, in the Final EIS Section 2.1.6 will be revised as follows:

The result of this process was an integrated plan that addresses all the uses of Molokai Ranch's property, including the Lā'au Point site. MPL is now moving forward with the Molokai community to implement the *Community-Based Master Land Use Plan for Molokai Ranch*.

Pending State and County approvals for the Lā'au Point project, MPL will sign a legal agreement ensuring the implementation of the overall *Community-Based Master Land Use Plan for Molokai Ranch*.

Comment #8: Peter Nicholas originally assured the community that it was to make the final decision on the Plan. Now that there is controversy about whether or not that took place, why is MPL going back on Peter's word? Please explain how MPL can still assert that the Plan is a result of the community's decision.

Response: The EC voted to support the *Community-Based Master Land Use Plan for Molokai Ranch* based on the strong recommendation from the Land Use Committee; however, appointed and elected members of the community, the County of Maui, and the State of Hawai'i, will make decisions on the approvals necessary for Lā'au Point to proceed. These include the Molokai Planning Commission, Maui County Council, and the State Land Use Commission. Approval of Lā'au Point is the primary action necessary to implement the other aspects of *Community-Based Master Land Use Plan for Molokai Ranch*. In democratic societies, such as ours, it is standard that the electorate passes responsibility to its elected representatives to make decisions on its behalf.

2.3.6 Covenants

Comment #1: CC&R's are not the strongest tool for enforcing conditions on landowners. Discuss how the Papohaku Ranchlands subdivision lot owners were able to vote to eliminate the prohibition against subdividing their lots. Discuss other options there may be for strengthening the force and enforceability of conditions that may be imposed on the project, and the individual lot owners, in perpetuity.

Response: Discussion of Papohaku Ranchland's CC&Rs is not relevant for inclusion in the Lā'au Point EIS. However Lā'au Point's CC&Rs are more restrictive than Papohaku Ranchland's CC&Rs. In approving the land use changes necessary for Lā'au Point, the State Land Use Commission and the Maui County Council have the authority to impose conditions on the project. These conditions can be a reflection of the Lā'au Point CC&Rs or additional

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 6 of 57

conditions. However, with Lā'au Point MPL has taken the unprecedented position of imposing a comprehensive set of conditions in advance of any governmental regulatory agency.

In response to your concerns regarding the CC&Rs, as well as the concerns of others, in the Final EIS, Section 2.3.6 (Covenants) will be revised as shown on the attachment titled, "Revised Section 2.3.6 (Covenants)."

Comment #2: A Hawai'i Supreme Court case regarding height restrictions in CC&R's set a precedent that they are not enforceable in Hawai'i. Discuss how reliable CC&R's are in the State of Hawai'i for enforcing restrictions on property owners' actions.

Response: This is an inaccurate interpretation of a Hawai'i Supreme Court decision. In our case, the Lā'au Point CC&Rs specifically set forth that the provisions which are part of the *Community-Based Master Land Use Plan for Molokai Ranch*, affect the community-at-large, and are enforceable by the Land Trust. Please also refer to the answer in Comment #1 above, and the attachment titled, "Revised Section 2.3.6 (Covenants)."

Comment #3: Expand discussion of who will enforce CC&R's — explain how it will work for homeowners to police themselves.

Response: In response to your concerns regarding the CC&Rs, as well as the concerns of others, in the Final EIS, Section 2.3.6 (Covenants) will be revised as shown on the attachment titled, "Revised Section 2.3.6 (Covenants)."

3 DESCRIPTION OF THE NATURAL ENVIRONMENT, POTENTIAL IMPACTS, AND MITIGATION MEASURES

Comment #1: The wealth of this island is in its natural resources. We cannot give up the water because that is what supports the subsistence and homesteader lifestyles. Describe how the natural resource wealth of Molokai will be protected by this project.

Response: We are not clear if this comment pertains specifically to water or natural resources in general. Section 3.0 of the Draft EIS provides a description of the natural environment, potential impacts, and mitigation measures. Regarding water, as discussed in Section 4.9.2 (Water) of the Draft EIS, MPL has committed to using only existing sources, at currently permitted amounts, to meet all of the potable water needs for its current water customers and MPL's future developments proposed under the *Community-Based Master Land Use Plan for Molokai Ranch*. A new non-potable source is being proposed. Existing irrigation uses that are now supplied with potable water will utilize the new non-potable source, thus freeing up sufficient potable water to meet the demands of the future.

3.1 Climate

Comment #1: The issue all along for development potential on Ranch lands has been availability of water. Since the Ranch was purchased by a foreign company, the water situation hasn't changed — there has never been enough water to develop the dry West End. Discuss how this project is different than all previous proposals as regards the water availability issue.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 7 of 57

Response: MPL believes that there is ample ground and surface water to meet current needs while still supporting MPL's plans for all of its lands. The total sustainable yield for groundwater resources on Moloka'i is 81 mgd. For planning purposes, the Moloka'i Water Working Group used 33.5 mgd as the developable yield of potable water on the island. Of the 81 mgd, less than 10 mgd is currently used. Additionally, there are 36 perennial streams on Moloka'i, but surface water usage on Moloka'i amounts to an average of about 3 mgd. The issue on Moloka'i is not the lack of water resources but accessibility, as the bulk of the resources are on the eastern side of the island whereas development and large scale agriculture is on the western and central parts of the island.

Under MPL's water plan, currently permitted ground and surface water withdrawals, plus the development of an additional 1 mgd of brackish water from the Kakalahale Well will meet the current and future needs for all of MPL's developments.

DHHL has a reserved 2.905 mgd from the Kualapu'u aquifer, the bulk of which is targeted for agricultural use. MPL's water plan recognizes DHHL's future needs and MPL's water development plans will not interfere with DHHL's ability to develop its water reservation. MPL is currently working with DHHL, the County of Maui Department of Water Supply, and USGS to comprehensively evaluate Moloka'i's long-term water demands and resources.

To reflect the above information in the Final EIS, as well as other comments regarding water issues, Section 4.9.2 (Water) has been revised as shown in the attachment titled, "Revised Section 4.9.2 (Water)."

3.3 SOILS

Comment #1: *There are problems with the soils in the area. The soils will erode, and impact plants and agriculture in the area. If the soil type is unstable and can't support native plants, how will the proposed revegetation be successful? Expand discussion of problems with certain soil types in the project area, and how those will be mitigated.*

Response: Revegetation in unstable or very poor soils is possible by utilizing "pioneer" native species that can grow under very poor conditions. For example, using bales of the native grasses emolosa and pill and wood chips (created from kiawe trees being removed on site), the soil can be restored so it can support a diverse native shrubland.

Since the Draft EIS publication, a Geotechnical Engineering Reconnaissance (Survey) was completed by Geolabs, Inc., in the project area. This Survey has been appended to the Final EIS. In the Final EIS Section 3.3 will be revised to include the following summary:

3.3.4 Geotechnical Engineering Reconnaissance

A Geotechnical Engineering Reconnaissance (Survey) was performed by Geolabs, Inc., in July and August of 2007 within the project area. The Survey, which is provided as Appendix D, provides a general study of the predominant soil characteristics of the project area.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 8 of 57

A review of aerial photographs combined with site reconnaissance and laboratory testing of selected soil samples indicates that the predominant soil at the project site is reddish brown to brown silty clays (CH) representing residual soil material derived from the weathering of basaltic rock. In general, these soils appear to have a low expansion potential. Reddish brown to brown clayey soils (CH) with sand are encountered mainly in alluvial depositional environments, which appear generally confined to topographic low elevations such as depressions and drainage ravines. These soils appear to have a low to moderate expansion potential.

Finally, the dark brown to grayish brown clay (CH) soil is encountered as isolated inland deposits and discontinuous deposits along the lower elevation coastal regions at the southern portion of the project site. These soils may have a relatively high expansion potential. With the exception of the northernmost portions of the project site (northerly of Kama'ika'ipō Gulch), basalt rock formation is encountered at the ground surface and partly exposed at the ground surface mixed with the soils mentioned previously.

In summary, the predominant surface soils encountered during reconnaissance consists of reddish brown to brown silty clays (CH) representing residual soil material derived from the weathering of basaltic rock. In general, these soils appear to have a low expansion potential. Reddish brown to brown clayey soils (CH) with sand are encountered mainly in alluvial depositional environments, which appear generally confined to topographic low elevations such as depressions and drainage ravines. These soils appear to have a low to moderate expansion potential.

Finally, the dark brown to grayish brown clay (CH) soil is encountered as isolated inland deposits and discontinuous deposits along the lower elevation coastal regions at the southern portion of the project site. These soils may have a relatively high expansion potential. With the exception of the northernmost portions of the project site (northerly of Kama'ika'ipō Gulch), basalt rock formation is encountered at the ground surface and partly exposed at the ground surface mixed with the soils mentioned previously.

Comment #2: *Molokai Ranch destroyed the land originally — explain why now it is up to the Molokai Community to restore it.*

Response: We disagree with your assertion that "Molokai Ranch destroyed the land originally." It is not stated or implied in the Draft EIS that "it is now up to the Molokai Community to restore it." Section 3.3 (Soils) of the Draft EIS contains discussion related to potential impacts to soils due to the project and proposes mitigation measures.

3.4 AGRICULTURAL IMPACT

Comment #1: *Data on issue of water availability is incomplete and inaccurate.*

Response: We disagree with your statement that "Data on issue of water availability is incomplete and inaccurate;" however, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

Add discussion of increasing salinity of wells on Molokai, especially Kualapu'u.

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Prior Studies by USGS on the Capacity of the DHHL Wells."

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 9 of 57

Discuss alternatives for minimizing water usage, revise underestimations of demand.

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Water Working Group Task Force 2007" and "La'au Project Issues."

Use more up to date water data —Alpha USA data is 13 years old.

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Additional Information on the Kākalahale Well," "USGS Modeling of Kualapu'u Aquifer," and "Water Working Group Task Force 2007."

Discuss how DHHL water rights are nonnegotiable.

Response: MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2 (Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water."

Discuss how island is in a severe water crisis and suffers from drought.

Response: MPL is cognizant that West Moloka'i and Ho'olehua have been identified as drought risk areas in the Drought Risk and Vulnerability Assessment and GIS Mapping Project prepared for the CWRM.

In to incorporate drought mitigation measures into the Final EIS, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Drought Mitigation."

The water for a 2.905 million gallons per day reservation from Kualapu'u doesn't exist.

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Additional Information on the Kākalahale Well," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

Discuss how no water can be taken from Kaunakakai.

Response: We are unaware of what this refers to. We have never stated that water will be taken from Kaunakakai.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 10 of 57

Include mandate to keep good data, records on water usage and supply. Include reference to requests that the State Water Commission monitor the situation.

Response: A standard condition in all water use permits issued by the State Commission on Water Resource Management is that all permittees must record withdrawal amounts, salinity, temperature, and pumping time and report these data to the Commission on a monthly basis on forms provided by the Commission. As this is a standard condition of the State Commission on Water Resource Management, mention of this condition is not warranted in the Final EIS. MPL is in compliance with this requirement.

There is currently only 10% build out at Kalaakoi — base water usage assessment on Kalaakoi at buildout. Include discussion of projected water usage —3,000 gallons per day per house.

Response: When MPL's predecessor was granted a permit to pump the 1.018 million gallons from Well 17 for the Kalaakoi area, the CWRM acknowledged that that water allocation would not be sufficient to meet the needs of a full build-out of the residential lots, the operation of the Kalaakoi Hotel, and the operation of the golf course and any other development plans.

CWRM stated that Moloka'i Public Utilities should come back to CWRM in future years and apply for non-potable water permits and separate the uses at Kalaakoi into potable and non-potable.

However, if MPL were to use the brackish water permitted from the Pālā au Prawn Farm brackish well (864,000 gallons per day, of which 500,000 gallons is recoverable), it would, along with its current surpluses from its mountain system and from Well 17, be able to meet the needs of the Kalaakoi residential build-out of lots and the re-opening of the hotel. There is no current water available for the hotel and multi-family sites at Kalaakoi, which is not an issue because MPL has no plans to develop them at this time.

Section 6.9 of the Water Plan contained in the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A of the Draft EIS), clearly sets out the future water needs for the Kalaakoi developments and other provisions of the *Community-Based Master Land Use Plan for Molokai Ranch*.

Under the Water Plan, the Kākalahale well meets all the needs of the *Community-Based Master Land Use Plan for Molokai Ranch* developments.

Comment #2: *Discuss impacts to the water supply for Hawaiian Homesteads and their agricultural enterprises.*

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Additional Information on the Kākalahale Well," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 11 of 57

Comment #3: *The continued viability of agriculture on Molokai depends on long term availability of water. Discuss how the project's use of water supports the long range sustainability of agricultural uses and activities on Molokai.*

Response: The Draft EIS discusses the impact on agriculture from the Lā'au Point project. The Draft EIS also addresses water issues as related to the Lā'au Point project. It is beyond the scope of the EIS to discuss that the continued viability of agriculture on Molokai depends on long-term availability of water. However, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding issues related to other's use of water on Molokai, please refer to sections of the attachment titled, "Additional Information on the Kākahale Well," "DHHL's Future Water Needs," "MIS Issues," "Water Working Group Task Force 2007," and "Other Issues Raised."

Comment #4: *Water needs to go to the farmers, period. Discuss why a luxury development should be a higher priority for land and water use on Molokai than farming.*

Response: The use of water in regard to the Lā'au Point project is discussed in the Section 4.9.2 (Water) of the Draft EIS. In the Draft EIS, reference is made to the Water Plan, which is included as Chapter 6 in Appendix A (Master Plan) and in Appendix P (Water Plan Analysis) of the Draft EIS. The Water Plan does not prioritize one water use over another.

In addition, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding issues related to other's use of water on Molokai, please refer to sections of the attachment titled, "Additional Information on the Kākahale Well," "DHHL's Future Water Needs," "MIS Issues," "Water Working Group Task Force 2007," and "Other Issues Raised."

Comment #5: *Traditionally, Hawaiian Homesteaders prayed for rain in times of drought, so there would be enough water for their farms. If you were pono, it would rain. If you weren't, there would be no rain. Discuss how MPL intends to be pono in order to get enough water for the project.*

Response: MPL is working within their existing water permit allocation; they are not requesting additional potable water.

Comment #6: *Homesteader childhood memories often involve carrying water in buckets from a distance to supply the homestead. The homesteaders have always had a hard time getting access to water. They knew that no one could build on that [West] side, because the water would have to be brought over. Discuss why, with such a limited supply of water on the island, that luxury homes are a better use of it than family farms.*

Response: This question is similar to comment #4 above. MPL is not taking water away from farms. In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding issues related to other's use of water on Molokai, please refer to sections of the attachment titled, "Additional Information on the Kākahale Well," "DHHL's Future Water Needs," "MIS Issues," "Water Working Group Task Force 2007," and "Other Issues Raised."

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 12 of 57

Comment #7: *Peter Nicholas has been quoted as saying that agriculture is a "dead horse" on Molokai. Discuss this perspective -- describe what data led him to make a statement like that, and whether or not this perspective is shared by the rest of the corporation.*

Response: MPL's Peter Nicholas has never used the phrase "agriculture is a dead horse." Peter Nicholas, however, has said that cattle ranching is a difficult business on Molokai, as evidenced by the ever-diminishing numbers of cattle on the island.

Comment #8: *The main issue is water-- provide discussion of assurance that taro farming in Halawa and Waiāluā valleys can be maintained by preventing additional diversions of water from mountain sources.*

Response: Molokai Ranch's mountain water system relies on surface water diverted from the upper Kawela and Kamakou watersheds, both of which are separate from and distantly removed from the streams serving the Halawa and Waiāluā taro activities.

To incorporate the above information into the Final EIS, in the Final EIS Section 4.9.2 (Water) will be revised as follows:

The Molokai Ranch Mountain System is the initial ranch water system. It is over 100 years old and relies totally on surface water delivered by gravity, which makes it cheaper to deliver to customers. The Ranch system moves surface water approximately 20 miles from the central mountains of Molokai to Pu'u Nana. The system relies on surface water diverted from the upper Kawela and Kamakou watersheds, both of which are separate from and distantly removed from streams serving the Halawa and Waiāluā taro activities. From Pu'u Nana, the water is either treated to potable for Maunaloa and the Industrial Park or used in the Molokai Ranch irrigation system. In addition, the system provides water for landscaping at Maunaloa Village, the Molokai Lodge, Kaupō Camp, and Molokai Ranch's livestock.

3.6 FLORA

Comment #1: *Provide additional information on endangered species, including the Ihi lau kea. Comment #2:* *Expand discussion of 'ihi'ihī fern -- it is a special fern with sacred and cultural significance, and needs to have critical habitat protection.*

Comment #3: *Draft EIS needs to expand discussion of 'ihi'ihī (Versilia memrosa). This endangered plant has the highest level of federal protection -- it is critically endangered. There are only five known occurrences, and two occur on the west end of Molokai. Occurrences can be spaced out for several years -- spores are in the ground. If found, the USFWS is mandated to protect it with critical habitat. Kamakaipo Gulch and Moki'o are likely places, but it needs a major flood, then the waters have to subside. There needs to be scarification of the spores. This is not addressed in the EIS. You can go out and look for it and find it -- it doesn't even look like a fern.*

Response: In response to your comments regarding the 'ihi'ihīlauakea (*Marsilea villosa*), Section 3.6 (Flora) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.6 (Flora)." We note that "Versilia memrosa" is not the correct scientific name for 'ihi'ihīlauakea (as stated in your Comment #3 above); it should be "Marsilea villosa."

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 13 of 57

Comment #4: *Ihi'ihī habitat at La'au was originally registered with the US Fish and Wildlife Service and was on the Critical Habitat list -- in 2003 it was delisted as critical habitat. Provide discussion of why this happened.*

Response: The 'ihī 'ihīlauakea (*Marsilea villosa*) was never "delisted as critical habitat." Although 'ihī 'ihīlauakea was proposed for critical habitat in 2002, it was not designated in the USFWS final rule (USFWS Federal Register/Vol. 68, No. 52, 2003). It is beyond our purview to respond on behalf of the USFWS as to the reason "why this happened." Instead, we provide a statement from USFWS's final rule:

In April 5, 2002, revised proposal, we [USFWS] stated that there was critical habitat for *Marsilea villosa* within Molokai AI. Upon further inspection, we discovered that the actual areas that contain the suitable habitat for this species were inadvertently left out of the proposed unit Molokai AI. We are unable at this time to publish proposed critical habitat for *Marsilea villosa* in this final rule. Critical habitat is proposed for this species on the island of Oahu. We plan to publish a proposed rule to designate critical habitat for *Marsilea villosa* on Molokai subsequent to publication of this final rule for 41 plants on Molokai. (p. 13017)

3.7 FAUNA

Comment #1: *Expand discussion of endangered monk seal population, and their current status and biological viability statewide. Discuss how important remote areas with quiet beaches are to their life cycle.*

Response: In response to your comment, as well as to address other questions and concerns regarding Hawaiian monk seals, Section 3.7 (Fauna) of the Final EIS has been revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)."

Comment #2: *Provide improved studies on natural resources at La'au Point, especially marine life and birds, using local researchers who are knowledgeable on the presence and habitat of endemic species.*

Response: The biologists who performed the surveys in the Draft EIS are recognized experts in Hawaii; they are knowledgeable of the taxonomy and habitats of endemic species. Each has conducted research for many years throughout the Hawaiian Islands and other Pacific Islands as well. It is not necessary to provide new studies using local researchers.

Comment #3: *The draft EIS stated that there were no land birds, mice or rats. Therefore, there must be puco (owl), because otherwise there would be a lot of mice and rats. Provide additional data from other researchers as to the likelihood of the presence of owls at La'au.*

Response: In the avifaunal and feral mammal field survey report (provided as Appendix C in the Draft EIS; Appendix E in the Final EIS) the biologist, states that Pueo are likely to forage in the area, but no Pueo were observed during the survey.

To address the above information into the Final EIS, Section 3.7 (Fauna) of the Final EIS has been revised as shown:

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 14 of 57

No native land birds, native water birds, or seabirds were observed at the project site during an avifaunal and feral mammal survey (Appendix E) conducted in August 2006. The only native land bird species likely to forage in this area is the Hawaiian Owl or Pueo (*Ninox hawaiiensis*). This species is listed by the State of Hawaii as endangered on O'ahu but not elsewhere in the State. They hunt in grasslands, agricultural fields and forests and nest on the ground in habitats with tall grass.

3.8 MARINE ENVIRONMENT

Comment #1: *The fish ponds need fresh water. Include a discussion of how fresh water springs along the coastline provide ideal conditions for fish and how these water sources are needed to do successful fishpond restoration.*

Response: In response to your comment, and the comments of others regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Impact of Pumping Kākalahale on the Coastal Environment, Limu, and Fishponds."

Comment #2: *Expand discussion of subsistence fishing to include impacts on rest of island, not just La'au Point—how will subsistence fishing pressure likely be displaced to other areas of the island? How will this displacement be handled?*

Response: Section 4.2 (Cultural Resources) of the Draft EIS discusses cultural resources, including subsistence fishing, potential impacts, and mitigation measures. Section 4.2 of the Draft EIS is a summary of the cultural impact assessment contained in Appendix F of the Draft EIS. In addition, Section 4.3 (Trails and Access) of the Draft EIS provides discussion on trails and access to the area, potential impacts, and mitigation measures. The Draft EIS and the cultural impact assessment adequately address concerns related to subsistence fishing. With the increased access to the area as a result of the La'au Point project, subsistence fishing pressure is not likely to be displaced to other areas of the island. In addition, with the Land Trust's plans to open all of its gifted lands (26,200 acres of MPL's 50,000 + acres) to subsistence fishing and hunting, no displacement is also anticipated from this decision.

Comment #3: *Provide improved assessment of underwater resources -- people from O'ahu did a study, and dove the reef, but they didn't see all the life down there such as sea cucumbers, coral, and wana, as well as lobster and he'e, moi and opihī. Explain how there could be such a discrepancy between local reports and the reports of outside researchers. Research needs to be done by people in the community-- the limu expert didn't find many species, but local people found lots of kinds of limu.*

Response: The marine survey represents a snapshot in time. However, the conditions observed represent the integration of historic influences on that coast. While there are likely some annual, seasonal, diurnal, and perhaps longer-term fluctuations in the apparent abundance and diversity of marine biota, the intent of the survey was to characterize the area in comparison with a range of other coastal habitats around the Hawaiian Islands to determine its uniqueness and/or special qualities. The results indicated that the area was not remarkable in comparison with other areas around the Main Hawaiian Islands.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 15 of 57

As stated earlier, the marine biologists who performed the in the Draft EIS are recognized experts in Hawaii; they are knowledgeable of the taxonomy and habitats of endemic species. Each has conducted research for many years throughout the Hawaiian Islands and other Pacific Islands as well. One of the researchers, Dr. Alan Friedlander, has been instrumental in development of the community-based management regime in place at Mo'omomi, and is intimately familiar with the marine biota of Moloka'i.

4.1 ARCHAEOLOGICAL AND HISTORIC RESOURCES

Comment #1: *There are many known burials and sites along the route of the proposed roadway, and 20% to 40% of the lot have known burials and artifacts -- what are the CC&Rs exactly? How are they guaranteed to protect all of these cultural resources?*

Response: In response to your comment regarding archaeological sites along the route of the proposed roadway, in the Final EIS Section 4.1 (Archaeological and Historic Resources) will be revised as follows: :

MPL has committed to maintain or expand upon previous preservation measures as the landowner's plans have changed in response to the community becoming more involved in the process. It is recognized by MPL that TMK 5-1-008 (Pāpōhaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpōhaku Ranchlands parcels that will be affected by the road corridor through the area. This commitment does not extend into TMK 5-1-02-030. Prior to construction, the archaeologist will re-examine the road corridor and verify descriptions of known sites, gather additional data if possible, and search for unrecorded archaeological deposits or features observable due to changes in surface visibility. After the road corridor re-survey re-examination, and supplemental data collection, the proposed subdivision lots and coastal zone will be also be re-surveyed, following the same methods for investigating and recording sites as described for the road corridor. Additional survey work will be done prior to designation of the road corridor in order to design the corridor to avoid significant sites. Inventory work will be performed in accordance with the Preservation and Monitoring Plans during the road construction period.

Archaeological sites will be treated in one of three ways: preservation, data recovery, or no action. Preservation means avoiding damage to the site whether treatment is passive (avoidance) or active (stabilization, interpretation, and other measures). Data recovery pertains to sites that are significant for their information only, and covers actions such as mapping, excavation, and surface collection that adequately gather that information. No action is planned for those sites that were deemed not significant in the 1993 Bishop Museum inventory report, such as sites that had been so badly damaged as to eliminate the possibility of determining their original form or salvaging meaningful data.

After the re-surveys of the road corridor and project site, short-term site preservation measures will be implemented, such as establishing protective buffers and emergency stabilization. Then, data recovery and long-term preservation measures will be implemented. During construction, monitoring by an approved archeologist will occur. In their July 5, 2006 comment letter on the EISPN, OHA requested that "an archaeological monitor be on-site during all excavation and ground disturbances for this project." The archaeological mitigation plan has been submitted to the State Historic Preservation

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 16 of 57

Division (SHPD) for review. The monitoring plan submitted to SHPD includes a provision for an archaeological monitor to be on-site during all construction activities, including excavation and/or ground disturbances.

CC&Rs stands for "Conditions, Covenants, & Restrictions." The Section 2.3.6 of the Draft DEIS contains information regarding the CC&Rs. The CC&Rs provide for easements granted to the Land Trust for preservation of natural and cultural resources. To more fully explain the CC&Rs and the Land Trust's enforcement rights, in the Final EIS Section 2.3.6 (Covenants) will be revised as shown on the attachment titled, "Revised Section 2.3.6 (Covenants)."

Individual lot owners will be required to adhere to State law regarding archaeological resources.

Comment #2: *The Plan says they will protect these areas - Na'iwa, Kaana -- that's a given --they are not really part of the package" [too many cultural/archaeological sites]. Sacred sites under those kiawe trees are not destroyed. Discuss why these areas need protection and/or restoration.*

Response: These areas, to be donated to the Land Trust, contain culturally-sensitive sites worthy of protection and/or restoration. It is not true that the 26,200 acres of land that is being donated to the Moloka'i Land Trust is otherwise safe from development. For example, Na'iwa was once threatened by the development of a golf course. Moreover, these lands are vulnerable to use for commercial activities, such as for ecotourism, as they have been in the past.

4.2 CULTURAL RESOURCES

Burials and Handling of Kūpuna
Comment #1: *Discuss how families on Molokai will be able to protect their ancestors' burials in the project area. Discuss how the impact of having burials disturbed can be mitigated for those descendants.*

Response: As stated in Section 4.1 of the Draft EIS, MPL and its contractors will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites. Should historic remains such as artifacts, burials, concentrations of shell or charcoal be encountered during the construction activities, work will cease immediately in the immediate vicinity of the find and the find will be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division, which will assess the significance of the find and recommend appropriate mitigation measures, if necessary.

According to the Burial Treatment plan (provided in Appendix E of the Draft EIS), construction will be planned to avoid any burials or suspected burials recorded in previous studies and during the supplemental road corridor survey. Therefore, it is very unlikely that any burials will be disturbed. Should it prove extremely difficult to plan around a possible burial, then (as a last resort) that feature may be tested to determine its actual function. If it is in fact a human burial, then it will be covered, and preserved in place. Human remains encountered during such a test will not be removed, photographed, or collected.

A major part in the planning and design of the La'au Point project has been the placement lots and infrastructure in locations where disturbance of known sites burials will be minimized or eliminated.

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007

Page 17 of 57

Comment #2: Discuss plans for a Burial Council for West Molokai, and how the Master Plan will provide for the handling of burial issues and discovery of human remains in the project area, including the use of hooponopono. Discuss how there currently is no active Burial Council on Molokai.

Response: We are unaware of any plan for a burial council specific to West Molokai, and note that the other burial councils are island-wide. Regarding burial issues the burial treatment plan included as Appendix E in the Draft EIS commits MPL to protect known burials in the project area so that disturbance is not an issue.

Comment #3: Discuss how disturbing the land where ancestors are buried is considered desecration by Native Hawaiians. Discuss the sensitivity of such areas, and how the sense that they are threatened with desecration causes stress to all Hawaiians, but especially the lined descendants of those kupuna. Discuss how the presence of ancestors, whether in the form of 'iwi or of cultural artifacts and other archeological remains, makes an area sacred in the minds of Native Hawaiians as well as non-native Hawaiians who are often long term residents of the island. Discuss how disturbing these areas is considered "not pono" and requires mitigation and remediation, both spiritual and physical.

Response: As set forth in the Burial Treatment Plan, all known burials will be preserved in place, and all sites of unknown function for which burial is a possibility will be preserved. The development area avoids features associated with settlements that appear to have had stable, long-term occupations where most people lived and died. Discussion of the importance of ancestral burials and their protection is discussed in the Burial Treatment Plan, which is included in Appendix E of the Draft EIS.

Comment #4: Discussion of moolelo of La'au needs to be expanded. I am Maka'iwi --testifying on behalf of kupuna. There are ancient chants that are 900 years old. John Ka'imikaau preserved them -- they tell of how La'au is a sacred place. It was a place of fishing for local people, and that was the place where the hahuana closed the Makahiki, which began with the rise of Makahi'i, the constellation of Pleiades. Kapiupo'i -- began at east end of island. The end of the Makahiki was at La'au --this place was not randomly chosen -- it is sacred. Kapukai o Lono --there was a heiau underwater in front of every ahupua'a -- the heiau attracted the fish. The area from Laau to Palaau attracts fishes. It has mana, a lot of moi holes, kole, aholehole. That place was called Po'o Lo'ulo'u, a word special to Molokai. It means turbulent -- a metaphor for the wealth of Molokai -- a place for the gathering of fishes. It was a special place for Ku and Hina -- Kane and Wahine. There were heiau. The fish spawning begins at Palaau. The 'ole, the hatchlings would stock the fish ponds --there is a cultural record. It is untrue that the fishing grounds are not as plentiful there. It is a wahi pama [sacred place]. It is significant. The mana goes into asking for fertility, then the fish would be abundant.

Response: The Draft EIS (Section 4.2, Cultural Resources) and the Cultural Assessment (Appendix F of the Draft EIS) discuss mo'olelo of La'au Point. To supplement the information in the Draft EIS with the information provided above, the Final EIS Section 4.2 (Cultural Resources) will be revised as follows:

It is also noted that the area from La'au to Pala'au attracts fish. It has a lot of moi holes, kole, aholehole. That place was called Po'o Lo'ulo'u, a name special to Molokai which means turbulent -- a metaphor for the wealth of Molokai -- a place for the gathering of

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007

Page 18 of 57

fishes. It was a special place for Ku and Hina--Kane and Wahine. There were heiau. The fish spawning begins at Pala'au. The 'ole, the hatchlings would stock the fishponds.

4.2.4 Cultural Assessment

Comment #1: Discuss how Hawaiians were obedient and took care of the land. Add discussion of how life on Molokai is about balance - people lived in the places that had water. Rovers were bigger before. Discuss how Native Hawaiians' connections to the land help them to survive.

Response: We believe Section 4.2 (Cultural Resources) of the Draft EIS provides a succinct summary of the cultural impact assessment (Appendix F of the Draft EIS) conducted for the EIS regarding the issue of how Native Hawaiians took care of the land. For a detailed discussion of this topic see Section 3.4 (Cultural Zones of Kahuako'i) of the cultural impact assessment.

Comment #2: Cultural impact study is incomplete, as informants were not qualified. Families who support the land should have been interviewed. Discuss how social and economic issues for Native Hawaiians stem from loss of land. Discuss how C.R. Bishop, who was not Hawaiian, gave the land away to non-Hawaiians.

Response: We disagree that the Cultural Impact Assessment is incomplete and that informants were not qualified. The 18 informants with whom Professor McGregor conducted in-depth semi-structured interviews were eminently qualified as kama'aina of Maunaloa, employees or relatives of Molokai Ranch employees, employees or relatives of employees of the former plantation, a descendant of the lighthouse keeper, and a descendant of the Cooke family who owned Molokai Ranch. Professor McGregor also met with the Maunaloa kupuna during a meeting with the social impact study consultant and with the committee responsible for the MPL beach access policies. In addition, a total of 250 persons attended community meetings. Careful notes were taken and their input included in the Cultural Impact Assessment.

Comment #3: Expand discussion of how many Hawaiians on Molokai depend on subsistence resources and intangible spiritual benefits of La'au to survive.

Response: The Draft EIS discusses dependence on subsistence resources in great length (see Sections 2.3.7, Access for Subsistence, 4.2.2, Focus on Subsistence; and 4.3 Trails and Access) and the intangible spiritual resources of La'au (see Section 4.2.3, Oral History and Interviews; 4.2.4, Cultural Assessment; and 7.3 Irreversible and Irrecoverable Commitments of Resources). These topics are also addressed in further detail in the Cultural Impact Assessment (Appendix F of the Draft EIS), see sections 2.1.2, 2.1.3, 2.1.4, 2.1.5 (pp. 30 - 42); 3.6 (pp. 78 - 102); 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 (pp. 102 - 111); 5.1, 5.2, 5.3, 5.4, 5.5, 5.6 (111 - 125); 6.2 (pp. 126 - 130); 7 (pp. 130 - 134); 8 (PP. 134 - 136); 10.1, 10.2, and 10.3 (pp. 142 - 154).

Comment #4: Add research on sacredness of La'au as an 'uhane lele, legend of Kane and Kanaloa, how they came there by canoe and Kane plunged his ko' into the sand to create water there. Discuss how this 'uhane lele is rich in cultural importance to the Hawaiian people.

Response: Informants were asked if La'au is a leina or 'uhane lele and no one knew of this phenomenon or occurrence in relation to La'au. Nor did they know of a Kane and Kanaloa mo'olelo in relation to the area proposed for development.

Comment #5: Discuss the cultural and social impacts of local people with low incomes being exposed to luxury homes — how does the impact of looking at all that wealth affect how the young people here see their simpler island way of life?

Response: As discussed in Section 4.8.3 of the Draft EIS, the Lā'au Point project is not adding a new element (affluent people) to Moloka'i's social environment. East Moloka'i, in particular, has been experiencing affluent people buying homes. Interaction between existing residents and affluent newcomers is therefore already occurring. From accounts in interviews and meetings, Moloka'i Style is still persistent and resilient in spite of these new residents.

As the Social Impact Assessment (Appendix M of the Draft EIS) suggests, there needs to be social integration on a regional level, and this is also already occurring. In the various positions regarding Lā'au Point, for example, various levels of economic strata are represented on all sides of the issue. Young Moloka'i residents seem to be able to join with wealthier newcomers in advocating their position on the project.

Comment #6: Discuss how high end marketing of land, and the internal conflicts caused by controversy over the Master Land Use Plan and the proposed project, is causing stress to Native Hawaiians, who have already lost most of their land to questionable land sale practices in the past.

Response: We disagree that conflicts that contribute to the controversy surrounding the Community-Based Master Land Use Plan for Molokai Ranch and Lā'au Point are causing stress to Native Hawaiians related to the past loss of land to questionable sales practices. Neither the Lā'au Point project nor the Community-Based Master Land Use Plan for Molokai Ranch involves questionable sales practices.

However, as discussed in Section 4.8.3 of the Draft EIS, the social impact assessment (Appendix M of the Draft EIS) found that a significant impact on the social environment is the embodiment of negative expectations related to Lā'au Point residents and the public controversy. The heated nature of this controversy has a detrimental effect on the social environment. It causes social disharmony and stress. Kūpuna were concerned that this type of behavior was becoming more common. The mitigation to offset this already existing impact has been to give people the opportunity to learn about the Lā'au Point project and the Community-Based Master Land Use Plan for Molokai Ranch in a non-confrontational setting so that they can make an informed decision on their own.

Comment #7: Expand discussion of cultural and social impacts to Native Hawaiians and other local Molokai people due to increased exposure to Mainland or off-island ways when buyers of the Lā'au development start to arrive.

Response: We believe the Section 4.8.3 of the Draft EIS provides a succinct summary of the social impact assessment conducted for the EIS; however, in response to your comment, we direct you to the full social impact assessment (Appendix M of the Draft EIS), which contains a detailed discussion of potential impacts related to increased exposure to Mainland or off-island ways when buyers of Lā'au Point arrive on Moloka'i.

First, the Lā'au development is proposed on an island that is already growing and exposure to non-Molokai people is part of the Molokai social environment. Section 2 of the social impact assessment presents detailed information regarding population trends and demographics. The information indicates that the island has experienced steady growth since the 1970s for an overall 43 percent increase by 2000. Significantly, East Maui's population grew by 82 percent between 1970 and 2000.

Second, as discussed in Section 5.4.4 of the social impact assessment, the Lā'au Point project does not add a new element on luxury housing on Moloka'i. The purchase of Moloka'i housing by people of affluence is already occurring, particularly in East Maui, where the mean selling price of homes exceeded those in West Maui by over \$100,000. Interaction between people of different economic status is already occurring. As the social impact assessment suggests, there needs to be social integration on a regional level, and this is also already occurring. In the various positions regarding Lā'au Point, for example, various levels of economic strata are represented on all sides of the issue. Young Moloka'i residents seem to be able to join with wealthier newcomers in advocating their position on the project.

Third, the level of new population due to Lā'au Point is not significant to cause major social impact. As discussed in Section 5.1 of the social impact assessment, the Lā'au Point project permanent population at build-out is estimated at 174 persons, which is only two percent of the forecasted 2025 population. On the average Lā'au Point residents will make up three percent of the island 2025 population. Further, the new Lā'au Point residents will not be the only new Moloka'i residents. In contrast, the residents in proposed new DHHH projects would account for 13 percent of the forecasted population in 2025.

Comment #8: Expand discussion of how the development pressure on Molokai, and the confusion caused by this very process, is impacting Molokai residents now, even before any development begins. Discuss how the numerous meetings on the DEIS and later, the various permit applications could be stressing the community.

Response: We believe Section 4.8.3 of the Draft EIS provides a succinct summary of the social impact assessment conducted for the EIS regarding the issue of the heated nature of development on Moloka'i. As stated in Section 4.8.3 of the Draft EIS, the heated nature of this controversy has a detrimental effect on the social environment. It causes social disharmony and stress. The mitigation to offset this already existing impact has been to give people the opportunity to learn about the Lā'au Point project and the Community-Based Master Land Use Plan for Molokai Ranch in a non-confrontational setting so that they can make an informed decision on their own.

In focus group sessions and interviews conducted for social impact assessment, people repeatedly said that they do not go to meetings because of confrontational behavior. Kūpuna were concerned that this type of behavior was becoming more common. One conclusion of this could be that the current level of controversy on Moloka'i is a reflection of the existing social environment and not unique to Lā'au Point.

We understand people are passionate about Moloka'i, and equally passionate about protecting their island and perpetuating the Moloka'i Style. Regardless of their position on the Lā'au Point

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 21 of 57

project, people want to protect Moloka'i from detrimental change. The controversy stems from a divergence in the approach on how to protect and perpetuate. The heat and intensity in meetings related to the project stem from this passion, and are not unique to La'au Point.

Comment #9: Expand discussion of adequacy of cultural easements that will be put in place. Include John Ka'imikaua's comments on how the Land Trust must be pono, made right before his death. Discuss how hidden agendas will make this project "not pono."

Response: The Draft EIS provides discussion of "Cultural Protection Zones" (see Sections 2.13, Protected Areas and 4.1, Archaeological & Historic Resources) and also provides a Cultural and Historic Resources Map (see Figure 10 of the Draft EIS), denoting the location of the Cultural Protection Zones. In addition the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A of the Draft EIS) provides discussion on Cultural Protection Zones. Discussion of proposed ownership of various areas denoted in the *Community-Based Master Land Use Plan for Molokai Ranch* is provided in Draft EIS Sections 2.1.7 (Key Points of the *Community-Based Master Land Use Plan for Molokai Ranch*), 2.1.8 (Moloka'i Land Trust), 2.1.9 (Moloka'i Community Development Corporation (CDC)). Therefore we believe this subject is well-explained in the Draft EIS.

MPL believes the easements to be put in place will reflect cultural values that are important to all Molokai residents. There are no "hidden agendas" as you assume.

To incorporate updated information regarding the Land Trust and the CDC into the Final EIS, Section 2.1.8 in the Final EIS will be revised as shown on the attachment titled, "Revised Section 2.1.8 (Moloka'i Land Trust)," and Section 2.1.9 will be revised as shown on the attachment titled, "Revised Section 2.1.9 (Moloka'i Community Development Corporation (CDC))."

Comment #10 Section 4.2.4 Cultural Assessment is inadequate. The true sense of the community was not accurately portrayed. An unsentimental survey of 100 residents revealed that 70% of those polled would not support a master plan that depended on a development at La'au Point. A full public vote was denied by the EC, because a majority of the community isn't for the plan, and that would have been revealed. Almost everyone was in favor of reopening Kaluakoi hotel, however. Expand discussion of these issues.

Response: We disagree that the cultural impact assessment is inadequate. We cannot comment on the conclusion of an unsentimental survey. In reference to the validity of the EC vote on the *Community-Based Master Land Use Plan for Molokai Ranch*, this was only raised as an issue by some people once the vote went contrary to their opinions. The EC vote holds no legal status and State and County regulatory approvals still must be obtained for various land use approvals necessary to implement the *Community-Based Master Land Use Plan for Molokai Ranch*. In addition, we believe the social impact assessment (summarized in Section 4.8.3 (Community Character) and contained in Appendix M of the Draft EIS) accurately examines community sentiments toward the La'au Point project and of reopening Kaluakoi Hotel.

Comment #11: Draft EIS didn't discuss spiritual connection of people to place -- place is 'ohana -- your family -- we are tied to the land. Hawaiians have a covenant and a kuleana. We are not in good shape -- our health is bad -- because we are disconnected from our ohana lands. Our health is

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 22 of 57

compromised, because what you do to the land you do to the place and to the people. Expand discussion of this spiritual connection to the land and how impacts to it affect Native Hawaiian health and well being.

Response: We believe the Section 4.2 (Cultural Resources) of the Draft EIS provides a succinct summary of the cultural impact assessment conducted for the EIS. Further details regarding 'ohana kuleana are discussed in the cultural impact assessment Sections 2.1.2, 2.1.3, 2.1.4 (pp. 30 - 40); 3.6.4 (pp. 84 - 94); 3.6.7 (pp. 99 - 102); and 6.2 (pp. 126 - 130). Further detail regarding spiritual beliefs, customs and practices are discussed in the cultural impact assessment Sections 3.6.7 (pp. 99 - 102); 4.6 (pp. 110 - 111); and 5.6 (pp. 124 - 125).

4.3 TRAILS AND ACCESS

Comment #1 -- Public Access: It's far from the end of the road to the nice spots down at La'au -- discuss how much access Molokai residents will have compared to residents of the development.

Response: Section 4.3 (Trails and Access) of the Draft EIS discusses shoreline access. The project will create two public access points at each end of the project. Homeowners may access the shoreline from the residential area; however, they will be required to adhere to the rules of the Shoreline Access Management Plan (SAMP). The lack of infrastructure and paths through to the shoreline, and the density of the foliage and rough terrain as a practical and natural barrier, will support adherence to the SAMP and serve to limit widespread access to the shoreline.

To incorporate the relevant above information into the Final EIS, in the Final EIS Section 4.2 will be revised as follows:

Some community members have expressed concerns that subdivision lot owners and their friends will have preferential access to the coast. Their concern is that there will be nothing to stop the owners who live along the shoreline and their guests from walking down to the beach and even using a vehicle. To some community members, affording only two access points for the general public while owners in the subdivision will have access from their homes, seems unequal. Informants also expressed concern that landowners might call police if they see the general public walking on the beach, as this has happened at Papohaku. To mitigate these concerns, all La'au Point homeowners will be required to undergo an education program about the restrictions on access, its importance, and the requirements of the SAMP. Adherence to the SAMP is mandatory. In addition, the educational process, the lack of infrastructure and paths through to the shoreline, and the density of the foliage and rough terrain as a practical and natural barrier, will support adherence to the SAMP and serve to limit widespread access to the shoreline.

4.4 ROADWAYS AND TRAFFIC

Comment #1 -- Traffic Impacts: Discuss how infrastructure improvements will precede, or be tied to an increase in development on the West End. Discuss how the same scenario that has occurred on Kaula'i, that of rampant growth without concurrent infrastructure improvements, will be avoided on Molokai as this and the other residential and resort areas on the West End approach buildout.

Response: Section 4.4 (Roadways and Traffic) of the Draft EIS discusses traffic impacts relative to the La'au Point project and provides a succinct summary of the Traffic Impact Analysis

Report (TIAR) (contained in Appendix G of the Draft EIS) prepared for the project. The TIAR analysis takes into account traffic generated by other proposed projects in the vicinity. A discussion of the traffic situation on Kaua'i is not relevant to this EIS.

In response to your comment regarding traffic infrastructure improvements, in the Final EIS, Section 4.4 (Roadways and Traffic) will be revised as follows:

MPL will fund the construction costs of all Lā'au Point roads which will be built using County standards to keep the option for future dedication. In their June 21, 2006 comment letter on the EISP, the Maui County Department of Public Works and Environmental Management stated: "We note that roads for the development will be built to County standards. We also note that access for these roads are from a private road. As such, the roads for the development shall remain under private ownership and maintenance." After build-out, should the roads will remain private, and the Lā'au Point homeowners' association will be responsible for maintenance. In addition, MPL will plan, design, and construct, at no cost to the State: 1) a left-turn deceleration lane and right-turn deceleration lane at the intersection of the proposed project access road (Kāhako'i Road) with Maunaloa Highway; and 2) highway improvements recommended as mitigation measures as required by the Highways Division.

4.8 SOCIAL AND ECONOMIC CHARACTERISTICS

Comment #1: Discuss how impacts from skyrocketing property taxes, as has happened on Maui and Kana'i, will not occur on Molokai and force long time residents to leave. Discuss how for many Hawaiians, there is no other place to go — Hawaii is home for us.

Response: Section 4.8.2 of the Draft EIS discusses the potential impact of Lā'au Point on property taxes for other Molokai homeowners. Appendix L (Hallstrom Letter) of the Draft EIS contains a complete analysis of this issue. As stated in 4.8.2 of the Draft EIS, assessments of existing property that is not adjacent (and thus not competing in the same market or market area), and/or that has different highest and best use potentials, will not be directly affected. This finding is based on analysis of paired assessment trends over time between expanding development and non-adjacent land holdings, an understanding of value trends and influences, and discussion with Maui County and O'ahu tax offices concerning this specific matter. The Lā'au Point project is physically separated from the rest of Molokai by hundreds of acres of Ranch land, and will be a unique market unto itself.

We acknowledge your comment regarding "how for many Hawaiians, there is no other place to go—Hawaii is home for us," but find this issue beyond the scope of this EIS. However, we note that as discussed in Section 4.8.2 (and various other sections) of the Draft EIS the Lā'au Point project will address affordable housing in the implementation of *Community-Based Master Land Use Plan for Molokai Ranch*. Throughout the community planning process, the vesting of land back into community hands and ensuring the development returns (Lā'au Point income) be shared by the community was part of a larger vision by the Molokai community to plan and finance housing for themselves without the involvement of MPL.

Comment #2: Expand discussion of proposed economic strategies, including any proposals for programs that will increase the number of Native Hawaiians and other local Molokai residents in management positions for the Kāhako'i Hotel and other enterprises proposed as part of the Master Land Use Plan.

Response: In response to your comment, and comments from others regarding jobs, Section 4.8.4 (Economy) of the Final EIS will be revised as follows:

Proceeds from the sale of the Lā'au Point lots will fund the renovations and upgrading of the Kāhako'i Hotel and Golf Course. These facilities are crucial to revitalizing the Molokai tourism economy and are projected to provide over 100 jobs for Molokai residents. By outsourcing various hotel functions such as laundry, gift shop, beach shack and spa, and by committing to use local produce, small business opportunities will also be created for the community. However, the direct impact of Lā'au Point on tourism will be limited since no vacation rentals are allowed under the Lā'au Point CC&Rs.

MPL is now totally managed on the island by members of the community, with many Native Hawaiians in key roles. Over the past 5 years there has been a conscious effort to promote local people into management positions within the Molokai Ranch Lodge and Beach Village. Local people, including a majority of Native Hawaiians, now hold all key management positions at the hotels and within the MPL management structure for maintenance and other on-island activities. Those individuals will form the core nucleus of the future management team in other MPL enterprises such as the Kāhako'i Hotel.

Regarding specific new jobs created by the Lā'au Point project, these jobs will be a mix of construction, maintenance, and service jobs at prevailing wages. Some will be short-term, depending on the length of time for full build-out, and some will be permanent and long-term. Many jobs will be contracted, therefore, for the contracted jobs during construction or after build-out. MPL will not be providing direct training and employment opportunities. Several positions also will be available for the operation and maintenance of the wastewater treatment plant. As mentioned above, there will also be jobs re-created upon the re-opening of the Kāhako'i Hotel.

Comment #3: There is not enough discussion of how Molokai contractors and residents will be given preference for contracts and employment as the purchasers of the Lā'au lots start to build their homes. What mechanisms will be in place, such as affirmative hiring plans, to assure that the "Design/Build phenomenon, where the owner can bring contractors here from out of state, circumventing Hawaii state regulations, and not hire anyone from Molokai? If MPL should go bankrupt, how can it be assured that development of each individual lot will be done by local contractors?

Response: MPL will adhere to all State contracting laws and require Lā'au Point homeowners to do the same.

Comment #4: Discuss what kinds of jobs will be created as a result of implementation of the Master Plan, how well they will pay, who they will be for, and how long they may last.

Response: See response to Comment #2 above.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 25 of 57

Comment #5: Social impacts are not adequately detailed or addressed. Expand discussion of possible social impacts due to project development and influx of new residents.

Response: We disagree that social impacts are not adequately detailed or addressed. We believe Section 4.8.3 of the Draft EIS provides a succinct summary of the social impact assessment conducted for the EIS. Section 4.8.3 (Community Character) of the Draft EIS and Section 5.4 of the social impact assessment (Appendix M of the Draft EIS) discuss impacts due to development and the in-migration of new residents. In the social impact analysis two models of growth were analyzed in terms of their relevance to the Moloka'i social environment, and discussions of conflicting values, community conflict, social interactions and relationships, community experience at La'au Point are presented as well. In addition, impacts on certain public services and facilities are presented in Section 5.5 of the social impact assessment.

Comment #6: Expand discussion of grief and resentment being experienced in the community right now due to the controversy over La'au Point. Discuss how it is dividing families and how it is putting the soul of Molokai at stake.

Response: We disagree that the project is "dividing families" and "putting the soul of Moloka'i at stake." However, as discussed in Section 4.8.3 of the Draft EIS, the social impact assessment (Appendix M of the Draft EIS) found that a significant impact on the social environment is the embodiment of negative expectations related to La'au Point residents and the public controversy. The heated nature of this controversy has a detrimental effect on the social environment. It causes social disharmony and stress.

As discussed in Section 5.4.4 of the social impact assessment, people repeatedly said that they do not go to meetings because of confrontational behavior. These were not just meetings related to the *Community-Based Master Land Use Plan for Molokai Ranch* or the La'au Point project, but included meetings on recent controversies, such as the proposal to allow cruise ships to land in Molokai and the University of Hawai'i patent applications for genetically-modified taro. Kūpuna interviewed for the social impact assessment were concerned that this type of behavior was becoming more common.

Comment #7: Describe exactly who the "1,000 people who participated" in the Master Plan process were. Discuss exactly how many people really supported the Plan, and provide a breakdown of how many of those were either Ranch/MPL employees directly, or family members of Ranch/MPL employees.

Response: MPL estimates that there were around 1,000 participants in the Master Planning process based on attendance sheets and other documents. MPL makes this assertion in good faith. It is possible that as the attendance sheets for the many meetings held during the community planning process do have several individuals listed more than once, or errors were made in counting the attendees; however, the variance in total number of participants is minimal. Detailed information on the participant "breakdown" is not available.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 26 of 57

Comment #8: Expand discussion of how the addition of 200 to 400 new millionaire homes will impact the people of Molokai. Discuss if and how these new residents, with political savvy and possibly much more conservative politics, could begin to sway political outcomes to their own favor and dominate the local residents.

Response: As a clarification to the statement regarding "200 to 400 new millionaire homes," the La'au Point project includes 200 lots, each of which would contain one home and possibly one ohana unit. However, all dwellings on any single lot must, in the aggregate, comply with the maximum square footage and building envelope restrictions for each lot.

Regarding the potential for the new residents, "with political savvy and possible much more conservative politics," to "sway political outcomes and...dominate the local residents," we disagree with this statement for two reasons. First, the expectation for a certain line of political persuasion is unfounded. People of many walks of life and from different economic strata often join forces to promote their values and views, and there are numerous examples of effective political collaborations based on diversity. As stated in Section 4.8.3 (Community Character) of the Draft EIS, interaction between existing residents and affluent newcomers is already occurring. From accounts in interviews and meetings, Moloka'i Style is still persistent and resilient in spite of these new residents.

Second, the level of population increase is not likely to change the political climate on Moloka'i. As discussed in Section 5.1 of the social impact analysis, the La'au Point permanent population at build-out is estimated at 174 persons, which is only two percent of the forecasted 2025 population. On the average La'au Point residents will make up three percent of the island 2025 population. Further, the new La'au Point residents will not be the only new Moloka'i residents. In contrast, the residents in proposed new DHHL projects, who would account for 13 percent of the forecasted population in 2025, have a more likely political influence.

Comment #9: Include discussion of who was on the EC Land Use Committee, and a breakdown of the 140 names listed, whether they are from Molokai or from other islands. I counted 36 for the plan and 46 against out of 140 names listed.

Response: This comment should be directed to the EC; MPL cannot respond on its behalf. However, the decision of the Land Use Committee to support the Master Plan was a majority vote of the committee's 29, not 140, members. To MPL's knowledge there were only two persons on the Land Use Committee who resided off-island. If those people had abstained from voting, the Land Use Committee would still have been the same result, but by a lesser majority.

4.8.2 Housing

Comment #1: Discuss how DHHL is planning to build more homes for Hawaiians in Kamiloa and Hoolehua, and how water is reserved for DHHL and cannot be negotiated away. Provide thorough discussion of DHHL Island Plan for Molokai and possible impacts to that Plan caused by the project.

Response: Section 7.2 (Cumulative and Secondary Impacts) of the Draft EIS discusses cumulative impacts related to DHHL's known plans contained in their *Moloka'i Island Plan*. MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 27 of 57

(Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water."

In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding DHHL's future water needs and DHHL's *Molokai Island Plan*, see the section of the attachment titled, "DHHL's Future Water Needs."

4.8.3 Community Character

Comment #1: *Molokai Ranch/MPL over the years has made a lot of promises to the community, yet kept very few of them. Discuss trust issues with the Ranch that have developed, and how MPL's recent actions have or have not served to divide a once tightly knit community, by creating insiders and outsiders, people who are invited to Ranch events and people who are not, etc.*

Response: Section 2.1.5 (Detailed Land Use History) of the Draft EIS provides a historical summary of West End land use and ownership. MPL's history is well-known to the Molokai community. We do not agree that discussion of MPL's "track record" or that of its predecessors is warranted in the EIS.

MPL's recent actions are the result of a unique community process discussed in Section 2.1.6 (The Planning Process for the *Community-Based Master Land Use Plan for Molokai Ranch*) of the Draft EIS. The complete *Community-Based Master Land Use Plan for Molokai Ranch* is included as Appendix A of the Draft EIS.

4.8.4 Economy

Comment #1: *Discussion of economic impacts and tourism are inadequate. Expand discussion on how project impacts tourism and on what economic engine is that will drive desired outcomes of project and Master Plan.*

Response: Section 4.8.4 (Economy) of the Draft EIS discusses economic impacts and tourism. As discussed in Section 4.8.4 (Economy) of the Draft EIS, proceeds of the sale of Lā'au Point lots will fund the renovations and upgrading of the Kaluako'i Hotel. The re-opening of Kaluako'i Hotel is crucial to revitalizing Molokai's tourism economy and is expected to provide over 100 jobs for Molokai residents. As noted in Section 4.8.4 (Economy) of the Draft EIS, the *Molokai's Responsible Tourism Initiative Report* indicates Kaluako'i resort development is essential to the island's tourism economy. Implementing the tourism industry plan set forth in the *Molokai's Responsible Tourism Initiative Report* will be the economic engine for driving the outcomes of your *Community-Based Master Land Use Plan for Molokai Ranch*. However, in response to your Comment Section 4.8.4 (Economy) of the Final EIS will be revised as follows:

Proceeds from the sale of the Lā'au Point lots will fund the renovations and upgrading of the Kaluako'i Hotel and Golf Course. These facilities are crucial to revitalizing the Molokai tourism economy and are projected to provide over 100 jobs for Molokai residents. By outsourcing various hotel functions such as laundry, gift shop, beach shack and spa, and by committing to use local produce, small business opportunities will also be created for the community. However, the direct impact of Lā'au Point on tourism

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 28 of 57

will be limited since no vacation rentals are allowed under the Lā'au Point CCRs.

Comment #2: *Discussion of economic impacts needs to be focused more on local community -- it was never explained exactly how the project will benefit the local community directly. Discuss how the proposed strategy is or is not the best way to help an economically depressed community.*

Response: In response to your comment, Section 4.8.4 (Economy) of the Final EIS will be revised as follows.

MPL is now totally managed on the island by members of the community, with many Native Hawaiians in key roles. Over the past five years there has been a conscious effort to promote local people into management positions within the Molokai Ranch Lodge and Beach Village. Local people, including a majority of Native Hawaiians, now hold all key management positions at the hotels and within the MPL management structure, for maintenance and other on-island activities. These individuals will form the core nucleus of the future management team in other MPL enterprises such as the Kaluako'i Hotel.

Regarding specific new jobs created by the Lā'au Point project, these jobs will be a mix of construction, maintenance, and service jobs at prevailing wages. Some will be short-term, depending on the length of time for full build-out, and some will be permanent and long-term. Many jobs will be contracted, therefore, for the contracted jobs during construction or after build-out. MPL will not be providing direct training and employment opportunities. Several positions also will be available for the operation and maintenance of the wastewater treatment plant. As mentioned above there will also be jobs re-created upon the re-opening of the Kaluako'i Hotel.

4.9 INFRASTRUCTURE AND UTILITIES

4.9.2 Water

Comment #1: *Provide discussion of contingency plans if the water wells go salty. Discuss how the agencies make adjustments to water allocations, and whether or not those allocations can be reduced once they are given and development has occurred.*

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Discussions regarding salinity of wells and alternative water sources are incorporated into the attachment. See the sections of the attachment titled, "The Punakou Aquifer," "Molokai Designated a Ground Water Management Area," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Alternatives to the Use of Kākalahale-sourced Water."

As discussed in the attachment titled, "Revised Section 4.9.2 (Water)," in the unlikely event that MPL's identified water sources cannot meet its needs, brackish water from the Prawn Farm and desalination have been identified as alternative sources of non-potable water.

Regarding agency adjustments to water allocations, CWRM, before it issues any pump installation permit, requires that a pump test be conducted to determine the impacts before long-term pumping is permitted. Depending on the results of the pump test, the size of the pump may

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 29 of 57

be modified or other changes made. By conducting a pump test before a permanent pump is installed, most of the risk that the well will go salty can be avoided.

In the long-term, if pumping has a more adverse impact than anticipated on the aquifer or on other wells, adjustments to pumping, including shutting down the well, may be required.

By conducting a pump test before a permanent pump is installed, most of the risk of unacceptable impacts can be avoided.

By way of a standard condition imposed on all water use permits, CWRM has the right to reduce the amount of water allocated for any of the following reasons:

- Protect the water sources (quantity or quality);
- Meet other legal obligations including correlative rights;
- Insure adequate conservation measures;
- Require efficiency of water uses;
- Reserve water for future uses;
- Meet legal obligations to DHHL;
- Carry out such other necessary and proper exercise of the Commission's powers.

Since the above is a standard condition imposed on all water use permits, this information has not been provided in the Final EIS.

Comment #2: I lived on a ranch, then the well ran dry. Colorado River water doesn't even reach Mexico anymore. Aquifers are going dry in the Southwest, because water is being diverted to areas of development. Hydrology is not an exact science. The monitoring well that was drilled is no longer in use. Provide expanded discussion of hydrological issues, status of monitoring well, and where water is going to come from if and when the wells run dry, or salty as the case may be.

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Explanation of Moloka'i Aquifer Systems Geology," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Alternatives to the Use of Kākalahale-sourced Water."

Comment #3: Information on water availability is inadequate or inaccurate-- include latest water studies, and/or discuss whether or not there is enough data on water on Molokai to make sound planning decisions.

Response: We disagree with your statement that "Information on water availability is inadequate or inaccurate;" however, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Prior Studies by USGS on the Capacity of the DHHL Wells," "Additional Information on the Kākalahale Well," and "USGS Modeling of Kualapu'u Aquifer," and "Water Working Group Task Force 2007."

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 30 of 57

Comment #4: Discuss how important it is for La'au residents to have access to fresh water, when the rest of us have to wait a year to get a water meter and can't even wash our kids off at the fish pond. Discuss how himu and baby fish need fresh water from coastal springs, and how additional withdrawals from aquifer could threaten that ecosystem.

Response: We acknowledge the importance of water. In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled: "Impact of Pumping Kākalahale on the Fresh Water Transition Zone," and "Impact of Pumping Kākalahale on the Coastal Environment, Limu, and Fistiponds."

Comment #5: Clarify how MPL is in negotiations with DHHL -- DHHL water rights are non-transferable and nonnegotiable.

Response: MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2 (Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water."

4.10 PUBLIC SERVICES

Comment #1: Discuss how this project will provide badly needed improvements in community facilities, bridges and roads.

Response: In response to the portion your comment pertaining to bridges and roads, in the Final EIS, Section 4.4 (Roadways and Traffic) will be revised as follows:

MPL will fund the construction costs of all La'au Point roads which will be built using County standards to keep the option for future dedication. In their June 21, 2006 comment letter on the EISP, the Maui County Department of Public Works and Environmental Management stated: "We note that roads for the development will be built to County standards. We also note that access for these roads are from a private road. As such, the roads for the development shall remain under private ownership and maintenance." After build-out, should the roads will remain private, and the La'au Point homeowners' association will be responsible for maintenance. In addition, MPL will plan, design, and construct at no cost to the State: 1) a left-turn deceleration lane and right-turn deceleration lane at the intersection of the proposed project access road (Kāluako'i Road) with Maunaloa Highway, and 2) highway improvements recommended as mitigation measures as required by the Highways Division.

In response to the portion your comment pertaining to community facilities, as discussed in Section 2.1.9 of the Draft EIS, the Community-Based Master Land Use Plan for Molokai Ranch proposes the creation of the Moloka'i Community Development Corporation (CDC). The CDC will have the following tasks:

- Develop affordable homes for the Moloka'i community.
- Promote economic development.
- Expand educational opportunities that will build capacity among the island's youth.

- Assist the Land Trust with project funding.

In addition, as stated in Section 4.10.5 (Recreational Facilities) the Draft EIS, the Lā'au Point project will include two public parks.

Regarding school facilities, in the Final EIS Section 4.10.1 (Schools) will be revised as follows:

MPL will make a monetary contribution to the development, funding, and/or construction of school facilities on a fair-share basis pursuant to the Education Contribution Agreement for Lā'au Point between MLP and the DOE dated August 3, 2007.

4.10.3 Fire Protection

Comment #1: Data on response times is inaccurate and understated. It takes at least 25 minutes for fire trucks to respond to Maunaloa from the Hoolehua station, as reported by a firefighter, so it will take additional time to get to the development. Provide more accurate response times, and provide discussion on how impacts to demands on fire protection services will be mitigated.

Response: In their comment letter on the Draft EIS, the County of Maui Department of Fire and Public Safety did not comment on the response times provided in Section 4.10.3 (Fire Protection) of the Draft EIS. However, in response to your comment and other information from the County of Maui Department of Fire and Public Safety, in the Final EIS Section 4.10.3 (Fire Protection) will be revised as follows:

The project may impact fire protection services due to the increased demand generated by additional population, the presence of more structures, and potential increased activity at the parks and along the shoreline. The project area is about 25 to 35 minute response time from the Ho'olehua fire station and about 20 additional minutes from Kaunakakai's station. These response times are estimates and emergency response times may take longer. Currently access to the area is via unimproved and dirt roads. With the project, the access road will be paved, improving the road conditions which may reduce emergency response times.

Most responses to the project area would probably be medical related given the older population. Further, there is a risk of brush fires in the area due to dryness and high winds, although fire breaks will be cut regularly during summer months.

A water storage tank or reservoir will be constructed above the project site to provide adequate pressure and to meet the storage requirements for fire protection. Fire hydrants will be installed along the road spaced at intervals between 450 to 500 feet.

To provide increased fire protection at Lā'au Point until there is a fire station within the five road miles required to have a favorable fire insurance rating as determined by the Hawaii Insurance Bureau, the Lā'au Point Covenants, Conditions, and Restrictions (CC&Rs) will require all residential structures to have sprinkler systems meeting standards specified in the Fire Code. The Fire Department does not require MPL to provide a fire station on the West End for Lā'au Point.

Fire and rescue emergency services will be able to access Lā'au Point and the shoreline from the new paved access road from Kaluako'i and the existing emergency access dirt

read from Hale O Lono Harbor, with access to the shoreline through the subdivision at designated locations. Emergency responders can also use an existing emergency access dirt road from Hale O Lono Harbor and do not have to go all the way to Kaluako'i to access Lā'au Point.

4.10.5 Recreational Facilities

Comment #1: Discuss how this project will help Molokai build a new gym in Maunaloa, as well as help create youth programs.

Response: The Draft EIS does not state the project will help Molokai build a new gym in Maunaloa. However the re-opening of the Kaluako'i Hotel, more activity and spending power of residents on the west end and in Maunaloa as a result of the Lā'au Point project, and more county income from the taxes these projects create, will enable the county, and the business community in Maunaloa, to have the confidence to invest in capital improvements and other community benefits.

Regarding youth programs, as discussed in Section 2.1.9 of the Draft EIS, the *Community-Based Master Land Use Plan for Molokai Ranch* proposes the creation of the Molokai Community Development Corporation (CDC). The CDC will have the following tasks:

- Develop affordable homes for the Molokai community.
- Promote economic development.
- Expand educational opportunities that will build capacity among the island's youth.
- Assist the Land Trust with project funding.

5.1 STATE OF HAWAII

DHHL

Comment #1: Hawaiian Homesteaders are often not allowed to subdivide so they can build additional homes for their children, and the reason given is because of the limitations on water. Explain how the project's water requirements takes into account the fact that Hawaiian homesteaders cannot intensify the agricultural uses of their land, or densify residential uses, because water is so limited on the island.

Response: It is beyond the scope of the EIS to discuss the Department of Hawaiian Home Lands' policies and restrictions on subdivision of Hawaiian Homestead lots. If this comment is related to the project's impact regarding DHHL's water rights, MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2 (Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water." In addition, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." For issues related to DHHL and water, see the sections of the attachment titled, "Prior Studies by USGS on the Capacity of the DHHL Wells," "Additional Information on the Kākalahale Well," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

5.2 COUNTY OF MAUI

Comment #1: Discuss status of SMA boundaries on Molokai, and how putting the entire island into the SMA is one of implementing actions of the Molokai Community Plan.

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 1, 2007

Page 33 of 57

Response: In response to your comment, in the Final EIS portion of Section 5.2.2 (Moloka'i Community Plan) under the heading "Environment" will be revised as follows:

IMPLEMENTING ACTION

14. Review and revise the Special Management Area boundary to include the entire island of Moloka'i except Department of Hawaiian Homes lands and Kalawao County.

Discussion: This implementing action is listed under the "Environment" section of the Moloka'i Community Plan (Community Plan). Also in the Community Plan, Table 1 lists implementation responsibilities. We note that the Planning Department is responsible to implement this action. As of September 2007, the Planning Department has stated that a SMA Boundary study is currently under way, but there are no reportable results as of this date.

Comment #2 Discuss current efforts to enact a water moratorium and put the entire island into the SMA.

Response: MPL has no knowledge of efforts to enact a water moratorium, but understands there was some discussion of this issue at EC meetings in mid-2007. See the above response regarding putting the entire island into the SMA.

5.2.2 Moloka'i Community Plan

Comment #1: Moloka'i is one big ahupua'a — what happens on one part of the island affects the rest of the island. Discuss how the Master Land Use Plan, including the La'au Point project, serves the rest of the island — was it done with the Moloka'i Community Plan in mind? Is it intended to coordinate activities with what is happening on the rest of the island?

Response: Section 5.2.2 (Moloka'i Community Plan) of the Draft EIS discusses the project's conformance with the Moloka'i Community Plan.

The Community-Based Master Land Use Plan for Moloka'i Ranch limits development on the West End, and protects more than 85 percent of MPL's property from future development through Land Trust donations and restrictive easements. This provides certainty for the future for the entire Moloka'i community.

Comment #2: The Moloka'i Community Plan is not the same as the Master Land Use Plan for Moloka'i Ranch — provide detailed discussion of how the Master Plan interface with the Community Plan.

Response: Section 5.2.2 of the Draft EIS discusses the project's conformance with the Moloka'i Community Plan. As stated in Section 5.2.2 of the Draft EIS, MLP is seeking a Community Plan Amendment to facilitate the La'au Point project.

In response to your comment, and the comments of others, regarding the general plan update process, the Moloka'i Community Plan update process, and the Community-Based Master Land Use Plan for Moloka'i Ranch, in the Final EIS Section 5.2.2 (Moloka'i Community Plan) will be revised as follows:

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 1, 2007

Page 34 of 57

In conjunction with the Maui County General Plan Update process noted in Section 5.2.1 of the 2001 Moloka'i Community Plan will also be updated. As of September 2007, the Moloka'i General Plan Advisory Committee (GPAC) was reviewing the Maui County General Plan. MPL has submitted information regarding La'au Point to the GPAC. In addition, this EIS, including the Community-Based Master Land Use Plan for Moloka'i Ranch (Appendix A of the Draft EIS), has been submitted to the Maui Planning Department. Further, the La'au Point project and the Community-Based Master Land Use Plan for Moloka'i Ranch have been widely discussed within the Moloka'i community.

It is expected that after the General Plan update process, the GPAC will transition into the Moloka'i Citizen Advisory Committee (CAC) to review and update the 2001 Moloka'i Community Plan. Per conversation with the Maui County Long Range Division (phone call February 1, 2007), the updated Community Plan may not reach approval stages until 2009. Therefore, the goals, objectives, and policies of the 2001 Moloka'i Community Plan are still in effect and are discussed below.

Comment #3: Expand discussion of how the project is or is not in conformance with the Moloka'i Community Plan. Describe conflicts and how they will be mitigated or avoided.

Response: Section 5.2.2 (Moloka'i Community Plan) of the Draft EIS discusses the project's conformance with the Moloka'i Community Plan. As stated in Section 5.2.2 of the Draft EIS, MLP is seeking a Community Plan Amendment to facilitate the La'au Point project.

5.3 APPROVALS AND PERMITS

Comment #1: Discuss how concurrent processing of permit applications could create pressure on the community and serve to dampen community participation. Discuss how concurrent processing serves or does not serve the Moloka'i community.

5.4 APPROVALS AND PERMITS

Comment #1: Discuss how concurrent processing of permit applications could create pressure on the community and serve to dampen community participation. Discuss how concurrent processing serves or does not serve the Moloka'i community.

Response: We disagree that "concurrent" processing of permit applications could create pressure on the community, serve to dampen community participation, and does not serve the Moloka'i Community.

To implement the La'au Point project, MPL submitted a petition to the State Land Use District Boundary to amend the State Land Use District boundary and applications to the County of Maui to amend the community plan, change the zoning, and obtain other necessary approvals. While the State petition and county applications were submitted within the same timeframe, the State petition and County applications will be processed by each government branch as appropriate. State and County hearings will not be combined; and the public will be afforded all opportunities to provide input as required by State and County law.

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'ĀU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 35 of 57

Comment #2: *If Maui County does not wait to process its applications until after the State Land Use Commission has decided on the District Boundary Amendment, there will be simultaneous meetings on project applications of the LUC and the Molokai Planning Commission. Discuss why concurrent processing was requested, and whether this serves the applicant or the community.*

Response: See response above. We find it highly unlikely that the State Land Use Commission and the Molokai Planning Commission would hold simultaneous meetings on the Lā'āu Point project.

Comment #3: *Permits for water use should come first before all other permits. The farmers and homesteaders should not have to go to court with DLR over water because of development applications. Discuss the issue of getting land use entitlements before the supply of water for the development has been secured. Why is that logical, or why not? Maui County is drilling wells to look for water just to serve existing development on the island — discuss how MPL proposes to coordinate with the State and County to identify sustainable and adequate sources of water for the development.*

Response: MPL does not determine the order in which permits must be obtained. As stated in Section 4.9.2 (Water) of the Draft EIS, MPL has long acknowledged publicly that its water use would yield to DHHL's (homesteaders') priority first rights to water. Regarding coordinating with the State and County regarding water resources, in Section 4.9.2 (Water) of the Draft EIS it is stated that MPL is currently working with the DHHL, the County of Maui DWS, and USGS to comprehensively evaluate Molokai's long-term water demands and resources. In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." For additional information regarding the USGS study see the section of the attachment titled, "USGS Modeling of Kualāpu'u Aquifer."

Comment #4: *Bring decision making power back to Molokai, and to the Molokai Planning Commission. Discuss why going for the District Boundary Amendment first and having the Land Use Commission as the accepting authority was better for Molokai, or not. Explain why home rule was not respected in this application process.*

Response: The State Land Use Commission is the first agency to process a permit (the State Land Use District Boundary Amendment) for the project; therefore, under State law (Chapter 343, Hawai'i Revised Statutes), the State Land Use Commission is the accepting agency for the EIS. In general the County usually will not change zoning if State Land Use designation is not consistent with the proposed zoning. State and County law was followed in filing the State Land Use District Boundary Amendment petition and the County of Maui applications.

6 ALTERNATIVES TO THE PROPOSED ACTION

Comment #1: *Everyone on the island supports the reopening of the Kalaheo Hotel. Expand the discussion of economic alternatives with realistic and frank information on MPL's current financial condition and what it would take to get it "out of the red."*

Response: It has been stated throughout the EIS that MPL's funding for the re-opening of the Kalaheo Hotel will be from the sale of Lā'āu Point lots.

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'ĀU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 36 of 57

To further address your concerns and the concerns of others in relation to alternatives, MPL conducted further analysis of all the alternatives, and in particular the options relating to Kalaheo Hotel and developments that were proposed at least half a mile and one mile mauka of the Lā'āu coastline. In addition, the Final EIS has been revised to include:

- Conclusions from further analysis of mauka Lā'āu lots and the Kalaheo Hotel Condominium Option;
- Analysis supporting the conclusion that the higher the price achieved per unit or lot, the less number of lots that need to be developed.
- The above conclusion, along with the high cost of funding, and the lack of water resources, is the principal reason MPL still believes the current Lā'āu development is the best alternative. Water use is a major barrier to larger-scale developments.

To incorporate the above information into the Final EIS, Section 6.0 (Alternatives to the Proposed Action) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

Comment #2: *The Lā'āu Point project is a luxury subdivision that will be unavailable to most if not all long time Molokai residents. Discuss why this alternative was explored so much more thoroughly than the other alternatives, and why other ways to develop were not given as much time, energy or thought.*

Response: As discussed extensively in Section 6.0 of the Draft EIS, prior to recommending the Lā'āu Point development, MPL's current management examined the information on the previous development plans by the previous management, and also undertook exhaustive reviews of all other alternatives suggested by community members and others such as Professor Minerbi from the University of Hawai'i. It also reviewed other alternatives not suggested by third parties. Please also see response to Comment #1 immediately above.

Comment #3: *The people of Molokai can come up with something much much better, if we work together, and preserve what we love best about our island, after all the debates and discussion. Discuss why the process has not yet been reopened to public debate and an island-wide vote or referendum.*

Response: The planning process for the Master Plan and this project has spanned four years now (since 2003). All known alternatives have been canvassed fully by MPL, the ALDC, and other concerned community members. MPL believes it has gone to extraordinary lengths in this area. Debate can go on forever. It is time to implement.

To further address your concerns and the concerns of others in relation to alternatives, MPL has conducted further analysis of all the alternatives, and in particular the options relating to Kalaheo Hotel and developments that were proposed at least half a mile and one mile mauka of the Lā'āu coastline. To include this further analysis into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

Comment #4: *Whole families have been hired into the ranch. MPL originally paid \$6 million for the Tokyo Kosan 600 acres (Alpha parcel). The island is only 10 miles wide. In Keawanui, people wanted*

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 37 of 57

to build a traditional structure and project -- they had to get an SMA permit for it, but these big new houses don't need one? Add discussion on the aspect of single-family dwellings being "not development" under SMA.

Response: The Lā'au Point home lots are not within the SMA. This is noted in Section 4.2.4 of the Draft EIS.

6.5 ALDC ALTERNATIVES

Comment #1: *Community participation, exploration of alternatives misrepresented in DEIS*

Response: We respectfully disagree with this statement. We have given factual information in the EIS.

To further address your concerns and the concerns of others in relation to alternatives, MPL has conducted further analysis of all the alternatives, and in particular the options relating to Kaluako'i and developments that were proposed at least half a mile and one mile mauka of the Lā'au coastline. To include this further analysis into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

To address other questions and concerns regarding the validity of the community-based planning process, the Final EIS Section 2.4 will be revised as shown on the attachment titled, "Revised Section 2.4 (Community Meetings and Involvement)."

Comment #2: *There was a lack of genuine search for alternatives, and the discussion of the Lā'au development was held to the very end of the process.*

Response: We respectfully disagree with this statement. MPL outlined fully at the commencement of the process on January 28 and 29, 2003, of its future needs to become economically viable. This is evidenced by the speech MPL's CEO, Peter Nicholas, gave at the start of the planning process. During the planning process, there was little, if any objection to the way Project #47 was conducted as many current opponents were at the table right through to the end. To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding the validity of the community-based planning process, Section 2.4 will be revised as shown on the attachment titled, "Revised Section 2.4 (Community Meetings and Involvement)."

Comment #3: *Molokai Properties Ltd. went through the motions in order to meet the requirements of community participation for the EIS process.*

Response: We respectfully disagree with this statement. As shown in Section 2.4 (Community Meetings and Involvement) of the Draft EIS, MPL participated in over 100 community meetings for the *Community-Based Master Land Use Plan for Molokai Ranch* and the Lā'au Point project. In addition, the Draft EIS was widely distributed and MLP voluntarily extended the Draft EIS public comment period from 45 days to over 60 days. Previous to the Draft EIS, the Environmental Impact Statement Preparation Notice (EISPN) was widely distributed for public comment.

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 38 of 57

Comment #4: *Corrections need to be made to facts and dates in Section 6.4. The nine alternatives were submitted by MPL and were not ALDC-generated alternatives.*

Response: MPL did not say the nine alternatives were ALDC-generated, but were suggestions made by LUC members, others, and MPL itself. The ALDC-generated alternatives are discussed in Section 6.5 of the Draft EIS.

To clarify information in Section 6.0 (Alternatives) in the Draft EIS, in April 2005, MPL proposed to the Land Use Committee and the ALDC on its review of 10 alternatives that had been reported over the previous 14 months by a variety of community members and planners. Later after the ALDC consultant delivered his report to the EC, MPL evaluated each of the consultant's recommendations and included evaluations in the draft EIS document.

In addition, the following statements from Mr. Matt Yamashita will be included in the Final EIS:

"...the ALDC was formed by frustrated members of the community who had to petition the EC for the ALDC to become a part of the "community" process."

"The ALDC was not formed until November of 2004. EC funding to support the work of the ALDC was not secured until June 2006!"

"The reason the ALDC formed was because no action was being taken by the EC to allow the community to address potential alternatives to Lā'au Point. While there was a Tourism Committee, Economics Committee, Environment Committee, & Cultural Committee -- no Committee was formed to look at the Lā'au development and other potential economic engines."

To include the above information into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

Comment #5: *The way the alternatives are framed is like apples and oranges --there is no way to directly compare the Lā'au alternative to the other alternatives.*

Response: We believe Section 6.0 (Alternatives) of Draft EIS presents a thorough discussion of the alternatives. However, to include further analysis regarding alternatives into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

Comment #6: *The alternatives submitted in the ALDC's last report to the Now of the EC should be included in EIS. These alternatives should be looked at in a more legitimate way.*

Response: The only alternative finally recommended by the ALDC related to finding a conservation buyer for Lā'au Point, MPL agrees this is a potential alternative and is open to this approach, itself having discussed this option with three potential purchasers, but currently with no positive outcome.

Analysis and discussion of cumulative impacts are restricted to those future actions that are reasonably foreseeable. The actual development of the area north of the Kaluako'i Resort zoned for hotels and multi-family units cannot be said to be reasonably foreseeable for the purposes of this EIS. MPL has not proposed any new development for Kaluako'i, Maunaloa, or Pāpōhaku that is not addressed already in the Master Plan. Therefore, speculation on unplanned future development cannot be said to be reasonably foreseeable for the purposes of this EIS.

To include the relevant information above in the Final EIS, in the in the Final EIS, Section 7.2 (Cumulative and Secondary Impacts) will be revised as follows:

The re-opening of the Kaluako'i Hotel will add 152 hotel rooms to the West End. To the extent that the development of Lā'au Point facilitates the reopening of the Kaluako'i Hotel, the reopening is roughly of the same extent that the hotel was operating at a few years ago such that the impacts of the hotel at that time are already known. There are also vacant residential and agricultural lots in Kaluako'i, Maunaloa, and Pāpōhaku that could be developed in the future. Cumulative and secondary impacts resulting from these projects and further development in the region are likely to include increased population and traffic, and greater demand on public infrastructure systems and services. Residents of Pāpōhaku Ranchlands and Kaluako'i would have a direct relationship with the Lā'au Point project. These areas are currently fairly isolated, and the project would bring increased activity due to the shared access road with Lā'au Point residents and those using the public shoreline access. These residents that live in the Kaluako'i and Pāpōhaku areas recognize that the upgraded roadways in the Kaluako'i and Pāpōhaku areas as a result of Lā'au Point project's infrastructure improvements should help to balance the impacts related to increased users and activities in the areas and could be considered to be a positive impact.

Regarding other MPL lands, currently, MPL does not have plans for developing any of the other MPL lands, including land adjacent to Hale O Lono Harbor and Kaluako'i. The Community-Based Master Land Use Plan for Molokai Ranch states that if demand for accommodation at the Kaluako'i Hotel warranted it, MPL at some time in the future, may seek to use some zoned land for an extension of the hotel for a cultural center, and for hotel staff housing. However, as the currently proposed renovations of the hotel are not complete it will be many years before further expansion is contemplated. Therefore, plans for developing any other MPL lands cannot be said to be reasonably foreseeable for the purposes of this EIS.

Comment #2: Discuss how each lot on the West End can subdivide, and how 75% of homeowners are needed to change CC&Rs and bylaws.

Response: Simply because other West End lots are able to be subdivided does not mean they will be. This comment is speculative. At least 70 percent of homeowners have submitted votes against further subdivision. Analysis and discussion of cumulative impacts are restricted to those future actions that are reasonably foreseeable.

As stated in Section 2.3.6 of the Draft EIS, Lā'au Point covenants prevent further subdivision of its lots. This is a provision set by the Master Plan. To include this discussion in the Final EIS, Section 2.3.6 has been revised to include the following:

Comment #7: Expand the discussion on a the general price for the Alpha parcel that would meet MPL's needs

Response: MPL will not discuss this with the general public, but will give, and has given, specific information to two of the three parties it has discussed a purchase of the parcel with.

Comment #8: Discuss cost to fund other aspects of the project and break them down in the draft EIS.

Response: The only costs MPL believes are relevant to and which were already discussed in the EIS are: 1) A cost of between \$30 million to \$35 million to fund the refurbishment of the Kaluako'i Hotel and fund its initial losses; and 2) The on-going operational losses for MPL of in excess of \$3.7 million per annum.

To include further analysis regarding alternatives, including costs and revenue information, into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

7.2 CUMULATIVE AND SECONDARY IMPACTS

Comment #1: Assess cumulative impacts based on current zoning out at West End -- true cumulative impact of project being ignored. Include in discussion all subdivisions that were part of the original Kaluako'i master plan -- 6 hotels, condos, rural, single-family dwellings, another golf course -- 1538 total dwelling units at buildout. Assess true cumulative impacts based on existing zoning in the area, and do not exclude "resort area".

Response: We concur that the Draft EIS must address cumulative impacts, the secondary and non-physical effects of a proposal and the socio-economic consequences of a proposed action. We have done so to the greatest extent possible in this EIS. The environmental impacts and benefits of this project have been addressed based upon the construction of this project in West Molokai.

The Lā'au Point project has been addressed as one component that permits other actions to take place such as: 1) the reopening of the Kaluako'i Hotel; and 2) affordable housing projects elsewhere. To the extent that the development of Lā'au Point facilitates the reopening of the Kaluako'i Hotel, this reopening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

The Lā'au Point project is also a part of the Community Based Master Land Use Plan for Molokai Ranch (Master Plan). To this extent, each component of the Master Plan really facilitates each other component of the Master Plan. In an overall context, the Master Plan preserves and protects large amounts of acreage on the West end of Molokai. The development of Lā'au Point to some degree facilitates this protection and preservation.

There is no need to discuss the original Kaluako'i Master Plan because the development plans set forth in the Community-Based Master Land Use Plan for Molokai Ranch supersede the Kaluako'i Master Plan. There are no plans to develop the area north of the Kaluako'i Resort.

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007

Page 41 of 57

The Land Trust is a signatory to the CC&Rs and is given specific enforcement rights under the terms of the document. Certain covenants and restrictions in the CC&Rs are derived from the provisions of the Master Plan that represent the Land Trust and community concerns on protection of subsistence and cultural practices and the protection of cultural/archaeological and environmental resources. These are designated Master Plan Covenants under the terms of the CC&Rs. The CC&Rs provide that the Land Trust may prosecute breaches of the Master Plan Covenants and take legal action to ensure their enforcement.

Some provisions of CC&Rs will be able to be changed by a 75 percent majority vote of homeowners. These are operational in nature or concern and involve the management of the Association common areas. They bear no relationship to the covenants that are designed to implement the vision of the Master Plan.

Comment #3: *Expand discussion of how the project will not serve to open the door to additional development on the island.*

Response: Under the Community-Based Master Land Use Plan for Molokai Ranch, more than 55,000 acres will be protected from future development either by donation to the Land Trust or by existing or new protective easements. Essentially, the donated lands and easement lands will no longer be under MPL control.

Comment #4: *Discuss guarantees that will be in place to assure the community that this will be "the last development" on MPL property. Discuss how secure these guarantees are or are not.*

Response: MPL is committed to adhere to the provisions of the Community-Based Master Land Use Plan for Molokai Ranch and is working through the numerous agreements with the Land Trust to ensure its compliance once the LUC application and other regulatory applications are approved.

Comment #5: *Discuss how a piecemeal review of the master land-use plan that only focuses on the La'au Point development satisfies environmental review requirements. Discuss why the applicant does not have to accept comments on all of the master plan, but only on the Laau Point development portion.*

Response: The EIS has been prepared in accordance with all laws, rules, and requirements. The Community-Based Master Land Use Plan for Molokai Ranch was included as an appendix (Appendix A) to the Draft EIS and was the subject of numerous public meetings on Molokai. We believe the public has been provided with tremendous opportunities to participate in the creation of, and comment on, all aspects of the Community-Based Master Land Use Plan for Molokai Ranch.

FURTHER COMMENTS FROM COMMISSIONER CHAIKIN

What is your contingency plan in the event that brackish water from the Katalahale well becomes too high in salinity for irrigation?

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007

Page 42 of 57

Response: In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Discussions regarding salinity of wells and alternative water sources are incorporated into the attachment. See the sections of the attachment titled, "The Punakou Aquifer," "Moloka'i Designated a Ground Water Management Area," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Alternatives to the Use of Kākalahale-sourced Water."

As discussed in the attachment titled, "Revised Section 4.9.2 (Water)," in the unlikely event that MPL's identified water sources cannot meet its needs, brackish water from the Prawn Farm and desalination have been identified as alternative sources of non-potable water. This could include re-captured or re-circulated water from the Prawn Farm.

Who will be responsible for providing water to the agricultural easements?

Response: The agricultural lands are currently supplied with non-potable water; the source depends on where the land is located. Under the current Water Plan, MPL does not have spare capacity to provide more water than it currently uses for cattle-rearing.

Future uses for the agricultural easement land will be dependent on developing non-groundwater from other sources.

If there is an inconsistency between The Community-Based Master Land Use Plan For Molokai Ranch and the FEIS which one prevails?

Response: Neither The Community-Based Master Land Use Plan For Molokai Ranch or the Final EIS are permits to implement the project. Any conditions imposed on the project by the State Land Use Commission or County of Maui Council will be the legally binding conditions of approval and will prevail.

Who are the current board of directors of the Molokai Community Development Corporation (MCDC) and the Molokai Land Trust (MLT)?

Response: The current Land Trust directors are: Colette Machado (chair), Davianna McGregor, Richard Cooke, Clarence Kaopuiki, David Lunney, Cheryl Corbiell, Stacy Crivello, Ed Misaki, and Billy Akaugawa. We note that the Land Trust is currently seeking additional membership.

The Molokai CDC has not been legally formed, and therefore, currently has no "Board of Directors." A steering committee is currently investigating future membership, structure, and tax-exempt issues. The CDC was to be incorporated in October 2007.

Is Laau Point already subdivided?

Response: No.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 43 of 57

How many times has there been an attempt to develop Laau Point?

Response: MPL knows of at least one other plan by a previous owner, and once under previous management regimes during BIL's ownership of the parcel.

What were the reasons that previous attempts to develop Laau point never proceeded.

Response: Previous landowners sold the land and did not proceed with their plans. In relation to the specific proposal under BIL ownership, when Peter Nicholas was appointed CEO and the community began the *Community-Based Master Land Use Plan for Molokai Ranch* process, that proposal, (which was for a greater number of lots, and had development close to the shoreline) was taken off the table.

What are the long-term plans for the hotels sites, the multi-families sites, the single-family sites and the rural zoned land that is not yet developed in the Kaluakoi area?

Response: As stated in the *Community-Based Master Land Use Plan for Molokai Ranch*, MPL has no plans to develop the entitled lots north of the Kaluakoi Hotel. However, as stated clearly in the *Community-Based Master Land Use Plan for Molokai Ranch*, some of those lands may be needed at some distant time in the future, for extending the Kaluakoi Hotel if demand requires it; some land for a Cultural Center adjacent to the hotel; and some land for community housing for Kaluakoi Hotel staff. At this point there are no plans to do any of that, but MPL believes it should be up-front about this remote possibility. In any case, under its Water Plan, MPL has no water available for such a remote possibility.

The *Community-Based Master Land Use Plan for Molokai Ranch* also states that if ever there is a demand for a second golf course on Molokai, (and replacing the Molokai community plan-approved course below the Lodge at Maunaloa) then it should be sited in this area. These parcels are within the SMA and construction of any sort is subject to approval by the Molokai Planning Commission. Desalinated water would be needed in this case.

Why are not many community members showing up at the public hearings to support the The Community-Based Master Land Use Plan For Molokai Ranch?

Response: We cannot speak for other peoples' reasons. To date there have been no public hearings to support the *Community-Based Master Land Use Plan for Molokai Ranch* within the regulatory process that facilitates the *Community-Based Master Land Use Plan for Molokai Ranch*.

However in relation to some previous public meetings, our information is that members of the community who support the *Community-Based Master Land Use Plan for Molokai Ranch* did not turn up because they are concerned about abuse, threats, and the antagonistic behavior of some opponents.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 44 of 57

What does the ranch intend to do if the State Land Use Commission denies its application for a land use change for Laau Point?

Response: Appeal and make necessary changes to re-submit. Otherwise, the scenario outlined in Section 6.1 (No Action Alternative) of the Draft EIS will happen, and MPL will be forced to over time sell off its land piecemeal in parcel to the highest bidder.

Does MPL and the MLT intend to try to have the The Community-Based Master Land Use Plan For Molokai Ranch adopted into the molokai community plan?

Response: In response to your comment, and the comments of others, regarding the general plan update process, the *Molokai Community Plan* update process, and the *Community-Based Master Land Use Plan for Molokai Ranch*, in the Final EIS Section 5.2.2 (Molokai Community Plan) will be revised as follows:

In conjunction with the Maui County General Plan Update process noted in Section 5.2.1, the 2001 Molokai Community Plan will also be updated. It is expected that after the General Plan update process, the GPAC will transition into the Molokai Citizen Advisory Committee (CAC) to review and update the 2001 Molokai Community Plan. Per conversation with the Maui County Long Range Division (phone call February 1, 2007), the updated Community Plan may not reach approval stages until 2009.

MPL has submitted information regarding the *Community-Based Master Land Use Plan for Molokai Ranch* and La'au Point to the GPAC. In addition, this EIS, including the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A of the Draft EIS), has been submitted to the Maui Planning Department and has been widely available for public review. Further, the La'au Point project and the *Community-Based Master Land Use Plan for Molokai Ranch* have been widely discussed within the Molokai community and many Molokai GPAC members. 1) participated in the process of creating or attended meetings regarding the *Community-Based Master Land Use Plan for Molokai Ranch*, and 2) commented on this EIS. While the La'au Point project and the *Community-Based Master Land Use Plan for Molokai Ranch* are well known on Molokai, MPL intends to continue to be available to respond to questions on these issues.

Ultimately, the Maui County Council will approve the updated Molokai Community Plan. However, until the Maui County Council approves the updated Molokai Community Plan, the 2001 Molokai Community Plan is still in effect. Discussion of how the La'au Point project conforms to the relevant objectives and policies of the 2001 Molokai Community Plan is provided below.

Documentation that needs to be included in FEIS

- 1) *Molokai Land Trust Agreement*
- 2) *Partnership Agreement between MPL and MLT*
- 3) *Articles of Incorporation and Bylaws of the Molokai Community Development Corporation*
- 4) *CC&Rs of the Laau Point development*
- 5) *Bylaws of the Laau Point Homeowners Association*
- 6) *Deed Restrictions on the 26200-acre land gift*

Mr. Jeffrey Hunt, Director

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 45 of 57

- 7) *Language that will make the Agricultural Easements run in perpetuity*
- 8) *Deed restriction language that will make the land a rural landscape reserve*

Response: The following is the status of the documents to which you refer:

- 1) Land Trust agreement. The Moloka'i Land Trust has received its federal non-profit status. Documents relating to its incorporation are private, but reflect its inability to sell donated land and its mission as a land protection organization.
- 2) Partnership Agreement and 26,200-acre donated land's Deed restrictions. The agreements between MPL and the Land Trust on implementation of the Master Plan are in process and will be signed concurrently with the regulatory agreements concerning the Lā'au development.
- 3) The CDC mission statement has now been defined by a steering committee as follows: "A community-based non-profit organization working to enhance the quality of life for residents primarily in the area of affordable homes for the community, as well as economic development, education, health care, leadership, culture and the environment, while preserving Moloka'i's rural character." We believe the CDC's Articles and By-laws are private. In response to your question, as well as other comments regarding the CDC, Section 2.1.9 (CDC) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 2.1.9 (CDC)."
- 4) As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in this EIS (see Section 7.5). The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition. This is reflected in the Final EIS as shown in the attachment titled, "Revised Section 2.3.6 (Covenants)."
- 5) The Homeowners' Association's Articles and By-laws will be private documents.
- 6) See #2 above regarding Land Trust deed restrictions.
- 7) Easement documents and restrictions relating to the 14,390 agricultural easements are being drafted and must be reviewed by the Moloka'i Land Trust and will be available at LUC petition hearings.
- 8) Easement documents and restrictions relating to the 10,560 acre under Rural Reserve are being drafted and must be reviewed by the Moloka'i Land Trust and will be available at LUC petition hearings.

What is an agricultural easement?

Response: An agricultural easement is a covenant that is agreed to by the owner, affixed to the property title of the land, and held by a third party (the Land Trust in this case), restricting activities that can take place on the land under covenant to agriculture. The Land Trust can enforce the restriction in a court of law.

Mr. Jeffrey Hunt, Director
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 46 of 57

How long will the agricultural easements be managed by MLT?

Response: In perpetuity.

Who will pay the property taxes on the agricultural easement during the time the MLT manages the easements?

Response: MPL, as the landowner, will pay the property taxes.

Will the MLT have an option to extend their management of the agricultural easement at the end of the management term?

Response: This is not necessary because the Land Trust's management of the agricultural easements will have no expiration. It is envisioned that the easement, and therefore the Land Trust's control over the activities under the easement, will be in perpetuity.

FURTHER COMMENTS FROM RITTE

Response: We note that Ritte's comments that were submitted with the Moloka'i Planning Commission comments are a duplication of the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) comment letter on the Draft EIS. Therefore, we have attached our response letter to NOAA NMFS as response to Ritte's comments.

FURTHER COMMENTS FROM VANDERBILT

Who prepared the above Financial Objectives document and what is the date it was prepared?

Response: This document was prepared by MPL CEO, Peter Nicholas, following the receipt of initial quotation estimates to reconstruct and re-open the property.

MPL'S FINANCIAL OBJECTIVE I: Kaluakoi Hotel Rebuild. Hotel opened in December 2006. In order for MPL to have reopened by December 2006, by what date did MPL assume its investor would had to invest money?

Response: The Kaluako'i Hotel was not re-opened by December 2006, and as stated in responses to other questions of a similar type, MPL's re-opening the Kaluako'i Hotel as a hotel is contingent on obtaining the funds arising from this Lā'au Point project.

What criteria did MPL anticipate would have to be met in order to give an investor the comfort level needed to make investment funds available for the renovation and reopening of the Kaluakoi hotel?

Response: This is commercially-sensitive information. However, an investor would need assurance that the Lā'au project has been approved.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 47 of 57

How long has MPL been pursuing an investor and what is the current status (as of February 23, 2007) of MPL's investor search?

Response: MPL is still hoping to attract an investor to either assist it in funding the La'au Point development costs or invest in its entire land holdings. MPL has been discussing investment in La'au and in its property with a number of potential investors both from Hawai'i and the US mainland over the past three years.

Over the past five years, MPL has never been contacted by an investor who is interested in re-opening the Kaluako'i Hotel without the potential returns from the La'au Point development.

The structuring of either a joint venture in the La'au development or in its total property assets, or the structuring of a relationship between MPL and that potential investor is commercially sensitive.

Assuming MPL receives its land use and water use entitlements for its proposed La'au Point development, please explain why MPL needs the investor, assuming the La'au lots are able to be presold to the "pentamillionaire" market MPL claims in the DEIS it is targeting, and funds to renovate and reopen the Kaluako'i Hotel can be borrowed based on solid presale commitments.

Response: MPL does not anticipate it will be able to pre-sell lots, and also probably will not wish to because of the huge discount usually associated with such pre-sale events. It is not unusual for pre-sale prices to be discounted as much as 30% which would make this project uneconomic.

Assuming MPL all the land and water entitlements approved for the proposed La'au Point development, please explain why MPL could not rely on its parent company BIL or The Guocco Group, which is described in the DEIS as Molokai Ranch's "ultimate parent company", to provide the funding needed to renovate and reopen the Kaluako'i Hotel.

Response: BIL has not supported MPL financially since 2002. BIL has a policy of ensuring that each of its operations is self-sufficient. If MPL is not self-sufficient and has no sustainable future, then BIL will seek its liquidation.

What is the net worth of Brierley Investments Limited?

Response: BIL Group's latest financial results are published on its website at www.bilgroup.com. The June 30, 2007 balance sheet shows BIL has shareholders equity of \$1,067 million, but debt of \$718 million and cash only of \$47 million. Most of BIL's assets, a total of \$2,062 million, are in hotel land and buildings in London, England.

What is the net worth of The Guocco Group?

Response: The financial statements of the Guocco Group, a shareholder in BIL, but by no means the majority shareholder of the BIL Group, are available on its website www.guocogroup.com.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 48 of 57

MPL's Peter Nicholas sent the ECs land Use Committee a letter stating that the investor MPL was seeking most likely would be some who sees more in Molokai than just dollars. Please explain the profile of such an investor? Did MPL anticipate that such an investor, who sees more in Molokai than just dollar, might consider a lower return on investment?

Response: The question ignores the economic reality of those who invest money and must obtain a return on their funds that is higher than just placing it in a bank or in government stock. What the question presumes is that an investor will also be a poor manager of his/her/their finances. It would be folly to suggest that MPL would be able to find an investor who would be willing to forego a reasonable financial return on funds. What MPL hopes for is to provide a reasonable return on funds, not a super return as is available to many shrewd investors today.

a) Around the time his financial objectives proforma was being prepared, MPL presented materials to the community showed that MPL was seeking an investor to put up \$45 million. Please explain where the \$45 million figure and uses of those funds are listed in the eight financial objectives presented herein.

Response: MPL has not indicated that it was seeking an investment of \$45 million. If this figure was concluded for any information previously supplied by MPL, then the figure is incorrect.

MPL did not include this information in the draft EIS and the information being referred to is now outdated, being more than three years old.

b) What costs are included in the \$19.58 million "Capital" cost?

Response: That capital cost for the hotel reconstruction mentioned was an estimate given prior to receiving updated costs to renovate and open the hotel. The current \$25 million to \$30 million estimate is also increasing by the month while this project is delayed and is now anticipated to be between \$30 million and \$35 million, inclusive of start-up losses.

c) Please provide a breakdown of how the \$3.85 million is divided up between "start up cost", the cost of the "initial marketing blitz", and the cost of the "losses to breakeven". What is included in "start up costs"?

Response: It is anticipated that at least \$500,000 will be needed for the initial marketing blitz. It is anticipated the hotel will be cash negative for up to three years. Start-up costs include hiring of staff prior to opening the hotel, testing and running the hotel without guests, training, and the cost of services without income. MPL considers that other details are commercially sensitive.

d) What collateral and/or loan guarantees are anticipated to be required by the Fender(s) underwriting the construction loan?

Response: MPL considers this information commercially sensitive.

e) When did MPL anticipate the 8-year loan begin? When the hotel breaks even in Year 4, what occupancy and average room rates did MPL assume? Are there any other costs associated with the design, renovation, construction and reopening of the hotel?

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 49 of 57

Response: MPL considers detailing further information to the public would be commercially disadvantageous to its interests.

MPL'S FINANCIAL OBJECTIVE 2: Kaluakoi Golf Course: Return course to resort standard attract visitors.

- a) Please breakdown the \$8.77 million Capital costs among the five costs items identified.
- b) What is CAPEX?
- c) Which of the identified buildings will be new and which ones will be renovated?
- d) To reach breakeven, what is assumed as the number of players per day and the green fees charged?
- e) Are the financing costs shown interest only?
- f) How will the loan be repaid (i.e. from proceeds generated by the La'au Point lot sales or otherwise?). If otherwise, please explain the source of repayment funds.

Response: All the information relative to the golf course renovation will be made available at the time of a submission to the Molokai Planning Commission. The further financial information requested is commercially sensitive.

MPL'S FINANCIAL OBJECTIVE 3: Repair Kaluakoi Infrastructure: Requirements must be completed.

- (a) Please identify specific costs associated with meeting the Health Department compliance order and the deadline by which the compliance issues have to be resolved.
- (b) How is the \$980,000 funding cost on CAPEX debt for seven years calculated? Please describe what is included in MPL's "core operations". What is the amount of loan? Did MPL anticipate the loan coming from an investor or being guaranteed by an investor or was the loan intended to be taken down by MPL or its parent company?

Response: MPL met the Health Department requirements for the Kaluakoi Water System in 2005. Other information requested is commercially sensitive.

MPL'S FINANCIAL OBJECTIVE 4: MPL Losses: Alternative plan must meet MPL's and capital requirements for 5 years.

- (a) Year 1 of the 5-year period of losses was anticipated to begin when? What did MPL estimate its losses would be for each of the 5-years? Did MPL assume its losses would be \$0 in Year 6?
- (b) What items make up capital requirements for each year of the 5-year period?
- (c) How many lots make up the inventory of lots that MPL anticipated would run out in December 2, 2005?

How many lots at Papohaku Ranchlands and the Moana Makani subdivisions were still owned by MPL when this financial objective proforma was prepared?
If MPL anticipated there would be no more lots available to sell to help fund losses for 2006, 2007, 2008 and 2009, how did MPL plan to cover the losses, through an investor or from a loan taken out by MPL or its parent company? How many agricultural subdivision lots does MPL or its affiliates currently own (as of February 23, 2007 the deadline for comments on the La'au Point draft EIS)?

Response: MPL noted in previous answers to similar questions, which the information it believes the questioner is referring to, is not included in the Draft EIS information, and is now three years old.

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 50 of 57

The information that MPL gave at the time was all the information of a financial nature concerning its future projections, which it is able to supply.

MPL has already given as much financial information as it both legally able to give and can supply commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

MPL'S FINANCIAL OBJECTIVE NO. 6: Land Trust: Alternative Plan must fund Conservation Fund, subdivision and Land Trust land and legals.

- (a) How much did MPL anticipate would be needed to fund "The Conservation Fund" and what did MPL anticipate those funds would be used for? How much funding will be needed for "subdivision", and what specific subdivision activities "will the funds be specifically used for? How much funding did MPL anticipate would be used for "Land Trust land" and what will these funds be used for? What are "legals" and how much funding was anticipated to be required to fund these items?
- (b) What was the anticipated source of the one-year loan at 7% interest?

Response: MPL has already given as much financial information as it both legally able to give and can supply commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

MPL'S FINANCIAL OBJECTIVE NO.7: Land Trust Evergreen Income: Percentage of lot sale revenue from La'au Point sales over 5 years only.

- (a) The estimated income of \$10,000,000 assumed what percentage of gross lot sales. In calculating the \$10,000,000, how many lots are assumed to be sold during the 5-year period? How long of a period did MPL anticipate from the time it was qualified to sell the lots until all 200 lots were sold? How many months after a Master Development Plan was agreed to in principal did MPL think it would take before MPL would be in a position to offer La'au Point lots for sale?

Response: MPL has stated in the Draft EIS that it is committed to 5 percent of net lot sale revenue. MPL has already given as much financial information as it both legally able to give and can supply commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

MPL'S FINANCIAL OBJECTIVE NO. 7: Restoration of Coastal Strand, Marine Resources, archeological sites preservation: Lot owners were to be required to contribute \$600,000 per annum to ensure marine, coastal resources repaired, archeological sites maintained and protected?

What repairs to marine resources were envisioned and what was the estimated cost of these repairs?
What repairs to coastal resources were envisioned and what was the estimated cost of these repairs?

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 51 of 57

*Were there any costs assumed for any repairs of archeological sites or did MPL envision that these sites would just be maintained in their existing condition? What annual costs did MPL assume to maintain and protect archeological sites?
(a) Did MPL anticipate the \$600,000 annual contribution from the lot owners would end at the end of five years?*

Response: Repairs to the coastal areas will include slow removal of alien trees and restoration of coastal shrubland, and creation of predator-free areas for seabirds nesting.

The Preservation Plan calls for a limited amount of stabilization, which could be regarded as "repair." However, restoration, including full repair of sites, landscaping, and perhaps interpretive efforts, would involve additional planning, and is not proposed at this time. Precise estimates for the cost of maintenance are not possible now, given the lack of a definite scope, the degree to which the Land Trust staff might be involved, and other factors. A single employee could handle maintenance, and that a budget in the range of \$10,000 per year for the first couple of years, likely to decrease over time, would cover the materials and program expenses of maintaining the "status quo." If there are additional elements, such as interpretive programs, landscaping (and hence, water), and restoration, there would be additional annual and single-instance expenses.

MPL's FINANCIAL OBJECTIVE NO.8: Return for MPL.
Explain what is meant by "depreciated assets employed". Is the \$110m total for depreciated assets employed meant to reflect \$10,000 or \$10,000,000 total dollar amount? MPL states that "depreciated assets employed" is not BIL's "equity investment in MPL. What book value does BIL report for its MPL investment.

Response: The accounting standards of the USA and other countries enforce rules that assets must be depreciated annually. The answer to the question as to what depreciated assets are, is the value of the assets at a point in time after allowing for depreciation.

MPL has already given as much financial information as it both legally able to give and give commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

Please breakdown the total dollars included in "depreciated assets employed" among a) land (identify at historic cost, b) Lodge and BV (What is BV?), c) specific infrastructure costs (i.e. water pipelines, Kaluakoi roads, etc.), d) Kaluakoi hotel, e) Kaluakoi golf course, front nine, back nine, f) Maunaloa Town, g) affordable housing project (is this located in Maunaloa Town?), h) industrial park costs (at Patia au or Maunaloa?), i) Describe "other capital projects over the five year period" (Timeframe of 5-year period), j) Breakdown of the \$56,000,000 increase in depreciated assets MPL anticipated between Kaluakoi Hotel and Kaluakoi golf course and "other capital projects" referenced, m) Explain how these increases in depreciable assets are related to the amount of depreciable assets MPL says it already has on the books, for the hotel and golf course.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 52 of 57

Response: MPL has already given as much financial information as it both legally able to give and can give commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

What does BIL's management feel is a suitable annual return to expect on MPL's "depreciated assets employed"? As of February 23, 2007 what is the value of MPL's depreciated assets?

Response: This information is not disclosed to shareholders and is commercially sensitive.

What suitable annual return on "depreciated assets employed" is MPL projecting from its proposed La'au Point development?

Response: This information is not disclosed to shareholders and is commercially sensitive.

How many years does MPL project the La'au Point development will fund a suitable annual return on its "depreciated assets employed"?

Response: This information is not disclosed to shareholders and is commercially sensitive.

If no Master Development Plan is accepted by MPL, how does MPL anticipate it will secure a suitable annual return on its "depreciated assets employed"?

Response: It has stated a number of times in many answers to the same question that it will be forced to sell the property piecemeal over a period of time to those who offer the highest price.

What has been BIL's return on MPL's "depreciated assets employed" over the last - years of MPL operations?

Response: This information is not disclosed to shareholders and is commercially sensitive.

Where in BIL's 2004 annual report is MPL's \$110 "depreciated assets employed" noted?

Response: BIL has never stated to its shareholders that MPL has \$110 million of depreciated assets employed, and furthermore the figure is inaccurate.

In the DEIS for La'au Point, MPL estimates the gross value of lots sales will exceed project costs (including \$ 10.5mm earmarked for the Land Trust) by approximately \$100,000,000. If an alternative proposal included an upfront cash offer of \$100,000,000 payable to MPL to purchase the proposed La'au Point project lands and the 26,000 acres of land MPL intended to donate to the Trust, assuming La'au Point would not be developed and the 26,000 acres would be donated to a community land trust along with at least \$10,500,000 invested in a community land trust and/or community development corporation to fund the objectives of these community organizations?

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 53 of 57

Response: MPL has stated on many occasions that it would be willing to negotiate with a potential purchaser of the La'au Point parcel. However, it will not have a public discussion on price prior to any such negotiations, preferring to treat any such discussions as private between a potential buyer and itself as a potential seller.

CRITERIA that must be used when reviewing alternatives: These criteria are met in the current draft plan.

1. How many full-time, part-time and on-call employees are included in the 140 staff positions projected by MPL?

Response: MPL's staff numbers fluctuate depending on occupancy at its tourism properties. Its tourism properties are of a seasonal and event-dependant nature. Currently, MPL employs 104 full-time employees and 30 part time and casual employees.

2. Is the community unanimous in what type of operation the hotel will house when it reopens (i.e. standard, full-service hotel, educational center, wellness center, community-owned facility, etc.)? What type of hotel operation is MPL planning for in its projection to breakeven in 5 years? In its DEIS, MPL has mentioned a "put option to the community for the hotel, Please explain the details of the "put option".

Response: MPL has stated that the hotel will be owned by MPL and targeted as a mid-range kama'aina hotel that is full service. A put-option will give the Community Development Corporation the right, at some future point in time, to have the option to own a minority shareholding if it is successful.

3. MPL has stated it will need to find an investor to put up the money needed to reopen the Kahuakoi Hotel. How long after a Master Development Plan is accepted by MPL in principal, does MPL estimate it will be before all the documents and entitlements are legally secured to the point where an investor will be willing to release his investment to fund the renovation of the hotel?

Response: MPL has been discussing investment in La'au and in its property with a number of potential investors both from Hawai'i and the US mainland over the past three years. All investors, who are also keen to invest in the re-opening of the Kahuako'i Hotel, are awaiting the outcome of the entitlement process.

Over the past five years, MPL has never been contacted by an investor who is interested in re-opening the Kahuako'i Hotel without the potential returns from the La'au Point development.

The structuring of either a joint venture in the La'au development or in its total property assets, or the structuring of a relationship between MPL and that potential investor is commercially sensitive.

4. How many rooms will the renovated hotel include? What mix of full-time, part-time and on-call jobs is being projected for the 130 jobs planned at the hotel during each of its first five years of operations? Please provide a copy of MPL's financial budget for the hotel that will lead to breakeven in hotel operations in five years.

Mr. Jeffrey Hunt, Director

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 54 of 57

Response: 152 rooms. Further information requested is considered to be commercially sensitive and not considered relevant for the EIS.

5. Is the Evergreen funding earmarked for the Land Trust or a Community Development Corporation?

Response: The Community Development Corporation, although its first priority will be to ensure that the Land Trust is adequately funded if grants and the Land Trust's fund raising efforts are not enough to fund its conservation and cultural projects.

6. MPL projects drinking water use at La'au Point 500 gpd per lot and an equivalent amount for irrigation water per lot must be used? Are these projected water uses still applicable as of February 23, 2007. Will MPL make the water it projects providing for its La'au development available to the development plans associated with an alternative plan to La'au?

Response: MPL believes its estimates are still accurate. MPL has found no sustainable alternative to the project from any alternative proposed either in terms of its economics or proposed water use, so the question is moot.

To further address your concerns and the concerns of others in relation to alternatives, MPL has conducted further analysis of all the alternatives, and in particular the options relating to Kahuakoi and developments that were proposed at least half a mile and one mile mauka of the La'au coastline. To include this further analysis into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

7. This figure cannot be controlled by CCR's or otherwise and therefore seems to be an arbitrary criteria that holds little weight.

Response: Comment noted, but MPL's advice is that this is not a correct statement and that water use can be controlled via adherence to the CC&Rs that will be legally enforceable.

8. Is MPL prepared to restrict the future development of timeshare projects on the lands that currently owns at the Kahuakoi Resort and elsewhere on Molokai by applying deed restrictions or other appropriate means to insure this restriction is perpetuated into the future?

Response: There are no timeshares proposed.

Section 6.4 Other MPL Land Development Alternatives:

In order to allow decision makers to make a meaningful comparative analysis next to each of the alternatives analyzed by the Ranch, list the corresponding line items for the La'au development, which include:

Revenue per lot
Total Revenue
Cost to develop
Financial return
Water Use

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 55 of 57

*Population increase
Land requirement*

Response: We believe Section 6.0 (Alternatives) of Draft EIS presents a thorough discussion of the alternatives. Many of the items listed above have been included in the Draft EIS for many of the alternatives; however because of the variation in the types of alternatives is not possible to provide a direct comparison for each item listed above. However, to include further analysis regarding alternatives into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

Section 6.52

Please provide dollar amounts for the following items that MPL states (on page 156) must be covered in an acceptable purchase offer for the La'au parcel:

1. *MPL's development return, and what the return is based on.*
2. *Estimated cost to protect subsistence areas (identify subsistence areas)*
3. *Amount of endowment income needed for a Molokai Land Trust/CDC.*

Response: Further financial information that is requested is considered commercially sensitive. It is considered that the proposed income from the La'au development earmarked for the Molokai Land Trust and CDC will meet its future needs for affordable housing, education, Land Trust funding.

Based on the above funding requirements being met, what would MPL's sale price be for the La'au Point parcel.

Response: MPL has stated on many occasions that it would be willing to negotiate with a potential purchaser of the La'au Point parcel, and in fact has had discussions with two potential purchasers. However it will not have a public discussion on price prior to any such negotiations, preferring to treat any such discussions as private between a potential buyer and itself as a potential seller.

Appendix J calls The Guocco Group MPL's "ultimate parent" and that a report had been prepared that set forth what Guocco could get for its lands if it shut down ranch lands and sold off its property "on a breakup basis".

**What is meant by the term "ultimate parent" and explain what How much could the Ranch expect today for its lands if a decision was made to sell off all the Ranch lands on a breakup basis?
Has anyone from Guocco ever been to Molokai, and if so did that representative ever meet with the community?**

Response: The Guocco Group is the largest investor in BIL through "associated person" rules. However it does not control the BIL Group as BIL is a public company with a board of directors who made decisions independently.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 36 of 57

MPL is not prepared to divulge likely sale proceeds from a break-up and sell off, however a valuation under such a scenario done by the Hallstrom Group in 2005 indicated a break-up valuation of \$203 million

A representative of the Guocco Group has visited Molokai i.

Have any representatives from BIL been to Molokai, and if so did they meet with in the community?

Response: Many representatives of BIL have visited Molokai since 2003 when the community process commenced, and at least one attended Land Use Committee meetings. Peter Nicholas is the "on-the-ground representative" of BIL.

The DEIS provides no in depth information regarding the ranch's operation losses that are emphasized often in the DEIS to justify the La'au project. Please identify the components, which make up the Ranch's 3.7 multi-million dollars annual loss from its current operations, and also explain how and by what dates the ranch intends to eliminate these operating losses.

Response: MPL has sold a considerable amount of property, mainly lots at Kaluako'i and Maunaloa and some agricultural land.

As has been outlined in the Economics and Fiscal Impacts report (Appendix J of the Draft EIS), accumulated cash deficits between 2001 and 2007 total \$42 million. Land sales in that period have enabled MPL to remain cash positive and not seek to debt fund its operations or seek funding from its parent.

MPL's parent will no longer fund MPL's operations. If MPL is unable to fund its own operations, MPL will be forced to sell its property piece meal over time to the highest bidders as this will obtain maximum cash returns.

MPL would be unable to meet interest payments on debt funding and not have the necessary interest cover to give comfort to a bank.

MPL can shut many of its loss making operations now. However the cost in terms of human turmoil may be unnecessary with an economic future that is proposed by the Master Plan.

MPL and its staff believe it is operating the company in a fiduciary and proper manner for the benefit of its stakeholders.

If MPL (the Ranch) were experiencing financial difficulties, why did MPL purchase the La'au Point parcel for a reported \$12,000,000 and 4,000 acres at the Kalukoi Resort for a reported \$9,000,000?

Response: This was a business decision and was funded from advances by the BIL parent company.

Mr. Jeffrey Hunt, Director
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 57 of 57

Since purchasing the Kaluakoi resort properties, what is the gross sale value MPL has realized through lot sales?

Response: This is commercially sensitive information, but it has enabled the company to fund cash losses, the entitlement process and much needed capital replacement items.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,



Peter Nicholas
President and CEO
Molokai Properties Limited

Attachments:

- FEIS Figure 10: Land Trust Land Donations and Easements
- Revised Section 2.1.8 (Moloka'i Land Trust)
- Revised Section 2.4 (Community Meetings and Involvement)
- Revised Section 2.3.6 (Covenants)
- Revised Section 4.9.2 (Water)
- Revised Section 3.6 (Flora)
- Revised Section 3.7 (Fauna)
- Revised Section 2.1.9 (Moloka'i Community Development Corporation (CDC))
- Revised Section 6.0 (Alternatives to the Proposed Action)
- Revised Section 2.4 (Community Meetings and Involvement)
- NOAA NMFS Draft EIS response letter (for Ritte's comment)

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Thomas S. Witten, PBR HAWAII

**Elected Office and
Private Organizations**



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

Senator Clayton Hee
Commentary Letter for La'au Point DEIS
02/21/2007
Page 2 of 14

by 10-miles of the "most pristine and cherished fishing grounds on Moloka'i." (Walter Ritte, Maui News, September 21, 2006). The Draft Environmental Impact Statement ("DEIS") by PBR Hawaii acknowledges that "La'au Point has become an icon of what Moloka'i represents -- a rural stronghold and reserve of Native Hawaiian culture, a cultural kipuka." (DEIS, p. 54).

Despite the sacredness of the area and its abundance of natural resources, the landowner/developer Moloka'i Properties Ltd. ("MPL") insists on transforming the culturally sensitive and resource rich La'au Point into a multi-million dollar luxury shoreline development, which as a practical matter no Moloka'i resident could afford to purchase.

February 21, 2007

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED & FACSIMILE TRANSMITTAL

Peter Nicholas & John Sabas
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Genevieve Salmonson
OEQC
235 S. Beretania St. #702
Honolulu, HI 96813

Re: Comments on La'au Point Draft Environmental Impact Statement

Dear Mr. Nicholas, Mr. Sabas, Mr. Witten, Mr. Ching, and Ms. Salmonson:

La'au Point, on the southern and western shorelines of Moloka'i, is one of the most sacred places in the state of Hawai'i. Mo'olelo reveal the area's cultural significance, and present day subsistence practices portray active customary and traditional fishing, hunting, and gathering. Native Hawaiian culture is alive at La'au, which is surrounded

The majority of long-time Moloka'i residents have expressed grave concerns and widespread resistance to the type of environmental desecration and destruction that will be caused by the La'au Project. During the planning of the Community-Based Master Land Use Plan for Moloka'i Ranch ("Master Plan"), community meetings were filled with individuals and families alike consistently voicing their opposition to the multi-million dollar development. Video footage at meetings and local newspaper articles clearly demonstrate that the overwhelming majority of attendees do not support the proposed MPL La'au Point Project. In testimony at those meetings, island residents continuously expressed serious concerns detailing a wide range of issues, specifically including limited water resources, adverse social impacts, and Native Hawaiian culture and resources. The community again voiced their concern two weeks ago in an election for the Moloka'i Economic Community Board, the same organization that voted to approve the Master Plan. The ballots cast this year were significantly higher than last year -- 1,275 ballots compared with a mere 103 in 2006, and the community spoke volumes when two La'au Point project opponents "overwhelmingly defeated" two project supporters. (Dieus, Howard, Pacific Business News, "Parched Moloka'i land becomes fertile ground for disagreement," February 16, 2007).

In response to this widespread opposition, Peter Nicholas, MPL President, has consistently stated that it will be the Moloka'i community that will decide whether this project will go through. The majority of the community has already spoken and continues to speak loudly and clearly: they do not want and do not approve of the La'au Point development. To the extent that MPL truly believes that the island of Moloka'i is one of the "last untouched Native Hawaiian places" on "[t]he Last Hawaiian Island," it should focus on the preservation, not desecration of this unique, untouched, and precious resource in the State of Hawai'i. (DEIS, p. 54).

Governor Linda Lingle opined in her State of the State Address on January 22, 2007, "[w]hile we all want a higher standard of living for ourselves and our children [we also] want to preserve everything that makes Hawai'i unique... especially our cultural and natural resources." The Governor also stated that in order to accomplish preserving Hawai'i's unique resources, we need to shift from dependence on land development and

change our economy to one fueled by science, mathematics, innovation, and high technology.

If there is any place in Hawai'i that can be described as rich in cultural and natural resources it is La'au Point. Its unique abundance of endangered species, marine resources, and cultural and subsistence resources should be preserved for future generations.

I. MPL'S PUBLIC REVIEW PERIOD WAS INADEQUATE

The limited time provided for public review of and comment on the DEIS was not sufficient to enable adequate review. The lengthy DEIS was originally released during the 2006 holiday season, which was problematic as family and friends properly focused their attention on celebrating Christmas and New Years. Although a short extension was finally granted after numerous requests, the response and eventual extension approval inexplicably took over two weeks, and thus did not provide a full and fair opportunity for concerned community members to offer input on the inadequacy of MPL's incomplete and pejorative analysis.

II. THE SCOPE AND IMPACTS COVERED WITHIN THE DEIS IS INADEQUATE

A. Inappropriate Scope

The DEIS is convoluted, including irrelevant and false information that is confusing and misleading to the public and the Land Use Commission ("LUC"). According to the Project Profile, the Project Name is La'au Point and the Project Area consists of 1,432 acres. (DEIS, p.1). If the applicant is preparing an Environmental Impact Statement ("EIS") for the La'au Point Project, the focus of the EIS should be limited to the impacts and mitigation efforts directly related to the La'au Point development, including its deleterious impacts to the island of Moloka'i. The DEIS constantly refers to the Master Plan, which MPL claims mitigates the overall impacts to the La'au area.

If MPL insists that the Master Plan truly mitigates the impacts to the petition area, the entire plan should be subject to HRS § 343, the Hawai'i Environmental Impact Statement law, which would require disclosure of "the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects."

Despite the efforts of those involved in creating the overall Master Plan, the granting of other lands to the Land Trust and the Moloka'i Community Development Corporation will not mitigate the environmental, cultural, and spiritual impacts at La'au. La'au Point is used by traditional and customary practitioners, and contains cultural and natural

resources unique to La'au. Protecting similar rights and resources in other areas will not change the inevitable and devastating impacts that will occur if the development is approved. Further, highlighting only the benefits of the overall plan serves to distort and confuse the environmental and cultural impacts that will result from the proposed multi-million dollar development.

B. Cumulative Impacts

If MPL insists that the La'au Project is crucial to the economic viability of the Master Plan, and its specific plans for the Kaluako'i Hotel re-opening, developments in Kaluako'i, Maunaloa, and Papohaku, and the CDC's affordable housing and community development projects, all cumulative impacts from these projects must and should be detailed in the DEIS. This will assist the public to understand the relationship of one to the other, as well as to understand the true impacts of a project of this size and scale.

Pursuant to HAR § 11-200-17(2), an EIS must examine all "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)." Cumulative impacts are those

"impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

HAR § 11-200-2.

MPL's empty claim that implementation of the Master Plan "may result in increases in demand for police, fire, medical, education, and other public services," and that the community character of Moloka'i will experience change, is wholly inadequate and does not adequately address the cumulative impacts on the environment. (DEIS, p. 161). What are MPL's plans for future development in Kaluako'i, Maunaloa, and Papohaku? What specific environmental, social, cultural, and infrastructure impacts will result from these future developments, the re-opening Kaluako'i hotel, and the community development projects?

Overall, the objectives of the La'au Point project and the Master Plan should be separated. Regardless of MPL's interest in creating a sustainable future for Moloka'i, it is misleading and inaccurate to claim that establishing a land trust and securing the community's role in land management are objectives of the proposed luxury development. (See e.g. DEIS, p. 4).

III. THE DEIS LACKS CRITICAL INFORMATION PERTAINING TO MOLOKA'I'S
CURRENT WATER CRISIS & DOES NOT ADDRESS IMPACTS TO DHHL'S
PRIORITY RESERVATION

- A. Moloka'i does not have enough water to meet existing uses and already approved developments, and MPL's plans for La'au will only serve to worsen the already heavy burden on Moloka'i and its existing water users.
- Current demand for water has increased as a result of a "growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from existing wells." (USGS Scientific Investigations Report 2006-5177). Although Moloka'i is thought to have more than 30 million gallons per day ("gpd") of sustainable water supplies, completion of approved developments would result in a 54 million gpd deficit. (Dicus, Howard, Pacific Business News, "Parched Moloka'i land becomes fertile ground for disagreement," February 16, 2007).
 - Both federal and state agencies have taken action which serves to protect the limited water resources of Moloka'i island. The EPA designated Moloka'i as a Sole Source Aquifer (59 FR 23063) under the Safe Drinking Water Act § 1424(e). This designation recognizes that Moloka'i has a sole source of drinking water for the entire island, and that water withdrawals from one part of the aquifer affects the water level and quality in other parts. Further, in 1992, the State Commission on Water Resource Management ("CWRM") designated the entire island of Moloka'i a "Ground Water Management Area," which acknowledges that current withdrawals are threatening Moloka'i's water quality and aquifer levels. This threat has been further compounded since the 1992 designation due to increased water demands and withdrawals.
 - The water crisis on Moloka'i makes it very difficult for users to obtain water use permits. Even the Department of Hawaiian Homelands ("DHHL"), which has a priority reservation (see further explanation below), has not been granted a water permit it applied for in 1999.

B. The community on Moloka'i, including Hawaiian homesteaders, have expressed concern that MPL's proposal to pump additional water from the Kakalahale Well will strain and diminish the water table on Moloka'i and interfere with DHHL's priority water reservation.

- Based upon the current and future water needs of DHHL, the homesteaders are properly concerned about MPL's water plan. DHHL currently pumps 569,000 gpd for its consumers at Ho'olehua and Kalama'ula, 202,000 gpd more than authorized by the CWRM. Future homestead lots in the area will require an additional 366,000 gpd, bringing total consumption to 985,800 gpd. DHHL also has plans for future homestead lots in 'Ualapu'e and Kamiloloa, which will require another 418,500 gpd of water. Pursuant to its obligations to fulfill the State of Hawaii's trust responsibilities to native Hawaiians, DHHL has set a goal to provide every qualified native Hawaiian beneficiary on the waiting list an

opportunity for home ownership or land stewardship in the next five years. (DHHL's Strategic Plan, 2003-2008). Upon completion of the 'Ualapu'e and Kamiloloa homesteads there will be at least 167 residential, 547 agricultural, and 173 pastoral applicants on the waiting list. Thus, in fulfilling its trust duty to benefit and rehabilitate native Hawaiians, and in achieving its strategic plans, DHHL should be planning to increase homesteading in Moloka'i, and more homesteading inevitably means increased water needs.

- DHHL has a priority water reservation of 2,905,000 gpd in the Kualapu'u aquifer. Its reservation rights are guaranteed by the Hawaiian Homes Commission Act (HHCA), the state Constitution, the State Water Code, and the public trust doctrine. *In Re Wat'ala O Moloka'i, Inc.*, 103, Hawai'i 401, 423 (2004). The HHCA mandates that "sufficient water shall be reserved for current and foreseeable" needs of Hawaiian home lands. (HHCA § 220). Thus, in applying for a water use permit, MPL has the burden of establishing that its proposed water use will not interfere with DHHL's reservation in the Kualapu'u aquifer. *In Re Wat'ala O Moloka'i, Inc.*, 103, Hawai'i 401, 425 (2004).
- "MPL's 'advice' is that drawing water from the Kakalahale Well will have no impact on the yield of the Kualapu'u aquifer." (DEIS, Appendix P, p. 119). That "advice" contradicts and conflicts with the 2006 USGS Report, which establishes that increased "ground-water withdrawals will affect ground-water levels, discharge of fresh and brackish water to the near shore environment, and possibly salinity of the water pumped from existing wells." The report further finds that pumping water from one well will affect the salinity of nearby wells and the discharge of fresh water to stream mouths and fishponds. (USGS Scientific Investigations Report 2006-5177, p. 4 & 47). The USGS report supports and justifies the public's concern.
 - What is the "advice" that MPL references? Has the MPL performed a study which contradicts the USGS report? If so, why hasn't it been included in the DEIS?
- D. Even in the unlikely event that MPL's withdrawal from the Kakalahale Well will not interfere with the yield of the Kualapu'u aquifer, MPL still fails to show that its Water Plan will not interfere with DHHL's water reservation, which as a public trust purpose is "entitled to the full panoply of constitutional protections afforded other public purposes." *In Re Wat'ala O Moloka'i, Inc.*, 103, Hawai'i 401, 431 (2004).
 - Delwyn Oki, a USGS hydrologist, and expert in this area, has openly stated that he doesn't think that DHHL will be able to get their water reservation from Kualapu'u. (Findings of Moloka'i Water Group - January 2007).
 - If DHHL is unable to get their water reservation from Kualapu'u it will need to seek its water from the next sector - Kamiloloa. MPL's Water Plan consists of a permit to pump 1,000,000 gpd from the Kakalahale Well, which is in the Kamiloloa sector.
 - MPL admits in its DEIS that implementation of its Water Plan will require findings that the withdrawal from the Kakalahale Well will not impact DHHL's

water reservation. (DEIS, Appendix P, p. 23). Why hasn't MPL conducted a study to determine whether or not the La'au Project will interfere with DHHL's reservation or other existing uses? Isn't it more likely to have impacts on DHHL's water reservation if DHHL begins to seek water from Kamilofoa?

- If MPL stands by its public announcements that its water use will yield to DHHL's priority reservation, it must first confirm that its project plans will not interfere with DHHL's water reservation before it proceeds with the La'au Point project. It must also establish that it has some other source of water to support its project. To do otherwise is patronizing to the LUC, the Moloka'i community, and the people of Hawai'i.
- In 1999, when DHHL applied for a water use permit within the limits of its water reservation for its Ho'olehua and Kalama'ula consumers, MPL opposed the application. Although MPL eventually withdrew its opposition, its past actions regarding DHHL's water reservation evidences a position on the limited water resources of Moloka'i. The LUC should be wary of approving a project conditioned upon MPL's empty promise to yield to DHHL's priority reservation.

E. MPL does not indicate how it plans to transport the water from the Kakalahale Well to the project site.

- Currently MPL transports its potable water using the MIS distribution system, however this system would not be appropriate for the brackish water that would come from the Kakalahale Well even assuming its water use permit is approved. MPL states it will not propose transmission by the MIS system, and the company has already failed in past attempts to build a new line on DHHL property.
- MPL should provide the LUC with a transmission line other than the MIS system and the DHHL pipelines, the costs to construct the alternative line, and an evaluation of any cultural and environmental impacts that may result from the line, prior to any LUC decisions regarding this proposal.

F. MPL contends it will sign covenants preventing it from ever seeking further potable water permits from the State Commission on Water Resource Management (CWRM). However, nothing prevents the new owners of the individual lots and subsequent assignees from applying. Who will be party to the covenants? Who will be able to enforce these covenants?

G. MPL has rightly conceded that the specifics of the water resource issues have yet to be sufficiently identified. MPL should not proceed with a project that will require 1,000,000 additional gpd to be pumped from the Kamilofoa aquifer, heavy water use during construction, and additional water for proposed public parks, until there is more certainty regarding the current water sources and issues on Moloka'i.

H. The State of Hawai'i and its agencies have a continuing public trust obligation to "ensure the continued availability and existence of water resources for present and future generations." *In Re Wai'ola O Moloka'i, Inc.*, 103, Hawai'i 401, 431 (2004), *citing In*

Re Water Use Applications ("Waihole I"), 94 Hawai'i 97, 139 (2000). The State and its agencies, including the LUC, also have a special trust responsibility to native Hawaiians pursuant to the Hawaiian Homes Commission Act and the Admissions Act. In deciding MPL's application the LUC should ensure it fulfills its constitutional and statutory mandates.

IV. THE DEIS DOES NOT SUFFICIENTLY ADDRESS IMPACTS TO AND MITIGATION OF NATIVE HAWAIIAN TRADITIONAL & CUSTOMARY RIGHTS

MPL's promise to "recognize" Native Hawaiian subsistence rights insults Native Hawaiian practitioners who do not need the MPL to validate their rights to exercise traditional and customary practices protected by the Hawai'i State Constitution, other state laws, and Hawai'i common law.

Addressing the effects on Hawai'i's culture and traditional and customary rights and practices is of vital importance in an EIS. In 2000, the Hawai'i state legislature specifically recognized that Native Hawaiian culture plays a vital role in the preservation of Hawai'i's 'aloha spirit' and that Articles IX and XII of the state constitution, other state law, and Hawai'i's courts, impose on government agencies a duty to promote and protect cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. Additionally, and most importantly, the legislature "observed that the past failure to require native Hawaiian cultural impact assessments resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 47, fn 28 (2000).

Pursuant to Haw. Const. art XII § 7, the LUC is obligated to "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible" when granting a petition for reclassification of district boundaries. *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 35 (2000). To protect traditional and customary Native Hawaiian rights, the LUC is, at a minimum, required to make specific findings and conclusions regarding

"(1) the identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the 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 to be taken by the state to reasonably protect native Hawaiian rights if they are found to exist."

Ka Pa'akai O Ka'aina v. Land Use Commission, 94 Hawai'i 31, 35 (2000).

The DEIS lacks necessary data to enable the LUC to make its required findings and conclusions:

A. Identity and Scope

- What is the extent to which traditional and customary native Hawaiian rights are exercised at La'au Point? How often is La'au used by gatherers? Fishermen? Hunters? Those seeking spiritual solace? How many gatherers, fishermen and hunters use the area?
- The Cultural Impact Assessment claims that La'au Point is so isolated that most of the residents of Moloka'i have never been there and thus have had no direct experience with the place. This statement can be confusing and misleading to the public. What data justifies this statement? What percentages of long-time residents and/or traditional and cultural practitioners use the area? What percentage of the residents who have not been to La'au benefit from its cultural, historical, or natural resources?
- The Cultural Impact Statement identifies coastal and cultural subsistence resources found at La'au Point, but what is the size and significance of these resources?

B. Impairment

- What are the realistic impairments to traditional and customary rights? The DEIS' 160-page cultural assessment points out some of the real and practical concerns of Moloka'i community members. Specifically, concerns recorded in the Cultural Assessment include the following: fishermen will lack privacy, throw net subsistence fishers require an undisturbed beach that allows fish and to forage closer inshore, gatherers of 'ama crabs require dark silent nights to ensnare their nocturnal prey, and subsistence practitioners are likely to be confronted by insensitive newcomers intolerable of extractive activities. What will be the impact to these practitioners? How does the DEIS address these specific concerns?
- As disclosed in the Cultural Impact Assessment, a 1993 Subsistence Sites map indicates intensive fishing and ocean gathering in the exact area of the proposed La'au Project. (DEIS, Appendix F, p. 40). If La'au and its shores serve as an "icebox" for fishermen, what effects will the development have on the families who rely upon the fishermen for a significant source of their food? What affects will be had on the families who do not "engage in subsistence practices but benefit through the sharing and exchange among family members and neighbors?"
- The DEIS acknowledges more than once that the overall cultural concern is that the La'au Point Project "will destroy the special quality of La'au as a special place of spiritual mana and power." (See e.g. DEIS, Appendix F, p. 149). Residents have stated it is the overall isolation of the area that is the foundation

for exercise of an individual's spiritual connection. What impact will the development have on spiritual practitioners?

- The DEIS does not adequately address the impacts that pumping 1,000,000 gpd will have on traditional and customary gathering rights. According to the 2006 USGS Report, ground-water withdrawals will affect the discharge of ground water discharge to the near shore environment. Significantly, this near shore environment is "essential to the livelihood" of several species of fish and limu. *In Re Wai'ola O Moloka'i, Inc.*, 103, Hawai'i 401, 413 (2004). Why doesn't the DEIS address the findings of USGS' most recent report, which has significant bearing on the same contested issues brought forth by interveners in the Wai'ola litigation? What impact will MPL's water plan have on limu (e.g., ogo, manana, etc etc), fish (e.g., mullet, holehole, milkfish), and other coastal resources? How will these impacts affect traditional and customary practitioners? What ground-water models are referred to in the Cultural Impact Statement? (DEIS, Appendix F, 131).

C. Feasible Action

The DEIS' feasible action does not adequately address the concerns of the community.

- As disclosed by the Cultural Impact Assessment, subsistence practitioners have been faced with challenges from newcomers and new residents from the Continental U.S. and the Philippines. (DEIS, Appendix F, p. 37). How will the new residents, many likely to be from outside of Hawai'i be any different? MPL insists that the homes at La'au Point will be a vacation/second home for the new landowners and only 30% of the homes will be occupied by permanent residents. What practical effects will attending educational classes have on the majority "vacationing" landowners who are less likely to have a genuine interest to learn about the Moloka'i lifestyle and culture?
- The DEIS states that the CC&Rs and additional guidelines will mitigate identified impacts to the cultural and natural resources. What is the exact language of these CC&Rs and additional guidelines? What are the enforcement and substantial penalties mentioned in the Master Plan that will "ensure" that the covenants are respected and upheld? (DEIS, Appendix A, p. 101). Who will be able to enforce these CC&Rs?
- If the Conservation Zone and other "protected" areas within the subdivision will be controlled equally by the homeowners and the Land Trust, what happens when there is a dispute? How will leaving decisions relating to subsistence protection and archaeological site protection to the new homeowners, who will not likely have any understanding of traditional and cultural practices, serve to mitigate and reasonably protect Native Hawaiian rights? (DEIS, Appendix F, p. 18).

The State and its agencies, specifically the LUC has an affirmative duty to protect traditional and customary rights and cannot delegate its trust obligations to the Moloka'i

Land Trust, a proposed, and not yet existing private entity. See e.g. *Ka Pa'akai*, 94 Haw. 31 (2000).

V. THE DISCUSSION OF ENDANGERED SPECIES WITHIN THE DEIS IS WHOLLY INADEQUATE

Hawai'i is often called the endangered species capital of the world. According to the Bishop Museum, there are more endangered species per square mile in Hawai'i than any other place in the world. Survival of the many endangered species found in Hawai'i is critical to maintaining our heritage, and thus it is our kuleana to protect our State's rich and vast array of unique species.

A. Hawaiian Monk Seal

The DEIS fails to adequately consider and measure the significance of La'au Point as a habitat of the Hawaiian Monk Seal. The DEIS also fails to assess the impacts the project will have on the monk seal population and its feeding grounds at the La'au Point fishery.

- The Hawaiian Monk Seal has been designated by the National Marine Fisheries Services ("NMFS") and the U.S. Fish and Wildlife Service ("USFWS") to be an endangered species pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). According to the NMFS:

"The Hawaiian Monk Seal is in crisis; the population is in a decline that has lasted 20 years and only around 1,300 monk seals remain. Modeling predicts the species' population will fall below 1,000 animals in the next five years. [T]he Hawaiian monk seal is headed to extinction."

National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006.

- The NMFS' Recovery Plan considers it very important to increase the number of monk seals in the Main Hawaiian Islands for its recovery, and a part of the recovery strategy is to ensure the natural growth of the monk seal in these islands. It notes that the Main Hawaiian Islands "represents a large amount of under-occupied habitat, which could support a larger population of seals if appropriate management actions were in place." (National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006).
- In addressing the La'au Point DEIS, the NMFS has concluded that La'au Point is an important habitat for the seals based upon the high number of documented monk seal sightings and the significant number of animals that use the area. (DEIS Commentary Letter, written by Chris E. Yates, on behalf of the National Marine Fisheries Services, February 5, 2007). It is known by many in the community that Hawaiian Monk Seals frequent the La'au Point area because of its isolation. The NMFS' commentary letter supports this, and in addition points out

that La'au's sandy beach and proximity to foraging areas also make it an especially good monk seal habitat.

- The DEIS fails to address the following: What effects will the development have on La'au as a habitat for monk seals? What impact will the increased human interaction have on the monk seals? How will domestic animals and humans impact the monk seals health and its population at La'au Point?
- The field study's statement that "[m]onk seals haul out to rest on beaches as deserted as this beach or as heavily used as public beaches on Oahu," is misleading. (DEIS, Appendix C p. 5). It is well known that monk seals do not frequent heavily populated beaches. To the contrary the USFWS has stated that remote areas with little impact by humans are the ideal habitat for the easily disturbed monk seals, and the NMFS' commentary letter describes monk seals that are tolerant of human presence to be the exception rather than the rule.

B. Endangered Sea Turtles

- MPL has been put on notice that native species of turtles and turtle nesting areas can be found in the La'au Point area. (DEIS, p. 57 & Appendix F, p. 145). The U.S. Fish and Wildlife Service established the Green Sea Turtle (*Chelonia mydas*), Leatherback Sea Turtle (*Dermochelys coriacea*), and the Hawksbill Sea Turtle (*Eretmochelys imbricata*), all found in Hawai'i, to be endangered pursuant to the Endangered Species Act of 1973. (U.S. Fish & Wildlife Service Threatened and Endangered Species System).
- The DEIS is completely absent of any data on how the La'au Point development will impact these endangered species.

C. 'Ihi ihilaaukea (*Marsilea villosa*)

- The U.S. declared the 'Ihi ihilaaukea an endangered species pursuant to the Endangered Species Act of 1973. (50 CFR Part 17). The Federal Register notes that "the extremely small number and size of the populations and their restricted distribution makes the species more vulnerable to stochastic events," and that "a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals" of the species. (50 CFR Part 17). The species has been known to exist in three small populations, one of which can be found at La'au Point. However, upon visiting La'au Point this past weekend, two populations, approximately 12 feet by 12 feet were found and documented at Kamakaipo by Walter Ritte and Scarlett Ritte Camara.
- The DEIS discloses that a management plan is to be developed by the Land Trust within the proposed development area. (DEIS, p. 43). Nothing in the DEIS speaks to protecting the 'Ihi ihilaaukea in the management plan. What requires MPL and future La'au residents from complying with the Land Trust's management plan? How might the 'Ihi ihilaaukea benefit from habitat created by

settling ponds and human habitation and intrusion into its natural habitat? (DEIS, p. 70).

VI. MANY OF SUPPOSED BENEFITS OF THE MASTER PLAN ARE MISLEADING TO THE PUBLIC AND THE LUC

A. One Last Development

The MPL has attempted to sell the La'au Point Project to the Moloka'i community by promising that La'au Point will be the last major development on ranch lands outside of the resort area. Such public statements are false and unenforceable, and are consistent with the history of MPL making disingenuous pronouncements to the Moloka'i island community. Moreover, such scurrilous statements are non-binding and are further evidence of MPL's efforts to move this project forward regardless its distorted representations.

B. Land Donation

The Land donation of 26,200 acres to the Moloka'i Land Trust doesn't change one iota the irreversible effects of a large luxury development at La'au Point to the island's ecosystem, its severely limited water supply, and its natural and cultural resources.

C. Agricultural Easement

MPL also promises to forever "protect" 14,390 acres of land by creating an Agricultural Easement. The promise that this easement will protect these lands from development is false, misleading, and difficult to enforce. Under this agricultural easement, MPL is still permitted to construct "farm dwellings." The definition of a farm dwelling is the subject of ongoing litigation. While one would imagine a farm dwelling to be a single-family home situated on an agricultural lot, yet many of the large homes located at Kahaako'i have been justified as "farm dwellings". One need only be reminded of the multi-million dollar farm dwellings constructed at the Hoku'i a development on the west side of the island of Hawai'i to appreciate the abuse of large landowner developers in Hawai'i.

VII. CONCLUSION

It is not the Master Plan that will set the stage for Moloka'i's future or assure its residents self-determination. It is the steadfast adherence of the community to what is pono. A massive luxury shoreline development is not pono for La'au Point, which is "regarded as a special place of spiritual mana and power." (DEIS, Appendix F, p. 144).

As the LUC reviews this EIS it must balance the loss of natural resources and risk to the Moloka'i Community and the larger Native Hawaiian community, with the economic

benefit to foreign land owners of developing 200 multi-millionaire lots in a sacred and revered area where the community has loudly and consistently voiced its opposition.

The DEIS is consistent with MPL's longstanding tradition and effort to maximize its profits regardless of the cost to the people and limited natural resources of the island of Moloka'i. MPL continues to shroud its profiteering efforts with entitlements which engender wide-spread opposition and criticism were they to develop historically and culturally significant areas like Ka'ana.

There is not likely a single resident of the island of Moloka'i who could purchase a proposed unit in the La'au Point Development, and by its own admission within the DEIS, the development is intended to be a vacation/second home for the super rich. Longtime local people who have lived on Moloka'i since time immemorial would likely be considered trespassers or engaged in menial tasks for the newly minted landowners' property, not unlike every other Hawaiian island where second homes for the super rich and famous have been constructed at irreversible costs to the Hawaiian island environment and her people.

Sincerely,



Clayton Hee
State Senator
Member, Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs



November 1, 2007

The Honorable Senator Clayton Hee
State Capitol
415 South Beretania Street, Room 228
Honolulu, Hawaii 96813

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Senator Hee:

Thank you for your letter dated February 21, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). Below, we respond to your comments.

1. *La'au Point, on the southern and western shorelines of Molokai, is one of the most sacred places in the state of Hawai'i... The majority of long-time Molokai residents have expressed grave concerns and widespread resistance to the type of environmental desecration and destruction that will be caused by the La'au Project. During the planning of the Community-Based Master Land Use Plan for Molokai Ranch ("Master Plan"), community meetings were filled with individuals and families alike consistently voicing their opposition to the multi-million dollar development. Video footage at meetings and local newspaper articles clearly demonstrate that the overwhelming majority of attendees do not support the proposed MPL La'au Point Project. In testimony at those meetings, island residents continuously expressed serious concerns detailing a wide range of issues, specifically including limited water resources, adverse social impacts, and Native Hawaiian culture and resources. The community again voiced their concern two weeks ago in an election for the Molokai Economic Community Board, the same organization that voted to approve the Master Plan. The ballots cast this year were significantly higher than last year — 1,275 ballots compared with a mere 103 in 2006, and the community spoke volumes when two La'au Point project opponents "overwhelmingly defeated" two project supporters. (Dicus, Howard, Pacific Business News, "Parched Molokai land becomes fertile ground for disagreement," February 16, 2007), (pages 1-2)*

Response: With the diversity of the island, we are aware that not everyone will agree on everything. We acknowledge your comment about the EC election and results; however, we respectfully disagree with your conclusion that there is a direct correlation between the election results and the project. The EC Board election was not a mandate for the Lā'au Point project, and the election should not be construed as the sole indicator of support for or against the Lā'au Point project.

The election held on January 31, 2007 was for two board members the Molokai Enterprise Community (EC) Governance Board. While some candidates ran on platforms that included stances on the proposed development at Lā'au Point, the proposed development at Lā'au Point is not a project of the EC.

The EC facilitated the Master Plan community-based planning process (as discussed in Section 2.1.6 of the Draft EIS), and later voted to support the Master Plan based on the strong

recommendation from the Land Use Committee. The EC has also stated that the Master Plan represents the fulfillment at the highest levels of the key principles of the USDA's Empowerment Zone/ Enterprise Community program, which are: 1) Economic Opportunity; 2) Sustainable Community Development; 3) Community-based Partnerships; and 4) Strategic Vision for Change.

A total of 1,284 voters turned out for the January 31, 2007 EC election, casting a total of 2,541 votes (2 votes per person minus 27 abstentions and voided ballots). This turnout, while record-setting for EC elections, represents only 25.6% of Molokai's residents over 18 (According to the 2000 Census, the Molokai population over 18 years of age is 5,015). Bridget Mowat and Leila Stone, who won the two seats and campaigned on an "anti-Lā'au" platform, received a combined 1,683 votes, or 65.5%, equivalent to 841.5 voters. A total of 841.5 voters represent only 16.8% of Molokai's eligible voting age population.

To assume that an election for Board Directors of a private nonprofit corporation is equivalent to a referendum on the Master Plan or a mandate for the Lā'au Point project, no matter what the candidates' platforms, is not only a misrepresentation of fact on many levels, but could also be seen as disenfranchising the other 3,731 eligible Molokai residents (74.4%) who did not turn out to vote.

A community vote on the Master Plan never occurred; there is no provision for one. Regulatory organizations are charged with making the decisions on entitlement issues such as with Lā'au Point. The EC election was for the Board of Directors that has no such regulatory power.

2. *In response to this widespread opposition, Peter Nicholas, MPL President, has consistently stated that it will be the Molokai community that will decide whether this project will go through. The majority of the community has already spoken and continues to speak loudly and clearly: they do not want and do not approve of the La'au Point development. To the extent that MPL truly believes that the island of Molokai is one of the "last untouched Native Hawaiian places" on "[t]he Last Hawaiian Island," it should focus on the preservation, not desecration of this unique, untouched, and precious resource in the State of Hawai'i. (DEIS, p. 54). (page 2)*

Response: We respectfully disagree with your comments regarding the community's decision about the project. There is clearly support for the project and the Master Plan. The Master Plan was created by participating community members who volunteered their time at numerous meetings (see Section 2.4 of the Draft EIS) to plan a sustainable future for Molokai. The Master Plan is a thoughtful and comprehensive compilation of the many visions community members have for Molokai. The Lā'au Point project and the Master Plan, is the product of more than 150 community and special interest group meetings over a three-year span. The Master Plan participants have made it clear their support through the creation of the Master Plan document.

3. *Governor Linda Lingie opined in her State of the State Address on January 22, 2007, "[w]hile we all want a higher standard of living for ourselves and our children [we also] want to preserve everything that makes Hawai'i unique... especially our cultural and natural resources." The Governor also stated that in order to accomplish preserving Hawai'i's unique resources, we need to shift from dependence on land development and change our economy to one fueled by science, mathematics, innovation, and high technology. (page 3)*

Response: We acknowledge your comments about Governor Lingle's State of the State Address. We note that Governor Lingle has also publicly supported the Master Plan and the community-based process to create the Master Plan (See August 18, 2006 article, "Linda Lingle Endorses Master Plan; Criticizes Lā'au Opposition," The Molokai Dispatch).

4. *If there is any place in Hawaii that can be described as rich in cultural and natural resources it is Lā'au Point. Its unique abundance of endangered species, marine resources, and cultural and subsistence resources should be preserved for future generations.* (page 3)

Response: We agree. The many benefits afforded by the Master Plan and the Lā'au Point project ensure the preservation of these resources for future generations (see Section 2.1.7 of the Draft EIS).

L. MPL's Public Review Period Was Inadequate

5. *The limited time provided for public review of and comment on the DEIS was not sufficient to enable adequate review. The lengthy DEIS was originally released during the 2006 holiday season, which was problematic as family and friends properly focused their attention on celebrating Christmas and New Years. Although a short extension was finally granted after numerous requests, the response and eventual extension approval inexplicably took over two weeks, and thus did not provide a fair and fair opportunity for concerned community members to offer input on the inadequacy of MPL's incomplete and pejorative analysis.* (page 3)

Response: The EIS law provides a 45-day review period for Draft EIS. We provided 63 days.

II. The Scope And Impacts Covered Within The DEIS is Inadequate

A. Inappropriate Scope

6. *The DEIS is convoluted, including irrelevant and false information that is confusing and misleading to the public and the Land Use Commission ("LUC"). According to the Project Profile, the Project Name is Lā'au Point and the Project Area consists of 1,432 acres. (DEIS, p.1). If the applicant is preparing an Environmental Impact Statement ("EIS") for the Lā'au Point Project, the focus of the EIS should be limited to the impacts and mitigation efforts directly related to the Lā'au Point development, including its deleterious impacts to the island of Molokai. The DEIS constantly refers to the Master Plan, which MPL claims mitigates the overall impacts to the Lā'au area.* (page 3)

Response: The Lā'au Point Project is one of the elements in the Master Plan. Successful implementation of the overall Master Plan depends on the project's completion. A discussion of the Master Plan is necessary to place into context the breadth of measures available to mitigate the environmental, social and cultural impacts of the project. The State Land Use District Boundary Amendment petition on Lā'au Point before the Land Use Commission, if approved, would not represent approval of the Master Plan.

7. *If MPL insists that the Master Plan truly mitigates the impacts to the petition area, the entire plan should be subject to HRS § 343, the Hawai'i Environmental Impact Statement law, which would require disclosure of "the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects."* (page 3)

Response: See response to #6. The application before the LUC does not ask for the approval of all the Master Plan elements. Furthermore, other aspects of the Master Plan, such as the 50,000+ acres being donated or put into agricultural and open space easements, will not create development; therefore, an environmental review (Chapter 343, HRS) of this action is not "triggered." Kaluako'i Hotel is a renovation of an existing development, and has already started processing its entitlements. Proposed community housing, to be developed by the Community Development Corporation (CDC), will be addressed when the CDC is ready to develop those homes.

8. *Despite the efforts of those involved in creating the overall Master Plan, the granting of other lands to the Land Trust and the Molokai Community Development Corporation will not mitigate the environmental, cultural, and spiritual impacts at Lā'au. Lā'au Point is used by traditional and customary practitioners, and contains cultural and natural resources unique to Lā'au. Protecting similar rights and resources in other areas will not change the inevitable and devastating impacts that will occur if the development is approved. Further, highlighting only the benefits of the overall plan serves to distort and confuse the environmental and cultural impacts that will result from the proposed multi-million dollar development.* (page 4)

Response: Master Plan participants felt that the proposed donated lands and easement lands also hold the same, if not more, significant environmental, cultural, and spiritual value to Lā'au Point's value. In addition, Lā'au Point will still be open to traditional and customary practitioners. The Conservation District will be expanded with this project.

B. Cumulative Impacts

9. *If MPL insists that the Lā'au Project is crucial to the economic viability of the Master Plan, and its specific plans for the Kaluako'i Hotel re-opening, developments in Kaluako'i, Maualoa, and Papohaku, and the CDC's affordable housing and community development projects, all cumulative impacts from these projects must and should be detailed in the DEIS. This will assist the public to understand the relationship of one to the other, as well as to understand the true impacts of a project of this size and scale. Pursuant to HAR § 11-200-17(2), an EIS must examine all "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)." Cumulative impacts are those "impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." HAR § 11-200-2. MPL's empty claim that implementation of the Master Plan "may result in increases in demand for police, fire, medical, education, and other public services," and that the community character of Molokai will experience change, is wholly inadequate and does not adequately address the cumulative impacts on the environment. (DEIS, p. 161). What are MPL's plans for future development in Kaluako'i, Maualoa, and Papohaku? What specific environmental, social, cultural, and infrastructure impacts will result from these future developments, the re-opening Kaluako'i hotel, and the community development projects? (page 4)*

Response: We concur that the Draft EIS must address cumulative impacts, the secondary and non-physical effects of a proposal and the socio-economic consequences of a proposed action. We have done so to the greatest extent possible in this EIS.

First, the Lā'au Point project was analyzed. The environmental impacts and benefits of this project have been addressed based upon the construction of this project in West Moloka'i.

Second, the Lā'au Point project has been addressed as one component that permits other actions to take place such as (1) the reopening of the Kaluako'i Hotel and (2) affordable housing projects elsewhere. To the extent that the EIS must discuss the impacts of re-opening of the Kaluako'i Hotel, this re-opening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

The impact of not increasing tourism on the island is more relevant as most tourism establishments and tour operators are in serious financial difficulties. This is evidenced by the continual change in ownership at Hotel Molokai, the lack of retained earnings to fund capital improvements, and the losses sustained by the Molokai Lodge and Beach Village.

The impact of the re-opening of the Kaluako'i Hotel will produce no more of an impact than when it was open up until right before the tragic events of 9-11-01, providing jobs and a stable economy on the West End of the Island, including a viable Maunaloa elementary school and a viable commercial heart for Maunaloa.

Third, the Lā'au Point project is also a part of the *Community Based Master Land Use Plan for Molokai Ranch* (Master Plan). To this extent, each component of the Master Plan really facilitates each other component of the Master Plan. In an overall context, the Master Plan preserves and protects large amounts of acreage on the West end of Moloka'i. The development of Lā'au Point to some degree facilitates this protection and preservation.

Cumulative impacts are restricted to those future actions that are reasonably foreseeable. MPL's development plans are clearly outlined in the Master Plan. MPL has not proposed any new development for Kaluako'i, Maunaloa, or Pāpōhaku that is not addressed already in the Master Plan. Therefore, your speculation on unplanned future development is not reasonably foreseeable for the purposes of this EIS.

10. Overall, the objectives of the Lā'au Point project and the Master Plan should be separated. Regardless of MPL's interest in creating a sustainable future for Moloka'i, it is misleading and inaccurate to claim that establishing a land trust and securing the community's role in land management are objectives of the proposed luxury development. (page 4)

Response: As previously stated in #6 above, the Lā'au Point project is linked to the implementation of the overall Master Plan.

11. The DEIS Lacks Critical Information Pertaining To Molokai's Current Water Crisis & Does Not Address Impacts To DHHL's Priority Reservation

11. A. Moloka'i does not have enough water to meet existing uses and already approved developments, and MPL's plans for Lā'au will only serve to worsen the already heavy burden on Moloka'i and its existing water users.

Response: MPL believes that there is ample ground and surface water to meet DHHL's and the County's needs while still supporting MPL's plans for all of its lands. MPL's Water Plan does

not adversely affect either DHHL's or the County's ability to develop the water resources they need for future uses.

MPL has committed to using only existing sources, at currently permitted amounts, to meet all of the potable water needs for its current water customers and MPL's future developments proposed under the Master Plan. A new non-potable source is being proposed. Currently permitted uses for potable water from Well 17 include more than 600,000 gpd for irrigation uses. When non-potable water from the Kākaalahale Well becomes available, those irrigation uses that are now supplied with potable water will utilize the new non-potable source, thus freeing up sufficient potable water to meet the demands of the Lā'au Point development.

To ensure water availability to all, MPL, DHHL, and Maui County DWS are working cooperatively to coordinate future water development plans with the assistance of the USGS. It is anticipated that by proper placement of wells, the needs of DHHL, the County, and MPL for the foreseeable future can all be met at reasonable costs to the respective parties.

In response to your comments regarding water issues, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

12. Current demand for water has increased as a result of a "growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from existing wells." (USGS Scientific Investigations Report 2006-5177).

Response: Rising salinity in certain Moloka'i wells appears related to local phenomena associated with particular wells. In particular, the concentrated pumpage of the two DHHL wells (Well Nos. 0801-01 & 02), the County DWS well (Well No. 0801-05) appear to be the cause of chloride rise in these wells.

The DHHL and DWS wells are closely grouped and poorly located relative to each other. All three wells have upgradient/downgradient effects when the DWS well is running while one or the other of the DHHL wells is also operating. A 20 mg/L chloride rise – to levels of about 100 mg/L – in the DHHL wells was an almost immediate response to the start of pumping of the DWS Kualapu'u well in 1991. Chloride levels appear to have been stabilized in all three wells at the higher level.

Well 17 has been in use from 1952 to the present. There has never been a chloride response in the DHHL wells since they began operating in 1961 and 1981, or in DWS well since it began operating in 1991 as a result of pumping the Well 17, even during periods of extended (continuous) pumpage of Well 17 at a 1750 gpm pumping rate (2.5 mgd). The fact that chloride levels for Well 17 have remained stable at about half (or less) the levels in the DHHL and DWS wells is further evidence that pumpage of Well 17 is not producing a chloride response in the DHHL/DWS wells, and vice versa.

The rising chloride levels in Kawela Shaft and 'Ualapu'e Shaft appear to be the result of localized phenomena, and the USGS and Maui County are exploring redistributing and

increasing withdrawals to other locations, including locations within the Kawela and 'Ualapu'e aquifers.

To reflect the above information in the Final EIS, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

13. Although Moloka'i is thought to have more than 30 million gallons per day ("gpd") of sustainable water supplies, completion of approved developments would result in a 54 million gpd deficit. (Dicus, Howard, Pacific Business News, "Parched Moloka'i land becomes fertile ground for disagreement," February 16, 2007).

Response: The numbers referred to in Mr. Dicus' article appear to have been from the Moloka'i Water Working Group's 1996 Report. Some clarification about these numbers is warranted. In considering available water supplies on Moloka'i, the Water Working Group limited its analysis to groundwater. Although the island's ground water sustainable yield is 81 mgd (it was 83 at the time the Water Working Group's report was written), the Group decided to work with a conservative 41.5 mgd of developable yield. Of that amount, 33.5 mgd was considered "sweet" or potable water.

On the demand side, the Water Working Group projected a 2010 potable water demand of 11.55 mgd. That included 2.14 mgd for the Kaluako'i Resort and 2.0 mgd for the Alpha USA property. Since the Water Working Group report, MPL acquired Kaluako'i Resort and the Alpha USA property. MPL's current projected potable water demand for all of its existing and future developments is less than 1.5 mgd, significantly less than the 4.14 mgd projected need for just the Kaluako'i Resort and Alpha property that was utilized in the Water Working Group's analysis.

The big gap between water supply and demand, however, is reflected in the Water Working Group's non-potable water use projections. Total projected long-term non-potable water demand amounted to 42.9 mgd. Included within this amount was 10.6 mgd for Molokai Ranch's agricultural activities. Existing agricultural activities on Ranch lands are supplied with irrigation water from the Ranch's mountain system, not from ground water. There are no plans to convert these uses to ground water sources. Additionally, the Water Working Group projected that 5.8 mgd of non-potable water would be required for Kaluako'i Resort and the Alpha USA property. Under MPL's current ownership, and as identified in the Water Plan for the EC/Molokai Ranch Community-Based Master Land Use Plan, the total long-term demand for non-potable ground water will be less than 1.5 mgd.

In other words, the gap between water availability and water need as identified in the Water Working Group's Report is, under present conditions, overstated, and the conclusion that "projections of water use exceed supply" is probably inaccurate.

The State Commission on Water Resource Management is reconvening the Moloka'i Water Working Group in 2007 in order to, among other things, update demand projections.

Nevertheless, MPL is keenly aware that water is our most precious resource, and, therefore, has incorporated into its plans water system improvements to increase efficiencies and decrease system losses and aggressive water conservation strategies to minimize water demands.

When MPL acquired the Moloka'i Public Utilities water system, inadequate maintenance had resulted in significant system losses amounting to approximately 200,000 gallons per day. MPL has already begun to implement system improvements and anticipates that system losses can be cut in half.

To minimize water demands, MPL will use a number of different strategies. Conservation rates that provide financial incentives to customers to conserve water have already begun to be implemented and its effectiveness has already been manifested. Additionally, covenants on Lā'au Point lots will limit further subdivision of the lots, restrict disturbance of each lot to no more than 30 percent (approximately half-acre, require catchment systems for each residence for irrigation use, requiring drip irrigation systems, double flush toilets and other water conservation devices.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

14. Both federal and state agencies have taken action which serves to protect the limited water resources of Moloka'i island. The EPA designated Moloka'i as a Sole Source Aquifer (59 FR 23063) under the Safe Drinking Water Act § 1424(e). This designation recognizes that Moloka'i has a sole source of drinking water for the entire island, and that water withdrawals from one part of the aquifer affects the water level and quality in other parts.

Response: In response to this comment, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Molokai's "Sole Source Aquifer" Designation."

15. Further, in 1992, the State Commission on Water Resource Management ("CWRM") designated the entire island of Moloka'i a "Ground Water Management Area," which acknowledges that current withdrawals are threatening Moloka'i's water quality and aquifer levels. This threat has been further compounded since the 1992 designation due to increased water demands and withdrawals.

Response: In response to this comment, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Moloka'i Designated a Ground Water Management Area."

16. The water crisis on Moloka'i makes it very difficult for users to obtain water use permits. Even the Department of Hawaiian Homelands ("DHHL"), which has a priority reservation (see further explanation below), has not been granted a water permit it applied for in 1999. (page 5)

Response: To the contrary, applicants have largely been successful in obtaining permits from the Water Commission since designation of the entire island of Moloka'i as a ground water management area in 1992. The Water Commission granted Waioala o Moloka'i an allocation for approximately 650,000 gpd from the Kamiloloa aquifer in 1998 (which was vacated and remanded by the supreme court); in 2001, Kukui Moloka'i was granted a water use permit for 1,018 mgd from Well 17 for existing and new uses; and Pu'u O Hoku obtained a water use permit for 0,235 mgd in 1998.

DHHL's lack of success in obtaining a permit for additional pumping was due to the fact that it wanted to increase pumping from its existing wells and not because of a lack of water resources in the Kualapu'u aquifer. In 1996, DHHL applied to increase its pumpage from its two Kualapu'u wells from its currently permitted 367,000 gpd to 1,247 mgd. The Water Commission staff recommended that the application be denied because DHHL was proposing to increase pumpage from wells that were already showing indications of localized upconing due to the close proximity of the two DHHL wells and the County well. Water Commission staff recommended that any increased withdrawals should be from new wells strategically located elsewhere in the Kualapu'u aquifer so as not to interfere with water quality in the existing wells.

DHHL proposed reducing the amount of increased pumpage, but was not willing to consider a new well site.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

17. B. The community on Moloka'i, including Hawaiian homesteaders, have expressed concern that MPL's proposal to pump additional water from the Kakaalahale Well will strain and diminish the water table on Moloka'i and interfere with DHHL's priority water reservation. Based upon the current and future water needs of DHHL, the homesteaders are properly concerned about MPL's water plan. DHHL currently pumps 569,000 gpd for its consumers at Ho'olehua and Kalama'ula, 202,000 gpd more than authorized by the CWRM. Future homestead lots in the area will require an additional 366,000 gpd, bringing total consumption to 985,800 gpd. DHHL also has plans for future homestead lots in 'Ulapu'e and Kamiloloa, which will require another 418,500 gpd of water. Pursuant to its obligations to fulfill the State of Hawaii's trust responsibilities to native Hawaiians, DHHL has set a goal to provide every qualified native Hawaiian beneficiary on the waiting list an opportunity for home ownership or land stewardship in the next five years. (DHHL's Strategic Plan, 2003-2008). Upon completion of the 'Ulapu'e and Kamiloloa homesteads there will be at least 167 residential, 547 agricultural, and 173 pastoral applicants on the waiting list. Thus, in fulfilling its trust duty to benefit and rehabilitate native Hawaiians, and in achieving its strategic plans, DHHL should be planning to increase homesteading in Moloka'i, and more homesteading inevitably means increased water needs. DHHL has a priority water reservation of 2,905,000 gpd in the Kualapu'u aquifer. Its reservation rights are guaranteed by the Hawaiian Homes Commission Act (HHCA), the state Constitution, the State Water Code, and the public trust doctrine. In Re Wai'ola O Moloka'i, Inc., 103, Hawaii 401, 423 (2004). The HHCA mandates that "sufficient water shall be reserved for current and foreseeable" needs of Hawaiian home lands. (HHCA § 220). Thus, in applying for a water use permit, MPL has the burden of establishing that its proposed water use will not interfere with DHHL's reservation in the Kualapu'u aquifer. In Re Wai'ola O Moloka'i, Inc., 103, Hawaii 401, 425 (2004). (page 5-6)

Response: As provided for under Hawaii law, and as MPL has consistently reiterated, DHHL's priority rights to water will be recognized.

MPL concurs that any ground water withdrawals on Moloka'i must consider the impact it would have on DHHL's ability to develop its reservation of 2,905 mgd from the Kualapu'u aquifer.

For DHHL to develop its 2,905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kakaalahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kakaalahale Well will be down- and across-gradient, and on the downstream side of known intervening intrusive structures, from any wells that DHHL is likely to develop to access any part of its 2,905 mgd reservation. Therefore, an adverse impact on future DHHL wells is highly unlikely.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

18. C. "MPL's 'advice' is that drawing water from the Kakaalahale Well will have no impact on the yield of the Kualapu'u aquifer." (DEIS, Appendix P, p. 119). That "advice" contradicts and conflicts with the 2006 USGS Report, which establishes that increased "ground-water withdrawals will affect ground-water levels, discharge of fresh and brackish water to the near shore environment, and possibly salinity of the water pumped from existing wells." The report further finds that pumping water from one well will affect the salinity of nearby wells, and the discharge of fresh water to streams, moatls and fishponds. (USGS Scientific Investigations Report 2006-5177, p. 4 & 47). The USGS report supports and justifies the public's concern. ¶What is the "advice" that MPL references? Has the MPL performed a study which contradicts the USGS report? If so, why hasn't it been included in the DEIS? (page 6)

Response: First, we do not know where the first quoted sentence comes from. We note that there is no page 119 in Appendix P, and the statement is not found on page 119 of the Draft EIS. We respond to the remainder of your comment below.

The Water Commission has established separate sustainable yields for each aquifer system. The Kakaalahale Well is within the Kamiloloa aquifer; therefore a withdrawal of 1 mgd from the Kakaalahale Well will not affect the remaining sustainable yield of the Kualapu'u aquifer.

In response to your comment, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Additional Information on the Kakaalahale Well."

19. D. Even in the unlikely event that MPL's withdrawal from the Kākalahale Well will not interfere with the yield of the Kualapu'u aquifer, MPL still fails to show that its Water Plan will not interfere with DHHL's water reservation, which as a public trust purpose is "entitled to the full monopoly of constitutional protections afforded other public purposes." In *Re Wat'ala O Moloka'i, Inc.*, 103, Hawaii 401, 431 (2004). ¶Debyon Oki, a USGS hydrologist, and expert in this area, has openly stated that he doesn't think that DHHL will be able to get their water reservation from Kualapu'u. (Findings of Moloka'i Water Group -- January 2007).

Response: As provided for under Hawai'i law, and as MPL has consistently reiterated, DHHL's priority rights to water will be recognized, and MPL will not interfere with DHHL's water reservation.

MPL's understanding is that Mr. Oki's statement was made in reference to a ground water model simulation that he conducted in 2006. USGS simulated the withdrawal of 2,905 mgd from four arbitrarily sited wells within the Kualapu'u aquifer. These arbitrarily chosen sites were spaced relatively close together and not far distant from the existing Kualapu'u well field. Under that scenario, USGS concluded that DHHL could not develop the full amount of its reservation from the Kualapu'u aquifer.

For DHHL to develop its 2,905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kākalahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kākalahale Well will be down- and across-gradient, and on the downstream side of known intervening intrusive structures, from any wells that DHHL is likely to develop to access any part of its 2,905 mgd reservation. Therefore, an adverse impact on future DHHL wells is highly unlikely.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

20. If DHHL is unable to get their water reservation from Kualapu'u it will need to seek its water from the next sector -- Kamiloloa. MPL's Water Plan consists of a permit to pump 1,000,000 gpd from the Kākalahale Well, which is in the Kamiloloa sector.

Response: DHHL's 2.9 mgd reservation is for the Kualapu'u aquifer. The reservation is not easily transferred to the "next sector--Kamiloloa" as you assume. DHHL does not have a reservation in Kamiloloa.

The sustainable yield for the Kamiloloa aquifer is 3 mgd. Current allocations total 0.211 mgd. If MPL is granted a permit for 1 mgd for the Kākalahale Well, 1,789 mgd of sustainable yield will still be available.

The Kākalahale well site is hydrogeologically isolated also from other areas within the Kamiloloa aquifer where there is a potential for developing potable water, such as the proposed Waioala well site. Thus, withdrawing 1 mgd from the Kākalahale well is unlikely to decrease the potential for developing potable water sources in the Kamiloloa aquifer in the future.

21. MPL admits in its DEIS that implementation of its Water Plan will require findings that the withdrawal from the Kākalahale Well will not impact DHHL's water reservation. (DEIS, Appendix P, p. 23). Why hasn't MPL conducted a study to determine whether or not the La'au Project will interfere with DHHL's reservation or other existing uses? Isn't it more likely to have impacts on DHHL's water reservation if DHHL begins to seek water from Kamiloloa?

Response: For DHHL to develop its 2,905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kākalahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kākalahale Well will be down- and across-gradient, and on the downstream side of known intervening intrusive structures, from any wells that DHHL is likely to develop to access any part of its 2,905 mgd reservation. Therefore, an adverse impact on future DHHL wells is highly unlikely.

The Kākalahale well site is hydrogeologically isolated also from other areas within the Kamiloloa aquifer where there is a potential for developing potable water, such as the proposed Waioala well site. Thus, withdrawing 1 mgd from the Kākalahale well is unlikely to decrease the potential for developing potable water sources in the Kamiloloa aquifer in the future.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

22. If MPL stands by its public announcements that its water use will yield to DHHL's priority reservation, it must first confirm that its project plans will not interfere with DHHL's water reservation before it proceeds with the La'au Point project. It must also establish that it has some other source of water to support its project. To do otherwise is patronizing to the LUC, the Moloka'i community, and the people of Hawai'i.

Response: To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that such uses will not interfere with DHHL's reservation. MPL has further acknowledged that its proposed use of 1 mgd from the Kākalahale Well is premised upon a showing that it will not interfere with DHHL's reservation rights.

The DEIS, on page 82, identified brackish water from the Prawn Farm and desalination as alternative sources of non-potable water.

23. In 1999, when DHHL applied for a water use permit within the limits of its water reservation for its Ho'olehua and Kalahele consumers, MPL opposed the application. Although MPL eventually withdrew its opposition, its past actions regarding DHHL's water reservation evidences a position on the limited water resources of Moloka'i. The LUC should be wary of approving a project conditioned upon MPL's empty promise to yield to DHHL's priority reservation. (page 6-7)

Response: When DHHL applied for a water use permit to increase pumpage from its Kualapu'u wells in 1996 (not 1999), DHHL was a party in a contested case proceeding on Waioala o Moloka'i's application for a new well and water use permit in the Kamiloa aquifer. In the Waioala contested case, DHHL took the position that pumping 1.25 mgd from the proposed Waioala well, which was more than 3 miles away from the Kualapu'u well field, would adversely affect existing pumping from the DHHL wells. According to DHHL, the transition zone was close to the bottom of its wells, thus the additional pumping by Waioala would result in an unacceptable increase in chloride levels in the DHHL Kualapu'u wells. At the same time, DHHL contradicted itself by filing an application to pump more out of its existing wells. Waioala/Moloka'i Ranch did not oppose DHHL's application, but sought to explore this blatant contradiction that through a contested case proceeding on DHHL's application.

DHHL did not receive a permit for additional pumping because the Water Commission staff recommended that the application be denied because DHHL was proposing to increase pumpage from wells that were already showing indications of localized upconing due to the close proximity of the two DHHL wells and the County well. Water Commission staff recommended that any increased withdrawals should be from new wells strategically located elsewhere in the Kualapu'u aquifer so as not to interfere with water quality in the existing wells. DHHL proposed reducing the amount of increased pumpage, but was not willing to consider a new well site.

That MPL will yield to DHHL's priority reservation is not an empty promise, but a requirement of law. MPL's agreement to withdraw its Waioala application under the terms of this Plan, and its offer to DHHL to use the resources of Well 17, should be evidence of MPL's sincerity in relation to the DHHL reservation for water in the Kualapu'u aquifer.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

24. E. MPL does not indicate how it plans to transport the water from the Kakalahale Well to the project site. Currently MPL transports its potable water using the MIS distribution system, however this system would not be appropriate for the brackish water that would come from the Kakalahale Well even assuming its water use permit is approved. MPL states it will not propose transmission by the MIS system, and the company has already failed in past attempts to build a new line on DHHL property. MPL should provide the LUC with a transmission line other than the MIS system and the DHHL pipelines, the costs to construct the alternative line, and an evaluation of any cultural and environmental impacts that may result from the line, prior to any LUC decisions regarding this proposal. (page 7)

Response: Kakalahale Water will be transmitted through one of the existing pipelines used to transport water from the Mountain system and not mixed in with the MIS system.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

25. F. MPL contends it will sign covenants preventing it from ever seeking further potable water permits from the State Commission on Water Resource Management (CWRM). However, nothing prevents the new owners of the individual lots and subsequent assignees from applying. Who will be party to the covenants? Who will be able to enforce these covenants? (page 7)

Response: Individual owners would not apply to the CWRM. MPL is the water company for the West End.

26. G. MPL has rightly conceded that the specifics of the water resource issues have yet to be sufficiently identified. MPL should not proceed with a project that will require 1,000,000 additional gpd to be pumped from the Kamiloa aquifer, heavy water use during construction, and additional water for proposed public parks, until there is more certainty regarding the current water sources and issues on Moloka'i. (page 7)

Response: MPL has been working diligently with DHHL and the County of Maui Department of Water Supply (DWS) to find water solutions for Moloka'i's future needs.

Since September of 2006, MPL has attempted to join with DHHL and the DWS in having USGS perform a comprehensive model for the Moloka'i aquifers. USGS is now moving forward with a joint study, the terms of which are currently under discussion with all parties.

USGS recently undertook a two-dimensional modeling exercise of the Kualapu'u and adjacent aquifers for the Army Corps of Engineers. This study included modeling of the impact of the Kakalahale Well on the DHHL wells. The results, which were preliminarily released in August 2007, indicate that the pumping of 1.0 mgd from the Kakalahale Well would have a negligible effect on the DHHL wells and the Kualapu'u aquifer as a whole. This study is extremely conservative in nature.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

27. H. The State of Hawai'i and its agencies have a continuing public trust obligation to "ensure the continued availability and existence of water resources for present and future generations." In *Re Wai'ole O Moloka'i Inc.*, 103, Hawai'i 401, 431 (2004), citing *In Re Water Use Applications ("Waioale I")*, 94 Hawai'i 97, 139 (2000). The State and its agencies, including the LUC, also have a special trust responsibility to native Hawaiians pursuant to the Hawaiian Homes Commission Act and the Admissions Act. In deciding MPL's application the LUC should ensure it fulfills its constitutional and statutory mandates. (page 7-8)

Response: We acknowledge your comment, and note that it is directed to the LUC, not MPL.

IV. The DEIS Does Not Sufficiently Address Impacts To And Mitigation Of Native Hawaiian Traditional & Customary Rights

28. Addressing the effects on Hawaii's culture and traditional and customary rights and practices is of vital importance in an EIS. In 2000, the Hawaii state legislature specifically recognized that Native Hawaiian culture plays a vital role in the preservation of Hawaii's 'aloha spirit' and that Articles IX and XII of the state constitution, other state law, and Hawaii's courts, impose on government agencies a duty to promote and protect cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. Additionally, and most importantly, the legislature "observed that the past failure to require native Hawaiian cultural impact assessments resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 31, 47, fn. 28(2000). (page 8) ¶ Pursuant to *Haw. Const. art. XII § 7*, the LUC is obligated to "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible" when granting a petition for reclassification of district boundaries. *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 31, 35 (2000). To protect traditional and customary Native Hawaiian rights, the LUC is at a minimum, required to make specific findings and conclusions regarding ¶ (1) the identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the 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 to be taken by the state to reasonably protect native Hawaiian rights if they are found to exist. ¶ *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 31, 35 (2000). (page 8)

Response: Your comment is noted, but should be directed to the LUC as it concerns its fiduciary duty when making land use reclassification decisions. MLP has complied with Hawaii's EIS law by conducting a cultural impact assessment (CIA) identifying cultural resources and potential impacts at La'au. It is the State's duty to identify a feasible action to reasonably protect native Hawaiian rights. However, MLP has taken a proactive stance by proposing certain covenants and restrictions running with the land to protect sites identified as culturally sensitive. The CIA is included as Appendix F in the DEIS.

A. Identity and Scope

29. What is the extent to which traditional and customary native Hawaiian rights are exercised at La'au Point? How often is La'au used by gatherers? Fishermen? Hunters? Those seeking spiritual solace? How many gatherers, fishermen and hunters use the area? ¶ The Cultural Impact Assessment claims that La'au Point is so isolated that most of the residents of Moloka'i have never been there and thus have had no direct experience with the place. This statement can be confusing and misleading to the public. What data justifies this statement? What percentages of long-time residents and/or traditional and cultural practitioners use the area? What percentage of the residents who have not been to La'au benefit from its cultural, historical, or natural resources? ¶ The Cultural Impact Statement identifies coastal and cultural subsistence resources found at La'au Point, but what is the size and significance of these resources? (page 9)

Response: The cultural impact assessment was a qualitative rather than quantitative study. Of the 250 persons who attended the community meetings held in Summer 2006, very few indicated that they access the area projected for development by land. Some indicated that they access the area by boat. The key informants who were interviewed indicated that their families have accessed the coastal areas proposed for development to gather marine resources for large family gatherings for occasions such as graduations, baby lu'au, weddings, and funerals.

The 1994 subsistence study reported that 23 percent of the respondents in the random sample telephone survey fish in the area from Pali'au to La'au Point and from La'au to Ilio Point, while 19% gather in the ocean off of the same area. By comparison, fishing and ocean gathering areas with the largest percentages of multiple responses (above 30%) was on the South-East end coast from Makakupa'ia to Honouliwai (40% for fishing and 35% for ocean gathering) and from Honouliwai to Halawa (30% for fishing and 33% for ocean gathering).

Employees of MPL are allowed access along the west coast at areas called Egusa, Kamaka ipō, Sam Wights, and Shipwreck, all of which are located in the area proposed for development. Maunaloa Ahupua'a Tenants can access Pu'u Hakina, Halena Camp, and Kolo on the South coast; however, only Pu'u Hakina is in the area proposed for development. From April 2006 through May 2007, a total of 214 different persons accessed these areas located on west and south coastal areas which are proposed for development. Many of these persons camped at 'ohana, as there were only 85 distinct family names among these 214 persons. In addition, some of these persons accessed these areas more than once, as there were a total of 375 persons who were granted a day pass or permission to camp in these areas from April 2006 through May 2007. The months of May 2006 and May 2007, right before graduation, had the highest use. January, February, and March 2007 also had high use.

B. Impairment

30. What are the realistic impairments to traditional and customary rights? The DEIS' 160-page cultural assessment points out some of the real and practical concerns of Moloka'i community members. Specifically, concerns recorded in the Cultural Assessment include the following: fishermen will lack privacy, throw net subsistence fishers require an undisturbed beach that allows fish and to forage closer inshore, gatherers of 'ama crabs require dark silent nights to ensnare their nocturnal prey, and subsistence practitioners are likely to be confronted by insensitive newcomers intolerable of extractive activities. What will be the impact to these practitioners? How does the DEIS address these specific concerns? ¶ As disclosed in the Cultural Impact Assessment, a 1993 Subsistence Sites map indicates intensive fishing and ocean gathering in the exact area of the proposed La'au Project. (DEIS, Appendix F, p. 40). If La'au and its shores serve as an "icebox" for fishermen, what effects will the development have on the families who rely upon the fishermen for a significant source of their food? What effects will be had on the families who do not "engage in subsistence practices but benefit through the sharing and exchange among family members and neighbors?" (page 9)

Response: Extraordinary measures will be taken by the Moloka'i Land Trust in cooperation with the homeowners, to work with the longtime residents of Maunaloa and longtime ranch cowboy and employee families to protect optimum conditions for subsistence hunting and fishing. These measures will also protect the quality of the cultural sites, complexes and resources.

During the planning process that resulted in the Master Plan, the persistence of subsistence on Moloka'i was of central significance. The Cultural Impact Assessment (CIA), provided as Appendix F in the Draft EIS, refers to the measures outlined in the Master Plan to protect subsistence fishing on pp. 113, 118-121. In addition, access will be managed to protect subsistence resources as discussed in section 5.2 of the CIA, pp. 116 - 118.

31. The DEIS acknowledges more than once that the overall cultural concern is that the La'au Point Project "will destroy the special quality of La'au as a special place of spiritual mana and power." (See e.g. DEIS, Appendix F, p. 149). Residents have stated it is the overall isolation of the area that is

the foundation for exercise of an individual's spiritual connection. What impact will the development have on spiritual practitioners? (page 9)

Response: In responding to your comment regarding the spiritual quality of Lā'au point, it is first important to note that Lā'au Point, itself, can be considered a significant cultural property. Hawaiians named specific sites according to their natural resources and features. Looking at historic and contemporary maps of Moloka'i, Ka Lae O Ka Lā'au is within the 51 acres owned by the federal government. This property will not be disturbed or developed on by the proposed project.

The west and south shorelines adjacent to Lā'au Point, Keawakalani on the southeast and Kamāka'ipō on the northwest, is where the proposed development is projected. According to the archaeological surveys and ethnographic documents, there were settlement clusters around protected bays, such as at Kapukuwahine and Kanalukaha on the south shore. In addition, the Master Plan identified Kamāka'ipō as an important cultural and spiritual place.

Molokai Ranch has applied to the State Land Use Commission to re-district these areas from Agricultural to Conservation district in order to protect the significant settlement areas and clusters along the west and south shores adjacent to Lā'au Point, notably at Kamāka'ipō, Kapukuwahine, and Kanalukaha. These proposed conservation zones will be gifted to the Moloka'i Land Trust under the Master Plan.

A Shoreline Access Management Plan, to be appended to the Final EIS, sets out management guidelines for the Lā'au shoreline area, which includes an expanded conservation district zone between the makai boundary of the proposed residential lots and the shoreline, and two parks at the culturally significant Kamāka'ipō Gulch and Pu'u Hakina areas. Access will be limited to foot travel in these areas to limit the amount of traffic and disturbance.

In addition, a cultural management plan will guide protection, access to and use of the cultural and spiritual sites. These cultural guidelines are provided on pages 116-117 of the Cultural Impact Assessment report (provided as Appendix F of the Draft EIS).

32. *The DEIS does not adequately address the impacts that pumping 1,000,000 gpd will have on traditional and customary gathering rights. According to the 2006 USGS Report, ground-water withdrawals will affect the discharge of ground water discharge to the near shore environment. Significantly, this near shore environment is "essential to the livelihood" of several species of fish and limu. In Re Wai'ola, O Moloka'i, Inc., 103, Hawai'i 401, 413 (2004). Why doesn't the DEIS address the findings of USGS' most recent report, which has significant bearing on the same contested issues brought forth by interveners in the Wai'ola litigation? What impact will MPL's water plan have on limu (e.g., ogo, manaua, ele'ele), fish (e.g., mullet, holehole, milkfish), and other coastal resources? How will these impacts affect traditional and customary practitioners? What groundwater models are referred to in the Cultural Impact Statement? (DEIS, Appendix F, 131).* (page 10)

Response: The CIA discusses this on pp. 130 – 131 (Appendix F of the Draft EIS), with regard to the potential impact of withdrawing 1 mgd of brackish water from the Kākalahale well, in part, as follows:

Impact on the Ocean

Marine resources need infusion of fresh water to spawn. The findings in the Wai Ola Case provide relevant information on the potential impact of the pumping of 1,000,000 gallons of brackish water a day can have on the marine resources makai of Kākalahale. The findings were based on the pumping of 1.25 mgd of ground water and thus the impact would be less than that projected in the Wai Ola Case.

Ground-water models used in the Waiola Contested Case showed that pumping 1.25 mgd of ground water would reduce ground-water flux to the nearshore area by about 3% to 15%. At that magnitude, the resultant change in salinity in the fishponds would be virtually indistinguishable from the initial values.

Native Hawaiians gather limu and other marine resources all along the southern and eastern coastline of Molokai, including the shoreline area of the Kamiloloa Aquifer, downgradient of the Kākalahale well site. They do not confine their gathering activities to areas within their ahupua'a of residence.

Interestingly, the shoreline area of the Kamiloloa aquifer is not a prime habitat for edible limu. Limu may occur in quantities sufficient for personal use, but the edible species are not abundant. Edible limu is salinity tolerant, i.e., can tolerate wide ranges of salinity. However, limu is more productive in brackish water than in pure seawater, probably because of the nutrients contained in groundwater and surface water discharges.

There is a variability in the nutrient concentration of groundwater along the south coast of Molokai, varying as much as 18-fold between Kawela and Kamiloloa. Human activities, primarily agriculture, probably subsidize the groundwater with nitrates. Assuming that these human subsidies remain unchanged, the effect of groundwater pumpage on nutrient loading to the ocean becomes insignificant. Thus, the reduction of groundwater discharge from the pumping of 1 mgd from the Kākalahale well is unlikely to have a significant impact on limu production.

C. Feasible Action

33. *The DEIS' feasible action does not adequately address the concerns of the community. As disclosed by the Cultural Impact Assessment, subsistence practitioners have been faced with challenges from newcomers and new residents from the Continental U.S. and the Philippines. (DEIS, Appendix F, p. 37). How will the new residents, many likely to be from outside of Hawaii be any different? MPL insists that the homes at Lā'au Point will be a vacation/second home for the new landowners and only 30% of the homes will be occupied by permanent residents. What practical effects will attending educational classes have on the majority "vacationing" landowners who are less likely to have a genuine interest to learn about the Moloka'i lifestyle and culture? (page 10)*

Response: Moloka'i is a unique community and island. Those who choose to buy a lot and build a house at Lā'au Point will likely be attracted to the beauty and mystique of the area.

Admittedly, educational classes for vacationing landowners is a new approach to a decades old problem of the disconnect between new landowners from outside Hawai'i and the local and Native Hawaiian communities.

We can only assume that educating new residents would have a better effect than if new residents were not educated at all. It is very likely that new buyers will be willing to attend classes to learn how to protect the environmental resources and Moloka'i lifestyle and culture. This is already occurring, whereby relatively newer residents are participating in environmental advocacy and protection efforts.

Currently, MPL allows limited beach access for MPL employees and Maunaloa residents to the area projected for residential development. It is mandatory that employees and their guests view a conservation video in order to qualify for a beach pass. This system has worked well and received the cooperation of those who have used beach passes.

34. *The DEIS states that the CC&Rs and additional guidelines will mitigate identified impacts to the cultural and natural resources. What is the exact language of these CC&Rs and additional guidelines? What are the enforcement and substantial penalties mentioned in the Master Plan that will "ensure" that the covenants are respected and upheld? (DEIS, Appendix A, P. 101). Who will be able to enforce these CC&Rs? (page 10)*

Response: The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point, affected lot owners, and in certain circumstances, Moloka'i Properties Limited as the Declarant under the CC&Rs. To include this information in the Final EIS, Section 2.3.6 (Covenants) will be revised as follows:

~~As previously stated;~~ Lā'au Point aims to attract people who respect the unique character of the site and Moloka'i, and who support conservation, cultural site protection, and coastal resource management. Residents of Lā'au Point will be educated and informed about the environment and culture, and taught to "mālama'āina," take care of the land and sea, through strict Conditions, Covenants, & Restrictions (CC&Rs) attached to the subdivision. The CC&Rs provide that every person whose name is on the property title must commit to undergo a certain amount of education about the Moloka'i community and its desires and aspirations with kupuna and the Maunaloa community. This will be conducted under the guidance of the Moloka'i Land Trust. The CC&Rs have been strengthened to protect the environment and resources at Lā'au Point. Enforcement and substantial penalties will be put in place to ensure that the covenants are respected and upheld. Although the CC&Rs are currently under development, because of the Master Plan process (Section 2.1.6), MPL does have a general idea of what the CC&Rs and some of the key provisions and concepts will be.

The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point (the Board), affected lot owners and in certain circumstances, the Moloka'i Land Trust as a signatory and Moloka'i Properties Limited as the Declarant under the CC&Rs. Failure to comply with the terms of the CC&Rs would expose the non-complying owner to sanctions which include monetary fines, suspending an owner's right to vote, suspending services provided by the Association, exercising self-help or taking action to abate any violation, removal of the non-compliant structure or improvement,

precluding contractors, agents, or employees of any owner who fails to comply with the terms of the CC&Rs.

As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in the Final EIS. The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition.

Burial grounds and other historically and/or archaeologically significant sites existing within the Project are set forth in Figure 10 to the Draft EIS. These sites, as well as other historical sites yet to be discovered and located on lots to be sold to third parties, will be defined as "Historic Sites" in the CC&Rs. Each Historic Site will be under the joint management and operation of the Association and the Moloka'i Land Trust, a community based land stewardship organization entrusted with the ownership and management of certain portions of the Project.

The Historical Sites and the Conservation District Areas (collectively the "Cultural Protection Zone") shall be under the joint stewardship of the Association and the Land Trust pursuant to the terms of the Grant of Easement and Joint Use Agreement. The governing council of the Land Trust shall be charged to develop a cultural plan to permit and protect Native Hawaiian archaeological and cultural sites and practices for the Cultural Protection Zone, including but not limited to the following: a) Subsistence fishing; b) subsistence hunting; and c) access to the private shoreline and restricting vehicular parking and pedestrian traffic.

The cultural plans will also incorporate programs to identify indigenous species in coordination with qualified governmental agencies and in consultation with qualified Moloka'i experts.

35. *If the Conservation Zone and other "protected" areas within the subdivision will be controlled equally by the homeowners and the Land Trust, what happens when there is a dispute? How will leaving decisions relating to subsistence protection and archaeological site protection to the new homeowners, who will not likely have any understanding of traditional and cultural practices, serve to mitigate and reasonably protect Native Hawaiian rights? (page 10)*

Response: Decisions relating to subsistence protection and archaeological site protection will be based upon management plans developed in conjunction with subsistence and cultural practitioners and kupuna. While the Shoreline Access Management Plan (SAMP) will be overseen by a Council with equal representation of the homeowners and the Moloka'i Land Trust, decisions shall be made by consensus. Disputes will be submitted to arbitration.

36. *The State and its agencies, specifically the LUC, has an affirmative duty to protect traditional and customary rights and cannot delegate its trust obligations to the Moloka'i Land Trust, a proposed, and not yet existing private entity. See e.g. Ka Pa'akai, 94 Haw. 31 (2000). (page 10-11)*

Response: MLP does not intend for the Moloka'i Land Trust to wholly assume the state's affirmative duty to protect cultural resources, and maintain traditional and customary rights. However, MLP recognizes it has a responsibility as a member of the community to help maintain

The Honorable Senator Clayton Hee

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 21 of 26

these rights as well. MLP views its role with the Moloka'i Land Trust, and Trust's respective enforcement powers over certain actions outlined in the covenants and restrictions, as an effort to supplement the State's constitutional duty. The Moloka'i Land Trust certainly exists and is a private, non-profit corporation organized under Hawaii State Statute HRS-414D and with a determination from the Internal Revenue Service as a public charity under code 509(a)3. It is governed by a board of directors, who will act within the rules and regulations established by these two state and federal codes. They will also be bound under state law to adhere to their Articles of Incorporation and Bylaws. The Board of Directors includes, as of June 1, 2007: Colette Machado, Richard Cooke III, Cheryl Corbiell, William Akutagawa, Stacy Chivello, Clarence Halona Kaopoiki, Edwin Misaki, Davianna McGregor and David Lunney. The Land Trust will be required to adhere to all mitigation plans approved in the SAMP. A copy of the SAMP has been appended to the Final EIS.

V. The Discussion Of Endangered Species Within The DEIS is Wholly Inadequate

37. *Hawai'i is often called the endangered species capital of the world. According to the Bishop Museum, there are more endangered species per square mile in Hawai'i than any other place in the world. Survival of the many endangered species found in Hawai'i is critical to maintaining our heritage, and thus it is our kuleana to protect our State's rich and vast array of unique species.* (page 11)

Response: We acknowledge your comment. Below we respond to your specific comments regarding endangered species.

A. Hawaiian Monk Seal

38. *The DEIS fails to adequately consider and measure the significance of La'au Point as a habitat of the Hawaiian Monk Seal. The DEIS also fails to assess the impacts the project will have on the monk seal population and its feeding grounds at the La'au Point fishery. ¶The Hawaiian Monk Seal has been designated by the National Marine Fisheries Services ("NMFS") and the U.S. Fish and Wildlife Service ("USFWS") to be an endangered species pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). According to the NMFS: "The Hawaiian Monk Seal is in crisis: the population is in a decline that has lasted 20 years and only around 1,300 monk seals remain. Modeling predicts the species' population will fall below 1,000 animals in the next five years. [¶]The Hawaiian monk seal is headed to extinction." National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006. ¶The NMFS' Recovery Plan considers it very important to increase the number of monk seals in the Main Hawaiian Islands for its recovery, and a part of the recovery strategy is to ensure the natural growth of the monk seal in these islands. It notes that the Main Hawaiian Islands "represents a large amount of under-occupied habitat, which could support a larger population of seals if appropriate management actions were in place." (National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006). ¶In addressing the La'au Point DEIS, the NMFS has concluded that La'au Point is an important habitat for the seals based upon the high number of documented monk seal sightings and the significant number of animals that use the area. (DEIS Commentary Letter, written by Chris E. Yates, on behalf of the National Marine Fisheries Services, February 5, 2007). It is known by many in the community that Hawaiian Monk Seals frequently use the La'au Point area because of its isolation. The NMFS' commentary letter supports this, and in addition points out that La'au's sandy beach and proximity to foraging areas also make it an especially good monk seal habitat. ¶The DEIS fails to address the following: What effects will the development have on La'au as a habitat for monk seals? What impact will the increased human interaction have on the monk seals? How will domestic animals and humans impact the monk seals health and its population at La'au Point? ¶The field study's statement that "[in]onk*

The Honorable Senator Clayton Hee

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 22 of 26

seals haul out to rest on beaches as deserted as this beach or as heavily used as public beaches on Oahu," is misleading. (DEIS, Appendix C p. 5). It is well known that monk seals do not frequent heavily populated beaches. To the contrary the USFWS has stated that remote areas with little impact by humans are the ideal habitat for the easily disturbed monk seals, and the NMFS' commentary letter describes monk seals that are tolerant of human presence to be the exception rather than the rule. (page 11-12)

Response: We consulted with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service about the monk seal population at La'au Point. The shoreline access management plan (SAMP) contains a plan and recommendations developed in conjunction with the National Oceanic and Atmospheric Administration (NOAA) Monk seal program and elements were taken directly from their draft *Recovery Plan for the Hawaiian Monk Seal* (November 2006). The SAMP reiterates the rules required to ensure non-disturbance of Monk seal habitat and the promotion of La'au Point as an area for Monk seals to frequent and "haul out."

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding monk seals, Section 3.7 (Fauna) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)," and the SAMP has been included as an Appendix to the Final EIS.

B. Endangered Sea Turtles

39. *MPL has been put on notice that native species of turtles and turtle nesting areas can be found in the La'au Point area. (DEIS, p. 57 & Appendix F, p. 145). The U.S. Fish and Wildlife Service established the Green Sea Turtle (*Chelonia mydas*), Leatherback Sea Turtle (*Dermochelys Coriacea*), and the Hawksbill Sea Turtle (*Eretmochelys imbricata*), all found in Hawai'i, to be endangered pursuant to the Endangered Species Act of 1973. (U.S. Fish & Wildlife Service, Threatened and Endangered Species System). ¶The DEIS is completely absent of any data on how the La'au Point development will impact these endangered species.* (page 12)

Response: Leatherback turtles are a highly pelagic species that does not nest in Hawai'i. They do not frequent shallow waters in Hawai'i and are not found at La'au Point. They will not be affected by the proposed development.

Green turtles may be found throughout the Hawaiian Islands but their main nesting beaches are in the NWHI. Given that most of the nesting of this species occurs in the NWHI, increased activity at La'au Point will have a negligible effect on the population trajectory of this species.

Hawksbill turtles are extremely rare in Hawai'i, but nests have been observed on isolated beaches on Moloka'i and the Big Island. The following information is from the Pacific Hawksbill Recovery Plan.

In Hawai'i, hawksbills nest only on main island beaches, primarily along the east coast of the island of Hawai'i. Kamehame Point on Hawai'i and a black sand beach at the river mouth of Halawa Valley at the east end of Molokai are the most consistently used beaches. In surveys from 1989-1993, eighteen hawksbills were tagged and 98 nests documented. Nesting occurred from late May with hatching completed by early December. Peak nesting activity occurs from

late July to early September (Katahira et al. 1994). There are no measurable trends in stock numbers, either up or down.

Hawkbill nesting has not been recorded at Lā'au Point, but such nests, if they occurred, would be subject to the same threats present elsewhere including non-native predators of eggs and hatchlings and perhaps human takes of eggs and/or shells. Increased human activity at Lā'au Point could reduce the threats from non-native predators, but increase the threats of human interactions. On the other hand, increased human presence could be a deterrent to illegal harvest if nesting were to occur at Lā'au Point.

The SAMP also addresses other biological and endangered species protection. A long term monitoring program will be developed to adapt to changing circumstances and to measure the effectiveness of the mitigation measures. To include this information in the Final EIS, Section 4.3 (Trails and Access) has been revised to include the following about the SAMP:

- **Biological/Endangered species protection** – Similar to the Hawaiian monk seal requirements, rules for access and designation of closed areas are set forth in the SAMP. The Resource Manager will be responsible for monitoring the health of any significant organisms, designating closed areas, and enforcing regulations designed to protect the resource including fires and limitations on access to the area. A long term monitoring program will also be developed to adapt to changing circumstances and to measure the effectiveness of the program.

C. 'Īhi'ihilaueka (Marsilea villosa)

40. The U.S. declared the 'Īhi'ihilaueka an endangered species pursuant to the Endangered Species Act of 1973. (50 CFR Part 17). The Federal Register notes that "the extremely small number and size of the populations and their restricted distribution makes the species more vulnerable to stochastic events," and that "a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals" of the species. (50 CFR Part 17). The species has been known to exist in three small populations, one of which can be found at Lā'au Point. However, upon visiting Lā'au Point this past weekend, two populations, approximately 12 feet by 12 feet were found and documented at Kamakaipo by Walter Rite and Scarlet Rite Camara. The DEIS discloses that a management plan is to be developed by the Land Trust within the proposed development area. (DEIS, p. 43). Nothing in the DEIS speaks to protecting the 'Īhi'ihilaueka in the management plan. What requires MPL and future Lā'au residents from complying with the Land Trust's management plan? How might the 'Īhi'ihilaueka benefit from habitat created by settling ponds and human habitation and intrusion into its natural habitat? (DEIS, p.70). (page 12)

Response: Section 3.6 of the Draft EIS discussed impacts and mitigation measures for flora, including 'Īhi'ihilaueka (*Marsilea villosa*). We confirm that 'Īhi'ihilaueka has been found around Kamāka'ipō Gulch. This area is slated for re-districting into Conservation use and designated a cultural protection zone, where no development will occur. The area will also be owned and managed by the Land Trust, who has developed a resource management plan for area.

This fern was federally listed as endangered on June 22, 1992. *Marsilea villosa* is the only federally listed endangered plant known from the Lā'au Point area. The Kamāka'ipō population of this rare fern is not a new discovery. This population is known from historic accounts and recent surveys. Flora collections were reported to state and federal agencies as part of required

collection permit reporting. In the past, collections from this population have also been distributed to botanical gardens in Hawai'i with programs dedicated to endangered plant conservation.

A proposed rule to designate critical habitat for listed species on the island of Moloka'i was published in the Federal Register in December 2000. We also note that the map indicating the general locations for the 46 endangered plant species on Moloka'i from USFWS (retrieved from http://www.fws.gov/pacificislands/CHRules/molokai/molokai_reproposals.fs.pdf) does not indicate Lā'au Point as a "critical habitat." According to the USFWS map, the critical habitat areas are along the northern coastline and East end of Moloka'i.

As noted in the Draft EIS, this is one of five known populations of this fern. Due to its unique requirement for flooded areas, 'Īhi'ihilaueka can be very difficult to find. Hence, the survey for the 'Īhi'ihilaueka was specifically conducted over a six month period (28 November 2005 to 6 June 2006), including surveys after the heavy rains of 2006, so that the populations could be found and mapped under the best possible conditions. The biologist checked all potential habitat in the area multiple times this year and no additional 'Īhi'ihilaueka populations were observed.

The 'Īhi'ihilaueka population at Kamāka'ipō is currently expanding vegetatively, despite some impact from occasional foot traffic. Samples are being preserved in three endangered plant collections around the state. The surrounding habitat is no longer the intact native shrubland that would have existed there hundreds of years ago.

All plants observed in the Kamāka'ipō population were found within the coastal setback area identified for special management and the adjacent area designated public recreational access (Conservation District and Public Park/Shoreline Accesses shown on Figure 1 in the Draft EIS). Possible management activities to protect this endangered plant include: 1) rerouting the coastal trail; 2) creating a boardwalk through the 'Īhi'ihilaueka habitat, which would discourage deer; 3) fencing if the boardwalk is not sufficient to restrict deer access, and 4) some alien plant removal to help stabilize the site. The key to protecting this population is the development and implementation of a management plan to protect the fern from grazing, trampling, erosion, fire or other habitat changes.

Mr. Garnett's collections were reported to state and federal agencies as part of required endangered species collection permit reporting to the Division of Forestry and Wildlife (DOFAW). A copy of this report must be requested from the State Botanist at DOFAW, if needed.

Specifically, the updated status of this *Marsilea villosa* population was reported to the State Botanist at the DLNR Division of Forestry and Wildlife and the USFWS Rare Plant Recovery Coordinator.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding 'Īhi'ihilaueka (*Marsilea villosa*), Section 3.6 (Flora) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.6 (Flora)."

The Honorable Senator Clayton Hee
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 25 of 26

VI. Many Of Supposed Benefits Of The Master Plan Are Misleading To The Public And The LUC. A. One Last Development

41. The MPL has attempted to sell the La au Point Project to the Moloka'i community by promising that La au Point will be the last major development on ranch lands outside of the resort area. Such public statements are false and unenforceable, and are consistent with the history of MPL making disingenuous pronouncements to the Moloka'i island community. Moreover, such scurrilous statements are non-binding and are further evidence of MPL's efforts to move this project forward regardless of its distorted representations. (page 13)

Response: The rest of MPL's lands will be either donated or have easements to the Land Trust on them.

B. Land Donation

42. The Land donation of 26,200 acres to the Moloka'i Land Trust doesn't change one iota the irreversible effects of a large luxury development at La au Point to the island's ecosystem, its severely limited water supply, and its natural and cultural resources. (page 13)

Response: We respectively disagree with your statement and characterization of the La au Point project. The land donation and easements off 51,000 acres of open space in perpetuity to the community is a benefit unprecedented by any other landowner in Hawai'i.

C. Agricultural Easement

43. MPL also promises to forever "protect" 14,390 acres of land by creating an Agricultural Easement. The promise that this easement will protect these lands from development is false, misleading, and difficult to enforce. Under this agricultural easement, MPL is still permitted to construct "farm dwellings." The definition of a farm dwelling is the subject of ongoing litigation. While one would imagine a farm dwelling to be a single-family home situated on an agricultural lot, yet many of the large homes located at Kahaolu'i have been justified as "farm dwellings". One need only be reminded of the multi-million dollar farm dwellings constructed at the Hoku'i'a development on the west side of the island of Hawai'i to appreciate the abuse of large landowner developers in Hawai'i. (page 13)

Response: The easements will be in the Land Trust's name. MPL will not determine the leasing or construction of farm dwellings.

In addition, MPL is not affiliated or familiar with the Hokuia development on the island of Hawai'i. We do not believe it is reasonable to make a comparison between that project and La au Point.

VII. Conclusion

44. It is not the Master Plan that will set the stage for Moloka'i's future or assure its residents self-determination. It is the steadfast adherence of the community to what is pono. A massive luxury shoreline development is not pono for La au Point, which is "regarded as a special place of spiritual mana and power." (DEIS, Appendix F, p. 144). ¶As the LUC reviews this EIS it must balance the loss of natural resources and risk to the Moloka'i Community and the larger Native Hawaiian community with the economic benefit to foreign land owners of developing 200 multi-millionaire lots in a sacred and revered area where the community has loudly and consistently voiced its opposition. ¶The DEIS is consistent with MPL's longstanding tradition and effort to maximize its profits regardless of the cost to the people and limited natural resources of the island of Moloka'i. MPL continues to shroud

The Honorable Senator Clayton Hee
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 26 of 26

its profecting efforts with emittlements which engender wide-spread opposition and criticism were they to develop historically and culturally significant areas like Ka'ana. ¶There is not likely a single resident of the island of Moloka'i who could purchase a proposed unit in the La au Point Development, and by its own admission within the DEIS, the development is intended to be a vacation/second home for the super rich. Longtime local people who have lived on Moloka'i since time immemorial would likely be considered trespassers or engaged in menial tasks for the newly minted landowners' property, not unlike every other Hawaiian island where second homes for the super rich and famous have been constructed at irreversible costs to the Hawaiian island environment and her people. (page 13-14)

Response: We acknowledge your comments. We note that MPL is opposed to developing Ka'ana as evidenced by the Master Plan's provisions to donate the area to the Moloka'i Land Trust.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.
Sincerely,



Peter Nicholas
President and CEO
Molokai Properties Limited

Attachments:
Revised Section 4.9.2 (Water)
Revised Section 3.7 (Fauna)
Revised Section 3.6 (Flora)

Cc: Anthony Ching, State Land Use Commission
Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witter, PBR HAWAII