

Draft EIS
Comments & Reponses

Agencies



STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION

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ANTHONY J.H. CHING
EXECUTIVE OFFICER

Mr. Thomas S. Witten, President
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February 21, 2007

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

Subject: LUC Docket No. A06-764/Moloka'i Properties Limited
Draft Environmental Impact Statement ("DEIS")
Lā'au Point, Moloka'i, Hawaii
Tax Map Key Nos.: (2) 5-1-002: 030; 5-1-006: 157; 5-1-008: 004, 003,
006, 007, 013, 014, 015, 021, and 025

Dear Mr. Nicholas,

We have reviewed the DEIS for the development of 200 two-acre rural residential lots surrounded by an open-space buffer, roads and infrastructure, an expansion of the State Land Use Conservation District, cultural protection zones for archaeological sites, easements to protect subsistence gathering, and two public shoreline parks (the "Project") and have the following comments.

1. Pursuant to §11-200-17(e)(4), Hawaii Revised Statutes ("HAR"), please indicate if the action proposed in the DEIS requires the use of public funds or lands.
2. Please clarify what is meant by "reserving" 100 acres around each of the towns of Kualapu'u and Maunaloa for community expansion. If the reserved lands are to be made available to the community as leasehold, please indicate the proposed leasehold terms of use. [sections 1.7.2 and 4.8.2 of DEIS]

3. Please include a figure in the FEIS that demonstrates the locations of the various parcels consisting of the 26,200 acres to be donated to the Moloka'i Land Trust (the "Land Trust"). [section 2.1.8 of DEIS]
4. Please include a figure in the FEIS that demonstrates the location of the 1,600-acre parcel of land on the coastline between Mo'omomi and 'Ilio Point, which will also be donated to the Land Trust. [section 2.1.8 of DEIS]
5. Please indicate how many existing parcels will be included within the 14,390-acre agricultural easement land. Based on the number of existing parcels, how many 'farm dwellings' could be potentially constructed on the 14,390-acre agricultural easement land without further subdivision? [section 2.1.8 of DEIS]
6. Please define what is meant by "community housing". This description should be in the context of affordable and market-priced housing, as defined by the County of Maui. [sections 2.1.9 and 5.1.2 of DEIS]
7. Please clarify the following regarding the Petitioner's gifts to the Moloka'i Community Development Corporation ("CDC"): [section 2.1.9 of DEIS]:
 - Why will the 5-acre parcel in central Kaunakakai zoned light industrial only become available in 2011?
 - Why would the sale of a 3.2-acre parcel to the Community College at market-value be considered an asset or benefit to the community?
 - Please clarify the mechanism in which the Petitioner proposes to provide the CDC with perpetual income from the subsequent resale of houses or lots.
8. Please clarify how the Project's Covenants, Conditions and Restrictions ("CC&Rs") will be enforced, including consequences for noncompliance. [sections 2.2.1 and 2.3.6 of DEIS]
9. Please correct **Table 1. Lā'au Point Community Land Use Summary** to indicate that Coastal Conservation and Preservation area should be described as State Land Use Conservation District (not Conservation-zoned) and that the Open Space area should be described as State Land Use Rural District (not Rural-zoned). [section 2.3.5 of DEIS]

10. Please provide additional details regarding the need for a live-in caretaker for the South Park and the potential housing arrangement. [section 2.3.5 of DEIS]
11. Please identify the U.S. EPA conservation standards that will be implemented for the Project's 'energy systems'. [section 2.3.6 of DEIS]
12. Please clarify if drinking water will be used for any of the Project's irrigation needs. [section 2.3.6 of DEIS]
13. Please clarify what percentage of the homeowners' association membership will be Land Trust members. What percentage of Land Trust members would be considered 'adequate representation'? [section 2.3.6 of DEIS]
14. Please clarify the manner in which the Land Trust will be able to enforce the compliance of the CC&Rs. [section 2.3.6 of DEIS]
15. Please clarify how an agreement between the Petitioner and the Moloka'i Enterprise Community (the "EC") will ensure that the Project promotes the importance of maintaining subsistence activities in the Conservation District areas and other protected resource areas. How will the sunset of public funding for the EC in 2008 affect any potential agreement with the Petitioner? [section 2.3.7 of DEIS]
16. Please clarify if the perpetual right to subsistence gathering that will be "noted on the land titles of the areas to be preserved" will be recorded with the Bureau of Conveyances. [section 2.3.7 of DEIS]
17. Please include a proposed timeline when the shoreline access management plan would be finalized, disseminated, and implemented. Will the shoreline access management plan be completed and included in the FEIS which is submitted to the LUC for approval?
Please also clarify how the shoreline access management plan's protocols, rules and restriction on activities might mitigate particular impacts of the Project. [section 4.3 of DEIS]

18. Please clarify the 'season' in which Project's population is expected to increase and how long that season lasts. [section 4.8.1 of DEIS]
19. The section of the DEIS addressing groundwater is deficient. The DEIS does not adequately discuss and describe the aquifer system of Moloka'i and its interconnected relationship to the various sectors of the aquifer.

The groundwater section of the FEIS should address the conflicting viewpoints regarding the direct and cumulative affect that pumping an additional 1,000,000 gallons per day ("gpd") of brackish water from the Kākalahale Well may have on affected wells in Moloka'i. Such disclosure should include a discussion of any former and pending Moloka'i aquifer controversies.

How will the withdrawal of an additional 1,000,000 gpd brackish water from the Kākalahale Well impact the Department of Hawaiian Homelands ("DHHL") groundwater reservation of 2,900,000 gpd?

The FEIS should include a discussion of the U.S. EPA Region 9 Sole Source Aquifer designation for the island of Moloka'i.

Please clarify where in northeast Moloka'i, Wells 0855-01, -02, and -03 are located.

The description of the existing water system at the Mahana pump station found at paragraph 1 of page 79 of the DEIS should be clarified. Please clarify how for every 1,000,000 gpd that is removed, 1,111,111 gallons is added, and how this all relates to Well 17's water use allocation of 1,018,000 gpd.

The DEIS indicated that the Petitioner expects that many of Moloka'i's water issues will be addressed by the comprehensive modeling analysis developed in conjunction with the DHHL, County of Maui Department of Water Supply ("DWS") and the United States Geological Survey ("USGS"). Please clarify specific issues that the modeling analysis is expected to resolve. Please also provide an estimated timeline for the completion of this modeling analysis. We note that this comprehensive modeling analysis appears to be a critically important element of the Project that should be incorporated into the FEIS.

The Petitioner's Water Plan uses: 1) the significant reduction of current use of drinking water for irrigation; 2) increased efficiencies within existing systems; and 3) aggressive water conservation strategies as a justification for the development of the Project. The FEIS should include an expanded discussion detailing how such goals will be achieved and quantified.

The estimated drinking water demand for the Project should be based on the maximum possible use at full buildout – not the Project's use at 80% occupancy.

How brackish is the Kakalahale Well (based on chloride levels)? What types of agriculture can be irrigated with water that has this particular concentration of chlorides?

We acknowledge that the high cost of desalination is the primary reason that this technology is not incorporated into the Project at this time. If the Project were approved as presented in the DEIS, what incentive (if any) is there for the Petitioner to develop desalination for the Project sometime in the future? A more comprehensive discussion of this issue is required. [section 4.9.2 of DEIS]

20. We acknowledge that the primary method of wastewater effluent disposal for the Project will be a beneficial reuse of treated effluent as irrigation water for select areas of SLU Conservation district lands along the coastline and for soil erosion control. Please include a discussion in the FEIS regarding the potential of treated effluent contributing to pathogen infection and nutrient loading which in turn may impact vegetation, groundwater, and nearshore ocean water quality.

If the primary method of effluent disposal is its beneficial reuse as irrigation water, what is the secondary method of wastewater effluent disposal?

Please describe what the need for soil erosion control will be over the life of the Project. Is this a temporary or permanent need? What areas will need soil erosion control?

If the conservation lands are to be vegetated with more of the drought tolerant plants that currently thrive in the Petition Area, why would this vegetation need to be irrigated? Please include a discussion in the FEIS regarding the potential

use of this non-potable water to irrigate landscaping of the residential lots and the parks.

Please include a discussion in the FEIS regarding any permit approvals the Petitioner may need to acquire before using treated wastewater effluent (including the necessary transmission infrastructure) in the State Land Use Conservation District or other areas of the Petition Area.

Please define BOD, SS, CFU and NTU in Table 4. Anticipated Wastewater Effluent Constituent Levels. [section 4.9.3 of DEIS]

21. Please note that page 41 of the DEIS states that agricultural activities ceased on the Petition Area in 1999; whereas page 97 of the DEIS states that no ranching has occurred since 2000. Please resolve this inconsistency in the FEIS.

22. Under the heading **Standards for Determining Conservation District Boundaries**, the FEIS should include a discussion why the 9-acre public shoreline park on the south shore should be reclassified from the SLU Conservation District to the SLU Rural District in the context of §15-15-20, HAR. [section 5.1.2 of DEIS]

23. Please clarify why a description of the Project's compliance with §13-5-30, HAR is used in the DEIS under the heading **State Conservation District Administrative Rules**. Please note that your reference to §13-5-30, HAR is more actually described as §13-5-30(c)(1-8), HAR. It is our understanding that §13-5-30(c)(1-8), HAR, is the criteria the Department/Board of Land and Natural Resources apply in its consideration of a Conservation District Use Application ("CDUA"). Does the Project require a CDUA? [section 5.1.3 of DEIS]

24. Please note page 107 of the DEIS incorrectly identifies the Water Plan as Appendix N – which is the Preliminary Engineering Report. Should this reference instead be to Appendix A, Chapter 6 or Appendix P?

25. Page 123 of the DEIS indicates that the Land Trust will be in charge of managing the Project's conservation lands. This reference seems inaccurate in light of the Petitioner's proposal that the coastal conservation district lands will be jointly administered by the Land Trust and the homeowners association. Please clarify.

26. Regarding Table 7. Summary of Other MPL Land Development Alternatives, please clarify how the estimated water use per lot/unit (gals/day) and estimated total water use (gals/day) were determined. The estimated water uses appear inflated in relation to the Project's proposed water needs. [section 6.4 of DEIS]
27. Please expand the discussion of Cumulative and Secondary Impacts in the FEIS to include the cumulative impact of the Project in the context of other lands owned or developed by the Petitioner that have development potential that has not been realized yet.

The discussion in the FEIS regarding Cumulative and Secondary Impacts should also address how the withdrawal of 1,000,000 gpd of brackish water from the Kālahale Well will impact (or not) other current and future water needs on the island. Please identify what the island's water allocation issues are and clarify what long-term solutions are envisioned.

Please clarify which of the Project's impacts to the communities of Kaluako'i and Pāpāhaku will be balanced by the Project's infrastructure improvements. [section 7.2 of DEIS]

28. We note that the first and only reference to cultural resource managers in the body of the DEIS is on page 168. Please expand the description of the duties and purpose of the cultural resource managers in the appropriate sections of the FEIS. [section 7.4.1 of DEIS]

29. The unresolved issue section of the DEIS is incomplete. Pursuant to §11-200-17(n), HAR, please include a discussion of how the presently unresolved issue of water will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the problem. [section 7.5 of DEIS]

30. The State Land Use Commission is listed twice under the State of Hawai'i as **Consulted Parties and Participants in the EIS Process** section of the DEIS. [section 8.0 of DEIS]

31. Please include details regarding the two outdoor warning sirens proposed for the Project in the body of the FEIS. [PBR letter dated December 13, 2006 letter to Ed Teixeira]
32. Please include the details associated with the Critical Wastewater Disposal Area and the inability of the County of Maui to provide the Project with sewer service in the body of the FEIS. [Department of Health ("DOH") letter dated July 6, 2006 to PBR]
33. Please include in the body of the FEIS: 1) the details regarding the Project's solid waste management plan; and 2) a representation that the Petitioner will ensure that all solid waste generated during the Project construction will be directed to a waste disposal or recycling facility which is appropriately permitted by the DOH. [DOH letter dated July 19, 2006 to PBR]
34. Please include the following opinions and recommendations of OHA in the body of the FEIS: 1) OHA has requested that an archaeological monitor be on-site during all excavations and ground disturbances for the Project; 2) OHA characterizes the Petition Area as more of a cultural property (a large, intact cultural site) rather than a property containing cultural sites; and 3) OHA has recommended that view planes must be preserved between existing *heiau* and other cultural sites. [OHA letter dated July 5, 2006 to PBR]
35. Please include the following representations in the body of the FEIS: 1) the Project's archaeological mitigation plan calls for a buffer with a radius of nine meters extending from burials and *heiaus* to keep an open view plane toward the ocean; and 2) that traditional gathering rights and access will not be restricted during construction, except as necessary to ensure safety and that alternate access routes will be provided in the event access is prevented for safety reasons. [PBR letter dated December 13, 2006 to Clyde Nāmu'o]
36. Please describe or clarify the Project's impacts (direct or otherwise) to the County of Maui's future use of TMK Nos.: (2) 5-1-004: 034 and 035, totaling 110.999 acres. [PBR letter dated December 13, 2006 to Alice Lee]

37. Please include the information provided by the DWS in the FEIS discussion and analysis regarding the sustainable yield and developable yield of the Punakoa aquifer, which the Project overlies. [DWS letter dated June 27, 2006 to PBR]
38. Please include the following findings of Maui Electric Company, Ltd. ("MECO") in the body of the FEIS: 1) the Project's anticipated electrical load demand will have a substantial impact to MECO's system; and 2) in addition to an electrical line extension, other substantial upgrades may be necessary to accommodate the Project. [MECO letter dated June 29, 2006 to PBR]
39. Please supplement your answers to the following questions and comments posed by Mr. David Kimo Frankel of the Native Hawaiian Legal Corporation in his letter dated July 7, 2006, and include your responses appropriately in the FEIS:
- The EIS should disclose what impact the pumping of brackish water from Kākahale will have on the Kualapu'u aquifer. How much will the water-level decline in the well field? How much less available water does this translate to? The EIS should also disclose how much the USGS model predicts DHHL's existing wells would lose in production.
 - The EIS should disclose what impact the pumping of brackish water from Kākahale will have on fisheries, fishponds, DHHL reservation rights and native Hawaiian rights.
 - The EIS should disclose what impact the pumping of brackish water from Kākahale will have on the level of the zone of transition between fresh and saltwater.
 - The EIS should disclose what MPL's plans are for the other lands it owns, but has not yet developed. These include lands near Hale o Lono Harbor and Kaluako'i.
 - The EIS should include any calculations or models used to support any conclusion regarding runoff and drainage into nearshore waters.

40. Please include in the FEIS the table of various water use permits held by MPL or its subsidiaries, as noted in your letter dated December 13, 2006 to Mr. Frankel.

41. Please clarify the following responses made to Mr. Frankel in your letter dated December 13, 2006:

- What assumptions did the Petitioner use to determine that: "MPL does not anticipate any impact to the Kualapu'u aquifer sector from pumping the Kākahale Well nor would it be expected that the water levels in any of the four wells in the Kualapu'u Well field to be measurably affected notwithstanding any model calculated impact"?
 - Please note that your comment that the potential impacts of the proposed use of the Kākahale Well will be addressed in the permitting process for this well – is insufficient in the context of the required disclosure of the Project's impacts to be made during the EIS process.
 - Please clarify what is meant by a timeline for the shift of "non-potable uses to non-potable sources" and why such a shift is necessary.
 - We note that your response regarding LLC ownership and the notion of avoiding conveyance taxes does not address the concerns regarding the potential loophole to avoid contributions to the community funding mechanism, as identified by Mr. Frankel.
 - Please clarify if the agreement in the *Community-Based Master Land Use Plan for Moloka'i Ranch* that profits generated from the Project will be used to revitalize the Kaluako'i Hotel represents a firm commitment or guarantee.
 - Please clarify your own remarks and assurance that any proposed mitigation measures will be performed and will be effective. Your answer implies that the only monitoring of the Project will be in the form of annual reports to the LUC. This does not consider other requirements and potential enforcement by such agencies as the U. S. Fish and Wildlife Service, County of Maui Department of Public Works and Environmental Management, the Department of Land and Natural Resources, and the DOH.
42. Please respond to the following questions from Ms. Lynn DeCoite of the Moloka'i Homestead Farmers Alliance dated July 6, 2006 (we note that Mr. Glenn Teves submitted an identical letter). Your earlier responses were inadequate.
- Is there a difference between taking fresh water from the Waiola Well, and has the impact of taking brackish water from Kākahale been quantified?

- What impacts will pumping Kākahale Well have on adjacent water sector, including Kualapu'u and Kawela? Have these impacts been quantified?
- Has there been any study regarding pumping water further east from the Kawela eastward?
- How will the Petitioner determine impacts before pumping the well? What factors will be quantified?
- Will the Petitioner take liability for the impacts, if determined or identified now and after the fact?
- What will be the impact of the Project on the ability of DHHL to secure water for all their lands presently and in the future?
- How will pumping of water from one sector and transporting it 20 miles away affect the recharge of the aquifer?
- Please clarify if the Petitioner has exhausted all options in harvesting brackish water from Kaluako'i *ahupua'a* around the location of the Project?
- Has the Petitioner conducted test drillings on West Moloka'i? If so, where are the locations of the wells?
- Does the Petitioner have sufficient water for the proposed developments they have already received zoning for on the west end? Where will this water come from? How much water will be required?
- Regarding the buildout of Kaluako'i, how will the Petitioner address the need for more water in the future? How will the Petitioner address impacts on native Hawaiian water rights to water as a result of its water permit?

43. Please include where appropriate in the FEIS your response to Ms. DeCoite that the Kākahale Well is 1.4 miles away and down gradient from the proposed Waiola site. [PBR letter dated December 13, 2006 to Ms. DeCoite]

44. We note that the points raised by Mr. Steve Morgan in his letter dated July 10, 2006, regarding sections 4.9.2 (Water System) and 4.10.3 (Fire Protection) of the EISPNI were not adequately addressed in the DEIS. Please incorporate those concerns and your response in the FEIS.

45. Please clarify the following remarks made to Mr. Morgan in your letter dated December 13, 2006, and incorporate appropriately into the FEIS:

- Please add to the FEIS the fact that the shoreline management and access plan will be developed to identify specific *kupuna* access points at appropriate locations.
 - Please clarify what the conditions of the *Community-Based Master Land Use Plan for Moloka'i Ranch* are, and include such conditions in the FEIS.
 - Your response that the "creation of the Lā'au Point community will be sensitive to natural systems and define areas for environmental protection" does not discuss how the monk seal habitat will be impacted by the Project and the adequacy of the Petitioner's proposed mitigation measures.
46. Please clarify your remarks or respond to the following questions posed by Mr. DeGray Vanderbilt and discussed in your letter dated December 13, 2006, and incorporate appropriately into the FEIS:
- Question #6: Please provide a general overview of previous development plans proposed by the Moloka'i Ranch (or its subsidiaries) to put the community's history of opposition to development on Moloka'i in context.
 - Question #24: The Petitioner should clarify if the "over 1,000 community participants" consisted of over 1,000 individuals. If a person participated in more than one meeting, would that person have been double-counted towards the "1,000 community participants" estimation?
 - Questions #29 and #68: Please clarify if the Petitioner intends to allow accessory dwellings within the Project.
 - Questions #69 and #121: These questions could be considered relevant if the proposed 40 acre park overlaps or is in the vicinity of the Petition Area.
 - Questions #71, #75, and #92: Please clarify if members of the public (who are not employees of the Ranch) are currently allowed to access the Petition Area.
 - Question #82: We acknowledge that a fauna survey was conducted for the Petition Area. Please provide an estimate of the frequency that monk seals may be currently utilizing the shoreline of the Petition Area. Please also indicate what times of the year the monk seals may be expected to frequent the Petition Area.

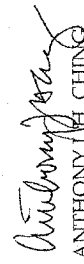


Mr. Thomas S. Whitten, President
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- Question #111: Please indicate what the saline content of the brackish Kākahale Well is and when that data was gathered.
- Question #112: Please indicate if a CWRM permit will be required to transport water from the Palā'au shrimp farm area to service irrigation needs in another area of the island.
- Question #113: Please indicate what transmission alternatives for the Kākahale Well water the Petitioner has considered.
- Question #115: Please indicate what the status of the Waiola Well application is.
- Question #117: Please indicate what are the current water rates applicable to Kāluako'i residents and how will these rates be restructured in the future.
- Question #118: Please indicate what the average monthly water usage is for the residents of Papohaku Ranchlands residential subdivision and what the average water usage is for the residents of Maunaloa town.
- Question #153: Please indicate when the saline content of the Palā'au shrimp farm was last tested.
- Question #154: Please indicate the cost of desalinating water in relation to developing and operating a deep groundwater well.

We have no further comments to offer at this time. Please feel free to contact Max Rogers of my office at 587-3822, should you require clarification or any further assistance.

Sincerely,


 ANTHONY J. CHING
 Executive Officer

c: Office of Environmental Quality Control
 Peter Nicholas, CEO, Molokai Properties Limited

November 1, 2007

Anthony Ching
 State of Hawai'i
 Department of Business, Economic Development & Tourism
 Land Use Commission
 P.O. Box 2359
 Honolulu, Hawai'i 96804-2359

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Ching:

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

1. Pursuant to §11-200.17(e)(4), Hawai'i Revised Statutes ("HAR"), please indicate if the action proposed in the DEIS requires the use of public funds or lands.

Response: The Lā'au Point project is not anticipated to directly require the use of public funds or lands; however, in the Draft EIS Section 1.5 (Compliance with State of Hawai'i and Maui County Environmental Laws), it is stated that construction of Lā'au Point may involve or impact State and/or County lands relating to infrastructure improvements for roadways, water, sewer, utility, drainage, or other facilities. While the specific nature of each improvement is not known at this time, the EIS is intended to address all current and future instances involving the use of State and/or County lands relating to Lā'au Point

2. Please clarify what is meant by 'reserving' 100 acres around each of the towns of Kualapu'u and Maunaloa for community expansion. If the reserved lands are to be made available to the community as leasehold, please indicate the proposed leasehold terms of use. [sections 1.7.2 and 4.8.2 of DEIS]

Response: In response to your comment, in the Final EIS Section 1.7.2 will be revised as follows:

Housing – The Lā'au Point project will address affordable housing in the implementation of Community-Based Master Land Use Plan for Molokai Ranch (see Section 2.1.7). Throughout the community-planning process, the vesting of land back into community lands 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. MPL has reserved will put title restrictions on 100 acres around each of the towns of Kualapu'u and Maunaloa for community expansion to limit the use of these lands for affordable housing. Approximately 1,100 acres will also be gifted to the Community Development Corporation (CDC), a large portion of which can be used for community-owned affordable housing. Section 4.8.2 contains the full discussion.

In addition, in the Final EIS Section 2.1.9 (Moloka'i Community Development Corporation (CDC)) will be revised as follows:

To assist the CDC with providing affordable housing, MPL will convey ownership of 1,100 acres of land mauka of Kaunakakai to the CDC for future housing development. MPL will also reserve put title restrictions on 200 100 acres around each of the towns of Kualapu'u and Maunaloa to be made available for community housing to limit the use of these lands for affordable housing. Although MPL will retain ownership of the reserved lands, development decisions and timing will be made by the community via the CDC and not by MPL.

Further, in the Final EIS Section 4.8.2 (Housing) will be revised as follows:

Affordable Housing – The Lā'au Point project will address affordable housing in the implementation of *Community-Based Master Land Use Plan for Molokai Ranch* (see Section 2.1.7). During the community planning process, the EC and other Moloka'i community members involved in creating the Plan clearly indicated that "only Moloka'i residents will decide future expansion of existing communities" (Appendix A, p. 5). 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 Moloka'i community to plan and finance housing for themselves without the involvement of MPL.

The community process identified up to 100 acres around each of the towns of, Kualapu'u and Maunaloa for the future development of "Ohana Neighborhood Communities" (i.e., affordable housing) to be developed by partnering various community resources such as Habitat for Humanity, Self-Help Housing, and others. As previously noted, approximately 1,100 acres will also be gifted to the Moloka'i Community Development Corporation (CDC); a large portion of which can be used for community affordable homes. As discussed in the Plan, the community desires a link between affordable housing and other community facilities present at each of the three communities to insure that they be developed as balanced communities. The community also does not support a large affordable housing project in one area only (Appendix A, p. 69).

There will be a continuing need in the future for more housing for Moloka'i families at affordable prices based on incomes. MPL, EC, and others in the community, such as Habitat for Humanity to name just one organization, can coordinate the planning and implementation of future affordable housing projects. MPL ~~can reserve lands for lease at affordable prices~~ will put title restrictions on 100 acres around each of the towns of Kualapu'u and Maunaloa to ~~ensure~~ limit the development of these lands for future affordable housing projects. Although MPL will retain land ownership, affordable housing development decisions will be made by the community-represented CDC and not by MPL.

The economic value of the land donations, and the income from Lā'au Point (estimated at more than \$10 million from initial lots sales and an endowment from the income from subsequent lot and house sales), will enable the Moloka'i CDC to plan, site, and construct affordable homes itself. Self-determination is a critical component behind the creation of the CDC and this Plan for development of ~~community~~ affordable housing. Moreover,

placing housing development in the hands of a community organization provides the opportunity for appropriate development timing, which is important in a slow-growing community like Moloka'i. As stated in the Plan: "The growth of Kaunakakai, Kualapu'u, and Maunaloa should be community-planned and should be allowed to happen naturally as community-driven demands require" (Appendix A, p. 67).

For the purposes of affordable housing, residency will be as specified under the County of Maui Residential Workforce Housing Policy, Chapter 2.96, MCC. Specifically, under Section 2.96.020, MCC, "Resident" means a person who meets one of the following criteria:

1. Currently employed in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

To satisfy the affordable housing requirements of Chapter 2.96, MCC, MPL will seek an adjustment as specified under Section 2.96.030(C)(1), MCC. The terms of the adjustment will specify the provisions discussed above.

3. *Please include a figure in the FEIS that demonstrates the locations of the various parcels consisting of the 26,200 acres to be donated to the Moloka'i Land Trust (the "Land Trust"). [Section 2.1.8 of DEIS]*

Response: As requested, the Final EIS will contain a figure showing the locations of the various parcels consisting of the 26,200 acres to be donated to the Moloka'i Land Trust as shown on the attachment titled, "Proposed Land Trust Donations and Easements." In addition in the Final EIS Section 2.1.8 (Moloka'i Land Trust) will be revised to indicate the notation for the added figure as follows:

The Moloka'i 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 Moloka'i 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 Moloka'i Land Trust will own, manage, and administer.

4. *Please include a figure in the FEIS that demonstrates the location of the 1,600-acre parcel of land on the coastline between Mo'omomi and 'Ilio Point, which will also be donated to the Land Trust, [section 2.1.8 of DEIS]*

Response: As requested, the Final EIS will contain a figure showing the location of the 1,600-acre parcel of land on the coastline between Mo'omomi and 'Ilio Point that will also be donated to the Land Trust as shown in the attachment titled, "First Land Trust Donation: Mokoio Parcel." In addition in the Final EIS Section 2.1.8 (Moloka'i Land Trust) will be revised to indicate the notation for the added figure as follows:

As a sign of good faith and to enable the Moloka'i Land Trust to begin its important work, MPL will donate a 1,600-acre parcel of land (referred to as the "Mokoio parcel") of on the coastline between Mo'omomi and 'Ilio Point, ~~as seen as the Moloka'i Land Trust obtains its tax-exempt status. The Moloka'i Land Trust obtained its tax-exempt status in early 2007. Figure 11 shows the location of the Mokoio parcel. The transfer of this land parcel is expected to take place in 2008. It also includes a partial assignment of rents that will provide \$50,000 of annual income to the Land Trust. This land donation is regardless of the outcome of the Lā'au Point LUC petition and County applications. As of August 2007, an agreement to transfer the 1,600-acre Mokoio parcel to the Land Trust was in the final stages of attorney review, and it is anticipated the donation in fee will take place early in 2008 following an extensive due diligence process conducted by the Trust and its advisors.~~

5. *Please indicate how many existing parcels will be included within the 14,390-acre agricultural easement land. Based on the number of existing parcels, how many 'farm dwellings' could be potentially constructed on the 14,390-acre agricultural easement land without further subdivision? [section 2.1.8 of DEIS]*

Response: In response to your comment, in the Final EIS Section 2.1.8 (Moloka'i Land Trust) will be revised as follows:

The Land Trust will permanently hold protective easements over a total of 24,950 acres of MPL-owned land; 14,390 acres will be dedicated as agricultural easement land and 10,560 acres will be dedicated as rural landscape reserve easement (see Appendix A, p. 9). The agricultural easement lands (depicted with diagonally-stripped lines on p. 11 of Appendix A) will be dedicated for agriculture and only farm-related structures (i.e., barns, sheds, or farm dwellings) can be built there. The Community-Based Land Use Plan process designated proposed easement land areas based on the agricultural suitability of the area, without regard to specific TMK parcels; however, the area includes 20 TMK parcels. Under State law (Section 205-4.5) one farm dwelling could be built on each of the TMK parcels for a total of 20 potential farm dwellings.

6. *Please define what is meant by "community housing". This description should be in the context of affordable and market-priced housing, as defined by the County of Maui. [sections 2.1.9 and 5.1.2 of DEIS]*

Response: The use of the term "community housing" in the Draft EIS has substantially the same meaning as the term "affordable housing" as defined by the County of Maui. In response to your

comment, in the Final EIS Section 2.1.9 (Moloka'i Community Development Corporation (CDC)) will be revised as follows:

To assist the CDC with providing affordable housing, MPL will convey ownership of 1,100 acres of land mauka of Kaunakakai to the CDC for future housing development. MPL will also reserve ~~put title restrictions on 200 100 acres around each of the towns of Kualapu'u and Maunaloa to be made available for community housing to limit the use of these lands for affordable housing.~~ Although MPL will retain ownership of the reserved lands, development decisions and timing will be made by the community via the CDC and not by MPL.

Self-determination is a critical component behind the creation of the CDC and this plan for development of ~~community~~ affordable housing. Moreover, placing housing development in the hands of a community organization, rather than a developer, provides the opportunity for appropriate development timing, which is important in a slow-growing community like Moloka'i.

Affordable housing is intended for resident members of the Moloka'i community (and not newcomers), within the income bracket and definitions as defined by the County of Maui. Affordable housing will be developed by the CDC. The CDC is tasked with providing affordable homes for Moloka'i residents.

In addition, in the Final EIS Section 4.8.2 (Housing) will be revised as follows:

The economic value of the land donations, and the income from Lā'au Point (estimated at more than \$10 million from initial lots sales), will enable the Moloka'i CDC to plan, site, and construct affordable homes itself. Self-determination is a critical component behind the creation of the CDC and this Plan for development of ~~community~~ affordable housing. Moreover, placing housing development in the hands of a community organization provides the opportunity for appropriate development timing, which is important in a slow-growing community like Moloka'i. As stated in the Plan: "The growth of Kaunakakai, Kualapu'u, and Maunaloa should be community-planned and should be allowed to happen naturally as community-driven demands require" (Appendix A, p. 67).

Further, in the Final EIS Section (5.1.2) will be revised as follows:

Discussion: As previously discussed in Sections 2.1.9 (CDC) and 4.8.2 (Housing), 200 acres around the towns of Kualapu'u and Maunaloa have been identified for the future development of 'Ohana Neighborhood Communities to be developed by partnering with various community resources such as Habitat for Humanity, Self-Help Housing, and others. Approximately 1,100 acres will also be gifted to the Moloka'i Community Development Corporation (CDC), a large portion of which can be used for ~~community~~ affordable housing.

7. *Please clarify the following regarding the Petitioner's gifts to the Moloka'i Community Development Corporation ("CDC") [section 2.1.9 of DEIS]:*

- *Why will the 5-acre parcel in central Kaunakakai zoned light industrial only become available in 2011?*

- Why would the sale of a 3.2-acre parcel to the Community College at market-value be considered an asset or benefit to the community?
- Please clarify the mechanism in which the Petitioner proposes to provide the CDC with perpetual income from the subsequent resale of houses or lots.

Response: In response to your comment in the Final EIS Section 2.1.9 (Moloka'i Community Development Corporation (CDC)) will be revised as follows:

In addition to land for housing, MPL will gift the CDC with the following assets that can be used for community development:

- A 5-acre parcel in central Kaunakakai zoned light industrial, which will be available for development in 2011 when the lease to the current lessee, the Junior Roping Club, expires.
- A 3.2-acre parcel adjacent to the Community College, which will be sold to the Maui Community College at market value. The proceeds from this sale would go to the CDC, which would add to the organization's funding for community projects such as construction of affordable housing.
- \$100,000 from the sale by MPL of a 5-acre site to the County for a new Kaunakakai Fire Station (contained within the 1,100 site above Kaunakakai).
- Endowment from the Lā'au Point project as a sustainable form of CDC funding, which will be structured as follows:
 - An initial funding of the CDC arises from a net 5 percent of the sale revenue of all 200 lots in Lā'au Point. The value of this revenue is estimated to be \$10 million over five years.
 - A percentage, yet to be determined, of subsequent revenue when lot- or lot-and-house-is-re-sold. Future and perpetual income for the CDC comes from second and subsequent sale of lots or lots and houses, as a percentage (half a percent) of all future net sale proceeds from sellers of Lā'au Point properties will be diverted for CDC use. This will provide the CDC with a perpetual income. This provision to allocate income from subsequent lot sales will be provided for in the CC&Rs in the form of a perpetual and unchangeable covenant (Master Plan Covenant). The CC&Rs will require the percentage fee to be paid to the CDC at closing directly out of escrow.

8. Please clarify how the Project's Covenants, Conditions and Restrictions ("CC&Rs") will be enforced, including consequences for noncompliance. [sections 2.2.1 and 2.3.6 of DEIS]

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, the Molokai Land Trust as a signatory and Molokai 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 Māmaloa 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 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.

9. Please correct Table 1. Lā'au Point Community Land Use Summary to indicate that Coastal Conservation and Preservation area should be described as State Land Use Conservation District (not Conservation-zoned) and that the Open Space area should be described as State Land Use Rural District (not Rural zoned). [section 2.3.5 of DEIS]

Response: In response to your comment, in the Final EIS Table 1 will be revised as follows:

Land Use	Acres
Rural-Residential House Lots	400
On-site Roadways	46
Infrastructure	14
Off-site Road Corridor	139
Coastal Conservation and Preservation (Conservation-zoned State Land Use Conservation District)	434
Open Space (Rural-zoned State Land Use Rural District)	382
Public Parks	17
TOTAL	1,432 acres

10. Please provide additional details regarding the need for a live-in caretaker for the South Park and the potential housing arrangement. [section 2.3.5 of DEIS]

Response: The Plan and EIS presume that a small caretaker's house will be built adjacent to the public parking lot at the southern (Hale O Lono) end of the development. This house will be occupied by the principle Resource Manager responsible for community access and protection of the subsistence resources within the Lā'au shoreline.

MPL and the Land Trust believe that providing on-site accommodation and having a resource manager on-site full-time will add additional protection to the marine resources at Lā'au Point.

To include this information in the Final EIS, Section 2.3.5 (Project Description) will be revised as follows:

There are no commercial businesses proposed for Lā'au Point. Operations and management are primarily related to tasks associated with the community common areas' maintenance and upkeep, which would be administered through the Lā'au Point homeowners' association. The responsibility of the shoreline park maintenance and upkeep will be provided by the County Department of Parks & Recreation or the Land Trust, depending on ownership of the parks, and may include a live-in caretaker Resource Manager for the South Park. The Resource Manager will be responsible for community access and protection of the subsistence resources within the Lā'au shoreline. MPL and the Land Trust believe that providing on-site accommodation and having a Resource Manager on-site full-time will add additional protection to the marine resources at Lā'au Point. The management (and stewardship) of the coastal Conservation District areas would be administered jointly by the Land Trust and homeowners' association. Beyond this, Lā'au Point does not propose any other uses that require employees.

In addition, in the Final EIS, Section 4.10.5 (Recreational Facilities) will be revised as follows:

A new paved road approximately 800 feet long will be constructed through the park site as far inland as possible along the base of the hills away from the shoreline. The use of permeable materials for the road and parking lots will be considered. A total of 30 parking stalls will be provided in three enclaves to minimize the impact of open paved lot areas. At the end of the paved road will be a caretaker's Resource Manager's residence and/or maintenance shed. An elevated vantage point for the caretaker's Resource Manager's residence will allow park personnel to overlook the park entrance and manage shoreline access. The Resource Manager would be responsible for community access and protection of the subsistence resources within the Lā'au shoreline. MPL and the Land Trust believe that providing on-site accommodation and having a Resource Manager on-site full-time will add additional protection to the marine resources at Lā'au Point. A gate will control use of the existing shoreline access road for emergency purposes.

11. Please identify the U.S. EPA conservation standards that will be implemented for the Project's 'energy systems'. [section 2.3.6 of DEIS]

Response: In response to your comment, in the Final EIS Section 2.3.6 (Covenants) will be revised as follows:

- **General energy.** All energy systems shall be designed and constructed to meet United States Environmental Protection Agency (EPA) conservation standards. An example of an EPA conservation standard is the ENERGY STAR program, which was established in 1992 for energy-efficient computers. Now a joint program under the EPA and the U.S. Department of Energy, the ENERGY STAR program has grown to encompass more than 35 energy-efficient product categories for homes and workplace. Homes that earn the ENERGY STAR designation must meet guidelines for energy efficiency set by the EPA.

ENERGY STAR qualified homes can include a variety of energy-efficient features, such as effective insulation, high performance windows, tight construction and ducts, efficient heating and cooling equipment, and ENERGY STAR qualified lighting and appliances. These EPA standards for the ENERGY STAR program can be found at the following website: <http://www.energystar.gov>. For example, all dwellings will be required to have solar panels (or comparable technology) sized to meet at least 80 percent of the hot water demand of each home. Other energy-efficient measures will be required in the Lā'au Point Design Guidelines.

12. Please clarify if drinking water will be used for any of the Project's irrigation needs. [section 2.3.6 of DEIS]

Response: To clarify that drinking water will not be used for irrigation, in the Final EIS Section 2.3.6, (Covenants) and Section 4.9.2 (Water) will be revised as follows:

- **Landscaping and irrigation.** Landscaping Common area irrigation systems will be from well utilize re-use water (treated effluent) from the wastewater treatment plant. or collected in easements systems; Residential catchment systems may provide landscape irrigation to individual lots and homes. Drinking water will not be used for irrigation of any landscaped areas. Only drip systems will be permitted for both common area and residential landscaping. Landscaping will be restricted to appropriate native and Polynesian species that are drought-tolerant and suitable for coastal locations; xeriscaping aims to reduce water use.

In addition in the Final EIS Section 4.9.2 (Water) the following will be included:

Safe Drinking (Potable) Water – MPL plans to retain its current 1,500,000 gpd of safe drinking water: 1,018,000 gpd from Well 17 and 500,000 gpd from the Molokai Ranch Mountain System. Under the Water Plan, approximately 600,000 gpd of safe drinking water from Well 17 will be freed up from existing irrigation uses, leaving that amount available for safe drinking water needs associated with MPL's future developments of Lā'au Point and Kaluako'i. Safe drinking (potable) water will not be used for irrigation.

13. Please clarify what percentage of the homeowners' association membership will be Land Trust members. What percentage of Land Trust members would be considered 'adequate representation'? [section 2.3.6 of DEIS]

Response: In response to your comment, in the Final EIS Section 2.3.6 (Covenants) will be revised as follows:

- **Land Trust easements.** The expanded State Conservation District of 434 acres, flood areas, archaeological sites, etc. are will be subject to easements an easement from the Land Trust; the The Land Trust will have adequate ex-officio representation on the homeowners' association (HOA) and Both both the Land Trust and HOA will share the responsibility and cost to care for the easement area by equal representation on a "Council" that will provide day-to-day management of the easement lands. The Council will have representation from qualified subsistence gatherers—those with knowledge of cultural site protection and from Maunaloa. The Council will be guided by a Shoreline Access and Management Plan (SAMP) which is contained in Appendix B.

14. Please clarify the manner in which the Land Trust will be able to enforce the compliance of the CC&Rs. [section 2.3.6 of DEIS]

Response: In response to your comment, in the Final EIS Section 2.3.6 (Covenants) will be revised as follows:

The Land Trust is a signatory to the CC&Rs and is given specific enforcement rights under the terms of the documents. 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 Community-Based Master Land Use Plan for Molokai Ranch.

The CC&Rs are currently being prepared in draft form. A key element of these will be the incorporation of the Molokai Land Trust as a party to the CC&Rs. This is critical because the Land Trust, as a party to the CC&Rs, will be able to enforce compliance.

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.

15. Please clarify how an agreement between the Petitioner and the Molokai Enterprise Community (the "EC") will ensure that the Project promotes the importance of maintaining subsistence activities in the Conservation District areas and other protected resource areas. How will the sunset of public funding for the EC in 2008 affect any potential agreement with the Petitioner? [section 2.3.7 of DEIS]

Response: In response to your comment, in the Final EIS Section 2.3.7 (Access for Subsistence Gathering) will be revised as follows:

An agreement between MPL and the Molokai EC will ensure that the La'au Point project promotes the importance of maintaining subsistence activities in the Conservation District areas and other protected resource areas. The work begun by the Molokai EC has now been taken over by the Molokai Land Trust, the organization that will enforce aspects of the Master Plan. The Land Trust will enforce agreements made between MPL and the EC. Because of the Land Trust role in the Master Plan implementation, public

funding or disbandment of the EC will not impact any agreements; the agreements will be completed with the Land Trust. Page 59 and Appendix 7 of the Community-Based Master Land Use Plan for Molokai Ranch (included as Appendix A of this EIS) shows designated subsistence fishing zones.

16. Please clarify if the perpetual right to subsistence gathering that will be "noted on the land titles of the areas to be preserved" will be recorded with the Bureau of Conveyances. [section 2.3.7 of DEIS]

Response: In response to your comment, in the Final EIS Section 2.3.7 (Access for Subsistence Gathering) will be revised as follows:

Protection of the shoreline for subsistence gathering is of great importance to the people of Molokai. Therefore, perpetual right to subsistence gathering will be noted on the land titles of the areas to be preserved and recorded with the Bureau of Conveyances. Protections to subsistence gathering will be specified in the La'au Point CC&Rs. The CC&Rs will establish policies that permit subsistence gathering and cultural practices, as well as allow the hiring of resource managers to protect the subsistence lifestyle.

17. Please include a proposed timeline when the shoreline access management plan would be finalized, disseminated, and implemented. Will the shoreline access management plan be completed and included in the FEIS which is submitted to the LUC for approval? Please also clarify how the shoreline access management plan's protocols, rules and restriction on activities might mitigate particular impacts of the Project. [section 4.3 of DEIS]

Response: The Shoreline Access Management Plan (SAMP) will be included in the Final EIS as an appendix. In response to your other questions regarding the SAMP in the Final EIS Section 4.3 (Trails and Access) will be revised shown on the attachment titled: "Revised Section 4.3 (Trails and Access)."

18. Please clarify the 'season' in which Project's population is expected to increase and how long that season lasts. [section 4.8.1 of DEIS]

Response: In response to your comment, in the Final EIS Section 4.8.1 (Population) will be revised as follows:

Based on the demographic patterns at other seasonal communities in Hawai'i and what has been observed at Kaluako'i, it is expected that most La'au Point residents will be empty nesters, and in pre-retirement or retirement. The average number of persons per household at La'au Point is expected to be 2.9. At the end of the lot sales period in 2012, it is expected there will be 12 permanent residents at La'au Point. At final build-out in 2023, preliminary estimates project that the population of La'au Point will be approximately 174 permanent residents (persons staying at La'au Point 180 or more days per year) and a maximum of 325 seasonal residents (KBCG 2006a). The term "seasonal resident" refers to persons living at La'au Point less than 180 days per year. On average, seasonal residents are expected to occupy their homes from 60 to 90 days per year. This is expected to occur over 4 to 6 visits, generally around holidays and summer vacation times. Because La'au Point homes will be individually owned (time-share or vacation

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rental will be prohibited), the seasonal fluctuations that are common with tourist high/low seasons would not necessarily apply to Lā'au Point.

19. *The section of the DEIS addressing groundwater is deficient. The DEIS does not adequately discuss and describe the aquifer system of Moloka'i and its interconnected relationship to the various sectors of the aquifer.*

In response to your comments regarding water issues, as well as to address other questions and concerns received 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)." Below we provide individual responses to your questions. These responses are incorporated into the attachment.

Regarding your above comment on the aquifer system of Moloka'i and its interconnected relationship to the various sectors of the aquifer, please see the section of the attachment titled: "Explanation of Molokai Aquifer Systems Geology."

The groundwater section of the FEIS should address the conflicting viewpoints regarding the direct and cumulative affect that pumping an additional 1,000,000 gallons per day ("gpd") of brackish water from the Kākalahale Well may have on affected wells in Moloka'i. Such disclosure should include a discussion of any former and pending Moloka'i aquifer controversies.

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, "Additional Information on the Kākalahale Well."

How will the withdrawal of an additional 1,000,000 gpd brackish water from the Kākalahale Well impact the Department of Hawaiian Homelands ("DHHL") groundwater reservation of 2,900,000 gpd?

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, 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," and "Recent Studies by USGS Indicate Pumping Kākalahale Will Not Have an Adverse Impact on The DHHL, County, or MPL Wells."

The FEIS should include a discussion of the U.S. EPA Region 9 Sole Source Aquifer designation for the island of Moloka'i.

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, "Moloka'i's Sole Source Aquifer Designation."

Please clarify where in northeast Moloka'i, Wells 0855-01, -02, and -03 are located.

Response: These three production wells located in Waikolu Valley withdraw water from the dike complex in northeastern Moloka'i, which is transported to central Moloka'i through the

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Moloka'i Irrigation System (MIS). In the Final EIS Section 4.9.2 (Water) will be revised as follows:

The MIS, managed by the State Department of Agriculture, develops surface water and high-level groundwater (Wells 0855-01, -02, and -03 in Waikolu Valley) in northeastern Moloka'i to irrigate farmlands in central and western parts of the island.

The description of the existing water system at the Mahana pump station found at paragraph 1 of page 79 of the DEIS should be clarified. Please clarify how for every 1,000,000 gpd that is removed, 1,111,111 gallons is added, and how this all relates to Well 17's water use allocation of 1,018,000 gpd.

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, "MIS Issues," and "Explanation of the 'System Losses' Concept in MIS Agreement."

The DEIS indicated that the Petitioner expects that many of Moloka'i's water issues will be addressed by the comprehensive modeling analysis developed in conjunction with the DHHL, County of Maui Department of Water Supply ("DWS") and the United States Geological Survey ("USGS"). Please clarify specific issues that the modeling analysis is expected to resolve. Please also provide an estimated timeline for the completion of this modeling analysis. We note that this comprehensive modeling analysis appears to be a critically important element of the Project that should be incorporated into the FEIS.

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, "Recent Studies by USGS Indicate Pumping Kākalahale will not have an Adverse Impact on the DHHL, County, or MPL Wells," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

The Petitioner's Water Plan uses: 1) the significant reduction of current use of drinking water for irrigation; 2) increased efficiencies within existing systems; and 3) aggressive water conservation strategies as a justification for the development of the Project. The FEIS should include an expanded discussion detailing how such goals will be achieved and quantified.

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, "Lā'au Project Issues," and "Restricting the Water Use at Lā'au Point."

The estimated drinking water demand for the Project should be based on the maximum possible use at full buildout — not the Project's use at 80% occupancy.

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, "Lā'au Project Issues," and "The Impact of 100 Percent of Lā'au Point Homes Using 600 mgd."

How brackish is the Kākalahale Well (based on chloride levels)? What types of agriculture can be irrigated with water that has this particular concentration of chlorides?

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," and "Salinity and Impacts on Use."

We acknowledge that the high cost of desalination is the primary reason that this technology is not incorporated into the Project at this time. If the Project were approved as presented in the DEIS, what incentive (if any) is there for the Petitioner to develop desalination for the Project sometime in the future? A more comprehensive discussion of this issue is required. [section 4.9.2 of DEIS]

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," and "Alternatives to the Use of Kākalahale-sourced Water."

20. We acknowledge that the primary method of wastewater effluent disposal for the Project will be a beneficial reuse of treated effluent as irrigation water for select areas of SLU Conservation district lands along the coastline and for soil erosion control. Please include a discussion in the FEIS regarding the potential of treated effluent contributing to pathogen infection and nutrient loading which in turn may impact vegetation, groundwater, and nearshore ocean water quality.

If the primary method of effluent disposal is its beneficial reuse as irrigation water, what is the secondary method of wastewater effluent disposal?

Response: The potential of treated effluents to contribute to pathogen infection and nutrient loading will depend on the level of treatment employed. As stated on page 83 of the DEIS, the proposed sewage system will be designed to County of Maui standards and all wastewater plans will conform to applicable provisions of Chapter 11-62, Hawaii Administrative Rules (HAR) "Wastewater Systems." The effluent produced by the WWTP shall meet the Hawaii State Department of Health (DOH) R-1 recycled water quality criteria.

To address your comments, in the Final EIS Section 4.9.3 (Wastewater) will be revised as follows:

The primary method of effluent disposal proposed for the Lā'au Wastewater Treatment Plant (WWTP) is beneficial reuse as irrigation water for select areas of conservation lands along the coastline common areas and for soil erosion control in arid areas of this project. Residential lots will not be irrigated with effluent disposal because the State

Hawaii State Department of Health (DOH) *Guidelines for the Treatment and Use of Recycled Water* require residential recycled water systems to be managed by a "irrigation manager," and this would not be effective for a the amount of residential lots at Lā'au Point. Therefore, however, the effluent produced by the WWTP shall meet the DOH R-1 recycled water quality criteria. R-1 quality recycled water requires the effluent to be at all times oxidized, then filtered, and then exposed to a disinfection process that kills pathogens.

A fully integrated wastewater treatment system that incorporates biological processes, ultrafiltration membranes, and disinfection technology is proposed for the WWTP due to the stringent effluent requirements for R-1 recycled water. This technology combines the activated sludge process with micro-pore filtration in a compact membrane bioreactor (MBR). Both oxidation and filtration are achieved in the MBR, thus eliminating the need for separate secondary and tertiary treatment processes.

Preliminary treatment of the plant influent for treatment in the MBR include coarse-bar screening, grit removal, flow equalization, anoxic basin, pre-aeration, and fine screening of the wastewater.

Final effluent from the MBR—virtually particulate-free, will be disinfectant—using ultraviolet irradiation to render it bacteriologically safe for recycling and disposal. Solids generated at the WWTP include screenings, grit and sludge. Screenings and grit will be dired on site using sand drying beds and disposed in a county landfill.

To meet the stringent effluent requirements for R-1 recycled water, a fully integrated wastewater treatment system that incorporates biological processes, ultrafiltration membranes, and disinfection technology is proposed for the WWTP. This technology combines the activated sludge process with micro-pore filtration in a compact membrane bioreactor (MBR). Final effluent from the MBR, virtually particulate-free, will be disinfectant using ultraviolet irradiation to render it bacteriologically safe for recycling and disposal. This grade of treated water is approved by the Hawaii Department of Health for such uses as agriculture, landscaping, and golf course irrigation.

The terminal disinfection process will eliminate the potential of pathogen infection. R-1 water, will however, contain inorganic nutrients such as nitrogen and phosphorus. Because the applications will take place below the UIC line, no potable groundwater lens will be affected. Runoff of this water into the ocean will have minimal effect on water quality because of the circulation patterns along this coast which will dilute the runoff.

The DOH Director must approve all recycled water systems. A Conservation District Use Permit also would be required for any recycled water systems within the State Conservation District. As stated in Section 3.3 (Soils), to the extent possible, Conservation District areas will not be landscaped or irrigated. Exceptions to this may include areas subject to erosion, where new landscaping can serve to stabilize the soil.

In addition, the Final EIS Section 4.9.3 (Wastewater) will be further revised as follows:
Reliability and Redundancy – Safeguards will be incorporated in the plant design to ensure that treatment operations are uninterrupted in the event of power failure or

equipment malfunction. Design features will comply with the reliability and redundancy provisions promulgated in the "Guidelines for the Treatment and Use of Recycled Water," prepared by the Hawai'i State Department of Health, and dated May 15, 2002, and amendments thereto. For power supply reliability, an auxiliary generator will automatically operate and transfer power during electrical power outages. For process redundancy, multiple units of tanks, pumps, and other key equipment will afford parallel operation during times when a process unit is taken out of service for maintenance or repair.

As part of the reliability and redundancy operating safeguards, an effluent storage impoundment will be provided at the treatment facility. Should any of the redundant backup treatment units malfunction resulting in the plant effluent not having full treatment, that water will be stored in the impoundment for re-treatment, applied to grounds for soil erosion control, or used in plant watering at nearby areas of the treatment facility that are not in the Conservation District. A contingency provision for impoundment is contained in the State Department of Health Reuse Guidelines of Chapter 62, HAR, Wastewater Systems.

Please describe what the need for soil erosion control will be over the life of the Project. Is this a temporary or permanent need? What areas will need soil erosion control? If the conservation lands are to be vegetated with more of the drought tolerant plants that currently thrive in the Petition Area, why would this vegetation need to be irrigated?

Response: In response to your comments, in the Final EIS Section 3.3 (Soils) will be revised as follows:

All construction activities will comply with all applicable Federal, State, and County regulations and rules for erosion control. Before issuance of a grading permit by the County of Maui, an erosion control plan and best management practices (BMPs) will be prepared describing the implementation of appropriate erosion control measures. All construction activities will also comply with the provisions of Chapter 11-60.1, Hawaii Administrative Rules, and Section 11-60.1-33 on fugitive dust.

Before a grading and grubbing permit can be secured from the County, a grading and grubbing permit must be secured from the County in accordance with Chapter 20.08 Maui County Code, "Soil Erosion and Sedimentation Control". This Chapter helps the County comply with Federal and State requirements to protect coastal waters from non-point source pollution and minimize construction impacts to downstream properties coastal ecosystems.

Erosion control plans are reviewed by the County Department of Public Works, the State of Hawaii Department of Health Clean Water Branch, and the Federal Natural Resources Conservation Services (NRCS).

The BMP plan which is part of the application will show silt fencing around construction areas. According to County policy, no more than 15 acres can be exposed at any given time. Each exposed area will be provided with a temporary sedimentation basin. Each exposed area must also be regressed or re-vegetated before the next 15 acre section can be graded. Contractors will also be asked to "leapfrog" between areas to be graded to minimize the cumulative exposed area.

After construction, the establishment of permanent landscaping will provide long-term erosion control. Since annual rainfall in West Molokai is less than 15 inches per year, a permanent irrigation system will be installed to irrigate and establish ground cover on all disturbed areas such as roadway shoulders and cut and fill slopes which are estimated to total 85 acres. Water for this purpose will be from the Kakalahale Well as discussed elsewhere in this EIS document. A nonpotable water irrigation reservoir or tank will be constructed above the project site at the outset to ensure continuous non-potable supply and source for this purpose. To the extent possible, Conservation District areas will not be landscaped or irrigated. Exceptions to this may include areas subject to erosion, where new landscaping can serve to stabilize the soil.

Please include a discussion in the FEIS regarding the potential use of this non-potable water to irrigate landscaping of the residential lots and the parks. Please include a discussion in the FEIS regarding any permit approvals the Petitioner may need to acquire before using treated wastewater effluent (including the necessary transmission infrastructure) in the State Land Use Conservation District or other areas of the Petition Area.

Response: In response to your comment, in the Final EIS Section 4.9.3 (Wastewater) will be revised as follows:

The primary method of effluent disposal proposed for the La'au Wastewater Treatment Plant (WWTP) is beneficial reuse as irrigation water for select areas of conservation lands along the eastside common areas and for soil erosion control in arid areas of this project. Residential lots will not be irrigated with effluent disposal because the State of Hawaii's State Department of Health (DOH) *Guidelines for the Treatment and Use of Recycled Water* require residential recycled water systems to be managed by a "irrigation manager," and this would not be effective for a the amount of residential lots at La'an Point. Therefore, however, the effluent produced by the WWTP shall meet the DOH R-1 recycled water quality criteria. R-1 quality recycled water requires the effluent to be at all times oxidized, then filtered, and then exposed to a disinfection process that kills pathogens.

A fully integrated wastewater treatment system that incorporates biological processes, ultrafiltration membranes, and disinfection technology is proposed for the WWTP due to the stringent effluent requirements for R-1 recycled water. This technology combines the activated sludge process with micro-pore filtration in a compact membrane bioreactor (MBR). Both oxidation and filtration are achieved in the MBR, thus eliminating the need for separate secondary and tertiary treatment processes.

Preliminary treatment of the plant influent for treatment in the MBR include coarse-bar screening, grit removal, flow equalization, anoxic basin, pre-aeration, and fine screening of the wastewater.

Final effluent from the MBR, virtually particulate free, will be disinfected using ultraviolet irradiation to render it bacteriologically safe for recycling and disposal.

Solids generated at the WWTP include screenings, grit and sludge. Screenings and grit will be dried on-site using sand drying beds and disposed in a county landfill.

To meet the stringent effluent requirements for R-1 recycled water, a fully integrated wastewater treatment system that incorporates biological processes, ultrafiltration membranes, and disinfection technology is proposed for the WWTP. This technology combines the activated sludge process with micro-pore filtration in a compact membrane bioreactor (MBR). Final effluent from the MBR, virtually particulate-free, will be disinfected using ultraviolet irradiation to render it bacteriologically safe for recycling and disposal. This grade of treated water is approved by the Hawaii Department of Health for such uses as agriculture, landscaping, and golf course irrigation.

The terminal disinfection process will eliminate the potential of pathogen infection. R-1 water, will however contain inorganic nutrients such as nitrogen and phosphorous. Because the applications will take place below the UIC line, no potable groundwater lens will be affected. Runoff of this water into the ocean will have minimal effect on water quality because of the circulation patterns along this coast which will dilute the runoff.

The DOH Director must approve all recycled water systems. A Conservation District Use Permit also would be required for any recycled water systems within the State Conservation District. As stated in Section 3.3 (Soils), to the extent possible, Conservation District areas will not be landscaped or irrigated. Exceptions to this may include areas subject to erosion, where new landscaping can serve to stabilize the soil.

In addition, in the Final EIS the above information regarding the need for a Conservation District Use Permit will be added to the table in Section 1.74 and Section 5.3 as shown in the attachment titled, "Permits & Approvals."

Please define BOD, SS, CFU and NTU in Table 4. Anticipated Wastewater Effluent Constituent Levels. [section 4.9.3 of DEIS]

Response: These acronyms pertain to the concentration measurement of pollutants in a liquid solution. In response to your comment, in the Final EIS Section 4.9.3 (Wastewater) will be revised as follows:

Table 4. Anticipated Wastewater Effluent Constituent Levels

Constituent	Influent	MBR	UV Disinfection
Average BOD ₅ (mg/L)	240	< 5	< 5
Average SS (mg/L)	240	< 5	< 5
Fecal Coliform - median (CFU/100 mL)	10 ⁸	< 23	< 1
Turbidity (NTU)	30 - 50	< 0.2	< 0.2

In wastewater engineering, BOD is a term for biochemical oxygen demand, SS is suspended solids, CFU is colony forming units, and NTU is nephelometric turbidity units.

Biochemical Oxygen Demand (BOD) is a measure of the quantity of oxygen used in the biochemical oxidation of organic matter in a biological treatment process, and hence an indicator of the biodegradable organic content of constituents in wastewater. In conventional secondary treatment processes for wastewater, BOD concentrations are reduced from 200 milligrams per liter (mg/L) to 30 mg/L, or 85 percent removal.

Suspended Solids (SS) is the concentration of organic and inorganic particles held in suspension in wastewater. The laboratory procedure is to measure a liter of liquid, pass it through a standard glass fiber filter, weigh the amount of particles after drying on the filter paper, and calculate the concentration in milligrams per liter of liquid. Secondary treatment processes are defined as producing an effluent of 30 mg/L, or 85 percent removal. As Table 4 indicates, R-1 recycled water quality is far better than secondary treatment.

Colony Forming Units (CFU) is a unit of expression used in enumerating bacteria density by plate-counting methods. A colony of bacteria develops from a single cell or a group of cells, either of which is a colony-forming unit.

Nephelometric Turbidity Units (NTU) is a unit of expressing the cloudiness (turbidity) of a sample as measured using a nephelometric turbidimeter, a laboratory instrument that emits and measures absorbed light through the solution.

21. *Please note that page 41 of the DEIS states that agricultural activities ceased on the Petition Area in 1999; whereas page 97 of the DEIS states that no ranching has occurred since 2000. Please resolve this inconsistency in the FEIS.*

Response: Agricultural activities ceased in 2000. To correct the mistake in Section 3.4 (Agricultural Impact), in the Final EIS this section will be revised as follows:

The Lā'au Point site is currently vacant. No ranching activities have occurred at the site since 1999-2000. In addition, no chemicals or fertilizers have been used on the site since 1970 when pesticides were used to kill overgrown kiawe trees. Historically, pineapple cultivation took place on gently sloping land near the top of the Lā'au Point parcel, but never in the area proposed for the development.

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As previously discussed in Section 3.3 (Soils), the NRCS Soil Survey, Land Study Bureau Detailed Land Classification, and ALISH soil rating systems classify the Lā'au Point soils as poorly suited for soil-based agriculture.

Other agricultural activities in the project area, such as cattle grazing, ceased in 1999-2000; therefore, the Lā'au Point project will not take any active agricultural land out of production and will not impact Molokai Ranch's agricultural operations.

22. *Under the heading Standards for Determining Conservation District Boundaries, the FEIS should include a discussion why the 9-acre public shoreline park on the south shore should be reclassified from the SLU Conservation District to the SLU Rural District in the context of §15-15-20, HAR. [section 5.1.2 of DEIS]*

Response: In response to your comment, in the Final EIS Section 5.1.2 (State Land Use Law Chapter 205, Hawai'i Revised Statutes) will be revised as follows:

A reclassification of nine acres from Conservation to Rural District is proposed for the public shoreline park on the south shore. While park-type uses are compatible with the standards set forth in §13-5-20, 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).

23. **Please clarify why a description of the Project's compliance with §13-5-30, HAR is used in the DEIS under the heading State Conservation District Administrative Rules. Please note that your reference to §13-5-30, HAR is more accurately described as §13-5-30(c)(1-9), HAR. It is our understanding that §13-5-30(c)(1-8), HAR, is the criteria the Department/Board of Land and Natural Resources apply in its consideration of a Conservation District Use Application ("CDUA"). Does the Project require a CDUA? [section 5.1.3 of DEIS]**

Response: As noted in #20 above, a Conservation District Use Permit would be required for any recycled water systems within the State Conservation District. To reflect this in the Final EIS the table in Section 1.74 and Section 5.3 as shown in the attachment titled, "Revised Permits & Approvals."

The reference to §13-5-30, HAR was a typographical error. The correct reference should be to §13-5-1, HAR. To correct this mistake, in the Final EIS Section 5.1.3 (State Conservation District Rules) will be revised as follows:

Discussion: According to HAR—§13-5-30 §13-5-1, HAR, the purpose of the Conservation District is to "regulate land use in the conservation district for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare."

24. **Please note page 107 of the DEIS incorrectly identifies the Water Plan as Appendix N — which is the Preliminary Engineering Report. Should this reference instead be to Appendix A, Chapter 6 or Appendix P?**

Response: The correct reference in the Draft EIS should be to Appendix P, the Water Plan Analysis. In the Final EIS, appendices have been re-lettered to reflect new appendices. In the Final EIS, the reference will be revised as follows:

The Water Plan (see Section 4.9.2 and Appendix N S) addresses the availability and coordination of water resources for future growth.

25. **Page 123 of the DEIS indicates that the Land Trust will be in charge of managing the Project's conservation lands. This reference seems inaccurate in light of the Petitioner's proposal that the coastal conservation district lands will be jointly administered by the Land Trust and the homeowner's association. Please clarify.**

Response: The Land Trust and the Homeowner's association will jointly manage the expanded Conservation District (434 acres total). The homeowner's association will own the expanded Conservation District lands and the Land Trust will hold, and be able to enforce, an easement over these lands. Both entities will discuss and jointly decide on the management of the lands within the scope of the easement provisions. To include this information in the Final EIS, the "Conservation Land" discussion in Section 5.1.6 will be revised as follows:

Discussion: MLP proposes to 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. Natural systems, such as streams, gulches, and floodways will also be maintained and remain as open space. The Land Trust will be in charge of managing Lā'au Point's Conservation lands. The Land Trust and the homeowner's association will jointly manage the expanded Conservation District. The homeowner's association will own the expanded Conservation District lands and the Land Trust will hold, and be able to enforce, an easement over these lands. Both entities will discuss and jointly decide on the management of the lands within the scope of the easement provisions.

26. **Regarding Table 7. Summary of Other MPL Land Development Alternatives, please clarify how the estimated water use per lot/unit (gals/day) and estimated total water use (gals/day) were determined. The estimated water uses appear inflated in relation to the Project's proposed water needs. [section 6.4 of DEIS]**

Response: In response to your comment, in the Final EIS Section 6.4 (Other MPL Land Development Alternatives) will be revised to include the following below Table 7:

The water uses are based on uses for the particular types of developments studied in each alternative. The usages in the table above are, in some cases, a combination of potable and non-potable uses.

Higher water uses were proposed for Maunaloa mauka two-acre and larger lots because, unlike Lā'au Point, it was anticipated that these developments would be occupied by full-time residents rather than second-homeowners as at Lā'au Point, and would therefore use more water. For example, at Kaluako'i, the majority of ocean front lots are owned by second-homeowners, as opposed to the hinterland lots that are, in the main, occupied by full-time residents.

Further, in the Kualapu'u residential development example only 500 gallons per day was used based on historic water use for the area. On larger rural development lots, more total water for irrigation use was factored than the 1,500 gallons per day proposed for the Lā'au Point two-acre lots. This was based on the supposed need to irrigate more land and the fact that these lots probably would have an agricultural use.

In the cases of the "Maunaloa to Lā'au-25 acre lots" and the "Maunaloa to Lā'au-10 acre lots" this water use may well be conservative if agriculture is part of the intended use.

In the alternative "Kaluakoi Resort Condo units" only 560 gallons per day of potable water was proposed (40 gallons per day less than Lā'au Point) based on the assumption there was likely to be less occupants in units than that Lā'au homes.

In any event, if the water use proposed was too high by a factor of 50 percent, most of these development alternatives, particularly Alternative 2, 3, 8, and 9, (the only ones that proposed any financial return), would all use more water than the proposed Lā'au development.

27. *Please expand the discussion of Cumulative and Secondary Impacts in the FEIS to include the cumulative impact of the Project in the context of other lands owned or developed by the Petitioner that have development potential that has not been realized yet.*

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 Moloka'i.

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 Kaluakoi Hotel; and 2) affordable housing projects elsewhere. To the extent that the development of Lā'au Point facilitates the reopening of the Kaluakoi 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.

In your comment, you suggest we discuss the cumulative impacts of the development of Lā'au Point together with potential development at some time in the future of other lands owned by the MPL that have development potential that has not been realized yet. Cumulative impacts are restricted to those future actions that are reasonably foreseeable. The actual development of MPL's other lands are not planned for development and cannot be said to be reasonably foreseeable for the purposes of this EIS.

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 facilitates this protection and preservation.

To include the relevant information above in the Final EIS, as well as to respond to your request to provide additional information in response to a question from Mr. David Kimmo Frankel (see #39 below), in the in the Final EIS, Section 7.2 (Cumulative and Secondary Impacts) will be revised as follows:

The re-opening of the Kaluakoi 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 Kaluakoi 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 Kaluakoi, Maunaloa, and Pāpohaku 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 Pāpohaku Ranchlands and Kaluakoi 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 Kaluakoi and Pāpohaku areas recognize that the upgraded roadways in the Kaluakoi and Pāpohaku areas as a result of Lā'au Point project is 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 Kaluakoi. The *Community-Based Master Land Use Plan for Molokai Ranch* states that if demand for accommodation at the Kaluakoi 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.

The discussion in the FEIS regarding Cumulative and Secondary Impacts should also address how the withdrawal of 1,000,000 gpd of brackish water from the Kākalahale Well will impact (or not) other current and future water needs on the island. Please identify what the island's water allocation issues are and clarify what long-term solutions are envisioned.

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 in the attachment. In addition, in the Final EIS Section 7.2 (Cumulative and Secondary Impacts) will be revised as follows to reference the additional water information and analysis provided in the revised Section 4.9.2 (Water):

Some Hawaiian homesteaders, especially those with lots in Ho'olehua, feel that the greatest cultural impact of the Lā'au Point project is the MPL Water Plan (discussed Section 4.9.2 of this EIS and Section 6 of Appendix A). They feel that the proposed withdrawal of an additional 1,000,000 gallons per day 1.0 mgd of brackish water for future non-drinking water needs of the project and other MPL properties from the Kākalahale Well (as proposed in the Water Plan of Section 6 of Appendix A) will take away water that DHHL will need to support future expansion of agriculture and residential lots. Hawaiian homesteaders have particular interest as major users of Molokai's aquifers with first preference for groundwater reservations. As discussed more extensively in Section 4.9.2 (Water), it is highly unlikely that pumping 1.0 mgd from the Kākalahale Well will have any measurable impact on the existing DHHL and DWS wells in Kualapu'u for several reasons. First, the Kākalahale Well is down- and

across-gradient from the DHHL and DWS wells. Second, the Kākalahale Well is approximately 12,200 feet (2.31 miles) away from the DHHL and DWS wells, at that distance it is unlikely that pumping 1.0 mgd will create a measurable effect. Third, there are known subsurface intrusions between the Kākalahale and DHHL/DWS well sites, namely Pu'u Kākalahale and Pu'u Luahine, which are barriers to ground water flow.

Please clarify which of the Project's impacts to the communities of Kaluako'i and Pāpōhaku will be balanced by the Project's infrastructure improvements. [section 7.2 of DEIS]

Response: The Lā'au Point project will upgrade the roadways from Kaluako'i and Pāpōhaku. To include this information 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. 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.

28. *We note that the first and only reference to cultural resource managers in the body of the DEIS is on page 168. Please expand the description of the duties and purpose of the cultural resource managers in the appropriate sections of the FEIS. [section 7.4.1 of DEIS]*

Response: In the Final EIS the term "Resource Manager" will be used to refer to both "cultural resource manager" and "natural resource manager". In response to your comment, in the Final EIS Section 7.4.1 (Rationale for Proceeding with Lā'au Point Notwithstanding Unavoidable Effects) will be revised as follows:

- Hiring community-cultural and natural resource managers Resource Managers who will work with the community to monitor every phase of the project, from clearing and grading, to construction and when the new homeowners move in.

29. *The unresolved issue section of the DEIS is incomplete. Pursuant to §11-200-17(n), HAR, please include a discussion of how the presently unresolved issue of water will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the problem. [section 7.5 of DEIS]*

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)." As explained in the attachment (see sections of the attachment titled: "Impact on the Aquifers of

Pumping Water from Kākalahale," and "Alternatives to the Use of Kākalahale-sourced Water"), the currently unresolved issue of water should not forestall proceeding with required approvals for the Lā'au Point project because:

1. It is highly unlikely that pumping 1.0 mgd from the Kākalahale Well will diminish other parties' ability to develop the water they need, or, conversely, that water withdrawals by others will impact MPL's ability to withdraw 1.0 mgd from the Kākalahale Well; and
2. In the event Kākalahale Well water is not available, there are alternative sources of non-potable water available to MPL: a) reclaimed water from the Pala'au Shrimp Farm could be treated to make it suitable for irrigation purposes; and b) desalination of either brackish water from West Molokai aquifers or sea water are alternative sources of irrigation water.

To incorporate this information and other relevant information from attachment titled, "Revised Section 4.9.2 (Water)" into Section 7.5 (Unresolved Issue) of the Final EIS, in the Final EIS Section 7.5 (Unresolved Issues) will be revised as follows:

7.5.1 Water

Water—In connection with the participants who were involved in preparing the *Community-Based Master Land Use Plan for Molokai Ranch*, MPL developed a proposed Water Plan. A key feature of the Water Plan is that only existing sources, at currently permitted amounts, will be utilized to meet all of the potable water needs for the current customers of the two large private water systems operated by MPL and MPL's future developments proposed under the *Community-Based Master Land Use Plan for Molokai Ranch*. These sources include the permitted 1,018,000 gpd from Well 17 in the Kūalapu'u Aquifer and surface water from the Molokai Ranch Mountain Water system. The constructed, but currently unused, Kākalahale well in the Kamiloa Aquifer is being proposed as a new non-potable water source. The Kākalahale Well was drilled in 1969 to provide drinking water to Kaluako'i. However, due to the brackish water quality, the well was never used as a production well.

The Kākalahale Well is an ideal source of non-potable water. The well is owned by MPL and already constructed (though not in production). More importantly, because the well site is hydro-geologically isolated by subsurface intrusive structures, withdrawing water from the Kākalahale Well is unlikely to have any adverse impact on existing wells in the Kūalapu'u aquifer, on DHHL's ability to withdraw its 2,905 mgd reservation amount from the Kūalapu'u aquifer, or the development of potable water in the Kamiloa aquifer.

In the Water Plan, MPL proposes that water from Well 17 be used solely for potable water needs. Irrigation uses, currently permitted under the Well 17 permit, will be supplied from other sources. Under this plan, MPL will not need to seek any more potable water than what is currently developed. MPL will sign covenants preventing it from ever seeking further potable water permits from the State Commission on Water Resource Management (CWRM), and will abandon the Waioala Well application.

The MIS was planned, designed, and constructed under a special Act of Congress (Reclamation Act of 1954) to develop surface water and high-level groundwater (Wells 0855-01, -02, and -03) in Waikolu Valley in northeastern Molokai to irrigate farmlands in central and western parts of the island. The MIS originally served large-scale pineapple

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operations, but was converted to serve diversified agriculture after the pineapple operations closed in the late 1970s. The system also serves the native Hawaiian homesteads in Ho'olehua, and pursuant to HRS section 168-4, Hawaiian homesteads have a prior right to two-thirds of the water currently developed by the MIS. The MIS transports 1,500,000 gpd via a 10-mile transmission link to an open reservoir at Kualapu'u, where it is stored prior to entering a distribution network extending from Ho'olehua to Mahana.

When originally constructed, the MIS was administered by the State Board of Land and Natural Resources (BLNR). In 1975, the BLNR entered into an agreement (the Agreement) with Kaluako'i Corporation (Kaluako'i), renting "space" in the MIS for Kaluako'i to transport water from Well 17 to Mahana. Under the terms of the Agreement, Kaluako'i would pump water from Well 17 into the MIS system and withdraw the water at Mahana. At Mahana, the Well 17 water is then treated to potable standards and used to supply potable water to Maunaloa town, the Papohaku and Kaluako'i subdivisions, the Kaluako'i condominiums, and for other residential purposes as well as to meet the potable water needs of the resort areas on the West End. To account for potential system losses along the way, Kaluako'i was allowed to withdraw a lesser amount than was put in from Well 17. Additionally, Kaluako'i paid lease rent to the MIS. The Agreement was for the use of "excess capacity" in the system and provided that if there was no longer sufficient capacity in the system then the use would have to be relinquished on reasonable notice. As a result of the Agreement no other infrastructure to transport Well 17 water to the West end of Moloka'i was put into place.

The 1975 Agreement was extended by the BLNR in 1985. In 1988, Kaluako'i assigned its interest in the Agreement to Kukui (Moloka'i), Inc. (KMI), which assignment was consented to by the BLNR.

Effective July 1, 1989, administration and management of the MIS was transferred from the BLNR to the State Department of Agriculture (DOA). In December 1989, the Agreement was amended to reflect the statutory transfer to the DOA.

Subsequently, the Agreement was extended twice through December 31, 2005. In late 2001, KMI assigned the Agreement to Kaluako'i Water, LLC (KWLLC), a Hawaii limited liability company wholly owned by Molokai Properties Limited. The DOA acknowledged the assignment in early 2002.

Prior to and following the Agreement termination date of December 31, 2005, KWLLC and the DOA have been engaged in negotiations for the continued use of the MIS to transport Well 17 water to Mahana, and the DOA has conducted community meetings on the matter. By September 2007, a further extension to the Agreement was in the final stages of being completed following community input on aspects of the Agreement. The Agreement had been open for public input on Moloka'i before the MIS Advisory Board prior to its execution by the parties.

The extension agreement had not been executed when, on September 12, 2007, DOA, through its Deputy Attorney General, officially determined that any agreement for the continued use of the MIS by KWLLC would be subject to the preparation of an environmental disclosure document pursuant to HRS Chapter 343. As of this writing, KWLLC continues to utilize the MIS to transport water, however, the DOA's Deputy

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Attorney General indicated in writing that the practice should cease pending preparation of the environmental disclosure document. Currently, there is no alternative means of transporting water from Well 17 to end users in Kaluako'i. Several alternatives are possible, each of which requires acquisition of new easements or modification of existing easements, as well as engineering and cost studies. These items have to be addressed before MPL can rationally identify the practicable alternatives.

The MIS currently transports up to 1,018 mgd of water (12-month moving average) pumped from Well 17 to Mahana for distribution to existing current users in Kaluako'i. Well 17 water will continue to be used by Kaluako'i customers whether or not the La'au Point project is approved. Thus, the issue of how to transport water from Well 17 to either Mahana or to Kaluako'i will have to be resolved regardless of the La'au Point project. Inasmuch as the MIS issue affects existing current uses, there is an element of urgency, and it is likely that the MIS issue will be resolved prior to any discretionary land use decisions being made on the La'au Point project. Therefore, the decisions made with respect to continued use of the MIS may have to be made without consideration of the La'au Point project.

Because there are existing customers in Kaluako'i dependent upon Well 17 water, water will have to somehow be transported from Well 17 to the facilities owned by MPL for further distribution to end users at Kaluako'i. Either the MIS will continue to be used or alternate infrastructure will be developed for this purpose. Either way, the infrastructure used to transport water from Well 17 to MPL distribution facilities will also be used to transport potable water to La'au Point. Therefore, even if use of the MIS to transport Well 17 water is discontinued, there will be a means of getting potable water to La'au Point. The decisions made with respect to this MIS issue, however, will affect infrastructure planning for the transport and distribution of potable water to La'au Point.

These water system improvements will need to be developed with the cooperation and consent of the County of Maui (DWS) and the CWRM. MPL with W&E has been working with the DWS and Department of Hawaiian Homes Lands (DHHL) to meet their future water needs, and all requirements of the CWRM. MPL must seek a water use permit from the State CWRM for its Kakaiaale Well, and to vary the supply areas of its current permits.

For many participants in the community meetings, water is the primary cultural resource. They feel that drawing brackish water out of the Kakaiaale Well will have a huge impact on the culture and way of life on Moloka'i. They expressed concern that the additional water proposed to be drawn out of the Kakaiaale Well, even if it is brackish, will strain and diminish the water table on Moloka'i, increasing salinity levels of ocean discharge and in neighboring wells. They refer to findings in the Waiola Well Water Use Permit contested case before the Hawaii State Commission on Water Resource Management which examined the potential impacts of withdrawing groundwater and affecting shoreline seepage on near shore marine resources makai of Kakaiaale.

Hawaiian homesteaders, especially those with lots in Ho'olehua, feel that the greatest cultural impact of the La'au Point project is the MPL Water Plan (discussed in Section 6 of Appendix A and Section 4.9.2 of this EIS). They feel that the withdrawal of an additional 1,000,000 gallons per day of brackish water from the Kakaiaale Well will

take away water that DHHL will need to support future expansion of agriculture and residential lots on their Moloka'i lands.

MPL unquestionably supports the reservation of 2.9 million gallons reserved in the Kualapu'u aquifer for Hawaiian homestead users. At an average of 4,000 gallons per day, this amounts to drinking water for an additional 2,900 households. A recent study by DHHL's consultants indicates that even after building out both Ho'olehua and Kalama'ula under DHHL's *Moloka'i Island Plan*, there will still be 698,900 gpd in the Kualapu'u Aquifer reserved for DHHL. This gives confidence that DHHL's future water needs are well protected. The recent two-dimensional modeling completed by USGS as part of the Kaunakakai Stream Ecosystem Restoration Project gives additional confidence that the Kākalahale Well will have minimal impact on DHHL.

MPL has long acknowledged publicly that its water use would yield to DHHL's priority reservation rights to water. Further mitigation measures for potential water impacts are discussed in Section 4.9.2 of this EIS.

MPL is actively working with DHHL, the County of Maui DWS, and the US Geological Survey to comprehensively evaluate and seek a solution to Moloka'i's cumulative water demands and resources. The goal is to appropriately locate wells and manage pumping such that all of the parties will be able, to the greatest extent possible, to withdraw sufficient water to meet their needs. It is expected that many of Moloka'i's water issues will be addressed by a comprehensive modeling analysis. Although the specific details of the water resource issues and modeling analysis have yet to be currently identified by DHHL, Maui DWS, MPL, the CWRM, and other homeowner associations and the study is likely to commence later in 2007. MPL has long acknowledged publicly that its water use would yield to DHHL's priority reservation rights to water. Further mitigation measures for potential water impacts are discussed in Section 4.9.2 of this EIS.

MPL is participating in these studies and cooperative efforts notwithstanding the fact that it is highly unlikely that pumping 1.0 mgd from the Kākalahale Well will diminish the other parties' ability to develop the water they need, or conversely, that water withdrawals by others will impact MPL's ability to withdraw 1.0 mgd from the Kākalahale Well.

In the event Kākalahale Well water is not available, however, there are alternative sources of non-potable water. Reclaimed water from the Palā'au Shrimp Farm could be treated to make it suitable for irrigation purposes. Additionally, desalination of either brackish water from West Moloka'i aquifers or sea water are alternative sources of irrigation water.

Therefore, the currently unresolved issue of water should not forestall proceeding with required approvals for the Lā'au Point project because:

1. It is highly unlikely that pumping 1.0 mgd from the Kākalahale Well will diminish other parties' ability to develop the water they need, or conversely, that water withdrawals by others will impact MPL's ability to withdraw 1.0 mgd from the Kākalahale Well, and
2. In the event Kākalahale Well water is not available, there are alternative sources of non-potable water available to MPL: a) reclaimed water from the Palā'au Shrimp

Farm could be treated to make it suitable for irrigation purposes; and b) desalination of either brackish water from West Moloka'i aquifers or sea water are alternative sources of irrigation water.

30. The State Land Use Commission is listed twice under the State of Hawai'i as Consulted Parties and Participants in the EIS Process section of the DEIS. (section 8.0 of DEIS)

Response: In response to your comment, in the Final EIS Section 8 (Consulted Parties and Participants in the EIS Process) will be revised as follows:

State of Hawai'i

- State Land Use Commission (LUC)
- Department of Accounting and General Services
- Department of Agriculture
- Department of Business, Economic Development & Tourism (DBEDT)
- Department of Business, Economic Development & Tourism - Land Use Commission (LUC)
- Department of Business, Economic Development & Tourism - Office of Planning Technology Division
- Department of Education
- Department of Hawaiian Homelands
- Department of Health - Environmental Planning Office
- Department of Health - Office of Environmental Quality Control
- Department of Land and Natural Resources
- Department of Land and Natural Resources - Historic Preservation Division
- Department of Transportation
- Office of Hawaiian Affairs
- University of Hawai'i Environmental Center

31. Please include details regarding the two outdoor warning sirens proposed for the Project in the body of the FEIS. (PBR letter dated December 13, 2006 letter to Ed Teixeira)

Response: In response to your comment, in the Final EIS Section 3.5 (Natural Hazards) will be revised as follows:

Lā'au Point will not exacerbate any hazard conditions. No structures will be built within FIRM Zones V and A to mitigate against coastal and flooding hazards. The potential impact of earthquakes, and destructive winds and torrential rainfall caused by hurricanes, will be mitigated through compliance with the Maui County Building Code. Likewise, the stringent CC&Rs and Lā'au Point Construction Rules and Design Guidelines will ensure that all structures be constructed for protection from earthquakes in compliance with the requirements of the Maui County Building Code. Although a small portion of the site is located within the 150m Inundation Zone (Figure 4.8 17), no structures will be allowed to be built in these areas. At the appropriate time during the project design phase MPL will consult with the State Department of Civil Defense regarding appropriate placement of the Civil Defense sirens. State Department of Civil Defense has recommended that two outdoor warning sirens should be included in the design.

To Lā'au Point after full build-out, total waste from residential uses would be 1,800 pounds per day. This estimate includes full occupancy of all homes. It is projected, however, that only 30 percent of the homes will be occupied on a full-time basis.

To mitigate potential impacts of solid waste generation, Lā'au Point will incorporate recycling during construction and in the community to help reduce the amounts of solid waste going to the landfill.

As required by the County of Maui, a solid waste management plan will be prepared to address waste generated by construction. During the construction phase, whenever practical, solid wastes will be minimized and recycled. It will be recommended to contractors that a job-site recycling plan be developed and, as much as possible, construction waste should be recycled. Construction waste that cannot be recycled will be sent to the Nā'iwa landfill. MPL will ensure that all solid waste generated during construction will be directed to a DOH-permitted waste disposal or recycling facility. Nā'iwa landfill is a DOH-permitted waste disposal facility.

Material derived from clearing and grubbing will be clipped and spread over adjoining MPL lands to decompose as organic matter. Boulders and other excavated material that are not recycled will be stockpiled on MPL lands with proper erosion control measures.

34. *Please include the following opinions and recommendations of OHA in the body of the FEIS: 1) OHA has requested that an archaeological monitor be on-site during all excavations and ground disturbances for the Project; 2) OHA characterizes the Petition Area as more of a cultural property (a large, intact cultural site) rather than a property containing cultural sites; and 3) OHA has recommended that view planes must be preserved between existing heiau and other cultural sites. [OHA letter dated July 5, 2006 to PBR]*

35. *Please include the following representations in the body of the FEIS: 1) The Project's archaeological mitigation plan calls for a buffer with a radius of nine meters extending from burials and heiaus to keep an open view plane toward the ocean; and 2) that traditional gathering rights and access will not be restricted during construction, except as necessary to ensure safety and that alternate access routes will be provided in the event access is prevented for safety reasons. [PBR letter dated December 13, 2006 to Clyde Nānu'u]*

Response: In response to your comments (34 and 35), in the Final EIS Section 4.1 (Archaeological Resources) will be revised as follows:

MPL is committed to preserving known archaeological sites and complexes in the project area. As a result of the archaeological work and the two year involvement of the Cultural Committee and the larger community within the *Community-Based Master Land Use Plan for Molokai Ranch* process, approximately 1,000 acres of "Cultural Protection Zones" were identified to denote areas where groupings of archaeological and historic sites exist, such as the archaeological preserve (approximately 128 acres) to be created at Kanāka 'ipō Gulch (see Figure #0 12). As noted throughout the *Preservation Plan* contained in Appendix E, the plan was developed with significant community input during the course of the community based planning process for the Master Plan and through the work of our archaeologist. The creation of Cultural Protection Zones, to be managed by the Land Trust, increases both continued community involvement and preservation of cultural landscapes rather than only individual sites, which represents a

32. *Please include the details associated with the Critical Wastewater Disposal Area and the inability of the County of Maui to provide the Project with sewer service in the body of the FEIS. [Department of Health ("DOH") letter dated July 6, 2006 to PBR]*

Response: In response to your comment, in the Final EIS Section 4.9.3 (Wastewater) will be revised as follows:

The Lā'au Point site is currently undeveloped and is not serviced by any wastewater system. In the project's vicinity, both Maunaloa Village and Kahuako'i have their own private individual wastewater systems. The site is located in the Critical Wastewater Disposal Area as determined by the Maui County Wastewater Advisory Committee where no new cesspools are allowed.

POTENTIAL IMPACTS AND MITIGATION MEASURES

At build-out, it is anticipated that permanent residents will occupy up to 60 of the homes (30 percent). Daily flows for wastewater are anticipated to be approximately 20,000 gpd. With additional seasonal residents (80 percent occupancy), the project could generate 70,000 gpd of wastewater.

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."

33. *Please include in the body of the FEIS: 1) the details regarding the Project's solid waste management plan; and 2) a representation that the Petitioner will ensure that all solid waste generated during the Project construction will be directed to a waste disposal or recycling facility which is appropriately permitted by the DOH. [DOH letter dated July 19, 2006 to PBR]*

Response: In response to your comment, in the Final EIS, Section 4.9.4 (Solid Waste) will be revised as follows:

Solid waste will be generated during construction and after development of Lā'au Point. During construction, material derived from clearing and grubbing will be clipped and spread over adjoining Ranch lands to decompose as organic matter. Boulders and other excavated material that are not recycled will be stockpiled in Ranch lands with proper erosion-control measures.

The County of Maui's Solid Waste Division has previously estimated that households on Maui generate approximately nine pounds of solid waste per day. Applying this estimate

great advance not just in acreage, but in diversity and intensity of preservation actions. In their July 5, 2006 comment letter on the EISPN, OHA stated: "Because many known archaeological sites exist within this property, it is likely that more will be found... the area is more of a cultural property than a property containing cultural sites." The creation of Cultural Protection Zones acknowledges this concept and implements protection of cultural landscapes rather than only individual sites.

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.

Access roads and the rural-residential lots will not affect cultural resources since plans are to avoid Cultural Protection Zones and archaeological sites. Depending on the nature of the archaeological sites, mitigation measures such as buffers, permanent boundaries and easements, and interpretive signs will be established to protect and preserve sites. It is expected that the project will not have adverse effects to archaeological sites. The residential community will not encroach on Cultural Protection Zones and strict cultural resource management measures (discussed below) will be implemented.

To ensure proper resource protection and management in the project area, mitigation efforts will include: 1) the establishment of the Moloka'i Land Trust, an organization tasked with preserving natural and cultural resources within lands decided to it; 2) conservation easements and cultural overlay districts on MPL lands; and 3) CC&Rs for the Lā'au Point project that would help preserve sites therein and establish procedures for a management partnership between the Lā'au Point homeowners' association and the Land Trust.

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 (Papohaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Papohaku 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 archaeologist 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 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.

The Preservation Plan, Burial Treatment Plan, Monitoring Plan, and Data Recovery Plan are contained in Appendix E. By letter February 13, 2007, SHPD has approved the Data Recovery Plan contained in Appendix E. The other three plans will be submitted in a revised form to SHPD in the near future. The Archaeological Plan in the DEIS has been replaced in its entirety by the four aforementioned plans.

Traditional gathering rights and access will not be restricted during construction, except as necessary to ensure safety. In the event access is prevented for safety reasons alternate access routes will be provided.

Finally, 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. ~~The Moloka'i Burial Ground will also be notified of any nearby found burials. Should a possible burial be encountered that cannot be planned around, SHPD and OHA will be consulted prior to any testing of the burial.~~

36. Please describe or clarify the Project's impacts (direct or otherwise) to the County of Maui's future use of TMK Nos.: (2) 5-1-004; 034 and 035, totaling 110,999 acres. [PBR letter dated December 13, 2006 to Alice Lee]

Response: To clarify the statement in the PBR HAWAII letter dated December 13, 2006 to County of Maui Director of Housing and Human Concerns Alice Lee, MPL does not anticipate any adverse direct or indirect impacts from the Lā'au Point project on the future use of the County-owned TMK parcels (2) 5-1-04:34 and 35. These parcels are in the Kaluako'i area and total 110,990 acres. As stated in Section 7.2 (Cumulative and Secondary Impacts) of the Draft EIS, and as clarified in the response to your comment 27 above, upgraded roadways in the Kaluako'i and Papohaku areas as a result of Lā'au Point should help to balance the impacts

related to increased users and activities in the areas and could be considered to be a positive impact.

37. Please include the information provided by the DWS in the FEIS discussion and analysis regarding the sustainable yield and developable yield of the Punakoa aquifer, which the Project overlies. [DWS letter dated June 27, 2006 to PBR]

Response: We note that the correct name of the aquifer you refer to is Punakou. 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, "The Punakou Aquifer."

38. Please include the following findings of Maui Electric Company, Ltd. ("MECO") in the body of the FEIS: 1) the Project's anticipated electrical load demand will have a substantial impact to MECO's system; and 2) in addition to an electrical line extension, other substantial upgrades may be necessary to accommodate the Project. [MECO letter dated June 29, 2006 to PBR]

Response: In response to your comment, in the Final EIS Section 4.9.5 (Electrical and Communication System) will be revised as follows:

Electrical, telephone, and cable distribution systems will be extended underground from Kaluako'i. Underground utilities will be as close to the road center as possible to avoid multiple impact corridors. At its eastern terminus, this underground distribution system will be connected to the existing overhead system servicing Hale O Lono Harbor to provide an alternative means of serving the project.

In their June 29, 2006 comment letter on the EISP, Maui Electric Company (MECO) stated that the project's anticipated electrical load demand will have a substantial impact to MECO's system and an electrical line extension and other substantial upgrades may be necessary to accommodate the project. As project design progresses, as recommended by MECO, MPL's electrical consultant will submit electrical drawings and a time schedule to MECO so that electrical service can be provided on a timely basis.

39. Please supplement your answers to the following questions and comments posed by Mr. David Kimo Frankel of the Native Hawaiian Legal Corporation in his letter dated July 7, 2006, and include your responses appropriately in the FEIS:

- The EIS should disclose what impact the pumping of brackish water from Kākalahale will have on the Kualapu'u aquifer. How much will the water-level decline in the well field? How much less available water does this translate to? The EIS should also disclose how much the USGS model predicts DHHL's existing wells would lose in production.

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, "Additional Information on the Kākalahale Well," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

- The EIS should disclose what impact the pumping of brackish water from Kākalahale will have on fisheries, fishponds, DHHL reservation rights and native Hawaiian rights.

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, "Additional Information on the Kākalahale Well."

- The EIS should disclose what impact the pumping of brackish water from Kākalahale will have on the level of the zone of transition between fresh and saltwater.

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, "Impact of Pumping Kākalahale on the Fresh Water Transition Zone."

- The EIS should disclose what MPL's plans are for the other lands it owns, but has not yet developed. These include lands near Hale o Lono Harbor and Kaluako'i.

Response: In response to this comment, 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 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.

- *The EIS should include any calculations or models used to support any conclusion regarding runoff and drainage into nearshore waters.*

Response: Section 4.9.1 (Drainage) of the Draft EIS included drainage calculations. This information was summarized from the drainage calculations provided in the preliminary drainage report, which was included as Appendix O of the Draft EIS.

40. *Please include in the FEIS the table of various water use permits held by MPL or its subsidiaries, as noted in your letter dated December 13, 2006 to Mr. Frankel.*

Response: In response to your comment, in the Final EIS Section 4.9.2 (Water) will be revised to include the following table that was also included in the December 13, 2006 letter from PBR HAWAII to Mr. David Kimo Frankel of the Native Hawaii Legal Corporation.

From Mahana, water is then pumped to a 7,000,000-gallon reservoir at Pu'u Nana for treatment. The treated water is then piped to a 3,000,000-gallon reservoir in Maunaloa and gravity-fed to Kalaoko'i. The distribution system terminates approximately 9,000 feet north of the La'au Point project site. With the Kalaoko'i Hotel closed, current use of the Kalaoko'i system is approximately 800,000 gpd.

Below is a table of the various existing water use permits held by MPL or its subsidiaries:

Table 6. Water Use Permits						
WUP NO.	APPROVED	APPLICANT	WELL NO.	WELL NAME	WUP (mgd)	USE
617	12/19/2001	Kalaoko'i Land, LLC	0901-01	Well #17	1.018	Molokai Public Utilities, Inc., Well Municipal
604	03/14/1995	Molokai Ranch Ltd.	0706-03	Palaau Salt	0.001	Aquaculture, Salt Water
607	11/17/1993	Molokai Ranch, Ltd.	0706-02	South Hoolehua	0.864	Aquaculture, Brackish Water

41. *Please clarify the following responses made to Mr. Frankel in your letter dated December 13, 2006:*

- *What assumptions did the Petitioner use to determine that: "MPL does not anticipate any impact to the Kualapu'u aquifer sector from pumping the Kākalahale Well nor would it be expected that the water levels in any of the four wells in the Kualapu'u Well field to be measurably affected notwithstanding any model calculated impact"?*

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, "Additional Information on the Kākalahale Well."

- *Please note that your comment that the potential impacts of the proposed use of the Kākalahale Well will be addressed in the permitting process for this well – is insufficient in the context of the required disclosure of the Project's impacts to be made during the EIS process.*

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, "Additional Information on the Kākalahale Well."

- *Please clarify what is meant by a timeline for the shift of "non-potable uses to non-potable sources" and why such a shift is necessary.*

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, "Transition of Potable Water to Non-Potable Uses in Kalaoko'i."

- *We note that your response regarding LLC ownership and the notion of avoiding conveyance taxes does not address the concerns regarding the potential loophole to avoid contributions to the community funding mechanism, as identified by Mr. Frankel.*

Response: All real estate transactions will be done legally. We recognize there may be creative ways in which people may avoid conveyance taxes; however, we cannot assume or anticipate most would do so.

- *Please clarify if the agreement in the Community-Based Master Land Use Plan for Molokai Ranch that profits generated from the Project will be used to revitalize the Kalaoko'i Hotel represents a firm commitment or guarantee.*

Response: It is both a firm commitment and guarantee. Pending the approval of permits for La'au Point, a legal agreement will be drawn up outlining the specific conditions of the Plan.

- *Please clarify your own remarks and assurance that any proposed mitigation measures will be performed and will be effective. Your answer implies that the only monitoring of the Project will be in the form of annual reports to the LDC. This does not consider other requirements and potential enforcement by such agencies as the U. S. Fish and Wildlife Service, County of Maui Department of Public Works and Environmental Management, the Department of Land and Natural Resources, and the DOI.*

Response: The Land Trust and the homeowners' association, through various documents including the CC&Rs, the Shoreline Access Management Plan, the Conservation easements, the Agricultural easements, and the Rural Landscape easements, will have the right and obligation to enforce and monitor the proposed mitigation measures. As the Land Trust is made up of

community members, it will have a vested interest in ensuring the mitigation measures are enforced.

42. Please respond to the following questions from Ms. Lynn DeCoite of the Moloka'i Homestead Farmers Alliance dated July 6, 2006 (we note that Mr. Glenn Teves submitted an identical letter).

- Is there a difference between taking fresh water from the Waiola Well, and has the impact of taking brackish water from Kākalahale been quantified?

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, "Additional Information on the Kākalahale Well."

- What impacts will pumping Kākalahale Well have on adjacent water sector, including Kualapu'u and Kawela? Have these impacts been quantified?

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" and "Additional Information on the Kākalahale Well."

- Has there been any study regarding pumping water further east from the Kawela eastward?

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, "West End Water Sources and East End Alternatives."

- How will the Petitioner determine impacts before pumping the well? What factors will be quantified?

Response: 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 be modified or other changes made.

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.

- Will the Petitioner take liability for the impacts, if determined or identified now and after the fact?

Response: By conducting a pump test before a permanent pump is installed, most of the risk of unacceptable impacts 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.

- What will be the impact of the Project on the ability of DHHL to secure water for all their lands presently and in the future?

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, "Prior Studies by USGS on the Capacity of the DHHL Wells," "Additional Information on the Kākalahale Well," and "DHHL's Future Water Needs."

- How will pumping of water from one sector and transporting it 20 miles away affect the recharge of the aquifer?

Response: Some of the water pumped from a ground water aquifer and applied as irrigation will find its way back into the ground as recharge. Water pumped from Kākalahale and applied as irrigation in West Moloka'i will recharge the West Moloka'i aquifers.

- Please clarify if the Petitioner has exhausted all options in harvesting brackish water from Kaluako'i ahupua'a around the location of the Project?

Response: Previous landowners completed several wells and a number of test borings in both the Kaluako'i and Punakou aquifer systems. The water there is very brackish to near-seawater salinity. In virtually all of the borings, the water was also geothermally heated. These sources are not satisfactory for irrigation use without desalination.

To include the relevant above information 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, "The Punakou Aquifer."

- Has the Petitioner conducted test drillings on West Moloka'i?
- If so, where are the locations of the wells?

Response: MPL has not conducted test drillings on West Moloka'i. However, public records indicate that Louisiana Land conducted a couple of tests in the 1970s with salinity in the 1/3 to 1/2 seawater level. Alpha USA reported similar results more recently.

- Does the Petitioner have sufficient water for the proposed developments they have already received zoning for on the west end?
- Where will this water come from?
- How much water will be required?

Response: When MPL's predecessor was granted a permit to pump the 1.018 million gallons from Well 17 for the Kaluako'i area, the CWRM acknowledged that that water allocation would

Mr. Anthony Ching, Executive Officer
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not be sufficient to meet the needs of a full build-out of the residential lots, the operation of the Kaluako'i Hotel, and the operation of the golf course and any other development plans.

CWRM stated that Molokai Public Utilities should come back to CWRM in future years and apply for non-potable water permits and separate the uses at Kaluako'i into potable and non-potable.

However, if MPL were to use the brackish water permitted from the Palā'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 Kaluako'i 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 Kaluako'i, 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 Kaluako'i 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.

- *Regarding the buildout of Kaluako'i, how will the Petitioner address the need for more water in the future*
- *How will the Petitioner address impacts on native Hawaiian water rights to water as a result of its water permit?*

Response: The Water Plan contemplates that only existing sources, at currently permitted amounts will be utilized to meet all of the potable water needs for MPL's current and future uses. A new non-potable water source (the Kākalahale Well) is being proposed.

Increased potable and non-potable water needs due to the future build out of Kaluako'i are included in the Water Plan.

MPL has stated that the 2.5 million gallons of water per day is the maximum the Plan will require; 1,000,000 gpd of existing drinking water from Well 17, and 500,000 gpd from the Mountain System, and 1,000,000 gpd of brackish water from the Kākalahale Well. To address the questions posed of future needs for more water, MPL reiterates that they will never go back to the community and seek more drinking water. If more non-potable water is needed in the future for agriculture in particular, MPL will seek other options, such as brackish water available from the Prawn Farm at Palā'au and desalination. But these are options for the future to be further explored in the future if necessary.

As stated in their Water Plan, MPL's water allocation is subject to reduction if they interfere with DHHL's rights to water in the future (page 124 of Appendix A).

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43. *Please include where appropriate in the FEIS your response to Ms. DeCoite that the Kākalahale Well is 1.4 miles away and down gradient from the proposed Waioala site. [PBR letter dated December 13, 2006 to Ms. DeCoite]*

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 information regarding the distance between the Kākalahale Well and Waioala site is incorporated into the attachment. We note that the correct distance is 1.5 miles. See the section of the attachment titled, "The Waioala case and the Kākalahale Well."

44. *We note that the points raised by Mr. Steve Morgan in his letter dated July 10, 2006, regarding sections 4.9.2 (Water System) and 4.10.3 (Fire Protection) of the EISPN were not adequately addressed in the DEIS. Please incorporate those concerns and your response in the FEIS.*

Response: In his July 10, 2006 letter, Steve Morgan commented on Section 4.9.2 that water usage estimates have been based on a low occupancy percentage and he asked about the impacts should the occupancy rise. Regardless of the occupancy percentage chosen, only existing sources, at currently permitted amounts will be utilized to meet all of the potable water needs for the current and future developments.

In the same letter, Mr. Morgan asks, "...Hawaiian Homesteads have notified applicants of limited availability of new homesteads in response to water limitations. How will homesteaders be guaranteed their water rights?" We cannot respond on behalf of DHHL regarding the limited availability of new homesteads in response to water limitations. MPL has often reiterated its recognition of DHHL's priority rights to water, which is a priority established by law.

DHHL's lack of success in obtaining a permit for additional pumping was due to the fact that it wanted to increase pumpage 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. This is beyond MPL's control.

DHHL proposed reducing the amount of increased pumpage, but was not willing to consider a new well site.

To incorporate the relevant above information 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 sections of the attachment titled, "DHHL's Future Water Needs," "DHHL's Current Water Shortages," "Moloka'i Island Plan and DHHL Future Water Needs," "DHHL's System Improvements," and "Source Development Options."

In his comment on Section 4.10.3, Mr. Morgan does not believe emergency services have been adequately accounted for on the West End. Based on our conversations with the Fire Department, they do not require MPL to provide a fire station on the West End for Lā'au Point. They do, however, request that Lā'au Point residential structures be equipped with sprinklers. To incorporate this information 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 Kalhako'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 Kaluako'i to access Lā'au Point.

45. Please clarify the following remarks made to Mr. Morgan in your letter dated December 13, 2006, and incorporate appropriately into the FEIS:
- Please add to the FEIS the fact that the shoreline management and access plan will be developed to identify specific kapuna access points at appropriate locations.

Response: In response to this comment, in the Final EIS Section 4.3 (Trails & Access) will be revised as follows:

Vehicular access in the Conservation District area will be prohibited, unless identified required for emergencies or kupuna use. Kupuna and the infirmed will be allowed to access the area in small motorized vehicles such as golf carts via trails along the

shoreline. Land alteration such as clearing and grading for vehicle trails will be prohibited and strictly enforced.

- Please clarify what the conditions of the Community-Based Master Land Use Plan for Moloka'i Ranch are, and include such conditions in the FEIS.

Response: In his letter on the EISP dated July 10, 2007, Steve Morgan asked: "3.2. Proceeds of the lots are to fund the renovation of the hotel. What if sales are slow? What guarantees are there that MPL will not just sell out?"

In response to these questions, in the PBR HAWAII response letter dated December 13, 2006, it is stated: "3.2(b) - MPL has accepted the conditions of the Community-Based Master Land Use Plan for Moloka'i Ranch which is a stakeholder agreement between MPL and Ke Aupuni Lokahi Molokai representing the community."

To clarify this statement, what is meant is that MPL will abide by the Community-Based Master Land Use Plan for Moloka'i Ranch and the commitments it has made as part of the Community-Based Master Land Use Plan for Moloka'i Ranch.

- Your response that the "creation of the Lā'au Point community will be sensitive to natural systems and define areas for environmental protection" does not discuss how the monk seal habitat will be impacted by the Project and the adequacy of the Petitioner's proposed mitigation measures.

Response: In response to your comment, and the comments of others concerning the Hawaiian monk seal, in the Final EIS Section 3.7 (Fauna) will be revised as shown the attachment titled, "Revised Section 3.7 (Fauna)."

46. Please clarify your remarks or respond to the following questions posed by Mr. DeGray Vanderbilt and discussed in your letter dated December 13, 2006, and incorporate appropriately into the FEIS:

- Question #6: Please provide a general overview of previous development plans proposed by the Moloka'i Ranch (or its subsidiaries) to put the community's history of opposition to development on Moloka'i in context.

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 Moloka'i community. We do not agree it is warranted that the Draft EIS include "a general overview of previous development plans proposed by Moloka'i Ranch (or its subsidiaries) to put the community's history of opposition to development on Moloka'i in context." MLP is moving forward and its current plans 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 Moloka'i Ranch) of the Draft EIS. The complete Community-Based Master Land Use Plan for Moloka'i Ranch is included as Appendix A of the Draft EIS.

- **Question #24:** *The Petitioner should clarify if the "over 1,000 community participants" consisted of over 1,000 individuals. If a person participated in more than one meeting, would that person have been double-counted towards the "1,000 community participants" estimation?*

Response: MPL and the EC estimated 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, errors were made in counting the attendees; however, we believe the variance in total number of participants is minimal.

- **Questions #29 and #68:** *Please clarify if the Petitioner intends to allow accessory dwellings within the Project.*

Response: At the present time, MPL does not anticipate prohibiting accessory dwellings. However, all dwellings on any single lot must, in the aggregate, comply with the maximum square footage and building envelope restrictions for each lot.

- **Questions #69 and #121:** *These questions could be considered relevant if the proposed 40 acre park overlaps or is in the vicinity of the Petition Area.*

Response: The County of Maui Moloka'i Community Plan, Recreation objectives and policies #12 states: "Develop 40 or more acres of fast land just mauka of the shoreline and around Hale O Lono for park and recreational uses."

Under the *Community-Based Master Land Use Plan for Molokai Ranch*, the area proposed in the County of Maui Moloka'i Community Plan for the 40-acre park around Hale O Lono will be donated to the Land Trust. Therefore, future park creation for Hale O Lono, as designated in the County of Maui Moloka'i Community Plan, would be determined by the Land Trust to establish. The County Department of Parks and Recreation has stated they do not want to manage the parks proposed in the *Community-Based Master Land Use Plan for Molokai Ranch*; therefore, the park management responsibility will be given to the Land Trust. So whether the project's proposed South shoreline park overlaps with the County of Maui Moloka'i Community Plan's proposed 40-acre park, it would not change the fact that the Land Trust will decide what happens in the area.

- **Questions #71, #75, and #92:** *Please clarify if members of the public (who are not employees of the Ranch) are currently allowed to access the Petition Area.*

Response: Lā'au Point is accessible to the public by boat or by walking laterally along the shoreline. There are currently no access restrictions based on recreation, subsistence, or cultural activities. Currently MPL employees are permitted to access the Petition Area through MPL's lands.

- **Question #82:** *We acknowledge that a fauna survey was conducted for the Petition Area. Please provide an estimate of the frequency that monk seals may be currently utilizing the shoreline of the Petition Area. Please also indicate what times of the year the monk seals may be expected to frequent the Petition Area.*

Response: In response to this comment, and the comments of others concerning the Hawaiian monk seal, in the Final EIS Section 3.7 (Fauna) will be revised as shown the attachment titled, "Revised Section 3.7 (Fauna)." The information on the use of the Petition Area by Hawaiian monk seals included in the attachment was received from the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA NMFS). Unfortunately, NOAA NMFS did not provide information regarding the times of the year that Hawaiian monk seals may be expected to frequent the Petition Area. This may be due to the fact that NOAA NMFS does not have extensive systematic surveys of Hawaiian monk seals in the main Hawaiian Islands, but does maintain records of non-systematic Hawaiian monk seal sightings provided by a number of sources.

- **Question #111:** *Please indicate what the saline content of the brackish Kākalahale Well is and when that data was gathered.*

Response: Water from Kākalahale Well is considered "slightly brackish" with chloride levels of approximately 400 mg/L. In contrast, seawater is about 19,500 mg/L, and the County's Kawela Shaft (a drinking water source) has chlorides of about 200 mg/L.

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, "Salinity and Impacts on Use."

- **Question #112:** *Please indicate if a CWRM permit will be required to transport water from the Pala'au shrimp farm area to service irrigation needs in another area of the island.*

Response: If the water from the shrimp farm were to be used in a different area, a petition would need to be submitted to CWRM to designate the area where would be used.

- **Question #113:** *Please indicate what transmission alternatives for the Kākalahale Well water the Petitioner has considered.*

Response: As stated in the response to this question, MPL is seeking to use existing pipeline easements across DHHL lands to transport Kākalahale well water. MPL believes that under the terms of its reciprocal easement agreement with DHHL, it has the right to expand its existing pipeline sizes in the same way that DHHL has a similar right on MPL lands. Therefore, MPL has not studied alternative transmission methods.

Mr. Anthony Ching, Executive Officer
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Mr. Anthony Ching, Executive Officer
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November 1, 2007
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- *Question #115: Please indicate what the status of the Waiola Well application is.*

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, "Waiola Well Issues Raised."

- *Question #117: Please indicate what are the current water rates applicable to Kahaoko'i residents and how will these rates be restructured in the future.*

Response: As stated in the Water Plan, the current water rate for Kahaoko'i is \$3.18 per thousand gallons up to 5,000 gallons. All water used in excess of 5,000 gallons per day is charged \$4.70 per thousand gallons (see page 122 of Appendix A). It is unknown at this time how these rates will be restructured in the future.

- *Question #118: Please indicate what the average monthly water usage is for the residents of Papohaku Ranchlands residential subdivision and what the average water usage is for the residents of Maunaloa town.*

Response: Average monthly usage varies in winter and summer months, and is distorted by the fact that at both locations, water for irrigation is not separated from water for domestic use.

In June 2007, average total water use for the month by residential customers was 1,216 gallons per day at Kahaoko'i and 310 gallons per day in Maunaloa town.

- *Question #153: Please indicate when the saline content of the Pala'au shrimp farm was last tested.*

Response: The saline content is between 1,300 to 1,400 mg/L. The well has not been tested in over five years.

- *Question #154: Please indicate the cost of desalinating water in relation to developing and operating a deep groundwater well.*

Response: Desalination is about four times more expensive on Molokai (not helped by the island's high energy costs) than developing an operating a deep groundwater well. To include this information 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, "Desalination-Additional Clarification."

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:

- Figure 10: Proposed Land Trust Donations and Easements
- Figure 11: First Land Trust Donation -- Mokio Parcel Revised Section 4.3 (Trails and Access)
- Revised Section 4.9.2 (Water)
- Revised Permits & Approvals
- Revised Section 3.7 (Fauna)

Cc: Office of Environmental Quality Control
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PBR HAWAII



RUSS K. SAITO
COMPTROLLER



STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 118, HONOLULU, HAWAII 96810

(P)1019.7

FEB - 1 2007

November 1, 2007

Ernest Y.W. Lau
Public Works Administrator
State of Hawaii
Department of Accounting & General Services
P.O. Box 119
Honolulu, Hawaii 96810

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Lau:

Mr. Thomas S. Witten
PBR Hawaii
ASB Tower, Suite 650
Honolulu, HI 96813

Thank you for your letter dated February 1, 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.

Dear Mr. Witten:

Subject: Draft Environmental Impact Statement
La'au Point
West Molokai, Island of Molokai
TMK: (2) 5-1-02:30; 5-1-06:157; 5-1-08:04, 03, 06, 07, 13, 14, 15, 21, & 25

Thank you for the opportunity to review the information regarding the subject project. The project does not impact any of the Department of Accounting and General Services' projects or existing facilities and we have no comments to offer.

Sincerely,

Peter Nicholas
President and CEO
Molokai Properties Limited

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

Sincerely,

ERNEST Y. W. LAU
Public Works Administrator

DD:mo

c: Mr. Peter Nicholas, Molokai Properties Limited
Mr. Anthony Chung, State Land Use Commission
Ms. Genevieve Salmonson, OEQC
Ms. Nancy McPherson, Maui County Department of Planning

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**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

STRATEGIC INDUSTRIES DIVISION
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DEPUTY DIRECTOR

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PBR Hawaii
January 12, 2007
Page 2

January 12, 2007

PBR HAWAII
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, Hawaii 96813

Attn: Thomas S. Witten

Re: Draft Environmental Impact Statement (DEIS)
La'au Point, West Molokai
Tax Map Key: (2) 5-1-02:30; 5-1-06:157; 5-1-08:04, 03, 06, 07, 13, 14, 15,
21 & 25

In response to your December 20, 2006, notice, thank you for the opportunity to provide comments on the DEIS for the La'au Point development. The proposed project would have an area of 1,432 acres including 200 two-acre rural-residential lots, an open space buffer, and coastal conservation land.

We would like to call your attention to: (1) State energy conservation goals; and, (2) energy and resource efficiency and renewable energy and resource development.

- 1. State energy conservation goals.** Project buildings, activities, and site grounds should be designed and/or retrofit with energy saving considerations. The mandate for such consideration is found in Chapter 344, HRS ("State Environmental Policy") and Chapter 226 ("Hawaii State Planning Act"). In particular, we would like to call to your attention HRS 226 18(c) (4) which includes a State objective of promoting all cost-effective energy conservation through adoption of energy-efficient practices and technologies.

We recommend that you consult the County of Maui Energy Code early in your project. Maui Electric Company, Inc. may also have suggestions and demand-side management programs that offer rebates for installation of energy efficient technologies.

- 2. Energy and resource efficiency and renewable energy and resource development.** We note that in Section 2.3.6 there are several proposed covenants to enhance the sustainability of the development, including green architecture, solar water heating and photovoltaic energy for appliances, shading of exterior lighting, and several water conservation measures.

We encourage the parties to this development to make a further commitment to energy and resource efficiency and include a requirement in the Conditions, Covenants, and Restrictions for a development that meets the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Certification. Zero Energy Homes might also be considered.

Our website (<http://www.hawaii.gov/dbedt/info/energy/efficiency/>) provides detailed information on guidelines, directives and statutes, as well as studies and reports on aspects of energy efficiency. Please also do not hesitate to contact Carilyn Shon, Energy Efficiency Branch Manager, at telephone number 587-3810, for additional information on LBED, energy efficiency, and renewable energy resources.

Sincerely,

Maurice H. Kaya
Chief Technology Officer

c: OFEC
State Land Use Commission
Molokai Properties Limited
County of Maui, Planning Department



Mr. Maurice Kaya, Chief Technology Officer
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
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certification process mainly deals with certifying buildings, not subdivision plans. However, the CC&Rs strive for the same goals as LEED and implement those standards without requiring homebuilders to formally go through the LEED certification process individually.

To include the above information in the Final EIS, the following statement has been added to Section 2.3.6 (Covenants):

While creating the CC&Rs, the LEED certification process was reviewed. Currently, the LEED certification process mainly deals with certifying buildings, not lot subdivisions. The Lā'au Point project will create 200 residential lots for sale; buyers will build their own homes. Therefore, Lā'au Point will not go through a formal LEED certification process. However, the CC&Rs and subsequent design guidelines will strive for the same goals as LEED.

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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November 1, 2007

Maurice H. Kaya, Chief Technology Officer
State of Hawai'i
Department of Business, Economic Development & Tourism
Strategic Industries Division
P.O. Box 2359
Honolulu, Hawai'i 96804

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Kaya:

Thank you for your letter dated January 12, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

1. In response to your comment regarding State energy conservation goals and incorporation of energy-efficient practices and technologies, the following has been added to Section 2.3.6 (Covenants) of the Final EIS:

- **General energy.** All energy systems shall be designed and constructed to meet United States Environmental Protection Agency (EPA) conservation standards. An example of an EPA conservation standard is the ENERGY STAR program, which was established in 1992 for energy-efficient computers. Now a joint program under the EPA and the U.S. Department of Energy, the ENERGY STAR program has grown to encompass more than 35 energy-efficient product categories for homes and workplace. Homes that earn the ENERGY STAR designation must meet guidelines for energy efficiency set by the EPA. ENERGY STAR qualified homes can include a variety of energy-efficient features, such as effective insulation, high performance windows, tight construction and ducts, efficient heating and cooling equipment, and ENERGY STAR qualified lighting and appliances. These EPA standards for the ENERGY STAR program can be found at the following website: <http://www.energystar.gov>. For example, all dwellings will be required to have solar panels (or comparable technology) sized to meet at least 80 percent of the hot water demand of each home. Other energy-efficient measures will be required in the Lā'au Point Design Guidelines.

Home builders will be required comply with the Maui's Energy Code (Section 16.16 of the Maui County Code). In addition, homebuilders will be encouraged to consult with Maui Electric Company, Inc., regarding suggestions and demand-side management programs that offer rebates for installation of energy efficient technologies.

2. We note that you encourage consideration of the US Green Building Council's LEED certification. We consulted the US Green Building Council's Leadership in Energy and Environmental Design (LEED) certification process while developing the CC&Rs. The Lā'au Point project will create 200 residential lots for sale to buyers. The LEED



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

OFFICE OF PLANNING

235 South Beretania Street, 8th Floor, Honolulu, Hawaii 96813
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Ref. No. P-11643

February 2, 2007

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

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

Dear Messrs. Witten, Nicholas and Sabas:

Petition No.: A06-764 (State Land Use Commission)
Project Name: La'au Point Draft Environmental Impact Statement
Location: West Molokai, Island of Molokai, Hawaii
Requested Change: Agricultural to Rural (613 acres)
Agricultural to Conservation (252 acres)
Conservation to Rural (10 acres)
TMK: (2) 5-1-02: 30; 5-1-06: 157;
5-1-08: 03, 04, 06, 07, 13, 14, 15, 21 and 25

Thank you for sending the Office of Planning a Draft Environmental Impact Statement (DEIS) for the above referenced proposal to reclassify land from the State Agricultural District to the State Rural District and Conservation District, and from the State Conservation District to the Rural District.

The La'au Point project by Molokai Properties Limited (MPL) proposes single-family rural residential lots, required infrastructure, access road, cultural preserves, parks, shoreline access, and creation of the Molokai Land Trust. We offer the following comments on several areas of state concern.

1. **Water Supply** – As stated in Appendix P of the DEIS, “Analysis of the Water Plan for the Community-Based Enterprise Community/Molokai Ranch Master Land Use Plan”, the Hawaii Supreme Court concluded in In the Matter of the Contested Case Hearing on Water Use, Well Construction, and Pump Installation Permit Applications, 103 Haw. 401 (2004), commonly referred to as the Waioala case, that implementation of the proposed Water Plan will require a finding by the Water Commission that the withdrawal of 1 million gallons per day (mgd) of brackish water from the Kakalahale

Mr. Thomas S. Witten
Messrs. Peter Nicholas and John Sabas
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February 2, 2007

Well will not negatively impact the Department of Hawaiian Home Lands' (DHHL) existing wells in the Kualapuu aquifer, nor jeopardize DHHL's future use of its priority water reservation of 2,905,000 gallons per day (g/d) from the Kualapuu aquifer.

The Water Commission requires that an application for a water use permit be consistent with the state and county land use plans. Therefore, the land use regulatory bodies such as the State Land Use Commission, the Molokai Planning Commission and the Maui County Council, will be considering the petition/application to reclassify/rezone the project area at La'au Point, prior to the issuance of a water use permit by the Water Commission.

Please include additional hydrological information to address the question of whether withdrawing 1 mgd of brackish water from the Kakalahale Well will jeopardize DHHL's water reservation.

2. **Housing** – If the La'au Point project is approved, MPL will donate over 1,100 acres to Molokai Community Development Corporation to provide affordable housing maula of Kaunakakai and will reserve 200 acres adjacent to the towns of Kualapuu and Maunaloa. Please discuss how this proposal will satisfy the new Maui County Workforce Housing Ordinance adopted in December 2006.

3. **Cultural/Historic Resources** – The archaeological sites preservation plan has been accepted by the State Historic Preservation Division (SHPD) and is proposed to be amended under a community consensus plan that would protect larger areas and a greater number of sites than could be protected without approval of the La'au Point project proposal. Please provide a timeline for approval by SHPD for the proposed amendments.

We would appreciate copies of all comments regarding the DEIS. Thank you for the opportunity to comment on the DEIS. If you have any questions, please call Mary Alice Evans at 587-2802.

Sincerely,

Laura H. Thielens
Director

c: Anthony Ching, IUC
Genevieve Salomonson, OEQC
Nancy McPherson, Staff Planner (Molokai), Maui County Planning Dept.
Daniel Orudenker, MPL, General Manager Land-General Counsel



November 1, 2007

Director
State of Hawai'i
Department of Business, Economic Development & Tourism
Office of Planning
235 South Beretania Street, 6th Floor
Honolulu, Hawai'i 96813

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Office of Planning Director:

Thank you for your agency's letter dated February 2, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter we are responding to your agency's comments.

1. **Water Supply** – 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 up-gradient 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 up-gradient of the intrusives and adversely impacting the wells down-gradient 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 include this information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water), will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

2. **Housing** – To satisfy the requirements of Chapter 2.96 of the Maui County Code (MCC) (i.e., the Maui County Workforce Housing Ordinance adopted in December 2006), MPL will seek an adjustment as specified under Section 2.96.030(C)(1), MCC. The terms of the adjustment will provide for MLP to: 1) donate over 1,100 acres to the Molokai Community Development Corporation to provide affordable housing mauka of Kaunakakai; and 2) put title restrictions on 100 acres around each of the towns of Kualapu'u and Maunaloa for to limit the use of these lands for affordable housing; and 3) provide an income stream to a new Community Development Corporation established to provide affordable housing for the Molokai community of an initial 5 percent of Lā'au lots sales (estimated to be \$10 million) and a further percentage from every lot and land and house sale in the development after that. These affordable housing provisions are

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Telephone 808.531.0158 • Facsimile 808.571.1279

Director, State Office of Planning
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November 1, 2007
Page 2 of 4

discussed in Section 2.19 (Molokai Community Development Corporation (CDC) and Section 4.8.2 (Housing) of the Draft EIS.

To include information regarding the satisfaction of the requirements of Chapter 2.96, MCC, in the Final EIS, Section 4.8.2 (Housing) will be revised as follows:

Affordable Housing – The Lā'au Point project will address affordable housing in the implementation of *Community-Based Master Land Use Plan for Molokai Ranch* (see Section 2.1.7). During the community planning process, the EC and other Molokai community members involved in creating the Plan clearly indicated that "only Molokai residents will decide future expansion of existing communities" (Appendix A, p. 5). 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.

The community process identified up to 100 acres around each of the towns of Kualapu'u and Maunaloa for the future development of "Ohana Neighborhood Communities" (i.e., affordable housing) to be developed by partnering various community resources such as Habitat for Humanity, Self-Help Housing, and others. As previously noted, approximately 1,100 acres will also be gifted to the Molokai Community Development Corporation (CDC); a large portion of which can be used for community affordable homes. As discussed in the Plan, the community desires a link between affordable housing and other community facilities present at each of the three communities to insure that they be developed as balanced communities. The community also does not support a large affordable housing project in one area only (Appendix A, p. 69).

There will be a continuing need in the future for more housing for Molokai families at affordable prices based on incomes. MPL, EC, and others in the community, such as Habitat for Humanity to name just one organization, can coordinate the planning and implementation of future affordable housing projects. MPL can reserve lands for lease at affordable prices will put title restrictions on 100 acres around Kualapu'u and Maunaloa to ensure limit the development of these lands for future affordable housing projects. Although MPL will retain land ownership, affordable housing development decisions will be made by the community-represented CDC and not by MPL.

The economic value of the land donations, and the income from Lā'au Point (estimated at more than \$10 million from initial lots sales and an endowment from the income from subsequent lot and house sales), will enable the Molokai CDC to plan, site, and construct affordable homes itself. Self-determination is a critical component behind the creation of the CDC and this Plan for development of community affordable housing. Moreover, placing housing development in the hands of a community organization provides the opportunity for appropriate development timing, which is important in a slow-growing community like Molokai. As stated in the Plan: "The growth of Kaunakakai, Kualapu'u, and

Director, State Office of Planning
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
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Maulaloa should be community-planned and should be allowed to happen naturally as community-driven demands require" (Appendix A, p. 67).

For the purposes of affordable housing, residency will be as specified under the County of Maui Residential Workforce Housing Policy, Chapter 2.96, MCC. Specifically, under Section 2.96.020, MCC, "Resident" means a person who meets one of the following criteria:

1. Currently employed in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

To satisfy the affordable housing requirements of Chapter 2.96, MCC, MPL will seek an adjustment as specified under Section 2.96.030(C)(1), MCC. The terms of the adjustment will specify the provisions discussed above.

3. Regarding your request to provide a timeline for SHPD approvals, while we seek SHPD's expeditious review and approval of all required reports and plans, current staffing and organizational issues within SHPD make it impossible to say when SHPD reviews and approvals may be expected.

On March 8, 2007, our planning consultant, PBR HAWAII, provided you with a CD containing electronic copies of all comments regarding the DEIS.

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)

Director, State Office of Planning
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 4 of 4

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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STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF BUSINESS SERVICES

February 2, 2007

Ms. Nancy McPherson, Staff Planner
County of Maui
250 South High Street
Wailuku, Hawaii 1 96793

Dear Ms. McPherson:

Subject: Draft Environmental Impact Statement (DEIS) for La'au Point, Moloka'i,
Hawaii. IMK: 5-1-02:30; 5-1-06:157; 5-1-08-04, 03, 06, 07, 13, 14, 15, 21, & 25

The Department of Education (DOE) has reviewed the Draft Environmental Impact Statement (DEIS) for the La'au Point project.

All enrollment estimates hinge on the number of permanent households residing in the project. The DEIS refers to approximately 30 percent of the residents, or 60 households being permanent households. The social impact assessment on page 65, however, suggests that less than 20 percent of the households would be full-time residents, or less than 40 households.

Notwithstanding the uncertainty regarding the number of permanent households, the DOE projects an impact on the schools serving the area: Maunaloa Elementary, Moloka'i Middle and Moloka'i High. We request a school fair-share contribution and suggest the following standard fair-share condition language:

The Applicant shall contribute to the development, funding, and/or construction of school facilities, on a fair-share basis, as determined by and to the satisfaction of the Department of Education. Terms of the contribution shall be agreed upon in writing by the Applicant and the Department of Education prior to obtaining building permits for any aspect of the project.

DOE has no further comment on the application but appreciates the opportunity to review the plans. If you have any questions, please call Heidi Meeker of the Facilities Development Branch at 733-4862.

Sincerely yours,

Tom Kashiwa

Duane Y. Kashiwai
Public Works Administrator

DYK:jnb

- c: Ron Okamura, CAS, Hana/Lahainalua/Lanai/Molokai Complex Areas
 - ✓ Thomas S. Witten, PBR Hawaii
 - John Sabas, Molokai Properties Limited
 - Anthony Ching, State Land Use Commission
 - Genevieve Salmanson, Office of Environmental Quality Control
- AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER



November 1, 2007

Duane Kashiwai
State of Hawaii
Department of Education
P.O. Box 2360
Honolulu, Hawaii 96804

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Kashiwai:

Thank you for your letter dated February 2, 2007 regarding the La'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

In the time since your letter was written, MLP and the State of Hawaii's Department of Education (DOE) have reached agreement regarding a contribution to the development, funding, and/or construction of school facilities. To reflect this agreement, in the Final EIS, Section 4.10.1 (Schools) will be revised as follows:

Potential Impacts and Mitigation Measures

According to Department of Education (DOE) school multipliers¹ for new communities, it is estimated that the La'au Point community will contain 56 elementary, 29 middle, and 31 high school students. However, this DOE formula does not take into consideration the unique character of the La'au Point community and the expectation that seasonal residents and retirees will occupy a substantial share of the community. Therefore, adjustments to the DOE formula may be justified given the following factors (KBCCG 2006):

- Only approximately 30 percent of La'au Point residents are expected to be permanent residents.
- La'au Point residents will be somewhat older than the general population.
- About 25 percent of the La'au Point permanent residents are expected to have children under 18.
- Expected school age population of La'au Point permanent residents will likely be less than 10 children ages 5 through 12, and less than 15 children ages 13 through 17.
- Expected La'au Point population of schoolchildren is less than 25 percent of what is expected on a pro rata basis.
- It is likely that some of the La'au Point residents will home school or send their children to private schools off island.

¹Elementary: 200 SF homes x 0.279 = 55.8 students
Middle: 200 SF homes x 0.143 = 28.6 students
High: 200 SF homes x 0.154 = 30.8 students

Mr. Duane Kashiwai
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 2

~~Under these conditions it would appear that the La'au Point project will not significantly impact the public school system and a reduction in DOE's impact fees would be appropriate and warranted.~~

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 La'au Point between MLP and the DOE dated August 3, 2007.

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
Nancy McPherson, Maui Planning Department
Thomas S. Witten, PBR HAWAII



MICAH A. KANE
CHAIRMAN
HAWAIIAN HOME LANDS COMMISSION
BEN HENDERSON
DEPUTY TO THE CHAIRMAN
KAULANA H. PARK
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

February 23, 2007

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

Dear Mr. Ching:

Subject: Comments on Leau Point Draft Environmental Statement, December 2006

The draft Environmental Impact Statement properly recognizes legislative intent regarding Department of Hawaiian Home Lands (DHHL) water rights:

"Since passage of the Hawaiian Homes Commission Act of 1921, the shortage of available water has been one of the primary reasons for the failure of administrators to settle native Hawaiians on Hawaiian homesteads ...

When the United States transferred responsibility for daily administration of the Hawaiian Homes Commission Act to the State of Hawaii in the Hawaii Admission Act, it impressed upon the State a solemn duty to faithfully administer the spirit of the Hawaiian Homes Commission Act (Article XII, Section 2, Hawaii State Constitution).

Accordingly, it is the intent of the State of Hawaii to provide the essential resources, especially water, to the department of Hawaiian home lands necessary for native Hawaiian beneficiaries to utilize the lands set aside for them." (Act 325, Session Laws of Hawaii 1991)

Mr. Anthony Ching
February 23, 2007
Page 2

In 2005, the Hawaiian Homes Commission approved its Molokai Island plan which defines its land use and water requirements over the next twenty years. DHHL has a water master plan study underway to examine alternatives to develop and deliver water, including use of its 2,905 mgd reservation from the Kualapuu Aquifer as approved by the Commission on Water Resource Management.

We commend Molokai Properties, Ltd. (MPL) for exploring a wide range of options related to water resources, water development, more efficient delivery of water, and water conservation. We support the direction being taken to use groundwater for potable water needs and surface water for irrigation or non-potable water needs. However, the draft Environmental Impact Statement acknowledges that "the water issue remains unresolved". (Section 7.5, Unresolved Issue)

At several places within the Draft Environmental Impact Statement, the following is noted:

"MPL is currently working with the Department of Hawaiian Home Lands, the County of Maui Department of Water Supply (DWS), and the U.S. Geological Survey to comprehensively evaluate Molokai's long-term water demands and resources. It is expected that many of Molokai's water issues will be addressed by a comprehensive modeling analysis. Although the specifics of the water resource issues and modeling analysis have yet to be identified, MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water." (Draft EIS, Pages 13, 80, 112, 114, 119, 127, 136, 172)

As DHHL's water needs and possible well, storage, and delivery system improvements are better defined, these considerations can be integrated into a comprehensive water modeling analysis by independent experts. These findings may indicate ways to satisfy DHHL's water needs, as well as MPL and Maui County DWS water needs. Or these findings may indicate that MPL's water needs cannot be accommodated without affecting DHHL's water rights, water reservation,



Mr. Anthony Ching
February 23, 2007
Page 3


or ability to develop and deliver water to its beneficiaries.

These studies, analyses, and findings need to be completed first, before the impacts of Laau Point development can be assessed. The water issues and related legal, development, financial, and environmental impacts that remain are significant and need to be addressed.

It is our opinion that the objectives of the State's environmental laws and the draft Environmental Impact Statement for Laau Point cannot be achieved until this comprehensive analysis is completed and the impacts are determined and addressed. DHHL is committed to work cooperatively with MPL and Maui DWS in this regard. We recommend that a final environmental impact determination be held until this work is completed.

Thank you for this opportunity to provide our comments. If you want to discuss this matter further, please call me at 586-3800 or have your staff call Darrell Yagodich, Planning Office, at 586-3836.

Aloha and mahalo,


Micah A. Kane, Chairman
Hawaiian Homes Commission

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

November 1, 2007

Micah A. Kane
State of Hawai'i
Department of Hawaiian Homelands
P.O. Box 1879
Honolulu, Hawai'i 96805

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Kane:

Thank you for your letter dated February 23, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

As you know, MPL has been working 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 the United States Geological Survey (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.

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 Kākalahale 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 Kākalahale 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 acknowledge your: 1) comment that "The water issues and related legal, development, financial, and environmental impacts that remain are significant and need to be addressed;" 2) opinion that "the objectives of the State's environmental laws and the draft Environmental Impact Statement for Lā'au Point cannot be achieved until this comprehensive analysis is completed and the impacts are determined and addressed;" and 3) recommendation "that the final environmental impact determination be held until this work completed."

To include recent information regarding water in the Final EIS, provide evidence to address your comment, opinion, and recommendation (as listed 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)."

Mr. Micah Kane
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
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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



LINDA UELGLE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96804-3378

CHIKOME L. FUJINO, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
EPO-07-004

January 31, 2007

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

Dear Mr. Witten:

SUBJECT: Draft Environmental Impact Statement for the La'au Point Project
West Molokai, Island of Molokai, Hawaii
TMK: (2) 5-1-002: 030
(2) 5-1-006: 157
(2) 5-1-008: 003, 004, 006, 007, 013, 014, 015, 021 & 025

Thank you for allowing us to review and comment on the subject document. The document was routed to the various branches of the Environmental Health Administration. We have the following Wastewater Branch, Safe Drinking Water Branch, Environmental Planning Office, Clean Air Branch, Hazard Evaluation & Emergency Response Office (HEER), and Noise, Radiation & Indoor Air Quality Branch comments.

Wastewater Branch

We have reviewed the subject impact statement which proposes to develop 1,432 acres into single-family rural-residential lots, required infrastructure, access road, cultural preserves, parks and shoreline access.

The subject project is located in the Critical Wastewater Disposal Area (CWDA) as determined by the Maui County Wastewater Advisory Committee where no new cesspools will be allowed.

As the area is not currently serviced by the County Sewer system, we concur with the proposal to construct "its own private wastewater treatment system to be maintained through homeowner's association dues". Therefore, we have no objections to the proposed construction of an R-1 wastewater facility.

We will reserve final comments until after reviewing the Final Environmental Impact Statement and wastewater plans. We encourage the developer to utilize recycled water for irrigation and

Mr. Witten
January 31, 2007
Page 2

other non-potable purposes especially in major common areas such as parks, golf courses and other open spaces or landscaping areas.

All wastewater plans must conform to applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater System." We do reserve the right to review the detailed wastewater plans for conformance to applicable rules. Should you have any questions, please contact the Planning & Design Section of the Wastewater Branch at (808) 586-4294.

Safe Drinking Water Branch

We have examined the Draft Environmental Impact Statement (DEIS) and have the following comments to offer:

1. According to the DEIS, Public Water System No. 231, Maunaloa-Kalaheo will be extended to service the La'au Point project. Hawaii Administrative Rules, Chapter 11-20, Rules Relating to Potable Water Systems, section 11-20-30 requires that this substantially modified distribution system for a public water system be approved by the Director of Health.
2. The DEIS indicates that the proposed development will have a dual water system. Water for irrigation and fire protection will initially use surplus, mountain system water and later, brackish water from the Kakalahale Well. The potable and nonpotable water systems must be carefully designed and operated to prevent cross-connections and backflow conditions. The two systems must be clearly labeled and physically separated by air gaps or reduced pressure principle backflow preventers to avoid contaminating the potable water supply. In addition, all nonpotable spigots and irrigated areas should be clearly labeled with warning signs to prevent the inadvertent consumption of nonpotable water.
The water system owner and operator will need to submit a dual water system management plan detailing the quality of the nonpotable water, who will be responsible for and how the potable and nonpotable water systems will be operated and actively monitored to maintain the separation and prevent cross connections between the two systems.
3. The DEIS needs to be consistent and clear in identifying the source(s) of non-potable water, its intended uses, and where it will be utilized. The section on "Non-Drinking (Non-potable) Water" calls for non-potable water for irrigation and fire protection to come initially from surplus, mountain system water and later, brackish water from the Kakalahale Well. However, the section on "Water Conservation" mentions landscape irrigation systems using wastewater treatment plant effluent or water collected in catchment systems. Since each home will be required to have a rain water catchment

system (including a minimum 5,000 gallon), are we to assume that reclaimed wastewater effluent will be provided to each residence?

As noted in the previous item, since non-potable water will be provided for or generated at each home or each residential, potable water meter will need to be protected by an approved, reduced pressure principle backflow prevention device that is routinely tested, as described in a dual water system management plan.

If you have any questions concerning drinking water, please contact Stuart Yamada of the Safe Drinking Water Branch at 586-4258.

Environmental Planning Office (EPO), Total Maximum Daily Load (TMDL) Program

The Draft EIS incompletely addresses EPO standard comments.

Receiving waters for the proposed project are "Class AA West Molokai open coastal waters," and water quality in a portion of these receiving waters (for drainage basins 1-6) is impaired by excessive nutrients, turbidity, and suspended solids (Final 2004 List of Impaired Waters in Hawaii Prepared under Clean Water Act Section 303(d)).

Environmental impact assessment should be structured accordingly.

Appendix D: It would be useful to compare the 1984 Coastal Resource Inventory results with the 2005/2006 survey results and other recent South Molokai marine biology and water quality investigations. The 2005/2006 baseline and post-storm measurement comparisons are incomplete since the 2005 baseline measurements did not include nutrients, one of the water quality impairments currently listed for these waters. Without additional details about the location, nature, extent, and operation of "several [Master Plan] elements that will protect nearshore waters from increased degradation of water quality," it is difficult to evaluate the likelihood that "the long-term water quality in adjacent coastal waters will be improved by these measures."

Appendix N, p. 3: Allowing runoff in gullies to pass through the project site uninhibited, preserving the present flow in these channels, and installing culverts to convey the 100 year flows across the roadway would not appear to contribute to the achievement of water quality goals for the Class AA receiving waters, and could represent additional post-project net increases in pollutant loading due to the enlarged capacities, accelerated velocities, and diminished floodplain deposition associated with new culverts and roadway shoulder conveyances (p. 5).

Appendix N, p. 5: Although "Additional runoff generated by each lot will be retained on the lot...", the runoff from the proposed project limits "...is expected to increase [from 512] to 623 cfs." Appendix O, p. 5 indicates that this "increase in surface runoff from the paved roadway areas will be directed into surface or subsurface detention and/or de-silting facilities before being

released into the nearby drainageways." Unless these facilities are 100% efficient at removing nutrients and sediments, this represents a post-project net increase in pollutant loading that remains to be quantified.

Appendix N, p. 4: The potential impacts of installing "grass lined diversion ditches along the mauka boundaries of the project areas" are unclear due to the lack of detail about related changes in down slope drainage patterns. If the mauka boundaries of the project site/project areas include existing drainageways, then statements that "The present flow patterns in the existing drainageways will be maintained" may be erroneous. Regardless, such diversions could lead to post-project net increases in pollutant loading that remains to be quantified.

Should you have any questions, please contact David Penn, EPO TMDL coordinator, at 586-4339

Clean Air Branch

Control of Fugitive Dust

A significant potential for fugitive dust emissions exists during all phases of construction and operations. Proposed activities that occur in proximity to existing residences, businesses, public areas or thoroughfares, exacerbate potential dust problems. It is recommended that a dust control management plan be developed which identifies and addresses all activities that have a potential to generate fugitive dust. The plan, which does not require the Department of Health (DOH) approval, would help with recognizing and minimizing the dust problems from the proposed project.

Activities must comply with the provisions of Hawaii Administrative Rules, §11-60.1-33 on Fugitive Dust. In addition, for cases involving mixed land use, we strongly recommend that buffer zones be established, wherever possible, in order to alleviate potential nuisance problems.

The contractor should provide adequate measures to control the fugitive dust from the road areas and during the various phases of construction. Examples of measures that can be implemented to control dust include, but are not limited to, the following:

- a) Planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing on-site vehicular traffic routes, and locating potential dust-generating equipment in areas of the least impact;
- b) Providing an adequate water resource at the site prior to start-up of construction activities;
- c) Landscaping and providing rapid covering of bare areas, including slopes, starting from the initial grading phase;
- d) Minimizing dust from shoulders and access roads;

Mr. Witten
January 31, 2007
Page 5

- e) Providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities; and
- f) Controlling dust from debris being hauled away from the project site.

If you have any questions, please contact the Clean Air Branch at 586-4200

Hazard Evaluation & Emergency Response Office (HEER)

1. A portion of the Papohaku Ranchland Subdivision has been identified as a Formerly Used Defense Site (FUDS). The FUDS was a rocket and bombing target range used by the United States Navy and Marine Corps from 1944 to 1965. The 1,500 acres FUDS is in the vicinity of Kaluakoi Road that provides access to the La'au Point Project Area. The information was not included in the Draft EIS.
2. If the land has a history of previous releases of petroleum, hazardous substances, pollutants, or contaminants, we recommend that the applicant request a "no further action" (NFA) letter from Hawaii State Department of Health (DOH) HEER Office prior to the approval of the land use change or permit approval

Noise, Radiation & Indoor Air Quality Branch

Project activities shall comply with the Administrative Rules of the Department of Health, Chapter 11-46, Community Noise Control.

Should there be any questions, please contact Russell S. Takata, Environmental Health Program Manager, Noise, Radiation and Indoor Air Quality Branch, at 586-4701.

We strongly recommend that you review all of the Standard Comments on our website: www.state.hi.us/health/environmental/env-planning/landuse/landuse.html. Any comments specifically applicable to this project should be adhered to.

Mr. Witten
January 31, 2007
Page 6

If there are any questions about these comments please contact Jiakai Liu with the Environmental Planning Office at 586-4346.

Sincerely,



KELVIN H. SUNADA, MANAGER
Environmental Planning Office

c: EPO
WWB
SDWB
EPO-TMDL
CAB
HEER
N&R/IAQ
Molokai Properties Limited, Peter Nicholas
State Land Use Commission, Anthony Ching
OEQC
County of Maui Planning Department, Nancy Mcpherson



Mr. Kelvin Sumada, Manager
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
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November 1, 2007

Kelvin Sumada, Manager
State of Hawai'i
Department of Health
Environmental Planning Office
P.O. Box 3378
Honolulu, Hawai'i 96801-3378

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Sumada:

Thank you for your letter dated January 31, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

Wastewater Branch

We note that the project is located in the Critical Wastewater Disposal Area (CWDA) as determined by the Maui County Wastewater Advisory Committee where no new cesspools will be allowed. To include this information in the Final EIS, Section 4.9.3 (Wastewater), will be revised as follows:

The Lā'au Point site is currently undeveloped and is not serviced by any wastewater system. In the project's vicinity, both Maunaloa Village and Kalaheo have their own private individual wastewater systems. The site is located in the Critical Wastewater Disposal Area as determined by the Maui County Wastewater Advisory Committee where no new cesspools are allowed.

We acknowledge that you have no objections to the proposed construction of an R-1 wastewater facility. To include this information in the Final EIS, Section 4.9.3 (Wastewater), will be 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 EISPN, 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, 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."

Molokai Properties Limited dba Molokai Ranch • 745 Fort Street Mall • Suite 600 • Honolulu, Hawaii 96813 •
Telephone 808.531.0158 • Facsimile 808.521.2279

As stated in Section 2.3.6, (Covenants) and Section 4.9.2 (Water) of the Draft EIS, MPL plans to utilize re-use water for landscaping irrigation. To clarify that re-use water will be used for common area landscape irrigation, in the Final EIS Section 2.3.6, (Covenants) and Section 4.9.2 (Water) will be revised as follows:

- Landscaping and Irrigation. Common area Landscaping landscape irrigation systems will be from will utilize re-use water (treated effluent) from the wastewater treatment plant. or collected in catchments; Residential catchment systems may provide landscape irrigation to individual lots and homes, only Only drip irrigation systems will be permitted for both common area and residential landscaping. Landscaping will be restricted to appropriate native and Polynesian species that are drought-tolerant and suitable for coastal locations; xeriscaping aims to reduce water use.

As stated on page 84 in Section 4.9.3 of the Draft EIS, all wastewater plans will conform to applicable provisions of the DOH's Administrative Rules, Chapter 11-62, "Wastewater System." We understand that DOH will review the detailed wastewater plans.

Safe Drinking Water Branch

1. In response to your comment, Sections 1.1, 1.74, and Section 5.3 in the Final EIS have been revised as shown in the attachment titled, "Permits and Approvals," and Section 4.9.2 (Water) will be revised as follows:

The existing distribution infrastructure at Kalaheo from Public Water System No. 231, Maunaloa-Kalaheo, will be extended to service Lā'au Point. This extension shall be approved by the Director of Health (HAR, Chapter 11-20, Rules Relating to Potable Water Systems, Section 11-20-30). When customer demand in Kalaheo warrants, a looped connection from Maunaloa to Lā'au Point is proposed to be added which will then supply Lā'au Point and augment deliveries to Kalaheo whose original infrastructure was undersized to support full build-out of the area. MPL has also offered to make the excess safe drinking water capacity available from Well 17 for the use of communities outside its property.

2. In response to your comment, in the Final EIS Section 4.9.2 (Water) will be revised as follows:

A water use permit would be required before the Kākalahale Well (0700-01) can be put into production; this was confirmed by the DLNR Commission on Water Resource Management in their letter dated January 10, 2007. When Kākalahale Well use is permitted, MPL will not transmit brackish water from the well to the West End by the MIS system. Instead, MPL has indicated that it will seek to use existing pipeline easements across DHHL's Ho'olehua lands for the transmission of Kākalahale water.

The safe drinking (potable) and non-drinking (non-potable) water systems will be carefully designed and operated to prevent cross-connections and backflow conditions. The two systems will be clearly labeled and physically separated by air gaps or reduced pressure principle backflow preventers to avoid contaminating the safe drinking (potable) water supply. In addition, all non-potable spigots and irrigated areas will be clearly labeled with warning signs to prevent the inadvertent consumption of non-potable water.

A dual water system management plan will be submitted by the water system owner and operator.

3. In the Final EIS Section 4.9.2 (Water) will be revised as follows in response to: 1) your statement regarding the source of non-drinking (non-potable) water, its intended uses, and where it will be utilized; and 2) your question regarding residential rain water catchment systems and reclaimed wastewater.

- Landscape and Irrigation. Common area landscaping landscape irrigation systems will be from will utilize re-use water (treated effluent) from the wastewater treatment plant or collected in catchment systems. Residential catchment systems may provide landscape irrigation to individual lots and homes. Only drip irrigation systems will be permitted for both common area and residential landscaping. Landscaping will be restricted to appropriate native and Polynesian species that are drought-tolerant and suitable for coastal locations; xeriscaping aims to reduce water use.

Environmental Planning Office (EPO) Total Maximum Daily Load (TMDL) Program

We are unable to respond to your comment that "The Draft EIS incompletely addresses EPO standard comments," because this broad statement does not specify how the Draft EIS is deficient. We have reviewed the EPO standard comments.

In response to your comment regarding receiving waters, in the Final EIS Section 3.8 (Marine Environment) will be revised as follows:

According to the State Department of Health Environmental Planning Office Total Maximum Daily Load (TMDL) Program, "Receiving waters for the proposed project are Class AA West Molokai open coastal waters" and water quality in a portion of these receiving waters is impaired by excessive nutrients, turbidity, and suspended solids (Final 2004 List of Impaired Waters in Hawaii Prepared under Clean Water Act Section 303(d))."

The marine waters surrounding La'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 transiting 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.

In response to your comment regarding Appendix D: The methodology used in the baseline marine biology survey is quantitative transects. The 1984 Molokai Coastal Resource Atlas (Atlas) was developed from a combination of aerial photo interpretation and extensive, rapid, qualitative surveys to ground-truth the photo interpretations. A coarse description of bottom types and fairly detailed information of resource uses resulted. The Atlas was used in planning the locations of transects for the current study, but no attempt was made to reproduce an area-wide bottom type survey, such as might be done by towing divers along the coast. The two methods are designed for different purposes and the results are not directly comparable.

The other recent South Molokai investigations are those of the USGS. Because of the well-documented "red water" plumes that appear along South Molokai after heavy rains, the USGS is using the area as a test ground for benthic habitat mapping using remote sensing technology (multispectral imaging) and underwater videography. They are also looking at sedimentation using various instrument packages to measure oceanographic conditions. Again, the purposes of the surveys and the methodologies are different between the La'au baseline and the USGS studies. The post-storm water quality samples and observations showed that a red water plume extended throughout the study area following that event. The area of coverage and concentration of suspended sediments will vary with the storm intensity and duration, wind direction, tidal state and other factors. The essential conclusion to be reached is that any improvement of the drainage pattern to reduce runoff and sediment delivered to the ocean, as proposed in the DEIS, will improve long-term water quality.

In response to your comment regarding Appendix N (Preliminary Engineering Report), page 3, in the Final EIS the Preliminary Engineering Report will be revised to include the following information:

Perforated risers will be added to the inlets of these culverts as shown in Exhibit 7. 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 driveway 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, "Rules for the Design of Storm Drainage Facilities in the County of Maui."

In response to your comment regarding Appendix N (Preliminary Engineering Report), page 6, in the Final EIS the Preliminary Engineering Report will be revised to include the following information:

The current runoff from the proposed 200 lots and roadways is 512 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 (53/111) = 48%, approximately 52% is attributable to

Mr. Kelvin Sunada, Manager
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
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the imperiousness 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.

In response to your additional comment regarding Appendix O (Preliminary Drainage Report), page 4, in the Final EIS the Preliminary Drainage Report will be revised to include the following information:

To minimize disturbance of existing conditions, existing drainageways that transects the lots in a mauka-makai direction, may be undergrounded and subsurface or surface detention facilities installed at the downstream end of such drainageways. In addition, the CC&Ks will state that the existing flow patterns through/across lots shall be retained and maintained by the lot owner.

Clean Air Branch

Prior to construction, the contractor will develop a dust control management plan, which will identify and address all activities that a potential to generate fugitive dust. Activities will comply with the provisions of Hawai'i Administrative Rules, §11-60.1-33 on Fugitive Dust.

We agree with your recommendation that buffer zones be established to alleviate potential nuisance problems arising from mixed land uses. As discussed in Section 2.3.1 on page 25 of the Draft EIS, the expanded State Conservation District and additional 50-foot building setback from the residential lot line will provide a buffer between the residential makai boundary and shoreline uses. The mauka boundary of the La'au Point community will be defined by a deer and livestock fence to minimize conflicts with adjacent subsistence hunting and pasture usage of the remainder of the parcel.

Based on your suggestions for dust control measures, the following discussion has been added to Section 4.6 (Air Quality) of the Final EIS:

The State of Hawai'i Air Pollution Control Regulations prohibit visible emissions of fugitive dust from construction activities at the property line. All activities will comply with the provisions of Hawai'i Administrative Rules, §11-60.1-33 on Fugitive Dust. Therefore, an effective dust control plan will be prepared for the project construction phase. In an effort to control fugitive dust, a program will be implemented to keep bare-dirt surfaces in active construction areas from becoming significant sources of dust. In addition, open-bodied trucks will be covered at all times when in motion and transporting materials that create airborne dust. An effective dust control plan will be prepared for the project construction phase, which may include the following:

- Planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing on-site vehicular traffic routes, and locating potential dust-generating equipment in areas of the least impact.
- Landscaping and providing rapid covering of bare areas, including slopes, starting from the initial grading phase.

Mr. Kelvin Sunada, Manager
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
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- Minimizing dust from shoulders and access roads.
- Providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.
- Controlling dust from debris being hauled away from the project site by having open-bodied trucks be covered at all times when in motion and transporting materials that create airborne dust.

Hazard Evaluation & Emergency Response Office (HEER)

1. In response to your comment, Section 2.1.3 (Surrounding Uses) in the Final EIS will be revised to include the following:

A portion of the Pāpohaku Ranchland subdivision, located north of the project area, has been identified as a Formerly Used Defense Site (FUDS). The FUDS was a rocket and bombing target range used by the U.S. Navy and Marine Corps from 1944 to 1965. The 1,500 acres of FUDS is in the vicinity of Kaliahiko'i Road which provides access to the project.

2. The project area does not have a history of previous releases of petroleum, hazardous substances, pollutants, or contaminants. Therefore, MPL is not seeking a "no further action" letter from the DOH HEER office.

Noise, Radiation & Indoor Air Quality Branch

As stated in Section 4.5 (Noise) of the Draft EIS, project activities will comply with HAR, Chapter 11-46, Community Noise Control.

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 Permits and Approvals

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



CHRYOMEL L. FUKINO, M. D.
DIRECTOR OF HEALTH
LORRIN W. PANG, M. D., M. P. H.
DISTRICT HEALTH OFFICER

Mr. Jeffrey S. Hunt
January 31, 2007
Page 2

STATE OF HAWAII
DEPARTMENT OF HEALTH
MAUI DISTRICT HEALTH OFFICE
54 HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2102
January 31, 2007

It is strongly recommended that the Standard Comments found at the Department's website: www.state.hi.us/health/environmental/env-planning/landuse/landuse.html be reviewed, and any comments specifically applicable to this project should be adhered to.

Should you have any questions, please call me at 808 984-8230.

Sincerely,

Herbert S. Matsubayashi
District Environmental Health Program Chief

c: EPO

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

Attention: Nancy McPherson

Dear Mr. Hunt:

Subject: La'au Point
TMK: (2) 5-1-002: 030 (por.)
EAC 2006/0017, CPA, 2006/009, CIZ 2006/0015,
SM1 2006/0040, CUP 2006/0005

Thank you for the opportunity to comment on the proposed La'au Point project. The following comments are offered:

1. The noise created during the construction phase of the project may exceed the maximum allowable levels as set forth in Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control". A noise permit may be required and should be obtained before the commencement of work.
2. HAR, Chapter 11-46 sets maximum allowable sound levels from stationary equipment such as compressors and HVAC equipment. The attenuation of noise from these sources may depend on the location and placement of these types of equipment. This should be taken into consideration during the planning, design, and construction of the building and installation of these types of equipment.

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COUNTY OF MAUI
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Mr. Herbert Matsubayashi
 SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
 November 1, 2007
 Page 2 of 2

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 Chung, 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

Herbert S. Matsubayashi
 State of Hawai'i
 Department of Health
 Maui District Health Office
 54 High Street
 Wailuku, Hawai'i 96793-2102

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Matsubayashi:

Thank you for your letter dated January 31, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

1. As discussed in Section 4.5 (Noise) of the Draft EIS, construction activities will comply with Chapter 11-46, HAR (Community Noise Control). Proper mitigation measures will be employed to minimize construction-related noise and comply with all Federal and State noise control regulations. Should expected construction noise exceed maximum allowable levels as set forth in Chapter 11-46, HAR, a noise permit will be obtained before the commencement of work.

2. In response to your comment, Section 4.5 of the Final EIS will be revised as follows:

Noise impacts in the long-term may include noise from stationary mechanical equipment (air conditioners, condensing units, compressors, etc.) that are typical for residential housing. Noise from this type of mechanical equipment must meet State-DOH noise rules comply with Chapter 11-46, HAR, which stipulates maximum permissible noise for single-family homes at the property line to be 55 dBA during daytime hours and 45 dBA during nighttime hours. The CC&Rs will require noisy equipment to be located away from neighbors and other residences, as much as practical.

3. We have reviewed the Standard Comments on the DOH website, and we note that the following DOH branches provided comments on the Draft EIS regarding their respective issues and concerns: Environmental Planning Office; Wastewater Branch; Safe Drinking Water Branch; Clean Air Branch; Hazard Evaluation and Emergency Response Office (HEER); and Noise, Radiation and Indoor Air Quality Branch. All State and County requirements/regulations will be complied with. We will review the balance of the other branches and divisions regulations and comply with all applicable requirements.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
235 SOUTH BERETANIA STREET
SUITE 702
HONOLULU, HAWAII 96813
PHONE: (808) 551-4145
FAX: (808) 551-4146
E-mail: oeqc@health.state.hi.us
February 15, 2007

GENEVIEVE SALMONSON
DIRECTOR

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FEB 22 2007

PBR HAWAII

Mr. Anthony Ching, Executive Officer
State Land Use Commission
235 South Beretania Street, 4th Floor
Honolulu, Hawaii 96813

Dear Mr. Ching:


Subject: Draft EIS for Lā'au Point, Island of Moloka'i

Thank you for the opportunity to review the subject document. We have the following comments.

1. The applicant should define "green architecture" in its covenants. OEQC recommends that The US Green Building Council's LEED silver standard be applied.
2. The applicant should be more specific in defining the EPA energy conservation standards in the covenants.
3. The applicant should be more specific about the solar power requirement in the covenants.
4. Who will monitor and enforce the CC&Rs?

Should you have any questions, please call Jeyan Thirugnanam at 586-4185.

Sincerely,


Genevieve Salmonson
Director

c: PBR Hawaii
MPL



November 1, 2007

State of Hawai'i
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, Hawai'i 96813

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Office of Environmental Quality Control:

Thank you for your letter dated February 15, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

1. Green architecture may be defined in the Lā'au Point Design Guidelines as: "Design standards which preserve, as far as practicable, the characteristics of each lot and the project as a whole, and strive to minimize non-renewable energy requirements, water use, and the impact of the project on the natural environment."

To include the above information in the Final EIS, Section 2.3.6 (Covenants) will be revised as follows:

- **Green architecture.** Require "green" architecture that incorporates recycled materials, energy efficient equipment, natural ventilation, solar and photovoltaic systems, etc. Green architecture may be defined in the Lā'au Point Design Guidelines as design standards, which preserve as far as practicable, the characteristics of each lot and the project as a whole, and strive to minimize non-renewable energy requirements, water use, and the impact of the project on the natural environment.

We note that OEQC recommends that the US Green Building Council's LEED silver standard be applied. We consulted the US Green Building Council's Leadership in Energy and Environmental Design (LEED) certification process while developing the CC&Rs. The Lā'au Point project will create 200 residential lots for sale to buyers. The LEED certification process mainly deals with certifying buildings, not subdivision plans. However, the CC&Rs strive for the same goals as LEED and implement those standards without requiring homebuilders to formally go through the LEED certification process individually.

To include the above information in the Final EIS, the following statement has been added to Section 2.3.6 (Covenants):

In their February 15, 2007 comment letter, the State Office of Environmental Quality Control (OEQC) recommended that the US Green Building Council's Leadership in Energy and Environmental Design (LEED) silver standard be applied. The LEED Green Building Rating System is a nationally accepted benchmark for the design, construction, and operation of sustainable buildings. LEED promotes a whole-building approach to

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Telephone 808.531.0158 • Facsimile 808.571.2779

Director, Office of Environmental Quality Control

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 1, 2007

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sustainability by recognizing performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

While creating the CC&Rs, the LEED certification process was reviewed. Currently, the LEED certification process mainly deals with certifying buildings, not lot subdivisions. The Lā'au Point project will create 200 residential lots for sale; buyers will build their own homes. Therefore, Lā'au Point will not go through a formal LEED certification process. However, the CC&Rs and subsequent design guidelines will strive for the same goals as LEED.

2. In response to your comment regarding energy conservation standards, the following has been added to Section 2.3.6 (Covenants) of the Final EIS:

- **General energy.** All energy systems shall be designed and constructed to meet United States Environmental Protection Agency (EPA) conservation standards. An example of an EPA conservation standard is the ENERGY STAR program, which was established in 1992 for energy-efficient computers. Now a joint program under the EPA and the U.S. Department of Energy, the ENERGY STAR program has grown to encompass more than 35 energy-efficient product categories for homes and workplace. Homes that earn the ENERGY STAR designation must meet guidelines for energy efficiency set by the EPA. ENERGY STAR qualified homes can include a variety of energy-efficient features, such as effective insulation, high performance windows, tight construction and ducts, efficient heating and cooling equipment, and ENERGY STAR qualified lighting and appliances. These EPA standards for the ENERGY STAR program can be found at the following website: <http://www.energystar.gov>. For example, all dwellings will be required to have solar panels (or comparable technology) sized to meet at least 80 percent of the hot water demand of each home. Other energy-efficient measures will be required in the Lā'au Point Design Guidelines.

3. In response to your comment regarding being more specific about the solar power requirement, the CC&Rs will require solar panels (or similar technology) for water heating and to supplement electric power for appliances. To include this information in the Final EIS, Section 2.3.6 (Covenants) will be amended as follows:

- **Solar power.** Solar panels requirement (or comparable technology) for water heating sized to meet at least 80 percent of the hot water demand of each home and to supplement electric power for appliances will be required.

4. 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. 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 Molokai, 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

Director, Office of Environmental Quality Control

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 1, 2007

Page 3 of 3

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 Molokai community and its desires and aspirations with kupuna and the Maunaloa community. This will be conducted under the guidance of the Molokai 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 Molokai 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.

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
Jeff Hunt, Maui Planning Department
Thomas S. Witten, PBR HAWAII



LINDA LINGLE
Commissioner of Water

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

HONOLULU, HAWAII 96809
January 10, 2007

PETER T. YOUNG
Commissioner
MEREDITH A. CHING
NANCY A. FRAZER
NAMES A. FRAZER
CHYOMIE L. FUKINO, M.D.
LAWRENCE H. MIKE, M.D., J.D.
STEPHANIE A. WHALEN
DEAN A. NAKANO
Acting Deputy Director

REF: LaauPLdr

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

Dear Mr. Witten:

SUBJECT: Laau Point

FILE NO.:

Thank you for the opportunity to review the subject document. The Commission on Water Resource Management (CWRM) is the agency responsible for administering the State Water Code (Code). Under the Code, all waters of the State are held in trust for the benefit of the citizens of the State, therefore, all water use is subject to legally protected water rights. CWRM strongly promotes the efficient use of Hawaii's water resources through conservation measures and appropriate resource management. For more information, please refer to the State Water Code, Chapter 174C, Hawaii Revised Statutes, and Hawaii Administrative Rules, Chapters 13-167 to 13-171. These documents are available via the Internet at <http://www.hawaii.gov/dlnr/cwrm>.

Our comments related to water resources are checked off below.

- 1. We recommend coordination with the county to incorporate this project into the county's Water Use and Development Plan. Please contact the respective Planning Department and/or Department of Water Supply for further information.
 - 2. We recommend coordination with the Engineering Division of the State Department of Land and Natural Resources to incorporate this project into the State Water Projects Plan.
 - 3. There may be the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality.
- Permits required by CWRM: Additional information and forms are available at www.hawaii.gov/dlnr/cwrm/forms.htm.
- 4. The proposed water supply source for the project is located in a designated ground-water management area, and a Water Use Permit is required prior to use of ground water.
 - 5. A Well Construction Permit(s) is (are) required before the commencement of any well construction work.
 - 6. A Pump Installation Permit(s) is (are) required before ground water is developed as a source of supply for the project.

Mr. Thomas S. Witten
Page 2
January 10, 2007

- 7. There is (are) well(s) located on or adjacent to this project. If wells are not planned to be used and will be affected by any new construction, they must be properly abandoned and sealed. A permit for well abandonment must be obtained.
- 8. Ground-water withdrawals from this project may affect streamflows, which may require an instream flow standard amendment.
- 9. A Stream Channel Alteration Permit(s) is (are) required before any alteration can be made to the bed and/or banks of a stream channel.
- 10. A Stream Diversion Works Permit(s) is (are) required before any stream diversion works is constructed or altered.
- 11. A Petition to Amend the Instream Flow Standard is required for any new or expanded diversion(s) of surface water.
- 12. The planned source of water for this project has not been identified in this report. Therefore, we cannot determine what permits or petitions are required from our office, or whether there are potential impacts to water resources.
- 13. We recommend that the report identify feasible alternative non-potable water resources, including reclaimed wastewater.

OTHER:

The correct amount of the Maui County Water Use Permit for Kualapuu Mauka Well 0801-03 (see p. 78) is 516,000 gpd. Development of the Kakalahale Well (0700-01) will require a water use permit. Modification of the uses of Well 17 (0801-01) to serve Leau Point will require a modification of the water use permit.

If there are any questions, please contact Charley Ice at 587-0251.

Sincerely,

W. Roy Hardy
for

DEAN A. NAKANO
Acting Deputy Director

cc: Mr. Anthony Ching, State Land Use Commission
Ms. Nancy McPherson, County of Maui, Planning Department



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

November 1, 2007

Mr. Dean Nakano
 State of Hawai'i
 Department of Land & Natural Resources
 Commission on Water Resource Management
 P.O. Box 621
 Honolulu, Hawai'i 96809

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Nakano:

Thank you for your letter dated January 10, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments (response number corresponds directly with the comment number checked off in your letter).

1. MPL has been working jointly with the County of Maui Department of Water Supply (DWS) and the State Department of Hawaiian Homelands (DHHL) regarding Moloka'i's water supply and future needs. Therefore, based on these joint discussions, we expect that DWS will incorporate MPL's, as well as DHHL's, water allocation, use, and demand on Moloka'i into their updated Water Use and Development Plan.
 2. In their comments dated January 24, 2007 regarding the Draft EIS, the DLNR Engineering Division did not recommend including this project into the State Water Projects Plan.
 4. We acknowledge that Moloka'i is a designated ground water management area. To include this information in the Final EIS, as well as to address other questions and concerns regarding water issues in the Final EIS Section 4.9.2 (Water) will be revised as shown in the attachment titled, "Revised Section 4.9.2 (Water)."
- In the Draft EIS Section 4.9.2 (Water) it is stated that "A water use permit would be required before the Kākahale Well can be put into production." In the Final EIS this information will be added to Sections 1.1, 1.74, and Section 5.3 as shown in the attachment titled, "Revised Permits and Approvals."

OTHER: Based on your comments, various parts of Section 4.9.2 (Water) in the Final EIS will be revised as follows:

"Maui County DWS has one well (0801-03) in close proximity to the DHHL wells, and has a permit to withdraw 500,000 516,000 gpd." (from page 78 of the Draft EIS).

Molokai Properties Limited dba Molokai Ranch • 745 Fort Street Mall • Suite 600 • Honolulu, Hawaii 96813
 Telephone 808.531.0158 • Facsimile 808.521.2279

"A water use permit would be required before the Kākahale Well (0700-01) can be put into production; this was confirmed by the DLNR Commission on Water Resource Management in their letter dated January 10, 2007." (from page 81 of the Draft EIS)

"**Safe Drinking (Potable) Water** - MPL plans to retain its current 1,500,000 gpd of safe drinking water: 1,018,000 gpd from Well 17 and 500,000 gpd from the Molokai Ranch Mountain System. Under the Water Plan, approximately 600,000 gpd of safe drinking water from Well 17 will be freed up from existing irrigation uses, leaving that amount available for safe drinking water needs associated with MPL's future developments of Lā'au Point and Kahaoko'i. Safe drinking (potable) water will not be used for irrigation."

For Lā'au Point, safe drinking water demand is projected at 96,000 gpd at full build-out based on 600 gpd for 200 lots at 80 percent occupancy. An additional demand of 1,000 gpd of safe drinking is projected for the two parks within the project area. Modification of the uses of Well 17 (0901-01) to serve Lā'au Point will require a modification of the water use permit. (from page 80 of the Draft EIS)

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 Permits and Approvals

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

LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER OF WATER RESOURCES MANAGEMENT
OFFICE DIRECTOR
ROBERT K. MASUDA
OFFICE DIRECTOR
DEAN NAKANO
ACTING OFFICE DIRECTOR - WATER
RESOURCES
ADULTIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSIONER OF WATER RESOURCES MANAGEMENT
OFFICE DIRECTOR
CONSERVATION AND RECREATION DEVELOPMENT
COMMISSIONER OF WATER RESOURCES MANAGEMENT
OFFICE DIRECTOR
STATE PARKS
OFFICE DIRECTOR
KAPALUA DISTRICT OFFICE
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 7, 2007

PBR Hawaii
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, Hawaii 96813
Attention: Thomas Witten

State Land Use Commission
Box 2359
Honolulu, Hawaii 96804
Attention: Anthony Ching

Gentlemen:

Subject: Draft Environmental Impact Statement for La'au Point, West Molokai,
Molokai, Tax Map Key: (2) 5-1-2-30; 5-1-6-157; 5-1-8-4,3,6,7,13-15,21,25

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR) Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comment.

Other than the comments from Engineering Division, Division of Forestry and Wildlife and Division of State Parks, the Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0433. Thank you.

Sincerely,

Russell Y. Tsuji
Administrator

Cc: Central Files
Molokai Properties Limited
OEQC
County of Maui

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 26, 2006

MEMORANDUM

TO: DLNR Agencies:
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Div. of Water Resource Management
 Office of Conservation & Coastal Lands
 Land Division - Maui District/Keith

FROM: Russell Y. Tsuji
SUBJECT: Draft Environmental Impact Statement for La'au Point
LOCATION: West Molokai, Molokai, TMK: (2) 5-1-2-30; 5-1-6-157; 5-1-8-4,3,6,7,13-15,21,25
APPLICANT: PBR Hawaii on behalf of Molokai Properties Limited

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by February 5, 2007.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:
Date: _____

RECEIVED
LAND DIVISION
2007 JAN 25 A 11:30

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

LDR/YT
Ref: DEIS/Lau/Piont
Maui.353

Division of Forestry & Wildlife

1151 Punchbowl Street, Rm. 325 • Honolulu, HI 96813 • (808) 587-0166 • Fax: (808) 587-0160

February 1, 2007

2007 FEB -5 A 9:47

COMMENTS

- (X) We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zones C, V25, V15, and A4. The National Flood Insurance Program does not have any regulations for developments within Zone C, however, it does regulate developments within Zones V25, V15 and A4, as indicated in bold letters below. Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is also located in Zone _____.
- () Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is _____.
- (X) Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:


- () Mr. Robert Sumimoto at (808) 523-4254 or Mr. Mario Siu Li at (808) 523-4247 of the City and County of Honolulu, Department of Planning and Permitting.
- () Mr. Kelly Gomes at (808) 961-8327 (Hilo) or Mr. Kiran Emler at (808) 327-3530 (Kona) of the County of Hawaii, Department of Public Works.
- (X) Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
- () Mr. Mario Antonio at (808) 241-6620 of the County of Kauai, Department of Public Works.

() The applicant should include project water demands and infrastructure required to meet water demands. Please note that the implementation of any State-sponsored projects requiring water service from the Honolulu Board of Water Supply system must first obtain water allocation credits from the Engineering Division before it can receive a building permit and/or water meter. The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.

() Additional Comments: _____

() Other: _____

Should you have any questions, please call Ms. Alyson Yim of the Planning Branch at 587-0259.

Signed: 
ERIC T. HIRANO, CHIEF ENGINEER

Date: 1/24/07

MEMORANDUM

TO: Russell Y. Tsuji, Administrator
Land Division

FROM: Paul J. Conry, Administrator
Division of Forestry and Wildlife

SUBJECT: Request for Comments: Draft Environmental Impact Statement for La'au Point, West Molokai, Molokai Island TMK: (2) 5-1-2-30; 5-1-8: 3, 4, 6, 7, 13-15, 21, 25. Applicant is PBR Hawaii for Molokai Properties Limited.

DOFAW has reviewed this draft EIS for La'au Point Development, West Molokai and have the following comments for your considerations.

Na Ala Hele Review:

- Although the County of Maui requires 16 shoreline right-of-ways for subdivisions of this size and the proposed project identifies only 2 access points on each end of the project, DOFAW recommends that the project include additional access right-of-ways into the subdivision lot plans. The additional access will not need to be opened initially, but it would satisfy future public access opportunities to this shoreline of the development.
- All user groups should be afforded the opportunity for shoreline access through this development i.e. not restricted to fishing or gathering, only! Furthermore, arguments to close access resulting from the anticipated negative impacts to the natural resources must rely on scientific data and acceptable limits of change based on quantitative and qualitative units of measurements and not by arbitrary management decisions.
- At least a couple of access points should include: parking, drinking water and a comfort station.

Wildlife Review:

- The two-day wildlife survey was completed at the wrong season. Wedged-tailed Shearwater chicks would have fledged by that time. The survey should be done in September and October. The fauna survey is woefully inadequate as reported in the draft EIS.

- DOFAW disputes the comment in the biological assessment that the areas would not support seabirds because of past disturbance and predators. Shearwaters do persist in predator disturb areas.
- Regarding water birds, Hawaiian stilts move around often, and 2-days survey would be of little use.
- Although the host plant (*Nicotiana glauca* a coastal strand and shrub vegetation) for the endangered *Manduca blackburni* or Blackburn's Sphinxmoth (Mabi) grows in this area, it did not meet the Fish and Wildlife Service criteria for critical habitat designation. Nevertheless, we encourage absolute protection of the endangered Sphinxmoth found in this area.
- Protection of the endangered Hawaiian monk seal is required on this coastal area.

Thank you for the opportunity to comment on this subject request. Please call Fern Duvall on Maui at (808) 873-3502 or David Leonard on Oahu at (808) 387-4158, if you have questions to our review.

C: John Cumming, Maui Branch Manager
Fern Duvall, Maui Wildlife Biologist
David Leonard, Wildlife Biologist, Administration



LINDA LINGGLE
GOVERNOR OF HAWAII



RECEIVED
STATE OF HAWAII STATE PARKS DIV
DEPARTMENT OF LAND AND NATURAL RESOURCES

LAND DIVISION
POST OFFICE BOX 621 06
HONOLULU, HAWAII 96809
DEC 27 P 3:47

PETER T. YOUNG
CHAIRMAN
BOARD OF LAND RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

MANUELA BARRERA
PLANNING AND DESIGN REGISTRATION
COMMISSION ON WATER RESOURCES MANAGEMENT

COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
COMMISSION ON WATER RESOURCES MANAGEMENT

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COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
COMMISSION ON WATER RESOURCES MANAGEMENT

December 26, 2006 DEPT OF LAND & NATURAL RESOURCES

MEMORANDUM

TO: DLNR Agencies:
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Div. of Water Resource Management
 Office of Conservation & Coastal Lands
 Land Division – Maui District/Keith

FROM: Russell Y. Tsuji
 SUBJECT: Draft Environmental Impact Statement for Lāʻau Point
 LOCATION: West Molokai, Molokai, TMK: (2) 5-1-2:30; 5-1-6:157; 5-1-8:4,3,6,7,13-15,21,25
 APPLICANT: PBR Hawaii on behalf of Molokai Properties Limited

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by February 5, 2007.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- () We have no objections.
- () We have no comments.
- () Comments are attached.

Signed:
 Date: 1/2/07

RECEIVED
LAND DIVISION

RECEIVED
LAND DIVISION JAN -9 P 3:22



Mr. Russell Tsuji, Administrator
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 3

the rules and guidelines set forth in the "Pu'u Hakina & Kamāka'ipō Shoreline Access Management Plan," which has been included in the Final EIS as an appendix.

Section 4.3 (Trails and Access) of the Draft EIS (as well as many other sections) contains extensive discussion on shoreline access and the community's decision to provide access at two parks at the ends of the project. In addition, Section 4.10.5 (Recreational Facilities) of the Draft EIS notes that both proposed shoreline parks on the west and south shores will include parking, drinking water, and comfort stations.

Wildlife Review: DOFAW comments that the wildlife survey was completed at the wrong season because at the time the survey was conducted (December 2005). Wedge-tailed Shearwater chicks would have fledged by that time. We note that the survey was not specifically targeted to Wedge-tailed Shearwaters and Wedge-tailed Shearwaters are not listed in Hawai'i as endangered or threatened. Their nesting is not restricted to remote locations free from disturbance. Successful breeding populations can be found in residential properties at Black Point at the foot of Diamond Head in Honolulu as well as in numerous residential properties along the North Shore of O'ahu, such as Mālaekahana to Turtle Bay Resort. Shearwaters also breed on offshore islands.

With regard to seabirds other than Wedge-tailed Shearwater nesting in the Lā'au Point area, our biologist has no verifiable recent records.

Regarding the Hawaiian Stilts, no permanent wetland habitat suitable for Hawaiian Stilts was observed on the property. Stilts are opportunistic and will take advantage of ephemeral wet areas following a flooding event. Their occurrence would be brief at best since this site receives limited rainfall.

While the tree tobacco plant (*Nicotina glauca*) was identified on the site during the botanical survey, according to the US Fish and Wildlife Service, there is no black sphinx moth habitat designated at Lā'au Point (www.fws.gov/pacific_islands/CHRules/mothmap.pdf). MLP will comply with all laws regarding threatened and endangered species should any be found on the property.

We agree that protection of the Hawaiian monk seal is required. We consulted with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service about the monk seal population at Lā'au Point. The shoreline access management plan contains a plan and recommendations developed in consultation with NOAA Monk seal program and elements were taken directly from their draft *Recovery Plan for the Hawaiian Monk Seal* (November 2006). The shoreline access management plan reiterates the rules required to ensure non-disturbance of Monk seal habitat and the promotion of Lā'au Point as an area for Monk seals to frequent and "haul out." In response to your comments, 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)." As previously mentioned above, the shoreline access management plan has been appended to the Final EIS.

November 1, 2007

Mr. Russell Tsuji
State of Hawai'i
Department of Land & Natural Resources
Land Division
P.O. Box 621
Honolulu, Hawai'i 96809

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Tsuji:

Thank you for your letter dated February 7, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we respond to your comments.

ENGINEERING DIVISION

As discussed on page 42 of the Draft EIS, Section 3.5 (Natural Hazards), no structures will be built in the flood zones V25, V15, or A4.

DIVISION OF FORESTRY & WILDLIFE

Na Ala Hele Review: We note that DOFAW recommends that the project include: 1) additional access right-of-ways into the subdivision lot plans; 2) opportunity for all user groups to access the shoreline, i.e. not restricted to fishing or gathering only; and 3) parking, drinking water, and a comfort station at a couple of access points.

We recognize that Section 18.16.210, Maui County Code (MCC) requires shoreline access rights-of-way every at least every 1,500 feet. However this Section 18.16.210, MCC also gives the Director of Public Works discretion to modify the standard rights-of-way requirement.

Through the course of the *Community-Based Master Land Use Plan for Molokai Ranch* (Master Plan) process significant input was obtained from the community regarding access to the shoreline. The community members were concerned that allowing additional public access to the shoreline and to the area in general would result in a significant change in character to the area and would spoil the traditional uses and activities in the area enjoyed by ahupua'a inhabitants. At the community's request, it was agreed that access to the area would be provided at two parks at the ends of the project area and limited to foot traffic. This was not an "arbitrary management decision[s]" as characterized in the Na Ala Hele comments.

The Lā'au Point Homeowners' Association and the Molokai Land Trust will be charged jointly with managing the Lā'au Point shoreline and Conservation District areas. They have agreed on

Mr. Russell Tsuji, Administrator
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 3 of 3

DIVISION OF STATE PARKS

We acknowledge that the Division of State Parks has no comments.

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

Sincerely,



Peter Nicholas
President and CEO
Motokai 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

LINDA LINGG
GOVERNOR OF HAWAII



AD-10-011
PBR-011

PETER S. YOUNG
CHAIRMAN
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT K. MASUDA
DEPUTY DIRECTOR
ATTORNEY GENERAL
STATE OF HAWAII
NATIVE RESOURCES
BUREAU OF CONSERVATION
BUREAU OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND RESTORATION DIVISION
PLANNING AND POLICY DIVISION
LAND AND NATURAL RESOURCES
STATE OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 26, 2006

MEMORANDUM

TO: DLNR Agencies:
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Div. of Water Resource Management
 Office of Conservation & Coastal Lands
 Land Division - Maui District/Keith

FROM: Russell Y. Tsuji
SUBJECT: Draft Environmental Impact Statement for Lāʻau Point
LOCATION: West Molokai, Molokai, TMK: (2) 5-1-2-30; 5-1-6-157; 5-1-8-4, 3, 6, 7, 13-15, 21, 25
APPLICANT: PBR Hawaii on behalf of Molokai Properties Limited

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by February 5, 2007.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

(1) We have no objections.
(2) We have no comments.
Comments are attached.

Signed: *Russell Y. Tsuji*
Date: 2/22/07

LINDA LINGG
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:DH

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

Correspondence: MO-07-140

FEB 23 2007

Dear Mr. Witten,
SUBJECT: Request for Comments regarding Draft Environmental Impact Statement for Lāʻau Point, Island of Molokai, Subject Parcel's TMK's: (2) 5-1-002-030, 5-1-006-157, 5-1-008-003, 004, 006, 007, 013-015, 021, and 025

The Department of Land and Natural Resources' (DLNR), Office of Conservation and Coastal Lands (OCCL) thanks you for the opportunity to comment on Draft Environmental Impact Statement for Lāʻau Point, Island of Molokai.

The OCCL notes subject parcel TMK: (2) 5-1-002-030 is located in the State Land Use (SLU) Limited and General subzones. The OCCL has the following comments regarding the DEIS:

The OCCL applauds the addition of 254 acres from the existing 180 acres of land located in the Conservation District (total 434 acres) that will include portions of the coastline, gulleches, parks and several cultural protection zones, which will conserve, protect, and preserve the natural resources of the State of Hawaii.

The OCCL notes that the 254 acres designated into the Conservation District will not have a subzone designation. If the land is designated to the Conservation District the landowner will need to petition the Board of Land and Natural Resources for a new subzone. This will require an Administrative Rule Amendment.

The petition to re-district approximately nine acres from the Conservation District to the Rural District for the development of the proposed public shoreline park (identified as Southern Public Park - consisting of caretakers residence, gate, emergency access road, restroom/shower, 30 parking stalls) near Hale O Lono Harbor, would ensure that a CDUA would not be required. However, the OCCL notes that if the applicant were to revert the Rural Designation back to the Conservation District then the above paragraph would apply.

REF:OCCL:DH


Correspondence: MO-07-140

The Molokai Land Trust and/or the Laau Point homeowners who will manage the Conservation District areas will need to get prior approval from the OCCL regarding any landscaping (removal and/or planting of drought-tolerant native species), access trail improvements, and fencing that will occur on Conservation District land. Because the OCCL does not want to see piecemeal requests from each individual landowner regarding possible uses, it may be beneficial to have a master landscape plan prepared by the Molokai Land Trust and Laau Point homeowners, and submit and process a CDUA which will describe in detail what land uses will occur given a specific timeframe.

The primary method of effluent disposal proposed for the Laau Wastewater Treatment Plant (WWTP) is beneficial reuse as irrigation water for select areas of Conservation District lands along the coastline and for soil erosion control in arid areas of the project. The OCCL notes what will happen if the effluent produced by the WWTP does not meet the Department of Health (DOH) R-1 recycled water quality criteria because there is some malfunction to the system? Is there an alternative area, such as the open space surrounding the house lots versus using select areas in the Conservation District to use the irrigation water? The OCCL would rather see the latter alternative that the proposed alternative regarding irrigation water.

Should you have any questions please feel free to contact Dawn Hegger of our Office of Conservation and Coastal Lands at 587-0380.

Very truly yours,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Oahu District Land Office
City and County of Honolulu
Department of Planning and Permitting
Anthony Chang - Land Use Commission



November 1, 2007

Mr. Samuel J. Lemmo, Administrator
State of Hawai'i
Department of Land & Natural Resources
Office of Conservation & Coastal Lands
P.O. Box 621
Honolulu, Hawai'i 96809

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Lemmo:

Thank you for your letter dated February 23, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). Below, we respond to your comments.

We acknowledge that the proposed 254 acres of expanded Conservation District will not have a subzone designation. The landowner will need to petition the Board of Land and Natural Resources for a new subzone. This will require an Administrative Rule Amendment per the requirements of Section 13-5-16, Hawaii Administrative Rules (HAR) (Conservation District Rules). This would be processed after the State Land Use Commission's decision on the project's State Land Use District Boundary Amendment. The Final EIS will be amended to reflect the need for an Administrative Rule Amendment in Sections 1.1, 1.74, and Section 5.3 has been revised as shown in the attachment titled, "Revised Permits & Approvals."

We concur that a CDUA would not be required for park improvements if the proposed park areas in the Conservation District are re-districted to the Rural District. In consultation with the State Land Use Commission, it has been determined that the best course of action would be for the park land to remain in the Rural District. Therefore, the previously contemplated reclassification of the park land back to the Conservation District is not being considered now.

We acknowledge that the Molokai Land Trust and/or the Lā'au Point Homeowners Association, who will manage/own the Conservation District areas, will need to obtain a Conservation District Use Permit (CDUP), as required, for any identified uses that would occur on Conservation District land. There will not be individual homeowner lots within the Conservation District, so individual landowners will not make "piecemeal" requests regarding possible uses in the Conservation District. If uses are proposed in the Conservation District, the Molokai Land Trust and/or the Lā'au Point Homeowners Association will submit a Conservation District Use Application (CDUA). Depending on the proposed use, a master landscape plan may be prepared for the CDUA. The CDUA may also describe in detail what land uses will occur in a specific timeframe.

Mr. Samuel Lemmo, Administrator
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 3

To address your comments, in the Final EIS Section 4.9.3 (Wastewater) will be revised as follows:

The primary method of effluent disposal proposed for the La'au Wastewater Treatment Plant (WWTP) is beneficial reuse as irrigation water for select areas of conservation lands along the coastline common areas and for soil erosion control in wet areas of this project. Residential lots will not be irrigated with effluent disposal because the State of Hawaii's State Department of Health (DOH) *Guidelines for the Treatment and Use of Recycled Water* require residential recycled water systems to be managed by a "irrigation manager," and this would not be effective for a the amount of residential lots at La'au Point. Therefore, however, the effluent produced by the WWTP shall meet the DOH R-1 recycled water quality criteria. R-1 quality recycled water requires the effluent to be at all times oxidized, then filtered, and then exposed to a disinfection process that kills pathogens.

A fully integrated wastewater treatment system that incorporates biological processes, ultrafiltration membranes, and disinfection technology is proposed for the WWTP due to the stringent effluent requirements for R-1 recycled water. This technology combines the activated sludge process with micro pore filtration in a compact membrane bioreactor (MBR). Both oxidation and filtration are achieved in the MBR, thus eliminating the need for separate secondary and tertiary treatment processes.

Preliminary treatment of the plant influent for treatment in the MBR include coarse bar screening, grit removal, flow equalization, anoxic basin, pre-aeration, and fine screening of the wastewater.

Final effluent from the MBR, virtually particulate-free, will be disinfected using ultraviolet irradiation to render it bacteriologically safe for recycling and disposal.

Solids generated at the WWTP include screenings, grit and sludge. Screenings and grit will be dred on site using sand drying beds and disposed in a nearby landfill.

To meet the stringent effluent requirements for R-1 recycled water, a fully integrated wastewater treatment system that incorporates biological processes, ultrafiltration membranes, and disinfection technology is proposed for the WWTP. This technology combines the activated sludge process with micro-pore filtration in a compact membrane bioreactor (MBR). Final effluent from the MBR, virtually particulate-free, will be disinfected using ultraviolet irradiation to render it bacteriologically safe for recycling and disposal. This grade of treated water is approved by the Hawaii Department of Health for such uses as agriculture, landscaping, and golf course irrigation.

The terminal disinfection process will eliminate the potential of pathogen infection. R-1 water, will however contain inorganic nutrients such as nitrogen and phosphorus. Because the applications will take place below the UIC line, no potable groundwater lens will be affected. Runoff of this water into the ocean will have minimal effect on water quality because of the circulation patterns along this coast which will dilute the runoff.

The DOH Director must approve all recycled water systems. A Conservation District Use Permit also would be required for any recycled water systems within the State

Mr. Samuel Lemmo, Administrator
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 3 of 3

Conservation District. As stated in Section 3.3 (Soils), to the extent possible, Conservation District areas will not be landscaped or irrigated. Exceptions to this may include areas subject to erosion, where new landscaping can serve to stabilize the soil.

In addition, the Final EIS Section 4.9.3 (Wastewater) will be further revised as follows:

Reliability and Redundancy – Safeguards will be incorporated in the plant design to ensure that treatment operations are uninterrupted in the event of power failure or equipment malfunction. Design features will comply with the reliability and redundancy provisions promulgated in the "Guidelines for the Treatment and Use of Recycled Water," prepared by the Hawai'i State Department of Health, and dated May 15, 2002, and amendments thereto. For power supply reliability, an auxiliary generator will automatically operate and transfer power during electrical power outages. For process redundancy, multiple units of tanks, pumps, and other key equipment will afford parallel operation during times when a process unit is taken out of service for maintenance or repair.

As part of the reliability and redundancy operating safeguards, an effluent storage impoundment will be provided at the treatment facility. Should any of the redundant backup treatment units malfunction resulting in the plant effluent not having full treatment, that water will be stored in the impoundment for re-treatment, applied to grounds for soil erosion control, or used in plant watering at nearby areas of the treatment facility that are not in the Conservation District. A contingency provision for impoundment is contained in the State Department of Health Reuse Guidelines of Chapter 62.HAR.Wastewater Systems.

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

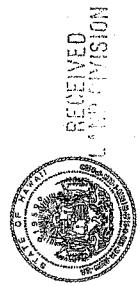
Attachment: Revised Permits & Approvals

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

PETER T. YOUNG
 BOARD OF LAND AND NATURAL RESOURCES
 CHAIRPERSON
 CHRISTOPHER M. HARRIS, DEPARTMENT SECRETARY

ROBERT A. MADDA
 DEPT. DIRECTOR
 1615 KALANANĀ'OHU
 ACTRESS DRIVE, HONOLULU, HAWAII

AGUATIC RESOURCES
 DEPT. OF LAND AND NATURAL RESOURCES
 BOARD OF ENVIRONMENTAL CONSERVATION
 CONSTRUCTION AND RESOURCES ENFORCEMENT
 FIREARMS AND WILDLIFE
 HAWAIIAN CULTURAL RESOURCES COMMISSION
 STATE PARKS



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 STATE OF HAWAII
 DEPARTMENT OF LAND AND NATURAL RESOURCES
 LAND DIVISION

RESOURCES: 06-1621

POST OFFICE BOX 621
 HONOLULU, HAWAII 96809

BP on this 1/10/07

LINDA LINGLE
 GOVERNOR OF HAWAII



December 26, 2006

MEMORANDUM

TO: DLNR Agencies:
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Office of Conservation & Coastal Lands
 Land Division - Maui District/Keith



Russell Y. Tsuji

FROM: Russell Y. Tsuji
 SUBJECT: Draft Environmental Impact Statement for La'u Point
 West Molokai, Molokai, TMK: (2) 5-1-2-30; 5-1-8-157; 5-1-8-4.3.6.7.13-15,21,25
 APPLICANT: PBR Hawaii on behalf of Molokai Properties Limited

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by February 5, 2007.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:
 Date: 2/15/07

PETER T. YOUNG
 BOARD OF LAND AND NATURAL RESOURCES
 CHAIRPERSON
 CHRISTOPHER M. HARRIS, DEPARTMENT SECRETARY

ROBERT A. MADDA
 DEPT. DIRECTOR
 1615 KALANANĀ'OHU
 ACTRESS DRIVE, HONOLULU, HAWAII

AGUATIC RESOURCES
 DEPT. OF LAND AND NATURAL RESOURCES
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POST OFFICE BOX 621
 HONOLULU, HAWAII 96809

March 6, 2007

State Land use Commission
 Box 2359
 Honolulu, Hawaii 96804
 Attention: Anthony Ching

PBR Hawaii
 1001 Bishop Street
 ASB Tower, Suite 650
 Honolulu, Hawaii 96813
 Attention: Thomas Witten

Gentlemen:

Subject: Draft Environmental Impact Statement for La'u Point, West Molokai, Molokai, Tax Map Key: (2) 5-1-2-30; 5-1-8-157; 5-1-8-4.3.6.7.13 to 15, 21, 25

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR) Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comment.

Other than the comments from Division of Aquatic Resources, the Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0433. Thank you.

Sincerely,

Russell Y. Tsuji
 Administrator

STATE OF HAWAII
Department of Land and Natural Resources
Division of Aquatic Resources

SUSPENSE DATE: February 5, 2007

MEMORANDUM

To: Dan Polhemus, Administrator *DP*
From: Bill Puleloa
Through: Richard Sixberry, Aquatic Biologist
Subject: Comments on Draft Environmental Impact Statement
(DEIS) for La'au Point

Comments Requested By: Russell Tsuji

Date of Request: 12/26/06 Date Received: 12/28/06

Summary of Project

Title: DEIS
Proj. By: PBR Hawaii on behalf of Molokai Properties Limited
Location: La'au Point, Molokai
Brief Description:

The applicant has provided an Environmental Impact Statement for the development of La'au Point, Molokai.

Comments:

-See attached comments from our Molokai Aquatic Biologist-

With regards to the December 2006 La'au Point Draft Environmental Impact Statement (DEIS) prepared by PBR Hawaii & Associates, Inc. for Molokai Properties Limited (MPL), I've finally muddled through the entire 835 page document to include the appendix "Marine Biological Baseline Study" (MBBS) and noted the following:

- (1) The reported findings of the MBBS may be surprising, but the methodology employed by their subcontractor PEC is consistent with acceptable practices, and very likely akin to what we would have done ourselves if given the task. However, the solitary survey was conducted more than a year ago and since the project has yet to start, it would not be unreasonable to request another survey so as to expand on this single database.
- (2) A significant shortcoming of the DEIS was the non-disclosure of subsequent monitoring activities. Without follow-up surveys it will be impossible to determine what effects the project would have, if any, on the integrity of the adjacent near shore marine environment. Since the inspected areas were identified with GPS coordinates, duplicate surveys at these same sites by competent researchers should provide meaningful comparisons over a period of time.
- (3) The potential for marine environment pollution from development runoff should be of concern to us. At bare minimum, MPL should be required to provide a detail drainage map of the entire project to include a scheme for the treatment and disposal of runoff water from roads, driveways, and other newly created impervious coverings. It would be advisable to have this drainage plan reviewed and approved by a certified engineer to alleviate concerns of potentially destructive runoffs into the marine environment. Additionally, it appears that each lot owner will be required to capture excessive sheet flow from their properties for the retention and treatment of such runoffs. However, I could not find anywhere in the DEIS how this was to be accomplished.
- Therefore, it would be further advisable to require the applicant to provide at least a minimum scheme to guide lot owners how accomplish this task. As it now stands there could be 200 different configurations, one on each of the proposed lots, ranging from a simple bucket in the ground to a full-on settlement basin.
- (4) The DEIS further contends that storm water runoff and siltation as the result of the Laau project will not adversely effect but instead improve near shore marine habitats because of certain restrictions to be instituted in the homeowners covenants (if only it was that simple!). Nowhere in the document can be found the actual Conditions, Covenants, & Restrictions (CC&R) so often alluded to. Therefore, it would be worthwhile requiring the applicant to provide in writing the final CC&R to which all lot owners must comply. The table of suggested restrictions, while admirable in themselves, does nothing to guarantee any safeguards as it now stands. Additionally, the DEIS falls short of identifying who would enforce these restrictions and what penalties would be levied if they were not complied with.

(5) Finally, another area of concern to DAR is the promise by MPL to designate "subsistence fishing areas" adjacent to the project site. The establishment of these exclusive-use fishing areas is a major condition conceded by MPL in order to win over public support. While the pursuit of "subsistence" classification is certainly the applicant's prerogative, it behooves the Division to make it clear from the start that such designations are not completely without doubt. Such an initial disclaimer lessens potential fallout with disgruntled Molokai residents should they agree to the project only to learn later that DLMR/DAR is unable to establish these "subsistence fishing areas".

In sum the applicant MPL should minimally:

- (a) Consider conducting another marine survey so as to expand on their single data base collected more than a year ago;
- (b) Establish a firm schedule for future marine surveys so as to properly monitor the integrity of the near shore environment as the project proceeds;
- (c) Submit a detail drainage plan to depict how potentially destructive water runoff from the project site will be retained and treated prior to releasing into the marine environment;
- (d) Submit a scheme by which lot owners can minimally follow when designing their excessive sheet flow retention facilities;
- (e) Should submit the final terms of the CC&R by which potential lot owners are expected to comply;
- (f) Clearly identify who will be enforcing the CC&R restrictions and the subsequent penalties for any breeches;
- (g) Should spell out in detail the mitigation plan should the CC&R be violated instead of leaving it so ambiguous.

And finally, DLMR/DAR should:

- (a) Make it **clear from the beginning that the establishment of "subsistence fishing areas" is not a forgone conclusion.**



November 1, 2007

Mr. Russell Tsuji
State of Hawaii
Department of Land & Natural Resources
Land Division
P.O. Box 621
Honolulu, Hawaii 96809

SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Tsuji:

Thank you for your letter dated March 6, 2007 which included comments from the Division of Aquatic Resources regarding the La'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to the Division of Aquatic Resources' comments.

1. Thank you for acknowledging that the methodology employed for Marine Biological Baseline Survey is consistent with acceptable practices, and very like akin to what the Division of Aquatic Resources would have done if given the task. To reflect this in the Final EIS, Section 3.8 (Marine Environment) has been revised to include the following:

Appendix D G of this EIS contains the marine biological and water quality baseline surveys prepared by The Environmental Company, Inc. (TEC). Section 4.2 (Cultural Resources) of this EIS provides discussion of subsistence gathering along the shoreline and nearshore waters. According to their letter dated February 15, 2007, the State Department of Land and Natural Resources, Division of Aquatic Resources stated: "the methodology employed by their subcontractor TEC is consistent with acceptable practices, and very likely akin to what we would have done ourselves if given the task."

Regarding your comment for the need for additional surveys, our marine resources consultant concludes that additional surveys would not likely alter the conclusion of the original survey. 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.

2. We disagree that a significant shortcoming of the Draft EIS "was the non-disclosure of subsequent monitoring activities." The original survey provides baseline data of existing conditions and is a snapshot in time. The project is not yet built; therefore follow up

surveys to predict impacts of the proposed project are not yet possible. Our marine resources consultant proposes that if the intent is to observe changes to the offshore marine community brought about by the presence of the proposed development, a better strategy would be to first develop a hypothesis about how such a change would be brought about, and then monitor the proximate cause, e.g., runoff, nutrient loading, increased fishing pressure, etc.

Subsequent monitoring activities will be conducted by the Land Trust in its role as the easement holder over the expanded Conservation Area. In the Final EIS, Section 3.8 (Marine Environment) has been revised to include the following:

Potential short-term impacts of construction on marine waters will be mitigated by implementation of State and County approved Best Management Practices to control drainage and mitigate erosion from grading for the duration of the construction period. Subsequent water monitoring activities will be conducted by a Council representing Homeowners and the Moloka'i Land Trust. These organizations will have management responsibility and enforcement authority over the Pu'u Hakina and Kamāka'ipō (Lā'au area) shoreline area and fishing zone. The Land Trust will conduct the monitoring on a regular basis. Should it be determined that there is some problem with water quality, testing will be undertaken and investigation made as to the cause. The action taken will depend on the results of the investigation and the attributed cause. Through the CC&Rs or through the courts, the problem will be rectified if the cause is a violation of the law of the CC&Rs.

In the Final EIS, Section 4.9.3 (Drainage) has been revised to include the following:

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 Land Trust will conduct the monitoring on a regular basis. Should it be determined that there is some problem with water quality, testing will be undertaken and investigation made as to the cause. The action taken will depend on the results of the investigation and the attributed cause. Through the CC&Rs or through the courts, the problem will be rectified if the cause is a violation of the law of the CC&Rs.

3. In response to your comments regarding runoff and drainage, our project engineer has conducted preliminary studies, and in the Final EIS the Preliminary Drainage Report (Appendix O of the Draft EIS) will be revised to include the following exhibits relative to drainage:

- Conceptual Drainage Master Plan for Lā'au Point, which shows 14 offsite contributory areas.
- Subsurface Drainage System Details, which shows subsurface retention systems that will be installed parallel to the roadway in sag points of the roadway systems, and storage of post development runoff in each lot.
- Preliminary Grading Plans for Roadways, which indicates risers that are to be installed at inlets of culverts at road crossings.

Velocities in the major drainageways will be calculated based on existing conditions, to establish benchmarks. Velocities will also be calculated for post-development conditions. Energy Dissipators will be constructed at the downstream ends of drainage structures to ensure that post-development velocities do not exceed pre-development conditions.

In addition, as stated in the Draft EIS (Section 2.3.6 Covenants) the project CC&Rs shall require the drainage system of each lot to retain any runoff within the disturbed area of the lot. The goal of the system shall be to maximize recharge into the ground, restore land areas that have been disturbed by re-establishing vegetative cover, and to minimize impervious (paved) services on the lot. In addition, the CC&Rs restrict buildable area (which is the only place where impervious surfaces will be allowed) to a maximum 30 percent of the lot. A minimum scheme for lot owners on how to retain runoff on-site will be included in the design guidelines given to owners when they buy their lot.

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. 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 Maunaioa 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~~

Mr. Russell Tsuji, Administrator
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 4 of 5

circumstances, the Molokai 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.

4. As noted above in response to item 3, the CC&Rs will be monitored and enforced by the Board of the Association of Owners of La'au Point, affected lot owners, and in certain circumstances, Molokai Properties Limited as the Declarant under the CC&Rs. There will also be substantial penalties for non-compliance. The CC&Rs will be provided at the LUC on the State Land Use District Boundary Amendment petition hearing.
5. MPL acknowledges that the designation of "subsistence fishing areas" is not a foregone conclusion but is subject to agreement by the DLNR and other organizations outside of its control. To reflect this information in the Final EIS Section 2.3.7 (Access for Subsistence Gathering) will be revised to include the following:

As recommended in the *Community-Based Master Land Use Plan for Molokai Ranch*, to preserve inshore fishing/subsistence resources, a subsistence fishing zone in the coastal waters along all of the Ranch's coastline property will be sought. This means that from one quarter-mile out from the shoreline (north and west shore) and from the beach to the reef edge/breaker line (south shore), only Molokai residents will be able to fish for subsistence, effectively banning off-island boats from fishing in these in-shore areas. State legislation will be needed for this to be enforced.

The 1994 Hawaii State Legislature created a process for designating community-based subsistence fishing areas (Act 271/94). The guidelines for a community-based subsistence fishing management area in *Community-Based Master Land Use Plan for Molokai Ranch* would need to be developed into a management plan and draft administrative rules for adoption by the Department of Land and Natural Resources (DLNR) Division of Aquatic Resources (DAR) working in coordination with the landowners, the community, and the subsistence fishers and gatherers. The administrative rules would need to undergo a public hearing process on Molokai, Oahu and other neighbor islands. Overall, the process would take from 18 months to 2 years. The development of guidelines and policies for such a management area within the *Community-Based Master Land Use Plan for Molokai Ranch* is the first step toward its establishment.

Once the community-based subsistence fishing management area is established through the DAR rule-making process, the rules will be enforced by DOCARE in conjunction with the shoreline resource managers who will be hired jointly by the homeowners and the Molokai Land Trust.

Mr. Russell Tsuji, Administrator
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 5 of 5

Regarding your "in sum" checklist at the end of your letter, the above responses have been provided to address your concerns.

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



**Molokai
Properties
Limited**

Ms. Melanie Chinen
SUBJECT: LĀ'AU POINT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 4

November 1, 2007

Melanie Chinen
State of Hawai'i
Department of Land & Natural Resources
State Historic Preservation Division
601 Kamokila Boulevard, Room 555
Kapolei, Hawai'i 96707

**SUBJECT: LĀ'AU POINT ENVIRONMENTAL IMPACT STATEMENT
PREPARATION NOTICE**

Dear Ms. Chinen:

Thank you for your letter dated January 11, 2007 (LOG NO: 2006.4323; DOC NO: 0701NM20) regarding the Chapter 6E-42 Historic Preservation Review EISPN for Lā'au Point. With this letter we are responding to the comments contained in your January 11, 2007 letter.

1. *This plan combines preservation, data recovery, monitoring and burial treatment...these plans should be submitted separately, since each plan will need to have the appropriate review processing fee submitted.*

Response: As you requested, the preservation, data recovery, monitoring, and burial treatment plans were separated and submitted to your offices with appropriate review processing fees on February 7, 2007.

2. *We concur that archaeological inventory survey work is needed to ensure significant historic sites have been properly identified and treated in the road corridor along with Papohaku Ranch lands which we understand had some assessment work conducted by IARII in 2000 for the Army Corp and Molokai Ranch. This report was never submitted to our office for review, therefore this area would now need to have an archaeological inventory survey that meets our current standards. Therefore, we recommend that your consultant archaeologist conduct archaeological inventory work in the road corridor and upgrade the archaeological assessment work in the Papohaku Ranch lands.*

Response: MPLs will comply with this request for upgrading of the archaeological assessment on the Papohaku Ranchlands and submission of the survey for SHPD approval. To clarify some confusion regarding the term "re-survey," as used in the Data Recovery and Preservation Plans, "re-survey" was used to describe a process of following the road corridor through previously inventoried land, using techniques such as expanded vegetation clearing and excavation to relocate known sites, and either verifying or augmenting the known data as appropriate. Use of the term "re-survey," in retrospect, has too great a similarity, at least on its surface, to "inventory survey," and we regret some confusion may have caused. The archaeologist, Maurice Majors, has agreed to revise the plans to more clearly communicate what is meant.

Regarding the re-examination and supplemental data gathering in the area of the road corridor and re-assessment of the Papohaku ranch lands, MPL and their archaeologist have recognized since the beginning that the TMK 5-1-008 subdivision (Papohaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Papohaku Ranchlands parcels that will be affected by the road corridor through the area, but this commitment does not extend into TMK 5-1-02-030.

MPL's Archaeologist, Maurice Majors, spoke with Nancy McMahon of SHPD about this issue, and provided her with a copy of the Inventory Survey Report for 5-1-02-030 (Dixon and Major 1993), as well as documents pertaining to the incomplete review of the first draft of the Archaeological Mitigation Plans for those properties. She recognized that the inventory had been accepted, and that only the Papohaku Ranchlands parcel would require an Inventory. 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 Mitigation Plans during the road construction period.

In response to your comments, Section 4.1 of the Final EIS has been revised as follows:

To ensure proper resource protection and management in the project area, mitigation efforts will include: 1) the establishment of the Molokai Land Trust, an organization tasked with preserving natural and cultural resources within lands deeded to it; 2) conservation easements and cultural overlay districts on MPL lands; and 3) CC&Rs for the Lā'au Point project that would help preserve sites therein and establish procedures for a management partnership between the Lā'au Point homeowners' association and the Land Trust.

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 (Papohaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Papohaku 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 re-examined, 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.

3. *We agree that 160 cultural sites should be preserved and a preservation plan will need to outline both the long term and short term preservation measures for these sites. This plan should also include community input. We also agree that short term preservation measures need to be implemented first which will establish protective buffer and emergency stabilization while working on the long term preservation, data recovery and monitoring aspects of this project.*

Ms. Melanie Chinen
SUBJECT: LA'AU POINT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 3 of 4

Response: We acknowledge your comment concurrence with the preservation plan concepts. The revised Preservation Plan (appended to the Final EIS) sets forth how the 160 sites will be preserved. As set forth in Section 4.1.2 of the EIS and as stated noted through out the Preservation Plan, the community had significant input into the Preservation Plan during the course of the community-based planning process for the Master Plan and through the work of our archaeologist.

In response to your comments Section 4.1 of the Final EIS has been revised as follows:

POTENTIAL IMPACTS AND MITIGATION MEASURES

MPL is committed to preserving known archaeological sites and complexes in the project area. As a result of the archaeological work and the two year involvement of the Cultural Committee and the larger community within the *Community-Based Master Land Use Plan for Molokai Ranch* process, approximately 1,000 acres of "Cultural Protection Zones" were identified to denote areas where groupings of archaeological and historic sites exist, such as the archaeological preserve (approximately 128 acres) to be created at Kamaka 'ipō Gulch (see Figure 40 12). As noted throughout the *Preservation Plan* contained in Appendix E, the plan was developed with significant community input during the course of the community based planning process for the Master Plan and through the work of our archaeologist. The creation of Cultural Protection Zones, to be managed by the Land Trust, increases both continued community involvement and preservation of cultural landscapes rather than only individual sites, which represents a great advance not just in acreage, but in diversity and intensity of preservation actions. In their July 5, 2006 comment letter on the EISPN, OHA stated: "Because many known archaeological sites exist within this property, it is likely that more will be found....the area is more of a cultural property than a property containing cultural sites." The creation of Cultural Protection Zones acknowledges this concept and implements protection of cultural landscapes rather than only individual sites.

4. We also agree that 21-24 sites will need data recovery work. We understand the data recovery plan is a revision of one previously approved by SHPD with very little changes. This should help facilitate our review once this plan is submitted as an independent report to our office.

Response: We note that SHPD has reviewed the data recovery plan; and in the letter dated February 13, 2007 (LOG NO: 2007.0484; DOC NO: 0702NM10), SHPD approved the plan (See attached letter).

5. Most of the archaeological inventory work was conducted in 1993 by the Bishop Museum. We are requesting copies of these reports and approval letters for our files.

Response: A copy of the Bishop Museum 1993 report was transmitted to your Kauai archaeologist, Nancy McMahon, on February 14, 2007. We note that the 1993 report was conducted for the previous landowner, Alpha USA, and therefore, MPL does not have a copy of the approval letter. We understand that SHPD has this letter and all their approval letters on file at their office.

Thank you for your review. Your letter will be included in the Final EIS.

Ms. Melanie Chinen
SUBJECT: LA'AU POINT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 4 of 4

Sincerely,



Peter Nicholas
President and CEO
Molokai Properties Limited

Attachment

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

LINDA LIRIGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

PETER T. YOUNG
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT K. MASUDA
REPORT DIRECTOR - LAND
DEAN MACKAYO
ACTING REPORT DIRECTOR - WATER
ADJUTANT RESOURCES
ROUTING AND OCCUPY RELATIONSHIP
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND SERVICES ENVIRONMENT
PROSPECTIVE ADJUTANT
HISTORIC PRESERVATION
KAPOLEI, HAWAII HISTORIC PRESERVATION COMMISSION
LAND
STATE PARKS

January 31, 2007

Mr. Tom Witten
PBR Hawaii
100 Bishop Street
ASB Tower, Suite 650
Honolulu, Hawaii 96813

LOG NO: 2006.4191
DOC NO: 0701NM26
Archaeology

Dear Mr. Witten:

SUBJECT: Chapter 6E-42 Historic Preservation Review (County/Molokai Properties Limited) EIS for La'au Point (formerly Molokai Ranch) West Moloka'i, Island of Moloka'i
TMK: (2) 5-1-002: 30; 5-1-006: 157; 5-1-008: 04, 03, 06, 07, 13, 14, 15, 21 and 25

Thank you for submitting this EIS which we understand is based on community input as early as 2003. Most of the archaeological inventory work in the project area was conducted in 1993 by the Bishop Museum. This survey was the basis for the determination of mitigation for these historic properties: preservation, data recovery and no further work. The preservation of historic properties now includes "Cultural Protection Zones" which includes archaeological sites and their surrounding landscapes. We agree with this concept. Over 168 sites will be preserved, and the Molokai Land Trust will then be responsible for carrying out the preservation plans for these Cultural Protection Zones.

We agree that re-survey work is needed in the road corridor and ranch lands. The proposed project will encompass land not yet surveyed in these areas. We understand that an archaeological assessment was completed by IARII during 2000; however, this report was never accepted by the State Historic Preservation Division. (Burtchard and Athens, IARII, 2000) We recommend the developer hire a qualified archaeologist to conduct an inventory survey of the road corridor and ranch lands. The AIS should be conducted in accordance with standards established in Chapter 13-276, Hawaii Administrative Rules.

Mr. Tom Witten
Page 2

We wish to reiterate our request that you resubmit your draft mitigation plan which currently combines preservation, data recovery, monitoring and burial treatment proposals. (Majors, CLH, 2006). These are considered separate reports under our existing rules and various fees are charged for them. As stated previously, we will not begin review of these plans until the reports are submitted as individual reports in accordance with standards established in current Administrative Rules. These rules require that the various reports include site descriptions.

If you have any questions, please call Nancy McMahon, our Molokai Archaeologist at 808-742-7033.

Aloha,


Melanie Chinen, Administrator
State Historic Preservation Division

NIM:jen

c: Anthony Ching, State Land Use Commission P.O. Box 2359, Honolulu, HI 96804
OEOC, 235 S. Beretania St. Suite 702, Honolulu, HI 96813
Peter Nicholas, Molokai Properties Ltd. 745 Fort St. Mall, Ste 600, Hon, HI 96813
Mo Majors, Cultural Landscapes



Molokai
Properties
Limited

Ms. Melanie Chinen
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
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November 1, 2007

Melanie Chinen
State of Hawai'i
Department of Land & Natural Resources
State Historic Preservation Division
601 Kamokila Boulevard, Room 555
Kapolei, Hawai'i 96707

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Ms. Chinen:

Thank you for your letter dated January 31, 2007 (LOG NO: 2006.4191; DOC NO: 0701NM26) regarding the Chapter 6E-42 Historic Preservation Review EIS for Lā'au Point. With this letter, we are responding to the comments contained in your January 31, 2007 letter.

1. *We agree that re-survey work is needed in the road corridor and ranch lands. The proposed project will encompass land not yet surveyed in these areas. We understand that an archaeological assessment was completed by IARI during 2000; however, this report was never accepted by the State Historic Preservation Division. (Burchard and Athens, IARI, 2000) We recommend that the developer hire a qualified archaeologist to conduct an inventory survey of the road corridor and ranch lands. The AIS [sic] should be conducted in accordance with standards established in Chapter 13-276, Hawaii Administrative Rules.*

Response: To clarify some confusion regarding the term "re-survey," as used in the Data Recovery and Preservation Plans, "re-survey" was used to describe a process of following the road corridor through previously inventoried land, using techniques such as expanded vegetation clearing and excavation to relocate known sites, and either verifying or augmenting the known data as appropriate. Use of the term "re-survey," in retrospect, has too great a similarity, at least on its surface, to "inventory survey," and we regret some confusion may have caused. The archaeologist, Maurice Majors, has agreed to revise the plans to more clearly communicate what is meant.

Regarding the re-examination and supplemental data gathering in the area of the road corridor and re-assessment of the Pāpohaku ranch lands, MPL and their archaeologist have recognized since the beginning that the TMK 5-1-008 subdivision (Pāpohaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpohaku Ranchlands parcels that will be affected by the road corridor through the area, but this commitment does not extend into TMK 5-1-02-030.

MPL's Archaeologist, Maurice Majors, spoke with Nancy McMahon of SHPD about this issue, and provided her with a copy of the Inventory Survey Report for 5-1-02-030 (Dixon and Major 1993), as well as documents pertaining to the incomplete review of the first draft of the

Archaeological Mitigation Plans for those properties. She recognized that the inventory had been accepted, and that only the Pāpohaku Ranchlands parcel would require an Inventory.

In response to your comments, Section 4.1 of the Final EIS has been revised as follows:

To ensure proper resource protection and management in the project area, mitigation efforts will include: 1) the establishment of the Moloka'i Land Trust, an organization tasked with preserving natural and cultural resources within lands deeded to it; 2) conservation easements and cultural overlay districts on MPL lands; and 3) CC&Rs for the Lā'au Point project that would help preserve sites therein and establish procedures for a management partnership between the Lā'au Point homeowners' association and the Land Trust.

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 (Pāpohaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpohaku 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 re-examined, 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.

2. *We wish to reiterate our request that you resubmit your draft mitigation plan which currently combines preservation, data recovery, monitoring and burial treatment proposals. (Majors, CLH, 2006). These are considered separate reports under out existing rules and various fees are charged for them. As stated previously, we will not begin review of these plans until the reports are submitted as individual reports in accordance with standards established in current Administrative Rules. These rules require that the various reports include site descriptions.*

Response: As you requested, the preservation, data recovery, monitoring, and burial treatment plans were separated and submitted to your offices with appropriate review processing fees on February 7, 2007.

Thank you for your review. Your letter will be included in the Final EIS.

Ms. Melanie Chinen
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 3 of 3

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



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

BARRY FUKUNAGA
INTERNAL DIRECTOR

Deputy Directors
FRANCIS PAUL KEENO
BRENNON T. MOSECKA
BRANDI H. SEIGSBACH

IN REPLY REFER TO:
STP 8.2405

Messrs. Witten, Nicholas, Sabas and Hunt
Page 2
February 6, 2007

STP 8.2405

February 6, 2007

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

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

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

Dear Messrs. Witten, Nicholas, Sabas and Hunt:

Subject: La'au Point
Molokai Properties, Ltd.
Draft Environmental Impact Statement in Support of Maui County
Permit Applications EAC 2006/0017, CPA 2006/0009,
CIZ 2006/0015, SM1 2006/0040 and CUP 2006/0005

In reply to your respective requests for our review of the subject environmental impact statement supporting county permit applications for the proposed project, we have the following comments:

1. The project adds another change to the area. The west end of Molokai has had development ventures in the area at different times over the past years. Some of the ventures have had certain success and some have not. Future growth for and fill-in or re-occupancy of the existing developments is pending.

2. The project anticipates that full build out and occupancy will occur in 2023. These are projections and expectations.
3. The project will contribute additional traffic on our highway to and from the local roads in the west Molokai resort area, but impact from the project will be relative to the status of the other existing developments and future projects in the area.
4. The subject project's Traffic Impact Assessment Report (TIAR) stated that the Maui Department of Public Works & Environmental Management (DPWEM) directed the use of the single-family residential trip. But the TIAR used a rate from another Maui subdivision that the consultant and landowner selected.

The TIAR also stated that the report assumed no additional background growth between 2006 and 2023, but then further stated trip analysis accounted for other projects in the Kaluakoi Resort and the reopening of the Resort's hotel.
5. Based on the above, as a condition of land use/permit approval for development of the subject proposed project, we believe the landowner (applicant/petitioner) should be required to do the following:
 - a. Plan, design and construct, at no cost to the State, a left-turn deceleration lane and right-turn deceleration lane at the intersection of the proposed project access road (Kaluakoi Road) with Maunaloa Highway. Construction of these lane improvements can be as earlier as concurrent with the start of infrastructure construction for the project or no later than prior to the first occupancy of the project, as may be determined by the Highways Division Maui District Engineer.
 - b. At the request and determination of the Highways Division Maui District Engineer, monitor the traffic at the intersection of the proposed project access road (Kaluakoi Road) with Maunaloa Highway.
 - c. If the monitoring shows that the trip generation and traffic projections in the TIAR are too low as determined by our Highways Division, submit a revised TIAR to the Highways Division, through the Highways Maui District Office, for review and approval.
 - d. Plan, design and construct, at no cost to the State, highway improvements recommended as mitigation measures in the revised TIAR and/or as required by the Highways Division.

Messrs. Witten, Nicholas, Sabas and Himt
Page 3
February 6, 2007

STP 8.2405



November 1, 2007

Barry Fukunaga
State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813-5097

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Fukunaga:

Thank you for your letter dated February 6, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments.

1. We acknowledge your comment.
2. We acknowledge your comment.
3. We acknowledge that traffic impact from the Lā'au Point project will be relative to the status of other existing and proposed developments in the area. The Traffic Impact Analysis Report (TIAR) prepared for the project takes into account future projected traffic existing and proposed developments in the area.
4. The reference to Maui Department of Public Works relates to a previous draft of the report. This reference will be removed from the final TIAR and the Final EIS. Likewise, the assumption of no additional background growth relates to a previous draft of the report; as stated in Item 3 above, the TAIR takes into account future projected traffic and existing and proposed developments in the area. These items will be corrected in the final TIAR, which will be included in the Final EIS. In addition, in response to the reference to the Maui Department of Public Works, in the Final EIS, Section 4.4 (Roadways and Traffic) will be revised as follows:

Although only 30 percent of the homes at Lā'au Point are expected to be permanently occupied, the trip generation rates used in the TIAR, ~~per the request of the County of Maui Department of Public Works and Environmental Management~~, are based on single-family housing units typical for a suburban subdivision with daily commuting. Therefore, the number of trips for Lā'au Point may be overestimated.

- 5a. MPL will plan, design, and construct, at no cost to the State, a left-turn deceleration lane and right-turn deceleration lane at the intersection of the proposed project access road (Kaluako'i Road) with Maunaloa Highway.

We appreciate the opportunity to provide our comments.

Very truly yours,

BARRY FUKUNAGA
Interim Director of Transportation

c: State Land Use Commission (Anthony Ching)
OEQC (Genevieve Salmonson)
Office of Planning (Laura Theilten)

Mr. Barry Fukunaga, Director
SUBJECT: LĀ'ĀU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
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5b. Based on the request and determination of the Highways Maui District Engineer, the traffic consultant has monitored the traffic at the intersection of Kahako'i Road and Maunaloa Highway.

5c. A revised TIAR has not been requested by the Highways Division.

5d. MPL will plan, design, and construct, at no cost to the State, highway improvements recommended as mitigation measures as required by the Highways Division.

To include the above information from 5a and 5d in the Final EIS, as well as other information regarding roadways, Section 4.4 (Roadways and Traffic) has been 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 ~~shedd~~ 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 (Kahako'i Road) with Maunaloa Highway; and 2) highway improvements recommended as mitigation measures as required by the Highways Division.

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



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD06/2394 B

February 23, 2007

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

RE: Request for consultation on the Draft Environmental Impact Statement (EIS) for the proposed Lā'au Point, Lā'au, Moloka'i; TMKS: 5-1-002:030, 5-1-006:157, 5-1-008:004, 003, 006, 007, 013, 014, 015, 021 and 025

Dear Thomas Witten,

The Office of Hawaiian Affairs (OHA) is in receipt of your December 20, 2006, request for comments on the above project, which would allow for the reclassification of 875 acres from State Agriculture to Rural and the subsequent creation of 200, two-acre, rural-residential lots; an open-space buffer; roads and infrastructure; expansion of the Conservation District; creation of a cultural protection zone for archaeological sites; easements to protect subsistence gatherings; and two public shoreline parks. OHA thanks the applicant for the extension allowed to the public for reviewing this hefty document, and offers the following comments.

Please note that OHA takes guidance from Article XII, Section 7, of the Constitution of the State of Hawai'i, which states:

TRADITIONAL AND CUSTOMARY RIGHTS, Section 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]

Thomas S. Witten
PBR Hawaii
February 23, 2007
Page 2

As noted by the Supreme Court of the State of Hawai'i, Article XII, Section 7's mandate grew out of a desire to "preserve the small remaining vestiges of a quickly disappearing culture [by providing] a legal means by constitutional amendment to recognize and reaffirm native Hawaiian rights." Stand. Comm. Rep. No. 57, in 1 Proceedings of the Constitutional Convention of 1978, at 640.

The Committee on Hawaiian Affairs, in adding what is now Article XII, Section 7, to the Constitution, also recognized that "[s]ustenance, religious and cultural practices of native Hawaiians are an integral part of their culture, tradition and heritage, with such practices forming the basis of Hawaiian identity and value systems." Comm. Whole Rep. No. 12, in 1 Proceedings of the Constitutional Convention of 1978, at 1016.

OHA also has statutory mandates to protect the cultural and natural resources of Hawai'i for its beneficiaries — all Hawaiians, in part through educating and assessing public and private entities that impact upon Hawaiians. For example, the Hawaii Revised Statutes (HRS) mandate that OHA "[s]erve as the principal public agency in the State of Hawaii responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; . . . and [t]o assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians." (HRS § 10-3)

Keeping these responsibilities in mind, OHA has a series of general comments and specific concerns with the applicant's Draft EIS, which will be addressed below.

Community Concerns

In our previous letter (July 5, 2006), responding to the applicant's EIS Preparation Notice, we noted that while we understood that the Community-Based Master Land Use Plan for Molokai Ranch, created by Molokai Properties Limited through multiple community meetings and negotiations with the Molokai Land Trust, includes the proposition of this particular project, and that the Molokai Land Use Committee, the Molokai Enterprise Community and the OHA Board of Trustees have all registered their support for the basis and intent of this plan, OHA still urged the applicant to thoroughly study and research the particular cultural and historical sites, events and practices and locations within and around the specific project area that could be impinged upon or even lost in the process. OHA also notes that while the OHA Trustees signed a resolution in support of Molokai Properties Limited's development of the Master Land Use Plan (Plan), that does not imply implicit support for each, individual concept project of the plan, and this particular, proposed project will be analyzed by OHA staff in the same manner as all impact assessments are analyzed — from the perspective of our beneficiaries.

The OHA Trustees' Resolution specifically appreciates and shows support for "the collaborative efforts toward community input and planning, preservation of cultural kipuka, subsistence protection and promotion, natural resource preservation, economic sufficiency, and the vast and generous contribution made by Moloka'i Properties Limited to the Community of Moloka'i." (September 29, 2005). All of the above efforts and intentions are laudable.

OHA staff, per the agency's Constitutional and Statutory mandates to examine other agency actions to assure that Hawaiians' interests are not lost, and that cultural and natural resources are protected as much as possible, also urged the applicant to listen to the elements of the Moloka'i community who oppose any development of Lā'au Point – as we, too, must listen, and we urged the applicant to meet the community's concerns with honest discourse. We acknowledge the two-year process of 160 planning and community meetings and special interest group presentations to try to gain consensus on the Master Land Use Plan. This was a daunting task, which took great innovation, initiative and patience. Nonetheless, many of our beneficiaries have specific problems and concerns with this specific project, and with the idea of an all-or-nothing approach to land use planning.

In examining the Draft EIS, we note with concern that Section 5.4.4 of Appendix M, regarding Social Impacts, states: "In focus group sessions and interviews conducted for this study, people repeatedly said that they do not go to meetings because of confrontational behavior. They feel intimidated and have become less inclined to participate in public meetings." OHA questions what effect these findings have on the overall assurances that the "community" has fully participated in the processes leading up to the various input into the proposals, both in support and opposition of the current plan.

Hawai'i's Environmental Review Process

The existing State environmental review process follows the Federal process, but is slightly more strict, and includes Cultural Assessments. Hawai'i's process attempts to take a balanced approach to preserving the environment and Native Hawaiian culture, with reasonable consideration for development. This balanced approach, which only works with honest and ample public participation, provides government agencies with enough information to make informed decisions on development proposals. Please keep in mind that the Hawai'i Environmental Review process states:

that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.

It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.

(HRS § 343-1).

While the applicant may well argue that such is exactly what the Plan has already taken into account, with much public participation, the Plan itself is not up for environmental review. Only the Lā'au Point project is, and while the relevant project is part of a larger plan, it is more than inappropriate that a Draft EIS begin with the following statement, which reads much like a threat: "This Environmental Impact Statement (EIS), which has been prepared for the proposed Lā'au Point project located along the shoreline bluffs on the southwest coastline of Moloka'i, is but one part of the comprehensive *Community-Based Master Land Use Plan for Molokai Ranch* (Plan) for all of Molokai Properties Limited (MPL)'s 60,000+ acres, which would be viable only as an integrated whole." (Section 1.7, page 4, underlining added).

The above statement basically denies all possible alternatives that could be presented in the Draft EIS, if the community wants any portion of the Plan. Thus, according to the document, the alternatives portion of the Draft EIS on this project was ostensibly done during the community discussions about the then-proposed Plan. This is not an adequate representation of a possible range of alternatives, according to the U.S. Supreme Court and various federal courts, including our 9th Circuit. (See *Ilio 'ulaloakalani Coalition v. Rumsfeld*, 464 F.3d 1083 (2006), holding that the U.S. Army could not base its alternative section in a site-specific EIS on the results of a previously completed Programmatic EIS, and finding that the Army must draft a Supplemental EIS with attention to be focused on alternatives for that site-specific project, which the Army believed was an integral component of the Programmatic EIS.)

An applicant is further required to:

describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. Examples of alternatives include:

1. The alternative of no action;
2. Alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts;
3. Alternatives related to different designs or details of the proposed actions which would present different environmental impacts;
4. The alternative of postponing action pending further study; and,
5. Alternative locations for the proposed project.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative.

(Hawai'i Administrative Rules (HAR), § 11-200-17(F)).

This Draft EIS does not include adequate consideration of a suitable number of real, legitimate alternatives. The alternatives presented in an EIS are "the heart of the environmental impact statement" (40 C.F.R. 1502.14, see also 42 U.S.C. 4332(C)), and an "inadequate range of alternatives presented" is one of three major sources of successful litigation against EISs.

The Legislature designed the requisite alternatives section to provide a clear choice among options to the public and the decision-makers. Several alternatives are presented in this Draft EIS, which is to be commended. All of the alternatives, except for the applicant's preferred alternative, however, are presented as though they had already been decided against during the decision-making process for the Plan. The section presenting the "no action" alternative, for example, lists a variety of reasons why this project must be allowed, because otherwise nothing else that the community has supported in the Plan will go forward – not the gifting of 24,600 acres to the Land Trust, not the continuation of the Ranch's existing employment opportunities, not the renovation and re-opening of the Kaluako'i Hotel, not the promise not to sell any of the Ranch's other properties. While all of this may be economically true, the section reads, again, as another threat, which cannot help but either frighten or anger Moloka'i community members. (See Section 6.1, p. 145, stating that "[s]ince the Lā au Point project is the primary financial component to achieve the Plan's objectives, non-implementation of the project means that most, or all, of the Plan may not be realized.")

Because of the language in the alternatives section, this Draft EIS is not really a public document or a written dialogue that requests legitimate decision-making. The applicant must not presume that its preferred alternative will be the chosen alternative, as it seems to do in the Draft EIS.

And it cannot stack the deck against any other possible alternatives. Hawai'i's environmental review process is a decision-making process, not a decision-made process.

Archaeological Resources

In reading the Archaeological section, OHA staff noted with appreciation that the applicant plans to re-survey all proposed road-corridors and house-lot areas (construction footprints), which, when added to the previous survey work done by the Bishop Museum (1993, accepted by the State Historic Preservation Division (SHPD)), could amount to more detailed attention than the typical project area gets. Nonetheless, some concerns remain and are explained below. Also, OHA requests that the applicant comply with the requirements of SHPD's January 11, 2007 letter, which indicates that it does not currently have copies of the 1993 Bishop Museum reports, previous approval letters, nor any detailed site descriptions, all of which concerns us greatly. All past review letters from SHPD, and documents in compliance with HRS § 6E, should be included in the Draft EIS. For example, the original 1993 survey and SHPD comments and letters accepting it should be included.

Another major concern is the applicant's consideration of the above-mentioned re-survey work as "supplemental data collection" (also known as "data recovery"). (See p. 1-3). Thus, labeling such intentions as "survey" work is a misnomer. Sites found during "survey" work would not be considered "inadvertent" finds, as they would be during "data recovery." Decisions on "inadvertent" finds, whether burials or otherwise, are, by law and rules, made more or less instantly (on the spot, or within a day or two) by SHPD. Public input is minimal because the process is accelerated. OHA urges the applicant to actually re-survey the areas, because any finds made during an inventory survey are subjected to an open and fair process for "interested" and knowledgeable persons, allowing for more potential mana'o to be gathered for better dispositions. Such an effort would show good faith to the lineal and cultural descendants of the area. This is in following with SHPD's statement that the road corridor and Papohaku Ranch lands must have an archaeological inventory survey that meets current requirements and standards, which would not be the same thing as "supplemental data collection."

As OHA had previously requested, page 52 of the Draft EIS addresses the issue of inadvertent finds of artifacts, burials or midden and notification of SHPD. The Draft EIS states, appropriately, that in the case of burial sites, the Moloka'i Island Burial Council, will be notified. Please note, that, unfortunately, island burial councils do not have legal jurisdiction over "inadvertent discoveries of human remains" (§13-300-40, HAR). SHPD, acting on behalf of DLNR, has the legal responsibility to contact and consult with island burial councils on inadvertent burials and/or human remains. The Monitoring Plan (p. M-2, Appendix E) and the Burial Treatment Plan (p. B-1, Appendix E) make this same procedural error, which should be fixed.

OHA has concerns regarding the current capacity and functioning of SHPD to adequately address resource protection in these instances, because the archaeologist assigned to Moloka'i – in what appears to be a band-aid situation to a long-term vacancy – is the Kaula' archaeologist who already has a full-time job on that island. Equally, the Moloka'i Island Burial Council has been defunct for more than two and a half years, creating another serious concern about any proposed mitigation or burial treatment plans.

SHPD also noted in its January 11, 2007 letter, that the project's revised mitigation plan needs to separate the individual plans for preservation, data recovery, monitoring and burial treatment for the appropriate, individual reviews and approvals. The applicant seems to be making a policy of bundling projects and concepts, which is appropriate when providing an overview for a survey of cumulative impacts, but not for project review purposes.

For example, page 52 of the Draft EIS states: "The archaeological mitigation plan has been submitted to the State Historic Preservation Division for review." Actually four mitigation plans can be found within the single document identified as "Archaeological Plan" (Appendix E). This language should be changed, because all four mitigation plans are reviewed under different Hawaii Administrative Rules. The archaeological consultant, in his document (Appendix E) makes this important point, and keeps it straight, but the main text of the Draft EIS should be corrected. Other inaccuracies in the various mitigations plans follow.

The Monitoring Plan (p. M-2) is not sufficiently specific as to where, and under what conditions, work will be monitored. The last paragraph (p. M-2) should be revised to reflect specific parameters and conditions under which monitoring is needed. Should the land reclassification be approved, OHA requests that an archaeological monitor be on site during all excavations and ground disturbances for this project.

On page 20 of the CIA, "cultural monitoring" is described as intended to be utilized during clearing, grading and construction activities as a mitigation measure. Given the absence of any formal qualifications or statutory authority and guidelines for cultural monitoring, it would be helpful to clarify the qualifications and selection process for these important, mitigative assurances since their efficacy is critically reliant upon the monitors' personal capabilities as well as the monitors' perceived qualities by their constituency.

Page I-6 of Appendix E, the Archaeological Plan, cites the incorrect administrative rule as guiding the process. It cites HAR §13-275, when it should be § 13-284, because the project area is privately owned.

Furthermore, the third paragraph of the Burial Treatment Plan (p. B-1) states: "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." SHPD and OHA must be consulted prior to any such testing.

Page 51 of the Draft EIS incorrectly states: "It is expected that the project will not have adverse effects to archaeological sites." The Draft admits that many sites will be adversely affected, but specific mitigation commitments have been proposed to alleviate these effects (e.g., data recovery, monitoring and preservation). This should be corrected. In addition, the Draft EIS should address the fact that where surface structures are severely eroded, altered or destroyed, the likelihood of finding sub-surface cultural deposits, such as ancestral burial sites, inadvertently and during construction activities, dramatically increases, especially in coastal frontage areas such as this project area.

OHA appreciates the applicant's creation of 1,000 acres of cultural protection zones and the archaeological preserve in Kamāka'ipō Gulch. This shows a strong awareness of the cultural importance of the area, but OHA does not agree that these proposals go far enough. In fact, because Lā'au is more of a cultural property than a property containing cultural sites, OHA believes that this project, if it is approved, would represent an outstanding opportunity to formally and proactively assess and document the area of potential effect and its surrounding context according to the "traditional cultural property" (TCP) model, as defined in the National Historic Preservation Act of 1966, as amended; and, as expanded upon and clarified by National Register Bulletin 38 ("Guidelines for Evaluating and Documenting Traditional Cultural Properties," Parker and King 1990, rev. 1998, see <http://www.ct.nps.gov/hr/publications/bulletins/nrb38>), National Park Service National Register of Historic Places.

Page 19 of the Cultural Impact Assessment (CIA) discusses the use of covenants, conditions and restrictions (CC&Rs) to help protect traditional and customary practices and the natural and cultural resources they inherently rely upon. The impressive list of proposed CC&R's comes with assurances that "measures will be taken to assure that these CC&R's cannot be changed in the future." Because the proposed CC&R's are such an integral component of the mitigation and protection plan, it would be helpful to clarify what "measures" will be taken given the propensity of allowances for homeowner associations to repeal or amend well-intentioned CC&R's, given the right conditions. Also, cultural practitioners of the area should be provided stewardship opportunities for the cultural properties, perhaps through a Stewardship Agreement with the Homeowners' Association.

Cultural Concerns and Historic Properties

In Section 4.1.2, concerning archaeology and potential impacts and mitigation measures, it reads that archaeological sites will be treated in one of three ways: preservation, data recovery, or no action. The Draft EIS notes that 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. Furthermore, the Draft EIS goes on to state (page 52), "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."

OHA has particular concerns with the term "meaningful" in regards to "data" obtained from data recovery efforts or no action which both mean the same thing ultimately, destruction and loss of the cultural resource. What may not be meaningful to a western trained archaeologist in terms of information and data on site form, function and actual use may not be the same qualities of a site which a native Hawaiian may find meaningful. This is an important distinction in historic preservation law. And, this is why, per §13-284-6, HAR, OHA must be consulted regarding all significance assessments for all significant historic properties deemed significant under criterion "e," if they are traditional Hawaiian sites.

To further explain, the State of Hawai'i Historic Preservation Program sets forth criteria based upon the above-referenced National Park Service standards with a very critical criterion added to address the concerns of the native Hawaiian population. HAR § 13-284-6 sets forth the criteria for significance evaluations as follows:

- (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this initial assessment or delegate this assessment, in writing, to the SHPD. This information shall be submitted concurrently with the survey report, if historic properties were found in the survey.
- (b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criteria:

- (1) Criterion "a": Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b": Be associated with the lives of persons important in our past;
- (3) Criterion "c": Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic value;

- (4) Criterion "d": Have yielded, or is likely to yield, information important for research on prehistory or history; or
- (5) Criterion "e": Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts - these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

Furthermore, HAR § 13-284-6 (c) states:

- (c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion "e", to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion "e", the Office of Hawaiian Affairs also shall be consulted.

The State of Hawai'i's addition of criterion "e" pertaining to an additional significance of an evaluated cultural site as having an "important value to the native Hawaiian people" and the duty to consult with the Office of Hawaiian Affairs regarding these significance assessments appears to have been wholly lacking in this project's historic preservation review process. Neither the developer's paid archaeological consultant nor SHPD independently possess the capacity to determine whether any historical site found and evaluated, meets the criteria for having an "important value to the native Hawaiian people." Thus the rules obligate meaningful consultation with OHA so that the Hawaiian people can determine what is valuable to them, in accordance with the rules.

To see so many discovered cultural resources meeting only one or two criteria and designated for destruction via "no action" or "data recovery," further magnifies the harm of the failure to adhere to the spirit and intent of HRS Chapter 6E. What little cultural, natural and historical resources left become increasingly important and crucial to the traditional and customary native Hawaiian practices that exist there due to the catastrophic loss of these resources in the larger areas throughout the island and the rest of the State of Hawai'i.

Cultural Resources

In reviewing the Cultural Impact Assessment (CIA) portion of the Lā'au Draft EIS, OHA notes that the cultural assessment is of high quality, and the breadth and depth of information as well as acknowledgment of the cultural importance of the Lā'au area is to be commended. This CIA contains major and significant community concerns that, based on their sheer number and import, are sufficient to raise serious concerns regarding the project. This is a testament to the earned reputation and credentials of the person who produced this CIA, especially considering that the principal investigator for cultural impacts was both an integral component in the creation and establishment of the Molokai Land Trust (MLT) and is a sitting Director of the MLT.

The CIA states quite clearly that Lā'au is an extremely sacred place, that should not be desecrated. Much of the CIA is a strong statement against the project and is incorporated well into the Draft EIS. As the Draft EIS states, the traditional cultural significance of the project area is that "it is raw and untouched." (p. 54) "This factor gives Lā'au an almost mythical quality. Lā'au Point has become an icon of what Molokai represents – a rural stronghold and reserve of Native Hawaiian culture, a cultural kipuka. If Molokai is 'The Last Hawaiian Island' then Lā'au is one of the last untouched Hawaiian places on 'The Last Hawaiian Island.'" (p. 54) These are powerful statements.

Culturally Related Social Impacts

The CIA acknowledges that "the Lā'au area is generally regarded as a special place of spiritual mana and power." The CIA further acknowledges, "the overall quality of the Lā'au area as a wahi pana and wahi kapu cannot be quantified and deserves recognition and respect." Another paramount concern in the CIA was that "the community expressed concern that 200 new millionaires will change the make up of the Molokai community and lead to changes in the Hawaiian way of life...and lead to irreversible cultural change." The CIA notes on page 23 that the "southwest shoreline from Kaupoa to Hale O Lono will be ringed by luxury residential homes."

The CIA further states that "in balance" to these concerns, the Maunaloa kūpuna shared that "no matter what happens, the population will increase and the land will be limited" and that "progress can not be stopped, but can be controlled." It is unclear as to whether the term "progress" is truly the intended term in this explanation, or if "change" or "development" would be more accurate because many Hawaiians view protection and preservation of cultural and natural resources as "progress" – not necessarily the word "development" in the Western sense.

This is especially true with regards to the amount of mana'o in the CIA from individuals who seemed to possess a more fatalistic view that the "development" was going to occur, no matter what. For example:

- "Nobody in this room wants to see Lā'au developed, but if it is developed, we should do it our way." (CIA, page 80);
- "I am against the project, period. But if going through, may as well say something." (CIA, page 93);
- "In the long run, it will go through, you cannot fight people with money." (CIA, page 103);
- "For me, I'm not for development, but will it stop because I don't like it...it's all in the process of development." (CIA, page 104)
- "They taking away what makes Molokai, Molokai. I don't think you can stop – too much money over here."
- "You go downtown and sit in the car and look at the market and you don't know anyone going into the market. That's progress."

Again, the distinction between the words "progress" and "development" is blurred in these documents, which raises the question of whether there has been a true understanding among community members and the applicant. This lack of true listening and comprehension, or hearing and application, is unfortunately all too common. The amount of development in Hawai'i that steadily moves forward, despite opposition and protest, causing some participants to drop out of the process altogether or not fully understand viable options and alternatives. Neither the CIA nor SIA address this pessimism, which we find to be too common in a Hawaiian population oppressed for generations. This pessimism and fatalism effects the overall participation in the "community" plans and input into these studies and documents, as the more mana'o, the better the final product.

Indeed, the CIA on page 16 paints a bleak predictive model of concern by informants regarding the destruction of cultural sites and burials, conservation zone violations and beach exclusion issues with the example of the Pāpōhaku subdivision being used as a possible precursor to the Lā'au project. On page 21 of the CIA, regarding "Feasible Action by the LUC to Reasonably Protect Native Hawaiian Rights", the CIA recommends applying "relevant recommendations from the Pāpōhaku Dunes Cultural and Natural Resource Preservation Plan" study to Lā'au. The specific recommendations to be utilized should be stated in light of the aforementioned concerns regarding ongoing issues with the Pāpōhaku subdivision.

Spiritual Impacts

There appear to be unmitigated spiritual impacts, as the CIA acknowledges on page 124 that there may be "no way to mitigate the impact upon the solitude that can now be enjoyed at Lā'au. It offers the opportunity to experience ho'ailona spiritual signs and the overall mana of Lā'au as a wahi kapu." The CIA also acknowledges through mana'o that 'ohana gather and pray in the area for many purposes, and others experience a replenishment of their 'uhane, an integral component of the Hawaiian psyche and overall well-being.

Page 29 of the CIA acknowledges that the persistence of subsistence on Moloka'i is of critical significance to the persistence of Hawaiian culture throughout our islands and acts again as a cultural kīpuka, not only for Moloka'i, but for Hawaiian culture "throughout Hawai'i." This is a truly profound observation, and the overall psychological and spiritual impacts to the Native Hawaiian population, not only on Moloka'i, but across the State of Hawai'i which may be adversely impacted, should this area be developed, is not sufficiently discussed to any extent in either the CIA or the Draft EIS. This needs to be addressed.

Subsistence Impacts

There is also good discussion in the CIA regarding the critical importance of "subsistence" and the statistics of how many Hawaiian families rely upon subsistence and an acknowledgment of the critical component this is for improving Hawaiian health. Furthermore, the CIA also outstandingly recognizes that "subsistence has also contributed to the persistence of traditional Hawaiian cultural values, customs and practices." This is a commendable observation. Regrettably, no analysis exists of the potential deleterious effects of a reduction in subsistence activities in an acknowledged "spiritual" and "mythical" area on either Native Hawaiian health or perpetuation of related endangered cultural practices.

Furthermore, the CIA contained testimony regarding the existence of a spring in the area. This should be clearly addressed in the Draft EIS, as well as the potential impacts to such a spring and its relation to nearshore percolating fresh or brackish water, fishery nurseries, and the irreplaceability of such an ecosystem and habitat.

The 1993 Subsistence Sites map referenced on page 40 of the CIA indicates "intensive fishing and ocean gathering in the area where the Lā'au Point Development is proposed." There doesn't appear to be any extensive analysis of the likely adverse impacts to subsistence gathering in this area outside of the reliance upon existing practitioners who don't believe the likely residents of the proposed development "know how to fish," as discussed further in the next section. This should be more carefully analyzed.

Fishery Concerns

The CIA, on page 15, does a good job of outlining serious concerns regarding subsistence fishing and gathering activities and the dismal expectations of cultural practitioners who utilize these resources for subsistence of the potential adverse impacts of the proposed development. As noted on page 15 of the CIA: "Most informants felt that the new residents will probably not directly damage the fishing grounds because they don't know how to fish. The real impact on the fishing resources is from the Honolulu boaters." This assertion is noted on page 46 of the Draft EIS as well: "The Cultural Impact Assessment (see Section 4.2) indicated that Moloka'i subsistence fisherman felt the new Lā'au Point residents would probably not directly damage the fishing grounds because they would not know how to fish."

While the common perception may be that the prospective purchasers of the high end residential lots will be malahini from locales outside of Hawai'i, in looking at comparable luxury projects throughout the islands, a portion of the purchases go to financially secure local residents who not only are familiar with local fishing opportunities but who also provide ingress for friends and family seeking abundant fishing opportunities. This fact combined with the publicity of the fishing resources created by the DEIS may have untoward additional impacts on the coastal ocean resources.

Another area of concern is the statement on page 11 of the CIA, which states: "The southwest shore also factors into the life cycle of the mullet, serving as a hatchery area from which they move east to Mana'e or East Moloka'i." Page 16 of the CIA further reads:

Some informants from the East End felt that the development would impact the mullet run and thus impact the resources on their end of the island. However, longtime fisherman who have regularly fished the south shore as members of the Ranch families noted that the mullet spawn at Hale O Lono, Halena and Kolo, rather than close to Lā'au.

Later, on page 85 of the CIA, it is noted that intervenor Vanda Hanakahi and William Kalipi, Sr. both assert Lā'au as being integral to the mullet life cycle. There are no identifying factors of the "longtime fisherman" that seem to contradict these views of Hanakahi and Kalipi. It is difficult to assess veracity, perception and accuracy in these conflicting statements. They should be clarified.

It is unclear as to whether any studies or other evidence regarding the important component of potential fishery impacts is available, other than competing claims by different practitioners regarding what area is or is not either a hatchery or a portion of a "mullet run." This should be

clarified further and backed up by independent studies or more detailed evidence, because it has the potential to be a significant impact not only on Lā'au but also in other areas.

Cultural and Traditional Access

Equally, Native Hawaiians should be afforded reasonable access for cultural and traditional purposes. We note that consideration must be given to applicable cultural gathering and access rights during and after construction activities, should construction be permitted. Such access should be fully described, including community members' concerns as to how welcome they anticipate feeling in the new, developed environment. OHA would like to see a copy of the proposed Shoreline Management Plan. In the meantime, OHA appreciates the applicant's assurances that recognized Native Hawaiian traditional gathering rights and access should not be restricted, even during construction, except as necessary to ensure safety, and that if such safety-related restrictions are put in place, alternative public access routes will be provided.

Potable Water Resources

OHA appreciates that the applicant has determined a source of potable water prior to commencement of construction. This is a wise planning step that is all too often ignored by developers until development has begun. We also appreciate that no new water sources will be sought, and in fact, "MPL will sign covenants preventing it from ever seeking further potable water permits from the CWRM, and will abandon the Waioala Well application." (Draft EIS at page 80).

From the information provided, MPL intends to use existing water allocations for potable water needs. Specifically, Well 17 in the Kualapu'u aquifer and treated surface water would be used for potable water and conducted to Lā'au Point via an extension of the existing Kalauko'i system infrastructure. This plan would convert 600,000 gallons per day (gpd) from Well 17 from irrigation use to potable use. MPL predicts that at full build-out, the Lā'au Point development would require at total of 97,000 gpd of potable water (based on 600 gpd for 200 lots each at 80 percent occupancy plus 1,000 gpd for drinking water at two public parks).

Non-Potable Water

The Lā'au Point development would require additional water allocations for non-potable water uses, such as irrigation. Although 340,000 gpd is predicted for future Lā'au Point use, the Draft EIS contemplates requesting a total allocation of 1,000,000 gpd from the State Commission on Water Resource Management. We appreciate that the applicant has disclosed the cumulative amount of water that it will seek; however, there is no analysis of the impact of this request. Please provide an analysis of the impacts that would result from withdrawing 1,000,000 gpd of

water from the Kamiloloa aquifer. This analysis must include not only the effects on Kamiloloa, but also effects on the adjacent hydrologically connected aquifers, such as the Kualapu'u aquifer, related Native Hawaiian rights, and the Department of Hawaiian Home Lands (DHHL) reservation in Kualapu'u aquifer. Please also discuss whether the proposed use of wastewater in the future will decrease the anticipated amount of groundwater for non-potable purposes.

Long-Term Water Development

It is noted on page 79 of the Draft EIS that a Moloka'i Water Working Group provided reports in 1993 and 1996. The group concluded that "current use (in 1996) plus 1993 projections of water use exceed supply." (Draft EIS, page 79). Please discuss the steps MPL has taken in its long-term planning to address this situation, particularly in light of the Lā'au Point development. The Draft EIS also states that MPL is working with DHHL, Maui County DWS, and USGS to evaluate long-term water demands in Moloka'i. We request an update on these discussions, so that the long-term water issues can be better analyzed based on current information.

Department of Hawaiian Home Lands (DHHL) Water Reservations and Rights

We are pleased with the applicant's guarantee that it will "yield to DHHL's priority first rights to water." (Draft EIS, p. 80). Nonetheless, OHA has significant concerns. As stated in the Draft EIS, DHHL currently uses two wells in the Kualapu'u aquifer, withdrawing a total of 367,000 gpd. DHHL also has an additional reservation of 2,905,000 gpd in the Kualapu'u aquifer. Beneficiaries have raised concerns, questioning whether the water needed for the proposed project will interfere with agriculture and DHHL allocations and reservations. The water section of this Draft EIS does not address these concerns, and it should. We request a specific analysis of how the applicant's plans will affect DHHL's existing uses and reservations and agriculture in general.

Thank you for the opportunity to comment on specific issues that have been brought to us by our beneficiaries. Thank you also for the care and effort that has gone into the project. Most concerned community members have good intentions, whether they support or oppose the project. OHA retains hope that the authors of the innovative and creative Master Land Use Plan can create further alternatives to the Lā'au Point project and more deeply address the community's and OHA's concerns.

Additionally, OHA hopes that the comments, concerns and questions elicited from the public about the current Draft EIS, which is a springboard for public comment, will be fully considered before the publication of the Final EIS. If you have further questions or require more



Thomas S. Witten
 PER Hawaii
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information regarding OHA's comments, please contact Heidi Guthi at (808) 594-1962 or e-mail her at heidig@oha.org.

Sincerely,

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SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Nāmu'o:

Thank you for your letter dated February 23, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we respond to your comments.

Community Concerns

1. *In examining the Draft EIS, we note with concern that Section 5.4.4 of Appendix M, regarding Social Impacts, states: "In focus group sessions and interviews conducted for this study, people repeatedly said that they do not go to meetings because of confrontational behavior. They feel intimidated and have become less inclined to participate in public meetings." OHA questions what effect these findings have on the overall assurances that the "community" has fully participated in the processes leading up to the various input into the proposals, both in support and opposition of the current plan.* (Page 3)

Response: We acknowledge OHA's concerns regarding community participation. MPL, however, cannot force every community member to participate in public meetings or even the planning process. However, as discussed in Section 2.4 of the Draft EIS, MPL made great efforts toward engaging those community members that wanted to participate. Throughout the *Community-Based Master Land Use Plan for Molokai Ranch* planning process, which involved 160 planning and community meetings, there was genuine interest, open discussion, and participation by a core group, with a broad cross section of 1,000 community members sitting in on committee meetings in their area of interest. Meetings were announced, open to the public and aired on public access television (Akaku Channel 53).

While some of these meetings were large public meetings, during which "confrontational behavior" may have been displayed, other meetings were small focus-grouped meetings, which would have provided a less "confrontational" setting for those feeling intimidated by the larger meetings. For these reasons, we feel that MPL has demonstrated best efforts to include as much as the community as they could during the planning process.

In a round of meetings set up to brief the community about the final plan, including Lā'au, opponents of the proposed Lā'au development dominated the discussions with confrontational behavior. As the Cultural Impact Assessment notes, opponents to the proposed development were the most vocal in meetings organized to receive input on impacts to cultural resources in the proposed development area, except at Maunaloa. In addition, the consultant met in a small meeting with the Maunaloa committee responsible for sustainable access policies on Molokai

Mr. Clyde Nāmu'ō, Administrator
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Ranch lands, a small meeting with Maunaloa kupuna, and interviewed seventeen kupuna and kama'āina.

Hawai'i's Environmental Review Process

2. *[T]he Plan itself is not up for environmental review. Only the Lā'au Point project is, and while the relevant project is part of a larger plan, it is more than appropriate that a Draft EIS begin with the following statement, which reads much like a threat: "This Environmental Impact Statement (EIS), which has been prepared for the proposed Lā'au Point project located along the shoreline bluffs on the southwest coastline of Moloka'i, is but one part of the comprehensive Community-Based Master Land Use Plan for Molokai Ranch (Plan) for all of Molokai Properties Limited (MPL)'s 60,000+ acres, which would be viable only as an integrated whole."...The above statement basically denies all possible alternatives that could be presented in the Draft EIS, if the community wants any portion of the Plan. This is not an adequate representation of a possible range of alternatives, according to the U.S. Supreme Court and various federal courts, including our 9th Circuit...This Draft EIS does not include adequate consideration of a suitable number of real, legitimate alternatives. (Page 4-5)*

Response: We acknowledge your comments; however, we respectfully disagree. MPL examined many viable alternatives, as shown in Section 6.0 of the Draft EIS, including the alternatives provided by the Alternatives to Lā'au Development Committee (ALDC). However, in response to your comments, and to others that were similar, MPL conducted further detailed examinations and analysis of the alternatives proposed in the Draft EIS, particularly those proposed to be located at least one mile and one half-mile away from the Lā'au shoreline. MPL also further reviewed alternative options at Kalbakō'i.

We also reviewed access options to the proposed development and reviewed other options for the supply of non-potable water (which you refer to in later questions) under the Water Plan (provided in Appendix P of the Draft EIS).

To reflect this information in the Final EIS, as well as to address other questions and concerns regarding alternatives, Section 6.0 (Alternatives) of the Final EIS has been revised as shown on the attachment titled, "Additional Alternatives Information and Analysis."

In answer to the other portion of your question, 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) for this action is not "triggered." Kahako'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.

Archaeological Resources

3. *In reading the Archaeological section, OHA staff noted with appreciation that the applicant plans to re-survey all proposed road-corridors and house-lot areas (construction footprints), which, when added to the previous survey work done by the Bishop Museum (1993, accepted by the State Historic Preservation Division (SHPD)), could amount to more detailed attention than the typical project area gets. Nonetheless, some concerns remain, and are explained below. Also, OHA requests that the applicant comply with the requirements of SHPD's January 11, 2007 letter, which indicates that it*

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does not currently have copies of the 1993 Bishop Museum reports, previous approval letters, nor any detailed site descriptions, all of which concerns us greatly. All past review letters from SHPD, and documents in compliance with HRS § 6E, should be included in the Draft EIS. For example, the original 1993 survey and SHPD comments and letters accepting it should be included. (Page 6)

Response: As requested in SHPD's January 11, 2007 letter, we sent a copy of the 1993 Bishop Museum report to SHPD's Kawai archaeologist on February 14, 2007. We note that the 1993 report was conducted for the previous landowner, Alpha USA, and therefore, MPL does not have a copy of the approval letter. We understand that SHPD has this letter and all their approval letters on file at their office.

4. *Another major concern is the applicant's consideration of the above-mentioned re-survey work as "supplemental data collection" (also known as "data recovery"). (See p. 1-3). Thus, labeling such intentions as "survey" work is a misnomer. Sites found during "survey" work would not be considered "inadvertent" finds, as they would be during "data recovery." Decisions on "inadvertent" finds, whether burials or otherwise, are, by law and rules, made more or less instantly (on the spot, or within a day or two) by SHPD. Public input is minimal because the process is accelerated. OHA urges the applicant to actually re-survey the areas, because any finds made during an inventory survey are subjected to an open and fair process for "interested" and knowledgeable persons, allowing for more potential mana'o to be gathered for better dispositions. Such an effort would show good faith to the lineal and cultural descendants of the area. This is in following with SHPD's statement that the road corridor and Papohaku Ranch lands must have an archaeological inventory survey that meets current requirements and standards, which would not be the same thing as "supplemental data collection." (Page 6)*

Response: To clarify some confusion regarding the term "re-survey," as used in the Data Recovery and Preservation Plans, "re-survey" was used to describe a process of following the road corridor through previously inventoried land, using techniques such as expanded vegetation clearing and excavation to relocate known sites, and either verifying or augmenting the known data as appropriate. Use of the term "re-survey," in retrospect, has too great a similarity, at least on its surface, to "inventory survey," and we regret some confusion may have caused. The archaeologist, Maurice Majors, has agreed to revise the plans to more clearly communicate what is meant.

Use of the terminology "supplemental data collection" is due to the nature of the work in relation to the historic preservation process, since the re-survey is in between the processes of "inventory" and "data recovery." An inventory was approved in 1993. However, because that work is not necessarily adequate (and negates the need to complete another inventory survey of the original 6,350-acre parcel), the road corridor and lot "re-surveys" are supplemental. The re-survey described in the 2006-2007 plans is not intended as "data recovery," and re-survey finds will not be considered "inadvertent." The plans state that a report will be issued after the re-survey, in which any previously unrecorded finds will be documented, evaluated, and treatments recommended, just as in a typical inventory survey report.

The intent of the plans was not to diminish the significance of any new finds or accelerate the process such that OHA or the community would not have a chance to react and provide input regarding significance and recommended treatments.

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The section of the road project through Pāpōhaku Ranchlands is different in that the work there will be the initial inventory survey (not re-survey), since no inventory has ever been accepted by SHPD for those parcels. Although SHPD did write that they agreed that an inventory of the entire road corridor was required, they did so based upon the mistaken belief that no inventory had been completed for the property that will be subdivided. Interestingly, the same SHPD letter did not acknowledge our intent to re-survey the area where proposed subdivision lots will be established, which was an important part of the program. The SHPD is currently embroiled in a controversy on the Big Island, in which its failure to require survey of subdivision lots (they required road survey only) has resulted in destruction of numerous archaeological sites, angry Hawaiians, and new lot owners facing the potential of massive fines and/or unexpected and expensive archaeological work and delays.

The section through Pāpōhaku Ranchlands is recommended for inventory survey in the plans, while the remainder will be "supplemental inventory" as noted in the previous response. The level of effort is the same.

To reflect the above information in the Final EIS, Section 4.1 (Archaeological Resources) has been 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 IMK 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 IMK 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 re-examined, 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.

5. As OHA had previously requested, page 52 of the Draft EIS addresses the issue of inadvertent finds of artifacts, burials or midden and notification of SHPD. The Draft EIS states, appropriately, that in the case of burial sites, the Moloka'i Island Burial Council, will be notified. Please note, that, unfortunately, island burial councils do not have legal jurisdiction over 'inadvertent discoveries of human remains' (13-300-40 HAR). SHPD, acting on behalf of DLNR, has the legal responsibility to contact and consult with island burial councils on inadvertent burials and/or human remains. The Monitoring Plan (p. M-2, Appendix E) and the Burial Treatment Plan (p. 8-1, Appendix H) make this same procedural error, which should be fixed. (Page 6)

Response: We note your comment and the reference to notifying the Burial Council has been taken out in the Final EIS, the Monitoring Plan, and the Burial Treatment Plan. Beyond compliance with legal procedures, we believe it is important to seek solutions regarding burial

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issues beginning at the local level. In practice, SHPD tends to defer to the Burial Council's judgment and recommendations. To reflect this information in the Final EIS, Section 4.1 (Archaeological Resources) has been revised as follows:

Finally, 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. ~~The Moloka'i Burial Council will also be notified of any newly found burials. Should a possible burial be encountered that cannot be planned around, SHPD and OHA will be consulted prior to any testing of the burial.~~

6. OHA has concerns regarding the current capacity and functioning of SHPD to adequately address resource protection in these instances: *because the archaeologist assigned to Moloka'i — in what appears to be a band-aid situation to a long-term vacancy is the Kawa'i archaeologist who already has a full-time job on that island. Equally, the Moloka'i Island Burial Council has been defunct for more than two and a half years, creating another serious concern about any proposed mitigation or burial treatment plans.*

Response: We acknowledge your concerns regarding the SHPD's capacity; however, this is out of our control. These concerns would be better addressed directly to SHPD.

7. SHPD also noted in its January 11, 2007 letter, that the project's revised mitigation plan needs to separate the individual plans for preservation, data recovery, monitoring and burial treatment for the appropriate, individual reviews and approvals... This language should be changed, because all four mitigation plans are reviewed under different Hawaii Administrative Rules. The archaeological consultant in his document (Appendix E) makes this important point, and keeps it straight, but the main text of the Draft EIS should be corrected. (Page 7)

Response: Per SHPD's January 11, 2007 letter, the Archaeological Plans were separated and submitted to SHPD on February 7, 2007 as individual Preservation, Data Recovery, Monitoring, and Burial Treatment plans. The Final EIS will include the separated plans in the appendices. To reflect this information in the Final EIS, Section 4.1 (Archaeological Resources) has been revised as follows:

The Preservation Plan, Burial Treatment Plan, Monitoring Plan, and Data Recovery Plan are contained in Appendix E. By letter February 13, 2007, SHPD has approved the Data Recovery Plan contained in Appendix E. The other three plans will be submitted in a revised form to SHPD in the near future. The Archaeological Plan in the DEIS has been replaced in its entirety by the four aforementioned plans.

8. The Monitoring Plan (p. M-2) is not sufficiently specific as to where, and under what conditions, work will be monitored. The last paragraph (p. M-2) should be revised to reflect specific parameters and conditions under which monitoring is needed. Should the land reclassification be approved, OHA requests that an archaeological monitor be on site during all excavations and ground disturbances for this project. (Page 7)

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Response: As noted, the Archaeological Plan contained in Appendix E of the Draft EIS has been separated into four separate plans for SHPD review and been re-drafted for clarity. The Monitoring Plan sets forth details on when and where monitoring will occur and what sites will be monitored at what times and how or under what conditions work will be monitored.

9. On page 20 of the CIA, "cultural monitoring" is described as intended to be utilized during clearing, grading and construction activities as a mitigation measure. Given the absence of any formal qualifications or statutory authority and guidelines for cultural monitoring, it would be helpful to clarify the qualifications and selection process for these important, mitigative assurances since their efficacy is critically reliant upon the monitors' personal capabilities as well as the monitors' perceived qualities by their constituency. (Page 7)

Response: Moloka'i Land Trust Resource Managers, charged with managing the cultural and natural resources of the area during clearing, grading, and construction of the proposed rural residential development for the west and south shores of Moloka'i adjacent to Ka Lae O Ka Lā'au, will be persons who have an ancestral relationship to these sites and resources. Moreover, they will be lineal descendants who are knowledgeable of the location of the cultural resources and the customs, practices and protocols related to these resources. The Moloka'i Land Trust will work with the applicant to identify and engage such kahu. Such qualified individuals were involved in the development of the Master Plan and have indicated their willingness to serve as kahu for the cultural resources.

The applicant is also mindful of the guiding wisdom of the late John Kaimikaua shared to those working on the Master Plan, "A single, most important and vital principle of our kupuna and their relationship to their land comes from the word 'Mālama 'Āina or 'Care for the land.'" To "Mālama" not only means to care for the land physically, it also means to care for the land spiritually. It also means to regulate the use of land and ocean resources to ensure the continuance of those resources for future generations. (John Kaimikaua, March 30, 2004)

10. Page 1-6 of Appendix E, the Archaeological Plan, cites the incorrect administrative rule as guiding the process. It cites HAR § 13-275, when it should be § 13-284, because the project area is privately owned. (Page 7)

Response: Comment noted. We have forwarded this correction to our archaeologist.

11. Furthermore, the third paragraph of the Burial Treatment Plan (p. B-1) states: "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." SHPD and OHA must be consulted prior to any such testing. (Page 7-8)

Response: The EIS will clarify the Burial Treatment Plan. SHPD and OHA will be consulted prior to any burial testing, should there be any. To reflect this information in the Final EIS, Section 4.1 has been revised as follows:

Finally, 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

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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. ~~The Moloka'i Burial Center will also be notified of any newly found burials. Should a possible burial be encountered that cannot be planned around, SHPD and OHA will be consulted prior to any testing of the burial.~~

12. Page 51 of the Draft EIS incorrectly states: "It is expected that the project will not have adverse effects to archaeological sites." The Draft admits that many sites will be adversely affected, but specific mitigation commitments have been proposed to alleviate these effects (e.g., data recovery, monitoring and preservation). This should be corrected. In addition, the Draft EIS should address the fact that where surface structures are severely eroded, altered or destroyed, the likelihood of finding sub-surface cultural deposits, such as ancestral burial sites, inadvertently and during construction activities, dramatically increases, especially in coastal frontage areas such as this project area. (Page 8)

Response: We acknowledge your comment; however, we respectfully disagree. The Draft EIS does not admit that many sites will be adversely affected. The Draft EIS states on page 51: "Access roads and the rural-residential lots will not affect cultural resources since plans are to avoid Cultural Protection Zones and archaeological sites. Depending on the nature of the archaeological sites, mitigation measures such as buffers, permanent boundaries and easements, and interpretive signs will be established to protect and preserve sites."

Also stated in the Draft EIS is that 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.

13. OHA appreciates the applicant's creation of 1,000 acres of cultural protection zones and the archaeological preserve in Kamaka'ipo Gulch. This shows a strong awareness of the cultural importance of the area, but OHA does not agree that these proposals go far enough. In fact, because La'au is more of a cultural property than a property containing cultural sites, OHA believes that this project, if it is approved, would represent an outstanding opportunity to formally and proactively assess and document the area of potential effect and its surrounding context according to the "traditional cultural property" (TCP) model, as defined in the National Historic Preservation Act of 1966, as amended; and, as expanded upon and clarified by National Register Bulletin 38 ("Guidelines for Evaluating and Documenting Traditional Cultural Properties," Parker and King 1990, rev. 1998, see bulletins/nrb38), National Park Service National Register of Historic Places. (page 8)

Response: Lā'au Point, itself, where the lighthouse is located, can be considered a significant cultural property. There are 51 acres at the point, its coastline and inland which are owned by the federal government and managed by the U.S. Coast Guard. These 51 acres will remain

14. Page 19 of the Cultural Impact Assessment (CIA) discusses the use of covenants, conditions and restrictions (CC&Rs) to help protect traditional and customary practices and the natural and cultural resources they inherently rely upon. The impressive list of proposed CC&R's comes with assurances that "measures will be taken to assure that these CC&R's cannot be changed in the future." Because the proposed CC&R's are such an integral component of the mitigation and protection plan, it would be helpful to clarify what "measures" will be taken given the propensity of allowances for homeowner associations to repeal or amend well-intentioned CC&R's, given the right conditions. Also, cultural practitioners of the area should be provided stewardship opportunities for the cultural properties, perhaps through a Stewardship Agreement with the Homeowners' Association. (Page 8)

undeveloped. (CIA, p. 79) The west and south shorelines adjacent to Lā'au Point 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 Land Use Plan identified Kamaka'ipo as an important cultural and spiritual place. MPL proposes to rezone these areas from Agriculture to Conservation, expanding the Conservation District along the shoreline from 180 acres to 434 acres in order to protect the significant settlement areas and clusters along the west and south shores adjacent to Lā'au Point, notably at Kamaka'ipo, Kapukuwahine and Kanalukaha. The proposed 128-acre Kamaka'ipo Gulch will be gifted to the Moloka'i Land Trust.

We note your suggestion regarding the TCP model.

Response: Certain provisions therein will be designated as "Master Plan Covenants." Master Plan Covenants will generally be provisions in the CC&Rs which were determined to be of such significant importance in the Community-Based Master Land Use Plan for Moloka'i Ranch that amendments or repeal thereof would be extraordinary. To safeguard this process, Master Plan Covenants will not be capable of being amended or repealed. As the Moloka'i Land Trust, a community-based land stewardship organization entrusted with the management of certain portions of the Project, will be a party to the CC&Rs, the Land Trust has enforcement rights in the event of any breaches. This will ensure that the community's interests, rights of cultural practitioners, and cultural resources are protected.

The CC&Rs will also require adherence to the Shoreline Access Management Plan (SAMP), which has been approved by the Moloka'i Land Trust, and which sets out the management protocol for the protection of the cultural resources and rights of practitioners within the project.

MPL agrees wholeheartedly with the concept of giving cultural practitioners stewardship opportunities. This concept is assured through the covenant provisions of the Deed over those lands that will be held by the Moloka'i Land Trust and through the aforementioned SAMP.

Given that the area proposed for development has been the private property of Moloka'i Ranch, the primary cultural practitioners of the area are current and former Moloka'i Ranch cowboys and employees, their 'ohana and longtime kama'aina residents of the Maunaloa community. The Master Land Use Plan outlines cultural principles and policies for the establishment and

management of a Cultural Conservation and Subsistence Management Zone, including areas of the proposed Lā'au development. The SAMP provides for its implementation and further development by a council that will include representatives of cultural practitioners of the area including Ranch employees, Maunaloa residents, persons with ancestral ties to the south and west coasts, well as the homeowners, and the Moloka'i Land Trust which is comprised of members from the larger community.

To reflect the above information in the Final EIS, Section 2.3.6 (Covenants) has been revised as follows:

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.

Cultural Concerns and Historic Properties

15. OHA has particular concerns with the term "meaningful" in regards to "data" obtained from data recovery efforts or no action which both mean the same thing ultimately, destruction and loss of the cultural resource. What may not be meaningful to a western trained archaeologist in terms of information and data on site form, function and actual use may not be the same qualities of a site which a native Hawaiian may find meaningful. This is an important distinction in historic preservation law. And, this is why, per § 13-284-6, HAR, OHA must be consulted regarding all significance assessments for all significant historic properties deemed significant under criterion "e," if they are traditional Hawaiian sites... The State of Hawai'i's addition of criterion "e" pertaining to an additional significance of an evaluated cultural site as having an "important value to the native Hawaiian people" and the duty to consult with the Office of Hawaiian Affairs regarding these significance assessments appears to have been wholly lacking in this project's historic preservation review process. Neither the developer's paid archaeological consultant nor SHPD independently possess the capacity to determine whether any historical site found and evaluated, meets the criteria for having an "important value to the native Hawaiian people." Thus the rules obligate meaningful consultation with OHA so that the Hawaiian people can determine what is valuable to them, in accordance with the rules. To see so many discovered cultural resources meeting only one or two criteria and designated for destruction via "no action" or "data recovery," further magnifies the harm of the failure to adhere to the spirit and intent of HRS Chapter 6E. What little cultural, natural and historical resources left become increasingly important and crucial to the traditional and customary native Hawaiian practices that exist there due to the catastrophic loss of these resources in the larger areas throughout the island and the rest of the State of Hawai'i. (Page 10)

Response: The inventory, significance evaluations, and treatment recommendations for the parcel containing the proposed subdivision lots was approved years before the relevant section of the HAR was amended. Criterion "E" was invoked without OHA consultation in 1993, applied to sites of perceived cultural importance, including burials and possible burials, heiau, fishing shrines, and a "piko stone" where umbilical cords of newborn babies were placed.

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It is noted that many sites were deemed "not significant" in 1993 by virtue of their destruction. It seems unlikely that they could be considered significant under Criterion "E." The relevant section of HAR (13-284-6-b) states that to be significant, a site must "retain integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criteria," before describing "A" - "E." "Integrity" is not an easy yes/no variable, and exists in various degrees, but in archaeological practice the "not significant" evaluation rests on factors such as complete topping of stone structures, graded or otherwise disturbed soil, or other damage such that the original form of the feature cannot be defined.

We note your concern however and, as set forth in the Preservation Plan, area practitioners and lineal descendants have been and will be consulted on the significance of the archaeological sites uncovered or noted in the surveys.

As responded in #11 above, SHPD and OHA will be consulted prior to any burial testing, should there be any. To reflect this information in the Final EIS, Section 4.1 has been revised as follows:

Finally, 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. ~~The Molokai Burial Caveat will also be notified of any newly found burials. Should a possible burial be encountered that cannot be planned around, SHPD and OHA will be consulted prior to any testing of the burial.~~

Cultural Resources

16. In reviewing the Cultural Impact Assessment (CIA) portion of the Lā'au Draft EIS, OHA notes that the cultural assessment is of high quality, and the breadth and depth of information as well as acknowledgement of the cultural importance of the Lā'au area is to be commended... (Page 11)

Response: We concur with your statement regarding the Cultural Impact Statement. We note that you had no questions for us to respond to in this section.

Culturally Related Social Impacts

17. ...It is unclear as to whether the term "progress" is truly the intended term in this explanation, or if "change" or "development" would be more accurate because many Hawaiians view protection and preservation of cultural and natural resources as "progress" — not necessarily the word "development" in the Western sense. Again, the distinction between the words "progress" and "development" is blurred in these documents, which raises the question of whether there has been a true understanding among community members and the applicant. This lack of true listening and comprehension, or hearing and application, is unfortunately all too common. The amount of development in Hawai'i that steadily moves forward, despite opposition and protest, causing some participants to drop out of the process altogether or not fully understand viable options and alternatives. Neither the CIA nor SIA address this pessimism, which we find to be too common in a Hawaiian population oppressed for generations. This pessimism and fatalism effects the overall

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participation in the "community" plans and input into these studies and documents, as the more mana'o, the better the final product. (Page 12)

Response: The apparent blurring of the words "progress" and "development" is inherent in the process and not due to any action or inaction on the part of the applicant or of the consultant. The consultant and those who assisted in taking notes at meetings faithfully noted the words used by the informants themselves. Their choice of words is reflected in the document and were not altered or changed according to any preconceived interpretation of the meaning of these words.

MPL also cannot bear the burden of the "pessimism, which [OHA] finds to be too common in Hawaiian population oppressed for generations." MPL made great efforts to engage as many members of the Molokai community during the community-based land use planning process, which spanned over two years; this effort is unprecedented for any large landowner in the state. The "optimistic" participants were key writers of the goals set forth in the overall *Community-Based Master Land Use Plan for Molokai Ranch*. We feel that it is unfair to discount their participation and viewpoints during the planning process because some pessimistic participants chose to "drop out of the process altogether or not fully understand viable options and alternatives."

18. Indeed, the CIA on page 16 paints a bleak predictive model of concern by informants regarding the destruction of cultural sites and burials, conservation zone violations and beach exclusion issues with the example of the Papohaku subdivision being used as a possible precursor to the Lā'au project. On page 21 of the CIA, regarding "Feasible Action by the LUC to Reasonably Protect Native Hawaiian Rights", the CIA recommends applying "relevant recommendations from the Papohaku Dunes Cultural and Natural Resource Preservation Plan" study to Lā'au. The specific recommendations to be utilized should be stated in light of the aforementioned concerns regarding ongoing issues with the Papohaku subdivision. (Page 12)

Response: To address your comment in the Final EIS, Section 4.2 (Cultural Resources) has been revised to include the following:

The cultural impact assessment has been designed to fulfill the mandate to the Land Use Commission from the Hawai'i State Supreme Court in its ruling, *Ka Pa'akai O Ka 'Aina v. Land Use Commission, State of Hawai'i*, 94 Haw. 31 (2000). The specific section of the ruling that served to guide the development of the report is as follows:

"In order for the rights of native Hawaiians to be enforceable, an appropriate analytical framework for enforcement is needed. Such an analytical framework must endeavor to accommodate the competing interests of protesting native Hawaiian culture and rights on the one hand, and economic development and security on the other."

MPL and its contractors will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites. Specific recommendations provided in the archaeological Preservation, Burial Treatment, Monitoring, and Data Recovery Plans (contained in Appendix E of the Draft EIS) will be submitted to SHPD for review and approval.

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In addition, the Shoreline Access Management Plan (SAMP), which has been approved by the Moloka'i Land Trust, sets out the management protocol for the protection of the cultural resources and rights of practitioners within the project. MPL agrees wholeheartedly with the concept of giving cultural practitioners stewardship opportunities. This concept is assured through the covenant provisions of the Deed over those lands that will be held by the Moloka'i Land Trust and through the aforementioned SAMP.

Spiritual Impacts

19. There appear to be unmitigated spiritual impacts, as the CIA acknowledges on page 124 that there may be "no way to mitigate the impact upon the solitude that can now be enjoyed at La'au. It offers the opportunity to experience ho'ailona spiritual signs and the overall mana of La'au as a wahi kapu." The CIA also acknowledges through mana'o that "ohana gather and pray in the area for many purposes, and others experience a replenishment of their 'uhane, an integral component of the Hawaiian psyche and overall well-being." (Page 13)

Response: Again, it is important to point out that 51 acres at La'au Point, itself, will remain undeveloped, raw and untouched. Within the proposed development area the Cultural Impact Assessment (Appendix F of the Draft EIS) also points out the following on p. 124: "Limiting access to a walking trail that is set back behind a row of kiawe and providing a clear demarcation between the private lots and the general public access areas can help protect the integrity of the shoreline and mitigate the impact of the house lots. The expanded Conservation District and the donation of the Kamāka'ipō Gulch to the Land Trust will protect the spiritual quality of important complexes such as Kamāka'ipō."

Also, as set forth in Section 2.3.1 of the Draft EIS, the shoreline Conservation District will be expanded to 434 acres. Given the natural state of the area and the substantial building setback imposed on the homeowners by the CC&Rs, the physical solitude of the shoreline will be minimized.

Unlike most other subdivisions, control of the Conservation District, archaeological sites, trails and native plant ecosystems would be an easement to the Land Trust, and control would rest jointly with the Land Trust and the lot owners. Both will share the responsibility and cost to malama (care for) the area through a council referred to in our response to #14 above. Kamāka'ipō Gulch and other areas identified as exceptional will be transferred to ownership of the Land Trust.

20. Page 29 of the CIA acknowledges that the persistence of subsistence on Moloka'i is of critical significance to the persistence of Hawaiian culture throughout our islands and acts again as a cultural kipuka, not only for Moloka'i, but for Hawaiian culture "throughout Hawaii." This is a truly profound observation, and the overall psychological and spiritual impacts to the Native Hawaiian population, not only on Moloka'i, but across the State of Hawaii which may be adversely impacted, should this area be developed, is not sufficiently discussed to any extent in either the CIA or the Draft EIS. This needs to be addressed. (page 13)

Response: This statement is taken out of context. The statement referred to is on page 129 of the CIA, rather than page 29, and is a reference and excerpt from Professor McGregor's

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testimony filed in the Waiola Case. The statement refers to Moloka'i as a whole and not specifically to the La'au area. The actual statement on page 129 is:

"Moreover, the persistence of subsistence on Moloka'i is of critical significance to the persistence of Hawaiian culture throughout our islands. The island of Moloka'i serves as a cultural kipuka for Hawaiian culture throughout Hawaii."

In the planning process that resulted in the Master Plan, the persistence of subsistence on Moloka'i was of central significance. The CIA refers to the measures outlined in the Master Plan to protect subsistence fishing and hunting which is elaborated upon in the response to the next three comments.

Subsistence Impacts

21. There is also good discussion in the CIA regarding the critical importance of "subsistence" and the statistics of how many Hawaiian families rely upon subsistence and an acknowledgment of the critical component this is for improving Hawaiian health. Furthermore, the CIA also outstandingly recognizes that "subsistence has also contributed to the persistence of traditional Hawaiian cultural values, customs and practices." This is a commendable observation. Regrettably, no analysis exists of the potential deleterious effects of a reduction in subsistence activities in an acknowledged "spiritual" and "mythical" area on either Native Hawaiian health or perpetuation of related endangered cultural practices. (Page 13)

Response: It is not expected that the project will reduce subsistence activities in the area. The Master Plan creates a subsistence fishing zone.

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 subsistence hunting and fishing. These measures will also protect the quality of the cultural sites, complexes and resources.

During the Master Plan planning process, the persistence of subsistence on Moloka'i was of central significance. The CIA refers to the measures outlined in the Master Plan to protect subsistence fishing and hunting in the proposed development area on page 113 of the CIA as follows:

Subsistence Fishing and Hunting

The recognition of Native Hawaiian subsistence rights, and protecting for the community, the hunting and fishing resources of the island, by:

- Seeking to establish a subsistence fishing zone from the coast to the outer edge of the reef or where there is no reef, out a quarter mile from the shoreline along the 40 mile perimeter of the property.
- Ending commercial hunting, and allowing only the community to hunt on the property.
- Ensuring access to the shoreline will be available only by foot.

The CIA provides details of the plan to protect subsistence fishing and gathering from page 118 through 121 and to protect subsistence hunting from page 121 through 122. In addition, Access

- Access and use of sites should follow protocols established by the Kahu and resource manager.
- Protocols should address manner of approach, entry, use, and exit of site; chants seeking entry and granting entry to sites; appropriate ho'okupu; chants and procedures to stabilize sites.
- Kahu and stewardship resource persons should train stewards in mo'olelo, protocols and responsibilities of stewardship for each site.
- There will be no commercial tours within the boundaries of Na'iwa (Manawainui-Kahanui) and Ka'ana-Pu'u Nana (Kalapahoa-Amikopala) wahi pana.

CC & Rs

- Design a measure to restrict access to foot only between Dixie Maru and Hale O Lono in order to conserve resources, with an acknowledgement of Native Hawaiian gathering rights as defined by law for subsistence purposes, in a designated subsistence management area.
- CC&Rs to reflect community-driven access plan. Walking access only from each end of the subdivision to restrict area for subsistence. No access from road above subdivision in order to restrict for subsistence gathering to ensure that resources are not depleted.
- No parking all through the roads, to prevent parking and access other than at each end which will enhance the subsistence nature of access.

Additional Recommended Guidelines:

- Community participants and informants reaffirmed that the Maumaloa community shall be integrally involved in the management and monitoring of access within the Kaluakoi ahupua'a. They also suggest the following additional guidelines.
- Emergency access to the shoreline through the rural-residential subdivision can be afforded for ocean rescues.
 - To accommodate kupuna and those with a disability, have a golf cart available to assist their access.
 - Do not allow camping in the public access and park area, although access for overnight fishing and surf casting should be allowed. The Nature Conservancy policy which allows overnight fishing can serve as a guideline.

The CIA also provides details of the Master Use Plan to protect subsistence fishing and gathering from pages 118 through 121 and to protect subsistence hunting from pages 121 through 122.

22. Furthermore, the CIA contained testimony regarding the existence of a spring in the area. This should be clearly addressed in the Draft EIS, as well as the potential impacts to such a spring and its relation to nearshore percolating fresh or brackish water, fishery nurseries, and the irreplaceability of such an ecosystem and habitat. (Page 13)

Response: Informants described an old well and windmill at Pu'u Hakina. This is an area designated for protection in the Master Plan. As for near shore percolating fresh or brackish water, in addition to Pu'u Hakina which is in the proposed development area, informants identified these as occurring from Hale O Lono and east to Palā au, outside of the proposed project area. Therefore, we disagree that this specific testimony needs to be addressed in the EIS.

will be managed to protect subsistence resources as discussed in CIA Section 5.2, pages 116 - 118 as follows:

5.2 Access and Trails

Subsistence fishermen and gatherers felt very strongly that opening access to the general public would lead to the depletion of marine resources. They observed that when Hale O Lono was opened the lobsters went. Subsistence fishers and gatherers involved in developing the master land use plan and the informants interviewed for this report were concerned if the area is opened up, that the community will keep going into the area until there is nothing left. They honestly believe that if access to the area is opened up every 1500 feet, the resources will be gone. More people are fishing now than before. There are more fishermen with better equipment. It will be ruined if vehicles are allowed to access the area every 1500 feet. The subsistence fishers and gatherers felt that the walk will be and important measure to better protect the area. They also felt that the provision of two access points and parking at either end of the development will afford sufficient access for subsistence fishers and gatherers.

Informants felt that overnight surf casting and pole fishing could be allowed but that camping should not be allowed in the reserve area. This is the policy implemented by The Nature Conservancy at their Mo'omomi Preserve.

Guidelines in the Community-Based Master Land Use Plan for Moloka'i Ranch

General Access

- Access on both MPL and Moloka'i Land Trust lands will be managed.
- Hawaiian Access Rights be enshrined on the property titles for both MPL lands and Land Trust lands.
- Non-Hawaiian access will be determined by the landowner.
- Hunting methods (rifle or bow) and game seasons are as confirmed on the Hunting Map.

Access and Use of Cultural Sites

- Sites can be accessed to fulfill traditional and customary Native Hawaiian responsibilities for cultural, religious, and subsistence purposes.
- Education and training activities can be organized through the kahu or the resource manager.
- In some cases access may be seasonal, such as during the non-hunting season, rainy/muddy season.
- Use of sites and related protocols will vary according to use of the particular site, including but not limited to:
 - Monitoring its condition - integrity, boundary and buffer, setting access routes, relation to overall complex or nearby sites and resources. Sites should be assessed once a year during the dry season.
- Work to stabilize and restore sites. A plan for the stabilization and restoration of selected sites should be developed and approved by the State Historic Preservation Office.
- Rededicated for specific spiritual and cultural purposes. Identify sites which have been in continuous use, those which have been rededicated and those which shall be rededicated.

However, based on other comments regarding the project's potential impacts to nearshore water systems and habitats, Section 4.9.2 of the Final EIS has been revised as shown in the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Impact of Pumping Kākalahale on the Coastal Environment, Līmu, and Fishponds."

23. *The 1993 Subsistence Sites map referenced on page 40 of the CIA indicates "intensive fishing and ocean gathering in the area where the Lā'au Point Development is proposed." There doesn't appear to be any extensive analysis of the likely adverse impacts to subsistence gathering in this area outside of the reliance upon existing practitioners who don't believe the likely residents of the proposed development "know how to fish," as discussed further in the next section. This should be more carefully analyzed. (Page 13)*

Response: See our response to #21 above.

Fishery Concerns

24. *... While the common perception may be that the prospective purchasers of the high end residential lots will be māhūni from locales outside of Hawai'i, in looking at comparable luxury projects throughout the islands, a portion of the purchases go to financially secure local residents who not only are familiar with local fishing opportunities but who also provide ingress for friends and family seeking abundant fishing opportunities. This fact combined with the publicity of the fishing resources created by the DEIS may have untoward additional impacts on the coastal ocean resources. (Page 14)*

Response: The local fishing opportunities of the area are currently open and available for public use with or without the Lā'au Point project. Therefore, the project will not necessarily add more fishermen to the area.

25. *Another area of concern is the statement on page 11 of the CIA, which states: "The southwest shore also factors into the life cycle of the mullet, serving as a hatchery area from which they move east to Māna'e or East Moloka'i." Page 16 of the CIA further reads: "Some informants from the East End felt that the development would impact the mullet run and thus impact the resources on their end of the island. However, longtime fisherman who have regularly fished the south shore as members of the Ranch families noted that the mullet spawn at Hale O Lono, Halena and Kolo, rather than close to Lā'au. Later, on page 85 of the CIA, it is noted that intervenor Vanda Hanakahi and William Kalipi, Sr. both assert Lā'au as being integral to the mullet life cycle. There are no identifying factors of the "longtime fisherman" that seem to contradict these views of Hanakahi and Kalipi. It is difficult to assess veracity, perception and accuracy in these conflicting statements. They should be clarified. It is unclear as to whether any studies or other evidence regarding the important component of potential fishery impacts is available, other than competing claims by different practitioners regarding what area is or is not either a hatchery or a portion of a "mullet run." This should be clarified further and backed up by independent studies or more detailed evidence, because it has the potential to be a significant impact not only on Lā'au but also in other areas. (Page 14-15)*

Response: Because intervenors Hanakahi and Kalipi spoke of Lā'au as being integral to the life cycle of the mullet along the south shore, Professor McGregor specifically asked the informants that she interviewed about mullet at Lā'au. Informants Espaniola, Mawae, Kaopuiki, Rawlins, Lapinid, and Quintura, all longtime fishermen with multi-generational access through Molokai Ranch to the west and south shore because of their 'ohana worked for Molokai Ranch

said that the coastal areas immediately adjacent to Lā'au Point are not where the mullet are found. They identified Hale O Lono as the western most point where the mullet were found. They also identified the area from Halena to Kolo as the coastal area where the mullet congregated.

These informants and others identified the coastal area off of the proposed residential development as having abundant lobster, uhu, eneneu, moi, aholehole, squid, 'opihī, foli, leho, pipipi, wana and 'a'ama and papa'i crab. As discussed above, extraordinary measures will be taken by the Ranch, its employees, the Molokai Land Trust, and representatives of the Maunaloa community, in cooperation with the homeowners to protect subsistence fishing.

During the planning process that resulted in the Community-Based Master Land Use Plan for Molokai Ranch, the persistence of subsistence on Moloka'i was of central significance. The CIA refers to the measures outlined in the Master Plan to protect subsistence fishing on pages 113, and subsistence fishing and gathering from pages 118 through 121. In addition, Access will be managed to protect subsistence resources as discussed in CIA Section 5.2, pages 116 – 118.

Cultural and Traditional Access

26. *Equally, Native Hawaiians should be afforded reasonable access for cultural and traditional purposes. We note that consideration must be given to applicable cultural gathering and access rights during and after construction activities, should construction be permitted. Such access should be fully described, including community members' concerns as to how welcome they anticipate feeling in the new, developed environment. OHA would like to see a copy of the proposed Shoreline Management Plan. In the meantime, OHA appreciates the applicant's assurances that recognized Native Hawaiian traditional gathering rights and access should not be restricted, even during construction, except as necessary to ensure safety, and that if such safety-related restrictions are put in place, alternative public access routes will be provided. (Page 15)*

Response: Access to the shoreline for recognized traditional gathering rights and access will be unaffected during construction. Construction will not occur in the Conservation District or shoreline areas. Native Hawaiians will be guaranteed access for cultural and traditional access through the provisions of the Shoreline Access Management Plan (SAMP). During the construction period, access will be maintained pursuant to the provisions of the SAMP and under the auspices of the Land Trust.

The SAMP is designed to minimize the impact on the traditional activities in the area and to provide actual control to the community over access. The SAMP is appended to the Final EIS. 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.

Potable Water Resources

27. *OHA appreciates that the applicant has determined a source of potable water prior to commencement of construction. This is a wise planning step that is all too often ignored by developers until development has begun. We also appreciate that no new water sources will be sought, and in fact, "MPL will sign covenants preventing it from ever seeking further potable water permits from the*

Mr. Clyde Nāmu'ō, Administrator

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CWRM, and will abandon the Waiola Well application." (Draft EIS at page 80). ¶From the information provided, MPL intends to use existing water allocations for potable water needs. Specifically, Well 17 in the Kualapu'u aquifer and treated surface water would be used for potable water and conducted to Lā'au Point via an extension of the existing Kalauko'i system infrastructure. This plan would convert 600,000 gallons per day (gpd) from Well 17 from irrigation use to potable use. MPL predicts that at full build-out, the Lā'au Point development would require at total of 97,000 gpd of potable water (based on 600 gpd for 200 lots each at 80 percent occupancy plus 1,000 gpd for drinking water at two public parks).

Response: We acknowledge and concur with your statements and note that you had no questions for us to respond to in this section.

Non-Potable Water

28. The Lā'au Point development would require additional water allocations for non-potable water uses, such as irrigation. Although 340,000 gpd is predicted for future Lā'au Point use, the Draft EIS contemplates requesting a total allocation of 1,000,000 gpd from the State Commission on Water Resource Management. We appreciate that the applicant has disclosed the cumulative amount of water that it will seek; however, there is no analysis of the impact of this request. Please provide an analysis of the impacts that would result from withdrawing 1,000,000 gpd of water from the Kamiloa aquifer. This analysis must include not only the effects on Kamiloa, but also effects on the adjacent hydrologically connected aquifers, such as the Kualapu'u aquifer, related Native Hawaiian rights, and the Department of Hawaiian Home Lands (DHHH) reservation in Kualapu'u aquifer. Please also discuss whether the proposed use of wastewater in the future will decrease the anticipated amount of groundwater for non-potable purposes. (Page 15-16)

Response: 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 has been 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."

Regarding your comment about whether the proposed use of wastewater will decrease the anticipated amount of groundwater for non-potable purposes, to meet MPL's comprehensive and cumulative non-potable water needs, MPL will be relying upon surface water sources (Molokai Ranch's mountain water system), ground water (Kākalahale Well), and treated wastewater. The Water Plan (provided in Appendix P of the Draft EIS) anticipates that wastewater treatment will generate 100,000 gallons of non-potable water that will be utilized for golf course irrigation. Any additional amounts of treated wastewater produced may offset reliance on surface and groundwater sources.

Long-Term Water Development

29. It is noted on page 79 of the Draft EIS that a Moloka'i Water Working Group provided reports in 1993 and 1996. The group concluded that "current use (in 1996) plus 1993 projections of water use exceed supply." (Draft EIS, page 79). Please discuss the steps MPL has taken in its long-term planning to address this situation, particularly in light of the Lā'au Point development. The Draft EIS also states that MPL is working with DHHH, Maui County DWS, and USGS to evaluate long-term water demands in Moloka'i. We request an update on these discussions, so that the long-term water issues can be better analyzed based on current information. (Page 16)

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Response: First of all, some clarification of the quoted statement 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 EG/Molokai Ranch Master 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 as reconvened the Moloka'i Water Working Group in July 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

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more than 30% (approximately 1/2-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, Section 4.9.2 (Water) in the Final EIS has been revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

Department of Hawaiian Home Lands (DHHL) Water Reservations and Rights

30. *We are pleased with the applicant's guarantee that it will "yield to DHHL's priority first rights to water." (Draft EIS, p. 80). Nonetheless, OHA has significant concerns. As stated in the Draft EIS, DHHL currently uses two wells in the Kualapu'u aquifer, withdrawing a total of 367,000 gpd. DHHL also has an additional reservation of 2,905,000 gpd in the Kualapu'u aquifer. Beneficiaries have raised concerns, questioning whether the water needed for the proposed project will interfere with agriculture and DHHL allocations and reservations. The water section of this Draft EIS does not address these concerns, and it should. We request a specific analysis of how the applicant's plans will affect DHHL's existing uses and reservations and agriculture in general. (Page 16)*

Response: We note that the impact of withdrawing 1 mgd from Kākalahale Well on existing DHHL and DWS wells in Kualapu'u and on the DHHL Reservation in Kualapu'u Aquifer was previously addressed in #28 above.

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 Kākalahale 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.

The Department of Agriculture has proposed increased pumpage from the Waikolu dike system to augment the Molokai Irrigation System. The dike compartments in Waikolu Valley are isolated from the basal ground water bodies from which Well 17 and Kākalahale well water is or will be withdrawn.

In addition to the development of new sources for agricultural water, drought mitigation strategies are important in securing the viability of agriculture and agricultural activities on Moloka'i. Recommended drought mitigation strategies for Moloka'i, identified by the Maui Drought Committee, include a number of measures to repair and improve the efficiencies of the Moloka'i Irrigation System. Another drought mitigation recommendation is to install a pump in MPL's Kākalahale well, which could supply brackish water for mixing with existing sources to meet non-potable demands. This drought mitigation measure can readily be incorporated into MPL's plans to utilize the Kākalahale Well for non-potable irrigation needs identified in the Master Plan.

Mr. Clyde Nāmu'ō, Administrator
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To reflect the above information, Section 4.9.2 (Water) in the Final EIS has been 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

Attachments:

- Additional Alternatives Information and Analysis
- Revised Section 4.9.2 (Water)
- Revised Section 4.3 (Trails and Access)

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

UNIVERSITY OF HAWAII AT MANOA
Environmental Center

February 5, 2007
RE:0758

Mr. John Sabas
Moloka'i Properties Limited
745 Fort Street Mall, Suite 600
Honolulu, HI 96813

Dear Mr. Sabas:

Draft Environmental Impact Statement
La'au Point
West Molokai, Hawaii

The La'au Point project proposes 200 two-acre rural-residential lots, roads and infrastructure, an expansion of the State Conservation District, cultural and environmental preservation zones, and two beach parks in the area of La'au Point on Molokai's southwestern shoreline. The total project area covered in the EIS is 1,432 acres. The EIS is being undertaken in support of a State Land Use District Boundary Amendment, a Community Plan Amendment, a Change in Zoning, a Special Management Area Permit, a County Special Use Permit, and other necessary approvals.

This review was conducted with the assistance of Zoe Norcross-Nuni, UHM Sea Grant Maui.

General Comment

At the core of this project is a deal between the owners of Molokai Ranch and the residents of the island of Molokai. The deal centers around permission to develop approximately 500 acres of land at La'au Point in exchange for protecting 50,000 acres of land in West Molokai from future development. There are a number of others parts to this complex tradeoff, but the essential trade is the rights to develop 200 two acre lots near the shoreline in southwestern Molokai while giving the community control through a land trust and restrictive covenants to a large portion of Molokai Ranch land. There have been few such tradeoffs in Hawaii like what is being proposed here. It may be similar to the deal the state made with Bishop Estate for permits to develop land in Hawaii Kai in exchange for leaving some at the entrance to Hawaii Kai undeveloped.

The Environmental Center cannot judge whether the land deal is a bargain for the community or for the Ranch's owners. This is a matter for the community to decide. We will

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look closely, however, how the deal plays out in the future to use it as a template for future proposals of a similar nature.

Aside from the aspect of the land deal there are two other major concerns we have with the proposed project. The first concern is water. Water resources on Molokai are scarce and developing 200 houses in an area where there is very little water will have an impact on the rest of the island. We note that the DEIS does discuss the issue in great detail in several sections of the DEIS. What we found lacking is a viable solution to the central dilemma. The DEIS states in many parts that the owners of Molokai Ranch, MPL, have long acknowledged publicly that its water use would yield to DHHL's priority first rights to water (p. 79). What is missing is a discussion of what MPL will do when DHHL requires the water that MPL is using for its developments. We would like to see a discussion in the DEIS on the scenario that DHHL needs the water in the near future.

We feel that there was a lack of discussion on coastal erosion and the impact on dunes in the vicinity of La'au Point. On page 94, there is a discussion on the lands in the vicinity of the proposed La'au Point development. There is mention of several places where there are sand dunes. Yet, there is no discussion about the impact the proposed development may have on the dunes. There is mention about the impacts on the dunes at Pāpōhaku beach and how some of the owners there have graded the dunes. We would like to see more discussion on how the dunes at La'au Point will be protected. We would also like to see more discussion on shoreline erosion in the areas where there are sandy beaches even though we recognize that the proposed project has a large setback from the shoreline.

In addition to our general comments, we have a number of specific issues that we note below.

La'au Point Summary Project Description (p. 5)

Paragraphs two and three are repetitive and redundant. We suggest merging the two paragraphs into one for readability.

Paragraph four states that residents will be "taught to malama aina..." It sounds from the description that residents will be forced to respect the land. We suggest changing the wording in this paragraph. We believe that this is a positive step taken by the MPL and suggest that the paragraph be reworded.

Flora (p. 6)

The section on "Flora," states a "management plan will be developed..." This is an important aspect of the mitigation of impacts in this development. Just as important is the issue of who will develop this management plan? We recommend this be addressed directly.

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Scenic Resources (page 67)

In several places in the DEIS it is stated the proposed project will use only 8 percent of the parcel (on page 23 and 25, for example). On page 67, the percentage is cited as 7. We believe the figure 8 percent is correct.

Conceptual South Park Plan (p. 91).


The use of permeable materials for the parking lots and road in the park should be considered. Sea Grant held a workshop on the use of permeable materials on Maui in 2006. Perhaps you might contact the Maui Sea Grant Extension office for information of the workshop.

Editorial Comments

On page 100, in the second paragraph in the fourth discussion of the page, should the word "acres" be replaced by "areas"? On page 147, in the first paragraph, the word "conversion" is misspelled.

Thank you for the opportunity to review this DEIS.

Sincerely,


Peter Rappa
Environmental Review Coordinator

cc: OEQC
Thomas S. Witten, PBR Hawaii
Anthony Ching, State Land Use Commission
James Moncure
Zoe Norcross-Nuni

February 5, 2007
Page 3 of 4

Trails and Access (p. 7).

In the paragraph entitled "Trails and Access," a "shoreline access management plan" is mentioned. We recommend that specific details about who will develop this plan be mentioned in the FEIS.

Key Points of the Community-Based Master Land Use Plan for Molokai Ranch (p. 19)

Paragraph one on the top of page 19 states that the Kaluako'i Hotel closed in 2001. This is inconsistent with section 2.1.6, page 17, paragraph two, which states that the hotel closed in 2000.

Petition Area (p. 25-26)

In the bulleted list, there is a mention of "Parks" (on approximately 8 acres). In the next paragraph two parks on 17 acres are mentioned. On page 26, the two parks are discussed, and one is mentioned as having 9 acres. The issue of public parks is confusing for the reader in this format. We recommend this section be clarified by listing parks, size and locations in the beginning of the section, and consistently referring to the parks in this manner.

Table 1. La'au Point Community Land Use Summary (p. 27)

The total acreage of the project is listed as 1,432 acres. This is inconsistent with the 1,113 acres listed as the petition area in section 2.3.2, page 25. It is not clear to the reader why there is a difference between the petition area and the acres listed in Table 1.

Potential Impacts and Mitigation Measures (page 44)

The document states that "the project increases the potential for interactions between humans and endangered species." The document further states that "appropriate protocol if one encounters a Monk seal on the beach is to notify National Marine Fisheries, who will check if the animal is injured or entangled, then put tape around the site to keep people from approaching too closely." Does National Marine Fisheries have enforcement staff on Molokai that can respond? Will this increased human/seal interaction tax the resources of National Marine Fisheries?

Marine Environment (page 46)

The DEIS states that a subsistence fishing management zone will be created in the coastal waters along the Ranch's coastline property. How will this management zone be created? Does this act require legislative approval?



Molokai
Properties
Limited

November 1, 2007

Peter Rappa
University of Hawai'i
Environmental Center
2500 Dole Street, Krauss Annex 19
Honolulu, Hawai'i 96822

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Rappa:

Thank you for your letter dated February 5, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter we are responding to your comments.

General Comment

1. *Water resources on Molokai are scarce and developing 200 houses in the area where there is very little water will have an impact on the rest of the island. We note that the DEIS does discuss the issue in great detail in several sections of the DEIS. What we found lacking is a viable solution to the central dilemma. The DEIS states in many parts that the owners of Molokai Ranch, MPL have long acknowledged publicly that its water use would yield to DHHL's priority first rights to water (p.79). What is missing is a discussion of what MPL will do when DHHL requires the water that MPL is using for its developments. We would like to see a discussion in the DEIS on the scenario that DHHL needs the water in the near future.*

Response: We do not agree with your statement that water resources on Molokai are scarce. The total sustainable yield for groundwater resources on Molokai is 81 mgd. For planning purposes, the Molokai 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 Molokai, but surface water usage on Molokai amounts to an average of about 3 mgd. The issue on Molokai 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 is on the western and central parts of the island.

A near future scenario in which DHHL requires the water that is being used by MPL, developments is extremely unlikely to occur. DHHL currently has a water use permit for 367,000 gallons per day of groundwater from its two wells in Kualapu'u. Additionally, DHHL homesteaders have priority rights to two-thirds of the water in the Molokai Irrigation System (MIS), which currently transports about 3.5 mgd of water from East Molokai. Since 1995, DHHL has had a reservation right to develop another 2,905 mgd of groundwater in the Kualapu'u aquifer. When DHHL requested that amount, it was anticipated that it would meet the domestic and agricultural water needs for DHHL lands in Ho'olehua and Kalama'ula. To date, DHHL has not developed any of its 2,905 water reservation. MPL's proposals for water use take into account DHHL's current and anticipated future uses. Thus, it is highly unlikely that DHHL and MPL will have to compete for the use of the same water in the foreseeable future.

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If this unlikely event occurs, however, MPL will recognize DHHL's priority rights to water and will seek alternative sources of water, from ground water sources on the eastern side of the island, surface water sources, and/or by desalinating brackish or salt water. The selection of alternative source(s) will depend on facts and circumstances at the time, such as technological advances associated with desalination, other then-existing and planned uses for the alternative water sources, ecological understandings about streams, etc.

To further ensure avoidance of the scenario described, currently 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 spacing of wells, the needs of DHHL, DWS, 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, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

2. *We would like to see more discussion on how the dunes at La'au Point will be protected. We would also like to see more discussion on shoreline erosion in the areas where there are sandy beaches even though we recognize that the proposed project has a large setback from the shoreline.*

Response: Lā'au Point does not contain Dune Lands according to the NRCS Soil Survey, discussed in Section 3.3.1 of the Draft EIS and as shown on Figure 12 of the Draft EIS.

Regarding erosion on the project site, all construction activities will comply with applicable Federal, State, and County regulations for erosion control. After construction, the establishment of permanent landscaping will provide long-term erosion control (see Section 3.3 of the Draft EIS). Also as discussed in the Draft EIS construction will not occur on or near the shoreline since building setbacks are a substantial distance from the shoreline (250 to 1,000 feet); therefore, we do not feel that it is necessary to provide further discussion in Final EIS on shoreline erosion, which will not be impacted by the project.

Lā'au Point Summary Project Description (p. 5)

3. *Paragraphs two and three are repetitive and redundant. We suggest merging the two paragraphs into one for readability.*

Response: As you suggested, the paragraphs you cited were merged and revised as follows:

Approximately 400 acres of rural-designated area within Lā'au Point will consist of 200 rural-residential lots, each approximately 1.5 to 2+ acres in size. An access road corridor will run north-south from Pōhakuloa Road to Kaipooa Beach Camp Road, connecting with Kaluako'i Road and Kuliawai Loop. ~~The mauika boundary of the rural-residential subdivision will be defined by a deer and livestock fence to minimize conflicts with adjacent subsistence hunting and pasture usage. The fence will also protect the open space and coastal conservation areas from degradation caused by livestock and deer.~~

An open space buffer area totaling approximately 382 acres will surround the residential lots. This open space buffer will be maintained by the Lā'au Point homeowners'.

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association. The mauka boundary of the open space buffer will be defined by a deer and livestock fence to minimize conflicts with adjacent subsistence hunting and pasture usage of the remainder of the La'au parcel. The fence will protect the open space and coastal conservation areas from degradation by livestock and deer.

4. Paragraph four states that residents will be "taught to *malama aina*..." It sounds from the description that residents will be forced to respect the land. We suggest changing the wording in this paragraph.

Response: We acknowledge your comment, but respectfully disagree that the paragraph needs to be re-worded. The wording in question comes directly from the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A, page 100).

Flora (p. 6)

5. [Who will develop this management plan?

Response: We note that your comment regarding the management plan from page 6 Draft EIS refers to the Executive Summary (Section 1.7) of the Draft EIS. As this is a summary of Section 3.6 (Flora), to clarify who will develop the management plan in the Final EIS Section 3.6 (Flora) will be revised as follows:

The majority of the native plant communities are located in the expanded Conservation District area in the sandy beach and rocky shoreline areas, where no development will occur within the setback of the coastal conservation zone. Of the native plant species, only the 'ihiihilaaukea (*Marsilea villosa*) population is located within the proposed development project area at Kamāka'ipō Gulch. Kamāka'ipō Gulch will be part of the expanded Conservation District area, designated a Cultural Protection Zone, and managed by the Land Trust. No development will occur in expanded Conservation District area, including Kamāka'ipō Gulch. The 'ihiihilaaukea population is not within the proposed residential house/lot area.

A management plan is to be a Shoreline Access Management Plan (SAMP) (Appendix B), has been developed adopted by the Land Trust as the easement holder of the expanded Conservation District area and county-zoned open space areas. Kamāka'ipō Gulch, which will be added to the Land Trust, is also covered by the SAMP. The provisions of the SAMP include managing this the significant 'ihiihilaaukea population, including possible opportunities to use for private landowner "safe harbor" conservation programs. The 'ihiihilaaukea might also benefit from habitat created by any settling ponds planned for the site. The key to protecting the 'ihiihilaaukea is the creation and implementation of provisions to protect the fern from grazing, trampling, erosion, fire, or other habitat changes.

To protect environmentally sensitive features, including native, rare, threatened, and endangered plants, the Terrestrial Biological Resources Preservation of Resources section of the SAMP provides for:

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1. Promulgation of rules and regulations to protect native, rare, threatened or endangered species.
2. Development of a natural resource management plan to identify management of terrestrial resources.
3. Provision of informational/educational signs where rare, threatened, or endangered plants or animals are found and to manage or control access.
4. Provision of buffer zones to ensure protection of sensitive species or habitats
5. Development of a monitoring program incorporating both scientific and anecdotal evidence to monitor the environment and ensure the viability of native species and habitats.
6. Enforcement of rules and prohibitions by an on-site Resource Manager.
7. Education of all individuals (staff, contract or volunteers) implementing the natural resource management plan.

Trails and Access (p. 7)

6. [A] 'shoreline access management plan' is mentioned. We recommend that specific details about who will develop this plan be mentioned in the FEIS.

Response: We note that your comment on Trails and Access from page 7 of the Draft EIS refers to the Executive Summary (Section 1.7) of the Draft EIS. As this is a summary of Section 4.3 (Trails and Access), in response to your comment regarding who will develop the shoreline access management plan and comments from others regarding the shoreline access management plan, in the Final EIS Section 4.3 (Trails and Access) will be revised as shown on the attachment titled, "Revised Section 4.3 (Trails and Access)," and the SAMP will be included as an Appendix to the Final EIS.

Key Points of the Community-Based Master Land Use Plan for Molokai Ranch (p. 19)

7. Paragraph one on the top of page 19 states that the Kaluako'i Hotel closed in 2001. This is inconsistent with section 2.1.6, page 17, paragraph two, which states that the hotel closed in 2000.

Response: The Kaluako'i Hotel shut down on January 3, 2001. To correct the mistake in Section 2.1.5 (Detailed Land Use History), in the Final EIS this section will be revised as follows:

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. It subsequently sold its interest in the underwriting and later tried to diversify into mainland commercial property. After initial success, the cash requirements of these investments led to the eventual sale of Molokai Ranch stock to Bready 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. The Kaluako'i Hotel, under separate ownership, closed in 2000.

Petition Area (p. 25-26)

8. In the bulleted list, there is a mention of "Parks" (on approximately 8 acres). In the next paragraph two parks on 17 acres are mentioned. On page 26, the two parks are discussed, and one is mentioned as having 9 acres. The issue of public parks is confusing for the reader in this format. We recommend this section be clarified by listing parks, size and locations in the beginning of the section, and consistently referring to the parks in this manner.

Response: The first mention of "parks (on approximately 8 acres)" in the bulleted list refers to the park acreage to be re-districted from the State Agricultural District to State Rural District. The "nine acres" refers to the park acreage to be re-districted from the State Conservation District to State Rural District. The "eight" and "nine" acreages refer to the re-districting, not the size of the separate parks. The West Park is approximately 2 acres and the South Park is 15 acres (total of 17 acres).

To clarify this issue in the Final EIS, Section 2.3.2 (Petition Area) will be revised as follows:

It should be emphasized that 382 acres or 45 percent of the total 850 acres of land being reclassified from Agricultural to Rural District is intended for open space use. In addition, MPL proposes to expand the existing State Conservation District by 254 acres along the shoreline and related resource areas. The two public shoreline parks, a.2-acre West park, and a 15-acre South park, will total 17 acres. When combined, the areas designated for conservation, open space, and park usage will total 653 acres or 59 percent of the total Petition Area.

The approximately nine acres proposed to be re-districted from the Conservation District to the Rural District will allow for the proposed park improvements for the proposed public shoreline park (on 15 acres) near Hale O Lono Harbor at the southeast end; another proposed public park (on 2 acres) will be located by Kamaka'ipō Gulch on the west end of the community, but that is included in the Agricultural to Rural re-districting previously mentioned. Public purpose uses, such as recreational facilities, are permitted in the Conservation District; however, the applicant would first have to obtain a permit from the State Board of Land and Natural Resources in addition to the County permits for any park improvements. Re-districting the park areas to Rural would streamline the permit process requiring just the County to handle the permit processing for subsequent park improvements. After all park improvements are completed and land ownership transferred to either the County or Land Trust, consideration should be given to reverting the Rural designation back to the Conservation District if added management control is deemed necessary.

Table 1. Lā'au Point Community Land Use Summary (p. 27)

9. It is not clear to the reader why there is a difference between the petition area and the acres listed in Table 1.

Response: The total project area of 1,432 acres includes the petition area (1,113 acres) plus the access road, which will remain in Agricultural District, and therefore, does not require a State Land Use District Boundary Amendment and is not included in the "petition area." Figure 1 in the Draft EIS (follows page 4) shows the difference between the project area and the LUC petition area.

Potential Impacts and Mitigation Measures (page 44)

10. Does National Marine Fisheries have enforcement staff on Moloka'i that can respond? Will this increased human/sea interaction tax the resources of National Marine Fisheries?

Response: We consulted with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) about the Hawaiian monk seal population at Lā'au

Point. The shoreline access management plan (SAMP) contains a plan and recommendations developed in consultation 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 Hawaiian monk seal habitat and the promotion of Lā'au Point as an area for Hawaiian monk seals to frequent and "haul out."

Based on conversations with NOAA NMFS, a dedicated NMFS enforcement staff member is not required to be on Moloka'i full-time to respond to monk seal sighting. Rules in the SAMP have been developed on removal of gear, the use of certain types of gear, and responses to Hawaiian monk seal sightings. No domestic pets and animals (including hunting dogs) will be allowed in the managed area. The use of toxins and pesticides is specifically prohibited and equipment will be purchased for cordoning off areas where Hawaiian monk seals have come ashore.

The established mitigation measures for protecting hauled-out Hawaiian monk seals have been generally effective elsewhere in the Main Hawaiian Islands, and this segment of the monk seal population appears to be increasing. Prohibiting dogs from the shoreline area may be of greater significance in limiting behavioral disturbances.

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)."

Marine Environment (page 46)

11. How will this [subsistence fishing] management zone be created? Does this act require legislative approval?

Response: In response to your question, in the Final EIS Section 2.3.7 (Access for Subsistence Gathering) will be revised to include the following:

As recommended in the *Community-Based Master Land Use Plan for Molokai Ranch*, to preserve inshore fishing/subsistence resources, a subsistence fishing zone in the coastal waters along all of the Ranch's coastline property will be sought. This means that from one quarter-mile out from the shoreline (north and west shore) and from the beach to the reef edge/breaker line (south shore), only Molokai residents will be able to fish for subsistence, effectively banning off-island boats from fishing in these in-shore areas. State legislation will be needed for this to be enforced.

Special Legislation will not be required to establish the subsistence fishing zone. The 1994 Hawai'i State Legislature created a process for designating community-based subsistence fishing areas (Act 271/94). The guidelines for a community-based subsistence fishing management area in The Master Plan would need to be developed into a management plan and draft administrative rules for adoption by the Department of Land and Natural Resources (DLNR) Division of Aquatic Resources (DAR) working in coordination with the landowners, the community and the subsistence fishers and gatherers. The administrative rules would need to undergo a public hearing process on Moloka'i, O'ahu and other neighbor islands. Overall, the process would take from 18 months to 2 years. The development of guidelines and policies for such a management area within the Master Plan is the first step toward its establishment.

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Once the community-based subsistence fishing management area is established through the DAR rule-making process the rules will be enforced by DOCARE in conjunction with the shoreline resource managers who will be hired jointly by the homeowners and the Moloka'i Land Trust.

Scenic Resources (page 67)

12. In several places in the DEIS it is stated the proposed project will use only 8 percent of the parcel (on page 23 and 25, for example). On page 67, the percentage is cited as 7. We believe the figure 8 percent is correct.

Response: To correct the mistake which you point out on page 67 (in Section 4.7, Scenic Resources), Section 4.7 (Scenic Resources) in the Final EIS will be revised as follows:

The existing landscape and views around Lā'āu Point will change with the creation of the rural- residential community. To mitigate visual impacts, the houselots, roadways, and infrastructure of the Lā'āu Point project will occupy only seven eight percent of the entire 6,348-acre Lā'āu parcel, protecting the majority of the land's open space landscapes. It is also important to note that the 200 homes will be on relatively large lots (approximately two acres each) which provides for a very low-density rural character. Homes will be sited appropriately to blend into the landscape and avoid a dense urban-like setting.

Conceptual South Park Plan (p. 91)

13. The use of permeable materials for the parking lots and road in the park should be considered.

Response: In response to your comment, in the Final EIS Section 4.10.5 (Recreational Facilities) will be revised as follow:

A new paved road approximately 800 feet long will be constructed through the park site as far inland as possible along the base of the hills away from the shoreline. A total of 30 parking stalls will be provided in three enclaves to minimize the impact of open paved lot areas. The use of permeable materials for the road and parking lots will be considered.

Editorial Comments

14. On page 100, in the second paragraph in the fourth discussion of the page, should the word "acres" be replaced with "areas"? On page 147, in the first paragraph, the word "conversion" is misspelled.

Response: Per your comment regarding the words "acres" and "areas" in the Final EIS Section 5.1.3 (State Conservation District Administrative Rules) will be revised as follows:

As previously discussed in Section 4.1, large areas areas of Cultural Protection Zones, such as the archaeological preserve (approximately 128 acres) at Kamāka'ipō Gulch (an area to be donated to the Moloka'i Land Trust), increases preservation of cultural landscapes rather than only individual sites, which represents a great advance not just in acreage, but in diversity and intensity of preservation actions (see Figure 40 12).

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Per your comment regarding the misspelling of the word "conversion," in the Final EIS Section 6.1 ("No Action" Alternative) will be revised as follows:

The resulting environmental, social, and economic benefits of creating the proposed Lā'āu Point project outweigh the loss of approximately 460 acres of currently vacant agricultural land. The conversion conversion to rural district for 200 lots and related infrastructure development would not impact Molokai Ranch's agricultural goals and production.

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 4.3 (Trails and Access)
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

COOPERATIVE EXTENSION SERVICE

College of Tropical Agriculture and Human Resources
University of Hawaii, at Manoa
United States Department of Agriculture Cooperative

February 22, 2007

Mr. Maxwell Rogers, Staff Planner
State of Hawaii Land Use Commission
235 S. Beretania St., Room 406
Honolulu, Hawaii 96813

Ref. Laau Point EIS

Dear Mr. Rogers,

I am an Extension Agent for the islands of Moloka'i and Lana'i. My primary responsibility is to assist and provide technical assistance to farmers with their crop production and agribusiness endeavors. My technical assistance spends all the science disciplines of growing plants and matters related to agri-business management.

Since 1982 one of my area of responsibility was to conduct educational training and workshops on land evaluation for the islands of Moloka'i and Lana'i. In order to carry out this responsibility I received training from land evaluation experts like Wade McCall, Soil Specialist, Saku Nakamura, Soil Scientist and Harryositi Ikawa "Ike", Soil Scientist early on in my career and jointly have conducted land evaluation workshops with them. Saku was one of the principal that developed United States Department of Agriculture, Soil Conservation Service Soil Survey of the State of Hawaii, 1972. In addition as an Agriculture Economist I also received training from Harold Baker, Agricultural Economist and one of the principal that authored the Land Study Bureau, Detailed Land Classification.

I had an opportunity to review the Laa'u Point, Draft Environmental Impact Statement, specifically the section on Soil and the Kapuhikani Soil Series, and the project projected water needs. Kapuhikani covers a major part of the southern and western shores of La'au Point. The EIS fails to mention that the only limitation associated with this Soil Series is the lack of irrigation and this limitation is the only reason it is placed in Land Suitability Classification VII. When irrigation is provided to Kapuhikani, it will be placed in Classification ranging, from II for lands with 3 to 7% slope to IV for lands with 15% slope. While "extremely stony clay" is used to describe Kapuhikani, it is not a limiting factor associated with this soil series that placed it in Classification VII. The EIS also failed to mention that only 10% of the acreage of Kapuhikani Soil Series is made up with very stony condition. In order for stony conditions to be a limiting factor that would place a soil series in VII, greater than 60% of the acreage need to be covered with stony conditions. This condition does not exist with Kapuhikani Soil Series described in the USDA, Soil Survey reference. For your reference, there are other soil factors that are associated with VII, but not to the Kapuhikani Soil Series. Other Class VII soil factors NOT associated

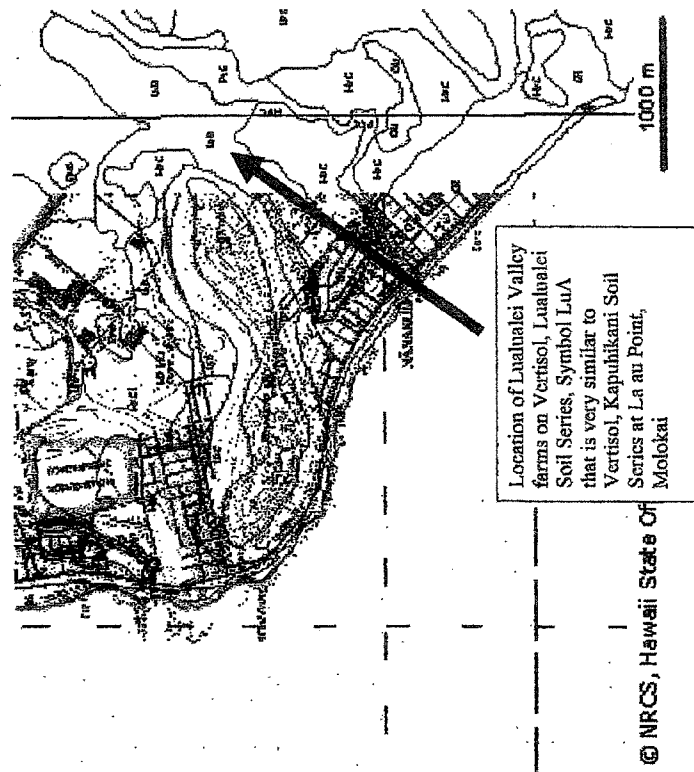
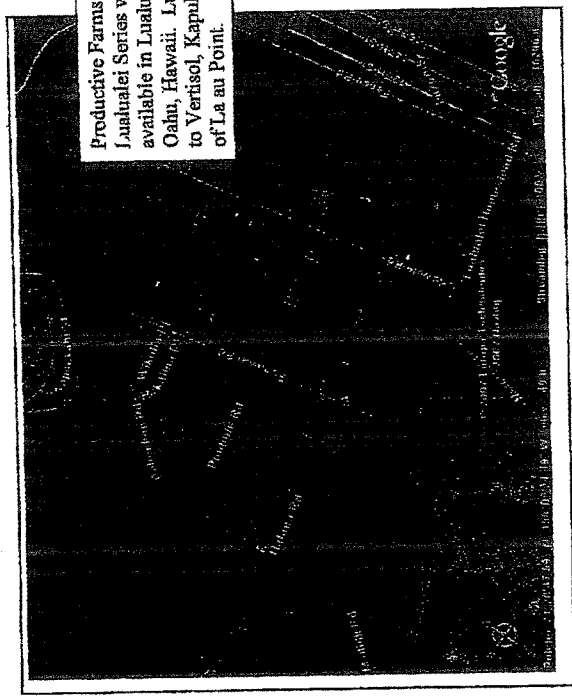
Kapuhikani includes very shallow soil depth (0 to 9 inches), very steep slope (40 to 69%) and very severe erosion. I would project that when irrigation is provided to Kapuhikani, it will be highly productive. This projection is based on similar Vertisol, like the Luabatei Soil Series that is farmed in Luabatei Valley on the Waianae Coast and the existence of Luabatei (LUA) Soil Series on the eastern property of Lono Harbor within the geographical and climatic conditions of Laau Point. Attached is Google arial photo of Luabatei Valley farms on Luabatei soil series, Luabatei Valley Soil Series map and map of Luabatei Soil Series in the vicinity of La au and Lono Harbor on Molokai. With irrigation Luabatei is Class III and Class VI or VII without irrigation. Thus the EIS conclusion that La au Point soils is "poorly suited for soil-based agriculture" is not accurate.

The EIS also fails to mention the Engineering Interpretation of Kapuhikani Soil Series described in the USDA, Soil Survey. Kapuhikani Soil Series is a very-fine, montmorillonitic soil, very clayey soil texture, thus very high shrink-swell characteristics. Therefore it has poor suitability for soil fill, highway location; will affect reservoir and embankments; poor workability for terraces and diversions; poor workability for grassed waterways; provide risks for foundations for low building and present severe limitations for septic tank and filter fields. Engineering soil interpretations are important for determining risk and longevity of manmade structures.

Working with farmers and crops in semi arid areas like in Hoololehua, Molokai requires me to have knowledge of crop water requirements and designing irrigation delivery systems that will meet crop needs and sustain production system. The EIS fails to present a clear picture of how the integrity of projected daily water figures for the project will actually be maintained. A 1/2 inch water meter pressured at 45 PSI has the capacity of delivering at least 14,000 gpd. Thus 200 lots could use 2.8 mgd. If you add uses of 300 lots at Papohaku Ranchland equip with 1/4 inch water meter that has the capacity of delivering at least 25,000 gpd or 7.5 mgd on 300 lots the total delivery capacity will exceed the water supply on Moloka'i. The project lots will be provided with the water use capabilities that exceed the projected water supply. The EIS left out discussions of the water delivery capacity at each lot in relation to projected water supply. The proposed project is only sustainable if water use projections are accurate. The Molokai and farming community will seriously be impacted if water use exceeds projections. What management tools will be used to maintain actual water use to the project projected water use? What evidence do you have that the management tools will be effective? What evidence do you have that indicates the willingness of lot owners to voluntarily limit their water use to the projected figures? Is the actual water consumption of occupied Papohaku Ranchland lots, neighboring La au Point, in keeping with their projected water use figures? What would be the impact be if lot owners start to using to the capacity of their water meters? Who is going to police water use when all is said and done?

Sincerely yours,

Alton S. Arakaki
County Extension Agent





November 1, 2007

Alton S. Arakaki
Cooperative Extension Service
College of Tropical Agriculture and Human Resources
University of Hawaii at Manoa
Fax No.: 567-6933

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Arakaki:

Thank you for your fax letter dated February 22, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). As the planning consultant for the applicant, Molokai Properties Limited (MPL), we are responding to your comments.

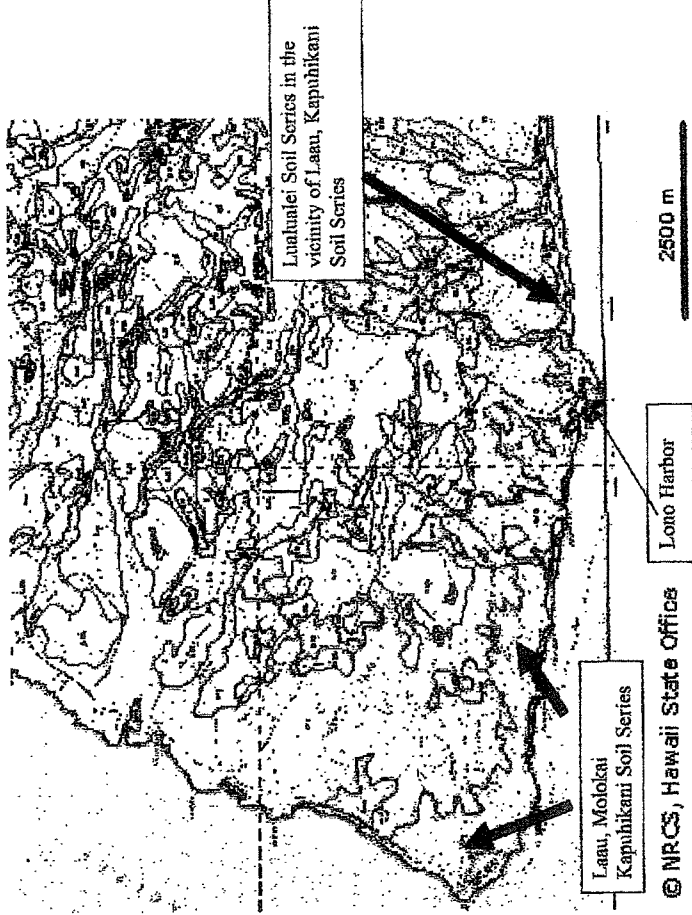
1. *The EIS fails to mention that the only limitation associated with this Soil Series is the lack of irrigation and this limitation is the only reason it is placed in Land Suitability Classification VII...*

Response: Based on your comments, we have added to Section 3.3.1 (Soils) of the EIS, the following information about Kapuhikani Soil Series:

Kapuhikani Extremely Stony Clay (KKTC) – These soils are well drained and extremely stony with slope ranges from 3 to 15 percent, and elevation ranges from nearly sea level to 500 feet. These soils are used for wildlife habitat and pasture. Runoff is slow to medium, and the erosion hazard is slight to moderate. The project area contains a significant amount of this type of soil. KKTC soils are rated Class VII, non-irrigated. Class VII soils have severe limitations that make them unsuited to cultivation (i.e., abundant stones and shallow soil). Irrigated, Kapuhikani soils are placed in Classification ranging from II for lands with 3 to 7 percent slope, to IV for lands with 15 percent slope. Only 10 percent of the acreage of Kapuhikani Soil Series is made up with very stony condition. In order for stony conditions to be a limiting factor that would place a soil series in VII, greater than 60 percent of the acreage need to be covered with stony conditions

2. *I would project that when irrigation is provided to Kapuhikani, it will be highly productive. This projection is based on similar Vertisol, like the Luahalei Soil Series that is farmed in Luahalei Valley on the Waianae Coast and the existence of Luahalei (LUA) Soil Series on the eastern property of Lono Harbor within the geographical and climatic conditions of Lā'au Point... With irrigation Luahalei is Class II and Class VI or VII without irrigation. Thus the EIS conclusion that Lā'au Point soils is "poorly suited for soil-based agriculture" is not accurate.*

Response: We note your comments.



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3. *The EIS also fails to mention the Engineering Interpretation of Kapuhikani Soil Series described in the USDA, Soil Survey, Kapuhikani Soil Series is a very-fine, montmorillonitic soil, very clayey soil texture, thus very high shrink-swell characteristics. Therefore it has poor suitability for soil fill, highway location; will affect reservoir and embankments; poor workability for terraces and diversions; poor workability for grassed waterways; provide risks for foundations for low building and present severe limitations for septic tank and filter fields, Engineering soil interpretations are important for determining risk and longevity of manmade structures.*

Response: Laboratory soil testing on samples of the site soils indicate that the expansiveness varies considerably. Most of the soils should be classified as low to moderately expansive with highly expansive soils only in localized areas. More importantly, the soil layer is thin, generally less than two feet thick. Therefore, adverse effects of expansive soils on foundations can be readily mitigated by removal.

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.

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 represented by a reddish brown to brown colored silty clay with a typical shrink-swell potential of less than about two to four percent, which is considered to be of generally low expansion potential. Based on an evaluation of the existing site conditions, these soils reside over approximately 70 to 80 percent of the land area within the project limits. The remaining 20 to 30 percent of the land area within the project limits may contain generally isolated and discontinuous deposits of expansive, dark grayish brown colored clay, which may be classified as a true vertisol containing a higher percentage of montmorillonite clay mineralogy.

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

Kamākaipō Gulch), basalt rock formation is encountered at the ground surface and partly exposed at the ground surface mixed with the soils mentioned previously.

4. *... The EIS fails to present a clear picture of how the integrity of projected daily water figures for the project will actually be maintained...The EIS left out discussions of the water delivery capacity at each lot in relation to projected water supply. The proposed project is only sustainable if water use projections are accurate. The Molokai and farming community will seriously be impacted if water use exceeds projections.*

Response: The use of water by owners is an expected use. Various devices will be used to discourage overuse. These range from provisions in the CC&Rs on planting and other practices as well as the rate structure. Meters will be of standard size for a residence of the type contemplated.

5. *What management tools will be used to maintain actual water use to the project projected water use? What evidence do you have that the management tools will be effective? What evidence do you have that indicate the willingness of lot owners to voluntarily limit their water use to the projected figures? Is the actual water consumption of occupied Papohaku Ranchlands lots, neighboring Laau Point, in keeping with their projected water use figures? What would be the impact if lot owners start to using to the capacity of their water meters? Who is going to police water use when all is said and done?*

Response: The Lā'au Point homeowners will be subject to complying with strict water covenants. The CC&Rs for Lā'au Point lot owners will be descriptive on water use as outlined in the Water Plan. Residents will need to sign on to these covenants when purchasing property in the development.

Enforcement provisions are available in these CC&Rs, particularly to the Moloka'i Land Trust, the organization that will be a party to the CC&Rs, and as such will have a right to enforcement. The CC&Rs are currently in preparation and being reviewed by the Moloka'i Land Trust prior to their presentation at LUC hearings.

The water use at Kaluako'i is higher than the anticipated water use at Lā'au Point, particularly from those residents who have large agricultural lots of between 10 and 40 acres and who irrigate those open spaces. Those residents, who have smaller lots of approximately 5 acres, in general, restrict their water use to similar water amounts proposed in the project's Water Plan.

For potable water, MPL has used the county standard, 600 gallons per day. Restricting development of the lot to roughly the house pad and a provision in the CC&Rs that the remainder of the 2-acre lot must remain undisturbed, will obviate the need for residents to irrigate the untouched portion of their lots. MPL has allowed for 1,500 gallons of irrigation water for each of the proposed lots, probably too high in light of the restrictions on lot use. The provision of a 5,000-gallon water tank on each property will also assist in restricting agricultural water use.

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

Mr. Alton Arakaki, County Extension Agent
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 4 of 4

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

RECEIVED

FEB 23 2007

PBR HAWAII

February 22, 2007

Molokai Properties, Limited
745 Fort Street Mail, Ste. 600
Honolulu, HI. 96813

RE: Comments on the La'au Point Draft Environmental Impact Statement (HRS 343 DEIS)

Aloha. As I stated in my testimony to the Molokai Planning Commission on January 10, 2007, I have concerns regarding the La'au Point DEIS in as much as the document pertains to Maui Community College on Molokai (College). Since La'au Point DEIS is a component of an integrated Community-Based Master Land Use Plan for Molokai Ranch (Plan), my main question at this meeting was whether the action taken on the La'au Point DEIS would constitute approval or acceptance of the entire 835 page document and appendices which includes the Plan. I would respectfully ask that this question be addressed in this current comment process.

While most DEIS deal primarily with the project for which they are written, the La'au Point DEIS has planning implications which will affect the entire island of Molokai. The Plan is referenced throughout the DEIS and is included in its entirety as Appendix A (on about page 306/835.)

Since there is language in the Plan which I can document that is either in error or is inconsistent with the Molokai Community Plan 2001, I have no choice but to have that language formally addressed through this public comment process. The three areas of concern with the Plan are:

Page 66: "The County should build a gymnasium next to the College as designated on the Molokai Community Plan." This statement is in error. The Molokai Community Plan does not designate that a gymnasium be built next to the College. It simply states that the county should build a gym in Kaunakakai. (Molokai Community Plan 2001, pages 29 and 41.)

Page 70: "Develop the gymnasium and swimming pool complex as part of the Community College complex. It would be part of the Community College." This statement is false. A gymnasium and swimming pool are County functions, not State or University responsibilities and therefore, should not be part of the Community College complex.

Page 109: "Community College. This 3.213 acre parcel fronting Kamehameha V Highway lays immediately west of the existing 2-acre campus. The parcel was included in the original master planning for the campus and was slated for additional classrooms, parking, and a theater. The University was given a 10-year option to acquire the parcel at fair market value running from the date of the

original parcel donation together with an additional 10-year right of first refusal thereafter." This statement is correct. The 3.213 acres is the second of two increments of the original agreement between Molokai Ranch and UH for the development of the Molokai Education Center dated March 2, 1998. However, by noting only the 3.213 acres, the language is inconsistent with the Molokai Community Plan 2001 which recommends 15 acres be set aside to meet the College needs far into the future. (Molokai Community Plan 2001, pages 32 and 46.)

The Office of Environmental Quality Control Molokai Notices dated December 23, 2006 states, "The Plan was the result of a two-year community-based planning process involving all Molokai community members who wished to participate." What is not noted here is that time and time again, like many of my fellow community members, I did participate and did voice the above concerns but the Plan was written without addressing them. I always asked the Land Use Committee of the Enterprise Community, the group facilitating the process, that they honor previous planning processes and follow these guidelines as they crafted their Plan. One such process was the updating of the Molokai Community Plan, which since 1994 had language recommending 15 acres for MCC that was ultimately included in the final 2001 document. I always summarized how long and hard our MCC Molokai Advisory Committee fought to secure the present site for the College and how they held firm on the location and recommended size of the campus. Yet, not only was the 15 acres not referenced in the Plan, but the inclusion of a swimming pool and gymnasium was.

As a Molokai resident for 32 years and a College professor for 22, I have spent my entire career providing for the higher educational needs of the residents of Molokai. I have spent the past six months trying to work with the Enterprise Community Board to clear up the discrepancies between the Plan and the Molokai Community Plan 2001. In the process, I have been called "greedy" and have been asked, "What are you still grumbling about?" So, while I have just recently heard that the Enterprise Community acknowledges some errors in the Plan language and will be taking steps to make some corrections, I do not have confidence in this group's ability to do so at this time. I trust the reviewers of this letter will be more professional in their response to my concerns.

Mahalo and aloha from Molokai.

Sincerely,

Donna Haytko-Paola, Professor/Coordinator
Maui Community College on Molokai

C: State Land Use Commission
PBR Hawaii
Office of Environmental Quality Control



Donna Haytko-Paoa
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 2 of 3

November 1, 2007

Donna Haytko-Paoa, Professor/Coordinator
Maui Community College on Moloka'i
375 Kamehameha V Highway
P.O. Box 440
Kaunakakai, Hawaii 96748

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Ms. Haytko-Paoa:

Thank you for your letter dated February 22, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). With this letter, we are responding to your comments. We have numbered your questions for clarity.

1. *Since Lā'au Point DEIS is a component of an integrated Community-Based Master Land Use Plan for Molokai Ranch (Plan), my main question at this meeting was whether the action taken on the Lā'au Point DEIS would constitute approval or acceptance of the entire 835 page document and appendices which included the Plan. I would respectfully ask that this question be addressed in this current comment process*

Response: Molokai Properties Limited (MPL) is not submitting the Community-Based Master Land Use Plan for Molokai Ranch (Master Plan) to the State Land Use Commission (LUC) for adoption. The Master Plan has already been adopted by the Moloka'i community as a part of the planning process and accepted by the Moloka'i Enterprise Community (EC) and will be subject to other regulatory approval processes.

The State Land Use Commission is the accepting agency for the Final EIS. In accepting a Final EIS, the LUC deems that the document is adequate as a complete disclosure document for decision makers. The LUC's acceptance of a Final EIS does not constitute the LUC's approval of a project or EIS appendices. The LUC can disagree with contents or conclusions of an appendix, but may approve the FEIS (including the appendices) as an adequate disclosure document.

2. *Page 66: "The County should build a gymnasium next to the College as designated on the Molokai Community Plan." This statement is in error. The Molokai Community Plan does not designate that a gymnasium be built next to the College. It simply states that the county should build a gym in Kaunakakai.*

Response: We note this question refers to the Master Plan document included as Appendix A in the Draft EIS. We do not believe there is an error in the statement in the Master Plan. The participants in the community-based Master Plan process determined that the gymnasium should be built next to the College, which is located in Kaunakakai. This is consistent with the Moloka'i Community Plan designating the gymnasium to be in Kaunakakai.

3. *Page 70: "Develop the gymnasium and swimming pool complex as part of the Community College complex. It would be part of the Community College." This statement is false. A gymnasium and swimming pool are County functions, not State or University responsibilities and therefore, should not be part of the Community College complex.*

Response: MPL was merely reporting the findings of the community representatives who initiated and developed the Master Plan. MPL has no opinion as to which entity has this responsibility.

4. *Page 109: "Community College. This 3.213 acre parcel fronting Kamehameha V Highway lays immediately west of the existing 2-acre campus. The parcel was included in the original master planning for the campus and was slated for additional classrooms, parking, and a theater. The University was given a 10-year option to acquire the parcel at fair market value running from the date of the original parcel donation together with an additional 10-year right of first refusal thereafter." This statement is correct. The 3.213 acres is the second of two increments of the original agreement between Molokai Ranch and UH for the development of the Molokai Education Center dated March 2, 1998. However, by noting only the 3.213 acres, the language is inconsistent with the Molokai Community Plan 2001 which recommends 15 acres be set aside to meet the College needs for into the future.*

Response: The Master Plan reflects the agreement made with MCC. MPL notes the Moloka'i Community Plan language on land to be set allocated to the College. This land is to be donated to the Moloka'i Land Trust and this issue, will in time, no doubt be addressed by the Land Trust.

5. *I did participate and did voice the above concerns but the Plan was written without addressing them. I always asked the Land Use Committee of the Enterprise Community, the group facilitating the process, that they honor previous planning processes and follow these guidelines as they crafted their Plan. One such process was the updating of the Molokai Community Plan, which since 1994 had language recommending 15 acres for MCC that was ultimately included in the final 2001 document. I always summarized how long and hard our MCC Molokai Advisory Committee fought to secure the present site for the College and how they held firm on the location and recommended size of the campus. Yet, not only was the 15 acres not referenced in the Plan, but the inclusion of a swimming pool and gymnasium was.*

Response: The answer to the previous comment pertains to this question as well. The issue is one for the Land Trust to address, not MPL.

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

Donna Haytko-Paoa
SUBJECT: LA'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 1, 2007
Page 3 of 3

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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