

March 2, 2023

Honorable Tasha Kama, Council Chair
Maui County Council
200 South High Street
Wailuku, Hawai'i 96793

SUBJECT: Correspondence from CM Paltin 02-28-2023 RE TRANSMITTAL OF DOCUMENT RELATING TO HOUSING PROJECTS UNDER CHAPTER 2.97, MAUI COUNTY CODE: RESOLUTIONS 23-78, 23-79, AND 23-80, RELATING TO THE HALE MAHAOLU KE KAHUA RENTAL HOUSING PROJECT (WAILUKU) (HLU-2(1))

Dear Councilmember Kama:

On behalf of Waiehu Housing, LP (Applicant), Hale Mahaolu, MEO, and its legal and technical consultant team, we offer the following information below to the Housing and Land Use (HLU) Committee regarding the above subject, as requested by Honorable Councilmember Tamara Paltin in her correspondence on February 28, 2023.

Comment No. 1:

Please provide a status update regarding the feasibility of incorporating a bus stop and lighted crosswalk in the project plans. If no status update is currently available, when can the committee expect an update?

Response: Upon review of the conceptual site plan, the Applicant believes the feasibility of a bus stop is contingent on the granting of the exemption from constructing curbs, gutters, and sidewalks. If the exemption is granted, the Applicant will coordinate with the County Department of Transportation to determine the need and desire for a bus stop at this location. If the Department requests the bus stop, full working drawings (which will be pending financing awards from Hawai'i Housing Finance and Development Corporation (HHFDC)) will be prepared to determine if the Department can accommodate the stop. The Applicant will keep the council apprised at every step of the process to ensure full transparency on this issue.

Comment No. 2:

Who recommended that the intersections be unsignalized with stop control along the westbound project exit approaches?

Response: A stop-controlled intersection is generally appropriate unless a signal warrant is met, and a signal warrant is not met at any of the three (3) project driveways. Hawai'i Department of Transportation (HDOT) and Department of Public Works (DPW) have reviewed the Traffic Impact Assessment Report (TIAR) with the stop-controlled access driveways and did not have comments regarding the intersection control.

Comment No. 3:

Will there be a northbound entering right-turn deceleration lane at all three project driveways?

Response: There are northbound entering right-turn deceleration lanes at the north access and the south access. At the central access, the project team plans to provide a southbound left-turn storage lane, and due to limited right-of-way, it is not possible to fit a northbound right-turn lane if providing curbs, gutters, and sidewalks. If the exemption to curbs, gutters, and sidewalks is granted, a northbound right-turn lane may be installed at the central access as well.

Comment No. 4:

Will there be a southbound left-turn lane at Driveway 2?

Response: Yes, the project plans to provide a southbound left-turn lane at the central access driveway.

Comment No. 5:

What type of traffic barrier will be employed to ensure no left-hand turns are made at Project Driveways 1 and 3?

Response: On the project site, curbed concrete islands will be installed to channelize the right-turn vehicles into and out of the driveway. If DPW prefers, delineators can also be installed in the median at the north and south driveways.

Comment No. 6:

When are the two major long-range regional roadway extension improvements for Imi Kala Street estimated to be completed?

Response: Per recent conversation with DPW, both phases of the Imi Kala Street Extension are anticipated to be completed within six (6) years.

Comment No. 7:

What is the source of the reclaimed landscaping water? Will there be a returning R-1 line from the Kahului Wastewater Reclamation Facility?

Response: At the present time, there are no reclaimed waterlines in the vicinity of the project site. If the County installs a reclaimed waterline in the project vicinity in the future, the development will consider connecting to the reclaimed water system.

Comment No. 8:

What is the estimated runoff for a 100-year, 2-hour storm in cubic feet per second? What is the corresponding runoff volume?

Response: 36.29 cfs or 130,655 cubic feet

Comment No. 9:

In the last ten years, how many 50-year, 1-hour storms have occurred in this area? In the last ten years, how many storms have created more runoff volume than a 50-year, 1-hour storm would?

Response: Unfortunately, the data for this is not readily available.

Comment No. 10:

Are there any traffic calming measures proposed to ensure vehicles will adhere to the posted 30 mph speed limit? If so, which measures are proposed?

Response: As the posted speed limit along Kahekili Highway in the vicinity of the project is 30 mph, enforcement of the speed limits would help control speeds. The project intends to provide northbound right-turn lanes at the north and south

accesses, and a southbound left-turn lane at the central access to allow deceleration for turning vehicles. Speed tables or speed bumps were not supported by DPW based upon previous discussion.

Comment No. 11:

Please provide a status update on the Maui AHF application.

Response: The project's 2021 AHF award was dropped from the county budget due to concerns about the land dispute as well as the fact that the project had not received its 2.97 approval. In anticipation of receiving approvals in early 2023, the development team submitted a new application in the 2022 funding round. It is our understanding that the application is under review, as we have not received communication of an award from DHHC.

Comment No. 12:

Have the tax-exempt bond, RHRF, and LIHTC been submitted to HHFDC? If not, how may this affect the estimated start and completion dates?

Response: The Applicant planned on submitting a tax credit application in the 2023 HHFDC funding round with the hope that HHFDC would accept the application in light of unforeseen delays to County Council action on the Ch. 2.97 application. However, HHFDC recently advised the Applicant that it did not meet its threshold entitlement requirements despite the aforementioned delays. With this said, given the fact that County affordable housing funds and other funding for which the project may be eligible cannot be obtained without Ch. 2.97 approval, the Applicant is moving forward with the request for the proposed 100 percent affordable housing community.

Comment No. 13:

It is my understanding that during the lawsuit, the opportunity arose to take the dispute to land court- the proper venue for quiet title disputes. Land court was not pursued, but a trespassing charge was pursued in circuit court. Please explain the reasoning behind this decision. While trespassing may continue, the court determined only a possessory and title interest. The court did not quiet the title.

Response: Civil No. 2CCV-21-0000254(2) filed in the Second Circuit Court, State of Hawaii on August 26, 2021 (the "Action"), was a proceeding related to the property designated as Tax Map Key No. (2) 3-3-001:106, located in

Waiehu, Maui, Hawai'i ("Property") owned by Maui Economic Opportunity, Inc. ("MEO").

After MEO served a Notice to Vacate to trespassers on the Property in 2021, certain persons came forward with claims of ownership rights in the Property as "Heirs of Pehuino". Accordingly, MEO sought court intervention to resolve the trespassing issues when it filed a Complaint for trespassing and nuisance against Laura Johnson and Kahala Johnson ("Defendants"), who in communications with MEO had identified themselves as the "Heirs of Pehuino".

Defendants filed their Answer and Counterclaim in the Action on November 19, 2021 ("Counterclaim"). In the Counterclaim Defendants claimed to own the property and asserted an ownership or possessory interest in the property through the theories of lost grant, lost kuleana, or adverse possession.

Because the Property is regular system property that is not registered in Land Court, the proper venue to decide the matters of trespassing and ownership is Circuit Court, not Land Court. There was and is no requirement for MEO to "quiet title" to the Property, because there is no break in MEO's chain of title to the Property.

After an evidentiary hearing on the Complaint and Counterclaim, the Circuit Court of the Second Circuit for the State of Hawaii affirmed MEO's rightful ownership of the Property, ruling that MEO has a possessory and title interest in the Property against the Defendants based on evidence presented by MEO, including evidence showing chain of title dating back to King Lunalilo and Claus Spreckels. The Court ruled that MEO has the right to exclude Defendants and anyone claiming by or through them from the Property. The Court also ruled that Land Commission Award 3386 awarded to Pehuino three (3) apana on the Waiehu side of the mouth of the Wailuku River (over a mile from the MEO Property) and that the three (3) apana awarded to Pehuino are not located within the MEO Property. Ultimately, all of Defendants Counterclaims were dismissed with prejudice (they cannot be brought again).

Comment No. 14:

The DOE determined 26 school-age children would reside in this proposed housing community where there are 58 two-bedroom units and 32 three-bedroom units. How did they arrive at this number?

Response: It is our understanding that the Hawai'i Department of Education (HIDOE) employs a student generation rate to estimate how many HIDOE students will reside in the housing community when the project is mature and turnover is stabilized. It is also noted that the developer will not be seeking an exemption from the school impact fee requirement, which is intended to mitigate any potential impacts from the project on HIDOE's school facilities. We respectfully refer any additional questions and clarification on the HIDOE's processes to the department's Planning Section.

Comment No. 15:

The project plans for 274 parking stalls and is not within walking distance from any grocery store, employment center, or school. How was it determined that the project would only create 64 additional trips during the morning peak hours and 79 additional trips in the afternoon peak hours?

Response: Trip generation methodology and formulas are obtained from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition, and is a methodology that is accepted by HDOT and DPW. The formulas utilized for the trip generation is reflective of trip generation for the specified land use, and represents a wide range of data from projects with varying degrees of proximity to stores, employment centers, and schools.

Comment No. 16:

Which energy-efficient and sustainable features will be included in the project?

Response: The buildings will have low flow plumbing fixtures, LED lighting, energy efficient windows, roof and wall insulation, and Energy Star appliances. Native drought tolerant plants and water efficient irrigation will also be used.

Comment No. 17:

What is the dollar value of each of the exemptions requested?

Response: At this time, the Project Team is researching and estimating the dollar value of the requested exemptions. However, the total estimated building permit fee exemption is \$330,880 and the rough order of magnitude exemption relating to the construction of curb, gutter, and sidewalk is \$180,000.

Comment No. 18:

Is the property under a warranty deed in addition to a quitclaim deed?

Response: MEO was donated the property and received title by Quitclaim Deed, however, the Grantee to MEO acquired title from C. Brewer and Company Limited by Warranty Deed recorded in the Bureau of Conveyances of the State of Hawai'i as Doc. No. 93-208060, who acquired title from Wailuku Agribusiness, formerly known as Wailuku Sugar Company by Warranty Deed recorded in said Bureau as Doc. No. 93-208058.

Comment No. 19:

How will erosion along the sand dune wall be addressed?

Response: The project is not proposing to disturb the bank along the easterly portion of the property.

Comment No. 20:

Considering the flooding that took place at the property site earlier this year, has the developer coordinated with HDOT to ensure the culvert is clear and operating properly during heavy rain events? If not, please explain why not.

Response: MEO has reached out to HDOT to coordinate clearing the culvert and will continue reporting maintenance issues during construction of the proposed project. Upon project completion, Hale Mahaolu will coordinate with HDOT on ensuring the culvert is clear and operating properly during heavy rain events.

Comment No. 21:

Would the developer be willing to retain some of the native flora (popolo, hao, aali'i, keahi, etc) for landscaping purposes? Would they be willing to utilize canoe plants (ulu, niu, kukui, milo, noni, etc)?

Response: Yes. Existing plants could be reused as part of the proposed landscape design. Canoe plant species could be utilized in the proposed landscape design and would augment those native species listed on the concept landscape plan.

Comment No. 22:

Has the County Archaeologist reviewed the archaeological assessment? Since the archaeological assessment was completed, many advancements in archaeological tools and processes have been made. If the County Archaeologist has not reviewed the assessment, I would like to request that the archaeologist review it and provide her comments to the committee.

Response: The 2008 archaeological assessment was reviewed and accepted by the State Historic Preservation Division (SHPD) in their June 13, 2008 Chapter 6E-42 historic preservation review letter (Log No.: 2008.2334; Doc. No.: 0806PC23) prior to the June 1, 2020 start of employment of the County Archaeologist. As part of the 2020 HRS Chapter 6E-8 historic preservation review of the proposed project, the County of Maui, Department of Housing and Human Concerns was provided the 2008 archaeological assessment study, which is referenced in their October 15, 2020 cover letter to the SHPD requesting review of the project and proposing archaeological monitoring as the next step in the process. It is unclear if the County Archaeologist assisted with the County Department of Housing and Human Concerns (DHHC) review of the project in October 2020. However, it is noted that the County Archaeologist was contacted as part of the project's Cultural Impact Assessment (CIA) consultation outreach, but did not provide a response (CIA Page 82).

Comment No. 23:

Has the County Archaeologist reviewed the Archaeological Monitoring Plan? If not, I would like to request that Dr. Six review it and provide her comments to the committee.

Response: The State of Hawai'i historic preservation review process of Archaeological Monitoring Plans is administered by the SHPD, as outlined in Hawai'i Administrative Rules (HAR) 13-279-4. The SHPD may request review and input from the County Archaeologist during their review of the document. For the proposed project, there does not appear to be any record that the SHPD requested review of the document by the County Archaeologist. However, the Archaeological Monitoring Plan is included in the Final EA as Appendix "G". The SHPD accepted the project's Archaeological Monitoring Plan in their November 10, 2021 Chapter 6E-8 historic preservation review letter (Project No: 2020PR34681; Doc. No.: 2111AM04).

Comment No. 24:

If iwi kupuna and or cultural finds are encountered during construction, which cultural and lineal descendants of the area will be consulted to create a reinternment plan and cultural preservation plan?

Response: In the event of the discovery of iwi kupuna during construction, the project's SHPD-accepted Archaeological Monitoring Plan stipulates that *"the SHPD will be notified. If human remains are identified, construction activity in the vicinity will be stopped and no exploratory work of any kind will be conducted unless specifically requested by the SHPD. All human skeletal remains that are encountered during excavation will be handled in compliance with HAR §13-300 and HRS §6E-43."* (AMP Page 55). In accordance with HAR §13-300 [specifically 13-300-40], it is the responsibility of the "department" [SHPD] to contact lineal and cultural descendants of the area in the event of the discovery of iwi kupuna. Per 13-300-35, the "department" [SHPD] is responsible for vetting and maintaining a list of descendants that have been recognized by the "council" [Maui/Lāna'i Islands Burial Council]. Any reinternment plan or cultural preservation plan that may be required for the project would include consultation with the list of recognized descendants maintained by the SHPD.

To summarize, the archaeologist's responsibility is to make the initial identification of iwi kupuna, stop work in the area of the find immediately, and contact the SHPD (and Maui Police Department (MPD)). It then falls to the SHPD (and later the Maui/Lāna'i Islands Burial Council (MLIBC)) to recognize and notify descendants of the area, which would be followed by consultation with recognized descendants during the preparation of any required plans.

Comment No. 25:

Has GPR or LiDAR been used on the property?

Response: Ground Penetrating Radar (GPR) and Light Detection and Ranging (LiDAR) are both non-invasive survey tools that can assist archaeologists in the identification of potential historic properties. These tools are typically used at the discretion of an archaeologist during the identification (inventory) process, but require confirmation via in-person visual assessment or ground-truthing excavation as to whether a historic property has been identified (explained in greater detail below). There are no historic

preservation rules or guidelines that require the use of GPR or LiDAR as part of the historic preservation review process.

LiDAR can be useful for large areas or in areas that are difficult to access on foot. LiDAR has the potential to identify archaeological sites on the surface of the land that may be hidden under thick vegetation and tree canopies. Once a potential identification of a surface historic property is made during the analysis of LiDAR data, an archaeologist is still required to visit the location and make a visual assessment and confirmation. For the proposed project, the project site is relatively small and easily accessible, therefore a LiDAR survey for historic property identification does not appear necessary. A systematic pedestrian survey of the entire project area was conducted as part of the project's archaeological assessment with no findings (AA Page 15). It should be noted, however, that it is likely that the County of Maui has performed a LiDAR survey of this parcel as part of their Real Property Assessment program and if so, this survey would be available to the committee.

GPR can be useful to identify subsurface anomalies, particularly in areas with soil types that are highly suitable for GPR in accordance with the Natural Resource Conservation Service (NRCS) GPR suitability maps. These anomalies, which typically manifest as a hyperbolic reflection with minimal detail, could include man-made structures and excavations such as a burial pit, or natural process such as tree roots, boulders, or changes in soil deposits. Once an anomaly is identified, the only way to determine the identity of the anomaly is to excavate the location. A GPR study of the project site was not conducted as part of the inventory survey process. Instead, the inventory survey relied upon subsurface testing that included 17 locations distributed throughout the project site with no findings (AA Page 16).

If the proposed project included excavation of the adjacent sand dune, then GPR may have been an appropriate tool to identify anomalies within the homogeneous sand dune matrix, an area that is traditionally and culturally associated with human burial practices. However, since the project site is located on former agricultural land, a GPR survey of the project site is not recommended due to the amount and extent of previous ground disturbance throughout the parcel that would generate non-cultural GPR anomalies. Ground disturbance included decades of plowing for the planting of sugarcane, followed by the planting of rows of macadamia nut trees, as well as the potential use of the area for "sand mining and stockpiling of excess materials during the construction of the Waiehu Heights Subdivision" (AA

Page ii), and the development of an agricultural program by MEO that included additional plowing and the preparation of modern lo'i and garden areas within the project site.

To summarize, neither GPR nor LiDAR have been recommended by the SHPD or archaeological consultants due to their limited abilities in the context of this project area.

Comment No. 26:

Seven of the twelve roadways in the project vicinity area are operating at LOS D-F. The proposal speaks to improvements anticipated at Imi Kala Street. Why has no LOS analysis been completed for Imi Kale Street or Wailupe Drive?

Response: The TIAR states that the Imi Kala Street Extension is forthcoming; however, given the planned timeline for construction of the Project, it is not anticipated that the Imi Kala Street Extension will be complete by the project's horizon year, therefore, the Imi Kala Street Extension was not analyzed. Traffic analysis for the impacts of Imi Kala Street Extension will be evaluated in separate studies.

Comment No. 27:

Per the DOFAW comments, what actions will be taken to prevent the spread of invasive species? What actions will be taken to minimize predator presence?

Response: Per recommendations from the Division of Forestry and Wildlife (DOFAW), the developer will minimize the movement of plant or soil material between worksites, such as in fill, in an effort to prevent the spread of invasive species. The developer will also follow DOFAW's recommendations to minimize predator presence, such as providing covered trash receptacles and removing cats, rodents and mongoose, to the extent practicable.

Comment No. 28:

Does the project plan include trash enclosures and covered receptacles?

Response: Yes, the project has planned trash enclosures throughout the site with each including covered trash bins.

Comment No. 29:

Has the applicant received the boundary interpretation? If so, please provide it to the committee.

Response: The District Boundary interpretation was received from the State Land Use Commission and included as Appendix "K" in the Final EA.

Comment No. 30:

The heirs of Pehuino filed their claims with the Bureau of Conveyances on August 13, 2020. Therefore, the heirs of Pehuino Ohana O Waiehu have claimed their undivided interest allowing the AMOW to also acknowledge their right to the cultural and traditional practices afforded that claim (Section 8, Pg. 231). Will MEO go to the land court to quiet the title for the property?

Response: All claims by defendants have been dismissed with prejudice. There are no other claims against the MEO property.

Comment No. 31:

Although the application states that community gardens and composting will be considered further along in the development process, will the developer set aside space for these facilities early in the construction process?

Response: The Applicant will work to identify areas within the project site for community-driven activities by the housing community's residents. Specific activities will be coordinated and led by Hale Mahaolu as the property management partner.

Comment No. 32:

What is the capacity of the existing irrigation well and storage tanks of the project site?

Response: At this time, the Applicant does not know the capacity of the existing irrigation well. The well will need to be tested before the Applicant can evaluate its use for onsite irrigation. The onsite metal storage tank has a 45,500-gallon capacity, however, it may need to be removed as part of the proposed project.

Comment No. 33:

If there is storm runoff greater than what is produced during a 50-year, 1-hour storm, how will the flooded areas within the project be addressed?

Response: During larger storm events, runoff will continue to enter into the project's drainage system, which will include catch basins within the parking and landscaped areas. Once the project's drainage system reaches its design capacity, runoff will overflow and follow the existing surface flow patterns.

Comment No. 34:

The application states that the remaining capacity for the Wailuku-Kahului Wastewater Reclamation Facility is 1 MGD. Of the 1 MGD, .34 MGD is allocated for affordable housing. The project's anticipated 30,600 gallons per day would bring the remaining capacity to .29 million gallons per day. Is this correct? Please clarify.

Response: Actual sewer demand and requirements will be determined during the building permit process. Based on preliminary feedback from the Department of Environmental Management, the treatment plant has sufficient capacity to accommodate the additional wastewater generated from the proposed project.

Comment No. 35:

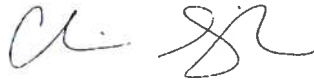
The application states that the Total Average Daily Demand will be 70,800 gallons per day, and the Max Daily Demand would be 106,200 gallons per day. Which of these numbers will be used to calculate need and capacity?

Response: The demand stated in the PER are based on the Water System Standards and are used for planning purposes. The actual demand shall be determined during the building permit process based on the fixture units.

Honorable, Council Chair
March 2, 2023
Page 14

Should you have any questions, please contact me at (808)244-2015.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Chris Sugidono', written in a cursive style.

Chris Sugidono
Senior Associate

CJES:yp

cc: Grant Chun, Hale Mahaolu
Debbie Cabebe, MEO
Moe Mohanna, Highridge Costa

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HLU Committee

From: Yolanda Pooouahi <yolanda@munekiyohiraga.com>
Sent: Thursday, March 2, 2023 8:04 AM
To: HLU Committee; Tasha A. Kama; Evan P. Dust; Paige Greco; Ana L. Lillis; Stacey L. Vinoray
Cc: GChun@halemahaolu.org; debbie.cabebe@meoinc.org; moe.mohanna@housingpartners.com; Mark Roy; Chris Sugidono
Subject: Hale Mahaolu Ke Kahua - Correspondence from CM Paltin 02-28-2023 – TRANSMITTAL OF DOCUMENT RELATING TO HOUSING PROJECTS UNDER CHAPTER 2.97, MCC: RESOLUTIONS 23-78, 23-79, AND 23-80
Attachments: HLU-2 Comment_Response Letter 03.02.23.pdf

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To: County of Maui
Councilmember Tasha Kama
Evan Dust
Paige Greco
Ana L. Lillis
Stacey L. Vinoray

From: Chris Sugidono, Senior Associate
Munekiyohiraga

Attachment:

Quantity	Date	Description
1	3/2/23	Applicant Communication regarding Correspondence from Councilmember Tamara Paltin on Item HLU-2(1)

Message: Aloha Honorable Housing and Land Use Committee Chair Tasha Kama,

Please see enclosed letter regarding the Correspondence from Councilmember Tamara Paltin on the subject item. Thank you.

cc: Grant Chun, Hale Mahaolu
Debbie Cabebe, MEO
Moe Mohanna, Highridge Costa
Mark Alexander Roy, Munekiyohiraga

Yolanda Pooouahi, Administrative Assistant
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